



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

REFERENCE: AL Business enterprises (2011) G/SO 214 (106-10) Slavery (2007-2) Trafficking (2004-5)
THA 2/2014

7 April 2014

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery; and Special Rapporteur on trafficking in persons, especially women and children pursuant to Human Rights Council resolution 17/4, 17/12, 24/3 and 17/1.

We would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged trafficking and forced labour of migrant workers committed at the Thai Companies, Vita food Factory and Natural Fruit Factory.**

While we acknowledge your Excellency's Government responses (52101/504 and 52101/507) and efforts to address concerns expressed in our previous communications (THA 2/2012 and THA 4/2013) on the alleged trafficking and labour exploitation of migrant workers from Cambodia and Myanmar at Phatthana Frozen Food Factory, Natural Fruit Factory and Vita Food Factory, we continued to receive persisting allegations of labour exploitation and trafficking in persons at the Natural Fruit Factory and Vita Food Factory.

While taking note of the inspection conducted by the Ministry of Labour of Thailand on 28 January 2013 and the recommendations made to the Natural Fruit Company, according to information received, violations persist as follows:

Migrant workers employed at Vita Food Factory allegedly entered Thailand with the help of labour brokers and smugglers conniving with the company and who provided forged work permits or work permits tied to employers other than Vita Food Factory. Migrant workers have been made to pay very high fees for passports, work permits, and document processing to enter Thailand despite the existing Memorandum of Understanding between the two countries. Migrant

workers have allegedly been made to pay between 2,500 and 14,000 baht for two years Thai work permits which normally cost 1,900 baht. It was further alleged that workers have to pay monthly broker fees of 300 to 600 baht, which are used to bribe local police to stay away from the factory area. Furthermore, work permits and work receipts have been confiscated by the company as well as passports due to unpaid broker and documentation fees. These practices are said to have resulted in the workers being in debt bondage to Vita Food Factory. The company allegedly charges 3,000 baht, equivalent to more than ten days salary, to issue the permit allowing migrant workers to change employers. Thus, even when workers pay off the debt related to brokers and documentation fees, they still may not be able to afford to leave Vita Food Company.

Reports alleged cases of trafficking of individuals from Myanmar, Laos and Thailand. Some workers from Myanmar have been deceptively taken to Thailand, not knowing that they would be traveling outside their country; were kept in locked rooms and forced to work at Vita Food Factory to repay labour brokers the imposed debt of 19,000 Baht for their travel. The alleged victims were deprived of their salaries or received very little income for long hours of work and faced violent physical reprisals for attempting to run away or alert the authorities.

Moreover, some migrant workers from Myanmar allegedly signed a contract promising a higher salary, free accommodation and uniforms by the factory. However, upon arrival they were required to pay for precarious housing and for their working supplies and uniforms.

Vita Food Factory is said to continue violating labour laws. The company allegedly pays migrant workers 250 baht a day, whereas their Thai counterparts receive the Thai minimum wage of 300 baht a day. Moreover, migrant workers are coerced to work up to three overtime hours per day. Their salaries are reportedly given to labour brokers who subsequently pay them in cash without pay slips, as a result of which they often receive less money than owed. Workers do not receive annual leave, they are forced to work on national holidays; they do not receive paid sick leave and cannot take sick leave without their supervisor's permission. They also do not receive safety training for machinery use, increasing the risk of work-related accidents. It is also reported that when workers take more than the allowed 15 minutes restroom break, half an hour worth of wages is deducted from their salary. Finally, during labour inspections days, employees are allegedly told to lie, and irregular migrant workers are required to stay home.

Concerning the Natural Fruit Factory, while the company returned passports to migrant workers, some of them still have not received their work permits which were confiscated by the company. Natural Fruit also allegedly withholds the documents necessary for workers to change employers. It was reported that 16-17 year old children are working in the factory. Working conditions have been reported to be deplorable: prohibition of sick leave, multiple salary deductions including for unauthorized sick leave, transportation fees even when the service is not used, and compulsory purchases at company owned stores.

Concerns were raised that the alleged human rights violations and exploitation of migrant employees by Vita Food Company and Natural Fruit Company may be related to or may constitute trafficking in persons.

