

The Australian Strategic Policy Institute's *Uyghurs for Sale* Report: Scholarly Analysis or Strategic Disinformation?

Jaq James



CO-WEST-PRO
CONSULTANCY

Working Paper
1/2022

WHAT IS CO-WEST-PRO CONSULTANCY?

The name CO-WEST-PRO is a counter-reference to CO-INTEL-PRO – a syllabic abbreviation for the ‘Counter Intelligence Program’ run by the United States Federal Bureau of Investigation (FBI) between the 1950s and 1970s. The program’s objective was to survey, infiltrate, discredit and disrupt domestic American political organisations (including feminist, black power and anti-war movements), all in the name of protecting democracy.

CO-WEST-PRO is a syllabic abbreviation for ‘Counter Western Propaganda’. The objective of CO-WEST-PRO Consultancy is to counter the propaganda theatre ultimately directed out of the Australian Security Intelligence Organisation (ASIO) that manipulates ordinary Australians to tacitly consent to the erosion of democratic and human rights, as well as diplomatic relations with non-enemy states... all in the name of protecting democracy. If there is no counterforce to the propaganda, ASIO and its adherents may soon get their ultimate wish: war with China.

CO-WEST-PRO Consultancy ultimately champions the values of the United Nations: to strengthen universal peace through developing friendly relations among nations and suppressing threats to that peace. Make no mistake... one of the biggest threats to world peace is Western propagandists who groom us into war-lusting and armaments-hoarding. The only path to peace and disarmament is to see through the squid-ink cloud of Western propagandists and refuse to be their plaything.

WHO IS JAQ JAMES?

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DISCLAIMER

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.

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Cover images are of Xinjiang migrant workers in China’s province of Jiangxi in 2019. Images belong to the Hotan People’s Government of Xinjiang, China.

REVISIONS

First Revision: Section 4.3.8 ‘Supplementary Evidentiary Issues’ was added, which also required modification of sections 4.2.1 to 4.2.6.

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

~ Voltaire

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DEDICATION

To the young people of Xinjiang...

*Life can be like a game of 'Snakes & Ladders'.
There are those who trade in ladders, and those who trade in snakes.*

Know that not all of us here trade in snakes.

This paper is my gift of a ladder to you. How far it will take you, I do not know.

I hope one day I can greet you at the top.

Until we meet,

Jaq James

1. EXECUTIVE SUMMARY

In early 2020, the Australian Strategic Policy Institute Limited (ASPI) made international headlines with the claim it had uncovered a systematic forced labour program taking place in China's factories; a heinous crime orchestrated by the Chinese Government against the Uyghur ethnic group from the province of Xinjiang. ASPI's report – *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* – resulted in the tarnishing of many Chinese and transnational companies for their human rights abuses, as well as freeing many Uyghurs from the shackles of forced labour. An outcome to be celebrated... or so it would seem.

Given such an outcome, it is essential that the world is confident that ASPI's assessment of the situation is correct. If ASPI's assessment is incorrect, then the companies that ASPI named-and-shamed, as well as the Uyghurs that worked for the companies, have suffered undeserved penalty. As a result, it would be ASPI, not the Chinese Government, that (ironically) has contributed to the infringement of the Uyghurs' human rights, i.e., their right to work and their right to access work-training programs, and possibly other human rights.

This paper is the first to delve into a deep legal analysis of the forced labour claims made by ASPI, and the findings are alarming. This paper ultimately concludes that both ASPI and the Australian Government need to remedy their failure to protect and respect the human rights of the Uyghurs (that they were purportedly trying to emancipate) by complying with the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles').¹

¹ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (United Nations Human Rights Office of the High Commissioner; 2011) <[online](#)>.

2. BRASS TACKS

ASPI is a defence and strategic policy think tank. It is based in Canberra, and will soon have an office in Washington. It was founded by the Australian Government, and is funded mostly by the Australian Department of Defence and the United States' Department of State. It also controversially takes funding from the armaments industry, as well as having some members of its governing council simultaneously sitting on the boards of armament-manufacturing companies.² Also, ASPI is listed on the Attorney-General's Department's *Foreign Influence Transparency Scheme Public Register* because of its receipt of funding from foreign governments and foreign political parties to engage in political and governmental influence work.³

In terms of its public face, ASPI is best known internationally for its commentary on China. Some of its China-related commentary clearly relates to the field of defence and strategic policy (e.g., the South China Sea), while other commentary is seemingly unrelated. On this latter point, it is ASPI's 2020 report, *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* ('ASPI report'), written by five members of ASPI's *International Cyber Policy Centre*, with which this paper is concerned.⁴

² *Annual Report 2020-2021* (Australian Strategic Policy Institute: 2021) Annex H <[online](#)>. It has been submitted by critics that ASPI's armament-industry-funding creates a perverse incentive for ASPI to manufacture geopolitical-threat-narratives so that their funders can financially gain from selling weapons to counter those manufactured threats. For further reading, see: Myriam Robbin, 'The think tank behind Australia's changing view of China', *Financial Review*, 15 February 2020 <[online](#)>; Marcus Reubenstein, 'Revealed: radical escalation in US war machine funding for Australian Government "think tank" ASPI', *Michael West Media*, 24 November 2020 <[online](#)>; Michelle Fahy, 'How the military-industrial-complex has captured Australia's top strategic advisory body', *Declassified Australia*, 9 December 2021 <[online](#)>.

³ 'Foreign Influence Transparency Scheme Public Register', *Attorney-General's Department* <[online](#)>.

⁴ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro and Nathan Ruser, 'Uyghurs for sale: "Re-education", forced labour and surveillance beyond Xinjiang', *Australian Strategic Policy Institute*, Policy Brief Report No 26/2020, February 2020 <[online](#)>.

In the report, ASPI alleged that the Chinese Government is likely implementing a systematic forced labour program via its pre-employment training and job placement schemes aimed at facilitating Uyghurs to move into factory work across China. ASPI listed 82 international companies that it believed was likely complicit in using forced Uyghur labour by way of their Chinese supply chains. ASPI estimated more than 80,000 Uyghurs could be subjected to forced labour.

Whatever the marketing reasons were, ASPI decided to tightly package the promotion of its report with its lead author, Ms Vicky Xiuzhong Xu. ASPI's aggressive salesmanship of Ms Xu paid off. It won her global media exposure and elite attention, turning her into a think tank celebrity. One to two weeks after the release of her report, a prime-time television show dedicated an episode to telling a hero's-journey-tale about her life and showcased her work for ASPI;⁵ and countless mainstream media outlets and human rights organisations went on to platform Ms Xu's forced labour allegations,⁶ including the *Working Group on Business and Human Rights* for the United Nations ('UN Working Group')⁷ and the *Institute of Business and Human Rights*.⁸ Despite these entities holding a watchdog status, not a single one that repeated Ms Xu's findings critically engaged with her cited sources and her interpretations of those sources.⁹

⁵ See 'When Worlds Collide – Vicky Xu', *Australian Story* (Australian Broadcasting Corporation, 2020) <[online](#)>.

⁶ See, e.g., Anna Fifield, 'China compels Uighurs to work in shoe factory that supplies Nike', *The Washington Post*, 29 February 2020 <[online](#)>; Isabelle Lane, 'Uyghurs for Sale: Report exposes forced labour beyond Xinjiang, implicating major brands', *The New Daily*, 1 March 2020 <[online](#)>; 'China Uighurs moved into factory forced labour for foreign brands', *BBC News*, 2 March 2020 <[online](#)>.

⁷ See 'China: UN experts deeply concerned by alleged detention, forced labour of Uyghurs', *United Nations Human Rights Office of the High Commissioner*, 29 March 2021 <[online](#)>.

⁸ See 'Top 10 Business and Human Rights Issues for 2021', *Institute of Business and Human Rights*, December 2020 <[online](#)>.

⁹ Whilst the UN Working Group has asked the companies listed in the ASPI report to respond to the allegations of forced labour, there is no evidence that the UN Working Group critically analysed ASPI's findings and its cited sources. See, e.g., a letter sent on 12 March 2021 to Meike Leisure Sports Goods Co Ltd from the UN Working Group <[online](#)>. It is conceded that, even if there were individuals in watchdog organisations who

This paper is the only known paper that critically analyses the ASPI report from a legal perspective, and is arguably long overdue.

wanted to critically analyse Ms Xu’s work, they may have been reluctant to do so because of Ms Xu’s antagonistic behaviour exhibited online: see, e.g., Ms Xu’s public post on Twitter, dated 28 October 2020, where she referred to the Director of the Australian Citizens Party as a “stupid bald old fuck” <[online](#)>; and her public post on Twitter, dated 27 September 2020, where she stated, with reference to an academic at Deakin University, that “many universities are doing a shit job at new, relevant empirical research on China” <[online](#)>.

3. WHY CRITICAL ENGAGEMENT MATTERS

Understandably, some people may be sceptical of a think tank that side-tracks into a human rights issue, like forced labour, when its official mandate is defence and strategic policy analysis, and its *International Cyber Policy Centre* is mandated to work on cyber-technology issues and foreign disinformation operations. This paper, however, takes a Pollyanna-outlook and welcomes any organisation's interest in matters belonging to the business and human rights domain ('BHR'), no matter how disingenuous that interest may seem. Forced labour is a very serious human rights issue, and the more resources dedicated to its eradication, the better. Accordingly, for the purposes of this paper, ASPI's contribution to the BHR space has been welcomed and its report has been engaged with in good faith.

ASPI proclaims its report is the most widely read study it has ever produced, receiving "nearly half a million unique page views and downloads" in the space of fifteen months.¹⁰ ASPI implicitly claimed credit for the following outcomes:

- Apple's severance with its Chinese component supplier, Ofilm Technology, which reportedly employed at least 700 Uyghur workers.¹¹ (Resulting from this, Ofilm Technology had to sell its factory, which reportedly employed up to 4000 workers.¹² Its company revenue declined 49%, and its share price dropped 63% between July 2020 and August 2021.¹³ No public statement was made by Apple indicating actual forced labour was discovered at Ofilm Technology.)

¹⁰ Graeme Dobell, 'ASPI's decades: 'Uyghurs for sale'', *The Strategist*, Australian Strategic Policy Institute, 11 October 2021 <[online](#)>.

¹¹ 'Apple is Said to Cut Off Chinese Supplier over Xinjiang Labor', *Bloomberg News*, 17 March 2021 <[online](#)>.

¹² Takashi Kawakami, 'Cotton to iPhones: Xinjiang labor casts shadow over electronics', *Nikkei Asia*, 16 June 2021 <[online](#)>.

¹³ See *Bi-Annual Report* (Ofilm Technology Co Ltd: August 2021) <[online](#)>.

- An investigation opened by France's anti-terrorism prosecutor's office into four leading fashion brands (Zara, Uniqlo, Skechers and SMCP) for profiting from forced Uyghur labour.¹⁴
- A lawsuit filed by human rights groups and a Uyghur litigant against the four French fashion brands listed above. (The evidence submitted was said to be largely based on ASPI's report.)¹⁵

ASPI has not yet officially claimed credit for:

- The motion to introduce legislation in Australia to outlaw importation of products made by Uyghurs.¹⁶
- The termination of 400 Uyghur workers and a blanket no-hire policy of Uyghurs by Apple's China-based supplier, Lens Technology.¹⁷ (No statement was made by Apple indicating actual forced labour was discovered at Lens Technology.)
- The termination of all Uyghur workers and a blanket no-hire policy of Uyghurs by Nike's China-based supplier, Taekwang Shoes. (This is despite the fact that due diligence processes reportedly found Uyghur workers had the freedom to end their contracts at any time, and had done so in the past.)¹⁸

¹⁴ Elizabeth Paton, Leontine Gallois and Aurelien Breeden, 'Fashion Retailers Face Inquiry Over Suspected Ties to Forced Labor in China', *The New York Times*, 4 July 2021 <[online](#)>.

¹⁵ Ibid.

¹⁶ 'Bill to Ban Goods Produced by Uyghur Forced Labour Introduced to Australian Parliament', *Rex Patrick*, 8 December 2020 <[online](#)>.

¹⁷ Liza Lin, Eva Xiao and Yoko Kubota, 'Chinese Suppliers to Apple, Nike Shun Xinjiang Workers as US Forced-Labor Ban Looms', *The Wall Street Journal*, 20 July 2021 <[online](#)>.

¹⁸ Jilil Kashgary, 'Nike Says China-Based Supplier Sent All Uyghur Workers Home Amid Forced Labor Allegations', *Radio Free Asia*, 21 July 2020 <[online](#)>.

- A blanket disengagement by Adidas and Lacoste from all suppliers and subcontractors listed in the ASPI report.¹⁹ (No statement was made by either company indicating that actual forced labour was discovered in their supply chains.)

In terms of pushback against ASPI, the Xinjiang Provincial Government denied ASPI's findings, stating the report was "a smear about Xinjiang, full of suppositions and fabricated stories, [and a demonstration of] obvious ideological prejudice".²⁰

In terms of denials from companies named in the ASPI report, many stated that there was either no forced labour in their supply chains or they had no business relationships with the suppliers named by ASPI.²¹

In terms of legal responses, one of the authors of the ASPI report, Dr James Leibold, acknowledged at a senate committee hearing that "a couple of companies have threatened legal proceedings against ASPI as a result of being named in the

¹⁹ Helen Atkinson, 'Adidas, Lacoste Pledge to Cut Forced Labor From Supply Chain', *Supply Chain Brain*, 7 July 2020 <[online](#)>.

²⁰ 'The 7th Press Conference on Xinjiang-Concerned Issues', *Tian Shan Net*, 16 March 2020 <[online](#)>.

²¹ See, e.g., 'Abercrombie & Fitch's Response', *Business & Human Rights Resource Center*, 23 March 2020 <[online](#)>; 'Amazon's updated response to the Australian Strategic Policy Institute's report on forced labour of ethnic minorities from Xinjiang', *Business & Human Rights Resource Center*, 2 October 2020 <[online](#)>; 'North Face/VF Corp's Response', *Business & Human Rights Resource Center*, 24 March 2020 <[online](#)>; 'Puma's Response to the Report by ASPI', *Puma* <[online](#)>; 'Statement of Skechers USA on Uyghurs', *Skechers*, March 2021 <[online](#)>; Jeremy Winslow, 'Nintendo Responds to Forced Uyghur Labor Claims', *Game Spot*, 7 July 2021 <[online](#)>; 'Esquel Group denies allegations of using forced labour in Xinjiang and appeals against US sanctions', *Business & Human Rights Resource Center*, 23 July 2020 <[online](#)>; 'Major Chinese supplier of Australian train parts blacklisted by US denies allegations of using forced labour', *Business & Human Rights Resource Center*, 29 July 2020 <[online](#)>; 'Marks & Spencer's Response', *Business & Human Rights Resource Center*, 19 March 2020 <[online](#)>.

report”.²² Additionally, a group of Uyghurs expressed an intention to sue ASPI, claiming its report defames them and contains mistruths because “Uyghurs are portrayed by the Australian think tank report as lazy people who need to be 'forced' to work”.²³

Most notably, the lead author of the ASPI report, Ms Xu, since acknowledged to a senate committee that “without adequate auditing access, it remains difficult to determine whether a factory [in China] uses forced labour or not”.²⁴

The above matters have been canvassed to emphasise that the ASPI report has had massive ramifications in the transnational business world, ranging from revenue losses and share price drops to reputational damage and even potential criminal convictions.²⁵ If the ASPI report is indeed an academically rigorous and precise piece of work, such ramifications are undeniably deserved. However, when there are company denials and threatened lawsuits, protestations from consensual Uyghur workers, and the lead author, herself, has conceded to a senate committee her uncertainty about the allegations, alarm bells should be ringing for all professionals working in the BHR space.

If ASPI got it wrong, it would mean company owners and shareholders have unjustly suffered financial losses and reputational damage. It would also follow that ASPI (ironically) contributed to human rights violations of consensual Uyghur workers, i.e.,

²² Foreign Affairs, Defence and Trade Legislation Senate Committee, Parliament of Australia, *Customs Amendment (Banning Goods Produced by Uyghur Forced Labour Bill 2020* (27 April 2021) 4 <[online](#)>.

²³ Liu Xin and Fan Lingzhi, ‘Young Uyghur look to sue Australian think tank over report on forced labor in Xinjiang’, *Global Times*, 20 June 2021 <[online](#)>.

²⁴ Vicky Xiuzhong Xu, ‘Submission No 50’ to the Foreign Affairs, Defence and Trade Legislation Senate Committee inquiry into the *Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020*, Parliament of Australia <[online](#)>.

²⁵ If the Chinese Government grants the author of this paper entry into China in 2022, oral testimony will be collected from managers of companies that were directly or indirectly impacted by the ASPI report. The interviews with the managers, if they can be successfully arranged, will be filmed and published with the final version of this paper.

their right to work and their right to access work-training programs under articles 6(1) and 6(2) of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR').²⁶ Surprisingly, these fundamental human rights were not factored into ASPI's analysis.

3.1. The Right to Work

The importance of the right to work has been expounded by two of the most preeminent international law bodies on economic and labour rights: the United Nations *Committee on Economic, Social and Cultural Rights* ('UN Committee') and the *International Labour Organisation* ('ILO').

