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Achieving decent work in China: a case study of decent working time

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Achieving decent work in China
A case study of decent working time

Achieving decent work in China

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List of Abbreviations

ACFTU	All-China Federation of Trade Unions
CASS	Chinese Academy of Social Sciences
CCP	Chinese Communist Party
CC-CCP	Central Committee of Chinese Communist Party
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CNKI	China National Knowledge Infrastructure
CPPCC	Chinese People's Political Consultative Conference
DWCPs	Decent Work Country Programmes
DWCProfiles	Decent Work Country Profiles
DWI	Decent Work Indicators
DWPPs	Decent Work Pilot Programmes
EU	European Union
GDP	Gross Domestic Product
GNI	Gross National Income
HRI	Human Development Index
IALL	International Association for Labour Legislation
ICJ	International Court of Justice
ILC	International Labour Conference
ILO	International Labour Organisation/International Labour Office
IMF	International Monetary Fund
ISWT	International Symposium on Working Time
IWA	International Workingmen's Association
KMT	Kuomingtang/Chinese Nationalist Party
LDACs	Labour Dispute Arbitration Committees
LDMCs	Labour Dispute Mediation Committees
LIB	Labour Inspection Bureau
LRD-NPC	Laws and Regulations Database-National People's Congress
LRD-PKU	Laws and Regulations Database-Peking University
MDGs	Millennium Development Goals
MHRSS	Ministry of Human Resources and Social Security
MoLSS	Ministry of Labour and Social Security
NPC	National People's Congress
OECD	Organisation for Economic Co-operation and Development
PCIJ	Permanent Court of International Justice
PRC	People's Republic of China
SOEs	State-owned enterprises

SAA	State Archives Administration
SDGs	Sustainable Development Goals
SRM	Standards Review Mechanism
SRM-TWG	Tripartite Working Group of the Standards Review Mechanism
TVEs	Town and Village Enterprises
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
WB	World Bank
WTO	World Trade Organisation

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1 Introduction

1.1 A quest for decent work

This thesis is about achieving decent work in China. The word 'achieving' underlines that China is still in the process of securing this aim. Walking into a historical museum, one may easily find early exhibitions on people's work and life. In the human trajectory from the cave to artificial intelligence, work and life have always been a central theme. Time has seen increasing diversity in the jobs and ways of work, but the ultimate goal seems to remain the same; that is, the quest for a better quality of work and life. In today's language, that goal is often referred to as 'decent work'. However, achieving such an objective is no easy task; it may even be associated with bloodshed and death.

On 1 May 1886, a strike to demand an eight-hour working day was launched in the City of Chicago. As described in much of the literature about this event, an estimated 35,000 workers walked off their jobs, and travelled from workplace to workplace urging fellow workers to strike.[1] Police clashed with strikers at least a dozen times, shooting three, killing four, and wounding more. Angry workers began to call for armed retaliation. On 4 May, when the police attempted to disperse a peaceful rally in Haymarket Square, a bomb was hurled at them, killing one officer instantly. Police drew guns and fired wildly. Sixty officers were wounded and eight died, and an inestimable number of workers in the crowd were killed or wounded. With no credible evidence as to the source of the bomb, the police arrested eight revolutionary labour leaders, seven of whom were sentenced to death and four were eventually executed. Inspired by this labour movement, in 1889, the Second International, a global organisation of socialist parties and trade unions, declared '1 May' as 'International Labour Day' in favour of the demand for the eight-hour working day.[2] Since then, '1 May'

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1 See: e.g., Alexander Trachtenberg, *The History of May Day* (International Pamphlets 1932) 3–15; Philip Sheldon Foner, *May Day: A Short History of the International Workers' Holiday, 1886-1986* (International Publishers 1986) 7–39; Lakshmidhar Mishra, 'History of Labour Rights' (2012) 42 Social Change 335, 337–38; 'Haymarket and May Day', *Encyclopaedia of Chicago* <http://www.encyclopedia.chicagohistory.org/pages/571.html> accessed 31 December 2021; 'May Day', *Encyclopaedia of Marxism: History Archive* <https://www.marxists.org/subject/mayday/index.htm> accessed 31 December 2021.

2 'The Second International', *Encyclopaedia of Marxism: History Archive* <https://www.marxists.org/history/international/social-democracy/index.htm> accessed 31 December 2021.

has been observed as 'May Day' or 'Labour Day' and celebrated with at least a day off for workers in many parts of the world.

Two decades after the birth of International Labour Day, the demand for the eight-hour working day was taken up in the first International Labour Convention, adopted by the International Labour Organisation (ILO).[3] Born in the aftermath of World War I, the ILO was built upon three principles set forth in the constitution of this organisation, namely: (a) universal and lasting peace is based upon social justice; (b) unjust labour conditions imperil the peace and harmony of the world; and (c) the adoption of humane conditions of labour at the international level is required.[4] As the most accomplished agency in the world of work, since its founding in 1919, the ILO has been devoted to advancing social justice and universal and lasting peace, and promoting humane working conditions for workers.

In 1999, eighty years after it was founded, the ILO held the 87th Session of the International Labour Conference (ILC), at which Juan Somavia, Director-General of the International Labour Office (ILO), pointed out that 'the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equality, security and human dignity'.[5] This was the first time that the concept of decent work as a term appeared in the world of work. For the ILO, this concept seeks to encapsulate the broad and varied aspects associated with work in a unifying framework, consisting of four strategic objectives: rights at work, employment, social protection, and social dialogue.[6] Since its conceptualisation in 1999, decent work has become the ILO's central objective and organising framework.[7]

In 2019 – two decades after the launch of the decent work concept, and a hundred years since the founding of the ILO – a group of developers in China launched an initiative on the computer code-sharing platform GitHub, called '996.ICU', to complain that their '996 working hour system' was a shortcut to the ICU. The term '996 working hour system' refers to 'a *de facto* work schedule that workers work from 9 a.m. to 9 p.m. and six days per week'.[8] Under this work schedule, workers are required to work long hours to the detriment of their health, families, and lives outside of work, and they rarely receive overtime pay.[9] This arrangement is a serious violation of Chinese labour laws, but still widely exists across the country. It is surprising that such a violation still exists a century after the adoption of the first International Labour Convention (i.e., Hours of Work [Industry]

3 Hours of Work (Industry) Convention, 1919 (No. 1).
4 ILO Constitution 1919, preamble.
5 ILO, *Decent work* (Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999) 3.
6 Gerry Rodgers and others, *The International Labour Organisation and the Quest for Social Justice, 1919-2009* (International Labour Office 2009) 223.
7 ibid.
8 'What is "996"?' <https://996.icu/#/en_US> accessed 31 December 2021.
9 ibid.

Convention, 1919), which set an eight-hour working day. Living in the most populous country and the largest developing country in the world, workers in China affected by such a violation account for a significant portion of the global workforce. Labour law in China is under pressure; workers in China need decent work.[10]

1.2 Aims, research questions and the scope

The aim of this thesis is to analyse the effort to achieve decent work in China through a comprehensive historical case study of Chinese labour legislation on working time. The main research question is: *to what extent is China achieving decent work?* Because decent work in itself is a very broad subject, it is beyond the capacity of this thesis to analyse its every aspect in detail. This thesis primarily focuses on decent work in the field of working time; that is, decent working time. In other words, this thesis uses decent working time as a case study for analysing achieving decent work in China. Hence, the main research question will be further addressed based on the following five sub-questions:

(1) How did the concept of decent work take shape in the ILO? (Chapter 2)
(2) What is the definition of decent work? (Chapter 3)
(3) What is the definition of decent working time? (Chapter 3)
(4) What analytical frameworks are needed to analyse the achievement of decent working time? (Chapters 3, 4, & 6)
(5) To what extent is China achieving decent working time? (Chapters 5, 7, & 8)

It is acknowledged that the term 'China' refers to the People's Republic of China (PRC) established on 1 October 1949. A profile of China is presented in Appendix I. The discussion of 'China' in this thesis is limited to Mainland China and excludes Hong Kong, Macau, and Taiwan. Because China is a very big country with vast regional disparity in terms of development levels, it is not practical to provide a fully complete picture of Chinese labour legislation covering all of the various levels. This thesis is thus confined to Chinese national labour legislation that operates in a uniform way across the country. Further, this thesis focuses on the period between the year of the founding of the People's Republic of China on 1 October 1949 to 31 December 2020, but the closing date of consulting new materials for this thesis is set on 31 December 2021, as some materials published in 2021 elucidate Chinese labour legislation from 1949 to 2020.

10 See: e.g., Sean Cooney, 'China's Labour Law, Compliance and Flaws in Implementing Institutions' (2007) 49 JIR 673; Yanling Lin, *Decent Work—World and China (in Chinese)* (Chinese Workers Press 2012); Alan C Neal, Towards a Functioning Framework for Individual Labour Law Rights: Challenges for China in a Changing World of Work (2011) 27 IJCLLIR 365.

1.3 Methodology

This thesis builds on a mixed methodology of case study, historical analysis, content analysis, structured critical analysis, and comparative law. Table 1.1 presents these methods and their relevant chapters in this thesis.

Table 1.1 Methods and their relevant chapters in this thesis

Methods	Related Chapters
Case study	Chapters 3, 4, 5, 6, 7, & 8
Historical analysis	Chapters 2, 3, 5, & 7
Content analysis	Chapter 2, 3. 4, 5, & 7
Structured critical analysis	Chapters 3, 4, 5, 6, 7, & 8
Comparative law	Chapters 4 & 5

1.3.1 Case Study

A case study is understood as an intensive study of a single unit for the purpose of understanding a larger class of similar units or as a single case whereby the main purpose of that study is to shed light on a larger class of cases or a population.[11] This thesis uses decent working time as a case study for analysing the achievement of decent work. In other words, it conducts an intensive study of decent working time in China to shed light on the big picture of achieving decent work in China. This organisation, as explained in Chapter 3, accommodates the reality that decent work as a research subject is broad and multifaceted in nature, and providing a comprehensive analysis of decent work in a single thesis is impractical. The focus on working time not only enables a comprehensive analysis in a doctoral thesis of this length – rather than a broad-brush account of how Chinese labour legislation has regulated for decent work, but also allows us to see the big picture of decent work through the lens of working time, as working time has been a core element of decent work and has been historically central to improving the lives of working people. Additionally, the case study of decent working time in itself builds on a mixed methodology of historical analysis, content analysis, structured critical analysis, and comparative law, which will be explained further in sections 1.3.2 to 1.3.5.

11 John Gerring, 'What is a case study and what is it good for?' (2004) 98 American political science review 341, 342; see also: Robert K. Yin, *Case Study Research: Design and Methods* (4th edn, SAGE Publications 2009) 3–24.

1.3.2 Historical analysis – periodisation

Confucius said: 'Study the past if you would define the future'.[12] Historical analysis not only helps us appreciate the past lessons of success or failure, but also identifies the factors that made progress possible. This method is applied to two situations in this thesis. The first is about the historical origins and developments of the concepts of decent work and decent working time. Chapter 2 offers a historical account of the processes by which the concept of decent work has evolved from the mid-eighteenth century. The closing date of this chapter is set for the year 2019, when the ILO's centenary anniversary was celebrated. As Hepple points out, 'historical analysis requires diachronous order, examining developments in stages or periods'.[13] This chapter is thus divided into five broad periods: (a) early attempts before 1919; (b) advancing social justice (1919-1944); (c) highlighting human rights (1944-1980s); (d) raising social concerns (1980s-1999); and (e) promoting decent work (1999-2019). This periodisation is basically related to the ILO's historical landmarks, such as the adoption of the 1919 Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, the 1999 Report of the Director-General on decent work, and the 2019 Centenary Declaration for the Future of Work. Because decent work as a research subject is broad and multifaceted in nature, this thesis uses decent working time as a case study for researching decent work. To explain such a selection, section 3.3.1 of Chapter 3 offers a historical overview of the development of working time within the ILO in the same time periods conducted for decent work in Chapter 2.

The second situation concerns the historical development of Chinese labour legislation. It is widely recognised that the history of Chinese labour legislation can be divided into three periods, namely: (a) the period before the transition (1949-1978); (b) the transition period (1978-2007); and (c) the period after the transition (2008-present).[14] Because the closing date of this thesis has been set on 31 December 2020, the third period ends in 2020. The core idea underlying this periodisation is 'transition': the process or period of changing from one state or condition to another.[15] In this thesis, transition

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12 *The Analects of Confucius (in Chinese: 论语, LunYu)* <https://ctext.org/analects> accessed 31 December 2021.

13 Bob Hepple and Bruno Veneziani (eds), *The Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945-2004* (Hart Publishing 2009) 7.

14 See: e.g., Sean Cooney, Sarah Biddulph and Ying Zhu, *Law and Fair Work in China* (Routledge 2013); Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 1–20; Junling Jia and Qian Wei, 'The Evolution and Development of China's Labour Law 1994' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 47–62; Huai Guan and Jia Lin (eds), *Labour Law* (5th edn, Renmin University of China Press 2015) 30–33; Huai Guan, 'Analysis about the Sixty-Year Development and Relative Prospect of China Labour Law' (2009) 12 LSciMag1, 1–5

15 Such a pure linguistic definition of the term 'transition' is found in the Oxford Dictionary.

specifically concerns the shift from a planned economy to a socialist market economy in China, and the making of a modern Chinese labour law system. Specifically, the first period dates back to the founding of China in 1949 and lasted until the dawn of the economic reform in 1978. The year 1978 is commonly identified as a critical turning point in the country's history.[16] It was when the historic third Plenary Session of the 11th Central Committee of the Communist Party of China was held. At this meeting, the new leadership of the Chinese Communist Party (CCP) agreed to implement market reforms and reconstruct the legal system, which was to have a profound impact on many aspects of the country, including labour legislation. The second period refers to the 'transition period', beginning with the shift from economic reform in 1978 to the 'Chinese Labour Legislation Year' in 2007. In this period, the most significant development with respect to Chinese labour legislation was the adoption of the Labour Law in 1994 and the beginning of its enforcement in 1995, representing a milestone for Chinese labour legislation.[17] In addition, 2007 is commonly identified as 'Chinese Labour Legislation Year',[18] which was when the three major labour laws (i.e., Labour Contract Law, Employment Promotion Law, and Labour Mediation and Arbitration Law) were adopted. With their entry into force in 2008, a modernised legislative framework for regulating labour was on the way to completion, marking China's entry into a 'modern era' in the labour law sphere.[19] Finally, the third period is from 2008 to 2020. This periodisation is used for the examination of the substantive and procedural aspects of decent working time in China (Chapters 5 & 7).

1.3.3 Content analysis

Content analysis is understood as 'a systematic, replicable technique for compressing many words of text into fewer content categories based on explicit rules of coding'.[20] The term 'text' in this thesis includes various sources and materials, such as legal texts of international labour laws,

16 Cooney, Biddulph, and Zhu (n 14); Jia and Wei (n 14); Guan and Lin (n 14); Guan (n 14).
17 ibid.
18 ibid.
19 ibid; As pointed out by Neal, 'what has finally ushered in a truly "modern era" of Chinese labour law, however, has been a dramatic period of reform and legislation undertaken during the course of the first decade of the twenty-first century. That process can be seen as comprising four key strands, encapsulated in the important legislative instruments of (a) a Labour Contract Law; (b) a Labour Disputes (Mediation and Arbitration) Law; (c) an Employment Promotion Law; and (d) a Social Insurance Law. Together, these related legislative initiatives indicate both the direction and focus of labour market reform in the PRC (People's Republic of China) as the social market economy propels China towards a position of increasing influence in global markets.' See: Neal (n 17) 10.
20 Steve Stemler, 'An Overview of Content Analysis' (2000) 7 Practical Assessment, Research & Evaluation (article 17), 1

legal texts of Chinese labour laws, doctrinal literature, reports and policy documents, and official statistics. Content analysis is closely associated with other methods in this thesis, such as historical analysis, structured critical analysis, and comparative law.

Historical analysis through content analysis is applied to two situations, as explained in section 1.3.2. The first is about the historical origins and developments of the concepts of decent work and decent working time. The sources used are mainly to be found in the ILO materials, such as the Constitution, Declarations, Conventions, Recommendations, and various reports of the ILO, which are available at the ILO's official website, specifically, the NORMLEX database.[21] The second is about the historical development of Chinese labour legislation. The sources used are mainly to be found in the five types of legal instruments adopted by the Chinese legislative institutions at the national level, namely: the Constitution, laws, administrative regulations, department rules, and normative documents. The legal texts are mainly to be found in two legal databases. The first is the National Database of Laws and Regulations developed by the highest legislature of China, that is the National People's Congress (NPC) (LRD-NPC). It is the primary authentic access to the information of Chinese legal texts, mainly in Chinese but may be also accessed in English.[22] The second is the Laws and Regulations Database of Chinalawinfo Database developed by Peking University (PKU) (LRD-PKU), which provides users with access to a wide range of China-related legal information, mostly both in Chinese and English.[23] In addition, some doctrinal literature and official statistics are covered for illuminating Chinese labour legislation, which can be found in the China National Knowledge Infrastructure (CNKI), the most frequently used Chinese academic database.[24]

Structured critical analysis through content analysis is mainly conducted through a review of the literature. The insights gained by earlier scholars serve intellectual progress. To gain a better understanding of the meaning of decent work and decent working time as a research subject, a review of the existing doctrinal literature on decent work and decent working time is thus conducted in Chapter 3. The doctrinal literature is mainly found in academic databases such as JSTOR, HeinOnline, and EBSCOhost as well as Google Scholar through a targeted search using the keywords

21 NORMLEX is an information system that brings together information on International Labour Standards. See: 'NORMLEX', <https://www.ilo.org/dyn/normlex/en/f?p=1000:1:::NO:::> accessed 31 December 2021.

22 'National Database of Laws and Regulations (in Chinese: 全国法律法规数据库)' <https://flk.npc.gov.cn/> accessed 31 December 2021.

23 'Chinalawinfo Database: Laws and Regulations Database (in Chinese: 北大法宝: 法律法规数据库)' <https://www.lawinfochina.com/search/SearchLaw.aspx> accessed 31 December 2021.

24 'China National Knowledge Infrastructure (in Chinese: 中国知网)' <https://www.cnki.net/> accessed 31 December 2021.

'decent work' and 'decent working time' in the title. To develop the ideal-type working time procedural configurations for analysing the procedural aspects of decent working time, a review of the doctrinal literature on the formulation and enforcement of working time standards is conducted in Chapter 6. The doctrinal literature is also mainly located in academic databases such as JSTOR, HeinOnline, and EBSCOhost as well as Google Scholar through a targeted search using the keyword 'working time' in the title. The method of structured critical analysis will be further explained in section 1.3.4.

Comparative law analysis through content analysis mainly refers to the coding of the legal texts, which is intended to develop a comprehensive set of benchmarks for evaluating the substantive aspects of decent working time in China. The sources for creating the benchmarks derive from the ILO conventions, protocols, and recommendations on working time with the 'up-to-date' and 'interim' status, and the related ILO General Surveys for understanding their interpretation, which are available at the ILO's official website, in particular, the NORMLEX database. The benchmarks are specifically addressed in Chapter 4, consisting of twelve legal indicators that are classified by three groups, namely: (a) working time duration by daily limit, weekly limit, overtime limit, weekly rest, and paid annual leave; (b) working time organisation by standard working time arrangement, variable working time arrangement, overtime work arrangement, night work, and part-time work; and (c) care-related leave by maternity leave and parental leave. Each legal indicator is further elaborated by four aspects (i.e., topic/definition, aim/purpose, scope of application, and material content), and each aspect is associated with a coding scheme. Applying the benchmarks to China leads to a horizonal comparison between the ILO benchmarks and China's working time standards, which will be further explained in section 1.3.5.

1.3.4 Structured critical analysis

Structured critical analysis has no clear definition. In this thesis, it is understood as a research method for developing a structural analytical framework that shapes the study's critical analysis. As mentioned in section 1.3.3. this method is closely associated with content analysis through the literature review. It mainly concerns the working definition of decent work and decent working time, and the analytical frameworks for evaluating the achievement of decent working time in China.

The working definition of decent work and decent working time as a research subject is specifically addressed in Chapter 3. While decent work is defined as a development goal with four dimensions (i.e., rights at work, employment, social protection, and social dialogue) that can be achieved by meeting international labour standards set by the ILO, decent working time as an essential element of decent work is defined as a development goal

with five dimensions (i.e., healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time) that can be achieved through its substantive and procedural aspects. While the substantive aspects refer to the concrete working time standards embodied in the positive law that directly determines the terms and conditions of labour with regard to working time, the procedural aspects concern the processes by which the desired working time standards are formulated and enforced.

The working definition of decent working time leads to two analytical frameworks for the case study of the achievement of decent working time. The first is about the ILO benchmarks for evaluation of the substantive aspects of decent working time, which are specifically discussed in Chapter 4. The second is about the ideal-type working time configurations for the evaluation of the procedural aspects of decent working time, which Chapter 6 specifically explicates. These two analytical frameworks are applied to China in Chapters 5 and 7, allowing for an understanding of the extent to which China is achieving decent working time regarding the substantive and procedural aspects against the benchmarks and the ideal-type procedural configurations, respectively. Additionally, the overall analysis of achieving decent working time in China is made according to the five dimensions, elucidated in Chapter 8.

1.3.5 Comparative law

The comparative law analysis this thesis undertakes intends to make a horizonal comparison between the international labour standards set by the ILO (i.e., ILO benchmarks) and China's national working time standards. This method is applied to Chapters 4 and 5 as a whole. Chapter 4 deals with international labour standards on working time as developed by the ILO, which are regarded as the benchmarks for the evaluation of the substantive aspects of decent working time in China. Chapter 5 then compares China's national working time standards to the ILO benchmarks. Such a comparison not only helps to evaluate the positive or negative quality of Chinese working time legislation against the ILO benchmarks but also determines what should happen to improve the situation.

1.4 Outline

This thesis consists of nine chapters. In addition to this introductory chapter, Chapters 2 and 3 provide some conceptual clarifications on decent work and decent working time. Chapter 2 offers a historical account of the process by which the concept of decent work evolved from the nineteen century to its official launch in 1999, and then to the ILO's centenary anniversary in 2019.

Chapter 3 first examines the meaning of decent work as a research subject. By taking decent work as a starting point of reference, it then examines the meaning of decent working time as a research subject. At last, it develops a working definition of decent working time for this thesis. Decent working time is defined as a development goal with five dimensions (i.e., healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time), which can be achieved through its substantive and procedural aspects.

Chapters 4 to 8 are the main body of this thesis for the case study of decent working time in China. Chapters 4 and 5 are concerned with the substantive aspects of decent working time. Chapter 4 develops a set of benchmarks for evaluating the substantive aspects of decent working time. The benchmarks derive from the ILO legal instruments, particularly conventions and recommendations. The concrete benchmarks are classified into three groups elaborated by twelve legal indicators, namely: (a) working time duration consists of daily limit, weekly limit, overtime limit, weekly rest, and paid annual leave; (b) working time organisation consists of standard working time arrangement, variable working time arrangement, overtime work arrangement, night work, and part-time work; and (c) care-related leave consists of maternity leave and parental leave. The rationale underlying the benchmarks is that they serve as baseline for achieving decent working time regarding the substantive aspects. It is expected that an individual country would provide similar-to-higher standards than the ILO benchmarks in order to ensure that the substantive aspects of 'working time' are 'decent'.

Chapters 5 applies the ILO benchmarks to China, providing a comprehensive historical examination of China's substantive working time standards against the ILO benchmarks in three periods (i.e., the period before the transition, 1949-1978; the transition period, 1978-2007; the period after the transition, 2008-2020). This analysis illuminates the extent to which China is achieving decent working time regarding the substantive aspects as measured against the ILO benchmarks.

Chapters 6 and 7 are concerned with the procedural aspects of decent working time. Chapter 6 develops an analytical framework on the procedural aspects of decent working time in four ideal-type working time configurations (i.e., mandated, centralised negotiated, decentralised negotiated, unilateral). These four ideal-type configurations are built upon the doctrinal literature on the formulation and enforcement of working time standards. While the formulation can take place on four regulatory levels (i.e., statutory legislation, sectoral-level agreements, enterprise-level agreements, and employment contracts), the enforcement can rely on three enforcement mechanisms (i.e., labour inspection, trade unions, and courts and tribunals). The rationale underlying the ideal-type configurations is that they serve as the ideal combinations of regulatory levels and enforcement mechanisms a given country may use to set its working time standards, which may be

regarded as the most effective way or provide greater possibilities in making the desired standards and enforcing them effectively in the real world. It is expected that an individual country would fit into or resemble one of the ideal-type configurations mostly to ensure that the procedural aspects of 'working time' are 'decent'.

Chapters 7 applies the analytical framework with ideal-type working time configurations to China, providing a comprehensive historical examination of China's formulation and enforcement of working time standards by three periods (i.e., the period before the transition, 1949-1978; the transition period, 1978-2007; the period after the transition, 2008-2020). This chapter explains the extent to which China is achieving decent working time regarding the procedural aspects measured against the ideal-type working time configurations.

Chapter 8 brings the substantive and procedural aspects together to perform an overall analysis of achieving decent working time in China. It presents an overview of the extent to which China is achieving decent working time through five dimensions, namely: healthy working time, family-friendly working time, gender equality through working time, choice and influence regarding working time, and productive working time.

Chapter 9 recapitulates the findings in Chapters 2 to 8 to answer the five sub-questions as set forth in Chapter 1. Based on these findings, it addresses the main research question of this thesis – that is the degree to which China is achieving decent work. At last, it provides some final recommendations for achieving decent work in China and for future research.

2 Historical origins and developments of decent work

2.1 Introduction

This chapter starts with a question about beginnings: How did the concept of decent work take shape in the International Labour Organisation (ILO)? The foundation of this concept, as it is understood today, lies firmly in the historical development of the ILO and its missions and values.

Historical studies on the ILO are extensive, while those on 'decent work' have been few.[1] The intention of this chapter is not to provide a new narrative of the history of the ILO, but rather to place 'decent work' at the core of the study and offer a historical account of this concept's evolution. Because the ILO is the main player in this process, the sources this chapter uses are mainly found in the ILO materials, such as the Constitution, Declarations, Conventions, Recommendations, and various ILO reports. However, it does not exclude the relevance of other sources derived from other organisations such as the United Nations (UN) and the World Trade Organisation (WTO), which may provide some comparable or complementary insights for understanding this concept, as well as some scholarly contributions, particularly those engaged with the ILO.

Historical analysis requires diachronous order, examining development in stages or periods.[2] In this regard, this chapter is organised through five broad historical periods: (a) early attempts before 1919; (b) advancing social justice (1919-1944); (c) highlighting human rights (1944-1980s); (d) raising social concerns (1980s-1999); and (v) promoting decent work (1999-2019). The boundary between each period is not a sharp one, but the distinction is helpful for identifying the key idea upholding the concept of decent work during that period. The main body of this chapter is thus organised according to the five periods (sections 2.2-2.6). Section 2.2 provides a short

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1 See: e.g., Bob Hepple, *Labour Laws and Global Trade* (Hart Publishing 2005); Gerry Rodgers and others, *The International Labour Organisation and the Quest for Social Justice, 1919-2009* (International Labour Office 2009); Jean-Michel Servais and Valérie Van Goethem, *International Labour Organisation* (2nd edn, Kluwer Law International BV 2016); Daniel Maul, *The International Labour Organization: 100 Years of Global Social Policy* (Walter de Gruyter GmbH 2019); ILO Regional Office for Asia and the Pacific, *100 Years International Labour Organization: Advancing Social Justice, Promoting Decent Work (1919-2019)* (Bangkok 2019); Jean-Michel Servais, *International Labour Law* (6th edn, Kluwer Law International BV 2020); Tarja Halonen and Ulla Liukkunen (eds), *International Labour Organization and Global Social Governance* (Springer 2021).

2 Bob Hepple and Bruno Veneziani (eds), *The Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945-2004* (Hart Publishing 2009) 7.

introduction of some early attempts before 1919, which presents some pivotal ideas for the concept of decent work that was to be adopted – in the distant future – in 1999. Section 2.3 introduces the idea of social justice, which has served as the personality of the ILO since its inception in 1919. Today, together with 'decent work', it remains central to the one-sentence introduction of the ILO's purpose: 'advancing social justice, promoting decent work'.[3] Section 2.4 identifies the idea of human rights, laying down a human rights foundation for the ILO since the adoption of the Declaration of Philadelphia in 1944. Section 2.5 examines the rising social concerns in the global economy due to globalisation, from 1980s to 1990s. Two events are specifically examined: the first is the debate on the introduction of a social clause in the global trading system; and the second is a series of UN global conferences with a particular focus on social issues and social developments. A major response of the ILO to these two events was the adoption of the Declaration on Fundamental Principles and Rights at Work in 1998. In 1999, the concept of decent work was officially introduced by the ILO. In 2019, the ILO celebrated its centenary anniversary and adopted the ILO Centenary Declaration for the Future of Work. Section 2.6 thus examines the developments of decent work from 1999 to 2019. Some concluding remarks are made in the final section, 2.7.

2.2 Early attempts before 1919

In the mid-eighteenth century, technical innovations, particularly the invention of the practical steam machine, inaugurated industrialisation and changed the world of work. With the spread of industrialisation and the lack of adequate labour regulations, workers suffered terrible conditions and exploitation.[4] Working twelve hours per day, seven days per week was not uncommon.[5] To tackle these issues and protect workers' interests, some early attempts had been taken in the world of work, which were mainly advanced through two approaches: socialist labour movement and international labour legislation.[6]

The socialist labour movement was loosely united in the 'First International' and 'Second International'.[7] The First International, also known as the International Workingmen's Association (IWA), was organised by Karl

3 'ILO's official website' <http://ilo.org/global/lang--en/index.htm> accessed 31 December 2021.

4 See: Rodgers and others (n 1) 3–4; ILO Regional Office for Asia and the Pacific (n 1) 6–7; Maul (n 1) 16.

5 ibid; see also: ILO, *Hours of Work: From Fixed to Flexible?* (General Survey, International Labour Conference, 51st Session, Geneva, 1967), 2; ILO, *Ensuring Decent Working Time for the Future* (General Survey, International Labour Conference, 107th Session, Geneva, 2018) 5.

6 See: Hepple (n 1) 25–29; Rodgers and others (n 1) 3–6; Maul (n 1) 15–20.

7 ibid.

Marx and Friedrich Engels in London in 1864. It was intended to advance the goal of protection, advancement, and emancipation of the working classes (i.e., 'Proletarians of all countries, unite!').[8] Although it failed in 1872, its work was succeeded and continued by the Second International, also known as the Socialist International since 1889.[9] One of the most famous actions of the Second International was the declaration of '1 May' as 'International Labour Day' in 1889 in order to respond in favour of the Chicago strike for an eight-hour working day.[10]

Regarding international labour legislation, efforts can be traced back to 1840s. Daniel Legrand, an Alsatian manufacturer, appealed to European politicians between 1840 and 1848 about the abuses of the working population, and argued that international labour legislation would be a practical way of 'overcoming the dilemma faced by industrialising countries which might expose themselves to the international competition if they adopted humanitarian measures to protect their workers'.[11] Later, in 1890, the German government in Berlin convened a conference, which was the first time that European governments came together to discuss labour standards on an international scale.[12] Although no international labour standard was adopted at this conference, a number of principles on international law were recommended, covering minimum ages for child employment, young persons, women, and labour inspection.[13] In 1900, the International Association for Labour Legislation (IALL) was founded in Basel. Although it was a private organisation whose members consisted mainly of academics, its primary aim was to encourage state intervention. The nation-state was its primary point of reference from the start.[14] In 1906, the IALL held a conference in Berne, in which two international conventions were adopted: the first prohibited night work for women in the industry; the second prohibited the use of white phosphorous in the manufacture of matches. The IALL was widely perceived to be the immediate forerunner of the ILO.[15]

Early attempts to protect workers' interests provided some pivotal ideas for the concept of decent work to be introduced many years later, in 1999. The concrete ideas and actions, such as 'eight-hour working day', 'International Workers' Day', and 'international labour legislation' can be seen

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8 'History of the First International', *Encyclopaedia of Marxism: History Archive* <https://www.marxists.org/archive/steklov/history-first-international/index.htm> accessed 31 December 2021.

9 'The Second International', *Encyclopaedia of Marxism: History Archive* <https://www.marxists.org/history/international/social-democracy/index.htm> accessed 31 December 2021.

10 ibid.

11 Hepple (n 1) 26.

12 ibid 28; Maul (n 1) 16.

13 ibid.

14 Rodgers and others (n 1) 4; Maul (n 1) 18.

15 ILO, *International Labour Standards: A Workers' Education Manual* (4th edn, International Labour Office 1998), 5.

as early forms of the promotion of decent work. In addition, the founding of an international regulatory mechanism (i.e., IALL) implied that global competition was not new and that there was already a sense that if one wants to prevent workers from becoming a commodity, one has to agree on international rules.

2.3 Advancing social justice (1919-1944)

The founding of the ILO in 1919 was the most important historical landmark in the evolution of the concept of decent work. The initial idea for creating such an organisation can be found in Part XIII of the Treaty of Versailles, which opens with this preamble:

> Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;
> And whereas conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures:
>
> Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;
>
> The HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following (Constitution of the International Labour Organisation):[16]

This preamble laid down the most basic rationale underlying the founding of the ILO, that is, the ILO is formulated around the idea of social justice.[17] This rationale can be elaborated by three points. First, the ILO is built upon social justice and is devoted to achieving social justice. Second, social justice is linked to the desire for universal and lasting peace because global peace and harmony would be imperilled by unjust and miserable labour conditions. Third, the adoption of humane conditions of labour at the international level is required, and thus refers to the effort to establish international labour standards.

16 Treaty of Versailles 1919, pt XIII.
17 See: Rodgers and others (n 1) 6; Maul (n 1) 6; Servais (n 1) 23.

However, what is the meaning of social justice? An appropriate explanation may be drawn from Albert Thomas (the first Director-General, 1941-1948) and Edward Phelan (the fourth Director-General, 1919-1932) of the International Labour Office (ILO). In his book *Yes and Albert Thomas*, Phelan reflects on Albert Thomas's vision for social justice in the ILO:

> (Albert Thomas) realised that the International Labour Organisation must develop as it were a personality of its own. And he sought the basis for such a personality on wider and deeper lines than those which its authors had commonly advanced. He rejected the theory that it existed mainly to secure equitable conditions of commercial competition, and he laid the major emphasis on the idea of the pursuit of social justice. Social justice is not easy to define. To Albert Thomas it meant much more than the removal of social injustice. It meant a positive policy through which the individual might attain his political, economic and moral rights. This was the doctrine which he believed could alone give the Organisation a real unity and personality, which could guide it safely where narrower doctrines would inevitably lead it to a division along lines of national interest.[18]

From Thomas's view, social justice was designed as the essence of the ILO. The ILO's primary aim is to be international organisation about social justice, at least according to Thomas's vision. Thomas did not provide a clear-cut definition of social justice; instead, he saw it as 'the removal of social injustice' and a way that an 'individual might attain his political, economic, and moral rights'. This explanation implies that the (human) rights language in the ILO was not new and there was already in that period a sense of the necessity to empower individuals with political, economic, and moral rights in order to achieve social justice. This link was further elucidated in the 1944 Declaration of Philadelphia, which laid down a human rights foundation for the ILO, to be discussed in detail in section 2.4.

While Part XIII of the Treaty of Versailles has a preamble that presents the most basic rationale for the founding of the ILO, it ends with a set of 'methods and principles' for regulating labour conditions of special and urgent importance, asserting that all industrial communities should endeavour to apply, so far as their special circumstances permit, namely:

(a) The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.
(b) The right of association for all lawful purposes by the employed as well as by the employers;
(c) The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.
(d) The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

18 Edward Joseph Phelan, *Yes and Albert Thomas* (Columbia University Press 1949) 242.

(e) The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.
(f) The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.
(g) The principle that men and women should receive equal remuneration for work of equal value.
(h) The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.
(i) Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.[19]

The first principle, labour is not merely a commodity, was widely accepted as part of a minimum consensus among the ILO's founders and in the regulation of labour.[20] The second principle dealt with freedom of association for both workers and employers, which was a confirmation of basic trade union freedoms and a response to the pre-1919 labour movement; however, it was not explicit with regard to the 'lawful purposes', which was left to the discretion of national governments.[21] The next three principles dealt with two basic working conditions, namely, wage and working time. The core idea was that it is necessary to have adequate wages, an eight-hour working day, a forty-eight-hour work week, and a weekly rest time of at least twenty-four hours, which would allow workers to maintain a 'reasonable' living standard.[22] The sixth principle called for the special protection of children and young people. The next two principles concerned equality, in particular, equal treatment of women and men. The last principle was about labour inspection, which would ensure that established standards were enforced effectively. Although these nine principles were not binding rules of international law, they do give the orientations for the ILO's quest for social justice and its standard-setting activities.[23] Indeed, many of them were eventually placed on the agenda of the ILO's standard-setting activities. For instance, the fourth principle on 'an eight-hour day and a forty-eight-hour week' was later taken up in the first International Labour Convention adopted by the ILO. These principles were mainly designed for 'industrial communities' because, as explained by Rodgers et al., 'the ILO's membership at the time

19 Treaty of Versailles 1919, pt XIII, art 427; the original ILO Constitution 1919, art 41.
20 In terms of the origins of the principle of 'labour is not (merely) a commodity', see: Paul O'Higgins, '"Labour Is Not a Commodity" – An Irish Contribution to International Labour Law' (1997) 26 ILJ 225 Stein Evju, '"Labour is not a Commodity. Reappraising the Origins of the Maxim"' (2013) 4 ELLJ 222.
21 Maul (n 1) 29.
22 ibid.
23 See: Hepple (n 1) 30–31.

it was established was dominated by industrialised European States'.[24] This assertion also explains why the early ILO standards aimed at populations of independent states – and were not intended to cover people in colonies and other dependent territories – as well as why they had lower standards for some countries where they could not be expected to apply such high standards immediately.[25]

All principles and the preamble were in part XIII of the Versailles Treaty, and the latter later became the original ILO Constitution.[26] As a result, the ILO got down to work. The most important task of the ILO, as found in its constitution, was setting international labour standards, in particular, through the adoption of Conventions and Recommendations.[27] Setting the ILO's international labour standards relies on a tripartite structure, also known as tripartism, which ensures that international labour standards are formulated, applied, and supervised with the participation of not only governments but also representatives workers and employers.[28] The idea of tripartism was proposed by Phelan for the ILO at the time this organisation was to be established.[29] Phelan is therefore widely recognised as the father of the ILO's tripartite structure.[30] Indeed, the importance of tripartism for the ILO cannot be underestimated. As pointed out by Rodgers et al., the adoption of a tripartite approach in 1919 signalled that labour conditions were recognised from the very beginning as appropriate subjects for joint decisions of governments, workers, and employers, which contributes to a valuable means of resolving conflicts through negotiation and dialogue rather than through confrontation.[31]

Under the tripartite structure, the ILO held the first session of the International Labour Conference (ILC) in Washington DC, from 29 October to 29 November 1919.[32] This conference convened delegations from forty countries; each delegation comprised two government delegates, one

24 Rodgers and others (n 1) 41–42.

25 For instance, in terms of Hours of Work Convention, 1919 (No. 1), some countries such as China and Persia were granted exceptions or special regulations (Japan: 57 hours per week; India: 60 hours per week).

26 Part XIII of the Treaty of Versailles consists of the Preamble and two Sections. Section 1 consists of four chapters and an annex, articles 387-426, and section 2 is about the general principles, which is article 427. Together they became the original ILO Constitution, preamble and articles 1–41. See: Treaty of Versailles 1919, Part XIII; the original ILO Constitution 1919; see also: Rodgers and others (1) 41; Maul (n 1) 30; Servais (n 1) 22.

27 The original ILO Constitution 1919, art 19; see also: Rodgers and others (n 1) 19; Maul (n 1) 54; Servais (n 1) 19.

28 ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (International Labour Office 2019), 18.

29 Hepple (n 1) 29.

30 ibid.

31 Rodgers and others (n 1) 12–13.

32 ILO, *Record of Proceedings* (International Labour Conference, 1st Session, Washington, DC,1919)

employers' delegate, and one workers' delegate.[33] At this conference, six Conventions were adopted, dealing with hours of work, unemployment, maternity protection, night work by women and young persons, and the minimum age for work in industry.[34]Six recommendations were also adopted, addressing unemployment, reciprocity of treatment, anthrax prevention, lead poisoning, labour inspection on health services, and white phosphorus.[35] While Conventions are international treaties that become legally binding once upon ratification, Recommendations are non-binding guidelines.[36] These earliest adopted Conventions and Recommendations in 1919 were concerned with some of the most pressing labour issues at that time.[37] As observed by Maul, four of the six Conventions (C.3-6) reflected the protective tradition of the IALL's pre-war standards and saw to the protection of women, youth, and children, while the other two Conventions (C.1 & C.2) dealt with work hours and unemployment, which were more ambitious in scope and aimed for an enlarged area of the ILO's competence in the regulation of labour.[38] In particular, he emphasised that the very first ILO Convention on the regulation of working time 'had significant symbolic values' and 'marked the start of a general debate on working time that essentially continued for the following hundred years'.[39] From 1919 to the adoption of the Declaration of Philadelphia in 1944, the ILC had adopted sixty-seven Conventions and sixty-six Recommendations, covering various

33 The decision to hold the first Session of ILC in Washington, DC, was motivated by the desire to secure the continued interest of the United States in, and cooperation with, the ILO; this hope, however, was soon dashed. The United States hosted the initial meeting, but did not join the ILO until 1934. See: Maul (n 1) 33–34.

34 The six Conventions are: Hours of Work (Industry) Convention, 1919 (No. 1); Unemployment Convention, 1919 (No. 2); Maternity Protection Convention, 1919 (No. 3); Night Work (Women) Convention, 1919 (No. 4); Minimum Age (Industry) Convention, 1919 (No. 5); and Night Work of Young Persons (Industry) Convention, 1919 (No. 6).

35 The six Recommendations are: Unemployment Recommendation, 1919 (No. 1); Reciprocity of Treatment Recommendation, 1919 (No. 2); Anthrax Prevention Recommendation, 1919 (No. 3); Lead Poisoning (Women and Children) Recommendation, 1919 (No. 4); Labour Inspection (Health Services) Recommendation, 1919 (No. 5); and White Phosphorus Recommendation, 1919 (No. 6).

36 In terms of the origins of the ILO's Conventions and Recommendations: 'The original British design proposed the adoption of only Conventions, that would be binding once ratified, in accordance with accepted international law and with the earlier efforts of the IALL. The United States took the opposite position, maintaining that the instruments adopted by the Conference should be merely Recommendations: if no action were taken to enact them into national law, there would be no obligation to pursue the matter further. Negotiations in the Labour Commission eventually resulted in an agreement to allow the adoption of both Conventions and Recommendations, which would be submitted to the competent national authority for action (and in the case of Conventions, for ratification). While far from assuring implementation, since ratification is optional, the agreement does require consideration in every state of each new instrument'. See: Rodgers and others (n 1) 19; a more detailed explanation of the nature of various legal instruments of the ILO, including Conventions and Recommendations, can be found in Chapter 4.

37 Maul (n 1) 54–55.

38 ibid.

39 ibid 55.

labour issues in the world of work.[40] These Conventions and Recommendations represented a huge advance for the ILO's quest for social justice and for protecting the dignity of workers; in today's language, they can be seen as a means of promoting decent work. In fact, together with the notion of 'decent work' that was to be introduced in 1999, today, social justice remains part of the one-sentence introduction of the ILO's purpose: 'advancing social justice, promoting decent work'.[41]

2.4 Highlighting human rights (1944-1980s)

While the idea of social justice was considered inseparable from universal and lasting peace during the early days of the ILO, the Declaration of Philadelphia reaffirmed this link, and connected it to the idea of human rights.[42] The Philadelphia Declaration, adopted at the 26th Session of the ILC in May 1944, is widely recognised as a turning point in the history of the ILO and the second founding of the Organisation.[43] It reasserted the objectives and principles of the Organisation, and in many respects reinforced and expanded them.[44] Specifically, Section I of the Declaration reaffirmed the 'fundamental principles' on which the ILO is based, in particular that:

(a) labour is not a commodity;
(b) freedom of expression and of association are essential to sustained progress;
(c) poverty anywhere constitutes a danger to prosperity everywhere;
(d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.[45]

As we can see, the first two principles, 'labour is not a commodity' and 'freedom of expression and association', were built upon the first two principles in the original ILO Constitution in 1919, but are expressed more strongly.[46] The third principle can be linked to employment and economic

40 See: the NORMLEX, which is an information system that brings together information on International Labour Standards (such as ratification information, reporting requirements, comments of the ILO's supervisory bodies, etc.) as well as national labour and social security laws <https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO:::> accessed 31 December 2021.

41 ILO's official website <http://ilo.org/global/lang--en/index.htm> accessed 31 December 2021.

42 See: Hepple (n 1) 32; Maul (n 1) 7.

43 Rodgers and others (n 1) 6–7; Servais and Van Goethem (n 1) 26; Maul (n 1) 128.

44 ibid.

45 ILO Declaration of Philadelphia 1944, s I.

46 The original principles were 'labour is not merely a commodity' and 'the right of association for all lawful purposes by the employed as well as by the employers'. See Treaty of Versailles 1919, art 427; the original ILO Constitution 1919, art 41.

development. After all, full employment and economic development are essential to eliminating poverty. The fourth principle reaffirmed the value of tripartism in the promotion of common welfare.

Section II not only reiterated the ILO's quest for social justice and lasting peace, but also laid down a human rights foundation for the Organisation, which marked a real and radical new beginning for the ILO.[47] It stressed the right of all human beings, irrespective of race, creed, or sex, 'to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'.[48] This point was taken up four years later by the most famous human rights instrument adopted by the UN in 1948, the Universal Declaration of Human Rights (UDHR). As shown in table 2.1, articles 1 to 2 of the UDHR read more like a reinforced version of the Philadelphia Declaration regarding the expression of human rights. Today, the UDHR remains the broadest and most fundamental international expression of human rights, but it was clearly inspired by the ILO's Philadelphia Declaration.[49]

Table 2.1 The 1944 Declaration of Philadelphia vs. The 1948 Universal Declaration of Human Rights

	Declaration of Philadelphia	**Universal Declaration of Human Rights**
Organisation	**ILO**	**UN**
Human rights content	All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. (Section II (a))	All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (art 1 & 2)

47 Rodgers and others (n 1) 37; Maul (n 1) 183; Servais (n 1) 28.

48 ILO Declaration of Philadelphia 1944, s II(a).

49 Even though the idea of human rights was set forth in the 1944 Philadelphia Declaration, many legal scholars only look for human rights statements from 1948, in which the UN adopted the UDHR, perhaps because the UDHR was the first major international document using the term 'human rights' clearly and directly. In addition, the UDHR universalised and embodied this term with a list of precise human rights, making it the most striking concept in the world. However, as pointed out by Supiot, the Philadelphia Declaration 'must be deemed as a human rights document even if it did not expressly use that term'. See: Janice R. Bellace and Beryl ter Haar, 'Perspectives on labour and human rights' in Janice R. Bellace and Beryl ter Haar (eds), *Research Handbook on Labour, Business and Human Rights Law* (Edward Elgar Publishing 2019) 6 (quoting Alain Supiot, 'The Spirit of Philadelphia: Social Justice vs. the Total Market' (Saskia Brown tr, Verso 2012).

Section II also stated that 'attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy', and that policies and measures 'should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective.'[50] This objective implied that social and human objectives must be seen as 'paramount aims of economic development'.[51] Moreover, this section emphasised that it was the ILO's duty 'to examine and consider all international financial and economic policies and measures in the light of this fundamental objective'.[52] This was the first time the ILO explicitly proclaimed an overarching social and human objective for all, particularly regarding economic and financial policies.[53] As Swepston has pointed out by, stating its aims in terms of human values and aspirations implied that the ILO moved into human rights territory.[54]

To achieve the overarching social and human objective and social justice, Section III set out what the ILO considered future areas of activity. It embraced a ten-point programme of action, namely:

(a) full employment and the raising of standards of living;
(b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common wellbeing;
(c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
(d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
(f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
(g) adequate protection for the life and health of workers in all occupations;
(h) provision for child welfare and maternity protection;
(i) the provision of adequate nutrition, housing and facilities for recreation and culture;
(j) the assurance of equality of educational and vocational opportunity.[55]

50 ILO Declaration of Philadelphia 1944, s II(b)(c).
51 Hepple (n 1) 32.
52 ILO Declaration of Philadelphia 1944, s II(d)(e).
53 Maul (n 1) 8.
54 Lee Swepston, 'The International Labour Organization and Human Rights: Access to the ILO' in Alfred Zayas and others (eds), *International Human Rights Monitoring Mechanisms*: *Essays in Honour of Jakob Th. Möller* (Brill 2021) 485–503.
55 ILO Declaration of Philadelphia 1944, s III.

As indicated full employment and standards of living came first, followed by vocational training and conditions of work, in particular, wage and working time. Section III then recognised collective bargaining as a right, the cooperation of management and labour as a means of improving productivity, and their joint participation in implementing social and economic measures. This commitment was followed by social security and social protection, in particular, basic income, medical care, occupational health and safety, protection for children and women, facilities for recreation and culture, and equality of educational and vocational opportunity. As Maul has pointed out, the section 'not only referred to the improvement of working conditions and the promotion of labour rights as the traditional area of ILO activity but, at the same time, largely represented the Organisation's new, more expansive understanding of the close link between social and economic policies'.[56] Although these areas of work were very diverse, they were to be further updated and organised under four groups, specifically, employment, rights at work, social protection, and social dialogue, the four strategic objectives of the concept of decent work to be adopted in 1999. In other words, the 1944 Declaration laid a solid foundation for the future introduction of the decent work concept.

Sections IV and Section V placed special emphasis on the universal application of the principles and objectives set forth in the Declaration, for instance, in the expression 'promote the economic and social advancement of the less developed regions of the world' and 'fully applicable to all peoples everywhere'.[57] This avowal promoted the ILO's image as a truly global organisation, both geographically and in terms of its work programme.[58] In contrast to this Declaration, as mentioned in section 2.3, article 41 of the original ILO Constitution in 1919 emphasised the application of 'methods and principles' for all industrial communities.[59] Notably, article 41 was replaced by the Philadelphia Declaration, where it was incorporated into the ILO's revised Constitution as an Annex in 1946.

With the adoption of the 1944 Declaration, and its incorporation into the ILO Constitution in 1946, the next phase of ILO standard-setting was launched.[60] In the following more than three decades, the ILC adopted eighty-six Conventions and ninety-four Recommendations, covering various subjects that aligned with the ILO mandate contained in the 1944 Declaration.[61] In particular, it adopted most of what today are regarded as the Organisation's fundamental Conventions, namely: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

56 Maul (n 1) 130.
57 ILO Declaration of Philadelphia 1944, ss IV and V.
58 Maul (n 1) 134.
59 The original ILO Constitution 1919, art 41.
60 Rodgers and other (n 1) 44.
61 See: ILO, 'NORMLEX' <https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO:::> accessed 31 December 2021.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and Minimum Age Convention, 1973 (No. 138).[62] These Conventions addressed four subjects: freedom of association and collective bargaining; forced labour; equality; and child labour. They are widely recognised as the 'enabling' rights, meaning 'as an essential precondition for the realisation of social and economic rights'.[63] They constitute what the ILO termed the decent work concept in 1999 and provide the most fundamental basis for its achievement. Nevertheless, it was not until the adoption of the Declaration on Fundamental Principles and Rights at Work in 1998 that these international labour standards were explicitly and officially recognised as the fundamental principles and rights at work – also known as core labour standards, they served as the ILO's response through an acknowledged 'human rights framework' to the raising social concerns in the global economy. This issue will be discussed in detail in the next section 2.5.

2.5 Raising social concerns (1980s-1999)

While the argument for international labour standards as a means of regulating global competition was explicitly identified in the original ILO Constitution in 1919, or even earlier, in the efforts made by the IALL, the ILO paid little attention to this issue.[64] It was not until the globalisation in 1980s that renewed debate occurred about the link between international labour standards and global trade, and the social dimension of economic liberalisation and development.[65] The term 'globalisation' has been defined by the International Monetary Fund (IMF) as 'the increasing integration of economies around the world, particularly through trade and financial flows', and 'the movement of people (labour) and knowledge (technology) across international borders', which 'has come into common usage since the 1980s'.[66] In this context, there were two developments of particular

62 There are eight fundamental Conventions, six of which were adopted in this period. The other two Conventions dealing with forced labour (i.e., Forced Labour Convention, No. 29) and child labour (i.e., Worst Forms of Child Labour Convention, No. 182) were adopted in 1930 and 1999, respectively. In addition, the ILO adopted a Protocol linked to Convention No. 29 in 2014.

63 Maul (n 1) 184; see also: Brian A Langille, 'Core Labour Rights - The True Story (Reply to Alston)' (2005) 16 EJIL 409; Francis Maupain, 'Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights' (2005) 16 EJIL 439.

64 Hepple (n 1) 33.

65 Maul (n 1) 241; Rodgers and others (n 1) 205; Servais (n 1) 30.

66 IMF, 'Globalization: Threats or Opportunity' <https://www.imf.org/external/np/exr/ib/2000/041200to.htm#II> accessed 31 December 2021.

importance for the ILO.[67] The first was the debate on whether a social clause should be embedded in the global trading system; and the second was a series of UN's Global Conferences on social issues, in particular, the World Summit for Social Development, held in Copenhagen in 1995.[68] Both reflected rising social concerns in the global economy, providing the background against which the ILO was forced to define its position.[69] The major response of the ILO was to promote a Declaration on Fundamental Principles and Rights at Work, adopted at the 86th Session of the ILC in June 1998.

The idea of 'social clause' refers to 'the obligation to meet specific social standards as a precondition for participation in international trade or access to trade preferences'.[70] Although this idea in itself was not new – it dates back to discussions around rebuilding world trade following the end of World War II, it repeatedly appeared in the ILO debates during the 1980s and the beginning of the 1990s.[71] In general, developed countries called for the inclusion of a social clause in global trade.[72] They argued that such a social clause would promote fair international competition and enable workers to benefit from increased trade.[73] Developing countries, however, saw it differently. They considered the social clause a 'neo-colonial western conception of human rights' that would hinder their industrial development and deprive them of comparative advantages.[74] With the creation of the WTO in January 1995, the debate came to an end with the failure of the inclusion of a social clause to the global trading system.[75] The first WTO Ministerial Meeting was held in Singapore in 1996, at which the idea of a social clause as a form of protectionism was rejected.[76] In addition, the meeting acknowledged that the ILO was the competent body to deal with labour standards, and that the best way to realise these standards was 'economic growth and development fostered by increased trade and further liberalisation'.[77]

67 See: Rodgers and others (n 1) 213; Maul (n 1) 251.
68 ibid.
69 ibid.
70 ibid.
71 Maul (n 1) 254.
72 Rodgers and others (n 1) 213–16; Maul (n 1) 253–55; See also: Gijsbert van Liemt, 'Minimum Labour Standards and International Trade: Would a Social Clause Work' (1989) 128 ILR 433.
73 ibid.
74 ibid.
75 ibid; the WTO is the successor of the General Agreement on Tariffs and Trade (GATT), which began in 1948. While the GATT mainly dealt with trade in goods, the WTO and its agreements also cover trade in services and intellectual property. See: WTO, 'History of the multilateral trading system' <https://www.wto.org/english/thewto_e/history_e/history_e.htm> accessed 31 December 2021.
76 ibid.
77 ibid.

Meanwhile, a series of UN Global Conferences with a focus on social issues were held in the 1990s, including: the Children's Summit in New York in 1990; the Earth Summit in Rio de Janeiro in 1992; the World Conference on Human rights in Vienna in 1993; the World Summit for Social Development in Copenhagen in 1995; the Fourth World Conference on Women in Beijing in 1995; and the Second United Nations Conference on Human Settlements in Istanbul in 1996. These conferences provided a platform for advocacy that economic policies should serve social ends.[78] In particular, the Social Summit brought together the largest gathering ever of world leaders to date and addressed the entire range of social issues.[79] At this Summit, the international community adopted the Copenhagen Declaration on Social Development, which put people at the centre of social and economic development and listed ten commitments, namely:

(a) creating an economic, political, social, cultural and legal environment that will enable people to achieve social development;
(b) eradicating absolute poverty by a target date to be set by each country;
(c) supporting full employment as a basic policy goal;
(d) promoting social integration based on the enhancement and protection of all human rights;
(e) achieve equality and equity between women and men;
(f) attaining universal and equitable access to education and primary health care;
(g) accelerating the development of Africa and the least developed countries;
(h) ensuring that structural adjustment programmes include social development goals;
(i) increasing resources allocated to social development;
(j) strengthening cooperation for social development through the UN.[80]

As we can see, these commitments almost overlapped with the ILO's agenda. Some were even made with explicit reference to the ILO Conventions. In particular, under the third commitment, the Copenhagen Declaration called for governments to enhance the quality of work and employment by safeguarding and respecting the basic rights and interests of workers, including the ILO Conventions on the prohibition of forced and child labour, freedom of association and collective bargaining, and the principle of non-discrimination.[81] This decision was clearly related to the concept of 'fundamental principles and rights at workers' to be adopted in 1998 by the ILO.

78 Rodgers and others (n 1) 217.
79 Roughly twenty thousand people participated, among them 117 heads of state. See UN, 'Social Summit' <http://www.un.org/esa/socdev/wssd/text-version/> accessed 31 December 2021; see also: Rodgers and others (n 1) 218; Maul (n 1) 252.
80 UN, Copenhagen Declaration on Social Development 1995, para 29.
81 ibid.

The social clause issue at the WTO and UN's Social Summit reflected growing social concerns about the global economy. Although the ILO was not the main actor in either case, both cases related to the ILO's mandate and the Organisation found its ways to react.[82] While the WTO's social clause issue made it clear that the ILO was the competent body to deal with labour standards, the UN's Social Summit, especially the ten commitments in the 1995 Copenhagen Declaration, helped to set the strategic direction of the ILO's work.[83]

In response to these challenges, the Declaration on Fundamental Principles and Rights at Work was adopted at the 86th Session of the ILC in June 1998. The Declaration recognised seven Conventions as 'fundamental', categorised by four subjects: freedom of association and the effective recognition of the right to collective bargaining (C.87 & C.98); the elimination of all forms of forced or compulsory labour (C.29 & C.105); the effective abolition of child labour (C.138); and the elimination of discrimination with respect to employment and occupation (C.100 & C.111). In 1999, an eighth Convention on child labour (C.182) was adopted and added to this list. In addition, the Declaration stipulated that 'all ILO member States, by the very fact of their membership in the Organisation, have an obligation to respect and realise these fundamental rights that were expressed in these Conventions, regardless of whether or not they had ratified them'.[84] The choice of these fundamental Conventions rested on the view that they are of 'particular significance' in maintaining 'the link between social progress and economic growth' and enable 'the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential'.[85] This definition means that these fundamental rights are 'enabling' such that they would remove obstacles to accessing work and provide a basis for the realisation of social and economic rights.[86]

The opinion on the 1998 Declaration was not unanimous.[87] A major criticism was that it tended to create two classes of standards: its fundamental rights are particularly important, while other standards dealing with working conditions and social protection, such as wage, working time, and

82 Rodgers and others (n 1) 213; Maul (n 1) 251.

83 ILO, *The ILO and the follow up of the World Summit on Social Development: Background paper for the United Nations Commission on Social Development* (International Labour Office 2005).

84 ILO Declaration on Fundamental Principles and Rights at Work 1998, preamble.

85 ibid.

86 Hepple (n 1) 59; Rodgers and others (n 1) 45; Maul (n 1) 184.

87 In terms of the debate regarding the Declaration on Fundamental Principles and Rights at Work and core labour standards, see: Philip Alston, "'Core Labour Standards' and the Transformation of the International Labour Right Regime" (2004) 15 EJIL 457; Brian A Langille, 'Core Labour Rights - The True Story (Reply to Alston)' (2005) 16 EJIL 409; Francis Maupain, 'Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights' (2005) 16 EJIL 439; Philip Alston, 'Facing up to the Complexities of the ILO's Core Labour Standards Agenda' (2005) 16 EJIL 467.

occupational health and safety, tend to diminish in significance.[88] However, from the ILO's point of view, the adoption of the 1998 Declaration was a major success for the Organisation.[89] It not only provided a reorientation of the ILO's work to which almost all its Member States could agree, but also, in practice, triggered an increase in the rate of ratification of these fundamental Conventions.[90] Today, 148 Member States have ratified all eight fundamental Conventions; in particular, all 187 Member States have ratified the Worst Form of Child Labour Convention (No. 182).[91] Nevertheless, when Juan Somavia took office as the ninth Direct-General of the ILO in 1999, he felt that the ILO still needed more focus and visibility, and introduced the concept of decent work to reorient and reintegrate the ILO's activities.[92] This verdict will be discussed in the next section.

2.6 Promoting decent work (1999-2019)

The concept of decent work finally took shape in the Report of the Director-General to the 87th Session of the ILC in March 1999, in which Juan Somavia, Director-General, pointed out that 'the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security, and human dignity'.[93] Thus, this new term, 'decent work', with an explicit reference to the 1944 Declaration regarding 'conditions of freedom and dignity, of economic security and equal opportunity',[94] appeared in the world of work.

According to the same Report, Somavia emphasised that 'decent work is the converging focus of all its four strategic objectives: the promotion of rights at work; employment; social protection; and social dialogue', and 'it is the most widespread need, shared by people, families and communities in every society, and at all levels of development'.[95] This proclamation means that decent work serves as the overall goal of the ILO, embracing four dimensions and reflecting a universal aspiration of people everywhere. These four dimensions are what the ILO regarded as its four areas of work or the so-called strategic objectives. They were not so new, however, as they aligned with the mission and action statements enshrined in the 1919 ILO

88 ibid; see also: Hepple (n 1) 62; Rodgers and others (n 1) 221; Maul (n 1) 261–62.
89 ibid.
90 ibid.
91 See: ILO, 'NORMLEX' accessed 31 December 2021. <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO>
92 Rodgers and others (n 1) 222; Maul (n 1) 265.
93 ILO, *Decent work* (Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999).
94 ILO Declaration of Philadelphia 1944, s II (a).
95 ILO, *Decent work* (n 93).

