



# Human Rights Now

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### Japanese Companies' Links to Forced Labor in Xinjiang Uyghur Autonomous Region<sup>1</sup>

Human Rights Now (HRN), a Tokyo-based international human rights NGO, expresses grave concerns about serious human rights violations against Uyghurs and other Turkic Muslims for forced labour inside and outside China's Xinjiang Uyghur Autonomous Region (UAR), as well as detentions, with links to Japanese companies, and we urge companies, investors, and the Japanese government to take immediate actions.

Currently, more than 250 companies and organizations, including HRN, have called for action to end and prevent involvement in the forced labour of Uyghurs,<sup>2</sup> but the responses of Japanese companies concerning this situation are not commensurate with the seriousness of the human rights violations.

In this report, we propose measures that Japanese companies, investors, and the Japanese government should implement based on references to Japanese companies in the report, "Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang" by the Australian Strategic Policy Institute (ASPI).<sup>3</sup> In this vein, a survey was conducted by the Japan Uyghur Association at the end of April 2020.

#### 1. Large-scale human rights violations against Uyghurs, including concentration camps

In May 2020, HRN issued a statement calling on the Chinese government to immediately end mass arbitrary detentions, abuses, forced labour, and the destruction of Muslim culture in Xinjiang UAR.<sup>4</sup> The statement noted the systematic and serious human rights violations committed by the Chinese government against Turkic Muslims in Xinjiang, a region of 12 million people, under their "Strike Hard Campaign against Violent Extremism".

These human rights violations include a comprehensive system of arbitrary and abusive detention and forced labour for more than one million people in re-education camps, mass surveillance and coercive and abusive home stays by officials, the suppression and punishment

<sup>1</sup> This is a translation of the Japanese version released on 28 Aug. 2020, available at <https://hrn.or.jp/activity/18457/>.

<sup>2</sup> <https://enduyghurforcedlabour.org/>.

<sup>3</sup> Xu, et al, "Uyghurs for sale", ASPI, 1 Mar. 2020, <https://www.aspi.org.au/report/uyghurs-sale>.

<sup>4</sup> "The Government of China Must Immediately End Its Campaign of Mass Detentions, Abuse, Forced Labor, and Destruction of Muslim Culture in Xinjiang", HRN, 1 May 2020, <https://hrn.or.jp/eng/news/2020/05/01/xinjiang-statement/>.

of various forms of cultural and religious expression, and the widespread destruction of cultural and religious sites.

Systematic and widespread human rights violations have also been revealed under the campaign, including torture, inhuman treatment, denial of justice, surveillance and violations of the freedoms of religion, expression, and association. The severity of these human rights violations, as well as their wide scale and systematic planning, may constitute serious crimes against humanity.

## **2. State duties and corporate responsibilities under the UN Guiding Principles on Business and Human Rights**

Under these circumstances, companies connected to supply chains and forced labour in China's Xinjiang UAR, including Japanese companies, must be held accountable. Aware of the situation in Xinjiang, their use of suppliers whose production is based on the forced labour of detainees in and out of the region, and which is also integrated with the mass incarceration program, is a serious problem in terms of involvement with serious human rights violations.

The UN Guiding Principles on Business and Human Rights ("Guiding Principles"), unanimously endorsed by the UN Human Rights Council in 2011, clearly states that business enterprises have a responsibility to respect fundamental international human rights, consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO Core Conventions. While international human rights have evolved around the obligations of states, the Guiding Principles indicate that, in light of the enormous influence that companies have on people and society, companies should pursue not only just economic interests, but also identify, prevent and mitigate negative impacts on human rights, i.e., implement human rights due diligence and provide or call for remedies for human rights violations. The scope is not limited to the company itself but extends to the entirety of its activities, i.e., throughout its entire supply chains and value chains.

