

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

Ref.: AL BGD 3/2024
(Please use this reference in your reply)

28 March 2024

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 51/15, 53/3, 52/20 and 53/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the fraudulent recruitment of migrant workers by criminal networks operating in Bangladesh and Malaysia. Migrant workers are deceived, recruited by fake companies and obliged to pay exorbitant recruitment fees which pushes them into debt bondage. Many migrants find on arrival in Malaysia that they do not have a job as they had been promised and are forced into overstaying their visa. Consequently, they risk arrest, detention, ill treatment and deportation. They also risk further exploitation and many have become destitute, facing an alarming humanitarian situation.**

According to the information received:

Worker's labour migration from Bangladesh to Malaysia resumed on 9 August 2022 after the Government of Malaysia had suspended the G2G Plus agreement in 2018 to investigate allegations of a syndicate exploiting the system to operate a human trafficking scheme.

Reportedly, the migration corridor based on an MoU agreed in 2021 continues to be beset with exploitative practices. Bangladeshi nationals are systematically deceived and charged recruitment fees ranging from USD \$4500 to USD \$6000 per person, where the MoU permitted charges are capped at USD \$720. Bangladeshi migrants intending to work in Malaysia pay the highest recruitment fees globally, reportedly much beyond market rates. The migrants travel through the regular migration corridor and the visas are attested both by the Governments of Malaysia and of Bangladesh. Migrants receive a valid work visa for Malaysia as agreed in the Bangladesh/Malaysia Bilateral Labour Migration Agreements. The permissible fees as regulated by the Government of Bangladesh for the Malaysia corridor amount to USD \$720 per migrant.

Many migrants have been exploited by private businesses and criminal networks, promising jobs that do not exist in practice, and thus leading to

destitution and debt bondage. Many migrants paid the recruitment and other excess fees, received a valid employment visa in Malaysia, but upon arrival found the job they had been promised was not available to them. This resulted in them not working, not receiving a salary, with agents or employers taking their passports and confining them to cramped, unhygienic conditions in facilities provided by the companies which recruited them. According to official estimates, around 422,000 Bangladeshis entered Malaysia since August 2022¹. Some sectors have reported to need additional workers, while other sectors have too many workers.

Due to a lack of effective action to regulate the costs imposed by recruitment agencies, Bangladeshi migrants subjected to debt bondage would need to work two full years to repay their debt. The Bangladesh to Malaysia migration corridor has been particularly targeted by exploitative recruitment networks, which have now shifted their operational model from overcharging migrants for actual jobs, into overcharging migrants without any available jobs at the other end.

The systematic charging of recruitment fees which are far above the permissible rate leads to a systematic exploitation of migrants in a vulnerable situation. Deception and corruption are allegedly either facilitated or condoned by your Excellency's Government. One of the main issues in this regard is that visas are issued against non-existent jobs. These bogus jobs are attested both by the Government of Malaysia as well as the Bangladesh High Commission, raising serious questions. We understand that the perpetrators of corruption and exploitation are both legitimate, licensed as well as non-licensed recruitment actors.

Reportedly, the recruitment process begins with bribery within the human resources and home affairs ministry of Malaysia to obtain fake quotas for bogus employers. Subsequently, bribery extends to the Bangladeshi High Commission in Malaysia and Bangladeshi syndicated agents to facilitate recruitment approval. Workers pay fees which go far beyond the actual recruitment costs, in addition to airfare, passport and visa costs, to the syndicate for migration. The pattern is that upon arrival, the migrants discover that the jobs they were promised do not exist and face exploitation by agents who confiscate their passports. Among the businesses which operate as bogus companies in Malaysia are Mulia One, Petrazerah Berhad and Suria Harmony SDN/Beaks Construction. It is our understanding that despite the fraudulent practices involved, migrants enter Malaysia regularly. Once they are in the country, they are tied to a specific employer and unable to change the company they work or were recruited for. Allegedly, permits are also issued by bogus companies with no actual operations. It has been reported to us that the perpetrators of corruption and exploitation are both legitimate as well as non-licensed recruitment actors. There is a lack of accountability of employers, recruitment actors and government officials involved in the exploitative recruitment of migrants.

As migrants in Malaysia are subjected to debt bondage, they face an imminent risk of being exploited further, for instance by taking on exploitative jobs due

¹ <http://www.old.bmet.gov.bd/BMET/statisticalDataAction>.

to pressing economic needs, including to repay their debts. Those who wish to return to Bangladesh often pay further fees to unscrupulous agents to receive identity documents and for repatriation. Despite the challenges faced by migrants, only a minority of them have attempted to return to Bangladesh and a vast majority intends to remain in Malaysia to work legally under decent conditions and to pay off their debts.

