

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

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

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

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human right to safe drinking water and sanitation; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on the human rights of migrants; and Special Rapporteur on the right to food

REFERENCE: UA Housing (2000-9) G/SO 218/2 Food (2000-9) G/SO 214 (26-18) G/SO 214 (106-10) Water (2008-1)
THA 8/2011

18 November 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human right to safe drinking water and sanitation; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on the human rights of migrants; and Special Rapporteur on the right to food pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 15/8, 16/2, 14/6, 17/12 and 13/4.

Allow us from the outset to express our sincere sympathies to Your Excellency's Government and the people of Thailand in the wake of the serious flood crisis. In this regard, we would like to recognize the commendable efforts made by Your Excellency's Government to ensure an effective response and provide relief for those in need. Kindly allow us also to express appreciation of the leadership demonstrated by Your Excellency's Government in facilitating coordination of international efforts to provide relief and recovery.

In light of the particular vulnerability of the large migrant community living and working in Thailand to the disastrous impact of the flooding, we would also like to acknowledge the efforts undertaken by Your Excellency's Government to ensure that migrant workers and members of their families access shelter at relief centres and travel back safely to their countries of origin in this situation of national crisis. In this regard, we were pleased to note the launch of an emergency centre at Wat Rai Khing in Nakhon Pathom for affected migrant workers. It has been brought to our attention that the Department of Employment has prepared a second location to house incoming migrant workers as the Wat Rai Khing centre has now itself been affected by the floods. We

furthermore take note of the memo issued on 25 October 2011 by the Immigration Bureau Commissioner notifying immigration offices in flooded provinces to allow migrant workers in their area of jurisdiction to seek visa renewal elsewhere.

Nevertheless, we remain deeply concerned by the heightened vulnerability of the thousands of migrant workers and members of their families present in the country and alleged violations of their human rights as they attempt to seek shelter, reunite with relatives, or return to their countries of origin. In particular, according to information received, we are concerned by the following allegations:

According to information received,

Migrant workers have been arrested and detained on the basis that their registration papers do not permit them to travel outside of permitted areas where they work. It is reported that approximately one and a half million migrant workers have work permits which do not allow them to travel outside the province in which they were employed. It is also alleged that migrant workers fleeing the flooding have been arrested by law enforcement officers for not having the full paperwork in place or for a lack of identification documents, including passports. While noting with appreciation that documented migrant workers have been given permission to travel across provinces to escape the flooding, many may have lost their documents as a result of the flooding or during their journey. Allow us also in this context to recall that some migrant workers are not in possession of passports and that, in other cases, passports of migrant workers are reported to have been illegally withheld by employers.

Allegedly, many of these arrests have taken place in the Mae Sot, Tak Province, at the border with Myanmar as thousands of migrant workers have sought to return to their country of origin. According to reports, many have been detained in the Immigration Centre in Mae Sot, or arrested and detained by immigration police officers at various checkpoints on their way to Mae Sot. Whilst appreciating the order issued by police authorities not to arrest migrant workers, arrests and detention by immigration officials are still ongoing, according to reports received.

Without prejudice to the accuracy of the facts and circumstances of these allegations, we are also concerned by reports regarding the lack of food and water for migrant workers while in detention. Furthermore, we are concerned at allegations of the involvement of immigration officials in extortion of undocumented migrant workers in order to facilitate cross-border movements.

We are furthermore concerned at allegations of denied access to emergency shelters as some facilities were reportedly open to Thai citizens only. According to information received, some shelters have allegedly accepted migrants only on the condition that they possess a recommendation document or certificate from the Ministry of Labour. It is reported that migrant workers without such documents have had little option but to find and stay in unsafe places. According to information received, migrant workers who fled the floods in the Bangbauthong

district in Nonthaburi province had to stay in warehouses in Prathunam area in Bangkok.

In this context, we are concerned by reports that some alternative shelters have also refused migrants. Alleged complaints regarding lack of food and drinking water by migrants in certain areas, including Pathum Thani, are furthermore of serious concern to us. According to information received, food, medicine and essential non-food items are, in some areas, distributed according to house registration records from which undocumented migrants are excluded.

