

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; 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; and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

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18 January 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on trafficking in persons, especially women and children; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences pursuant to Human Rights Council resolutions 44/4, 44/15, 43/6 and 42/10

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of human rights abuses faced by a group of Vietnamese migrant workers, who are reported to be victims of trafficking for the purpose of forced labour, or slavery or practices similar to slavery, or servitude, located at Linglong construction site near the northern town of Zrenjanin, where a number of Chinese companies, registered in Serbia, are operating.

According to the information received:

In the spring of 2021, it is estimated that 402 Vietnamese men were recruited in Viet Nam by three Vietnamese labour export recruitment agencies, Song Hỷ Gia Lai Company Limited, Công Ty Xuất Khẩu Lao Động Bảo Sơn and Công Ty Cổ Phần Quốc Tế Kaizen (Kaizen International Stock Company). They were recruited to work as construction workers for Linglong International Europe d.o.o Zrenjanin, a Chinese company registered in Serbia, to construct a factory in Zrenjanin, Serbia.

Reportedly, China Energy Engineering Group Tianjin Electric Power Construction Co., Ltd, Belgrade Branch, and Sichuan Dinglong Electric Power Engineering, two other Chinese construction companies registered as foreign companies in Serbia, were hired by Linglong International Europe d.o.o. Zrenjanin—affiliated to Shandong Linglong Tire Co. LTD, the main company – to construct the factory.

It is alleged that the labour export recruitment agencies that recruited the workers in Viet Nam, advertised an appealing salary, and acceptable living and working conditions. According to available information, the migrant workers were also required to sign a “commitment form” in order to confirm they were informed about the rules in the host country. This form reportedly stipulated that workers could be executed or have their hands amputated as

punishment by the host country for any failure to respect the terms and conditions of their contracts such as stealing, fighting, gambling, among others. The migrant workers were also required to pay an advance of \$2000 - \$4000 US dollars to the recruitment agencies to cover the costs of their transportation, visas, and accommodation. Furthermore, they were told that upon completion of their contract and their return to Viet Nam, they would be refunded their deposits, which amounted to \$700 - \$1000. Some of the workers borrowed money to make these payments, and as a consequence, they became indebted to their families, banks or other financial institutions.

It is reported that the Vietnamese workers arrived in Serbia between 9 August 2021 and 29 September 2021. Shortly after arrival in Serbia, reportedly the workers' passports were confiscated by their employers. They were told that this practice is common in relation to migrant workers. The Vietnamese recruitment agencies then cut off all contact with the workers after their departure from Viet Nam.

The migrant workers were also required to sign contracts of employment with the two companies subcontracted by Linglong International Europe d.o.o. Zrenjanin, namely China Energy Engineering Group Tianjin Electric Power Construction Co., Ltd, and Sichuan Dinglong Electric Power Engineering.

Their contract of employment is reported to have no start or end date, however stipulates a duration of 12-months. It was also stipulated that if, for whatever reason, a worker wants to return to Viet Nam before the contract expires, they would have to do so at their own expense. It is reported that most of the Vietnamese workers cannot afford a return ticket to Viet Nam and are prevented from terminating their contracts because of the debts owed.

The contract of employment stipulates that they are expected to work nine hours per day, not including lunch, for 26 days per month with a probationary period of 30 days. If an employee fails to work, they will not be paid for days that they are absent. If they are late to work, they are fined and can be denied their daily wage. Additionally, the provisions that mention compensation for changes to food, accommodation, and transportation, as well as increased rewards based on performance do not specify a defined amount of money, which creates a risk of significantly under-paying and exploiting migrant workers. Workers are also prohibited by contract from participating in union activities and their contracts of employment may be terminated if this prohibition is breached and as a consequence, the respective migrant worker would be returned to Viet Nam. In these situations, the worker would have to cover the costs of their return airfares.

The 402 migrant workers were originally living within the Zrenjanin industrial zone, near the construction site at a barracks, from the time of their arrival until mid-November 2021. From 20-25 November 2021, at least 350 migrant workers were reportedly moved to new locations under the supervision and guard of a private security firm. The remaining workers continue to reside in the Zrenjanin industrial zone. It is unclear whether the conditions in the new

locations have been improved.

It is alleged that the accommodation at the Zrenjanin industrial zone does not have adequate ventilation. The cleaning facilities are reportedly located on the outside of the barracks where there are several insulated water pipes. The beds do not have mattresses, only quilts laid over the top of wooden planks. The migrant workers reportedly enclosed their beds with cloth or makeshift curtains to keep themselves warm and they do not have, nor were provided with adequate clothes for colder weather. Reportedly, there are a few electric radiators but not enough sockets to connect them. In addition, it is reported that the electrical sockets are in poor condition and hazardous.

