

**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**

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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 34/21, 34/35, 33/1 and 35/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Atypical Working Scheme (AWS) for Sea fishers, launched in 2016 to respond to allegations of trafficking in persons and severe forms of labour exploitation against migrant fishermen in the country and its alleged shortcomings according to international law standards.

It is our understanding that the AWS, currently operated by the Minister for Justice and Equality, is designed for non-EEA Crew in the Irish Fishing Fleet and allows for migrant fishermen to be granted permission to live in Ireland and work on certain type of vessels. The application process to obtain a work permit through the AWS for non-EEA workers comprises a series of steps, including the certification of an employment contract by a solicitor, the registration of the contract with the Central Depository for Sea-Fishing Boats within the Department of Agriculture, Food and the Marine (DAFM) and, once it is approved, a separate application to the Department of Justice for an immigration permission.

In this regard, we are concerned about a series of barriers for non-EEA workers attempting to access the scheme, such as a short timeframe to make an application, a general lack of awareness of the scheme, the lack of information in a language non-EEA workers can understand and considerable costs related to the certification by a practicing solicitor. Importantly, according to the AWS, once a fisher's work permit is granted, workers are eligible to work for only that employer, effectively tying migrant fishermen, their livelihood and immigration status to such employer and allegedly giving excessive power to potentially abusive employers over workers. As underlined below, this is not in line with international law and standards related to trafficking in persons and the human rights of migrants. In connection to this, it has also been brought to our attention that those workers that could not convince their employers to apply for the AWS scheme have no choice but to remain undocumented. Undocumented workers are particularly vulnerable to exploitation, as they fear losing their job and consequently being at risk of

deportation; therefore they often refrain from filing a complaint against their abusive employer.

In addition, while in principle vessel owners must comply with all relevant requirements under EU and National Law, including those relating to the terms of employment, the National Minimum Wage, maximum hours of work, minimum hours of rest, employment records, taxation and social insurance, several shortcomings exist in practice. According to data brought to our attention, 80.7% of respondents reported working more than 60 hours per week and 65.3% more than 100 hours per week, while the employment contract for the permit applied a standard 39 hour work per week. Similarly, migrant fishermen working under the AWS reported that underpayment of wages is widespread, amounting to an average of Euro 2.82 per hour, which is way below the legal minimum wage rate, amounting to Euro 9.15 per hour. In terms of safety and working conditions, 40% of migrant fishermen under the AWS reported not feeling safe at work and 36.6% of them reported having either personally sustained injuries or witnessed others injured at work. Moreover, we were informed that one in four workers interviewed experienced verbal and/or physical abuse and one in five experienced discrimination, which included unequal pay or unfair share of the catch compared to other European fishermen. Migrant fishermen also reported having to take on more difficult or risky jobs and facing racist insults.

We wish to express our concern that the AWS, as currently framed, does not provide for effectively preventing and combating trafficking in persons for the purpose of forced labour and labour exploitation in the fishing industry, nor does it provide for adequate protection of the rights of migrant fishermen. Instead, the provision which ties a work permit to a particular employer is likely to have the unintended consequence of increasing the position of vulnerability and dependency of employees particularly vis à vis unethical employers. Migrant workers are often threatened with loss of residence and eventually deportation, in case they attempt to quit or denounce their exploitative working conditions.

We also wish to express our concerns on the conditions in which migrant fishermen allegedly find themselves under the AWS: the reported isolation, abuse of vulnerability, physical violence, intimidation and threats, withholding of wages, abusive working and living conditions and excessive overtime have been identified by ILO among indicators of forced labour. All this considered, we are concerned that a number of migrant workers in the fishing industry may be victims of trafficking in persons for the purpose of forced labour or labour exploitation.

Aware of the judicial proceedings recently brought by the Transport Workers' Federation over this work permit scheme, we would like to bring to your attention a number of international laws and standards pertaining to actions against trafficking in persons, as well as recommendations made by regional human rights mechanisms, which we believe could assist in the ruling of this case.

We would like to draw your attention to the Slavery Convention of 1926 (acceded to by your Excellency's Government on 1 May 2008), 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, which calls on States to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

We also would like to draw the attention of your Excellency's Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency's Government on 17 June 2010, through which your Excellency's Government is obliged to refrain from acts which would defeat or undermine the Protocol's objectives and purposes, which include to prevent and combat trafficking in persons, including for the purpose of forced labour or labour exploitation.

