

## **Alleged forced labor in China: The role of German textile brands and supermarket chains**

### Q&A\_\_\_\_\_

#### **What is the case about?**

In its criminal complaint from September 2021, ECCHR asks the German Federal Public Prosecutor to investigate several German textile brands and retailers and their possible responsibility for alleged forced labor of the Uyghur minority in the Chinese region Xinjiang.

According to research by organizations like Amnesty International, there are strong indications that the Chinese government forces the Uyghur population and other Muslim minorities in the Xinjiang Uyghur Autonomous Region (Xinjiang or XUAR) to work in the garment industry, either in the supply of cotton and yarn, or in the manufacture of ready-made garments. This might be part of a broader strategy of these minorities' persecution. The companies named in the complaint have directly or indirectly sourced their products from the region.

Since 2017, there are increasing reports of human rights violations in Xinjiang. Multi-stakeholder initiatives like the Fair Labour Association pointed towards the high risk of forced labor in the region in April 2019, and in December 2020 forbade their member companies to directly or indirectly buy from the region. In March 2020, the Better Cotton Initiative declared that it was no longer able to conduct independent visits in XUAR factories. Nevertheless, some companies continued to source from Xinjiang in the course of 2020, some until mid-2021. By doing so, they have contributed to making a business model profitable that is allegedly heavily relying on forced labor.

The companies investigated by ECCHR had various firms with production facilities in Xinjiang on their supplier lists. There are indications that these production facilities either employ former Uyghur camp inmates, or hire Uyghurs through state-organized job fairs.

The International Labour Organization defines forced labor as follows: Article 2 of ILO Convention 29 says that forced labor is 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 said to be forced to work in factories. After the reeducation camps, they are apparently sent directly to industrial jobs, for example in the textile industry. There is no question of a free choice of job here, nor do people who are brought to so-called job fairs by government agencies as part of the government's plan to fight poverty have any choice. In view of the general climate of repression, it seems likely not possible either for Uyghurs from rural areas to refuse employment.

The reported companies deny the allegations of forced labor in their supplier factories, and, according to their own statements, have terminated these supplier relationships by the end of 2019, in mid-2020 or at the end of 2020.

## **What do we want to achieve?**

The case demonstrates 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. Corporate managers must review and adjust their purchasing policies accordingly.

By now, this is part of a mandatory human rights due diligence, which has been legislated recently in the German supply chain law and that extends to suppliers abroad.

Based on their risk analysis, the brands should aim to identify and cease, prevent or mitigate human rights risks including forced labor. If this is not possible, they should cease their business relations.

## **What is the legal basis of the criminal complaint in Germany?**

Chinese government policies of arbitrary detention, mass surveillance and repression in Xinjiang are part of a broader scheme of persecution of the Uyghur population. Forced labor, as allegedly sponsored by the Chinese government and its subordinates, can be classified as a crime against humanity under Paragraph 7 I No. 3 of the Code of Crimes Against International Law (CCAIL). ECCHR has several indications of the use of forced labor in the Chinese supplier companies investigated. Even after many media and research reports have been published and multi-stakeholder initiatives flagged the high risk of forced labor, discounters and brands have allegedly continued to place orders with suppliers from the region until late 2019, mid- or end of 2020, or even after that. Therefore, in ECCHR's view, the German discounters and textile brands are allegedly aiding and abetting the government forced labor program in the XUAR, as they help their suppliers' business model to stay profitable. Due to the fact that the ordering process takes place within textile companies based in Germany, it is the duty of the German authorities to prosecute these acts.

State-sponsored forced labor has long been established as a crime against humanity. The precedent was set in the 1940s in the Nuremberg Follow-up Trials where businesses in particular were seen to perpetrate or aid and abet the Nazi crimes.

## **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. Considering the severity of the alleged crimes, criminal justice authorities should investigate.

## **And why not a civil compensation lawsuit?**

Worker 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.

Apart from that, complaints under the recently adopted [German supply chain law](#) are also possible, once the law enters into force in 2023.

## **Are we punishing companies that are at least transparent about their suppliers?**

Our criminal complaint is based mainly on the supplier lists that the companies themselves published. However, this does not mean that companies that are more transparent than others are now “punished” by our legal action. If sustaining business relationships to companies that allegedly use forced labor should be qualified as criminal behavior, law enforcement authorities must investigate. Their investigations must be directed against both companies that published their suppliers as well as those who have not. Being transparent, an in itself laudable act, but cannot exempt companies from criminal liability.

## **Why is the case relevant?**

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, if 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 engaging 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? Would the German supply chain law have changed anything in this situation?**

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

Recently introduced or debated mandatory human rights due diligence legislation like the German supply chain law obliges companies to conduct a human rights risk assessment

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

As a first step, brands would need to identify any suppliers that are located, are 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.

The reported companies have categorically denied their involvement in forced labor in XUAR and have stated that they terminated their supplier relationships with certain suppliers at various points in time. However, they have not outlined the scope and accuracy of their verification procedures. They would have been obliged to do so under the German supply chain law. Furthermore, it must be clarified whether the termination of supply relationships was early enough to avoid criminal liability. It is questionable whether, with increasing reporting since 2018, a termination of supply relationships in the middle or end of 2020 is not too late to exclude criminal liability. Even the German supply chain law would require that companies respond to human rights violations at their direct suppliers and, in the case of concrete indications, also at indirect suppliers within a reasonable timeframe. Whether the German textile companies have done this needs to be clarified.

## **What is ECCHR's role in the case?**

ECCHR conducted factual research into the case, developed the legal proceedings in Germany, and provided its research results to its European partners. In April 2021, we [supported](#) a similar criminal complaint by our partner Sherpa in France. Already in July 2021, national authorities started investigations against several French fashion brands.

So far, we have had no direct contact to 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](#)) or 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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