There are also reports of no washing machines on site and, only two bathrooms, two water heaters for over 402 workers, until the moment that 350 workers were moved to a different location. Due to the limited sanitation facilities, it has been reported that sewage and wastewater drainage installations are not performing effectively, and that hazardous waste storage is located near the migrant workers' living quarters. Concerns have also been reported in relation to the quality of drinking water. According to reports, the food allocated to workers has been insufficient and of poor quality.

It is reported that several migrant workers were presenting symptoms of COVID-19 and had to pay for the cost of testing at a private clinic, and for medication. There are not prevention measures related to COVID-19 in place, including access to masks, isolation and quarantine facilities. Concerns have also been raised as to the limited availability of health and safety equipment and protective equipment at the site.

Since conditions within the barracks and the overall construction site were reportedly substandard, migrant workers have gone on strike on several occasions— in September 2021 due to lack of food available, and in mid-November 2021, due to unpaid salaries. It is reported that the private security firm from Zrenjanin, Patrol 023 d.o.o, does not allow civil society organizations to enter into the premises to provide assistance to the migrant workers.

On 16 November 2021, an unannounced inspection was undertaken by Serbian state officials of the Labour Ministry and Internal Affairs Ministry. Unfortunately, there is not public information about the findings of the inspections available. The Ministry of Labour, Employment, Veteran, and Social Affairs mentioned in a public broadcast agency the same day of the inspection that this is one of the most controlled construction sites in the Banat region. The next day, the Minister Ms. Kisić Tepavčević said to another broadcast agency that there were 18 inspection visits to Linglong so far.

On 18 November 2021, it is reported that officers of the Zrenjanin Police Department visited the work site and concluded that the migrant workers were living in life-threatening conditions. The Zrenjanin Police then instructed that two of the accommodation buildings should no longer be used for housing. At

the same time, Government officials stated that the Vietnamese workers did have valid residence registration documentation or work permits.

It is alleged that on 19 November 2021, the passports were returned to the Vietnamese workers and they were forced by employers to sign a statement declaring that they were satisfied with their living conditions, and that they were working voluntarily. However, it has been alleged that the migrant workers felt threatened, and felt that they had no choice but to sign the statement.

It is alleged that on 26 November 2021, managers working at the construction site re-confiscated some of the passports of a number of Vietnamese workers. In addition, some have indicated that they want to return to Viet Nam but are unable to pay for a return ticket.

We are deeply concerned about the reported human rights violations allegedly committed against this group of migrant workers, in particular allegations that they were trafficked to Serbia for purposes of forced labour, servitude or slavery or practices similar to slavery. We are gravely concerned that they are allegedly forced to work and live in conditions that pose a serious risk to health and to life. We are further concerned that civil society organisations were allegedly not granted access to the sites in order to provide assistance to the workers.

We would like to remind your Excellency's Government of the Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations on 10 December 1948, further contributes to international standards regarding the elimination of all forms of slavery. Article 4 of the UDHR states: " No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

Forced or compulsory labour is defined in the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), ratified by Serbia on 24 November 2000. As per article 2, paragraph 1, the term forced or compulsory labour shall mean "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".

Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), ratified by Serbia on 24 November 2000 reaffirms that measures of prevention, protection, and remedies, such as a compensation, rehabilitation, are necessary to achieve effective and sustained suppression of forced and compulsory labour.

We would also like to refer to the Observation of the ILO Committee of Experts (CEACR), adopted in 2020, published at the 109th ILC session (2021), under the Forced Labour Convention, 1930 (No. 29).

Specifically, we refer to the Direct Request of the ILO Committee of Experts to your Excellency's Government to strengthen efforts with regard to the identification of victims of trafficking for the purpose of both sexual and labour

exploitation, and to ensure that appropriate protection and assistance is provided to such victims, as well as to ensure that adequate and dissuasive sanctions are imposed on persons convicted for forced labour or trafficking offences, in accordance with article 25 of the Forced Labour Convention, 1930 (No. 29).

We would like to draw your Excellency's Government's attention to the obligations set out in the Council of Europe Convention on Action against Trafficking in Human Beings, which your Excellency's Government ratified 14 April 2009, in particular articles 5, 10 and 12 which sets out the obligations on State Parties to prevent trafficking in persons, and to identify and assist victims of trafficking. We also remind your Excellency's Government of the obligation stated in article 15, to ensure access to compensation and legal redress, and article 35 on cooperation with civil society. In addition, the Convention, in article 27, obliges States Parties to ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.

