

Mandate of the Special Rapporteur on extreme poverty and human rights

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Excellency,

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.

In this capacity, I would like to bring to the attention of Your Excellency's Government information I have received on allegations that your Government has failed to protect workers from in-work poverty and to fulfill the right to an adequate standard of living. Additionally, I would like to bring to the attention of Your Excellency's Government information regarding three corporations headquartered in the United States, Amazon.com, Inc., DoorDash, Inc., and Walmart U.S., concerning their roles in contributing to in-work poverty among their employees and allegations of violating US and international labour protections and international human rights obligations.

According to the information received:

Despite being one of the wealthiest countries in the world, the United States has a high rate of poverty among workers. The US Bureau of Labor Statistics (BLS) defines the “working poor” as those who spend at least 27 weeks working or looking for work during a calendar year but have an income below the national poverty line¹ – \$14,580 for individuals in 2023.² Under that definition, around 6.3 million people were among the working poor in 2020,³ or 4.1% of US workers.⁴

According to the information received, in-work poverty is directly linked to US law and policy, including highly inadequate and inconsistent pay, systematic improper worker classification and a proliferation of gig work, paltry social protection, weak and unenforced labour law, widespread discrimination, and a lack of protection for workers at higher risk of poverty. A 2023 Oxfam America report found that the social safety net and worker protections in the United States were shockingly weak and significantly behind those of other high-income nations. Out of 38 OECD peer countries, the United States came 36th in wage policies, 38th in worker protections, and 32nd on the right to organize.⁵

¹ US Bureau of Labor Statistics, A Profile of the Working Poor, 2020 (September 2022), <https://www.bls.gov/opub/reports/working-poor/2020/home.htm>.

² Healthcare.gov, Federal Poverty Level, <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/> (last visited April 20, 2023).

³ US Bureau of Labor Statistics, A Profile of the Working Poor, 2020 (September 2022), <https://www.bls.gov/opub/reports/working-poor/2020/home.htm>.

⁴ US Bureau of Labor Statistics, A Profile of the Working Poor, 2020 (September 2022), <https://www.bls.gov/opub/reports/working-poor/2020/home.htm>.

⁵ Kaitlyn Henderson, Where Hard Work Doesn't Pay Off: An Index of Us Labor Policies Compared to Peer Nations, Oxfam America (June 2023), <https://www.oxfamamerica.org/explore/research-publications/where-hard-work-doesnt-pay-off/> at 2, 9, 15, 19.

Certain populations, including part-time workers, gig workers, tipped workers, migrant and informal workers, and women, appear to be more vulnerable to in-work poverty. For instance, 10.2% of part-time workers were classified as among the working poor compared to just 2.6% of full-time workers.⁶ Similarly, a 2022 national survey found that 14% of gig workers earned below the federal minimum wage of \$7.25 per hour.⁷ A 2021 study indicated that the poverty rate of tipped workers was 14.8% in states adopting the federal tipped minimum wage of \$2.13 per hour.⁸ Many employers continue to hire undocumented workers and use the threat of immigration enforcement, such as detention and deportation, to exploit them, pay them less, and get away with unsafe labour conditions.⁹ Women account for 56% of the nation's poor¹⁰ and dominate eighteen of the 25 lowest paid jobs in the United States – including those paying at or below the poverty line.¹¹ Women are twice as likely as men to work part-time, which means lower wages, fewer opportunities for promotion, a lower likelihood of pension coverage, and fewer benefits.¹²

Low Wages and Lack of Benefits

According to the information received, the US minimum wage is insufficient to protect workers from poverty. The current federal minimum wage is \$7.25 per hour, last updated in 2009, and is not automatically adjusted for inflation.¹³ Failure to index the minimum wage to inflation causes workers' real wages to shrink every year the minimum wage is not raised, causing more workers to fall into in-work poverty.

