

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; 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

Ref.: AL KOR 6/2023
(Please use this reference in your reply)

27 September 2023

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 racism, racial discrimination, xenophobia and related intolerance; 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 52/20, 52/36, 51/15 and 53/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of abuse and exploitation of migrant workers on Korean-owned and Korean-flagged vessels, which reportedly continues to take place despite recent measures introduced in 2021.

According to the information received:

Korea has one of the world's largest distant water fishing fleets, with approximately 200 vessels sailing the Korean flag and an unknown number of vessels around the world being linked to Korean interests. The operation of the fleet heavily depends on migrant workers - around 77% of fishers working onboard Korean Distant Water Fishing vessels are migrant workers and most of them, roughly 79% are from Indonesia.

Most of them left their home country to look for opportunities abroad to cover their and their families' needs. Many recruitment agencies, acting as liaisons to employers in the Republic of Korea, promise stable jobs and good working conditions in exchange for heavy fees.

In 2020, allegations of widespread illegal, unreported, unregulated fishing and severe human rights abuses including forced labour, debt bondage, confiscation of identity documents, excessively long working hours and voyages at sea, physical and verbal abuse and underpayment of wages were publicly reported.

In response to these revelations, the Korean Government announced a series of reforms in December 2020. Amendments to the Seafarer's Act¹, adopted in June 2021, banned passport confiscation, and the Ministry of Oceans and Fisheries (the competent authority responsible for governing seafarers) introduced the "Implementation Plan for Migrant Fishers on Distant Water Fishing Vessels" (hereafter, "the Plan"). The new measures outlined in the Plan attempted to enhance protections for migrant workers in the Korean Distant Water Fishing vessels, including:

¹ See article 50.2 and article 179 of the Seafarers Act.

- a) Preventing excessive working hours by setting a minimum of 10 hours a day and 77 hours a week of rest time.
- b) Establishing a minimum wage for migrant crew members based on the minimum monthly salary stipulated by the International Transport Workers' Federation (ITF) standards.
- c) Banning all pre-recruitment fees including salary deduction, wage-withholding and miscellaneous fees, including recruitment and manning fees as well as banking fees, and requiring that all expenses be borne by employers.
- d) Migrant crew members can request to disembark the vessel after ten months of service at sea and subsequent crew rotation can be promoted after 12 months for those who want to relieve the distress of long-term voyages.
- e) Ship owners must provide sufficient quality drinking water to ship crews and distribute the water fairly, regardless of nationality.
- f) Crew members who committed human rights abuses will have their contracts cancelled and cannot be re-employed. The shipowner will oversee the implementation of post-disembarkment questionnaires to check for human rights violations and the implementation of periodic consultations about difficulties experienced by the crew members, among other concerns.
- g) Vessel owner companies must conduct crew questionnaires to monitor fishers' at-sea working and living conditions as well as any grievances; and the Korea Overseas Fisheries Association (KOFA) would be responsible for quarterly monitoring after February 2021.

The Plan was enacted in January 2021. It has been reported that there was no stakeholder consultation in the formulation of this Plan, and there have been several concerns raised about it.

Allegations of continuing abuse and labour exploitation of migrant workers since the enactment of the Plan and amendments to the Seafarer's Act

Concerns have been raised on the effectiveness of the Plan, given these measures are not legally binding and thus difficult to enforce, and the monitoring mechanism is inadequate and not independent.

While the confiscation of passports is now prohibited by the Seafarers Act, this practice remains prevalent, with migrant workers' passports and identification documents reportedly being seized by ship captains, foremen or manning agencies. Some migrant crew members have reported that they must pay money to retrieve their documents at the end of their contracts.

While the Plan in principle stipulates a minimum of 10 rest hours per day and 77 hours per week, in line with the international standards, it allows this to be

flexibly counted within a month period, and further stipulates an absolute minimum of only 6 rest hours per day. It has been alleged that many migrant crew members continue to work excessively long hours of more than 14 hours per day, with some reportedly working more than 18 hours without rest, in violation of both international standards and the Plan.

Moreover, while the minimum wage for Korean crew members is set in the Seafarers Act, there is no legally set minimum wage for migrant crew members. The wage set for migrants in the Plan and by the International Transport Workers' Federation is far lower than that for Korean crew members doing the same work. In 2021, the minimum monthly wages for migrant new crew members with less than three years of experience was approximately 540 USD per month and for experienced migrant crew around 725 USD per month. In comparison, the minimum wage for a Korean crew member was approximately 1,965 USD per month.