At the same time, the Guiding Principles also require states to set clear expectations for corporate implementation of human rights due diligence and to support the effort. Although the Guiding Principles themselves are soft law that do not have legally binding force, since their enactment, each state has been establishing a National Action Plan (NAP) that provides a roadmap for states to meet their obligations. The Japanese government also declared in 2016 that it would formulate a NAP, and it released its draft NAP for public comment in February 2020. Currently, revisions are being considered in response to the public comments, and the final version is expected to be released by the end of 2020.<sup>5</sup>

In addition to NAPs, there is a growing movement in countries around the world to legislate corporate Guiding Principle responsibilities, including the UK's Modern Slavery Act (2015), France's Corporate Duty of Vigilance Law (2017), and Australia's Modern Slavery Act

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<sup>5</sup> "Business and Human Rights", MOFA, 16 Oct. 2020, [https://www.mofa.go.jp/fp/hr\\_ha/page23e\\_000551.html](https://www.mofa.go.jp/fp/hr_ha/page23e_000551.html). Update: Japan launched its NAP on 16 Oct. 2020, [https://www.mofa.go.jp/press/release/press4e\\_002939.html](https://www.mofa.go.jp/press/release/press4e_002939.html).

(2018). Furthermore, in April 2020, the EU Commissioner for Legal Affairs explicitly stated that the EU would begin consideration of enacting mandatory human rights and environmental due diligence legislation in the EU by the end of 2021, and the content of specific legislation is currently under consideration.

Corporate responsibility for international human rights is also very relevant to the 2030 Agenda for Sustainable Development (SDGs) by the UN and to the growing interest in ESG investment. In the body of the SDGs, the participation of companies in solving the challenges of SDGs is expected, and the premise that companies will adhere to the Guiding Principles is stated (paragraph 67). For ESG investment, the "S" or "society" in ESG includes human rights issues, and focusing on ESG means proactively addressing human rights issues, which is also in line with the Guiding Principles.

### **3. Corporate responsibility for human rights violations inside and outside Xinjiang UAR**

The ASPI report, released at a time when the international community attached importance to corporate responsibility for international human rights, asks once again how companies can fulfil their responsibilities towards forced labour, which is a serious violation of human rights. The report shows that not only is there forced labour in Xinjiang UAR, which has been reported in the past, but also that people from there are sent to various other parts of China to engage in forced labour. It was noted that 83 global companies were allegedly involved in the forced labour of Uyghurs, including 12 Japanese companies.

In particular, one of the major industries in Xinjiang, known as "Xinjiang cotton", accounts for more than 80% of Chinese cotton, which accounts for about 20% of the world's cotton supply, and it is known as one of the world's three most expensive cotton products in the apparel industry of Japan, the United States, and Europe. In a situation where such a familiar commodity is highly likely to be associated with forced labour, companies are required to actively address the issue in collaboration with various stakeholders in order to fulfil their responsibility to respect human rights.

In addition to corporate responsibility, it is extremely important that Japanese civil society as a whole, including consumers, learn about the relationship between their lives and the forced labour of Uyghurs inside and outside the Xinjiang UAR, and that effective measures must be implemented for improvements as soon as possible.

HRN has signed on to and endorsed a "Call to Action" by international human rights NGOs calling on companies to take effective action. This action currently has the support of more than 250 companies and organizations.<sup>6</sup>

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<sup>6</sup> <https://enduyghurforcedlabour.org/>.

#### 4. Questions for and Answers from Japanese Companies

The Japan Uyghur Association sent questionnaires on April 30 to Japanese companies suspected of being involved in forced labour. It asked the companies to respond to the following questions (excerpts from the questionnaire are as follows).<sup>7</sup>

1. What is your opinion on the possibility that your products are manufactured by the forced labour of Uyghurs as shown in ASPI's reports?
2. In response to question 1, if your company is unable to confirm this at this time, would it be possible, from a business ethics and humanitarian perspective, to ask the Chinese government or your supplier to confirm the reports?
3. Do you implement mandatory human rights due diligence in your supplier selection?
4. If some of your products are manufactured by the forced labour of Uyghurs, is it possible to suspend the manufacture and procurement of those products in China for the sake of compliance with international and domestic laws, business ethics, and humanitarian reasons?
5. With regard to the suspicion that your company is unintentionally involved in the forced labour of Uyghurs, please tell us whether you are willing to investigate the actual situation and take measures to eliminate the suspicion.

The following is a summary of the responses from Japanese companies.

