

**The Assessment on Human Rights in Xinjiang  
by the United Nations Office of the High Commissioner  
for Human Rights:  
A Critical Analysis**

Jaq James



**CO-WEST-PRO**  
CONSULTANCY

Working Paper  
4/2023

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## **ABOUT THE AUTHOR**

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This paper is published on the understanding that the author is not providing any form of legal advice. Before acting on the contents of this paper, legal advice should be sought from a certified legal practitioner.

Substantial revisions made to this working paper will be listed on this page. Minor revisions will not be listed. Feedback is encouraged from all readers.

## **ACKNOWLEDGEMENTS**

Many thanks go to the anonymous contributors who helped the author along the way, and a special thanks to Dr Stuart Gilmour for his help with the statistical data analysis in this paper.

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*“Those who make you believe absurdities  
can make you commit atrocities”*

~ Voltaire

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# 1. INTRODUCTION

On 15 March 2023, former Australian Prime Minister, Paul Keating, lambasted an Australian journalist for an article he had published in *The Sydney Morning Herald*. It was titled 'Red Alert: War Risk Exposed' and displayed a picture of Chinese fighter-jets leaving China, the implication being that they were headed towards Australia. The message was that Australians need to be ready for war with China within three years.



Front page of the Sydney Morning Herald on 7 March 2023

Mr Keating said the following to the journalist at the National Press Club:

*“After what you co-wrote with Hartcher last week in that shocking presentation in the Herald on Monday, Tuesday and Wednesday, you should hang your head in shame. I’m surprised you even have the gall to stand up in public and ask such a question, frankly. You know you ought to do the right thing and drum yourself out of Australian journalism. I mean that’s the most egregious, the worst, the most biased presentation. ... If I were you, mate, I’d hide my face and never appear again.”<sup>1</sup>*

In the confrontation, the journalist tried to get Mr Keating to make a comment about the accusations of maltreatment of Uyghurs by the Chinese government. In the context, this would have implicitly created a link in some people’s minds between a

<sup>1</sup> Paul Keating, Speech to the National Press Club (15 March 2023) <[online](#)>.

military threat from China and the situation in Xinjiang. There is nothing new in the technique of using atrocities (real, exaggerated, fabricated or imagined) to paint a perceived adversary in an unfavourable light.<sup>2</sup> Examples include the ‘Kuwaiti babies thrown out of incubators story’<sup>3</sup> used to help justify the United States’ military intervention in Iraq, and the ‘Libyan Viagra rape squads story’<sup>4</sup> used to help justify NATO’s military intervention in Libya.

Mr Keating did not want to buy into the journalist’s maneuver and made the comment that there are “disputes” about the nature of what has happened in Xinjiang. The journalist’s retort to this was to cite the August 2022 report by the United Nations Office of the High Commissioner for Human Rights (OHCHR),<sup>5</sup> as if it was a reliable source for the accusations relating to Xinjiang. The problem is, in its current state, it is not a reliable source for significant reasons.

Given that the OHCHR report has returned to the spotlight due to the confrontation between Mr Keating and *The Sydney Morning Herald* journalist, it is timely for an independent evaluation of the OHCHR report to be carried out, which is what this paper sets out to do.

The OHCHR report covered five major accusations against the Chinese government: (1) the broadness and vagueness of Xinjiang’s counter-terrorism and counter-extremism laws; (2) the application of the laws in Xinjiang by imprisonment; (3) conditions inside Xinjiang’s Vocational Education and Training Centres; (4) other human rights concerns; and (5) issues of family separation and reprisals. Contrary to other institutional and activists’ claims about Xinjiang, the OHCHR report did not entertain the accusation of genocide occurring in Xinjiang.<sup>6</sup>

For reasons that will become clear later in this paper, only the first and fourth major accusations have been specifically examined in this paper. More pertinently, a critical

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<sup>2</sup> See AB Abrams, *Atrocity Fabrication and its Consequences: How Fake News Shapes World Order* (Clarity Press, 2023); Edward S Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (The Bodley Head, 2008).

<sup>3</sup> Mary McGrory, ‘Capitol Hill Knowlton’, *The Washington Post*, 12 January 1992 <[online](#)>.

<sup>4</sup> Russ Baker, ‘Did Qaddafi Really Order Mass Rapes? Or Is The West Falling Victim To A Viagra-Strength Scam?’ *Business Insider*, 12 June 2011 <[online](#)>.

<sup>5</sup> ‘OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China’ (United Nations Office of the High Commissioner for Human Rights, 31 August 2022).

<sup>6</sup> To understand why the term ‘genocide’ has been inappropriately used by activists and institutions to describe the situation in Xinjiang, see Jaq James, ‘The Uyghur Tribunal: People’s Justice or Show Trial?’ (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) section 5.6 <[online](#)>.

evaluation of an overarching issue - the OHCHR's interviewee sampling technique - is a major focal point in this paper.<sup>7</sup>

This paper ultimately concludes that the OHCHR report is of substandard quality and is therefore not a reliable source for popular claims made in the West about the Xinjiang situation that are presented in a conclusive or definitive manner. This paper does not reach any conclusions about why the OHCHR produced a substandard report, but it does end with a warning that if the OHCHR allowed itself to become a politicised instrument, it will continue diminishing its credibility, which will ultimately weaken the international human rights regime.

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<sup>7</sup> It is hoped that in the future there will be qualified researchers with sufficient resources to carry-out a detailed critical analysis of the whole OHCHR report, as there are many parts of the OHCHR report that, on the face of it, are contestable or questionable.



## 2. PROBLEMS WITH THE FORM AND RELIABILITY OF THE OHCHR REPORT

### 2.1. Small Interviewee Sample Size

The OHCHR accepted the estimate that, as of 2018, between “tens of thousands to over a million” individuals in Xinjiang had gone through the Vocational Education and Training Centre (VETCs). It is noted that this is an incredibly wide and imprecise estimate range that the OHCHR accepted. Moreover, the OHCHR’s cited source for the range does not explain how these numbers were reached, thereby adding to the unreliability of the estimates.<sup>8</sup> It is assumed that the upper estimate range is based on the work of the United States-backed Network of Chinese Human Rights Defenders, which interviewed a mere eight Uyghur individuals and then extrapolated that number out to one million.<sup>9</sup>

Establishing a population size is an important factor in sample size.<sup>10</sup> It is particularly important in quantitative research, which emphasises sample sizes must be of sufficient size so that research findings are generalisable to the whole population group studied. This is especially so in the case of the OHCHR’s report, given that the OHCHR conjectured that crimes against humanity “may” have been committed with respect to its findings of arbitrary and discriminatory detention linked to the VETCs.<sup>11</sup> For reasons explained in the next paragraph, referencing ‘crimes against humanity’ brings into question the quantitative relevance of the OHCHR’s interviews.

