

Mandates of the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Ref.: AL OMN 1/2022
(Please use this reference in your reply)

23 December 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 44/4 and 51/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **human rights abuses faced by a group of women, Malawi nationals, who are allegedly victims of trafficking exploited in domestic households in Oman.**

According to the information received:

A group of 28 Malawian women arrived in Oman during 2022 via the facilitation of local Malawi-based recruitment intermediaries and their partners in Oman. The women were promised employment as domestic workers in private households, as well as visas, flights to Oman and monthly salaries. Upon arrival in Oman, the conditions of employment reportedly differed significantly from those outlined in the labour contract the women had originally been promised.

At their employers households, the 28 migrant women have reportedly been subjected to physical violence and labour abuses. Abuses concerning labour practices reported include: Confiscation of passports upon arrival by the agents or employers; change of terms of contract to less favorable conditions; contracts are verbally and rarely provided in writing; daily shifts of up to 19-hours with no rest days, holidays or overtime pay; excessive workloads; non-payment of wages or payment below the minimum wage and inadequate meals. Moreover, the migrant workers are reportedly not in a position to terminate their contract agreements as they are unable to pay the penalty for breach of contract.

Some of the 28 domestic workers have reportedly also been subjected to sexual harassment and sexual violence, including rape by their employer and employer's family members; other forms of physical abuse and limited or a lack of access to medical care.

We have been informed that on 18 October 2022, an eight-member delegation representing the Malawi Government and accompanied by a representative from IOM Malawi made a courtesy call to the Ministry of Foreign Affairs of Oman and was granted an audience with officials from the Labour

Inspectorate and Labour Administration Directorate. The objective of these actions and the request of the delegation was reportedly the discharge of these 28 domestic workers in order for the Malawian government and IOM to facilitate their safe return to Malawi. According to information received, despite these efforts, the Omani government refused to acknowledge any complaints of human rights abuses and reportedly stated that cancellation of a labour contract by an employee in the country would require full payment of breach penalty.

We are concerned at the reported human rights violations committed against this group of women by their employers. The situations described can be defined as trafficking in persons for the purposes of forced labour, as per the definitions set forth in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, acceded by your Excellency's Government on 13 May 2005, and article 2 of the Forced or compulsory labour is defined in the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), ratified by your Excellency's Government on 30 October 1998. The human rights violations reported also constitute indicators of forced labour as established by the ILO: Abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions and excessive overtime.

If confirmed, these allegations may also amount to acts of torture or other cruel, inhuman or degrading treatment or punishment perpetrated by private actors, and as such must be prevented, investigated and prosecuted in accordance with articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency's Government acceded on 9 June 2020.

In connection with the above alleged facts and concerns, please refer also to the **Annex on Reference to international human rights law** 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 any comment you may have on the above mentioned allegations.
2. Please provide details, and where available the results, of any investigations, prosecution or criminal charges, and other inquiries carried out in relation to the allegations.
3. Please provide information on the measures being taken to ensure compliance with the State's obligation of due diligence to prevent

trafficking of migrant workers, including, in particular, migrant domestic workers, and to ensure early identification and effective access to protection, and access to effective remedies, including to compensation.

4. Please provide information on measures to strengthen cooperation between the Government of Malawi and your Excellency's Government in cross-border trafficking cases.
5. Please indicate what measures are taken to ensure the returns of victims of trafficking to Malawi and how these measures ensure a safe and voluntary return.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary 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. We urge also that all necessary measures are taken to ensure the safe and voluntary return of the women to Malawi, and to release them of the payment of the breach penalty.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

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

Annex

Reference to international human rights law

The Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations on December 10, 1948, further contributes to international standards regarding the elimination of all forms of slavery. Article 4 states that "no one shall be subjected to slavery or servitude, slavery and slave trade are prohibited in all its forms."

As regards to the protection of victims of trafficking in persons we would like to draw your attention to the Palermo Protocol in particular articles 6 and 9 which sets out the obligations on State Parties to protect and prevent trafficking in persons, and to assist victims of trafficking. Regarding forced labour, Protocol of 2014 to the Forced Labour Convention, 1930 (No.29) reaffirms that measures of prevention, protection and remedies, such as a compensation, rehabilitation, are necessary to achieve effective and sustained suppression of forced and compulsory labour.

We also draw the attention of your Excellency's Government to the Convention on the Elimination of All Forms of Discrimination against Women, ratified by your Excellency's Government on 7 February 2006, in particular article 6 on the prohibition of trafficking in persons, and to CEDAW General Recommendation No.38 on trafficking in women and girls in the context of global migration, specifically, paragraphs 31, 38-42, 85, 89, 94, 98 and 100 -101.

We would also like to bring to the attention of your Excellency's Government article 4 (c & 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. In this context, we recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women whether perpetrated by a State official or a private citizen, in public or private life. We would also like to refer to CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19.

CEDAW General Recommendation No. 35 sets out States' obligations on reparations and states, "(a)Provide effective reparations to victims/survivors of gender-based violence against women. Reparations should include different measures, such as monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition, in line with general recommendation No. 28, general recommendation No. 30 and general recommendation No. 33. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered."

