

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 Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL Health (2002-7) G/SO 214 (106-10) G/SO 214 (53-24) G/SO 214 (89-15)
THA 6/2013

30 July 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolution 15/22, 17/12, 16/23 and 23/25.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **conditions of detention of more than 1800 ethnic Rohingya migrants and refugees in immigration detention centers in Thailand that may amount to cruel, inhuman or degrading treatment or even torture, including information we have received concerning the death of seven Rohingya men and one boy between 19 March 2013 and 22 July 2013 allegedly as a result of poor conditions and lack of medical care in the centers.** We would also like to bring to your Excellency's Government's attention information we have received concerning **the rape of one Rohingya woman living in a government shelter in Phang Nga province and the alleged related involvement of a Thai police officer.** Finally, we would like to bring to your Excellency's Government's attention information we have received concerning **the possible refoulement of refugees despite substantial grounds for believing that there is a high risk of torture in case of repatriation.**

According to information received:

Each year, tens of thousands of ethnic Rohingya from Rakhine, Myanmar, set sail to flee persecution by the Myanmar government, and dire poverty. It is reported that the situation has significantly worsened following violence in Rakhine state in June 2012 between Buddhists and Rohingya Muslims.

As a result of the escalating clashes in 2012, thousands of Rohingya have been forced to flee by boat to neighboring countries such as Thailand to escape the conflict. It is reported that more than 20,000 Rohingya Muslims may have fled violence-wracked Rakhine state in Myanmar, while approximately more than 1800 are currently held in immigration detention centers in Thailand.

It is reported that the Rohingya male migrants and refugees are being detained in Thailand as irregular immigrants. Families have allegedly been split up; the men have been separated from the women and children and are detained in separate facilities while women and children are allegedly placed in shelters. It is reported that there are no alternatives to detention in Thailand for male migrants and refugees. It is also reported that conditions in the shelters where the Rohingya women and children stay are generally better than those in the immigration detention facilities for men. It is alleged that the conditions of detention for Rohingya male migrants and refugees do not meet the UN Standard Minimum Rules for the Treatment of Prisoners and that the conditions in the shelters, although generally better, do not meet the qualifications for long-term stay of the Rohingya women and children.

According to the information received, in the Phang Nga facility, there are 276 Rohingya men living on the second floor in cells that were meant to house only 5 to 15 people. It is reported that there is barely any room to sit, and the men have swollen feet and withered legs from lack of exercise. It is reported that they have not been let out of the cells in five months and they seemed to share a deep sense of despondency. The smell is reportedly heavy of sweat, urine and human waste, exacerbated by the intense heat and mosquitoes. It is also reported that at the local level, lock-ups like the one at Phang Nga are clearly not properly resourced, including with financial resources, medical care, clothing and cleaning equipment.

In this context, seven Rohingya men and one boy died from septic shocks between 19 March 2013 and 22 July 2013 allegedly as a result of poor conditions and lack of medical care in the immigration detention centers Sadao, Songkla; Ubon Rajjathani; and Prachuap Khiri Khan.

Furthermore, it is reported that on 27 May 2013, three Rohingya women and two girls, aged 9 and 12, left a government shelter in Phang Nga province, reportedly run by the Ministry of Social Development and Human Security, to join two men who promised to take them to Malaysia to reunite with their husbands and other relatives in exchange for payment. One of the men was later identified as a police officer stationed in Khao Lak, Phang Nga province and the other was an undocumented Rohingya man from Myanmar. Between 9 and 11 June 2013, the Rohingya man allegedly held one of the women in a secluded location and repeatedly raped her. The Rohingya man is allegedly detained and charged with rape, human trafficking, and being in Thailand without documents. He has allegedly denied the charges and claims that his boss is a police officer. It is also reported that the Thai police officer involved in this case was a Senior Sergeant. He was reportedly arrested on 28 June 2013, and charged for his involvement in

human trafficking and abuse of his position. According to the information received, he has since been released from detention on bail and dismissed from the police force.

Aside from the grave concerns regarding the allegedly deplorable physical conditions and security of the immigration detention centers and the shelters, there are serious concerns regarding the psychological health of the Rohingya migrants and refugees. There were allegedly rumors made at a family center that was housing women and children migrants and refugees in Koh Sireh, east of Phuket City that the Thai Government was planning on repatriating them, compelling them to flee. It is reported that a majority of the Rohingya migrants and refugees in Thailand fear “certain death” if they are repatriated. It is reported that Thai authorities claim to know of the overcrowded detention centers, yet it is alleged that no progress has been made for a more lasting solution. The uncertainty and rumored repatriation contributes to the apprehension and despondency of the Rohingya migrants and refugees. Allegedly, several detainees have even contemplated suicide by making a noose out of their clothes.

It is alleged that the detention and the conditions in the immigration detention centers are used as a punitive measure and as a means to discourage the Rohingya from taking legal measures. Furthermore, Thailand does not recognize refugees in its domestic law, and is not party to the 1951 UN Convention relating to the Status of Refugees. The Thai authorities reportedly consider asylum seekers as “illegal migrants” (irregular immigrants), which puts all those who enter Thailand without proper documentation at high risk of arrest, detention and deportation.

On 25 January 2013, the Thai authorities reportedly stated that they would find a place for Rohingyas in Thai detention centres and shelters for a period of six months until they could be safely repatriated to their places of origin or resettled to third countries. This period is set to expire in late July 2013. However, a few months later, the head of Thailand’s immigration authority, Mr. Pharnu Kerdlapphon, informed the media that they had run out of space.