A key legal element of ‘crimes against humanity’ is that such crimes are committed on a ‘widespread or systematic’ scale. The term ‘widespread’ generally connotes the

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<sup>8</sup> The OHCHR cited the ‘Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China)’, CERD/C/CHN/CO/14-17, para. 40(a), 19 Sept. 2018 <[online](#)>.

<sup>9</sup> See Ajit Singh and Max Blumenthal, ‘China detaining millions of Uyghurs? Serious problems with claims by US-backed NGO and far-right researcher ‘led by God’ against Beijing’, *The Grayzone* (21 December 2019) <[online](#)>.

<sup>10</sup> Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (Routledge, 2000); Marguerite G Lodico, Dean T Spaulding and Katherine H Voegtler, *Methods in Educational Research: From Theory to Practice* (Jossey-Bass, 2006).

<sup>11</sup> The OHCHR report, 44. It is emphasised that ‘crimes against humanity’ is an extremely serious accusation and therefore requires highly persuasive evidence and detailed discussion of each legal element; it should not be a ‘by-the-way’ statement thrown in at the end of a report, as the OHCHR did.

‘large-scale nature’ of the crimes, whilst the term ‘systematic’ generally connotes the ‘organised nature’ of the crimes and the ‘improbability of their random occurrence’.<sup>12</sup> Thus, the OHCHR’s conjecture that crimes against humanity “may” have been committed required evidence of its widespread or systematic scale.

It is noted that the OHCHR only interviewed 40 individuals in total, and only 26 interviewees “stated they had either been detained or had worked in various facilities” in Xinjiang. It is unclear what first-hand experiences the remaining 14 individuals had in Xinjiang. The OHCHR did not explicitly state how many of the 26 individuals had been “detained” and how many had “worked in various facilities” in Xinjiang. This lack of disaggregation further complicates calculating the sample size.

Given how small this sample size is, it brings into great doubt the generalisability of the OHCHR’s findings, as there is an incredibly high margin for error. It follows that this brings into question the OHCHR’s conjectures relating to ‘crimes against humanity’ because of the key legal element that the crimes are widespread or systematic in nature. A small sample size leaves the OHCHR open to the accusation that its interviewees were not representative of the studied population group, and therefore may be outliers. To avoid such an accusation, it is submitted that the OHCHR should have interviewed, at minimum, 1067 individuals of the population group, based on a 3% margin of error.<sup>13</sup> Forty individuals is nowhere near this number. The OHCHR certainly would have been aware of the need for a reliable sample size, given past assessment precedents, such as the 875 individuals who were interviewed for the United Nations Human Rights Council’s Myanmar assessment.<sup>14</sup>

The OHCHR may subsequently claim that it did not base its conjecture relating to ‘crimes against humanity’ on its interviews, or at least not solely on its interviews. However, the fact is that the OHCHR left the foundation for its conjecture ambiguous, opening itself to the charge that it entertained the commission of an extremely serious international crime based on an unreliable sample size. To avail itself of this charge, the OHCHR should have explicitly explained its foundational basis for its reference to crimes against humanity, given the legal element of ‘widespread or systematic’.

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<sup>12</sup> See discussions of international judgments in Robert Cryer, Darryl Robinson and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press, 2019) 232-233.

<sup>13</sup> Ronan Conroy, *The RCSI Sample Size Handbook (Royal College of Surgeons in Ireland, 2018)* <[online](#)>.

<sup>14</sup> ‘Report of the independent international fact-finding mission on Myanmar’ (United Nations Human Rights Council, 39<sup>th</sup> Session, 10-28 September 2018, A/HRC/39/64) <[online](#)>.

Overall, the OHCHR's extremely small sample size brings down the professionalism and reliability of its report.

## 2.2. Opaque Sampling Technique for Interviewees

The literature on sampling methodology makes it clear that there must be an unbiased selection of the sample interviewee group. Unbiased sampling techniques are ones that are random.

There was a particular need for unbiased sampling in the case of the OHCHR report. As explained by this author in the second CO-WEST-PRO paper,<sup>15</sup> the situation in Xinjiang is not a clear-cut case that is untainted by politics and ideology. Rather, it is set against a backdrop of exiles and activists who want Xinjiang to become a separate state (or Islamic state) called East Turkistan. There are various exile and activist groups set up for separatist lobbying purposes, including the *East Turkistan Government-In-Exile* and the *East Turkistan National Awakening Movement*, headquartered in Washington DC. There is also the *East Turkistan Islamic Movement* (or the *Turkistan Islamic Party*), declared a terrorist organisation by the United Nations Security Council since 2002.<sup>16</sup> In their separatist pursuits or separatist sympathies, it is conceivable that self-selected or politically-networked interviewees could be motivated to make false or exaggerated statements to the OHCHR, especially since the interviewees have the cover of anonymity.<sup>17</sup>

In the case of the OHCHR report, an unbiased selection would have been random sampling from either the population of Xinjiang as a whole or the population of individuals who had gone through the VETCs. It is noted, however, that the OHCHR did not explain how its 40 interviewees were selected. This lack of transparency goes against the OHCHR's public statement that "[d]ata collectors should provide clear, openly accessible information about their operations, including research design and

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<sup>15</sup> Jaq James, 'Amnesty International and Human Rights Watch's Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?' (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) section 4.2.2.2 <online>.

<sup>16</sup> 'East Turkistan Islamic Movement', *United Nations Security Council* (2011) <online>.

<sup>17</sup> To understand the unreliability problems with anonymous testimony, see Jaq James, 'Amnesty International and Human Rights Watch's Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?' (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) section 4.1 <online>.

data collection methodology”.<sup>18</sup> The OHCHR linked this principle of transparency to the human right to information under article 19 of the *International Covenant on Civil and Political Rights* (‘ICCPR’).<sup>19</sup>

It is suspected that the OHCHR did not disclose its sampling methodology because it was not random. It is highly likely that the OHCHR purposively sampled through a network-based sampling process. This likelihood is based on the fact that the OHCHR stated in footnote 12 of its report that nearly two-thirds of its interviewees had previously been interviewed by “researchers, civil society or journalists”. Thus, it is likely the interviewees were recruited through these parties. If the OHCHR’s interviewees were indeed a non-random purposive sample, then, as with the problem of the small sample size, the OHCHR’s interviewees cannot be considered representative of the population group studied. It also follows that conclusions cannot be drawn about the widespread or systematic scale pertaining to the OHCHR’s conjecture of ‘crimes against humanity’ being committed in Xinjiang.

Overall, the OHCHR’s opaque sampling technique brings down the professionalism and reliability of its report.

