

Alleged forced labor in China: The role of textile brands in the Netherlands

Q&A_____

What is the case about?

In December 2021, ECCHR brought a criminal complaint before the Dutch prosecutor against the managements of several textile brands headquartered in the Netherlands. In addition to Dutch brands including State of Art, the complaint focuses on several international US fashion brands that have their European headquarters in the Netherlands, such as Patagonia and Nike. These brands are possibly encouraging the Chinese government to carry out alleged forced labor against the Uyghur population in the Chinese region of Xinjiang Uyghur Autonomous Region (Xinjiang or XUAR).

Research from organizations like Amnesty International shows that since 2017, the Chinese government may have detained a large number of Uyghurs in “re-education camps”. Some former detainees may be forced to work. In a separate policy, known as “poverty alleviation”, rural Uyghurs, mostly in southern Xinjiang, who are not engaged in formal employment may also be forced to work. Their “recruitment” may take place via government-organised “job fairs”. The region's garment industry, including the production of cotton and yarn, or the manufacture of ready-made garments, are implicated to be an important destination of forced labor. This might be part of a broader Government strategy of these minorities’ persecution. The companies named in the complaint have allegedly directly or indirectly sourced their products from the region.

Already in April 2019, multi-stakeholder initiative Fair Labour Association pointed towards the high risk of forced labor in the region, and in December 2020 it forbade its member companies to directly or indirectly buy from the region. In September 2020, five auditing companies also said they would no longer carry out audits in Xinjiang. Nevertheless, some companies continue to source from suppliers either based in Xinjiang or those that get their raw materials from the region. By doing so, they are contributing to making a business model profitable that is allegedly heavily relying on forced labor.

Based on public information disclosed by the investigated brands and recent [public reporting](#), the brands may source products from companies that seem to use cotton from Xinjiang, possibly produced with forced labor.

The International Labor Organisation (ILO) defines forced labor as any work or service which is exacted from persons under the menace of penalty and for which they have not offered themselves voluntarily. According to available reports from the region, the Chinese government is cracking down on the Uyghur minority with massive surveillance and arbitrary detentions. People who are in detention or even so-called reeducation camps are forced to work in factories. After internment in the “re-education camps”, they are sometimes sent directly to industrial jobs, for example in the textile industry. In view of the general climate of repression, it seems likely not possible either for Uyghurs from rural areas to refuse employment.

What do we want to achieve?

The complaint in the Netherlands is part of a series of criminal complaints in Europe against Western brands over their alleged involvement in Xinjiang. In September 2021, ECCHR brought a similar [complaint](#) in Germany and in April 2021, we [supported](#) a criminal complaint brought by Sherpa in France.

The complaints are seeking to challenge Western brands' alleged benefitting from possible forced labor in Xinjiang. The cases demonstrate that international textile brands, retailers, and their management may potentially expose themselves to criminal liability if sourcing from Xinjiang. The companies should take international criminal law standards into account when assessing human rights risks if they entertain business relationships to facilities or companies active in the region. It is too often overlooked that forced labor, when it is part of a systematic attack on certain populations, can also be a crime against humanity in the form of forced labour. Corporate managers must review and adjust their purchasing policies accordingly.

The case also illustrates the urgent need for the Netherlands to pass the Responsible and Sustainable International Business Conduct Bill (Wet verantwoord en duurzaam internationaal ondernemen), which is currently being debated in the Dutch Parliament. Under the current version of the proposed law, brands would have a duty of care and would be required to conduct risk analyses and identify and cease, prevent or mitigate human rights risks including forced labor in their supply chains. If they cannot cease or mitigate risks, brands should responsibly disengage from those suppliers.

What is the legal basis of the criminal complaint in the Netherlands?

ECCHR is of the opinion that by using suppliers who used forced labour or exploitation, directly or indirectly, the intended suspects in Dutch textile brands may have reaped the benefits of this exploitation and thereby took advantage of it. Eventually, the exploitation allegedly resulted in financial gain for Dutch textile brands. The criminal complaint before the Dutch prosecutor alleges the brands are aiding and abetting forced labor in XUAR as a crime against humanity. The complaint is also based on the specific crime of benefitting from labour exploitation criminalised by Art. 273f subsection 1 under °6 of the Dutch Criminal Code. Furthermore, by purchasing goods from suppliers allegedly involved with the Chinese governmental forced labor program, ECCHR is of the opinion that Dutch textile brands could allegedly be accused of money laundering or receiving stolen goods produced by means of modern-day slavery according to Articles 416-417bis and 420bis et seq. of the Dutch Criminal Code.

