

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 214 (106-10) G/SO 214 (53-24)
THA 2/2011

15 February 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 6/4, 8/10, and 8/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **Mr. Charlie Diyu**, a migrant worker from Myanmar who is detained on illegal immigration charge in a cell at the Police General Hospital in Bangkok, despite the fact that his work permit is still valid.

According to the information received:

Mr. Diyu is a 33-year-old migrant worker from Myanmar who has worked at construction sites with temporary work permits. Around December 2010, he began to work for a new employer, Tara Rit-taeng of Pathum Thani, without informing the relevant authorities. On 9 January 2011, he was seriously injured at a construction site when a concrete wall fell on him at Charoen Pokphand's food processing plant in the Lat Lum Kaeo district of Pathum Thani. Mr. Diyu's large intestine burst from his stomach and his left hip was broken. While he received medical attention at the state-run Pathum Thani Hospital, the hospital contacted the police upon realizing that he carried no identity card and could not pay his medical expenses of 70,000 to 80,000 baht, especially as Mr. Diyu's employer or contractor has not provided any financial compensation to his injuries.

Mr. Diyu was held in custody at the Pathum Thani police station and then transferred to the Immigration Bureau on 31 January 2011. He stayed one night in the Immigration Bureau, where the conditions of detention were reportedly unhygienic and unsuitable for sick persons. During his detention, he was not given any medical care despite his medical conditions. On 1 February 2011, Mr. Diyu was transferred to the Police General Hospital, where he was shackled to his bed for 4 days. His detention in a locked cell at the Police General Hospital has made access to him difficult, including by his lawyers. Mr. Diyu is scheduled to be deported upon recovery on the basis that his work permit expired on 20

January 2011. However, on 8 February 2011, the Alien Workers Management Committee discovered that in fact, Mr. Diyu's work permit is valid until 28 February 2011.

In view of the allegation according to which Mr. Diyu was transferred to the Police General Hospital, where he was shackled to his bed for 4 days, concern is expressed about the physical and mental integrity of Mr. Diyu.

Without expressing at this stage an opinion on whether the detention of Mr. Charlie Diyu is arbitrary or not, we would like to appeal to your Excellency's Government to respect and protect his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights ("ICCPR"), acceded by the Kingdom of Thailand on 29 October 1996.

Furthermore, while we do not want to prejudge the accuracy of the allegations reported above, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Diyu and to respect and protect the human rights of all individuals within its territory and subject to its jurisdiction, regardless of their immigration status. In light of the information indicating that Mr. Diyu's work permit is still valid, we would like to urge your Excellency's Government to immediately release him from the cell.

We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded by the Kingdom of Thailand on 2 October 2007. In particular, we would like to highlight article 10, paragraph 1 of ICCPR, which provides that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

In light of the allegations that Mr. Diyu was not provided any medical care at the Immigration Bureau and that it has also been difficult in accessing his initial medical record at the first hospital in Pathum Thani, we would also like to highlight to your Excellency's Government the obligations under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 24 specifically provides that "[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."

Furthermore, with respect to the allegation according to which the conditions of detention centre in the Immigration Bureau where Mr. Diyu stayed one night were unhygienic and unsuitable for sick persons, we would like to draw your Excellency's Government's attention to the fact that the Committee against Torture and the Human

Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this context and with respect to the allegation according to which Mr. Diyu was shackled to his bed for 4 days in the Police General Hospital, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In addition, we would like to take this opportunity to reiterate our concern with respect to the right of migrant workers to compensation in case of workplace accidents, as highlighted in our previous communication of 10 November 2009. Having regard to the information indicating that Mr. Diyu's employer or contractor has not provided any financial compensation, there are concerns that Mr. Diyu may be left without any remedy. In this connection, we would like to highlight once again article 7 of the International Covenant on Economic, Social and Cultural Rights, acceded by the Kingdom of Thailand on 5 September 1999, which recognizes the "right of everyone to the enjoyment of just and favorable conditions of work". I would also like to refer to article 2, paragraph 3 of the ICCPR, which guarantees the right to an effective remedy and obliges States to ensure that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy".

As it is our responsibility under the mandate 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. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the legal basis for Mr. Diyu's detention in the Immigration Bureau and in the cell of the Police General Hospital, and how these measures are compatible with applicable international human rights norms and standards, particularly in light of his medical conditions.
3. Please provide information on the measures undertaken to ensure that Mr. Diyu is treated with humanity and with respect for the inherent dignity of the human person while he is treated at the Police General Hospital. Please also provide information on whether Mr. Diyu will be allowed to remain in the country to be able to continue receiving the necessary medical care for his full recovery, as well as to claim reparation for the work accident he incurred.
4. Please provide full details of the current legal framework, regulations and policies which apply to migrant workers who are injured in workplace. Please provide details of any measures or steps your Excellency's

Government has undertaken or intends to undertake to ensure that such a legal framework, regulations and policies comply with the international human rights standards and are implemented in a manner which protects and promotes the human rights of migrants.

5. Please provide details of any measures your Excellency's Government has undertaken to ensure that Mr. Diyu and migrant workers in similar situations have access to adequate procedures for receiving compensation and/or rehabilitation.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Jorge A. Bustamante
Special Rapporteur on the human rights of migrants

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