It is also reported that the Thai authorities denied the UN Office of the High Commissioner for Refugees (UNHCR) to perform status determinations screenings of the Rohingya, only instead to keep them in these overcrowded detention centers.

Grave concern is expressed regarding the conditions of detention and related deaths in immigration detention centers. Serious concern is also expressed regarding rape in a government shelter, and regarding the possible refoulement of refugees.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the case of Rohingya migrants and refugees in Thailand. We would 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 (UDHR), the International Covenant on Civil and Political Rights (ICCPR), which the Government of Thailand acceded on 29 October 1996, the Convention on the Elimination of All Forms of Discrimination against Women, which the Government of Thailand acceded on 9 August 1985, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Excellency's Government on 2 October 2007.

With regard to the conditions of detention, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. (Adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). Rule 22(2) provides that, "(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed". We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (Adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

With regard to the right to the highest attainable standard of health, we would like to recall that this right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (acceded by Thailand on 5 September 1999), which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

We would like to draw the attention of your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that States are under the obligation to respect the right to health by, inter alia, refraining from interfering directly or indirectly with the enjoyment of the right to health, from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal migrants, to preventative, curative and palliative health services, and from enforcing discriminatory practices as a State policy (para.34).

We wish to recall the 2013 report of the Special Rapporteur on the right to health (A/HRC/23/41), which states in paragraph 11 that "fulfilling the right to health requires States to adopt and implement an evidence-based national health policy which does not discriminate against non-nationals and addresses the needs of irregular and regular migrant workers, at all stages of the migration process, including pre-departure and

return”. In paragraph 36, the Special Rapporteur notes that long periods of detention and poor living conditions in detention centres facilitate the transmission of communicable diseases and can have a devastating effect on the mental health of migrant workers. In the same paragraph, the report points out that, where States persist with immigration detention, they should, at the minimum, provide detainees with adequate living conditions, consensual medical check-ups and make quality and confidential physical and mental health facilities available and accessible in a timely manner.

Furthermore, we would like to refer your Excellency's Government to Principle 8 of the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, which indicates that “Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.”

With regard to the systematic detention of Rohingya migrants and refugees, we would like to draw your attention to Article 9.1 of the ICCPR, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (art. 9 (4)). For a more detailed overview of the international human rights standards governing the detention of migrants, including the obligation of States to always resort to alternatives to detention first, we would like to draw your attention to the Special Rapporteur on the human rights of migrants’ 2012 report to the Human Rights Council (A/HRC/20/24).

With regard to the death of seven Rohingya men and one boy since 19 March 2013, we would like to recall that the ICCPR provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this includes the obligations “to identify and bring to justice those

responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

With regard to the rape of one Rohingya woman living in a government shelter in Phang Nga province and the alleged related involvement of a Thai police officer, we would like to recall that “rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry” (A/HRC/7/3, para. 69). In this context, we would also like to draw the attention of your Excellency’s Government to article 4 (c) and article 4 (d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms. (Adopted by General Assembly resolution 48/104 on 20 December 1993).

We would also like to draw your Excellency’s Government’s attention to paragraph 18 of the General Comment No. 2 of the Committee against Torture (CAT/C/GC/2, 24 January 2008), where the Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

With regard to the possible refoulement of refugees despite substantial grounds for believing that those refugees would be at high risk of torture in case of repatriation, we would also like to draw the attention of your Excellency’s Government to article 3 of the Convention against Torture, which provides that no State party shall expel, return

(refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, we would also like to draw the attention of your Excellency's Government to paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement."

We would also like to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly which urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States "(n)ot to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, [...]."

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 summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the conditions of detention in immigration detention centers. If no inquiries have taken place or if they have been inconclusive please explain why.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the circumstances surrounding the death of the six Rohingya men and one boy while held in immigration detention centers. If no inquiries have taken place or if they have been inconclusive, please explain why.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the circumstances surrounding the rape of one Rohingya woman living in a government shelter in Phang Nga province and the alleged involvement of a Thai police officer therein. If no inquiries have taken place or if they have been inconclusive please explain why.

5. Please inform about steps taken to immediately transfer the Rohingya migrants and refugees from overcrowded cells in immigration detention centers, and what measures have been taken to find a long-term solution for the refugees in Thailand.

6. Please indicate if an individual assessment has been made of the need for detention for all the Rohingya concerned, as well as on the procedure for judicial review of the lawfulness of detention, and on the maximum duration of detention. Please also provide information on the available alternatives to immigration detention (non-custodial measures).

7. Please indicate if there are any plans to return the Rohingya concerned to Myanmar and if so, indicate what steps have been taken in this respect.

8. Please explain what measures are taken to ensure that Thailand does not expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture in accordance with article 3 CAT and other international standards.

9. Please inform about steps taken to allow for screening and protection from the United Nations High Commissioner for Refugees (UNHCR) for all refugees, including steps taken to allow Rohingya refugees to seek asylum.

10. Please provide information on the measures taken to ensure the enjoyment of the right to the highest attainable standard of physical and mental health, including adequate detention conditions and access to medical care, of Rohingya migrants and refugees in Thailand.

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 carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of the six Rohingya men and one boy, as well as into the circumstances surrounding the rape of one Rohingya woman living in a government shelter in Phang Nga province and to take all necessary measures to guarantee that the rights and freedoms of all Rohingya migrants and refugees are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. 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.

Anand Grover

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