

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

REFERENCE:
AL OTH 33/2018

30 May 2018

Dear Mr. Tien Tzu Hung,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 35/7, 32/8, 34/18, 36/15 and 33/1.

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.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) 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 the 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 would like to bring to the attention of your company information we have received concerning the **alleged unsafe working conditions at Catcher Technology's factory in Suqian, northern Jiangsu Province, People's Republic of China, and the implications for the human rights of the affected workers.**

According to the information received:

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Catcher Technology Co Ltd. (**Catcher**), headquartered in Taiwan, is a world leader in the light metal industry, specializing in notebook computers, digital cameras, and disc drives. Catcher manufactures products for many well-known consumer electronics companies including Apple Inc. (**Apple**), an American technology company headquartered in Cupertino, California, United States of America. Apple's website states that Apple holds itself and its "suppliers to the highest standard when it comes to human rights, environmental protections, and responsible business practices in our supply chain". Apple's supplier list published in February 2018 describes Catcher's factory at 'No. 21 Gucheng Road, Suzhou-Suqian Industrial Park, Suqian, Jiangsu, China' as one of its top 200 suppliers 'representing at least 98% of procurement expenditures for materials, manufacturing, and assembly' of Apple products worldwide in 2017.

In 2013, an undercover investigation revealed serious labour rights and safety violations in Catcher's Suqian factory (the factory). Abuses identified included discriminatory hiring practices, excessive overtime work, long work shifts, insufficient social insurance, lack of occupational safety training, workplace pollution, and lack of protective equipment – particularly for workers handling potentially toxic chemicals.

Apple was informed of the situation. After carrying out a follow-up inspection, Apple stated that Catcher would carry out reforms, especially those related to occupational safety. However, a subsequent undercover investigation in 2014 revealed that many of the violations identified in 2013 including those relating to occupational safety standards were still prevalent in Catcher's factory. The same investigation also found additional violations that had not been previously found in 2013. As such, the investigation report in 2014 suggested that conditions were getting even worse for Catcher's factory workers.

Between October 2017 and January 2018 a further undercover investigation in the factory revealed the persistence of serious concerns regarding occupational health and safety, workplace pollution and unfavourable work schedules among others. These include:

1. **The exposure of workers to hazardous substances and polluted indoor air:**

On 25 May 2017, an incident of toxic gas poisoning at the A6 workshop of the factory resulted in the hospitalization of 90 workers, with five workers admitted to intensive care. An investigation conducted by the Administrative Committee of the Suzhou-Suqian Industrial Park confirmed that poisonous gas permeated throughout the workshop, triggering adverse reactions among operator personnel. In addition, there is severe indoor air pollution at the factory, with some workers suffering from respiratory illnesses as a result.

2. **Discharging hazardous contamination in the local community:**

Wastewater from the factory contained a significant amount of white foam. The waste water when tested, following procedures used based on consultation with relevant experts and testing companies on water quality testing procedures, showed high levels of Chemical Oxygen Demand (CODcr), Biochemical Oxygen Demand (BOD) and suspended solids (SS) that exceeded standards stipulated by the Jiangsu Provincial Government. While the local government's approved standard for CODcr levels are 80 - 120mg/L, the waste water had CODcr levels of 278mg/L, more than double the maximum limit of exposure. Similarly, BOD levels were at 45.8mg/L, also exceeding the government standard of 20 - 30mg/L. The waste water was directly dispensed into the public sewage system and also overflowed onto the public sidewalks.

3. Workers are at risk of other health and safety hazards:

The surface of the factory floor is often covered in oil, resulting in instances of workers slipping and falling. In addition, workers at the Computer Numerical Control (CNC) machining workshop of the factory are exposed to excessive loud noise, placing them at risk of irreversible hearing loss. In addition, the main door of the CNC machining workshop only opens 30 cm wide, posing a safety hazard, particularly in case of emergencies.

4. Subjection of workers to excessive working hours and inadequate pay:

Catcher's work regulation pamphlet specifies an "eight hours a day, five days a week" work schedule, but working hours at the factory are generally 10 hours a day, six days a week. The factory practises a "seven shifts, six rotations" work schedule, for up to two weeks of the month, under which workers take turns in taking a day off from Monday to Friday but are then made to make up for that day of work on Saturdays. According to Catcher's factory regulations and Apple's Supplier Responsibility Standards, workers should be paid double time for the work they do on Saturdays and Sundays. However, weekends are counted as regular workdays, and workers affected by this schedule lose around 500 RMB (\$76.57 USD) every month in overtime pay.