Furthermore, the monthly minimum wage set by the International Transport Workers' Federation and stipulated within the Plan are for seafarers working only eight hours a day, who receive overtime payments and who receive paid holidays, which does not apply to the contractual and working conditions of migrant crew members on Korean distant water fishing fleets.

Additionally, while the Plan bans all pre-recruitment fees, reportedly the charging of recruitment fees to migrant crew members is still a common practice. Many migrants described experiencing wages being withheld or deducted under various pretexts, including recruitment fees and currency exchange rates. The payment of recruitment fees is commonly made through local recruitment agencies. According to the Plan, if a foreign recruitment agency is found to charge illegal fees three times, they would be blacklisted and lose their ability to recruit crew for Korean Distant Water Fishing vessels. However, despite claims of illegal fee charging, no recruitment agency has reportedly been blacklisted and there is no oversight in this regard.

Further, it has been reported that labour brokers and/or recruitment agents would withhold a significant portion of wages per month, ranging from half a month to three months, ostensibly as "savings," so that if a migrant crew member failed to complete their contract, they would be unable to receive the remaining salary. These financial penalties and entrapment results in debt bondage and risks forcing crew members to fulfil the entirety of their work contract, regardless of unsafe and exploitative working and living conditions onboard.

Concerns are also raised over the discriminatory treatment of migrant workers onboard. Migrant crew members have alleged they are discriminated against in accessing water, since they had to buy bottled mineral water (about US\$ 4-5 for 1 Litre bottle) with much lower salaries, in contrast to Korean counterparts working on the same vessel. Many have also alleged that migrant crew members often receive different meals than their Korean counterparts.

Despite the Plan adding provisions to hold those responsible for physical, sexual and verbal abuse accountable by having their contracts cancelled with no possibility of re-employment, migrants continue to allege abuse. According

to the information received, a majority of migrants continue to suffer from verbal threats and abuse, with some reporting physical violence and abuse, and smaller number alleging sexual violence. However, no perpetrators have been penalised for abuse since the enactment of the Plan.

Longliners allegedly venture farthest from land and spend the longest time at sea, without port entry for more than a year. Thus, reducing opportunities for inspections and interventions by port authorities. Once the vessel has left port to fish, crew members are often unable to leave the vessels, with no freedom to leave the job at any time they wish, and the channels to report abuse, injury or violations to seek protection are restricted. There is no mandatory limit on the maximum voyage length for Korean Distant Water Fishing vessels, whereby vessels must enter ports. Given the growing power imbalance and pressure by migrant crew members to appease their employers, migrant crew members feared making requests to leave the vessels after ten months of service at sea because of the potential drawbacks including the failure or refusal by manning agencies and fishing companies to reinstate or re-employ migrant crew members that made requests to disembark.

While the responsibility for labour inspections lies with the Ministry of Oceans and Fisheries, the Plan formally delegates the responsibility to KOFA, an organisation that represents the interests of the Korean Distant Water Fishing industry, raising conflict of interest concerns.

Moreover, the Korea Seafarers' Welfare and Employment Centre runs a call centre where migrant crew members can file grievances, although this information is not proactively shared. Many migrant workers are unaware of their rights, and the support services and official grievance mechanisms in place. This is further exacerbated by the limited access to onboard Wi-Fi. While KOFA has been conducting its survey every quarter to foreign crew on fishing vessels, migrant crew members are asked to answer the questionnaires under the supervision of their captains or senior Korean crew, which limits their ability to freely answer the questions on their working and living conditions.

Without prejudging the accuracy of the information received, we are deeply concerned about the ongoing human rights situation affecting migrant crew members on Korean-owned and Korean-flagged vessels. From the information available, there appears to be no justified basis for the discriminatory treatment in terms of domestic labour standards and entitlements for migrant workers on Korean fishing vessels. According to the information received, your Excellency's Government seems to have failed to meet its international human rights obligations to protect the human rights of these migrant workers. It should be noted that abuse of a position of vulnerability, deception, restriction of movement, physical violence, intimidation and threats, retention of identity documents and withholding of wages – which have allegedly been recorded in the present case – have been identified as indicators of forced labour by ILO. The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. The working conditions reported may also amount to contemporary forms of slavery.