International human rights law recognizes a right to a living wage. Workers should be provided, at a minimum, with a "living wage", regularly adapted in accordance with costs of living. Under article 23 of the Universal Declaration of Human Rights and article 7(a) of the International Covenant on Economic, Social and Cultural Rights, all workers have a right to a remuneration which provides them, as a minimum, with fair wages and a decent living for themselves and their families. Additionally, the International Labour Organization (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. The persistence of in-work poverty, in many cases, can be attributed to violations

⁶ US Bureau of Labor Statistics, A Profile of the Working Poor, 2020 (September 2022), <https://www.bls.gov/opub/reports/working-poor/2020/home.htm>.

⁷ Ben Zipperer et al., National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay (June 1, 2022), Economic Policy Institute, <https://www.epi.org/publication/gig-worker-survey/>.

⁸ Justin Schweitzer, Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality, Center for American Progress (March 30, 2021), <https://www.americanprogress.org/article/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>.

⁹ Josh Bivens et al., How Today's Unions Help Working People, Economic Policy Institute (August 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

¹⁰ The Center for American Progress, The Basic Facts About Women in Poverty (August 3, 2020), <https://www.americanprogress.org/article/basic-facts-women-poverty/>.

¹¹ The Center for American Progress, The Basic Facts About Women in Poverty (August 3, 2020), <https://www.americanprogress.org/article/basic-facts-women-poverty/>; Grant Suneson, What are the 25 Lowest Paying Jobs in the US? Women Usually Hold Them, USA Today (April 4, 2019), <https://www.usatoday.com/story/money/2019/04/04/25-lowest-paying-jobs-in-us-2019-includes-cooking-cleaning/39264277/>.

¹² Elise Gould et al., What is the Gender Pay Gap and is it Real?, Economic Policy Institute (October 20, 2016), <https://www.epi.org/publication/what-is-the-gender-pay-gap-and-is-it-real/>.

¹³ US Department of Labor, Minimum Wage, <https://www.dol.gov/general/topic/wages/minimumwage>.

of these guarantees. The right to remuneration ensuring an adequate standard of living for the worker and his/her family 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."¹⁴

Reportedly, the United States' inadequate minimum wage leaves many full-time workers unable to fulfill their basic needs and gives many full-time workers no choice but to rely on social safety nets to survive. Those earning the federal minimum wage and even higher state minimum wages may not be able to afford living expenses in the United States. The National Low Income Housing Coalition found that the average full-time hourly wage worker, spending the accepted affordability standard of 30% of their income on housing, would need to make \$23.67 an hour to afford a modest one-bedroom rental home in the United States – more than triple the minimum wage.¹⁵ This puts a one-bedroom home out of reach of a full time minimum wage worker making even the highest state minimum wage of \$15 an hour.¹⁶ According to the report, there is no state, metropolitan area, or county in the United States in which a worker earning the federal or prevailing state or local minimum wage for 40 hours a week can afford a modest two-bedroom rental home at fair market rent. In only 7% of all US counties can a full-time minimum-wage worker afford a one-bedroom rental home at fair market rent.

According to the information received, the United States has allowed widespread and systematic misclassification of workers as independent contractors, eroding worker protections, leaving workers vulnerable to the whims of private companies, and leading to low pay and unstable work conditions. Loopholes in minimum wage laws leave some workers without protection and with even less pay than the already inadequate minimum wage. For example, “gig work” platforms base their business models on classifying workers as independent contractors, a move that shifts the costs and risks that employers normally bear - such as equipment and maintenance, overtime pay, and insurance - to the workers themselves, as well as the public.¹⁷ Gaps in US minimum wage protections results in workers falling through the cracks. A 2022 Economic Policy Institute report found that one in seven gig workers earned less than the federal minimum wage of US\$7.25 per hour, and 29% of gig-workers earned less than the state minimum wage they would be entitled to if classified as an employee.¹⁸ Another study found that 30% of gig workers had used the Supplemental Nutrition Assistance Program (food stamps), within one month of the survey, indicating that many gig-workers must rely on social support to eat.¹⁹

¹⁴ E/C.12/GC/23, para. 18.

