

Mandate of the Special Rapporteur on extreme poverty and human rights

Ref.: AL OTH 103/2023
(Please use this reference in your reply)

31 August 2023

Dear Mr. Xu,

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 DoorDash, Inc. in alleged violations of international human rights and labour rights law.

According to the information received:

It is alleged that DoorDash's procedures, practices and algorithms lead to many DoorDash workers being paid below the minimum wage, or even the poverty line, leaving them and their families unable to access an adequate standard of living.

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 required under article 7 of the International Covenant on Economic, Social and

Cultural Rights. Yet according to the information received, DoorDash pays wages that do not allow many workers and their families an adequate standard of living.

As a result of classifying workers as independent contractors, unclear algorithms, and unfair tip practices, DoorDash workers are often not paid a living wage, and as a result, many DoorDash workers cannot afford their basic needs.¹ DoorDash drivers are not guaranteed a minimum level of pay and may be paid well below what the company advertises, the minimum wage, or even the poverty line. DoorDash's policies have reportedly enormous consequences for drivers' lives. Testimonies of DoorDash workers suggest low wages are paid out for extremely difficult working conditions, with some workers surviving on Supplemental Nutrition Assistance Program (SNAP) benefits to survive.² Drivers' compensation depends on their ability to complete a sufficient number of orders.³ Yet despite working full-time for DoorDash, one employee reported that he lives in his car and relies on SNAP. It is reportedly not an uncommon situation, with many DoorDash drivers unable to pay for childcare on their income from DoorDash, with sometimes tragic consequences.⁴ Problematically, after New York City passed minimum pay standards for gig workers in 2023, DoorDash reportedly filed suit to stop the wage changes from going into effect.⁵

According to the information received, DoorDash's lack of transparency makes it difficult for workers to predict their take-home pay, and thus, due to this uncertainty, workers struggle to ensure they earn a living wage or can financially plan for the future. According to a study, people who deliver for DoorDash, the estimated time and distance of the order is often incorrect –which impacts their cost-benefit analysis in accepting orders. Additionally, workers are not compensated for waiting time –the company only calculates pay based on “active time” when they are making deliveries. This can misrepresent and inflate the pay they are taking home. According to the research, if a delivery worker scheduled a 10-hour shift with the app, but did not receive many orders, they may only have made US\$70. DoorDash might consider they were only working for 3.5 hours and therefore made \$20/hour. Whereas, accounting for the full time on the clock, the worker would have only made \$7/hour –below the federal minimum wage.⁶ Reportedly, DoorDash also does not inform drivers of an order's tip amount before they accept it. This lack of up-front transparency means drivers do not know beforehand if they will make or lose money on an

¹ White House Anti-Hunger Plan Enlists Gig Companies Including DoorDash and Instacart —Whose Workers Sometimes Go Hungry Themselves, Financial Press (November 9, 2022), <https://www.proquest.com/docview/2734319694>.

² White House Anti-Hunger Plan Enlists Gig Companies Including DoorDash and Instacart —Whose Workers Sometimes Go Hungry Themselves, Financial Press (November 9, 2022), <https://www.proquest.com/docview/2734319694>.

³ DoorDash, How is Your Dasher Paid?, <https://help.doordash.com/consumers/s/article/How-do-Dasher-earnings-work>.

⁴ Soleil Ho, People Donated \$100K Plus to a DoorDash Driver. Why Did it Take a Child Abduction to Support this Gig Worker? San Francisco Chronicle (February 10, 2021), <https://www.sfchronicle.com/food/article/People-donated-100K-plus-to-a-DoorDash-driver-15938140.php>.

⁵ Kellen Browning and Ana Ley, Food-Delivery Companies Sue New York City Over Minimum Pay Law, New York Times (July 6, 2023), <https://www.nytimes.com/2023/07/06/nyregion/uber-minimum-wage-lawsuit-nyc.html>.

