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Human rights situations that require the Council's attention

Written statement* submitted by The Next Century Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 August 2020]

* Issued as received, in the language(s) of submission only.

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Corporate complicity in the mobilisation of forced Uyghur labour in China

The Next Century Foundation notes that the Working Group on the issue of human rights and transnational corporations and other business enterprises, in its report before the 44th Session of the United Nations Human Rights Council (UNHRC), called for anti-corruption compliance programmes and human rights due diligence programmes within multinational corporate institutions, that ensured “that corruption and human rights risks are considered in employee onboarding systems” – a process that, by implication, extends to supply chain labour.

The Next Century Foundation supports the Working Group’s proposal, and welcomes its incorporation into the UNHRC’s resolution 44/15 on 17 July 2020. This resolution, in particular, called on all “States [...] as well as public and private businesses [...] to give due consideration to the issue of business and human rights, and, in the cases of States, to reply favourably to requests for visits by the Working Group”.

We also welcome the proposals in an adjacent report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), released on 19 May 2020, and later cited by resolution 44/15. This report identifies how non-state-based grievance mechanisms, “with due regard for applicable laws and appropriate safeguards relating to protecting people from the risk of retaliation”, could improve accountability and access to remedy for victims of business-related human rights abuse.

The Next Century Foundation believes that these grievance mechanisms are of particular relevance to the alleged mistreatment of Uyghur Muslims within and beyond the Xinjiang Uyghur Autonomous Region (‘XUAR’) of China.

We especially note the concerns expressed in a report released on February 28, 2020 by the Australian Strategic Policy Institute, titled ‘Uyghurs for Sale’, which claimed that several multinational corporations, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony and Volkswagen, were implicated in mobilising Uyghur workforces in affiliated factories and supply chain units “under conditions that strongly suggest forced labour”.

One case study, titled ‘From ‘re-education camps’ to forced labour assignments’, alleged that the “Haoyuanpeng Clothing Manufacturing” company (HYP) in XUAR, “transferred 63 [Uyghur] workers [...] to its Anhui factory in eastern China with plans to eventually transfer 500 in total”, citing a briefing released on 23 June 2018 by the ‘Voice of Guangdong Aid’.

It is also noted that the HYP’s corporate website (at the time) advertised “strategic partnerships with the Italian-South Korean fashion label Fila” and “German sportswear companies, Adidas and Puma, and Nike”. Detailing the subsequent expansion of the Anhui “compound”, and the extensive security surveillance procedures within the factory, the report claimed that the “transfer of Uyghur labour to Anhui was part of a Xinjiang Aid project organised by the Guangdong government”.

Most striking of all, however, is the report’s outlining of the purposes of ‘Xinjiang Aid’. Quoting from a May 2012 briefing by the “Institute of Economic Research of Xinjiang Development and Reform”, the report identifies how participant “factory bosses are expected to fundamentally alter Uyghur workers by reforming their ‘backward qualities’ and sinicising them” – implicitly through measures such as forcible indoctrination.

The Next Century Foundation recognises alarming similarities with issues raised by rapporteurs from the UNHRC on 26 June 2020, who themselves alleged there was mobilisation of forced labour in various sectors of China’s formal and informal economy.

Given China’s acceptance of the United Nation’s 1948 Universal Declaration of Human Rights, these allegations are particularly worrying. Article 19 of the Declaration notably protects an individual’s “right to freedom of opinion and expression [...] without interference”. Forcible indoctrination would of course amount to ‘interference’ in an individual’s right to freedom of opinion.

Recalling Article 7 of resolution 44/15, we call on the Working Group on the issue of human rights and transnational corporations and other business enterprises to focus explicitly on the

issue of corporate complicity in the mobilisation of forced Uyghur labour at its proposed panel discussion during the UNHRC's 47th regular session. This would encourage further implementation of the 2011 UN Guiding Principles for Business and Human Rights by all the necessary stakeholders, including states and public and private businesses.