¹⁵ National Low Income Housing Coalition, *Out of Reach* (2023), <https://nlihc.org/oor>.

¹⁶ US Department of Labor, *Minimum Wage*, <https://www.dol.gov/general/topic/wages/minimumwage>.

¹⁷ Federal Trade Commission, *FTC Policy Statement on Enforcement Related to Gig Work* (September 15, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work> at 2; Maria Figueroa et al., *Essential but Unprotected: App-based Food Couriers in New York City*, <https://www.issuelab.org/resources/38934/38934.pdf> at 1.

¹⁸ Ben Zipperer et al., *National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay*, Economic Policy Institute (June 1, 2022), <https://www.epi.org/publication/gig-worker-survey/> at 2.

¹⁹ Ben Zipperer et al., *National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay*, Economic Policy Institute (June 1, 2022), <https://www.epi.org/publication/gig-worker-survey/>.

US minimum wage laws similarly leave tipped workers especially vulnerable to in-work poverty. Under federal law, employers of tipped workers are only required to pay \$2.13 per hour in direct wages²⁰ and must make up the difference where their total income is not at least the minimum hourly wage for non-tipped workers.²¹ However, this system puts employees in the position of enforcing their own wages, requiring that they know the law, take the initiative to calculate their hourly wage with tips, and demand that their employer compensate them for the difference.²² The disparity in power, lack of external enforcement, and high burden on employees leaves tipped workers vulnerable to “wage theft”.

Widespread wage theft, where workers are not paid what they are legally owed, directly deprives workers of their wages –and can account for the loss of up to a quarter of their annual pay.²³ Wage theft often happens in low-wage sectors which can push those workers even further into poverty.²⁴ A report from the National Employment Law Project found that in 2019 alone, US\$9.27 billion was stolen from workers who earned less than \$13 per hour.²⁵

Labour Rights Violations

According to the information received, a failure to adequately protect the right to organize deprives workers of needed protection and is contributing to in-work poverty. There are significant barriers to labour organizing in the United States as a result of hostile employer action, a weak legal regime, and diminishing protections. This problem is evidenced by the dramatic decline of private sector union participation, from 35% in the 1950s to just 6.2% in 2019.²⁶

Unions are essential for addressing in-work poverty. According to the US Bureau of Labor Statistics, workers with unions earn 15% higher wages than workers without unions.²⁷ An Economic Policy Institute report found that union workers are half as likely to suffer from wage theft such as minimum wage violations.²⁸ Further, research from Harvard University and the University of Washington found that the decline of organized labour in the

²⁰ US Department of Labor, Tips, <https://www.dol.gov/general/topic/wages/wagestips>.

²¹ US Department of Labor, Tips, <https://www.dol.gov/general/topic/wages/wagestips>.

²² Sylvia Allegretto and David Cooper, Twenty-Three Years and Still Waiting for Change, EPI, <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

²³ Ihna Mangundayao et al., More than \$3 Billion in Stolen Wages Recovered for Workers Between 2017 and 2020, Economic Policy Institute (December 22, 2021), <https://www.epi.org/publication/wage-theft-2021/>.

²⁴ Alexia Fernández Campbell, Ripping off Workers Without Consequences, The Center for Public Integrity, <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/cheated-at-work/ripping-off-workers-with-no-consequences/>.

²⁵ Ihna Mangundayao et al., More than \$3 billion in Stolen Wages Recovered for Workers Between 2017 and 2020, Economic Policy Institute (December 22, 2021), <https://www.epi.org/publication/wage-theft-2021/>.

²⁶ Lawrence Mishel et al., Explaining the Erosion of Private-Sector Unions, Economic Policy Institute (November 18, 2020), <https://www.epi.org/unequalpower/publications/private-sector-unions-corporate-legal-erosion/>.