The UN Committee has declared:

*"The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity".*²⁷

The preamble to the *ILO Employment Promotion and Protection Against Unemployment Convention 1988 (No 168)* emphasises:

*"the importance of work and productive employment in any society, not only because of the resources which they create for the community, but also because of the income which they bring to workers, the social role which they confer and the feeling of self-esteem which workers derive from them".*²⁸

Of additional relevance is an acknowledgement by the author of the *UN Guiding Principles*, Professor John Ruggie, that businesses play a complementary role to governments in fulfilling human rights:

²⁶ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, 3 <[online](#)>.

²⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18 [1] <[online](#)>.

²⁸ *ILO Employment Promotion and Protection Against Unemployment Convention 1988 (No 168)*, Preamble <[online](#)>.

“Business is the major source of investment and job creation, ... capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights”.²⁹

Taking the above into account, it is submitted that any analysis of China’s job placement schemes should have started from the premise that the Uyghurs have a human right to engage in consensual work that must not be adversely impacted. It is noted that ASPI did not start from this premise in its report.

3.2. State Duty to Realise the Right to Work

The right to work under article 6(1) of the ICESCR is realised practically through article 6(2), which sets out that states should take steps to provide:

“technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment”.³⁰

According to the *ILO Human Resources Development Convention 1975 (No 142)*, state employment policies and programs should be tailored to relevant “employment needs, opportunities and problems, both regional and national”, as well as “the stage and level of economic, social and cultural development” of the relevant country.³¹

According to the UN Committee, a state will violate its obligation under article 6(2) of the ICESCR if it is unwilling to use maximum available resources to realise their

²⁹ John Ruggie, ‘Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises’, *United Nations Human Rights Council*, 7 April 2008, A/HRC/8/5 <[online](#)>.

³⁰ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 <[online](#)>.

³¹ Article 2 of the *ILO Human Resources Development Convention 1975 (No 142)* <[online](#)>.

citizens' rights to work and protect them from unemployment and insecurity, particularly among young people, women, the disadvantaged and the marginalised.³²

Taking the above into account, it is submitted that any analysis of China's pre-employment training for Uyghurs should have started from the premise that the Chinese Government is obligated under international law to create work-training and employment opportunities for its Uyghur population (including worker mobility programs where no, or insufficient, local work is available). This is particularly important because the Uyghurs are considered to be an economically and socially disadvantaged group.³³ It is noted that ASPI did not start from this premise in its report.

3.3. Corporate Responsibility to Respect Article 6 of the ICESCR

Going beyond government duties, the *UN Guiding Principles* specifically state that companies have a responsibility to respect human rights.³⁴ Accordingly, this responsibility would arguably apply to ASPI and its intra-territorial and extra-territorial business operations, given it is a Commonwealth company.³⁵ Thus, there is not just a positive duty on the Chinese Government to fulfil the Uyghurs' article 6 rights, there is also a responsibility on ASPI to ensure its business operations, such as its publications and lobbying, do not adversely impact on the Uyghurs' article 6

³² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18 <[online](#)>.

³³ See, e.g., 'The 7th Press Conference on Xinjiang-Concerned Issues', *Tian Shan Net*, 16 March 2020 <[online](#)>.

³⁴ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (United Nations Human Rights Office of the High Commissioner; 2011) Principle 11 <[online](#)>.

³⁵ ASPI is a company limited by guarantee under the *Corporations Act 2001* (Cth): see ASPI's Company Constitution <[online](#)>. ASPI also must meet the legal requirements under the *Commonwealth Authorities and Companies Act 1977* (Cth): see 'Charter', *Australian Strategic Policy Institute* <[online](#)>.

rights. It is noted that ASPI made no acknowledgement of this responsibility in its report.

3.4. Summary

Considering the detrimental consequences that the ASPI report has had on all stakeholders, particularly the Uyghurs' human rights under article 6 of the ICESCR, it is essential that the ASPI report be examined from a critical perspective. Too much is at stake to give ASPI a free pass just because it enjoys presumed legitimacy by being a think tank.

4. CRITICAL ENGAGEMENT WITH THE ASPI REPORT

The ASPI report has been examined in great detail for the purposes of this paper. It must be emphasised that such an exercise was very challenging for two reasons.

First, even though the ASPI report centred around the claim of forced labour, there was little substantial engagement with international laws. When laws were referenced by ASPI, they were either not fully contextualised or not clearly and consistently connected to all of the allegations. To add order to the chaos, this paper adds legal structure and legalistic interpretations to give ASPI's imputed concerns some legalistic meaning. (See the '[Legal Issues](#)' and '[Merit Issues](#)' sections below.)

Second, where ASPI made specific allegations, many of its cited references were misrepresented, were of unreliable quality, or were decontextualised. Sometimes the references would also state the opposite of what ASPI claimed. To add further order to the chaos, this paper compares and contrasts ASPI's imputed concerns against its cited sources. (See the '[Evidentiary Issues](#)' section below.)

4.1. Legal Issues

Regarding international law, ASPI's accusation of forced labour centred around one document - the *ILO Indicators of Forced Labour 2012* ('ILO indicators').³⁶ The document is a manual to help front-line practitioners "identify persons who are **possibly** trapped in a forced labour situation" (emphasis added). It contains eleven indicators that "represent the most common signs or 'clues' that point to the **possible** existence of a forced labour case" (emphasis added). In other words, the ILO indicators do not necessarily, of themselves, lead to a person being forced into labour; rather, they are simply red flags that warrant further investigation. This important distinction was not explained by ASPI to its readers.

³⁶ Special Action Programme to Combat Forced Labour, *ILO Indicators of Forced Labour*, International Labour Organization, 2012 <[online](#)>.

The eleven ILO indicators of forced labour are worded by the ILO as follows:

- First indicator - 'Abuse of vulnerability'
- Second indicator - 'Deception'
- Third indicator - 'Restriction of movement'
- Fourth indicator - 'Isolation'
- Fifth indicator - 'Physical and sexual violence'
- Sixth indicator - 'Intimidation and threats'
- Seventh indicator - 'Retention of identity documents'
- Eighth indicator - 'Withholding of wages'
- Ninth indicator - 'Debt bondage'
- Tenth indicator - 'Abusive working and living conditions'
- Eleventh indicator - 'Excessive overtime'.

BHR professionals are clear in their minds that these eleven indicators do not amount to a legal definition of 'forced labour'. Rather, they are measured against the definition of 'forced labour' under article 2(1) of the *ILO Forced Labour Convention 1930 (No 29)*, which states:

"all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".³⁷

The International Labour Office has explained that the meaning of 'voluntary' consists of two parts: (i) whether consent to work was freely given by the worker; and (ii) whether the worker retained the ability to revoke that consent.³⁸ Thus, 'forced labour' has a narrow definition that is clearly demarcated from other substandard working conditions.

Surprisingly, the international legal definition - which is central to any accusation of forced labour - was tucked away in an endnote of the ASPI report instead of

³⁷ *ILO Forced Labour Convention 1930 (No 29)* <[online](#)>.

³⁸ *Forced Labour and Human Trafficking: Casebook of Court Decisions* (International Labour Office: 2009) 13 <[online](#)>. These two elements are reflected in the Australian legal definition of 'forced labour' under section 270.6 of the *Criminal Code Act 1995* (Cth), also referenced in section 4 of the *Modern Slavery Act 2018* (Cth): (i) the victim provides labour or services because of coercion, threat or deception; and (ii) the victim is not free to cease providing the labour or services, or leave the place where the labour or services are provided.

featuring in the body of the report.³⁹ Only the ILO indicators were referenced in the body, which would have led lay readers to mistakenly believe that the ILO indicators amount to a legal definition or a legal checklist. By doing this, ASPI effectively widened the term ‘forced labour’ to mean any unfavourable working condition or labour rights violation. To add to this confusion, ASPI widened its definition of ‘forced labour’ even further by rewording the first ILO indicator - “abuse of vulnerability” - as “**being placed in a position of dependence and** vulnerability” (emphasis added).

Consequently, the very foundations of ASPI’s argumentations were compromised from the outset because the central legal element of consent was not a consistent feature in its analysis.⁴⁰

4.2. Merit Issues

The ASPI report contained both general claims and specific claims to make a case of forced Uyghur labour. This paper is only concerned with ASPI’s specific claims, as evidence proffered for specific claims is more likely to be of probative value than for general claims.

³⁹ Endnote 25.

⁴⁰ It is noted that one of the authors of the ASPI report, Ms Kelsey Munro, holds a Bachelor of Laws from the University of Sydney. It is also noted that the Director of ASPI’s *International Cyber Policy Centre*, Mr Fergus Hanson, who is listed in the ‘Acknowledgements’ section of the ASPI report as providing “support and guidance” to the authors, holds a Master of International Law from the University of Sydney and is the Executive Vice President of the *Global Fund to End Slavery*. Therefore, it is submitted that both Ms Munro and Mr Hanson likely had the capacity to ensure the ASPI report was legally sound, since identifying elements of legal definitions is a foundational legal skill, and Mr Hanson’s senior position with the *Global Fund to End Slavery* would have provided him with expertise on the legal elements of ‘forced labour’. Because the ASPI report is legally flawed, it could be concluded that ASPI did not prioritise legal preciseness for its report.

ASPI's specific claims of forced labour fell within three case studies, with the third case study being made up of four small case studies. Thus, in total, there were six case studies, which have all been analysed below.

4.2.1. Case Study 1: Taekwang Shoes Co Ltd

ASPI stated that Taekwang Shoes, located in the city of Qingdao, employed 600 Uyghur workers, and its primary client was Nike.

The concerns ASPI had are listed below.

4.2.1.1. First Concern: Night School Attendance

ASPI stated that the Uyghur workers “attend a night school where they study Mandarin,⁴¹ sing the Chinese national anthem and receive ‘vocational training’ and ‘patriotic education’”.⁴² It appears ASPI believed this was concerning for two reasons.

First, ASPI explicitly stated that attendance of night school amounts to excessive overtime under the eleventh ILO indicator.⁴³ However, it is noted that ASPI made no reference to whether or not the Uyghur workers consented to night school attendance, thereby precluding it from the realm of forced labour. Moreover, the International Labour Office has explained that an obligation to undergo compulsory education is not ‘work or service’ extracted under the menace of a penalty. Similarly, a compulsory vocational training

⁴¹ For clarification, many Uyghurs do not speak China's lingua franca of Mandarin.

⁴² Page 8.

⁴³ Page 6.

scheme that delivers genuine vocational training - as opposed to extraction of work or service - does not usually constitute forced labour.⁴⁴

Second, ASPI suggested that night school attendance was concerning because the “curriculum closely mirrors that of Xinjiang’s ‘re-education camps’”.⁴⁵ In its executive summary, ASPI referred to Xinjiang’s “re-education camps” as a “government-led program of cultural genocide”.⁴⁶ Accordingly, it can be assumed that ASPI took the position that Uyghurs participating in Mandarin studies, singing the Chinese national anthem, receiving vocational training and receiving patriotic education are forms of cultural genocide. Following from this, it is assumed that ASPI held the erroneous belief that to partake in such activities means the Uyghurs automatically unlearned their own ethnic cultural facets.

Putting aside ASPI’s grossly misaligned and sensationalised analogy, it must be noted that there is no crime of cultural genocide under international law; there is only the crime of genocide, which consists of violent or forceful acts committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.⁴⁷

Whilst Taekwang Shoes may be deserving of censure for running patriotism classes, the matter ought to have been characterised by ASPI proportionately and in line with international law.

Thus, given the weaknesses in ASPI’s argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ‘[Supplementary Evidentiary Issues](#)’ section.

⁴⁴ *Forced Labour and Human Trafficking: Casebook of Court Decisions* (International Labour Office: 2009) 12 <[online](#)>.

⁴⁵ Page 8.

⁴⁶ Page 4.

⁴⁷ *Convention on the Prevention and Punishment of the Crime of Genocide* (signed 9 December 1948, entered into force 12 January 1951), 48 UNTS 227, article 2.

4.2.1.2. Second Concern: National Identity

ASPI stated that the Uyghur workers were called upon by a local government bureaucrat to “strengthen their identification with the state and the nation”.⁴⁸ ASPI also stated that the night school was called “Pomegranate Seed” and noted the name was a reference to a speech made by President Xi Jinping in which he said “every ethnic group must tightly bind together like the seeds of a pomegranate”.⁴⁹

It is unclear which ILO indicator of forced labour ASPI believed these matters fell within. There is nothing in the ILO indicators’ commentary that mentions workers that are asked to identify with a nation is a clue of forced labour. Even if it was, a statement by one bureaucrat and one name of a night school (which seems to be a reference to ethnic minority groups co-existing with one another) would be too trivial to entertain.

Thus, given the weaknesses in ASPI’s argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ‘[Supplementary Evidentiary Issues](#)’ section.

4.2.1.3. Third Concern: Involuntary Work

ASPI stated the Uyghur workers did not choose to work for Taekwang Shoes in Qingdao, nor were they allowed to return home for the holidays.⁵⁰ If this is true, then this would be a case of forced labour, and therefore warrants further investigation under the ‘[Evidentiary Issues](#)’ section.

⁴⁸ Page 9.

⁴⁹ Page 9.

⁵⁰ Page 10.

4.2.1.4. Fourth Concern: Religious Practice Bans

ASPI stated the Uyghur workers were “unable to practice their religion”.⁵¹ This was interpreted by ASPI as falling under the tenth ILO indicator - abusive working conditions.⁵² It is noted that nowhere in the ILO indicators is the prohibition of religious practice acknowledged as an indicator of forced labour.

If ASPI was, instead, trying to imply the lesser charge of Uyghurs being subjected to workplace discrimination based on their religion, ASPI needed to make clear what religious practices were banned and why. For example, if hijabs were banned, was it because of their religious symbology or because of occupational health and safety? If the latter, it would not amount to religious discrimination. ASPI failed to engage in such a discussion.

Thus, given the weaknesses and incompleteness of ASPI’s argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ‘[Supplementary Evidentiary Issues](#)’ section.

4.2.1.5. Fifth Concern: Security Measures

ASPI noted that the Taekwang Shoes factory was “equipped with watchtowers, razor wire and inward-facing barbed-wire fences”, and the Uyghurs’ “comings and goings were closely monitored by a police station at the side gate equipped with facial recognition cameras”.⁵³

⁵¹ Page 10.

⁵² Page 6.

⁵³ Page 10. A long-range view of the factory can be viewed [online](#).

ASPI seemed to be of the position that these security measures fell under the third ILO indicator (restriction of movement) and the sixth ILO indicator (intimidation and threats).⁵⁴

It is noted that ASPI failed to acknowledge a well-known fact in China, i.e., many large factories in China have barbed-fencing, viewing-boxes⁵⁵ and security-monitoring for the purposes of keeping non-employees out, not keeping employees in. This is because large factories normally contain millions of dollars of assets that they do not want stolen or vandalised, and factories also have a duty of care to ensure no harm comes to their employees or wandering members of the general public. Likewise, many large companies and education institutions in China have internal or nearby satellite police stations for security purposes (known as 警务室).⁵⁶

As for the claim that the police station closely monitors the movements of the Uyghur workers using facial recognition cameras, it would seem ASPI was suggesting the facial recognition cameras were discriminately programmed to only monitor workers of Uyghur ethnicity, not all workers. If this is technically possible, it is certainly unusual and may be an indicator of forced labour or other human rights violations, therefore requiring further investigation under the ‘[Evidentiary Issues](#)’ section.

If the facial recognition cameras were not discriminately programmed, then, in order to successfully argue that the Uyghur workers’ movements were restricted, as per the third ILO indicator, ASPI needed to show that Taekwang Shoes’ security situation went beyond the status quo of factories elsewhere in China, i.e., the security measures were specifically designed to keep Uyghur workers inside the factory, away from the outside world. With the possible exception of the facial recognition cameras, it is submitted that ASPI did not demonstrate Taekwang Shoes’ security measures were out of the ordinary.

⁵⁴ Page 6.

⁵⁵ It is submitted that referring to viewing-boxes as “watchtowers” is a sensationalised description.

⁵⁶ If the Chinese Government grants the author of this paper entry into China in 2022, photographs of the security measures taken by other factories in China will be provided in the final version of this paper for comparison purposes.

Moreover, it does not appear that the ILO envisaged passive security measures as counting towards acts of intimidation or threat, as per the sixth ILO indicator. In the accompanying commentary to the sixth ILO indicator, it is clear that the ILO concerns itself with serious matters, such as “threats of physical violence”, “denunciation to the immigration authorities”, “loss of wages or access to housing”, “sacking of family members”, or “withdrawal of ... the right to leave the workplace”.

With the exception of the facial recognition cameras issue, this concern should be set aside for the purposes of this paper due to the weaknesses in ASPI’s argumentation. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ‘[Supplementary Evidentiary Issues](#)’ section.