### **2.3. Insufficient Verification Information**

The OHCHR stated it had conducted its 40 interviews “in accordance with its standard practice and methodology”.<sup>20</sup> It also stated that it assessed the credibility and reliability of other documentation it relied on “in line with standard OHCHR methodology”.<sup>21</sup> The OHCHR did not provide a citation for its standard practices and methodologies in each instance, leaving it to the lay reader to second-guess where those standards are documented. This lack of transparency goes against the OHCHR’s transparency principle and the public’s right to information, noted earlier. These omissions bring down the overall professionalism of the report.

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<sup>18</sup> OHCHR, ‘A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Agenda for Sustainable Development’ (United Nations, 2018) 14 <[online](#)>.

<sup>19</sup> Ibid.

<sup>20</sup> The OHCHR report, 2.

<sup>21</sup> Ibid, 1.

It is assumed that the OHCHR's reference to "standard practice and methodology" for its interviews was the OHCHR's revised *Manual on Human Rights Monitoring*, specifically Chapter 11, titled 'Interviewing'. Praiseworthy aspects of the chapter include:

- its stipulation that interviewees must be asked "open-ended questions without suggesting an expected answer" and "should avoid asking leading questions";<sup>22</sup>
- its guidance on assessing interviewees' credibility and reliability, such as analysing whether an interviewee has a motive for providing information, and asking the same questions in different ways to assess the reliability of the interviewee's entire story;<sup>23</sup>
- its warning to the OHCHR interviewers not to reveal information provided by other interviewees;<sup>24</sup> and
- its recommendation that the OHCHR interviewers request documents or materials that support interviewees' accounts.<sup>25</sup>

Another relevant chapter of the OHCHR's original *Manual on Human Rights Monitoring* is Chapter 7, titled 'Information Gathering' (which is currently being revised).<sup>26</sup> Praiseworthy aspects of the chapter include:

- its stipulation that available witnesses should be interviewed to see if they can corroborate first-hand accounts;<sup>27</sup>
- its emphasis that information should be consistent with material collected from independent sources;<sup>28</sup>
- its stipulation that the OHCHR interviewers should "test the internal consistency and coherence of the testimony" of interviewees;<sup>29</sup>
- its reminder that the OHCHR interviewers should factor in the biases of interviewees;<sup>30</sup> and
- its reminder that hearsay testimony is more unreliable than direct testimony.<sup>31</sup>

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<sup>22</sup> OHCHR, 'Manual On Human Rights Monitoring' (United Nations, 2011, Revised Edition) 17-18 <[online](#)>.

<sup>23</sup> Ibid, 19.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> OHCHR, 'Training Manual on Human Rights Monitoring' (United Nations, 2001, First Edition) <[online](#)>.

<sup>27</sup> Ibid, 104.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid, 105.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, 106.

Whilst it is submitted that the OHCHR’s manual could have gone further in its credibility assessment methodologies for interviews,<sup>32</sup> this is not as important as including all interview transcripts in an appendix to the OHCHR report (with requested redactions by the interviewees). Readers of the OHCHR report should not be expected to implicitly trust human rights advocates and have them be the gatekeepers of information, especially when the human rights framework can be misappropriated for disinformation purposes to serve political agendas.<sup>33</sup> We are in an era of democratisation of information, in line with the principle of transparency and the right to information under article 19 of the ICCPR. As such, readers of the OHCHR report should have been allowed to make their own reliability and credibility assessments of the interviewees’ testimonies and the interviewers’ compliance with the OHCHR’s *Manual on Human Rights Monitoring*.

With regard to the OHCHR’s other claim that it assessed the credibility and reliability of other documentation it relied on “in line with standard OHCHR methodology”, it is also submitted that the OHCHR should have explicitly spelled out the steps taken to comply with its methodology, in line with the principle of transparency and the right to information, in order to satisfy its readers.

Overall, these two omissions undermine the persuasive value of the OHCHR report.

## **2.4. Language that is Willing to Wound, but Afraid to Strike**

It is noted that the OHCHR report employed a significant amount of cautious language, such as the words “may”, “possible”, “appears”, “suggests” and “reportedly”. Crucially, for its most grave finding - the commission of “international crimes” including “crimes against humanity” - the OHCHR qualified it with the word “may”.<sup>34</sup> It is noted that cautionary language is often employed in public reports in order to protect against the risk of tortious liability actions. Yet, in the case of the OHCHR, the accused subject is a state, not a company, a charity or an individual with

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<sup>32</sup> See, for example, Jaq James, ‘Amnesty International and Human Rights Watch’s Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?’ (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) section 4.2 <[online](#)>

<sup>33</sup> See, for example, a collation of criticisms of Human Rights Watch (‘Criticisms of Human Rights Watch’, *Academic Dictionaries and Encyclopedias*, web page <[online](#)>) and Amnesty International (‘Criticisms of Amnesty International’, *Academic Dictionaries and Encyclopedias*, web page <[online](#)>).

<sup>34</sup> The OHCHR report, 44.

capacity to sue the OHCHR. This means there is no risk of a legal action against the OHCHR. Thus, it is natural to conclude that the OHCHR's usage of such cautious language was for the purpose of allowing its grave imputations to hang in the air without the burden of committing to them. As such, this brings down the overall persuasive value of the OHCHR report.

## 2.5. Poor and Unconventional Referencing

In ordinary practice, when referencing online materials, the URL or a web-link must be included in order to allow readers to independently verify quotations and interpretations of those sources. This is even more important when sources in another language other than English are cited, as there are risks of mistranslation. There are precedents for incorrect translations (and even bad-faith translations) in the 'China-watcher' space. For example, the Australian Strategic Policy Institute in its *Uyghurs For Sale* report chose to translate the Chinese word 心理疏导室 literally as "psychological dredging office" instead of its figurative and ordinary meaning of 'counselling office'.<sup>35</sup> By mistranslating the word to falsely carry an Orwellian connotation, it fundamentally changed the meaning of the word and any interpretations that preceded it and followed it.

It is noted that the OHCHR failed to include URLs or web-links for several of its references. This is unacceptable. Readers of the OHCHR report should have been enabled to independently verify the OHCHR's source material. The OHCHR's lack of transparency with its referencing also goes against its own transparency principle and the public's right to information, noted earlier, in addition to basic academic standards.

Another peculiarity with the OHCHR's referencing was its citation of one individual's Twitter account and another individual's Medium blog for supporting evidence.<sup>36</sup> In ordinary practice, the field of scholarly research does not consider individuals' social

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<sup>35</sup> Jaq James, 'The Australian Strategic Policy Institute's "Uyghurs For Sale" Report': Scholarly Analysis or Strategic Disinformation?' (Working Paper 1/2022, CO-WEST-PRO Consultancy, January 2022) section 4.2.1.8 <online>.