Constitution, the 1944 Declaration, and the 1998 Declaration, as well as the Copenhagen Declaration on Social Summit.[96]

Since its inception in 1999, the concept of decent work began to dominate the discussion in the ILO. To better embed this concept in both international and national policies, the 2001 Director-General Report of the ILO identified the notion of 'decent work deficits', meaning 'a gap between the world that we work in and the hopes that people have for a better life'.[97] It also elaborated upon four decent work deficits, namely: the denial of rights at work; the absence of sufficient employment opportunities; inadequate social protection; and shortcomings in social dialogue, and emphasised that the goal of decent work can be promoted by reducing such deficits.[98] In addition, a series of Decent Work Pilot Programmes (DWPPs) were launched by the ILO, with an aim to pioneer how decent work could be effectively promoted and applied in ILO Member States.[99] The activities initiated by the DWPP continue today as part of the respective ILO Decent Work Country Programmes (DWCPs).[100] The DWCPs are time-bound country programmes organised around a limited number of country programme priorities and outcomes according to the four strategic objectives of decent work.[101] They are used as a vehicle for delivering ILO's support to its Member States towards the goal of decent work at the national level.[102] With the launch of the 2030 Agenda for Sustainable Development in September 2015, the DWCPs entered a new phase as the distinct ILO contribution to UN country programmes on the development of working life.[103]

The next important development on decent work was gaining a codification in the Declaration on Social Justice for a Fair Globalisation, adopted at the 97th Session of the ILC in June 2008. This Declaration had three major

96 See: Rodgers and others (n 1) 222; Maul (n 1) 265.

97 ILO, *Reducing the Decent Work Deficit: A Global Challenge* (Report of the Director-General, International Labour Conference, 89th Session, Geneva, 2003).

98 ibid.

99 Eight countries were covered: Bahrain, Bangladesh, Denmark, Ghana, Kazakhstan, Morocco, Panama, and Philippines. With the exception of Denmark and Panama, which were initiated in 2001, most country programmes were effectively launched in 2002. Kazakhstan is the latest addition, in 2003. All country programmes operate within a timeframe of three to four years. See: Azita Berar Awad, *Decent Work as a National Goal: The Experience of the Decent Work Pilot Programme (DWPP) and other Related Initiatives* (paper prepared for the 2nd South-East Asia and the Pacific Subregional Tripartite Forum on Decent Work, Melbourne, 2005); see also: ILO, 'Decent Work Pilot Programme (DWPP)' <https://www.ilo.org/public/english/bureau/dwpp/> accessed 31 December 2021.

100 ILO, *ILO Decent Work Country Programme: A Practical Guidebook (version 4)* (International Labour Office 2016) 1.

101 ibid.

102 At the time of writing, the ILO has initiated 92 DWCPs including the Draft ones. See: ILO, 'Decent Work Country Programmes (DWCPs)' <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/program/dwcp/lang--en/index.htm> accessed 31 December 2021.

103 ILO, *ILO Decent Work Country Programme: A Practical Guidebook (version 4)* (n 100) 1.

purposes. First, built upon the 1919 ILO Constitution, the 1944 Declaration of Philadelphia, and the 1998 Declaration on Fundamental Principles and Rights at Work, it formulated 'the contemporary vision of the ILO's mandate in the era of globalisation', that is, the promotion of a fair globalisation based on social justice and decent work.[104] Thus the concept of decent work was incorporated into a legal instrument of the ILO. Second, it proclaimed the universality of the decent work concept, based on its four strategic objectives: employment, social protection, social dialogue, and fundamental principles and rights at work.[105] The Declaration emphasised that these four objectives 'are inseparable, interrelated and mutually supportive' and that 'the failure to promote any one of them would harm progress towards the other'.[106] These four objectives are based upon the four dimensions of decent work originally introduced in 1999, but instead of 'rights at work', only 'fundamental principles and rights at work' were counted. This outcome implied that special emphasis was placed on the fundamental rights recognised in the 1998 Declaration. Third, the Declaration identified four governance Conventions, namely: Labour Inspection Convention, 1947 (No. 81) (and its Protocol of 1995); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); and Employment Policy Convention, 1964 (No. 122).[107] These Conventions are considered 'most significant from the viewpoint of governance', which would help build national institutions and capacities that serve to promote employment, and to strengthen national systems for the effective enforcement of labour standards, particularly through labour inspection and tripartite consultations.[108] This direction emphasised institution-building for the promotion of decent work.

To implement the decent work agenda at the national level, the 2008 Declaration also recommended 'the establishment of appropriate indicators or statistics, if necessary with the assistance of the ILO, to monitor the progress made'.[109] As a consequence, in September 2008, the ILO carried out a tripartite meeting of experts on the measurement of decent work, at which a framework of Decent Work Indicators (DWI) was proposed.[110] This framework was updated in 2013 with several enhancements and additions to the previous version.[111] In its new version, this framework covered ten substantive elements that correspond to four strategic objectives of decent work (i.e., rights at work, employment, social protection, and social

104 ILO Declaration on Social Justice for a Fair Globalisation 2008, preface.
105 ILO Declaration on Social Justice for a Fair Globalisation 2008, s I (A).
106 ILO Declaration on Social Justice for a Fair Globalisation 2008, s I (B).
107 ILO Declaration on Social Justice for a Fair Globalisation 2008, annex II (A)(vi).
108 ibid; ILO, *Towards Widespread Ratification and Effective Implementation of the Governance Conventions (Plan of Action: 2010–2016)* (International Labour Office 2009) 1.
109 ILO Declaration on Social Justice for a Fair Globalisation 2008, s II (B)(ii).
110 ILO, *Decent Work Indicators: Guidelines for Producers and Users of Statistical and Legal Framework Indicators (second version)* (International Labour Office 2013), preface.
111 ibid.

dialogue) and an additional element concerning the economic and social context for decent work, namely:

(a) employment opportunities;
(b) adequate earnings and productive work;
(c) decent working time;
(d) combining work, family and personal life;
(e) work that should be abolished;
(f) stability and security of work;
(g) equal opportunity and treatment in employment;
(h) safe work environment;
(i) social security;
(j) social dialogue, employers' and workers' representation, and
(k) economic and social context for decent work.[112]

These eleven elements represent the structural dimensions of the framework of DWIs. Each element is further elaborated by a set of statistical and legal indicators. While statistical indicators are quantitative in nature and derive from official national data sources, legal indicators are qualitative and primarily based on legal texts and other related textual information.[113] In total, fifty-six statistical and twenty-one legal indicators are identified. The framework of DWIs provides countries with a common set of indicators to approach decent work from an integrated perspective, representing the ILO's distinct effort to operationalise decent work.[114] Moreover, it allows each country to apply a flexible methodology according to its needs and to what it considers its own relevant indicators.[115] The progress made in the measurement of decent work is recorded in the Decent Work Country Profiles (DWCProfiles). Since 2008, the ILO has produced eighteen DWCProfiles as well as three additional provincial profiles for Indonesia.[116]

The most recent development on decent work was the ILO's celebration of the centenary anniversary in 2019. A new Declaration, the ILO Centenary Declaration for the Future of Work, was adopted at the 108th Session of the ILC in June 2019. This Declaration not only stated that the ILO's Centenary is at a time of transformative change in the world of work, ranging from technology to climate change, from demographic shifts to the need for new skills, but also reaffirmed the mission and values of the ILO that were given and highlighted in the 1919 ILO Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, and the 2008 Declaration on Social Justice for a Fair Globalisation.[117]

112 ibid 12.
113 ibid.
114 ibid 14–17.
115 ILO, *Stock-taking of the ILO's Programme on Measuring Decent Work: Decent Work Indicators and Decent Dork Country Profiles* (International Labour Office 2013) 4.
116 See: ILO, 'Decent Work Country Profiles' <https://www.ilo.org/integration/themes/mdw/lang--en/index.htm> accessed 31 December 2021.
117 ILO Centenary Declaration for the Future of Work 2019, preface and s I (A).

In terms of the concept of decent work, the new Declaration specifically asserted that 'safe and healthy working conditions are fundamental to decent work', and reaffirmed the value of social dialogue (e.g., collective bargaining and tripartism) to decision-making in the Member States, and of effective workplace cooperation to safe and productive workplaces.[118] This commitment provided a more pragmatic orientation for promoting decent work. Moreover, this Declaration called for Member States to further develop a human-centred approach through three pillars of investment. The first pillar is to strengthen 'the capacities of all people to benefit from the opportunities of a changing world of work'.[119] This assurance relates to promoting the rights and enabling environment that would widen people's opportunities and improve their well-being, such as gender equality, lifelong learning and quality education, and social protection.[120] The second pillar is to strengthen 'the institutions of work to ensure adequate protection of all workers'.[121] This principle means that it is necessary to provide adequate wages, limit working hours, ensure safety and health, and safeguard fundamental rights at work through laws and regulations.[122] The third pillar is to promote 'sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'.[123] This obligation calls for the adoption of policies that promote an enabling environment for sustainable enterprises, economic growth, and decent work for all.[124] As we can see, these three pillars align very closely with the four strategic objectives of decent work, indeed, the third in itself was the promotion of decent work.

2.7 Conclusion

This chapter has examined how the concept of decent work evolved from from the mid eighteenth century up to 2019. Although five broad periods have been distinguished, the line between them is not marked. As shown in table 2.2, once the key idea had been highlighted in that period, it endured, running through the following story of the development. Before the founding of the ILO in 1919, some pivotal ideas for decent work had emerged, and would finally be introduced in 1999, such as 'eight-hour working day', 'International Labour Day', and 'international labour legislation'. From 1919 to the formulation of decent work in 1999, a series of terms and expressions appeared, including social justice, human rights, and social concerns.

118 ILO Centenary Declaration for the Future of Work 2019, s II (B)(C)(D).
119 ILO Centenary Declaration for the Future of Work 2019 s III (A).
120 ibid; ILO, *Work for a brighter future: Global Commission on the Future of Work* (International Labour Office 2019), 11–12.
121 ILO Centenary Declaration for the Future of Work 2019, s III (B).
122 ibid; ILO, *Work for a brighter future* (n 120) 12–13.
123 ILO Centenary Declaration for the Future of Work 2019, s III (C)
124 ibid; ILO, *Work for a brighter future* (n 120) 13.

Whether decent work differs from those aims might be debatable, but in general, social justice has served as a fundamental quality of the ILO since the founding of the Organisation in 1919. Human rights, in particular, those fundamental rights at work, incorporate all the notions that constitute what the ILO termed decent work in a broad sense. After all, everyone has the right to enjoy a decent working life. Social concerns reflect the link between labour standards and economic development, leading to ILO's introduction of fundamental rights at work or so-called core labour standards and decent work. While the concept of decent work was not officially introduced until 1999, the ILO recognised that decent work is necessary in the world of work before the terminology even existed. Decent work is at the heart of advancing social justice, promoting human rights, and adapting to social concerns.

Today, decent work nearly dominates the discussion within the ILO. It serves as the contemporary vision of the ILO and can be expressed in terms of social justice, human rights, and social concerns, as enshrined in the 1919 Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, the 2008 Declaration on Social Justice for a Fair Globalisation, and the 2019 Centenary Declaration for the Future of Work. Decent work specifically embraces the ILO's four strategic objectives: employment, social protection, social dialogue, and rights at works, which can be advanced through the promotion of international labour standards in the world of work. Decent work functions as a unified framework that captures the essence of ILO's mission and its four areas of work succinctly and straightforwardly.

Table 2.2 A timeline of historical origins and developments of decent work: key terms and expressions

	Before 1919	**1919-1944**	**1944-1980s**	**1980-1999**	**1999-2019**
Before 1919	Early attempts (e.g., eight-hour working day, International Workers' Day, and international labour legislation)				
1919-1944		Social justice (e.g., the 1919 Constitution and social justice, and international labour standards)			
1944-1980s			Human rights (e.g., the 1944 Declaration and human rights, and international labour standards)		
1980s-1999				Social concerns (e.g., Social Clause, Social Summit, and the 1998 Declaration and core labour standards)	
1999-2019					Decent work (e.g., four objectives, the 2008 Declaration and governance Conventions, and the 2019 Declaration and a human-centred approach)

3 From decent work to decent working time

3.1 Introduction

This chapter picks up from the previous chapter's work tracing the historical origins and developments of decent work by looking more deeply at this concept and asking, for example, about the meaning of decent work as a research subject. A precise understanding of this concept is essential to limiting the scope of further discussion. The further discussion in this thesis mainly relates to the use of decent working time as a case study for decent work. Hence, this chapter also addresses the meaning of decent working time as a research subject by taking decent work as a starting point of reference.

As discussed in Chapter 2, since its inception in 1999, decent work has nearly dominated discussions in the International Labour Organisation (ILO). However, against the understanding by the ILO, we see that the concept of decent work is more like a mission statement that comes to define the values of the ILO, rather than serve as a working hypothesis. When the ILO uses the term 'decent work', it tends to have two meanings. First, it is the contemporary vision of the ILO's 'personality' that can be expressed in terms of social justice, human rights, and social concerns, enshrined in the 1919 Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, the 2008 Declaration on Social Justice for a Fair Globalisation, and the 2019 Centenary Declaration for the Future of Work. Second, it specifically refers to the ILO's four strategic objectives, namely: employment; social protection; social dialogue; and rights at works. Indeed, the decent work concept functions as a unified framework that can capture the essence of the ILO's mission and its four areas of work succinctly and straightforwardly. The paradox, however, is that this concept is very broadly defined and all-encompassing and can be overloaded with all labour-related issues in the world of work. It is acceptable for an international organisation, like the ILO, to embrace a broadly defined concept as its personality or flagship, but it raises many research issues in the academic field, of which a fundamental one is the meaning of decent work as a research subject. Without a reasonably clear idea of its meaning, we cannot draw specific implications for researching decent work from an external academic perspective.

The purpose of this chapter is thus to review the existing doctrinal literature on decent work, forming a clearer understanding of the meaning of decent work as a research subject. Once this question is adequately

answered, we can discuss achieving decent work through a case study of decent working time. The sources this chapter uses are mainly to be found in the doctrinal literature. It also covers some of the ILO materials because they provide a starting point of reference for academic research. The remainder of this chapter is structured as follows. Section 3.2 provides a literature review of decent work. The review is divided into three aspects of research: decent work as a multiple-facet concept (section 3.2.1); decent work as a development goal (section 3.2.2); and measurement of decent work (section 3.2.3). Based on an examination of these three aspects of research, some implications of the meaning of decent work as a research subject are drawn in section 3.2.4. Anticipating one of the core ideas of those implications, decent work as a research subject is too broad in a single thesis. Therefore this thesis focuses on decent work in the field of working time, namely, decent working time, which indicates that this thesis uses decent working time as a case study for decent work. In this light, section 3.3 examines the meaning of decent working time as a research subject by taking decent work as a starting point of reference. Section 3.3.1 presents the reasons for choosing decent working time as a case study for decent work through a historical overview of the development of working time within the ILO in the same time periods conducted for decent work in Chapter 2. Section 3.3.2 then examines the concept of decent working time, in particular, through the five dimensions commonly recognised both in the ILO and doctrinal literature: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. Section 3.3.3 discusses some implications for the meaning of decent working time as a research subject. Based on the examination of both concepts of decent work and decent working time, section 3.4 formulates a working definition of decent working time from a legal perspective, laying the groundwork for the evaluation of achieving decent working time in subsequent chapters.

3.2 Concept of decent work

There is a wide variety of doctrinal literature relating to decent work.[1] Because the aim of this section is to elucidate the meaning of decent work as a research subject, it provides a review of the extant conceptual and operational studies on decent work. In this context, the review can be divided into three aspects of research: first, decent work as a multiple-facet concept (section 3.2.1); second, decent work as a development goal (section 3.2.2); and third, measurement of decent work (section 3.2.3). This section con-

1 A simple Google scholar search may give an illustration, although it is not a scientific research tool. Searching the term 'decent work' in the title of articles through Google scholar to the year of 2021 yields 1,660 results, which are diverse and spread across various disciplines, such as labour law, economics, sociology, and psychology.

cludes with some implications for a better understanding of the meaning of decent work as a research subject (section 3.2.4).

3.2.1 Decent work as a multi-faceted concept

As found in Chapter 2, decent work was introduced in the 1999 Director-General Report, and gained codification in the 2008 Declaration. Almost all existing literature on decent work uses one or both of these two documents as a starting point of reference, for instance, two special issues are devoted to this topic: issue 2 of volume 142 of the *International Labour Review* and issue 1 of volume 15 of the *Employment Rights and Employment Policy Journal*. The former was produced against a background of the launch of the decent work agenda by the ILO in 1999 with the aim at establishing the full meaning of the concept and developing the concrete and reliable means of measuring countries' performance in achieving decent work.[2] The latter was generated against the background of the global economic crisis and the adoption of the 2008 Social Justice Declaration with the aim of conveying an evolving understanding of the decent work concept and examining the role this concept plays in assessing existing problems, programmatic outcomes, and policy innovations in responding to the global economic crisis.[3]

In issue 2, volume 142 of the *International Labour Review*, for instance, Ghai defines decent work as an expression conveying the broad and varied dimensions associated with work that everyone can appreciate.[4] He elaborates on this concept through the four components recognised in the 1999 Director-General Report, namely: employment, social protection, workers' rights, and social dialogue.[5] He argues that the first two components concern work opportunities, remuneration, safety at work and healthy working conditions, while the last two emphasise the social relations of workers.[6] Anker et al. consider decent work to be a fundamental dimension of the quality of life as work is a major part of life in terms of time, social integration, and individual self-esteem.[7] To translate this general concept into simple, explicable characteristics of work, based on the 1999 Director-General Report, Anker et al. proffer six dimensions for decent work, namely: opportunities for work, work in conditions of freedom, productive work, equality in work, security at work, and dignity at work.[8] They emphasise that the first two dimensions indicate the availability and basic acceptability

2 'Introduction' (2003) 142 ILR 109.
3 Susan Bisom-Rapp, 'Introduction: Decent Work in a Post-Recessionary' (2011) 15 Employee Rights and Employment Policy Journal 1.
4 Dharam Ghai, 'Decent Work: Concept and Indicators' (2003) 142 ILR 113, 113.
5 ibid.
6 ibid.
7 Richard Anker and others, 'Measuring Decent Work with Statistical Indicators' (2003) 142 ILR 147, 147.
8 ibid 151–52.

of work, while the last four emphasise the extent to which available and freely accepted work is 'decent'.[9] Bonnet et al. regard decent work as the basic security for all people in society, in the workplace, and for individual workers.[10] Based on this definition, they identify seven forms of security in the field of work, namely: labour market security, employment security, job security, work security, skill reproduction security, income security, and representation security.[11] They place the income and representation at the primacy position of the seven forms of security because people lack the real freedom to make rational choices and be socially responsible without reasonable income security and the vulnerable would remain vulnerable without collective and individual voices.[12]

In issue 1, volume 15 of the *Employment Rights and Employment Policy Journal*, for instance, Bellace argues that decent work is a new term encompassing a broad set of norms that should be applied at work, reflecting ILO aspirations.[13] However, Bellace indicates that this concept has not met with the widespread positive response in developed countries due to a lack of understanding as to what exactly is meant by decent work.[14] By taking the United States as an example, she illustrates that this concept tends to be analogous to fair labour standards, and does not possess the same urgency as the concept of 'fundamental principles and rights at work' identified in the 1998 Declaration.[15] Nevertheless, she argues these two concepts are connected, and both of them should be incorporated into the overarching vision of achieving social justice of the ILO, which would provide a foundation for sustainable economic recovery.[16] Blanpain examines the efforts to promote decent work in the European Union (EU) from the effects of the global economic crisis, explicitly noting that the ILO's Decent Work Agenda coincides with the EU's social policy aims.[17] Based on the 2008 Declaration, Blanpain argues that the Decent Work Agenda in the EU seeks not only to guarantee a minimum set of social rights and standards but also links social justice to economic competitiveness, a central component of the European Social Model and the EU's Lisbon Strategy.[18] Bisom-Rapp et al. examine how older workers fared during the global financial crisis and were faring during the recovery in three common law countries, namely: Australia, the

9 ibid 152.
10 Florence Bonnet, José B. Figueiredo and Guy Standing, 'A Family of Decent Work Indexes' (2003) 142 ILR 213, 213.
11 ibid 217–37.
12 ibid 214.
13 Janice R. Bellace, 'Achieving Social Justice: The Nexus between the ILO's Fundamental Rights and Decent Work' (2011) 15 EM RTS & EM POL'Y J 5, 6.
14 ibid 6–7.
15 ibid 7.
16 ibid 7, 28.
17 Roger Blanpain, 'Decent Work in the European Union: Hard Goals, Soft Results' (2011) 15 EM RTS & EM POL'Y J 29, 30.
18 ibid 31.

United Kingdom, and the United States, by using the decent work concept as a yardstick.[19] Based on the 1999 Director-General Report and the 2008 Declaration, they argue that the concept of decent work with its four pillars is particularly relevant for older workers, allowing for the needs of workers to be considered across the life course.[20] Among the four pillars of decent work, they assess the three that are especially pertinent to older workers, namely: employment promotion, social protection, and fundamental rights.[21] By comparing the three countries, they provide an example for evaluating how countries with similar patterns of labour regulations behave in the promotion of decent work for older workers.[22]

In addition to the two special issues as mentioned previously, other scholarly contributions on the concept of decent work warrant discussion. For instance, Servais considers decent work to be an expression of the ILO's resolve to bring together all the components of harmonious economic and social development.[23] He emphasises that the purpose of decent work is to satisfy the prerequisites for ensuring that labour regulations are actually applied, and the legal approach is the most effective way as it tends to presuppose a longer-term vision.[24] Hence, he proposes two prerequisites to promote decent work: the first is the recognition of ethical values; the second is the emphasis on social dialogue.[25] While the former means that human relationships cannot be reduced to some utilitarian ideology, the latter calls for the support of social partners in designing, drafting, and implementing labour laws.[26] Burchell et al. consider decent work to be a systematic definition of the ILO's quality of work.[27] They explore the development of concepts related to the 'quality of employment' in the academic literature in terms of their definition, methodologies, and ongoing debates, and found that only the ILO has attempted a systematic definition through its decent work concept.[28] Based on the 1999 Director-General Report, they argue that decent work 'juxtaposes the generation of employment itself with the conditions under which it is generated as well as workers' rights and their voice in the community'.[29] Nevertheless, they point out that the

19 Susan Bisom-Rapp, Andrew Frazer and Malcolm Sargeant, 'Decent Work, Older Workers and Vulnerability in the Economic Recession: A Comparative Study of Australia, the United Kingdom, and the United States' (2011) 15 EM RTS & EM POL'Y J l 43, 45.

20 ibid 119.

21 ibid 46, 118–21.

22 ibid 45–46, 114.

23 Jean-Michel Servais, 'Globalization and Decent Work Policy: Reflections upon a New Legal Approach' (2004) 143 ILR 185, 185.

24 ibid 185–86.

25 ibid.

26 ibid.

27 Brendan Burchell and others, 'The Quality of Employment and Decent Work: Definitions, Methodologies, and Ongoing Debates' (2014) 38 CJECON 459, 460.

28 ibid.

29 ibid 462.

overall impact of the concept of decent work on both research and public policy is extremely limited, and that measuring decent work across countries is not possible.[30]

The above review shows that decent work as a research subject is relatively broad and divergent. It can be seen as an agenda for the ILO, an expression conveying various aspects of work, a fundamental dimension of the quality of life, the basic security for all people, a term encompassing a broad set of norms, a promoter of social justice and labour standards, a balance between economic development and social rights, a response to the challenges of globalisation, and a unifying framework to the quality of work. At first glance, academic work seems to have paid substantial attention to this concept. However, closer inspection of these expressions indicate that decent work tends to be viewed as a term that has not been filled with any substantive content. It tends to be a 'decent' concept that can be universally used and promoted in the world of work, but meanwhile, it lacks a clear-cut definition and can be filled with all labour-related issues. Its major contribution is to elucidate a multifaceted subject in a synthetic form. It may not be necessary to provide a clear-cut definition, especially in the case of the ILO, in which decent work functions as an umbrella term to capture the essence of the ILO's mission and its four areas of work. However, for research purposes and from a pragmatic point of view, as a multi-faceted subject, a working definition of decent work is needed, depending on the context in which the research is conducted.

3.2.2 Decent work as a development goal

Since its inception in 1999, decent work has become the primary goal of the ILO and embraces four strategic objectives: employment, social protection, social dialogue, and rights at work.[31] In 2007, decent work was included in the renewed Millennium Development Goals (MDGs) of the UN, which listed 'full and productive employment and decent work for all, including women and young people' as a target under Goal No. 1 (i.e., eradicate extreme poverty and hunger).[32] In 2015, it was explicitly incorporated into

30 ibid 469–74.

31 ILO, *Decent work* (Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999); ILO Declaration on Social Justice for a Fair Globalisation 2008.

32 The MDGs were eight international development goals for the year 2015, which had been established following the Millennium Summit of the UN in 2000, following the adoption of the United Nations Millennium Declaration. The eight MDGs are: Goal 1: Eradicate extreme poverty and hunger; Goal 2: Achieve universal primary education; Goal 3: Promote gender equality and empower women; Goal 4: Reduce child mortality; Goal 5: Improve maternal health; Goal 6: Combat HIV/AIDS, malaria and other diseases; Goal 7: Ensure environmental sustainability; and Goal 8: Develop a global partnership for development. See UN, 'Millennium Development Goals and Beyond 2015' <http://www.un.org/millenniumgoals/bkgd.shtml> accessed 31 December 2021.

the UN's Sustainable Development Goals (SDGs), in which Goal No. 8 aims to 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'.[33]

However, what is a development goal? As argued by Sen, development can be seen as 'a process of removing unfreedoms and of extending the substantive freedoms of different types that people have reason to value'.[34] While 'unfreedoms' leave people with little choice and opportunity of exercising their reasoned agency, 'freedoms' empower people with the capabilities to achieve goals that they value.[35] Built upon Sen's study, Rodgers identifies a threefold relationship between freedoms and development: first, freedoms as goals in their own right (constitutive); second, freedoms contribute to the achievement of other valued goals (instrumental); and third, freedoms are in the definition and building of consensus around social needs, values, and priorities (constructive).[36] He then argues that such a threefold relationship is an important aspect of the rationale for decent work as a development goal.[37] In his view, the four dimensions (i.e., work and employment, rights at work, social security, and representation and dialogue) are different types of freedoms, and decent work brings them together and sets them within a coherent framework.[38] Each of the four dimensions is a goal in its own right and has its own characteristics, but they are closely interconnected, and taken together they are more than the

33 The SDGs are a collection of 17 interlinked global goals designed to be a 'blueprint to achieve a better and more sustainable future for all'. They were set up in 2015 by the UN General Assembly and are intended to be achieved by 2030. The 17 goals are: Goal 1: End poverty in all its forms everywhere; Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture; Goal 3: Ensure healthy lives and promote well-being for all at all ages; Goal 4: Ensure inclusive and quality education for all and promote lifelong learning; Goal 5: Achieve gender equality and empower all women and girls; Goal 6: Ensure access to water and sanitation for all; Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all; Goal 8: Promote inclusive and sustainable economic growth, employment and decent work for all; Goal 9: Build resilient infrastructure, promote sustainable industrialization and foster innovation; Goal 10: Reduce inequality within and among countries; Goal 11: Make cities inclusive, safe, resilient and sustainable; Goal 12: Ensure sustainable consumption and production patterns; Goal 13: Take urgent action to combat climate change and its impacts; Goal 14: Conserve and sustainably use the oceans, seas and marine resources; Goal 15: Sustainably manage forests, combat desertification, halt and reverse land degradation, halt biodiversity loss; Goal 16: Promote just, peaceful and inclusive societies; and Goal 17: Revitalize the global partnership for sustainable development. See UN, 'The Sustainable Development Agenda' <http://www.un.org/sustainabledevelopment/development-agenda/> accessed 31 December 2021.

34 Amartya Sen, *Development as Freedom* (Oxford University Press 1999) 86.

35 ibid preface.

36 Gerry Rodgers, 'Decent Work as a Development Objective' in Jill Rubery and others (eds), *Systems of Production: Markets, Organisations and Performance* (Routledge 2003) 267–68.

37 ibid 268.

38 ibid.

sum of the parts.[39] They contribute jointly to societal goals, such as poverty eradication, social integration, and personal fulfilment, which are explicitly included in the UN's MDGs and SDGs.[40]

Can decent work as a development goal be applied in various levels and processes of development? While the ILO materials have already provided an answer in Chapter 2, the doctrinal literature provides the same answer. For instance, Ghai argues that decent work retains its universal validity, though the content and mechanisms for its attainment must be adapted to national circumstances.[41] Hepple emphasises that the goal of decent work proclaims the basic equality of all those who work or seek work, and it helps to move away from paid employment in formal sectors towards international regulation of productive work on the basis of a minimum set of social-economic rights.[42] Perhaps the person who has contributed most to research decent work as a development goal is Rodgers, who has worked for the ILO for many years, and written many books and articles. Rodgers points out that decent work as a development goal is equally valid in different development situations.[43] To illustrate, he first examines the concept of decent work through its two component words, namely, 'decent' and 'work'. In his view, the word 'decent' is a positive expression reflecting the idea of a realistic ambition that meets social norms of income, conditions of work and security, and right and dignity, while the word 'work' is wider than labour, employment, or a job, and covers a wide range of activities both in formal and informal economies,[44] which explains why decent work can apply to all working people, regardless of their employment status.

When applying decent work in different development situations, Rodgers provides two valuable insights: the first is that decent work has a floor, but no ceiling; the second is that above the floor, decent work represents a moving goal that evolves as the possibilities of societies evolve.[45] Specifically, in terms of 'the floor', he argues that the core labour standards as recognised in the 1998 Declaration can be considered a social floor of decent

39 ibid 268–69.
40 ibid 269–70.
41 Dharam Ghai, 'Decent Work: Universality and Diversity' (2005) International Institute for Labour Studies Discussion Paper 159/2005, 3.
42 Bob Hepple, *Labour Laws and Global Trade* (Hart Publishing 2005) 65–66.
43 Rodgers (n 36) 271.
44 ibid, 265–66; Gerry Rodgers and others, *The International Labour Organization and the Quest for Social Justice, 1919-2009* (International Labour Office 2009) 224.
45 ibid 271–72; the expression regarding the 'floor' can also be found in the 2001 Director-General Report of the ILO. See ILO, *Reducing the Decent Work Deficit: A Global Challenge* (Report of the Director-General, International Labour Conference, 89th Session, Geneva, 2001) 11, 19.

work since they are enabling rights and principles at work.[46] In addition, Rodgers calls for a wider range of rights and standards on the social floor, but indicates that there is no general international agreement in this regard because such ideas do not yet have the strong global backing that exists for the core labour standards.[47] Regarding 'above the floor', Rodgers argues that decent work provides a framework for continuous progress on the basis of common principles, which depends on the values, priorities, and possibilities of each society.[48] He emphasises that many of the elements of decent work are development goals that can be raised with economic and social possibilities, and the ILO's standards system provides the support to help to promote such goals and offer the benchmarks which guide the progress, and against which progress can be measured.[49] The above review shows that the concept of decent work as a research subject can be interpreted as a development goal. While the concrete contents of the development goal of decent work may vary according to country, the overall framework and its underlying rationale remain similar. In Rodgers's vision, decent work as a development goal with four strategic objectives has a floor, but no ceiling, and it can apply to all countries in the world and in different development situations or stages of each country. In addition, Rodgers points out that, apart from the core labour standards that can be confirmed as a social floor, no other general international agreement on this floor of decent work can be reached. This thesis, however, holds that such a general international agreement does exist, for example international labour standards as defined by the ILO. After all, the ILO's international labour standards are widely recognised as the minimum standards adopted by governments and social partners in the world of work, and represent the 'international consensus on how a particular labour problem could be addressed at the global level' and reflecting the 'knowledge and experience from around the world'.[50]

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46 ibid 271; The notion of 'core labour standards' has also been widely recognised and discussed by many scholars, such as Alstan, Langille, Maupain, and Hepple. See: Philip Alston, '"Core Labour Standards" and the Transformation of the International Labour Rights Regime' (2004) 15 European Journal of International Law 457; Philip Alston, 'Facing up to the Complexities of the ILO's Core Labour Standards Agenda' (2005) 16 EurJIntlL 467; Brian A Langille, 'Core Labour Rights - The True Story (Reply to Alston)' (2005) 16 EurJIntlL 409; Francis Maupain, 'Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights' (2005) 16 EurJIntlL 439; Bob Hepple, *Labour Laws and Global Trade* (Hart Publishing 2005).

47 Rodgers (n 36) 272.

48 ibid.

49 ibid.

50 ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (International Labour Office 2019) 14, 17.

3.2.3 Measurement of decent work

Many efforts have also been made regarding the measurement of decent work. In particular, in issue 2 of volume 142 of the *International Labour Review,* as mentioned in section 3.2.1. In addition to providing some conceptual clarifications on decent work, its contributing authors present different methodologies for operationalising decent work. These efforts are very diverse, four of which are particularly concerned with the indicators for measuring countries' performance in achieving decent work.[51] Moreover, to reach a more universal agreement on the measurement of decent work, the ILO carried out an international Tripartite Meeting of Experts on the Measurement of Decent Work in 2008, and adopted a framework of Decent Work Indicators (DWIs).[52] In 2013, the DWIs were updated to a second version.[53] Table 3.1 displays these four studies as covered in issue 2 of volume 142 of *International Labour Review* and contrasts them to the ILO's own indicators.

Table 3.1 Overview of measurements of decent work: some selected studies and the ILO's indicators

Studies	Categories/Indicators	Countries	Data collection
Ghai, 2003	Four categories with eight indicators	Transnational (twenty-two OECD countries)	The existing data compiled by the ILO, UNDP, WB, IMF
Anker et al., 2003	Eleven categories with thirty indicators	To apply to a wide range of countries	To produce data for a reasonable level of international comparison
Bescond et al., 2003	Seven indicators	Transnational (forty countries)	The existing data compiled by national labour force surveys
Bonnet et al., 2003	Seven categories at three levels	Transnational (eighty-four countries)	To produce data for individual countries and international comparison
ILO, 2008, 2013	Eleven categories with fifty-six statistical and twenty-one legal indicators	National (eighteen countries)	To produce data for individual countries and international comparisons

51 These four studies are: Dharam Ghai, 'Decent Work: Concept and Indicators' (2003) 142 ILR 113; Richard Anker and others, 'Measuring Decent Work with Statistical Indicators' (2003) 142 ILR147; David Bescond, Anne Châtaignier and Farhad Mehran, 'Seven Indicators to Measure Decent Work: An International Comparison' (2003) 142 ILR 179; Florence Bonnet, José B. Figueiredo and Guy Standing, 'A Family of Decent Work Indexes' (2003) 142 ILR 213.

52 ILO, *Measuring Decent Work: Tripartite Meeting of Experts on Measurement of Decent Work* (International Labour Office 2008).

53 See Chapter 2; see also: ILO, *Decent Work Indicators: Guidelines for Producers and Users of Statistical and Legal Framework Indicators (second version)* (International Labour Office 2013).

Ghai proposes a wide range of indicators for each of the four components of decent work.[54] However, considering the availability of internationally comparative data, he presents an index of eight indicators to measure the performance on decent work by twenty-two Organisation for Economic Co-operation and Development (OECD) countries in the 1990s, namely: female labour force participation; the ratio of female/male unemployment rate; female proportion of professional, technical, managerial, and administrative workers; labour force participation; unemployment rate; Gini coefficient; public social expenditure as a proportion of Gross Domestic Product (GDP); and union members as a proportion of all employees.[55] The sources of data used are very diverse, and derive from data collected by the ILO, United Nations Development Programme (UNDP), World Bank (WB), and International Monetary Fund (IMF).[56] The ranking results are presented with regard to gender discrimination (best-ranking performer: Norway; lowest-ranking performer: Luxembourg), employment (best-ranking performer: Sweden; lowest-ranking performer: Ireland), social protection (best-ranking performer: Sweden; lowest-ranking performer: Japan), and social dialogue (best-ranking performer: Sweden; lowest-ranking performer: France).[57]

Anker et al. identify eleven categories for the measurement of decent work, namely: employment opportunities; unacceptable work; adequate earnings and productive work; decent hours; stability and security of work; balancing work and family life; fair treatment in work; safe work environment; social protection; social dialogue and workplace relations; and the economic and social context of decent work.[58] Each category is further elaborated by a set of indicators; in total, thirty indicators are identified.[59] However, as Anker et al. noted, these suggested indicators are not designated to capture all aspects of decent work in full detail and meet the needs of specific technical programmes, countries, or regions, but rather to propose a minimal set of indicators that are globally relevant.[60]

Bescond et al. select seven of the thirty indicators identified by Anker et al. in a pragmatic manner in order to measure certain key dimensions of decent work.[61] The seven indicators are slightly redefined and set within a more concise framework to respond to the decent work deficits as recognised in the 2001 Director-General Report, consisting of: low hourly pay; excessive hours of work for economic or involuntary reasons; national unemployment; children not at school (as a proxy for child labour); youth unemployment;

54 Ghai, 'Decent work: Concept and indicators' (n 4) 135.
55 ibid 135–44.
56 ibid.
57 ibid.
58 ibid 153–54.
59 Richard Anker and others, 'Measuring Decent Work with Statistical Indicators' (n 7) 147.
60 ibid 169.
61 David Bescond, Anne Châtaignier, and Farhad Mehran, 'Seven Indicators to Measure Decent Work: An International Comparison' (2003) 142 ILR179, 180.

the male-female gap in labour force participation; and old age without pension.[62] They apply the seven indicators to forty countries, and the sources of data used come from national labour force surveys. The ranking results show that Denmark, France, Iceland, Sweden, and Switzerland are the top five countries in terms of decent work performance, while Bangladesh, Turkey, Sri Lanka, Jordan, and Costa Rica are at the bottom.[63] In addition, the results show that Russia is better than Finland, Germany, and the United States, while Spain and Italy are worse than Tanzania and Nepal.[64]

Bonnet et al. suggest seven forms of labour-related security for measuring decent work, namely: labour market security, employment security, job security, work security, skill reproduction security, income security, and representation security.[65] They then present a family of decent work indexes by applying these seven forms of security at three levels, namely: the macro (aggregate) level; the meso (workplace) level; and the micro (individual worker) level. At the macro level, they define the objective of decent work as 'creating laws, regulations and institutions that enable a growing number of people in all societies to work without oppression, in reasonable security and with steadily improving opportunity for personal development, while having enough income to support themselves and their families'.[66] At the workplace level, they argue that decent work requires 'adequate security for workers while fostering the dynamic efficiency of their enterprises'.[67] At the individual worker's level, they argue that decent work implies that individual workers have 'the opportunity to work with adequate levels of all forms of work-related security'.[68] They present an illustrative index constructed at the national level for eighty-four countries. The results show that the best performers are mainly in European countries, while the worst performers are mainly in African countries. In addition, they find that this index is positively correlated with the UNDP's Human Development Index (HRI) and with GDP per capita, and negatively correlated with measures of inequality, such as the Gini coefficient for income distribution.[69]

The ILO's indicators for measuring decent work were conducted against the background of the adoption of the 2008 Declaration, which recommended establishing appropriate indicators or statistics to monitor the progress made to implement the ILO's Decent Work Agenda.[70] Also part

62 ibid 181.
63 ibid 205–08.
64 ibid.
65 Florence Bonnet, José B. Figueiredo and Guy Standing, 'A Family of Decent Work Indexes' (n 10).
66 ibid 214.
67 ibid.
68 ibid.
69 ibid
70 ILO, *Measuring Decent Work: Tripartite Meeting of Experts on Measurement of Decent Work* (International Labour Office 2008); ILO, *Decent Work Indicators: Guidelines for Producers and Users of Statistical and Legal Framework Indicators (second version)* (n 53).

of the background is a heated debate on the measurement of decent work in the world of work.[71] As summarised by Burchell et al., some experts are convinced of the need for a comparative indicator that would help to operationalise decent work, while others argue that the concept of decent work is too complex for a simplistic approach through indicators.[72] Against these backgrounds, in September 2008, the ILO carried out an international meeting, and adopted a framework of DWIs. This framework was updated in 2013 with several enhancements and additions to the previous version.[73] As found in Chapter 2, the framework of DWIs provides eleven elements that are elaborated by fifty-six statistical and twenty-one legal indicators, which provide countries with a common set of indicators to approach decent work from an integrated perspective. The progress made in the measurement of decent work is recorded in the Decent Work Country Profiles (DWCProfiles). As noted by an ILO report, the DWCProfiles are useful for four reasons: first, they help to produce more accurate statistics to monitor decent work on a regular basis; second, they are an important tool for social dialogue and for discussion with the government; third, they can aid national policymaking and development planning; and fourth, they help in the development of the Decent Work Country Programmes (DWCPs).[74]

The above review provides several studies on the measurement of decent work, which adopt two distinct approaches: the first is to use existing data to assess and rank the decent work performance by country; the second is to produce the relevant data to assess and rank the decent work performance by country (see table 3.1). Although other studies address the measurement of decent work, to the best of our knowledge, these two approaches represent genuinely valid options for measurement. Nevertheless, they have two fundamental limitations. First, the measurement of decent work is severely constrained by the availability of internationally comparative data. Although both Ghai and Bescond et al. present the ranking results for the decent work performance by country, they are fully aware of the limitations of the accuracy and comparability of the used data, and explicitly emphasise that such international comparisons are given for illustrative purposes only. As pointed out by Bescond et al., 'for most indicators the availability of data is limited, and where data is available, the underlying concepts and definitions and the scope and coverage of measurement are often widely different'.[75] They highlight that the measurement would

71 Brendan Burchell and others, 'The Quality of Employment and Decent Work: Definitions, Methodologies, and Ongoing Debates' (2014) 38 CJEcon 459, 469.

72 ibid.

73 ILO, *Decent Work Indicators: Guidelines for Producers and Users of Statistical and Legal Framework Indicators (second version)* (n 53) preface.

74 ILO, *Stock-taking of the ILO's Programme on Measuring Decent Work: Decent Work Indicators and Decent Dork Country Profiles* (International Labour Office 2013) 7.

75 Bescond, Châtaignier, and Mehran (n 61) 208.

make little sense if the result ends up showing that Italy and Spain have worse decent work performance than Tanzania or Nepal, which in fact is the ranking result of their own research.[76] Second, both approaches failed to set benchmarks for the evaluation and achievement of decent work, generating fundamental confusion: according to what situations can countries be classified as having achieved decent work?

Compared to these studies, the framework of the DWIs as developed by the ILO represents a more universal agreement on the measurement of decent work. The framework of the DWIs would lead to the DWCProfile. However, as noted in an ILO report on the evaluation of the DWCProfiles, how a DWCProfile should be defined and for whom (the ILO or the country) is it useful remain unknown.[77] The ILO report also notes that many countries lack the capacity to develop a DWCProfile on their own, and to a large extent, existing DWCProfiles are not comparable in practice due to data differences.[78] Additionally, the framework of the DWIs failed to set the benchmarks for the evaluation and achievement of decent work.

3.2.4 Meaning of decent work as a research subject

The above review evinces three major implications for a better understanding of decent work as a research subject. First, decent work can be interpreted as a multi-faceted subject that covers all labour-related issues. Decent work functions as the ILO's personality and an umbrella term to capture the essence of ILO's mission and its four areas of work (i.e., rights at work, employment, social protection, and social dialogue). For research purposes and from a pragmatic point of view, a working definition of decent work is needed, and should be tailored to the context in which the research is conducted.

Second, decent work can be interpreted as a development goal with a floor but no ceiling. Rather than the core labour standards only, this thesis considers all the international labour standards defined by the ILO as the floor for the development goal of decent work. The ILO's international labour standards are widely recognised as the minimum standards in the

76 In the study conducted by Bescond, Châtaignier and Mehran, the full ranking results of the 40 countries are presented as followed (from the best to the worst): Sweden, Denmark, Iceland, Switzerland, France, Russian Federation, Finland, United Kingdom, Belgium, Germany, United States, Republic of Korea, Canada, Macau, Mainland China, Portugal, Japan, Tanzania, Lithuania, Australia, Estonia, Thailand, Romania, Slovakia, Nepal, Ireland, Jamaica, Indonesia, Italy, Poland, Greece, Yemen, Hong Kong China, Mauritius, Mexico, Spain, Costa Rica, Jordan, Sri Lanka, Turkey, Bangladesh. According to the results, Tanzania or Nepal have better decent work performance than Italy and Spain.

77 ILO, *Stock-taking of the ILO's Programme on Measuring Decent Work: Decent Work Indicators and Decent Dork Country Profiles* (International Labour Office 2013) 12.

78 ibid 4.

world of work, and represent the international consensus on how a particular labour issue could be addressed at the global level. The floor provides an 'entrance ticket' to enter the 'realm' of decent work, meaning that decent work leads nowhere without respecting ILO standards. More favourable standards than the floor are encouraged in order to ensure that 'work' is 'decent'. In addition, as a development goal, decent work embraces a developing process, which means that the development towards decent work is a dynamic and evolving process, and a historical review will be appropriate and necessary for analysing achieving decent work.

Third, the research on decent work sooner or later has to confront the question of how decent work can be measured and achieved. Although the literature has already provided several schemes for measuring decent work across countries, none of them stands out as technically superior due to the absence of valid data. It may simply not be possible to reach a universal agreement or perfect scheme on the measurement of decent work due to the various differences among countries. Although the ILO has attempted to develop a framework of DWIs, it explicitly mentions that each country can apply a flexible methodology on this framework according to its needs and to what it considers relevant to itself. Moreover, it remains unclear under what circumstances a country can be identified as having achieved decent work. To our best knowledge, the relevant benchmarks set for the achievement of decent work remain lacking in the world of work. In light of these limitations, in terms of the measurement of decent work, attention may be best directed at individual countries or even individual groups or sectors of workers in a given country, as well as at the development of the benchmarks of decent work.

Each of the three implications has its own values for understanding decent work, but they contribute jointly to a better understanding of the meaning of decent work as a research subject for this thesis. Drawing upon these three implications, decent work in this thesis is defined as a development goal with four dimensions (i.e., rights at work, employment, social protection, and social dialogue) that can be achieved by meeting international labour standards set by the ILO. In light of the broad and multifaceted nature of decent work, it is not practical to provide a comprehensive analysis in one single thesis. After all, decent work is all-encompassing. A large number of international labour standards are contained in the ILO's legal instruments, particularly in the 190 Conventions and 206 recommendations. Hence, this thesis narrows down decent work into one specific subject, namely, decent working time. In other words, it uses decent working time as a case study for decent work. It should be noted that such a 'narrow-down' does not imply a separation, but rather a focus on a manageable subject within the overall framework of decent work. The next section will explain the reason for choosing decent working time as a case study for decent work and the meaning of decent working time as a research subject.

3.3 Concept of decent working time

After having narrowed down decent work to one specific subject, decent working time, this section moves to examine the meaning of decent working time as a research subject within the context of decent work. Section 3.3.1 explains the choice of decent working time as a case study for decent work through a historical overview of the development of working time within the ILO in the same time periods as conducted for decent work in Chapter 2. Section 3.3.2 examines the concept of decent working time, in particular, through its five dimensions that are commonly recognised both in the ILO and doctrinal literature, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. Section 3.3.3 describes some of the implications of the meaning of decent working time as a research subject.

3.3.1 Working time as an essential element of decent work

As discussed in Chapter 2, this thesis looks at five broad periods for the historical origins and development of decent work: (a) early attempts before 1919; (b) advancing social justice (1919-1944); (c) highlighting human rights (1944-1980s); (d) raising social concerns (1980s-1999); and (e) promoting decent work (1999-2019). Working time as an essential element has run from the very beginning to the end in this historical process.

Before 1919, the limitation of hours of work was a central demand of the labour movement. The most striking example was the Chicago strike for an eight-hour working day in 1886. Later, in 1889, the Second International declared 1 May 'International Workers' Day'. Working time was also a subject of international labour legislation; in 1906, a Convention on night work was adopted by the International Association for Labour Legislation (IALL) prohibiting night work for women in the industry.

From 1919 to 1944, the regulation of working time was explicitly mentioned in the 1919 Constitution, which pursued the ILO's quest for social justice and lasting peace. The 1919 Constitution stipulated that 'the regulation of hours of work, including the establishment of a maximum working day and week' is urgently required.[79] It also called for the adoption of an eight-hour day, a forty-eight-hour workweek, and weekly rest of at least twenty-four hours.[80] Conscious of this urgency, the very first ILO Convention, the Hours of Work (Industry) Convention, 1919 (No.1), was adopted at the first session of the International Labour Conference (ILC) in 1919. As found in Chapter 2 and mentioned by Maul, this Convention had robust symbolic value for ILO's position in the regulation of labour, and marked the start of

79 The original ILO Constitution 1919, preamble.
80 ibid art 41.

a general debate on working time that endured for the following hundred years.[81] In addition to this Convention, the ILO had subsequently adopted thirteen Conventions and ten Recommendations on working time in this period, dealing with: (a) hours of work for commerce and offices, coal mines, sheet-glass road transport, hotels, theatres, and hospitals; (b) reduction of hours of work in general and specific for glass-bottle works, public works, and textiles; (c) night work for women, bakeries, and road transport; (d) weekly rest for industry and commerce and rest periods for private chauffeurs; (e) utilisation of spare time; and (f) holidays with pay in general.[82]

From 1944 to the 1980s, the regulation of working time was, again, explicitly mentioned in the 1944 Declaration of Philadelphia, which was incorporated into the ILO Constitution in 1946, and served to pursue the ILO's reaffirmed mandate for social justice and the overarching social and human objective for all. It appeared in Section III of the 1944 Declaration that listed what the ILO considered as its the future areas of activity, which read 'policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection'.[83] Against this backdrop, the ILO's standard-setting activities gained a new human rights foundation, which was especially reflected in the eight Conventions later to be identified as 'fundamental'.[84] In addition, the ILO had

81 Daniel Maul, *The International Labour Organization: 100 Years of Global Social Policy* (Walter de Gruyter GmbH 2019), 55.

82 The ten Conventions are: Night Work (Women) Convention, 1919 (No. 4); Weekly Rest (Industry) Convention, 1921 (No. 14); Night Work (Bakeries) Convention, 1925 (No. 20); Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Hours of Work (Coal Mines) Convention, 1931 (No. 31); Night Work (Women) Convention (Revised), 1934 (No. 41); Sheet-Glass Works Convention, 1934 (No. 43); Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46); Forty-Hour Week Convention, 1935 (No. 47); Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49); Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51); Holidays with Pay Convention, 1936 (No. 52); Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61); and Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67). The ten Recommendations are: Night Work of Women (Agriculture) Recommendation, 1921 (No. 13); Weekly Rest (Commerce) Recommendation, 1921 (No. 18); Utilisation of Spare Time Recommendation, 1924 (No. 21); Hours of Work (Hotels, etc.) Recommendation, 1930 (No. 37); Hours of Work (Theatres, etc.) Recommendation, 1930 (No. 38); Hours of Work (Hospitals, etc.) Recommendation, 1930 (No. 39); Holidays with Pay Recommendation, 1936 (No. 47); Control Books (Road Transport) Recommendation, 1939 (No. 63); Night Work (Road Transport) Recommendation, 1939 (No. 64); Methods of Regulating Hours (Road Transport) Recommendation, 1939 (No. 65); and Rest Periods (Private Chauffeurs) Recommendation, 1939 (No. 66).

83 ILO Declaration of Philadelphia 1944, s III (d).

84 The eight fundamental Conventions are: Forced Labour Convention, 1930 (No. 29); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182).

adopted five Conventions and five Recommendations on working time in this period, dealing with: (a) night work for women, (b) holidays with pay in general and specific for agriculture, (c) weekly rest for commerce and offices, (d) hour of work and rest periods for road transport, and (e) reduction of hours of work in general.[85]

From the 1980s to 1998, international labour standards, including those on working time, received a renewed attention in regulating global competition in the context of globalisation. A major response of the ILO to this challenge was the adoption of a Declaration on Fundamental Principles and Rights at Work in 1998, dealing with four subjects considered fundamental principles and rights at work in seven Conventions, namely: freedom of association and the effective recognition of the right to collective bargaining (C.87 & C.98); the elimination of all forms of forced or compulsory labour (C.29 & C.105); the effective abolition of child labour (C.138); and the elimination of discrimination in respect of employment and occupation (C.100 & C.111). A year later, an eighth Convention on child labour (C.182) was adopted and added to this list. Although this list did not directly cover the subject of working time, the fundamental rights are considered enabling rights that would promote other international labour standards, including those on working time. For instance, freedom of association and collective bargaining are widely seen as having an essential role to play in the making and enforcement of working time standards.[86] Hence, there is a solid connection between working time Conventions and Recommendations and those fundamental Conventions. Moreover, although the emphasis of the ILO's work was placed on the fundamental rights and principles at work, setting working time standards did not stop in this period. Another two Conventions and Recommendations on working time were adopted, respectively, dealing with night work and part-time work.[87] In addition, a protocol was adopted in 1990, which was linked to the Night Work (Women) Convention (Revised), 1948 (No. 89).[88] These five legal instruments were most recently adopted by the ILC in the field of working time.

85 The five Conventions are: Night Work (Women) Convention (Revised), 1948 (No. 89); Holidays with Pay (Agriculture) Convention, 1952 (No. 101); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); Holidays with Pay Convention (Revised), 1970 (No. 132); and Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153). The five Recommendations are: Holidays with Pay (Agriculture) Recommendation, 1952 (No. 93); Holidays with Pay Recommendation, 1954 (No. 98); Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103); Reduction of Hours of Work Recommendation, 1962 (No. 116); and Hours of Work and Rest Periods (Road Transport) Recommendation, 1979 (No. 161).

86 ILO, *Ensuring Decent Working Time for the Future* (General Survey, International Labour Conference, 107th Session, Geneva, 2018) 275–88.

87 The two Conventions are: Night Work Convention, 1990 (No. 171) and Part-Time Work Convention, 1994 (No. 175). The two Recommendations are: Night Work Recommendation, 1990 (No. 178) and Part-Time Work Recommendation, 1994 (No. 182).

88 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89).

From 1999 to 2019, the concept of decent work was officially introduced in the 1999 Director-General Report of the ILO, embracing four strategic objectives: rights at work, employment, social protection, and social dialogue. Later, it was codified in the 2008 Declaration on Social Justice for a Fair Globalisation. The subject of working time was mentioned in this Declaration under the objective of social protection, through the reaffirmation of the statement contained in the 1944 Declaration: 'developing and enhancing measures of social protection' includes 'policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection'.[89] However, working time also has an obvious bearing on the other three objectives. First, working time can claim a solid position in the rights at work. After all, as stipulated in the 1944 Declaration, all human beings 'have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity', which shall cover working time-related rights.[90] More obviously, the Universal Declaration of Human Rights (UDHR) stipulated that 'everyone has the right to rest and leisure, including a reasonable limitation of working hours and periodic holidays with pay'.[91] Second, working time is closely related to employment. For instance, reduction of hours of work was promoted by the ILO as a means to fight unemployment.[92] The number of hours of work and how they are organised are important in determining productivity and whether an enterprise is profitable and sustainable.[93] Third, the relationship between social dialogue and working time is apparent. For instance, working time is often considered a subject for collective bargaining between representatives of workers and employers.[94] In addition, the 2008 Declaration identified four governance Conventions, dealing with labour inspection (C.81 & C.129), employment policy (C.122), and tripartism (C.144).[95] These Conventions are considered 'most significant from the viewpoint of governance', which would help to build national institutions and capacities that serve to promote decent work in the field of working time.[96] Moreover, working time was explicitly mentioned in the 2019 ILO Centenary Declaration for the Future of Work, which emphasised that 'safe and healthy working conditions are fundamental to decent work' and that all workers should enjoy adequate protection in accordance with the Decent Work Agenda, including the maximum limits on working time.[97]

89 ILO Declaration of Philadelphia 1944, s III (d).
90 ILO Declaration of Philadelphia 1944, s II (a).
91 Universal Declaration of Human Rights 1948, art 24.
92 Maul (n 81) 87.
93 ILO, *Ensuring Decent Working Time for the Future* (n 90) 2.
94 ibid 275.
95 ILO Declaration on Social Justice for a Fair Globalisation 2008, Annex II (A)(vi).
96 ibid.
97 ILO Centenary Declaration for the Future of Work 2019, s II (D), s III (B) (iii)

This Declaration also reaffirmed the value of social dialogue (e.g., collective bargaining and tripartism) to decision-making in the Member States, and of effective workplace cooperation to safe and productive workplaces, which would help build national institutions and capacities that serve to promote decent work in the field of working time.[98]

Over the course of time, we can see that working time had been, and will continue to be, at the heart the ILO's mandate and on its agenda. It has historically been central to improving the lives of workers. Since the very first ILO Convention in 1919, the ILC has adopted twenty-two Conventions, one Protocol, and eighteen Recommendations on working time (see figure 3.1). The subject of working time accounts for the second largest number of ILO Conventions and the fourth largest number of ILO Recommendations. As such, working time can claim a secure position in the historical origins and developments of decent work. It serves as an essential element of the overall development goal of decent work, and one of the most important steps in the quest for decent work is the enhancement of working time.

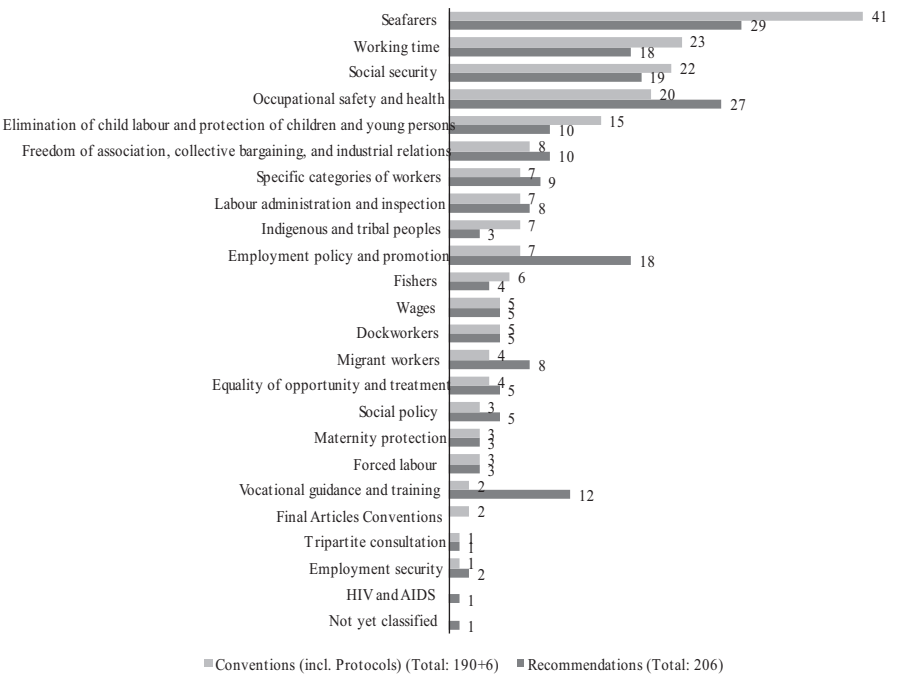

Figure 3.1 The number of ILO Conventions and Recommendations by subjects

98 ILO Centenary Declaration for the Future of Work 2019, s II (B)(C).

3.3.2 Decent working time and its five dimensions

While working time serves as an essential element of the historical origins and development of decent work, decent working time, as an independent concept, first appeared in the book *Working time and workers' preferences in industrialised countries: Finding the balance* of 2004, edited by Messenger, which concluded with the application of decent work in the field of working time, allowing for a concept of 'decent working time' to take shape. [99]

However, what exactly is meant by decent working time? Compared to the studies on decent work, those on decent working time are extremely limited.[100] I found three books specifically dealing with the subject of decent working time. In addition to Messenger's work are: *Decent working time: New trends, new issues* of 2006, edited by Boulin, Lallement, Messenger, and Michon; and *Working time around the world: Trends in working hours, laws and policies in a global comparative perspective* of 2007 by Lee, McCann, and Messenger.[101] Though these three books are academic, they were written in close collaboration with the ILO: all three books were published, or at least co-published (with Routledge Publishers), by the International Labour Office. The contributors are either ILO officials or scholars who have engaged with the ILO. In particular, Messenger, a Senior Research Officer of the ILO with the lead responsibility for its sub-programme on working time, participated in the work of all three books. In other words, the outcomes of these three books are important in their own right, but they can be also seen as part of the ILO's broader effort on working time, indicating that academic research on decent working time remains largely underdeveloped. As such, this thesis aims to redress the dearth of studies on decent working time as the case study for decent work.

Working time and workers' preferences in industrialised countries: Finding the balance was written against the background of the 2001 Director-General Report of the ILO, with the aim of exploring one kind of 'decent work deficit' regarding working time, specifically the gap between workers' actual and preferred working time.[102] It has six chapters, the first five of which discuss key factors that can lead to differences in working time needs and preferences in industrialised countries, such as family structure, gender, and

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99 Jon C. Messenger (ed), *Working Time and Workers' Preferences in Industrialized Countries: Finding the Balance* (International Labour Office and Routledge 2004) 195.

100 A simple Google Scholar search may give an illustration, although it is not a scientific research tool. Searching the term 'decent working time' in the title of articles and books yields only 18 results, of which half are citations. On the rare occasion that decent working time is discussed, it mostly appears in one book published by the International Labour Office in 2006, that is, Jean-Yves Boulin and others (eds), *Decent Working Time: New Trends, New Issues* (International Labour Office 2006).

101 Boulin and others (n 100); Sangheon Lee, Deirdre McCann and Jon C. Messenger, *Working Time around the World: Trends in Working Hours, Laws and Policies in a Global Comparative Perspective* (International Labour Office and Routledge 2007).