5. Workers' right to information is not protected:

The workers have insufficient information regarding the toxic substances they handle or could be exposed to and their potential hazards. For instance, workers are inadequately informed of the hazards of exposure to cutting fluid and of any relevant protection methods. While factory regulations require providing a 24-hour training to workers prior to starting work, the training offered is neither adequate nor effective. Training sessions are frequently less than an hour long and workers are handed questionnaires, the answers to which are read out by the staff. Such a practice restricts workers from fully understanding the nature and potential hazards of the toxic substance they handle or could be exposed to. Furthermore, information

is not available regarding the exposure levels of workers to various toxic chemicals that are commonly used in electronics production and relevant information about the use of toxic chemicals at the factory.

6. Workers are not provided with adequate Personal Protective Equipment (PPE):

Excluding some workers who wear glasses, all other workers in the workshop operate machinery with no eye protection. The CNC machining workshop provides workers with a pair each of rubber and cotton gloves every day. However, the cotton gloves appear to be have been previously used as they would be given to the workers while they were already damp and water-stained. The cutting fluid which CNC machine operators come into contact with is absorbed quickly by the cotton gloves along with other chemicals, oils, and fluids, thus eroding the rubber gloves worn inside. This results in the workers' hands making direct contact with the cotton gloves soaked in cutting fluid. The inadequate equipment has resulted in irritation and peeling off of skin on the hands of many workers. In addition, for workers who use pressure guns in the production process, the cutting oil splashes onto their heads. Single-use paper face masks provided by the factory only protect the workers' mouths and faces and the cutting fluid often splashes into the workers' eyes resulting in complications like eye pain, blurred vision and bloodshot eyes for prolonged periods.

7. Workers' control and self-management is restricted:

Workers are not allowed to print copies of their attendance records or their labour contracts. Catcher hires many workers in the factory through labour dispatch companies. While workers hired in such manner work for and are supervised by Catcher, they remain employed by the dispatch companies. Labour dispatch companies do not usually agree to a worker's request to resign, and these workers are often rebuked by Catcher employees when they apply for resignation. For all workers, wages are not settled on the day of resignation and are only distributed on the fifth day of the following month, in violation of the Labor Department's "Temporary provision for wage payment" which provides that "at the time of both parties legally releasing or terminating the labor contract, the employer must, *at the time of release or termination of the labor contract*, pay the laborer's wages in full" (Emphasis added). Furthermore, there is insufficient representation of workers in the factory on labour unions, and workers are often unaware of who their representatives are and whether meetings are held.

8. Workers face inadequate access to health and sanitation facilities:

Workers at the factory are responsible for paying for their physical examinations. Workers do not undergo physical examinations after they resign making it difficult to determine if they have contracted an occupational disease as a result of working at the factory. Workers applying through labour dispatch companies are not given

social insurance during their probationary work period. Workers do not have access to healthcare services and have to pay for any occupational treatment out of pocket for the first three months of work, as Catcher only distributes social insurance cards three months after the contract commences. While there is legal provision for access to treatment for occupational illnesses, many workers remain vulnerable due to inadequate access to contractual documents from the employer, insufficient or lack of regular health checks for workers, and unsatisfactory or lack of workplace evaluations which would be evidence for the worker to prove the link between exposure and the illness.

The bathrooms in the factory's housing area do not have adequate hot water facilities even during the winter. Workers have on occasion fallen ill due to inadequate heating and insufficient shelter from the wind in the shower areas. There are also no emergency hallways or exits in the workers' dormitories.

9. In addition, workers have **little to no time for rest or leisure and have access to very few entertainment or recreational facilities.**
10. **The food provided to workers is unsanitary:**

For instance, there have been many occasions where workers have suffered from diarrhoea after eating at the factory cafeteria. The factory does not permit workers to leave the factory area during lunchtime and workers therefore cannot purchase their own food.

While we do not wish to prejudge the accuracy of these allegations, concern is expressed over the health and safety impacts stemming from the unsafe working conditions at Catcher's Suqian factory. Particular concern is expressed over the impact of the working conditions on human rights, in particular the right to life, health and physical integrity. Serious concern is also expressed about the alleged violation of labour rights, in particular the right to just and favourable remuneration, right to safe and healthy working conditions and the right to just and favourable conditions of work. Concern is also expressed regarding the environmental contamination caused by the reckless discharge of hazardous waste water laden with toxic chemicals, and the insufficient information amongst workers about the toxic chemicals they handle in order to protect and respect the rights to life and health.