²⁷ US Department of Labor, The Union Advantage, <https://www.dol.gov/general/workcenter/union-advantage/> (last visited April 21, 2023).

²⁸ Josh Bivens et al., How Today’s Unions Help Working People, Economic Policy Institute (August 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

United States accounts for a third to a fifth of the growth in inequality.²⁹

States have a duty to protect the right of each worker to form and join trade unions, both under human rights law and 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 International Covenant on Civil and Political Rights (ICCPR) and article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), trade unionists should be protected from all forms of harassment, intimidation, or reprisals.³⁰ 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,³¹ as well as under ILO Convention (No. 98).³² States should ensure that all categories of workers have access to collective bargaining processes, including domestic workers,³³ farmworkers, and workers in precarious employment,³⁴ including platform workers.³⁵

Allegedly, the erosion of worker protection laws in the United States has contributed to the sharp decline in unionization. The laws regulating how to form a union are reportedly outdated, with the federal government failing in protecting workers who try to form unions, leaving them exposed to firings and abuse. Some states prohibit collective bargaining outright, while others limit certain union activities, such as the right to strike or to collect dues automatically.³⁶ According to some, US law permits anti-union discrimination, restrictions on union organizing, and replacement of striking workers.³⁷ Weak labour laws, a long series of anti-union amendments, and regressive rulings from courts and the National Labor Relations Board have tilted labour law against workers and enabled employers to undermine and defeat labour organizing without consequence.³⁸

Furthermore, the United States has turned a blind eye to the union suppressing and retaliatory actions of powerful corporations, allowing them to steamroll employees into accepting poverty wages while the corporate revenues skyrocket. Private companies have spent millions of dollars countering unionization efforts. Reportedly, three quarters or more of private employers facing labour organizing in the United States now hire union avoidance consultants to impede unionization efforts through both legal and illegal

²⁹ Bruce Western and Jake Rosenfeld, Unions, Norms, and the Rise in U.S. Wage Inequality, American Sociological Association (August 4, 2021), <https://www.asanet.org/wp-content/uploads/savvy/images/journals/docs/pdf/asr/WesternandRosenfeld.pdf>.

³⁰ E/C.12/ARG/CO/4 (2018) (Argentina), para. 34.

³¹ 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.

³² *Compilation of decisions of the Committee on Freedom of Association* (International Labour Organisation: Geneva, 2018), para. 1099.

³³ See ILO Domestic Workers Convention, 2011 (No. 189), art. 3.

³⁴ E/C.12/ZAF/CO/1 (2018) (South Africa), paras. 45-46.

³⁵ E/C.12/PRT/CO/4 (2014) (Portugal), para. 10.

³⁶ Josh Bivens et al., How Today's Unions Help Working People, Economic Policy Institute (August 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

³⁷ ITUC CSI IGB, ITUC Global Rights Index, Freedom of association / Right to Organise, <https://survey.ituc-csi.org/USA.html?lang=en#tabs-2> (last visited April 21, 2023).

³⁸ Lawrence Mishel et al., Explaining the Erosion of Private-Sector Unions, Economic Policy Institute (November 18, 2020), <https://www.epi.org/unequalpower/publications/private-sector-unions-corporate-legal-erosion/>.

action, sometimes spending hundreds of thousands or millions of dollars.³⁹ For example, in 2021, Amazon reportedly spent US\$4.3 million to retain labour consulting firms in response to large-scale organizing efforts.⁴⁰

According to the information received, US companies also punish and retaliate against workers who attempt to exercise their legal right to organize for better pay and working conditions. Private companies have reportedly resorted to a range of retaliatory measures in response to union organizing, including firing workers, threatening to close worksites, reducing hours or wages, or even reporting workers to immigration authorities.⁴¹ Amazon reportedly fired at least six senior managers in 2022 at a warehouse in Staten Island where workers voted to unionize, as well as two employees who were part of Amazon Labor Union's organizing committee.⁴² Similarly, Starbucks Corporation has been accused of firing more than 80 employees because of their union activism⁴³ and federal labour regulators have accused the company of illegally discriminating against union employees by denying them wage and benefit increases that it granted non-union employees.⁴⁴

