

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE:
AL USA 26/2020

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Excellency,

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 in the field of cultural rights; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 44/15, 37/12, 43/8, 40/10, 42/10, 43/20 and 44/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged forced labour, arbitrary detention, and trafficking in persons of Uyghur and other minority workers within and outside the Xinjiang Uyghur Autonomous Region (Xinjiang), as well as the related lack of accountability and access to effective remedy for victims. We have also received information regarding multinational corporations domiciled in your territory and/or jurisdiction, sourcing items from factories in China, including in Xinjiang, not being allowed to freely access these factories in order to exercise adequate oversight and human rights due diligence across their supply chains.

According to the information received:

The Chinese Government has allegedly undertaken the forcible transfer of tens of thousands of Uyghurs and other minorities to work in factories in Xinjiang and across the country. These workers, predominantly employed in low-skilled, labor-intensive industries, such as agribusiness, textile and garment, automotive and technological sectors, both in Xinjiang and other Chinese provinces, are allegedly subject to exploitative working and sub-standard living conditions that may fall under the definition of forced labour, trafficking in persons for labour exploitation and arbitrary detention. Some factories are reportedly operating as part of the supply chains of companies, including well-known global brands. Between 2017 and 2019 more than 80,000 Uyghur and other minority workers have allegedly been transferred out of Xinjiang under the "industrial Xinjiang Aid" policy, aimed at finding low-skilled employment opportunities for "re-educated" Uyghurs and other minorities previously interned in centers. These centers have been described by the Government of China as "vocational education and training centers", created in the name of poverty alleviation, and of fighting against terrorism and combatting violent

extremism.¹ Such centers allegedly operate in a prison-like or internment manner without freedom of movement, as part of fulfilling political re-education goals. We have also received information that minority workers from Xinjiang may be forced to work under the “industrial Xinjiang Aid” policy in factories inside and outside of Xinjiang province under threat of detention and/or the intimidation of family members. Information received indicates that workers’ contact with relatives is forbidden or strictly controlled.

The workers are reportedly required to work in fenced-in factories, inside and outside Xinjiang, and are placed in closed and surveilled working environments, away from their original residences and families and in a position of dependency and vulnerability to human rights abuses. The workers and their family members are allegedly exposed to intimidation, coercion, threats, and restriction on their freedom of movement, and are subjected to surveillance by security personnel and through digital tools. All aspects of the daily lives of Uyghur workers are allegedly controlled by governmental authorities. In certain factories, Uyghur and other minority workers from Xinjiang are allegedly subjected to excessive overtime work, and it is unclear whether these workers receive salaries. It is unclear if workers are given any indication of a specific timeframe for when the cycle of their alleged forced enrolment in “vocational education and training centers” and related forcible transfer to factories in Xinjiang and across the country would end, allowing workers to return freely to their homes and families. Information received raises concerns that there may be cases in which the alleged forced detention and labour of members of the Uyghur minority and their living conditions, may amount to torture or other degrading, cruel or inhuman treatment.

Moreover, Uyghur and other minority workers are allegedly required to attend State controlled trainings in the workplace, including organized mandarin language classes and patriotic education and undue limitations are placed on their right to manifest and practice their religion both in the workplace and outside work hours.

According to information obtained, both the sending institution and the receiving company are paid per head compensation by the Xinjiang Government for supplying/receiving workers. Information suggests that this is promoted by official websites allegedly indicating that Uyghurs are available for work as part of their re-education process. The rate paid varies depending on whether the rural “surplus laborer”, a term used to identify former minority detainees, is transferred within Xinjiang or to other provinces in mainland China. When “surplus laborers” are transferred outside Xinjiang, the per-head compensation is allegedly higher.

We have been informed of recent online advertisements in the media, for example, claiming to have capacity to “supply” 1,000 government sponsored Uyghurs aged 16 to 18 within 15 days of signing a one-year contract. Managers are allegedly offered the possibility to request that police officers be stationed at factories 24 hours per day. Reportedly, every 50 minority workers are assigned a government minder and are monitored by dedicated security

¹ We take note of the Government of China’s white paper on employment and labor rights in Xinjiang Uyghur autonomous region of 17 September 2020. See: http://english.www.gov.cn/archive/whitepaper/202009/17/content_WS5f62cef6c6d0f7257693c192.html

personnel.