4.2.1.6. Sixth Concern: Separation

ASPI stated that the Uyghur workers at Taekwang Shoes “speak almost no Mandarin, so communication with locals is largely non-existent”. ASPI also stated that the Uyghurs “eat in a separate canteen or a Muslim restaurant across the road from the factory”, and they live in “separate quarters from those of the Han workers”.⁵⁷ ASPI counted such circumstances as falling under the fourth ILO indicator (isolation) and the first ILO indicator (abuse of vulnerability).⁵⁸

Again, it is noted that ASPI failed to acknowledge another well-known fact in China, i.e., many large companies and education institutions in China have

⁵⁷ Page 10.

⁵⁸ Page 6 and endnote 58.

separate canteens and restaurants to cater to Muslims who only consume halal meals.⁵⁹

Regarding the living arrangements of the Uyghur workers, it is noted that ASPI did not consider the default explanation of the Uyghurs preferring to live with one another because of their shared mother-tongue, religious values, behavioural norms and lifestyles. If Taekwang Shoes did not accommodate the Uyghurs' culinary customs and culturally-sensitive living arrangements, the company would still likely risk accusations of isolation and abuse of vulnerability, on top of risking accusations of forced assimilation, thus putting Taekwang Shoes in a "damned if they do, damned if they don't" situation.

Regarding ASPI's comment about Uyghur workers speaking limited Mandarin, it begs the question that if ASPI saw this as isolation and abuse of vulnerability issues, why then did it have a problem with Uyghur workers attending Mandarin classes after work? Here, ASPI wedged Taekwang Shoes into another "damned if they do, damned if they don't" situation.

Putting aside all of the above reasoning, ASPI drew an extremely long bow to suggest all these factors amount to isolation and abuse of vulnerability as envisaged by the ILO. The commentary accompanying the fourth ILO indicator makes it clear that isolation covers circumstances where workers are in "remote locations, denied contact from the outside world", "being kept behind closed doors", or having "means of communication confiscated". The ILO indicators make no mention of trivialities like separate dormitory rooms or separate canteens. Regarding the commentary accompanying the first ILO indicator, the ILO notes that lack of knowledge of a local language can make a person vulnerable to abuse, but qualified this by stating "[t]he mere fact of being in a vulnerable position ... does not necessarily lead a person into forced labour"; "[i]t is when an employer takes advantage of a worker's vulnerable position ... that a forced labour situation may arise". ASPI did not show how the Uyghurs' limited Mandarin skills were abusively exploited by Taekwang Shoes to amount to forced labour.

⁵⁹ If the Chinese Government grants the author of this paper entry into China in 2022, photographs of halal canteens and restaurants in, or near, large companies and education institutions will be provided in the final version of this paper for comparison purposes.

Given the weaknesses in ASPI's argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the 'Supplementary Evidentiary Issues' section.

4.2.1.7. Seventh Concern: Crossed-Out Halal Signs

ASPI claimed the halal restaurant "across the road" from the factory had "crossed out" its halal signs.⁶⁰ ASPI did not make clear whether the restaurant was owned by Taekwang Shoes, nor did it make clear how the crossed-out halal signs related to the allegation of forced labour, or why it was even a significant point to raise in its report at all. As an example of conjecture, the situation with the halal signs could have been as trivial as the restaurant being temporarily out of stock of certified halal food and therefore was prohibited by consumer laws to engage in misleading advertising. Without further explanation, crossed-out halal signs carry no meaning.

Given the incompleteness in ASPI's argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the 'Supplementary Evidentiary Issues' section.

4.2.1.8. Eighth Concern: Psychological-Dredging, Ideology-Monitoring and Thought-Reporting

ASPI had the following concerns: (i) "[a]t a purpose-built 'psychological dredging office' (心理疏导室), Han and Uyghur officials from Taekwang's local women's federation conduct 'heart-to-heart' talks, provide psychological

⁶⁰ Page 10.

consulting and assist in the uplifting of the ‘innate quality’ (素质) of the Uyghur workers - in order to aid their integration”;⁶¹ (ii) psychological dredging offices and talking/consulting/uplifting roles “are also present in Xinjiang’s ‘re-education camps’”;⁶² (iii) government officials monitor the Uyghurs and “discuss the workers’ ‘ideological trends and any issues that have emerged’”;⁶³ and (iv) government representatives are “stationed inside factories like Taekwang to report daily on the ‘thoughts’ of the Uyghur workers, manage any disputes and guard against spontaneous ‘mass instances’”.⁶⁴

ASPI seemed to imply that “psychological dredging”, and monitoring and reporting of the Uyghur workers’ “ideological trends” and “thoughts” was for the purposes of political indoctrination, falling under the tenth ILO indicator (abusive working conditions).⁶⁵ It is noted that the commentary attached to the ILO indicators does not reference political indoctrination as a clue of forced labour. Nevertheless, political indoctrination on its own, depending on its substance and lack of voluntariness, could still be a concern.

Regarding ASPI’s first sub-concern, it is noted that, if the factory did indeed have an office called “psychological dredging office”, this would be very worrisome. However, 心理疏导室 is figuratively understood in Mandarin as ‘psychological counselling office’. Given that the lead author, Ms Xu, is a native Mandarin speaker, it is likely this Orwellian translation was intentional so that it would taint the references to “heart-to-heart talks”, “psychological consulting” and “uplifting of the ‘innate quality’ of the Uyghur workers” that came afterwards. Thus, it is submitted that this was a bad-faith translation for the purpose of sensationalism. Putting the mistranslation aside, the fact is that many large businesses and institutions around the world provide counselling services for their workers; it does not mean anything untoward is occurring, especially without actual evidence of it.

⁶¹ Page 10.

⁶² Page 10.

⁶³ Page 11.

⁶⁴ Page 11.

⁶⁵ Page 6.

Regarding ASPI's second sub-concern, it is an outright logical fallacy to suggest something nefarious was occurring at Taekwang Shoes just because it had a neutrally-titled office and neutral-sounding roles that shared the same generic names as an office and roles in a re-education camp. By ASPI's flawed logic, every workplace in the world that has a "psychological counselling office" or provides workers with talking/consulting/uplifting services must also be engaging in nefarious activity akin to what goes on in a re-education camp.

Accordingly, ASPI's first and second sub-concerns should be set aside for the purposes of this paper due to dubious translation and argumentation. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ['Supplementary Evidentiary Issues'](#) section.

Regarding ASPI's third and fourth sub-concerns, if government officials and representatives were monitoring, discussing and reporting on Uyghurs' thoughts and ideological trends for the purposes of political indoctrination, this needs to be further investigated under the ['Evidentiary Issues'](#) section to see if it relates to forced labour or other human rights violations.

4.2.1.9. Ninth Concern: Auxiliary Police

ASPI stated that "Qingdao was looking for auxiliary police who are fluent in minority languages", and then noted that "in Xinjiang, auxiliary police officers are responsible for bringing people to detention camps and monitoring them when they are in detention".⁶⁶

It appears that, by juxtaposing these two statements within the Taekwang Shoes case study, ASPI was strongly implying that Taekwang Shoes intended to use auxiliary police to monitor and detain the Uyghur workers. As such, it is assumed ASPI saw this as an abusive working condition under the tenth ILO

⁶⁶ Page 11.

indicator, as well as amounting to acts of intimidation and threats under the sixth ILO indicator.⁶⁷

It should be noted that auxiliary police in Chinese (协警) simply means police reserves. Many countries, including Australia, have police reserves, in addition to army reserves and firefighter reserves. Police reserves usually perform administrative duties. To suggest police reserves would automatically engage in the same type of work as detention camp police, simply because they share the same generic job title, is a straight-out logical fallacy.

Thus, given ASPI's dubious argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the 'Supplementary Evidentiary Issues' section.

4.2.2. Case Study 2: Haoyuanpeng Clothing Manufacturing Co Ltd (HYP Clothing)

ASPI stated that HYP Clothing, headquartered in the province of Anhui, employed 63 Uyghur workers, and had advertised relationships with fashion label Fila, and sportswear brands Adidas, Puma and Nike. ASPI also stated HYP Clothing had a satellite factory in Xinjiang.

The concerns ASPI had are listed below.

4.2.2.1. First Concern: Involuntary Work

ASPI stated that the Uyghur workers engaged by HYP Clothing were graduates of the Jiashi County Secondary Vocational School, which ASPI claimed has

⁶⁷ Page 6.

been a re-education camp since 2017. ASPI said it reached its conclusion through analysis of official documents and satellite imagery that showed fenced-off areas that “resemble other political indoctrination camps”, and that the “compound” had added “significant security features ... through the introduction of secure ‘military-style management’”.⁶⁸ ASPI concluded that “in such circumstances, it is unlikely that their work arrangements are voluntary”.⁶⁹

It is noted that ASPI did not provide satellite images of other political indoctrination camps for comparison purposes. Instead, it appears there was an expectation that readers take ASPI’s word at face-value. This is far from a scholarly or legal approach, especially since it is not common knowledge what a political indoctrination camp looks like.

Nevertheless, if ASPI was correct in claiming the Uyghurs’ work arrangements with HYP Clothing were involuntary because their work formed part of a continued re-education camp program, then it would be the case that HYP Clothing engaged forced Uyghur labour. Thus, this allegation requires further investigation under the ‘[Evidentiary Issues](#)’ section.

4.2.2.2. Second Concern: Security Measures

ASPI seemed to be concerned that the HYP Clothing factory in Xinjiang was surrounded by a three-metre-high fence and the perimeter was monitored by security guards.⁷⁰ ASPI seemed to be of the position that these security measures fell under the third ILO indicator (restriction of movement) and the sixth ILO indicator (intimidation and threats).⁷¹

⁶⁸ Page 18.

⁶⁹ Page 18.

⁷⁰ Page 19.

⁷¹ Page 6.

As mentioned above, the mere existence of such security measures at a factory in China bears no significance. It is a well-known fact in China that many large factories have security fencing and security checkpoints – not for the purpose of keeping employees in, but for keeping non-employees out, as well as for the purpose of preventing removal of factory assets without authorisation.⁷²

Thus, given the weaknesses in ASPI’s argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ‘[Supplementary Evidentiary Issues](#)’ section.

4.2.3. Case Study 3A: Ofilm Technology Co Ltd

ASPI stated that Ofilm Technology employed hundreds, if not thousands, of Uyghur workers, and the company made components for Apple.

ASPI’s concerns are listed below.

4.2.3.1. First Concern: Political Indoctrination and Surveillance

ASPI submitted that the Uyghur workers “were expected to ‘gradually alter their ideology’”,⁷³ and that Uyghur workers were “managed by a few minders” who were “‘politically reliable’ and knew both Mandarin and the Uyghur

⁷² If the Chinese Government grants the author of this paper entry into China in 2022, photographs of the security measures taken by other factories in China will be provided in the final version of this paper for comparison purposes.

⁷³ Page 22.

language”.⁷⁴ It is assumed that ASPI viewed this as political indoctrination amounting to an abusive working condition under the tenth ILO indicator,⁷⁵ and intrusive surveillance amounting to intimidation under the sixth ILO indicator.⁷⁶

If involuntary and substantial political indoctrination and intrusive surveillance was occurring at Ofilm Technology, it would require further investigation under the ‘[Evidentiary Issues](#)’ section to see if it relates to forced labour or other human rights violations.

4.2.3.2. Second Concern: “Modern, Capable Youth”, Gratitude towards the Communist Party, and Contribution to Stability

ASPI submitted that the Uyghur workers “were expected to ... turn into ‘modern, capable youth’ who ‘understand the party’s blessing, feel gratitude toward the Party, and contribute to stability’”.⁷⁷

Two points can be made about this concern. Firstly, it is noted that there is widespread propaganda, across all provinces of China, referencing gratitude to the Communist Party; the Uyghurs are not specifically singled-out.⁷⁸ Secondly, whilst Ofilm Technology may deserve censure for expecting Uyghur workers to feel gratitude towards a political party and feel blessed by a political party, ASPI did not make clear how this concern relates to forced labour or any other human rights violation.

⁷⁴ Page 22.

⁷⁵ Pages 4 and 6.

⁷⁶ Page 6.

⁷⁷ Page 22.

⁷⁸ See, e.g., ‘Tell stories of poverty alleviation; show deep gratitude to the party’, *Guangxi Daily*, 4 November 2020 [<online>](#) and Wei Guixiong, ‘Be Grateful to the Party, Follow the Party -- A Project Hope Class’ series of events enters Wuming’, *China News Service*, 13 April 2021 [<online>](#).

Regarding ASPI's concern that Uyghur workers are expected to become "modern, capable youth" and "contribute to stability", it is not clear why ASPI viewed this as a worrisome expectation.

Accordingly, due to decontextualisation, triviality and incompleteness of ASPI's argumentations, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the '[Supplementary Evidentiary Issues](#)' section.

4.2.4. Case Study 3B: Foxconn Technology Group

ASPI stated that Uyghur workers were sent to the Foxconn Technology factory in the province of Henan. Foxconn Technology were said to have made half of the world's Apple iPhones.

The concerns ASPI had are listed below.

4.2.4.1. First Concern: Excessive Overtime

ASPI stated that Uyghur workers "put in at least 100 overtime hours a month".⁷⁹ If this is true, and was involuntary, it can be taken that ASPI viewed this as falling under the eleventh ILO indicator (excessive overtime) and would amount to forced labour. Accordingly, this allegation requires further investigation under the '[Evidentiary Issues](#)' section.

⁷⁹ Page 23.

4.2.4.2. Second Concern: Industrial Xinjiang Aid

ASPI seemed to be concerned that Foxconn Technology was actively participating in the ‘Xinjiang Aid’ scheme.⁸⁰ According to ASPI, ‘Xinjiang Aid’ involves “financial subsidies and political inducements ... to mobilise wealthier provinces and cities to pair up with cities and prefectures in Xinjiang in order to ‘aid’ the region’s development and stability”.⁸¹ For context, it is important to note that Xinjiang is not unique in receiving financial and technical assistance from wealthier provinces and cities to aid in development. There have been numerous pairings of counterpart provinces and cities across China participating in such poverty alleviation programs.⁸²

It seems ASPI’s concern with ‘Xinjiang Aid’ is its ‘Industrial Xinjiang Aid’ sub-scheme. According to ASPI, ‘Industrial Xinjiang Aid’ “seeks to assign work to ‘idle’ Uyghurs in the name of poverty alleviation, but it also shares the same indoctrination aims as the ‘re-education camp’ system: factory bosses are expected to fundamentally alter Uyghur workers by reforming their ‘backward qualities’ and sinicising”.⁸³

It is noted that ASPI did not specify:

- whether or not Foxconn Technology’s Uyghur workers consensually participated in the Industrial Xinjiang Aid scheme; and
- the degree of voluntariness and severity of “sinicising” and reforming of “backward qualities”, and how it relates to forced labour or other human rights violations.⁸⁴

⁸⁰ Page 23.

⁸¹ Page 12.

⁸² See, e.g., ‘China province with largest remaining poor population eliminates absolute poverty’, *Xinhua Net*, 14 November 2020 <[online](#)> and ‘China calls for closer regional collaboration to fight poverty’, *The State Council - The People’s Republic of China*, 7 December 2016 <[online](#)>.

⁸³ Page 12.

⁸⁴ It is acknowledged that the words “sinicising” and “backwards” are politically incorrect terms in English, and therefore may make some readers feel uneasy. However, as will be explained in [section 4.3.8.11](#) of this paper, these terms were not used in the cited reference, as ASPI suggested.

Without such specifications, ASPI's argumentations are incomplete. Consequently, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ['Supplementary Evidentiary Issues'](#) section.

4.2.5. Case Study 3C: Precision Manufacturing Co Ltd

ASPI made reference to Uyghur workers being sent to Precision Manufacturing in the province of Hubei. ASPI suggested the company had a supplier relationship with Apple and Huawei.

ASPI's concerns are listed below.

4.2.5.1. First Concern: Exercise Gratitude to the Communist Party

ASPI stated that, on the day the Uyghur workers arrived at Precision Manufacturing, a senior Communist Party official "demand[ed]" them to "exercise gratitude to the Communist Party".⁸⁵

Two points can be made about this concern. Firstly, it is reiterated that there is widespread propaganda, across all provinces of China, referencing gratitude to the Communist Party; the Uyghurs are not specifically singled-out.⁸⁶ Secondly, whilst the Communist Party official may deserve censure for such a demand (if it even was a demand), ASPI did not make clear how the mere

⁸⁵ Pages 23 to 24.

⁸⁶ See, e.g., 'Tell stories of poverty alleviation; show deep gratitude to the party', *Guangxi Daily*, 4 November 2020 <[online](#)> and Wei Guixiong, "'Be Grateful to the Party, Follow the Party -- A lesson of Project Hope" Event Enters Wuming', *China News Service*, 13 April 2021 <[online](#)>.

exercise of gratitude to a political party relates to forced labour or other human rights violations.

Due to decontextualization, triviality and incompleteness of ASPI's argumentation, this concern should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support its concern will be examined in the ['Supplementary Evidentiary Issues'](#) section.