We are concerned at the alarming situation described and consider that it requires urgent attention before the situation escalates further or before lives are further put at risk. We also urge your Excellency's Government to ensure that the migrants under consideration do not face reprisals from employers, brokers or Government officials for having claimed their rights.

We believe that enhanced coordination between Malaysian and Bangladeshi authorities is required in order to effectively and sustainably stop the exploitative recruitment agencies and employers from operating, including by holding perpetrators accountable and to ensure the protection of migrants in vulnerable situations.

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 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 against Government officials, employers or other actors in relation to the allegations, including as related to corruption.
3. Please provide information on the measures being taken to ensure compliance with the State's obligation of human rights due diligence to prevent trafficking of migrant workers. Please also indicate if your Excellency's Government is undertaking awareness raising about the risks of labour migration to Malaysia, particularly due to the involvement of criminal syndicates in this regard.
4. Please provide information on measures taken to strengthen cooperation between the Government of Malaysia and your Excellency's Government to effectively combat transnational exploitative networks, facilitate fair and ethical recruitment, and enhance consular cooperation with the aim of strengthening consular protection of and assistance to Bangladeshi migrants in Malaysia, including the group mentioned in this letter.
5. Please indicate what steps your Excellency's Government has taken or is considering to take, including policies, legislation, and regulations,

to uphold its obligations to protect against human rights abuses, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct human rights due diligence to identify, prevent, mitigate, and account for how they address their impacts on human rights and the natural environment throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.

6. Please indicate how private recruitment agencies are regulated by your Excellency's Government and what measures are taken to address the exploitative networks operating in this area. Please also clarify if any measures are taken to stop bogus companies from issuing permits to migrant workers, generating large sums of money through such practices. Please provide details on how accountability is ensured and if any perpetrators who are actively involved in this business or condoning it have been held accountable.

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 be informed that a letter on this subject matter has been also sent to the Permanent Mission of Malaysia.

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

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

Robert McCorquodale
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Gehad Madi
Special Rapporteur on the human rights of migrants

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 to the attention of your Excellency's Government the international human rights standards that are applicable in this case. The situation described can be defined as trafficking in persons and forced labour, as per the definitions set forth in article 3 of 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 12 September 2019. As regards to the protection of victims of trafficking in persons we would like to draw your attention to the Palermo Protocol articles 6 and 9 which set out the obligations on State Parties to protect and prevent trafficking in persons, and to assist victims of trafficking.

The human rights violations reported also constitute indicators of forced labour as established by the ILO, including the following: 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.

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.

We would also like to draw your attention to the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, of 1956, ratified by Bangladesh on 5 February 1985. The definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926 is stipulated as follows:

- a. Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

The human rights violations reported also constitute indicators of forced labour as established by the ILO, including the following: 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.

The Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations on 10 December 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."

We would also like to draw your Excellency's attention to Article 8 of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government on 6 September 2000, which prohibits slavery, the slave trade, servitude and forced labor, as well as to Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 8 October 1998, which recognizes the "right of everyone to the enjoyment of just and favourable conditions of work". These conditions must guarantee, among other things, remuneration that provides all workers, at a minimum, a decent living for themselves and their families, safe and hygienic working conditions, rest, leisure and reasonable limitation of working hours and periodic vacations, as well as remuneration for public holidays.

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 11 June 1979, and CERD General Recommendation XXX on discrimination against non-citizens.

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 refer to objective 6 of the Global Compact for Safe, Orderly and Regular Migration, where States are committed to facilitate fair and ethical recruitment and safeguard conditions that ensure decent work through “reviewing existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination (para. 22, A/RES/73/195)”. To realize this commitment, States decided to “(i)mprove 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 (para. 22 (c), A/RES/73/195). In addition, under objective 14, States are committed to enhance consular protection, assistance and cooperation throughout the migration cycle. More specifically, States “commit to strengthen consular protection of and assistance to our nationals abroad, as well as consular cooperation between States, in order to better safeguard the rights and interests of all migrants at all times, and to build upon the functions of consular missions to enhance interactions between migrants and State authorities of countries of origin, transit and destination, in accordance with international law. (para. 30 A/RES/73/195)

Finally, we would like to also highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties,

including business enterprises. The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. 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. We would like to refer to the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) and recommendations contained therein elaborating on the duty of States to protect against human rights abuses involving those business enterprises that they own or control. This includes the following considerations: “88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.

States, as primary duty bearers under international human rights law, should lead by example. To show leadership on business and human rights requires action and dedicated commitment on many fronts. It also includes using all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations. There is untapped potential for State-owned enterprises to be champions of responsible business conduct, including respect of human rights. The Working Group calls on States and State-owned enterprises to demonstrate leadership in this field.”

Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.