

To:

United Nations Human Rights Councils

Re: 4th UPR cycle: contributions and participation of "other stakeholders" in the UPR

Contribution by ASTRA Anti Trafficking Action, SERBIA

Inputs and comments regarding *Compilation on Serbia, Report of the Office of the United Nations High Commissioner for Human Rights*

II. Scope of international obligations and cooperation with international human rights mechanisms and bodies

(On ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)

1. In the reporting period, ASTRA Anti-Trafficking Action provided support to almost one hundred of migrant workers from India, Vietnam and Philippines, who suffered serious human rights violation and were presumed victims of trafficking in human beings in form of labour exploitation.
2. Several international institutions reacted to the case of Vietnamese workers in Serbia, in Linglong construction site for the tyre factory in Zrenjanin:
 - a. **European Parliament resolution**¹ on forced labour in the Linglong factory and environmental protests in Serbia (December 2021),
 - b. **Joint statement of UN experts**² (January 2022) expressing their deep concern because of the alleged trafficking of Vietnamese migrant workers to Serbia,
 - c. **UN Committee on Economic, Social and Cultural Rights**, Concluding Observations³ regarding trafficking in human beings, improving the position and respecting the rights of victims, and the specific case of potential trafficking in human beings for the purpose of labour exploitation of Vietnamese workers engaged in the construction of the Linglong tyre factory and
 - d. **United States Department**, in ‘Trafficking in Persons Report’ (TIP report) 2022⁴, by downgrading Serbia to Tier 2 Watch List, for not fully protecting victims or fully investigate credible allegations that approximately 500 Vietnamese workers were subjected to forced labour at a People’s Republic of China (PRC)-owned factory.

¹ https://www.europarl.europa.eu/doceo/document/RC-9-2021-0600_EN.html

² <https://www.ohchr.org/en/2022/01/un-experts-deeply-concerned-alleged-trafficking-vietnamese-migrant-workers-serbia>

³ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSRB%2fCO%2f3&Lang=en

⁴ https://www.state.gov/wp-content/uploads/2022/08/22-00757-TIP-REPORT_072822-inaccessible.pdf

3. Due to the lack of domestic workers, the Government of Serbia is in the process of concluding an agreement with **Bangladesh, Vietnam and Guatemala** that would **facilitate the arrival of new migrant workers** from these countries to Serbia⁵.
4. Having in mind the issues with the treatment of the migrant workers in the reporting period, in particular the lack of the adequate state response and low quality of the protection and services to the migrant workers, ASTRA is **fully supporting** the UPR recommendation on the need to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families).

III. National human rights framework

(Recommendation no. 3. on the legal mandate for the Protector of Citizens (Ombudsman) to interact with the international human rights system and civil society organizations, the lack of sufficient financial and human resources available for the Ombudsman's Office and the limited follow-up by Serbia to the views and recommendations of the Ombudsman)

5. On the independence of the Ombudsman, ASTRA would like to draw attention to the Ombudsman activities in the *case*⁶ of *Vietnamese workers*^{7,8} in Chinese factory Ling long in Serbia. In November 2021, representatives of the Ombudsman, visited the workers and concluded that **the workers live in life-threatening conditions**⁹. After this visit, there were several public statements from the Ombudsman Office, in which the protector of the citizens **acted more in the competence of protector of the government**, providing justification of the situation, trivialising the issues raised, elaborating on the suspicion of THB and “performing” the identification procedure (out of his competence), providing information on the activities of Centre for the Protection of Trafficking Victims, not completely correct, and so on^{10,11,12}. In the interview on the occasion of the International Human Rights Day, the Ombudsman put the issue of the human rights in the field of **relative perception** and pointed out the “investigative” nature of his approach to work¹³.
6. According to the updated Law on the Ombudsman¹⁴, the Ombudsman is to appoint a deputy, performing as the **national rapporteur in the field of human trafficking**. This novelty is extremely important. In the light of the recent public statements of the Ombudsman, **there are concerns** on how this function of the Office of the Ombudsman will operate and whether the true impartial and independent initiatives will be implemented.