We refer to the Group of Experts on Action against Trafficking in Human Beings' (GRETA) Second Evaluation Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, adopted on 24 November 2017, published on 29 January 2018, where it was noted that the majority of the victims were men who were subjected to trafficking for the purpose of labour exploitation (GRETA(2017)37, para. 12). Your Excellency's Government was urged to take further steps to ensure that all victims of trafficking are properly identified, in addition to recommending that your Excellency's Government continues to strengthen efforts to prevent trafficking for the purpose of labour exploitation, in particular, by ensuring that relevant professionals are properly trained, and called for increased monitoring of recruitment and temporary work agencies, and for review of the legislative framework to address any loopholes that may limit protection or preventive measures. Further it was recommended that measures should be taken to raise awareness of labour exploitation and to strengthen corporate social responsibility (GRETA(2017)37, para 61).

We also remind your Excellency's Government of the positive obligations arising under articles 3 and 4 ECHR, ratified in March 2004. Article 3 prohibits inhuman and degrading treatment or punishment, and is an absolute prohibition applying to all persons subject to the State's jurisdiction. Article 4 ECHR prohibits forced labour, servitude or slavery, and prohibits trafficking in persons. As was confirmed by the European Court of Human Rights in a case concerning trafficking for forced labour, *Chowdury and Others v Greece* (Application no. 21884/15) (Judgment of 30 June 2017):

“States must, firstly, assume responsibility for putting in place a legislative and administrative framework providing real and effective protection of the rights of victims of human trafficking. In addition, the States' domestic immigration law must respond to concerns regarding the incitement or aiding and abetting of human trafficking or tolerance towards it.

Secondly, in certain circumstances, the State will be under an obligation to take operational measures to protect actual or potential victims of treatment contrary to article 4. [...] In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of article 3 (a) of the Palermo Protocol and article 4 (a) of the Anti-Trafficking Convention. [...]

Thirdly, article 4 imposes a procedural obligation to investigate potential trafficking situations. The authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or close relative.” (paras 87-89, citations excluded)

We remind your Excellency’s Government that, as stated by the European Court of Human Rights in *Chowdury and Others v Greece*:

“[...] where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour.” (para.96)

We would also like to draw your Excellency's Government's attention to the obligations set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, which your Excellency’s Government ratified 6 September 2001, in particular articles 6, 7, 8 and 9 which set out the obligations on State Parties to prevent trafficking in persons, to assist victims of trafficking, to consider permitting victims of trafficking to remain within the State, and to ensure the safe and preferably voluntary repatriation of victims.

We would also like to bring to the attention of your Excellency’s Government, the Report of the Special Rapporteur on trafficking in persons, especially women and children, (A/HRC/47/34), on Implementation of the Non-Punishment Principles. The obligation of non-discrimination in international human rights law is critical to the principle of non-punishment and to its application across all anti-trafficking measures, including in the exercise of prosecutorial discretion. The report also highlights that the principle of non-punishment must be applied without discrimination to all trafficked persons.

We would also like to bring to your attention the Report by the Special Rapporteur on trafficking in persons, especially women and children to the Human Rights Council in 2019 (A/HRC/41/46) on innovative and transformative models of social inclusion of survivors of trafficking in persons.

We wish to refer to articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, articles 7, 8 and 13 of the International Covenant on Civil and Political Rights, and articles 7 and 8 of the International Covenant on Economic, Social, and Cultural Rights, succeeded by your Excellency's Government on 12 March 2001.

According to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, States have an international obligation not only to identify traffickers but also to identify victims of trafficking. It is highlighted that a failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. We also would like to refer to Principle 13 of these Recommended Principles and Guidelines, which provide 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".

We would like to recall the 2018 UN Principles and Guidelines on the human rights protection of migrants in vulnerable situations, particularly, Principle 3 on access to justice, and Principle 7 on the protection from violence and exploitation, which establishes to take measures to prevent and respond all forms of exploitation and violence against migrants, and guides States to "ensure that the measures taken will prevent the recurrence of abuse and are accessible to all migrants"; to "ensure that legislation and policy, as well as practice, reduce the risk that migrants will be exploited by those who offer them services or work in the formal or informal sectors, including the risk of being subject to forced labour or trafficking in persons"; and to "establish accessible and confidential services for migrants who are survivors of violence and exploitation", further establishing that migrant's experiences of violence "should be addressed without causing further victimization".

