China’s Ratification of the ILO Forced Labour Conventions: A Hollow Gesture?

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There was a lukewarm welcome from the international community to China’s announcement in April 2022 that it would ratify the International Labour Organization’s two forced labour conventions: the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). Director-General of the International Labour Organization (ILO) Guy Ryder’s statement that the move ‘demonstrates China’s strong support for ILO values’ (ILO 2022b) was met with raised eyebrows by human rights experts. Against a background of numerous reports of forced labour in Xinjiang and an imminent visit to the region by the UN High Commissioner for Human Rights—which took place at the end of May, bringing new controversies with her failure to criticise China publicly—it was difficult to be other than sceptical about the news from Beijing. Setting aside the cynical timing of the announcement, will ratification of these two fundamental labour conventions change anything on the ground?

To consider the potential impact of ratification, we need to understand the nature of forced labour in China today and what we know of the Chinese Government’s sincerity in undertaking international commitments on human rights.
The ILO established an office in Beijing in 1985 as the country began the transition to a market economy. Twenty years ago, the organisation embarked on a program of technical assistance to the Chinese Government, addressing the use of forced labour in the practice of reeducation through labour (劳动教养 laodong jiaoyang or 劳教 laojiao for short) (ILO 2005). Laojiao, a form of administrative detention, was created in 1955 as part of a campaign to suppress counterrevolutionaries. Imposed by the police, laojiao was targeted at the ‘politically unreliable’ and minor offenders. A State Council decision in 1979 fixed the period of detention at three years with a possible one-year extension. Human rights organisations have long seen the policy as a significant obstacle to China undertaking international commitments on human rights. The ILO was one of several international organisations trying to apply constructive pressure on China to end the use of lengthy extrajudicial detention. Laojiao was officially abolished in December 2013, but, as the situation in Xinjiang demonstrates, the practice was too useful to the authorities to be abandoned and it has, to all intents and purposes, been reintroduced in the Xinjiang Uyghur Autonomous Region (XUAR).

The Forced Labour Convention (ILO 1930) defines forced labour as work that is performed involuntarily and under threat of punishment. It can be imposed by state authorities, by private enterprises, or by individuals. Exceptions from the scope of the convention include compulsory military service as well as normal civic obligations and minor communal services, compulsory labour as a result of a conviction in a court of law, and cases of emergency. Each of these exceptions is, however, subject to the observance of certain conditions that define their limits.

Forced labour in China takes several forms and a full discussion, including of forced sexual exploitation, is beyond the scope of this article. Broadly, there are two dimensions to the problem in the People’s Republic of China (PRC): the exploitation of vulnerable workers in the private sector and state-imposed forced labour as part of penal policies. Yet, with officials complicit in abusive employment practices at local enterprises and the private sector benefiting commercially from state-imposed forced labour, the two types are interrelated.

Surplus agricultural labour following the de-collectivisation of land in the 1980s fed the growth of township and village enterprises (TVEs). As TVE expansion outpaced the state’s capacity to regulate the workplace, numerous reports of abusive practices came to light. For instance, firework factories in China were typically small and locally owned. A string of reports in 2003 of fatal accidents at unregulated sites revealed that many village schools were forcing children to work to pay for their tuition (China Labour Bulletin 2003).

A few years later, the Chinese public was shocked by reports that children, teenagers, and people with mental disabilities were among captives forced to work in appalling conditions in brick kilns in rural
Shanxi (Watts 2007; Franceschini 2022). Distraught parents and local investigative media revealed the extent of exploitation and ill-treatment, including the collusion of local officials.

China’s Labour Contract Law was introduced in 2008 to help ensure fairer employment practices and reduce labour unrest (Gallagher 2022). The new law contributed to a decline in the level of informalisation among the urban labour force, yet the young, the old, migrant workers, and the less educated were the ones who predominated among those without labour contracts (Gallagher et al. 2015).

The rapid expansion of vocational education in China created new opportunities to bypass labour laws as factories took advantage of requirements that students complete an internship to graduate. Thousands of school and university students participated in unskilled factory work that provided few discernible training benefits (Cai 2018). A 2014 China National Textile and Apparel Council report, co-authored with the ILO, described how unacceptable working conditions from unregulated internships in the textile and apparel sector risked causing ‘scandals at home and abroad, including accusations of forced labour’ (ILO and CNTAC 2014).

