

Mandate of the Special Rapporteur on extreme poverty and human rights

Ref.: AL OTH 102/2023
(Please use this reference in your reply)

31 August 2023

Dear Mr. Jassy,

I have the honour to address you in my capacity as Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolution 53/10.

I am an independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. I am part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. I am sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying 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 my capacity, I would like to bring to your attention information my mandate has received regarding the role of Amazon.com, Inc. in alleged violations of international human rights and labour rights law.

According to the information received:

It is alleged that Amazon pays wages that do not allow its workers and their families an adequate standard of living, shifts the cost of doing business onto the public by relying on public assistance to supplement very low wages, and prevents workers from exercising their right to unionize through intimidation and retaliation.

In accordance with international human rights law, the Guiding Principles on Business and Human Rights and the Guiding Principles on Extreme Poverty and Human Rights, endorsed respectively by Human Rights Council resolutions 17/4 and 21/11, that impose a responsibility on businesses to respect internationally recognized human rights, wages should be set at a level that ensures the worker and his or her family an adequate standard of living, as

Amazon.com Inc.

required under article 7 of the International Covenant on Economic, Social and Cultural Rights. Yet according to the information received, Amazon pays workers a minimum wage of US\$15 per hour.¹ While this is above the federal minimum wage, this is not necessarily a living wage in all parts of the country. For example, the Massachusetts Institute of Technology (MIT) Living Wage Calculator estimated that the living wage in New York City is around \$25 per hour.² According to a testimony, one Amazon worker and labour organizer said that despite working full-time, he struggled to pay rent and living expenses to the point where he had considered sleeping in his car.

It has been found that many Amazon workers depend on government benefits to meet their basic needs, underscoring the inadequacy of wages. In 2020, the US Government Accountability Office reported that Amazon was among the top 25 employers with workers enrolled in the Supplemental Nutrition Assistance Program (food stamps) in six out of nine states studied. According to the report, more than 4,000 warehouse workers at Amazon depended on food stamps to make ends meet in nine states, and a shocking 70% of food stamp recipients studied work full-time. It also stated that the workers also relied heavily on Medicaid, despite the company's claim that it offers generous health insurance and tuition assistance programs. Amazon ranked among the top 10 employers of Medicaid recipients in five states studied.³

It is alleged that Amazon hires many of its workers as independent contractors, who are therefore not eligible for employee benefits.⁴ While this allows the company to lower its costs, it may also contribute to these workers' incomes being set too low to keep them out of poverty.

An investigation of Amazon's labour practices found that its approach to mass-managing people through technology while minimizing human contact with management resulted in inadvertent firings and stalled benefits. Amazon is reported to have systematically made incorrect wage payments in almost two hundred warehouses, including to new parents, patients dealing with medical crises and other vulnerable workers on leave.⁵

Allegedly, Amazon tracks every minute of most warehouse workers' shifts, and fires workers for lapses in productivity.⁶ In 2021, Amazon had to issue a public apology for denying a claim that its workers are under such severe time

¹ Amazon, Why Amazon Supports a \$15 Minimum Wage <https://www.aboutamazon.com/impact/economy/15-minimum-wage#:~:text=In%202018%2C%20Amazon%20raised%20its,stuck%20at%20%247.25%20since%202009.>

² MIT Living Wage Calculator, Living Wage Calculation for New York County, New York, <https://livingwage.mit.edu/counties/36061>.

³ US Government Accountability Office, Federal Social Safety Net Programs: Millions of Full-Time Workers Rely on Federal Health Care and Food Assistance Programs (October 19, 2020), <https://www.gao.gov/products/gao-21-45>.

⁴ Law Offices of Kropach & Kropach, Do Amazon Flex Workers Have Protection When Injured? (February 14, 2020), <https://www.williamkropach.com/blog/do-amazon-flex-workers-have-protection-when-injured>.

⁵ Jodi Kantor, Karen Weise, and Grace Ashford, Inside Amazon's Worst Human Resources Problem, *The New York Times* (October 24, 2021), <https://www.nytimes.com/2021/10/24/technology/amazon-employee-leave-errors.html>.