4.2.5.2. Second Concern: Increased Surveillance and Intensified Patriotic Education

ASPI stated that a senior Communist Party official "demand[ed]" that factory managers "increase surveillance and intensify patriotic education".⁸⁷

If patriotic education was intensified to the point of political indoctrination, it is assumed that ASPI viewed this as amounting to an abusive working condition under the tenth ILO indicator.⁸⁸

In regards to the demand of increased surveillance, if the surveillance was for intrusive purposes, not for standard workplace security and safety purposes, it is assumed ASPI viewed this as an act of intimidation under the sixth ILO indicator.⁸⁹

If involuntary and substantial political indoctrination and intrusive surveillance occurred at Precision Manufacturing, then this requires further investigation under the ['Evidentiary Issues'](#) section to see how it relates to forced labour or other human rights violations.

⁸⁷ Pages 23 to 24.

⁸⁸ Pages 4 and 6.

⁸⁹ Page 6.

4.2.6. Case Study 3D: Fuying Photoelectric Co Ltd

ASPI stated that Fuying Photoelectric is a subsidiary company of Highboard Advanced Material Co Ltd, and a supplier of Apple. ASPI stated that Fuying Photoelectric employed 544 Uyghur workers.

ASPI seemed to be concerned that one Uyghur woman who worked for Fuying Photoelectric said she “learned to improve her Mandarin and workplace discipline and to take daily showers that made ‘her long hair more flowing than ever’”.⁹⁰ ASPI also seemed to be concerned that the same Uyghur woman said “Like President Xi has said, happiness is always the result of struggle”.⁹¹ It is unclear what ILO indicator ASPI believed this case study fell within, let alone why it even considered the case study serious enough to be worth mentioning in its report in the first place.

Given the triviality of this case study, it should be set aside for the purposes of this paper. However, given one co-author of the ASPI report, Mr Nathan Ruser, took issue with the approach of setting aside arguments lacking in merit, the evidence provided by ASPI to support this case study will be examined in the ‘[Supplementary Evidentiary Issues](#)’ section.

4.2.7. Summary

It is clear from the analysis above that ASPI took a scattergun approach when making a case of forced Uyghur labour. Of the eighteen concerns identified across all of the case studies, only seven concerns have been considered as having merit for further investigation. These are the allegations of:

- involuntary Uyghur workers sent to Taekwang Shoes (amounting to forced labour);

⁹⁰ Page 25.

⁹¹ Page 25.

- discriminant programming of facial recognition cameras to closely monitor workers of Uyghur ethnicity at Taekwang Shoes (possibly indicative of forced labour or other human rights violations);
- ideology-monitoring and thought-reporting of Uyghur workers at Taekwang Shoes for political indoctrination purposes (possibly indicative of forced labour or other human rights violations);
- involuntary Uyghur workers sent from a Xinjiang re-education camp (i.e., Jiashi County Secondary Vocational School) to HYP Clothing (amounting to forced labour);
- political indoctrination and surveillance of Uyghur workers at Ofilm Technology (possibly indicative of forced labour or other human rights violations);
- non-consensual excessive overtime work by Uyghur workers at Foxconn Technology (amounting to forced labour); and
- political indoctrination and surveillance of Uyghur workers at Precision Manufacturing (possibly indicative of forced labour or other human rights violations).

The evidence provided by ASPI to support these allegations were endnoted in its report and are discussed in the next section.

4.3. Evidentiary Issues

This section compares the allegations listed above against the supporting references cited by ASPI. This section also assesses the quality of those references.

4.3.1. Involuntary Uyghur Workers sent to Taekwang Shoes

This allegation was coupled with endnote 57, which was an article by *The Washington Post*.⁹² The article contained the following witness statements as evidence of forced Uyghur labour:

- A Uyghur woman browsing a street stall near the factory stated “in broken Mandarin” to the reporter that “We can’t go back [to Xinjiang] on our own”.⁹³
- A fruit seller stated to the reporter that “Everyone knows they didn’t come here of their own free will. They were brought here.”
- A vendor stated to the reporter that “The Uyghurs had to come because they didn’t have an option. The government sent them here.”

The problem with the last two statements is that they amount to hearsay evidence, and are therefore unreliable. Even if they were to be considered, clarification would still be needed as to whether the claims of the Uyghurs having no option or free will to work in Qingdao were references to no job opportunities back home or references to government coercion. If the former, then it is not forced labour.

The problem with the first statement is that the reporter did not clarify: (i) how she identified the woman as Uyghur; (ii) how she identified the woman as working for Taekwang Shoes; (iii) whether the woman’s limited Mandarin skills impeded her ability to communicate accurately; and (iv) whether the statement “we can’t go back [to Xinjiang] on our own” meant the workers were not allowed to return to Xinjiang on their own or, in the alternative, the workers did not have the capacity to return on their own (e.g. their limited Mandarin proficiency could make it difficult to use long-distance transport without a bilingual assistant). Moreover, one short statement from one anonymous woman is not sufficient to make the accusation that all Uyghur workers were involuntarily sent to Taekwang Shoes.

Furthermore, despite ASPI’s multiple revisions to its report since its publication,⁹⁴ it has not reconciled the claims made by *The Washington Post* with the counterclaim

⁹² Anna Fifield, ‘China compels Uighurs to work in shoe factory that supplies Nike’, *The Washington Post*, 29 February 2020 <[online](#)>.

⁹³ The bracketed “[to Xinjiang]” was added by the reporter.

⁹⁴ See the inside cover of the ASPI report for its long list of revisions.

that due diligence processes reportedly found Uyghur workers at Taekwang Shoes had the freedom to end their contracts at any time, and had done so in the past.⁹⁵

It is also noted that *The Washington Post* article was published one to two days after the ASPI report was originally released.⁹⁶ This means there was some type of co-operation arrangement (perhaps collusion) between ASPI and *The Washington Post*, as opposed to *The Washington Post* article being an independently cited source. What seems to support the more serious accusation of collusion is that ASPI changed its publication date from “February 2020” to “1 March 2020” on the inside cover of its later versions of its report without any known explanation for the discrepancy.⁹⁷ This subsequently created the appearance that *The Washington Post* article was published before the ASPI report, thereby making it look like an independently cited source. The failure to declare a co-operation arrangement in the ASPI report (which was also not declared in *The Washington Post* article) is arguably a failure by ASPI to meet academic integrity standards.⁹⁸ Worse still, if ASPI’s later alteration of the publication date was for the purpose of concealing the co-operation arrangement, it may be a breach of academic integrity standards serious enough to amount to falsification.⁹⁹

⁹⁵ Jilil Kashgary, ‘Nike Says China-Based Supplier Sent All Uyghur Workers Home Amid Forced Labor Allegations’, *Radio Free Asia*, 21 July 2020 <[online](#)>.

⁹⁶ Based on the date provided by Google, the ASPI report was first published on 28 February 2020 <[online](#)>. It is unclear if this is Australian time or United States time. *The Washington Post* article was published on 29 February 2020, United States time, which would be 1 March 2020 Australian time. This means *The Washington Post* article was published either one or two days after the ASPI report was released.

⁹⁷ The original ASPI report with the “February 2020” publication date has been archived <[online](#)>. The first record of the publication date being changed to “1 March 2020” was on 6 March 2020, and has been archived <[online](#)>.

⁹⁸ See, e.g., sub-sections 12(2)(d) and (f) of the *Australian National University Academic Integrity Rule 2021* (Cth), which indicates that a breach of academic integrity standards includes colluding with another person, and engaging another person to prepare work on behalf of the first person (without declaring it).

⁹⁹ See, e.g., sub-section 12(2)(k) of the *Australian National University Academic Integrity Rule 2021* (Cth), which indicates that a breach of academic integrity standards includes falsifying information. However, it is noted that Ms Xu, well before the ASPI report was published, told the Australian Broadcasting Corporation (ABC) that the ASPI report was a “collaboration” between ASPI and *The Washington Post*: see ‘When Worlds Collide –

On another point, it has to be emphasised that journalism is not a profession, but an occupation. The conduct of journalists is not meaningfully regulated by legislation like it is with the legal profession or medical profession, for example. There are no independent regulatory consequences for journalists if they breach ethical standards, such as fabricating or exaggerating stories; nor is there an independent regulatory framework that addresses perverse incentives in the industry to sensationalise stories for increased revenue and notoriety. There are some industry codes of conduct that journalists voluntarily sign up for, but they mean little in practice if there are no legal consequences for engaging in unethical behaviour. Thus, the word of a journalist arguably does not carry any more weight than that of an ordinary person, and may even carry less weight than the ordinary person, given the dilemma of perverse incentives in the media industry.

Based on the weak and questionable evidence provided by ASPI, it is submitted that this allegation is unsubstantiated.

Vicky Xu', *Australian Story* (Australian Broadcasting Corporation, 2020) <[online](#)>. A number of alternative summations can be made about this in light of the fact that Ms Xu's disclosure did not make its way into the final version of the ASPI report or *The Washington Post* article: (i) at the time that Ms Xu spoke to the ABC, ASPI and *The Washington Post* had the intention of being open and transparent about their arrangement, but later changed their minds; (ii) without approval, Ms Xu divulged the arrangement, not understanding the significance of doing so; or (iii) Ms Xu was aware that the arrangement was not to be divulged, but, due to her own academic integrity standards, decided not to take part in any type of concealment. If the reason for Ms Xu's disclosure to the ABC was the second or third summation, then speculation of deliberate falsification cannot be attributed to Ms Xu in this instance.

4.3.2. Discriminant Programming of Facial Recognition Cameras to Closely Monitor Workers of Uyghur Ethnicity at Taekwang Shoes

This allegation was coupled with endnote 57, which was *The Washington Post* article analysed above.¹⁰⁰

The following paragraph is what ASPI seemed to rely upon to support its allegation: “There is a special police station equipped with facial-recognition cameras and other high-tech surveillance that **workers** must pass through when they enter and exit the factory” (emphasis added).

Two points are noted about this paragraph. First, there is no mention of Uyghurs being discriminately subjected to the cameras; rather, it seems all workers were subjected to the cameras. Second, *The Washington Post* reporter did not demonstrate how she identified the cameras were programmed with facial recognition software, as opposed to being just ordinary security cameras.¹⁰¹

Based on the weak and questionable evidence provided by ASPI, it is submitted that this allegation is unsubstantiated.

¹⁰⁰ Anna Fifield, ‘China compels Uighurs to work in shoe factory that supplies Nike’, *The Washington Post*, 29 February 2020 <[online](#)>.

¹⁰¹ For example, the reporter could have demonstrated the cameras were programmed with facial recognition software by publishing photographs of screens inside the police station displaying video footage from the cameras. No such photographs were published in the article, not even a mere eye-witness explanation.

4.3.3. Ideology-Monitoring and Thought-Reporting of Uyghur Workers at Taekwang Shoes for Political Indoctrination Purposes

This allegation was coupled with endnotes 63 and 64 that both referred to the same government notice.¹⁰²

The government notice referenced an emergency response action plan agreed upon between the government and Taekwang Shoes to deal with potential conflicts and disputes involving ethnic minorities. It appears the following paragraph was relied upon by ASPI for its allegation of government officials and government representatives monitoring, discussing and reporting Uyghur workers' "ideological trends" and "thoughts":

"In order to improve emergency response management relating to ethnic minority groups and timely resolution of various types of unforeseen incidents, the municipal government issued a special 'Emergency Plan for Unforeseen Ethnic Group Incidents in Laixi City'.... Especially after the Xinjiang Urumqi '7/5' beat-smash-loot-burn incident happened, members of the joint committee have been stationed at Laixi City's Taekwang Shoes, an emergency plan for intelligence information has been implemented, and a daily reporting system has been implemented. In order to provide a reliable basis for correct decision-making of the leaders, ideological trends of Xinjiang workers have been effectively controlled" (emphasis added).¹⁰³

As can be seen from the above paragraph, ASPI decontextualised its allegation, in addition to being imprecise with its language. The document referred to the violent riots in Xinjiang that occurred in July 2009, which were a result of ethnic tensions

¹⁰² 'Let the seeds of national unity be rooted in the heart—The Women's Federation of the Municipality truly cares for minority female workers', *Discover Qingdao, Sohu*, 9 October 2019 <[online](#)>; 'Outstanding humanistic care, strengthening employment security: Qingdao's Laixi county steadily carrying out service management work for Xinjiang ethnic minorities', *Qingdao Ethnicity and Religion Bureau*, 19 April 2017 <[online](#)>.

¹⁰³ The original text is: 为提高处置涉及少数民族群众突发事件的时效性, 及时化解各类矛盾纠纷, 市政府专门下发了《莱西市民族方面突发事件应急预案》... 特别是在新疆乌鲁木齐 '7.5' 打砸抢烧事件发生后, 联席会成员集体进驻莱西市泰光制鞋有限公司, 启动情报信息紧急预案, 实行日报告制度。有效地掌控了新疆籍务工人员的思想动态, 为上级领导的正确决策提供了可靠依据。

between the Uyghur and Han ethnic groups. This was spurred by the ‘Shaoguan Incident’ in the province of Guangdong a few days earlier. This was when a violent conflict erupted between Uyghur and Han workers in a toy factory as a result of a false allegation of sexual assault of a Han woman. A group of Han workers attacked the Uyghur workers, leading to at least two Uyghur workers being killed and 118 people being injured.¹⁰⁴ This spilled over into violent street riots in Xinjiang several days later, where Uyghurs attacked Han in revenge for the ‘Shaoguan Incident’. The riots resulted in 197 deaths and more than 1,700 people being injured.¹⁰⁵

Clearly, Taekwang Shoes agreeing to such an emergency response plan was for the purpose of taking pro-active steps to prevent another ‘Shaoguan Incident’ or ‘7/5’ incident, not for political indoctrination purposes, and definitely not for forced labour purposes. It has to be remembered that safe working conditions is a human right as well.¹⁰⁶ If ASPI had a better solution to deal with ethnic tensions in the workplace, it should have said so.

Interestingly, ASPI did not make any attempt at balance and completeness in its report by including matters mentioned in the same document that were unequivocally favourable to Taekwang Shoes and, some of which, contradicted the claims of religious practice bans and cultural genocide. The document referenced provision of Uyghur workers with:

- a library, recreation room, chess and card room, table tennis and badminton court;
- online video chatrooms in dormitory areas made available each weekend to help with homesickness;
- nine chefs brought over from Xinjiang to prepare traditional Uyghur halal meals each week;
- lambs to slaughter for the celebration of Islamic festivals;
- organisation of ethnic-minority-related activities;
- organisation of monthly sporting competitions; and

¹⁰⁴ Xinhua News, ‘Guangdong Toy Factory Brawl Leaves 2 Dead, 11 Injured’, *China.Org.Cn*, 27 June 2009 <[online](#)>.

¹⁰⁵ ‘Xinjiang arrests “now over 1,500”’, *BBC News*, 3 August 2009 <[online](#)>.

¹⁰⁶ See article 7(b) of the *International Covenant on Economic, Social and Cultural Rights*.

- invitations for parental visits, which include round-trip transportation costs, seven-day accommodation costs and local sight-seeing tour costs (for workers who complete twelve months of work).

For ASPI not to mention the above provisions in its report is arguably a breach of academic integrity standards.¹⁰⁷

Based on the decontextualised evidence, it is submitted that this allegation is unsubstantiated.

4.3.4. Involuntary Uyghur Workers sent from a Xinjiang Re-education Camp (i.e., Jiashi County Secondary Vocational School) to HYP Clothing

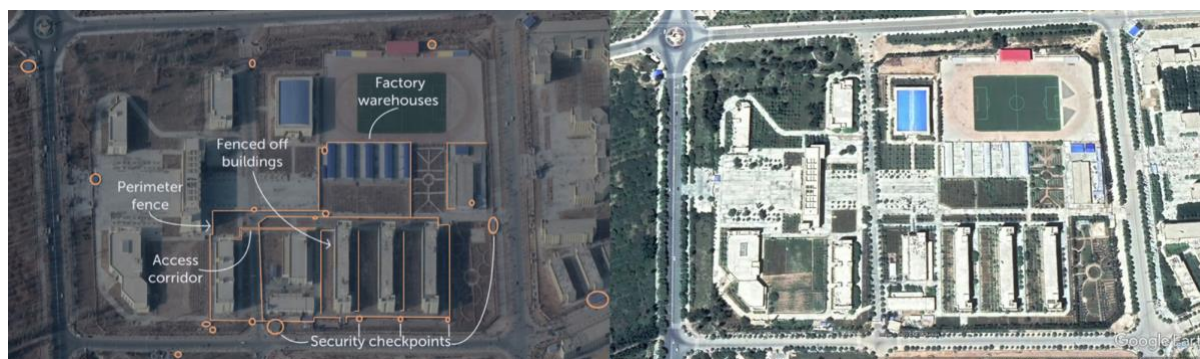
This allegation was coupled with endnote 107, which contained: (i) a good news story about the province of Guangdong’s financial investment in the Jiashi County Secondary Vocational School and the Jiashi County People’s Hospital (as a part of ‘Xinjiang Aid’); (ii) a reference to a satellite image of the school, analysed by Mr Nathan Ruser of ASPI; and (iii) a school advertisement for the recruitment of “military-style management instructors”.¹⁰⁸ It is submitted that none of these references supported the allegation.