Scandal has, at times, been a driver of the reform agenda in China (Fu 2009). As stories of abuse circulated online, growing public concern pushed the authorities to act. This dynamic depended on a degree of media freedom that has disappeared under President Xi Jinping. Today, public discussion of a controversial topic can usually be closed down in days while reform-minded scholars and lawyers are wary of speaking out, fearful of the consequences. Rather than address the complex social and legal challenges these stories usually raise, the authorities are now more likely to lock up the messenger (Macbean 2016). Ten years on from the brick kilns scandal, Franceschini reflected that the ‘display of solidarity’ that had enabled parents and the media to save hundreds of children from slavery was now improbable as critical media voices were tamed and those speaking out for the ‘weak and disenfranchised’ were arrested in Xi’s China (Franceschini 2022: 585).

Although market-led reforms began to transform the relationship between the state and workers, the Chinese Constitution continues to proclaim both the ‘right and the obligation to work’ (Constitution of the PRC, Art. 42). China bucks the global trend that sees the decline of the ‘systematic state practice of compelling free citizens to work, for either economic or political purposes’ (ILO 2005). Labour is viewed as a national resource (Bian 1994) and Chinese Communist Party (CCP) policymakers regard employment not only as the source of people’s livelihoods, but also as ‘the top strategy’ for ensuring social stability (Di n.d.).

Reports from the Uyghur region illustrate how far CCP notions of employment as a tool of social control can intertwine with inadequate protections, leading to devastating consequences. The rapid establishment of the so-called vocational education and training centres in XUAR took place in the shadow of laojiao. The internment camps replicate not only the extralegal characteristics of laojiao, but also the requirement to undertake productive labour.
centres in XUAR took place in the shadow of laojiao. The internment camps replicate not only the extralegal characteristics of laojiao, but also the requirement to undertake productive labour (The Rights Practice 2022).

The Chinese Government has justified its repression of Uyghurs in terms of both counterterrorism and poverty alleviation. Xi’s goal to eradicate extreme poverty in China converged with the desire of the CCP leadership to assert greater control over Uyghur and other Turkic communities accused of being radicalised and fomenting unrest. With the threat of being sent to the camps hanging over families, households have been pressured to agree to state-sponsored labour transfers where workers are placed under close surveillance and supervision. Researchers have unearthed examples of Uyghur forced labour in picking cotton (Zenz 2020; Murphy et al. 2022), as well as in the textile and solar industries (see Lehr and Bechrakis 2019; Murphy and Elymä 2021).

With the repressive apparatus of the state always present, it is a thin line between voluntary and involuntary labour. In Laundering Cotton, a report on Xinjiang cotton in international supply chains, the authors refer to a 2014 provision that resistance to government assistance programs in Xinjiang was included on a list of ‘religious extremist activities’ (Murphy et al. 2022). In southern Xinjiang, factories have been built near villages to bring women into the wage economy. An official observed approvingly how women ‘no longer wear headscarves. Instead, they wear work clothes, hats and square kerchiefs’ (The Rights Practice 2020).

The obligation to work has always been integral to the ‘reeducation’ of offenders and political enemies. Deploying different names, schemes share the characteristics of coerced labour and oppressive indoctrination, mislabelled as ‘education’.

In 2017, the XUAR saw a staggering 730 per cent increase in the number of Uyghurs sent to prison over the previous year. Our report, (Ab)use of Law, concluded that, given the likely political purpose of convictions and in the absence of fair trial rights, the large-scale imprisonment of Uyghurs was inherently arbitrary (The Rights Practice 2022). Although compulsory labour by prisoners following conviction in a court of law is excluded from the general prohibition against forced labour (ILO Convention No. 29, Art. 2[c]), this does not apply where the deprivation of liberty is arbitrary.
The Abolition of Forced Labour Convention No. 105 is primarily concerned with forced labour imposed by state authorities. As a first step, China will need to revise several laws to ensure there is a clear prohibition against forced labour in all places where persons are deprived of their liberty without trial. The 2017 draft Kanshousuo Law—still not passed—states that pre-trial detainees cannot be compelled to engage in productive labour (Art. 83), but in the absence of independent mechanisms to inspect places of detention it will be impossible to monitor compliance. Attempts by reformers to remove Ministry of Public Security authority over kanshousuo were rebuffed in the drafting process. Individual detainees are reluctant to complain, fearing—with justification—that raising the issue of forced labour will be viewed unfavourably pending a decision on their case.