⁶ Jodi Kantor, Karen Weise, and Grace Ashford, The Amazon That Customers Don't See, *New York Times* (June 15, 2021), <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html>.

constraints that they urinate in bottles.⁷ An examination of the internal injury records from 23 of the company's 110 US fulfillment centers revealed that the rate of serious injuries was more than double the national average for the warehousing industry: 9.6 serious injuries per 100 full-time workers in 2018, compared with an industry average of four.⁸ I understand that New York federal prosecutors and the Department of Labor have launched an inspection into Amazon warehouses as part of a civil investigation into unsafe and unseemly workplace conditions.⁹

Under article 8 of the International Covenant on Economic, Social and Cultural Rights, the States Parties to that Covenant undertake to ensure the right of everyone to form trade unions and join the trade union of his choice, for the promotion and protection of his economic and social interests. Article 22 of the International Covenant on Civil and Political Rights guarantees the right of everyone to freedom of association with others, including the right to form and join trade unions for the protection of his interests. The Human Rights Committee, established in order to supervise compliance with this instrument, has interpreted this provision to include a duty to guarantee "workers' freedom of association in practice, including the right to organize, the right to collective bargaining and the right to strike".¹⁰

Yet according to the information received, Amazon has a long history of anti-union action at warehouses.¹¹ This includes constant and continuous anti-union messaging to workers at its "captive audience meetings", aggressive objection to election outcomes, and a narrative that workers will be better off dealing directly with Amazon rather than through a union.¹² The Amazon Labor Union (ALU) has accused Amazon of using the company's staged mandatory meetings to intimidate and retaliate against employees while aiming to discourage pro-union votes. It seems that an anti-union company video was leaked in 2018, which included instructions on messaging how unions threaten job security or even a facility's continued existence.¹³ Reportedly, Amazon spent US\$4.3 million in 2021 to retain labor consulting firms in response to large-scale organizing efforts.¹⁴

⁷ Amazon (April 3, 2021) <https://www.aboutamazon.com/news/policy-news-views/our-recent-response-to-representative-pocan>

⁸ Will Evans, Ruthless Quotas at Amazon are Maiming Employees, Atlantic (November 25, 2019), <https://www.theatlantic.com/technology/archive/2019/11/amazon-warehouse-reports-show-worker-injuries/602530/>.

⁹ United States Attorney's Office Southern District of New York, SDNY Amazon warehouse investigation, <https://www.justice.gov/usao-sdny/webform/sdny-amazon-warehouse-investigation>

¹⁰ CCPR/C/DOM/CO/6 (2018) (Dominican Republic), para. 32.

¹¹ David Streitfeld, How Amazon Crushes Unions, New York Times (March 16, 2021), <https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html>.

¹² Andrea Hsu, Amazon Labor Union fails to Repeat Victory in Staten Island Amazon Warehouse Election, National Public Radio (May 2, 2022), <https://www.npr.org/2022/05/02/1095866859/amazon-labor-union-staten-island-union-election-chris-smalls-warehouse-workers>.

¹³ Brian Menegus, USA: Leaked Amazon Training Video Reveals 'Union-Busting' Tactics; Incl. co. comments, Business & Human Rights Resource Centre (September 26, 2018), <https://www.business-humanrights.org/en/latest-news/usa-leaked-amazon-training-video-reveals-union-busting-tactics-incl-co-comments/>.

¹⁴ US Department of Labor, LM-10 Employer Report, OMB No. 1245- 003, <https://olmsapps.dol.gov/query/orgReport.do?rptId=813414&rptForm=LM10Form>.

In 2020, Amazon reportedly fired Mr. Christian Smalls, a worker who organized a walkout at a New York warehouse to demand greater protection against Covid-19, drawing scrutiny from the New York City Commission of Human Rights and New York Attorney General Letitia James.¹⁵ In 2021, the National Labor Relations Board (NLRB) canceled the first Amazon union election at Bessemer, Alabama, because Amazon influenced its workers against voting for the Union. The NLRB ordered a second vote after it found Amazon improperly interfered in the first election.¹⁶ Reportedly, in 2022, US Labor board prosecutors took the view that Amazon violated federal labor law by threatening, interrogating, and surveilling workers at a New York warehouse where workers were trying to unionize.¹⁷