In regards to the satellite image analysed by Mr Ruser, despite the ASPI report being written in 2020, for some reason Mr Ruser selected a satellite image from 2018 instead of a more recent image from 2019. If he did select a more recent image, he would have seen that the internal fencing, that led him to believe the school was a

¹⁰⁷ See, e.g., sub-section 12(2)(k) of the *Australian National University Academic Integrity Rule 2021* (Cth), which states that “intentionally omitting data to obtain a desired result” amounts to fabrication or falsification.

¹⁰⁸ ‘Thanks to Foshan’s “Xinjiang Aid” team, this girl from Payziwat county, Xinjiang, who wanted to drop out of school, is now at university’, *Tencent* <[online](#)>; Recruitment advertisement of Jiashi Secondary Vocational Technical School, Payziwat County Human Resources Service Centre, *Sohu*, 9 August 2018 <[online](#)>.

re-education or political indoctrination camp, does not exist in the 2019 image. It can therefore be deduced that the 2018 internal fencing was temporary, likely for construction purposes. Moreover, Mr Ruser left out a well-known fact about China, i.e., the majority of schools in China have security checkpoints.¹⁰⁹ This does not mean they are re-education or political indoctrination camps, as Mr Ruser suggested.



Left image: 2018 winter satellite image analysed by Mr Nathan Ruser of ASPI

Right image: 2019 summer satellite image showing no internal construction fences

More importantly, an online search brings up photographs of the school's buildings, students and teachers that clearly do not resemble how a reasonable person would imagine a re-education camp or political indoctrination camp to look like. Below is a sample of photographs taken between 2017 and 2019.¹¹⁰ It is difficult to believe that the authors of the ASPI report did not view these photographs in the course of their research.

¹⁰⁹ If the Chinese Government grants the author of this paper entry into China in 2022, photographs of security checkpoints at Chinese schools will be provided in the final version of this paper for comparison purposes.

¹¹⁰ The photographs were taken from: 'Gen Shu's Daily Work for Xinjiang's Jiashi', *Sohu*, 15 October 2017 <[online](#)>; 'Jiashi County Vocational School first batch of 46 graduates for Fujian employment', *Xinhua News*, 13 April 2018 <[online](#)>; 'The Fifth Year of Principal Foshan in Xinjiang's Jiashi', *Nanfang*, 16 August 2017 <[online](#)>; 'On The Way to School, "No One Left Behind"! Jiashi Secondary Vocational Education Benefits Thousands of Families', *Foshan News*, 8 July 2019 <[online](#)>; 'Our Boys and Girls are Great! The Students of Jiashi Vocational School Show their Style at Vocational and Technical Education Week', *Official Foshan Government WeChat Account*, 15 May 2019 <[online](#)>; 'Jiashi County Secondary Vocational School Students Learn Dragon and Lion Dances', *Official Jiashi Government WeChat Account*, 23 June 2018 <[online](#)>.



Left image: Red signage says “Library”, in both Chinese and Uyghur-Arabic

Right image: Students on campus practising dragon dancing



Left image caption: “New teachers participating in their six-hour induction training”

Right image caption: “Teacher Pan participated in the inspections of the vocational training classes”



Left image: Students in their school uniforms on the school campus

Right image: Students and parents attending the “School Campus Open Day Parent Meeting”



Left image caption: "Fruit-carving exhibition"
Right image caption: "Pastry-making exhibition"



Left image caption: "Teacher Pan Yougen is known as 'Uncle Gen' by his colleagues and students"
Right image caption: "Teacher Pan Yougen attends a week-long military training"



Left image caption: "Happy to embark on the road to work"
Right image caption: "Taking a train to a new life"

A number of points can be made about the above images. First, the last two images are of the school's graduates travelling to the province of Fujian to start their new work arrangements. The happy and content faces of the girls would not conjure up an image of camp interns in a reasonable person's mind. Second, the third last image is of students participating in paramilitary training (which is compulsory in all high schools and universities across China for a minimum of 44 hours per year). The light-hearted demeanour of the boys would also not conjure up an image of camp interns in a reasonable person's mind. Third, the image of the students and parents attending the "School Campus Open Day Parent Meeting" would also not conjure up an image of camp interns in the reasonable person's mind, as camp interns presumably do not enjoy parental visits of the kind depicted in the image. Overall, it is reiterated that a reasonable person would not look at the above images and conclude it is a re-education or political indoctrination camp.¹¹¹ The fact that this needs to be painstakingly spelled out is an embarrassing indictment of ASPI.

It appears ASPI's claim that "significant security features were added [to the "compound"]¹¹² through the introduction of secure 'military-style management'" was a reference to the following statement in the school's staff recruitment advertisement:

*"In order to further strengthen the management of students, improve the overall quality of students and cultivate students who understand discipline and comply with rules, the school will implement military-style management. **We are now recruiting for military-style management instructors**" (emphasis added).*¹¹³

It is clear that this statement has nothing to do with "significant security features" of the school campus, as ASPI claimed. It may be that ASPI would want to shift the goal posts and suggest the recruitment of "military-style management instructors" still means the school is a re-education or political indoctrination camp (despite the

¹¹¹ If the Chinese Government grants the author of this paper entry into China in 2022, a random sample of the school's students will be interviewed in order to ascertain their reactions to ASPI's characterisation of their school for the final version of this paper.

¹¹² "Compound" was the sensationalised descriptor used by ASPI, rather than the more accurate descriptor of "campus".

¹¹³ The original text is: 为了进一步加强对学生的管理, 提高学生的综合素质, 培养懂纪律、守规矩的学生, 学校将实行军事化管理。现需面向社会公开招聘军事化管理教官。

photographs above). However, as mentioned above, a minimum of 44 hours of paramilitary training is mandatory in all high schools and universities in China each year, and some high schools add additional scout-like training to the curriculum to improve the self-discipline, resiliency, fitness and presentation of their students.¹¹⁴ This is supported by the first selection criterion in the recruitment advertisement – i.e., “a veteran or junior college (or above) graduate specialising in physical education”¹¹⁵ – which suggests the focus of the role is not so much on the military aspect, but rather the discipline and fitness aspect that comes with military training. Thus, taken alone, a recruitment advertisement for “military-style management instructors” is not evidence of a school being a re-education or political indoctrination camp linked to forced labour.

Based on the weak and misleading evidence provided by ASPI, it is submitted that this allegation is unsubstantiated.

4.3.5. Political Indoctrination and Surveillance of Uyghur Workers at Ofilm Technology

This allegation was coupled with endnotes 115 and 116, which referenced the same Chinese news article.¹¹⁶

It appears ASPI’s reference to Uyghur workers facing the expectation to “gradually alter their ideology” was based on the following paragraph:

*“while working throughout the mainland to earn money, the surplus [migrant] labour force in urban and rural areas should network and mingle with people of all ethnic groups, which will **gradually transform their mindsets** and allow them to grow into new-age youth who ‘have something to do, have a job, have money to earn,*

¹¹⁴ See, e.g., ‘Military Education and Training in China’, *Baidu Wenku* <[online](#)>.

¹¹⁵ The original text is: 退伍军人或体育专业的大专及以上毕业生.

¹¹⁶ ‘Over 1200 surplus labourers from Lop County head to mainland China for work’, *Hotan Daily Newspaper*, 11 May 2017 <[online](#)>.

understand the Party's blessing, feel gratitude toward the Party, and contribute to stability'" (emphasis added).¹¹⁷

The latter references to "the Party" have already been dealt with under the 'Merit Issues' section above. It is submitted that the Chinese word for ideology (思想) was not used in the paragraph, as claimed by ASPI; rather, the Chinese word for mindset (观念) was the word used instead. In the context of the Uyghur workers networking and mingling with people of different ethnic backgrounds, it is to be expected that cross-pollination of ideas and outlooks will occur, with such cross-pollination not necessarily being political. Thus, it is submitted that this paragraph does not support the suggestion that the Uyghurs are being politically indoctrinated as an indicator of forced labour or other human rights violations.

ASPI's reference to Uyghur workers being "managed by a few minders" who were "politically reliable and knew both Mandarin and the Uyghur language" seems to be based on the following paragraph:

*"Ten **cadres**, who are bilingual, **politically qualified** and skilled in business, were selected to be responsible for the management services of the labour force"* (emphasis added).¹¹⁸

It is submitted that the Chinese word for "minder" (监护) was not used in this paragraph, as claimed by ASPI; rather, the Chinese word for "cadre" (干部) was the word used instead. It is also submitted that the Chinese words for "politically reliable" (政治素质可靠) was not used in this paragraph, as claimed by ASPI; rather, the Chinese word for "politically qualified" (政治素质过硬) were the words used instead. Whilst it is questionable as to why cadres would need to be politically qualified (whatever this means in practice), it is submitted that this paragraph does not support the suggestion that the Uyghurs are being politically indoctrinated or are under surveillance as an indicator of forced labour or other human rights violation.

¹¹⁷ The original text is: 确保城乡富余劳动力在内地务工赚钱的同时, 与各族群众交流交往交融, 逐步转变他们的观念, 让他们成长为 '有事干、有业就、有钱赚、知党恩、感党恩、跟党走、保稳定' 的新时代有为青年.

¹¹⁸ The original text is: 选派懂双语、政治素质过硬、业务熟练的 10 名干部, 具体负责洛浦籍劳动力的管理服务工作的.

Based on the weak evidence provided by ASPI, it is submitted that this allegation is unsubstantiated.

4.3.6. Non-Consensual Excessive Overtime Work by Uyghur Workers at Foxconn Technology

This allegation was coupled with endnote 124, which was a *South China Morning Post* article referencing a China Labor Watch report.¹¹⁹ The article made reference to workers putting in at least 100 hours of overtime work per month. The article also stated that a number of Foxconn Technology worker suicides had “made headlines over the years”. It is noted that there was no mention of Uyghurs in the article.

It is also important to note that ASPI did not include Apple and Foxconn Technology’s side of the story.¹²⁰

Apple stated:

“We looked into the claims by China Labor Watch and most of the allegations are false. We have confirmed all workers are being compensated appropriately, including any overtime wages and bonuses, all overtime work was voluntary and there was no evidence of forced labour.”

Foxconn Technology stated:

“At no time did we find any evidence of forced labour and we can confirm that this facility currently has no interns working overtime. ... We did find evidence that the use of dispatch workers and the number of hours of overtime work carried out by employees, which we have confirmed was always voluntary, was not consistent with company guidelines. We did determine that the affected workers were paid all earned overtime and related bonus payments.”

¹¹⁹ Phoebe Zhang, ‘Apple iPhone 11 launch marred by claims Foxconn factory broke labour laws’, *South China Morning Post*, 9 September 2019 <[online](#)>.

¹²⁰ A reminder that Apple was Foxconn Technology’s purchaser.

Given the disparity between the position of China Labor Watch on the one hand, and Apple and Foxconn Technology on the other, ASPI should have investigated the credibility of China Labor Watch and its claims.¹²¹ ASPI's failure to do so undermines any appearance of impartiality. Furthermore, ASPI's failure to disclose both sides of the story arguably amounts to a breach of academic integrity standards.¹²²

Given ASPI did not reconcile the contradictory claims between China Labor Watch and Apple and Foxconn Technology, it is submitted that this allegation is unsubstantiated.

4.3.7. Political Indoctrination and Surveillance of Uyghur Workers at Precision Manufacturing

This allegation was coupled with endnote 128, which was a Chinese article about high-level policy and program discussions between different government departments and working groups at a coordination meeting.¹²³

ASPI's allegation of a Communist Party official demanding increased surveillance of Uyghur workers seems to be based on the following statement:

"The Wuhan workstation should work with the local United Front Department and the Ethnic and Religious Affairs Department to jointly ensure a good job done in

¹²¹ For example, the funding source and track-record of China Labor Watch has been questioned in the past: see Abe Sauer, 'The Foxconn Economy: From the State Dept to China to Your Slideshow Payviews', *The Awl*, 16 October 2012 <[online](#)>.

¹²² See, e.g., sub-section 12(2)(k) of the *Australian National University Academic Integrity Rule 2021* (Cth), which states that "intentionally omitting data to obtain a desired result" amounts to fabrication or falsification.

¹²³ 'Xianning, Hubei, opens up a 'green tunnel' for Xinjiang's organised labour export', United Front of Jingchu, *Headlines Express*, 18 May 2018 <[online](#)>.

*supervision, inspection, risk prevention and other work, in order to smoothly develop work conditions that **ensure the safety of workers***” (emphasis added).¹²⁴

It is submitted that this statement, alone, is not evidence of a demand of increased surveillance; particularly not evidence of nefarious surveillance, as the stated objective is to ensure worker safety.

ASPI’s allegation of a Communist Party official demanding intensified patriotic education (possibly amounting to political indoctrination) seems to be based on the following statement:

*“we should diligently and conscientiously perform our duties; have courage to be responsible; dare to take charge; establish and improve various internal management rules and regulations; actively cooperate with enterprises employing workers; **do a good job in ideological and political work for migrant workers by highlighting policies, regulations, patriotism, etcetera**; and help improve the overall qualities of our Xinjiang compatriots*” (emphasis added).¹²⁵

It is not clear from the wording of this paragraph that there is a demand for patriotic education to be intensified to the point of political indoctrination of the Uyghur workers. A general argument can be made that politics and patriotism should be kept out of the workplace. However, much more evidence and cultural context is needed beyond mere bureaucratic rhetoric before it can be said that Precision Manufacturing engaged in political indoctrination indicative of forced labour or other human rights violations.

Based on the weak evidence provided by ASPI, it is submitted that this allegation is unsubstantiated.

¹²⁴ The original text is: 武汉工作站要会同当地统战、民宗等部门，共同做好督促检查、风险防范等工作，为顺利开展务工创造条件，确保务工人员安全。

¹²⁵ The original text is: 切实增强责任性，认真履职尽责，勇于负责，敢于担当，建立健全内部管理各项规章制度，积极配合用工企业，做好务工人员思想政治工作，突出抓好政策法规、爱国主义等教育，提高新疆同胞综合素质。

4.3.8. Supplementary Evidentiary Issues

This section was added to the second version of this paper to address a statement made by one of the co-authors of the ASPI report, Mr Nathan Ruser, that implied all of ASPI's concerns should have been addressed in the 'Evidentiary Issues' section of this paper even when ASPI's argumentation lacked merit.¹²⁶ Whilst it is submitted that further engagement is unwarranted, in order to be accommodating of Mr Ruser, this section was included to complete a comparison of all of ASPI's concerns covered in the 'Merit Issues' section against the supporting evidence cited in the ASPI report endnotes. Unfortunately for Mr Ruser and ASPI, the evidence they provided did not end up matching approximately half of their concerns.

It is submitted that if Mr Ruser and ASPI did not want to be tied down to the preciseness of words and their meanings, they should not have written a report that entered the domain of the law where preciseness of language is the very foundation of the profession. Instead, they should have merely written a report that stuck to the domain of the liberal arts where words and their meanings are loose.

4.3.8.1. Case Study 1: Taekwang Shoes – First Concern: Night School Attendance

It is submitted that even though the content of ASPI's supporting citation at endnote 50¹²⁷ matches ASPI's claims under this concern, it does not change the merit problems with ASPI's argumentation.

¹²⁶ See Mr Nathan Ruser's Twitter post of 3 January 2022 <[online](#)>.

¹²⁷ 'Strengthening patriotism education and building a bridge of national unity', *China Ethnic Religion Net*, 7 November 2019 <[online](#)>.

4.3.8.2. Case Study 1: Taekwang Shoes – Second Concern: National Identity

As a reminder, ASPI's specific concerns here were that: (i) Uyghur workers were called upon by a local government bureaucrat to "strengthen their identification with the state and the nation";¹²⁸ and (ii) the night school the Uyghur workers attended was called "Pomegranate Seed", which ASPI stated was a reference to a speech made by President Xi Jinping in which he said "every ethnic group must tightly bind together like the seeds of a pomegranate".¹²⁹

Regarding the call for strengthening national identity, it is submitted that the content of ASPI's supporting citation at endnote 55¹³⁰ could be said to match ASPI's claim. However, the full context and exact wording used by the local government bureaucrat was as follows:

*"Firmly establish **national consciousness, civic consciousness and community consciousness of the Chinese nation; strengthen the relationships, communications and bonds of all ethnic groups; contribute to the realisation of the Chinese dream of the great rejuvenation of the Chinese nation; and share in the fruits of prosperity and development of our homeland**" (emphasis added).*¹³¹

Thus, to adopt ASPI's language, not only were the Uyghurs asked to strengthen their identification with the state and nation, they were also asked to strengthen their identification with civic society, the community and ethnic groups. Therefore, this aspect of ASPI's concern not only has merit problems, but also has evidentiary problems due to lack of full context.

¹²⁸ Page 9.

¹²⁹ Page 9.

¹³⁰ 'Municipal United Front Work Department's "Pomegranate Seed" Night School: a look into Qingdao Taekwang's Mandarin classes', Laixi United Front, *WeChat*, 1 July 2019 <[online](#)>.