<sup>36</sup> The OHCHR report, footnotes 137 and 139. In the case of Mr Ruser's Twitter account, the OHCHR did not even include URLs for specific posts or even the URL of the Twitter account, itself. In fact, Mr Ruser's first name was not even referenced in the OHCHR report, thus leaving readers who are unfamiliar with the online China debate unsure whose Twitter account the OHCHR would have been referencing.

media accounts to be dependable sources of data and interpretation (especially without independent verification). Even if research standards were to be brought down to such low depths that citing social media accounts became acceptable, it would then logically follow that other social media accounts refuting the social media accounts would also need to be cited in the OHCHR report.<sup>37</sup> Yet, this did not occur, which brings into question the objectivity of the authors of the OHCHR report.

The OHCHR's poor referencing brings down the overall professionalism and reliability of its report.

## 2.6. Exclusion of Global South Perspectives

A growing movement called 'Third World Approaches to International Law' (TWAIL), made up of critically-minded legal scholars troubled by the geopolitical imbalance in international law, have pushed for the expansion of international law commentary to go beyond Euro-centric and American-centric views to being inclusive of Global South perspectives.<sup>38</sup> It is noted that numerous secondary and tertiary sources were cited in the OHCHR report - including the Australian Strategic Policy Institute, Amnesty International, Human Rights Watch, Bellingcat, BuzzFeed, Reuters, BBC, The Intercept, The New York Times and Dr Adrian Zenz - but these are all notably Western sources. There were no secondary sources from Global South countries - particularly Muslim countries - cited in the OHCHR report.<sup>39</sup> This is unfortunate, as the OHCHR not only failed to satisfy the calls from TWAIL for inclusivity, but also failed to meet its own principle of "non-selectivity".<sup>40</sup> The OHCHR's omission gives the impression that the OHCHR has a strong Western bias.

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<sup>37</sup> See, for example, the Twitter posts of Associate Professor Chengxin Pan (26 September 2020) <[online](#)>.

<sup>38</sup> See, for example, Makau Mutua, 'What Is TWAIL?' (2000) 94 *Proceedings of the ASIL Ann. Meeting* 31.

<sup>39</sup> Given a group of Islamic scholars from 14 countries, including the Chairman for the World Muslim Communities Council, have come out on the record defending the Chinese government regarding Xinjiang, it is submitted that the OHCHR should have gone to the effort of reaching out to such scholars and incorporating their perspectives into the OHCHR report: see Liu Xin and Fanglin Zhi, 'Islamic scholars from 14 countries visit Xinjiang region, praise efforts on countering terrorism, extremism', *The Global Times*, 9 January 2023 <[online](#)>.

<sup>40</sup> United Nations General Assembly Resolution 48/141 emphasises that the High Commissioner for Human Rights must be guided by "the principles of impartiality, objectivity and non-selectivity, in the spirit of constructive international dialogue and cooperation": UN General Assembly, *High Commissioner for the promotion and protection of all human rights: resolution / adopted by the General Assembly*, 20 December 1993, A/RES/48/141 <[online](#)>.



### 3. A SOUND LEGAL ANALYSIS OF CHINA'S COUNTER-TERRORISM AND COUNTER-EXTREMISM LAWS

One section of the OHCHR report that remains unaffected by the OHCHR's flawed sampling is its analysis section on China's counter-terrorism and counter-extremism laws.<sup>41</sup> This makes an evaluation of this section of the OHCHR report relatively straightforward.

On the face of it, the OHCHR's legal analysis of China's counter-terrorism laws is sound.<sup>42</sup> The OHCHR noted that the broad definition of 'terrorism', and vaguely defined elements of the list of 'terrorist activities', leave the counter-terrorism laws open to:

- “potentially encompass a wide range of acts that are substantially removed from a sufficient threshold of seriousness and demonstrable intent to engage in terrorist conduct” (for example, by including in the definition of 'terrorism' “propositions ... that create social panic” without defining the term 'propositions' or 'social panic'); and
- potentially encompass “acts of legitimate protest, dissent and other human rights activities, or of genuine religious activity” (for example, by including “disruption of social order and other serious social harm” in the list of 'terrorist activities').<sup>43</sup>

As such, the OHCHR concluded that China's counter-terrorism laws are “vulnerable to being used – deliberately or inadvertently – in a discriminatory or otherwise arbitrary manner against individuals or communities”.<sup>44</sup> This conclusion is accepted and, as such, it is the position of the author of this paper that the counter-terrorism laws be redrafted to safeguard against potential inappropriate application of the law that unjustifiably infringes upon individuals' human rights under international law or incorrectly casts individuals as terrorists.

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<sup>41</sup> The OHCHR report, Part III.

<sup>42</sup> The author of this report plans to engage the professional services of a certified legal practitioner in China specialising in criminal law to confirm or refute the OHCHR's legal analysis at a later date.

<sup>43</sup> The OHCHR report, 6-7.

<sup>44</sup> Ibid, 7.

The OHCHR's legal analysis of China's counter-extremism law, on the face of it, is also largely sound. Valid concerns noted by the OHCHR include that the laws:

- “appear to conflate what might otherwise be construed as matters of personal choice in relation to religious practice with ‘extremism’” (for example, individuals rejecting “public goods and services such as radio and television”); and, as such, the laws:
- “significantly broaden... the range of conduct that can be targeted under a counter-terrorism objective or pretext”.<sup>45</sup>

Accordingly, it is the position of this author that the counter-extremism laws need to be redrafted to comply with international human rights law standards, and, instead of criminalising extremism in general, they should criminalise **violent** extremism and extremist **practice that violates the human rights of others** (for example, forcing girls and women to wear religious clothing in violation of their choice to moderately practice their religion).

Having stated this, it must be emphasised that just because China's counter-terrorism and counter-extremism laws have been poorly drafted, with potential to be applied in ways that infringe human rights, it does not mean that human rights have automatically been infringed. Evidence of infringement is required before such a conclusion can be drawn. It also must be emphasised that China is not alone in having poorly drafted laws. For example, Hardy and Williams (2022) have documented many Australian counter-terrorism laws that also have the potential to contravene fundamental rights.<sup>46</sup> Hardy and Williams (2022) have also noted that Australia enacted 55 laws in the first decade after September 11 and that Australia's laws outnumbered the counter-terrorism laws in other countries, including countries with higher threat levels.<sup>47</sup> In fact, in the first decade after September 11, Australia did not suffer any terror attacks (although a planned one was prevented in 2009).<sup>48</sup> China, on the other hand, suffered at least 135 terror attacks between 1992 and 2017, according to the University of Maryland's Global Terrorism Database, and those attacks were inside China's actual borders.<sup>49</sup> The OHCHR did not deny that

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<sup>45</sup> Ibid, 8.

<sup>46</sup> Keiran Hardy and George Williams, ‘Two Decades of Australian Counterterrorism Laws’, *Melbourne University Law Review*, 2022, 46(1), referencing Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011) 209-10.

<sup>47</sup> Ibid.

<sup>48</sup> Daniel Fogarty and Steve Lillebuen, ‘Extremists Jailed for “Evil” Terror Plot’, *The Sydney Morning Herald*, 16 December 2011 <[online](#)>.