Because the act of profiting from the exploitation and the possession of an object obtained by means of a crime takes place in part in the Netherlands and because Dutch textile brands in the Netherlands profit from the low wage costs and exploitation of the Uyghur minority, Dutch prosecutors are the competent authorities to prosecute the case. Furthermore, crimes against humanity can be prosecuted (globally) under the principle of universal jurisdiction, which means that Dutch authorities can prosecute these cases irrespective of whether the crimes have been committed on Dutch territory. Finally, we are of the opinion that the fact that these companies have their (European) headquarters in the Netherlands means that they can and should be held accountable under Dutch law and before Dutch courts.

Why do we pursue a criminal procedure?

Forced labor has been qualified as a grave human rights violation and, in connection to a widespread and systematic attack on the civilian population, as a crime against humanity. Unfortunately, in December 2020, the Dutch Minister of Foreign Trade rejected a Parliamentary motion that called for a ban on the import of clothing produced in Xinjiang. Since the Dutch politicians refuses to take action, it's up to the courts to make a ruling. Considering the severity of the alleged crimes, criminal justice authorities should investigate. Given the lack of transparency provided by the companies and Dutch and EU customs agencies, the investigative powers of the prosecutor are necessary to achieve complete fact finding and accountability.

And why not a civil compensation lawsuit?

Workers who were submitted to forced labor can also pursue civil claims against the companies. But given the highly repressive situation in Xinjiang, it is almost impossible for those affected to bring such individual compensation claims: workers are simply unable to take legal action against companies along the supply chain while still in heavily surveilled Xinjiang. They would have to fear for themselves and their families. Even if they were able to leave the region, this would probably have dire consequences for their relatives who remain in XUAR.

Why is the case relevant?

In February 2021, the Dutch parliament passed a non-binding motion saying that China's treatment of ethnic minorities in the region amounted to genocide, the first European country to do so after similar moves by the US and Canada. European governments cannot entertain double standards when it comes to China. If they criticize China on its human rights record, as they currently do, they also need to hold corporate actors legally accountable, when they are profiting from human rights abuses amounting to crimes against humanity in China.

Our case also exemplifies that companies need to consider the standards of international criminal law when operating in countries with repressive regimes. The garment sector is prone to labor rights abuses, both in direct contractual relations as well as deeper in the supply chain. Despite repeated promises to do better, fashion brands have not sufficiently advanced in ensuring their products are free of forced labor and other labor rights violations in order to respect workers' rights around the world. When situations of forced labor reach the (high) threshold of international crimes, companies but also law enforcement agencies need to act immediately.

How can companies take action against forced labor in Xinjiang?

This case shows once again how companies need to be careful when operating in countries with repressive regimes. Companies need to ensure that they are neither a beneficiary, nor an accomplice by act or omission, to forced labor.

Recently debated mandatory human rights due diligence legislation in the Netherlands would require companies to conduct a human rights risk assessment of their supply chain. As our

research shows, a proper human rights risk analysis would have revealed to the respective companies their problematic links to forced labor in the region. Mandatory HRDD laws then would require companies to act appropriately upon the detected risks.

As a first step, brands would need to identify any suppliers that are located, active or have subsidiaries in the Xinjiang region. They would then need to assess the likelihood that these supplying companies are linked to forced labor. They should address any actual or potential involvement of the companies that supply them in state-sponsored forced labor programs. If this is unfruitful or there is no prospect for addressing forced labor, brands and retailers should disengage from business relationships with any suppliers and with those with subsidiaries in the region. Brands should also endorse the [call to action](#) of the Coalition to End Uyghur Forced Labor, which prescribes detailed steps to ensure companies do not contribute to abuses in Xinjiang.

What is ECCHR's role in the case?

ECCHR conducted factual research into the case and provided our legal thinking to Dutch law firm Prakken d'Oliveira, who wrote the complaint.

So far, we have had no direct contact with witnesses from the forced labor camps or those living in the XUAR region due to the precarious security situation in China.

We previously have worked on cases of corporate responsibility for international crimes (like [Lafarge](#) or [Mercedes Benz Argentina](#)) as well as cases in which certain products sold by a company were used to commit serious human rights violations (see [Yemen](#) or [Turkey](#) cases).

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