102 Messenger (n 99) 195.

coordination at the national or enterprise level. In its concluding chapter, Anxo et al. introduce the concept of decent working time by applying decent work in the field of working time, and then identify five of the most significant dimensions of decent working time, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time.[103]

The second book was the outcome of the Ninth International Symposium on Working Time (ISWT), held in Paris in 2004 and co-sponsored by the ILO.[104] The aim of this symposium was to explore new trends and issues in hours of work and working time arrangements across industrialised countries.[105] This book has sixteen chapters that deal with working time from different perspectives and cover a number of industrialised countries. In its concluding chapter, Messenger further developed and refined the five dimensions by synthesising the key findings from the previous chapters.[106] The five dimensions in themselves are completely consistent with the first book, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working.[107]

The third book was a follow-up of the first book with an extension of the concept of decent working time from industrialised countries to transition and developing countries.[108] It has seven chapters, of which the first six examine global working time issues, such as international trends towards reducing working hours, trends in actual working hours, and the specific experiences of different types of workers and different economic sectors. In its concluding chapter, Lee et al. provide some policy suggestions for governments and social partners within the framework of the five dimensions of decent working time developed in the first book.[109]

All three books maintain that decent working time can be expressed in five dimensions, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. They point towards decent work in the field of working time.[110] Specifically, the first dimension concerns workers' health and safety, representing a traditional but essential concern for working time that can date back to the very first ILO Conven-

103 ibid 195–209.

104 The ISWT is 'a premier network of the international researcher in the field of working time, representing an important source of knowledge regarding working time trends and developments, as well as an essential forum for the exchange of ideas'. See: ibid Boulin and others (n 100) foreword.

105 ibid.

106 ibid 419.

107 ibid 419–38.

108 Lee, McCann, and Messenger (n 101).

109 ibid 138–53.

110 Boulin and others (n 100) 436.

tion, the Hours of Work (Industry) Convention, 1919 (No.1).[111] This dimension addresses the health and safety implications of various working time issues, such as long hours and night work.[112] The principle underlying this dimension is that the regulation of working time should facilitate a healthy and safe environment for workers, and that unhealthy working time should not be used as a means of improving enterprises' profitability.[113]

The second dimension emphasises the balance between work and family, which means that working time should be not only associated with work itself, but also with activities outside work, such as caring for children and elder relatives, and some necessary household tasks and personal life.[114] The principle underlying this dimension is that the regulation of working time should reconcile work and family life.[115]

The third dimension emphasises equality between women and men, and is related to one of four core labour standards as recognised by the ILO, which is enshrined in the Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).[116] It embraces two layers of meaning: first, the other dimensions of decent working time should be advanced in conjunction with gender equality; second, the promotion of the other dimensions should not have detrimental effects on gender equality.[117] The principle underlying this dimension is that gender equality should be integrated into the other four dimensions.[118]

The fourth dimension serves as a potential benefit of the promotion of the other four dimensions.[119] This dimension maintains that the promotion of a healthy and family-friendly working time arrangement with gender equality, as well as greater choice and influence of workers on their own working time schedules, would improve the productivity of individual workers and the enterprise as a whole.[120] The principle underlying this dimension is that productive working time should build upon the promotion of the other four dimensions.[121]

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111 Messenger (n 99) 196–98; Boulin and others (n 100) 420–23; Lee, McCann, and Messenger (n 101), 143–46.
112 ibid.
113 ibid.
114 Messenger (n 99) 198-202; Boulin and others (n 100) 423–27; Lee, McCann, and Messenger (n 101) 146–47.
115 ibid.
116 Messenger (n 99) 202–05; Boulin and others (n 100) 427–29; Lee, McCann, and Messenger (n 101) 147–48.
117 ibid.
118 ibid.
119 Messenger (n 99) 205–07; Boulin and others (n 100) 430–32; Lee, McCann, and Messenger (n 101) 149–51.
120 ibid.
121 ibid.

The fifth dimension concerns the procedural aspects of decent working time, and intends to provide a vehicle for negotiations on the scope of concrete working time standards that are relevant to the other four dimensions.[122] This dimension is particularly related to one of the four core labour standards as recognised by the ILO, that is, freedom of association and collective bargaining, as enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The principle underlying this dimension is that institution-building is an essential part of achieving decent working time, through which workers should be empowered with adequate choice and influence in determining the length and organisation of their working hours.[123]

Clearly, the five dimensions are very ambitious and intend to address different working time issues, on the one hand; they are closely interconnected and contribute jointly to the overall development goal of decent work in the field of working time, specifically, decent working time, on the other hand. The relationship of the five dimensions is depicted in figure 3.2.

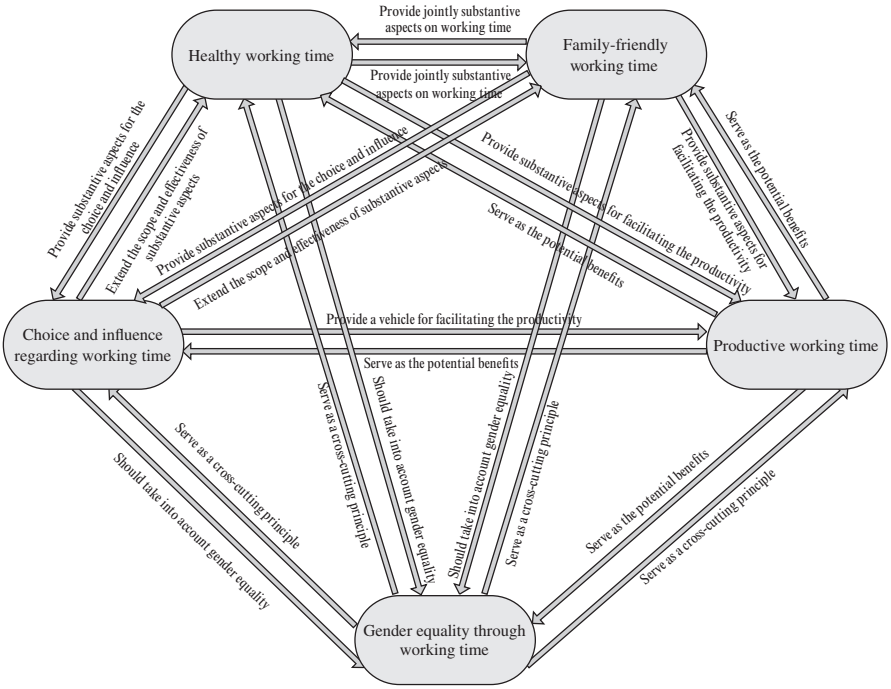

Figure 3.2 The relationship among each of the five dimensions of decent working time

122 Messenger (n 99) 208–09; Boulin and others (n 100) 433–36; Lee, McCann, and Messenger (n 101) 151–53.

123 ibid.

The first two dimensions are mainly concerned with the substantive aspects of decent working time, which need to be integrated into the principle of gender equality, help to promote productive working time, and provide concrete content for workers' greater choice and influence over working time. The third dimension serves as a cross-cutting principle that must be integrated into the other four dimensions, while the fourth serves as a potential benefit of the promotion of the other four dimensions. The last is mainly concerned with the procedural aspects of decent working time, which extend the scope of the concrete content of the other four dimensions.

Further, it is worth noting that the concept of decent working time with five dimensions was first introduced to developed countries, and later extended to developing countries, which means that decent working time, like decent work, is also a universal goal, no in developed and developing countries. This fact is not surprising, given that decent work is a universal goal in the world of work and decent working time is an essential element of decent work.

3.3.3 Meaning of decent working time as a research subject

The above review identifies two major implications for a better understanding of decent working time as a research subject. First, in general, decent working time refers to decent work in the field of working time. It serves as an essential element of decent work, and cannot be discussed in isolation from decent work. In this light, the implications of decent work as identified in section 3.2.3 also apply to the understanding of decent working time. Against this backdrop, first, decent working time can be interpreted as a multifaceted subject within the realm of working time. In other words, it covers all working time-related issues. For research purposes and from a pragmatic point of view, a working definition of decent working time is needed, depending on the context in which the research is conducted. Secondly, decent working time can be interpreted as a development goal that has a floor, but no ceiling. The floor can be referred to the ILO's international labour standards on working time, as they are widely recognised as the minimum standards and represent the international consensus on how a particular working time issue could be addressed at the global level. The floor provides an 'entrance ticket' to the 'realm' of decent working time, meaning that decent working time leads nowhere without respecting the ILO standards. The ceiling is built upon the floor, which means that more favourable standards than the floor are encouraged to ensure 'working time' is 'decent'. Third, the research on decent working time sooner or later must confront how decent working time can be measured and achieved. As a development goal, the spirit of decent working time lies with its achievement. The case study of decent working time will thus focus on how decent working time can be measured and achieved.

Second, decent working time, in its own right, has a specific meaning

relating to five dimensions, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. The five dimensions can capture the essences of the term 'decent' within this concept by identifying the value-based expressions, namely: healthy, family-friendly, gender equality, productive, and capability. They also aim for to advance decent work in the field of working time.

3.4 Conclusion: A working definition of decent working time from a legal perspective

After having examined the meanings of decent work and decent working time respectively as a research subject, this section intends to bring all implications on decent work and decent working time together and develop a working definition of decent working time for this thesis. Because this thesis is interested in the legal aspects of decent working time, the working definition is formulated from a legal perspective. In this light, decent working time is defined as a development goal with five dimensions that can be achieved through its substantive and procedural aspects. This definition holds two elements: first, the conceptualisation, specifically, what is meant by decent working time – a development goal with five dimensions; second, the operationalisation, specifically, how to analyse the achievement of decent working time – through its substantive and procedural aspects.

3.4.1 A development goal with five dimensions

Three points are particularly relevant to the development goal. First, decent working time is within the overall development goal of decent work and is thus used as a case study for researching decent work in this thesis. Second, decent working time embraces a developing process, implying that the progress towards decent working time is not static, but rather a dynamic and evolving process. It is thus necessary to analyse the progress towards achieving decent working time. Third, the spirit of decent working time lies with its achievement. It is thus necessary to develop a set of benchmarks against which decent working time can be measured and evaluated.

The five dimensions point in a direction that leads towards the development goal of decent working time, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. As found in section 3.3.2, the five dimensions are interrelated, and are presented as equally important, each with a specific role to fulfil in achieving decent working time (see figure 3.2). However, upon closer look at the five dimensions, and for research purposes, their relationship would probably be better presented in the construction of a house. As shown in figure 8.3,

the fifth dimension, choice and influence regarding working time, lays the foundation, allowing workers to influence the content of their factual working time arrangements. On the foundation, we find two pillars that hold the construction of the five dimensions of decent working time, specifically, healthy working time (first dimension) and family-friendly working time (second dimension). Together, the foundation and two pillars, carry the casco of the house, namely, the creation of gender equality through working time (third dimension). These four dimensions bring us to the roof of the house, that is productive working time (fourth dimension). These four dimensions improve the overall productivity of the workers.

To construct such a house, the building blocks are needed, which can be referred to as the substantive and procedural aspects of decent working time, leading to the operationalisation of the development goal of decent working time with the five dimensions, to be discussed in the next section, 3.4.2.

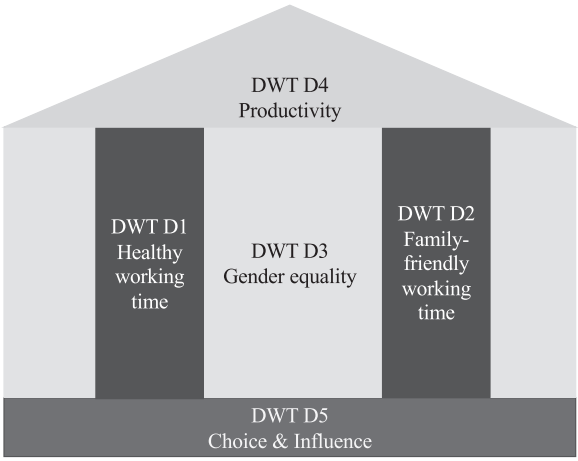

Figure 3.3 House of decent working time by the five dimensions

3.4.2 Substantive and procedural aspects

The operationalisation in this thesis can be understood as the construction of the decent working time house as drawn in figure 3.3, which relies on the building blocks: substantive and procedural aspects of decent working time.

The substantive aspects refer to the concrete working time standards contained in the legal instruments that directly determine the terms and conditions of labour, which are particularly related to the two pillars (i.e., healthy working time and family-friendly working time) and the casco (i.e., gender equality through working time) of the decent working time house. The limitations on daily and weekly hours of work, night work, part-time work, and maternity leave are examples of substantive aspects. Evaluating the substantive aspects of decent working time requires benchmarks.

These can be drawn from international labour standards on working time as defined by the ILO, as they are widely recognised as the minimum standards and represent the international consensus on how a particular working time issue could be addressed at the global level (see sections 3.2.4 & 3.3.3). The concrete benchmarks will be further developed in Chapter 4.

The procedural aspects refer to the processes by which the desired working time standards are formulated and enforced, which are particularly related to the foundation (i.e., choice and influence regarding working time) of the decent working time house. They do not directly govern working time conditions, but instead provide legal support for institutions and mechanisms of the formulation and enforcement of working time standards. National legislation, collective agreements, labour inspection, and courts are examples of procedural aspects in this sense. Evaluating the procedural aspects of decent working time requires an analytical framework that provides the ideal institutional settings of formulation and enforcement of working time standards. This issue will be further discussed in Chapter 6.

Altogether, the thread running through the working definition of decent working time is outlined in figure 3.4. As a development goal, decent working time can be conceptualised through the five dimensions. The core idea underlying the five dimensions is to analyse the concrete working time standards as substantive and procedural aspects. While the substantive aspect concerns the concrete working time standards contained in the positive law, the procedural aspect emphasises the processes according to which these standards are shaped and enforced. To analyse the substantive and procedural aspects of decent working time, the benchmarks and an analytical framework are required, respectively (Chapters 4 & 6). Since the focus of this thesis is on China, the benchmarks and analytical framework will be applied to China (Chapters 5 & 7). The results from the analysis and evaluation of the substantive and procedural aspects of decent working time in China will enable us to address the research question as presented in Chapter 1, namely, to what extent is China achieving decent working time? (Chapter 8) Based on the case study of decent working time, the main research question of this thesis is addressed in Chapter 9.

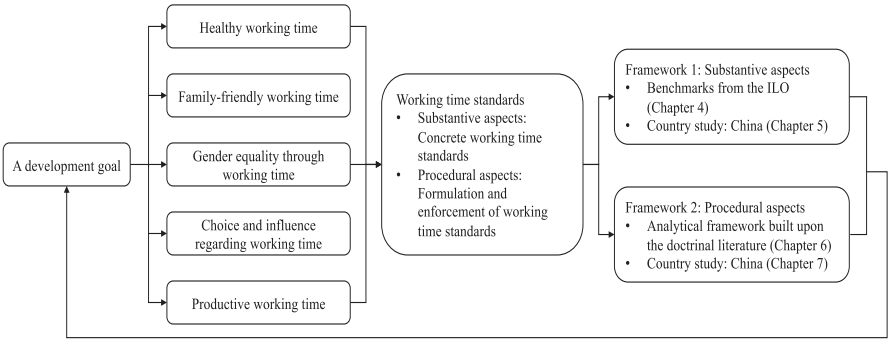

Figure 3.4 Framework for the overall analysis of the achievement of decent working time

4 Substantive aspects of decent working time: The benchmarks from the ILO

4.1 Introduction

As discussed in Chapter 3, decent working time is defined as a development goal with five dimensions that can be achieved through its substantive and procedural aspects. While the substantive aspects refer to the concrete working time standards contained in the legal instruments that directly determine the terms and conditions of labour, the procedural aspects emphasise the processes by which the desired working time standards are formulated and enforced. This chapter begins by examining the substantive aspects of decent working time. Its central purpose is to develop a comprehensive set of benchmarks for evaluating the concrete working time standards contained in the legal instruments in the individual countries, which in this thesis concerns China, as discussed in the next chapter.

The remainder of this chapter is structured as follows. Section 4.2 lays down the rationale underlying the benchmarks for evaluating the substantive aspects of decent working time. Section 4.3 identifies the legal sources for the construction of the benchmarks. Section 4.3.1 gives an overview of various types of legal instruments developed by the ILO to deal with labour standards and their implications for working time, consisting of the Constitution, Declarations, Conventions, Protocols, Recommendations, Resolutions and Conclusions, and Codes of Practice and Technical Guidelines. References are also made to the interpretation of ILO legal instruments, particularly the Constitution, Conventions, Protocols, and Recommendations. Section 4.3.2 identifies the most relevant ILO legal instruments for creating the benchmarks, which are confined to the Conventions, Protocols, and Recommendations on working time with the 'up-to-date' and 'interim' status, as well as the related ILO General Surveys for understanding their interpretation. After having identified the relevant legal sources, section 4.4 moves to the construction of the benchmarks. Section 4.4.1 identifies twelve legal indicators that are organised under three groups, consisting of working time duration (i.e., daily limit, weekly limit, overtime limit, weekly rest, and paid annual leave); working time organisation (i.e., standard working time arrangement, variable working time arrangement, overtime work arrangement, night work, and part-time work); and care-related leave (i.e., maternity leave and parental leave). These indicators provide the structural dimensions of the construction of the benchmarks. Section 4.4.2 then presents the concrete benchmarks. Section 4.4.3 deals with the application of

the benchmarks. Section 4.4.4 presents some further methodological issues regarding the benchmarks. Some concluding remarks are made in the final section, 4.5.

4.2 Decent working time: substantive aspects

As elaborated in Chapter 3, the substantive aspects are particularly related to the first three dimensions of decent working time, namely: healthy working time, family-friendly working time, and gender equality through working time. In other words, these three dimensions are substantive in nature, directly determining the terms and conditions of labour in the field of working time. Evaluating the substantive aspects of decent working time requires the benchmarks. The benchmarks here can be understood as a yardstick against which a legal rule can be evaluated.[1] In this thesis, they are specifically related to the international labour standards as developed by the ILO, as they are widely recognised as the minimum standards in the world of work and represent the 'international consensus on how a particular labour problem could be addressed at the global level'.[2]

The rationale underlying the benchmarks is straightforward: the benchmarks serve as the 'floor' of decent working time. This metaphor is drawn from the meaning of decent working time as a development goal that has a floor, but no ceiling.[3] As elaborated in Chapter 3, the floor provides an 'entrance ticket' to enter the 'realm' of decent working time, meaning that decent working time leads nowhere without respecting the ILO standards. The ceiling is built upon the floor, implying that more standards above the floor are encouraged. As shown in figure 4.1, according to the comparison between the substantive working time standards contained in national legislation and the benchmarks, one can determine the extent to which a country is achieving decent working time. Specifically, national legislation that provides similar-to-higher standards than the benchmarks indicate that 'working time' in the country tends to be 'decent'; if national legislation provides for lower standards than the benchmarks, 'working time' tends to be 'not decent'. In other words, decent working time is used as a relative expression, that is 'working time' is more or less 'decent' relative to the benchmarks. To achieve decent working time regarding the substantive aspects, a country should provide similar-to-higher standards than the benchmarks.

1 Cf. Sanne Taekema, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice' (2018) Law and Method 1, 6.

2 ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (International Labour Office 2019) 17.

3 See Chapter 3.

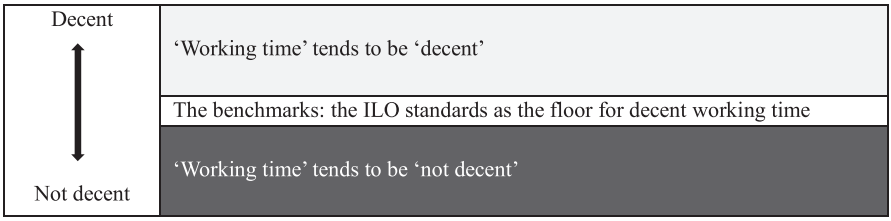

Figure 4.1 The rationale underlying the ILO benchmarks

4.3 Mapping the ILO legal instruments concerning working time

Before moving to the concrete benchmarks, it is first necessary to identify the relevant legal sources. This section thus provides a comprehensive review of how the ILO deals with working time standards through its legal instruments. According to the three ILO documents, the *Employers' Handbook on ILO Standards-related Activities* of 2001, the *Manual for Drafting ILO Instruments* of 2006, and the *Rules of the Game: A Brief Introduction to International Labour Standards* of 2019, seven major types of ILO legal instruments can be classified, namely: the Constitution, Declarations, Conventions, Protocols, Recommendations, Resolutions and Conclusions, and Codes of Practice and Technical Guidelines (table 4.1).[4] Each type has a specific role to play in dealing with labour standards. Section 4.3.1 begins to examine these seven types of legal instruments and their implications on working time, respectively (sections 4.3.1.1 to 4.3.1.7). To gain a better understanding of these legal instruments, particularly the Constitution, Conventions, Protocols, and Recommendations, the section examines their interpretation (section 4.3.1.8) and the relations between them (section 4.3.1.9). Section 4.3.2 then identifies the most relevant legal sources for creating benchmarks regarding the substantive aspects of decent working time, which are confined to the Conventions, Protocols, and Recommendation on working time with 'up-to-date' and 'interim' status (section 4.3.2.1) and the related ILO General Surveys that form an integral part of understanding the interpretation of these legal instruments (section 4.3.2.2).

4 See: Alfred Wisskirchen and Christian Hess, *Employers' Handbook on ILO Standards-related Activities* (International Labour Office 2001); ILO, *Manual for Drafting ILO Instruments* (International Labour Office 2006); ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (n 2).

Table 4.1 Classification of ILO legal instruments

Types of instruments	Explanation
The Constitution	Laying down a legal basis for the creation of the Organisation as well as its activities
Declarations	Non-binding instruments; containing formal and authoritative statements on certain principles and values of the ILO
Conventions	International treaties; setting international labour standards
Protocols	International treaties but always linked to a Convention; setting international labour standards
Recommendations	Non-binding instruments; setting international labour standards
Resolutions and Conclusions	Non-binding instruments; calling upon the various actors to take particular action on certain standards-related matters
Codes of Practice and Technical Guidelines	Non-binding instruments; mainly dealing with labour issues regarding occupational safety and health

4.3.1 Types of ILO legal instruments dealing with labour standards and their implications on working time

4.3.1.1 The Constitution

The ILO Constitution presents a legal basis for the creation of the Organisation and its activities.[5] While it contains mainly provisions relating to the organs and functioning of the Organisation, it also articulates a number of general principles to which the State began to adhere when it joined the Organisation.[6] Such principles are contained in the preamble to the Constitution and the Declaration of Philadelphia. The latter was adopted by the International Labour Conference (ILC) in 1944 and was incorporated into the ILO Constitution as an Annex in 1946. These principles provide the rationale for standards-related activities of the Organisation and give shape to its mandate for social justice and decent work by identifying areas of legitimate competence.[7] The areas covered are diverse, and working time is clearly not an exception. For instance, the preamble calls for the adoption of humane conditions of labour at the international level, particularly the regulation of hours of work, including the establishment of a maximum working day and week.[8]

5 Nicolas Valticos and Geraldo von Potobsky, *International labour law* (2nd edn, Kluwer Law and Tax Publisher 1995) 49; Jean-Michel Servais, *International Labour Law* (6th edn, Kluwer Law International BV 2020) 50.

6 ibid.

7 Wisskirchen and Hess (n 4) 4–5; Servais (n 5) 43; see also: Francis Maupain, 'Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights' (2005) 16 EurJIL 439, 447.

8 ILO Constitution 1919, preamble.

4.3.1.2 Declarations

Declarations are non-legally binding instruments adopted by the ILC or Governing Body.[9] Although they are not subject to ratification, they are intended to have wide application by the ILO Member States.[10] In general, Declarations represent the historical landmarks of the ILO and to make a formal and authoritative statement on certain principles and values of the Organisation.[11] Since 1919, seven Declarations have been adopted, of which the 1944 Declaration of Philadelphia incorporated into the ILO Constitution was arguably the most important.[12] As elaborated in Chapter 2, the 1944 Declaration of Philadelphia was widely recognised as the second founding of the ILO. While Declarations do not directly set substantive working time standards, they often recognise the regulation of working time as a means of upholding the principles and values of the ILO. For instance, the subject of working time was explicitly mentioned in the 2019 Centenary Declaration for the Future of Work, which emphasised that 'safe and healthy working conditions are fundamental to decent work' and that all workers should enjoy adequate protection in accordance with the Decent Work Agenda, including the maximum limits on working time.[13]

4.3.1.3 Conventions

Conventions are international treaties within the meaning of Article 2.1(a) of the Vienna Convention on the Law of Treaties (VCLT).[14] They are drawn up by representatives of governments, employers, and workers, and are adopted by the ILC under Article 19 of the ILO Constitution.[15] They are either technical by setting the specific substantive standards which the Member States undertake to comply with or to achieve through ratification, or of a promotional nature by setting aims that have to be pursued

9 ILO, *Manual for Drafting ILO Instruments* (n 4) 80.

10 ibid.

11 ibid.

12 The seven Declarations are: the 1944 Declaration of Philadelphia; the 1964 Declaration concerning the Policy of 'Apartheid' of the Republic of South Africa; the 1975 Declaration on Gender Equality; the 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; the 1998 Declaration on Fundamental Principles and Rights at Work; 2008 Declaration on Social Justice for a Fair Globalisation; and the 2019 Centenary Declaration for the Future of Work of 2019. With the exception of the 1977 Declaration, which was adopted by the Governing Body, all the other Declarations were adopted by the ILC.

13 ILO Centenary Declaration for the Future of Work 2019, s II (D), s III (B) (iii).

14 Vienna Convention on the Law of Treaties 1969, art 2.1(a).

15 ILO Constitution 1919, art 19; Wisskirchen and Hess (n 4) 1; ILO, *Manual for Drafting ILO Instruments* (n 4) 79; ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (n 2) 18.

through ongoing national action plans.[16] Since 1919, 190 Conventions have been adopted, of which twenty-two specifically deal with the subject of working time, setting a great number of substantive working time standards at the international level.[17] For instance, the first ILO Convention, that is, the Hours of Work (Industry) Convention, 1919 (No.1), established the most famous principle of eight-hour working day and forty-eight-hour workweek on the regulation of working time.[18] More recently, the Part-Time Work Convention, 1994 (No. 175), established a principle of 'equal treatment between part-time and full-time workers'.[19]

4.3.1.4 Protocols

Protocols are also international treaties within the meaning of Article 2.1(a) of the VCLT.[20] They are also drawn up by representatives of governments, employers, and workers, and are adopted by the ILC; but they do not exist independently because they are always linked to a Convention.[21] They are used to add extra flexibility to a Convention or to extend a Convention's obligations, thus matching the changing conditions or dealing with practical difficulties that have arisen since such a Convention was adopted.[22] They are particularly appropriate where the aim is to keep intact a Convention that has already been ratified and that may receive further ratifications, while amending or adding to certain provisions on specific points.[23] Like Conventions, they are subject to ratification. Since 1919, six Protocols have been adopted, one of which specifically deals with the subject of working time, namely the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89).[24] This Protocol provides, for instance, that national laws or regulations may allow for variations in the duration of night period

16 International Labour Office, *Manual for drafting ILO instruments* (n 4) 79.
17 'ILO Conventions' <https://ilo.org/dyn/normlex/en/f?p=1000:12000:::NO> accessed 31 December 2021.
18 Hours of Work (Industry) Convention, 1919 (No.1), art 2.
19 Part-Time Work Convention, 1994 (No. 175), arts 4–7.
20 Vienna Convention on the Law of Treaties 1969, art 2.1(a).
21 ILO, *Manual for Drafting ILO Instruments* (n 4) 79.
22 ibid.
23 ibid.
24 'ILO Protocols' <https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12005:0::NO> accessed 31 December 2021.

as defined in Article 2 of Convention No. 89 and exemptions from the prohibition of night work contained in Article 3 of this Convention.[25]

4.3.1.5 Recommendations

Recommendations are non-legally binding guidelines.[26] Their adoption goes through the same process as Conventions and Protocols, but they are not subject to ratification. According to Article 19.1 of the ILO Constitution, Recommendations deal with subjects that are not 'suitable or appropriate at that time for a Convention'.[27] However, the practice has moved away from this primary function. It has become more common practice for a Recommendation to supplement and clarify the content of a Convention.[28] In many cases, a Convention lays down the basic principles to be implemented by the ratifying States, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied.[29] Since 1919, 206 Recommendations have been adopted, of which eighteen specifically deal with the subject of working time.[30] For instance, the Part-Time Work Convention, 1994 (No. 175), calls for measures to be taken to ensure that part-time workers enjoy conditions equivalent to those of comparable full-time workers with regard to maternity protection, termination of employment, paid annual leave, paid public holidays, and sick leave.[31] The Part-Time Work Recommendation, 1994 (No. 182), adds that the same rules should apply to both full-time and part-time workers with regard to the scheduling of annual leave and work on customary rest days and public holidays.[32]

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25 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), art 1(1); according to the Night Work (Women) Convention (Revised), 1948 (No. 89), article 2 stipulates that 'for the purpose of this Convention the term night signifies a period of at least eleven consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning; the competent authority may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings, but shall consult the employers' and workers' organisations concerned before prescribing an interval beginning after eleven o'clock in the evening', while article 3 stipulate that 'women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed'.

26 Wisskirchen and Hess (n 4) 1; ILO, *Manual for Drafting ILO Instruments* (n 4) 79; ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (n 2) 18.

27 ILO Constitution 1919, art 19.1.

28 ILO, *Manual for Drafting ILO Instruments* (n 4) 79.

29 Valticos and von Potobsky (n 5) 50.

30 'ILO Recommendations' <https://ilo.org/dyn/normlex/en/f?p=1000:12010:::NO> accessed 31 December 2021.

31 Part-Time Work Convention, 1994 (No. 175), art 7.

32 Part-Time Work Recommendation, 1994 (No. 182), para 14.

4.3.1.6 Resolutions and Conclusions

Resolutions and Conclusions are non-legally binding instruments adopted by the ILC, Governing Body, or ILO regional and sectoral meetings.[33] They are of an ad hoc nature calling upon various actors involved, such as the ILO, governments, and employers' and workers' organisations, to take particular action on certain standards-related matters.[34] While Conclusions reflect the outcome of the discussions on agenda items of a meeting, Resolutions deal with related matters outside the agenda.[35] Additionally, Resolutions adopted by the ILC are often used as way of formally expressing its will or its opinion on a given subject – as guidelines with regard to social policy standards, or as reference points for the ILO's supervisory bodies for evaluating national situations.[36] Although Resolutions and Conclusions do not lead directly to a standard-setting action, in many cases they enable problems to be explored in detail.[37] Since 1919, a great number of Resolutions and Conclusions have been adopted.[38] The subjects covered are very diverse, and working time is no exception. For instance, from 1919 to 2019, forty-four Resolutions on '(reduction) hours of work' were adopted by the ILC, dealing with '(reduction) of hours of work' in specific contexts or in particular sectors, such as industry, commerce and offices, agriculture, coal mines, textile industry, chemical industry, transport, and seafarers, by providing some practical and technical guidance or reference points.[39]

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33 Wisskirchen and Hess (n 4) 45–46; ILO, *Manual for Drafting ILO Instruments* (n 4) 80.

34 ibid.

35 ibid.

36 ibid; see also: Valticos and von Potobsky (n 5) 66.

37 ibid.

38 In terms of Resolutions adopted by the ILC, See: 'Resolutions adopted by the International Labour Conference (1919-2019)' <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/jur/legal-instruments/WCMS_428590/lang--en/index.htm> accessed 31 December 2021.

39 These forty-four Resolutions are: Resolution of Sympathy with the Population of the Devastated Regions (Commission on Hours of Work) (1st, 1919); Maintenance of Wage Standards (Commission on Hours of Work) (1st, 1919); Effect of Convention upon Existing Standards more advantageous than those provided (Commission on Hours of Work) (1st, 1919); Resolution concerning hours of work in agriculture (3rd, 1921); Resolution concerning the ratification of the Washington Hours Convention (8th, 1926); Resolution concerning the question of the regulation of hours of work on board ship (9th, 1926); Resolution concerning the hours of work of commercial employees (10th, 1927); Resolution concerning the revision of the Washington Hours Convention for the special countries (12th, 1929); Resolution concerning the limitation of hours of work in inland navigation (13th, 1929); Resolution concerning the maintenance of more favourable conditions of work than those laid down in the Draft Convention limiting hours of work of underground workers in coal mines (14th, 1930); Resolution concerning the application of the Washington Hours Convention to surface workers in mines (14th, 1930); Resolution concerning the conclusion of an economic agreement between the coal-producing countries (14th, 1930); Resolution concerning the placing of the question of hours of work in lignite mines on the Agenda of the 1931 Session of the International Labour Conference (14th, 1930); ⇛

4.3.1.7 Codes of Practice and Technical Guidelines

Codes of Practice and Technical Guidelines are non-legally binding instruments adopted by the ILO's Technical Committees of Experts.[40] They deal with specific workplace issues, mainly in the field of occupational safety and health.[41] They are not intended to replace the provisions of national

⇛ Resolution concerning the employment of workers under sixteen years of age and women workers on underground work in coal mines (15th, 1931); Resolution concerning the ratification of the Convention limiting hours of work in coal mines (17th, 1933); Resolution concerning the reduction of hours of work (18th, 1934); Resolution concerning the maintenance of the standard of living of the workers (19th, 1935); Resolution concerning the reduction of hours of work in the textile industry (19th, 1935); Resolution concerning the reduction of hours of work in the printing and book-binding trades (19th, 1935); Resolution concerning the reduction of hours of work in the chemical industry (19th, 1935); Resolution concerning the calling of a tripartite technical conference on hours of work in the building and civil engineering industry (20th, 1936); Resolution concerning the calling of a tripartite technical conference on hours of work in the coal mining industry (20th, 1936); Resolution concerning the calling of a tripartite technical conference concerning conditions of work in the textile industry (20th, 1936); Resolution concerning modifications of the Reduction of Hours of Work (Textiles) Convention, 1937, in the case of certain countries (23rd, 1937); Resolution concerning the generalisation of the reduction of hours of work (23rd, 1937); Resolution concerning statistics of wages and hours of work in agriculture (24th, 1938); Resolution concerning supplementary statistics of wages and hours of work (24th, 1938); Resolution concerning the reduction of hours of work in coal mines (24th, 1938); Resolution concerning the reduction of hours of work in transport (24th, 1938); Resolution requesting the Governing Body to undertake a study of the position of federal States as regards the ratification of Conventions (25th, 1939); Resolution postponing the question of the generalisation of the reduction of hours of work in industry, commerce and offices (25th, 1939); Resolution postponing the question of the reduction of hours of work in coal mines (25th, 1939); Resolution concerning the Reduction of Hours of Work (37th, 1954); Resolution concerning the Reduction of Hours of Work (39th, 1956); Resolution concerning the Placing of the Question of the Reduction of Working Hours on the Agenda of the Next Ordinary Session of the Conference (40th, 1957); Resolution concerning the Application of the Principle of a 40-Hour Working Week on Board Ship (41st, 1958); Resolution concerning the Placing on the Agenda of an Early Session of the Conference of the Question of the Reduction of Hours of Work (42nd, 1958); Resolution concerning the Placing on the Agenda of the Next Ordinary Session of the Conference of the Question of Reduction of Hours of Work (44th, 1960); Resolution concerning Hours of Work in Agriculture (45th, 1961); Resolution concerning Hours of Work in Maritime Fishing (45th, 1961); Resolution concerning Hours of Work in Maritime Transport (45th, 1961); Resolution concerning Publication of Information on Hours of Work of Work (45th, 1961); Resolution to Place on the Agenda of the Next Ordinary Session of the Conference an Item Entitled 'Hours of Work and Rest Periods in Road Transport' (64th, 1978); Resolution to Place on the Agenda of the Next Ordinary Session of the Conference an Item entitled 'Revision of the Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)' (70th, 1984); Resolution concerning the application of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (Committee on Convention and Recommendation No. 109] (84th, 1996); Resolution concerning the IMO/STCW Convention of 1978, as amended, and the application of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (Committee on Convention and Recommendation No. 109) (84th, 1996).

40 Wisskirchen and Hess (n 4) 45; ILO, *Manual for Drafting ILO Instruments* (n 4) 80.

41 ibid.

laws and regulations, or accepted standards, but rather to supplement the existing ILO standards and set out the detailed practical or technical guidelines without creating legal obligations.[42] While Codes of Practice have been elaborated, for instance, in certain economic sectors (e.g., construction, opencast mines, coal mines, iron and steel industries, non-ferrous metals industries, agriculture, shipbuilding and ship repairing, and forestry) and on protecting workers against certain hazards (e.g., radiation, lasers, visual display units, chemicals, asbestos, and airborne substances), Technical Guidelines have been elaborated, for instance, on workers' health surveillance and management systems occupational safety and health.[43] Although these guidelines mainly address topical workplace issues with regard to occupational safety and health, the subject of working time is also frequently covered, for example, the promotion of specific working time standards in a certain context. This appearance is logical, because, in many ways, working time, especially healthy working time and family-friendly working time, is also part of occupational safety and health. For instance, the ILO Code of Practice *Safety and Health in Shipbuilding and Ship Repair* identifies that working hours should be arranged so as to provide adequate periods of rest for workers, the nature of night work requires specific measures, and working alone should be avoided.[44]

4.3.1.8 Interpretation and case law

According to Article 37(1) of the ILO Constitution, 'any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice (ICJ)'.[45] The subsequent paragraph provides for the possibility of establishing an *ad hoc* tribunal to resolve issues of interpretation.[46] However, in practice, only the predecessor of the ICJ, the Permanent Court of International Justice (PCIJ), was called upon to give advisory opinions on the scope of application of the Night Work (Women) Convention, 1919 (No. 4); no other cases on the interpretation of Conventions can be found.[47] In 1932, the Court was asked to determine whether the text in Convention No. 4 also applied to women who hold positions of supervision or management

42 ibid; see also: Servais (n 5) 89.
43 ibid
44 ILO Code of Practice: Safety and Health in Shipbuilding and Ship Repair 2019, paras 17.2-17.4.
45 ILO Constitution 1919, art 37.1.
46 ILO Constitution 1919, art 37.2.
47 Servais (n 5) 68;Valticos and von Potobsky (n 5) 66; see also: Ruben Zandvliet, *Trade, Investment and Labour: Interactions in International Law* (E.M. Meijers Instituut 2019) 55.

and are not ordinarily engaged in manual work. In its advisory statement, the Court confirmed that it did.[48] As for the proposed ad hoc tribunal, it has been discussed several times, but it has never been put into practice.[49]

The 'interpretative function' on the Conventions, Protocols, and Recommendations are often exercised by the ILO's supervisory bodies, in particular, the Committee on Freedom of Association (CFA) and Committee of Experts on the Application of Conventions and Recommendations (CEACR).[50] The CFA has dealt with over 3,300 cases since it was founded in 1951.[51] However, this supervisory body is mainly concerned with complaints regarding violations of freedom of association, whether the country in question had ratified the relevant Conventions on freedom of association, rather than with working time-related instruments.[52]

The CEACR was established in 1926 with the task of examining 'the extent to which each Member State's legislation and practice are in conformity with the ratified Conventions and the extent to which Member States have fulfilled their obligations under the ILO Constitution in relation to standards'.[53] To carry out this task, the CEACR must consider and express its views on the legal scope and meaning of the provisions contained in Conventions and Recommendations.[54] In other words, it contains a *de facto* interpretative function for the ILO Conventions and Recommendations, though this is not its original purpose. As pointed out by Valticos and Von Potobsky, this interpretative function 'is not based on any explicit authority, but it derives logically from its mandate and the nature of its task'.[55] The results of the CEACR's work mainly take the form of annual reports, consisting of three parts: Part I is the General Report that contains comments on compliance of Member States with their Constitutional obligations; Part II contains observations on the application of international labour standards; Part III is the General Survey on one specific subject selected by the ILO

48 ibid.

49 ibid.

50 A Recommendation in itself may interpret a corresponding Convention. However, like a Convention, a Recommendation in nature as a legal instrument can also be interpreted. Although it is are not subject to ratification, States are obliged to inform the ILO on the actions that have been taken in pursuit of the Recommendation's objectives and on 'the position of the law and practice in their country in regard to the matters dealt with in the Recommendation' according to article 19 of the ILO Constitution.

51 ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (n 2) 114.

52 ibid.

53 ILO, *Report III (PartA): General Report and Observations concerning particular countries* (Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 104thsession, Geneva, 2015) 2; see also: ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (n 2) 106; Valticos and von Potobsky (n 5) 68; Servais (n 5) 72.

54 ibid.

55 Valticos and von Potobsky (n 5) 68.

Governing Body.[56] While Part I and Part II appear in a single volume, that is, Report III (Part A), Part III forms a separate volume, that is, Report III (Part B).[57] The interpretation of Conventions and Recommendations mainly derives from Part III (Part B) of the General Survey, which appears to provide information on the precise legal scope and meaning of the provisions contained in Conventions, Protocols, and Recommendations.[58]

4.3.1.9 Relations between the ILO legal instruments and their implications for working time

The legal instruments discussed above relate to each other in the following way: they all serve a particular purpose for standards-related matters of the ILO and vary accordingly in their forms of adoption, subject matters, degree of commitment, and details of regulations.[59] The Constitution forms a legal basis for all standards-related activities, including the elaboration and adoption of working time standards at the international level. Declarations contain formal and authoritative statements on certain principles and values of the ILO, and often recognise that the regulation of working time at the international level plays an essential role in upholding the principles enshrined in the Constitution and the ILO's quest for social justice and decent work. Conventions, Protocols, and Recommendations constitute the core of standards-related activities. While Conventions and Protocols are legally binding international treaties, Recommendations are non-legally binding instruments that contain additional or more detailed rules to Conventions or deal with a subject that is not (yet) suited or appropriate for Conventions. Together, the three set substantive working time standards at the international level. Resolutions and Conclusions are non-legally binding instruments, dealing with working time standards contained in Conventions, Protocols, and Recommendations in specific contexts or in particular sectors. Codes of Practice and Technical Guidelines mainly address topical workplace issues with regard to occupational safety and health, often covering the promotion of specific working time standards contained in Conventions, Protocols, and Recommendations in a certain context.

Because this chapter is interested in the substantive aspects of decent working time – more precisely, the concrete substantive working time standards defined by the ILO as the benchmarks, the most relevant legal instruments are confined to the Conventions, Protocols, and Recommendations. Nevertheless, other types of legal instruments should not be under-

56 ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (n 2) 106.
57 ibid.
58 'ILO General Surveys' <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm> accessed 31 December 2021.
59 Wisskirchen and Hess (n 4) 1.

estimated as they help to elucidate or promote working time standards contained in the Conventions, Protocols, and Recommendations, directly or indirectly, in general or in specific contexts, but are not used to directly create the benchmarks of decent working time. Moreover, it is necessary to take into account the relevant ILO General Surveys on working time as they form an integral part of understanding the interpretation of the standards contained in the Conventions, Protocols, and Recommendations.

4.3.2 Selected ILO legal instruments to create the benchmarks

4.3.2.1 Working time Conventions and Recommendations with 'up-to-date' and 'interim' status

Since 1919, the ILC has adopted 190 Conventions, six Protocols, and 206 Recommendations. Over time, some Conventions and Recommendations no longer correspond to today's needs.[60] In such circumstances, the ILO's Standards Review Mechanism (SRM) has sought to streamline these legal instruments. The SRM is 'a mechanism that is integral to the ILO's standards policy with a view to ensuring that the ILO has a clear, robust and up-to-date body of standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises'.[61] It was set up by the Governing Body in 2011, but became operational in 2015 as a result of the decision on the establishment of the Tripartite Working Group of the SRM (SRM-TWG).[62] The SRM-TWG is mandated to review the ILO standards with a view to making recommendations to the Governing Body on the status of the standards examined (e.g., up-to-date, interim status, to be revised, or outdated), the review of gaps in coverage, and practical and time-bound follow-up action.[63]As a result of recommendations made by the SRM-TWG, the Governing Body has decided that, of the 190 Conventions and 206 Recommendations, seventy-four and eighty-two are up-to-date, respectively; sixteen and eighteen have interim status to be determined at a later date, respectively; and the other legal instruments are to be revised or are outdated.[64]

60 ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (n 2) 23.
61 ibid.
62 ibid.
63 ibid.
64 'Standards Reviews: Decisions on Status' <https://www.ilo.org/dyn/normlex/en/f?p=1000:12040:::NO:RP,12040::>
accessed 31 December 2021.

In terms of working time, there are twenty-two Conventions and eighteen Recommendations. Because working time, in a broader sense, also concerns 'maternity protection' and 'workers with family responsibilities', which especially reflect healthy working time and family-friendly working time, this thesis also takes into account the Conventions and Recommendations on these two subjects. Specifically, there are three Conventions and three Recommendations on maternity protection, and one Convention and two Recommendations on workers with family responsibilities. Altogether, as shown in figure 4.2, there are twenty-six Conventions and twenty-three Recommendations dealing with the subject of working time (including maternity protection and workers with family responsibilities), of which six and six are up-to-date, respectively; six and one have interim status, respectively; and fourteen and sixteen are to be revised or are outdated, respectively. The full list of these legal instruments with status can be found in Appendix II.

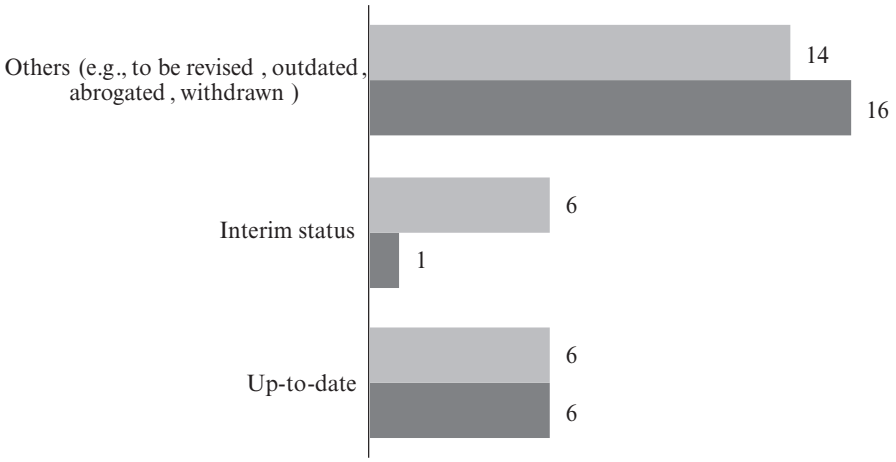

Figure 4.2 The number of ILO Conventions and Recommendations on working time (incl. maternity protection and workers with family responsibilities) by status

Considering that not all Conventions and Recommendations on working time as identified in figure 4.2 are valid today, this thesis only takes into account the legal instruments with 'up-to-date' and 'interim' status to create the benchmarks. In this context, as shown in table 4.2, twelve Conventions and seven Recommendations are selected as the legal sources of the creation of the benchmarks of decent working time. Additionally, an up-to-date Protocol linked to Convention No. 89 is covered.

Table 4.2 Selection of ILO Conventions, Protocols, and Recommendations for creating the benchmarks

Types	Relevant legal instruments
Conventions	C.1 – Hours of Work (Industry) Convention, 1919 (No.1)
	C.3 – Maternity Protection Convention, 1919 (No. 3)
	C.14 – Weekly Rest (Industry) Convention, 1921 (No. 14)
	C.30 – Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
	C.47 – Forty-Hour Week Convention, 1935 (No. 47)
	C.89 – Night Work (Women) Convention (Revised), 1948 (No. 89)
	C.106 – Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
	C.132 – Holidays with Pay Convention (Revised), 1970 (No. 132)
	C.156 – Workers with Family Responsibilities Convention, 1981 (No. 156)
	C.171 – Night Work Convention, 1990 (No. 171)
	C.175 – Part-Time Work Convention, 1994 (No. 175)
	C.183 – Maternity Protection Convention, 2000 (No. 183)
Protocol	Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89)
Recommen-dations	R.98 – Holidays with Pay Recommendation, 1954 (No. 98)
	R.103 – Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103)
	R.116 – Reduction of Hours of Work Recommendation, 1962 (No. 116)
	R.165 – Workers with Family Responsibilities Recommendation (No. 165)
	R.178 – Night Work Recommendation, 1990 (No. 178)
	R.182 – Part-Time Work Recommendation, 1994 (No. 182)
	R.191 – Maternity Protection Recommendation, 2000 (No. 191)

4.3.2.2 ILO General Surveys on working time

With the exception of Convention No. 183 and Recommendation No. 191, all Conventions, Protocol, and Recommendations identified in table 4.2 have been examined in the ILO General Surveys, including the General Surveys of 1964, 1964, 1967, 1984, 1993, 2001, 2005, and 2018 (see table 4.3).[65] These General Surveys also help to create the benchmarks, especially where the substantive working time standards contained in the selected legal instruments in table 4.2 are vague or ambiguous. Notably, as shown in table 4.3, of all identified ILO General Surveys, the 2018 version, which explicitly incorporated 'decent working time' into its title, deals the most

65 'ILO General Surveys' <https://libguides.ilo.org/general_surveys/theme> accessed 31 December 2021.

comprehensively with working time, covering most of the legal instruments as identified in table 4.2.

Table 4.3 Identification of ILO General Surveys on working time

Year	Title of General Surveys	Relevant legal instruments
1964	Annual holidays with pay	C.52, C.101, R.47, & R.98
1965	Maternity Protection	C.3
1967	Hours of work (pages 600-721)	C.1, C.30, C.47, & R.116
1984	Working time: Reduction of hours of work, weekly rest and holidays with pay	C.14, C.106, C.132, R.116, & R.103
1993	Workers with Family Responsibilities	C.156 & R.165
2001	Night work of women in industry	C.4, C.41, & C.89 and its Protocol of 1990
2005	Hours of Work: From fixed to flexible?	C.1 & C.30
2018	Ensuring decent working time for the future	C.1, C.14, C.30, C.47, C.89 and its Protocol of 1990, C.106, C.132, C.171, C.175, R.98, R.103, R.116, R.178, & R.182

4.4 Benchmarks of substantive aspects of decent working time from the ILO

After having identified the relevant sources, the major challenge is to create the concrete benchmarks of decent working time. This section thus moves to the construction of the benchmarks by dealing with four issues: first, how to formulate the benchmarks (section 4.4.1); second, determining the concrete benchmarks (section 4.4.2); third, how to apply the benchmarks (4.4.3); and fourth, some further methodological issues regarding the benchmarks and their application (section 4.4.4).

4.4.1 Scheme for formulating the benchmarks

As elaborated in section 4.3, the sources for creating the benchmarks of decent working time are to be found in the twelve Conventions, one Protocol, and seven Recommendations, as identified in table 4.2 as well as in their interpretative documents – that is, eight ILO General Surveys as identified in table 4.3. These sources provide ILO standards regarding the first three dimensions of decent working time as elaborated in Chapter 3, namely, healthy working time, family-friendly working time, and gender equality through working time. From the ILO's point of view, these standards directly determine the terms and conditions of labour in the field of working time at the international level. The core idea can be interpreted by how the ILO standards limit hours of work and structure their scheduling as well as deal with care-related leave. In this light, three groups of the benchmarks

can be classified, in a more neutral and pragmatic manner, namely: working time duration, working time organisation, and care-related leave (see table 4.4). Each group can be further elaborated upon by a set of legal indicators. A legal indicator, here, can be understood as a practical way of measuring the quality of a legal rule, which lies at the heart of the benchmarks.[66] As shown in table 4.4, working time duration can be elaborated by the legal indicators of daily limit, weekly limit, overtime limit, weekly rest, and paid annual leave; working time organisation can be elaborated by standard working time arrangement, variable working time arrangement, overtime work arrangement, night work, and part-time work; and care-related leave by maternity leave and parental leave. These legal indicators represent the structural dimensions of the construction of the benchmarks, which establishes the basis for constructing a decent working time 'house', as explicated in Chapter 3 (see figure 3.3).

Table 4.4 Structural dimensions of the benchmarks: Legal indicators and legal sources

Legal indicators		**Relevant legal sources**
Working time duration	**Daily limit**	C.1; C30; C.47; R.116; General Surveys of 1967, 1984, 2005, and 2018
	Weekly limit	C.1; C.30; C.47; R.116; General Surveys of 1967, 1984, 2005, and 2018
	Overtime limit	C.1; C.30; C.47; R.116; General Surveys of 1967, 1984, 2005, and 2018
	Weekly rest	C.14; C.106; R.103; General Surveys of 1984 and 2018
	Paid annual leave	C.132; R.98; General Surveys of 1984 and 2018
Working time organisation	**Standard working time arrangement**	C1; C.30; C.47; R.116; General Surveys of 2018
	Variable working time arrangement	C1; C.30; C.47; R.116; General Surveys of 1967, 1984, 2005, and 2018
	Overtime work arrangement	C1; C.30; C.47; R.116; General Surveys of 1967, 1984, 2005, and 2018
	Night work	C.89 and its Protocol of 1990; C.171; R.178; General Surveys of 2001 and 2018
	Part-time work	C.3; C.175; R.182; General Surveys of 1965
Care-related leave	**Maternity leave**	C.183; R.191; General Surveys of 2018
	Parental leave	C.156; R165; General Survey of 1993

66 This definition is inspired by two sources: Mathias Siems, *Comparative law* (Cambridge University Press 2018) 167–72; and Dharam Ghai, 'Education and Decent Work: Concepts, Models and Indicators' (2002) International Institute for Labour Studies Discussion Paper 139/2002, 9–10.

To render the legal indicators more precise in operational terms, this chapter further considers four aspects for each of them, namely: (a) topic/definition, (b) aim/purpose, (c) scope of application, and (d) material content. In general, these four aspects appear to provide a guide to present the substantive content of a legal rule in a given international legal instrument. Each aspect has a different purpose for understanding the legal indicator. The 'topic/definition' refers to a very preliminary question: what is the meaning of the indicator, and is such an indicator is regulated? The 'aim/purpose' concerns the goal of the indicator, which is often directly linked to the five dimensions of decent working time (i.e., healthy, family-friendly, gender equality, productive, and choice and influence) as each dimension can be considered a goal of the regulation of working time. The 'scope of application' mainly relates to the personal scope: who is covered or affected by the indicator? It may also refer to the sectors or activities covered: to which sectors or activities does the indicator apply? In some cases, it may be even related to certain circumstances for the existence of such an indicator. The 'material content' concerns the concrete content of the provisions contained in the legislation: what exactly does the indicator carry in provisions?

4.4.2 The concrete benchmarks

Based on the legal sources and legal indicators identified in table 4.1, the concrete benchmarks of the substantive aspects of decent working time as derived from the ILO take shape through twelve legal indicators organised into three groups. Each legal indicator is further divided by four aspects (i.e., topic/definition, aim/purpose, scope of application, and material content). The concrete benchmarks are presented in table 4.5.

Table 4.5 The concrete benchmarks of the substantive aspects of decent working time

Legal indicators		Benchmarks
Group 1: working time duration		
Indicator 1.1: Daily limit	**1.1.1 Topic/ definition**	**Daily limit:** it refers to a limit on normal daily hours of work; hours of work means the time during which the persons employed are at the disposal of the employer; normal hours of work refers to the number of hours that may legally be worked during the day, week, month, and/or year, excluding overtime (C30, art 2; General Survey of 2018, pp18-19).
	1.1.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and also serves the need related to production (General Survey of 2018, p5).
	1.1.3 Scope of application	a. It applies to persons employed in any public or private industrial undertaking (mines and quarries; industries in which articles are manufactured or materials are transformed, such as shipbuilding and energy generation; construction, maintenance and demolition of roads, bridges and tunnels; and transport of passengers or goods by road, rail, sea or inland waterway) (C1, art 1.1; General Survey of 2018, p16); b. It applies to persons employed in any public or private commerce and office sectors (commercial or trading establishments, including postal, telegraph and telephone services and commercial or trading branches of any other establishments; establishments and administrative services in which the persons employed are mainly engaged in office work; mixed commercial and industrial establishments, unless they are deemed to be industrial establishments) (C30, art 1.1; General Survey of 2018, p16).
	1.1.4 Material content	a. 8-hour limit on normal hours per day (C1, art 2; C30, art 3); b. Daily hours can be averaged within the 48-hour week, allowing the 8-hour limit to be extended to 9 hours in industry and 10 hours in commerce and office (C1, art. 2 and art. 5.2).
Indicator 1.2: Weekly limit	**1.2.1 Topic/ definition**	**Weekly limit:** it refers to a weekly limit on normal hours of work; hours of work means the time during which the persons employed are at the disposal of the employer; normal hours of work refers to the number of hours that may legally be worked during the day, week, month and/or year, excluding overtime (C30, art 2; General Survey of 2018, pp18-19).
	1.2.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and also serves the need related to production. (General Survey of 2018, p5)

	1.2.3 Scope of application	a. It applies to persons employed in any public or private industrial undertaking (mines and quarries; industries in which articles are manufactured or materials are transformed, such as shipbuilding and energy generation; construction, maintenance and demolition of roads, bridges and tunnels; and transport of passengers or goods by road, rail, sea or inland waterway) (C1, art 1.1; General Survey of 2018, p16); b. It applies to persons employed in any public or private commerce and office sectors (commercial or trading establishments, including postal, telegraph and telephone services and commercial or trading branches of any other establishments; establishments and administrative services in which the persons employed are mainly engaged in office work; mixed commercial and industrial establishments, unless they are deemed to be industrial establishments) (C30, art 1.1; General Survey of 2018, p16).
	1.2.4 Material content	a. 48-hour limit on normal hours per week (C1, art 2; C30, art 3); b. A reduction to 40-hour limit on normal hours per week should be promoted gradually (C47, art 1; R116, para 4)
Indicator 1.3: Overtime limit	**1.3.1 Topic/ definition**	**Overtime limit:** it refers to the maximum of additional hours to the normal hours of work (C1, art 6.2; C30, art 7.4; R116, para 11; General Survey of 2018, p18, 55)
	1.3.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and also serves the need related to production. (General Survey of 2018, p5)
	1.3.3 Scope of application	It covers certain circumstances permitted under the derogations to normal hours of work in the case of permanent exceptions (intermittent work, complementary and preparatory work, cases of public interest, exceptions allowed in view of the nature of the work, the size of the population, or the number of persons employed) and temporary exceptions (abnormal pressure of work and unforeseen additional work, accidents or force majeure, the occurrence of a national emergency) (C1, arts. 3, 6, 14; C30, arts 7, 9; R116, para 11: General Survey of 2018, p34).
	1.3.4 Material content	Although no ILO instrument or General Survey establishes a specific limit on the number of overtime hours, such limit must be reasonable. When deciding what should be considered as 'reasonable', the public authority should make a thorough evaluation of the intensity of the respective work, its ability to produce physical or mental fatigue, and of possible negative consequences of fatigue for the respective employee and the public at large (General Survey of 2018, p46)
Indicator 1.4: Weekly rest	**1.4.1 Topic/ definition**	**Weekly rest:** it refers to the rest period comprising at least 24 consecutive hours in every period of 7 days. (C14, art 2.1; C106, art 6)
	1.4.2 Aim/ purpose	It aims to protect the health and safety, as well as the well-being of workers (General Survey of 2018, p92, 95 & 101)

	1.4.3 Scope of application	a. It applies to the whole of the staff employed in any public or private, or any branch of industrial undertaking (mines, quarries, and other works for the extraction of minerals from the earth; industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding and the generation, transformation and transmission of electricity or motive power of any kind; construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure; transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand) (C14, art 1 & 2); b. It applies to all persons, including apprentices, employed in commerce and offices sectors (trading establishments; establishments, institutions and administrative services in which the persons employed are mainly engaged in office work, including the offices of persons engaged in the liberal professions; establishments under certain conditions, such as the trading branches of any other establishments, the branches of any other establishments in which the persons employed are mainly engaged in office work, and mixed commercial and industrial establishments) (C106, art 2); c. It may also apply to persons employed in establishments in consequence of a formal declaration made by a Member State at the time of ratification of Convention No. 106 such as establishments, institutions and administrative services providing personal services; post and telecommunications services; newspaper undertakings; and theatres and places of public entertainment (C106, art 3.1).
	1.4.4 Material content	An uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of 7 days (C14, art. 2.1; C106, art 6.1)
Indicator 1.5: Paid annual leave	**1.5.1 Topic/ definition**	**Paid annual leave:** it refers to the period during which workers are given time away from their work while continuing to receive an income and to be entitled to social protection (General Survey of 2018, p103).
	1.5.2 Aim/ purpose	It aims to protect the health and well-being of workers, allow them to be with their families and help them to be more productive, and limit working time over the course of the year (General Survey of 2018, p103).
	1.5.3 Personal or material scopes	It applies to all employed persons except seafarers (C132, art 2.1).