⁵ <https://www.ekapija.com/en/news/3751984/danas-government-of-serbia-preparing-to-import-workers-from-guatemala-bangladesh-and>

⁶ <https://drive.google.com/drive/folders/17rc11HyG26G8mvumN3Phh56Dh5gZMjGs>

⁷ <https://www.astra.rs/en/european-parliament-expresses-concern-over-treatment-of-vietnamese-workers-and-calls-on-authorities-to-investigate-case/>

⁸ <https://www.astra.rs/en/request-for-the-urgent-reaction-of-the-competent-institutions-in-case-of-potential-human-trafficking-for-the-purpose-of-labor-exploitation-of-workers-from-vietnam-engaged-in-the-company-linglong/>

⁹ [Zaštitnik građana proverava navode o položaju vijetnamskih radnika u Linglongu \(n1info.com\)](https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=498:pasalic-for-tv-tanjug-vietnamese-workers-moved-to-five-new-locations&catid=16&Itemid=19)

¹⁰ https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=498:pasalic-for-tv-tanjug-vietnamese-workers-moved-to-five-new-locations&catid=16&Itemid=19

¹¹ https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=499:pasalic-for-n1-part-of-the-vietnamese-workers-do-not-want-to-leave-their-original-accommodation&catid=16&Itemid=19

¹² [Pašalić: Jedno jaje za doručak "ne stoji", radnici tražili vijetnamskog kuvara \(n1info.com\)](https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=505:pa%C5%A1ali%C4%87-for-radio-belgrade-everybody-has-their-own-interpretation-of-human-rights&catid=16&Itemid=19)

¹³ https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=505:pa%C5%A1ali%C4%87-for-radio-belgrade-everybody-has-their-own-interpretation-of-human-rights&catid=16&Itemid=19

¹⁴ [Zakon o Zaštitniku građana \(paragraf.rs\)](https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=505:pa%C5%A1ali%C4%87-for-radio-belgrade-everybody-has-their-own-interpretation-of-human-rights&catid=16&Itemid=19)

IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

B. Civil and political rights

(Section 2. Administration of justice, including impunity, and the rule of law, Recommendation no. 20, remaining backlog of court cases and the delays in the adoption of the draft law on free legal aid.)

7. ASTRA welcomes the initiative to adopt the Law on Free Legal Aid. However, many issues arose in drafting, adopting and finally, in the implementation of this law. The Law on Free Legal aid poses **many practical issues and obstacles** to legal support and aid for the victims of trafficking in human beings. **It prohibits lawyers and attorneys at law engaged in NGOs from providing free legal aid**, regardless of the fact that they have been providing this type of specialized service for more than 20 years. The Law grants the right to provide free legal aid only to attorneys/barristers and lawyers working in local self-government units, **discriminating against lawyers who work in non-governmental organizations.**
8. The publication on *Law on free legal aid - The first six months of application*¹⁵, states that that the **local governments are not communicating the free legal aid service properly and adequately** which is probably leading to a small number of applications, coming from the i.e. victims of trafficking in human beings (only one in the reporting period). According to the provisions of The Law on Free Legal Aid¹⁶, related to the work of **associations/NGOs, they are limited** to the ones working on the issue of asylum and prohibition of discrimination.
9. In accordance to the Law, the victim of the THB should personally address to the local government for free legal aid, **not taking into account the specific nature of the trauma, victimization and the fear of the victim.** It is likely possible that the lawyers who has previously defended a perpetrator known to the victim, or is connected with the perpetrators acquaintances, gets assigned to defend the victim, particularly in smaller cities. Also, the lawyers assigned to engage in the free legal aid to the victims of the THB, in majority of cases, are **not sensitised or trained** to work with them. If the local government refers the victim to the specialised NGO/CSO, registered to provide the legal aid, the funds for the legal aid **are not** secured from the local government.

Section 2. Administration of justice, including impunity, and the rule of law, Recommendation no. 27, on a need to strengthen and systematize support and protection programmes for victims and witnesses.

10. In July 2020, the **National Strategy for the Realization of the Rights of Victims and Witnesses of Crimes (2020-2025)** was adopted¹⁷, aiming to establish a new and comprehensive system of protection and promotion of the rights of victims and witnesses of crimes in Serbia. According to the Strategy, all **higher public prosecutor's offices and all higher courts – will establish information and support services for victims and witnesses.** The services should provide victims with information on their rights and obligations, but in a **more technical sense.** The services, once when they actually start functioning, **will not provide legal aid.**
11. In addition to the fact that the services are **not yet established** in majority of higher public prosecutor's offices and higher courts, most of the prosecutor's offices and courts don't have the technical possibilities (transmitting video and sound, adequate

¹⁵ <https://www.yucom.org.rs/wp-content/uploads/2020/07/Primena-zakona-BPP-2.pdf>

¹⁶ <https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html>

¹⁷ <https://www.mpravde.gov.rs/files/Strategija-ENG.docx>

rooms for hearings).