	Company name	Date of response	Responses	Has a human rights policy
1	Fast Retailing Co., Ltd.	18 May 2020	<ul style="list-style-type: none"> <li>• No products are produced in Xinjiang UAR.</li> <li>• The companies referred in the report are not production partners or designated material plants, and we have no transactions with them.</li> </ul>	Yes
2	TDK Corporation	4 June 2020	No response to any of the details mentioned in the report.	Yes

<sup>7</sup> Japan Uyghur Association, "Uiguru hito no kyōsei rōdō ni kan'yo shite iru utagai ga fujō shite iru Nihon kigyō e no kōkai shitsumon-jō ni tsuite no go hōkoku", 25 May 2020, <https://uyghur-j.org/japan/2020/05/%E3%82%A6%E3%82%A4%E3%82%B0%E3%83%AB%E4%BA%BA%E3%81%AE%E5%BC%B7%E5%88%B6%E5%8A%B4%E5%83%8D%E3%81%AB%E9%96%A2%E4%B8%8E%E3%81%97%E3%81%A6%E3%81%84%E3%82%8B%E7%96%91%E3%81%84%E3%81%8C%E6%B5%AE%E4%B8%8A/> (Japanese).

3	Mitsubishi Electric Corporation	11 June 2020	<ul style="list-style-type: none"> <li>We confirmed that none of our primary suppliers manufacture using forced labour.</li> <li>In accordance with the CSR procurement policy that prohibits forced labour, we will suspend business with any supplier who is suspected of using forced labour.</li> </ul>	Yes
4	Sony Corporation	May 2020	No response to any of the details mentioned in the report.	No
5	Hitachi, Ltd.		No response to any of the details mentioned in the report.	Yes
6	Japan Display Inc.	May 2020	No relevant facts mentioned in the report were confirmed by fact-finding surveys conducted with the secondary suppliers.	No
7	Mitsumi Electric Co., Ltd.	June 2020	<ul style="list-style-type: none"> <li>No relevant transactions mentioned in the report were found by investigation.</li> <li>It is clearly stated in the basic transaction agreement that the business partners must comply with the CSR procurement guidelines that prohibit forced labour, the failure of which will be considered a cause for termination.</li> </ul>	No
8	Nintendo Co., Ltd.	June 2020	No labour conditions described in the report were found by fact-checking our production partners.	Yes
9	Sharp Corporation	June 2020	As far as we have investigated, the transactions mentioned in the report have not been confirmed, and we do not believe that there is a relationship.	No
10	Toshiba Corporation	July, 2020	We confirmed that the suppliers listed in the report are not direct suppliers, including consolidated subsidiaries, by investigating our transactions.	Yes
11	Panasonic Corporation		No response. However, there is a statement by the company in the investigation report	Yes

			that the company has "no direct contractual relationship with any of the suppliers involved in the labour scheme (as indicated by this investigation report)."	
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\*MUJI (*Ryohin Keikaku*) is also mentioned in the report, but a letter of inquiry to the company has not yet been issued. According to the report, MUJI "sources good quality cotton from many places around the world, including India, Turkey, the US and China" and "all of this cotton and yarn has been independently verified by the International Labour Organization (ILO) for organic international certification, which is conditional on compliance with working conditions, including forced labour."<sup>8</sup>

## 5. Evaluation of the responses of Japanese companies

With the exception of Panasonic Corporation, the fact that companies that received the questionnaire responded to it is commendable as an attitude of respect for dialogue with stakeholders. In addition, each company's approach, including their human rights policy and procurement guidelines for suppliers, is also important in promoting effective human rights due diligence.

However, the responses to this situation are inadequate in terms of the Guiding Principles and do not sufficiently comply with each company's human rights policy or code of conduct.

### (1) Implementation of the survey

TDK Corporation, Sony Corporation, and Hitachi, Ltd. did not respond to any of the matters mentioned in the report but answered only to the general human rights and procurement policies of their companies. We urge these companies to first conduct investigations into the contents of the report and publish their results as soon as possible.