Amazon has reportedly aggressively appealed election results and filed repeated objections,¹⁸ delayed bargaining, confiscated union literature, demoted, or transferred organizing workers, and made implied promises of promoting those who opposed unionization. During the first Staten Island election, Amazon filed more than two dozen objections within a week of the election, stating that the ALU harassed and threatened workers who were not supporting the union and that the NLRB facilitated the victory.¹⁹ Moreover, Amazon reportedly fired at least six senior managers in 2022 at Staten Island where workers voted to unionize and two employees who were part of the ALU's organizing committee.²⁰

According to information received, Amazon also implemented policy changes that made it more difficult to organize across all facilities. For instance, workers cannot access the building during non-working hours. This off-duty access policy makes it more difficult for workers to organize or campaign across the facilities, and they said the company issues write-ups for those who violate this policy. One Amazon worker who was part of union organizing said it took more than a year to sign up the necessary number of active workers to get the election approved, because of the high rate of turnover and the many people who were fired or quit during the campaign.

¹⁵ Alexandra Olson and Mae Anderson, Amazon Fires Warehouse Worker who Staged Walkout, AP News (March 31, 2020), <https://apnews.com/article/virus-outbreak-us-news-ap-top-news-new-york-city-bill-de-blasio-aal1c97b70be0e442d6e62f6329c1cf17>.

¹⁶ Annie Palmer, Amazon Workers in Alabama Reject Union for Second Time, but Challenged Ballots Remain, CNBC (March 31, 2022), <https://www.cnbc.com/2022/03/31/amazon-workers-in-alabama-reject-union-for-second-time.html>; Annie Palmer, Amazon warehouse workers in Alabama will get another chance to vote to unionize, CNBC (November 29, 2021), <https://www.cnbc.com/2021/11/29/amazon-warehouse-workers-in-alabama-will-get-another-chance-to-vote-to-unionize.html>.

¹⁷ Josh Eidelson, Amazon Illegally Threatened Staff, U.S. Labor Board Alleges, Bloomberg (January 27, 2022), <https://www.bloomberg.com/news/articles/2022-01-27/amazon-illegally-threatened-staff-labor-board-complaint-alleges>.

¹⁸ Alina Selyukh, Amazon Loses Key Step in its Attempt to Reverse its Workers' Historic Union Vote, National Public Radio (September 1, 2022), <https://www.npr.org/2022/09/01/1116315891/amazon-loses-key-step-in-its-attempt-to-reverse-its-workers-historic-union-vote>; Andrea Hsu, Amazon Labor Union fails to Repeat Victory in Staten Island Amazon Warehouse Election, National Public Radio (May 2, 2022), <https://www.npr.org/2022/05/02/1095866859/amazon-labor-union-staten-island-union-election-chris-smalls-warehouse-workers>.

¹⁹ Andrea Hsu, Amazon Labor Union fails to Repeat Victory in Staten Island Amazon Warehouse Election, National Public Radio (May 2, 2022), <https://www.npr.org/2022/05/02/1095866859/amazon-labor-union-staten-island-union-election-chris-smalls-warehouse-workers>.

²⁰ Annie Palmer, Amazon Fires Two Employees Tied to Staten Island Union Effort, CNBC (May 9, 2022), <https://www.cnbc.com/2022/05/09/amazon-fires-two-employees-tied-to-staten-island-union-effort.html/>.

While I do not wish to prejudge the accuracy of the above allegations, the information described above raises serious concerns about the role of Amazon in contributing to violations of the right to a living wage and freedom of association.

In connection with the above alleged facts and concerns, please refer to the **Annex: Reference to international human rights law** attached to this letter which details applicable international human rights law and standards relevant to the present allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the above allegations, and specifically on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please highlight the steps that your company has taken, or is considering taking, to ensure that all workers earn a living wage, set at a level that ensures the worker and his or her family an adequate standard of living, as well as the progress that has been achieved (in line with the Guiding Principles on Extreme Poverty and Human Rights and the Guiding Principles on Business and Human Rights).
3. Please provide information regarding the measures that your company has, or is planning to put in place, to address allegations that, as a result of the low level of wages they receive, Amazon employees sometimes depend on government benefits such as the Supplemental Nutrition Assistance Program.
4. Please provide information regarding the measures that your company has adopted, or is planning to adopt, to address allegations that because it classifies many of its workers as independent contractors they are not eligible for employee benefits, which may result in them remaining below the poverty line.
5. Please provide your views regarding the allegations that Amazon's approach to mass-managing people through technology, while minimizing human contact with management, is resulting in inadvertent firings and stalled benefits, as well as negative effects on the well-being of workers.
6. Please provide information regarding the mechanisms, including grievance mechanisms, that your company has, or is planning to put in place, to address allegations your company has actively discouraged union organizing efforts and deploys anti-union tactics depriving workers of their right to organize. Please provide your views as to how your company guarantees union rights and the rights to organize and collective bargaining, as stipulated in the International Labour

Organization's (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and in ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which guide the interpretation of article 8 of the International Covenant on Economic, Social and Cultural Rights and of article 22 of the International Covenant on Civil and Political Rights.