<sup>49</sup> ‘Global Terrorism Database’, University of Maryland (webpage, page 1 archived [online](#) and page 2 archived [online](#)). There has also been the problem of Uyghur terrorists training and fighting in the Middle East and

China had suffered terror attacks, but it did not plainly accept them either. If this was because the authors of the report did not want to accept that terrorism was a real problem in China, then this may have coloured some of the OHCHR's findings as a consequence.

Moving on, it is noted that the OHCHR should be criticised for its commentary on the 75 signs of religious extremism reported in an article in *Sina News*.<sup>50</sup> Through careless phrasing, the OHCHR created the impression that the list of 75 signs in the newspaper article amounted to criminalisation of those signs, rather than a list of indicators. One sign that the OHCHR took issue with was “young and middle-aged men with a big beard”.<sup>51</sup> Yet, it is noted that the Australian Strategic Policy Institute (a defence and strategic policy think tank that was cited favourably in the OHCHR report on other issues) has published a report on counter-terrorism also listing “growing a beard” as a “behavioural indicator” that an individual may be “changing their physical appearance to conform or identify with an extremist or terrorist group”.<sup>52</sup>

Following on from this, whilst the validity of these purported indicators can be brought into question, the OHCHR should have contextualised the 75 signs within the international public debate on indicators of radicalisation so as not to create the impression that China is the odd country out. Moreover, China's response to the problem of terrorism should have also been contextualised within the global response to terrorism for the sake of interrogating the application of the concept of proportionality. For example, the ‘Coalition of the Willing’ - the United States, the United Kingdom and Australia, amongst other Western countries - killed 46,319 Afghani civilians and at least 185,831 Iraqi civilians in the name of fighting terror between 2001 and 2021.<sup>53</sup> Such numbers do not even encompass all the inevitable suffering - in forms of other human rights violations besides the right to life - that

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Central Asia alongside other terrorist groups: see, for example, Terri Moon Cronk, ‘US Forces Strike Taliban, East Turkestan Islamic Movement Training Sites’, US Department of Defense, 7 February 2018 (webpage) <[online](#)> and Trine Heimerback, ‘Letter dated 15 July 2021 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council’, *United Nations Security Council*, 21 July 2021, S/2021/655 <[online](#)>.

<sup>50</sup> The OHCHR report, 8.

<sup>51</sup> It is noted that the counter-extremism laws prohibit “irregular beards”, but it is qualified with it being for the purpose of “spreading religious fanaticism”, not the banning of “irregular beards” per se: see the OHCHR report, 7.

<sup>52</sup> ‘Counterterrorism Yearbook 2020’ (Counter-Terrorism Policy Centre, Australian Strategic Policy Institute, 2020) 31 <[online](#)>.

<sup>53</sup> Costs of War Project, ‘Human Cost of Post-9/11 Wars’ (Watson Institute, Brown University) <[online](#)>.

would have resulted from turning Afghanistan and Iraq into conflict zones (another contextual consideration relevant to the concept of proportionality).

The need for such contextualisation ties into concerns by some states that the international human rights law framework has been politicised by the OHCHR.<sup>54</sup> These concerns are further validated by Resolution 60/251 of the United Nations' General Assembly which explicitly recognises the "importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicisation".<sup>55</sup>

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<sup>54</sup> See, for example, the statements made at the 24<sup>th</sup> and 25<sup>th</sup> meetings of the United Nations' General Assembly on 1 November 2022 by China, India, Malaysia, Algeria, Belarus and South Africa <[online](#)>.

<sup>55</sup> UN General Assembly, *Human Rights Council: resolution/adopted by the General Assembly*, 3 April 2006, A/RES/60/251 <[online](#)>.

## 4. AN ANALYSIS OF THE OHCHR'S SECTION ON EMPLOYMENT AND LABOUR ISSUES IN XINJIANG

There are problems with many parts of the OHCHR report, but due to this author's limited resources, a detailed analysis will only be undertaken of the section on employment and labour issues in the OHCHR report.<sup>56</sup> This section is chosen for two reasons. First, the section directly relates to CO-WEST-PRO Consultancy's first and second working papers on forced labour allegations made by the Australian Strategic Policy Institute, Amnesty International and Human Rights Watch.<sup>57</sup> Second, the section contains some of the most egregious examples of junk research.<sup>58</sup>

To begin with, it is important to note that the OHCHR did not conclude that forced labour has been occurring in Xinjiang. Instead, it used the more muted language of identifying "elements of coercion" (qualified by the phrase "appear to be") and acknowledged that "more information" and "further clarification" is required.<sup>59</sup>

The OHCHR effectively identified these "elements of coercion" in three main contexts:

- (1) work tied to the government's labour mobility schemes;
- (2) work tied to individuals leaving Xinjiang's Vocational Education and Training Centres (VETCs); and
- (3) work inside the VETCs.<sup>60</sup>

Each context will be discussed over the following pages and will demonstrate that the OHCHR produced weak arguments and weak evidence, taking a 'grasping at straws' approach.

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<sup>56</sup> The OHCHR report, Part VI (D).

<sup>57</sup> See Jaq James, 'The Australian Strategic Policy Institute's "Uyghurs For Sale" Report': Scholarly Analysis or Strategic Disinformation?' (Working Paper 1/2022, CO-WEST-PRO Consultancy, January 2022) <[online](#)>; 'Amnesty International and Human Rights Watch's Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?' (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) <[online](#)>.

<sup>58</sup> For an explanation of the term 'junk research', see Jaq James, 'Amnesty International and Human Rights Watch's Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?' (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) section 6.1 <[online](#)>.

<sup>59</sup> The OHCHR report, 40.

<sup>60</sup> *Ibid*, 37. The OHCHR combined the last two categories together, but for the purpose of clarity, these categories have been separated in this paper.

## 4.1. Work Tied to Labour Mobility Schemes

The first point to note is that the OHCHR continually placed in quotation marks the term “surplus labour” (a synonym for “unemployed”) used in Chinese policy documents.<sup>61</sup> As noted in the first CO-WEST-PRO paper, there is an insinuation that the term “surplus labour” holds a nefarious connotation. As explained in that paper, the interchangeable terms of “surplus labour” and “labour surplus” are in fact innocuous terms used in the field of economic development.<sup>62</sup> A sample of international academic journals that have used the terms include: *Review of Economic Studies*, *Oxford Economic Papers*, *Canadian Journal of African Studies*, *The Economic Journal*, *Journal of Entrepreneurship Education*, *Indian Economic Review*, *Journal of Social and Economic Development*, *The International Journal of Human Resource Management*, *The Pakistan Development Review*, *The International Journal of Manpower*, *The European Journal of Development Research* and *Journal of Development Economics*. The converse term that can also be found in the literature is “labour scarcity”. Therefore, there was no need for the OHCHR to employ a punctuation device that casts cynicism over the use of the term.

