



No. 52101/ 504

PERMANENT MISSION OF THAILAND
GENEVA

30 July 2012

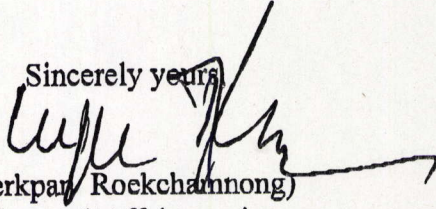
Dear Mr. Crépeau, Ms. Shahinian, and Ms. Ezeilo,

I have the honour to refer to the communication from the Permanent Mission of Thailand No. 52101/344 dated 21 May 2012 informing you that the Permanent Mission has forwarded your communication to the authorities concerned for their consideration.

The Permanent Mission forwards herewith the clarification on your communication based on the information received from the Ministry of Labour of Thailand. It is our hope that the clarification will address the concerns raised in your communication.

The Permanent Mission of Thailand once again reiterates our commitment to cooperating with all Special Procedures mandate holders.

Sincerely yours,


 (Krerkpan Roekchannong)
 Chargé d'Affaires, a.i.

Mr. François Crépeau,
 Special Rapporteur on the human rights of migrants;
 Ms. Gulnara Shahinian,
 Special Rapporteur on contemporary forms of slavery;
 Ms. Joy Ezeilo,
 Special Rapporteur on trafficking in persons, especially women and children,
 Office of the High Commissioner for Human Rights,
 Palais des Nations, CH-1211,
GENEVA.

Fax: 022 917 9006, 022 917 9008

Reference: AL G/SO 214 (106-10) Slavery (2007-2) Trafficking (2004-5)
THA 2/2012

OHCHR REGISTRY

30 JUL 2012

Recipients: SPD.....

**Clarification by the Royal Thai Government
Regarding alleged trafficking of migrant workers from Cambodia and Myanmar
for the purpose of labour exploitation and debt bondage**

- The Royal Thai Government takes communications received from the Special Procedures mandate holders very seriously. Upon receiving the communication regarding the alleged trafficking of migrant workers from Cambodia and Myanmar at Phatthana Frozen Food Factory in Songkhla Province, the Thai Government launched an investigation into the matter. Labour inspectors from the Minister of Labour have been deployed to gather facts and information.
- After a thorough investigation and based on the information gathered so far, it can be concluded that no crimes have been committed under the 2008 Anti-Trafficking in Persons Act. Rather, the case of Phatthana Frozen Food Factory concerns labour disputes as well as violations of the labour protection law.
- In this regard, the Ministry of Labour has intervened to address unlawful practices on the part of the employer. Measures to rectify the situation have been implemented and some interventions are still on going.
- Clarifications on some issues raised in the communication are provided below :

1. It is alleged that the conditions at Phatthana Frozen Food Factory were different from those stipulated in the contract made between migrant workers and CDM Trading Manpower, a broker based in Cambodia. These differences include lower monthly wages, lower attendance bonus, and the absence of free accommodation and medical care.

Clarifications

- The issue surrounding the contract made between the migrant workers and CDM Trading Manpower is currently under investigation by the Ministry of Labour.
- However, it should be mentioned that all migrant workers also entered into direct contractual agreements with Phatthana Frozen Food Factory. The contract was made in 2 languages, Thai and Cambodian, and stipulates that the daily wages should not be below the legal minimum wage. It also requires the employee to adhere to general rules and regulations regarding work and change of employers.
- Regarding the claim that migrant workers are required to pay for their accommodation, it has been verified that Phatthana Frozen Food Factory had never required such payment from the migrant workers. However, workers were required to pay electricity and water bills in the amount of 300 baht per month per person. But since May this year, the company has helped to subsidize such charges in the amount of 150 Baht per month per person. This means that the workers have to pay the remaining 150 Baht or approximately 8 USD per month.
- In addition, transportation services between the company premises and the workers' accommodation are provided free-of-charge by the company.

- In terms of medical care, evidence demonstrates that the migrant workers have contributed to Social Security Fund. Therefore, they are entitled to medical care in case of sickness.