Section 3. Fundamental freedoms and the right to participate in public and political life, Recommendation no. 31, related to a narrowing of the public space owing to, inter alia, the apparent shrinkage of the range and number of independent media outlets, and new authoritarian strains in cultures of governance that had strengthened censorship.

12. ASTRA compiled a comprehensive media clipping related to the case of Vietnamese workers exploited in the Linglong factory in Zrenjanin. The file is a list of national and international media and other coverage of the case and it has more than 500 entries. Majority of the articles and videos were published by the independent media, associations and individuals. Among the only few mentioning's of the case in the pro-government media, not one has shown at least mild criticism or investigative approach. On the contrary they dealt with appraisals to the government capital investment initiatives and provided space for government officials attacks on CSOs and activists, for 'attacking the joint ventures and attempting to spoil the relations between Serbia and China'.

Section 4. Prohibition of all forms of slavery, Recommendation 34 on concern of a Committee about the presence of national and foreign criminal groups involved in trafficking and their exploitation of the large number of migrants and refugees in Serbia and recommendation to strengthen measures to prevent and combat trafficking in persons, placing a specific focus on migrants and refugees.

13. Serbia should strengthen the relevant actors' capacities and improve the national mechanism for the referral and protection of victims of human trafficking. The position of victims of human trafficking in judicial, administrative and other proceedings is not at an enviable level and certain changes are needed at the legislative and institutional level, as well as a more consistent application of existing legal provisions that are in accordance with international standards (especially in the area of protecting the privacy and safety of children and female victims in court proceedings).¹⁸ An approach that is fully focused on the victims of human trafficking and puts them in focus, as well as continuity in building the capacities of various key actors, is necessary.

14. The protection and support system for victims of human trafficking additionally shows its limitations when the victims are foreign nationals¹⁹.

15. Centre for the Protection of Trafficking Victims (CpoTV), the social protection institution mandated to perform the formal identification of victims of human trafficking and coordinate the overall support to the victims, has not yet found its place in the system. This is valid for both in the normative sense (the Law on social protection does not recognize this institution, and the adoption of the is awaited for more than 3 yeras), as well as in operational sense (i.e. individual associates from the centre for social work often do not know that this institution exists nor it's function).

16. CPoTV needs adequate resources to increase its efforts to protect victims. The Center's annual report for 2021, states that there is a shortage of professional staff and an overload of professional workers. There are numerous shortcomings and limitations in the work of this institution, starting from the lack of professional workers to the delay of funds that are necessary for the functioning of this institution. It is necessary to clearly define the role of the CPoTV in the social protection system.

¹⁸ Please refer to Analysis of Judicial Practice for 2019, 2020 and 2021. <https://www.astra.rs/en/manuals-reports-studies/>

¹⁹ Please refer to Case ASTRA ID 6664 in Annex 1.