I would appreciate receiving a response within 60 days. After this time, this communication and any response received will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations.

Please be informed that a letter on this subject matter has also been sent to the Government of the United States of America.

Please accept, Mr. Jassy, the assurances of my highest consideration.

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, and while I do not wish to prejudge the accuracy of these allegations, I would like to refer your company to the international norms and standards applicable to the present case.

International human rights law includes standards relevant to the setting of wages at a level that ensures the worker and his or her family an adequate standard of living, and it also guarantees the right to organize. Specific expectations follow as regards the practices of business entities. I am concerned that these standards are not being respected.

I would like to refer you in particular to articles 23, 24 and 25 of the Universal Declaration of Human Rights (UDHR), articles 2, 7, and 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as article 22 of the International Covenant on Civil and Political Rights (ICCPR).

Additionally, I would like to draw your attention to a number of International Labour Organization (ILO) Conventions including the Declaration on Fundamental Principles and Rights at Work, adopted in 1998 by the 86th session of the International Labour Conference, as well as the ILO Convention on Minimum Wage Fixing Convention, No. 131 (1970), and the ILO Convention on Freedom of Association and Protection of the Right to Organise, No. 87 (1948). These instruments protect, inter alia, the rights to freedom of association and collective bargaining.

The Guiding Principles on Business and Human Rights and the Guiding Principles on Extreme Poverty and Human Rights, endorsed by the Human Rights Council respectively through resolution 17/4 and 21/11, provide that business entities have responsibilities to respect human rights, including the rights to a living wage and to collective bargaining. That responsibility requires that business enterprises avoid and address adverse human rights impacts caused through their own activities and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, for instance through their suppliers, even if they have not directly contributed to those impacts.²¹ The Guiding Principles on Extreme Poverty and Human Rights specifically require that States “ensure that all workers are paid a wage sufficient to enable them and their family to have access to an adequate standard of living.” And that they respect and promote freedom of association.

A Living Wage

International human rights law recognizes workers should be provided, at a minimum, with a "living wage", regularly adapted in accordance with costs of living. The Preamble of the ILO Constitution calls for “an adequate living wage” and the 1944 Declaration of Philadelphia affirms the “solemn obligation” of the ILO to promote “policies in regard to wages and earnings, hours and other conditions of work calculated

²¹ Guiding Principles on Business and Human Rights, para. 13.

to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection”.

Under article 7 of the ICESCR, this is understood as a right to a remuneration ensuring a decent standard of living for the worker and his/her family. It requires that the level of wages takes into account the cost of living to ensure it is "sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs".²²

Furthermore, article 7 declares parties recognize the rights of everyone to the enjoyment of just conditions of work, including fair wages and a decent living for workers and their families. General Comment No. 23 (2016) of the Committee on Economic, Social and Cultural Rights authoritatively interprets the normative content of article 7 of the ICESCR. The Committee interprets article 7 to apply to everyone, without distinction of any kind, including distinctions based on informal or self-employed work. The Committee also interprets article 7 to mean that a living wage must be set by reference to outside factors such as the cost of living or other economic factors. The Committee states that the wage must be sufficient to allow “the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs.” General Comment No. 23 also instructs parties to prioritize the adoption of minimum wages indexed to the cost of living and to periodically review and adjust these wages as necessary. The Committee interprets the Covenant to mean that employers that violate minimum wage laws should be subject to sanctions, and States should take appropriate measures, such as inspections, to ensure the implementation of minimum wage provisions.

Additionally, the ILO Convention on Minimum Wage Fixing Convention, No. 131 (1970) states that minimum wage laws shall take into consideration, among other factors, the needs of the workers and the cost of living. According to the Convention, each ratifying State “undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.” Article 3 of the Convention requires minimum wage setting to take into consideration “(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.” The living wage should therefore not only ensure access to a minimum basket of goods and services essential to enjoy an adequate standard of living. It should protect not only from absolute poverty, but also from relative poverty.