We would also like to bring to the your attention article 8 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 8 December 1989, which prohibits slavery, the slave trade, servitude and forced labour. We would like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the ICCPR are not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

In addition, other international human rights standards clarify the rights of migrant workers and non-citizens alike. In particular, we would like to highlight article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 8 December 1989, 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 ILO Forced Labour Convention, 1930 (No. 29), ratified by your Excellency's Government on 2 March 1931, in addition calls for the suppression of the use of forced or compulsory labour in all its forms within the shortest possible period. In particular, according to its article 2, forced or compulsory labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said

person has not offered himself voluntarily'. We would also like to remind Your Excellency about your obligations under the ILO Equal Remuneration Convention, 1951 (No. 100), ratified by Your Excellency's Government on 18 December 1974, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by Your Excellency's Government on 11 April 1999 and the Labour Inspection Convention, 1947 (No. 81), ratified by your Excellency's Government on 16 June 1951. We however regret that, at present, Your Government has not yet ratified and enforced the ILO Work in Fishing Convention, 2007 (No. 188).

We would like to reiterate the obligations of your Excellency's Government under the International Convention on the Elimination of All Forms of Discrimination (ICERD), ratified by Ireland on 29 December 2000. We call to your attention the obligations inscribed in Article 2 (obligation to eliminate all forms of racial discrimination, whether direct or indirect in nature, and to reform any laws and regulations that result in racial discrimination and/or racial inequality), Article 5 (obligation to ensure equality before the law), and Article 5(d)(i) (obligation to ensure racially equal enjoyment of the rights to work, to free choice of employment, and to just and favourable conditions of work).

We also wish to refer your Excellency's Government to the Committee on the Elimination of Racial Discrimination's guidance on eliminating discrimination against non-citizens. In paragraph 33 of General Recommendation No. 30, the Committee emphasizes States' ICERD obligation to "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." In paragraph 35, the Committee further emphasizes that all individuals, regardless of citizenship status, "are entitled to the enjoyment of labour and employment rights... once an employment relationship has been initiated until it is terminated."

In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking ("Recommended Principles and Guidelines"), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Recommended Principles and Guidelines provides that "States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors".

Criteria and indicators of trafficking in persons for the purpose of labour exploitation should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/23/48/Add.4, appendix I and A/HRC/35/37).

We would also like to recall for Your Excellency's Government the thematic report of the Special Rapporteur on the human rights of migrants on labour exploitation of migrants, in which the Special Rapporteur recommends States to: "Guarantee that all migrants have the right to accept and to leave employment voluntarily, without the threat

of a penalty. Migrants who choose to leave an abusive employer should not lose their residence permit. Instead, they should receive adequate support, for example by providing them with a long enough grace period in order to find a new job. Allowing migrants to change employers when they wish would render them far less vulnerable to exploitation” (A/HRC/26/35, para 83)

In its second evaluation round of Ireland adopted on 7 July 2017, the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (GRETA) expressed concerns on the issue of ‘tied visa’. It noted that: ‘while the putting in place of a regulatory regime for the employment of non-EEA workers in the fishing industry is a welcome development, the fact that the employer must support the fisher’s application for a visa creates a dependence on the employer and if the employment relationship breaks down, places the fisher in a vulnerable position.’ GRETA also noted that the number of permits issued is reportedly small in relation to the total number of workers in the fisheries industry, and those without permits accept to work overtime without pay for fear of being discovered and deported from Ireland.

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 provide information on measures undertaken to ensure that the AWS does not tie migrant workers to a particular employer, which indirectly increases workers’ vulnerability to trafficking and exploitation.
3. Please provide information on measures undertaken to ensure that, under the AWS, victims or potential victims of trafficking for the purpose of forced labour or labour exploitation in the fishing industry are promptly identified and referred to appropriate protection services. Please indicate whether any individuals in the fishing industry has already been identified as such and supported.
4. Please provide information on measures undertaken to ensure that, under the AWS, investigation and prosecution of trafficking cases for the purpose of forced labour or labour exploitation in the fishing industry are carried out in an effective manner.
5. Please provide information on measures undertaken to ensure effective and independent labour inspections to detect cases of forced labour or labour exploitation in the fishing industry. Please also indicate how Your Excellency Government ensure that workers’ voice, including through their representatives, such as trade unions, is taken into account.

6. Please provide information on measures undertaken to introduce a firewall between immigration enforcement and employment inspections to ensure workers to safely and freely denounce exploitative working conditions.
7. Please provide information on measures undertaken to ensure that, under the AWS, all migrant workers in the fishing industry are protected from any form of discrimination and abuse, including racial discrimination.
8. Please provide information on steps undertaken by Your Government to ratify and enforce the ILO Work in Fishing Convention, 2007 (No. 188).

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

In view of these observations and concerns, we urge Your Excellency Government to ensure that the AWS is in line with international human rights law and does not directly or indirectly violate workers' rights. We also encourage the judiciary to take these comments into account while examining the case.

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

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