### (2) The scope of the survey

The Guiding Principles call for addressing human rights risks throughout a company's entire supply chains, not just its direct suppliers. Therefore, the absence of transactions with any of the companies alleged to have conducted forced labour mentioned in the report is not sufficient to address the situation, and it requires investigations into the involvement in human rights abuses in the investigating company's supply chains. It is clear that we cannot say that even if a company's direct suppliers were not engaged in forced labour that that company was

<sup>8</sup> "UNIQLO, muinryōhin ni Uiguru mondai "tobihi"... ninki no `shinkyōmen' o kaigai media ga mondaiji", Zakzak, 1 May 2020, <https://www.zakzak.co.jp/soc/news/200105/for2001050004-n1.html> (Japanese). Related story in English: Handley & Xiao, "Japanese brands Muji and Uniqlo flaunt 'Xinjiang Cotton' despite Uyghur human rights concerns", ABC, 4 Nov. 2019, <https://www.abc.net.au/news/2019-11-01/muji-uniqlo-flaunt-xinjiang-cotton-despite-uyghur-human-rights/11645612>.

unconnected to forced labour completely. It is commendable as an effort to ensure the effectiveness of the procurement policy that Mitsubishi Electric Corporation and Mitsumi Electric Co., Ltd. created a CSR procurement policy that prohibits forced labour and makes it a condition for continuing contracts with suppliers. However, such a procurement policy should be applied to secondary suppliers as well, in line with the Guiding Principles. In this regard, companies are required to disseminate their procurement policy and conduct investigations into its implementation status as part of their responsibility to respect human rights in this situation.

### (3) Survey method

The companies that reported that they have conducted investigations are also commendable for their proactive approach, but there is still room for doubt as to whether their investigations were sufficient.

The Guiding Principles recommend the use of outside experts in identifying and addressing human rights risks. This is because the nature of human rights risks and the disproportionate power relationship between employees and employers make it unlikely that employees will be able to report human rights violations by their employers.

This is why there is a need for an objective investigation by an industry trade union or some third party to identify the existence of human rights risks. In this regard, none of the companies that have reported conducting investigations provided any details of how they were conducted. Accountability and transparency, which lead to a constructive dialogue with stakeholders, are important to ensure corporate responsibility.

Therefore, in this situation as well, even if the company reaches the conclusion that "there is no fact that corresponded to forced labour" as its result, it is necessary to publicise the specific investigation methods, the facts, and the evaluation criteria that led to such a conclusion. In doing so, the company should engage in dialogue with stakeholders and outside experts on whether the investigation methods, the facts, and the evaluation criteria are objective and effective from the perspective of international human rights.

### (4) Other Industry Trends

This situation has been attracting a great deal of international attention, and a variety of efforts have been made by companies other than Japanese companies. For example, since the situation came to light, a major apparel brand, Patagonia, has been discussing the issue with the Fair Labor Association, a human rights NGO that works on labour issues, and it has been considering how to proceed. Recently, the company announced its withdrawal from Xinjiang UAR, where it had been procuring materials, and it prohibited its global suppliers from procuring and processing materials from the region.<sup>9</sup> The American Apparel & Footwear

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<sup>9</sup> Byars, "Update: Patagonia Statement on Xinjiang", Patagonia, 23 July 2020, <http://www.patagoniaworks.com/press/2020/7/23/update-patagonia-statement-on-xinjiang>; Chua, "Patagonia' ga shinkyōuigurujichiku kara no sozai chōtatsu o sutoppu" WWD, 13 Aug. 2020, <https://www.wwdjapan.com/articles/1109040> (Japanese).

Association, Footwear Distributors and Retailers of America, The National Retail Federation, The Retail Industry Leaders Association, and The United States Fashion Industry Association reaffirmed a policy of zero tolerance for forced labour, accurately assessed the issues, offered constructive solutions to increase transparency, and issue a joint statement on July 23 calling on the government to immediately establish a multi-stakeholder working group to protect both workers' rights and the integrity of supply chains.<sup>10</sup>

## 6. Investors' Responsibility

Under the Guiding Principles, investors are also expected to themselves take responsibility to respect human rights. The UN Principles for Responsible Investment (PRI), which promote environmental, social, and governance (ESG) investment, also often stress that it is the responsibility of investors to respect and promote human rights. The Investor Alliance for Human Rights, a collective action platform for responsible investment based on respect for basic human rights, on 4 August 2020 published a guide to help investors assess their potential risks and to provide tools they can use to engage relevant companies linked to Xinjiang UAR.<sup>11</sup> The following is a summary of the issues the guide discusses:

- **Human Rights Due Diligence** and the challenges of applying commonly-used methods of human rights due diligence to business activities in or connected with the Uyghur region;
- **Assessing Exposure and Engaging with Portfolio Companies** during investment decision-making processes and throughout the investment lifecycle for salient human rights risks;
- **Guiding Questions for investors** to address with portfolio companies in order to evaluate efforts to conduct human rights due diligence and to address and manage actual or potential human rights risks in their operations and value chains, connected to the Uyghur Region;
- **Collaborative action** with other investors, civil society stakeholders, international organizations, and policymakers as likely the most effective way to amplify investor leverage to encourage companies to take action to address systemic human rights harms.