¹³¹ The original text is: 牢固树立国家意识、公民意识、中华民族共同体意识，加强与各民族的交往交流交融，为实现中华民族伟大复兴的中国梦贡献力量，共享祖国繁荣发展成果。

Regarding the quote from President Xi Jinping, it is submitted that ASPI decontextualised and modified President Xi Jinping's quote found in the reference at endnote 56.¹³² The full quote of President Xi Jinping was as follows:

"All ethnic groups should understand each other, respect each other, tolerate each other, appreciate each other, learn from each other, help each other and hug each other tightly like seeds of a pomegranate, together" (emphasis added).¹³³

It is submitted that the full quote lays bare that there was no untoward pretext to the name "Pomegranate Seed", as ASPI insinuated. Thus, this aspect of ASPI's concern also has both merit problems and evidentiary problems.

4.3.8.3. Case Study 1: Taekwang Shoes – Fourth Concern: Religious Practice Bans

The reference ASPI cited for this concern was *The Washington Post* article analysed above (endnote 57). The same criticisms in the 'Evidentiary Issues' section about possible collusion between ASPI and *The Washington Post*, as well as the unreliability of journalist testimony, still apply here. More importantly, it is noted there was no definitive evidence presented by *The Washington Post* that the Uyghur workers "were unable to practice their religion". The only reference to "religious practice" in the article was the following:

"Taekwang did not respond to questions about whether ... [the Uyghurs] could pray or observe religious practices while working at the factory" (emphasis added).

¹³² 'Xi Jinping: China's ethnic groups should closely embrace one another like pomegranate seeds', *China Communist Party News*, 28 September 2015 <[online](#)>.

¹³³ The original text is: 各民族要相互了解、相互尊重、相互包容、相互欣赏、相互学习、相互帮助，像石榴籽那样紧紧抱在一起。

It is submitted that a question put to someone is not the same as evidence supporting an allegation. Furthermore, a lack of response from Taekwang Shoes cannot be taken as evidence to support the allegation. Thus, this concern has both merit problems and evidentiary problems.

4.3.8.4. Case Study 1: Taekwang Shoes – Fifth Concern: Security Measures

The reference ASPI cited for this concern was *The Washington Post* article analysed above (endnote 57). For comparison purposes, the construction described by *The Washington Post* as a “watchtower” at the Taekwang Shoes factory is in the left image below. A selected image from the internet of an actual watchtower is in the right image below. Clearly referring to the construction in the left image as a “watchtower” is an exaggerated description. A more fitting description would be “viewing box”.



The evidence provided by *The Washington Post* for the “razor wire and inward-facing barbed-wire fences” is in the image below.¹³⁴

¹³⁴ Also note a long-range view of the factory from a different angle can be viewed [online](#). If the Chinese Government grants the author of this paper entry into China in 2022, the author will visit the Taekwang Shoes factory to see if *The Washington Post*’s photographs actually match the factory complex.



These images do not change the merit problems with ASPI’s argumentation.

4.3.8.5. Case Study 1: Taekwang Shoes – Sixth Concern: Separation

The reference ASPI cited for this concern was *The Washington Post* article analysed above (endnote 57). It is submitted that even though *The Washington Post* article matches ASPI’s claims under this concern, it does not change the merit problems with ASPI’s argumentation. Moreover, the same criticisms in the ‘*Evidentiary Issues*’ section about possible collusion between ASPI and *The Washington Post*, as well as the unreliability of journalist testimony, still apply here.

4.3.8.6. Case Study 1: Taekwang Shoes – Seventh Concern: Crossed-Out Halal Signs

As a reminder, ASPI’s concern here was that the halal restaurant “across the road from the factory” had “crossed out” its halal signs.¹³⁵ The reference ASPI cited for this claim was *The Washington Post* article analysed above (endnote 57).

¹³⁵ Page 10.

It is noted that *The Washington Post* stated the halal restaurant was “in town”. It did not state that the halal restaurant was “across the road from the factory”, as ASPI claimed; nor did *The Washington Post* state that the halal restaurant belonged to Taekwang Shoes. If the restaurant did not belong to Taekwang Shoes, one must then ask why Taekwang Shoes should be held responsible for anything that happens “in town”? Furthermore, how does the matter relate to the allegation of forced Uyghur labour at Taekwang Shoes?

The Washington Post article also did not state that halal signs in the restaurants were “crossed out”, as ASPI claimed; rather, the signage was said to be “taped over”. It is submitted that this is not a pedantic observation, as the use of tape suggests the covering of the halal signage was temporary, not permanent. *The Washington Post* claimed that the concealment of the halal signage was “in line with orders from the authorities”. It is noted that no evidence was provided by *The Washington Post* to support this claim (for example, a link to local government documentation).

To add further complication to the matter, it is noted that the photograph provided by *The Washington Post* of the taped-over signage unlikely covered up the Arabic word for “halal”: the length of the tape in the image (below) is too long for the much shorter word of “halal”. Unfortunately, the image provided by *The Washington Post* is too blurry to be able to read the partially uncovered words to verify. What makes *The Washington Post* story even more complicated is that the Chinese words above the Arabic state: “***This is a halal restaurant.*** Do not bring outside dishes inside. No drinking alcohol. Please be understanding and considerate” (emphasis added). This would indicate that the restaurant was not concealing that it was a halal restaurant, as *The Washington Post* claimed.

Accordingly, it is submitted that ASPI’s concern here has both merit problems and evidentiary problems.



On a side note, it is observed that ASPI cited *The Washington Post* article for six of its concerns relating to forced Uyghur labour at Taekwang Shoes. In terms of academic quality, it is submitted that this is an overreliance on a singular source, particularly when it was not an independent source.

4.3.8.7. Case Study 1: Taekwang Shoes – Eighth Concern: Psychological Dredging Office

The matter of the mistranslation of ‘psychological dredging office’ has already been dealt with in the ‘[Merit Issues](#)’ section. It is submitted that even though the content of ASPI’s supporting citation at endnote 59¹³⁶ largely matches ASPI’s claims under this concern, it does not change the merit problems with ASPI’s argumentation.

On a minor point, it is noted that the reference to “integration” was not made in the context of psychological counselling, as ASPI indicated. Instead, the reference to “integration” was made in the following context:

*“In order to properly solve the problem of ‘**integration**’ difficulties’ caused by differences in the language and the lives of the female Uyghur workers, municipal and township women’s federations actively hold Mandarin classes and academic classes to enable female Uyghur workers to master language*

¹³⁶ ‘Let the seeds of national unity be rooted in the heart—The Women’s Federation of the Municipality truly cares for minority female workers’, Discover Qingdao, *Sohu*, 9 October 2019 <[online](#)>.

*skills and **integrate** into local work and local life as quickly as possible”* (emphasis added).¹³⁷

It is also noted that the reference included the following quote from a female Uyghur worker who had been at the Taekwang Shoes factory for three years and wanted to bring her family to work and live with her:

*“The company **respects the living customs of our ethnic minority employees very much. It has set up a bathhouse and halal canteen for the Xinjiang employees, equipped with interpreters and Uyghur chefs**”* (emphasis added).¹³⁸

This quote contradicts ASPI’s claims of Taekwang Shoes engaging in religious practice bans and cultural genocide. Thus, it is submitted that ASPI should have included the above quote in its report for the purposes of balance and completeness. For ASPI not to include the quote is arguably a breach of academic integrity standards.¹³⁹

4.3.8.8. Case Study 1: Taekwang Shoes – Ninth Concern: Auxiliary Police

As a reminder, ASPI’s juxtaposed and context-dependent concerns here were that Taekwang Shoes was: (i) looking for “auxiliary police who are fluent in minority languages”; and (ii) “in Xinjiang, auxiliary police officers are

¹³⁷ The original text is: 为妥善解决维吾尔族女工因语言、生活习惯等方面存在差异而产生的“融入难”问题，市、镇妇联积极开办汉语学习班、学历教育班等，使维吾尔族女职工掌握语言技能，尽快融入当地工作和生活。

¹³⁸ The original text is: “公司非常尊重我们少数民族员工的生活习俗，单设了新疆员工澡堂和清真食堂，配备了翻译和维吾尔族厨师”。

¹³⁹ See, e.g., sub-section 12(2)(k) of the *Australian National University Academic Integrity Rule 2021* (Cth), which states that “intentionally omitting data to obtain a desired result” amounts to fabrication or falsification.

responsible for bringing people to detention camps and monitoring them when they are in detention”.¹⁴⁰

It is submitted that even though the content of ASPI’s supporting citation at endnote 66¹⁴¹ matches ASPI’s claims under the second sub-concern, it does not change the merit problems with ASPI’s argumentation.

A recruitment advertisement for forty auxiliary police was cited at endnote 65¹⁴² for the first sub-concern. A concerning discovery is that nowhere in the recruitment advertisement was there a reference to Taekwang Shoes; it only referenced Qingdao Municipality. It is submitted that ASPI’s reference to auxiliary police within the Taekwang Shoes case study was misleading, since readers would have mistakenly believed that auxiliary police were being recruited for Taekwang Shoes as opposed for the city of Qingdao (which has a population of nine million people). Moreover, the recruitment advertisement also sought out speakers of Korean, Japanese and English, not just China’s minority languages, as ASPI suggested. It is a logical fallacy to imply, just because a city of nine million people is seeking the employment of forty auxiliary police who are bilingual, that this means they will be posted to Taekwang Shoes. Thus, this aspect of ASPI’s concern has both merit problems and evidentiary problems.

4.3.8.9. Case Study 2: HYP Clothing – Second Concern: Security Measures

As a reminder, ASPI’s specific concerns here were that the HYP Clothing factory in Xinjiang was surrounded by a three-metre-high fence and the

¹⁴⁰ Page 11.

¹⁴¹ Austin Ramzy, ‘He needed a Job. China gave him one: locking up his fellow Muslims’, *The New York Times*, 2 March 2019 <[online](#)>.

¹⁴² ‘Shandong Qingdao recruits 40 auxiliary policemen with a monthly salary of 4500, can sign up for specialized training’, Auxiliary Police Officers, *WeChat*, 19 January 2018 <[online](#)>.

perimeter was monitored by security guards.¹⁴³ ASPI provided the following satellite image and frontal-view image as evidence:



Satellite image analysed by Mr Nathan Ruser of ASPI



Frontal-view image analysed by Mr Nathan Ruser of ASPI

The issue of security checkpoints has already been dealt with under the 'Merit Issues' section. It is noted that the frontal-view image of the factory has an estimated one-and-a-half to two-metre-high cyclone mesh fence in front of the parked motorcycles. It is submitted that this is not an uncommon sight in

¹⁴³ Page 19.

China, as such fencing creates a barrier between road traffic and parked vehicles.¹⁴⁴

Accordingly, it is emphasised that these images do not amount to evidence indicating forced labour occurring at HYP Clothing.

4.3.8.10. Case Study 3A: Ofilm Technology – Second Concern: “Modern, Capable Youth”, Gratitude Towards the Communist Party, and Contribution to Stability

The evidence provided by ASPI to support this concern has already been covered under the ‘[Evidentiary Issues](#)’ section (in passing).

4.3.8.11. Case Study 3B: Foxconn Technology – Second Concern: Industrial Xinjiang Aid

As a reminder, ASPI’s specific concern here was that, by Foxconn Technology participating in ‘Industrial Xinjiang Aid’, “factory bosses are expected to fundamentally alter Uyghur workers by reforming their ‘backward qualities’ and sinicising” them.¹⁴⁵ It is submitted that ASPI’s citation at endnote 80¹⁴⁶ does not support ASPI’s claim. It is also submitted that the reference is too dated (a decade old) to be considered a reliable source for this case study.

¹⁴⁴ If the Chinese Government grants the author of this paper entry into China in 2022, the author will take photographs of parking spaces out the front of buildings for the final version of this paper to show how common it is to see fencing near parking spaces. The author will also visit the HYP Clothing factory in Xinjiang to take her own photographs for the final version of this paper.

¹⁴⁵ Page 12.

¹⁴⁶ Yan Hailong, ‘Thoughts and suggestions on human resources development in the three regions of southern ‘Xinjiang Aid’ work’, *Institute of Economic Research of Xinjiang Development and Reform*, 22 May 2012 <[online](#)>.

It is noted that the Chinese word in the reference translated by ASPI as “backwards” was “落后”. It is submitted that “backwards” was the least charitable translation that could have been chosen by ASPI. The more contextually accurate translations were “outmoded”, “lagging” or “underdeveloped”, as the reference discussed concepts belonging to the fields of socioeconomics, social work and community development. It is also noted that the word “落后” was not used to describe “Uyghur workers”, as ASPI claimed, but rather “the rural labour force” of Xinjiang, the Uyghurs’ “concept of employment”, and “the economic and social development of a Xinjiang region”. Regarding the word “sinicising”, it is noted that this word did not appear anywhere in the reference. Thus, this concern has both merit problems and evidentiary problems.

4.3.8.12. Case Study 3C: Precision Manufacturing – First Concern: Exercise Gratitude to the Communist Party

As a reminder, ASPI’s concern here was that, on the day the Uyghur workers arrived at Precision Manufacturing, a senior Communist Party official “demand[ed]” them to “exercise gratitude to the Communist Party”.¹⁴⁷ It is submitted that the citation at endnote 128¹⁴⁸ supports ASPI’s reference to “gratitude”, but ASPI’s reference to “demand” is questionable. The full wording was as follows:

“One should know how to be grateful. Migrant workers from Xinjiang should remember those who dug the well whilst drinking water from it. They should be grateful to the Communist Party of China’s Central Committee for its special care of our fellow Xinjiang compatriots, uphold and support the central strategy for governing Xinjiang, and be grateful for the cadres and people of all ethnicities in the province of Hubei and the city of Xianning for their care and love of their fellow Xinjiang compatriots” (emphasis added).¹⁴⁹

¹⁴⁷ Pages 23 to 24.

¹⁴⁸ ‘Xianning, Hubei, opens up a ‘green tunnel’ for Xinjiang’s organised labour export’, United Front of Jingchu via *Headlines Express*, 18 May 2018 <[online](#)>.

¹⁴⁹ The original text is: 一要懂得感恩。新疆籍务工人员要吃水不忘挖井人，要感恩党中央对新疆同胞的特殊关怀，坚决拥护和支持中央治疆方略，要感恩湖北省、咸宁市各族干部群众对新疆同胞的关心关爱

This does not change the merit problems with ASPI's argumentation.

4.3.8.13. Case Study 3D: Fuying Photoelectric

It is submitted that even though the content of ASPI's supporting citation at endnote 134¹⁵⁰ matches ASPI's claims under this concern, it does not change the merit problems with ASPI's argumentation.

4.3.9. Summary

It would no doubt be a surprise to many professionals working in the BHR space that not one of ASPI's specific allegations stood up to close scrutiny. Of the seven allegations that had some *prima facie* substance, none of ASPI's references reliably substantiated the allegations. In some cases, the evidence provided by ASPI supported the opposite of ASPI's claims. This is extraordinary in light of the fact that the Deputy Director of ASPI's *International Cyber Policy Centre* and co-author of the ASPI report, Ms Danielle Cave, has claimed that ASPI cares about "empirical, data-driven research" and "firm facts".¹⁵¹

Given the frequency of dubious arguments, unsupported and overplayed claims, poor-quality sources, lack of balance and completeness, and questionable academic integrity standards, it is submitted that it is unlikely the ASPI report is a mere case of scholarly incompetence. Rather, it is submitted that ASPI intentionally produced a piece of strategic disinformation propaganda.

Wherever there is a serious injustice, one must always search out for the 'why'. This paper's case theory is that ASPI intended to: (i) further demonise the Chinese

¹⁵⁰ 'Happiness is earned through struggle: girl from Pishan wants to stay in Hefei as a blue-collar worker', *Tianshan Net*, 19 March 2018 <[online](#)>.

¹⁵¹ Graeme Dobell, 'ASPI's Decades: 'Uyghurs for Sale'', *The Strategist*, Australian Strategic Policy Institute, 11 October 2021 <[online](#)>.

government on the international stage, regardless of the facts; (ii) disrupt the Chinese government's worker mobility and pre-employment training programs; (iii) disrupt Chinese companies' supply and employment contracts; and (iv) incite discrimination against Uyghurs in the Chinese job market; which thereby (v) undermines the economic development and social stability of Xinjiang – a geopolitical vulnerability in China's peace and security.

It is submitted that the above explanation – as the basis for ASPI's high volume of unsubstantiated allegations – makes more sense than the assumption that ASPI went down a good-will, *ultra vires* detour into the BHR space. More to the point, it is submitted that the above explanation fits very neatly into ASPI's mandated purpose to work on 'strategic policy', 'strategic issues' and 'strategic thinking'.¹⁵²

If this paper's case theory can be substantiated (through a total collation of direct and circumstantial evidence), then, in addition to undermining the Uyghurs' article 6 rights under the ICESCR, it is arguable that ASPI also undermined the Uyghurs' article 1 right to economic development under the ICESCR. Of additional relevance may also be article 8(2)(e) of the *United Nations Declaration on the Rights of Indigenous Peoples* (if Uyghurs are viewed by the international legal community as indigenous peoples).¹⁵³ That article prohibits:

"Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against [Indigenous peoples and individuals]."