⁶ Maria Figueroa et al., Essential but Unprotected: App-based Food Couriers in New York City <https://www.issuelab.org/resources/38934/38934.pdf> at 26.

order.⁷ Furthermore, it is alleged that DoorDash changed its application to be incompatible with Para, an app that preemptively showed drivers how much a customer tipped.⁸ In addition to the opacity of tips and its efforts to circumvent Para, DoorDash had to pay US\$2.5 million in a tip-theft lawsuit in 2019, where it was accused of pocketing millions of dollars of money intended for workers that went directly to DoorDash's operational costs.⁹

It is also alleged that the DoorDash app leads to workers receiving less pay due to missed payments and punishing algorithms which increases their chances of falling into in-work poverty. In a study of New York City app-based delivery drivers across a number of popular apps, 38% reported issues with payment from the apps. Common issues included missing tips, missing payments from a completed order, and being paid less than the app indicated. After attempting to resolve the issue, 72% of survey respondents said they did not reach a resolution. It has also been noted that the apps can also kick drivers off the platform without due process.¹⁰

The same study noted that DoorDash contends that drivers can accept or reject orders, a positive flexible feature for "independent contractors." However, according to the information received, workers may not enjoy this flexibility in reality because the app's performance evaluation systems are based largely on order acceptance rates and customer ratings. If workers reject too many orders, they risk being kicked off the app and losing their income in its entirety, putting pressure on drivers to accept even unprofitable orders. As a result, workers may be forced to decide between risking losing their entire income or accepting orders that will cost them money and time. Workers can also be kicked off for using multiple delivery apps (for example, to supplement their income). Discipline is not transparent and there is no formal appeals process.¹¹ It could be argued that when apps exert this level of control on workers, the workers should be classified as employees.¹²

Information received also shows that working as a delivery driver may be dangerous, with the costs borne by the worker. A survey of delivery drivers (including but not limited to DoorDash) in New York City found that 49% of the drivers surveyed had been in an accident while working. Of those who had been in accidents on the job, 75% reported paying for the ensuing medical care with personal funds.¹³ Because the workers are classified as independent

⁷ Cody Doctorow, Tech Rights Are Workers' Rights: DoorDash Edition, Electronic Frontier Foundation (August 6, 2021), <https://www.eff.org/deeplinks/2021/08/tech-rights-are-workers-rights-doordash-edition>.

⁸ Josie Fischels, Why DoorDash Drivers Are on Strike, National Public Radio (July 21, 2021), <https://www.npr.org/2021/07/31/1023265561/why-doordash-drivers-are-on-strike>.

⁹ Doordash to Pay \$2.5 Million in Tip Theft Lawsuit, MSE Labor (December 7, 2020), <https://www.mselaborlaw.com/news/doordash-pay-25-million-tip-theft-lawsuit>.

¹⁰ Maria Figueroa et al., Essential but Unprotected: App-based Food Couriers in New York City <https://www.issuelab.org/resources/38934/38934.pdf> at 32.

¹¹ Maria Figueroa, et al., Essential but Unprotected: App-based Food Couriers in New York City <https://www.issuelab.org/resources/38934/38934.pdf> at 33.

¹² The Legal Loophole That Lets Companies Like Doordash Steal Tips, Explained, Talk Poverty (February 22, 2019), <https://talkpoverty.org/2019/02/22/legal-loophole-doordash-steal-tips/index.html>.

¹³ Maria Figueroa et al., Essential but Unprotected: App-based Food Couriers in New York City <https://www.issuelab.org/resources/38934/38934.pdf> at 8.

contractors, they do not get sick days or health insurance.¹⁴ If they are hurt on the job and cannot work, they do not get paid.