While we welcome the aforementioned measures taken, namely the enactment of the Plan, we call upon your Excellency's Government to promptly enhance

protection measures as many migrant crew members are trapped and stranded for prolonged periods on vessels, being denied their human rights including the rights to physical and mental health, decent work and living conditions, and freedom of movement, where routine crew changes cannot be carried out and oversight mechanisms are ineffective. We wish to refer to [the Global Compact for Safe, Orderly and Regular Migration](#) and the [International Labour Organization Maritime Labour Convention 2006](#).

Furthermore, in his report to the General Assembly on protection of the labour and human rights of migrant workers, the Special Rapporteur on the human rights of migrants observed that “[O]ften migrants face differential access to decent work as compared with nationals or citizens in countries of employment, as is evidenced by indicators such as pay inequity, termination of employment, lack of access to maternity protection, paternity and parental leave, maximum hours of work and paid annual leave, minimum wage and collective bargaining rights, inter alia. Migrant workers also face social exclusion from broader integration measures, such as access to education, language training, sociocultural and recreation facilities, immigration and employment services owing to their ineligibility for these programmes” (A/78/180).

We urge your Excellency’s Government to carry out an urgent, thorough, independent and systematic review of the current legal and policy framework and enforcement systems in place. This requires taking appropriate steps to prevent, investigate, punish and redress abuses through effective policies, legislation, regulations and adjudication. We also urge your Excellency’s Government to allocate sufficient resources to implement effective, independent and regular labour inspections, which take a victim-centred approach and include measures to ensure safety and confidentiality for those being interviewed.

In connection with the above alleged facts and concerns, please refer 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/or comment(s) you may have on the above-mentioned allegations.
2. Please highlight the steps that your Excellency’s Government has taken, or is considering taking, to protect all migrant workers – without discrimination - against human rights abuses including forced or bonded labour by employers and/or recruitment agencies. Please state if the protective measures refer to law or practice.
3. 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, including private individuals and business enterprises within your territory and/or jurisdiction.

4. Please indicate what measures your Excellency's Government has undertaken, or is considering taking, to proactively screen, identify, assist and protect migrant workers who are victims of trafficking and labour exploitation, including forced or bonded labour. Please also provide information on measures your Excellency's Government has taken to ensure migrant workers' effective access to justice.
5. Please indicate the measures that your Excellency's Government may adopt to ensure that the migrant workers have access to effective remedy, including payment of salary and other benefits promised orally. Please indicate how related potential barriers faced by migrants to use the established mechanism have been identified and addressed.
6. Please indicate whether there is a labour inspection system in place which extends to the Korean Distant Water Fishing industry and whether it has been used to properly identify victims of debt bondage, trafficking for purposes of forced labour and other human rights and labour rights violations. In addition, please provide information on the existing practice of mandatory port-calling and pro-longed stays on vessels, as well as what measures are in place to ensure migrant crew members rights to physical and mental health, adequate work and living conditions, and freedom of movement.
7. Please indicate whether Your Excellency's Government intends to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); P029 - Protocol of 2014 to the Forced Labour Convention, 1930; and C188 – 2007 Work in Fishing Convention (No. 188).
8. Please provide information on the existing complaint mechanisms for migrant workers who wish to report labour abuse or exploitation and how these channels or mechanisms can be accessed from abroad.
9. Please provide information on the measures taken or to be taken, if any, by the new Department of Rights and Rescue within the Ministry of Gender Equality and Family, pertaining to migrant crew members on Korean-owned and Korean-flagged vessels.
10. Please provide information about steps taken to address discrimination, particularly against migrant workers, in line with relevant international standards, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination on "Discrimination Against Non-Citizens". Please include information about any relevant human rights training on anti-discrimination, as well as whether Your Excellency's Government intends to amend the Seafarers Act to ensure equal protection and treatment for national and migrant crew members.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will

be made public via the communications reporting [website](#). 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 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.

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 note that a copy of this communication has been transmitted to the Government of Indonesia.

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

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Special Rapporteur on the human rights of migrants

K.P. Ashwini
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

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

Siobhán Mullally
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 refer your Excellency's Government's attention to the Universal Declaration of Human Rights (UDHR), article 1 of which affirms the equal dignity and rights of all human beings.² These principles of equality and non-discrimination are among the core elements of international law and international human rights law, as reaffirmed in article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded on 10 April 1990; in article 2 (2) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) acceded on 10 April 1990; in article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified on 5 December 1978.