According to information received, migrant workers have also had difficulties in accessing assistance due to poor or little access to information, including due to language barriers. According to reports received, migrants have limited access to essential information on access to health care, sanitation and infectious diseases as most sources – including the official telephone hotline service – are available in Thai only. According to information received, migrant workers have not been able to request assistance in their own languages and have been unable to communicate their locations or conditions due to lack of access to official channels of communication.

In addition to the above and according to reports received, immigration officials at the Mae Sot border crossing on Tuesday 25 October 2011 picked up several hundred migrant workers and transported them in 13 crowded trucks and two mini-vans to Gate 10 at the Thai side of the border with Myanmar, where they were deported by being ferried across the Moei River to Myawaddy. Such deportations have reportedly also, at least initially, occurred at night, with increased risk for exploitation and abuse of migrants. We are gravely concerned that such deportations could be in violation of the obligation of non-refoulement as there is no procedure in place to determine whether those deported are in need of international protection, or would be at risk of torture or other serious human rights violations if returned to Myanmar.

Whilst we do not make any determination on the facts and circumstances of these allegations, and whilst acknowledging the challenges in the distribution of essential services affecting the population at large in this situation of national crisis, we would like to recall Your Excellency's Government that persons affected by natural disasters should enjoy the same rights and freedoms under human rights law as others. The principle of non-discrimination is a core obligation under international human rights law and must be scrupulously upheld also in the context of natural disasters. In this regard, we wish to draw Your Excellency's Government's attention to the fact that according to General Principle I.1. of the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters¹ (hereinafter "Operational Guidelines"), which have been endorsed by the Inter-Agency Standing Committee (2010), "persons affected by natural disasters should be recognised and treated as persons entitled to enjoy the same rights and freedoms under international human rights law as others in their country, and to not be

¹ A/HRC/16/43/Add.5.

discriminated against on the basis of [inter alia] their race, language, national or social origin, or other status [...].” It should be noted that while the above Operational Guidelines are non-binding on States, the general principles and guidance they provide, including the above, draw on and are in keeping with the principle of non-discrimination and other human rights guarantees contained in international human rights law, and the Guiding Principles on Internal Displacement.²

In this regard, allow us also to recall Your Excellency’s Government that the Guiding Principles on Internal Displacement³ (hereinafter “Guiding Principles”), which have been recognised as an “important international framework for the protection of internally displaced persons”, establish a set of important principles that provide guidance to States and other stakeholders when faced with the phenomena of internal displacement. As such, internally displaced migrants present in Thailand during the natural disaster, shall, inter alia: not be discriminated against (Guiding Principle 1 and 4, hereinafter “GP”) ; be entitled to have the Guiding Principles observed irrespective of their legal status (GP 2); shall be protected from discriminatory arrest and detention as a result of their displacement (GP 12); have the right to seek safety in another part of the country, to leave the country and to be protected against forcible return to any place where their life, safety, liberty and / or health would be at risk (GP 15); and have the right to be recognised as a person before the law and to be issued (or have replaced) documents necessary for the enjoyment and exercise of their legal rights (GP 20). Internally displaced persons are also, at a minimum and without discrimination, to be provided with safe access to, inter alia, food and water, shelter and housing, clothing, essential medical services, and to the right to family unity (GP 7, 18, 19) including during the displacement period.

On the basis of international human rights law, migrant workers should also have the right to freedom of movement and to be protected from arbitrary detention. The detention of migrant workers fleeing from the floods could be qualified as arbitrary as their detention results from the exercise of the rights or freedoms guaranteed by article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights, ratified by Thailand on 29 October 1996. Allow us in this regard to refer Your Excellency’s Government to article 9, paragraph 1, of the International Covenant on Civil and Political Rights which states that “Everyone has the right to liberty and security of persons. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Allow us also underscore in this regard that the Covenant applies to “everyone”, citizens or non-citizens, and that rights stipulated therein are fully applicable to all migrant workers in Thailand, regardless of their status. Under article 2 of the Covenant, State parties undertake to guarantee the

² E/CN.4/1998/53/Add.2

³ The Guiding Principles were recognised as such by: the Heads of State at the 2005 World Summit Outcome; General Assembly resolution 60/1, para. 132; Human Rights Council resolution 6/32, para. 5; General Assembly resolution 62/153 (2008), para. 10; and 64/162, para. 11. The Guiding Principles define internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of [inter alia] natural or human-made disasters, and who have not crossed an internationally recognised state border.” (para. 2).

exercise of the rights enunciated therein without any discrimination of any kind, including nationality.

