



# Conflicts of Labour Rights between China and International Rules



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**Submission:** February 20, 2019; **Published:** February 27, 2019

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## Abstract

This paper is designed to investigate the role of transforming labour rights in influencing and determining the nature of labour between the conflicting rules of international law and China's reform through labour system. In the evolution of labour rights within the international law framework, labour rights are generally placed in the category of social and cultural rights, which are exclusively pure rights. Legal conflicts of labour rights between the ICESCR and other human rights rules can be further examined in detail as follows:

## The Nature of Labour Rights

For multiple reasons, labour rights have also come to be considered civil rights, to which exceptions are permissible with compulsory elements under certain circumstances. However, the international context of labour rights may be in conflict when a State cannot simultaneously comprehend or fulfil its obligations under any two conflicting treaties. Ambiguities regarding the nature of labour are within the scope of systematic interpretation. If a rights conflict is irreconcilable in international law, State parties might need to clarify or determine the nature of the right to resolve the treaties' conflict with domestic laws. For instance, the International Covenant on Economic, Social and Cultural Rights (ICESCR) codifies the right-to-work rules of international law, suggesting the nature of labour as a right only. International lawyers have widely acknowledged the law's deficiency and inadequacy in resolving rights conflicts. This deficiency paves the way for the political determination of such conflicts by State parties and further impacts how to transform labour rights at the domestic level, e.g., the notorious reform through labour programme in China.

## Potential Conflicts in International Human Rights Law

A rights conflict can be identified as conflicting international obligations required of States under two treaties containing labour rights provisions: e.g., the ICESCR and International Covenant on Civil and Political Rights (ICCPR). A rights conflict gives rise to issues regarding the validity and enforceability of conflicting State obligations in one of the human rights treaties, when a State cannot simultaneously fulfil both and thus risks violating one of them. More precisely, a right 'conflict arises when

two obligations cannot be fulfilled by all addressees, always and in all spaces covered, about all objects and purposes, and in all conditions specified by the obligations.

The international framework on labour rights, including the ICESCR, ICCPR and other rules, fails to provide norms for the resolution of a rights conflict. Even with reference to interdependent interpretive tests for the application of treaty obligations in the Vienna Convention on the Law of Treaties (VCLT) Articles 30 and 59, it is unlikely for State Parties to resolve the conflict in international laws, further impacting China's re-education through labour programmed that was abolished in 2017 as an administrative measure.

## Rights Conflicts between China and International Human Rights Law

The Chinese Characteristic rules of labour rights and duties in the Constitution of the PRC are known to be unhelpful in resolving any rights conflicts or in fully protecting Chinese citizens' labour rights, as international lawyers have heavily criticized these rules' techniques for resolving rights conflicts. Determinations of the true subject matter of labour and the requirements for its contents are problematic due to the main differences between the duty and the right of labour. The ostensible subject matter of labour is the interest it primarily proposes to protect, such as human rights. However, this definition does not preclude the implications that specific labour provisions may have for other areas of interest, e.g., forced labour. Put another way, the subject matter is still the 'same when a norm incorporated in one treaty is incompatible with the norm incorporated' in other treaties.

Therefore, the subject of two types of human rights treaties would not be affected by their individual norms' generation of a conflict of interest. Presuming that the determination of the real subject and its requirements is somehow possible in the context of human rights treaties, the rule in one treaty fails to offer an adequate resolution for normative conflicts because the opposite rule may provide the other legally plausible interpretation in certain occasions of rights conflict.

### Conclusion

After investigating the nature of labour rights and the conflicts of the relevant rules, this research conclude that it is

necessary for the Standing Committee of the National People's Congress to bring Chinese legislation in line with international rules. This can be achieved by means of the future revisions of Chinese legislation concerned, in order to remove conflicts between the ICESCR to which China is a party and its reform through labour system applicable to prisoners, both in law and in practice.



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DOI: [10.19080/GJAA.2019.08.555731](https://doi.org/10.19080/GJAA.2019.08.555731)

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