

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on trafficking in persons, especially women and children**

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Excellency,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and Special Rapporteur on trafficking in persons, especially women and children pursuant to Human Rights Council resolutions 26/22, 26/19, 24/3, and 26/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **violation of migrant workers' human rights in Thailand's poultry industry.**

According to the information received:

Migrant workers, mainly from Cambodia and Myanmar, who work in processing poultry factories owned by CP Foods Public Company Limited, Laemthong Poultry Co. Ltd, Saha Farms Group (under the name of Golden Line Business Co. Ltd) and the Centaco Group (under the name of Sky Food Co. Ltd), are victims of multiple human rights violations perpetrated by employers, recruiters and allegedly in some cases by the local police.

There are reportedly cases of migrant workers who are trafficked from their countries of origin by organized syndicates for the purpose of labour exploitation, including within the poultry industry. It is reported to us that brokers and recruitment agencies, many operating without Government oversight, take care of the formal processes relating to this labour migration, including requirements under the Memorandums of Understandings (MoU) between Thailand and neighbouring countries; the arrangement of documentation; and the facilitation of workers travel, including through both regular and irregular channels.

Unscrupulous intermediaries charge fees to migrants and facilitate their passage into exploitative and vulnerable situations within the Thai labour market. Many migrant workers allegedly find themselves in situations of debt bondage whereby they have acquired debts associated with recruitment fees and other costs, such as wage deductions for non-existent health insurance, and must work without pay to repay such debt. There are also reports of recruitment agents facilitating access to the labour market amongst underage workers in violation of Thailand's Protection Act of 1998.

Migrants working in poultry processing factories are allegedly subjected to various forms of abuse by their employers. These include working up to 12-13 hours daily for a minimum of six days per week; continuous physical and verbal abuse; arbitrary manipulation of salaries; arbitrary suspension of the contracts; lack of social security and health protection; and unsafe working conditions. Migrant workers reportedly face discrimination by employers in relation to their work conditions work, salaries and benefits.

It is also reported that recruiters and/or employers confiscate migrants' documents such as passports, identification cards, work permits and employer contracts, thus restricting their freedom of movement. Moreover, it is alleged that these practices can expose migrant workers to abuse and extortion by the local police, which is reported as a response to not possessing such documents.

The range of abuses faced by migrant workers is reportedly difficult to identify during official audits by authorities or buyers. Employers have a tendency to act differently towards their employees when such audits take place, impeding the identification of abuse.

Finally, there are reports of barriers to migrant workers' rights to collective bargaining. According to information received, Thai law allows migrant workers to join unions but not to form them. Therefore in practice migrant workers do not often join existing unions because of language and cultural barriers.

Concern is expressed about the complex spectrum of human rights and labour rights violations allegedly faced by migrant workers within the poultry industry in Thailand and their continuing potential vulnerability to further abuses.

In connection with the above alleged facts and concerns, please refer to the Reference to international law Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information as to any investigation, judicial or other inquires, into the alleged human rights and labour rights violations, and their outcome including any examples of the prosecution of perpetrators.

3. Please provide information related to protection and assistance measures for the victims.

4. Please indicate whether there is a labour inspection system in place which extends to the poultry industry and whether it has been used to properly identify victims of trafficking, debt bondage and other human rights and labour rights violations.

5. Please provide information on any cooperation arrangements with the authorities in Myanmar and Cambodia to prosecute and punish brokers and recruitment agencies that facilitate trafficking of migrant workers from Myanmar and Cambodia for the purpose of labour exploitation and can push them into situations of debt bondage. Please indicate if the Government has provided any guidance to business enterprises operating in Thailand regarding their human rights due diligence obligations in relation to migrant workers' rights.

6. Please provide detailed information on any measures the Government has taken to identify migrant workers who are victims of trafficking for purposes of labour exploitation.

7. Please indicate what measures are in place to address labour exploitation, debt bondage and other abuses in companies employing migrant workers.

8. Please detail the measures including policies, legislation, regulations and adjudication that the Government has put in place to prevent, investigate, punish and redress human rights abuse by business enterprises within its territory and/or jurisdiction, including the companies mentioned in this letter?

