



Submission to the Universal Periodic Review of the Republic of Serbia

August 2022

China Labor Watch

Introduction

China Labor Watch (CLW) submits the following information regarding Serbia's implementation of the recommendations of its 2022 Universal Periodic Review (UPR). This submission focuses on human trafficking, violations of labor rights, migrant workers' rights, the right to freedom of expression, and the right to freedom of movement.

In addition to its national laws, Serbia has human rights obligations as a result of accession¹ and/or ratification of the International Covenant on Civil and Political Rights (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW);² the United Nations Convention against Transnational Organized Crime (UNTOC),³ the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children;⁴ the Council of Europe Convention on Action against Trafficking In Human Beings; the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the UN Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the ILO Forced Labour Convention (No. 29); the Abolition of Forced Labour Convention (No. 105); the ILO Migrant Workers (Supplementary Provisions) Convention (No. 143) and the Worst Forms of Child Labour Convention (No. 182).

Serbia's National Law

Serbian legislation is largely compliant with the international conventions on trafficking in human beings regarding the criminal law provisions. The Constitution of the Republic of Serbia,⁵

¹ "accession" is "whereby a State establishes on the international plane its consent to be bound by a treaty." United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Articles 2(1)(b) and 15

² UN Treaty Body Database, Ratification Status for Serbia, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=en (accessed August 15, 2022)

³ UN Treaty Collection, CHAPTER XVIII PENAL MATTERS, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en (accessed August 15, 2022)

⁴ *ibid*

⁵ "Official Gazette of the Republic of Serbia", no. 98/2006, Article 26 – Prohibition of slavery, servitude and forced labour: No person may be kept in slavery or servitude. All forms of human trafficking are prohibited. Forced labour is prohibited. Sexual or financial exploitation of person in unfavourable position shall be deemed forced labour. Labour or service of persons serving sentence of imprisonment if their labour is based on the principle of voluntariness with financial compensation, labour or service of military persons, nor labour or services during war or state of emergency in accordance with measures prescribed on the declaration of war or state of emergency, shall not be considered forced labour "

⁶ "Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 – amend 107/2005 – amend, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.

the Criminal Code,⁶ the Criminal Procedure Code,⁷ the Law on Public Order and Peace,⁸ the Law on Aliens,⁹ etc. all have direct reference to trafficking. Specifically, on August 31, 2009, the Serbian Parliament passed amendments and supplements to the Criminal Code of Serbia (Official Gazette of RS, no. 72/09), increasing the sentences for various forms of human trafficking, and envisioned punishment for the buyers of services and employers who knew or could have known that an individual involved is/could be a victim of human trafficking.¹⁰ Core international labor conventions have also been reflected in Serbia's labor related legislation.

However, reports¹¹ on human trafficking and labor abuses published by NGOs and news media reported extensive labor rights abuses happening in Serbia, including restrictions of personal freedom, overworking, confiscation of identity documents, etc., suggesting a potential issue in the enforcement of said legislations in protecting individuals.¹²

CLW commends Serbia for introducing human trafficking and smuggling of migrants as offences punishable under the Criminal Code, and for setting up the ad hoc national body to monitor related abuses.¹³ However, Serbia has introduced limited measures, and no national action plan, to enforce or promote these new laws or the national body.

Human Trafficking

Serbia has obligations to protect the victims of transnational trafficking in persons, ensure that its domestic legal or administrative system contains measures that provide assistance to victims of trafficking in persons, consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons, and establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons and to protect victims of trafficking in persons from revictimization.¹⁴

⁶Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 – amend 107/2005 – amend, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.

⁷ "Official Gazette of the Republic of Serbia", No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014.

⁸ "Official Gazette of the Republic of Serbia", No. 65/2013, 13/2016.

⁹ "Official Gazette of the Republic of Serbia", No. 97/2008.