We wish to refer to Articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) acceded by your Excellency's Government on 2 January 2003, and CERD General Recommendation No. 30 on discrimination against non-citizens. We also highlight CERD General Recommendation No. 25 on the gender-related dimensions of racial discrimination which states (at paragraph 2):

“Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as [...]abuse of women workers in the informal sector or domestic workers employed abroad by their employers. [...]Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.”

According to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, States have an international obligation to identify victims of trafficking. It is highlighted that a failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. We also would like to refer to Principle 13 of these Recommended Principles and Guidelines, which provide 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”.

We would also like to bring to your attention the report by the Special Rapporteur on trafficking in persons, especially women and children to the Human Rights Council in 2019 A/HRC/41/46 on Innovative and transformative models of social inclusion of survivors of trafficking in persons into societies. We would like to highlight recommendations made by the Special Rapporteur to States on areas such as considering the revision of any legislation or policies hampering social inclusion, including policies tying workers to a single employer, or preventing equal access to long-term empowerment measures (para 66), in addition to other measures with regard to trafficked persons' access to empowerment measures (para 68). Furthermore, we would also like to draw your attention to the Report of the Special Rapporteur on trafficking in persons, especially women and children to the General Assembly in 2015 on due diligence.

Furthermore, we wish to recall the report issued by the former Special Rapporteur on contemporary forms of slavery (A/HRC/39/52) on the impact of slavery and servitude on marginalized migrant women workers in the global domestic economy. In the report, the Special Rapporteur notes that “the effective fulfilment of the Sustainable Development Goals and in particular of Goal 8 on the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all is directly linked to the prevention of domestic servitude (para 81).” In the same report, the Special Rapporteur issued a series of recommendations which are particularly relevant regarding the allegations mentioned:

- Adopt and implement labour and social protection laws which extend to all domestic workers, including migrant domestic workers;
- Guarantee equal access for migrant women to services such as health care, including sexual and reproductive health care, and social protection. Also ensure that they have access to information materials in relevant languages;
- Guarantee the rights to assembly and to freedom of association for workers, including migrant domestic workers;
- Allow for collective bargaining in the domestic sector by promoting social dialogue involving tripartite partners in countries of origin, transit and destination;
- Avoid the isolation of domestic workers by ensuring their freedom of movement and access to communication;
- End sponsorship systems and prohibit the retention of passports or other identity documents by employers, introduce an independent immigration status and grant a grace period to migrant domestic workers to find new employment when leaving an employer;
- Establish accessible, safe and effective complaint mechanisms for victims of domestic servitude in order to increase the number of incidents reported; (m) Investigate all allegations of domestic servitude with due diligence by also ensuring that victims of servitude have effective access to a remedy without discrimination;
- Reinforce efforts to identify perpetrators of domestic servitude and bring them to justice, including by developing and implementing measures for regular and proactive labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work.

We would also like to recall the Principles and Guidelines on the human rights protection of migrants in vulnerable situations. Particularly, we would like to draw your attention to Principle 3 on access to justice, which calls upon States to “take measures that will enable migrants, including migrants at particular risk of marginalization and exclusion, to enjoy effective and equal access to justice” and to “ensure that migration status that depends on a single employer or a partner is not a barrier to seeking or obtaining protection, support, or justice”. This principle further guides States to “strengthen or establish official mechanisms and procedures to receive, investigate and monitor allegations of human rights violations and abuse of migrants”, as well as to “consider granting legal status to migrant victims or witnesses of crimes during the process of accessing justice”. Further, Principle 7 on the protection from violence and exploitation establishes to take measures to prevent and respond all forms of exploitation and violence against migrants, and guides States to “ensure that the measures taken will prevent the recurrence of abuse and are accessible to all migrants”; to “ensure that legislation and policy, as well as practice,

reduce the risk that migrants will be exploited by those who offer them services or work in the formal or informal sectors, including the risk of being subject to forced labour or trafficking in persons”; and to “establish accessible and confidential services for migrants who are survivors of violence and exploitation”, further establishing that migrant’s experiences of violence “should be addressed without causing further victimization”.

We would also like to recall General Assembly resolution 62/156 on the protection of migrants and specifically paragraph 14 which “requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers’ labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association”

In this respect, we would like to draw up your Excellency’s Government’s attention to the General Assembly Resolution 62/132 which in paragraph 6 “calls upon Governments to adopt or strengthen measures to protect the human rights of women migrant workers, regardless of their immigration status, including in policies that regulate the recruitment and deployment of women migrant workers”. We would also like to refer to paragraph 11, which “calls upon Governments [...] to provide women migrant workers who are victims of violence with the full range of immediate assistance and protection, such as access in counselling, legal and consular assistance and temporary shelter, as well as mechanisms to allow the views and concerns of victims to be presented and considered at appropriate stages of proceedings, including other measures that will allow victims to be present during the judicial process, to the extent possible, as well as establish reintegration and rehabilitation schemes for returning women migrant workers”.