Allegedly, DoorDash has not supported legislation that would force the corporation to supply more protections to delivery drivers.¹⁵ DoorDash reportedly spent hundreds of thousands of dollars lobbying in New York City against a package of bills that would guarantee a minimum wage and other protections to delivery workers in the city.¹⁶ In addition, DoorDash allegedly spent over US\$100,000 lobbying directly before a Massachusetts ballot initiative to classify delivery drivers as employees.¹⁷ It has been noted that a group of app-based companies, including DoorDash, spent \$224 million to lobby for Prop 22, a California proposition to exclude the workers of ride-share and food delivery app-based companies from employee benefits.¹⁸

While I do not wish to prejudge the accuracy of the above allegations, the information described above raises serious concerns about the role of DoorDash in contributing to violations of the right to an adequate standard of living and a fair and adequate living wage.

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).

¹⁴ Rebecca Smith, Independent Contractors and COVID-19: Working Without Protections, National Employment Law Project (March 24, 2020), <https://www.nelp.org/publication/independent-contractors-covid-19-working-without-protections/>.

¹⁵ Claudia Irizarry Aponte and Josefa Veladquez, New York City Passes Landmark New Protections for Food Delivery Workers, The City (September 23, 2021), <https://www.thecity.nyc/2021/9/23/22690509/new-york-city-landmark-food-delivery-worker-law>.

¹⁶ Lobbyist Search (Filtered for DoorDash 2021), <https://lobbyistsearch.nyc.gov/>.

¹⁷ Lobbyist Public Search (Filtered for DoorDash), <https://www.sec.state.ma.us/LobbyistPublicSearch/CompleteDisclosure.aspx?sysvalue=Tcg7Ii3rjW5sIbUrwbcVKfAOks8OIMQbcnlMvHrVv4EHgk7pDP9kHxcyy2/RIZZ>; Kellen Browning, Massachusetts Court Throws Out Gig Worker Ballot Measure, New York Times (June 14, 2022), <https://www.nytimes.com/2022/06/14/technology/massachusetts-gig-workers.html>.

¹⁸ Brian Chen and Laura Padin, Prop 22 Was A Failure for California's App Based Workers. Now, it's Also Unconstitutional, National Employment Law Project (September 16, 2021), <https://www.nelp.org/blog/prop-22-unconstitutional>.

3. Please provide information regarding the measures that your company has adopted, or is planning adopt, to address allegations that, as a result of the low level of wages they receive, DoorDash workers cannot afford their basic needs.
4. Please provide information regarding the measures that your company has adopted, or is planning to adopt, to address allegations that a lack of transparency, including deliberate actions to circumvent transparency, makes it difficult for workers to predict their take-home pay, and thus, due to this uncertainty, workers struggle to ensure they earn a living wage or financially plan for the future.
5. Please provide information regarding the measures that your company has, or is planning to put in place, to address allegations that the DoorDash app leads to workers receiving less pay due to missed payments and punishing algorithms, including missing tips, missing payments from a completed order, and being paid less than the app indicated.
6. Please provide information regarding the measures that your company has, or is planning to put in place, to address allegations that workers who reject too many orders risk being kicked off the app and losing their income in its entirety, putting pressure on them to accept even unprofitable orders.

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. Xu, 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. Specific expectations follow as regards the practices of business entities. I am concerned 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 the Declaration on Fundamental Principles and Rights at Work, adopted in 1998 by the 86th session of the International Labour Conference, as well as to the International Labour Organization (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.

International human rights law, as well as 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.¹⁹ 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

¹⁹ 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".²⁰

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. The ICCPR states under article 26 that the law shall “guarantee to all persons equal and effective protection against discrimination” including on grounds of race and sex. The Human

²⁰ E/C.12/GC/23, para. 18.

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.²¹ 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.

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 Rights²² and the Guiding Principles on Extreme Poverty and Human Rights²³ 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 "business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice,"²⁴ 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.²⁵ 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.

²¹ Human Rights Committee, General Comment No. 18 (1989): Non-discrimination, para. 12.

²² Human Rights Council Res. 17/4 (June 2011).

²³ Human Rights Council Res. 21/11 (Sept. 2012), paras. 100-101.

²⁴ E/C.12/GC/24, para. 5.

²⁵ ILO Committee of Experts, Promoting employment and decent work in a changing landscape (Geneva: ILO, 2020), p. 127.