

Mandate of the Special Rapporteur on extreme poverty and human rights

Ref.: AL OTH 104/2023
(Please use this reference in your reply)

31 August 2023

Dear Mr. Mc Millon,

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 Walmart U.S. in alleged violations of international human rights and labour rights law.

According to the information received:

It is alleged that Walmart U.S. pays wages that do not allow its workers and their families an adequate standard of living, and actively prevents workers from exercising their right to unionize.

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 information received, Walmart U.S. pays

Walmart Inc.

wages that do not allow the worker and his or her family an adequate standard of living. Walmart's minimum salary is reportedly low compared with other companies in the retail sector. Walmart in January 2023 announced plans to raise its minimum wage to \$14 per hour,¹ while Costco pays its workers a minimum of \$17 per hour.² According to Good Jobs First's violation tracker, Walmart has accrued \$1.5 billion in total wage settlement and fines since 2020.³

Wages at Walmart are reportedly so low that some workers often have to rely on government benefits including food stamps and health coverage for low-income individuals. According to a 2021 Government Accountability Office report, in many states, Walmart is the top employer of beneficiaries receiving government medical coverage and food stamps. In addition, Walmart was the top employer of Medicaid enrollees (government funded medical coverage) in three states and one of the top four employers in all states studied. It was also the top employer of Supplemental Nutrition Assistance Program (food stamp) recipients in five states and one of the top four employers in all 11 states studied.⁴ The fact that incomes of thousands of its employees are so low that they qualified for government benefits means that Walmart is transferring labor costs from itself to the public.

It has been suggested that Walmart has deliberately retained more part-time workers, contributing to more low-paid work.⁵ Part-time workers accounted for half of the company's workforce in 2018, compared to just 20% in 2005.⁶ Yet studies seem to indicate that working part-time is not a voluntary choice for workers – in one survey, 69% of part-time Walmart associates said they would prefer to work full-time. Part-time associates have fewer benefits and earn less for the same work as full-time associates. They are excluded from major employee benefits such as paid family leave. And part-time associates working fewer than 30 hours per week are not eligible for Walmart's health care plan.⁷

Allegedly, Walmart has also been reducing its operation costs by employing contractors and subcontractors who usually work full-time with low pay and

¹ Melissa Repko, Walmart Raises Minimum Wage as Retail Labor Market Remains Tight, CNBC (January 24, 2023), <https://www.cnbc.com/2023/01/24/walmart-raises-minimum-wage-as-retail-labor-market-remains-tight.html>.

² Nathaniel Meyersohn, Costco Raised its Minimum Wage to \$17 an Hour, CNN Business (October 27, 2021), <https://www.cnn.com/2021/10/27/business/costco-minimum-wage/index.html>.

³ Good Jobs First Violation Tracker, Walmart, <https://violationtracker.goodjobsfirst.org/parent/walmart/> (last visited December 13, 2022).

⁴ US Government Accountability Office, 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>.

⁵ Nikki Thanos and Maggie Corser, Trapped in Part Time: Walmart's Phantom Ladder of Opportunity (September 2019), <https://united4respect.org/wp-content/uploads/2019/09/Part-Time-Full-Report-Web.pdf> at 3; Lauren Kaori Gurley, Walmart's Gig Workers Are Struggling to Survive, Vice (April 26 2021), <https://www.vice.com/en/article/4avyzq/walmarts-gig-workers-are-struggling-to-survive>.

⁶ Hiroko Tabuchi, Next Goal for Walmart Workers: More Hours, New York Times (February 25, 2015), <https://www.nytimes.com/2015/02/26/business/next-goal-for-walmart-workers-more-hours.html>; Julia Conley, Walmart Workers Protest Outside Alice Walton's Penthouse as Retail Giant Cuts Jobs, Salon (February 21, 2020), https://www.salon.com/2020/02/21/walmart-workers-protest-outside-alice-waltons-penthouse-as-retail-giant-cuts-jobs_partner.

⁷ Nikki Thanos and Maggie Corser, Trapped in Part Time: Walmart's Phantom Ladder of Opportunity (September 2019), <https://united4respect.org/wp-content/uploads/2019/09/Part-Time-Full-Report-Web.pdf> at 10.

harsh working conditions.⁸ Walmart classifies its drivers as independent contractors, for example, meaning the drivers don't have any of the traditional benefits of employment such as minimum wage guarantees, worker's compensation, or paid time off.⁹

Multiple reports have found pervasive labor rights abuses in Walmart's domestic supply chain.¹⁰ Reportedly, Walmart engages contractors in its supply chain, where it has substantial control over setting working conditions in its warehouses, transportation, and delivery –sometimes even having its managers onsite or monitoring suppliers' operation –but avoids responsibility or accountability for labor rights abuses. Walmart actively reduces contractors' margins and incentivizes low standard employment of the contractors by requiring that all suppliers and contractors reduce their price of supplies and increase quality or speed of delivery every year. The contractors in turn reduce their operational costs by violating minimum wage and overtime regulations and extending working hours without overtime pay.¹¹

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".¹²

According to the information received, Walmart has a long track record of discouraging union organizing efforts. In 2007, Human Rights Watch noted that Walmart “stands out for the sheer magnitude and aggressiveness of its anti-union apparatus and actions”, that it deploys illegal anti-union tactics, and that the cumulative impact of its anti-union efforts deprives workers of their internationally recognized right to organize.¹³ Walmart has reportedly

⁸ Jim Morris and Adithya Sambamurthy, Warehouse Worker Lawsuit Targets Walmart, Public Integrity (November 30, 2012), <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/warehouse-worker-lawsuit-targets-walmart/>.