Even where protections exist, notoriously inadequate consequences for labour violations fail to incentivize corporations to respect the rights guaranteed under the National Labor Relations Act. These include posting of a notice by the employer promising not to violate the law, reinstatement of fired workers, back pay, or repeating an election –but not punitive damages or criminal charges.⁴⁵

US Corporations:

In addition to complaints regarding weak legal protections, I have also received allegations concerning the practices of three US based corporations that contribute to in-work poverty. According to the information received, Amazon.com, Inc., DoorDash, Inc., and Walmart U.S., evade minimum wage laws to pay their workers as little as possible, prevent workers from exercising their right to unionize through intimidation and retaliation, and shift costs of doing business onto the public by relying on public assistance to supplement inadequate wages.

³⁹ Josh Bivens et al., How Today's Unions Help Working People, Economic Policy Institute (August 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

⁴⁰ US Department of Labor, LM-10 Employer Report, OMB No. 1245- 003, <https://olmsapps.dol.gov/query/orgReport.do?rptId=813414&rptForm=LM10Form>.

⁴¹ Josh Bivens et al., How Today's Unions Help Working People, Economic Policy Institute (August 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

⁴² 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>.

⁴³ Josh Eidelson, Starbucks Illegally Fired a Michigan Employee for her Union Activism, a National Labor Relations Board Judge Ruled, Fortune/Bloomberg (October 7, 2022), <https://fortune.com/2022/10/07/starbucks-illegally-fired-a-michigan-employee-union-activism-abor-board-rules/>.

⁴⁴ Noam Scheiber, Starbucks Illegally Denied Raises to Union Members, Labor Board Says, New York Times (August 25, 2022), <https://www.nytimes.com/2022/08/25/business/economy/starbucks-union-howard-schultz-nlrb.html>.

⁴⁵ Josh Bivens et al., How Today's Unions Help Working People, Economic Policy Institute (August 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

Amazon.com, Inc.:

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 and 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, Amazon pays workers a minimum wage of US\$15 per hour.⁴⁶ 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.⁴⁷ 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.⁴⁸

It is alleged that Amazon hires many of its workers as independent contractors, who are therefore not eligible for employee benefits.⁴⁹ 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

⁴⁶ 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.>

⁴⁷ MIT Living Wage Calculator, Living Wage Calculation for New York County, New York, <https://livingwage.mit.edu/counties/36061>.

⁴⁸ 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>.

⁴⁹ 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>.

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.⁵⁰

Amazon tracks every minute of most warehouse workers' shifts, and fires workers for lapses in productivity.⁵¹ In 2021, Amazon had to issue a public apology for denying a claim that its workers are under such severe time constraints that they urinate in bottles.⁵² 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.⁵³ 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.⁵⁴

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".⁵⁵

Yet according to the information received, Amazon has a long history of anti-union action at warehouses.⁵⁶ 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.⁵⁷ 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. An anti-union company video was leaked in 2018, which included instructions on messaging how unions threaten

⁵⁰ 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>.

⁵¹ 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>.

⁵² Amazon (April 3 2021) <https://www.aboutamazon.com/news/policy-news-views/our-recent-response-to-representative-pocan>

⁵³ 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/>.

⁵⁴ 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>

⁵⁵ CCPR/C/DOM/CO/6 (2018) (Dominican Republic), para. 32.

⁵⁶ David Streitfeld, How Amazon Crushes Unions, *New York Times* (March 16, 2021), <https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html>.