17. Changes in the internal procedures of the CPoTV should follow and be in accordance with the law and by-laws and international standards and ratified documents. The victim who has started the process of formal identification must be familiar with his/her rights and informed about all relevant issues. If she is not recognized as a victim of human trafficking, he/she has the right to appeal.²⁰
18. The procedure for regulating the residence of foreign citizens who are potential victims of human trafficking must be clearly and correctly defined, starting with the question of who is competent to submit a request for the regulation of residence.²¹
19. There is a need to increase the effort to proactively identify victims in various vulnerable groups (children, people with disabilities, national minorities, foreigners who come to work in Serbia and have an unregulated legal status, etc.).
20. Investigations, prosecution and punishment of human traffickers must be improved, especially taking into account the lack of recognition of human trafficking in the form of organized crime.
21. There is a great need to widen the scope, ensure sustainability and standardize the availability of services throughout the country. In Serbia, there are only three specialized providers of support and protection services for victims of human trafficking. Some of the services provided by specialized NGOs are licensed, but the provision of funds is left to the NGOs themselves, which speaks of the unsustainability and insecurity of these services.²²
22. The National Referral Mechanism (NRM) for the victims of trafficking in human beings needs significant improvements and operationalisation. Standard operating procedures for dealing with victims of human trafficking (SOP) were adopted in February 2019, as stated in the Report of the Republic of Serbia. Standard operating procedures are still not binding and are still largely unknown to key institutions, therefore the impact of SOP can't be assessed.
23. The National Anti-trafficking coordination office is mandated, among other areas, for monitoring, coordinating, supervising and directing the implementation of actions and measures in the system of referral and protection of victims of human trafficking. In practice, the National Office shows disinterest and inertia regarding important topics and areas that require multisectoral cooperation and active planning and action. Although an important body in the NRM, the office is failing to build and confirm its position and take a more significant role in initiating state response in occasion of complex cases, i.e. the one of human trafficking for the purpose of labour exploitation in Zrenjanin, in 2022, or previously in 2019/2020, in regards to the workers from India. This applies also the 'SerbAz case' that resulted in the judgment of the European Court of Human Rights in 2021, but also to the number of complex individual cases. It is unknown whether the Office officially addressed the highest body in the NRM - Council for the fight against human trafficking, and draw their attention to some of the burning issues, such as that the report of the Action Plan for 2019-2020, was not officially adopted (in the Report of the Republic of Serbia, the state claims that it was), that the year 2022 is almost at its end, and the Action Plan for the 2021-2022 was not officially adopted. Also, the coordinating body for monitoring the implementation of the Strategy and the Action Plan was dissolved (it was authorized to monitor the AP for

²⁰ Challenges of recognition of the status of human trafficking victim in the Republic of Serbia, ASTRA, 2022. https://drive.google.com/file/d/1x_mnFXbhzwLb9k-EV4ifEDR1sWIcPhk/view

²² Challenges in regulating the temporary residence of foreign victims of trafficking, ASTRA, 2022. <https://drive.google.com/file/d/1k9AXrfmWw86pbpvnFR4CDm6C6GpU-Ouk/view>

the period 2019-2020), and finally that the discussion on the Strategy for the next period should be put on the agenda a long time ago, since it is currently in its last year of implementation and the strategic document for the following period should have already been in the preparation phase.

Section 4. Prohibition of all forms of slavery, Recommendation 34 on Committee concerned about the situation of children trafficked or exploited by family members or others.

24. A large percentage of formally identified victims of trafficking in human beings are children²³ (64% in 2019, 42% in 2020 and 37% in 2021), almost exclusively girls (59% in 2019, 49% in 2020, 94% in 2021).
25. The analysis of court judgments²⁴ (ASTRA) pays special attention to the protection of minors for this reason. The percentage of children victims of trafficking among the total identified number of victims is identified. In 2021, 71% comparing to 60% in 2020, and 59% in 2019.
26. Serbia still does not have a specialized shelter for emergency accommodation or specialized programs to support children victims of human trafficking.
27. SOS hotline for victims of trafficking (20 years) and Missing children hotline 116000 (10 years) are licensed and run by NGO ASTRA but without finance support of state and Serbia still didn't established Child alert Early warning missing children system.

Section 4. Recommendation 35 to strengthen the monitoring of child labour, in particular by enhancing the Labour Inspectorate, in order to detect and prevent the worst forms of child labour, in particular by street children.

28. There is no comprehensive base of long-term programs for the support and reintegration of children involved in living and working on the street, and the exact number of street children is not known, although estimation of 2,000 children has been repeated for years (it is believed that this number is much higher).
29. The drop-in service for children is only available in two cities in Serbia.
30. In accordance to the law, children who live and work on the street can be misdemeanour liability liable for begging, a younger minor (14-16 years old) can be sentenced to an educational order, while older minors can also be sentenced to criminal sanctions.
31. There is a lack of reliable and comparable data as well as the records, kept by the competent authorities, which has the effect of hindering the creation of effective policies towards children, as well as effective intersectoral cooperation.

We are at your disposal for any further information, clarifications or additional sources of verification for the information provided.

²⁴ Analysis of services protection and support to victims of trafficking to the people in Serbia, ASTRA, 2021. <https://drive.google.com/file/d/1LMS8ZLjdcgqeFWm2q6FOpa3khC0bwLpd/view>

ASTRA Anti-Trafficking Action Team
In Belgrade, Sept 29, 2022

