

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

Ref.: UA OTH 3/2022
(Please use this reference in your reply)

18 January 2022

Dear Ms. Trịnh,

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; 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

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we have received information that your company may be involved in the alleged forced labour and trafficking in persons for purposes of forced labour, of Vietnamese workers within a Linglong construction site in Zrenjanin, Serbia. We have also received information and are seriously concerned that there is an alleged lack of accountability and oversight of the conditions on the construction site, and allegedly no access to effective remedies for victims. We have also received information regarding other human rights abuses committed against this group of workers who are allegedly forced to work in locations and under conditions that could endanger their health and lives.

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.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern that the rights of workers from Viet Nam, are not upheld in line with international and regional human rights and labour rights standards. We are concerned that these workers, allegedly trafficked to Serbia, are subjected to forced labour and placed in locations that could endanger their health and lives. We are further concerned about allegations that civil society organizations are not allowed to access these factories in order to provide assistance to the workers.

In connection with above alleged facts and concerns, we would like to draw your attention to the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultations involving Governments, civil society

and the business community.

The Guiding Principles have been established as global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and/or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights.

“The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” (Guiding Principle 13).

“In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.” (Guiding Principle 19).

Appropriate action will vary depending on whether the business actor causes human rights abuses, contributes to human rights abuses; or whether the adverse human rights impact is linked to the operations of the company by a business relationship. Furthermore, the action will depend on the extent of leverage of the business enterprise to the adverse impact.

To fulfil their responsibility to respect human rights, business enterprises should have in place:

- (a) “A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.” (Guiding Principle 15)

In this connection, we recall that Guiding Principle 22 states that: “[w]here business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. Guiding Principle 20 states that businesses should track the effectiveness of their response. Tracking should: a) be based on appropriate qualitative and quantitative indicators; and b) draw on feedback from both internal and external sources, including affected stakeholders.

Furthermore, business enterprises are expected to utilize their leverage to prevent or mitigate the adverse impact. And if they lack leverage there may be ways for the enterprise to increase it. “Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors” (Commentary to Guiding Principle 19).

Guiding Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to an effective remedy.

In the 2018 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly, A/73/163, the Working Group noted in paragraph 2 that:

“The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships”.

In addition, this requires:

- (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact;
- (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working;
- (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

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

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 information as to whether your company has undertaken human rights due diligence steps, as set out in the UN Guiding Principles on Business and Human Rights, to identify, prevent,

mitigate, and account for human rights abuses caused by or contributed to through your own activities, or directly linked to your operations, products or services by your business relationships. This includes the negative impact that your company could have caused, or contributed to, on the enjoyment of human rights of Vietnamese workers, including the right to freedom of movement, right to the highest attainable standard of health, right to protection from racial discrimination, and protection from forced labour and trafficking for purposes of forced labour, servitude or slavery or practices similar to slavery.

3. Please explain what monitoring and evaluation systems your company has in place to ensure the effectiveness of human rights due diligence steps taken to mitigate and prevent forced labour, trafficking in persons for purposes of forced labour, servitude or slavery or practices similar to slavery, racism, and other related human rights violations in your business operations.
4. Please describe the measures that your company has taken, or is planning to take, to prevent recurrence of such situations in the future.
5. Kindly explain what measures have been taken to ensure that your company's staff have been trained and are equipped with adequate awareness, knowledge and tools, to identify and report human rights abuses, particularly those described in this letter.
6. Please provide information on whether your company has reported any such alleged human rights abuses to the law enforcement authorities. Furthermore, please explain if and how your company ensures that reports about forced labour, trafficking in persons for purposes of forced labour, servitude, slavery and practices similar to slavery, racism, and other relevant human rights abuses, are shared with the relevant national authorities.
7. Please provide information on whether your company has established or participated in an effective operational-level grievance mechanism, in line with the UN Guiding Principles, to address adverse human rights impacts caused by your company throughout your operations. Please also provide any information on whether such grievance mechanisms have been used to address any of the concerns or impacts identified by the stakeholders concerning the abovementioned allegations, and any outcomes or remedy provided as a result. Please provide specific information about any procedures in place to ensure participation of migrant workers and their representatives in the establishment and operationalization of such mechanisms.
8. Additionally, please provide information, if any, on cooperation your company may have had with local civil society actors and/or relevant state authorities to ensure that your company's grievance mechanism are aligned with national mechanisms and procedures to address such

business related human rights violations, ensure accountability for such violations and access to effective remedies for victims.

9. Please advise how your company has provided, or is considering to provide, or cooperates in the remediation of adverse impact on human rights of migrant workers.

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 for 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 company to clarify the issue/s in question.

This communication and any response received from your company 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, China and Viet Nam, as well as to other companies potentially involved in the abovementioned allegations.

Please accept, Ms. Trịnh, the assurances of our highest consideration.

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