¹⁰ <https://www.astra.rs/en/national-legislation/>

¹¹ ASTRA "Would you really buy this- Final report on LingLong case by ASTRA." 2022, ASTRA. <https://documentation.lastradainternational.org/doc-center/3456/would-you-really-buy-this-final-report-on-linglong-case-by-astra> ; Horizontal Facility for the western balkans and turkey "Report on trafficking for the purpose of labour exploitation in Serbia." 2017: <https://rm.coe.int/serbia-preventing-and-combating-trafficking-in-human-beings-pdf/168075f341>;

¹² <https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/submissions-HRC47/NGOs-and-academia/Astra-Antitrafficking-Action.pdf>

¹³ UNGA, Report of the Working Group on the Universal Periodic Review: Serbia, UN Doc A/HRC/36/13, para 17

¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Serbia also has obligations to prohibit private individuals, companies or associations from hiring individuals through the use of coercion, abduction, fraud or deception.¹⁵

With reference to the International Labor Organization's indicators of trafficking in persons,¹⁶ CLW has found evidence of multiple indicators of violations of workers' rights and indicators of human trafficking, including breaches of labor contracts, confiscation of passports, false work visas, unpaid wages, no medical compensation or sick leave, physical violence and verbal abuse, restricted freedom of movement and personal expression, etc. Many Chinese workers, at the time of our investigation, were stranded in Serbia due to a combination of COVID-19 restrictions and the companies' policies. They also have difficulty accessing help from the Serbian authorities.

Deceptive Recruitment

According to the ICRMW and national law, migrant workers' right to life shall be protected by law.¹⁷ The state shall also prevent unlawful actions for anyone to confiscate, destroy or attempt to destroy identity documents¹⁸, and needs to address migrant workers' cases as they claim that their work contracts have been violated by their employers.¹⁹ Additionally, employers need written permission from the Minister of Manpower before hiring foreign citizens²⁰ and an obligation to repatriate migrant workers to their countries of origin after their employment comes to an end.²¹

There is evidence of trafficking in persons in Serbia today. The relevant indicators of deceptive recruitment are: deception about content and legality of work contract, legal documentation or obtaining legal migration status, wages or earnings, and travel and recruitment conditions.²² Serbia also has obligations to protect foreign migrant workers from forced labor, in accordance with national law. Moreover, the above-mentioned laws and treaties protecting worker rights are sometimes not enforced, enabling these abuses.

Chinese workers also face debt bondage. In addition to the intermediary fee for the employment agencies, which might cost thousands of dollars, workers were asked to pay "liquidation damage" if they wished to return to China before the written or verbal contract ends. If workers failed to pay the damage, the employer might not return the workers' passports to allow them to

¹⁵ International Labour Organization, 4 May 2009, Operational indicators of trafficking in human beings, available at: [https://www.ilo.org/global/topics/forced-labour/publications/WCMS_105023/lang--en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_105023/lang-en/index.htm)

¹⁶ Ibid, pp 4-6

¹⁷ ICRMW, Article 9

¹⁸ Ibid, Article 21

¹⁹ Ibid, Article 54(2)

²⁰ State Gazette of the Republic of Indonesia, Act of the Republic of Indonesia Number 13 Year 2003 Concerning Manpower (ILO Translation), available at: <https://www.ilo.org/dyn/travail/docs/760/Indonesian+Labour+Law+-+Act+13+of+2003.pdf> (accessed December 18, 2021), Articles 33, 42(1)

²¹ Ibid, Article 48

²² Ibid

return to China. Therefore, workers were forced to perform the same amount of work for debt payments so they could one day be finally allowed to return home. This is another indicator of trafficking for labor exploitation.

Serbia has obligations to protect migrant workers from compulsory labor²³ and the national law requires that all foreigners hold valid residence permits and employers to report the employment relationship with foreign workers to the local authorities.²⁴ However, these measures are insufficient to address transnational labor trafficking in Serbia.