In the case of the Uyghur workers, the ethnic discrimination directed against them could be said to be the inevitable disruption of their employment opportunities with the companies listed by ASPI in its report.

More extraordinary than a rogue think tank operating in the BHR space is that, in the near two years that have passed since the publication of the ASPI report, not a single

¹⁵² See 'Charter', *Australian Strategic Policy Institute* <[online](#)>. It is noted that there is no equivalent reference in ASPI's Charter to human rights policy, human rights issues or human rights thinking.

¹⁵³ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295 <[online](#)>. For an understanding of the term 'indigenous peoples', see 'Indigenous Peoples, Indigenous Voices: Factsheet', *United Nations Permanent Forum on Indigenous Issues* <[online](#)>.

mainstream media outlet or human rights organisation critically scrutinised the report. As such, this would have likely emboldened ASPI to publish more reports containing disinformation against China. As such, the Australian public and Australian politicians would be wise to view ASPI's other China-related reports through the legal doctrine of '*falsus in uno, falsus in omnibus*', meaning 'false in one thing, false in everything'.

The greater tragedy is that this has all come at the suffering of salt-of-the-earth Uyghurs: in trying to break free of the cycle of poverty and pursue economic independence, the Uyghurs have potentially been set back further in life because of a think tank's pretence of human rights activism.¹⁵⁴

The question remains: who will take responsibility for the injustice?

¹⁵⁴ If the Chinese Government grants the author of this paper entry into China in 2022, the author will try to track down the Uyghur workers who lost their employment opportunities with the companies listed in the ASPI report and interview them to ascertain the damages they have suffered. The interviews, if they can be successfully arranged, will be filmed and published with the final version of this paper.

5. UNITED NATIONS *GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS* ('UN GUIDING PRINCIPLES')

As mentioned in the 'Executive Summary' section of this paper, it is submitted that the *UN Guiding Principles*¹⁵⁵ apply to ASPI (as a Commonwealth company) and the Australian Government because of the extra-territorial ramifications of the ASPI report.

The *UN Guiding Principles* were introduced in 2011 as a set of guidelines for states and companies to prevent, address and remedy human rights violations committed through business operations. The *UN Guiding Principles* are authoritative soft law.

In terms of the international legal arena, it can be said that the *UN Guiding Principles* were introduced in a transitioning period from “territorial sovereignty – characterised by discrete and meaningful borders, a clear separation between domestic and international affairs, a marked distinction between the public and private spheres, and states as the only meaningful actors (and only subjects of international law) – to one in which sovereignty and geographic jurisdiction are compromised, borders are less meaningful, the sharp separation between domestic and foreign is diffuse and blurred, multiple actors are politically significant, and the public-private distinction is confused”.¹⁵⁶ This global transition is still playing out today.

Based on the analysis in the sections above, it is submitted that ASPI, as well as the Australian Government, have not complied with their duties and responsibilities under the *UN Guiding Principles*.

The reasons are discussed below.

¹⁵⁵ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (United Nations Human Rights Office of the High Commissioner; 2011) <[online](#)>.

¹⁵⁶ Stephen J Korbin, 'Oil and Politics: Talisman Energy and Sudan' (2004) 36, *NYU Journal of International Law & Politics*, 425, 451 <[online](#)>.

5.1. *UN Guiding Principles* and ASPI

Under Pillar II of the *UN Guiding Principles*, a company must respect the human rights of individuals by avoiding infringement of their rights and by addressing adverse human rights impacts involving the company.¹⁵⁷ To be clear, the *UN Guiding Principles* apply to all companies, regardless of size, sector, location, ownership and structure.¹⁵⁸ Accordingly, it is argued that the *UN Guiding Principles* apply to ASPI's business operations that have intra-territorial and extra-territorial impacts.

As was noted in [Part 3](#) of this paper, ASPI implicitly claimed credit for Apple severing its relationship with its Chinese supplier, Ofilm Technology. This subsequently resulted in the discriminatory termination of the Uyghur workers' employment with Ofilm Technology, despite no evidence of forced labour. ASPI also likely contributed to the discriminatory termination of Uyghur workers' employment by naming other supply companies in its report, as outlined in [Part 3](#) of this paper. This is in spite of the fact that several companies' investigations have shown no forced labour.

Any subsequent inability of Uyghurs to gain meaningful employment because of the ASPI report would no doubt have resulted in significant economic hardship and a deep sense of helplessness. It may also follow that some Uyghurs lost access to pre-employment training if they could not subsequently partake in job placement schemes because of reputational risks to employers.

By ASPI passing off dubious and misleading claims relating to forced labour as factual and substantial, and having at least constructive knowledge that those claims would adversely impact the Uyghurs' human rights under the ICESCR, it is argued that ASPI showed a blatant disrespect for those rights and, as such, failed to comply with the *UN Guiding Principles*.

ASPI may argue that it did not breach the *UN Guiding Principles* because its recommendations conservatively stated that international companies should only sever relations with their Chinese suppliers if cases of actual forced labour were

¹⁵⁷ Principle 11.

¹⁵⁸ Principle 14.

found and could not be remediated.¹⁵⁹ However, it is argued that ASPI's recommendations were knowingly undercut by the disinformation that preceded the recommendations, along with its subsequent marketing of its report. Accordingly, ASPI would at least have had constructive knowledge that rash measures would be taken by some of the named-and-shamed companies in order to mitigate reputational and financial risks, and even criminal risk.¹⁶⁰ To argue otherwise would beg the question: if ASPI did not want Uyghurs losing consensual employment and work-training opportunities, why then publish so much disinformation?

Based on the above, and as per the *UN Guiding Principles*,¹⁶¹ it is recommended that ASPI undertake the following three remedial steps as soon as practicable:

- implement a clear policy commitment to respect human rights, embedded in all its relevant functions;
- develop a human rights due diligence process that: (i) identifies and assesses actual and potential adverse human rights impacts linked to its business operations; (ii) prevents and mitigates adverse human rights impacts; (iii) verifies whether adverse human rights impacts are being addressed; and (iv) externally communicates steps taken to address adverse human rights impacts; and
- ensure individuals adversely affected by its business operations are able to secure remediation (such as monetary compensation).

Another added benefit to ASPI taking the steps outlined above is that it puts greater pressure on it to investigate and act on claims that the funding it receives from the armaments industry is tainted with forced American and British prison labour.¹⁶²

¹⁵⁹ Page 29.

¹⁶⁰ It is noted that ASPI explicitly acknowledged “new risks – reputational and legal – for companies” at page 28 of its report.

¹⁶¹ Principle 15.

¹⁶² Pepe Escobar, ‘Sinophobia meets prison labor in a think tank down under’, *Al Mayadeen*, 14 September 2021 <[online](#)>; Marcus Reubenstein, ‘US prison labour, foreign weapons-makers finance Australian government think tank ASPI’, *Michael West Media*, 12 October 2020 <[online](#)>.

5.2. *UN Guiding Principles* and the Australian Government

ASPI's non-compliance with the *UN Guiding Principles* could also implicate the Australian Government and its own duties under Pillar I of the *UN Guiding Principles* to protect against human rights abuses by companies operating in its jurisdiction.¹⁶³ Under Pillar I and Pillar III, protection against human rights abuses includes taking appropriate steps to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudications.¹⁶⁴

It is submitted that the Australian Government must fulfil its duties under the *UN Guiding Principles* in relation to ASPI. It can do so in the six ways recommended below, in addition to pressuring ASPI to implement the three recommendations above.

First, there is no current legislation or regulations that the Australian Government can utilise to hold ASPI civilly and criminally accountable for its report. However, it is noted that there is an existing legislative framework that the Australian Government could amend and enforce to ensure ASPI does not repeat similar adverse actions in the future, i.e., the *Commonwealth Authorities and Companies Act 1997* (Cth). Under sections 22 and 23 of the Act, officers of a 'Commonwealth authority' must: (i) act honestly and with care and due diligence at all times in the discharge of their duties; and (ii) not improperly use their position to cause detriment to another person. Under section 4, the Act has extra-territorial application. If the Australian Government amended sections 22 and 23 to also apply to Commonwealth companies like ASPI, not just Commonwealth authorities, then, in the future, there could be civil and criminal penalties for ASPI's authors (or at least its Executive

¹⁶³ It is noted that there is nothing in the *UN Guiding Principles* that precludes a state from protecting against human rights abuses that occur offshore when they emanate from a company within a state's jurisdiction.

¹⁶⁴ Principle 1 and Principle 25.

Director)¹⁶⁵ for deliberate acts of disinformation that cause detriment to others, like the job losses suffered by the Uyghur workers.

Second, the Australian Government should consider obtaining legal advice from the *Australian Government Solicitor* to see if the affected Uyghurs could successfully sue ASPI for the tort of interference with a contract or the tort of conspiracy under Australian common law. If the *Australian Government Solicitor* believes the Uyghurs have a strong case, then it is submitted the Australian Government should offer financial assistance to the Uyghurs so they can launch a test class action against ASPI in an Australian court.¹⁶⁶ Such financing would be justified in light of the fact that there is a strong nexus between ASPI and the Australian Government because: (i) ASPI is a Commonwealth company that is partly funded by Australian tax-payers; (ii) ASPI's Charter states that the Australian Government seeks to have "regular input into the setting of ASPI's research agenda";¹⁶⁷ (iii) the Australian Minister for Defence appoints the Executive Director of ASPI;¹⁶⁸ and (iv) ASPI reports to the Australian Minister for Defence.¹⁶⁹ The Australian Government should also support the Uyghurs in lodging legal actions against the ASPI report authors, personally. This would help

¹⁶⁵ Under the current wording of the Act, only directors or those involved in management of an authority can face penalties under the Act, as per the definition of 'officer' under section 5. It is submitted that, if sections 22 and 23 were to be extended to Commonwealth companies like ASPI, penalty provisions should apply to all employees that cause detriment to others. For persuasive arguments as to why individuals in institutions need exposure to real world consequences for their harmful actions, see Nassim Nicholas Taleb, *Skin in the Game* (Random House: 2018).

¹⁶⁶ It is noted that the Australian Attorney-General's Department runs a financial assistance program to cover costs of test cases that are of public importance: 'Commonwealth public interest and test cases', *Attorney-General's Department (Australian Government)* <[online](#)>.

¹⁶⁷ 'Charter', *Australian Strategic Policy Institute* <[online](#)>.

¹⁶⁸ See, e.g., Ben Packham, 'Security guru Justin Bassi to lead national strategic forum', *The Australian*, 19 December 2021 <[online](#)>.

¹⁶⁹ See, e.g., *Annual Report 2019-2020* (Australian Strategic Policy Institute: 2020) 2 <[online](#)>.

ensure that individuals who do ASPI's bidding have actual skin in the game,¹⁷⁰ as well as aligning with the Minister for Defence's vision of ASPI authors taking ownership for their own publications.¹⁷¹

Third, the Australian Government should launch an inquiry – overseen by the *Parliamentary Joint Committee on Human Rights* – into how the ASPI report ended up containing so many dubious and misleading claims. In addition to questioning the authors of the report, the Director of the *International Cyber Policy Centre*, Mr Fergus Hanson, and the Executive Director of ASPI, Mr Peter Jennings, should also be questioned to ascertain their actual or constructive knowledge of the situation, and whether or not they, themselves, directed the authors to bypass academic and legal rigour.

Fourth, the Australian Government should tie any future funding of ASPI to an undertaking from ASPI that it will start complying with its responsibilities under the *UN Guiding Principles*.

Fifth, the Australian Government should refuse to enact the *Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill*, if the impetus for the bill was the ASPI report.

Sixth, the Australian Government should contact the UN Working Group's Chair-Rapporteur leading the investigation into the forced Uyghur labour claims and alert him to the problems with the ASPI report.¹⁷²

¹⁷⁰ See Nassim Nicholas Taleb, *Skin in the Game* (Random House: 2018) for persuasive arguments as to why individuals in institutions need exposure to real world consequences for their harmful actions.

¹⁷¹ ASPI's Charter states that the "[m]inisters envisaged that ... [t]he Institute would not publish views in its own name, but provide a forum for the publication of the views of the authors of its publications": see 'Charter', *Australian Strategic Policy Institute* <[online](#)>.

¹⁷² See 'China: UN experts deeply concern by alleged detention, forced labour of Uyghurs', *United Nations Human Rights Office of the High Commissioner*, 29 March 2021 <[online](#)>.

6. CONCLUSION

The way Australians view forced labour can be found in the language used in the Australian Parliament's 2017 inquiry into modern slavery: "a heinous crime", "an appalling crime", "a terrible crime".¹⁷³ Forced labour is a symbol of evil that conjures up outrage in us all and requires what limited resources we have to eradicate it.

What should also be an outrage is when political power-brokers appropriate a symbol of evil for a game of geopolitical one-upmanship: to further demonise a country that Australians are already conditioned to distrust and dislike.¹⁷⁴

ASPI lobbed eighteen specific accusations relating to forced labour at China, and, as this paper shows, not one of them survives close scrutiny. It is submitted that this is because the ASPI report was not a work of scholarly analysis, but rather a piece of strategic disinformation to exact harm. What ASPI has done should be a scandal that grabs the world's attention to the same degree as when Ms Xu captured the world's attention with her hero's-journey-tale.¹⁷⁵

What worsens this travesty is that no mainstream media outlet or human rights organisation tried to stop ASPI from high-jacking a word endowed with cardinal meaning and turning it into something that can mean anything – from taking daily showers to studying Mandarin. By nobody policing the boundary between forced labour and substandard or innocuous working conditions, it has ultimately been the Uyghurs who have been harmed. The question remains: will the mainstream media and human rights organisations shine a light on the real human rights violations of the Uyghurs by reporting this paper's findings, or will they continue to spread junk research?

¹⁷³ Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*, Australian Parliament, December 2017 <[online](#)>.

¹⁷⁴ See, e.g., David Brophy, *China Panic* (Latrobe University Press: 2021).

¹⁷⁵ See 'When Worlds Collide – Vicky Xu', *Australian Story* (Australian Broadcasting Corporation, 2020) <[online](#)>.

There are many morals to this story. The salient lesson for professionals in the BHR space is to not assume that, just because someone emphatically cries wolf, there must be one somewhere. Trials by evidence must be favoured over trials by accusation, even when the accused is China.

All stakeholders, especially the Australian Government, must right the grave wrong perpetrated against the Uyghurs because of the ASPI report. Otherwise, if there are no legal and reputational consequences for ASPI and its authors, they will be given licence to go on acting as they arbitrarily, or even maliciously, please. It is only by taking a stand against human rights violations that emanate from Australian soil that us Australians can unhypocritically turn to China and preach the virtues of human rights.

FEEDBACK & FUNDING

Feedback on this working paper is welcomed from professionals working in the BHR field, as well as any companies and individuals adversely affected by the ASPI report. To write to the author, please go to www.cowestpro.co/contact. Feedback received may be incorporated into the final version of this paper (with redactions, if requested).

CO-WEST-PRO Consultancy is trialling 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 *CO-WEST-PRO Consultancy* is financial contributions from the public.

If you appreciate the immense amount of time, effort and expertise that has gone into this paper, you can make a financial contribution through a link that can be found at www.cowestpro.co/papers. Any amount is appreciated.

This working paper, and its anticipated final version, has been valued against the monetary contribution that ASPI received from the British Government for its human rights research project, which is a total of AU\$77,653.95. When this amount has been crowdfunded, *CO-WEST-PRO Consultancy* will commence work on the final version of this paper. Funds raised will go towards the costs of conducting a field study in China to help complete the final version of this paper (provided permission is obtained from the Chinese Government), as well as promotional materials raising awareness of the work rights of Uyghurs. Unused or excess funds may be used as supplementary income for the author of this paper.

If you would like *CO-WEST-PRO Consultancy* to scrutinise other Western institutions' reports relating to China and international law, please send your recommendations through www.cowestpro.co/contact.

CALL-TO-ACTION

Often after uncovering upsetting injustices, individuals can feel powerless to do anything because the problem feels too big and complex. In this matter, however, you can do something simple to help.

CO-WEST-PRO Consultancy has prepared pro-forma letters below that you can email to key individuals and organisations. The letters will let the recipients know that the fifth estate (i.e., ordinary global citizens) expect accountability when universal human rights have been violated. The letters are addressed to:

1. Executive Director of ASPI, Mr Peter Jennings.
2. Australian Minister for Defence, the Hon Peter Dutton, responsible for ASPI.
3. South Australian Senator, Mr Rex Patrick, who led the motion to introduce the anti-Uyghur slave labour bill.
4. Australian Attorney-General, the Hon Michaelia Cash, responsible for Australia's human rights portfolio.
5. Chair of the Australian *Parliamentary Joint Committee on Human Rights*, Dr Anne Webster.
6. Chair-Rapporteur of the *Working Group on Business and Human Rights* for the United Nations, Mr Dante Pesce.
7. Chief Executive of the *Institute of Business and Human Rights*, Mr John Morrison, an important BHR organisation that constructively endorsed the ASPI report.

You are, of course, free to send your own letters to whoever you feel is appropriate, in the alternative or in addition to the list above.

