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International Transport Workers' Federation
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Fédération internationale des ouvriers du transport
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Международная федерация транспортных работников
التنظيم العالمي، الاتصال من أجل حقوقنا

Submission of the International Transport Workers' Federation (ITF) to the Third UPR Cycle for Ireland

1. In advance of the Universal Periodic Review (UPR) of Ireland due to take place during the 39th session of the Working Group on the UPR in November 2021, the ITF, a global union federation representing 18 million workers, from 670 affiliates in 154 countries submits the following information on behalf of migrant workers in the Irish fishing industry.
2. ITF concerns relate to the failure to adequately address human trafficking and other labour abuses in the Irish commercial fishing sector, and the failure to adequately transpose European Union directives relating to ILO Convention 188 relating to Work in Fishing.

State Obligations under International Law

3. Ireland is a longstanding member of the International Covenants on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which it ratified in 1989. In accordance with articles 7 of the ICESCR, the state is obliged to respect the right to just and favourable conditions of work, including fair wages, limitation of working hours, adequate rest, and safe and healthy working conditions.
4. The state has ratified the eight fundamental ILO conventions, including Convention 029 on Forced Labour and its Optional Protocol (P029). It thus undertakes to suppress the use of forced or compulsory labour in all its forms and in the shortest possible time, with the Protocol providing a vital update to the 1930 convention with obligations and solutions more targeted at the eradication of complex modern slavery and specifically tackling trafficking for the purposes of forced labour. Where ratified, a state's obligations include: effective prevention measures such as education of both those vulnerable to trafficking and employers; supporting business due diligence and responses to risk in their supply chains; ensuring victim release, recovery, rehabilitation and compensation; sanctioning offenders; and addressing root causes of forced labour. Access to justice should be ensured for any victim, whether or not they are legally resident in that state.
5. Importantly, Ireland has not independently ratified the ILO Work in Fishing Convention 188. As a seafaring nation and a host country for migrant workers in the sector, this convention if ratified could help to protect migrant fishers in Ireland, including via its section dedicated to fair practices in recruitment and a prohibition of recruitment fees being borne directly or indirectly by the fisher.
6. In 2010, Ireland ratified the UN Convention Against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children.

Previous UPR Session

7. During the 2016 UPR review of Ireland,¹ certain states were concerned that the state should be taking increased action to combat trafficking in human beings and to protect migrant workers. While commending the establishment of the Irish Human Rights and Equality Commission and the adoption of the Equality Act, 2015, the Philippines encouraged Ireland to ensure migrants' access to the labour market and social security" (para 16).

8. Ireland was further commended for adopting its Equality Act 2015, developing a draft national plan to prevent and combat trafficking by the Maldives (para 27), Mozambique (para 31), Sierra Leone (para 54), and Egypt (para 103). Furthermore, Belarus, Chad and China welcomed efforts to combat trafficking (paragraphs 89, 95, 97 respectively).

9. At 135.150 Sudan urged Ireland to continue efforts on its national action plan to prevent and combat trafficking. The ITF urges that to fulfil its commitments, Ireland must increase its efforts in this regard.

Exploitation in the Fishing Industry

10. Since 2008, the ITF had been providing assistance to fishers found to have been trafficked into modern slavery conditions, supporting them in their referral to be designated victims of trafficking by the National Referral Mechanism and through the employment tribunals in order to recover unpaid wages.

11. ITF investigations found that Ireland's Atypical Working employment Scheme of work permits ('the Scheme'), introduced in May 2016 in response to a Guardian newspaper investigation prompted by ITF and local union concerns, had in fact made the situation for non-EEA fishers worse. The additional isolation and "invisibility" of fishers on a vessel, in particular migrant fishers returning to a non-native country, make them some of the most vulnerable workers.

12. Under the Scheme, the balance of power is so heavily in favour of the employer as to create prime conditions for the exploitation of workers. Permits for any fisher not from the EEA may only be granted to those directly employed by the sea fishing licence holder via a written work contract for a period of 12 months.

13. Fishers found themselves in situations akin to bonded labour, as employers were able to threaten workers with dismissal and imminent deportation with the loss of their right to be in Ireland. Fishers found themselves in no position to organise, challenge their conditions and had no bargaining power in a situation where their right to be in Ireland was tied to their current employment situation.

14. The ITF brought a case against various agencies of the Irish government to the High Court requesting a moratorium on the grant or renewal of permits under the scheme and a thorough review to prevent the engagement of further fishers in exploitative conditions. The various agencies involved in administering the Scheme are the Department of Justice and

¹ A/HRC/33/17, 18 July 2016.

Equality; Department of Transport, Tourism and Sport; Department of Business, Enterprise and Innovation; Department of Agriculture, Food and the Marine; and the Workplace Relations Commission.

15. In 2019, the ITF entered into mediation with the Irish government in order to secure pledges from the state to implement measures for improved conditions for non-EEA migrant fishers working in the Irish commercial sea-fishing fleet. An agreement was reached that sought to achieve these aims.

16. While a number of the measures in the settlement have been implemented, Ireland has taken limited steps to address the issue of human trafficking. Despite ITF providing details of at least 20 potential victims of human trafficking, there was little investigation of these allegations and no cases were taken further. It is noted that there have not been any prosecutions in relation to human trafficking in Ireland since 2013.

17. We also note that the US State Department has twice downgraded Ireland in their Trafficking in Persons report. Ireland is now graded as Tier 2 Watchlist making it the amongst the lowest ranking in Europe. Issues in the fishing industry are specifically mentioned in the report.

18. We also note that, on 12 February 2019, four UN Special rapporteurs (human rights of migrants; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; contemporary forms of slavery, including its causes and consequences; and trafficking in persons, especially women and children) wrote to Ireland calling on the Government to ensure that the Atypical Working Scheme complies with Ireland's human rights obligations. We are not aware of any response from Ireland to this letter.

Transposition of C188 Work in Fishing

19. ITF also has concerns around the transposition into Irish law of the Work in Fishing Convention (C188). This transposition is required by Council Directive 2017/159/EU.

20. Firstly, Ireland failed to carry out any consultation employee representatives or trade unions in relation to their transposition.

21. The regulations implemented in relation to working time suffer from a serious deficiency in that they fail to define the reference period for the calculation of the average daily working hours (see European Union (International Labour Organisation Work in Fishing Convention) (Working Hours) Regulations 2019, SI 672 of 2019).

22. As such, the regulations fail to adequately provide an effective limitation on working hours and therefore do not address the issue for which the regulation is intended.

23. Without effective legislation to limit working hours on fishing vessels, we are concerned that fishers will continue to work excessive hour seriously endangering their safety.

Recommendations

24. We urge the state to improve the situation for migrant fishers in Ireland by:

- Actively investigating and taking appropriate action in response to allegations of human trafficking and other labour abuses in the fishing industry;
- Revising the transposition of Council Directive 2017/159 EU relating to Convention 188 to adequately reflect the requirements of that directive;
- Increase co-operation with workers' representatives to through consultation and other appropriate measures.