	1.5.4 Material content	a. Workers shall enjoy at least 3 working weeks of annual paid holiday for 1 year of service (C132, art 3.3); b. Absence from work for reasons beyond the control of the employed persons concerned as illness, injury, or maternity shall be counted as part of the period service (C132, art 5.4); c. Public and customary holidays shall not be counted as part of the minimum annual paid holiday; (C132, art 6.1); d. Regarding the divisions of the annual paid holiday, unless otherwise provided in an agreement applicable, one of the parts shall consist of at least two uninterrupted working weeks (C132, art 8.2).
Group 2: Working time organisation		
Indicator 2.1: Standard working time arrangement	**2.1.1 Topic/ definition**	**Standard working time arrangement:** a. It refers to an 8-hour day and a 48-hour or 40-hour week under Conventions Nos. 1, 30 and 47 and Recommendation No. 116 (General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble); b. It can be further elaborated as the fixed working hours each day for a fixed number of days, usually a Monday-to-Friday (for a 40-hour normal workweek) or Monday-to-Saturday (for normal weeks longer than 40 hours) daytime shift (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and a number of ILO working time reports)
	2.1.2 Aim/ purpose	It aims to safeguard workers' legitimate interests and needs in relation to their health and safety, as well as their recreational, family, social and spiritual values and needs (General Survey of 2005, p105).
	2.1.3 Scope of application	No ILO instrument or General Survey establishes an explicit personal scope on the standard workweek. However, according to the ILO instruments as well as a number of ILO reports on working time, it should have a similar personal scope with the elements of 'daily limits' and 'week limits', but with a focus on the formal economy (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and a number of ILO working time reports).
	2.1.4 Material content	a. Monday-to-Friday (for a 40-hour normal workweek) daytime shift (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and a number of ILO working time reports); b. Monday-to-Saturday (for normal weeks longer than 40 hours) daytime shift (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and a number of ILO working time reports)

Indicator 2.2: Variable working time arrangement	**2.2.1 Topic/ definition**	**Variable working time arrangement:** it mainly refers to adjustments in the distribution of hours of work, particularly consisting of averaging normal weekly hours of work over a defined period, to allow the extension of working hours beyond their normal length on certain days, and their shortening on other days, without resorting to overtime (General Survey of 2018, p21).
	2.2.2 Aim/ purpose	It aims to adapt to the production requirements and technical variations inherent in certain sectors of activity, to respond to exceptional circumstances or to meet the specific needs of workers or the establishment (General Survey of 2018, p21).
	2.2.3 Scope of application	It applies to four types of variations in the distribution of working hours through averaging: the distribution of working hours within the week; the distribution of working hours over a period longer than a week; averaging in the case of shift work in continuous processes; and averaging in the case of shift work (General Survey of 2018, p21; C1, art 2, 4 & 5; C30, art 4 & 6).
	2.2.4 Material content	a. Daily hours can be averaged within the 48-hour week, allowing the 8-hour limit to be extended to 9 hours in industry and 10 hours in commerce and office (C1, art 2; C30, art 4); b. Over a period longer than a week, the average hours of work per week shall not exceed 48 hours per week and those hours of work in any day shall not exceed 9 hours in industry and 10 hours commerce and office (C1, art 5; C30, art 6); c. It allows for the possibility of the averaging of hours of work in the case of shift work and permits the extension of normal hours of work on the condition that the average number of hours over a period of 3 weeks respects the limits of 8 hours a day and 48 hours a week (C1, art 2); d. It allows for the possibility of the averaging of hours of work in the case of shift work in continuous processes and provides for a limit of 56 hours a week on average (C1, art 4); e. The hours-averaging arrangement should be approved by the competent authority or by agreement between workers' and employers' organisations. (C1, art 2; C30, art 6)
Indicator 2.3: Overtime work arrangement	**2.3.1 Topic/ definition**	**Overtime work arrangement:** it refers to how additional hours to normal hours of work are organised (C1, art 6.2; C30, art 7.4; R116, para 11; General Survey of 2018, p18, 55).
	2.3.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and also serves the need related to production (General Survey of 2018, p5).
	2.3.3 Scope of application	It covers certain circumstances permitted under the derogations to normal hours of work in the case of permanent exceptions (intermittent work, complementary and preparatory work, cases of public interest, exceptions allowed in view of the nature of the work, the size of the population, or the number of persons employed) and temporary exceptions (abnormal pressure of work and unforeseen additional work, accidents or force majeure, the occurrence of a national emergency) (C1, arts. 3, 6, 14; C30, arts 7, 9; R116, para 11: General Survey of 2018, p34).

	2.3.4 Material content	a. The limits to hours of overtime work must be reasonable. To decide what should be considered as 'reasonable', the public authority should make a thorough evaluation of the intensity of the respective work, its ability to produce physical or mental fatigue, and of possible negative consequences of fatigue for the respective employee and the public at large (General Survey of 2018, p46); b. For each instance of overtime work, the public authority shall fix the maximum of additional hours after the consultation with the organisations of employers and workers (C1, art 6.2; C30, art 7.3); c. The rate of pay for overtime permitted shall not be less than one-quarter times the regular rate (C1, art 6.2; C30, art 7.4).
Indicator 2.4: Night work	**2.4.1 Topic/ definition**	**Night work:** it means all work performed during a period of not less than 7 consecutive hours, including the interval from midnight to 5 a.m. (C171, art 1; R178, para 1)
	2.4.2 Aim/ purpose	It is intended to protect night workers' health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately (C171, art 3.1)
	2.4.3 Scope of application	It applies to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation (C171, art 2; R178, para 2; General Survey of 2018, p158).
	2.4.4 Material content	a. Night work hours contains not less than 7 consecutive hours, including the interval from midnight to 5 a.m. (C171, art 1; R178, para 1); b. Normal hours of work for night workers should not exceed 8 in any 24-hour period in which they perform night work, except in the case of work which includes substantial periods of mere attendance or stand-by, in cases in which alternative working schedules give workers at least equivalent protection over different periods or in cases of exceptional circumstances recognised by collective agreements or failing that by the competent authority (R178, para 4.1); c. The normal hours of work of night workers should generally be less on average than and, in any case, not exceed on average those of workers performing the same work to the same requirements by day in the branch of activity or the undertaking concerned (R178, para 4.2); d. Night workers should benefit to at least to the same extent as other workers from general measures for reducing normal weekly hours of work and increasing days of paid leave (R178, para 4.3); e. Night workers have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work (C171, art 4.1); f. Suitable first-aid facilities shall be made available for workers performing night work (C171, art 5); g. For reasons of health, night workers certified as unfit for night work, shall be transferred to a similar job for which they are fit, and if the transfer is not practicable, they shall be granted the same benefits as other workers who are unable to work or to secure employment (C171, art 6. 1 & 6.2);

	2.4.4 Material content	h. Night workers certified as temporarily unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who were prevented from working for reasons of health (C171, art 6.3) i. Measures shall be taken to ensure that an alternative to night work is available to women workers concerning maternity issues; at any point during pregnancy, once this is known, women night workers who so request should be assigned to day work, as far as practicable (C171, art 7; R178, para 19); j. Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work; the compensation should be additional to the remuneration paid for the same work performed to the same requirements during the day and should respect the principle of equal pay for men and women for the same work, or for work of equal value, and may by agreement be converted into reduced working time (C171, art 8; R178, para 8); k. Where financial compensation for night work is a normal element in a night worker's earnings, it should be included in the calculation of the remuneration of paid annual leave, paid public holidays and other absences that are normally paid as well as in the fixing of social security contributions and benefits (R178, para 9); l. Appropriate social services shall be provided for night workers and, where necessary, for workers performing night work, such as to limit or reduce the time spent by night workers in travelling between their residence and workplace, to avoid or reduce additional travelling expenses for them and to improve their safety when travelling at night, to improve the quality of rest for night workers, and to enable workers performing night work to obtain meals and beverages (C171, art 9; R178, para 13, 14, 15 & 16); m. Before introducing work schedules requiring the services of night workers, the employer shall consult the worker representatives concerned on the details of such schedules and the forms of organisation of night work that are best adapted to the establishment and its personnel as well as on the occupational health measures and social services which are required; In establishments employing night workers this consultation shall take place regularly (C171, art 10.1; R178, para 10); n. In determining the content of the tasks assigned to night workers, account should be taken of the nature of night work and the effects of environmental factors and forms of work organisation; special attention should be paid to factors such as toxic substances, noise, vibrations and lighting levels and forms of work organisation involving heavy physical or mental strain; cumulative effects from such factors and forms of work organisation should be avoided or reduced (R178, para 11) o. Overtime work by night workers should be avoided as far as possible before or after a daily period of work which includes night work; and in occupations involving special hazards or heavy physical or mental strain, no overtime should be performed by night workers before or after a daily period of work which includes night work, except in cases of force majeure or of actual or imminent accident (R178, para 5);

	2.4.4 Material content	p. Where shift work involves night work: in no case should two consecutive full-time shifts be performed, except in cases of force majeure or of an actual or imminent accident; a rest period of at least 11 hours between two shifts should be guaranteed as far as possible (R178, para 6); q. Daily periods of work which include night work should include a break or breaks to enable workers to rest and eat; the scheduling and total length of these breaks should take account of the demands placed on workers by the nature of night work (R178, para 7); r. Except in cases of force majeure or of an actual or imminent accident, workers should be given reasonable notice of a requirement to perform night work (R178, para 21); s. Workers who have spent a considerable number of years as night workers should be accorded special consideration with respect to opportunities for vacancies that they have the necessary qualifications, and voluntary early or phased retirement where such opportunities exist (R178, para 23 & 24)
Indicator 2.5: Part-time work	**2.5.1 Topic/ definition**	**Part-time work:** it means the work in which the normal hours of work are less than comparable full-time work; normal hours of work can be calculated weekly or on average over a given period (C175, art 1; R182, para 2).
	2.5.2 Aim/ purpose	It aims to safeguard productive and freely chosen employment for all workers, to facilitate additional employment opportunities, to ensure protection for part-time workers in the areas of access to employment, working conditions and social security, as well as to assist workers with family responsibilities (C175, Preamble; General Survey of 2018, p201)
	2.5.3 Scope of application	It applies to all part-time workers, excludes wholly or partly particular categories of workers or establishments when its application to them would raise particular problems of a substantial nature, such as temporary, casual or seasonal work, or workers engaged in temporary, seasonal or casual employment relationships, unless they work shorter hours than their full-time colleagues (C175, art 3; R182, para 3; General Survey of 2018, p216).
	2.5.4 Material content	a. Normal hours of work may be calculated weekly or on average over a given period of employment (C175, art 1; R182, para 2) b. Part-workers shall be entitled to the same protection as full-time workers in respect of the right to organise, bargain collectively and act as workers' representatives, occupational safety and health, and discrimination in employment and occupation (C175, art 4); c. Part-time workers shall enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to the basic wage, hours of work, contributions or earnings, or through other methods consistent with national law and practice (C175, art 5 & 6);

	2.5.4 Material content	d. Part-time workers shall also enjoy conditions equivalent to those of comparable full-time workers with regard to maternity protection, termination of employment, paid annual leave and paid public holidays, sick leave, and other forms of leave including paid educational leave, parental leave and leave in cases of illness of a child or another family member of a worker's immediate family, as well as the scheduling of annual leave and work on customary rest days and public holidays (C175, art 7, R182, para 13 & 14); e. Measures shall be taken to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers, provided that the protection described above is ensured (C175, art 9); f. Where appropriate, employers should consider requests by workers for transfer from full-time to part-time work that becomes available in the enterprise, and also for transfer from part-time to full-time work; such transfers shall be voluntary and should not in itself constitute a valid reason for termination of employment (C175, art 10; R182, para 18 & 19).
Group 3: Care-related leave		
Indicator 3.1: Maternity leave	**3.1.1 Topic/ definition**	**Maternity leave**: it refers to the leave to which a woman is entitled to a continuous period allocated before and after giving birth in accordance with national legislation and practice (C183, art 4; R191, para 1).
	3.1.2 Aim/ purpose	It aims to promote equality of all women in the workforce and the health and safety of the mother and child, and to recognise the diversity in the economic and social development and of enterprises (C183, Preamble)
	3.1.3 Scope of application	It applies to all employed women, including those in atypical forms of dependent work; exclusions are allowed for limited categories of workers when its application to them would raise special problems of a substantial nature, after consulting workers' and employers' organisations (C183, art 2.1 & 2.2).
	3.1.4 Material content	a. A female worker shall be entitled to a period of maternity leave of not less than 14 weeks, including a period of 6 weeks' compulsory leave after childbirth (C183, art 4.1 & 4.4); b. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of child-birth and the actual date of childbirth, without a reduction in any compulsory portion of postnatal leave (C183, art 4.5); c. An extension of maternity leave of to at least 18 weeks should be promoted; an extension of maternity leave should also be made in the event of multiple births; and regarding the extensions, the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth (R191, para 1); d. Measures should be taken to ensure that a pregnant woman or nursing mother is not obliged to perform work that has been determined to be harmful to her health or that of her child (C183, art 3; R191, para 6); e. A woman should be allowed to leave her workplace, if necessary, after notifying her employer, to undergo medical examinations relating to her pregnancy (R191, para 6.6); f. On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth (C183, art 5);

	3.1.4 Material content	g. Cash benefits shall be provided to female workers, and such benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living, and which shall be no less than two-thirds of her previous earnings or a comparable amount (C183, art 6); h. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave, and a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave; the burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer (C183, art 8); i. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child, and these breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly (C83, art 10).
Indicator 3.2: Parental leave	**3.2.1 Topic/ definition**	**Parental leave:** it refers to the leave during a period following the expiry of maternity leave (R191, para 10.3; R165 para 22.1).
	3.2.2 Aim/ purpose	It aims to promote equality of opportunity and treatment in employment for men and women workers with family responsibilities as well as between such workers and other workers (C156, Preamble; R165, Preamble; General Survey of 1993, p9)
	3.2.3 Scope of application	It applies to all branches of economic activity and all categories of workers with responsibilities in relation to their dependent children (C156, art 1.1 & 2).
	3.2.4 Material content	a. The employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave, without their relinquishing employment and with their employment rights protected (R191, para 10.3; R165, para 22.1); b. The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits and the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any other manner consistent with a national practice (R191, para 10.4; R165, para 22.2); c. It should be possible for the employed mother or the employed father in relation to a dependent child to obtain leave of absence in the case of its illness (R165, para 23.2); d. All measures compatible with national conditions and possibilities should be taken to enable workers with family responsibilities to become and remain integrated into the labour force, as well as to re-enter the labour force after an absence due to those responsibilities, such as vocational training facilities and paid educational leave arrangements to use such facilities (R165, para 12 & 13); e. Where national law and practice provide for adoption, adoptive parents should have access to the system of protection, especially regarding leave, benefits and employment protection (R191, para 10.5).

4.4.3 Scheme for applying the benchmarks

When it comes to the application of the benchmarks to an individual country, which specifically refers to China in this thesis, two types of data will be created based on the outcome of the comparison between national working time standards and the ILO benchmarks: qualitative data in legal texts and quantitative data in numerical values. While the qualitative data concern the provisions contained in national legislation on working time, the quantitative data are based on the coding result of the comparison between these provisions and the benchmarks.

These two types of data are correlated and inseparable, and both of them are divided by four aspects. As the first aspect (i.e., topic/definition) is determinant in the binary question of whether the legal indicator is regulated in the given country, a 'binary coding' approach is applied, through which a value either '0' or '1' is assigned to each legal indicator (see table 4.6). While '0' means the legal indicator is not regulated by national legislation, '1' refers to the legal indicator is regulated by national legislation. Because the last three aspects (i.e., aim/purpose, scope of application, and material content) are definite for their normative quality in terms of providing lower or higher standards than the benchmarks, a 'graduated coding' approach is applied, through which a value from '0' to '2' is assigned to each of them (see table 4.6). Specifically, compared to what is required by the ILO benchmarks, if national legislation provides no standard, a value '0' is coded; if national legislation provides lower standards (e.g., narrower scope, vague or unclear provisions, or general provision with any elaboration), a value '0.5' is coded; if national legislation provides consistent or similar standards, a value '1' is coded; if national legislation provides higher standards (e.g., broader scope, clear and/or detailed provisions, or well-elaborated provisions), a value '1.5' is coded; and if national legislation provides very high or prefect standards, a value '2' is coded in theory. As mentioned in section 4.2, and as discussed in Chapter 3, decent working time is a development goal that has a floor but no ceiling. While the value '1' refers to the floor, meaning that an 'entrance ticket' entering the 'realm' of decent working time is received, the value '2' refers to the ceiling, which is not existent in practice.

Table 4.6 Coding schemes of a legal indicator by four aspects

Aspects	Score	Explanation	Implications
Topic/definition	0	The legal indicator is not regulated by national legislation	A starting point for the discussion of a legal indicator
	1	The legal indicator is regulated by national legislation	
Aim/purpose; scope of application; and material content	0	No standards	'Working time' tends to be 'not decent' regarding an aspect of a legal indicator
	0.5	Lower standards (e.g., narrower scope; vague or unclear provisions; or general provision with any elaboration)	
	1	Consistent or similar or standards (i.e., the floor)	'Working time' tends to be 'decent' regarding an aspect of a legal indicator
	1.5	Higher standards (e.g., broader scope; clear and detailed; or well-elaborated)	
	2	Very high or prefect standards (i.e., the ceiling; not exist in practice)	

4.4.4 Some further methodological issues

Although this chapter is devoted to developing the ILO benchmarks as comprehensive and transparent as possible, some issues still need to be clarified. At least three issues can be identified: (a) individual countries versus international comparison, (b) longitudinal data versus cross-sectional data, and (c) law in books versus law in practice. These three issues will be subsequently examined in detail in sections 4.4.4.1 to 4.4.4.3.

4.4.4.1 Individual countries vs. international comparisons

Although this thesis applies all of the benchmarks to China, they are not developed specifically for China, but as a general methodology that can be used to assess achieving decent working time in any given individual country. In addition, the benchmarks can be used for international comparisons across countries as the legal information (i.e., twelve legal indicators by four aspects) can be collected in a standardised format. Hence, the benchmarks not only have value in the content for assessing the extent to which China is achieving decent working time regarding the substantive aspects, but also represent a new methodology to make such an assessment for any country of choice as well as to make international comparisons across countries. In other words, the benchmarks developed in this thesis have scientific value

in terms of methodology development. Nevertheless, it should be borne in mind that any use of the benchmarks for either individual countries or international comparisons should be conducted with carefully designed premises and selected legal sources.

4.4.4.2 Longitudinal data vs. cross-sectional data

The benchmarks will be applied to China by three periods in accordance with the periodisation of the development of Chinese labour legislation as provided in Chapter 1: (a) the period before the transition (1949-1978); (b) the transition period (1978-2007); and (c) the period after the transition (2008-2020). Hence, the legal indicators will be repeatedly examined by the three periods, leading to the construction of a longitudinal database. As pointed out by Diggle et al., 'the defining characteristic of a longitudinal study is that individuals are measured repeatedly through time, which is in contrast to a cross-sectional study in which a single outcome is measured for each individual'.[67] The longitudinal database by the three periods will give an evolving picture of the performance of Chinese working time legislation against the ILO benchmarks. Furthermore, in the construction of such a longitudinal database, Chinese working time legislation is coded in the year in which it comes into force, which means that if a legal instrument was adopted at the end of the first period but came into effective at the beginning of the second period, it will be coded in the second period.

4.4.4.3 Law in books vs. law in practice

The application of the benchmarks to China will lead to two types of data: the qualitative data in legal texts and the quantitative data in numerical values. While the qualitative data will provide detailed legal information regarding the concrete substantive working time standards, the quantitative data are the coding results in numerical values that would render qualitative materials more graphic and user-friendly for researchers and make the data more accessible for statistical analysis. In terms of the quantitative data, a higher score on a legal indicator only indicates a better performance at the *de jure* level. It does not in itself, however, indicate the effectiveness of a legal indicator at the *de facto* level.

67 Peter J. Diggle and others, *Analysis of Longitudinal Data* (2nd edn, Oxford University Press 2013) 1.

4.5 Conclusion

This chapter has developed a comprehensive set of benchmarks for evaluating the substantive aspects of decent working time in individual countries. The benchmarks derive from the ILO Conventions, Protocols, and Recommendations on working time with the 'up-to-date' and 'interim' status, as well as their related ILO General Surveys. The concrete benchmarks are classified into three groups that are elaborated by twelve legal indicators, namely: (a) working time duration consists of daily limit, weekly limit, overtime limit, weekly rest, and paid annual leave; (b) working time organisation consists of standard working time arrangement, variable working time arrangement, overtime work arrangement, night work, and part-time work; and (c) care-related leave consists of maternity leave and parental leave. The rationale for the benchmarks is that they serve as a floor for achieving decent working time regarding the substantive aspects. It is expected an individual country to provide similar-to-higher standards than the ILO benchmarks in order to ensure that 'working time' is 'decent' with regard to these substantive aspects. The next chapter will apply these ILO benchmarks to China.

5 Substantive aspects of decent working time: The development of China

5.1 Introduction

This chapter assesses China's progress towards the substantive aspects of decent working time in terms of the ILO benchmarks discussed in Chapter 4. In accordance with the periodisation of the development of Chinese labour legislation in Chapter 1, the main body of this chapter is divided into three parts: the period before the transition (1949-1978); the transition period (1978-2007); and the period after the transition (2008-2020). Each part has a similar format conducted in three steps. First, it identifies the relevant legal instruments addressing working time in China. Five types of legal instrument at the national level are specifically examined, namely: the Constitution, laws, administrative regulations, departmental rules, and normative documents, all of which are positive laws that may directly set substantive working time standards – but with different levels of legal authority.[1] Together, they provide a complete picture of the substantive aspects of decent working time in China at the national level. Second, this chapter evaluates China's substantive working time standards in the identified legal instruments against the ILO benchmarks. Third, it provides an analysis and evaluation of the extent to which China is achieving decent working time regarding the substantive aspects. The three parts are followed by an overall evaluation of the three periods.

The sources used in this chapter embrace both the ILO benchmarks and Chinese legal texts. The ILO benchmarks are enumerated in Chapter 4 (see table 4.5). The Chinese legal texts can be found in two legal databases. The first is the National Database of Laws and Regulations developed by the highest legislature of China, the National People's Congress (NPC) (LRD-NPC). This database is the largest authentic access source to information on Chinese legal texts, and is mainly in Chinese but may be also available in English translation.[2] The second is the Laws and Regulations Database of Chinalawinfo Database developed by Peking University (PKU) (LRD-PKU), which provides users with access to a wide range of China-related

1 For a more detailed introduction of the sources of Chinese labour laws, see: Chapter 1 and Appendix 1: Profile of China.

2 'National Database of Laws and Regulations (in Chinese: 全国法律法规数据库)' <https://flk.npc.gov.cn/> accessed 31 December 2021.

legal information, mostly both in Chinese and English.[3] The assessment of China's substantive working time standards against the ILO benchmarks in this chapter could produce to a new database, ILO-DWT-China database, on the extent to which China is achieving decent working time regarding the substantive aspects, to be found in Appendix 5.

5.2 The period before the transition (1949-1978)

5.2.1 Identification of China's legal instruments dealing with working time (1949-1978)

Based on the legal databases of LRD-NPC and LRD-PKU, a full list of China's legal instruments dealing with working time in the period before the transition (1949-1978) can be identified in table 5.1. In general, we can see that the no 'law' dealing with working time can be found in this period; instead, the majority of legal instruments are to be found in 'normative documents', which have the lowest legal status in the Chinese legal system. Sections 5.2.1.1 to 5.2.1.4 examine these types of legal instruments regarding working time in detail, respectively.

Table 5.1 The legal instruments dealing with working time in China (1949-1978)

Types	Legal instruments	Legal indicators covered	Effective period
Constitutions	**The 1949 Common Programme**	Working time duration (daily limit)	1949-1954
	The 1954 Constitution	Working time in general	1954-1975
	The 1975 Constitution	Working time in general	1975-1978
Administrative Regulations	**Measures on Public Holidays for Annual Festivals and Memorial Days of 1949**	Other legal indicators (public holidays)	1949-1999
	Labour Insurance Regulation of 1951 (amended in 1953)	Care-related leave (maternity leave)	1951-present (partly expired)*
	Interim Regulation on Living Conditions of State Functionaries during Sick Leave of 1952 (Revisions in 1954 and 1955)	Other legal indicators (sick leave)	1952-1981
	Interim Regulation on Home Leave and Wages Benefits of Workers of 1957	Other legal indicators (home leave)	1957-1978

3 'Chinalawinfo Database: Laws and Regulations Database (in Chinese: 北大法宝: 法律法规数据库)' <https://www.lawinfochina.com/search/SearchLaw.aspx> accessed 31 December 2021.

Departmental rules	**Measures on Handling Dangerous Goods of 1951**	Working time duration (daily limit); other legal indicators (daily break)	1951-2008
Normative Documents	**Decisions on Employment Issues of 1952**	Working time duration (daily limit, overtime limit, overtime work arrangement); working time organisation (standard working time arrangement)	1952-1987
	Notice on Maternity Leave for Female Workers of 1955	Care-related leave (maternity leave)	1955-1988
	Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work, and Performing State and Social Obligations of 1956	Working time organisation (standard working time arrangement, overtime work arrangement)	1956-present
	Provisions on Eight Working Hours in the Construction Sector of 1956	Working time duration (daily limit); working time organisation (standard working time arrangement)	1956-2000
	Provisions on Working Conditions of Loading, Unloading, and Handling Workers of 1956	Other legal indicators (daily break)	1956-present
	Opinions on Wage Benefits for Workers during Overtime, Personal Leave, Sick Leave, and Suspension from Work of 1959	Working time duration (overtime limit); working time Organisation (overtime work arrangement); other legal indicators (personal leave, sick leave, wedding and funeral leave)	1959-present
	Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965	Working time duration (daily limit, paid annual leave)	1965-present

Note. The provisions on maternity leave contained in this regulation were terminated due to the adoption of the Regulation on Labour Protection of Female Workers in 1988.

5.2.1.1 The Constitution

The first form of regulation of working time in this period is found in the Common Programme, which was adopted by the Chinese People's Political Consultative Conference (CPPCC) in 1949 and served as the interim Constitution of China from 1949 to 1954. It set a general rule of 'eight to

ten hours working day', applying to both public and private enterprises.[4] The first formal Constitution, adopted by the National People's Congress (NPC) in 1954, explicitly stipulated that 'workers have the right to rest' and 'the State shall regulate hours of work and holidays, and expands the facilities for rest and recuperation of workers in order to enable them to exercise such right'.[5] The 1954 Constitution was replaced by the 1975 Constitution, born in the context of the Cultural Revolution.[6] The latter legitimised the Cultural Revolution and reduced many provisions that should be stipulated explicitly in the Constitution.[7] Most strikingly, the 1975 Constitution eliminated the stipulation that 'citizens are legally equal' contained in the 1954 Constitution.[8] The regulation of working time was simplified as 'workers have the right to rest'.[9]

5.2.1.2 Administrative Regulations

The first administrative regulation regarding working time was adopted by the State Council in 1949, namely, the Measures on Public Holidays for Annual Festivals and Memorial Days.[10] It recognised four types of public holidays in China: (a) holidays for all citizens (seven days in total); (b) holidays for certain groups (half-day for women, youth, children, and military personnel); (c) holidays for ethnic minorities (shall be regulated by local governments); and (d) memorial days without leave.[11]

Next was the Labour Insurance Regulation, adopted by the State Council in 1951 and amended in 1953, dealing with maternity leave. It identified maternity leave as part of labour insurance to protect the health of paid workers and ease special difficulties in their livelihood.[12] It entitled female workers to a leave period of fifty-six days with full payment of the wage, an additional fourteen days in cases of a difficult delivery or the birth of twins, and a leave period of thirty days to those who have had a miscarriage.[13]

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4 The Common Programme 1949, art 32.

5 The Constitution 1954, art 92.

6 The Cultural Revolution (in Chinese: 文化大革命) was a socio-political movement in China from 1966 to 1976. During the Cultural Revolution, all political science and law institutes were basically closed. As many scholars have pointed out, it was a ten-year disaster for legal studies. See: Sean Cooney, Sarah Biddulph and Ying Zhu, *Law and Fair Work in China* (Routledge 2013) 25; Dong Yan, 'In Search of Chinese "Labour Law"' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 26.

7 The 106 articles contained in the 1954 Constitution were reduced to 30 articles in the 1975 Constitution.

8 The Constitution 1954, art 85.

9 The Constitution 1975, art 27.

10 In general, a legal instrument titled with 'measures' often leads to a 'department rule' or 'normative document' in China, but there are a few exceptions, such as the current one. See Appendix 1: Profile of China.

11 Measures on Public Holidays for Annual Festivals and Memorial Days 1949, ss 1-4.

12 Labour Insurance Regulation 1951 (amended in 1953), art 1.

13 Labour Insurance Regulation 1951 (amended in 1953), art 16.

In 1952, a regulation dealing with sick leave was adopted, the Interim Regulation on Living Conditions of State Functionaries during Sick Leave. It was subsequently revised to a new version in 1954 and 1955. The 1955 Regulation on Sick Leave was designed for State Functionaries and other workers who had made great contributions to society.[14] It entitled such workers to a relatively long period of sick leave (within six months or above six months) with payment, depending on the years of work.[15]

The last major administrative regulation regarding working time in this period was the Interim Regulation on Home Leave and Wages Benefits of Workers, adopted by the State Council in 1957. This regulation was designed for workers who have worked for a whole year in public enterprises and institutions while living far away from their families.[16] It entitled these workers to a period of leave of two to three weeks, depending on the distance between workplace and home where their family members live.[17]

5.2.1.3 Department Rules

Only one department rule in relation to working time was formed in this period, the Measures on Handling Dangerous Goods, which was adopted by the Ministry of Labour in 1951. It stipulated that the daily working hours of workers handling toxic substances shall be limited to six to eight hours.[18] In addition, it clarified that these workers shall not work continuously for more than two hours, shall enjoy an adequate break between each work shift, and shall enjoy a higher payment of 115 per cent to 150 per cent more than workers handling regular substances.[19]

5.2.1.4 Normative Documents

The majority of legal instruments dealing with working time in this period were found in normative documents (see table 5.1). The first normative document was the Decisions on Employment Issues, adopted by the State Council in 1952 in accordance with the 1949 Common Programme. It was relatively comprehensive, covering various legal indicators, such as daily limit, overtime limit, overtime work arrangement, and standard working time arrangement.[20] It identified that the purpose of the regulation of working time was to protect workers' health, improve their working productivity,

14 Interim Regulation on Living Conditions of State Functionaries during Sick Leave 1955, arts 1, 3.
15 Interim Regulation on Living Conditions of State Functionaries during Sick Leave 1955, art 3.
16 Regulation on Home Leave and Wages Benefits of Workers 1957, art 1.
17 Regulation on Home Leave and Wages Benefits of Workers 1957, art 2.
18 Measures on Handling Dangerous Goods 1951, art 4.
19 Measures on Handling Dangerous Goods 1951, arts 4, 5.
20 Decisions on Employment Issues 1952, s 1.

and promote employment.[21] It also elaborated upon the rule of 'eight to ten hours working day' set forth in the 1949 Common Programme. Specifically, first, in general, an eight- to ten-hour working day shall apply across the country; second, an eight-hour working day shall apply to the industry, mining, and transportation sectors, as well as to public enterprises in big and medium-sized cities; third, a less than eight-hour working day shall apply to activities that are detrimental to workers' health; and fourth, overtime work shall be closely restricted in both public and private enterprises.[22]

Next, the Notice on Maternity Leave for Female Workers was adopted by the State Council in 1955. It was a relatively short normative document, applying to female workers in public institutions.[23] It set four rules consistent with maternity leave provisions contained in the 1951 Labour Insurance Regulation: (a) childbirth: a total of fifty-six days of leave shall apply to female workers before and after childbirth, with an additional fourteen days in cases of a difficult delivery or the birth of twins; (b) miscarriage: in the event of a miscarriage before the seventh month of pregnancy, a period of leave of up to thirty days shall apply to female workers, based on the advice of a medical practitioner; (c) during maternity leave (including Sundays and statutory holidays), wages shall be paid as usual; and (d) if a female worker still needs to rest at the expiration of her maternity leave due to illness, such leave shall be treated as sick leave.[24]

In the following year, three normative documents concerning working time were adopted, the Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations, by the Ministry of Labour, Provisions on Eight Working Hours in the Construction Sector by the State Council, and Provisions on Working Conditions of Loading, Unloading and Handling Workers by the Ministry of Labour. Specifically, the first document recognised 'Sunday' as 'public day' in the industry, mining, infrastructure construction, and transportation sectors.[25] In other words, a six-day workweek from Monday to Saturday was confirmed in these sectors. In addition, it clarified the rate of overtime payment, specifically: (a) 150 per cent on the regular wage if workers were required to work on Sunday, and (b) 200 per cent on the regular wage if workers were required to work on public holidays.[26] The second specifically confirmed an eight-hour working day in the Construction Sector.[27] The

21 ibid.
22 ibid.
23 Notice on Maternity Leave for Female Workers 1955.
24 ibid.
25 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).
26 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(1).
27 Provisions on Eight Working Hours in the Construction Sector 1956.

third provided a set of technical rules with regard to handling-related activities, and clarified that workers shall have a break of at least ten minutes after two continuous hours of work.[28] It also cited that the rules for workers engaged in handling toxic substances shall refer to the special regulation, the 1951 Measures on Handling Dangerous Goods, as mentioned in section 5.2.1.3.

In 1959, the Opinions on Wage Benefits for Workers during Overtime, Personal Leave, Sick Leave and Suspension from Work was adopted by the Ministry of Labour, dealing with overtime payment, personal leave, and wedding and funeral leave.[29] It provided three rules: (a) formal workers in public enterprises are not entitled with paid personal leave since they are entitled to overtime payment; (b) administrative, engineering, technical, and cooking workers and other odd-job persons are entitled to paid personal leave of within two days as they are not entitled to overtime payment; and (c) all workers in public enterprises are entitled to a paid wedding or funeral leave of at most three days.[30]

The last normative document regarding working time in this period was the Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works, adopted by the Ministry of Health in 1965. It provided for a less than eight-hour working day and an annual leave of two to four weeks, specifically designed for workers in radioactive-related work.[31]

5.2.2 Assessment of China's substantive working time standards against the ILO benchmarks

This section assesses China's substantive working time standards against the ILO benchmarks for the period before the transition (1949-1978). Table 5.2 provides a full overview of the qualitative data of the assessment, while the full coding results with legal texts can be found in the ILO-DWT-China database in Appendix 5. As shown in table 5.2, not all legal indicators identified in the ILO benchmarks were regulated by Chinese legislation in this period. The qualitative data on the aspect of 'topic' ('0' or '1') give a first indication. While the legal indicators covered ('topic' coded as '0') consist of daily limit, overtime limit, weekly rest, paid annual leave, standard working time arrangement, overtime work arrangement, and maternity leave, while the legal indicators not covered (i.e., 'topic' coded as '0') consist of weekly limit, variable working time arrangement, night work, part-time work, and parental leave. As elaborated in Chapter 3, these legal indica-

28 Provisions on Working Conditions of Loading, Unloading and Handling Workers 1956.

29 It is worth noting that although 'sick leave' appeared in the title of this normative document, it was not dealt with in the content of this document. See: Opinions on Wage Benefits for Workers during Overtime, Personal Leave, Sick Leave and Suspension from Work 1959.

30 ibid.

31 Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works 1965.

tors are organised into three groups, working time duration, working time organisation, and care-related leave, to be explained in more detail in sections 5.2.2.1 to 5.2.2.3, respectively. Other legal indicators not governed by the ILO benchmarks can be found in Chinese legislation, identified in table 5.1 (see section 5.2.1), such as daily break, public holidays, sick leave, home leave, personal leave, and wedding and funeral leave, to be examined in section 5.2.2.4.

Table 5.2 Results of the assessment of China's substantive working time standards against the ILO benchmarks (1949-1978)

Legal indicators		Topic	Aim/ purpose	Scope of application	Material content
Working time duration	**Daily limit**	1	1	1	1
	Weekly limit	0	0	0	0
	Overtime limit	1	0	0	0.5
	Weekly rest	1	0	0.5	0.5
	Paid annual leave	1	0.5	0.5	0.5
Working time organisation	**Standard working time arrangement**	1	1	1	0.5
	Variable working time arrangement	0	0	0	0
	Overtime work arrangement	1	0	0	1.5
	Night work	0	0	0	0
	Part-time work	0	0	0	0
Care-related leave	**Maternity leave**	1	0.5	0.5	0.5
	Parental leave	0	0	0	0
Other legal indicators	**Daily break, public holidays, home leave, personal leave, sick leave, and wedding and funeral leave**				

5.2.2.1 Working time duration

Five legal indicators are concerned with the duration of working time: daily limit, weekly limit, overtime limit, weekly rest, and paid annual leave. As shown in table 5.2, with the exception of weekly limit, all the other four legal indicators were regulated in China in this period.

As found in the 1949 Common Programme and 1952 Decisions on Employment Issues, the daily hours of work was limited at eight to ten hours in general.[32] Additionally, the 1952 Decisions stipulated that an eight-hour work day shall apply to the industry, mining, and transportation sectors as well as to public enterprises in big and medium-sized cities and a less than eight-hour working day shall apply to activities that are detrimen-

32 The Common Programme 1949, art 32; Decisions on Employment Issues 1952, s 1.

tal to workers' health.[33] These rules were elaborated upon in the 1951 Measures on Handling Dangerous Goods (e.g., six- to eight-hour working day), 1956 Provisions on Construction Sector (e.g., eight-hour working day), and 1965 Opinions on Radioactive Works (e.g., shorter than eight-hour working day).[34] As such, the daily limit of work hours in this period was generally established around eight as set by the ILO benchmarks, resulting in a coding of '1' on the material content of daily limit. The purpose of the regulation of daily limits was also provided in these legal instruments, mainly serving to protect workers' health and to improve their working productivity.[35] This incentive was consistent with the ILO benchmarks that aim to safeguard the health and well-being of workers and serve needs related to production.[36] Hence, a coding result of '1' was given to the aim/purpose of daily limit. Regarding the scope of application, the 1949 Common Programme and 1952 Decisions covered both public and private enterprises, which were also consistent with the ILO benchmarks that apply to both public and private industrial undertakings, commerce, and office sectors.[37] A coding result of '1' was thus also given to the scope of application of this legal indicator.

Compared to the daily limit that was fully regulated in this period, the overtime limit was only regulated based on the material content with no indications of the aim/purpose and scope of application. In fact, only a very brief stipulation of 'overtime work shall be strictly restricted in both public and private enterprises' was stipulated in the 1952 Decisions.[38] No other provisions on overtime limit can be found. Compared to the ILO benchmarks that call for a 'reasonable' limit on the number of overtime hours, Chinese legislation provided lower standards on material content.[39] Hence, a coding result of '0.5' was given to this aspect.

Weekly rest was regulated on the material content and scope of application with no indication of the aim/purpose. However, compared to the ILO benchmarks in which weekly rest is fleshed out in detail in two specific Conventions, only one legal instrument related to weekly rest can be found in China, the 1956 Notice on Wage Issues.[40] This instrument specifies 'Sunday' as 'public day' in the industry, mining, infrastructure construction and transportation sectors, implying one day of weekly rest.[41] This resulted in

33 Decisions on Employment Issues 1952, s 1.
34 Measures on Handling Dangerous Goods 1951, art 4; Provisions on Eight Working Hours in the Construction Sector 1956; Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works 1965
35 Decisions on Employment Issues 1952, s 1.
36 See: table 4.5 in Chapter 4 and Appendix 5.
37 ibid.
38 Decisions on Employment Issues 1952, s 1.
39 See: table 4.5 in Chapter 4 and Appendix 5.
40 ibid.
41 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).

a coding result of '0.5' on both material content and scope of application of weekly rest.

Similar to the daily limit, paid annual leave was fully regulated on three aspects in this period. However, compared to the ILO benchmarks that provide all employed persons, except seafarers, with at least three working weeks of paid annual leave for one year of service in order to protect their health and well-being, allow them to be with their families, help them be more productive, and limit working time over the year, Chinese legislation provided lower standards on all three aspects.[42] Only one normative document dealing with paid annual leave can be found in this period, the 1965 Opinions on Radioactive Works, which provided workers involved with radioactive-related works annual rest of two to four weeks to protect their health and prevent disease.[43] A coding result of '0.5' was given to all three aspects of paid annual leave.

5.2.2.2 Working time organisation

Five legal indicators are concerned with the organisation of working time: standard working time arrangement, variable working time arrangement, overtime work arrangement, night work, and part-time work; however, as shown in table 5.2, only two of them were regulated in China in this period, standard working time arrangement and overtime work arrangement.

Based on the ILO benchmarks, the standard working time arrangement is built upon the regulation of daily and weekly limits of hours of work and weekly rest. It is defined as the fixed working hours each day for a fixed number of days, usually an eight-hour working day and a forty-hour workweek (Monday to Friday) or a longer workweek than forty hours (Monday to Saturday).[44] It aims to safeguard the health and well-being of workers and to serve needs related to production, applying to both public and private industrial undertakings, commerce, and office sectors.[45] In this Chinese context, however, due to the lack of weekly limit, the standard working time arrangement was generally simplified as an eight-hour working day. Although 'Sunday' was specifically recognised as a 'public day', it merely appeared in a normative document applying to certain sectors.[46] Hence, Chinese legislation provided lower standards than the ILO benchmarks on the material content. A coding result of '0.5' was given to this aspect. The aim/purpose and scope of application of the standard working time arrangement are consistent with daily and weekly limits of hours of

42 See: table 4.5 in Chapter 4; Appendix 5.
43 Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works 1965.
44 See: table 4.5 in Chapter 4; Appendix 5.
45 ibid.
46 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).

work and weekly rest. As examined in section 5.2.2.1, because these two aspects of daily limit in Chinese legislation were consistent with the ILO benchmarks, a same coding result of '1' was given to these two aspects of the standard working time arrangement.

The overtime work arrangement, much like the overtime limit examined in section 5.2.2.1, was only regulated on the material content with no indications of the aim/purpose and scope of application. As provided in the ILO benchmarks, the material content of overtime work arrangement is confined to overtime payment. While the ILO benchmarks provide that overtime payment shall not be less than 125 per cent of the regular wage, Chinese legislation stipulated that the overtime payment shall be 150 to 200 per cent of the regular wage depending on the days workers were required to work.[47] Hence, Chinese legislation provided higher standards than the ILO benchmarks on the material content. A coding result of '1.5' was given to this aspect.

5.2.2.3 Care-related leave

Two legal indicators are concerned with care-related leave: maternity leave and parental leave. As shown in table 5.2, while maternity leave was regulated on all three aspects in this period, parental leave was completely overlooked.

As found in the 1951 Labour Insurance Regulation, maternity leave was considered part of labour insurance to protect the health of paid workers and ease any special difficulties in their livelihood.[48] Compared to the ILO benchmarks, which aim to promote the equality of all women in the workforce; protect the health and safety of the mother and child; and recognise diversity in economic and social development and in enterprises applying to all employed women – including those in atypical forms of dependent work, Chinese legislation had lower standards for the aim/purpose and scope of application.[49] A coding result of '0.5' was given to these two aspects. In terms of the material content, while the ILO benchmarks provide a period of maternity leave of no less than fourteen weeks, including a compulsory leave period of six weeks after childbirth, both the 1951 Labour Insurance Regulation and 1955 Notice on Maternity Leave provided a leave period of fifty-six days and an additional fourteen days in cases of a difficult delivery or the birth of twins.[50] Chinese legislation thus provided lower standards than the ILO benchmarks. A coding result of '0.5' was given to this aspect.

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47 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).

48 Labour Insurance Regulation 1951 (amended in 1953), art 1.

49 See: table 4.5 in Chapter 4; Appendix 5.

50 Labour Insurance Regulation 1951 (amended in 1953), art 16.

5.2.2.4 *Other legal indicators*

In addition to the twelve legal indicators identified in the ILO benchmarks, other legal indicators can be found in the Chinese legal instruments as identified in section 5.2.1, such as daily break, public holidays, sick leave, home leave, personal leave, and wedding and funeral leave. However, due to the lack of relevant ILO benchmarks, they are not coded in the ILO-DWT-China database (see Appendix 5). Nevertheless, they also played an important role in achieving decent working time in China, at least for certain groups of workers. For instance, a relatively long period of sick leave with payment was provided to State Functionaries and other workers who had made a great contribution to the society, which helped to promote healthy working time.[51] Home leave was considered a means of resolving the problem for workers who have worked for a whole year in public enterprises and institutions and meanwhile live far away from their families, which helped to promote family-friendly working time.[52]

5.2.3 Analysis of achieving decent working time in China: Substantive aspects (1949-1978)

This section moves to an analysis and evaluation of achieving decent working time regarding the substantive aspects in China. While table 5.2 provides a full overview of the qualitative data of the assessment for the period before the transition (1949-1978), figure 5.1 features the same information, but shows more clearly where China met the ILO benchmarks, on which indicators it was falling short, and on which indicators China was outperforming the ILO benchmarks.

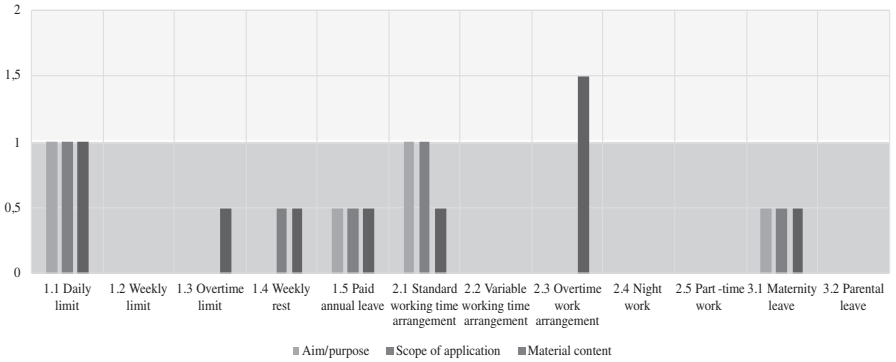

Figure 5.1 Evaluation of achieving decent working time in China: Substantive aspects (1949-1978)

51 Interim Regulation on Living Conditions of State Functionaries during Sick Leave 1955.
52 Regulation on Home Leave and Wages Benefits of Workers 1957.

As figure 5.1 makes clear, China was far from reaching any of the ILO benchmarks in this period, with the exception of daily limit, the aim/purpose and scope of application of standard working time arrangement, and the material scope of overtime work arrangement. This shortcoming was due to China's lack of a comprehensive and specific law governing working time in this period. Most attention was paid to the daily limit, whereas for five of the twelve legal indicators nothing at all was regulated, including weekly limit, variable working time arrangement, night work, part-time work, and parental leave. Notably, however, China exceeded the ILO benchmarks on the material content of overtime work arrangement because Chinese legislation provided a higher rate of overtime payment than what the ILO benchmarks set.

A second remarkable point is that, although the legal indicators of paid annual leave and maternity leave were fully regulated on three aspects, none of them provided similar-to-higher standards than the ILO benchmarks because paid annual leave merely derived from a normative document dealing with radioactive works. It was expressed as an 'annual rest' confined to such workers. Maternity leave was found in an administrative regulation dealing with labour insurance, and a normative document specifically applying to public institutions. However, both legal instruments provided lower standards than the ILO benchmarks.

A third point is that, although the legal indicators of overtime limit and weekly rest were regulated, they were only regulated on the material content with little or no indication of the aim/purpose and being limited in the scope of application. While overtime limit was only found in a very brief stipulation that overtime work shall be rigorously restricted in both public and private enterprises, weekly rest was stipulated through the recognition of 'Sunday' as a 'public day' in certain sectors. No further elaboration on these two legal indicators can be observed.

5.3 The transition period (1978-2007)

5.3.1 Identification of China's legal instruments dealing with working time (1978-2007)

Based on the legal databases of LRD-NPC and LRD-PKU, a full list of China's legal instruments dealing with working time in the transition period (1978-2007) appears in table 5.3. As this table shows, substantial changes took place in the legal instruments dealing with working time in this period. It became more common to use laws and regulations to set substantive working time standards. Normative documents appeared to interpret or elaborate upon the legislative provisions enshrined in the laws and regulations. Sections 5.3.1.1 to 5.3.1.4 examine such legal instruments dealing with working time in detail, respectively.

Table 5.3 The legal instruments dealing with working time in China (1978-2007)

Types	Legal instruments	Legal indicators covered	Effective period
Constitution	**The 1978 Constitution**	Working time in general	1978-1982
	The 1982 Constitution (amended in 1988, 1993, 1999, 2004, and 2018)	Working time in general	1982-present
Laws	**Law on the Protection of Women's Rights and Interests of 1992 (amended in 2005 and 2018)**	Care-related leave (maternity leave)	1992-present
	The 1994 Labour Law (amended in 2009 and 2018)	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement, night work); care-related leave (maternity leave); other legal indicators (public holidays)	1995-present
Administrative regulations	**Regulation on Home Leave of Workers of 1981**	Other legal indicators (home leave)	1981-present
	Regulation on Living Conditions for State Functionaries during Sick Leave of 1981	Other legal indicators (sick leave)	1981-present
	Regulation on Labour Protection of Female Workers of 1988	Working time organisation (night work); care-related leave (maternity leave)	1988-2012
	Regulation on Working Time of Workers of 1994	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1994-1995
	Regulation on Working Time of Workers (1995 Revision)	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1995-present
	Measures on Public Holidays for Annual Festivals and Memorial Days (1999 Revision)	Other legal indicators (public holidays)	1999-2007

Departmental rules	**Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises of 1994**	Working time organisation (variable working time arrangement)	1995-present
	Measures of the Ministry of Labour on the Implementation of the <Regulation on Working Time of Workers> of 1995	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1995-present
	Measures of the Ministry of Personnel on the Implementation of the <Regulation of on Working Time of Workers> in State Departments and Public Institutions of 1995	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1995-present
	Measures of the Ministry of Posts and Telecommunications on the Implementation of Working Time Provisions of 1995	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, variable working time arrangement, overtime work arrangement)	1995-present
	Measures of the Ministry of Transport on the Implementation of Working Time Provisions of 1995	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, variable working time arrangement overtime work arrangement)	1995-present
Normative documents	**Notice on Wedding and Funeral Leave for Workers in the State-own Enterprises of 1980**	Other legal indicators (wedding and funeral leave)	1980-present
	Opinions on the Implementation of <Regulation on Home Leave of Workers> of 1981	Other legal indicators (home leave)	1981-present
	Notice on the Restriction regarding the Excessive Overtime Payments of 1982	Organisation (overtime work arrangement)	1982-present

Normative documents	**Interpretation on Issues regarding <Regulation on Labour Protection of Female Workers> of 1989**	Working time organisation (night work arrangement); care-related leave (maternity leave)	1989-present
	Interpretation on Certain Provisions of <Labour Law> of 1994	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement, night work); care-related leave (maternity leave)	1994-present
	Interpretation on the Issues regarding the <Regulation on Working Time of Workers> of 1995	Duration (daily limit, weekly limit, weekly rest); Organisation (standard working time arrangement)	1995-present
	Opinions on the Issues regarding the Implementation of <Labour Law> of 1995	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement, night work); care-related leave (maternity leave)	1995-present
	Reply to Working Time Issues of Workers of 1997	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement)	1997-present
	Opinions on Part-time Work Issues of 2003	Working time organisation (part-time work arrangement)	2003-present

5.3.1.1 The Constitution

The 1978 Constitution was China's third Constitution, adopted by the NPC at the end of the Cultural Revolution.[53] It restored several provisions contained in the 1954 Constitution but were deleted in the 1975 Constitution, including the provisions on working time. Specifically, Article 49 of the 1978 Constitution stipulated that 'workers have the right to rest', and 'the State

53 The 1978 Constitution was the third version of Chinese Constitution. Because of the limitations of the historical conditions at that time, this Constitution failed to tackle the flaws of the 1975 Constitution. It was short-lived, working only up to 1982, when a new Constitution was adopted, which is the current 1982 Constitution. See Appendix 1: Profile of China.

shall regulate hours of work and holidays, and expand the facilities for rest and recuperation of workers in order to enable them to exercise such right', which was consistent with the 1954 Constitution. Four years later, a fourth Constitution was adopted by the NPC in 1982, which is the current Constitution and provides the same provisions regarding working time contained in the 1978 and 1954 Constitutions.[54] The 1982 Constitution was amended several times, but the provisions on working time have never been changed.

5.3.1.2 Laws

The first law in relation to working time was the Law on the Protection of Women's Rights and Interests, adopted by the NPC in 1992, dealing with maternity leave. It identified maternity leave as part of women's rights and in the interests of labour and social security, serving the overall purpose of this law to 'protect women's lawful rights and interests, promote equality between men and women, and allow full play to women's role in socialist modernisation'.[55] Additionally, it stipulated that women be under special protection during menstrual, pregnancy, obstetrical and nursing periods, and their labour contracts cannot be terminated by reasons of marriage, pregnancy, maternity leave, or baby-nursing.[56]

The most important law dealing with working time was the Labour Law, which was adopted by the NPC Standing Committee in July 1994 in accordance with the 1982 Constitution, and came into effect in January 1995. It was a comprehensive law governing labour in China, representing a milestone for Chinese labour legislation.[57] The purpose of this law is to 'protect workers' lawful rights and interests, adjust labour relationship, establish and safeguard the labour system suiting to the socialist market economy, and promote economic development and social progress.'[58] It has a broad application to workers who have established a labour relationship with the 'employing unit', including enterprises and individual businesses, State departments, public institutions, and social groups within the boundary of China.[59] The content of this law is also very broad, consisting of 107 articles divided into thirteen chapters, dealing with labour matters such as employment promotion, labour contract, working time, wages, occupational health and safety, special protection for female and juvenile workers, vocational training, social insurance and welfare, and labour disputes.[60]

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54 See: The Constitution 1982, art 43.

55 Law on the Protection of Women's Rights and Interests 1992, art 1.

56 Law on the Protection of Women's Rights and Interests 1992, arts 26–27.

57 Sean Cooney, Sarah Biddulph, and Ying Zhu, *Law and Fair Work in China* (Routledge 2013) 51; Junling Jia and Qian Wei, 'The Evolution and Development of China's Labour Law 1994' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 49.

58 Labour Law 1994, art 1.

59 Labour Law 1994, art 2.

60 Labour Law 1994.

A set of substantive standards in Chapter 4 of the 1994 Labour Law elaborated upon working time. Specifically, this law provides for an eight-hour working day, an average workweek of forty-four hours, and at least one day off per week.[61] It also provides provisions that enable an organisation to 'opt out' of these standards. Article 39 of this law stipulates that 'if the employer cannot follow those standards on daily and weekly limits of working hours and weekly rest, it may adopt other standards with the approval of the local labour department'. The detailed standards are not elaborated in this law; instead, they are specifically dealt with in a department rule adopted by the Ministry of Labour in 1994, namely, the Measures on Examination and Approval of Irregular Working Hour System and Comprehensive Working Hour System of Enterprises, to be examined in section 5.4.1.4, where department rules are concerned.

The 1994 Labour Law also regulates overtime due to the requirement of the production of enterprises, which is allowed limited to one hour per day in general, three hours per day for special reasons, and thirty-six hours per month, after the consultation between the employer and trade unions and workers concerned.[62] The 'requirement of the production of enterprises' is not elaborated in this law; instead, it is clarified in a normative document adopted by the Ministry of Labour in 1994, that is, the Interpretation on Certain Provisions of <Labour Law>, to be examined in section 5.3.1.5, where normative documents are concerned. The 1994 Labour Law also sets the rate of the overtime payment, covering three circumstances: (a) 150 per cent of the regular wage if workers are required to work longer hours in general; (b) 200 per cent of the regular wage if no compensation rest can be arranged afterwards for workers required to work on days of rest; and (c) 300 per cent of the regular wage if workers are required to work on public holidays.[63] Additionally, this law provides that overtime is not subject to restriction under three circumstance: (a) an emergency threatening the life and health of workers or the safety of property; (b) where urgent repairs are needed to production facilities; and (c) other circumstances stipulated by laws and administrative regulations.[64]

Public holidays and paid annual leave are also covered in the 1994 Labour Law. Article 40 identifies five paid national public holidays (i.e., New Year's Day, Spring Festival, International Labour Day, National Day, and other holidays stipulated by laws and regulations). This provision is supplemented by an administrative regulation, Measures on Public Holidays, which was originally adopted by the State Council in 1949 and revised in 1999. This regulation will be examined in section 5.4.1.3, where administrative regulations are concerned. In terms of paid annual leave, Article 45 of the 1994 Labour Law stipulates that workers who have worked

61 Labour Law 1994, arts 36, 38.
62 Labour Law 1994, art 41.
63 Labour Law 1994, art 44.
64 Labour Law 1994, art 42.

for one successive year or more are entitled to paid annual leave. However, such a provision is an enabling one that requires the State Council to adopt specific rules. The national rules were passed by the State Council with the Regulation on Paid Annual Leave of Workers in 2007 and took effect in 2008. This will be examined in the next period in section 5.4.

Maternity leave and night work as special protections for female workers are also covered in the 1994 Labour Law. While Article 62 provides female workers with maternity leave of no less than ninety days, Articles 61 and 63 prohibit night work for female workers who are pregnant for seven months or are breastfeeding babies of less than one year old. The more detailed standards can be referred to an administrative regulation adopted by the State Council in 1988, the Regulation on Labour Protection of Female Workers, to be examined later in section 5.4.1.3, where administrative regulations are concerned.

5.3.1.3 Administrative Regulations

The first two administrative regulations concerning working time in this period were adopted in 1981, the Regulation on Home Leave of Workers and the Regulation on Living Conditions for State Functionaries during Sick Leave. Both were new versions that replaced old interim regulations examined in the first period. The former replaced the 1957 Interim Regulation on Home Leave.[65] The major development in this regulation concerns the clarification of three types of home leave, namely: (a) a thirty-day leave each year is entitled to workers to visit their spouses; (b) a twenty-day leave each year is entitled to unmarried workers to visit their parents, or a forty-five-day leave every two years may be granted to workers if their employing units are unable to provide him with the leave in the given year due to the work needs or if workers wish to visit their parents once every other year; and (c) a twenty-day leave is entitled to married workers to visit their parents once every four years.[66] The latter replaced the 1955 Interim Regulation on Sick Leave.[67] The major development in this regulation concerns the clarification of the rules for sick leave: (a) within two months: the wage shall be paid as usual; (b) exceed two months but no more than six months: ninety per cent of the wage shall be paid for workers who have worked for less than ten years; and the wage shall be paid as usual for workers who have worked for ten years; and (c) more than six months: seventy per cent of the wage shall be paid for workers who have worked for less than ten years; eighty per cent of the wage shall be paid for workers who have worked for ten years; and ninety per cent of the wage shall be paid for workers who participated in revolutionary work before 1945.[68]

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65 Regulation on Home Leave of Workers 1981, art 9.
66 Regulation on Home Leave of Workers 1981, art 3.
67 Regulation on Living Conditions for State Functionaries during Sick Leave 1981, art 11.
68 Regulation on Living Conditions for State Functionaries during Sick Leave 1981, arts 1–3.

Next was the Regulation on Labour Protection of Female Workers, adopted by the State Council in 1988, dealing with maternity leave and night work. It replaced maternity leave provisions contained in the 1953 Labour Insurance Regulation and 1955 Notice on Maternity Leave, examined in the first period.[69] This regulation aimed to 'safeguard the lawful rights and interests of female workers, reduce and resolve the special difficulties they encountered during work due to their physiological characteristics, and protect their health and promote socialist modernisation'.[70] It had the same scope of application as the Labour Law of China, to be adopted in 1994.[71] Some basic rules contained in this regulation were incorporated into the 1994 Labour Law, such as a ninety-day maternity leave and the prohibition of night work for female workers who are pregnant for seven months or are breastfeeding their babies. In addition, this regulation stipulated that the ninety days of maternity leave shall include fifteen days of antenatal leave; an additional fifteen days shall be granted in case of dystocia; an additional fifteen days shall be granted for each additional baby born for those who have born more than one child in a single birth; and a certain period of leave shall be granted for those who have a miscarriage according to a certificate from a medical department.[72] This regulation also stipulated that during the pregnancy, maternity leave, and breastfeeding period of female workers, their basic wage shall not be reduced and their labour contracts cannot be terminated.[73]

The most comprehensive administrative regulation governing working time was the Regulation on Working Time of Workers, which was first adopted by the State Council in 1994, and then revised by a new version in 1995. The 1995 Regulation came one year after the adoption of the 1994 Labour Law and holds the same scope of application but with several developments regarding content. In particular, it adjusts the forty-four-hour workweek contained in the 1994 Labour Law to forty hours, leading to a reduction of weekly limit of hours of work in China.[74] It also explicitly expresses the eight-hour working day and forty-hour workweek as the standard working hours system in China and identifies Saturday and Sunday as weekly rest days in the State departments and public institutions.[75] In other words, an eight-hour working day from Monday to Friday and a two-day weekly rest from Saturday and Sunday is recognised in China, which is the typical form of the so-called standard working hours system there. Like the 1994 Labour Law, this regulation has provisions enabling organisations to opt out of the standard working hours system, leading to the non-standard

69 Regulation on Labour Protection of Female Workers 1988, art 19.
70 Regulation on Labour Protection of Female Workers 1988, art 1.
71 Regulation on the Labour Protection of Female Workers 1988, art 2.
72 Regulation on the Labour Protection of Female Workers 1988, art 8.
73 Regulation on the Labour Protection of Female Workers 1988, art 4.
74 Regulation on Working Time of Workers 1995, art 3.
75 Regulation on Working Time of Workers 1995, art 7.

working hours system.[76] As mentioned in section 5.3.1.2, the non-standard working hours system is specifically dealt with in a department rule to be examined in section 5.3.1.4.

The last administrative regulation, as shown in table 5.3, was the 1999 Revision of the Measures on Public Holidays. This regulation provided four types of public holidays, but with an extension from seven to ten days on the first type, and from one half-day to one full day for children within the second type, namely: (a) holidays for all citizens (ten days in total); (b) holidays for certain groups (half-day for women, youth, and military personnel; one day for children);(c) holidays for ethnic minorities (shall be regulated by local governments); and (d) memorial days without leave.[77]

5.3.1.4 Department Rules

The most important department rule governing working time was the Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises, adopted by the Ministry of Labour in December 1994 and actualised in January 1995. It serves as a supplement to Article 39 of the 1994 Labour Law and Article 5 of the 1995 Regulation on Working Time, applying to all enterprises in China that cannot follow the standard working hours system due to special characteristics of production.[78] It provides two types of non-standard working hours systems: the irregular working hours system and the comprehensive working hours system. The first deals with unfixed working hours applying to three circumstances: (a) whose work cannot be measured according to the standard working hours system (e.g., senior managers, field workers, sales personnel, guards, etc.); (b) whose work requires great flexibility (e.g., transport personnel, taxi drivers, loaders, stevedores, warehouse workers, etc.); and (c) other workers who are more suited for irregular hours of work due to the nature of their production activity or work.[79] The second deals with the calculation of working hours on a weekly, monthly, quarterly, or yearly basis, also applying to three circumstances: (a) whose work has to be conducted continuously due to the special nature of work (e.g., transportation, railway, postal and telecommunication services, water transport, aviation, fishery, etc.); (b) whose work is limited by seasonal or natural conditions (e.g., geological and resource exploration, construction, salt-making, sugar-making and tourism, etc.); and (c) other workers who are more suited

76 Regulation on Working Time of Workers 1995, art 5.

77 Measures on Public Holidays for Annual Festivals and Memorial Days (1999 Revision) arts 2–5.

78 Measure on Examination and Approval of Irregular Working Hour System and Comprehensive Working Hour System of Enterprises 1994, arts 2–3.