⁵⁷ 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>.

job security or even a facility's continued existence.⁵⁸ Reportedly, Amazon spent US\$4.3 million in 2021 to retain labor consulting firms in response to large-scale organizing efforts.⁵⁹

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.⁶⁰ 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.⁶¹ 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.⁶²

Amazon has reportedly aggressively appealed election results and filed repeated objections,⁶³ 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.⁶⁴ 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.⁶⁵

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

⁵⁸ 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/>.

⁵⁹ US Department of Labor, LM-10 Employer Report, OMB No. 1245- 003, <https://olmsapps.dol.gov/query/orgReport.do?rptId=813414&rptForm=LM10Form>.

⁶⁰ 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-aa1c97b70be0e442d6e62f6329c1cf17>.

⁶¹ 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>.

⁶² 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>.

⁶³ 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>.

⁶⁴ 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>.

⁶⁵ 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/>.

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.

DoorDash, Inc.:

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.

As stated before, 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.⁶⁶ 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.⁶⁷ Drivers' compensation depends on their ability to complete a sufficient number of orders.⁶⁸ 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.⁶⁹ 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.⁷⁰

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

⁶⁶ 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>.

⁶⁷ 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>.

⁶⁸ DoorDash, How is Your Dasher Paid?, <https://help.doordash.com/consumers/s/article/How-do-Dasher-earnings-work>.

⁶⁹ 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>.

⁷⁰ 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>.

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.⁷¹ 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 order.⁷² 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.⁷³ 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.⁷⁴

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.⁷⁵

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

⁷¹ 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.

⁷² 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>.

⁷³ 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>.

⁷⁴ *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>.

⁷⁵ 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.

appeals process.⁷⁶ It could be argued that when apps exert this level of control on workers, the workers should be classified as employees.⁷⁷

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.⁷⁸ Because the workers are classified as independent contractors, they do not get sick days or health insurance.⁷⁹ 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.⁸⁰ 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.⁸¹ In addition, DoorDash allegedly spent over US\$100,000 lobbying directly before a Massachusetts ballot initiative to classify delivery drivers as employees.⁸² 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.⁸³

Walmart U.S.:

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.

Similar to the two previous companies and according to information received, Walmart U.S. pays 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

⁷⁶ Maria Figueroa, et al., Essential but Unprotected: App-based Food Couriers in New York City <https://www.issueab.org/resources/38934/38934.pdf> at 33.

⁷⁷ 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>.

⁷⁸ Maria Figueroa et al., Essential but Unprotected: App-based Food Couriers in New York City <https://www.issueab.org/resources/38934/38934.pdf> at 8.

⁷⁹ 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/>.

⁸⁰ 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>.

⁸¹ Lobbyist Search (Filtered for DoorDash 2021), <https://lobbyistsearch.nyc.gov/>.

⁸² Lobbyist Public Search (Filtered for DoorDash), <https://www.sec.state.ma.us/LobbyistPublicSearch/CompleteDisclosure.aspx?sysvalue=Tcg7I13rjW5sIbUrwbCVKfAOks8OIMQbcnlLmVhRVv4EHgk7pDP9kHxcyy2/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>.

⁸³ 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>.

announced plans to raise its minimum wage to \$14 per hour,⁸⁴ while Costco pays its workers a minimum of \$17 per hour.⁸⁵ According to Good Jobs First's violation tracker, Walmart has accrued \$1.5 billion in total wage settlement and fines since 2020.⁸⁶

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.⁸⁷ 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.⁸⁸ Part-time workers accounted for half of the company's workforce in 2018, compared to just 20% in 2005.⁸⁹ 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.⁹⁰

Allegedly, Walmart has also been reducing its operation costs by employing contractors and subcontractors who usually work full-time with low pay and harsh working conditions.⁹¹ 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

⁸⁴ 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>.

⁸⁵ 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>.

⁸⁶ Good Jobs First Violation Tracker, Walmart, <https://violationtracker.goodjobsfirst.org/parent/walmart/> (last visited December 13, 2022).

⁸⁷ 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>.

⁸⁸ 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>.

⁸⁹ 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.

⁹⁰ 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.