The OHCHR then went on to make the claim that “some publicly available information on ‘surplus labour’ schemes suggests that various coercive methods may be used in securing ‘surplus labourers’”.<sup>63</sup> It cites a mere singular source - a BBC report - as supporting evidence for this claim, which is particularly astonishing given that the BBC report has already been exposed to be a repackaged misrepresentation of a CGTN news report about young Muslim females from Xinjiang entering the mainstream workforce.<sup>64</sup> The OHCHR citing the BBC report for its claim is particularly inexcusable given that the original source material indirectly raised issues relevant to the *Convention on the Elimination of all Forms of Discrimination Against Women 1979* (‘CEDAW’), namely, that a labour mobility scheme could help females be “free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and

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<sup>61</sup> The OHCHR report, 38.

<sup>62</sup> See Jaq James, ‘The Australian Strategic Policy Institute’s “Uyghurs For Sale” Report”: Scholarly Analysis or Strategic Disinformation?’ (Working Paper 1/2022, CO-WEST-PRO Consultancy, January 2022) <[online](#)>.

<sup>63</sup> The OHCHR report, 38.

<sup>64</sup> See Jaq James, ‘Amnesty International and Human Rights Watch’s Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?’ (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) section 5.1.5 <[online](#)>.

prejudices”.<sup>65</sup> Of all the organisations that should be fully attuned to the interdependence and interrelatedness of human rights, a United Nations organisation should be at the apex of the group.<sup>66</sup>

The OHCHR report then went on to reference statements in official Chinese government documents as further evidence of “elements of coercion” in the labour mobility scheme. In reaching this conclusion, the OHCHR conflated government statements that **diagnose** the problems of unemployment with government statements about the **solution** (namely incentivising employment and disincentivising unemployment, as well as setting employment quotas). The OHCHR went on to interpret the disincentivising parts of the policy and the employment quotas as evidence of coercion.

In order to understand the OHCHR’s flawed analysis, each of these parts need to be pulled apart and examined separately.

The Chinese government statements diagnosing the unemployment problem, as referenced by the OHCHR, were:

- (1) “insufficient willingness of the poor people to gain employment, making it difficult to transfer employment and increase income”; and
- (2) “surplus rural labour force” “are unwilling to go out of their homes, to receive training and to be steadily employed” and have “old-fashioned and stubborn ideas”.<sup>67</sup>

In other words, this segment of the unemployed population that the government has focused on possess mindsets that are hurdles to escaping poverty via productive employment. It is incomprehensible as to why the OHCHR would take issue with this common sense diagnosis, especially since the OHCHR did not provide evidence that there was a problem with the government’s research methodology nor disclose any evidence in the OHCHR’s possession that contradicts this diagnosis.

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<sup>65</sup> *General recommendation No 28 on the core obligations of states under article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations Committee on the Elimination of All Forms of Discrimination against Women, UN Doc CEDAW/C/GC/28 (16 December 2010) 5 <[online](#)>.

<sup>66</sup> United Nations General Assembly Resolution 48/141 requires that the High Commissioner for Human Rights recognise that “all human rights - civil, cultural, economic, political and social - are universal, indivisible, interdependent and interrelated”: UN General Assembly, *High Commissioner for the promotion and protection of all human rights*: resolution / adopted by the General Assembly, 20 December 1993, A/RES/48/141 <[online](#)>.

<sup>67</sup> The OHCHR report, 38-39.

The Chinese government's statements addressing the solution to the unemployment problem, as referenced by the OHCHR, were:

- (1) a point system where points would be deducted if "any person is found to be reluctant to participate in the training despite having the conditions to attend" or "not actively employed despite being able to go out for employment"; and
- (2) management of the point system should "reward those who do a good job, and criticise or educate or even punish those who do a bad job".<sup>68</sup>

Unfortunately, the OHCHR did not include a URL or web-link with its citation for the above quotes, so it is impossible to independently verify the translations. Putting this unreliability issue aside, the first point to make is that the source cited by the OHCHR was a government document of one mere county of Xinjiang - Chabuchar (incorrectly spelt as Chabchal by the OHCHR).<sup>69</sup> It is noted that there are 99 counties in Xinjiang. This means the OHCHR chose to extrapolate one county government's statement (representing around 1% of Xinjiang counties) to apply to the whole of Xinjiang without explaining to its readers that the OHCHR was, in fact, extrapolating, and also without explaining why such an extrapolation was justified.

The second point to make is that, on the face of it, Chabuchar county's point system sounds similar to Australia's 'Work For The Dole' scheme, which places an obligation on those receiving welfare benefits to engage in some form of training or work, which can include joining the Army Reserves.<sup>70</sup> The penalty for not fulfilling this obligation is to face "demerits and penalties", such as loss of welfare benefits.<sup>71</sup> It is noted that the United Nations' Human Rights Committee has already examined the legality of Australia's 'Work For The Dole' scheme and concluded it does not constitute unlawful coercion.<sup>72</sup> Accordingly, if the Chabuchar County's point system is indeed similar to Australia's 'Work For The Dole' scheme, then it cannot be described as having "elements of coercion", at least not in contravention of international law.<sup>73</sup>

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid, footnote 281.

<sup>70</sup> 'Work For The Dole' in *Guides to Social Policy Law: Social Security Guide* (Australian Government, 20 March 2023) <[online](#)>; 'Defence Force Reserves' in *Guides to Social Policy Law: Social Security Guide* (Australian Government, 20 March 2023) <[online](#)>.

<sup>71</sup> 'Demerits and Penalties for not Meeting Mutual Obligation or Participation Requirements' (Services Australia, Australian Government) (webpage) <[online](#)>.

<sup>72</sup> *Bernadette Faure v Australia*, Communication No. 1036/2001, U.N. Doc. CCPR/C/85/D/1036/2001 (2005).

<sup>73</sup> For a discussion of China's welfare-to-work initiatives, see Qin Gao, *Welfare, Work, and Poverty: Social Assistance in China* (Oxford University Press, 2017).



