

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 capacities 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 Viet Nam on 5 March 2007. As per Article 2, paragraph 1, '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'.

We refer to the Observation of the ILO Committee of Experts (CEACR), adopted 2020, published 109th ILC session (2021), under the Forced Labour Convention, 1930 (No. 29). Specifically concerning penal sanctions and law enforcement, CEACR requested that your Excellency's Government, "strengthen its efforts to ensure the strict application of national legislation, so that sufficiently effective and dissuasive penalties of imprisonment are imposed and enforced against perpetrators."

We refer also to the Direct Request of the ILO Committee of Experts to your Excellency's Government to continue to take the necessary measures to ensure the effective implementation of national legislation, 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 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 in 2012, in particular articles 6 and 9, which set out the obligations on State Parties to prevent trafficking in persons for purposes of forced labour, servitude or slavery or practices similar to slavery, and to assist and protect victims of trafficking.

We would also like to refer to Articles 2 and 8 of the International Covenant on Civil and Political Rights, Article 7 of the International Covenant on Economic, Social, and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination all acceded by your Excellency's Government in

1982.

We remind your Excellency's Government of the Concluding Observations of the UN Human Rights Committee (2019), (CCPR/C/VNM/CO/3), specifically the recommendations stated in paragraph 40:

“The State party should:

- (a) Intensify efforts to prevent, suppress and punish trafficking in persons;
- (b) Provide victims with effective protection, assistance and remedies;
- (c) Ensure access to social services and the availability of a sufficient number of adequately funded shelters for victims, including for men and children;
- (d) Continue its raising-awareness efforts to eradicate the stigmatization of victims of trafficking. “

We remind Your Excellency's Government of the obligations arising under the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), ratified on 5 January 2017, and specifically: Article 11 (Prevention of Trafficking in Persons); Article 14 (Protection of Victims of Trafficking in Persons); Article 15 (Repatriation and Return of Victims of Trafficking); and Article 16 (Law Enforcement and Prosecution).

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. (Guideline 2). We remind your Excellency's Government of Principle 2 of the OHCHR Recommended Principles and Guidelines on Human Rights: “States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.” We also would like to refer to Principle 13 of the Recommended Principles and Guidelines, specifically 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 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 into societies.

We would like to recall the 2018 UN Principles and Guidelines on the human rights protection of migrants in vulnerable situations, particularly, we would like to draw your attention to Principle 3 on access to justice, and Principle 7 on the protection from violence and exploitation.

We highlight the ILO General principles and Operational Guidelines for Fair Recruitment (ILO: 2019). Specifically we remind your Excellency's Government of Principles 6 and 7, which state:

“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.

7. No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.”

We also wish to recall that Viet Nam is a “Pathfinder country” under Alliance 8.7 and in that context, the State has committed to taking accelerated action in implementing SDG target 8.7, which implies that States, “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking (...)”.

The obligation to protect, respect, and fulfill 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 fulfill 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 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 (A/RES/73/195).

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 law. We also urge the Government to cooperate with the competent authorities from Serbia to ensure that the victims are provided with protection measures, such as access to adequate health, psychosocial care and legal assistance, and that return and repatriation of victims shall be facilitated, ensuring compliance with the State’s obligation of non-refoulement, including risks of trafficking and re-trafficking on return.

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 person(s) 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 provide details, and where available the results, of any investigations, and other inquiries carried out in relation to the allegations.
3. Please indicate if any of the recruitment agencies have been sanctioned for their role in the trafficking and exploitation of Vietnamese workers, if so, please specify what sanctions have been applied, and to how many recruitment agencies.
4. 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.
5. Please specify what measures your Excellency's Government has adopted or intends to adopt to regulate public and private recruitment agencies in order to prevent abuses.
6. Please provide information on measures adopted, or intended to be adopted, to strengthen international cooperation with the Serbian law enforcement bodies in cross-border trafficking cases, to ensure effective investigations and prosecutions.
7. Please provide information on any steps taken by the Government of your Excellency to ensure that the affected workers have access to effective, adequate and timely remedies for business related human rights abuses.
8. Please indicate and elaborate on any further efforts to facilitate access to long term social protection for victims of trafficking for forced labour, slavery or practices similar to slavery or servitude, regardless of the victims' participation in the criminal proceedings.
9. 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.

10. Please elaborate on the measures being taken to ensure effective access to assistance and protection to the victims that have returned (if applicable), including legal assistance, medical and psychosocial care and adequate shelters, and protection against re-victimisation
11. Please provide information on the measures taken to ensure effective access to compensation and legal remedies for victims of the alleged human rights violations.
12. Please provide information on what measures are being taken to ensure effective prevention of trafficking in persons for forced labour, servitude, slavery or practices similar to slavery, including in cooperation with non-governmental organisations and trade unions.
13. Please specify what measures are being taken by consular and Embassy officials in Romania to strengthen protection of Vietnamese migrant workers, and to prevent trafficking in persons for forced labour, servitude and slavery or practices similar to slavery.

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 Serbia and China, as well as to the companies potentially involved in the abovementioned allegations.

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

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Fernanda Hopenhaym
Working Group on the issue of human rights and transnational corporations and other business enterprises

Felipe González Morales
Special Rapporteur on the human rights of migrants

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and
consequences