2. On April 1st, 2012, the minimum daily wage in Songkhla province was increased by 40 % by the authorities (from 172 baht to 246 baht). This has allegedly led to cut backs in working conditions such as the withdrawal of food allowance and the decrease of attendance bonus from 400 baht every 2 weeks to 300 baht per month.

Clarifications

- Regarding food allowance, Phatthana Frozen Food Factory has been paying food allowance in the amount of 20 baht per day to all workers. However, after the increase in the daily minimum wage in Songkhla province, the company adjusted the daily wages from 177 to the required 246 Baht. In addition, there was an agreement between the company and the workers to include a 20 Baht daily food allowance into their daily wages. Therefore, the daily wages stand at 266 Baht. It was agreed that this rate would be used as the basis to calculate over time payment and compensation, which would be more beneficial for the workers.
- Regarding the attendance bonus, Phatthana Frozen Food Factory has been paying attendance bonus to workers at the rate of 300 baht every 15 days based on the condition that they do not miss work, take leave and are not late for work. However, after the increase in the daily minimum wage in Songkhla Province, Phatthana Frozen Food Factory did propose to reduce the attendance bonus. In this regard, the Songkhla Provincial Labour Protection Office has formally informed Phatthana Frozen Food Factory to comply with the law which prohibits any arbitrary changes in the conditions of employment unless the changes are more beneficial to the workers or the workers have consented to the changes or the employer has filed a formal request for changes in the conditions of employment in accordance with the 1975 Labour Relations Act. In the case of Phatthana Frozen Food Factory, both the employer and the workers had formally agreed to change the payment of the attendance bonus from 300 Baht every 15 days to 300 Baht every month on the condition that the workers would not be late, absent, or take leave during the 30-day period.
- It should also be stressed that employers are not legally obliged to pay food allowance and attendance bonus to their employees.

3. Phatthana Frozen Food Factory allegedly withheld passports of migrant workers to prevent them from leaving.

Clarifications

- On the withholding of passports of migrant workers, it was found that Phatthana Frozen Food Factory has arranged for migrant workers to be able to deposit their passports with the company on a voluntary basis in order to

prevent the loss of their passports and to facilitate the process whereby migrant workers have to report to the immigration office every 90 days. The workers can ask for their passports at any time. A record is kept of all passports deposited and returned.

- Regardless of the intention of the part of the employer, the Ministry of Labour is fully aware of the wrongfulness of the employers' action on this matter. The Provincial Welfare and Labour Protection Office has informed Phatthana Frozen Food Factory that they are prohibited from withholding the passports of their employees as these are official documents issued by the Cambodian Government to their citizens. As a result, the company has returned all passports to the migrant workers.

4. It is alleged that part of the workers' monthly wage is withheld by Phatthana Frozen Food Factory in order to settle their debt with CDM Trading Manpower. This is due the contractual agreement between the migrant workers and the broker in Cambodia in order to cover part of the "service fee".

Clarifications

- The 1998 Labour Protection Act prohibits any deduction of daily or monthly wage/salary of a worker except for specific cases stipulated by law. In the case of the Cambodian workers employed by Phatthana Frozen Food Factory, inspections found that the company has been deducting their wages and sending them to CDM Trading Manpower as part of the "service fees" in accordance with the written agreement made between CDM Trading Manpower and the migrant workers.
- In this regard, the Songkhla Provincial Welfare and Labour Protection Office has formally informed Phatthana Frozen Food Factory that any deduction of salary must be in accordance with Section 76 and 77 of the 1998 Labour Protection Act. As a result, since 16 April 2012, Phatthana Frozen Food Factory has stopped deducting the workers' salary, with the exception of the deduction made to the Social Security Fund in accordance with Article 76 of the 1998 Labour Protection Act. As a result, Phatthana Frozen Food Factory has agreed to return the money deducted to all workers. This process is now ongoing. However, if it is found that the company does not return the money to the workers, labour inspectors are obliged to proceed in accordance with law in order to compel the employers to do so.