79 Measure on Examination and Approval of Irregular Working Hour System and Comprehensive Working Hour System of Enterprises 1994, art 4.

for comprehensive hours of work.[80] Additionally, this department rule stipulated that the application of non-standard working hours system in enterprises shall be built upon the protection of workers' health and safety and their opinions.[81] Such application requires approval by the relevant labour departments.[82]

In addition to the 1994 Measures, other departmental rules in relation to working time were adopted in this period. However, as shown in table 5.3, they were mainly adopted by the internal departments of the State Council, such as the Ministry of Labour, the Ministry of Personnel, the Ministry of Posts and Telecommunications, and the Ministry of Transport, as a response to the implementation of working time provisions contained in the 1994 Labour Law, 1995 Regulation, and/or 1994 Measures. Except for providing more technical rules for certain sectors, nothing changed with regard to the concrete working time provisions contained in these legal instruments.

5.3.1.5 Normative Documents

The first normative document concerning working time in this period was the Notice on Wedding and Funeral leave for Workers in the State-owned Enterprises, which was adopted by the State Labour Bureau and the Ministry of Finance in 1980. It provided workers in public enterprises with one- to three-day paid leave to attend their own wedding, or the wedding or funeral of an immediate relative (i.e., parents, spouse, or children).[83]

In 1981, the National Labour Bureau adopted Opinions on the Implementation of <Regulation on Home Leave of Workers>, a normative document interpreting the 1981 Regulation on Home Leave. This document clarified the scope of application for home leave for formal workers, excluding apprentices, trainees, and interns.[84] It also clarified that the term 'parents' refers to those who have brought up the worker and are now supported by this worker, excluding parents-in-law.[85]

In the following year, the Notice on Restriction of Excessive Overtime Payments was adopted by the State Council, dealing with overtime work. It clarified situations in which overtime work was allowed in order to restrict excessive overtime payments in public enterprises.[86] This implementation

80 Measure of Examination and Approval for Irregular Working Hour System and Comprehensive Working Hour System in Enterprises 1994 art 5.
81 Measure of Examination and Approval for Irregular Working Hour System and Comprehensive Working Hour System in Enterprises 1994, art 6.
82 Measure of Examination and Approval for Irregular Working Hour System and Comprehensive Working Hour System in Enterprises 1994, art 7.
83 Notice on Wedding and Funeral leave for Workers in the State-owned Enterprises 1980.
84 Opinions on the Implementation of <Regulation on Home Leave of Workers> 1981, para 2.
85 Opinions on the Implementation of <Regulation on Home Leave of Workers> 1981, para 1.
86 Notice on the Restriction regarding the Excessive Overtime Payment 1982.

occurred when many public enterprises were using overtime work as a way of increasing wages even when overtime work was not necessary.[87]

Four interpretative normative documents were subsequently adopted by the Ministry of Labour, namely: the 1989 Interpretation on the Issues regarding <Regulation on Labour Protection of Female Workers>, the 1994 Interpretation on Certain Provisions of <Labour Law>, the 1995 Interpretation on the Issues regarding <Regulation on Working Time of Workers>, and the 1995 Opinions on the Issues regarding the Implementation of <Labour Law>. As interpretative documents, they do not directly set substantive working time standards, but rather provide information on the precise meaning and scope of the provisions contained in the relevant laws and regulations. For instance, while the 1988 Regulation prohibited night work for female workers seven or more months pregnant or breastfeeding, its 1989 Interpretation clarified 'night work' as 'work performed from 10 p.m. to 6 a.m.'.[88] Notably, the 1989 Interpretation is the only legal instrument explicitly defining night work in China.[89] While the 1994 Labour Law provides that overtime work is allowed according to the requirements of production enterprises, its 1994 Interpretation clarifies such a requirement as 'the situations where materials and commercial enterprises are required to complete the urgent tasks, such as acquisition, transportation and transportation of agricultural and side-line products during the peak season'.[90] Further, the 1995 Interpretation and the 1995 Opinions clarify that overtime denotes additional hours to the standard working hours system (i.e., eight-hour working day and forty-hour workweek), the consultation of enterprises and workers and trade unions is a process of determining overtime work, and workers have the rights to refuse overtime work if the enterprise violates relevant labour laws and regulations.[91]

Next was the Reply to Working Time Issues of Workers, adopted by the Ministry of Labour in 1997. The 1994 Labour Law and the 1995 Regulation provided for a forty-four-hour workweek and forty-hour workweek, respectively; however, having two standards of weekly limit created some confusion. The 1997 Reply clarifies that China takes the forty-hour workweek as the applicable standard of weekly limit of hours of work.[92]

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87 ibid.

88 Interpretation on the Issues regarding <Regulation on Labour Protection of Female Workers> 1989, para 7.

89 Although many Chinese labour law textbooks mentioned that night work shall be reduced to one hour per shift compared to the eight-hour working day. Unfortunately, none of them provided a source of reference; the author has not been able to find other legal instruments regulating night work. E.g., Kai Chang and others (eds), *Labour Law* (Higher Education Press 2011) 392; Huai Guan and Jia Lin (eds), *Labour Law* (5th edn, Renmin University of China Press 2015) 144.

90 Interpretation on Certain Provisions of <Labour Law>, art 41.

91 Interpretation on the Issues regarding <Regulation on Working Time of Workers> 1995, para 1; Opinions on the Issues regarding the Implementation of <Labour Law> 1995, para 71.

92 Reply to Working Time Issues of Workers 1997, paras 1–2.

The last normative document as shown in table 5.3 was the Opinions on Part-time Work Issues, which adopted by the Ministry of Labour and Social Security (MoLSS) in 2003 to meet the requirements of working time flexibility of employers and the freely chosen employment of workers, and to promote employment and protect workers' lawful rights and interests.[93] It refers to 'part-time work' as 'a form of employment where payments are calculated on an hourly basis' and 'workers generally work for no more than five hours per day on average and thirty hours per week in total for the same employer'.[94] Additionally, this document stipulates that a worker engaged in part-time work can establish a labour contract with one or more employers, and their payment shall not be lower than the minimum hourly wage stipulated by the local government.[95]

5.3.2 Assessment of China's substantive working time standards against the ILO benchmarks

This section provides an assessment of China's substantive working time standards against the ILO benchmarks for the transition period (1978-2007). While table 5.4 provides a complete overview of the qualitative data of the assessment, the full coding results with legal texts can be found in the ILO-DWT-China database in Appendix 5. As shown in table 5.4, with the exception of parental leave, all legal indicators identified in the ILO benchmarks were regulated by China in this period. These legal indicators are organised into three groups: working time duration, working time organisation, and care-related leave, to be explained in more detail in sections 5.3.2.1 to 5.3.2.3, respectively. In addition, similar to the first period, other legal indicators that are not governed by the ILO benchmarks remained in China, such as daily break, public holidays, home leave, personal leave, sick leave, and wedding and funeral leave, examined in section 5.3.2.4.

Table 5.4 Results of the assessment of China's substantive working time standards against the ILO benchmarks (1978-2007)

Legal indicators		Topic	Aim/ purpose	Scope of application	Material content
Working time duration	**Daily limit**	1	1	1	1
	Weekly limit	1	1	1	1.5
	Overtime limit	1	1	1	1.5
	Weekly rest	1	1	1	1.5
	Paid annual leave	1	0.5	0.5	0.5

93 Opinions on Part-time Work Issues 2003, preamble.
94 Opinions on Part-time Work Issues 2003, para 1.
95 Opinions on Part-time Work Issues 2003, paras 1, 7.

Working time organisation	**Standard working time arrangement**	1	1	1	1
	Variable working time arrangement	1	0.5	1.5	1.5
	Overtime work arrangement	1	1	1	1.5
	Night work	1	0.5	0.5	0.5
	Part-time work	1	0.5	0.5	0.5
Care-related leave	**Maternity leave**	1	1	1	0.5
	Parental leave	0	0	0	0
Other legal indicators	**daily break, public holiday, home leave, personal leave, sick leave, and wedding and funeral leave**				

5.3.2.1 Working time duration

All five legal indicators concerned with the duration of working time were regulated in China in this period. With the exception of paid annual leave, China provided similar-to-higher standards than the ILO benchmarks regarding all aspects of all legal indicators.

As found in the 1994 Labour Law, the working day was limited to eight hours, the workweek was limited to forty-four hours on average, and at least one day off per week was required.[96] The 1995 Regulation on Working Time also ordered an eight-hour working day, but adjusted the workweek to forty hours.[97] As interpreted by the 1997 Reply to Working Time Issues, the forty-hour weekly limit is the applicable standard in China.[98] Additionally, the 1995 Regulation specified Saturday and Sunday as the days of weekly rest for the State departments and public institutions, and its 1995 Interpretation and 1997 Reply further emphasised that enterprises, as far as possible, shall implement the standard working hours system of an eight-hour work day and forty-hour work week with two days of weekly rest.[99] As such, Chinese legislation provided consistent standards on the material content of daily limit, and higher standards on the material content of weekly limit and weekly rest, compared to what the ILO benchmarks require.[100] A coding result of '1' and '1.5' were thus given to the material content of daily limit, and weekly limit and weekly rest, respectively. In addition, Chinese legislation regulated the aim/purpose and scope of application of the regulation of working time, including these three legal indicators. In particular,

96 Labour Law 1994, arts 36, 38.
97 Regulation on Working Time of Workers 1995, art 3.
98 Reply to Working Time Issues of Workers 1997, paras 1–2.
99 Regulation on Working Time of Workers 1995, art 7; Interpretation on the Issues regarding <Regulation on Working Time of Workers> 1995, para 1; Reply to Working Time Issues of Workers 1997, para 1.
100 See: table 4.5 in Chapter 4 and Appendix 5.

according to the 1995 Regulation, the purpose of the regulation of daily limit, and weekly limit and weekly rest, was to ensure a reasonable working time arrangement for workers and to safeguard their right to rest, promote working efficiency, and promote socialist modernisation.[101] Although such purpose failed to identify the protection of workers' health and well-being as set by the ILO benchmarks, this regulation explicitly expressed the need to protect workers' right to rest. Hence, Chinese legislation was generally in line with the ILO benchmarks regarding the aim/purpose of these three legal indicators. A coding result of '1' was thus given. As for the scope of application, Chinese legislation covered the enterprises and individual businesses, State departments, public institutions, and social groups, which were also consistent with the ILO benchmarks.[102] A coding result of '1' was given to this aspect.

Overtime limit was also regulated in this period. According to the 1994 Labour Law, overtime was limited to one hour per day in general, three hours per day for special reasons, and thirty-six hours per month.[103] This limit provided clearer standards than the ILO benchmarks as the latter only calls for a 'reasonable' limit of overtime.[104] A coding result of '1.5' was given to the material content of overtime limit. In addition, as a limit to the extension of normal hours of work, overtime limit serves the same purpose as those on the daily and weekly limits of hours of work.[105] Such purpose applies to both the ILO benchmarks and Chinese working time standards. Similar to the legal indicators of daily and weekly limits, a coding result of '1' was given to the aim/purpose of overtime limit. With respect to the scope of application, as found in the ILO benchmarks, this aspect is not about personal scope or sectors covered, but rather refers to the circumstances on which overtime work can be conducted.[106] According to the 1994 Labour Law and its 1994 Interpretation, overtime work applied to both the circumstance related to the requirement of production of enterprises and permanent exceptions such as an emergency threatening the life and health of workers or the safety of property and where urgent repairs are needed to production facilities.[107] Such a stipulation was consistent with the ILO benchmarks where both temporary and permanent exceptions are identified.[108] A coding result of '1' was thus given to the scope of application of overtime limit.

101 Regulation on Working Time of Workers 1995, art 1.
102 See: table 4.5 in Chapter 4 and Appendix 5.
103 Labour Law 1994, art 41.
104 See: table 4.5 in Chapter 4 and Appendix 5.
105 ibid.
106 ibid.
107 Labour Law 1994, arts 41–42; Interpretation on Certain Provisions of <Labour Law> 1994, arts 41–42.
108 See: table 4.5 in Chapter 4 and Appendix 5.

Paid annual leave was officially introduced in this period. As found in the first period, the regulation of paid annual leave was confined to an 'annual rest' for workers engaged in the radioactive works based on the 1965 Opinions on Radioactive Works. In this period, the 1994 Labour Law explicitly stipulated that workers who have established a labour relationship with their employers shall be entitled to paid annual leave after working for more than one year continuously.[109] However, the law failed to elaborate on this legal indicator, instead only calling for the State Council to provide more specific rules.[110] It was not until 2007 that national rules were adopted by the State Council with the Regulation on Paid Annual Leave of Workers. Since this regulation came into effect in 2008, it will be further discussed in section 5.4. Hence, in this period, Chinese legislation provided lower standards than the ILO benchmarks, which flesh out the details of paid annual leave.[111] A coding result of '0.5' was given to all three aspects of paid annual leave.

5.3.2.2 Working time organisation

All five legal indicators concerned with the organisation of working time were regulated in China in this period, but China provided similar-to-higher standards on all three aspects for only two of them (i.e., standard working time arrangement and overtime work arrangement).

According to the 1994 Labour Law and the 1995 Regulation as well as their interpretative documents, the standard working hours system, or the so-called standard working time arrangement, was expressed as an eight-hour working day and a forty-hour workweek with at least one day off per week in general, and an eight-hour working day and a forty-hour workweek (Monday to Friday) with two days of weekly rest (Saturday to Sunday) in specific.[112] This arrangement was consistent with the ILO benchmarks.[113] A coding result of '1' was thus given to the material content of this legal indicator. In addition, since it is built upon the regulation of daily and weekly limits of hours of work and weekly rest, the standard working time arrangement has the same purpose and scope of application of those legal indicators. Hence, like the discussion in section 5.3.2.1, a coding result of '1' was given to these two aspects of the standard working time arrangement.

Both the 1994 Labour Law and the 1995 Regulation provided provisions that enable enterprises to 'opt out' the standard working hours system, leading to the non-standard working hours system in China. Two types

109 Labour Law 1994, art 45.

110 Given the lack of national rules, paid annual leave was decided by the policies of individual localities and enterprises. See: Sean Cooney, Sarah Biddulph, and Ying Zhu, *Law and Fair Work in China* (Routledge 2013) 63.

111 See: table 4.5 in Chapter 4 and Appendix 5.

112 Interpretation on Certain Provisions of <Labour Law> 1994, art 36; Regulation on Working Time of Workers 1995, art 7; Reply to Working Time Issues of Workers 1997, paras 1–2.

113 See: table 4.5 in Chapter 4 and Appendix 5.

of non-standard working hours systems were specifically regulated in the 1994 Measures on Working Time: irregular working hours system and comprehensive working hours system. This non-standard working hours system relates to the variable working time arrangement defined by the ILO benchmarks – 'the adjustments in the distribution of hours of work, particularly consisting of averaging normal weekly hours of work over a defined period, to allow the extension of working hours beyond their normal length on certain days, and their shortening on other days, without resorting to overtime'.[114] Compared to the ILO benchmarks, the 1994 Measures provided a clearer scope of application and more favourable rules on the material content of the variable working time arrangement.[115] In particular, it used the forty-hour weekly limit as the reference of the averaging, presenting a shorter weekly limit of forty-eight hours provided in the ILO benchmarks.[116] A coding result of '1.5' was given to the scope of application and material content of variable working time arrangement. In terms of the aim/purpose, however, compared to the ILO benchmarks that serve both the requirements of the production of enterprises and the specific needs of workers, Chinese legislation only identified one purpose of meeting the special characteristics of the production of enterprises.[117] A coding result of '0.5' was given to the aim/purpose of variable working time arrangement.

Overtime work arrangements had the same aim/purpose and scope of application of overtime limit as examined earlier in section 5.3.2.1. A coding result of '1' was given to these two aspects. In terms of the material content, the 1994 Labour Law stipulated that overtime payments shall be 150 to 300 per cent of the regular wage depending on which days workers are required to work, providing higher standards than the ILO benchmarks that provide for no less than 125 per cent of the regular wage.[118] A coding result of '1.5' was thus given to this aspect.

Unlike the absence of the regulation of night work in the first period, both the 1988 Regulation on Female Protection and the 1994 Labour Law explicitly prohibited night work for female workers who are at least seven-months pregnant in order to provide special protection to female workers.[119] Additionally, the interpretative document to the 1988 Regulation clarified 'night work' as 'work performed from 10 p.m. to 6 a.m.'.[120] However, compared to the ILO benchmarks in which night work is explicated in great detail – in particular applying to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport,

114 ibid.
115 ibid.
116 ibid.
117 Labour Law 1994, art 45.
118 See: table 4.5 in Chapter 4 and Appendix 5.
119 Regulation on Labour Protection of Female Workers 1988, art 1; Labour Law 1994, art 58.
120 Interpretation on the Issues regarding <Regulation on Labour Protection of Female Workers> 1989, para 7.

and inland navigation, Chinese legislation provided lower standards on the aim/purpose, scope of application, and material content.[121] A coding result of '0.5' was thus given to all three aspects.

Part-time work was also regulated in this period. According to the 2003 Opinions on Part-time Work, the purpose of the regulation of part-time work was to meet the flexible working time requirements of employers and the freely chosen employment of workers, and to promote employment and protect workers' lawful rights and interests.[122] Such provision had lower standards than the ILO benchmarks as the latter explicitly identify an additional purpose of assisting workers with family responsibilities.[123] A coding result of '0.5' was given to the aim/purpose of this legal indicator. In terms of the scope of application and material content, the 2003 Opinions defined 'part-time work' as 'a form of employment where payments are calculated on an hourly basis', and asserted that 'workers generally work for no more than five hours per day on average and thirty hours per week in total for the same employing unit'.[124] Such a stipulation led to a relatively narrow understanding of part-time work compared to the ILO benchmarks, which define 'part-time work' as 'the work in which the normal hours of work are less than comparable full-time work'.[125] In fact, it seems to be more reasonable to term 'part-time work' 'casual work' in Chinese legislation, or conclude that 'part-time work' was mainly confined to 'casual work'. Hence, Chinese legislation provided lower standards on the scope of application and material content than the ILO benchmarks. A coding result of '0.5' was given to these two aspects.

5.3.2.3 Care-related leave

While maternity leave remained regulated on all three aspects in this period, parental leave was still totally absent.

As found in the 1953 Labour Insurance Regulation in the first period, maternity leave was merely considered part of labour insurance serving the objective of protecting the health of paid workers and easing the special difficulties in their livelihood. In this period, the purpose of the regulation of maternity leave was mentioned in the 1988 Regulation, the 1992 Women's Protection Law, and the 1994 Labour Law. In particular, according to the 1988 Regulation, the regulation of maternity leave was to safeguard the lawful rights and interests of female workers, to reduce and resolve the special difficulties they encountered, to protect their health, and to promote socialist modernisation.[126] This regulation was generally in line with the

121 See: table 4.5 in Chapter 4 and Appendix 5.
122 Opinions on Part-time Work Issues 2003, preamble.
123 See: table 4.5 in Chapter 4 and Appendix 5.
124 Opinions on Part-time Work Issues 2003, para 1.
125 See: table 4.5 in Chapter 4 and Appendix 5.
126 Regulation on Labour Protection of Female Workers 1988, art 1.

ILO benchmarks. A coding result of '1' was thus given to the aim/purpose of this legal indicator. In terms of the scope of application and material content, both the 1988 Regulation and 1994 Labour Law provided for a period of leave of ninety days in general, applying to all female workers. This guideline was consistent with the ILO benchmarks on the scope of application, but lower than those on the material content of no less than fourteen weeks. Coding results of '1' and '0.5' were given to the scope of application and material content of this legal indicator, respectively.

5.3.2.4 Other legal indicators

In addition to the twelve legal indicators as identified in the ILO benchmarks, other legal indicators – as found in the Chinese legal instruments identified in tables 5.1 and 5.3 – can still be observed such as daily break, public holidays, sick leave, home leave, personal leave, and wedding and funeral leave. Some of these indicators underwent development in this period. For instance, both the 1955 Interim Regulation on Sick Leave and 1957 Interim Regulation on Home Leave found in the first period were replaced by new formal Regulations.

5.3.3 Analysis of achieving decent working time in China: Substantive aspects (1978-2007)

Similar to the first period, while table 5.4 provides a full overview of the qualitative data of the assessment for the transition period (1978-2007), figure 5.2 presents the same information, but shows more clearly where China meets the ILO benchmarks, on which indicators it was falling short in this period, and on which indicators China was outperforming the ILO benchmarks.

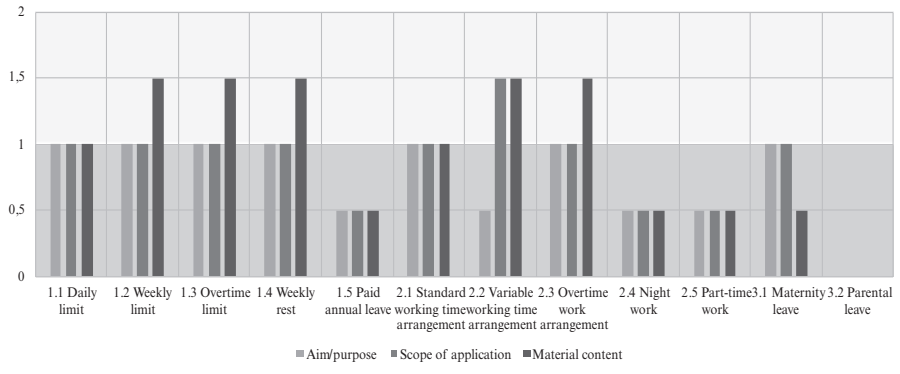

Figure 5.2 Evaluation of achieving decent working time in China: Substantive aspects (1978-2007)

A first point that stands out in figure 5.2 is that China reached most of the ILO benchmarks in this period, mainly because of the 1988 Regulation on Labour Protection of Female Workers, the 1994 Labour Law, the 1994 Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises, and the 1995 Regulation on Working Time of Workers. Together, they established a comprehensive set of working time standards in China, providing similar-to-higher standards than the ILO benchmarks regarding all three aspects of the legal indicators of daily limit, weekly limit, overtime limit, weekly rest, standard working time arrangement, and overtime work arrangement, and two aspects of the legal indicators of variable working time arrangement (i.e., scope of application and material content) and maternity leave (i.e., aim/purpose and scope of application). When it comes to the aim/purpose of variable working time arrangement, Chinese legislation only identified one purpose of meeting the special characteristics of the production of enterprises, which failed to meet the requirements of both the production of enterprises and the specific needs of workers as provided in the ILO benchmarks. Regarding the material content of maternity leave, Chinese legislation only provided for a period of leave of ninety days, which was a bit shorter than the fourteen weeks required by the ILO benchmarks.

A second remarkable point is that, although the legal indicators of paid annual leave, night work, and part-time work were fully regulated on all three aspects, none of them provided similar-to-higher standards than the ILO benchmarks, mainly because Chinese legislation failed to elaborate on the operational rules on paid annual leave, only regulated that night work was prohibited for female workers at least seven months pregnant, and provided a relatively narrow understanding of part-time work compared to the ILO benchmarks.

5.4 The period after the transition (2008-2020)

5.4.1 Identification of China's legal instruments dealing with working time (2008-2020)

Based on LRD-NPC and LRD-PKU legal databases, table 5.5 shows a full list of China's legal instruments dealing with working time in the period after the transition (2008-2020). Notably, most of the legal instruments adopted in the transition period remain effective in this period. In other words, much has remained the same with regard to the legal framework of working time since the transition period. Nevertheless, some new legal instruments dealing with certain legal indicators can still be found, as will be examined in detail in sections 5.4.1.1 to 5.4.1.3.

Table 5.5 The legal instruments dealing with working time in China (2008-2020)

Types	Legal instruments	Legal indicators covered	Effective period
Laws	**Labour Contract Law of 2007 (amended in 2012)**	Working time organisation (part-time work); care-related leave (maternity leave)	2008-present
Administrative Regulations	**Regulation on Paid Annual Leave of Workers of 2007**	Working time duration (paid annual leave)	2008-present
	Measures on Public Holidays for Annual Festivals and Memorial Days (2007 Revision)	Other legal indicators (public holidays)	2008-2013
	Special Regulation on Labour Protection of Female Workers of 2012	Care-related leave (maternity leave)	2012-present
	Measures on Public Holidays for Annual Festivals and Memorial Days (2013 Revision)	Other legal indicators (public holidays)	2014-present
Departmental Rules	**Measures on the Implementation of Paid Annual Leave of Workers of Enterprises of 2008**	Working time duration (paid annual leave)	2008-present
Normative documents	**Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises of 2009**	Organisation (variable working time arrangement)	2009-present
	Reply to the Issues regarding the <Measures on the Implementation of Paid Annual Leave of Workers of Enterprises> of 2009	Working time duration (paid annual leave)	2009-present

5.4.1.1 Laws

The Labour Contract Law was adopted by the NPC Standing Committee in June 2007, and came into effect in January 2008. While this law deals with labour contract-related matters, it also contains provisions on part-time work and maternity leave. In terms of part-time work, this law has much in common with the provisions contained in the 2003 Opinions on Part-time Work as examined in the transition period, but it reduced the hours of work of part-time work from 'no more than five hours per day on average and thirty hours per week in total' to 'no more than four hours per day on aver-

age and twenty-four hours per week for the same employer'.[127] Additionally, this law prohibits the termination of female workers' labour contracts if they are in the pregnancy, maternity leave, or breastfeeding period.[128]

5.4.1.2 Administrative Regulations

The Regulation on Paid Annual Leave of Workers was adopted by the State Council in accordance with the 1994 Labour Law in December 2007 and came into effect in January 2008. The purpose of this regulation is to safeguard workers' rights to take rest and leave and to promote their working efficiency.[129] It provides workers who have continuously worked for one year or more in public institutions, social groups, enterprises, private non-enterprise entities, and individual businesses with a period of paid leave of five to fifteen days, namely: (a) five days for workers who have continuously worked for one to ten years, (b) ten days for workers who have continuously worked for ten to twenty years, and (c) fifteen days for workers who have continuously worked for twenty years or more.[130]

In the same year, the Measures on Public Holidays was revised by a new version and came into effect in January 2008. This regulation was further revised by a new version in 2013. According to the latest 2013 Measures, four types of public holidays are identified in China: (a) holidays for all citizens (eleven days in total); (b) holidays for certain groups (half-day for women, youth, and military personnel, and one day for children); (c) holidays for ethnic minorities (shall be regulated by local governments); and (d) memorial days without leave.[131]

The Special Regulation on Labour Protection of Female Workers was adopted by the State Council in 2012, which replaced the 1988 Regulation on Labour Protection of Female Workers as found in the transition period.[132] This regulation resembles the provisions contained in the 1988 Regulation, but extends the period of maternity leave from ninety days to ninety-eight days, and provides an annex on the scope of prohibited labour for female workers.[133]

5.4.1.3 Departmental Rules

Only one department rule concerning working time was found in this period, the Measures on the Implementation of Paid Annual Leave of Workers of Enterprises, which was adopted by the Ministry of Human Resources

127 Labour Contract Law 2007, art 68.
128 Labour Contract Law 2007, art 43(4).
129 Regulation on Paid Annual Leave of Workers 2007, art 1.
130 Regulation on Paid Annual Leave of Workers 2007, arts 2, 3.
131 Measures on Public Holidays for Annual Festivals and Memorial Days (2013 Revision) arts 2–5.
132 Special Regulation on Labour Protection of Female Workers, art 16.
133 Special Regulation on Labour Protection of Female Workers, art 7, annex.

and Social Security (MHRSS) in 2008. It provides clearer and more technical rules for implementing the 2007 Regulation on Paid Annual Leave of all enterprises in China.[134]

5.4.1.4 Normative Documents

Two normative documents concerning working time were found in this period. The first is the Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises, which was adopted by the MHRSS and the Ministry of Business. It did not set new substantive working time standards, but simply clarified that outsourcing service enterprises may apply the standard working hours system.[135]

The second is the Reply to the Issues regarding the <Measures on the Implementation of Paid Annual Leave of Workers of Enterprises>, adopted by the MHRSS in 2009. As an interpretative document to the 2007 Regulation, it mainly clarified that '"a worker has worked continuously for more than twelve months" includes both cases where the worker has worked continuously for more than twelve months for the same employer and cases where the workers has worked continuously for more than twelve months for different employers'.[136]

5.4.2 Assessment of China's substantive working time standards against the ILO benchmarks

This section provides an assessment of China's substantive working time standards against the ILO benchmarks for the period after the transition (2008-2020). While table 5.6 provides a full overview of the qualitative data of the assessment, the full coding results with legal texts can be found in the ILO-DWT-China database in Appendix 5. It should be noted that the current legal framework of working time mainly took shape in the transition period, and that much has remained the same with regard to the twelve legal indicators identified by the ILO benchmarks and other legal indicators not covered in this period. Since 2008, the major developments of the legal indicators are confined to paid annual leave, variable working time arrangement, part-time work, maternity leave, and public holidays.

134 Measures on the Implementation of Paid Annual Leave of Workers of Enterprises 2008, arts 1–2.

135 Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises 2009.

136 Reply to the Issues regarding the <Measures on the Implementation of Paid Annual Leave of Workers of Enterprises> 2009.

Table 5.6 Results of the assessment of China's substantive working time standards against the ILO benchmarks (2008-2020)

Legal indicators		Topic	Aim/ purpose	Scope of application	Material content
Working time duration	**Daily limit**	1	1	1	1
	Weekly limit	1	1	1	1.5
	Overtime limit	1	1	1	1.5
	Weekly rest	1	1	1	1.5
	Paid annual leave	1	0.5	0.5	0.5
Working time organisation	**Standard working time arrangement**	1	1	1	1
	Variable working time arrangement	1	0.5	1.5	1.5
	Overtime work arrangement	1	1	1	1.5
	Night work	1	0.5	0.5	0.5
	Part-time work	1	0.5	0.5	0.5
Care-related leave	**Maternity leave**	1	1	1	1
	Parental leave	0	0	0	0
Other legal indicators	**daily break, public holiday, home leave, personal leave, sick leave, and wedding and funeral leave**				

5.4.2.1 Working time duration

Five legal indicators are concerned with the duration of working time. With the exception of paid annual leave, all other legal indicators (i.e., daily limit, weekly limit, overtime limit, and weekly rest) have remained unchanged since the transition period. However, although a new regulation – the 2007 Regulation on Paid Annual Leave of Workers – specifically dealing with paid annual leave has taken effect since 2008, it still has lower standards than the ILO benchmarks on all three aspects of paid annual leave. This outcome is due to the fact that this regulation still failed to identify a purpose of work-family balance as set forth in the ILO benchmarks, excludes workers who have worked less than one year, and only provides a range of five- to fifteen-day paid annual leave. In other words, a coding result of '0.5' was still given to all three aspects of this legal indicator.

5.4.2.2 Working time organisation

Five legal indicators are concerned with the organisation of working time. While the variable working time arrangement and part-time work saw new developments, the other three legal indicators (i.e., standard working time arrangement, overtime work arrangement, and night work) have remained unchanged since the transition period. However, the variable working time

arrangement was covered by a normative document, which only clarified that the outsourcing service enterprises may apply the standard working hours system.[137] Because no further elaboration on this legal indicator was found, the coding result remained the same as it was during the transition period.

Part-time work was specifically regulated by the 2007 Labour Contract Law, but it remains to be defined as 'a form of employment where payments are calculated on an hourly basis', as provided in the 2003 Opinions on Part-time Work examined in the transition period. The major new development was that the 2007 Labour Contract Law reduced the hours for part-time work from 'no more than five hours per day on average and thirty hours per week in total' contained in the 2003 Opinions to 'no more than four hours per day on average and twenty-four hours per week for the same employer'.[138] No further elaboration on this legal indicator was found; as such the coding result remained the same.

5.4.2.3 Care-related leave

While maternity leave saw significant development in this period, parental leave remained totally absent. A new regulation dealing with maternity leave was adopted, the Special Regulation on Labour Protection of Female Workers, which replaced the 1988 Regulation on Labour Protection of Female Workers. It has the same purpose and scope of application as the 1988 Regulation, but provides stronger protection for female workers regarding material content. In particular, it extends the period of maternity leave from ninety days to ninety-eight days and specifies the scope of prohibited labour for female workers, both of which are consistent with the ILO benchmarks.[139] A coding result of '1' was thus given to the material content of this legal indicator.

5.4.2.4 Other legal indicators

With the exception of reorganising public holidays in this period, all 'the other legal indicators' found in the Chinese legal instruments identified in the transition period remain effective in this period, and no new developments can be found.

137 Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises 2009.

138 Labour Contract Law 2007, art 68.

139 See: table 4.5 in Chapter 4 and Appendix 5.

5.4.3 Analysis of achieving decent working time in China: Substantive aspects (2008-2020)

Like the first two periods, while table 5.6 provides a full overview of the qualitative data of the assessment for the period after the transition (2008-2020), figure 5.3 shows the same information, but more clearly indicates where China meets the ILO benchmarks, on which indicators it was falling short in this period, and on which indicators it was outperforming the ILO benchmarks.

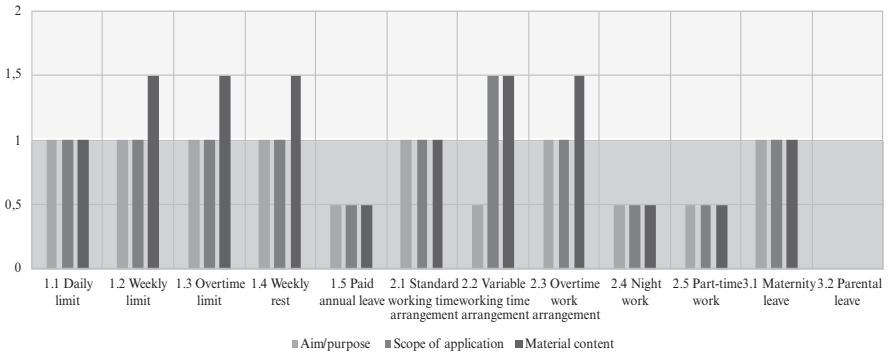

Figure 5.3 Evaluation of achieving decent working time in China: Substantive aspects (2008-2020)

Figure 5.3 shows that, compared to the second period, nothing changed, with the exception of maternity leave because the current legal framework of working time in China mainly took shape in the transition period. Most of the legal instruments adopted in the transition period remained effective in this period. However, a major development occurred with regard to the material content of maternity leave. This change was a result of new regulations on female protection, the 2012 Special Regulation on Labour Protection of Female Workers, which extended the period of leave from ninety days to ninety-eight days, consistent with the fourteen weeks provided in the ILO benchmarks.

A second point is that, although the assessment results of both paid annual leave and part-time work are unchanged, both underwent development. In terms of paid annual leave, an administrative regulation specifically dealing with paid annual leave was adopted at the end of the second period and came into effect at the beginning of this period, the Regulation on Paid Annual Leave of Workers. Unfortunately, this regulation still has lower standards than the ILO benchmarks regarding all three aspects. Part-time work was further regulated by the 2007 Labour Contract Law that has taken effect since 2008. However, except for reducing the hours of part-time work from 'no more than five hours per day on average and thirty hours per week in total' stipulated in the 2003 Opinions adopted in the transition

period to 'no more than four hours per day on average and twenty-four hours per week for the same employer', nothing at all changed. In other words, similar to the transition period, Chinese legislation still provides a relatively narrow understanding of part-time work compared to the ILO benchmarks.

5.5 Conclusion: an overall evaluation of achieving decent working time in China: Substantive aspects

Based on analysis and evaluation of China's substantive working time standards against the ILO benchmarks for each of the three periods, figure 5.4 presents an overall evaluation of the development of China towards decent working time regarding the substantive aspects. As figure 5.4 shows, most legal indicators have seen significant development from the first period to the third period. Chinese legislation is increasingly providing similar-to-higher standards than the ILO benchmarks regarding most of the twelve legal indicators. The major issues that failed to reach the floor of decent working time set by the ILO benchmarks are paid annual leave, night work, part-time work, and parental leave. In other words, to achieve decent working time regarding the substantive aspects in China, Chinese legislation would have to improve the substantive standards on paid annual leave, night work and part-time work, and introduce parental leave for workers.

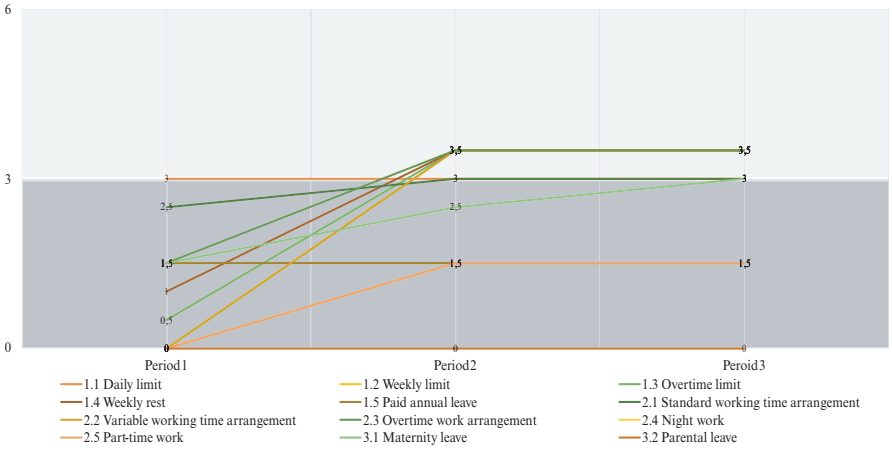

Figure 5.4 Developments of China towards decent working time: Substantive aspects (three periods, 1949-2020)

6 Procedural aspects of decent working time: An analytical framework

6.1 Introduction

This chapter looks at the procedural aspects of decent working time, defined in Chapter 3 as the processes by which the desired working time standards are formulated and enforced. The desired working time standards can refer to those that provide similar-to-higher standards than the ILO benchmarks as developed in Chapter 4. The central purpose of this chapter is to develop an analytical framework for evaluating the procedural aspects of decent working time (i.e., formulation and enforcement) in individual countries, which in this study concerns China, to be discussed in the next chapter.

The remainder of this chapter is structured as follows. Section 6.2 lays out the rationale underlying the relationship between the formulation and enforcement of working time standards, allowing for 'ideal-type working time configurations' to take shape. In order to achieve decent working time regarding the procedural aspects, a country is expected, to the best of its ability, to match the ideal-type configuration. To construct the ideal-type configurations, section 6.3 presents a review of the existing doctrinal literature on the formulation and enforcement of working time standards. The review draws on two approaches: 'working time regimes' (section 6.3.1) and 'working time configurations' (section 6.3.2). Based on these two approaches, section 6.3.3 identifies four regulatory levels (i.e., statutory legislation, sectoral-level agreements, enterprise-level agreements, and employment contracts) and three enforcement mechanisms (i.e., labour inspection, trade unions, and courts and/or tribunals), providing the structural dimensions of the construction of ideal-type configurations. Next, according to the combination of regulatory levels and enforcement mechanisms, four ideal-type configurations are developed in section 6.4, namely: mandated configuration, centralised negotiated configuration, decentralised negotiated configuration, and unilateral configuration. Sections 6.4.1 to 6.4.4 present these four configurations in detail. Section 6.4.5 then deals with the application of the ideal-type configurations in the individual countries. Section 6.4.6 presents further methodological issues regarding the ideal-type configurations. Some concluding remarks are made in the final section, 6.5.

6.2 Decent working time: procedural aspects

As elaborated in Chapter 3, procedural aspects are particularly related to the dimension of choice and influence regarding working time. Although they do not directly govern the conditions of working time, they provide legal support for the institutions and mechanisms on the formulation and enforcement of substantive working time standards. The emphasis on procedural aspects in labour law, as pointed out by Hepple, stems from the view that 'the role of the State is to ensure that certain minimum safeguards exist' and that 'the desired outcomes tend to be best achieved by enabling employers and workers to make and enforce substantive rules'.[1] In the field of working time, the desired outcome in this study is the achievement of decent working time, which also depends on the procedural aspects, more precisely, the formulation and enforcement of the desired working time standards. While the formulation deals with how substantive standards are determined by the State and/or social partners, the enforcement concerns how substantive standards are enforced effectively in practice.

The history of labour law shows different approaches to its formulation and enforcement, reflecting different strategies of the State, workers, and employers as actors involved in the procedural aspects of labour law.[2] As pointed out by Malmberg, 'the processes used in the enforcement of labour law are to large extent dependent on the sources of law from which an applicable norm emanates'.[3] This means that the actors that take part in making labour standards also take the main responsibility for their enforcement. For instance, the State adopts legislative provisions and supervises their enforcement through labour inspection; trade unions and employers' organisations create rules through collective agreements and supervise their enforcement through the means of negotiation; and the courts not only apply the existing rules, but also contribute to the development of the law.[4] In other words, the formulation and enforcement of working time standards as two procedural aspects shall be linked in a holistic and consistent manner, which allows 'ideal-type working time configurations' to take shape. The rationale underlying the ideal-type configurations is straightforward: they represent the ideal combinations of formulation and enforcement a given country may use to set its working time standards, which would be most effective or provide the best possibilities for establishing the desired standards and enforcing them effectively in the real world.

1 Bob Hepple, 'Rights at Work' in Dharam Ghai (ed), *Decent work: Objectives and Strategies* (International Labour Office 2006) 34.
2 Jonas Malmberg (ed), *Effective Enforcement of EC Labour Law* (Wolters Kluwer 2003) 59.
3 ibid.
4 ibid.

6.3 The formulation and enforcement of working time standards

To construct the ideal-type working time configurations for analysing the procedural aspects of decent working time, it is first necessary to characterise the formulation and enforcement of working time standards. This section draws on two existing approaches: the first is based on 'working time regimes' developed by Anxo and O'Reilly, Anxo, McCann, Lee, Lee and McCann, and Eurofound; and the second is based on 'working time configurations' proposed by Berg et al., Eurofound, and Inversi.[5] These two approaches will be reviewed in detail in sections 6.3.1 and 6.3.2, respectively. Based on these two approaches, section 6.3.3 identifies four regulatory levels and three enforcement mechanisms for a comprehensive understanding of the formulation and enforcement of working time standards, providing the structural dimensions for constructing the ideal-type working time configurations.

6.3.1 Working time regimes

The term 'working time regimes' is understood by Anxo and O'Reilly and Anxo as 'institutional rules to regulate working time'.[6] They point out that the regulation of working time can take place at four levels: (a) the national level through the universal application of statutory legislation, (b) the branch or industry level through collective bargaining applied to a range of companies or sectors, (c) the plant or company level through localised

5 See: Dominique Anxo and Jacqueline O'Reilly, 'Working Time Regimes and Transitions in Comparative Perspective' in Jacqueline O'Reilly, Inmaculada Cebrián and Michel Lallement (eds), *Working-Time Changes: Social Integration Through Transitional Labour Markets* (Edward Elgar 2000); Dominique Anxo, 'Working Time Patterns among Industrialized Countries: A Household Perspective' in Jon C. Messenger (ed), *Working Time and Workers' Preferences in Industrialized Countries: Finding the Balance* (International Labour Office and Routledge 2004); Deirdre McCann, 'Regulating Working Time Needs and Preferences' in Jon C. Messenger (ed), *Working Time and Workers' Preferences in Industrialized Countries: Finding the Balance* (International Labour Office and Routledge 2004); Sangheon Lee, 'Working-hour Gaps: Trends and Issues' in Jon C. Messenger (ed), *Working Time and Workers' Preferences in Industrialized Countries: Finding the Balance* (International Labour Office and Routledge 2004); Sangheon Lee and Deirdre McCann, 'Negotiating Working Time in Fragmented Labour Markets: Realizing the Promise of "Regulated Flexibility"' in Susan Hayter (ed), *The Role of Collective Bargaining in the Global Economy* (Edward Elgar Publishing 2011); Eurofound, *Working Time Developments in the 21st Century: Work Duration and its Regulation in the EU* (Publications Office of the European Union 2016); Peter Berg, Gerhard Bosch, and Jean Charest, 'Working-time Configurations: A Framework for Analyzing Diversity across Countries' (2014) 67 IndLabourRelRev 805; Cristina Inversi, 'Employment Regulation and Working Time Through the Lens of a Regulatory Space Approach' in Alysia Blackham, Miriam Kullmann, and Anya Zbyszewska (eds), *Theorising Labour Law in a Changing World: Towards Inclusive Labour Law* (Hart Publishing 2019).

6 Anxo and O'Reilly (n 5) 63; Anxo (n 5) 63.

collective agreements, and (e) the individual level through the employment contract concluded between an employer and an employee.[7] While some countries (e.g., France and Italy) rely essentially on statutory legislation in setting working time standards, in other countries (e.g., Germany, Sweden and the Netherlands), working time standards tend to be determined by collective agreements at industry and/or plant levels.[8] Additionally, in countries with relatively weak labour regulations (e.g., Australia, the United Kingdom, and the United States), working time standards tend to be determined through company-based collective agreements, employment contracts, and market forces.[9] Anxo and O'Reilly and Anxo argue that the working time regime in a given country is partly a reflection of the different industrial relations traditions, the regulatory role of the state in the labour market, and the degree of centralisation and coordination of collective bargaining processes.[10]

McCann, Lee, and Lee and McCann have confirmed that the outcome of working time standards depends on how these four regulatory levels are articulated.[11] They emphasise that all four of these regulatory levels are more or less present in industrialised countries, but that their relative strength varies, often with one level being dominant.[12] McCann, Lee, and Lee and McCann focus more firmly on the collective bargaining system to interpret the different outcomes of working time standards. Specifically, they point out that, in countries with a weak or fragmented collective bargaining system, such as France, statutory intervention plays the primary role in determining working time standards.[13] For countries with a strong collective bargaining system, such as Germany and Austria, the primary role in determining working time standards is the collective agreement between representatives of workers and employers.[14] Notably, in some cases, such as Denmark, the national collective agreements may be the functional equivalent of statutory legislation as they establish a single universal standard for all workers.[15] Additionally, for countries with both weak or ineffective statutory legislation and collective bargaining, such as the United States, individual bargaining takes a prominent role.[16] Lee and McCann consider these four regulatory levels as typologies for understanding the dynamics of the formulation of working time standards in the industrialised world; however, they explicitly point out that their

7 Anxo and O'Reilly (n 5) 62–63.
8 ibid.
9 ibid.
10 ibid.
11 McCann (n 5) 11–12; Lee (n 5) 31; Lee and McCann (n 5) 51.
12 Lee and McCann (n 5) 51.
13 ibid.
14 ibid 51–53.
15 ibid 53.
16 ibid.

extension to the developing world is not straightforward.[17] Three reasons have been identified: first, the relatively weak collective bargaining and its limited coverage in developing countries undermine its explanatory role in the overall regulatory settings of working time standards; second, statutory working time standards are of limited use due to poor enforcement; and third, a very substantial presence of time-related underemployment exists because of the shortage of work.[18] To gain a better understanding of these four regulatory levels of working time standards in the developing world, McCann, Lee, and Lee and McCann provide a country case study of South Korea. In their view, South Korea represents a useful example for examining the industrialising economy.[19] They extrapolate three implications from their case study: first, the determination of working time standards by collective bargaining would appear to be largely unworkable in less-developed countries; second, it is essential to place more weight on negotiation at the national level; and third, the emphasis on national negotiation should not reduce the role of collective bargaining at lower levels in setting working time standards.[20]

To develop a comparative framework for analysing the national institutional configuration influencing working time across the Members States of the European Union (EU), Eurofound combined the four regulatory levels of working time recognised by Anxo and O'Reilly, Anxo, Lee, McCann, and Lee and McCann with the three types of working time configurations developed by Berg et al., to be discussed in section 6.3.2. This formulation led to four types of working time regimes: pure mandated, adjusted mandated, negotiated, and unilateral.[21] Specifically, Eurofound has found that eight Members States (i.e., Bulgaria, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, and Slovenia) fall within the pure mandated regime, in which the State plays a dominant role in setting working time standards, and autonomous collective bargaining over working time issues is infrequent, and collective agreements covering working time duration or organisation are rare.[22] Another eight countries (i.e., Croatia, Czech Republic, France, Greece, Ireland, Malta, Portugal, and Slovakia) belong to the adjusted mandated regime, in which statutory legislation remains the most important regulatory level in setting working time standards, but these standards may be adjusted through collective bargaining at the sectoral, company, or individual levels.[23] Moreover, eleven countries (i.e., Austria, Belgium, Cyprus, Denmark, Finland, Germany, Spanish, Sweden, Italy, the Netherlands, and Luxembourg) and Norway have a negotiated regime, in which statutory

17 ibid.
18 ibid 53–56.
19 ibid 63; South Korea was reclassified from a developing economy to a developed one by the United Nations Conference on Trade and Development (UNCTAD) on 2 July 2021.
20 ibid 70–71.
21 Eurofound (n 5) 13–14.
22 ibid 14–15.
23 ibid 15–16

legislation is still relevant, but plays the role of setting the general legal framework for working time regulation at lower levels; working time standards are formulated mainly through collective agreements at the sectoral level, which may be further complemented by company-based collective agreements.[24] The unique country is the United Kingdom, which has a unilateral regime, in which statutory legislation plays hardly any role in determining working time standards and the existing bargaining structures are highly decentralised; the duration and organisation of working time are usually provided in individual employment contracts and tend to reflect the conditions determined and offered by the employers.[25]

6.3.2 Working time configurations

The term 'working time configuration' is defined by Berg et al. as 'the ability of employers or employees to establish working time practices aligned with their interests'.[26] They argue that working time configurations are shaped by a set of factors related to labour market institutions and mechanisms, such as trade unions, forms of employees' voices, and systems of social support.[27] Based on these factors, they developed three types of working time configurations: unilateral, negotiated, and mandated.[28] Specifically, they point out that the unilateral configuration is characterised by employers' control over working time.[29] In this configuration, trade union membership and coverage density tend to be low, bargaining structures tend to be decentralised, and other forms of employees' voices tend to be absent or weak. Consequently, working time standards depend primarily on the strategies of individual employers, resulting in wide diversity in the labour market. Employees have to rely on the court system to enforce what rights or access they have to working time standards. Next, the negotiated configuration is characterised by negotiations between employers and employees or their representatives.[30] In this configuration, trade union membership and coverage density tend to be high, which provides employees with strong bargaining power in negotiations. Working time standards are mainly concluded in collective agreements, reflecting the compromise between employers' and employees' interests. In addition, trade unions and employers may agree on framework agreements about flexible working time arrangements, but the concrete standards have to be set at the company level to fit the specific

24 ibid 16–19
25 ibid 19; it is worth mentioning that, due to the Brexit, the UK is not a Member State of EU since 31 January 2020.
26 Berg, Bosch, and Charest (n 5) 810.
27 ibid 807, 810.
28 ibid.
29 ibid 810–11, 813–14.
30 ibid 811–12, 814.

needs of employees and employers. Hence, differentiation exists between sectors according to the level of coordination and the bargaining power of actors and their strategies. Moreover, the enforcement of working time standards concluded in collective agreements tends to rely primarily on trade unions. The third is the mandated configuration, which is characterised by the strong role of the State in shaping working time standards.[31] In this configuration, autonomous collective bargaining is weakly developed due to the low trade union density or the strong resistance of employers, and the State establishes working time standards that are standardised across the economy. In addition, the State takes the main responsibility for the enforcement of working time standards, usually through labour inspectors. In some cases, trade unions may be given specific roles and authority by the State in the enforcement. As pointed out by Berg et al., these three types of working time configurations are typologies that emphasise the dominant form of establishing working time practices within countries, and they rarely exist in a pure form, but rather coexist in different combinations.[32] Nevertheless, they consider France, Sweden, and the United States to be representations of these three configurations (i.e., mandated, negotiated, and unilateral), respectively.[33] They argue that analysis of these three representing countries would explain why working time standards differ across countries and provide a basis for a better understanding of the mixed types of working time configurations.[34]

Eurofound has criticised that the three types of working time configurations developed by Berg et al. are not sufficient to examine countries within the EU, as they fail to capture the variety of systemic relationships between different institutional actors and mechanisms regulating working time.[35] In addition, a predominantly unilateral model is unlikely to exist due to the Working Time Directive in the EU.[36] Hence, as mentioned in section 6.3.1, by combing the four regulatory levels of working time standards with the three configurations, Eurofound has developed four types of working time regimes – also called working time configurations – specifically for the EU Member States and Norway: pure mandated, adjusted mandated, negotiated, and unilateral.[37] Since these four types of working time regimes or configurations have already been extensively examined in section 6.3.1, they are not repeated here.

Similar to Eurofound, Inversi was inspired by Berg et al.'s three types of working time configurations. She argues that employment regulations encompass three regulatory levels (i.e., international, national, and

31 ibid 812–14.
32 ibid 810, 814.
33 ibid 815–31.
34 ibid 831–34.
35 Eurofound (n 5) 8.
36 ibid.
37 ibid 13–14.

workplace) and three regulatory mechanisms (i.e., formal legal process, mandated or voluntary negotiations, and unilateral decisions).[38] While the former represents the space in which regulation is formed and enforced, the latter represents how regulation is created.[39] According to the combination of these regulatory levels and mechanisms, Inversi developed four regulatory models: law, mandated negotiated regulation, voluntarist negotiated regulation, and unilateralism.[40] Notably, Inversi explicitly points out that these four regulatory models are built upon the three types of working time configurations developed by Berg et al., but with some adjustments, as the latter was only for didactic purposes and did not exist in reality. In addition, she specifically applies these models to working time with a particular focus on the United Kingdom. Specifically, in terms of the regulatory model by law, Inversi considers labour law a 'coordinating a system of sources in a hierarchical structure to regulate employment relationship in its entirety'.[41] She argues that this model needs to take into account the limitations of legal regulations, such as the unclear and vague rules and lack of coordination and coherence within the regulatory system.[42] In the field of work time, she points out that setting highly standardised working time standards by statutory legislation becomes extremely difficult due to conflicts of interests between employers and employees.[43] Hence, providing individual rights might be part of the resolution, but needs to be combined with the enhanced social partners.[44] Regarding the negotiated regulation, she divides it into two regulatory models: the first is the mandated model, describing a mandated or statutory process of negotiation supported and created by the law or statutory forms of information and consultation; and the second is the voluntarist model, referring to the forms of negotiation and regulation that result from a voluntarist process between labour market actors.[45] In the field of working time, she points out that codetermination or institutionally supported collective bargaining is the common regulatory instrument for addressing working time issues in the mandate negotiated model, while voluntarist negotiation in the form of collective bargaining and individual negotiations represents the most important sources of regulation in the voluntarist negotiated model.[46] The unilateral model describes regulation by the authority of a single body, typically imposed without negotiation.[47] Inversi argues that this model is not an easy one to evaluated,

38 Inversi (n 5) 171.
39 ibid.
40 ibid 176.
41 ibid 177.
42 ibid 178.
43 ibid 182–83.
44 ibid.
45 ibid 178–79.
46 ibid 185.
47 ibid 179.

as 'it has a strong political and actor-centred characterisation, which often makes it difficult to conceptualise from a legal perspective'.[48] In the field of working time, she emphasises that 'the unilateral model deals with not only employers' power to shape and direct employee working time, but also with workers' ability to resist employers' regulation or impose their preferences'.[49]

6.3.3 Procedural aspects: regulatory levels and enforcement mechanisms

Table 6.1 displays the two approaches reviewed above and contrasts them with those from different sources. In general, 'working time regimes' are confined to the four regulatory levels, while 'working time configurations' tend to be broader, dealing with the regulatory models of working time. In addition, many borderline cases between them can be observed. As shown in table 6.1, regulatory levels tend to constitute an essential element of regulatory models, while regulatory models indicate the level at which the regulation is formed and enforced, as illustrated by Berg et al.'s three types of working time configurations, in which 'the level at which work hours are set' is an essential element. The borderline cases can also be illustrated by the study conducted by Eurofound, which uses the terms 'working time regimes' and 'working time configurations' interchangeably.

Table 6.1 Overview of approaches to examine the formulation and enforcement of working time standards

Approach	Sources	Formulation	Enforcement
Working time regimes	**Anxo and O'Reilly (2000), Anxo (2004)**	Four regulatory levels (i.e., statutory legislation, collective agreements at the branch or industry level, collective agreements at the plant or company level, employment contracts)	Not explicitly mentioned
	Lee (2004); McCann (2004); Lee and McCann (2011)	Four regulatory levels (i.e., statutory legislation, collective agreements at the branch or industry level, collective agreements at the plant or company level, employment contracts)	Poor enforcement of statutory working time standards in the developing world

48 ibid.
49 ibid 186.

	Eurofound (2016)	Four regulatory levels + three working time configurations = four working time setting regimes (i.e., pure mandated, adjusted mandated, negotiated; unilateral)	Not explicitly mentioned
Working time configurations	**Berg et al. (2014)**	Three working time configurations (i.e., mandated, negotiated, unilateral)	Labour inspectors and borrowed power for union representatives and work councils (mandated); autonomous worker representatives (negotiated); individuals and employers, and court system (unilateral)
	Eurofound (2016)	Four regulatory levels + three working time configurations = four working time setting regimes (i.e., pure mandated, adjusted mandated, negotiated, unilateral)	Not explicitly mentioned
	Inversi (2019)	Four regulatory models (i.e., law, negotiated regulation – code-termination, negotiated regulation – voluntarism, unilateralism)	Not explicitly mentioned

These two approaches yield valuable insights for understanding the procedural aspects of decent working time in the individual countries, particularly in how working time standards are formulated. They also offer a useful framework for a systematic comparison between countries; however, they are not without limitations if we use them directly as a framework to analyse the procedural aspects of decent working time, especially in developing countries. At least three limitations can be recognised.

First, these two approaches mainly focus on how working time standards are formulated, while the enforcement tends to be ignored. As shown in table 6.1, with the exception of the studies of Lee and McCann and Berg et al., all the existing sources failed to deal with the enforcement matters. Even though Lee and McCann dealt with the enforcement matters, they only pointed out that the developing countries tend to exercise poor enforcement of working time standards, and failed to elaborate on how these standards are enforced in these countries. Berg et al. tend to provide a more elaborate analysis, as they identify three enforcement mechanisms, namely: (a) labour inspectors and borrowed power for union representatives and work councils in the mandated configuration; (b) autonomous

worker representatives in the negotiated configuration; and (c) individuals and employers, and court systems in the unilateral configuration. Unfortunately, they neglected to explore how these three mechanisms would result in the effective enforcement of working time standards, and they do not make a distinction between disputes of rights and interests.

They focus on the formulation of working time standards instead of the enforcement largely because their concern is with the developed countries, especially the EU Member States, which tend to have better performance in enforcing labour law due to the well-established labour law system. This reality leads to the second limitation: these two approaches are largely developed countries-oriented, and their application to the developing world is not straightforward. In fact, much of the discussion found in the literature, as shown in table 6.1, is confined to the EU Member States or other developed countries. Although Lee and McCann offered a case study of South Korea to illuminate the regulatory levels in industrialising economies, the so-called 'industrialising economies' is not equivalent to the 'developing world'. Compared to other studies, Berg et al. tend to provide a more neutral framework that may apply to the global world, but the country examples (i.e., France, Sweden, and the United States) they used are also from the developed countries. A possible explanation might be that the application of working time configurations they developed is more significant in developed countries, while in the developing world, the application is currently not clear. Nevertheless, it is unsatisfying that they did not move further to explore how these configurations could be practised in developing countries.

The third limitation goes to the concrete content of these two approaches. As found in sections 6.3.1 and 6.3.2, the core idea underlying these two approaches lies in the four regulatory levels (i.e., statutory legislation, branch- or industrial-level agreements, plant- or company-level agreements, and employment contracts) and three regulatory mechanisms (i.e., mandated, negotiated, and unilateral), reflecting the diversity of industrial relations traditions and differences in the mechanisms and coverage of collective bargaining as well as the role and behaviour of regulatory actors in the labour market. However, they do not appear to capture the variety and complexity of systemic relationships of different levels and mechanisms making and enforcing working time standards. Although Eurofound has made some effort in this regard, it only aimed at researching and comparing the EU Member States. In addition, the lack of coherence as around developed regulatory mechanisms, such as the distinctions between the pure and adjusted mandate, and the mandated and voluntary negotiation, further prevents the clarification of the systemic relationships, as mentioned earlier. Moreover, an additional international level proposed by Inversi makes regulatory levels of working time standards even more complex in a given country. Hence, with the above two limitations, the two approaches shown in table 6.1 are not sufficient to study and characterise the procedural aspects of decent working time in developing countries, particularly the enforcement of working time standards.

To build a comprehensive framework to analyse the procedural aspects of decent working time, it is first necessary to address at least the three limitations as mentioned above. In terms of the limitation on the enforcement matters, it is possible to confirm the three enforcement mechanisms provided by Berg et al.: (a) labour inspectors and borrowed power for union representatives and work councils; (b) autonomous worker representatives; and (c) individuals and employers, and the court system. However, more evidence needs to be added. As such, it is useful to draw on two additional approaches to examining the enforcement of labour law in general: the first is the three enforcement processes of labour laws as discussed by Malmberg; and the second is the three institutions for examining the enforcement of labour laws as discussed by Cooney.