In Zijin Mining Group Co., Ltd., a Chinese-owned mining company operating in the city of Bor, many workers interviewed did not have a copy of their labor contract. They were simply told to sign on a blank space on a pre-printed document, which was immediately taken away right afterward by the manager. Workers did not know what was in the contract, and were not aware of the illegality of their status until they realized they had been deceived about the working conditions after arriving in Serbia.

Chinese workers in the Linglong Tire's factory in Zrenjanin, Serbia, were also victims of deceptive recruitment. The main contractor of the construction at Linglong was the Tianjin Electric Power Construction Co., Ltd. (天津电力建设有限公司), a subsidiary of the state-owned China Energy Engineering Group (中国能源建设集团). Parts of the construction had been further outsourced to second-tier and third-tier contractors. False information provided by recruiters led many workers to agree to pay a deposit, only to realize later that the recruiters' promises to return the money once they arrived in Serbia were empty.

Coercion and Abuse of Vulnerability at Destination

According to the ICESCR and national law, workers in Serbia have the right to: the opportunity to earn a living through work which can be freely chosen or accepted,²⁵ remuneration²⁶ including for public holidays,²⁷ safe and healthy working conditions,²⁸ equal opportunity,²⁹ and rest, leisure and reasonable limitations of working hours.³⁰ They have the right to liberty and security of

²³ ICRMW art 11.2

²⁴ Law 08-11 of 25 June 2008

²⁵ UN General Assembly, International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 6

²⁶ Ibid, Article 7(a)

²⁷ Ibid, Article 7(d)

²⁸ Ibid, Article 7(b)

²⁹ Ibid, Article 7(c)

³⁰ Ibid, Article 7(d)

³¹ Ibid, Article 16(1)

person,³¹ urgent medical care,³² freedom to leave or enter any State of origin at any time³³, effective protection by the State against violence, physical injury, threats and intimidation,³⁴ and compulsory labor³⁵.

On the ground, a variety of related abuses happened. Zijin Mining fines the workers heavily when they violate company rules. Many of the rules, however, were petty and arbitrary. For example, a worker, Zheng, was caught leaving the worksite and was subsequently fined RMB 3,000 (around USD 450). The company did not provide uniforms; workers needed to purchase their own safety equipment. However, a worker who wore their own short-sleeved shirt at work was fined RMB 500 (around USD 75). Workers were required to work nine hours a day, seven days a week. There was no paid sick leave, and no overtime pay.

The workers CLW spoke with described living conditions that were unbearable. Trash and excrement could be seen everywhere. Workers were told to use pipes that were connected to the latrines in the settlement to wash away excrement and waste. The stench, according to the workers, was so strong that all the dorm rooms smelled like sewage. The food provided in the dining hall was often spoiled. Many workers tried to grow vegetables after work in order to get necessary nutrients.

A worker who witnessed a work-related accident told CLW that after an injured worker collapsed at the worksite, no medical care was provided. The injured worker was left lying on the ground for 50 minutes until a company's vehicle arrived. No ambulance was called.

A report by ASTRA³⁶, a Serbian anti-human trafficking NGO, also detailed the deplorable conditions that Vietnamese workers in Linglong factory, Serbia suffered. Accordingly, they were deprived of basic necessities including food, water, clothing, heating such that locals noticed them setting up traps and skinned rabbits in the open. Their passports were also confiscated by the company, rendering them trapped in their conditions. The Vietnamese workers' experiences, according to ASTRA, fulfilled at least 42 indicators of the 67 ILO indicators of trafficking of adults for labor exploitation.³⁷

Wages were supposed to be paid by the end of the month, but they were frequently delayed. Workers were not given any pay slips, only were told to sign on a pre-printed form where the wages were simply listed. According to some experienced workers, it was common for the

³¹ Ibid, Article 16(1)

³² Ibid, Article 28

³³ Ibid, Article 8 (1), (2)

³⁴ Ibid, Article 16(2)

³⁵ Ibid, Article 11(1), (2)

³⁶ ASTRA "Would you really buy this- Final report on LingLong case by ASTRA." 2022, ASTRA.