In this context, kindly allow us also to recall Your Excellency's Government of General Assembly resolution 65/212, adopted on 21 December 2010, which calls upon States to "promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status" and to "respect the human rights and the inherent dignity of migrants and put an end to arbitrary arrest and detention" (paragraphs 1 and 4(a)).

Allow us furthermore to refer Your Excellency's Government to article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, ratified by Thailand on 5 November 1999, which stipulates the right of everyone to an adequate standard of living, including adequate food, clothing and housing. Allow us to underscore in this regard that the Covenant applies to "everyone", citizens or non-citizens, regardless of their status. Under article 2 of the Covenant, State parties undertake to guarantee the exercise of the rights enunciated therein without any discrimination of any kind, including nationality. As stated by the Committee on Economic, Social and Cultural Rights, the treaty body in charge of monitoring States Parties' compliance with the Covenant, the "Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation" (General Comment No. 20, UN Doc. E/C.12/GC/20, para. 30).

The Committee on Economic, Social and Cultural Rights has interpreted article 11 on an adequate standard of living as implicitly including the human rights to water and sanitation. Furthermore, on 28 July 2010 the General Assembly adopted a resolution explicitly recognizing water and sanitation as a human right, essential for the full enjoyment of life and all human rights. Your Excellency's Government voted in favor of this resolution. Furthermore, in September 2010, the UN Human Rights Council adopted resolution 15/9 which specifies that the right to water and sanitation is derived from the right to an adequate standard of living.

In this regard, the Operational Guidelines detail in General Principle I.8. that "Protection activities [which include assistance] should be undertaken and prioritized on the basis of identified needs of affected persons. Such needs should be identified and assessed on the basis of non-discriminatory and objective criteria, and in consultation with the affected population." In the context of a natural disaster, and according to the same principle, affected persons are further entitled to "targeted measures to address the specific assistance and protection needs of [inter alia] particular categories of affected populations, including [...] internally displaced persons..." Allow us, in this regard, to recall Your Excellency's Government that under international human rights law, States carry the primary duty and responsibility to provide such protection and assistance, including in relation to migrants who may be present in their territory, and become internally displaced as a result of the natural disaster (see also Guiding Principle 3(1)).

Allow us also to remind Your Excellency's Government that all members of communities affected by natural disasters should have equal access to information regarding disaster relief. The right to full, free and impartial information, and to full consultation are also part of the right to information and freedom of expression guaranteed by human rights law. In this regard, we would like to draw Your Excellency's Government's attention to article 19, paragraph 2, of the International Covenant on Civil and Political Rights which stipulates that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This right is also recognised in General Principle I.2 of the Operational Guidelines which provides that "persons affected by natural disasters [...] should be provided with easily accessible information in a language they understand" concerning, amongst others, risk reduction measures, humanitarian assistance and their entitlements, and their rights under international and domestic law.

We would also like to refer Your Excellency's Government to article 3 of the Convention against Torture, ratified by Your Excellency's Government on 2 October 2007, which states that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of all migrant workers present in Thailand are respected.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide information on measures taken by Your Excellency's Government to ensure, to the maximum of its capacities, the enjoyment by migrant workers of their fundamental freedoms and human rights, in particular the right to freedom from arbitrary arrest and detention; the right to food, water and adequate housing; the right to seek, receive and impart information; and the prohibition of refoulement. Please also indicate whether and how such measures have included international assistance and co-operation.
3. Please provide information on whether arrest and detention of migrant workers have been undertaken in conformity with international human rights standards.
4. Please provide information on steps taken by Your Excellency's Government to ensure that the specific situation and needs of migrant workers, irrespective

of their status, are addressed in the relief and early recovery phase with a view to strengthen the protection and full enjoyment of their human rights.

We would appreciate a response at your earliest convenience. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the joint communications report of the special procedures to the Human Rights Council for its consideration.

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

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

Raquel Rolnik
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Catarina de Albuquerque
Special Rapporteur on the human right to safe drinking water and sanitation

Chaloka Beyani
Special Rapporteur on the human rights of internally displaced persons

François Crépeau
Special Rapporteur on the human rights of migrants

Olivier de Schutter
Special Rapporteur on the right to food