<sup>10</sup> Harden, "AAFA, FDRA, NRF, RILA, USFIA on Supply Chains, Xinjiang: Joint Associations Statement", 23 July 2020, <https://www.rila.org/focus-areas/public-policy/joint-statement-from-aafa-fdra-nrf-rila-and-usfia>.

<sup>11</sup> "Human Rights Risks in Xinjiang Uyghur Autonomous Region - Practical Guidance for Investors", IAHR, 8 Mar 2020, <https://investorsforhumanrights.org/publications/cover-human-rights-risks-xinjiang-uyghur-autonomous-region-practical-guidance>.



## 7. Recommendations

Based on the above, HRN makes the following recommendations for companies, investors, and the Japanese government.

### 7-1 Recommendations for companies

We call on all companies, including those that have already been implicated in forced labour, to take the following actions.

Companies should:

- 1) Follow the Call to Action regarding the risks of involvement in Uyghur forced labour in and outside of Xinjiang UAR in the company's business activities, including their entire supply chains, in a way that ensures objectivity and effectiveness. Also, assess and publicise human rights due diligence identifying whether the company has production facilities based in the Xinjiang UAR or has business relationships with any of the companies in the region, extending to second-level and subsequent companies in their supply chains.
- 2) Identify and map business relationships. If any business relationships with A through D below are identified, assume that the supply chain is linked to forced labour of Uyghurs and other Turkic Muslim groups, dissolve business relationships involving all production facilities in the Xinjiang UAR that are used for the production of apparel and cotton products, and otherwise implement the content of the Call to Action:
  - A. Suppliers and subcontractors of production facilities that produce apparel or other cotton products in the Uyghur region;
  - B. Suppliers and subcontractors based outside the Uyghur region with subsidiaries or operations in the Uyghur region that accept Chinese government subsidies or employ government provided workers; these business relationships must be identified and mapped regardless of whether the products are produced in the Uyghur region or not;
  - C. Suppliers and subcontractors employing Uyghur workers provided by the government outside the Uyghur region; suppliers with multiple factories/workplaces must also be identified and mapped, regardless of whether Uyghur workers sent by the government are employed in the particular factory/workplace;
  - D. Business relationships with Chinese and international suppliers using materials produced in Xinjiang UAR such as fabrics, yarns, or cottons.
- 3) Obtain sufficient information on human rights due diligence by having dialogues with stakeholders and experts who have knowledge of human rights violations against Uyghurs in and outside of Xinjiang UAR such as international organizations and NGOs.
- 4) Publicly disclose their human rights due diligence process on their website.

5) Conduct human rights due diligence and engage in dialogue regarding human rights issues related to Xinjiang UAR with stakeholders, and continue to monitor the effectiveness of the company's efforts to address the risk of forced labour.

#### 7-2 Recommendations for investors

Investors should:

- 1) Require the investee company to conduct human rights due diligence on Uyghurs in and outside of Xinjiang UAR.
- 2) Obtain sufficient information on human rights due diligence by having dialogues with stakeholders and experts who have knowledge of human rights violations against Uyghurs in and outside of Xinjiang UAR such as international organizations and NGOs before making a decision on the company's actions.
- 3) Follow the Guiding Principles, and responsibly divest from companies that do not adequately address the risk of human rights violations.

#### 7-3 Recommendations to the Japanese Government

The Japanese government should:

- 1) Develop a legal framework that requires companies to address human rights risks, including forced labour in their supply chains, in accordance with the Guiding Principles. At the very least, clarify expectations of companies by preparing guidelines on human rights due diligence in accordance with the Guiding Principles.
- 2) Provide sufficient information on human rights risks in countries and regions where Japanese companies are involved in business activities that are identified as at particularly high risk of human rights violations in the international community.
- 3) Urge the Chinese government to ratify and ensure compliance with international human rights treaties in its territory in cooperation with the international community.