The OHCHR also referenced criticisms by the International Labour Organization’s Committee of Experts on the Application of Conventions and Recommendations (CEACR), claiming there was a discriminatory effect on employment opportunities for minority groups, and claiming coercive measures in employment.<sup>74</sup> It is noted that CEACR cited allegations made by the International Trade Union Confederation (ITUC), and it can be deduce that ITUC’s allegations were based on the discredited *Uyghurs For Sale* report by the Australian Strategic Policy Institute.<sup>75</sup> This patently indicates that ITUC and CEACR did not critically examine their sources. This is particularly unfortunate since uncritically accepting the allegations made in the *Uyghurs For Sale* report risks undermining article 1(4) of the *International Convention on the Elimination of all Forms of Racial Discrimination 1979* with regard to any affirmative action measures taken by the Chinese government to address employment disadvantages that minority groups face in Xinjiang. Article 1(4) states: *“Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”*

On the other hand, it can be assumed that the OHCHR did critically examine the *Uyghurs For Sale* report, as it (rightly) chose not to cite it in the OHCHR report; this is despite it being the seminal work on the subject of forced Uyghur labour, and despite the OHCHR being willing to cite less influential reports by the Australian Strategic Policy Institute.<sup>76</sup> Unfortunately, however, it seems the OHCHR overlooked the fact that CEACR’s criticisms of the Chinese government ultimately link back to the *Uyghurs For Sale* report, which means the OHCHR report is still tainted by the discredited *Uyghurs For Sale* report.

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<sup>74</sup> See the OHCHR report, 39.

<sup>75</sup> See Jaq James, ‘The Australian Strategic Policy Institute’s “Uyghurs For Sale” Report’: Scholarly Analysis or Strategic Disinformation?’ (Working Paper 1/2022, CO-WEST-PRO Consultancy, January 2022) <[online](#)>. The ITUC’s complaint to the CEACR is not publicly available, but given it was the Australian Strategic Policy Institute that came up with the figure of 80,000 Uyghurs being forced into labour, and this is the same number alleged by the ITUC, it is more likely than not that ITUC relied on the Australian Strategic Policy Institute for its complaint: see International Labour Organization, ‘Application of International Labour Standards 2022 Report III (Part A) Report of the Committee of Experts on the Application of Conventions and Recommendations’, International Labour Conference 110<sup>th</sup> Session, 2022, 515 <[online](#)>.

<sup>76</sup> See the OHCHR report, footnotes 137 and 197.

## 4.2. Work Tied to Leaving VETCs

The OHCHR's convoluted logic behind finding "elements of coercion" in work tied to individuals leaving VETCs appears to be the following:

- (1) the Chinese government had described the transition of individuals who trained inside the VETCs who then went on to find outside employment as a "seamless connection";
- (2) this "seamless connection" is evidenced by:
  - (a) companies in Xinjiang being incentivised to employ ethnic minorities, including ethnic minorities who previously attended VETCs; and
  - (b) one county government had set a quota of 100,000 job placements for individuals who had completed vocational training;
- (3) therefore, because the OHCHR had concluded earlier in its report that the VETC system amounts to arbitrary detention,<sup>77</sup> any "seamless connection" between outside employment and the VETCs means there is a menace of penalty cast over that employment (in other words, an "element of coercion").<sup>78</sup>

There are a number of substantial problems with the OHCHR's logic. First, in regard to point (1), it is submitted that abstract bureaucratic rhetoric - especially a mere two words - is not sufficient evidence to make the grave allegation that individuals are working under a menace of penalty. A documented plan spelling out the detail of what a "seamless connection" means would be required before such words could be fully fleshed out as having substance. Without such detail, it has to be considered that "seamless connection" could simply mean well-funded and well-managed job placement services offering real work opportunities.

Second, it is submitted that the OHCHR's attempt to overlay point (2) on point (1) as an attempt to flesh out the words "seamless connection" is drawing a very long bow, particularly since those who attended VETCs would be a mere subgroup of "ethnic minorities" taking part in an affirmative action scheme for increased employment. In regard to point (2)(b), the OHCHR admitted itself that it does not know if the 100,000 job placements "relates to VETCs directly".<sup>79</sup> It is also drawing a very long bow to

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<sup>77</sup> The validity of this finding will not be critically assessed in this paper because it falls outside the analytical ambit of this paper, but the problem with the OHCHR's small and non-randomised interviewee sample group is a pertinent issue in the corresponding section of the OHCHR report.

<sup>78</sup> The OHCHR report, 37-38.

<sup>79</sup> Ibid, footnote 276.

claim that, just because quotas are set, this means the government is coercing individuals to work. A reasonable person would presume that - in the absence of evidence to the contrary - if the quota is not met, the government simply accepts there are not enough consensual workers for the number of job placement opportunities.

The OHCHR also seemed to imply that, because Xinjiang's de-extremification laws and regulations require enterprises and trade unions to undertake de-radicalisation duties, that this means workers are subjected to "elements of coercion".<sup>80</sup> It is submitted that, unless such laws stipulate that individuals must involuntarily work for an enterprise or cannot leave an enterprise as part of its de-radicalisation efforts, it cannot be said that there are systematic "elements of coercion". In the alternative, if the OHCHR is implying that de-radicalisation activities create a coercive environment resulting in consent to work not being freely given or revoked, then a substantial amount of victim testimony would be required to confidently make this claim and demonstrate how such activities are coercive. (The problem with the OHCHR's small and non-randomised interviewee sample group has already been discussed in this paper.)

### 4.3. Work Inside VETCs

The OHCHR stated that some of its interviewees told them that "they had to work within the VETC facilities as part of the 'graduation process', with no possibility of refusal for fear of being kept longer at the facilities".<sup>81</sup> The lack of extrapolability regarding OHCHR's small and non-randomised interviewee sample group has already been discussed in this paper. Therefore, it cannot be concluded, based on the OHCHR's interviews, that any coercive work in the VETCs - if it was actually occurring - has been on a systematic scale. Moreover, it is open to conjecture that, by "work", the interviewees were actually referring to compulsory vocational skills training, which, according to the International Labour Office's explanation, would not be considered "work" if it was delivering genuine vocational skills training.<sup>82</sup>

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<sup>80</sup> Ibid, 38.

<sup>81</sup> Ibid.

<sup>82</sup> *Forced Labour and Human Trafficking: Casebook of Court Decisions* (International Labour Office: 2009) 12 <online>. The International Labour Office is the permanent secretariat of the International Labour Organization. As to whether individuals were required to engage in work inside the VETCs, as opposed to

## 5. THE CHINESE GOVERNMENT'S RESPONSE TO THE OHCHR REPORT

A comment needs to be made about the response to the OHCHR report by the Chinese government.<sup>83</sup> To put it bluntly, the 131-page response cannot be described as being of the professional standard expected from a nation that carries the prestigious status of a United Nations Security Council permanent member. A sample of the shortcomings with the Chinese government's response includes the following:

- The Chinese government attempted to replace the OHCHR's 'China bad' narrative with its own 'China good' narrative; but the correct approach is to first methodically demonstrate why the OHCHR's findings are unreliable (as this paper does) which then makes way for an alternative narrative. The Chinese government did not do this, which simply leaves a reader to choose between two competing narratives.
- Related to the above point is the Chinese government's profuse and sweeping use of words like "rumors" and "lies" to defend itself without sufficient exploration preceding the use of such words. This would leave an unprofessional impression for many readers.
- The Chinese government did not concede any wrongdoing or flaws in its counter-terrorism and counter-extremism responses, including no concession that its counter-terrorism and counter-extremism laws were drafted in ways that could leave them open to abuse in their application on the ground. The fact is that the drafting of the laws are problematic (as this paper acknowledges) and it would be plainly impossible for any type of crime control program in any part of the world to be applied perfectly because opposing individual rights are difficult to balance. Not conceding these realities undermines the believability of the Chinese government's response.
- The Chinese government's response did not contain any footnotes/endnotes/appendices of evidentiary sources for its own claims or claims from secondary sources. In other words, the Chinese government

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vocational skills training, this is a matter that the Chinese government should be open and transparent about with the OHCHR.