We highlight the ILO General principles and Operational Guidelines for Fair Recruitment (ILO: 2019). Specifically, we remind your Excellency's Government of Principle 6, which states

"6. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented."

The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

We also remind your Excellency's Government of the Report of the Special Rapporteur on Trafficking in Persons, especially women and children, on Due Diligence and Trafficking in Persons (A/70/260), which states: "The exercise of due diligence in anti-trafficking is critical to achieving a comprehensive and integrated

approach to ensuring the human rights of trafficked persons and persons at risk of being trafficked.” (para. 8) Further, the Report recognises that: “The due diligence principle is a well-established component of a State’s obligations under general international law and specific human rights covenants to address acts by private actors by preventing and protecting victims against such abuses, punishing the perpetrators and ensuring remedies for victims. As it is non-State actors who most often perpetrate trafficking, the application of States’ due diligence obligations concerning non-State actors is particularly critical to ensure the rights of trafficked persons.” (para.7)

We would like to also highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). 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 occur.

Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and

other relevant barriers that could lead to a denial of access to remedy.”

We would also like to recall General Assembly resolution 62/156 on the protection of migrants and specifically paragraph 14 which “requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers’ labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association”.

Furthermore, we would also like to refer your Excellency’s Government to the thematic report of the Special Rapporteur on the human rights of migrants on labour exploitation of migrants (A/HRC/26/35), in which the Special Rapporteur recommends States to:

82. Make sure that passports and other identity documents are not confiscated, and make the withholding of such documents an offence, with appropriate penalties, and effectively prosecute violations.
86. Guarantee that all migrant workers have an adequate standard of living, including adequate food, water, clothing and housing.
91. Ensure that migrants are free to terminate their employment contract, without fear of retribution, and find another employer or leave the country when they so wish.

Finally, we would like to recall objective 6 of the Global Compact for Safe, Orderly and Regular Migration to facilitate fair and ethical recruitment and safeguard conditions that ensure decent work, under which Member States committed to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination. This commitment includes providing migrant workers with the same labour rights extended to all workers in the respective sector, such as rights to just and favourable conditions of work, equal pay for work of equal value, and to the highest attainable standard of physical and mental health, among others (A/RES/73/195).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 indicate what the findings of the reportedly multiple inspections undertaken by the Labour Ministry and Internal Affairs Ministry are and what type of follow-up action has been taken by respective ministries.
3. Please provide details, and where available the results, of any investigations, and other inquiries carried out in relation to the above-mentioned allegations. Please indicate if any employers have been penalized for the non-payment of wages and if so, please specify what sanctions have been applied to how many employers.
4. Please provide information on measures taken to strengthen cooperation between Vietnamese judicial authorities and your Excellency's Government in cross-border trafficking cases.
5. Please provide information on any steps that your Excellency's Government has taken, or is considering to take, including policies, legislation and regulations to protect migrant workers against human rights abuses by business enterprises within its territory and/or jurisdiction, and to ensure that business enterprises conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations, as set forth by the UN Guiding Principles on Business and human Rights.
6. Please provide information on any steps that your Excellency's Government has taken, or is considering to take, to protect migrant workers during the Covid pandemic, as well as protection measures in case of absenteeism as a result of Covid-19 related illness.
7. Please indicate what measures are in place to ensure that returns of all victims of trafficking to Viet Nam are safe and voluntary.
8. Please provide information on any steps taken by your Excellency's Government to ensure that the affected workers have access to effective, adequate and timely remedies for business related human rights abuses.
9. Please indicate and elaborate on any further efforts to facilitate access to long term social protection for survivors of trafficking, other forms of contemporary slavery or labour exploitation that is provided unconditionally, regardless of the victims' participation in the criminal proceedings.
10. Please elaborate on measures taken to ensure the application of the non-punishment principle for victims of trafficking in persons for any

unlawful activity carried out by a trafficked person as a direct consequence of their trafficking situation.

11. Please elaborate on any measures being taken to strengthen the welfare services and assistance provided to migrant workers who are victims of exploitation, including legal assistance, medical and psychosocial care, and adequate shelters, and ensure that such services and assistance are accessible to all migrant workers, including those who are undocumented.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that letters expressing similar concerns relating to the alleged violations of the rights of Vietnamese migrant workers are also sent to the Governments of China and Viet Nam, as well as to companies potentially involved in the abovementioned allegations.

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

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