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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 contemporary forms of slavery; the Special Rapporteur on the human rights of migrants 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 3/2011

15 February 2011

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of slavery; Special Rapporteur on the human rights of migrants and Special Rapporteur on trafficking in persons, especially women and children pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 6/14, 8/10, 8/12.

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

According to the information received:

Mr. **Kyaw Kyaw**, a 25 year-old man from Pa An in Karen State, Myanmar, came to Mae Sot, Thailand in April 2009 to work in agriculture. In September 2009, he met a broker who offered him 8,000 baht (US\$266) in cash and recruited him for a job which would earn 5,000 baht (US\$166) a month. Mr. Kyaw Kyaw asked the broker about the nature of the work, but the broker did not answer him. Mr. Kyaw Kyaw was then sold to work in a fishing boat, which usually travelled in the Rayong sea area. He worked on the fishing boat for 10 months from November 2009 to August 2010. The conditions of work on the fishing boat were allegedly very harsh. He was required to catch fish every three or four hours all day and thus could not get any adequate rest. During these months, he did not receive any salary for his work. When the boat reached a harbor every 15 days, Mr. Kyaw Kyaw had to beg for 500 baht (US\$16) from the manager of the boat so that he could buy food. After working on the boat for 10 months, he asked the manager to give him 3,000 baht (US\$99) so that he could go to a karaoke bar. When the manager reluctantly gave him the money, he managed to run away from the boat.

In addition to Mr. Kyaw Kyaw's case, we have received a number of cases which point to a pattern of trafficking of migrant workers for labour exploitation in the fishing industry, particularly in a coastal town of Mahachai in the Samut Sakhon

province. 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 on fishing boats under debt-bondage conditions, as they owe their brokers fees for finding employment in Thailand and money for a variety of expenses, such as costs of transportation to Thailand. Deceptive and unfair payment practices, including non-payment of wages are a common feature in many cases. The migrants are further reported to perform long working hours without rest and in a hazardous environment which put their health, safety and life at risk. They are also submitted to physical abuse if they complain to their employers.

Without in any way making any determination on the accuracy of these allegations, 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...”. 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 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”.

Further, we would like to recall that your Excellency’s Government has 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 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. 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 attention to article 8 of the International Covenant on Civil and Political Rights (“ICCPR”), acceded to your Excellency’s Government on 29 October 1996, which prohibits, slavery, servitude, forced or compulsory labour. Furthermore, we would like to bring to your Excellency’s attention article 2 of the 1930 ILO Forced Labour Convention, 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. Moreover, we would also like to bring to your Excellency’s Government attention the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 which states that “no one shall be held in slavery or servitude”. Article 5 of the Slavery Convention, which states that the High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

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.

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 Mr. Kyaw Kyaw and other migrants from Myanmar and Cambodia who are trafficked to work on fishing boats in Thailand for the purpose of labour exploitation.
3. Please indicate whether there is a labour inspection system in place which extends to the fishing industry and whether it has been used to properly identify victims of trafficking on fishing boats in Thailand.

4. Please provide information on any cooperation arrangements with the authorities in Myanmar and Cambodia 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. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration. .

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

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