In this connection we note that the following companies domiciled within your territory and/or jurisdiction are potentially involved, including through their supply chains in China and the Xinjiang Uyghur Autonomous Region, in the alleged human rights violations detailed in this letter: Abercrombie& Fitch; Amazon; American Eagle; Anthropologie; Apple; Banana Republic; Brooks Brothers; Calvin Klein; Carter's; Cisco; Costco; Dell; DKNY; Dress Barn; Free People; Gap; General Electric; General Motors; Google; Guess; Hollister; HP; J. Crew; JCPenney; Jos. A. Bank; Kohl's; L.L.Bean; Land's End; Levi's; Macy's; Microsoft; Nautica; Nike; Oculus; Patagonia; Polo Ralph Lauren; Ralph Lauren; Skechers; Target; The North Face; Tommy Hilfiger; Urban Outfitters; Victoria's Secret; Walmart; Summit Resource International. We note that we are writing to these companies to seek their responses to these allegations. While these are companies that have been brought to our attention we note that this is not an exhaustive list and that others domiciled within your territory and/or jurisdiction may also be implicated.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern that the rights of minority workers from the Xinjiang Uyghur Autonomous Region, especially Uyghur, are not upheld in line with international human rights and labour rights standards. We are concerned that these workers who are allegedly forcefully relocated across the country, are subjected to forced labour as part of what the Government describes as development and poverty alleviation policy, and with the stated objective of combatting terrorism and violent extremism. We are further concerned about allegations that multinational companies sourcing from factories in China are not allowed to access these factories in order to exercise appropriate oversight and human rights due diligence across their supply chains.

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 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. In regard to the above allegations, please highlight the steps and/or legal and policy measures that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled in its territory and/or jurisdiction, respect human rights throughout their operations and supply chains. This may, for example, include requiring such businesses to conduct effective human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights, to identify, prevent, mitigate and account for how they address their impacts on human rights, including prohibition of forced labour, throughout their operations.

3. Please indicate the measures taken by your Excellency's Government to ensure that its public procurement of goods and services is only from business enterprises which have not caused, contributed to, or are directly linked to human rights abuses such as those alleged in the present letter.
4. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure effective access to domestic judicial mechanisms for victims of business-related human rights abuses, including for overseas victims of serious human abuses such as those alleged in the present letter.
5. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled in its territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that letters expressing similar concerns are also sent to the Governments of China, United Kingdom of Great Britain and Northern Ireland, France, Switzerland, Sweden, Spain, Republic of Korea, Japan, Italy, Germany, Finland, Denmark and Canada, as well as to companies involved in the abovementioned allegations.

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

Dante Pesce
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transnational corporations and other business enterprises

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punishment

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

Annex

Reference to international human rights law

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

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- UN Guiding Principles on Business and Human Rights

We would like to particularly bring your Excellency's attention to the human rights obligations under international human rights instruments and under customary international law binding on United States of America.

It is well established that the international human rights law obligations of States apply extraterritorially. Under international treaty law, this is a question of the scope of application of the treaty itself, a matter of treaty interpretation. In this regard, it is worth noting that under the International Covenant on Civil and Political Rights (ICCPR), ratified on 8 June 1992, the scope of application is a matter of interpretation of the notion of "territory and jurisdiction" in its article 2 (1). The Human Rights Committee has long and consistently affirmed a disjunctive interpretation of these two concepts, and that that the Covenant applies extraterritorially in situations where the State exercises jurisdiction in the form of effective control over territory or power over an individual (see General Comments no. 31 para. 10 and no. 36 para. 63).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) signed on 5 October 1977, provide an explicit basis for extraterritorial obligations. All rights recognized by the ICESCR should be understood in conjunction with its Article 2, Para 1, which reads "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Thus, it explicitly establishes an obligation of international cooperation.

In addition, the Committee on the Economic, Social and Cultural Rights has indicated that "extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective." (General Recommendation 24 (2017)).

With regard to the obligations incumbent on United States of America under customary international law, it is worth noting that no restriction in terms of their scope of applicability exists, comparable to those enshrined in treaty law. Thus, as a starting point, there is a presumption *against* the territorial limitation of these obligations. In this regard, we note that the Universal Declaration of Human Rights (UDHR) contains no explicit jurisdictional limitations. At the very least, the scope of applicability of customary international human rights law obligations must be understood to similar scope of application as those within the two Covenants. This finds support in the following three considerations: First, the ICCPR and the ICESCR are treaty codifications of human rights contained in the UDHR. Second, the affirmation that human rights obligations apply extraterritorially enjoys not only consistent affirmation by the relevant treaty bodies, but more generally from global and regional human rights monitoring bodies. This has been accepted by the International Court of Justice with respect of the ICCPR. Third, that human rights obligations are not territorially limited has been accepted, implicitly and explicitly, by States.

We wish to draw the attention of your Excellency's Government to Article 3 of the UDHR and Article 6(1) of the ICCPR which guarantee the right of every individual to life, liberty and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance.