<sup>83</sup> See Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, Letter No GJ/56/2022, 31 August 2022 <[online](#)>.

expected readers to accept its whole response on mere face value. This undermines the believability of the Chinese government's response.

- An odd feature of the Chinese government's response was its profuse use of emotive, subjective and hyperbolic language more befitting of a novel than a formal document for a United Nations body. Examples include: "so-called" (notably repeated 19 times); "thug"; "iron-clad facts" (when the nature of the information provided could not be described as such); "absolutely ridiculous"; and value-laden adjectives placed before the mention of crimes, such as "unpardonable", "barbaric", "heinous", "egregious" and "horrific". Such language would create an unprofessional impression with many readers and give the appearance of the Chinese government substituting reasoned arguments for fervor.
- Another odd feature of the Chinese government's response is its apparent view that the existence of an Exhibition Centre for Counter-Terrorism and De-radicalisation in Xinjiang, and visits to that centre, amount to evidence that supports the Chinese government's position.<sup>84</sup> It is not supporting evidence.
- The Chinese government made unidentified references to "more than 170 people of various ethnic groups in Xinjiang", "experts" and "scholars" who wrote to the OHCHR to support the Chinese government's position.<sup>85</sup> There are two problems with this. Firstly, just like the OHCHR, the Chinese government expected its readers to unquestioningly accept claims made under the cover of anonymity.<sup>86</sup> As such, a natural question for readers to ask is whether those individuals were proxies of the Chinese government (especially since the Chinese government knew about these individuals writing to the OHCHR). Secondly, a couple of hundred individuals (just like the OHCHR's 40 interviewees) is not a reliable sample size (for reasons explained earlier).

Based on the above sample, the question to ask is: are these shortcomings a byproduct of a lack of awareness inside the Chinese government of English discourse norms and the need to demonstrate evidence-based thinking, or are they a byproduct of the Chinese government evading incrimination? If it is the former, the

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<sup>84</sup> Ibid 8 and 15.

<sup>85</sup> Ibid 13.

<sup>86</sup> To understand the unreliability problems with anonymous testimony, see Jaq James, 'Amnesty International and Human Rights Watch's Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?' (Working Paper 2/2022, CO-WEST-PRO Consultancy, May 2022) section 4.1 <[online](#)>.

Chinese government needs to address its English communications approach on the international stage. If it is the latter, more space is needed in China to discuss public policies within the international human rights law framework in order to increase compliance. Regardless of whether the answer is the former or the latter, it is acknowledged that the Chinese government faces a significant challenge in harmonising the different communication requirements for its domestic audience and the international audience.

## 6. CONCLUSION

This paper will likely be the last major CO-WEST-PRO paper that examines existing institutional reports on Xinjiang, as the OHCHR report has since become the perceived ‘trump card’ of those who perpetuate the mainstream atrocity narratives relating to Xinjiang.<sup>87</sup> CO-WEST-PRO’s last three papers have clearly shown that the atrocity claims that have come out of Western nations on the topic of Xinjiang have been of mixed quality, poor quality, or have been outright misleading and deceptive. This means that former Australian Prime Minister, Paul Keating, was correct when he said there are “disputes” about the claims surrounding Xinjiang.

This paper further confirms that the OHCHR report is not the watertight source Mr Keating’s interlocutor - the *Sydney Morning Herald* journalist - believed it to be. Whilst the OHCHR’s black-letter legal analysis of China’s counter-terrorism and counter-extremism laws appears sound, there are fundamental problems with other aspects of the OHCHR report to the point where some of it can be described as junk research. The overall impression of the OHCHR report is that it over-represented assertions in favour of a predetermined conclusion and under-represented assertions, evidence and analysis in opposition to that conclusion. The consequence is that not a single person stands on solid ground when they wave around the OHCHR report as their weapon of choice against China. This raises the question as to whether it is for these reasons that the then United Nations High Commissioner for Human Rights, Ms Michelle Bachelet, did not sign the OHCHR report.

It is noted that Mr Keating, at the same National Press Club gathering, also criticised the Australian Strategic Policy Institute for being a “pro-US cell” inside Australia.<sup>88</sup> Given the fundamental defects with the OHCHR report, the OHCHR leaves itself open to similar concerns of it possibly being captured by proxies of foreign governments that are engaged in ‘strategic rivalry’ with China.

The OHCHR should be heavily criticised for not breaking free from the trend set by Western institutions and Western-aligned activists before it. By aligning with the Western political pack on the topic of Xinjiang, not only has the OHCHR diminished its own professional credibility, it also may have undermined the human rights law

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<sup>87</sup> It was hoped that a future CO-WEST-PRO paper could be based on a field study carried out in Xinjiang by the author of this paper, but the author was unable to secure official permission to conduct such a study independently.

<sup>88</sup> Paul Keating, Speech to the National Press Club (15 March 2023) <[online](#)>.

framework as a powerful linguistic tool to motivate states into respecting fundamental rights. As such, an inevitable question to ask is: will the next state accused of human rights abuses point to the OHCHR report on Xinjiang as a reason why other states should be sceptical of what the OHCHR says? If or until that time comes, let us hope that the OHCHR report will not be used to justify Australia going to war with China within the next three years - the timeframe asserted by the former Executive Director of the Australian Strategic Policy Institute.<sup>89</sup>

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<sup>89</sup> Peter Hartcher and Matthew Knott, 'Red Alert: War Risk Exposed', *The Sydney Morning Herald*, 7 March 2023 <[online](#)>.



## FEEDBACK & FUNDING

Feedback on this working paper is welcomed from professionals working in the human rights field, as well as members of the public. To write to the author, please go to [cowestpro.co/contact](https://cowestpro.co/contact). Also, if any broken weblinks are found in this paper, please inform the author so that they can be amended.

The author is trialing an innovative funding model. Currently, there are no Australian government or corporate funding sources for professional pieces of work that challenge status-quo narratives that are dear to the hearts of the political class, particularly the 'China bad - West good' narrative. This means that the only source of funding for ongoing scrutineer work of the kind in this paper is financial contributions from the public.

If you appreciate the immense amount of work that has gone into this paper, you can make a financial contribution through a link that can be found at [cowestpro.co](https://cowestpro.co). Any amount is appreciated.



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