We are also alarmed by the heightened risks to contemporary forms of slavery as described in this case. We note with concern that, if accurate, the allegations presented above might comprise situations of forced labour – particularly in view of the reported excessive work hours, the possible deception of workers and the limitations to their freedom of decision (*vis-à-vis* the lack of information concerning workers' exposure to toxic substances and their potential hazards), the alleged abusive working conditions (pursuant to the reports of serious threats to workers' occupational health and safety as well as workplace pollution), as well as the potential occurrence of coercion (in view of the alleged criticism and denial to terminate labour contracts of workers who wish to resign). The risks of workers being caught in situations of contemporary forms of slavery are further

aggravated by the alleged insufficient representation of workers in the factory on labour unions, inadequate access to contractual documents from the employer, and unsatisfactory or lack of workplace evaluations which would be evidence for the worker to prove the link between exposure and the illness.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandate 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 the details of any site-specific enquiries or assessment conducted in relation to the health and working conditions of workers in Catcher's Suqian factory or other similar factories, including the methodologies used and the results. If no enquiries have taken place, or if they have been inconclusive, please explain why. Please provide information on any mechanisms or initiatives by your company in relation to data collection, measuring, monitoring, reporting and verification of information on health of workers in your company's factories.
3. Please provide information on existing measures, including policies your company has put in place to ensure occupational health and safety and the protection of workers from toxic chemicals and other hazardous substances. Please explain any measures taken by your company to facilitate provision of medical assessment and treatment to the affected workers.
4. Please provide information on the existing initiatives your company has put in place to ensure workers are fully informed on the chemicals and other hazardous substances they handle or could potentially be exposed to and on the required precautions to avoid and respond to exposure. Please explain what special protections are afforded to pregnant women and women of reproductive age.
5. Please provide information on any human rights due diligence that may have been undertaken by your company to prevent, identify and remedy the adverse human rights impacts of the activities of businesses in your factories in accordance with the United Guiding Principles on Business and Human Rights.
6. Please provide information on any steps taken to prevent, mitigate and remedy adverse human rights impacts caused by, contributed to, or directly

linked to your company. Please also provide information on any steps taken to provide for or cooperate in their remediation through legitimate processes.

7. Finally, please provide information on any measures taken by your company to prevent the occurrence of contemporary forms of slavery in your productive processes.

We would appreciate receiving a response within **60 days**. Your company's response will be made available in a report to be presented to the Human Rights Council for its consideration. 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(s) responsible for the alleged violations.

Please be informed that a letter on the same subject has also been sent to the Government of the People's Republic of China, the Government of the United States of America, and to Apple Inc.

We may publicly express our concerns in the near future as, in our view, the information upon which a press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release would indicate that we have been in contact with your company to clarify the issue/s in question.

Please accept the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The UN Guiding Principles on Business and Human Rights;
- The UN Global Compact principles;
- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- ILO Convention concerning Safety in the use of Chemicals at Work (Chemicals Convention), 1990 (No. 170); and
- ILO Convention concerning the Application of the Weekly Rest in Industrial Undertakings, 1921 (No. 14).

As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (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).

We wish to draw your company's attention to Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), enshrining the right of everyone to the enjoyment of just and favorable conditions of work, including safe and

healthy working conditions. General Comment No.14 of the Committee on Economic, Social and Cultural Rights (CESCR) provides that the improvement of all aspects of environmental and industrial hygiene comprises, inter alia, “preventive measures in respect of occupational accidents and diseases [and] the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”.

The CESCR has previously also stated that “corporate activities can adversely affect the enjoyment of Covenant rights”, including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the “obligation of State Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities” (E/C.12/2011/1, para. 1). Particularly, business enterprises are required to respect of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health enshrined by Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The CESCR describes the normative content of Article 12 of ICESCR in General Comment No. 14, noting that the private business sector has responsibilities regarding the realization of the right to health (para. 42).

Additionally, we would like to draw your attention to Article 12 of International Labour Organization (ILO) Convention No. 170 concerning Safety in the use of Chemicals at Work which states that “employers shall limit exposure of workers to toxic chemicals, carry out assessments of workplace exposure, monitor and record exposure, and ensure that the records of the monitoring of the working environment and of the exposure of workers using hazardous chemicals are accessible to the workers and their representatives.” Furthermore, we would like to call your attention to article 13 of the Convention which stipulates that “employers shall make an assessment of the risks arising from the use of chemicals at work, and shall protect workers against such risks by appropriate means.”

Further, Article 18 of the ILO Convention No. 170 states that “workers concerned and their representatives shall have the right to: (a) information on the identity of chemicals used at work, the hazardous properties of such chemicals, precautionary measures, education and training;(b) the information contained in labels and markings; and (c) chemical safety data sheets.” Workers also have the right to “right to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health...” which is contingent on information about the known and unknown risks of the substances to which they are exposed Article 15 highlights employers’ responsibilities relating to information and training of workers with regard to exposure to chemicals used at the workplace.

Furthermore, we would like to draw your attention to the right of every worker “to just and favourable remuneration ensuring for the worker and the worker’s family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection” and the right of everyone “to form and to join trade unions for the protection of his interests” as recognized in article 23 of the Universal Declaration of

Human Rights (UDHR).

We would also like to highlight the right “to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay” enshrined under article 24 of the UDHR. In addition, we would wish to refer your company to article 1 of the ILO Convention No.14 concerning the Application of the Weekly Rest in Industrial Undertakings which states that “the whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof shall... enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours” and that the “period of rest shall, wherever possible, be granted simultaneously to the whole of the staff of each undertaking.”

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