We remind Your Excellency's Government that adherence to and full implementation of ICERD are of paramount importance for promoting equality and non-discrimination and for fulfilling Your Excellency's obligations under the Convention. We would like to draw the attention of your Excellency's Government to General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination on "Discrimination Against Non-Citizens". The Committee urges States to address xenophobic attitudes and behavior towards non-citizens, ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status and guarantee that non-citizens enjoy equal protection of the law. The General Comment also includes important guidance on protecting the security of non-citizens. In General Recommendation No. 30, the Committee also recommended that States "remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health" (para. 29).

In its 2019 Concluding Observations the Committee on the Elimination of Racial Discrimination provided that "[I]n the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party make the necessary amendments to the legislation applicable to migrant workers to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices that may have discriminatory purposes or effects. It also recommends that the State party firmly combat discrimination between national and foreign workers, including by strengthening its labour inspections in industries employing migrant workers, without prejudice to their immigration status. It further recommends that the State party guarantee access to adequate remedies for migrant workers in cases where their rights are violated and ensure that those responsible are held accountable and sanctioned with appropriate penalties. Finally, the Committee requests the State party to include in its next periodic report statistics on visits of the labour inspection body, or any other body conducting labour inspections, including on violations found and any remedies or penalties imposed" (CERD/C/KOR/CO/17-19).

In addition, the ILO Forced Labour Convention, 1930 (No. 29), ratified by your Excellency's Government on 20 April 2021, calls for the abolition of the use of

² For a definition of non-discrimination, see Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination.

forced or compulsory labour in all its forms as soon as possible. In particular, according to article 2, forced or compulsory labour is defined as "any work or service which is exacted from a person under the threat of any penalty and for which that person has not volunteered". Protocol No. 29 to the Forced Labour Convention, adopted by the International Labour Conference in 2014, also sets out specific guidelines for governments and businesses on measures to end and prevent trafficking in persons for forced labour and ensure access to effective and appropriate remedies but Republic of Korea has yet to ratify it.

We wish to bring to your attention the ILO general principles and operational guidelines for fair recruitment which in general principle 1 states that "Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation". Principle 10 stipulates that "Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment." Principle 11 states that "Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained". Principle 12 stipulates that "Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer" and principle 13 states that "Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred".

We also wish to refer to the Maritime Labour Convention 2006, ratified by your Excellency's Government on 9 January 2014, namely States commitments to "ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system" (regulation 1.4); "ensure that seafarers have a fair employment agreement" (regulation 2.1); "ensure that seafarers are paid for their services" (regulation 2.2); "ensure that seafarers have regulated hours of work or hours of rest" (regulation 2.3); "ensure that seafarers have adequate leave" (regulation 2.4); "ensure that seafarers are able to return home" (regulation 2.5); "ensure that seafarers have decent accommodation and recreational facilities on board" (regulation 3.1); "ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions" (regulation 3.2); "protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore" (regulation 4.1); and "ensure that each Member implements its responsibilities under this Convention with respect to ships that fly its flag" (regulation 5.1).

We wish to refer to the Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), in particular objective 6 according to which States should:

- “(c) Improve regulations on public and private recruitment agencies in order to align them with international guidelines and best practices, and prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour, including by establishing

mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry;

- (d) Establish partnerships with all relevant stakeholders, including employers, migrant workers' organizations and trade unions, to ensure that migrant workers are provided with written contracts and are made aware of the provisions therein, the regulations relating to international labour recruitment and employment in the country of destination, and their rights and obligations, as well as of how to access effective complaint and redress mechanisms, in a language they understand;
- (e) Enact and implement national laws that sanction human and labour rights violations, especially in cases of forced and child labour, and cooperate with the private sector, including employers, recruiters, subcontractors and suppliers, to build partnerships that promote conditions for decent work, prevent abuse and exploitation, and ensure that the roles and responsibilities within the recruitment and employment processes are clearly outlined, thereby enhancing supply chain transparency;
- (f) Strengthen the enforcement of fair and ethical recruitment and decent work norms and policies by enhancing the abilities of labour inspectors and other authorities to better monitor recruiters, employers and service providers in all sectors, ensuring that international human rights and labour law is observed to prevent all forms of exploitation, slavery, servitude and forced, compulsory or child labour;
- (g) Develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden, while promoting greater opportunities for decent work and respect for international human rights and labour law;
- (h) Take measures that prohibit the confiscation or non-consensual retention of work contracts and travel or identity documents from migrants, in order to prevent abuse, all forms of exploitation, forced, compulsory and child labour, extortion and other situations of dependency, and to allow migrants to fully exercise their human rights;
- (i) Provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions”.