In this regard, we would like to draw the attention of your Excellency's Government to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by your Excellency's Government on 17 October 2013 and which stipulates that State parties shall combat the crime of trafficking in persons and assist and protect victims (article 2). As a State Party to the Palermo Protocol, your Excellency's Government is obliged to prevent and combat trafficking in persons as well as protect and assist the victims of such trafficking, with full respect for their human rights.

We would like to further refer your Excellency's Government to principle 2 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, launched by the Office of the United Nations High Commissioner for Human Rights in 2002, which provides that States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

Furthermore, we would like to recall recommendations made to your Excellency's Government by the United Nations Special Rapporteur on Trafficking in persons, especially women and children in the report of her visit to Thailand (A/HRC/20/18/Add.2).

As trafficking in persons may amount to slavery or slavery like conditions, we would also like to bring to your Excellency's attention article 8 of the International Covenant on Civil and Political Rights, ratified by Thailand in 1996, and article 2 of the 1930 Compulsory Labour Convention (ILO No. 29) ratified in 1969 both prohibiting forced or compulsory labour. As bonded labour is one of the most traditional and widespread forms of forced labour, we would also like to draw your Excellency's Government's attention to the Abolition of Forced Labour Convention, 1957 (No. 105).

We would also 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 as well as article 1(a) of the 1956 Supplementary Slavery Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which provides that all practicable and necessary legislative and other measures shall be taken to bring about progressively and as soon as possible the complete abolition or abandonment of debt bondage. We also wish to recall article 6 of the Convention that refers to article 1 and which stipulates that "the act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment."

Moreover, we would like to recall 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”, as well as article 8 of the International Covenant on Civil and Political Rights which prohibits slavery, the slave trade, servitude and forced labour and articles 6 and 7 of the ICESCR which protects the right to just and favourable conditions of work.

In this connection, we would also like to make reference to the report of the Special Rapporteur on Contemporary forms of slavery, its causes and consequences to the twelfth session of the Human Rights Council (A/HRC/12/21), which explores the issue of forced labour, including bonded labour, and to the recommendations made therein.

We would like to recall the obligations the State assumed under international human rights treaties to respect and protect the human rights of all individuals within its territory and subject to its jurisdiction, regardless of citizenship, nationality or immigrant status. We would particularly like to underline that the obligation of your Excellency’s Government to protect human rights entails ensuring that the human rights of these individuals are not violated by private actors. On this basis, we would like to highlight article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Thailand on 5 September 1999, 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). 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”.

Furthermore, we would also like to draw the attention of your Excellency’s Government to the UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. 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; and
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” As specified in the Guiding Principles, fulfilling this duty requires that a State take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, inter alia, that a State should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. 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 do occur.

The Guiding Principles also state that business enterprises have an independent responsibility to respect human rights. However, 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). Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

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. Are the facts alleged in the summary of the case accurate?
2. In furtherance to our earlier communications and your Excellency's Government responses thereto, please provide the details, and where available the results, of any follow-up investigation, and judicial or other inquiries carried out in relation to the alleged violations by Vita Fruit Factory and Natural Fruit Company. If no such follow up inquiries have taken place, or if they have been inconclusive, please explain why.
3. Has any complaint been lodged by or on behalf of the alleged victims?
4. Please indicate if the Government has provided any guidance to business enterprises operating in Thailand on their expected human rights due diligence process? Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights 17-21). Please provide information on whether Vita Food Company and Natural Fruit Company have been asked to implement the Guiding Principles on Business and Human Rights and, if not, please explain why.
5. Please provide detailed information regarding measures taken to identify potential victims of trafficking and bonded labour among the employees of Vita Food Company and Natural Fruit Company. If no such measures have been taken, please explain why.
6. Please provide information on implementation of the recommendations made to Natural Fruit Company following the inspection of the Thai Ministry of Labour including detailed information regarding follow-up investigation undertaken to ensure that the company has complied with the minimum wage, paid holiday, and overtime regulations.
7. What concrete measures are implemented to address trafficking in persons and labour exploitation in companies employing migrant workers?
8. What measures including policies, legislation, regulations and adjudication, has the Government in place to prevent, investigate, punish and redress human rights abuse by business enterprises within its territory and/or jurisdiction, including the two companies mentioned in this letter (Vita Food Factory and Natural Fruit Company)?
9. What steps is the Government taking to ensure that victims have access to effective remedy?

10. Please explain what the Government is doing specifically to implement the Guiding Principles on Business and Human Rights in the food industry and other business sectors in Thailand?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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