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URGENT

Mr Charlie Flanagan TD,
 Minister for Justice and Equality
 Department of Justice and Equality,
 94 St Stephen's Green
 Dublin 2.
BY COURIER

16 May 2018

Your ref:

Our ref: LGA/HS/46505.3
 MHC-18039067-1

**Matter: Our client: International Transport Workers' Federation (ITF)
 Trafficking of Human Beings and Severe Labour Exploitation in the Irish Fishing Fleet**

Dear Minister

We act for the International Transport Workers' Federation ('ITF').

By letters dated 29 March and 26 April 2018, the General Secretary of the ITF wrote to the Minister for Justice and Equality to highlight the severe labour exploitation suffered by migrant fishermen participating in the Atypical Working Scheme for Non- EEA Crew in the Irish Fishing Fleet operated by the Irish Naturalisation and Immigration Service of the Department of Justice and Equality (see copies enclosed for your information). In particular, the General Secretary drew the Minister's attention to the fact that six migrant fishermen who had participated in the Scheme had already been formally identified as suspected victims of trafficking in human beings by the Garda National Immigration Bureau under the Department of Justice and Equality's Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking.

We are instructed that, as of today, ITF has referred no fewer than **12** potential trafficking cases to Gardai, and that **7** of these men have now been positively identified as suspected victims of trafficking in human beings, with 5 referrals still under investigation by the Garda National Protective Services Bureau.

In his letters to the Minister, the General Secretary of the ITF expressed grave concern that the Atypical Working Scheme, which was intended to protect migrant fishermen, is actually increasing their vulnerability to exploitation by giving their employers the power to cancel their permission to reside and work in the State at will. He further observed that labour rules designed to protect workers on sea-going fishing vessels go unenforced, so that employers operate in an environment of complete impunity. That senior officers of GNIB have been satisfied in respect of 7 referrals that trafficking offences have been committed confirms that ITF's concerns are objectively well-founded.

Our client believes that migrant fishermen working legally in Ireland have human rights protected by the Irish Constitution, the European Convention on Human Rights Act 2003, and EU law. These include the right to be protected against forced labour and human trafficking and the right to work in just and safe conditions.

The continued operation of the Atypical Working Scheme manifestly represents a real and imminent danger to those human rights. For this reason, the General Secretary of the ITF has repeatedly requested that the Department of Justice and Equality implement a moratorium on the grant or renewal of permissions under the Scheme pending a full review of its terms, with interim measures to be adopted to protect fishermen with currently valid permissions. ITF's concerns have been echoed by the Migrants Rights Centre Ireland (MRCI), the Oireachtas Joint Committee on Business, Enterprise and Innovation and the Council of Europe Group of Experts on Action against Trafficking (GRETA).

Notwithstanding that there is now clear unambiguous evidence that the Atypical Working Scheme is not fit for purpose, it remains in operation today. Fishermen abroad are induced to come to Ireland by the hollow promise of safe and fair working conditions. Dozens of fishermen are still working on permissions issued under its terms, leaving them vulnerable to trafficking and other forms of severe labour exploitation.

To make matters worse, ITF has observed that the number of applications for permissions under the Scheme has decreased as some unscrupulous employers eschew it entirely in favour of even more exploitative practices. In April 2018, ITF assisted four Ghanaian fishermen recruited by Northern Irish companies and smuggled across the border to work in this jurisdiction and on Irish-flagged vessels. These men have now been positively identified by GNIB as suspected victims of trafficking. Their experience is proof that a new Scheme containing effective protections against labour exploitation is urgently needed.

Our client believes that the first step towards reform of the Atypical Working Scheme must be a moratorium on the grant or renewal of permissions. Such a moratorium would ensure that no more migrant fishermen face the risk of trafficking or severe labour exploitation. Appropriate interim measures could be adopted to ensure that fishermen with valid permissions would no longer be at risk.

We note that, to date, no response whatever to the General Secretary's letters of 29 March and 26 April 2018 have been received. Our client is acutely conscious that every day which passes without reform means that migrant fishermen remain at risk of human trafficking and other severe forms of labour exploitation. While ITF profoundly regrets that its efforts to engage with the Department of Justice and Equality have failed, it is absolutely committed, as an international federation of transport workers' trade union comprising 670 unions representing over 19.5 million workers, to the protection of the human rights of migrant fishermen in Ireland.

With respect, it is unacceptable that the Minister's Department should continue to grant and renew permissions under the Atypical Working Scheme while, at the very same time, it receives information from senior officers of GNIB that there are reasonable grounds to believe that participants in the Scheme have been subjected to offences under the Criminal Law (Human Trafficking) Act 2008. The Minister cannot therefore be unaware that as long as the unreformed Atypical Working Scheme is in operation, there will be a proven and substantial risk of danger to the human rights of migrant fishermen.

Fishermen subjected to trafficking and severe labour exploitation cannot defend themselves. In these circumstances, the Minister is under a moral duty and positive legal obligation to act. To date, he has failed to do so. It therefore falls to ITF to take concrete steps in the public interest to vindicate the human rights of trafficked and exploited migrant fishermen, who today stand in real and imminent danger.

Accordingly, we have received instructions to request that the Minister confirm, **within 21 days of receipt of this letter**, that an immediate moratorium on the grant or renewal of permissions under the Atypical Working Scheme for Non-EEA Crew in the Irish Fishing Fleet will be implemented so as to protect the human rights of migrant fishermen in Ireland. If such confirmation is received, ITF offers to work constructively with the Minister and the Government on reforms to protect workers and restore the reputation of the Irish fishing industry.

Failing receipt of such confirmation, we have received instructions to initiate proceedings in the High Court without further notice, seeking, *inter alia*, orders restraining the grant or renewal of further permissions under the Atypical Working Scheme, and this letter, together with previous correspondence, will be relied upon in respect of the costs of such proceedings.

Yours faithfully



MASON HAYES & CURRAN