

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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Organization: Lawyers' Rights Watch Canada
Item 3 – Interactive Dialogue with the Special Rapporteur on trafficking in persons, especially women and children
Date: 9 June 2017
Speaker: Ms. Angela Walker

Oral Statement to the 35th Session of the UN Human Rights Council from Lawyers' Rights Watch Canada (LRWC), NGO in special consultative status

Mr. President:

Lawyers' Rights Watch Canada appreciates the report of the Special Rapporteur on Trafficking.¹ Issues of grave concern include lack of access to effective remedies for victims of forced labour and victims of kidnapping for ransom.

Migrant workers continue to be subjected to forced labour in Thailand, remedies are blocked by criminal prosecutions against those reporting abuses, perpetrators are immune, and abuses continue.² Last November, the Special Rapporteur and five other mandate holders sent a communication to Thailand³ reporting that Myanmar migrants were forced to work 22-hour days in slave-like conditions. After complaining to Thailand's National Human Rights Commission, workers now face retaliatory prosecutions filed by their employer, including charges under Thailand's overbroad criminal defamation laws.⁴ We suggest follow-up by the Special Rapporteur to address

¹ Report of the Special Rapporteur on trafficking in persons, especially women and children, A/HRC/35/37, 28 March 2017, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/37

² US Department of State, Office To Monitor and Combat Trafficking in Persons, 2016 Trafficking in Persons Report: Thailand, <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258876.htm>

³ OHCHR, Special Procedures Communication to Thailand from the Working Group on the issue of human rights and transnational corporations and other business enterprises, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the human rights of migrants, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, and Special Rapporteur on trafficking in persons, especially women and children, available at OHCHR:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22831>. See Thailand's response at "Thailand: Response to the Special Procedures under the Human Rights Council concerning the sentence issued against a human rights defender, Mr. Andy Hall, and two migrant workers, Ms. Ye Ye and Mr. Su Yone," available at: <https://business-humanrights.org/sites/default/files/documents/Thai-Gov-response-to-UN-19-Jan-2017.pdf>

⁴ Kate Hodal, "Workers claiming they had to sleep with the chickens face Thai court charges: Burmese migrants charged with defamation after alleging labour abuses in Thailand's multimillion-pound poultry export industry," *The Guardian*, 6 June 2017, <https://www.theguardian.com/global->

misuses of criminal defamation laws to punish and deny remedies to victims and their advocates.

Victims of kidnapping for ransom – monetary or non-monetary – also lack access to remedies even when their lives are at stake. Examples are Joshua Boyle, a Canadian kidnapped in 2012 in Afghanistan by Taliban insurgents and now held in the region with his wife, Caitlan Coleman, a US citizen, and their two children born in captivity. The US⁵ and Canada⁶ do not appear to recognize kidnapping for ransom as “trafficking” within the meaning of the *Trafficking Protocol* Article 3, which does not list hostage-taking for ransom among its non-exhaustive examples.⁷ Given that hostage-taking is an extreme form of commodification of human beings,⁸ we urge the Special Rapporteur to examine such cases with other relevant mandate holders, and develop an interpretation of Article 3 that includes hostages as victims of trafficking. This would allow families of hostages access to remedies – such as vigorous consular protection – on an equal footing with persons whose predicaments fit the specific examples listed in Article 3.

Thank you.

[development/2017/jun/06/workers-claiming-they-had-to-sleep-with-the-chickens-face-thai-court-charges-burmese-migrants](http://www.fortifyrights.org/downloads/Fortify_Rights_Thailand_A_Work_in_Progress_(March%202017).pdf) Fortify Rights. *A Work in Progress: Thailand's Compliance with the International Covenant On Civil And Political Rights*, March 8, 2017, [http://www.fortifyrights.org/downloads/Fortify_Rights_Thailand_A_Work_in_Progress_\(March%202017\).pdf](http://www.fortifyrights.org/downloads/Fortify_Rights_Thailand_A_Work_in_Progress_(March%202017).pdf); Prominent UK rights activist, fearing for safety, leaves Thailand, Reuters, 7 November 2016, <http://in.reuters.com/article/thailand-rights-activist-idINKBN1310XA>

⁵ E.g., the USA, Human Trafficking vs. Human Smuggling: Fact Sheet, US Department of State, n.d., <https://www.state.gov/documents/organization/226276.pdf>. Also see, Government of Canada, National Action Plan to Combat Human Trafficking, 2012, available at:

<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>

⁶ Canada's legislation on human trafficking is summarized at <http://www.justice.gc.ca/eng/cj-jp/tp/legis-loi.html>. Canada's definition of “trafficking” is found in Government of Canada, *A Handbook for Criminal Justice Practitioners on Trafficking in Persons*, Chapter 2, <http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/p1.html>. The definition of “trafficking” and “exploitation” are found in The Criminal Code of Canada, section 279, particularly s.279.03 and s.279.04.

⁷ The *Trafficking Protocol* states in Article 3(a) that “trafficking in persons” means:

recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

⁸ Mogus O Brhane, “Trafficking in Persons for Ransom and the Need to Expand the Interpretation of Article 3 of the UN Trafficking Protocol,” *Anti-Trafficking Review*, issue 4, 2015, pp. 120–141, www.antitraffickingreview.org. Hostages have been called “the ultimate commodity” by Cecilia M. Bailliet, “Towards Holistic Transnational Protection: An Overview of International Public Law Approaches to Kidnapping” *Denver Journal of International Law and Policy*, 38(4)(2010): 581-622, at 583, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/TerrorismHostage/Academic.Baillietarticle.pdf>, paraphrasing Boaventura de Sousa Santo, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, Cambridge University Press, 2002, at 9