Lastly, you can publicly show your support for the Uyghurs' rights to work under article 6 of the *International Covenant on Economic, Social and Cultural Rights* by using the **#WorkRights4Uyghurs** hashtag on your social media.

Letter to the Executive Director of ASPI, Mr Peter Jennings

Email: peterjennings@aspi.org.au

Subject: ASPI's 'Uyghurs for Sale' Report

Attachment: CO-WEST-PRO's working paper

Dear Executive Director

I write to you to express my concern about the reliability of the claims published in ASPI's 2020 report – *Uyghurs for sale: 'Re-education', slave labour and surveillance beyond Xinjiang* ('ASPI report').

I have read through *CO-WEST-PRO Consultancy's* working paper (attached) that has examined the ASPI report from an international law perspective. I find it highly concerning that all of ASPI's specific allegations relating to forced Uyghur labour were actually unsubstantiated, seemingly driven by a disinformation agenda.

ASPI's allegations have since resulted in lost employment opportunities for many Uyghurs because of their ethnicity (an already economically disadvantaged ethnic group in China).

As you would be aware, the Uyghurs, like everyone else, have a right to work and a right to access work-training opportunities under the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR').

Based on *CO-WEST-PRO's* paper, it is my opinion that ASPI has contributed to the infringement of the Uyghurs' human rights under the ICESCR. As such, it is submitted that ASPI, as a Commonwealth company, has failed to comply with its responsibility to respect human rights under the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles').

Based on the findings of *CO-WEST-PRO's* paper, I would like for you to answer the following questions:

1. The Deputy Director of ASPI's *International Cyber Policy Centre*, Ms Danielle Cave, has stated that ASPI cares about "empirical, data-driven research" and "firm facts". How do you reconcile this claim with the amount of misleading information contained in the ASPI report?
2. Did the Director of ASPI's *International Cyber Policy Centre*, Mr Fergus Hanson, or yourself, play any role in directing the authors of the ASPI report to bypass academic and legal rigour in order to produce a report that would further

damage the Chinese Government's reputation?

3. Do you and Mr Hanson wish to express any regret for the damages suffered by the Uyghurs because of the ASPI report?
4. Will ASPI compensate affected Uyghurs for any financial losses borne by them because of the ASPI report?
5. Will ASPI implement the recommendations in *CO-WEST-PRO's* paper regarding ASPI's responsibilities under the *UN Guiding Principles*?

I await your responses to these questions.

Yours sincerely

Letter to the Australian Minister for Defence, the Hon Peter Dutton

Email: Peter.Dutton.MP@aph.gov.au

Subject: ASPI's non-compliance with the UN Guiding Principles

Attachment: CO-WEST-PRO's working paper

Dear Minister for Defence

I write to you regarding a matter that falls within your portfolio of defence, namely the business operations of the Australian Strategic Policy Institute (ASPI).

As you would be aware, ASPI published a report in 2020, titled *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* ('ASPI report'). In the report, ASPI claimed that the Chinese Government was orchestrating a forced Uyghur labour program. The ASPI report went on to cause reputational and financial damage to companies named in the report, as well as the termination of the employment arrangements of hundreds, if not thousands, of Uyghurs. This would be warranted if ASPI's claims were true. However, I would like to bring to your attention a working paper by *CO-WEST-PRO Consultancy* (attached) that has scrutinised the ASPI report from an international law perspective. It has found that all of ASPI's specific allegations relating to forced labour were unsubstantiated, seemingly driven by a strategic disinformation agenda. I urge you to read *CO-WEST-PRO's* paper so you are fully across all its findings.

What is most concerning is that, by publishing unsubstantiated allegations relating to forced Uyghur labour, ASPI has arguably contributed to the infringement of the Uyghurs' rights to work and access to work-training programs under article 6 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'). As such, it is submitted that ASPI (as a Commonwealth company) breached its responsibility under the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles') to respect human rights extra-territorially, namely the Uyghurs' article 6 rights under the ICESCR.

Consequently, I would like to know how you propose to respond to the findings and recommendations in *CO-WEST-PRO's* paper. Specifically, I would like answers to the following questions:

1. What powers will you be using as Minister for Defence to help ensure ASPI complies with its responsibility to respect human rights under the *UN Guiding Principles*?
2. What powers will you be using as Minister for Defence to hold ASPI accountable for the human rights harms to which they have contributed?

3. What powers will you be using as Minister for Defence to ensure that ASPI does not publish reports containing disinformation in the future?
4. What steps will you be taking to ensure members of the Australian public are made aware of *CO-WEST-PRO's* paper so that damages incurred by the Uyghurs can begin to be mitigated?
5. What would you like to say to the companies and workers who have unfairly suffered financial, reputational and legal hardship because of the ASPI report?

I await your responses to these questions.

Yours sincerely

Letter to South Australian Senator, Mr Rex Patrick

Email: senator.patrick@aph.gov.au

Subject: Your motion to introduce anti-Uyghur slave labour legislation

Attachment: CO-WEST-PRO's working paper

Dear Senator Patrick

I write to you regarding your lead in introducing anti-Uyghur slave labour legislation for Australia. I note that the lead witnesses who gave testimony at the senate committee inquiry you held last year were Ms Vicky Xiuzhong Xu and Dr James Leibold – two authors of ASPI's 2020 report, *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* ('ASPI report').

I would like to bring to your attention a working paper by *CO-WEST-PRO Consultancy* (attached) that has scrutinised the ASPI report from an international law perspective. It has found that all of ASPI's specific allegations relating to forced Uyghur labour were unsubstantiated, seemingly driven by a strategic disinformation agenda. This means that hundreds, if not thousands, of Uyghurs have unfairly lost their employment opportunities because of their ethnicity. I urge you to read *CO-WEST-PRO's* paper so you are across all its findings.

As *CO-WEST-PRO's* paper points out, the Uyghurs have a right to work and a right to access work-training opportunities under the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR').

Based on *CO-WEST-PRO's* paper, it is my opinion that ASPI has contributed to the infringement of the Uyghurs' human rights under the ICESCR. As such, it is submitted that ASPI, as a Commonwealth company, has failed to comply with its responsibility to respect human rights under the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles').

Based on the above, I would like for you to answer the following questions:

1. In light of the findings in *CO-WEST-PRO's* paper, do you intend to push ahead with your *Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill*?
2. What powers will you be using as a senator to help ensure ASPI complies with its responsibility to respect human rights under the *UN Guiding Principles* and is held accountable for its report?

3. What kind of pressure will you be putting on the Australian Government to ensure it complies with its duties under the *UN Guiding Principles* to protect against human rights infringements linked to Australian companies like ASPI?

I await your responses to these questions.

Yours sincerely

Letter to the Australian Attorney-General, the Hon Michaelia Cash

Email: senator.cash@aph.gov.au

Subject: ASPI's non-compliance with the UN Guiding Principles on Business and Human Rights

Attachment: CO-WEST-PRO's working paper

Dear Attorney-General

I write to you to lodge a complaint about the *Australian Strategic Policy Institute* (ASPI) not complying with the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles').

As you would be aware, all companies operating in Australia have a responsibility under the *UN Guiding Principles* to respect human rights, both intra-territorially and extra-territorially. Accordingly, I would like to bring to your attention the contents of a report by *CO-WEST-PRO Consultancy*, which uncovered that ASPI's 2020 report – *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* ('ASPI report') – did not contain a single substantiated specific allegation relating to forced Uyghur labour. The allegations were unmasked as being based on dubious argumentation, misleading translations, unreliable or incomplete evidence, and questionable academic integrity standards.

Based on *CO-WEST-PRO's* analysis, it appears that ASPI was not driven by a desire to emancipate the Uyghur population, but was rather driven by a bad-faith agenda to publish disinformation that further damages the Chinese Government's reputation on the global stage. As a result of the ASPI report, many consensual Uyghur workers have been forced out of their jobs because of their ethnicity (an ethnic group that is already economically disadvantaged in China).

As you would be aware, the Uyghurs have the right to work and the right to access work-training programs established by the Chinese Government, as per article 6 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR')

It is submitted that the Uyghurs' enjoyment of their human rights under the ICESCR has been adversely impacted because of ASPI's claims of forced labour. Given ASPI is a Commonwealth company, it is submitted that it has breached its responsibility under the *UN Guiding Principles* to respect human rights.

As Attorney-General, you would be aware that the Australia Government also has duties under the *UN Guiding Principles* to prevent and remedy human rights abuses committed by Australian companies through their business operations. As such, I request the Australian Government comply with its duties under the *UN Guiding*

Principles by taking the following actions to hold ASPI accountable and assist the affected Uyghurs obtain remediation:

1. Ensure ASPI: (i) implements a clear policy commitment to respect human rights; (ii) develops a human rights due diligence process; and (iii) guarantees that individuals adversely affected by its business operations are able to secure remediation, as per ASPI's responsibilities under Pillar II of the *UN Guiding Principles*.
2. Amend and enforce the *Commonwealth Authorities and Companies Act 1997* (Cth) to create civil and criminal penalty provisions for employees of a Commonwealth company who improperly use their position to cause detriment to another person (for future deterrence purposes).
3. Obtain legal advice from the *Australian Government Solicitor* to determine if the affected Uyghurs can successfully sue ASPI under the tort of interference with a contract or the tort of conspiracy under Australian common law. If the *Australian Government Solicitor* believes the Uyghurs have a case, then the Australian Government should offer financing to the Uyghurs so they can launch a test class action against ASPI in an Australian court. The Australian Government should support the Uyghurs in lodging legal actions against ASPI's implicated employees, personally, as well.
4. Request the Chair of the *Parliamentary Joint Committee on Human Rights* to launch an inquiry into ASPI and the extra-territorial human rights violations it has contributed towards through its business operations.
5. Tie any future government funding of ASPI to an undertaking from ASPI that it will start complying with its responsibilities under the *UN Guiding Principles*.
6. Refuse to pass the *Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill*, if the impetus for the bill was the ASPI report.
7. Contact the Chair-Rapporteur currently leading the investigation into the forced Uyghur labour claims for the United Nations, and inform him of *CO-WEST-PRO*'s findings.

I urge you to read *CO-WEST-PRO*'s paper (attached) so that you can fully understand the reasoning behind each of the above requests.

In concluding, I would like to emphasise that forced labour is a heinous crime that conjures up outrage in us all and must be eradicated. But what is equally outrageous is when bad-faith organisations appropriate the term for what seems to be strategic

disinformation purposes. Someone needs to police the boundary between forced labour and substandard or innocuous working conditions; otherwise, innocent people - like the Uyghurs - become collateral damage in a geopolitical game. You have the power to police that boundary.

I look forward to receiving your response.

Yours sincerely

Letter to the Chair of the Australian Parliamentary Joint Committee on Human Rights, Dr Anne Webster

Email: human.rights@aph.gov.au

Subject: Request for inquiry into ASPI's non-compliance with UN Guiding Principles

Attachment: CO-WEST-PRO's working paper

Dear Chair

I write to you as Chair of the Australian *Parliamentary Joint Committee on Human Rights* and make a request for you to open a new inquiry this year.

My request relates to the Australian Strategic Policy Institute ('ASPI') and its business operations that have arguably amounted to non-compliance with the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles').

In 2020, ASPI published a report, titled *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* ('ASPI report'). The report claimed that the Chinese Government was orchestrating a forced Uyghur labour program. The ASPI report went on to cause reputational and financial damage to companies named in the report, as well as the termination of the employment arrangements of hundreds, if not thousands, of Uyghurs. This would be warranted if ASPI's claims were true. However, I would like to bring to your attention a working paper by *CO-WEST-PRO Consultancy* (attached) that has scrutinised the ASPI report from an international law perspective. It has found that all of ASPI's specific allegations relating to forced labour were unsubstantiated, seemingly driven by a strategic disinformation agenda.

What is most concerning is that, by publishing so many unsubstantiated allegations, ASPI has contributed to the infringement of the Uyghurs' rights to work and access to work-training programs under article 6 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'). As such, it is submitted that ASPI breached its responsibility under the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles') to respect human rights extra-territorially, namely the Uyghurs' article 6 rights under the ICESCR.

Accordingly, I urge you to read *CO-WEST-PRO's* working paper and subsequently:

- (i) open an inquiry into how it is that the ASPI report contained so much disinformation;
- (ii) quantify the damages caused by the ASPI report;
- (iii) assess what international and domestic laws ASPI has likely breached; and
- (iv) recommend methods of redress for the Uyghurs, the companies named in the ASPI report, and the Australian public at large.

I look forward to receiving your response.

Yours sincerely

Letter to the Chair-Rapporteur of the *Working Group on Business and Human Rights* for the United Nations, Mr Dante Pesce

Email: wg-business@ohchr.org

Subject: Your investigation into forced Uyghur labour claims

Attachment: CO-WEST-PRO's working paper

Dear Chair-Rapporteur

I write to you as the Chair-Rapporteur of the *Working Group on Business and Human Rights*. I am aware that your working group is currently investigating claims of forced Uyghur labour in China.

I am also aware that your working group's investigation was partly prompted by a report written in 2020 by the *Australian Strategic Policy Institute* ('ASPI'), titled *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* ('ASPI report').

I would like to draw your attention to an important paper written by *CO-WEST-PRO Consultancy* that has critically analysed the ASPI report and has found that not a single specific allegation relating to forced Uyghur labour was substantiated by ASPI. It appears that the driving force behind ASPI's unsubstantiated allegations was not a desire to emancipate the Uyghurs, but rather a bad-faith agenda to publish disinformation that further damages the Chinese Government's reputation on the international stage. The author of *CO-WEST-PRO's* paper is an independent Western Propaganda Analyst and International Law Advocate. She holds a Bachelor of Laws with Honours, a Master of Public Policy, a Master of Education, and is currently completing a Master of Laws specialising in international law.

It is vital that your working group seriously reflect on *CO-WEST-PRO's* findings, as many consensual Uyghur workers are losing access to work and work-training programs established by the Chinese Government, all because of the ASPI report. As you would no doubt know, this would mean that the Uyghurs' article 6 rights under the *International Covenant on Economic, Social and Cultural Rights* are being violated. This is particularly disturbing in light of the fact that the Uyghurs are already an economically disadvantaged ethnic group in China.

In light of the above, it is also arguable that ASPI (a Commonwealth Company) has failed in its responsibility to respect human rights under the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles') by contributing towards the violations of the Uyghurs' article 6 rights. Therefore, it is submitted that ASPI should be publicly censured by your working group for its failure to respect the article 6 rights of the Uyghurs; along with censuring the Australian Government if it

does not fulfil its duties under the *UN Guiding Principles* to hold ASPI accountable for its non-compliance with the *UN Guiding Principles*.

Please find attached *CO-WEST-PRO*'s paper.

I look forward to receiving your response.

Yours sincerely

Letter to the Chief Executive of the *Institute of Business and Human Rights*, Mr John Morrison

Emails: john.morrison@ihrb.org

Subject: IBHR's constructive endorsement of ASPI's 'Uyghurs for Sale' report

Attachment: CO-WEST-PRO's working paper

Dear Chief Executive

I write to you as Chief Executive of the *Institute of Business and Human Rights* ('IBHR').

It has come to my attention that IBHR has constructively endorsed a report written by the *Australian Strategic Policy Institute* (ASPI), titled, *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang* ('ASPI report').

Whilst I realise that IBHR would be facing the pressures of limited funding and therefore unable to carry out due diligence on all reports claiming human rights abuses, in the case of the ASPI report, it is submitted that IBHR should have critically engaged with the report before referencing it in its *Top 10 Business and Human Rights Issues for 2021* report.

As such, I would like to draw your attention to a working paper by *CO-WEST-PRO Consultancy* (attached) which has critically analysed the forced Uyghur labour claims made by ASPI from an international law perspective. Its findings are highly concerning. Not a single one of ASPI's specific allegations relating to forced Uyghur labour were found to be substantiated. It appears that the driving force behind ASPI's high volume of unsubstantiated allegations was not a desire to emancipate the Uyghurs, but rather a bad-faith agenda to publish disinformation that further damages the Chinese Government's reputation on the international stage. As a result of the ASPI report, many consensual Uyghur workers have been forced out of their jobs because of their ethnicity (an already economically disadvantaged ethnic group of China).

As you would be aware, the Uyghurs have a right under article 6 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') to access work and work-training programs established by the Chinese Government. It is submitted that the enjoyment of the Uyghurs' human rights under the ICESCR has been adversely impacted because of ASPI's claims of forced labour. Given ASPI is a Commonwealth company, it is submitted that this is a breach of its responsibility to respect human rights under the United Nations *Guiding Principles on Business and Human Rights* ('UN Guiding Principles')

My concern is that, by IBHR repeating ASPI's claims uncritically, or remaining silent about the unreliability of ASPI's claims, the IBHR is complicit in perpetuating the human rights violations against the Uyghurs. As a human rights organisation, and an incorporated company also subject to the *UN Guiding Principles*, IBHR should be the most vigilant of all organisations to ensure it is not furthering human rights abuses through its business operations.

As such, I implore you to read *CO-WEST-PRO's* paper and strongly voice your objection to ASPI's disinformation campaign. It is not too late to right a wrong.

I look forward to receiving your response.

Yours sincerely