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.

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 would also like to bring to the attention of your Excellency’s Government article 8 of the ICCPR, which prohibits slavery, the slave trade, servitude and forced labour and article 7 of the ICESCR, 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). The article 13 of the mentioned Covenant states that “the States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

In paragraph 47 (e) of general comment No. 23, the Committee on Economic, Social and Cultural Rights further notes that the right to just and favourable conditions of work relates to certain workers, in particular migrant workers: "These workers, particularly if they are undocumented, are vulnerable to exploitation, to long working hours, to unfair wages and dangerous and unhealthy work environments. This vulnerability is increased by abusive labour practices that give the employer control over the migrant worker's residence status or that bind him or her to a specific employer. If they do not speak the national language(s), they may be less aware of their rights and unable to access grievance mechanisms. Undocumented workers often fear retaliation from employers and eventual expulsion if they try to complain about working conditions. Laws and policies should ensure that migrant workers are treated no less favourably than national workers in relation to remuneration and working conditions. Internal migrant workers are also vulnerable to exploitation and require legislative and other measures to ensure their right to just and favourable working conditions."

The Committee notes that any individual or group who is a victim of a violation of the right to work should have access to effective judicial or other appropriate remedies at the national level. At the national level, trade unions and human rights commissions should play an important role in upholding the right to work. All victims of such violations have the right to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantee of non-repetition (para. 48, general comment No. 18).

The Committee also emphasizes that States parties must demonstrate that they have taken all necessary measures for the realization of the right within the limits of the remedies available to them, that the right is enjoyed without discrimination and that women enjoy conditions of work that are not inferior to those of men, as well as equal pay for equal work and work of equal value. Failure to take such measures constitutes a violation of the Covenant. In assessing whether States parties have complied with their obligation to take such measures, the Committee examines whether the measures taken are reasonable and proportionate and whether they comply with human rights standards and democratic principles (para. 77, general comment No. 23).

In its 2017 Concluding Observation the Committee on ICESCR “recommends that the State party abolish the restriction on the change of employment for migrant workers under the employment permit system. Furthermore, bearing in mind its recommendation on the coverage of the labour legislation, the Committee urges the State party to ensure that labour and social security rights are protected and respected in the fisheries and agricultural sectors, including by preventing the practice of passport confiscation, investigating reports of the exploitation, de facto detention and physical abuse of migrant workers, and bringing perpetrators to justice. The Committee encourages the State party to ratify the International Labour Organization (ILO) Forced Labour Convention 1930 (No. 29) and the Abolition of Forced Labour Convention 1957 (No. 105) (E/C.12/KOR/CO/4).

We would also like to bring the report of the Special Rapporteur on contemporary forms of slavery A/HRC/51/26 to your attention, in which the Special Rapporteur urges States to “Ensure that minorities and migrant workers enjoy the same treatment as other nationals in respect of their rights to work and just and favourable conditions of work without discrimination, in areas such as wages, working hours and access to work related benefits (para 56 b); to “Enhance cooperation between sending and destination States to protect the rights of migrant workers and prevent contemporary forms of slavery and other exploitative practices; and conclude and implement bilateral agreements on issues such as employment contracts, change of employers, access to education and training, and other public services and grievance procedures (s); and to “Provide opportunities for granting permanent residency to migrant workers in order to enhance their access to rights and services and to prevent exploitation and abuse” (t).

We would further like to draw your Excellency’s Government’s attention to article 22 of the ICCPR, 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.

Furthermore, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. 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 or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (guiding principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (guiding principle 3). 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 occur.

States may be considered to have breached their international human 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). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (guiding principle 22).

In addition, the Committee on the Economic, Social and Cultural Rights in its general comment 24 (2017) states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.”

We would also like to remind your Excellency’s government its obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and children ratified in November 2015 by your Excellency’s Government. The Protocol sets forth obligations on States for the prevention and protection of

trafficking in persons as well as measures for victims of trafficking to obtain compensation.