⁹ Lauren Kaori Gurley, Walmart's Gig Workers Are Struggling to Survive, Vice (April 26 2021), <https://www.vice.com/en/article/4avyzq/walmarts-gig-workers-are-struggling-to-survive>.

¹⁰ Jim Morris and Adithya Sambamurthy, Warehouse Worker Lawsuit Targets Walmart, Public Integrity (November 30, 2012), <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/warehouse-worker-lawsuit-targets-walmart/>; Anastasia Christman et, al., Chain of Greed: How Walmart's Domestic Outsourcing Harms Workplace Rights of Warehouse Workers, National Employment Law Project (June 6, 2012), <https://www.nelp.org/publication/chain-greed-walmarts-domestic-outsourcing-harms-workplace-rights-warehouse-workers/>.

¹¹ Anastasia Christman et, al., Chain of Greed: How Walmart's Domestic Outsourcing Harms Workplace Rights of Warehouse Workers, National Employment Law Project (June 6, 2012), <https://www.nelp.org/publication/chain-greed-walmarts-domestic-outsourcing-harms-workplace-rights-warehouse-workers/> at 12.

¹² CCPR/C/DOM/CO/6 (2018) (Dominican Republic), para. 32.

¹³ Human Rights Watch, Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association (April 30, 2007), <https://www.hrw.org/report/2007/04/30/discounting-rights/wal-marts-violation-us-workers-right-freedom-association>.

disseminated anti-union propaganda to its employees for decades, requiring new employees to watch a video deriding organized labor. Additionally, in 2014, leaked internal Walmart slides, including a “Labor Relations Training” for its managers, portrayed organized labor in a negative light.¹⁴

In 2000, after meat cutters in its Texas store won union recognition, Walmart laid off all meat cutters in that store and 179 other stores.¹⁵ In 2012, it fired five employees who were involved in organizing workers.¹⁶ In 2014, labor regulators found that the corporation illegally fired, disciplined, or threatened more than 60 employees in 14 states for participating in legally protected activities such as striking.¹⁷

While I do not wish to prejudice the accuracy of the above allegations, the information described above raises serious concerns about the role of Walmart 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, Walmart employees sometimes depend on government medical coverage and food stamps.

¹⁴ Steven Greenhouse, How Walmart Persuades Its Workers Not to Unionize, Atlantic (June 8, 2015), <https://www.theatlantic.com/business/archive/2015/06/how-walmart-convinces-its-employees-not-to-unionize/395051/>.

¹⁵ Frank Swoboda, Wal-Mart Ends Meat-Cutting Jobs, Washington Post (March 4, 2000), <https://www.washingtonpost.com/archive/business/2000/03/04/wal-mart-ends-meat-cutting-jobs/acdb8f7c-d7c2-4e31-aad7-8f690ba3b35b/>.

¹⁶ Spencer Woodman, Walmart Accused of Firing Union Organizers in Bid to Intimidate Workers, Guardian (July 26, 2012), <https://www.theguardian.com/business/2012/jul/26/walmart-accused-firing-union-organizers>.

¹⁷ Amanda Becker, U.S. Labor Board Alleges Wal-Mart Violated Labor Law in 14 States, Reuters (January 15, 2014), <https://www.reuters.com/article/us-walmart-labor/u-s-labor-board-alleges-wal-mart-violated-labor-law-in-14-states-idUSBREA0E1PY20140115>.

4. Please provide information regarding the measures that your company has adopted, or is planning to adopt, to address allegations your company has actively discouraged union organizing efforts, and deploys illegal 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 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. Mc Millon, 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.¹⁸ 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.

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

¹⁸ 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".¹⁹

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 the equality of all before the law under article 26 and that the law shall “prohibit any discrimination and guarantee to all persons equal and effective protection against

¹⁹ E/C.12/GC/23, para. 18.

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.²⁰ Furthermore, the International Covenant on Economic, Social and Cultural Rights, 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.²¹ The refusal to hire or promote workers who are affiliated with a trade union,²² the dismissal of workers having engaged in trade union activities,²³ the discriminatory use of fixed-term contracts for trade union activists,²⁴ or the deportation of migrant workers engaging in union activities,²⁵ would therefore be a violation of these provisions.²⁶ 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,²⁷ as well as under ILO Convention (No. 98).²⁸

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 Rights²⁹ and the Guiding Principles on Extreme Poverty and Human Rights³⁰ 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

²⁰ Human Rights Committee, General Comment No. 18 (1989): Non-discrimination, para. 12.

²¹ E/C.12/ARG/CO/4 (2018) (Argentina), para. 34.

²² E/C.12/ROU/CO/3-5 (2014) (Romania), para. 14.

²³ CCPR/C/CHL/CO/5 (2007) (Chile), para. 14.

²⁴ CCPR/C/BLR/CO/5 (2018) (Belarus), paras. 54-55.

²⁵ CCPR/C/DOM/CO/6 (2018) (Dominican Republic), paras. 31-32.

²⁶ E/C.12/MLI/CO/1 (2018) (Mali), paras. 28-29; E/C.12/LKA/CO/5 (2017) (Sri Lanka), paras. 33-34.

²⁷ 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.

²⁸ *Compilation of decisions of the Committee on Freedom of Association* (International Labour Organisation: Geneva, 2018), para. 1099.

²⁹ Human Rights Council Res. 17/4 (June 2011).

³⁰ 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,"³¹ 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.³² 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.

³¹ E/C.12/GC/24, para. 5.

³² ILO Committee of Experts, Promoting employment and decent work in a changing landscape (Geneva: ILO, 2020), p. 127.