9. Please provide details about the steps the Government has taken to ensure that victims have access to effective remedy?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Dante Pesce

Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

François Crépeau

Special Rapporteur on the human rights of migrants

Urmila Bhoola

Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Maria Grazia Giammarinaro

Special Rapporteur on trafficking in persons, especially women and children

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the Slavery Convention of 1926, which calls for the complete abolition of slavery and all its forms, and article 4 of the Universal Declaration of Human Rights, which states that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". We would also like to recall article 5 of the Slavery Convention that calls on States to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery. The ILO Forced Labour Convention, 1930 (No. 29), ratified by your Excellency's Government on 26 February 1969, in addition calls for suppression of the use of forced or compulsory labour in all its forms within the shortest possible period. A new protocol to Convention No.29 passed by the International Labour Conference ILC in 2014, also provides specific guidelines to governments and businesses on steps to end forced labour.

We would also like to bring to the attention of your Excellency's Government article 8 of the International Covenant on Civil and Political Rights, ratified by Thailand in 1996, which prohibits slavery, the slave trade, servitude and forced labour and article 7 of the International Covenant of Economic, Social and Cultural Rights, acceded by Thailand in 1999, which protects the right to just and favourable conditions of work. Furthermore, we wish to make reference to article 1 of the 1956 Supplementary Slavery Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery that prohibits debt bondage and provides that States Parties shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of debt bondage.

We also would like to draw the attention of your Excellency's Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency's Government on 17 October 2013 through which your Excellency's Government is obliged to refrain from acts which would defeat or undermine the Protocol's objectives and purposes, which include "[t]o prevent and combat trafficking in persons...". In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking ("Recommended Principles and Guidelines"), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Recommended Principles and Guidelines provides that "States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors". In light of information suggesting that brokers and recruitment agencies actively recruit migrant workers in Myanmar and Cambodia, we would also like to highlight guideline 11, paragraph 6, which recommends States to consider "establishing mechanisms to facilitate

the exchange of information concerning traffickers and their methods of operation”. Paragraph 7 of the same guideline also recommends “developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned States. In recognition of the value of direct contacts, provision should be made for direct transmission of requests for assistance between locally competent authorities in order to ensure that such requests are rapidly dealt with and to foster the development of cooperative relations at the working level”. We would also like to refer to the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children, in her visit to Thailand (A/HRC/20/18/Add.2), including the one on strengthening cooperation with neighbouring countries, in particular (...)Cambodia (...) and Myanmar, in preventing and eliminating clandestine movements that result in or contribute to trafficking in migrant workers and their families, while at the same time ensuring options for safe migration. The Government should ensure the effective implementation of any bilateral and regional memorandums of understanding that provide migrants with proper protection, prevent trafficking and ensure the recovery and reintegration of trafficked persons, including having specific targets, performance indicators and timelines to monitor implementation (A/HRC/20/18/Add.2 para 77 z.)

In addition, other international human rights standards clarify the rights of migrant workers and non-citizens alike. We would like to highlight article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Thailand on 5 September 1999, which recognizes the “right of everyone to the enjoyment of just and favourable conditions of work”. Such conditions must ensure, inter alia, remuneration which provides all workers, as a minimum, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The rights in the Covenant 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 (Committee on Economic, Social and Cultural Rights, general comment no 20, para. 30).

We would also like to refer you to paragraph 33 of General Recommendation 30 relating to “Discrimination against Non-citizens,” in which the Committee on the Elimination of Racial Discrimination recommended that States “take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.” Furthermore, paragraph 35 unambiguously states that “all individuals are entitled to the enjoyment of labour and employment rights... once an employment relationship has been initiated until it is terminated.”

We would further like to draw your Excellency’s Government’s attention to article 22 of the International Covenant on Civil and Political Rights (ICCPR), which your Excellency’s Government ratified on 29 October 1996, which provides that “everyone

shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also defines the term migrant worker and states the application of their rights.

Furthermore, we would like to recall recommendations made to States by the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences in her report on eradicating contemporary forms of slavery from supply chains (A/HRC/30/35).

In addition, we would also like to draw the attention of your Excellency’s Government to the UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. These Guiding Principles are grounded in recognition of:

- a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) “The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” As specified in the Guiding Principles, fulfilling this duty requires that a State take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”. In addition, this requires, inter alia, that a State should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur.

The Guiding Principles state that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take

appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures. Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).