Malmberg et al. provide three enforcement processes of labour laws (i.e., industrial relations process, administrative process, and judicial process, with a focus on the EU countries).[50] The industrial relations process concerns the role of trade unions or other workers' representatives in the enforcement, which is characterised by the use of negotiations as a means, possibly combined with (the threat of) industrial actions.[51] The administrative process considers enforcement to be a task for public authorities, such as labour inspectors or other equivalent bodies, undertaken through inspections, reports, and directives as well as administrative fines and similar sanctions.[52] The judicial process deals with enforcement through judicial procedures in courts or tribunals, such as litigations initiated by workers and employers or their representatives, and arbitrations conducted by office tribunals.[53] Malmberg et al. argue that these three processes could create effective enforcement of labour laws.[54]

Similar to Malmberg, Cooney recognises three institutions for examining the enforcement of labour laws but with a focus on China, namely: labour inspectorates, labour dispute resolution systems, and trade unions).[55] He argues that the ineffective labour inspectorates, weak labour dispute resolution systems, and the limited capacity of trade unions are three factors leading to the ineffective enforcement of Chinese labour laws.[56]

A consensus to the above-mentioned approaches is to identify three kinds of enforcement mechanisms contributing to the enforcement of working time standards – although the literature presents some slight differences

50 Malmberg (n 2) 64–65; see also: Jonas Malmberg, 'Enforcement of Labour Law' in Bob Hepple and Bruno Veneziani (eds), T*he Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945-2004* (Hart Publishing 2009) 263.

51 ibid.

52 ibid.

53 ibid.

54 ibid.

55 Sean Cooney, 'China's Labour Law, Compliance and Flaws in Implementing Institutions' (2007) 49 JIR 673, 673.

56 ibid 682.

to this end. To keep this research manageable and consistent, it is useful to confirm three more easily understandable enforcement mechanisms, namely: labour inspection, trade unions, and courts and tribunals.[57] These three mechanisms can be considered three channels for securing compliance with working time laws in the workplace. Each of these three enforcement mechanisms has its own characteristics, but they contribute jointly to the effective enforcement of labour laws including the correct application of working time standards.

The term 'effective', as it is used here, refers to the substantive aspects of decent working time (i.e., concrete working time standards) actually applied in the real world of the workplace. In this regard, a distinction between two types of disputes (i.e., disputes of rights and interests) must be made, which is common in labour law in most countries.[58] While a right dispute concerns the violation or non-application of an existing legal norm embodied in the law, collective agreement, or under an individual employment contract, an interest dispute concerns conflicts regarding the establishment of a new or modified condition of employment, mainly resulting from a breakdown in the bargaining process with the parties failing to reach an agreement.[59] This research concerns the handling of 'disputes of rights', as opposed to the 'disputes of interests'.

Regarding the second limitation, though the literature is mainly limited to or derived from developed countries does not mean it is not relevant to, or separate from, the developing world. Some of the working time matters discussed by these two approaches may be specific to developed countries, like the EU Member States, but many are universal. For instance, the case study of South Korea discussed by Lee and McCann shows that the determination of working time standards by collective bargaining would be largely unworkable in less-developed countries, and it is essential to scale up negotiation at the national level. In addition, being 'unworkable' or even absent is an outcome of its application in a given country. In this sense, the real issue is not whether they can be extended to the developing world, but how they are present in the individual countries in the world. In other words, it is possible to understand these regulatory levels and models in a neutral manner, and to merely consider them as a methodological and analytical instrument for approaching the study of working time.

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57 It should be kept in mind that the enforcement processes are not merely limited to such three channels; an alternative dispute resolution can also be recognised, which generally refers to dispute resolution without litigation, including mediation and arbitration. Overlap between alternative dispute resolution and industrial and administrative processes.

58 Jonas Malmberg, 'Enforcement of Labour Law' in Bob Hepple and Bruno Veneziani (eds), T*he Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945-2004* (Hart Publishing 2009) 264.

59 ibid.

The third limitation about the concrete content of the existing two approaches can be addressed in conjunction with the explanation of the above two limitations. As discussed at the beginning of this section, these two approaches are used to characterise the formulation and enforcement of working time standards. For enforcement, three mechanisms were summarised earlier by addressing the first limitation, namely: labour inspection, trade unions, and courts and tribunals. For the formulation, because the focus of this research is on individual countries, the international level as proposed by Inversi will not be taken into account, as it is imposed by a supernational authority. In addition, rather than a distinction between 'pure mandated' and 'adjusted mandated' as provided by Eurofound, or between 'mandated negotiation' and 'voluntary negotiation' as argued by Inversi, it is more useful to distinguish 'centralised negotiation' from 'decentralised negotiation' so as to capture the relationship of different regulatory levels and mechanisms. While the centralised negotiation tends to contribute to sectoral-level agreements, reflecting the self-regulation of social partners, the decentralised negotiation tends to generate enterprise-level agreements in order to meet enterprise-specific circumstances. For the purpose of clarity and consistency throughout this research, the terms 'sectoral-level' and 'enterprise-level' represent the expressions of 'branch, industry, or sectoral level' and 'plant, company, firm, and establishment level' from different sources (see table 6.1), respectively. Altogether, it is possible to conclude with four regulatory levels that result from four regulatory mechanisms, namely: statutory legislation by mandated mechanism, sectoral-level agreements by centralised negotiation, enterprise-level agreements by decentralised negotiation, and employment contracts by unilateral decision.

6.4 Framework for analysing procedural aspects of decent working time

After having recognised four regulatory levels and three enforcement mechanisms for understanding the formulation and enforcement of working time standards, the main challenge is to construct the ideal-type working time configurations. As provided in section 6.2, the ideal-type configurations specifically address how the formulation and enforcement of working time standards are linked in a holistic and consistent manner. They represent the ideal combinations of regulatory levels and enforcement mechanisms a given country may use to set its working time standards, which would be most effective or provide the best possibilities for establishing the desired standards and enforcing them effectively in the real world.

To construct the ideal-type configurations, it is necessary to lay down two interrelated prerequisites that are inspired by the two approaches discussed in section 6.3. First, the four regulatory levels and three enforcement mechanisms rarely operate exclusively in their pure form, nor are they mutually exclusive, but rather tend to coexist. Although it is unclear

whether all levels or mechanisms exist in a given country, one level or mechanism tends to play a more prominent role in relation to other levels or mechanisms. In this light, a distinction between 'dominant' and 'other levels or mechanisms' can be made. While the dominant level refers to the level at which working time standards are mainly formulated, functioning as a trendsetter for the concrete working time standards, other levels complement the dominant level with regard to specific aspects that are not covered by or might deviate from the dominant level. Likewise, the dominant mechanism refers to the mechanism through which the existing working time standards are mainly enforced, while other mechanisms complement the dominant mechanism.

Second, the dominant regulatory level and the dominant enforcement mechanism of working time standards are correlated, indicating that the enforcement of statutory legislation, sectoral-level agreements, and employment contracts tend to primarily depend on labour inspection, trade unions, and courts and tribunals, respectively. Notably, the enforcement of enterprise-level agreements serves as an exception, as it represents a relatively complex case. As discussed in section 6.3.3, unlike sectoral-level agreements that mainly reflect the self-regulation of social partners through centralised negotiation, enterprise-level agreements tend to be accompanied by regulated flexibility and a more decentralised collective bargaining structure. They are a kind of reflection of strong coordination between various regulatory levels. As a result, their enforcement requires strong coordination between various enforcement mechanisms. Hence, it is reasonable to assume that all three mechanisms (i.e., labour inspection, trade unions, and courts and tribunals) are equally important for the enforcement of working time standards in which enterprise-level agreements serve as the dominant regulatory level.

On the basis of these two prerequisites and the two approaches discussed in section 6.3, four ideal-type working time configurations as shown in table 6.2 can be constructed, namely: mandated configuration, centralised negotiated configuration, decentralised negotiated configuration, and unilateral configuration. Each of them is described in detail in sections 6.4.1 to 6.4.4. Their application to individual countries (e.g., China) is discussed in section 6.4.5, and some further methodological issues regarding these configurations are provided in section 6.4.6.

Table 6.2 Framework to analyse the procedural aspects of decent working time: Ideal-type configurations

Procedural aspects		Mandated	Centralised Negotiated	Decentralised Negotiated	Unilateral
Regulatory levels	**Dominant level**	Statutory legislation	Sectoral-level agreements	Enterprise-level agreements	Employment contracts
	Other levels	Sectoral-level agreements; enterprise-level agreements; employment contracts	Statutory legislation; enterprise-level agreements; employment contracts	Statutory legislation; sectoral-level agreements; employment contracts	Statutory legislation; sectoral-level agreements; enterprise-level agreements
Enforcement mechanisms	**Dominant mechanism**	Labour inspection	Trade unions	Trade unions + labour inspection + courts and tribunals	Courts and tribunals
	Other mechanisms	Trade unions; courts and tribunals	Labour inspection; courts and tribunals	N/A	Labour inspection; trade unions

6.4.1 Mandated working time configuration

The mandated working time configuration is characterised by the strong role of the State in formulating and enforcing working time standards. It expects statutory legislation to serve as the dominant level at which working time standards are regulated, and labour inspection serves as the dominant mechanism through which working time standards are effectively enforced. In other words, working time standards are mainly established by the State and, in turn, their effective enforcement mainly relies on the State through labour inspection.

In this configuration, the State has a greater interest in establishing working time standards in order to protect workers' health and safety as well as to regulate the labour market, while the autonomous collective bargaining over working time matters might be infrequent due to the weakly developed trade unions system. In this context, two situations in relation to the other regulatory levels can be identified. First, collective bargaining regarding working time is (almost) absent. Statutory legislation not only provides a comprehensive set of standards with regard to the duration and organisation of working time and care-related leave but also includes some specific rules for specific jobs or categories of workers based on the work characteristics. Second, collective bargaining regarding working time exists and can adjust the standards provided in statutory legislation at the sectoral,

enterprises, or individual level. The adjustment either complements statutory standards or derogates from them by setting more favourable (i.e., derogation *in melius*) or less favourable (i.e., derogation *in pejue*) conditions for employees. However, given the dominant role of statutory legislation, such adjustments tend to cover a lower percentage of workers. As for the other enforcement mechanisms, courts and tribunals shall always have a role to play in ensuring the effective enforcement of working time standards, as they represent essential judicial machinery for dispute resolutions within a framework of the rule of law, while trade unions may be given specific roles and authority by the state for the enforcement of working time standards.

6.4.2 Centralised negotiated working time configuration

The centralised negotiated working time configuration is characterised by negotiations between trade unions and employers or their representatives at the sectoral level. It expects sectoral-level agreements to serve as the dominant level at which working time standards are determined, and trade unions serve as the dominant mechanism through which working time standards are effectively enforced. In other words, working time standards established by social partners through collective agreements are also mainly enforced by them.

In this configuration, trade unions have the power to establish working time standards for the protection and interest of workers at the sectoral level. Working time standards, including working time duration and organisation as well as care-related leave, tend to be the result of bargaining procedures between trade unions and employers or their representatives at the sectoral level. Hence, sectoral-level agreements are the trendsetters of the concrete working time standards in the country. Sectoral-level agreements as the dominant level often operate inclusively with the other regulatory levels. Statutory legislation tends to be always present but only plays a role in setting the general framework or basic working time standards. In addition, the standards provided in sectoral agreements may be further adjusted by enterprise-level agreements and employment contracts; however, such adjustments tend to be rare or only operate in a supplementary manner based on the specific needs of workers and employers. As for the other enforcement mechanisms, both labour inspection and courts and tribunals always have a role to play in ensuring the effective enforcement of working time standards, although their role is not as significant as that of trade unions.

6.4.3 Decentralised negotiated working time configuration

The decentralised negotiated working time configuration is characterised by negotiation between trade unions and employers at the enterprise level. It expects enterprise-level agreements to serve as the dominant level at

which working time standards are determined, and that all three enforcement mechanisms (i.e., labour inspection, trade unions, courts and tribunals) play an equally important role in the effective enforcement of working time standards.

This configuration appears in a sophisticated regulatory framework in which each regulatory level is assigned a specific role in the formulation of working time standards, but enterprise-agreements serve as the dominant level. Statutory legislation tends to provide a general regulatory framework or basic working time standards for the protection of workers' health and safety and permit social partners to negotiate and agree on the definition of working time standards through sectoral-level agreements. A comparable role is then played by sectoral-level agreements that facilitate collective bargaining at the enterprise level in order to meet specific circumstances of enterprises or workers in a tailored approach. In other words, enterprise-level agreements operate within the boundaries of statutory legislation and sectoral-level agreements for facilitating greater regulated flexibility. In addition, statutory legislation may directly permit trade unions and employers to determine certain working time standards through enterprise-level agreements.

6.4.4 Unilateral working time configuration

The unilateral working time configuration is characterised by individual bargaining between employers and workers at the workplace level. It expects employment contracts to serve as the dominant level at which working time standards are determined, and courts and tribunals serve as the dominant mechanism through which working time standards are effectively enforced.

This configuration appears to be grounded in the belief that the labour market in itself is efficient to reflect the needs of both workers and employers. However, given the inequality of bargaining power between workers and employers, the subordination of workers to employers, and the dependency of workers on employers, working time standards arranged in employment contracts tend to be defined and proposed unilaterally by employers. In this context, it is necessary to take into account workers' capability to resist the standards determined by employers or to impose their preferences. In other words, employment contracts as the dominant level where working time standards are formulated should meet both worker and employer needs. As for the other regulatory levels, statutory legislation tends to play a negligible role in defining working time standards or merely set a general regulatory framework. Collective agreements are rare due to the weakly developed trade union system or only take place at the enterprise level given the decentralised bargaining structure. As for the other enforcement mechanisms, both labour inspection and trade unions usually have a role to play in ensuring the effective enforcement of working time standards, but their influence is relatively limited.

6.4.5 Application of the analytical framework with four ideal-type working time configurations

The four ideal-type working time configurations discussed above can be useful as an analytical and methodological tool for researching the procedural aspects of decent working time in both developed and developing countries. They can also be useful for a country case study or a comparative study. Since the focus of this thesis is on an individual country (i.e., China), a set of questions, shown in table 6.3, can be raised when it comes to the application of such an analytical framework with four ideal-type configurations, namely: (a) How are working time standards formulated, or how many regulatory levels exist? (b) What is the dominant regulatory level? (c) How are working time standards enforced by the three enforcement mechanisms? (d) What is the dominant enforcement mechanism? (e) Which of the ideal-type configurations does the given country come closest to? (f) How does the given country's working time procedural configuration evolve in a historical process? These questions determine the framework of description and critical analysis in terms of the procedural aspects of decent working time in the individual countries.

Table 6.3 Questions to be addressed in the individual countries by applying the framework

Procedural aspects	Questions to be raised
Regulatory levels (statutory legislation; sectoral-level agreements; enterprise-level agreements; employment contracts)	(a) How are working time standards formulated, or how many regulatory levels exist? (b) What is the dominant regulatory level?
Enforcement mechanisms (labour inspection; trade unions; courts and tribunals)	(c) How are working time standards enforced by the three enforcement mechanisms? (d) What is the dominant enforcement mechanism?
Working time configurations (mandated; centralised negotiated; decentralised negotiated; unilateral**)**	(e) Which of the ideal-type configurations does the given country come closest to? (f) How does the given country's working time procedural configuration evolve in a historical process?

6.4.6 Some further methodological issues

Although this chapter is devoted to making the analytical framework with four ideal-type working time configurations as comprehensive and transparent as possible, some issues need to be clarified. Similar to the ILO benchmarks for the substantive aspects of decent working time developed in Chapter 4, at least three issues can be identified: (a) ideal combinations versus other combinations, (b) individual countries versus international comparison, and (c) longitudinal data versus cross-sectional data. These three issues will be examined in detail in sections 6.4.6.1 to 6.4.6.3.

6.4.6.1 *Ideal combinations vs. other combinations*

This chapter has developed four types of working time configurations: mandated configuration, centralised negotiated configuration, decentralised negotiated configuration, and unilateral configuration. They represent ideal combinations of the four regulatory levels (i.e., statutory legislation, sectoral-level agreements, enterprise-level agreements, and employment contracts) and the three enforcement mechanisms (i.e., labour inspection, trade unions, and courts and tribunals) of working time standards, while other different combinations may also operate in practice. However, this thesis holds that these four ideal-type configurations would provide greater abilities or possibilities for achieving decent working through the procedural aspects. It is therefore expected that a country's working time procedural configuration fit into one of these four ideal-type configurations, at least at the first step. In addition, there is a distinction among four ideal-type configurations which does not mean that one is better than another. The developments towards the ideal-type configurations will vary substantially from one country to another, according to variations in labour laws and industrial relations systems as well as the wider legal, economic, and political context in a given country.

6.4.6.2 *Individual countries vs. international comparisons*

Although this thesis applies the analytical framework to China, the framework is not developed specifically for China, but as a general methodology to analyse the working time procedural configurations of any given individual country. In addition, the analytical framework is useful in making international comparisons across countries. Hence, the analytical framework not only has value for the content in assessing the extent to which China is achieving decent working time regarding the procedural aspects, but also represents a new methodology to make such an assessment for any country as well as to draw international comparisons across countries. In other words, the analytical framework developed in this thesis has scientific value in terms of methodology development. However, similar to the ILO benchmarks discussed in Chapter 4, any use of the analytical framework either for individual countries or international comparisons should be conducted with carefully designed premises and selected sources.

6.4.6.3 *Longitudinal data vs. cross-sectional data*

The analytical framework will be applied to China by three periods in accordance with the periodisation of the development of Chinese labour legislation as elucidate in Chapter 1: (a) the period before the transition (1949-1978); (b) the transition period (1978-2007); and (c) the period after the transition (2008-2020). Hence, the regulatory levels and enforcement mechanisms will be repeatedly examined by the three periods, leading to a longi-

tudinal study. As pointed out by Diggle et al., and mentioned in Chapter 4, 'the defining characteristic of a longitudinal study is that individuals are measured repeatedly through time, which is in contrast to a cross-sectional study in which a single outcome is measured for each individual'.[60] A longitudinal study through three periods presents an evolving picture of China's working time procedural configurations.

6.5 Conclusion

This chapter has developed an analytical framework on the working time procedural aspects of four ideal-type configurations (i.e., mandated, centralised negotiated, decentralised negotiated, unilateral), which are built upon the doctrinal literature on the formulation and enforcement of working time standards. While the formulation can take place at four regulatory levels (i.e., statutory legislation, sectoral-level agreements, enterprise-level agreements, and employment contracts), enforcement can rely on three enforcement mechanisms (i.e., labour inspection, trade unions, and courts and tribunals), which allow for a comprehensive understanding of how working time standards are formulated and enforced effectively in a holistic manner in individual countries or across countries. The rationale underlying the ideal-type configurations is that they serve as an ideal framework for the development towards decent working time regarding the procedural aspects. It is expected that a country would resemble one of the ideal-type configurations mostly in order to ensure that 'working time' is 'decent' regarding the procedural aspects. The next chapter will apply this framework to China.

60 Peter J. Diggle and others, *Analysis of Longitudinal Data* (2nd edn, Oxford University Press 2013) 1.

7 Procedural aspects of decent working time: The development of China

7.1 Introduction

Applying the analytical framework developed in Chapter 6, this chapter examines China's developments towards decent working time in terms of procedural aspects. The chapter is divided into three parts in accordance with the periodisation of the development of Chinese labour legislation discussed in Chapter 1: the period before the transition (1949-1978); the transition period (1978-2007); and the period after the transition (2008-2020). Each part has a similar format, which is generally conducted in three steps. First, it examines the formulation of working time standards. Next, it examines the enforcement of working time standards. And then it identifies the working time procedural configuration in China and provides an analysis of the extent to which China is achieving decent working time regarding the procedural aspects. The three parts are followed by an overall evaluation of the three periods. However, given that both regulatory levels and enforcement mechanisms in China were quite complex, and varied according to enterprise type, especially in the first two periods, the first two steps are organised by types of enterprises. In addition, there was a clear dividing line in each of the first two periods on the formulation and enforcement of working time standards. To gain a clearer picture, a further division of two stages is identified in the first two periods: an early stage and a later stage. In other words, the examination of the formulation and enforcement of working time standards conducted in the first two steps are organised by stages of periods, and then by types of enterprises.

Notably, the procedural aspects – both the formulation and enforcement of working time standards – are embedded within more general principles of labour legislation, and operate in the wider legal, economic, and political context. Hence, to gain a better understanding of procedural aspects of working time in China, in particular, in a historical process, some backgrounds on the changing nature of Chinese legislation, economics, and politics in each of the three periods must be taken into account. Hence, each period will start with a brief introduction of the general legal, economic, and political backgrounds.

In addition, this chapter mainly focuses on working time procedural provisions as they appear in the text of the relevant legal instruments. It also looks at some of the available empirical evidence such as the quantitative data on the practice of these provisions, provided that they are collected by authoritative institutions. Additionally, it draws upon the contributions

of Chinese and international scholars. Given the limited resources and capacity, this chapter does not move further on the empirical evidence by conducting the fieldwork. Nevertheless, the current study is sufficient to provide a relatively comprehensive picture of procedural aspects of working time in China and to identify which ideal-type configuration China fits into or comes closest to.

7.2 The period before the transition (1949 – 1978)

To get a clearer picture of the formulation and enforcement of working time standards in the period before the transition, it is useful to divide this period into two stages: early stage (1949-1956) and later stage (1957-1978).[1] The dividing line between them is drawn for a twofold reason. First, China witnessed a fundamental structural change in the economy by the end of 1956; that is, almost all private enterprises were remoulded into public enterprises, implying the completion of nationalisation and the entering into the primary stage of socialism.[2] Second, in 1957, the 'Anti-rightist Campaign' was launched, which was a political campaign in which intellectuals and legal professionals were particularly targeted and attacked, triggering the interruption of legislative activities in China.[3]

7.2.1 Early stage (1949-1956)

By the time the Chinese Communist Party (CCP) came to power in 1949, the country had been devastated by decades of wars, foreign depredation, and internal chaos.[4] The CCP's priority was to restore legal orders and economy.[5] The law-based governance was enshrined in two subsequent constitutional instruments (i.e., the 1949 Common Programme and the 1954

1 Cf. e.g., Xianyi Zeng, On Rule by Law in the Past Fifty Years since the Founding of New China (in Chinese) (1999) 6 Journal of Renmin University of China 31, 31–41; Huai Guan, Analysis About the Sixty-Year Development and Relative Prospect of China Labour Law (in Chinese) (2009) 12 Law Science Magazine 1, 1–5; Sean Cooney, Sarah Biddulph and Ying Zhu, *Law and Fair Work in China* (Routledge 2013) 23–32; Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 1–19; Dong Yan, 'In Search of Chinese "Labour Law"' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 21–46.

2 Zeng (n 1) 32; Yan (n 1) 44.

3 Zeng (n 1) 33; Yan (n 1) 24–25; see also: Cooney, Biddulph, and Zhu (n 1) 25; Yifan Yang, Hanfeng Chen, and Qun Zhang, *The Legal History of the People's Republic of China* (*in Chinese*) (Social Sciences Academic Press 2010) 16.

4 Cooney, Biddulph, and Zhu (n 1) 23; Huai Guan, Fushan Ren, and Wenyuan Chen (eds), *Labour Law* (in Chinese) (Qunzhong Press 1992) 75; Kai Chang and others (eds), *Labour Law* (in Chinese) (Higher Education Press 2011) 73; Huai Guan and Jia Lin (eds), *Labour Law* (in Chinese) (5th edn, Renmin University of China Press 2015) 30–31.

5 ibid.

Constitution). Both instruments placed emphasis on building a legal system to run the country.[6] Regarding the economy, although the CCP took over the enterprises operated by the Chinese Nationalist Party (Kuomingtang, KMT) in the Republican era (1912-1949), as public enterprises, much of the economy and a majority of non-agricultural workforce remained in private hands.[7] As such, two primary types of enterprises coexisted in the early stage: public and private enterprises.

While public enterprises were characterised by the public ownership of the means of production, of which the primary form were State-owned enterprises (SOEs), private enterprises were characterised by private ownership of the means of production.[8] Due to the influence of the socialist ideology at that time, it was believed that a socialist industrial relation with a non-exploitative partnership of workers, enterprises, and the State existed in public enterprises, while a capitalist industrial relation that exploited and oppressed workers existed in private enterprises.[9] Although private enterprises were required to reconfigure themselves as public enterprises in accordance with the socialist principle, the CCP did not take a radical approach, but rather a moderate method of 'benefiting both labour and capital and simultaneously looking after public and private enterprises'.[10] In consequence, both public and private enterprises were commonly recognised as promoting production and flourishing economy, but they were treated differently due to their different industrial relations. As a result, working time procedural aspects varied according to enterprise ownership.

7.2.1.1 Public enterprises

A. Regulatory levels

As elaborated in Chapter 6, working time standards can be determined at four regulatory levels, namely: statutory legislation, sectoral-level agreements, enterprise-level agreements, and employment contracts. In China, three of these four regulatory levels can be found in public enterprises – statutory legislation, sectoral-level agreements, and employment contracts; however, they tend to have different meanings in the Chinese context.

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6 Yan (n 1) 25; see also: Chapter 5 of this thesis.

7 Cooney, Biddulph, and Zhu (n 1) 24; Guan and others (n 4) 75; The KMT was the dominant party in China during the Republican Era (i.e., Republic of China, ROC) from 1928 to 1949. The party retreated from the mainland to Taiwan on 7 December 1949, following its defeat in the Chinese Civil War. See: 'Kuomintang Official Website' <http://www1.kmt.org.tw/english/> accessed 31 December 2021.

8 Guan, Ren, and Chen (n 4) 114–16; Kai Chang, Qiao Zheng, and Guanghua Peng (eds), *Labour Relations Science* (in Chinese) (China Labour and Social Security Press 2005) 128–29.

9 ibid.

10 Common Programme 1949, art 26; see also: Cooney, Biddulph, and Zhu (n 1) 25; Guan, Ren, and Chen (n 4) 75.

As found in Chapter 5, a number of legal instruments concerning working time were adopted in the period before the transition, most of which applied to public enterprises. However, the majority were confined to normative documents, which had the lowest legal status in the Chinese legal system. Of note, normative documents were often titled 'orders', 'decisions', 'notices', and 'opinions', and were couched in a mixture of exhortative and legal language that could be issued by not only legislative institutions but also other authoritative institutions, such as the Central Committee of CCP (CC-CCP) and the All-China Federation of Trade Unions (ACFTU).[11] In many cases, it was difficult to determine whether they constituted legal rules or merely administrative guidance.[12] Although it is possible to consider normative documents issued by legislative institutions as statutory legislation, those issued by the CC-CCP and the ACFTU were not formally 'legal' in nature but had a regulatory effect in practice. A possible explanation for this complicated situation is that no clear separation existed between law and politics, and in practice, the Party/State/Government governance was the foundation for the daily running of the country in the first period.[13] To keep this chapter consistent, it is generally accepted that all normative documents that had a regulatory effect functioned as statutory legislation, or at least the functional equivalent of them, including those issued by the CC-CCP and the ACFTU. This definition was particularly evident with regard to the subject of this chapter, working time procedural aspects, as several normative documents concerning collective agreements and trade unions were issued by the ACFTU. Additionally, normative documents as statutory legislation embraced two specific features in period before the transition. First, they were more relevant to a labour administration system, rather than an actual labour market. Second, their legal force was more based on political will, rather than on the nature of the law itself.[14]

Against this background, in addition to the legal instruments identified in Chapter 5, one specific legal instrument in relation to working time should be mentioned, that is, the Internal Code of Conduct for State-owned Enterprises adopted by the State Council in 1954. Although this legal instrument was an administrative regulation and did not directly provide concrete working time standards, it triggered the operation of working time through labour administration as indicated by many normative documents.[15] Specifically, as stipulated in its Chapter 3, entitled 'working time':

11 Cooney, Biddulph, and Zhu (n 1) 46; Yan (n 1) 23; see also: Appendix I (Profile of China).
12 Cooney, Biddulph, and Zhu (n 1) 46.
13 Yan (n 1) 27.
14 Cf. Mimi Zou, 'The Evolution of Collective Labour Law with "Chinese Characteristics"?:'Crossing the River by Feeling the Stones'?' in Roger Blanpain, Ulla Liukkunen, and Yifeng Chen (eds), *China and ILO Fundamental Principles and Rights at Work* (Wolters Kluwer 2014).
15 Yan (n 1) 44.

> 'Article 9: All factories and mines shall establish working hours and rest periods. In the case of shift work, workers must be allowed to change shifts in an equal and orderly manner.
> Article 10: Workers shall be notified of the start and end of work and of breaks (normally by sounding a horn, bell, clock or other signals).
> Article 11: When going to work, workers must remove their badges from the badge box, or hand their pass-card to the depository and custody office; when leaving work, workers must hang the badge on the badge box, or take back their pass-card. The badge box or depository and custody office should be available for half an hour before and after work. On the side of the badge box or the depository and custody office, the metering staff shall supervise the procedures for going through the work. An accurate clock next to the badge or at the depository and custody office should be provided.
> Article 12: In the course of continuous work, if the person taking over the shift does not come to work, the worker of the previous shift shall not stop work and shall report the situation to the person in charge. The person in charge shall promptly attempt to send someone to take over the work.
> Article 13: The following activities are prohibited during working time (except for the provisions that are stipulated in Articles 18 and 19 of the 1950 Trade Union Law): (1) to take workers off work to engage in social activities; (2) to convene meetings on social work; (3) to issue workers' salaries and various supporting documents; (4) to engage workers in other things that hinder their work.
> Article 14: Workers are prohibited from attending work when they are incapable of working.'[16]

These provisions indicate that an administrative intervention concerning working time was added to the day-to-day management of labour in the SOEs. Working time conditions in the SOEs were subjected to administrative interference. Indeed, the 1954 Internal Code of Conduct was designated for the SOEs, but the State Council also emphasised that other forms of public enterprises and public institutions, as well as private enterprises, can produce an internal code of conduct with reference to the principles provided in this instrument.[17] This arrangement indicated that producing an internal code of conduct was not an obligation for non-SOEs, but the State did intend to use its administrative muscle to deal with working time matters in all enterprises, regardless of the nature of their ownership.[18]

It is generally accepted that 'sectoral-level agreements' are generated by collective bargaining at the sectoral level and mainly serve as a device for improving working conditions via statutory legislation.[19] In China, instead of 'collective agreements' based on a literal Chinese-English translation, the

16 Internal Code of Conduct for the State-owned Enterprises 1954, arts 9–14.

17 Decision of the State Council on the adoption of the Internal Code of Conduct for State-owned Enterprises 1954, para 5.

18 Yan (n 1) 44.

19 Folke Schmidt and Alan C. Neal, 'Collective Agreements and Collective Bargaining' in Konrad Zweigert and Ulrich Drobnig (eds), *International Encyclopaedia of Comparative Law, Volume XV, Chapter 12* (Tübingen 1984).

expression 'collective contracts' is more common, though many scholars use these two expressions interchangeably, especially in the literature in English.[20] Given that 'collective contracts' in the Chinese context intend to refer to 'collective agreements' as used internationally in the world of work, this thesis uses the expression 'collective agreements' for the sake of consistency.[21] According to several normative documents (e.g., the 1950 Instructions on Signing Collective Agreements in Public Enterprises, the 1953 Joint-Instructions on Signing Collective Agreements in Public Enterprises [textile industry], and the 1955 Instructions on Signing Collective Agreements in Mines Sectors), collective agreements were introduced in a few public sectors, such as textiles, railways and electricity, mines, and other key industries.[22] However, they neither reflected a process of collective bargaining nor served as a device for improving working conditions. Instead, they were considered a means of encouraging workers to cooperate with the management for promoting production and fulfilling the economic targets set by the State.[23] Although collective agreements were required to incorporate the subject of working time, it was not determined or improved by them, but rather served the purpose of economic goals enshrined in collective agreements.[24]

'Employment contracts' also existed in public enterprises, but with very different meanings than they are understood today. An employment contract can be generally understood as a work agreement between an employer and an employee, and it is often interchangeable with a labour contract in the world of work.[25] In China, based on a literal Chinese-English translation, the expression 'labour contract' is more common. However, it is debatable whether there was a labour contract system in public enterprises in the first period. Many scholars have pointed out that there was no labour contract under the planned economy given the lack of an actual labour market and contractual relationships, and that labour contracts were a post-reform phenomenon.[26] However, as argued by Professor Guan Huai – a leading founder of Chinese labour law doctrine, labour contracts did exist in public enterprises in this period but were associated with socialist industrial relations.[27] He maintained that there was a cooperative partnership between workers and management of enterprises, and they jointly used the

20 E.g., Yan (n 1); Chang, Zheng, and Peng (n 9); Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014).

21 Cf. Kai Chang, *Theory of Workers' Rights: Research on the Legal Regulation of Labour Relations in Contemporary China* (in Chinese) (China Labour and Social Security Press 2004) 243–48.

22 Qiao Zheng, *Report on the Survey on Industrial Relations in East Asia: Collective Bargaining in China* (ILO Regional Office for Asia and the Pacific 2006) 6; Guan and Lin (n 4) 130; Chang, Zheng, and Peng (n 8) 287.

23 ibid.

24 ibid.

25 Jie Shen, *Labour Disputes and their Resolution in China* (Chandos Publishing 2007) 79.

26 ibid 80; see also: Yan (n 1); Zou (n 15).

27 Guan, Ren and Chen (n 4) 125-129; Guan and Lin (n 4) 91–92.

means of production to create wealth for the country and to improve the living standards of workers.[28] He further pointed out two types of labour contracts: permanent contracts and temporary contracts.[29] Permanent contracts were characterised by the lifetime employment and cradle-to-grave social welfare provided by the state, applying to the urban workers.[30] They were the major form of labour contracts in public enterprises and were often expressed as an 'iron rice bowl'.[31] Notably, permanent contracts could take either the oral or written form (e.g., the admission letter), but neither form managed to touch any concrete content (including working time standards) shaping labour contracts. In today's language, they read more like the certification of a job rather than a signed labour contract covering the rights and obligations of both parties. Regarding temporary contracts, they applied to temporary or informal workers who were recruited by public enterprises but did not hold a permanent position.[32] They served to address occasional, temporary, and seasonal work in public enterprises.[33] Recruiting temporary workers was specifically regulated by two normative documents adopted by the Ministry of Labour – that is, the 1951 Interim Provisions on the Recruitment of Workers in Various Regions and the 1954 Measures on Signing Labour Contract for Workers Recruited in Construction Sectors. However, both instruments in themselves were very short and only briefly mentioned that when recruiting temporary workers, labour contracts, including the content of working time standards, shall be signed, and the signed labour contract shall be reported to the local administrative departments.[34]

B. Enforcement mechanisms

As discussed in Chapter 6, three enforcement mechanisms are charged with the effective application of working time standards, labour inspection, trade unions, and courts and tribunals. In China, the building of all these three enforcement mechanisms can be observed in public enterprises in the early stage, but they were less developed.

The labour inspection system can be traced back to the year 1950.[35] According to the Decisions on Labour Relations between Provincial and

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28 ibid.
29 ibid.
30 ibid; see also: Bill Taylor, Kai Chang, and Qi Li, *Industrial Relations in China* (Edward Elgar 2003) 78.
31 ibid; see also: Zou (n 14) 5; Shen (25) 163.
32 ibid; see also: Chang, Zheng, and Peng (n 9) 260.
33 ibid.
34 Interim Provisions on the Recruitment of Workers in Various Regions 1951; Measures on Signing Labour Contract for Workers Recruited in Construction Sectors 1954.
35 Guan and Lin (n 4) 254; Fen Shao and Xiaoyan Li, The Origin, Development, and Improvement of China's Labour Security Inspection System (in Chinese) 21 Journal of Yunan Fiance & Economics University 96, 96.

Municipal Labour Bureaus and Local State-owned Enterprises adopted by the Financial and Economic Committee of the State Council in 1950, labour departments at the provincial and municipal levels were empowered to supervise and inspect the enforcement of labour provisions (including working time standards) in the SOEs.[36] This instrument also provided that the cases of conflicts between the local labour departments and the SOEs shall be reported to the higher level of labour departments.[37] The peak labour department was the Ministry of Labour. According to the General Organisational Rules of the Ministry of Labour adopted by the State Council in 1956, the Ministry of Labour was tasked with leading and guiding local labour departments in their work of supervising and inspecting compliance with labour provisions (including working time standards) in all public enterprises.[38] However, both the 1950 Decisions and the 1956 General Organisational Rules failed to offer concrete provisions regarding the operation of the labour inspection system, such as the procedures and rules for dealing with labour complaints, conducting inspection activities, and imposing penalties on enterprises that violated labour provisions, nor did they specify labour inspectors. In addition, there was no relevant data concerning labour inspection cases.[39]

Trade unions were also empowered to supervise the compliance of enterprises with labour provisions. Based on the Trade Union Law adopted by the Central People's Government Committee in 1950, there was a distinction of rights of trade unions between public and private enterprises, corresponding to the two types of industrial relations mentioned at the beginning of the section – socialist and capitalist industrial relations.[40] In public enterprises, trade unions had the right to represent workers in the management of production and to conclude collective agreements with the administrative managers, while in private enterprises, they had the right to represent workers to negotiate, bargain, participate in collective bargaining meetings and conclude collective agreements with the employers.[41] The distinction of rights, however, did not lead to the different obligations of trade unions between public and private enterprises. As stipulated by the

36 Decision on Labour Relations between Provincial and Municipal Labour Bureaus and Local State-owned Enterprises 1950, para 1.

37 Decision on Labour Relations between Provincial and Municipal Labour Bureaus and Local State-owned Enterprises 1950, para 3.

38 General Organisational Rules of the Ministry of Labour 1956, art 2.

39 The record of labour inspection cases including those that are related to working time is totally a post-reform phenomenon. China Labour Statistical Yearbook started to record the labour inspection cases since 2002.

40 Trade Union Law 1950, arts 5–6; Aidi Gao, Some Issues of the Trade Union Law Promulgated in 1950 (in Chinese) (2010) 24 Journal of China Institute of Industrial Relations 20, 22; It is worth noting that the Central People's Government Committee was the supreme organ of the country exercising State power between October 1949 (the 1949 Common Programme) and September 1954 (the 1954 Constitution).

41 ibid.

1950 Trade Union Law, no matter in public or private enterprises, trade unions had the same duty to protect the interests of workers, supervise the enforcement of labour provisions (including working time standards), and carry out various facilities to improve the material and cultural lives of workers.[42] In other words, the law enforcement function through the means of supervision was conferred to trade unions. Unfortunately, this law failed to elaborate on the procedures and rules regarding the enforcement of labour provisions. In addition, there was little information on the supervision function of trade unions in practice.

Trade unions were also empowered to resolve labour disputes, leading to the labour dispute resolution framework that applied to both public and private enterprises. According to the Provisions on Labour Dispute Settlement Procedures adopted by the Ministry of Labour in 1950, labour disputes applied to a broad range of matters, including working time, and their resolution process consisted of four stages: negotiation, mediation, arbitration, and litigation.[43] Specifically, the negotiation was divided into two phases: an intra-enterprises phase and a second phase that involved negotiation by trade unions. If negotiation was unsuccessful, labour departments would initiate mediation and then arbitration. A party dissatisfied with the arbitration award could appeal to the courts. Notably, labour arbitration was elaborated upon by a departmental rule adopted by the Ministry of Labour in 1950, the Rules on Organisation and Procedures of Municipal Labour Dispute Arbitration Committees. According to this legal instrument, labour arbitration was conducted by the Labour Dispute Arbitration Committees (LDACs), which were composed of a (deputy) director of the local labour department (the chair), and representatives of the industrial and commercial association and trade unions as well as other representatives.[44] The arbitration award was legally binding.[45] This implied that labour arbitration had a 'quasi-judicial' nature, and the LDACs in many respects can be considered as a functional equivalent of labour tribunals as found in some western countries.[46] Hence, labour arbitration, together with litigation, can be considered a judicial process for the enforcement of working time standards in the Chinese context, and the litigation represented the final remedy in resolving labour disputes in accordance with civil court procedures.[47]

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42 Trade Union Law 1950, art 7.

43 Provisions on Labour Dispute Settlement Procedures 1950, arts 4–8.

44 Rules on Organisation and Procedures of Municipal Labour Dispute Arbitration Committees, arts 2–3.

45 Provisions on Labour Dispute Settlement Procedures 1950, art 7.

46 For instance, in the United Kingdom and Germany, the typical western employment tribunal or industrial relations court has a structure and process that are similar to labour arbitration. See: Shen (n 25) 127.

47 Chang, Zheng, and Peng (n 8) 389; Xudong Huang, The Evolution of the Relationship between China's Labour Disputes Arbitration and Litigation (2016) 6 SocLR 56, 60.

Some relevant data concerning labour dispute cases in the early stage can be found from the *Archives of Economic Information of the People's Republic of China: Labour Wages and Welfare from 1949 to 1952* (hereafter: *1949-1952 Archives*), which was filed by the Chinese Academy of Social Sciences (CASS) and State Archives Administration (SAA). As shown in table 7.1, the number of labour dispute cases handled in thirty cities in China from 1950 to 1952 was recorded, of which only a very small number was related to the subject of working time. Obviously, working time was not a significant subject for labour disputes in the early stage. Although exploring how these working time-related cases were settled is not possible, the means of the total cases settled generally indicate that they were mainly resolved by negotiation and mediation. Moreover, the number of labour dispute cases, as shown in table 7.1, covered both public and private enterprises, generally implying that in both public and private enterprises, labour disputes – including those related to working time – tended to be primarily resolved at the stages of negotiation and mediation within the labour dispute resolution framework.

Table 7.1 Labour dispute cases handled in thirty cities (1950-1952)

	Number of cases		Means of cases settled				
Year	**In total**	**Working time-related**	**Negotiation**	**Mediation**	**Arbitration**	**Litigation**	**Other forms**
1950	23,323	21	10,356	8,327	297	903	3,440
1951	23,159	83	7,361	9,608	363	1,217	4,610
1952	55,252	91	11,742	25,114	449	3,748	14,199

Source: Chinese Academy of Social Sciences and State Archives Administration (eds.), Archives of Economic Information of the People's Republic of China: Labour Wages and Welfare (1950-1952) (in Chinese) (China Price Press 1998) 150.

Note: Other forms consisted of referral to other authorities, withdrawn, by other means and disposal unknown.

7.2.1.2 Private enterprises

A. Regulatory levels

Statutory legislation on working time was mostly designed for public enterprises, but some basic working standards enshrined in statutory legislation (e.g., eight to ten working hours per day) also applied to private enterprises.[48]

The primary means of dealing with labour matters in private enterprises was through the collective agreement system, as illustrated through two normative documents issued by the ACFTU in 1949 (i.e., the Interim

48 See Chapter 5 of this thesis.

Measures on Labour Relations and the Interim Measures on Establishing Collective Agreements in Private Enterprises). According to these two legal instruments, collective agreements can be concluded at the sectoral level in private sectors, and can be further made at the enterprise level within the boundaries of sectoral-level collective agreements.[49] Unlike those in public sectors, which were considered a means of encouraging workers to cooperate with the management for promoting production and fulfilling the economic targets set by the State, collective agreements in private sectors reflected 'self-regulation' through collective bargaining between trade unions and employers.[50] This outcome was consistent with the 1950 Trade Union Law, in which private enterprise trade unions were empowered to represent workers to negotiate, bargain, participate in collective bargaining meetings, and conclude collective agreements with the employers.[51] It also reflected the relative autonomy of trade unions in labour regulation in private enterprises in accordance with the approach of 'benefiting both labour and capital and simultaneously looking after public and private enterprises' set forth in the 1949 Common Programme.[52] However, although both sectoral-level and enterprise-level collective agreements can be concluded in private enterprises based on the relevant legal instruments, relatively little enterprise-level bargaining was taking place in practice.[53] As pointed out by Howe, collective agreements were encouraged by the CCP as a major mode of dealing with labour matters in private enterprises in the early days, and working conditions were primarily determined by sectoral-level agreements negotiated between representatives of workers and employers.[54] However, it did not follow that substantive working time standards were well covered by sectoral-level agreements in private enterprises. As found in the *1949-1952 Archives*, working time standards in private enterprises were systematically worse than those in public enterprises due to the lack of adequate statutory legislation for the former.[55]

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49 Interim Measures on Establishing Collective Agreements in Private Enterprises 1949, art 6.

50 Cooney, Biddulph, and Zhu (n 1) 28; Christopher Howe, *Wage patterns and wage policy in Modern China 1919-1972* (Cambridge University Press 1973) 79–80.

51 Trade union law 1950, arts 5–6.

52 The Common Programme 1949, art 26.

53 Cooney, Biddulph, and Zhu (n 1) 24; Howe (n 50) 73, 103.

54 Howe did not elaborate on working time but instead wages; however, working time as an essential part of working conditions and as a subject closely interrelated to wages, it can be indicated that working time standards were also primarily determined by the negotiation between trade unions and employers at the sectoral level. In addition, Howe mentioned that enterprise-level contracts were possible, but not significant since there was relatively little enterprise-level bargaining. See: Howe (n 50) 79-80; Cooney, Biddulph, and Zhu (n 1) 24, 28.

55 Chinese Academy of Social Sciences and State Archives Administration (eds), *Archives of Economic Information of the People's Republic of China: Labour Wages and Welfare (1950–1952)* (in Chinese) (China Price Press 1998) 150.

In terms of labour contracts, some Chinese labour law textbooks briefly mentioned that labour contacts also exist in private enterprises in the early stage, which were similar to temporary contracts as applied to public enterprises.[56] The extent to which working time standards were covered by temporary contracts applying to private enterprises is unclear.

B. Enforcement mechanisms

While trade unions and the labour dispute resolution framework charged with the effective application of labour provisions can also be found in private enterprises, the labour inspection system was absent, as it only applied to public enterprises.

As discussed in section 7.2.1.1, whether in public or private enterprises, trade unions hold the same duty to protect the interests of workers and to supervise the effective enforcement of labour provisions, including working time standards.[57] This meant that the information on the supervision function of trade unions in public enterprises as discussed in section 7.2.1.1 also applied to private enterprises. In other words, there was a lack of procedures and rules on how to supervise the enforcement of labour provisions by trade unions. And there was little information on the supervision function of trade unions in practice.

The labour dispute resolution framework also applied to both public and private enterprises; however, there was a major difference at the stage of negotiation. According to the 1950 Provisions, when the intra-enterprise negotiation failed, in public enterprises, a second process shall be involved with the higher-level trade unions and the management of enterprises, while in private enterprises, sectoral-level trade unions shall take action in the negotiation.[58] These requisites generally reflected the different rights of trade unions between public and private enterprises as stipulated by the 1950 Trade Union Law.[59] However, when it comes to the settlement of labour dispute cases, the existing data as shown in table 7.1 indicate that labour disputes, including those related to working time in both public and private enterprises, tended to be primarily resolved at the stages of negotiation and mediation within the labour dispute resolution framework.

56 Chang and others (n 4) 73; Guan and Lin (n 4) 91; Chang, Zheng, and Peng (n 8) 260.
57 Trade Union Law 1950, art 7.
58 Provisions on Labour Dispute Settlement Procedures 1950, art 5.
59 Trade Union Law 1950, arts 5–6; Gao (n 40) 22.

7.2.2 Later stage (1957-1978)

With China's transformation into a socialist country, almost all private enterprises were restructured as public enterprises by the end of 1956.[60] The approach of 'benefiting both labour and capital and simultaneously looking after public and private enterprises' to restore economic recovery and growth in the early stage was not to last. Private ownership was eliminated, leaving only public enterprises.[61] In addition, legislative activities and the project to build a legal system to run the country were interrupted due to a series of political or economic campaigns, such as the Anti-rightist Campaign, the Great Leap Forward, and the Cultural Revolution.[62] Due to the influence of 'ultra-left' ideology, these campaigns were directed at crushing opponents of the socialist regime or accelerating the social and economic transformation of China into a Communist society.[63] In this context, the legal norms and institutions were considered 'revisionist bureaucratism, obstructionism and oppression', the collective agreement system was abolished and trade unions ceased to operate, labour disputes were considered non-existent, and government administration became a foundation for the daily running of the State and enterprises.[64] As a result, working time procedural aspects in public enterprises tended to be very different from the early stage.

7.2.2.1 Public enterprises

A. Regulatory levels

With the completion of nationalisation, most workers were employed in public enterprises, in particular, the SOEs. Working conditions ranging from working hours to wages were unilaterally decided upon by the State through administration.[65] This was largely due to the fact that the SOEs in practice became an extension of government administration, which were

60 Zeng (n 1) 33–34; Guan (n1) 2; Cooney, Biddulph, and Zhu (n 1) 25–26; Yan (n 1) 26.
61 ibid.
62 As pointed out by Chen, 'After 1957, the prestige of legal institutions such as the courts and the procurates fell sharply. Lawyers ceased to practise, the publication of legal materials declined, the law schools switched to teach politics rather than law. Many Courts, particularly those at lower levels, were merged with the corresponding public security organs and procurates. In 1959, the Ministry of Justice and organs of judicial administration under it were abolished.' See: Albert H.Y. Chen, *An Introduction to the Legal System of the People's Republic of China* (5th edn, LexisNexis 2018) 29.
63 Zeng (n 1) 33–34; Guan (n 1) 2; Cooney, Biddulph, and Zhu (n 1) 25–26; Yan (n 1) 26.
64 ibid.
65 Yan (n 1) 45.

often expressed as the 'Unit' (danwei) and directly controlled by the State.[66] It was therefore both legitimate and effective for the State to manage labour matters through administrative rules and orders, rather than by way of legislation.[67]

Permanent and temporary contracts remained in public enterprises. However, similar to the early stage, they were still more like the certification of a job rather than a signed labour contract covering rights and obligations of both parties.

B. Enforcement mechanisms

Because labour disputes were considered non-existent in public enterprises, all three enforcement mechanisms (i.e., labour inspection, trade unions, labour dispute resolution framework) developed in the early stage were disfavoured or abolished. Potential labour disputes would be considered 'complaints' dealt with through the 'complaint letters and visits' system.[68] The term 'complaint letters and visits' referred to 'the activities that a citizen, legal person or any other organisation who, by way of letter, e-mail, telephone or visit, etc., reports facts, submits proposals or opinions, or files a complaint to governments at various levels'.[69] However, because this system was neither associated with a legally prescribed dispute resolution procedure, nor was it able to produce any legally binding decisions regarding labour disputes, it was almost impossible to resolve labour disputes in practice.[70]

7.2.3 Identification and analysis of China's working time procedural configurations (1949-1978)

Table 7.2 shows China's working time procedural configurations for the period before the transition.

66 The danwei was an outcome of the planned economy in China. As pointed out by Cooney, Biddulph, and Zhu, 'An urban resident would be assigned to a danwei after completing school or university with the expectation that they would be there for life. The assignment could be to a work unit concerned with production, non-profit activities, such as health education and cultural service, or administration'. As commented by Naughton, 'the danwei was a microcosm of urban society, into which individuals were born and in which they lived, worked and died.' See: Cooney, Biddulph, and Zhu (n 1) 30; Barry Naughton, *The Chinese Economy: Transitions and Growth* (The MIT Press 2007) 118.

67 Yan (n 1) 44–45.

68 Guan, Ren, and Chen (n 4) 366–67; Huang (n 47) 61–62; Zhenqi Wang, Changshuo Wang, and Shangyuan Zheng, 'Labour Disputes Settlement System in China: Past and Perspective' (2003) Institute of Developing Economies - Asian Law Series No. 22, 13.

69 Such a definition is found in an administrative regulation adopted by the State Council in 2005, i.e., Regulation on Complaint Letters and Visits, art 2.

70 Guan, Ren, and Chen (n 4) 367; Huang (n 47) 62; Wang, Wang, and Zheng (n 68) 13.

Table 7.2 Identification of China's working time procedural configurations (1949-1978)

Procedural aspects		**Early stage (1949-1956)**		**Later stage (1957-1978)**
		Public enterprises	**Private enterprises**	**Public enterprises**
Regulatory levels	**Dominant level**	Statutory legislation (mainly in the form of normative documents) + labour administration	Sectoral-level agreements	Labour administration
	Other levels	Sectoral-level agreements, permanent contracts, temporary contracts	Statutory legislation, enterprise-level agreements, temporary contracts	Permanent contracts, temporary contracts
Enforcement mechanisms	**Dominant mechanism**	Labour dispute resolution framework (mainly at the stages of negotiation and mediation)	Labour dispute resolution framework (mainly at the stages of negotiation and mediation)	Complaint letters and visits system
	Other mechanisms	Labour inspection; trade unions	Trade unions	N/A
Identification of working time configuration		Closest to the mandated configuration	Closest to the centralised negotiated configuration	Closest to the administrative configuration

In the early stage (1949-1956), in public enterprises, working time standards were mainly determined by a combination of statutory legislation (mainly in the form of normative documents) and labour administration, and their enforcement was mainly dependent on the labour dispute resolution framework at the stages of negotiation and mediation. This would come closest to the mandated configuration developed in Chapter 6, but with several limitations.

First, the ideal mandated configuration presumes that working time standards are mainly established by the State through statutory legislation; in turn, their enforcement mainly relies on the State through labour inspection. In the Chinese context, however, there was no clear separation between law and politics in the early stage, leading to a hybrid regulatory model combining statutory legislation and labour administration. In addition, although the State clearly played a dominant role in determining working time standards, it failed to provide a well-developed labour inspection

system. Labour inspection was only briefly mentioned in two normative documents without any elaboration, and there was no information regarding labour inspection cases.

Second, statutory legislation mainly took shape through normative documents, which had the lowest legal status in the Chinese legal system. Although normative documents can produce a regulatory effect, such an effect was not as authoritative as 'laws' and 'regulations'. In addition, as illustrated in Chapter 5, the existing normative documents failed to cover all relevant legal indicators of working time as provided by the ILO benchmarks. Meanwhile, the other regulatory levels were not able to supplement them on the substantive aspects of working time. For instance, collective agreements neither reflected a process of collective bargaining between workers and employers, nor served as a device for making or improving working time standards. Instead, they were considered a means of encouraging workers to cooperate with the management of enterprises for promoting production and fulfilling the State-set economic targets. With respect to permanent and temporary contracts, they read more like certification of the job than a signed labour contract covering the rights and obligations of both parties.

Third, in addition to the less-developed labour inspection system, trade unions and the labour dispute resolution framework were weakly developed. Trade unions in public enterprises were more like a party institution designed to allocate welfare, mediate intra-enterprise disputes, and maintain production orders, than to negotiate and bargain with employers on working time standards. A possible explanation is that it was believed that workers themselves owned the enterprises due to public ownership of the means of production. As for the labour dispute resolution framework, although it is possible to recognise that labour disputes were mainly resolved by negotiation and mediation based on the existing statistical data found in the *1949-1952 Archives*, there was a lack of clear procedures and rules underpinning their operation in practice.

In private enterprises, working time standards were primarily determined by the negotiation of trade unions and employers through collective agreements at the sectoral level, at least on paper, and their enforcement mainly relied on the labour dispute resolution framework at the stages of negotiation and mediation. Such a combination of formulation and enforcement of working time standards came closest to the centralised negotiated configuration as developed in Chapter 6. However, there were also a few limitations.

First, the ideal centralised negotiated configuration assumes that working time standards are mainly established by social partners through sectoral-level collective agreements, and their enforcement was also mainly enforced by them through supervision and even industrial action. In the Chinese context, however, although trade unions had relative autonomy in labour regulation in private enterprises, there was a lack of procedures and rules on the supervision functions of trade unions. In addition, the labour

inspection system was absent in private enterprises. Although this system was not required to play a dominant role under centralised negotiated configuration, it had at least a supplementary role to play in the enforcement of working time standards.

Second, although the collective agreements system was considered the primary means of dealing with labour matters in private enterprises, it did follow that the subject of working time was well regulated. On the contrary, according to the *1949-1952 Archives*, working time standards in private enterprises were even worse than those in public enterprises due to the lack of adequate statutory legislation for private enterprises.

Third, like public enterprises, trade unions and the labour dispute resolution framework were weakly developed for private enterprises. Both lacked the clear procedures and rules for their operation in practice.

In the later stage (1957-1978), only public enterprises existed in China. Working time standards were unilaterally decided upon by labour administration, and labour disputes were not supposed to exist in public enterprises since workers themselves owned the enterprises. In the case of the potential labour disputes, they would be considered complaints that would be dealt with through the 'complaint letters and visits' system. As a result, this was not within the four ideal-type configurations developed in Chapter 6. An 'administrative working time configuration' may be added to the ideal-type configurations in the context of China's planned economy. Arguably, there should be some similarities between the mandated configuration and administrative configuration as both are characterised by the strong role of the State in formulating and enforcing working time standards. However, the former is associated with statutory legislation, while the latter is associated with administration guidance. Both configurations can expect the labour inspection system to play an essential role in the enforcement of working time standards.

In the Chinese context, given the strong administrative power, in theory, it was possible to provide a comprehensive set of working time standards in China. However, given the wider legal, economic, and political context at the time, such a possibility was unlikely to come into practice. Regarding enforcement, there was a major gap regarding all three enforcement mechanisms (i.e., labour inspection, trade unions, and courts and tribunals), as identified in Chapter 6. The 'complaint letters and visits' system was not an effective means of resolving labour disputes; nor it can replace the labour inspection system expected to serve as the dominant mechanism through which working time standards are effectively enforced.[71]

71 As pointed out by Chang, under the planned economy and administrative configuration, the effective enforcement of the established working time standards can be generally ensured since public enterprises became a vertically administrative system between the State and workers, and they must strictly implement administrative rules adopted by the State. See: Chang (n 21) 173.

7.3 The transition period (1978-2007)

As in the discussion of the first period, it is also useful to divide the transition experience into two stages: early stage (1978-1994) and later stage (1995-2007).[72] The dividing line between them is the adoption of the 1994 Labour Law and its entry into force in 1995. The 1994 Labour Law is the first formal 'labour law' since the establishment of socialist China in 1949, representing a milestone for Chinese labour legislation for protecting the rights and interests of workers.[73] However, the dividing line is not straightforward, as was particularly evident with regard to the three enforcement mechanisms, as they were officially reconstructed at the beginning of the 1990s.

7.3.1 Early stage (1978-1994)

With the launch of economic reform in 1978, public enterprises were to be reformed, and private enterprises – both domestic and foreign-invested – appeared in the economy.[74] A key feature of economic reform was to establish a modern labour contract system in enterprises.[75] As Cooney et al. point out, '(labour) contracts are key legal instruments governing work in modern societies, and they generally operate against the backdrop of a sophisticated legal system which provides norms and institutions for their operation and enforcement'.[76] However, as we saw in section 7.2.2, the legislative activities had been interrupted, and the legal system had been largely displaced by administrative models of regulation. Although the post-1978 CCP leadership sought to reconstruct the legal system to govern social and economic activities, they were not clear about the kind of laws and regulations that China would need, nor did they spell out the overall orientation of the economic reform.[77] Not until the fourteenth National Congress of the CCP in 1992 did the CCP leadership explicitly declare that the major goal of economic reform was to establish a 'socialist market economy'.[78] In 1994, the first formal labour law was adopted.

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72 Cf. e.g., Guan (n 1) 1–5; Cooney, Biddulph, and Zhu (n 1) 33–85; Neal (n 1) 1–19; Yan (n 1) 21–46.

73 Cooney, Biddulph, and Zhu (n 1) 51; Junling Jia and Qian Wei, 'The Evolution and Development of China's Labour Law 1994' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 49.

74 Cooney, Biddulph, and Zhu (n 1) 33–34; Chang and others (n 4) 77–78.

75 ibid 42–43; see also: Kinglun Ngok, 'The Changes of Chinese Labour Policy and Labour Legislation in the Context of Market Transition' (2008) 73 ILWCH 45, 45.

76 Cooney, Biddulph, and Zhu (n 1) 42–43.

77 ibid 34.

78 The socialist market economy (in Chinese: 社会主义市场经济) is the economic system and model of economic development employed in Mainland China. The system is a market economy with the predominance of public ownership and state-owned enterprises. For more information regarding this system, see: Barry Naughton, *Growing Out of the Plan: Chinese Economic Reform 1978–1993* (Cambridge University Press 1999).

Against this background, from the beginning of the economic reform to the adoption of the 1994 Labour Law, the government took an incremental and provisional approach to law-making that allowed for the identification – and correction – of mistakes in a relatively timely manner, a process often described as 'crossing a river by feeling the stones'.[79] In keeping with this approach to construct legal norms and institutions, a number of legal instruments, mostly titled 'interim provisions', were adopted. These instruments did not attempt to establish a common system of rules for all types of enterprises, but rather to establish separate rules for public and private enterprises. As a consequence, working time procedural aspects varied according to ownerships of enterprises.

7.3.1.1 Public enterprises

A. Regulatory levels

In keeping with the incremental and provisional approach, many institutions and practices in the later stage of the first period continued to operate in public enterprises in the 1980s, which meant that labour administration continued to play an essential role in determining working time standards in public enterprises. In addition, some normative documents concerning certain legal indicators of working time, such as sick leave, home leave, and maternity leave, were replaced by a new version (see Chapter 5). This reflected that statutory legislation (mainly in the form of normative documents) was still relevant to the formulation of certain specific working time standards in public enterprises.

The most significant change was the introduction of a modern labour contract system into public enterprises, particularly the SOEs. In 1986, four administrative regulations entitled 'interim regulation' were adopted by the State Council (i.e., the Interim Regulation on Implementing the Labour Contract System in State-Owned Enterprises, the Interim Provisions on Recruitment of Workers in State-Owned Enterprises, the Interim Regulation on Dismissal of Workers in State-Owned Enterprises, and the Interim Regulation on Unemployment Insurance in State-Owned Enterprises). They intended to provide managers of enterprises with greater power and autonomy to deal with labour matters and to break down permanent contracts or the so-called 'iron rice bowl' applied under the planned economy.[80] Of these four regulations, the most significant was the 1986 Interim Regulation on Implementing the Labour Contract System in State-owned Enterprises. This

79 The expression 'crossing a river by feeling the stones' (in Chinese: 摸着石头过河), popularised by Deng Xiaoping, is commonly evoked by Chinese policy-makers to promote a cautious, gradual, and selective approach to reform that takes into account 'Chinese characteristics' (in Chinese: 中国特色). Cf. Zou (n 14).