State-imposed forced labour operates in close association with both state-owned and private sector enterprises across China, while complex supply chains can connect prisons to household names in the West (Kuo 2019). Outrage at reports of forced labour among Turkic minorities detained in Xinjiang led the United States to introduce the *Uyghur Forced Labor Prevention Act*, while the European Union and other countries are drafting legislation to strengthen due diligence throughout global value chains.

Supply chains in China’s extensive apparel industry have been described as a ‘black box’ with opaque networks of subcontractors difficult to investigate (Wu 2021). In-person auditing of factories in Xinjiang has long been difficult and is now impossible (Lehr and Bechrakis 2019). Some Western companies have concluded that the only socially responsible action is to try to remove their supply chains not just from Xinjiang, but from China altogether. Yet, cotton yarn from Xinjiang now appears to be part of garments finished elsewhere in Asia as businesses conceal the source of raw materials (Murphy et al. 2022).

How far economic incentives are driving the continued use of forced labour in Xinjiang, or indeed, labour in the prison system across China is hard to assess. Reports suggest that prison labour can be a useful source of income (Vincent 2011). As wages in China rise, sources of cheap labour are particularly attractive.

China’s commitment to ratify the two forced labour conventions will bring increased international scrutiny. Ratifying countries undertake to apply the conventions and report on their application at regular intervals. The ILO supervises the application of standards through a committee of experts and a tripartite committee that considers submissions by member states and observations by workers’ organisations and employers’ organisations. In February 2022, ILO experts called on the PRC Government to review, repeal, and revise laws and practices of employment discrimination against racial and religious minorities in Xinjiang (ILO 2022a: 514).
Domestic accountability, however, is the missing piece in the implementation of ILO standards. The All-China Federation of Trade Unions does not provide an independent voice for workers and is not responsive to worker complaints. China has ignored the advice of UN experts to amend the Trade Union Law to allow workers to form independent trade unions (OHCHR 2014) and has yet to ratify two fundamental ILO conventions on freedom of association and protection of the right to organise (No. 87) and the right to organise and collective bargaining (No. 98); nor has it indicated its intention to ratify Protocol of 2014 to the 1930 Convention (No. 29), which encourages states to adopt stronger preventative measures. Labour groups in China lost international funding and support after the introduction of the Overseas NGO Law and the departure of many support organisations (Howell 2022; Froissart and Franceschini 2022). While some continue to offer limited services to workers, the extent of political repression in China today has largely silenced these grassroots groups.

China’s move to ratify the forced labour conventions helps the ILO progress towards the goal of universal ratification of the fundamental conventions. It also contributes to the realisation of the United Nations’ Agenda 2030 and Sustainable Development Goal 8, Target 7, which is to take immediate and effective measures to eradicate forced labour and end modern slavery and human trafficking. At the end of her controversial visit to China, including Xinjiang, in May 2022, the UN High Commissioner for Human Rights, Michelle Bachelet, welcomed the announcement on forced labour and encouraged China to engage constructively with the ILO (OHCHR 2022).

There is, however, a risk that progress towards these diplomatic objectives will come at the cost of further weakening of the UN system and the authority of international law if China fails to approach implementation in good faith. China has already ratified six core human rights instruments, but in June 2020, an unprecedented 50 UN experts felt compelled to raise concerns at the deteriorating situation and called on China to protect fundamental freedoms at home (OHCHR 2020).

The ILO has had an office in China for several decades and has, throughout that time, been providing expert advice to the government on international labour laws and inspection regimes. It would seem to be political will rather than technical competencies that is the real obstacle to progress. Although the problem of forced labour in China is bigger than its use in the XUAR, without a U-turn in its policy towards Xinjiang, China cannot make meaningful progress towards ending forced labour. The state is too complicit in its use.