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CONSEIL DES DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery; and the Special Rapporteur on trafficking in persons, especially women and children.

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

14 May 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery; and Special Rapporteur on trafficking in persons, especially women and children pursuant to Human Rights Council resolution, 17/12, 15/2, and 17/1.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged trafficking of migrant workers from Cambodia and Myanmar for the purpose of labour exploitation and debt bondage.**

According to information received:

Mr. X, a man in his thirties from Cambodia came to Songkhla province, Thailand on December 2010 through a broker, CDM Trading Manpower Co Ltd, based in Cambodia. He entered into a contract with CDM to work at Phatthana Frozen Food Factory in Songkha, Thailand, which exports fish. According to his contract which was read to him by the broker, he would be entitled to a wage of 4,400 to 6,000 baht (\$220 to \$300) per month and a 6-day work week at 8 hours per day. Additional benefits included accommodation and medical care as well as attendance bonus of 400 baht (\$20) every two weeks and food allowance (20 baht (\$0.65) per day. In addition, Mr. X was asked to pay \$250 as a 'service fee' to CDM. He paid \$150 upfront and arranged to have 18,000 baht deducted from his salary.

It is alleged that the conditions upon arrival at Phatthana Frozen Food Factory were different from those stipulated in Mr. X's contract. Mr. X's wage is reportedly less than 4,000 baht (\$200) per month from which a 'service fee' for the broker and living expenses are deducted. Work is irregular and payment is

made per days worked. While he receives a food allowance, the attendance bonus was decreased to 300 baht (\$15) every 2 weeks. In addition, it is alleged that he pays his own rent of 400 baht (\$20) per month for a 3x4m room which he shares with 3 other workers. His medical care is reportedly not covered. Moreover, part of his salary and his passport are allegedly withheld by his employer, Phatthana Frozen Food Factory, in order to prevent him from leaving until he settles his debts- as specified his contract with CDM Cambodia.

On 1 April 2012, the minimum wage for Songkhla province by the authorities was increased by 40%. According to workers of the Phatthana Frozen Food Factory, this led to cut backs in working conditions such as the withdrawal of their food allowance and the decrease of their attendance bonus from 400 baht every 2 weeks to 300 baht per month. A worker who misses one day during the month may lose the monthly bonus.

On 8 and 9 April 2012, Mr. X was one of the workers of the Phatthana Frozen Food Factory who protested against the changes in wages and demanded the release of the migrant workers' passports.

While the Special Rapporteurs acknowledge the ongoing discussions for possible solutions between workers on strike and the management of the Phatthana Frozen Food Factory, concern remains over the reported pattern of trafficking of migrant workers for labour exploitation and debt bondage to Thailand. The Phatthana Frozen Food Factory in Songkha, Thailand, and the Vita Food Factory a pineapple canning in Kanchanaburi, Thailand, have particularly been at the center of the information brought to our attention following the strikes of workers from Cambodia and Myanmar over their working conditions. The migrant workers reportedly enter Thailand for the purpose of employment with the help of brokers, only to realize that their job in Thailand is different from what they were promised. The migrants are often forced to work under debt bondage conditions- as they owe their brokers fees for finding employment and for a variety of expenses, such as costs of transportation to Thailand. They are paid low wages and are unable to leave their work as a result of their debts. Deceptive and unfair payment practices, including non-payment of full wages and withholding part of their wages are reportedly common features. The migrants are further reported to work without rest and adequate toilet breaks which put their health at risk. Their official documents including passports are also allegedly withheld by their employers to prevent them from escaping.

Without in any way making a determination on the accuracy of these allegations, we would like to recall your Excellency's Government obligations under international human rights treaties to respect and protect the human rights of all individuals within its territory and subject to its jurisdiction, regardless of citizenship, nationality or immigrant status. We would particularly like to underline that the obligation of your Excellency's Government to protect human rights entails ensuring that the human rights of these

individuals are not violated by private actors. On this basis, we would like to highlight article 7 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), acceded to 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”. 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). In addition, we would like to refer to paragraph 33 of the General Recommendation XXX 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” and 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 also like to bring to your Excellency’s Government attention the Universal Declaration of Human Rights which states that “no one shall be held in slavery or servitude”. Debt bondage has been recognized as slavery like practice in international human rights instruments and article 8 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by your Excellency’s Government on 29 October 1996, prohibits, slavery, servitude, forced or compulsory labour. 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” (Human Rights Committee general comment no 31, para. 10).

Moreover, we would like to bring to your Excellency’s Government attention article 2 of the 1930 ILO Forced Labour Convention ratified by Thailand on 26 February 1969, which defines "forced or compulsory labour" as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Further, we would like to recall that as a signatory of 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 (“the Protocol”), 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...”. The Protocol defines trafficking in persons

as the recruitment, transportation, transfer, harbouring or receipt of persons, by Proscribed means for the purpose of exploitation, which includes, inter alia, forced labour or services, or servitude. 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 actively recruit migrant workers in Cambodia and Myanmar, 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”.

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 cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary accurate?
2. Please provide details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to cases of trafficking of migrant workers from Cambodia and Myanmar into Thailand for the purpose of labour exploitation, particularly with regards to the Phatthana Frozen Food Factory in Songkhla province, Thailand.
3. Please indicate whether labour inspectors from the Department of Welfare and Labour Protection of the Ministry of Labour in Thailand have been involved to properly identify victims of trafficking and debt bondage, particularly with regards to the Phatthana frozen Food Factory in Songkhla province, Thailand.
4. Please provide information on how the cooperation arrangements and Memoranda of Understandings (MoUs) with the authorities in Cambodia and Myanmar related to the protection of trafficked migrant workers from Cambodia and Myanmar, prevention of trafficking and ensuring recovery and reintegration such trafficked persons. What measures are foreseen to

prosecute and punish brokers who facilitate trafficking of migrant workers from Myanmar and Cambodia for the purpose of labour exploitation?

5. Please indicate whether the victims or the families of the victims have access to adequate procedures of compensation for damages from those legally responsible for the crime of trafficking and other exploitative practices.

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 responses, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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

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