We also call on all implicated multinational corporations to:

- (1) Conduct immediate and thorough due diligence checks on their factories and supply chains in China,
- (2) Ensure the full transparency of these procedures to affiliated international stakeholders, including the UNHRC,
- (3) Ensure that any instances of forced labour are redressed with the requisite procedures. Measures that could facilitate this redressal include the cessation of all activity and affiliation with the implicated factory and labour supplier.

Nevertheless, the Next Century Foundation takes particular note of opposing concerns expressed by China's Permanent Mission to the United Nations Office at Geneva, which, on June 28 2020, accused the aforementioned panel of UNHRC rapporteurs of factual distortion, infringement of China's sovereignty, and violation of the principles embedded in the UN Charter. In our view, an effective international response to the alleged mistreatment of Uyghurs in China can only be achieved by giving consideration to the perspective of the Chinese government.

We therefore request that the UNHRC establish an independent international fact-finding mission, as well as an independent investigative mechanism, that suitably address the numerous allegations concerning forced Uyghur labour within and beyond the XUAR in China. We ask that the proposed fact-finding mission and investigative mechanism deal explicitly with the issue of multinational corporate complicity in the alleged mobilisation of this forced labour.

In view of the concerns surrounding biases against China within the international community, we urge the UNHRC to coordinate the proposed fact-finding mission and investigative mechanism in cooperation with China's Permanent Mission, whereby a formal recognition is made regarding China's status as a sovereign, independent nation. This is essential in ensuring transparency and due process with all actors involved.

Moreover, the Next Century Foundation believes that a suitable definition of the term 'forced labour' must be established at the onset of any fact-finding or investigative mechanism. For example, Article 2 of the International Labour Organisation's Convention Concerning Forced or Compulsory Labour, 1930 (No. 29) defines "forced or compulsory labour" as a work or service "exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

We also request the establishment of an international non-state-based grievance mechanism – arbitrated in accord with Resolution 44/15, the adjacent OHCHR report, and existing International Labour Organisation (ILO) conventions – with specific regard to potentially complicit multinational corporations, and the affected workforces' access to remedy.

The Next Century Foundation additionally asks that the proposed fact-finding mission and investigative mechanism recognise the elements and exceptions to the 1930 Forced Labour Convention, with emphasis on identifying the principles underpinning Article 2's "menace of any penalty" clause. These principles include the repudiation of civil liberties and privileges, the absence of wages, and the perpetration of sanctions, threats and violence towards mobilised workforces.

Notwithstanding the above, the Next Century Foundation takes note of the fact that China is one of only nine states that have failed to ratify the 1930 Forced Labour Convention, and its associated addendums. We take issue with the absence of remedial mechanisms in existing Chinese labour laws, particularly regarding the issue of forced labour.

Article 32 of the 1995 Labour Law of China, identifies how labourers can notify their employer of their decision to revoke labour contracts in cases where "they are forced to work [...] through means of violence, threat or the deprivation of personal freedom in violation of

law” – a mechanism reminiscent, though not wholly consistent with, Article 2 of the 1930 Forced Labour Convention.

The 1995 Chinese Labour Law fails to outline any remedial measures in the instance of labour contract revocation. This is worrying, given that proposals delineated in Article 4 of the Protocol of 2014 to the 1930 Forced Labour Convention require each state to ensure that “all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation”.

We urge the Chinese government to expand the remit of existing national labour laws in compliance with the standards of the UN Guiding Principles for Business and Human Rights and those of the ILO. This step would help consolidate existing legal protections afforded to all workers currently residing in China.

The Next Century Foundation invites the UNHRC’s 45th regular session to scrutinise the allegations of corporate complicity in the mobilisation of forced Uyghur labour in China.

In addition to the above, we urge multinational corporations and marketing platforms such as Amazon, to indicate the country of origin of goods they market and produce. This would be an important step towards greater transparency.

Above all, we urge that the UNHRC co-ordinate a comprehensive response to this long-standing issue, ameliorating any existing concerns surrounding accountability, transparency and due process, thereby underpinning the rights of Uyghur minorities currently residing in China.