Human rights law also addresses discrimination in work and wages Human rights law also addresses discrimination in work and wages. The ICCPR states the equality of all before the law under article 26 and that the law shall “prohibit any

²² E/C.12/GC/23, para. 18.

discrimination and guarantee to all persons equal and effective protection against discrimination on any ground". The Human Rights Committee, which authoritatively interprets the Covenant, has found that article 26 provides in itself an autonomous right which prohibits discrimination in law or in fact in any field regulated and protected by public authorities and that the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.²³ Furthermore, the ICESCR, and the Convention on the Elimination of All Forms of Discrimination against Women both contain prohibitions on discrimination. Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women specifically requires that States take all appropriate measures to eliminate discrimination against women in the field of employment.

Right to Organize

International human rights law guarantees the right of each worker to form and join trade unions, a right also ensured under ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Under article 22 of the ICCPR and article 8 of the ICESCR, trade unionists should be protected from all forms of harassment, intimidation, or reprisals.²⁴ The refusal to hire or promote workers who are affiliated with a trade union,²⁵ the dismissal of workers having engaged in trade union activities,²⁶ the discriminatory use of fixed-term contracts for trade union activists,²⁷ or the deportation of migrant workers engaging in union activities,²⁸ would therefore be a violation of these provisions.²⁹ Subjecting an individual to adverse treatment based on union membership or activities, including by denying bonuses, would also constitute discrimination under the ICESCR and the ICCPR,³⁰ as well as under ILO Convention (No. 98).³¹

Implications for business entities

Such requirements are imposed on States, but they also have implications for corporate actors. It follows from the Guiding Principles on Business and Human Rights³² and the Guiding Principles on Extreme Poverty and Human Rights³³ that business entities have responsibilities to respect the right to a living wage. It is not necessarily sufficient in this regard that they comply with the locally applicable legislation. Specifically, where the statutory minimum wage is lower than the "living wage" required under international human rights law, employers are required to pay wages above the minimum wage defined in domestic legislation. This is consistent with the view expressed by the Committee on Economic, Social and Cultural Rights that

²³ Human Rights Committee, General Comment No. 18 (1989): Non-discrimination, para. 12.

²⁴ E/C.12/ARG/CO/4 (2018) (Argentina), para. 34.

²⁵ E/C.12/ROU/CO/3-5 (2014) (Romania), para. 14.

²⁶ CCPR/C/CHL/CO/5 (2007) (Chile), para. 14.

²⁷ CCPR/C/BLR/CO/5 (2018) (Belarus), paras. 54-55.

²⁸ CCPR/C/DOM/CO/6 (2018) (Dominican Republic), paras. 31-32.

²⁹ E/C.12/MLI/CO/1 (2018) (Mali), paras. 28-29; E/C.12/LKA/CO/5 (2017) (Sri Lanka), paras. 33-34.

³⁰ Human Rights Committee, General Comment No. 18 (1989): Non-discrimination, para. 12; Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, para. 10.

³¹ *Compilation of decisions of the Committee on Freedom of Association* (International Labour Organisation: Geneva, 2018), para. 1099.

³² Human Rights Council Res. 17/4 (June 2011).

³³ Human Rights Council Res. 21/11 (Sept. 2012), paras. 100-101.

"business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice,"³⁴ In particular, corporations should refrain from following cost minimization strategies that can lead to violations of the right to a living wage.

Corporations should therefore avoid relying routinely on casual labour to carry out activities that concern the main business of the enterprise, as this encourages precariousness of work.³⁵ They should avoid using the threat of immigration enforcement to exploit undocumented migrant workers and pay them sub-standard wages. They should register overtime work and pay workers what they are legally owed. They should refrain from hiring workers for a schedule just below what is considered a full-time job, for the sole purpose of depriving these workers of the benefits associated with the status of a full-time worker. And they should refrain from actions aimed at discouraging unionization, such as firing workers, threatening to close worksites, or reducing the hours or wages of unionized workers.

³⁴ E/C.12/GC/24, para. 5.

³⁵ ILO Committee of Experts, Promoting employment and decent work in a changing landscape (Geneva: ILO, 2020), p. 127.