<https://documentation.lastradainternational.org/doc-center/3456/would-you-really-buy-this-final-report-on-linglong-case-by-astra>

³⁷ Ibid

numbers to be incorrect. Workers did not receive any medical insurance, social insurance, or other work-related benefits. Many workers reported to CLW that they were not provided with enough protection while they were working, increasing the risk of work injury. These are evidence of coercion at the destination, another indicator of human trafficking.

When COVID-19 hit their worksite, the workers were reportedly asked to continue to work and live in crowded dorms as if nothing had happened. Some workers in Zijin Mining told CLW that their coworkers contracted COVID-19, but the company did not provide any medical treatment. The only protection provided by Zijin Mining during COVID-19 were surgical face masks: 10 per worker per month. In January 2021, both the Balkan Investigative Reporting Network and Radio Free Europe reported on the exploitative conditions that the Chinese workers experienced, calling them victims of human trafficking and forced labor.³⁸ The only change that came about because of this news coverage, however, was that a worker could receive 50 face masks per month subsequently.

Some workers reported that they only received their wages every six months and had to apply for cash advances from the next wage. Furthermore, when workers wanted a cash advance, they needed to do a currency conversion through the company, where the company used a very high rate. In this way, the company could take money from their workers.³⁹ Some Chinese workers' wages had been withheld for years; a worker said his employer was withholding 30% of his wages up until the very end of the two-year contract. Worse, even though many workers had worked for three to four years after their original contract expired, they still had not received the full wages and had to stay and keep working at their worksites to wait for their withheld wages.⁴⁰ This is exploitation in addition to coercion and abuse of vulnerability and destination, all indicators of human trafficking.

Workers in Serbia also spoke to CLW about a potential issue of the smuggling of persons. They explained that Serbia was an accessible destination for Chinese people who want to leave the country, because it did not require Chinese nationals to have a visa. Furthermore, as part of Europe, Serbia was perceived as a gateway to the rest of the continent, and even North America; people came first to Serbia, worked and stayed for a while, then sought opportunities elsewhere. CLW had learned about extensive human trafficking and smuggling networks, where users communicated through social media and word of mouth. People who used these networks paid huge fees and accepted the high risks involved, including deportation and death. CLW also discovered group chats with discussions of different tactics to use to cross borders. Accordingly, some people would “rent” the passports of European Union citizens with Asian ancestry, explaining that European border services were unable to distinguish between different Asians.

³⁸Sasa Dragojlo, ‘Like Prisoners’: Chinese Workers in Serbia Complain of Exploitation, 2021. Balkan Insight. <https://balkaninsight.com/2021/01/26/like-prisoners-chinese-workers-in-serbia-complain-of-exploitation/>

³⁹ Radio Free Asia, January 15, 2022, 独家揭秘一带一路：工人血泪不归路（一） | 新闻追击: <https://www.rfa.org/mandarin/duomeiti/xinwen-zhuiji/xwzj-01152022084033.html?encoding=simplified&encoding=traditional> (accessed February 27, 2022)

⁴⁰ Ibid

Others were smuggled into the EU on tractors and trucks. Still others spoke of flying from Serbia to Ecuador, where Chinese nationals did not need a visa, and walking from there into the United States. There were always people who were willing to make a referral or recommendation, and tips about each of these human smuggling routes were provided.

Conclusion

Although Serbia has a national ad hoc body to monitor human trafficking and smuggling of migrants, workers that CLW interviewed had not heard of it or spoken to them. It was not clear whether this body provided assistance in addition to monitoring, either.