80 Cooney, Biddulph, and Zhu (n 1) 38; Guan and Lin (n 4) 91; Chang, Zheng, and Peng (n 8) 130.

instrument provided a relatively comprehensive set of rules to deal with labour contracts in the SOEs across the country, and particularly stipulated that the content of labour contracts shall include conditions of production and work.[81] Although working time was not explicitly mentioned, it can be considered an element of conditions of production and work. Given the increasing power and autonomy of managers dealing with labour matters in the SOEs, working time standards tended to be largely determined by managers of the enterprises. However, due to the fact that managers in public enterprises still had a close relationship with the government, their decision-making remained heavily influenced by administrative guidance.[82] It was more precise to saying that substantive working time standards in public enterprises tended to be primarily determined by the combination of administrative guidance and labour contracts.

B. Enforcement mechanisms

As economic reform unfolded, it was clear that the 'complaint letters and visits' system operated in the later stage of the first period was no longer a suitable means of resolving labour disputes. The three enforcement mechanisms that had been abolished needed to be revived. In the 1980s, both trade unions and the labour dispute resolution framework were restored in public enterprises. Regarding the labour inspection system, it was not until the adoption of the 1993 Provisions on Labour Inspection and the 1994 Labour Law that this system was finally re-established in China.

The ACFTU resumed its activities in 1978 and began to set up branches at various levels.[83] According to the ACFTU Statistical Yearbook of 1995, union membership rose to 102 million by the end of 1994, organised into almost 600,000 enterprise-level unions, and 97 per cent of the unions were established in public enterprises.[84] However, trade unions still did not play an active and effective role in the enforcement of labour provisions. Notably, in 1985, the ACFTU issued three normative documents, namely, the Interim Provisions on the Work of Labour Protection Supervision Inspectors of Trade Unions, the Provisions on the Work of Labour Protection Supervision and Inspection Committees of Grassroots Trade Unions, and the Provisions on the Work of Labour Protection Inspectors of Trade Union Groups, which provided a set of rules on the establishment of supervisory bodies of trade unions for labour protection, appointment, and rights and obligations of labour protection inspectors for public enterprises, which reflected the ACFTU's assertion for a direct supervisory power for the enforcement of

81 Interim Regulation on Implementing the Labour Contract System in State-Owned Enterprises 1986, art 8(3).
82 Taylor, Chang, and Li (n 31) 69–70.
83 Cooney, Biddulph, and Zhu (n 1) 40; Shen (25) 66.
84 ACFTU Statistical Yearbook 1995; see also: Cooney, Biddulph, and Zhu (n 1) 40.

labour provisions in the workplace.[85] However, these three documents were not legally binding as they were adopted by the ACFTU, which was not a legislative institution. As mentioned in section 7.2.1, although it was possible to consider normative documents adopted by the ACFTU as statutory legislation or at least the functional equivalent of statutory legislation in the first period, this was not the case in the post-1978 period as there was an increasingly clear separation between law and politics, especially after the adoption of the 2000 Legislation Law, which officially clarified the rules for making Chinese laws and regulations. In addition, there was relatively little information regarding the practice of the rules contained in these normative documents. In fact, the law enforcement function was formally conferred to trade unions by the new Trade Union Law adopted by the National People's Congress (NPC) in 1992, which replaced the 1950 Trade Union Law that had been undermined since 1956.

The labour dispute resolution framework was restored in public enterprises in 1987.[86] According to the Interim Provisions on Labour Dispute Resolution in State-owned Enterprises adopted by the State Council in 1987, labour disputes were mainly concerned with the implementation and termination of labour contracts, and their resolution process consisted of three stages: mediation, arbitration, and litigation. Specifically, mediation took place within the enterprises by the Labour Dispute Mediation Committees (LDMCs); arbitration was conducted by the LDACs; a party dissatisfied with the LDAC's decision may appeal the matter to a court. This arrangement revived the system for resolving labour disputes that had been interrupted for thirty years, since 1956. According to a document issued by the Ministry of Labour in 1993, from the entry into force of the 1987 Interim Provisions to the end of 1992, about 220,000 LDMCs and 2,855 LDACs had been established in China, and about one million labour dispute cases had been accepted, of which about 710,000 had been handled by the LDMCs, about 290,000 by the LDACs, and about 1,000 brought to the courts by the parties who disagreed with the arbitration award.[87] Although the extent to which these labour disputes were related to the subject of working time, the report generally indicated that labour disputes in public enterprises were mainly resolved by the LDMCs through mediation, and then by the LDACs through arbitration, and courts played a role of judicial supervision and final remedy in resolving labour disputes within the overall labour dispute resolution framework. Moreover, the 1987 Interim Provisions was further replaced by the Regulation on Labour Dispute Settlement in Enterprises

85 Guan and Lin (n 4) 261.

86 Huang (n 47) 62; Wang, Wang, and Zheng (n 68) 15.

87 Answers of the Ministry of Labour to Some Questions on the Handling of Labour Disputes in Enterprises in the People's Republic of China 1993; see also: Huang (n 47) 63; Wang, Wang, and Zheng (n 68) 15–16; It is worth noting that the quantitative data concerning labour dispute cases have been officially collected and reported in the China Labour Statistical Yearbook since 1992.

adopted by the State Council in 1993. Together with the 1994 Labour Law, it clarified the rules and procedures underpinning the operation of the labour dispute resolution framework for various types of enterprises.

7.3.1.2 Private enterprises

A. Regulatory levels

As the economic reform unfolded, two primary forms of private enterprises appeared in the economy: domestic and foreign-invested enterprises. Given the different legal rules governing these two forms of private enterprises, working time standards were treated disparately between them.

In terms of domestic private enterprises, they mainly took forms of the Town and Village Enterprises (TVEs), small private businesses, and larger private enterprises.[88] Each of them was governed by a few legal instruments in which almost no labour standards were specified, with the exception of an eight-hour working day stipulated in the 1988 Interim Regulation on Private Enterprises applying to the larger private enterprises.[89] The content of these provisions differed markedly, but common to them is that labour contracting was central to work regulation in all forms of private enterprises.[90] Working time was required to incorporate into labour contracts.[91] Given the top priority to develop the economy, employers had almost absolute power and autonomy to deal with labour matters, including working time standards.[92] Taken together, working time standards tended to be unilaterally decided upon by the employers through labour contracts in domestic private enterprises.

88 The Town and Village Enterprises (TVEs) (in Chinese: 乡镇企业) are engaged in a wide range of activities including manufacturing, construction, transport, wholesale and retail trade and mining. See: Regulation on Town and Village Enterprises 1990; Provisions on Labour Management in Town and Village Enterprises 1992; The small private business or so-called Getihu (in Chinese: 个体户) are restricted to no more than seven employees, which were intended to engage in small-scale activities in industries such as retail, repair work, food provision, and non-mechanized transport. See: Interim Regulation on Small Private Business 1987; The larger private enterprises (in Chinese: 私营企业) are those enterprises that employed in excess of eight people and so were no longer confined to the small business sector. They could be established by individuals, as partnerships or as incorporated entities. See: Interim Regulation on Private Enterprises 1988; Interim Provisions on Labour Management of Private Enterprises 1989.

89 Interim Regulation on Private Enterprises 1988, art 31.

90 Cooney, Biddulph, and Zhu (n 1) 49.

91 e.g., Interim Regulation on Small Private Business 1987, art 21; Interim Regulation on Private Enterprises 1988, art 28; Interim Provisions on Labour Management of Private Enterprises 1989, art 8; Provisions on Labour Management in Town and Village Enterprises 1992, art 16.

92 Chang, Zheng, and Peng (n 8) 142.

Foreign-invested enterprises were mainly confined to the Special Economic Zones (SEZs) located in coastal areas near Hong Kong and Taiwan.[93] The earliest provisions were very brief rules developed for labour relations in foreign-invested enterprises in the SEZs.[94] In 1988, a relatively comprehensive labour regulation was adopted by the People's Congress of Guangdong Province, the Guangdong Provincial Labour Regulation in Special Economic Zones. This regulation was intended to protect the legal rights and interests of workers and to safeguard the right of autonomy of employers in all enterprises in the Guangdong SEZs.[95] Although it was not a national labour law, it was applicable to all enterprises in the Guangdong SEZs where the most foreign-invested enterprises in China existed. In other words, this regulation represented a major legal instrument governing foreign-invested enterprises in China. Unlike the legal instruments governing domestic private enterprises, the 1988 Guangdong Provincial Labour Regulation paid relatively comprehensive attention to working time standards, providing a set of specified working time standards, such as eight-hour working day, six-day workweek, a weekly limit of forty-eight hours, a weekly rest day, maximum overtime, and maternity leave.[96] These provisions had much in common with the incoming 1994 Labour Law. Additionally, as mentioned earlier, this regulation was meant to safeguard the autonomy of employers in dealing with labour matters, which meant that, like domestic private enterprises, employers in foreign-invested enterprises also had a relatively strong power to deal with labour matters, including working time standards, but within the boundaries of the standards provided in the 1988 Guangdong Provincial Labour Regulation.

B. Enforcement mechanisms

Unlike public enterprises in which both trade unions and the labour dispute resolution framework were restored in the 1980s, the enforcement mechanisms of labour provisions in both domestic and foreign-invested private enterprises tended to be a legal vacuum.

As mentioned in section 7.3.1.1, since the ACFTU resumed its activities in 1978, the number of trade unions and union membership had increased rapidly. However, trade unions were mainly established in public enterprises, and there was a near-absence in private enterprises, both in forms of domestic and foreign-invested enterprises, not to mention the development regarding their law enforcement function in private enterprises.[97]

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93 Cooney, Biddulph, and Zhu (n 1) 36–37; Chang, Zheng, and Peng (n 8) 144.

94 e.g., Regulation on Labour Management of Chinese-Foreign Joint Ventures 1980; see: Cooney, Biddulph, and Zhu (n 1) 48.

95 Guangdong Provincial Labour Regulation in Special Economic Zones 1988, art 1.

96 Guangdong Provincial Labour Regulation in Special Economic Zones 1988, arts 30–35.

97 Cooney, Biddulph, and Zhu (n 1) 40–42.

The labour dispute resolution framework featured in several legal instruments governing private enterprises.[98] However, unlike public enterprises with a legal instrument (i.e., 1987 Interim Provisions on Labour Dispute Resolution in State-owned Enterprises) specifically dealing with labour disputes, except for the brief expression of 'a three-stage process (i.e., mediation, arbitration, and litigation)', no further specific rules or related institutions can be found in private enterprises.[99] Not until the adoption of the 1993 Regulation on Labour Dispute and the 1994 Labour Law was the labour dispute resolution framework formally applied to private enterprises.

7.3.2 Later stage (1995-2007)

While the incremental and provisional approach to labour regulations was explicable in light of the rapidly changing economic and social circumstances in the 1980s, it became clear that the overall orientation of economic reform was to establish a socialist market economy at the fourteenth National Congress of the CCP held in 1992.[100] It also became obvious that labour regulations needed greater coherence to support the deepening economic reform.[101] In this context, the first formal labour law was finally adopted by the NPC Standing Committee in 1994.

The 1994 Labour Law represented a milestone for Chinese labour legislation for protecting the rights and interests of working people in the context of a socialist market economy.[102] It replaced the interim provisions adopted in the early stage with a set of common labour standards and rules for labour relations across both public and private enterprises. It also paved the way for subsequent laws and regulations on specifying labour matters covered by the 1994 Labour Law, such as labour contracts, collective contracts, labour inspection, and labour dispute resolution. Against this background, working time procedural aspects were incorporated into a unified framework across various types of enterprises.

98 e.g., Interim Provisions on Labour Management of Private Enterprises 1989, art 34; Provisions on Labour Management in Town and Village Enterprises 1992, arts 43–46; Guangdong Provincial Labour Regulation in Special Economic Zones 1988, arts 58–60.

99 ibid; it was difficult to see how the labour dispute resolution framework could have operated in practice as it entailed access to the LDMCs that were mostly absent in private enterprises, or to the LDACs that were also mostly absent in rural areas where many private enterprises were located. See: Huang (47) 64; Sheng (25) 109.

100 Cooney, Biddulph, and Zhu (n 1) 44; Jia and Wei (n 73) 52.

101 Cooney, Biddulph, and Zhu (n 1) 50.

102 Cooney, Biddulph, and Zhu (n 1) 51; Jia and Wei (n 73) 49.

7.3.2.1 Various types of enterprises

A. Regulatory levels

With the entry into force of the 1994 Labour Law and a number of legal instruments that supplemented this law, three regulatory levels for the formulation of working time standards emerged in China, namely: statutory legislation, collective agreements at the enterprise level, and labour contracts.

As discussed in Chapter 5, statutory working time standards were mainly laid down in three major legal instruments: the 1994 Labour Law, the 1995 Regulation on Working Time of Workers, and the 1994 Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises. Together with the other legal instruments concerning certain legal indicators of working time, such as sick leave, home leave, and maternity leave, a comprehensive set of relatively well-developed working time standards was established, applying to all the major forms of enterprises across China. As a result, statutory legislation became the dominant level at which working time standards were determined across various types of enterprises in China.

Within the boundaries of statutory legislation, working time standards may also be negotiated by the representative of workers and employers through enterprise-level agreements, at least on paper. It should be noted that the ACFTU resumed its activities in 1978 and proposed to restore the collective agreement system in public enterprises in 1979.[103] However, not until 1992 did the ACFTU launch a campaign to include the collective agreement system in legislation, and it succeeded in getting it into the 1992 Trade Union Law.[104] The 1994 Labour Law also contained provisions for collective agreements and confined them to the enterprise level. In the same year, the Provisions on Collective Agreements was adopted by the Ministry of Labour and Social Security (MoLSS), which supplemented the 1992 Trade Union Law and the 1994 Labour Law. This instrument specified the details of the legal aspects on forming collective agreements, and was replaced by a new version in 2004 (i.e., the 2004 Provisions on Collective Agreements), which further clarified the procedural rules, expanded the scope and contents, and introduced the concept of 'consultation in good faith' for the collective agreement system.[105] With the entry into force of these legal instruments and the support of the ACFTU, collective agreements had been expanded rapidly in China.[106] However, as argued by many scholars, such expansion did nothing to strengthen the collective agreement

103 Guan and Lin (n 4) 130; Chang, Zheng, and Peng (n 8) 287.

104 Shen (25) 86.

105 ibid; see also: Simon Clarke, Chang-Hee Lee, and Qi Li, 'Collective Consultation and Industrial Relations in China' (2004) 42 BritJIR 235, 238; Chang-Hee Lee, *Industrial Relations and Collective Bargaining in China* (International Labour Office 2009) 8.

106 Cooney, Biddulph, and Zhu (n 1) 57.

system as an effective mechanism to regulate working conditions, including working time standards.[107] In practice, the number of collective agreements was often considered a target set by trade unions and local governments, and many collective agreements did not go beyond the mandatory legal requirements and the standardised collective agreements provided by the MoLSS.[108] This can be illustrated by empirical research conducted by Li, which found that the content of collective agreements were usually a duplication of legal provisions, merely adding the names of the parties concerned in the appropriate places.[109] In other words, the signing of a collective agreement was more like 'window dressing' to meet the requirement of implementing such a system.[110] It had relatively little impact on making or improving working time standards.

In terms of labour contracts, as we saw in the early stage of the transition period, their establishment in enterprises was central to economic reform. They were explicitly introduced by the State Council into SOEs in 1986. They were also introduced into private enterprises, but tended to be less formal and short-term, particularly in domestic private enterprises. Not until the adoption of the 1994 Labour Law did the labour contract system gain a statutory basis and was consolidated and formalised across various types of enterprises. As a result, permanent contracts that were applied in public enterprises finally came to an end.[111] The 1994 Labour Law defined labour contracts as '(written) agreements reached between a labourer and an employer to establish the labour relationship and specify the rights, interests, and obligations of each party'.[112] It emphasised that 'where there is a labour relationship, there must be a signed labour contract' and 'the formation and alteration of labour contracts shall follow the principles of equality, voluntariness, and agreement through negotiation'.[113] With the entry into force of the 1994 Labour Law, labour contracts were implemented extensively in China. However, as observed by many scholars, the practice of labour contracts proved to be quite inadequate to protect workers' most basic rights, including those related to working time, and many enterprises failed to fully comply with the law, making the refusal to sign labour contracts popular in private sectors.[114] This can be illustrated by a report published by the NPC Standing Committee in 2005, which found that in non-state sectors only around 20 per cent of workers had entered into writ-

107 ibid 81; Shen (25) 89–90; Chang, Zheng, and Peng (n 8) 293–94.
108 Cooney, Biddulph, and Zhu (n 1) 81; Taylor, Chang, and Li (n 30) 194–95; Clarke, Lee, and Li (n 105) 245.
109 Qi Li, Transition of Labour Relations in Chinese State-owned Enterprises: Case Studies of a Process Dominated by Government (PhD Dissertation, City University of Hong Kong 2000).
110 Shen (25) 90.
111 ibid 82.
112 Labour Law 1994, art 16.
113 Labour Law 1994, arts 16–17.
114 Cooney, Biddulph, and Zhu (n 1) 72–73; Shen (n 25) 81.

ten labour contracts, with the rate even lower in private enterprises, and abusive practices were particularly severe in the construction sectors.[115] In other words, labour contracts tended to have little impact on making or advancing working time standards; even if labour contracts could have documented the working time standards laid out in the 1994 Labour Law and the supplemented legal instruments, this role may be obviated by the very low rate at which labour contracts were formerly recorded.[116]

B. Enforcement mechanisms

With the declaration to establish a socialist market economy in 1992 and the adoption of the 1994 Labour Law, all three enforcement mechanisms (i.e., labour inspection, trade unions, labour dispute resolution framework) were officially re-established across various types of enterprises.

The labour inspection system was finally re-established in 1993. According to the Provisions on Labour Inspection adopted by the Ministry of Labour in 1993, labour departments at and above the county level were empowered to supervise and inspect the compliance of enterprises and workers with labour provisions.[117] This move revived the labour inspection system that had been undermined since 1956. This system regained a legal basis in articles 85 to 87 of the 1994 Labour Law. As with much of the 1994 Labour Law, these three short articles lacked detail, and their operation had to be remedied through the 1993 Provisions. The latter instrument was further replaced by a regulation adopted by the State Council in 2004, the Regulation on Labour and Security Inspection, which has a higher authoritative status in the Chinese legal system. One significant change in the 2004 Regulation was the removal of workers as the subject of supervision and inspection, which reflected that the labour inspection system was inclusively designed for enterprises rather than for workers. In addition, this regulation further clarified the duties of supervisory bodies and inspectors, and put clear procedures and rules in place for dealing with labour complaints, conducting supervision and inspection activities, and imposing penalties on enterprises that violated labour provisions. In particular, it provided for the penalties including order corrections, warnings, fines, compensation orders, confiscation orders, cancellation of business licence, administrative detention, and orders directing an enterprise to cease operation, thereby generating an operational basis for labour inspection activities.[118] However, it was not without limitations. As summarised

115 Report of the NPC Standing Committee Law Enforcement Inspection Group on the Investigation of the Implementation of the Labour Law in People's Republic of China 2004.

116 Cooney, Biddulph, and Zhu (n 1) 73; Shen (n 25) 81.

117 Provisions on Labour Inspection 1993, art 5.

118 Regulation on Labour and Security Inspection 2004; see also: Sean Cooney, 'China's Labour Law, Compliance and Flaws in Implementing Institutions' (2007) 49 JIR 673, 678.

by Cooney et al., at least three limitations can be recognised, namely: (a) the legal framework failed to clarify the jurisdiction of labour inspectors, their level of discretion, their qualifications, the procedures to be followed in an investigation, and the parameters of the fines that can be imposed; (b) the legal framework failed to provide strong non-monetary remedies for employers who violated provisions if they prepared to ignore warnings and fines; and (c) labour inspectors had relatively weak power in dealing with inspection activities since they were dependent on the local governments for resources and careers.[119] Since the local governments often primarily focused on economic development, they tended to be less supportive of enforcement activities that might have a negative impact on business.[120]

Despite all these shortcomings, the labour inspection system was clearly handling a large number of cases. The number of labour inspection cases, including those that are concerned with working time, has been recorded by the China Labour Statistical Yearbook since 2002. Table 7.3 presents the quantitative data from 2002 to 2007. As this table shows, the total number of cases increased from 233,747 to 407,678. Although working time-related cases only accounted for a small proportion of the total number of cases, their number also increased significantly, from 11,247 in 2002 to 23,934 in 2007. Given the lack of further detailed information, it was not possible to explore how these working time-related cases were settled. Nevertheless, based on the means of the total number of cases settled, it can be generally indicated that they were mainly settled by 'order corrections', which represented relatively 'soft' penalties.

Table 7.3 The number of labour inspection cases (2002-2019)

Year	Total case settled	Working time-related cases	Means of settlement					
			Order corrections	Warning	Fine	Administrative settlement	Administrative penalty	Others
2002	233,747	11,247	150,376	5,040	15,919	6,805	19,914	830
2003	263,567	11,987	170,155	7,562	16,980	10,069	22,011	931
2004	365,786	18,922	221,520	8,013	20,242	13,620	26,835	655
2005	378,831	23,307	230,541	9,584	21,347	15,216	28,032	594
2006	403,754	30,180	244,926	6,677	25,333	16,386	30,794	506
2007	407,678	32,934	239,490	7,539	25,387	15,510	36,298	339

Sources: China Labour Statistical Yearbooks, 2003-2008

119 For instance, labour inspectors can only impose less serious penalties, such as warnings, correction notices, fines, and compensation orders. In the case of excessive working hours, a fine of no less than 100 Yuan (around EUR 14) but no more than 500 Yuan (around EUR 70) can be imposed for each aggrieved worker. See: Regulation on Labour and Security Inspection 2004, art 25.

120 Cooney, Biddulph, and Zhu (n 1) 66–67, 73–74.

The law enforcement function was formally conferred upon trade unions by the 1992 Trade Union Law and the 1994 Labour Law. While the latter only contained one article regarding trade unions, stipulating that trade unions 'shall safeguard the lawful rights and interests of workers and supervise the employing unit's observation of laws and regulations', the concrete legal provisions relating to the operation of trade unions were set out in the 1992 Trade Union Law.[121] However, unlike the 1950 Trade Union Law, the 1992 Trade Union Law left little room for trade unions to act with relative autonomy from the Party.[122] According to this law, trade unions were required not only to entrench democratic centralism, assist governments, and uphold the socialist state power of the people's democratic, but also to represent workers to promote their welfare, educate them, urge them to improve their productivity, mediate their disputes with management, and ensure that they maintain labour discipline, as well as to support the management in its lawful operation of the enterprise.[123] This meant that trade unions were not organised around the interests of workers or acted wholly as workers' representatives, which tended to prejudice their ability to engage in effective supervision on behalf of workers. Moreover, the hindrance of the law enforcement function is also illustrated in the language in the contents of the 1992 Trade Union Law on union rights and obligations. For example, trade unions have the 'right to demand' that enterprises comply with the law; if an enterprise threatens to dismiss a worker, they have the 'right to express opinions'; and when an enterprise requires workers to engage in dangerous work, they have the 'right to suggest solutions'.[124] None of these powers compels an employer to act lawfully; and if the union wishes to do that, it must refer the matter to labour departments or the dispute resolution system.[125]

The labour dispute resolution framework, based on the 1993 Regulation on Labour Dispute Settlement in Enterprises and the 1994 Labour Law, was extended to various types of enterprises across China. These two legal instruments clearly defined the rules, procedures, and institutions for the operation of the labour dispute resolution framework. Instead of a three-stage framework stipulated in the 1987 Interim Provisions for public enterprises, a fourstage framework that begins with an informal 'negotiation' between the two parties was provided. If the negotiation fails to resolve the dispute or is simply ignored, either party may apply to the LDMCs at the enterprise level; if the mediation fails or neither party wants mediation, then they may apply to the LDACs; if either party is dissatisfied with the arbitration award, they may file a lawsuit with a court.[126] This graduated

121 Labour Law 1994, art 22; Trade Union Law 1992.
122 Cooney, Biddulph, and Zhu (n 1) 67.
123 Trade Union Law 1992, arts 5–7.
124 Trade Union Law 1992, art 20.
125 Cooney, Biddulph, and Zhu (n 1) 68.
126 Regulation Labour Dispute Settlement in Enterprises 1993, art 6; Labour Law 1994, art 79.

labour dispute resolution framework was intended to provide a rational, coherent, and uniform approach to the labour dispute resolution across various types of enterprises.[127] However, it was not without limitations. As summarised by Cooney et al., at least five limitations can be recognised: (a) the legal framework failed to provide for a systematic resolution of interest disputes; (b) the important arbitration stage had been insufficiently separated institutionally from the labour bureaucracy; (c) although the labour dispute resolution framework applied to all forms of enterprises, it was much more workable in the SOEs than in others; (d) there had been the unwillingness of arbitrators to accept cases; and (e) delay and expense had been a problem.[128]

Despite these shortcomings, the labour dispute resolution framework was increasingly used. The number of labour dispute cases handled by the LDACs through mediation and arbitration has been recorded by China Labour Statistical Yearbook since 2002. The number of labour dispute cases handled by the civil courts, to our best knowledge, based on the official statistics, was only available from 2006 to 2007 in the transition period in the China Social Statistical Yearbooks. Although the labour dispute resolution framework is a process consisting of four stages, in reality, labour disputes that finally take shape in practice are mainly charged by the LDACs and the civil courts. In addition, the process of the labour dispute resolution framework is much more fluid, with the emphasis being placed by the authorities, including the LDACs and courts, at all stages on mediation.[129] Even if a case does make it to a LDAC or a civil court, those institutions will still urge the parties to agree to a mediated settlement rather than issue a formal ruling.[130] This explains why the quantitative data on labour disputes are mainly concerned with the LDACs and courts, and why the means of mediation also uses them. Tables 7.4 and 7.5 present the quantitative data on labour dispute cases handled by the LDACs and the civil courts, respectively. As shown in table 7.4, the number of labour dispute cases resolved by the LDACs through mediation and arbitration rose rapidly, from 8,150 in 1992 to 350,182 in 2007. Table 7.5 presents the number of labour dispute cases handled by the court through litigation, rising from 126,047 in 2006 to 150,531 in 2007. Although it was not possible to explore the extent to which these cases were related to the subject of working time, based on the means of the total cases settled, it can be generally deduced that they were mainly resolved by the LDACs through mediation and arbitration.

127 Huang (n 47) 64.
128 Cooney, Biddulph, and Zhu (n 1) 65–66.
129 Shen (n 25) 95; China Labour Bulletin, 'China's Labour Dispute Resolution System' <https://www.clb.org.hk/en/view-resource-centre-content/100618> accessed 31 December 2021.
130 ibid.

Table 7.4 The number of labour dispute cases handled by the LDACs (1992-2007)

Years	Cases accepted	Cases settled	Mediation	Arbitration
1992	8,150	3,793	2,329	429
1993	12,368	11,403	6,004	1,709
1994	19,098	17,962	9,362	3,465
1995	33,030	31,415	17,990	7,269
1996	48,121	46,543	24,223	12,789
1997	71,524	70,792	32,793	15,060
1998	93,649	92,288	31,483	25,389
1999	120,191	121,289	39,550	34,712
2000	135,206	130,688	41,877	54,142
2001	154,621	150,279	42,933	77,250
2002	184,116	178,744	50,925	77,340
2003	226,391	223,503	67,765	95,774
2004	260,471	258,678	83,400	110,708
2005	313,773	306,027	104,308	131,745
2006	317,162	310,780	104,435	141,465
2007	350,182	340,030	119,436	149,013

Source: China Labour Statistical Yearbook (1993-2007)

Table 7.5 The number of labour disputes cases handled by the courts (2006-2007)

Years	Cases accepted	Cases settled	Mediation	Judgement	Reject	Withdrawn	Other
2006	126,047	124,966	27,025	66,989	5,662	22,407	2,883
2007	150,531	147,592	37,912	70,973	6,291	29,305	3,121

Source: China Social Statistical Yearbook, 2007-2008

7.3.3 Identification and analysis of China's working time procedural configurations (1978-2007)

After having examined the regulatory levels and enforcement mechanisms of working time standards in China, China's working time procedural configurations for the transition period, as shown in table 7.6, can be identified.

Table 7.6 Identification of China's working time procedural configurations (1978-2007)

Procedural aspects		**Early stage (1978-1994)**			**Later stage (1995-2007)**
		Public enterprises		**Private enterprises**	**Various types of enterprises**
		Domestic	**Foreign-invested**		
Regulatory levels	**Dominant level**	Labour contracts + labour administration	Labour contracts	Labour contracts + statutory legislation	Statutory legislation
	Other levels	Permanent contracts; statutory legislation (mainly in the form of normative documents)	N/A	N/A	Enterprise-level agreements; labour contracts
Enforcement mechanisms	**Dominant mechanism**	Labour dispute resolution framework (mainly at the stage of mediation)	Labour dispute resolution framework (only setting the frame)	Labour dispute resolution framework (only setting the frame)	Labour inspection
	Other mechanisms	Trade unions	N/A	N/A	Labour dispute resolution framework (mainly at the stages of mediation and arbitration); trade unions
Identification of working time configuration		Closest to the administrative configuration	Closest to the unilateral configuration	Closest to the unilateral configuration	Fit into the mandated configuration

In the early stage (1978-1994), in public enterprises, working time standards were mainly determined by the combination of labour contracts and labour administration, and their enforcement mainly relied on the labour dispute resolution framework at the stage of mediation, which came closest to the administrative configuration provided in section 7.2.3, but with several limitations.

First, the ideal administrative configuration expects that working time standards are mainly established by the State through labour administration, and in turn, their enforcement mainly relied on the State through labour inspection. In the Chinese context, however, there was a hybrid regulatory

model combining labour contracts and labour administration. There was also a major gap in the labour inspection system.

Second, both labour contracts and labour administration failed to cover all relevant legal indicators of working time as provided by the ILO benchmarks. In fact, given the top priority granted to develop the economy, relatively limited attention was paid to the substantive working time standards in public enterprises from the beginning of the economic reform to the adoption of the 1994 Labour Law.

Third, in addition to the absence of the labour inspection system, trade unions and the labour dispute resolution framework were also not adequate to ensure an effective application of the existing working time standards. In terms of trade unions, the ACFTU resumed its activities in 1978, but the development regarding its enforcement functions lagged behind. Not until the adoption of the 1992 Trade Union Law and the 1994 Labour Law was the law enforcement function formally conferred to trade unions. As for the labour dispute resolution framework, it was possible to recognise that labour disputes were mainly resolved by mediation within the enterprises; however, there was a lack of clear procedures and rules underpinning the operation of labour mediation as well as labour arbitration.

In private enterprises, there was a distinction between domestic and foreign-invested enterprises. In domestic private enterprises, working time standards were unilaterally decided upon by the employers through labour contracts, and their enforcement relied on the labour dispute resolution framework. In foreign-invested enterprises, working time standards were mainly determined by the combination of labour contracts and statutory legislation, and their enforcement relied on the labour dispute resolution framework. As a result, working time procedural aspects in both types of private enterprises would come closest to the unilateral configuration developed in Chapter 6, but with several limitations.

First, the ideal unilateral configuration is grounded in the belief that the labour market in itself reflects the needs of both workers and employers. It is expected that labour contracts serve as the dominant level at which working time standards are determined, and the courts and tribunals serve as the dominant mechanism for effectively enforcing those standards. In the Chinese context, however, although it is possible to see that labour contracts served as the dominant regulatory level, particularly in domestic private enterprises, there was a major gap regarding enforcement mechanisms. There was only a very brief expression implying that a three-stage labour dispute resolution framework applied to both types of private enterprises. No further specific rules or related institutions can be found in private enterprises

Second, labour contracts that applied to domestic private enterprises tended to be less formal and short-term, and were unlikely to cover all relevant legal indicators of working time as provided by the ILO benchmarks. In fact, similar to public enterprises, given the top priority to develop the economy, little attention was paid to the substantive working time stan-

dards in domestic private enterprises from the beginning of the economic reform to the adoption of the 1994 Labour Law.

In the later stage (1995-2007), working time procedural aspects were incorporated into a unified regulatory system applying to various types of enterprises across China. The State had strong interest in establishing working time standards through statutory legislation, and took primary responsibility for their enforcement through labour inspection, thereby fitting into the mandated configuration developed in Chapter 6. Nevertheless, a few clarifications or limitations need to be noted, which are mainly confined to the enforcement mechanisms.

First, the reason that the labour inspection system is seen as playing a more prominent role in the enforcement of working time standards in relation to the labour dispute resolution framework can be attributed to at least three possible factors. First, working time as a subject must be explicitly examined by the labour inspection system. Second, based on the official statistics, the extent to which labour dispute cases were related to the subject of working time was unclear, but labour inspection cases on working time were specifically recorded. Third, more labour inspection cases than labour dispute cases were handled by the LDACs or the civil courts prior to the enactment of the 2007 Labour Dispute Mediation and Arbitration Law.

Second, although the labour inspection system can be considered the dominant mechanism, it had several limitations to ensure that working time standards were being effectively enforced in practice. As found in section 7.3.2.1, as a summary, the limitations covered were the failure to specify the jurisdiction of labour inspectors, their level of discretion, their qualifications, the procedures to be followed in an investigation, and the parameters of the fines that can be imposed, the relatively weak power of labour inspectors, and the less serious penalties that can be imposed on enterprises.

Third, the other two enforcement mechanisms also suffered from several constraints that prejudiced their ability to engage in the effective enforcement of working time standards. As found in section 7.3.2.1, as a summary, in terms of the labour dispute resolution framework, the shortcomings included the absence of a system for dealing with interest disputes, insufficient structural separation of arbitrators from the labour bureaucracy, the orientation of formal dispute resolution structures towards public enterprises rather than other types of enterprises, the unwillingness of arbitrators to accept many kinds of cases, and the delay and expense associated with actions. The shortcomings of trade unions were the lack of independence, the limited representative function, and the absence of the ability to take industrial actions.

7.4 The period after the transition (2008-2020)

Although the 1994 Labour Law remains the fundamental law governing labour matters in China, it contains significant gaps and shortcomings in

keeping pace with the dramatic changes in the labour market and responding to the escalating labour problems.[131] Over time, the legal framework based on the 1994 Labour Law clearly needed further improvement.[132] Not until 2007 were three new labour laws built upon the 1994 Labour Law (i.e., Labour Contract Law, Employment Promotion Law, and Labour Dispute Mediation and Arbitration Law, were adopted by the NPC Standing Committee). The year 2007 was thus commonly identified as a 'labour legislative year' in China.[133] With the entry into force of these three labour laws in 2008, a modernised legislative framework for regulating labour was on the way to completion, marking China's entry into a 'modern era' in the labour law sphere.[134] As a result, working time procedural aspects witnessed some new significant developments, particularly in the collective agreements and labour dispute resolution framework.

7.4.1 Various types of enterprises

7.4.1.1 Regulatory levels

All four regulatory levels for the formulation of working time standards as recognised in Chapter 6 can be observed in this period, namely: statutory legislation, sectoral-level agreements, enterprise-level agreements, and labour contracts.

The current regulation of working time in China mainly took shape in the later stage of the transition period, which means that statutory legislation remains the dominant level at which working time standards are determined across various types of enterprises throughout China. In addition, as discussed in Chapter 5, a few legal indicators of working time, such as paid annual leave, variable working time arrangement, part-time work, and maternity leave, were further revised in statutory legislation in this period, leading to a more comprehensive set of working time standards that are in line with most of the ILO benchmarks or even provide higher standards than what are required by these benchmarks.

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131 Cooney, Biddulph, and Zhu (n 1) 70, 86; Neal (n 1) 7.

132 ibid.

133 Guan (n 1) 4; Neal (n 1) 10; Jia and Wei (n 73) 60.

134 As pointed out by Neal, 'what has finally ushered in a truly "modern era" of Chinese labour law, however, has been a dramatic period of reform and legislation undertaken during the course of the first decade of the twenty-first century. That process can be seen as comprising four key strands, encapsulated in the important legislative instruments of (a) a Labour Contract Law; (b) a Labour Disputes (Mediation and Arbitration) Law; (c) an Employment Promotion Law; and (d) a Social Insurance Law. Together, these related legislative initiatives indicate both the direction and focus of labour market reform in the PRC (People's Republic of China) as the social market economy propels China towards a position of increasing influence in global markets.' See: Neal (n 1) 10.

Within the boundaries of statutory legislation, working time standards may still be negotiated by the representative of workers and employers through the collective agreement system, at least on paper. While the 1994 Labour Law and the 2004 Provisions on Collective Agreements confine collective agreements to the enterprise level, the 2007 Labour Contract Law further extends their operation to various levels, including the sectoral level.[135] This legal development is significant because it takes bargaining out of the hands of representatives of enterprise-level unions and places it in the hands of union officials who are outside the direct control of the management.[136] With the entry into force of the 2007 Labour Contract Law and the support of the ACFTU and government, collective agreements were further widely implemented in the workplace.[137] There is no doubt that this system, if successful, could effectively deal with labour relations by regulating working conditions, including working time standards, and reducing labour disputes in the workplace. However, as many scholars pointed out, collective agreements continue to be formulaic documents, and their number remains a target set by trade unions and local governments.[138] Similar to the discussion in the transition period, as long true collective bargaining and independent trade unions remain absent, the collective agreement system will be unlikely to play an effective role in making or improving working time standards in practice.

The 2007 Labour Contract Law also made a number of reforms. To better understand these reforms, it is first necessary to recall the provisions on labour contracts contained in the 1994 Labour Law. The 1994 Labour Law's provisions on labour contracts are mainly concerned with the termination of labour relationships, and lack details on matters such as formation and variation of labour contracts, party responsibilities, impermissible clauses, contracts with unlawful entities, or the effect on contracts of business mergers. Built upon the 1994 Labour Law, the 2007 Labour Contract Law aims to regularise labour relationships by structuring them around written contracts.[139] This law provides for systematic provisions on the formation, content, fulfilment, change, and termination of labour contracts. It emphasises that labour contracts address working hours and leave, and maintains that the clause is invalid if it violates standards and rules contained in statutory legislation and collective agreements.[140] Additionally, this law reclarified the principle of 'lawfulness, fairness, equality, voluntariness, agreement through negotiation' in the formation of labour contracts, but it is arguably not to strengthen the negotiating process between workers and employers, as there is a lack of substantive provisions concerning

135 Labour Contract Law 2007, arts 52–53.
136 Cooney, Biddulph, and Zhu (n 1) 102.
137 ibid 103.
138 ibid; Taylor, Chang, and Li (n 30) 194–95; Shen (n 25) 90; Clarke, Lee, and Li (n 105) 245.
139 Cooney, Biddulph, and Zhu (n 1) 103; Guan and Lin (n 4) 92; Jia and Wei (n 73) 60.
140 Labour Contract Law 2007, arts 17, 26, 55.

the negotiating process. Instead, as many scholars pointed out, the 2007 Labour Contract Law is to mandate the use of written labour contracts as a means of raising compliance with labour standards and reducing labour disputes.[141] This mandate is grounded in the view that greater formalisation would enable the parties to have a written record of their obligations so that labour standards, including those concerned with working time, can be enforced effectively in practice, and that labour disputes are handled in an orderly way.[142] In other words, labour contracts are not used as a means of determining working time standards by employers and/or workers, but rather as a way of ensuring the application existing labour standards set forth in statutory legislation.

7.4.1.2 Enforcement mechanisms

All three enforcement mechanisms, recognised in Chapter 6, are at work in this period, namely: labour inspection, trade unions, and the labour dispute resolution framework.

The current legal framework of the labour inspection system is built upon the 1994 Labour Law and 2004 Regulation on Labour Inspection, which means the limitations identified in the transition period continue to exist. Nevertheless, this system has a few new developments. The first was the creation of the Labour Inspection Bureau (LIB) in 2008 within the Ministry of Human Resources and Social Security (MOHRSS), which aims to achieve some degree of national coordination over national data collection and policymaking.[143] However, at the time of writing, the LIB has relatively limited permanent staff, and is not yet to produce a national and consolidated enforcement policy and to set out a strategic vision and principles for inspection; nor has it produced a national model operations manual.[144] Another important development derived from the 2007 Labour Dispute Mediation and Arbitration Law. Although this law mainly deals with the labour dispute resolution framework, it contains one important article on labour inspection. Article 9 of this law stipulates that workers can complain about employers' violations of labour provisions to the labour departments. The violations concerned can be further referred to article 11 of the 2004 Regulation, explicitly covering the subject of working time. As pointed out by Chang et al., the legislative purpose of this article is to guide workers to prefer the labour inspection system over labour mediation and arbitration regarding labour disputes in order to resolve these disputes quickly, reduce the cost of defending rights, and safeguard their own rights.[145] In other

141 Cooney, Biddulph, and Zhu (n 1) 91; Chang and others (n 4) 246; Guan and Lin (n 4) 92.
142 ibid.
143 Giuseppe Casale and Changyou Zhu, *Labour Administration Reforms in China* (International Labour Office 2013) 25, 39; Cooney, Biddulph, and Zhu (n 1) 122.
144 ibid.
145 Chang and others (n 4) 598.

words, it expects the labour inspection system to play a 'preferential' role to the labour dispute resolution framework in resolving some cases, at least on paper.

In practice, however, there was generally a decreasing trend in the number of labour inspection cases, including those concerned with working time, since 2008. As shown in table 7.7, working time-related cases continued to account for a small proportion of the total number of cases. Their number reached a peak at 40,969 in 2008, then fluctuated, and fell to a low point of 6,522 in 2019. Given the lack of further detailed information, exploring how these working time-related cases were settled was impossible. Nevertheless, based on the means of the total number of cases settled, they generally remain mainly settled by 'order corrections'.

Table 7.7 The number of labour inspection cases (2008-2019)

Year	Total case settled	Working time-related cases	Means of settlement					
			Correction orders	Warning	Fine	Administrative settlement	Administrative penalty	Others
2008	482,659	40,969	289,931	8,619	22,101	19,959	29,146	553
2009	438,903	37,041	251,487	9,924	16,582	27,885	25,674	938
2010	383,746	40,734	234,482	8,642	15,975	15,269	23,784	550
2011	379,875	30,761	247,148	8,263	18,318	13,254	25,266	653
2012	411,822	28,966	263,829	6,566	16,304	12,981	22,861	928
2013	418,634	27,148	262,447	6,862	14,423	10,499	21,363	865
2014	406,210	23,942	235,467	6,309	12,622	9,414	17,086	394
2015	388,681	20,685	217,016	3,711	9,191	10,895	12,275	128
2016	322,618	15,017	177,183	2,296	9,254	9,276	10,830	145
2017	205,923	11,303	102,238	2,224	7,609	5,503	8,982	116
2018	139,213	6,585	67,923	2,710	6,827	6,353	8,621	100
2019	111,587	6,522	49,434	2,781	6,087	4,512	7,781	52

Sources: China Labour Statistical Yearbooks, 2009-2020

Regarding trade unions, the legal framework for their law enforcement function also took shape in the transition period, which was built upon the 1992 Trade Union Law and 1994 Labour Law. Although the 1992 Trade Union Law was amended a few times, there was no evidence to suggest a major change in patterns of the law enforcement function of trade unions.[146] In other words, similar to the later stage of the transition period, trade unions are still unlikely to play an effective role in the enforcement of working time standards.

146 Trade Union Law 1992 (amended in 2001 and 2009).

The most significant development for enforcement mechanisms was in the labour dispute resolution framework. As in the later stage of the transition period, five limitations were recognised regarding the labour dispute resolution framework built upon the 1993 Regulation on Labour Dispute Settlement in Enterprises and the 1994 Labour Law. With the entry into force of the 2007 Labour Dispute Mediation and Arbitration Law, the legal framework for labour dispute resolution was elevated from an administrative regulation (i.e., the 1993 Regulation) to a law. This law retained the basic structure of the four-stage process consisting of negotiation, mediation, arbitration, and litigation, but made virtually no headway for the interest dispute resolution and insufficient structural separation of arbitrators from the labour bureaucracy. Nevertheless, this law has indeed made some significant efforts in reducing the other three limitations. First, it seeks to establish the procedures appropriate to a larger number of enterprises.[147] This is particularly evident with regard to the enterprises where the LDMCs are not available. This law provides that, where a dispute arises, a worker has three choices on mediation: (a) mediation within the enterprise, which is the sole option under the 1994 Labour Law; (b) mediation by a 'grassroots mediation organisation'; and (c) a 'township or community organisation with a labour mediation function'.[148] This law thus enhances the stage of mediation charged by the LDMCs. Second, this law provides a clear definition of a labour dispute, covering a wide range of disputes arising out of a labour relationship.[149] This means that, for most kinds of rights disputes, as long as a factual labour relationship can be established, a LDAC, and subsequently a court, must accept the case. Third, this law prevents employers from defeating workers' claims on technicalities or through prolonging litigation.[150] For instance, it requires employers to disclose evidence under their control, where failure to do so will lead to adverse inferences being drawn.[151] It also restricts employers' appeals against most common types of arbitral awards to matters such as errors of law and fraud.[152]

With the entry into force of the 2007 Labour Dispute Mediation and Arbitration Law, the number of labour dispute cases jumped dramatically in 2008, as illustrated in tables 7.8 and 7.9. As shown in table 7.4, after more than doubling in 2008 (compared to the 350,182 cases settled in 2007, see table 7.4), the number of labour dispute cases handled by the LDACs through mediation and arbitration continues to rise rapidly. At the end of 2019, 1,079,638 cases were accepted by the LDACs. Table 7.5 presents the number of labour dispute cases handled by the civil courts through litiga-

147 Cooney, Biddulph, and Zhu (n 1) 109–10.
148 Labour Dispute Mediation and Arbitration Law 2007, art 10.
149 Labour Dispute Mediation and Arbitration Law 2007, art 2.
150 Cooney, Biddulph, and Zhu (n 1) 110–11.
151 Labour Dispute Mediation and Arbitration Law 2007, art 39.
152 Labour Dispute Mediation and Arbitration Law 2007, arts 47–49.

tion, rising from 295,531 in 2008 to 483,767 in 2019. Although it is impossible to explore the extent to which these cases related to working time, based on the means of the total cases settled – similar to the later stage of the transition period – they appear to have been mainly resolved by the LDACs through mediation and arbitration.

Table 7.8 The number of labour dispute cases handled by the LDACs (2008-2019)

Years	Cases accepted	Cases settled	Mediation	Arbitration
2008	693,465	622,719	221,284	274,543
2009	684,379	689,714	251,463	290,971
2010	600,865	634,041	250,131	166,506
2011	589,244	592,823	278,873	244,942
2012	641,202	643,292	302,552	268,530
2013	665,760	669,062	311,806	283,341
2014	715,163	711,044	321,598	313,175
2015	813,859	812,461	362,814	368,409
2016	828,410	827,717	389,109	366,742
2017	785,323	790,448	390,278	336,073
2018	894,053	884,223	458,353	357,666
2019	1,079,638	1,068,413	552,584	430,309

Source: China Labour Statistical Yearbook (2009-2020)

Table 7.9 The number of labour disputes cases handled by the courts (2006-2008, 2014-2019)

Years	Cases accepted	Cases settled	Mediation	Judgement	Reject	Withdrawn	Other
2008	295,531	286,221	93,368	124,652	10,688	50,895	6,618
2009 – 2013: Data is not available based on the China Social Statistical Yearbook and China Statistical Yearbook							
2014	386,576	374,299	141,071	146,797	8,567	69,754	8,110
2015	483,311	455,761	144,270	201,792	17,081	80,007	12,611
2016	467,396	474,770	136,027	228,971	191,88	76,886	13,698
2017	451,567	470,669	132,245	220,214	19,649	78,933	11,151
2018	452,289	450,589	136,577	206,284	18,645	76,418	9,286
2019	483,767	482,850	133,281	231,054	21,820	82,157	11,901

Sources: China Social Statistical Yearbook, 2009, 2015-2020; China Statistical Yearbook, 2015-2020

7.4.2 Identification and analysis of China's working time procedural configurations (2008-2020)

China's working time procedural configurations for the period after the transition appear in table 7.10.

Table 7.10 Identification of China's working time procedural configurations (2008-2020)

Procedural aspects		**Various types of enterprises**
Regulatory levels	**Dominant level**	Statutory legislation
	Other levels	Sectoral-level agreements, enterprise-level agreements, labour contracts
Enforcement mechanisms	**Dominant mechanism**	Labour inspection vs. labour dispute resolution framework (mainly at the stages of mediation and arbitration)
	Other mechanisms	Trade unions
Identification of working time configuration		Fit into the mandated configuration

As shown in table 7.10, working time standards are mainly determined by statutory legislation. Regarding their enforcement, however, it is unclear which one of the two enforcement mechanisms (i.e., the labour inspection system and the labour dispute resolution framework) plays a more prominent role. In general, the enforcement of working time standards tended to primarily rely on the labour inspection system, at least on paper; however, in practice, it mostly leaned on the labour dispute resolution framework during mediation and arbitration – at least based on the official statistics. Despite such a law-practice gap, it can be generally concluded that working time procedural aspects would fit into the mandated configuration as developed in Chapter 6, but with a few limitations.

First, the ideal mandated configuration expects that working time standards be mainly established by the State through statutory legislation, and in turn, their effective enforcement mainly depends upon the State through labour inspection. In the Chinese context, however, the labour inspection system is designed to play a more prominent role in the enforcement of working time standards on paper; but in practice, the labour dispute resolution framework tends to serve as the dominant mechanism for the enforcement of working time standards. A possible explanation might be the entry into force of the 2007 Labour Dispute Mediation and Arbitration Law, which renders the labour dispute resolution framework, particularly at the stages of mediation and arbitration, more accessible to workers while the labour inspection system still suffers from several constraints that have prejudiced its ability to engage in the effective enforcement of working time standards.

Second, with the entry into force of the 2007 Labour Contract Law and the 2007 Labour Dispute Mediation and Arbitration Law, significant progress concerning working time procedural aspects have been made, but many of the limitations identified in the transition period persist, particularly with regard to the labour inspection system and trade unions. As an illustration, the labour inspection system is expected to play a 'preferential' role over the labour dispute resolution framework in resolving some cases on paper, but in practice, there was a decreasing number of labour inspection cases since 2008. Regarding trade unions, there was still relatively little attention paid to their law enforcement function.

7.5 Conclusion: an overall evaluation of achieving decent working time in China: procedural aspects

Having identified and analysed China's working time procedural configurations for each of the three periods, an overall evaluation of the development of China towards decent working time regarding the procedural aspects appears in table 7.11. As shown in table 7.11, working time procedural aspects were not fixed in China, and the mandated configuration finally took shape as the dominant working time configuration with the entry into force of the 1994 Labour Law. As an ideal-type configuration, the mandated configuration represents an ideal combination of regulatory levels and enforcement mechanisms China uses to set its working time standards. This means that, in theory, China would have a greater ability or possibility to actualise the desired working time standards through statutory legislation and enforce them effectively through labour inspection in the real world. It makes an important initial achievement regarding the procedural aspects of decent working time in China.

Nonetheless, the potential impact of the mandated configuration is constrained by a number of practical limitations, particularly inherited from the labour inspection system, such as the failure to specify the jurisdiction of labour inspectors, their level of discretion, their qualifications, the procedures to be followed in an investigation, the parameters of the fines that can be imposed, the relatively weak power of labour inspectors, and the less serious penalties that can be imposed on enterprises.

Table 7.11 Developments of China towards decent working time: Procedural aspects (three periods, 1949-2020)

Periods		**Types of enterprises**		**Dominant regulatory level/ enforcement mechanism**	**Working time configurations**
Period 1 (1949-1978)	**Early stage (1949-1956)**	**Public enterprises**		Statutory legislation + labour administration/ Labour dispute resolution framework (mainly at the stages of negotiation and mediation)	Closest to the mandated configuration
		Private enterprises		Sectoral-level agreements/ Labour dispute resolution framework (mainly at the stages of negotiation and mediation)	Closest to the centralised negotiated configuration
	Later stage (1957-1978)	**Public enterprises**		Government administration/Complaint letters and visits system	Closest to the administrative configuration
Period 2 (1978-2007)	**Early stage (1978-1994)**	**Public enterprises**		Labour contracts + government administration/ Labour dispute resolution framework (mainly at the stage of mediation)	Closest to the administrative configuration
		Private enterprises	**Domestic**	Labour contracts/ Labour dispute resolution framework (only setting the frame)	Closest to the unilateral configuration
			Foreign-invested	Labour contracts + statutory legislation/ Labour dispute resolution framework (only setting the frame)	Closest to the unilateral configuration
	Later stage (1995-2007)	**Various types of enterprises**		Statutory legislation/ Labour inspection	Fit into the mandated configuration
Period 3 (2008-2020)		**Various types of enterprises**		Statutory legislation/ Labour inspection vs. labour dispute resolution framework (mainly at the stages of mediation and arbitration)	Fit into the mandated configuration

8 The overall analysis of achieving decent working time in China

8.1 Introduction

Chapters 4 to 7 have examined the substantive and procedural aspects of decent working time, with a focus on China. Their findings enable further analysis of the progress of China towards decent working time in five dimensions: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. As elaborated in Chapter 3, the five dimensions relate to each other, and their relationship is usefully represented in terms of the construction of a house. As shown in figure 8.1, the house of decent working time is built as follows (see also figure 3.3): The fifth dimension, choice and influence regarding working time, lays the foundation, and is what enables workers to influence their working time schedules. On the foundation are two pillars, which support the construction of five dimensions of decent working time, healthy working time (first dimension) and family-friendly working time (second dimension). Together, the foundation and two pillars carry the casco of the house (i.e., the creation of gender equality through working time [third dimension]). These four dimensions bring us to the roof of the house – productive working time (fourth dimension). After all, together, these four dimensions help to improve the overall productivity of the workers.

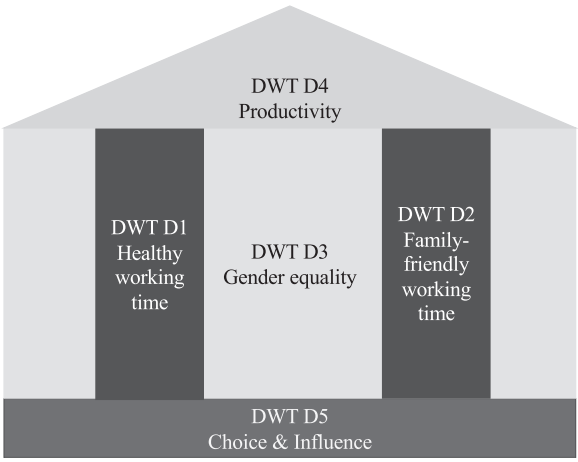

Figure 8.1 House of decent working time by the five dimensions

The closer China's working time regulations are to the ILO benchmarks on decent working time, the more solid the house will be – at least, when it comes to the substantive aspects of decent working time, which have been analysed in detail in Chapters 4 and 5. The extent to which the substantive aspects of decent working time can be achieved depends on the setting of the procedural aspects of decent working time; that is, the extent to which China's working time procedural configurations match the ideal-type configurations (i.e., mandated, centralised negotiated, decentralised negotiated, unilateral, or administrative) given the combination of regulatory levels and enforcement mechanisms China is using to set its working time regulations, which has been analysed in detail in Chapters 6 and 7.

The purpose of this chapter is to bring these two aspects of decent working time (i.e., substantive and procedural) together and present a final analysis and evaluation of the degree to which China is achieving decent working time through the five dimensions compared to the ILO benchmarks. The analysis and evaluation unfold as follows. Sections 8.2 to 8.4 deal with the dimensions of healthy working time, family-friendly working time, and gender equality through working time. These three dimensions are mainly concerned with the substantive aspects of decent working time. The analysis and evaluation are conducted in three steps: first, the respective legal indicators are identified for the three dimensions; second, the trend in the assessment results of the identified legal indicators in China against the ILO benchmarks is presented; and third, an analysis and evaluation of how effectively China is achieving these three respective dimensions is performed. Section 8.5 deals with the dimension of choice and influence regarding working time. This dimension is mainly concerned with the procedural aspects of decent working time. The analysis and evaluation are also conducted in three steps: first, the ideal-type working time configurations are presented for this dimension; second, China's working time procedural configurations are identified; and third, an analysis and evaluation of how well China is achieving this dimension is made. Section 8.6 concerns the dimension of productive working time, which serves as the potential benefit of the promotion of the other four dimensions. The analysis and evaluation thus rely on the evaluation results of the other four dimensions. As such, two steps are conducted: first, the requirements for achieving this dimension are identified by linking to the other four dimensions; and second, an analysis and evaluation of the degree to which China is achieving productive working time is made. Section 8.7 presents an overall conclusion of the extent to which China is achieving decent working time by bringing the five dimensions together.

8.2 Healthy working time

8.2.1 Identification of the legal indicators for healthy working time

The dimension of healthy working time concerns workers' health and safety, which can be best expressed as 'working time safety'. As explained in Chapter 3, working time serves as an aspect of health and safety regulation, and unhealthy working time should not be used as a means of improving enterprises' profitability. As shown in figure 8.1, this dimension serves as one of the two pillars supporting the construction of the decent working time house. To make this pillar 'solid' in the decent working time house, China should provide similar-to-higher standards than the ILO benchmarks regarding the legal indicators that have an explicit impact on workers' health and safety. In this sense, as set out in the left column in table 8.1, it is possible to focus on nine legal indicators in the substantive aspects of decent working time as examined in Chapters 4 and 5, namely: daily limit, weekly limit, overtime limit, weekly rest, paid annual leave, overtime work arrangement, night work, standard working time arrangement, and maternity leave. In other words, these nine legal indicators constitute the regulation of healthy working time. The selection can be illustrated by their aim/purpose provided in the ILO benchmarks, which appear to safeguard workers' health and safety (see table 4.5 and Appendix 5).

Table 8.1 Identification of legal indicators for the first three dimensions of decent working time

<table>
<tr><th>Pillar 1: Healthy working time</th><th>Casco: Gender equality</th><th>Pillar 2: Family-friendly working time</th></tr>
<tr><td rowspan="2">1.1 Daily limit
1.2 Weekly limits
1.3 Overtime limits
1.4 Weekly rest
1.5 Paid annual leave
2.1 Standard working time arrangement
2.3 Overtime work
2.4 Night work
3.1 Maternity leave</td><td>In general, all legal indicators shall carry the casco of gender equality for constructing the decent working time house.</td><td rowspan="2">2.2 Variable working time arrangement
2.5 Part-time work
3.2 Parental leave</td></tr>
<tr><td>Highlights:
2.5 Part-time work
3.1 Maternity leave
3.2 Parental leave</td></tr>
</table>

8.2.2 Healthy working time regulations in China

As Chapter 4 discusses, to render the legal indicators more precise in operational terms, each of them is elaborated by four aspects: (a) topic/definition, (b) aim/purpose, (c) scope of application, and (d) material content. To evaluate these aspects in an individual country against the ILO benchmarks, each is further associated with a coding scheme (see table 4.6). As a brief summary, while the first aspect is determinant in the binary question of whether the legal indicator is regulated, a 'binary coding' approach is

applied, while the last three aspects are definite for their normative quality in terms of providing lower or higher standards than the ILO benchmarks, a 'graduated coding' approach is applied. Hence, for a legal indicator, while a coding result '0' or '1' is given to the first aspect, a coding result from '0' to '2' is given to the last three aspects. As a result, for each legal indicator, excluding the first aspect (i.e., topic/definition), an overall coding result from '0' (i.e., the absence of a legal indicator compared to the ILO benchmarks) to '3' (i.e., the floor of a legal indicator set by the ILO benchmarks), and then to '6' (i.e., the ceiling of a legal indicator indicated by the ILO benchmarks) can be recognised.

Because the regulation of healthy working time can be composed of nine legal indicators, excluding the first aspect, an overall coding result from '0' (i.e., the absence of healthy working time regulations compared to the ILO benchmarks) to '27' (i.e., the floor of healthy working time regulations set by the ILO benchmarks), and then to '54' (i.e., the ceiling of healthy working time regulations indicated by the ILO benchmarks) can be recognised, reflecting the extent to which a country has constructed the pillar of healthy working time for the decent working time house as shown in figure 8.1.

Figure 8.2 presents the trend in the coding result of each of the nine legal indicators shaping the healthy working time regulations in China by the three periods; figure 8.3 shows the trend in their overall coding result. As shown in figure 8.2, in general, the nine legal indicators can be divided into three groups. The first group covers the legal indicators that always provide similar-to-higher standards than the ILO benchmarks. Only one exists, daily limit. The second group covers those that always provide lower standards than the ILO benchmarks. Two indicators can be identified, paid annual leave and night work. The third group covers those that have witnessed significant development from providing lower to similar/higher standards than the ILO benchmarks. Most legal indicators fall within this group, including weekly limit, overtime limit, weekly rest, standard working time arrangement, overtime work arrangement, and maternity leave. The overall coding result of the nine legal indicators, as shown in figure 8.3, rose significantly from '11.5' in the first period to '25.5' in the second period, and then had slightly increased to '26' in the third period. However, it has never reached the floor of the healthy working time regulations set by the ILO benchmarks.