⁹¹ 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/>.

compensation, or paid time off.⁹²

Multiple reports have found pervasive labor rights abuses in Walmart's domestic supply chain.⁹³ 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.⁹⁴

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".⁹⁵

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.⁹⁶ Walmart has reportedly 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.⁹⁷

⁹² 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>.

⁹³ 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/>.

⁹⁴ 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.

⁹⁵ CCPR/C/DOM/CO/6 (2018) (Dominican Republic), para. 32.

⁹⁶ 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>.

⁹⁷ Steven Greenhouse, *How Walmart Persuades Its Workers Not to Unionize*, *Atlantic* (June 8, 2015), <https://www.theatlantic.com/business/archive/2015/06/how-walmart-convincing-its-employees-not-to-unionize/395051/>.

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.⁹⁸ In 2012, it fired five employees who were involved in organizing workers.⁹⁹ 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.¹⁰⁰

While I do not wish to prejudge the accuracy of the above allegations, the information described above raises serious concerns about the role of US laws and policies in the persistently high rates of in-work poverty in the United States.

Concern is also expressed that your Excellency's Government may have failed to protect against human rights abuses within its territory and/or jurisdiction by third parties, including Amazon.com, Inc., DoorDash, Inc., and Walmart U.S., concerning their roles in contributing to in-work poverty among their employees and violating US and international labour protections. This duty to protect human rights requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

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 provide information regarding the measures that your Excellency's Government has, or is planning to put in place, in response to widespread in-work poverty in the country, and what progress has been achieved so far.
3. Please provide information regarding the measures that your Excellency's Government has, or is planning to put in place, to address allegations that national minimum wage legislation is not adjusted for inflation, does not ensure a living wage, contains significant exceptions, and is routinely circumvented through worker misclassification.

⁹⁸ 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/>.

⁹⁹ 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>.

¹⁰⁰ 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 Excellency's Government has, or is planning to put in place, to address allegations that US labour law functions as a barrier to union organizing and, in many cases, permits anti-union discrimination, restrictions on collective bargaining, and replacement of striking workers.
5. Please provide information regarding the measures that your Excellency's Government has, or is planning to put in place, to address allegations that even where protections for unionization exist, notoriously inadequate consequences for labour violations fail to incentivize corporations to respect the rights guaranteed by the National Labor Relations Act.
6. Please provide information regarding the measures that your Excellency's Government has, or is planning to put in place through executive action or comprehensive federal legislation, that address the range of issues facing women that contribute to in-work poverty including equal pay, paid leave, pregnancy accommodations, protection against sexual harassment, and improved social protections.
7. Please provide information on how your Excellency's Government is addressing allegations that business enterprises under its jurisdiction are contributing to in-work poverty among their employees and violating US and international labour protections, including wage theft, widespread misclassification of workers, and aggressive action against unionization.

I would appreciate receiving a response within 60 days. After this time, this communication and any response received from your Excellency's Government 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 measures be taken to address the issues highlighted in this letter, including the actions of private companies, halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express my concerns 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. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that letters on this matter are also being sent to Amazon.com, Inc., DoorDash, Inc., and Walmart U.S., regarding their involvement in the above allegations.

Please accept, Excellency, 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 Excellency's Government 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 your Government 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 the attention of your Government to the ILO 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 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 to collective bargaining.

I would also like to highlight the Guiding Principles on Extreme Poverty and Human Rights and the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council respectively through resolution 21/11 and 17/4. The Guiding Principles on Extreme Poverty and Human Rights urge States to develop a comprehensive national strategy to combat poverty and social exclusion, including a clear implementation scheme and appropriate remedies for cases of noncompliance. The principles also encourage States to “[a]dopt rigorous labour regulations and ensure their enforcement through a labour inspectorate with adequate capacity and resources to ensure enjoyment of the right to decent working conditions” and to “ensure that all workers are paid a wage sufficient to enable them and their family to have access to an adequate standard of living.” Additionally, the Principles instruct states to respect and promote freedom of association. I would like to further remind your Excellency's Government that States, according to the principles, have a duty to prevent human rights abuses by non-state actors, including business enterprises. The Guiding Principles on Business and Human Rights 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.¹⁰¹

¹⁰¹ Guiding Principles on Business and Human Rights, para. 13.