In addition to preventing and supporting victims of human trafficking, Serbia has an obligation to protect migrant workers. This includes ensuring that employers do not confiscate or destroy passports.⁴¹ Serbia should support victims by monitoring the situation of these workers through the national body, provide accessible help, and support victims when they reach out. Serbia also has the obligation to provide protection and prevent abuses of migrant workers employed by private employment agencies placed in its territories.⁴²

In Serbia, the current labor law does provide a strong foundation protecting workers' rights. The Law on Employment of Foreign Citizens of 2019 stipulates that "A foreign citizen employed in the Republic in accordance with this Law shall have equal rights and obligations in terms of labor, employment and self-employment as citizens of the Republic if the conditions established by law are met."⁴³ In other words, all persons working in Serbia, irrespective of nationality, are protected by the same legal provisions that protect domestic workers, including the basic requirements of a labor contract, which shall include: personal information of employers and employees, work content, location, methods, duration, start and end dates, working hours, basic salary, regulations, etc. And most of the language of the Law on Employment of Foreign Citizens itself concerns work permit requirements. Moreover, in 2018, the government of Serbia and the government of China signed the Social Security Agreement, ensuring social security in both territories. However, Article 7 and Article 8⁴⁴ of this agreement expressly makes only Chinese labor law applicable to Chinese migrant workers in Serbia for the first five years of their stay, which is subjected to an extension of up to two years. This excludes Chinese workers from the due labor protections they shall receive in their host country.

⁴¹ ICRMW, art 21

⁴² Private Employment Agencies Convention

⁴³ Laws on Employment of Foreign Citizens, Republic of Serbia.

⁴⁴ Social Security Agreement, <https://www.zso.gov.rs/doc/m-ug/Kina/Agreement-on-Social-Security-between-the-Government-of-the-Republic-of-Serbia-and-the-Government-the-Peoples-Republic-of-China.pdf>

Moreover, various sources have reported on the issues of corruption and the poor rule of law in the country.⁴⁵ And in the experiences of the workers CLW is in contact with, Serbia's national labor law does not offer migrant workers with sufficient protection against fraudulent recruitment processes as the employers may exploit the legal definitions of the employment relationship, confiscate workers' identification documents, then exploit the workers' inability to return to their countries of origin for personal gains.

Recommendations

- Regularly inspect labor conditions on construction sites with foreign migrant employers, and develop a mechanism to identify victims of human trafficking.
- Provide assistance to migrant workers who overstay their temporary permits, and offer translation services at police departments in localities with the most foreign migrant workers.
- Improve accessibility to the ad hoc national body to monitor human trafficking and the smuggling of migrants.
- Amend the labor law to acknowledge unwritten contract's potential role in encouraging international labor trafficking and to acknowledge Serbia's obligation to eliminate all kinds of modern slavery.
- Ratify Protocol of 2014 to the Forced Labour Convention.
- Enact a penalty mechanism in migrant labor law to prohibit employers withholding workers passports and related documents.
- Adopt a legislative framework in accordance with the Convention for the protection of migrant workers and their families.
- In situations where victims of trafficking entered the Republic of Serbia illegally or lack a legal work or residence permit, establish relevant facts and circumstances that reduce or eliminate the liability of the trafficked victims.

⁴⁵ Georgi Gotev "Leaked paper sheds light on poor rule of law, media situation in Serbia." Euractive. 2021. <https://www.euractiv.com/section/enlargement/news/leaked-paper-sheds-light-on-poor-rule-of-law-media-situation-in-serbia/> ; N1 "Serbian government receives EC rule of law non-paper." N1, 2022. <https://rs.n1info.com/english/news/serbian-government-receives-ec-rule-of-law-non-paper/>; European Court of Auditor, "EU support for the rule of law in the Western Balkans: despite efforts, fundamental problems persist." 2022. https://www.eca.europa.eu/Lists/ECADocuments/SR22_01/SR_ROL-Balkans_EN.pdf; Nieves Zúñiga, "Overview of corruption and anti-corruption changes in the last 10 years." U4 Anti-Corruption Centre, 2022. <https://www.u4.no/publications/serbia-overview-of-corruption-and-anti-corruption-changes-in-the-last-10-years>.