We would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities. In particular, article 27 of the ICCPR protects persons who belong to ethnic, linguistic and religious minorities to enjoy their own culture, use their own language, and practice their own religion with other members of their group. This right imposes positive obligations on states not to deny the exercise of these rights among themselves. Article 26 of the ICCPR contains a general right to equality without discrimination on ground, such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as religion.

Furthermore, we would like to draw the attention of your Excellency's Government to the principle of non-discrimination enshrined in article 2 of the Universal Declaration of Human Rights, as well as in several other United Nations declarations and conventions which provide that every individual is entitled to the protection of their rights and freedoms without discrimination or distinction of any kind, and that all persons shall be guaranteed equal and effective access to remedies for the vindication of those rights and freedoms. The Universal Declaration of Human Rights further contributes to international standards regarding the elimination of all forms of slavery. Article 4 states that "no one shall be subjected to slavery or servitude, slavery and slave trade are prohibited in all its forms."

We wish to refer to articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by your Excellency's Government in 21 October 1994.

We also take this opportunity to remind you of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1.1 of the UN Declaration requires that States protect the existence and the national or ethnic, linguistic or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1, stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

We wish to emphasize article 15 of the International Covenant on Economic, Social and Cultural Rights, which guarantees everyone the right to take part in cultural life without discrimination. According to General Comment Number 21 of the Committee on Economic, Social and Cultural Rights, this includes the right of everyone “to choose his or her own identity, to engage in one’s own cultural practices and to express oneself in the language of one’s choice.” (para. 15(a)). The Committee has also highlighted that “In particular, no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity.” (para. 22) Additionally, the Committee notes that states parties must “recognize, respect and protect minority cultures as an essential component of the identity of the States themselves.” (para. 32) Moreover, “[a]ny programme intended to promote the constructive integration of minorities and persons belonging to minorities into the society of a State party should... be based on inclusion, participation and non-discrimination, with a view to preserving the distinctive character of minority cultures.” (para. 33) Undoubtedly, as the Committee underscored, the obligations under article 15 include the right not to be subjected to forced assimilation (para 49).

Article 7 of the International Covenant on Economic, Social and Cultural Rights, which recognizes the “right of everyone to the enjoyment of just and favourable conditions of work”. Such conditions must ensure, inter alia, remuneration, which provides all workers, as a minimum, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Furthermore, we would like to draw the attention of your Excellency’s Government to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, art. 2 which declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation

The Convention on the Rights of the Child, which your Excellency's Government signed on 16 February 1995, requires States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form, (article 35).

Moreover, we wish to refer to the Worst Forms of Child Labour Convention, 1999 (No. 182) as ratified on 2 December 1999.

Furthermore, we would like to draw the attention of your Excellency's Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency's Government in 3 November 2005, through which your Excellency's Government is obliged to refrain from acts which would defeat or undermine the Protocol's objectives and purposes, which include to prevent and combat trafficking in persons, to ensure assistance to victims, to provide effective remedies and to prosecute those responsible.

Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women signed by your Excellency's Government in 17 July 1980, states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 21 October 1994, codifies in articles 2 and 16, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. States Parties have to, "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and affirms that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture" and to also refrain from engaging in or knowingly contributing to any act of torture or ill-treatment, whether through acts of omissions or complicity, whenever they exercise control or influence over a place or process outside their borders (see A/70/303 para 15).

In its General Comment No. 2 (CAT/C/GC/2), the Committee against Torture recognised that where State officials fail to exercise due diligence to prevent, investigate, prosecute and punish acts of torture or ill-treatment committed by private actors the State bears responsibility and its officials should be considered as complicit or otherwise responsible, including for cases of trafficking.

Mandate holders have consistently held that, although not expressly mentioned in the treaty text, the "powerlessness" of the victim is a defining prerequisite of torture (A/63/175, para. 50; A/73/207, para. 7; A/HRC/13/39, para. 60; and A/HRC/22/53, para. 31). As has been shown, "all purposes listed in article 1 of the Convention against Torture, as well as the travaux préparatoires of the Declaration and the Convention, refer to a situation where the victim of torture is a detainee or a person 'at least under the factual power or control of the person inflicting the pain or suffering', and where the perpetrator uses this unequal and powerful situation to achieve a certain effect, such as the extraction of information, intimidation, or punishment". In the view

of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, when institutional arbitrariness or persecution intentionally and purposefully inflicts severe mental pain or suffering on powerless persons, it can constitute or contribute to psychological torture.

We also would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commission for Human Rights in July 2012. Principle 13 of these recommended Principles and Guidelines provides that “States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors”.

Finally, criteria and indicators of trafficking in persons for the purpose of labour exploitation should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/23/48/Add.4, appendix I and A/HRC/35/37).

We would like to also highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding

Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.