A Living Wage

International human rights law recognizes a right to a living wage. 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 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".¹⁰²

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.

I would like to remind your Excellency's Government of its obligation to refrain from acts which would defeat the object and purpose of these 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

¹⁰² E/C.12/GC/23, para. 18.

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.

Although the United States has not ratified these conventions, by virtue of its membership in the International Labour Organization, your Excellency’s Government has agreed to promote these fundamental rights.

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 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.¹⁰³ 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.¹⁰⁴ The refusal to hire or promote workers who are affiliated with a trade union,¹⁰⁵ the dismissal of workers having engaged in trade union activities,¹⁰⁶ the discriminatory use of fixed-term contracts for trade union activists,¹⁰⁷ or the deportation of migrant workers engaging in union activities,¹⁰⁸ would therefore be a violation of these provisions.¹⁰⁹ 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,¹¹⁰ as well as under ILO Convention (No. 98).¹¹¹

States should also facilitate and promote collective bargaining, to allow workers and employers to reach an agreement through their respective organisations,

¹⁰³ Human Rights Committee, General Comment No. 18 (1989): Non-discrimination, para. 12.

¹⁰⁴ E/C.12/ARG/CO/4 (2018) (Argentina), para. 34.

¹⁰⁵ E/C.12/ROU/CO/3-5 (2014) (Romania), para. 14.

¹⁰⁶ CCPR/C/CHL/CO/5 (2007) (Chile), para. 14.

¹⁰⁷ CCPR/C/BLR/CO/5 (2018) (Belarus), paras. 54-55.

¹⁰⁸ CCPR/C/DOM/CO/6 (2018) (Dominican Republic), paras. 31-32.

¹⁰⁹ E/C.12/MLI/CO/1 (2018) (Mali), paras. 28-29; E/C.12/LKA/CO/5 (2017) (Sri Lanka), paras. 33-34.

¹¹⁰ 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.

¹¹¹ *Compilation of decisions of the Committee on Freedom of Association* (International Labour Organisation: Geneva, 2018), para. 1099.

in particular on wages. They should avoid interfering with the right of collective bargaining, for instance by imposing excessive requirements concerning the representativity of the unions allowed to enter into collective bargaining¹¹², or by imposing that unions operate with collective bargaining "licenses,"¹¹³ or through other means.¹¹⁴

I wish to draw your Excellency's Government's attention to the details of article 8 of the ICESCR in particular, which presents that parties undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

Mindful of this obligation, I would like to remind your Excellency's Government of the ILO Convention on Freedom of Association and Protection of the Right to Organise, No. 87 (1948), which requires ILO members "to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise".

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 Rights¹¹⁵ and the Guiding Principles on Extreme Poverty and Human Rights¹¹⁶ 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

¹¹² E/C.12/DOM/CO/4 (2016) (Dominican Republic), para. 39.

¹¹³ E/C.12/IRL/CO/3 (2015) (Ireland), para. 19.

¹¹⁴ E/C.12/LBN/CO/2 (2016) (Lebanon), para. 40.

¹¹⁵ Human Rights Council Res. 17/4 (June 2011).

¹¹⁶ Human Rights Council Res. 21/11 (Sept. 2012), paras. 100-101.

domestic laws exist or are fully enforced in practice,"¹¹⁷ 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.¹¹⁸ 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 hours or wages of unionized workers.

¹¹⁷ E/C.12/GC/24, para. 5.

¹¹⁸ ILO Committee of Experts, Promoting employment and decent work in a changing landscape (Geneva: ILO, 2020), p. 127.