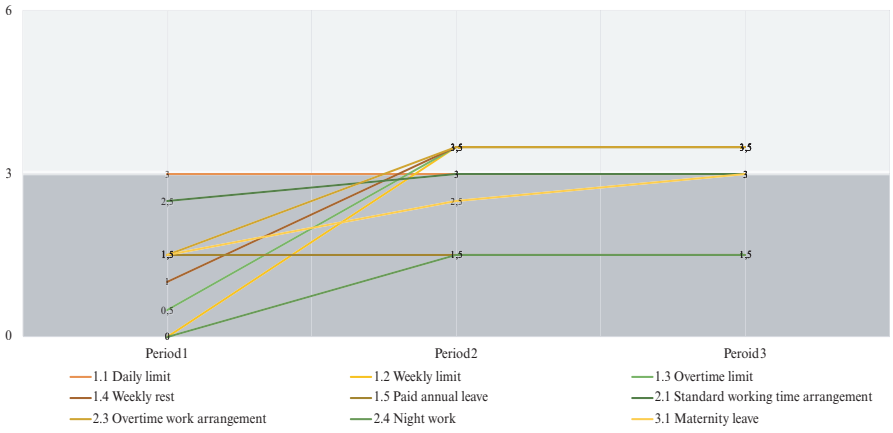

Figure 8.2 The trend in the regulation of healthy working time by nine legal indicators in China

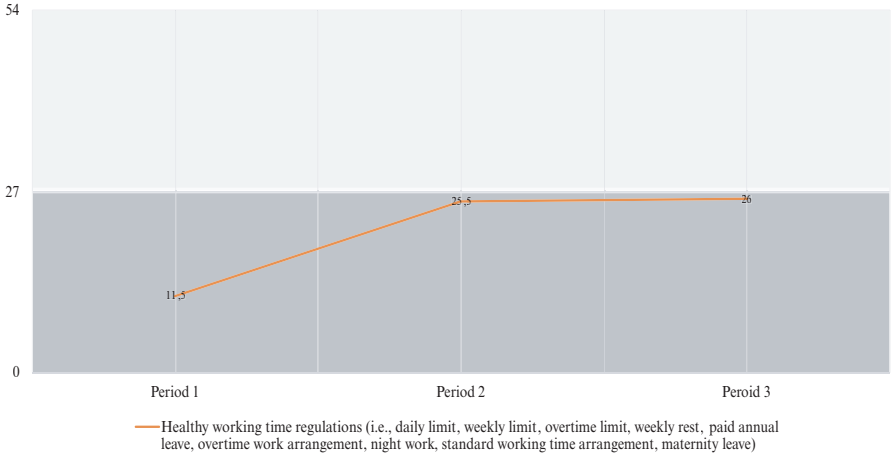

Figure 8.3 The trend in the regulation of healthy working time at the overall level in China

8.2.3 Analysis and evaluation of achieving healthy working time in China

Figures 8.2 and 8.3 graphically present the extent to which China is achieving healthy working time against the ILO benchmarks. A first point that emerges from these two figures is that Chinese legislation has not (yet) reached the floor of the healthy working time regulations set by the ILO benchmarks for the three periods (more than seventy years), but it is increasingly approaching such a floor. In the first period, as shown in figure 8.3, an overall result of '11.5' was observed, which was far from reaching the floor of the healthy working time regulations. A breakdown of the value '11' by the nine legal indicators reveals that, with the exception of daily limit, Chinese legislation was either silent or provided lower standards than the ILO benchmarks regarding all identified legal indicators. Chapter 5 ascribes

this finding to the fact that China lacked a comprehensive and specific law governing working time in this period. Attention was primarily paid to the most basic working time standard, an eight-hour working day. Over time, the regulation of healthy working time in China has seen significant development. In the third period, as shown in figure 8.2, Chinese legislation provides similar-to-higher standards than the ILO benchmarks regarding seven of the nine legal indicators: daily limit, weekly limit, overtime limit, weekly rest, standard working time arrangement, overtime work arrangement, and maternity leave. Unfortunately, given the lower standards on night work and paid annual leave, an overall result of '26' was observed, which still failed to reach the floor of '27' of the healthy working time regulations set by the ILO benchmarks.

A second point that stands out is the dramatic development in healthy working time regulations in the second period. As shown in figure 8.2, from the second period, Chinese legislation provided similar-to-higher standards than the ILO benchmarks regarding six of the nine legal indicators: daily limit, weekly limit, overtime limit, weekly rest, overtime work arrangement, and standard working time arrangement. An overall coding result of '25.5' can be found in figure 8.3, a value only '1.5' lower to reach the floor of the healthy working time regulations. As Chapter 5 explains this result was primarily the result of the adoption of the 1994 Labour Law and 1995 Regulation on Working Time of Workers and their entry into force in 1995. While the 1994 Labour Law is a comprehensive law governing labour in China, the 1995 Regulation is an administrative regulation specifically governing working time. Together, they established a comprehensive set of working time standards in China, which are similar to or even higher than the ILO benchmarks regarding most of the nine legal indicators. Unfortunately, they still provided lower standards on night work, paid annual leave, and maternity leave, which explains that the overall coding result of '25.5' was very close to the floor but still failed to reach it.

A third point is that the coding result of '1.5' on paid annual leave was unchanged over the three periods; however, as Chapter 5 indicates, this is not because Chinese legislation on paid annual leave remained the same since the first period. In fact, China has been updating paid annual leave over the three periods. In the first period, paid annual leave appeared in a normative document specifically dealing with radioactive works, and was described as an 'annual rest' confined to workers engaged in radioactive works. In the second period, it was officially and explicitly introduced in the 1994 Labour Law but was not elaborated on by operational rules. Not until the end of the second period was an administrative regulation specifically governing paid annual leave adopted, Regulation on Paid Annual Leave of Workers, which came into effect at the beginning of the third period. Unfortunately, this regulation still provides lower standards than the ILO benchmarks.

Additionally, other legal indicators that are not covered by the ILO benchmarks but help to promote healthy working time can be found in

Chinese legislation. As indicated in Chapter 5, for instance, a relatively long period of sick leave with payment is provided for State Functionaries and other workers who made a significant contribution to the society. This decree promotes healthy working time, at least for certain groups of workers.

To conclude, the regulation of working time in China tends to be not 'healthy' compared to the requirements in the ILO benchmarks; but it is becoming increasingly 'healthy'. The major challenge remaining that affects achieving healthy working time in China concerns paid annual leave and night work. In other words, to achieve healthy working time in China, Chinese legislation must improve the substantive standards on paid annual leave and night work.

8.3 Family-friendly working time

8.3.1 Identification of the legal indicators for family-friendly working time

The dimension of family-friendly working time concerns work-life balance, which can be best expressed as 'working time flexibility'. As explained in Chapter 3, the regulation of working time should be not only associated with work itself, but also with activities outside work, such as caring for children and elder relatives, as well as some necessary household tasks and personal life, which relies upon flexible working time arrangements. As shown in figure 8.1, this dimension serves as the other pillar to support the construction of the decent working time house. To make this pillar 'solid' in the decent working time house in China, China should provide similar-to-higher standards than the ILO benchmarks regarding the legal indicators that have an impact on work-life balance. In this sense, as set out in the right column in table 8.1, it is possible to focus on three legal indicators in the substantive aspects of working time as examined in Chapters 4 and 5, namely: variable working time arrangement, part-time work, and parental leave. In other words, these three legal indicators comprise the regulation of family-friendly working time. Similar to the discussion of healthy working time, this selection can be illustrated by their aim/purpose as provided in the ILO benchmarks, which appear to promote work-life balance (see table 4.5 and Appendix 5).

However, two more clarifications are exigent. Firstly, in general, the legal indicator of maternity leave helps to promote work-life balance as it would resolve women's immediate problems of balancing work and family life. However, the emphasis on maternity leave for family-friendly working time would do nothing to promote the equal responsibility of women and men for childcare. Instead, it would perpetuate the idea that the main responsibility for childcare lies with women. Hence, this study holds that, instead of family-friendly working time, maternity leave is confined to the dimensions of healthy working time and gender equality through working time.

Secondly, in a broad sense, the healthy working time regulations help promote work-life balance as they would ensure reasonable rest time for the recreation and social life of workers. Arguable, then, it the nine legal indicators identified for the dimension of healthy working time in section 8.2 would lay a primary foundation for the promotion of family-friendly working time – which can also be reflected in the aim/purpose of some legal indicators provided in the ILO benchmarks. For instance, paid annual leave and night work, in addition to protecting workers' health and well-being, also allow workers to be with their families or assist them in meeting their family and social responsibilities. However, given the that their primary focus is on 'working time safety' and the primary focus of the dimension of family-friendly working time is on 'working time flexibility', the discussion of family-friendly working time is confined to the three legal indicators selected earlier (i.e., variable working time arrangement, part-time work, and parental leave), which are distinguished by the basic health and safety requirement and specifically reflect the aspiration of a flexible working time arrangement.

8.3.2 Family-friendly working time regulations in China

Because the regulation of family-friendly working time can be composed of three legal indicators, based on the coding schemes as set in Chapter 4 (see table 4.6), excluding the first aspect (i.e., topic/definition), an overall coding result from '0' (i.e., absence of family-friendly working time regulations compared to the ILO benchmarks) to '9' (i.e., the floor of family-friendly working time regulations set by the ILO benchmarks), and then to '18' (i.e., the ceiling of family-friendly working time regulations indicated by the ILO benchmarks) can be recognised, reflecting the extent to which a country has constructed the pillar of family-friendly working time for the decent working time house as shown in figure 8.1.

Figure 8.4 presents the trend in the coding result of each of the three legal indicators shaping the family-friendly working time regulations in China by the three periods, and figure 8.5 shows the trend in their overall coding. As shown in figure 8.4, no regulation on these three legal indicators can be observed in the first period. While both variable working time arrangement and part-time work witnessed development in the second period and remained unchanged in the third period, parental leave remained absent the whole time. In addition, since the second period, Chinese legislation began to provide higher standards than the ILO benchmarks regarding the variable working time arrangement, but it has never provided similar-to-higher standards on part-time work. The overall coding result of the three legal indicators, as shown in figure 8.5, rose significantly from '0' in the first period to '5' in the second period, and then remained unchanged in the third period. However, it has never reached the floor of the family-friendly working time regulations set by the ILO benchmarks.

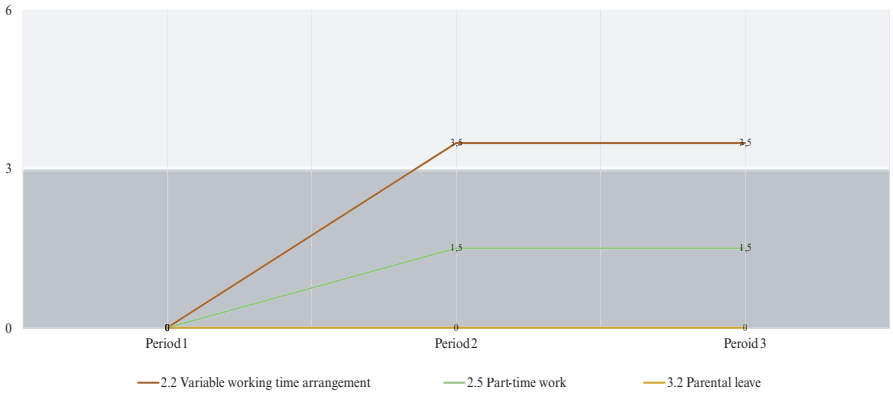

Figure 8.4 The trend in the regulation of family-friendly working time by three legal indicators in China

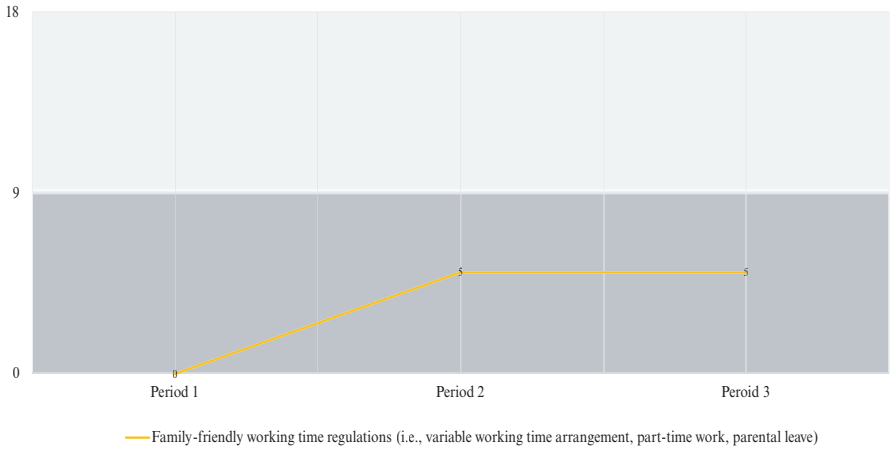

Figure 8.5 The trend in the regulation of family-friendly working time at the overall level in China

8.3.3 Analysis and evaluation of achieving family-friendly working time in China

Figures 8.4 and 8.5 clearly demonstrate the extent to which China is achieving family-friendly working time compared to the ILO benchmarks. A first point that emerges from these two figures is that Chinese legislation has not (yet) reached the floor of the family-friendly working time regulations set by the ILO benchmarks for the three periods (more than seventy years), but it has begun to provide higher standards on the variable working time arrangement since the second period. This outcome is due to a department rule adopted by the Ministry of Labour in the second period, the 1994 Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises, which specifi-

cally deals with the variable working time arrangement in China. As found in Chapter 5, this legal instrument serves as a supplement to Article 39 of the 1994 Labour Law and Article 5 of the 1995 Regulation on Working Time, allowing for a certain degree of working time flexibility for enterprises. It provides clearer scope of application and more favourable rules on the material content of variable working time arrangement, making it higher than what are required by the ILO benchmarks. In particular, it identifies two specific types of variable working time arrangement – the irregular working hours system and the comprehensive working hours system. In addition, instead of a forty-eight-hour weekly limit as the reference of the averaging provided in the ILO benchmarks, this legal instrument uses a shorter weekly limit of forty-hour as the reference. However, given the absence of parental leave and the lower standards on part-time work, the overall assessment result failed to reach the floor of the family-friendly working time regulations set by the ILO benchmarks.

A second point is that, although Chinese legislation has provided higher standards than the ILO benchmarks on the variable working time arrangement since the second period, it is mainly confined to the aspects of the scope of application and material content. In terms of the aim/purpose of this legal indicator, however, as found in Chapter 5, Chinese legislation only identified one purpose of meeting the special characteristics of the production of enterprises, rather than meeting the requirements of both the production of enterprises and the specific needs of workers provided in the ILO benchmarks. In other words, only the employer-oriented flexibility was reflected in Chinese legislation on this legal indicator, while ignoring employee-oriented flexibility.

Additionally, some legal indicators not covered by the ILO benchmarks but helpful to promoting family-friendly working time appear in Chinese legislation. As found in Chapter 5, for instance, a relatively long period of home leave is afforded to workers in public enterprises and institutions and who live in places far from their families over a long period. This decree promotes family-friendly working time, at least for certain groups of workers.

To conclude, the regulation of working time in China tends not to be 'family-friendly' compared to the ILO benchmarks. In fact, compared to the dimension of healthy working time, family-friendly working time is a relatively marginal subject in the regulation of working time in China. Although a departmental rule specifically dealing with variable working time arrangement exists, it only refers to employer-oriented flexibility not employee-oriented flexibility. Many challenges that affect achieving family-friendly working time in China remain. To achieve family-friendly working time in China, Chinese legislation needs to provide parental leave for workers, improve the substantive standards on part-time work, and identify an employee-oriented flexibility for the variable working time arrangement.

8.4 Gender equality through working time

8.4.1 Identification of the legal indicators for gender equality through working time

The dimension of gender equality through working time concerns one of four core labour standards recognised by the ILO – the equality of women and men. As shown in figure 8.1, this dimension offers the casco for the construction of the decent working time house, which needs to be integrated into all the other dimensions of decent working time, especially into the two pillars (i.e., healthy and family-friendly working time). In theory, all legal indicators forming the healthy and family-friendly working time regulations must integrate the dimension of gender equality. However, evaluating all of them from a gender equality perspective is not practical because many legal indicators in themselves are not designated with explicit reference to gender equality. For research purposes, as set out in the middle column in table 8.1, it is useful to highlight three legal indicators that, by nature of their topic, integrate or promote gender equality as the substantive aspects of decent working time, namely: part-time work, maternity leave, and parental leave.

Part-time work and parental leave provide working parents the opportunity to spend more time on family responsibilities, such as caring for children and elder relatives. However, if mothers are the only ones who make use of such working time arrangements or leave, the regulation may indeed help promote work-life balance, but also reinforce gender inequality by perpetuating the idea that the main family responsibility lies with women.

Maternity leave, as mentioned in section 8.3.1, helps to promote work-life balance as it resolves women's immediate problems of balancing work and family life. However, the emphasis on maternity leave for family-friendly working time may perpetuate the idea that the main responsibility for childcare lies with women; therefore, it is confined to the dimensions of healthy working time and gender equality through working time.

8.4.2 Gender equality through working time regulations in China

Unlike the first two dimensions, in which the identified legal indicators can be evaluated both individually and as a whole, the three legal indicators highlighted for gender equality must be evaluated on a case-by-case basis because promoting gender equality in working time tends to vary according to the legal indicators. As a consequence, an immediate question is, what kind of content in the ILO benchmarks on each of the three legal indicators promotes gender equality? As explained in Chapter 3, an essential mechanism for promoting gender equality through working time is the principle of equal treatment between women and men in the field of working time, which implies that, to promote gender equality, working time

regulations must enable women and men to be equal in employment and family responsibility.

To be more specific, in terms of part-time work, equal treatment of women and men can be expressed as 'equal treatment between part-time and full-time workers', an essential principle established in the ILO benchmarks on part-time work, more precisely, in the Part-Time Work Convention, 1994 (No. 175) and the Part-Time Work Recommendation, 1994 (No. 182) (see table 4.5 and Appendix 5). Although this principle does not address gender equality directly, it has implications for the promotion of gender equality through working time because, if part-time work is regarded as essential for working parents seeking to reconcile work and family life, in case mothers are the only ones making use of such a working time arrangement, part-time positions must be equivalent to full-time ones in terms of working conditions.

Maternity leave is more challenging to equalise, and requires involving men in childcare following childbirth. In this light, it is useful to introduce a new legal indicator, paternity leave, which refers to a period of leave for the father immediately following childbirth.[1] Although no ILO standard exists dealing specifically with paternity leave, associating maternity leave (for mothers) with paternity leave (for fathers) for childcare clearly has positive effects on promoting gender equality through working time.

With parental leave, equal treatment of women and men can be defined as 'equal responsibility of women and men for the task of raising children and other care-related activities', which is an essential principle established in the ILO benchmarks on parental leave, more precisely, in the Workers with Family Responsibilities Convention, 1981 (No. 156) and the Workers with Family Responsibilities Recommendation (No. 165) (see table 4.5 and Appendix 5). This principle means that, to promote gender equality through working time, parental leave must be available to both parents.

Altogether, three respective specific principles can be identified for the evaluation of the three legal indicators for promoting gender equality through working time: (a) equal treatment between part-time and full-time workers; (b) maternity leave must be associated with paternity leave in childcare following childbirth; and (c) parental leave must be available for both parents.

Figure 8.6 presents the trend in the coding result of each of the three legal indicators that have an impact on promoting gender equality through working time, and table 8.2 provides the result of the further assessment of whether the regulation of the three legal indicators in China adheres to the three respective principles mentioned earlier. As shown in figure 8.6 and table 8.2, while parental leave never existed in China, both part-time work and maternity leave indicated some development but failed to adhere to the gender equality principles.

1 ILO, *Maternity and Paternity at Work: Law and Practice across the World* (International Labour Office 2014) 52.

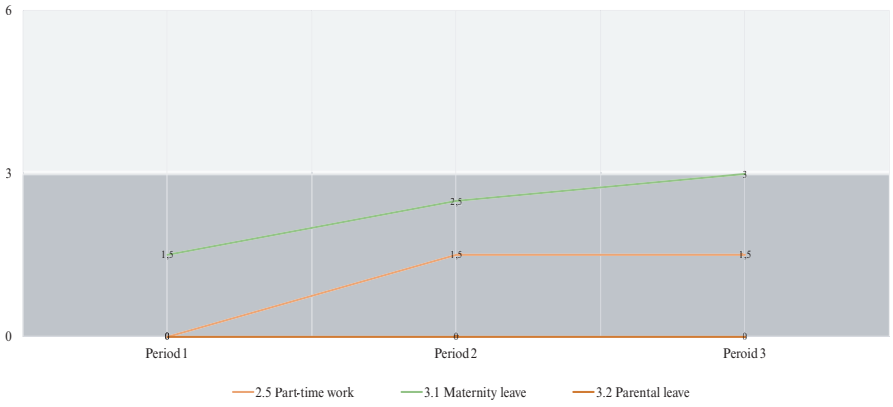

Figure 8.6 The trend in the three legal indicators for gender equality through working time in China

Table 8.2 Evaluation of whether the three legal indicators adhere to the gender equality principle in China

Legal indicators	Gender equality principles	Period 1	Period 2	Period 3
Part-time work	**Equal treatment between part-time and full-time workers**	×	×	×
Maternity leave	**Maternity leave must be associated with paternity leave in childcare following childbirth**	×	×	×
Parental leave	**Parental leave must be available for both parents**	×	×	×

8.4.3 Analysis and evaluation of achieving gender equality through working time in China

Figure 8.6 and table 8.2 clearly present the extent to which China is achieving gender equality through working time against the ILO benchmarks. In terms of part-time work, no regulation can be observed in the first period. In the second period, a result of '1.5' was observed, which was still far from meeting IL O benchmarks because part-time work was introduced in a normative document, the 2003 Opinions on the Part-time Work Issues, but was defined as a form of employment for which payments are calculated on an hourly basis, more precisely, for no more than five hours per day on average and thirty hours per week in total for the same employer. This definition led to a relatively narrow understanding of part-time work compared to the ILO benchmarks which define 'part-time work' as 'the work in which the normal hours of work are less than comparable full-time work'. Although part-time work was further regulated by the 2007 Labour Contract Law that came into effect in 2008, its definition was unchanged except for reducing the hours of part-time work from 'no more than five hours per day on aver-

age and thirty hours per week in total' contained in the 2003 Opinions to 'no more than four hours per day on average and twenty-four hours per week for the same employer'. As found in Chapter 5, it seems to be more reasonable to term 'part-time work' as 'casual work' in the Chinese context, or one can conclude that 'part-time work' was mainly confined to 'casual work'. In other words, China still lacks an equivalent of the ILO's regulation of part-time work. Additionally, instead of equal treatment of part-time and full-time workers, Chinese legislation on the payment of part-time work is linked to the minimum hourly wage stipulated by the local government, which means that the regulation of part-time work failed to adhere to the gender equality principle shown in table 8.2.

Maternity leave has seen gradual development in Chinese legislation. As found in Chapter 5, the regulation of maternity leave was found in the 1951 Labour Insurance Regulation and the 1955 Notice on Maternity Leave in the first period, which was replaced by the 1988 Regulation on Labour Protection of Female Workers in the second period. Later, in the third period, the 1988 Regulation was further replaced by the 2012 Special Regulation on Labour Protection of Female Workers. As a result, Chinese legislation finally provides similar standards to the ILO benchmarks. However, given the lack of paternity leave, the regulation of maternity leave in China only serves as a special health and safety protection for women, and no specific implication for gender equality through working time can be found.

No regulation regarding parental leave exists in China. It is thus not possible to analyse and evaluate whether it promotes gender equality through working time in China.

To conclude, gender equality tends to be a marginal subject in the regulation of working time in China. To achieve gender equality through working time, Chinese legislation has to provide paternity leave and parental leave for workers, and improve the substantive standards on part-time work to comply with the ILO benchmarks.

8.5 Choice and influence regarding working time

8.5.1 Ideal-type working time configurations

The dimension of choice and influence regarding working time concerns workers' greater choice and influence in determining their preferred working time schedules. As explained in Chapter 3, providing workers greater choice and influence over working time does not equal complete individualisation of preferences and decisions regarding the concrete working time standards. Rather, it is a matter of how the desired working time standards are formulated and enforced, which means that this dimension relates to the procedural aspects of decent working time, and can be illustrated by the substantive aspects of decent working time. As shown in figure 8.1, this

dimension lays the foundation for all other dimensions in the construction of the decent working time house. To provide workers greater choice and influence regarding working time in China, the procedural aspects of decent working time in China first have to match the ideal-type working time configurations developed in Chapter 6, including: mandated configuration, centralised negotiated configuration, decentralised negotiated configuration, and unilateral configuration. As Chapter 7 indicates, research on the period before the transition, identified a new ideal-type configuration that was particularly relevant to the planned economy, that is, administrative configuration. Altogether, five ideal-type working time configurations are presented in table 8.3.

Table 8.3 Framework to analyse the procedural aspects of decent working time: Ideal-type configurations

Procedural aspects		**Mandated**	**Administrative**	**Centralised Negotiated**	**Decentralised Negotiated**	**Unilateral**
Regulatory levels	**Dominant level**	Statutory legislation	Government administration	Sectoral-level agreements	Enterprise-level agreements	Employment contracts
	Other levels	Sectoral-level agreements, enterprise-level agreements, employment contracts	N/A	Statutory legislation, enterprise-level agreements, employment contracts	Statutory legislation, sectoral-level agreements; employment contracts	Statutory legislation, sectoral-level agreements, enterprise-level agreements
Enforcement mechanisms	**Dominant mechanism**	Labour inspection	Labour inspection	Trade unions	Trade unions + labour inspection + courts and tribunals	Courts and tribunals
	Other mechanisms	Trade unions, courts and tribunals	N/A	Labour inspection, courts and tribunals	N/A	Labour inspection, trade unions

These ideal-type configurations, as explained in Chapter 6, represent ideal combinations of regulatory levels and enforcement mechanisms a given country may use to set its working time regulations, which would be most effective in formulating the desired working time standards and enforcing these standards effectively in the real world. To link to the dimension of choice and influence regarding working time, the procedural aspects would

have to match ideal-type configurations, with workers having choice and influence over their preferred schedules and enforcing compliance would be effective. To a great extent, the desired working time standards (i.e., similar-to-higher standards than the ILO benchmarks) can reflect workers' preferences over working time (e.g., working time safety, working time flexibility, and gender equality) through either statutory legislation or collective agreements, or even government administration. In addition, workers' choice and influence over working time can be an opportunity to secure effective enforcement of the established standards through sound enforcement mechanisms. For instance, workers can be supported by trade unions in enforcing compliance with working time standards in statutory legislation, collective agreements, and employment contracts. They can also file a complaint through the labour inspection system or go to a tribunal or a court.

Nonetheless, there is concern that in different ideal-type configurations, the relative strength of workers' direct choice and influence regarding working time varies accordingly. In general, workers' greater choice and influence regarding working time tend to be more prevalent in the centralised negotiated and decentralised negotiated configurations than in the mandated, unilateral, and administrative ones, because, in the former two ideal-type configurations, collective agreements and trade unions tend to play a more dominant role in the formulation and enforcement of working time standards, which by their nature enable workers' voices to be better heard. Nevertheless, it does not follow that the former two configurations are superior to the latter three configurations. As elaborated in Chapter 6, the development towards the ideal-type configurations varies substantially from one country to another, according to variations in labour laws and industrial relations systems as well as in the wider legal, economic, and political context in a given country. Hence, the dimension of choice and influence regarding working time shall be understood in a broad sense; that is, it is a matter of how the desired working time standards (i.e., similar-to-higher standards than the ILO benchmarks) are formulated and enforced. Two layers of analysis are thus made in this section. First, whether an ideal-type configuration can be observed; second, on the basis of the ideal-type configuration, the extent to which workers' greater choice and influence regarding working time can be achieved.

8.5.5 Working time configurations in China

Table 8.4 presents the development of working time configurations in China as found in Chapter 7, and figure 8.7 shows the trend in the overall assessment result of the substantive aspects of decent working time in China compared to ILO benchmarks. As found in Chapters 4 and 5, the substantive aspects of decent working time consist of twelve legal indicators. Based on the coding schemes set in Chapter 4 (see table 4.6), excluding the first aspect (i.e., topic/definition), an overall coding result from '0' (i.e., absence of the

substantive aspects of decent working time compared to the ILO benchmarks) to '36' (i.e., the floor of the substantive aspects of decent working time set by the ILO benchmarks), and then to '72' (i.e., the ceiling of the substantive aspects of decent working time indicated by the ILO benchmarks) can be recognised, reflecting the extent to which a country has regulated the twelve legal indicators as a whole through statutory legislation compared to ILO benchmarks.

As table 8.4 indicates working time configurations in China are very complex. A clear dividing line can be observed in the second period, more precisely, in 1994/1995, due to the adoption of the Labour Law in 1994 and its entry into force in 1995. Before the adoption of the 1994 Labour Law, the procedural aspects of decent working time varied according to periods/stages and types of enterprises. Specifically, in the first period, for public enterprises, they firstly came closest to the mandated configuration in the early stage (1949-1956), and then came closest to the administrative configuration in the later stage (1957-1978). In terms of private enterprises, they only existed in the early stage (1949-1956) and came closest to the centralised negotiated configuration. In the second period, in the early stage (1978-1994), they came closest to the administrative configuration in public enterprises, while in private enterprises, they came closest to the unilateral configuration, though with a distinction between domestic- and foreign-invested enterprises. These procedural configurations only represented a simplified picture of which ideal-type configurations China came closest to. It did not follow from this that they perfectly fit into one of them. A number of limitations have been recognised in Chapter 7, which indicate that the regulatory levels and enforcement mechanisms at that time were unlikely to formulate the desired working time standards and to enable established standards to be enforced effectively. This finding is generally illustrated by figure 8.7, in which only a value of 11 was observed in the first period, meaning China provided much lower standards than the ILO benchmarks regarding the substantive aspects of decent working time as a whole through statutory legislation.

With the entry into force of the 1994 Labour Law, together with some other legal instruments that are relevant to the regulatory levels and enforcement mechanisms, the procedural aspects of decent working time began to fit into the mandated configuration, applying to various types of enterprises. This step implies that there was greater possibility in the existing regulatory levels and enforcement mechanisms that were able to formulate the desired working time standards and enable the established standards to be enforced effectively in China – at least on paper. This is also generally illustrated in figure 8.7, which shows an overall coding result of '30.5' in the second period, meaning that some significant developments regarding the substantive aspects of decent working time occurred in China. Unfortunately, the result of '30.5' was still lower than the floor of '32' set by ILO benchmarks. Likewise, a slightly higher coding result of '31' was observed in the third period, but still failed to reach the floor of '32'.

Table 8.4 Developments of working time configurations in China by types of enterprises and periods

	Period 1 (1949-1978)		Period 2 (1978-2007)		Period 3 (2008-2020)
	Early stage (1949-1956)	**Later stage (1957-1978)**	**Early stage (1978-1994)**	**Later stage (1995-2007)**	
Public enterprises	Closest to the mandated configuration	Closest to the administrative configuration	Closest to the administrative configuration	Fit into the mandated configuration (various types of enterprises)	Fit into the mandated configuration (various types of enterprises)
Private enterprises	Closest to the centralised negotiated configuration	N/A	Closest to the unilateral configuration (domestic- vs. foreign-invested)		

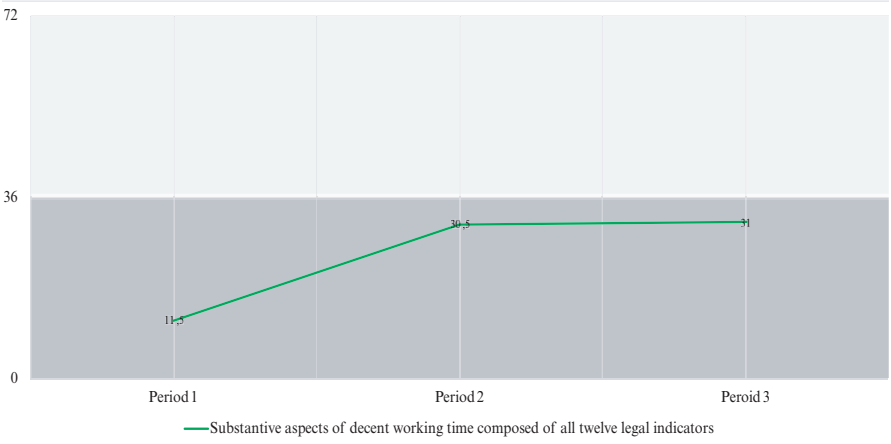

Figure 8.7 The overall trend in the substantive aspects of decent working time by all twelve legal indicators

8.5.3 Analysis and evaluation of achieving workers' greater choice and influence regarding working time in China

Table 8.4 and figure 8.7 clearly present the degree to which China is furthering workers' greater choice and influence regarding working time. As this table and figure indicate, there was a clear dividing line in the development of the procedural aspects of decent working time in China. Before the adoption of the 1994 Labour Law, the procedural aspects of decent working time varied according to periods/stages and types of enterprises and, in any case, failed to meet the ideal-type configurations. In general, a bifurcated regulatory system existed that set up separate rules for public and private enterprises. A possible explanation for this arrangement is the influence of the socialist ideology, which maintained that a socialist industrial relation with

a non-exploitation partnership of workers, enterprises, and state existed for public enterprises, while a capitalist industrial relation with exploitation and oppression of capitalists existed for private enterprises. Consequently, the government took different approaches to public and private enterprises. Nevertheless, for both public and private enterprises, the regulatory levels and enforcement mechanisms were either mismatched or poorly developed. For instance, in the early stage of the period before the transition, for public enterprises, the State played a dominant role in determining working time standards through a combination of statutory legislation and labour administration, but failed to provide a well-developed labour inspection system. In addition, although collective agreements at a regulatory level occurred for public enterprises, they neither reflected a process of collective bargaining between trade unions and enterprises nor served as a device for making or improving working conditions; instead, they were considered a means of encouraging workers to cooperate with the management of enterprises for promoting production and fulfilling State-set economic targets.

With the entry into force of the 1994 Labour Law, the procedural aspects of decent working time began to fit into an ideal-type configuration, namely, the mandated configuration. The 1994 Labour Law replaced the fragmentary and interim provisions with a set of common standards and rules for the regulation of working time across various types of enterprises, regardless of the nature of their ownership. Together with some other legal instruments relevant to the regulatory levels and enforcement mechanisms of working time, the procedural aspects of working time saw many significant developments in the transition period. As a result, the State played a dominant role in establishing working time standards through statutory legislation for various types of enterprises, and takes primary responsibility for their enforcement through labour inspection.

Second, the procedural aspects of decent working time were evolving in China, and the mandated configuration finally took shape as the dominant working time configuration. Table 8.4 shows several different ideal-type configurations that the procedural aspects of decent working time came closest to, such as the mandated, administrative, centralised negotiated, and unilateral configurations. However, except for the mandated configuration, none of them survived to evolve into the 'real' ideal-type configuration in the end. For instance, in public enterprises, the procedural aspects of decent working time first came closest to the mandated configuration, and then turned to come closest to the administrative configuration, and finally came back to fit into the mandated configuration. In private enterprises, they first came closest to the centralised negotiated configuration, and then were absent due to the elimination of private ownership, and later turned to come closest to the unilateral configuration, and finally fit the mandated configuration. A possible explanation for this process is that China took an incremental approach to the development of the procedural aspects of decent working time. As elaborated in Chapter 7, in the early stage of the period before the transition, China took an approach of 'benefiting both

labour and capital and simultaneously looking after public and private enterprises'; in the early stage of the transition period, China used the method of 'crossing a river by feeling the stones', enabling mistakes to be identified and corrected in a relatively timely manner. This process is heavily State-centric. To determine which working time configuration China could use to set its working time regulations was constrained by the heavy dependence on State action, as is particularly evident with regard to the final taking-shape of the mandated configuration in China.

Third, under the mandated configuration, some gaps in the substantive aspects of decent working time endure, as is generally illustrated by figure 8.7, in which coding results of '30.5' and '31' were seen in the transition period and the post-transition period, respectively; both failed to reach the floor of '32' set by the ILO benchmarks. Hence, it is necessary to take a closer look at the operation of the mandated configuration in China. As elaborated in Chapter 7, in terms of regulatory levels, under the mandated configuration, statutory legislation serves as the dominant level at which working time standards are regulated, but it fails to provide similar-to-higher standards than the ILO benchmarks regarding all substantive aspects of decent working time in China. As indicated by the discussion of healthy and family-friendly working time conducted in sections 8.2 and 8.3, the gaps are confined to the legal indicators of paid annual leave, night work, part-time work, and parental leave.

The coding results in figure 8.7 are merely concerned with statutory legislation on working time. Under the mandated configuration, within the boundaries of statutory legislation, working time standards may be further regulated by collective agreements at the enterprise level (in the later stage of the transition period) and later at both enterprises and sectoral levels (in the period after the transition) in China, at least on paper. However, in practice, given the lack of true collective bargaining and independent trade unions, collective agreements have never been able to – and are still unlikely to – play an effective role in regulating working time standards. As found in Chapter 7, the number of collective agreements was often considered a target set by trade unions and local governments, and their content tended to be a duplication of legal provisions set by statutory legislation and the standardised collective agreements set by labour departments, indicating that workers are unlikely to have greater choice and influence regarding working time through collective agreements.

Regarding the enforcement mechanisms, as found in Chapter 7, under the mandated configuration, the labour inspection system serves as the dominant mechanism compared to trade unions and the labour dispute resolution framework in China, but it has and continues to suffer from several constraints that prejudiced its ability to engage in the effective enforcement of working time standards, such as the failure to specify the jurisdiction of labour inspectors, their level of discretion, their qualifications, the procedures to be followed in an investigation, and the parameters of the fines that can be imposed, the relatively weak power of labour inspectors, and the

less serious penalties that can be imposed to enterprises. Moreover, in the period after the transition, the labour inspection system was still designed to play a more prominent role in the enforcement of working time standards on paper; but in practice, the labour dispute resolution framework tends to serve as the dominant mechanism for the enforcement of working time standards. A possible explanation for this arrangement might be the entry into force of the 2007 Labour Dispute Mediation and Arbitration Law, which renders the labour dispute resolution framework, particularly the stages of mediation and arbitration, more accessible to workers. However, such an outcome leads to a factual mismatch in the mandated model regarding the dominant regulatory level (i.e., statutory legislation) and enforcement mechanism (i.e., labour inspection). This mismatch may explain the widespread compliance failures of working time standards in China, as mentioned in Chapter 7.

To conclude, the procedural aspects of decent working time finally began to fit into the mandated configuration in the transition period. This mandated configuration applies to various types of enterprises across China, representing an ideal combination of regulatory levels and enforcement mechanisms China is using to set its working time regulations. Hence, theoretically, this configuration would be effective in formulating the desired working time standards and enforcing the established standards in China, which would lay a basis for workers to have their preferred working time schedules and make enforcing compliance fruitful. However, its operation in practice suffers from several constraints, which are particularly evident with respect to collective agreements, labour inspection, and trade unions. Collective agreements are unable to play the supplementary and effective role in regulating working time they are expected to. Workers thus have to exclusively rely on statutory legislation to acquire their preferred working time schedules, and they are unlikely to have greater choice and influence regarding working time through collective agreements.

8.6 Productive working time

8.6.1 The roof of the decent working time house

The dimension of productive working time serves as a potential benefit of the promotion of the other four dimensions, which means that the promotion of healthy and family-friendly working time with gender equality, and workers' greater choice and influence regarding working time, would improve the productivity of individual workers and the enterprise as a whole. As shown in figure 8.1, this dimension serves as the roof of the decent working time house. To build the roof in the house of decent working time in China, it is firstly expected to achieve the first four dimensions of decent working time. In this sense, the requirements for ensuring working time to be productive are in line with those for the other four dimen-

sions. First, China is expected to provide similar-to-higher standards than the ILO benchmarks regarding all legal indicators presented in table 8.1 for the dimensions of healthy and family-friendly working time. Second, China is expected to equalise women and men in all legal indicators as presented in table 8.1 for the dimension of gender equality through working time, especially in the legal indicators of part-time work, maternity leave, and parental leave. Third, China is expected to fit into or at least to resemble mostly the ideal-type configurations presented in table 8.3 for the dimension of choice and influence regarding working time.

8.6.2 Analysis and evaluation of achieving productive working time in China

On the basis of the results derived from the analysis conducted in sections 8.2 to 8.5, we can analyse the extent to which China has met the above-mentioned three requirements, which enables us to gain a better picture of the progress China has made in achieving productive working time. The analysis is ordered according to the three requirements.

First, as found in sections 8.2 and 8.3, China is increasingly providing similar-to-higher standards than the ILO benchmarks regarding most of the legal indicators that have an explicit impact on workers' health and safety, which promotes the productivity of workers. On the basis of healthy working time, workers could improve their mental and physical health and thus be more rested and alert during working hours, thereby improving their labour productivity. However, China still fails to provide similar-to-higher standards than the ILO benchmarks regarding the legal indicators of paid annual leave and night work in the regulation of healthy working time as well as the legal indicators of part-time work and parental leave for family-friendly working time, which may hinder worker productivity.

Second, as found in section 8.4, gender equality through working time tends to be a marginal subject in the regulation of working time in China. Of the three highlighted legal indicators (i.e., part-time work, maternity leave, and parental leave) that integrate or promote gender equality as substantive aspects of decent working time, only maternity leave is observed; and though it serves as a special health and safety protection for women it fails to integrate or promote gender equality, which may hinder women's potential productivity capacity.

Third, although an ideal-type working time configuration, the mandated configuration, can be observed in China, it still has several constraints that prejudice its ability to meet the desired working time standards and ensure the existing standards are effectively enforced. Workers have to rely exclusively on statutory legislation to acquire their preferred working time schedules, and their choice and influence over the enforcement of the established standards are relatively limited. This situation may also hinder the productivity capacity of workers.

To conclude, the dimension of productive working time tends to be built on the basis of healthy working time in China. Even though working time has improved in China, given the less-developed notions of family-friendly working time, gender equality through working time, and choice and influence regarding working time, the achievement of productive working time in China tends to be largely hindered.

8.7 Achieving decent working time in China

Achieving decent working time is like constructing a house. The preceding sections 8.2 to 8.6 have dealt with the degree to which China has constructed the two pillars (i.e., healthy working time and family-friendly working time), the casco (i.e., gender equality through working time), the foundation (i.e., choice and influence regarding working time), and the roof (i.e., productive working time). This section brings them together and presents an overall picture of the construction of the decent working time house in China. Based on the conclusions provided in sections 8.2 to 8.6, the construction of the decent working time house in China appears in figure 8.8 in a relatively subjective but evident manner.

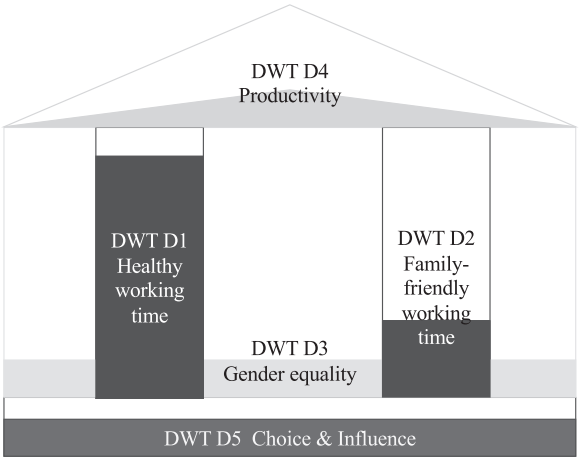

Figure 8.8 House of decent working time by the five dimensions in China

The decent working time house in China is still not complete. As figure 8.9 shows, the developments between the five dimensions of decent working time are unbalanced. While great efforts have been made to protect workers' health and safety and working time procedural configurations, less attention has been paid to family-friendly working time, gender equality, and productive working time. Even though the regulation of working time in China is becoming increasingly 'healthy', challenges with respect to paid annual leave and night work remain. Although an ideal-type configuration

(i.e., mandated configuration) finally took shape in China, its operation in practice suffers from several constraints, which are particularly evident with respect to the labour inspection system as well as collective agreements and trade unions.

9 From decent working time to decent work

9.1 Aim of the thesis and research questions

In 1999, the concept of decent work was introduced by Juan Somavia, the Director-General, in the Report of the Director-General to the 87th Session of the International Labour Conference (ILC). Since then, it has become the central objective and organising framework of the International Labour Organization (ILO). Two decades later, a group of developers in China launched an initiative on the computer code-sharing platform GitHub, called '996.ICU', to complain that their '996 working hour system' was a shortcut to the ICU. Under this work schedule, workers are being required to work from 9 a.m. to 9 p.m. six days per week, and rarely receive overtime pay – a serious violation of Chinese labour laws that still widely exists across the country. Labour law in China is under pressure, and workers in China are in need of decent work. The aim of this thesis is thus to present an analysis of achieving decent work in China, with a case study of decent working time. The preceding chapters have provided a comprehensive study of decent working time in China, specifically addressing the following five sub-questions as set forth in Chapter 1:

(1) How did the concept of decent work take shape in the ILO? (Chapter 2)
(2) What is the definition of decent work? (Chapter 3)
(3) What is the definition of decent working time? (Chapter 3)
(4) What analytical frameworks are needed to analyse the achievement of decent working time? (Chapters 3, 4, & 6)
(5) To what extent is China achieving decent working time? (Chapters 5, 7, & 8)

Based on the findings with respect to these five questions, section 9.3 poses the main research question: **to what extent is China achieving decent work?** In section 9.4, some final recommendations are provided for achieving decent work in China and as well as ideas for further research.

9.2 Recapitulation findings research questions

9.2.1 How did the concept of decent work take shape in the ILO?

The concept of decent work first appeared in the 1999 Director-General Report of the ILO, but it was not built on a day. The foundation of this concept, as it is understood today, lies firmly in the historical development of the ILO and its missions and values.

Chapter 2 has provided a clear picture of the evolution of the concept of decent work. Five broad periods have been delineated in this chapter: (a) early attempts before 1919; (b) advancing social justice (1919-1944); (c) highlighting human rights (1944-1980s); (d) raising social concerns (1980s-1999); and (e) promoting decent work (1999-2019). Before the founding of the ILO in 1919, some pivotal ideas for decent work to be introduced in 1999, such as 'eight-hour working day', 'International Labour Day', and 'international labour legislation', already existed. The founding of the ILO in 1919 was the most important historical landmark in the evolution of the decent work concept. The initial idea for creating such an organisation can be found in Part XIII of the Treaty of Versailles, which later became the original Constitution of the ILO, that is, the ILO is constructed around the idea of social justice. With the adoption of the Declaration of Philadelphia in 1944, the ILO gained a human rights foundation. In the 1980s, globalisation raised social concerns in the global economy. Two events are particularly relevant to the ILO. The first is the debate on the introduction of a social clause in the global trading system; and the second is a series of United Nations Global Conferences with a particular focus on social issues and social developments. A major response of the ILO to these two events was the adoption of the Declaration on Fundamental Principles and Rights at Work in 1998. In 1999, the ILO officially introduced the concept of decent work as another response.

From the founding of the ILO in 1919 to the final introduction of the decent work concept in 1999, a series of terms and expressions appeared, including social justice, human rights, and social concerns. Whether decent work differs from these concepts is debatable. As elaborated in Chapter 2, social justice has served as a 'personality' of the ILO running since the founding of the Organisation in 1919. Human rights, in particular, those fundamental rights at work, incorporate all notions that make up what the ILO termed decent work in a broad sense. After all, everyone should have the right to enjoy a decent working life. Social concerns reflect the link between labour standards and economic development, leading to the ILO's introduction of fundamental rights at work or the so-called core labour standards and decent work. While the concept of decent work was officially introduced in 1999, the ILO has frequently recognised that the world of work needed decent work before decent work terminology existed. Decent work is at the heart of advancing social justice, promoting human rights, and dealing with social concerns.

9.2.2 What is the definition of decent work?

Against the understanding by the ILO, the concept of decent work tends to have two meanings. First, it serves as the contemporary vision of the ILO's personality as expressed in terms of social justice, human rights, and social concerns, enshrined in the 1919 Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, the 2008 Declaration on Social Justice for a Fair Globalisation, and the 2019 Centenary Declaration for the Future of Work. Second, it specifically refers to the ILO's four strategic objectives, namely: employment, social protection, social dialogue, and rights at work. As a research subject, however, decent work in this thesis has been defined as a development goal with four dimensions (i.e., rights at work, employment, social protection, and social dialogue) that can be achieved by meeting international labour standards set by the ILO. This definition draws upon the three implications derived from a review of the existing conceptual and operational studies on decent work as conducted in Chapter 3. The three implications are as follows.

First, decent work can be interpreted as a multi-faceted subject that covers all labour-related issues. For research purposes and from a pragmatic point of view, a working definition of decent work is needed, and should be tailored to the context in which the research is conducted.

Second, decent work can be interpreted as a development goal with a floor but no ceiling. The floor serves as an 'entrance ticket' to the 'realm' of decent work – meaning that decent work leads nowhere without respecting the ILO standards. Such a floor refers to all the international labour standards defined by the ILO because the ILO's international labour standards are widely recognised as the minimum standards in the world of work and represent the international consensus on how a particular labour issue should be addressed at the global level. The ceiling implies that more favourable standards than the floor are encouraged to make sure that 'work' is 'decent'.

Third, the research on decent work eventually must confront how decent work can be measured and achieved. Although the literature has already provided several schemes for measuring decent work across countries, none of them stands out as technically superior due to the absence of valid data. Although the ILO has attempted to develop a framework of Decent Work Indicators (DWIs), it explicitly mentions that each country can apply a flexible methodology to this framework according to its needs and to what it considers relevant for its purposes. Additionally, precisely what situations indicate that a country can be identified as having achieved decent work remains unclear. There is still a lack of relevant benchmarks for the achievement of decent work in the world of work. Hence, attention to the measurement of decent work may be best given to individual countries or even individual groups or sectors of workers in a given country, as well as to the development of the benchmarks of decent work.

9.2.3 What is the definition of decent working time?

In general, decent working time refers to decent work in the field of working time. This means any study of decent working time must start with a discussion of decent work. As a research subject, the concept of decent working time builds upon decent work. In this thesis, decent working time has been defined as a development goal with five dimensions (i.e., healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time) that can be achieved through its substantive and procedural aspects. This definition draws upon the two implications derived from the understanding of decent work as a research subject and a review of the existing studies on decent working time conducted in Chapter 3. The two implications are as follows.

First, decent working time serves as an essential element of decent work and cannot be discussed in isolation from decent work. As such, the implications as identified for decent work also apply to the understanding of decent working time. Against this backdrop, first, decent working time can also be interpreted as a multifaceted subject that covers all working time-related issues. For research purposes and from a pragmatic point of view, a working definition of decent working time is also needed, depending on the context in which the research is conducted. Second, decent working time can be interpreted as a development goal with a floor but no ceiling. The floor provides an 'entrance ticket' to enter the 'realm' of decent working time, which means that decent working time leads nowhere without respecting the ILO standards. The ceiling is built upon the floor, which means that more favourable standards than the floor are encouraged to ensure 'working time' is 'decent'. Third, the research on decent working time sooner or later must confront how decent working time can be measured and achieved. As a development goal, the spirit of decent working time lies with its achievement.

Second, decent working time, in its own right, has a specific meaning relating to five dimensions, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. The five dimensions can capture the essences of the term 'decent' within this concept by identifying the value-based expressions, namely: healthy, family-friendly, gender equality, productive, and capability. They also point in a direction for achieving decent work in the field of working time.

9.2.4 What analytical frameworks are needed to analyse the achievement of decent working time?

To find a way to analyse the achievement of decent working time, the first step is to set out a working definition of it. As elaborated in Chapter 3,

decent working time has been defined as a development goal with five dimensions that can be achieved through its substantive and procedural aspects. The definition has two elements: first, the conceptualisation, what is meant by decent working time – a development goal with five dimensions; second, the operationalisation, how to analyse the achievement of decent working time – through the substantive and procedural aspects.

The five dimensions lead towards the development goal of decent working time, namely: healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time. As elaborated in Chapter 3 and mentioned in Chapter 8, the five dimensions are related to each other, and their relationship is usefully represented in terms of the construction of a house. As shown in figure 9.1, the fifth dimension, choice and influence regarding working time, lays the foundation, and is what enables workers to influence their working time schedules. On the foundation are two pillars, which support the construction of five dimensions of decent working time, healthy working time (first dimension) and family-friendly working time (second dimension). Together, the foundation and two pillars carry the casco of the house (i.e., the creation of gender equality through working time [third dimension]). These four dimensions bring us to the roof of the house – productive working time (fourth dimension). After all, together, these four dimensions help to improve the overall productivity of the workers.

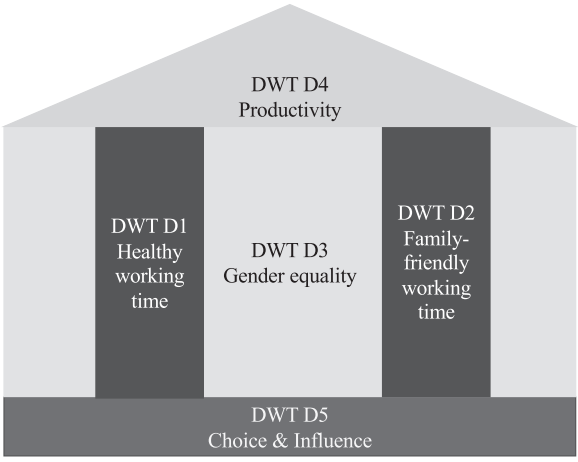

Figure 9.1 House of decent working time by the five dimensions

To construct such a house, the building blocks are needed, which can be referred to as the substantive and procedural aspects of decent working time. The substantive aspects concern the concrete working time standards contained in the legal instruments that directly determine the terms and conditions of labour, which are particularly related to the two pillars (i.e., healthy working time and family-friendly working time) and the casco (i.e.,

gender equality through working time) of the decent working time house. To evaluate the substantive aspects of decent working time, the benchmarks are required, which is the subject of Chapter 4. Specifically, the benchmarks can be referred to the international labour standards contained in the ILO's working time Conventions, Protocols, and Recommendations with the 'up-to-date' and 'interim' status, as well as their related ILO General Surveys. As shown in figure 9.2, according to the comparison between the substantive working time standards contained in national legislation and the benchmarks, we can see the extent to which a country is achieving decent working time. If national legislation provides similar-to-higher standards than the benchmarks, 'working time' tends to be 'decent'; if national legislation provides lower standards than the benchmarks, 'working time' tends to be 'not decent'. In other words, decent working time is used as a relative expression – that is, 'working time' is more or less 'decent' relative to the benchmarks. To ensure that 'working time' is 'decent' regarding the substantive aspects, a country is expected to provide similar-to-higher standards than the ILO benchmarks.

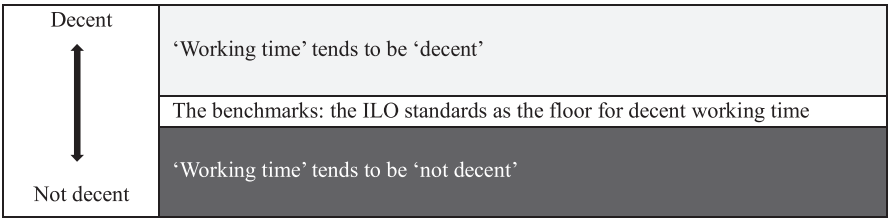

Figure 9.2 The rationale underlying the ILO benchmarks

The procedural aspects concern the processes by which the desired working time standards (i.e., providing similar-to-higher standards than the ILO benchmarks) are formulated and enforced. Although they do not directly govern the conditions of working time, they provide legal support for the institutions and mechanisms on the formulation and enforcement of substantive working time standards. To evaluate the procedural aspects of decent working time, an analytical framework concerning the ideal combinations of the formulation and enforcement of working time standards is needed, which is the subject of Chapter 6. Specifically, the analytical framework consists of four ideal-type working time configurations, namely: mandated configuration, centralised negotiated configuration, decentralised negotiated configuration, and unilateral configuration, which allow a comprehensive understanding of how working time standards are formulated and enforced effectively in a holistic manner in individual countries or across countries. The ideal-type configurations serve as a framework for progress towards decent working time regarding the procedural aspects. To ensure 'working time' is 'decent' regarding procedural aspects, a country is expected to resemble one of the ideal-type configurations, at least at the first step.

Table 9.1 Framework to analyse the procedural aspects of decent working time: Ideal-type configurations

Procedural aspects		Mandated	Centralised Negotiated	Decentralised Negotiated	Unilateral
Regulatory levels	**Dominant level**	Statutory legislation	Sectoral-level agreements	Enterprise-level agreements	Employment contracts
	Other levels	Sectoral-level agreements; enterprise-level agreements; employment contracts	Statutory legislation; enterprise-level agreements; employment contracts	Statutory legislation; sectoral-level agreements; employment contracts	Statutory legislation; sectoral-level agreements; enterprise-level agreements
Enforcement mechanisms	**Dominant mechanism**	Labour inspection	Trade unions	Trade unions + labour inspection + courts and tribunals	Courts and tribunals
	Other mechanisms	Trade unions; courts and tribunals	Labour inspection; courts and tribunals	N/A	Labour inspection; trade unions

9.2.5 To what extent is China achieving decent working time?

Achieving decent working time is like constructing a house. Unfortunately, such a house still has not been completed in China. From the perspective of the substantive aspects of decent working time, Chapter 5 has assessed and analysed China's substantive working time standards against the ILO benchmarks as developed in Chapter 4 by three periods. As shown in figure 9.3, most of the legal indicators have seen significant development, which means that Chinese legislation is increasingly providing similar-to-higher standards than the ILO benchmarks regarding most of the twelve legal indicators. However, some legal indicators have still failed to reach the floor of decent working time set by the ILO benchmarks, including paid annual leave, night work, and parental leave.

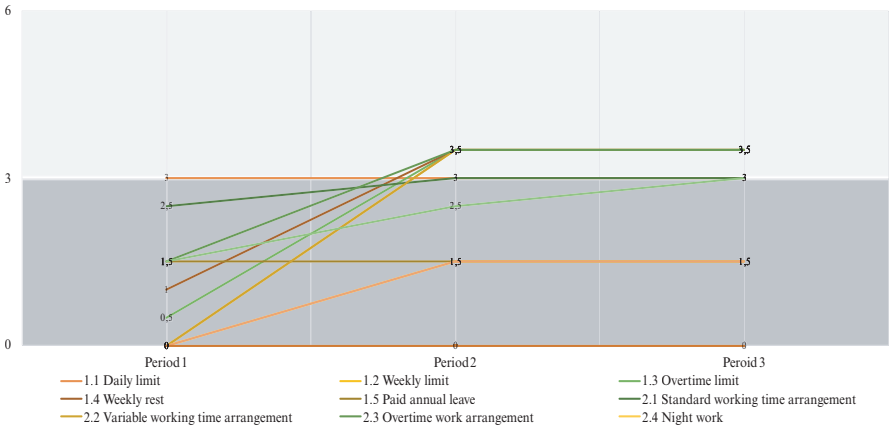

Figure 9.3 Developments of China towards decent working time: Substantive aspects (three periods, 1949-2020)

From the perspective of the procedural aspects of decent working time, Chapter 7 has identified and analysed China's working time procedural configurations by applying the analytical framework with four ideal-type working time configurations developed in Chapter 6 by three periods. As shown in table 9.2, an ideal-type working time configuration, mandated configuration, finally took shape in China in the latter stage of the transition period due to the adoption of the Labour Law in 1994 and its entry into force in 1995. Under such a mandated configuration, the State has a strong interest in establishing working time standards through statutory legislation; it also takes the main responsibility for their enforcement through labour inspection. In other words, in theory, China has a greater ability or possibility to actualise the desired working time standards through statutory legislation and enforce them effectively through labour inspection in the real world, which makes an important initial achievement regarding the procedural aspects of decent working time in China. However, the potential impact of the mandated configuration is constrained by a number of practical limitations, particularly inherited from the labour inspection system, such as the failure to specify the jurisdiction of labour inspectors, their level of discretion, their qualifications, the procedures to be followed in an investigation, the parameters of the fines that can be imposed, the relatively weak power of labour inspectors, and the less serious penalties that can be imposed on enterprises.

Table 9.2 Developments of China towards decent working time: Procedural aspects (three periods, 1949-2020)

Periods		**Types of enterprises**		**Dominant regulatory level/enforcement mechanism**	**Working time configurations**
Period 1 (1949-1978)	**Early stage (1949-1956)**	**Public enterprises**		Statutory legislation + labour administration/ Labour dispute resolution framework (mainly in the stages of negotiation and mediation)	Closest to the mandated configuration
		Private enterprises		Sectoral-level agreements/Labour dispute resolution framework (mainly in the stages of negotiation and mediation)	Closest to the centralised negotiated configuration
	Later stage (1957-1978)	**Public enterprises**		Government administration/Complaint letters and visits system	Closest to the administrative configuration
Period 2 (1978-2007)	**Early stage (1978-1994)**	**Public enterprises**		Labour contracts + government administration/ Labour dispute resolution framework (mainly in the stage of mediation)	Closest to the administrative configuration
		Private enterprises	**Domestic**	Labour contracts/ Labour dispute resolution framework (only setting the frame)	Closest to the unilateral configuration
			Foreign-invested	Labour contracts + statutory legislation/ Labour dispute resolution framework (only setting the frame)	Closest to the unilateral configuration
	Later stage (1995-2007)	**Various types of enterprises**		Statutory legislation/ Labour inspection	Fit into the mandated configuration
Period 3 (2008-2020)		**Various types of enterprises**		Statutory legislation/ Labour inspection vs. labour dispute resolution framework (mainly in the stages of mediation and arbitration)	Fit into the mandated configuration

When bringing together the substantive and procedural aspects of decent working time, an overall picture of the extent construction of the decent working time house in China is presented in figure 9.4 in a relatively subjective but evident manner, which is the subject of Chapter 8.

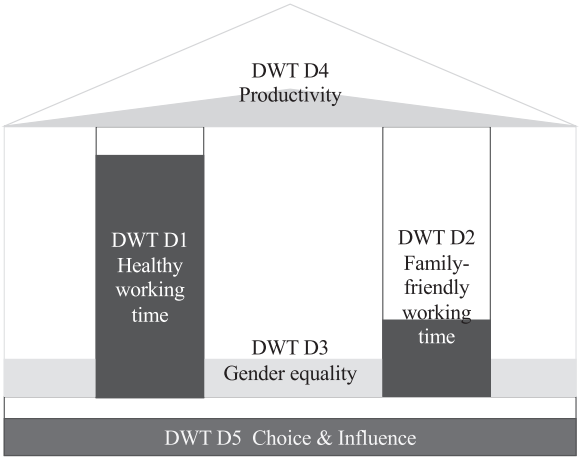

Figure 9.4 House of decent working time by the five dimensions in China

Regarding the second pillar of the house, i.e., healthy working time, the regulation of working time in China tends to be not 'healthy' compared to the requirements in the ILO benchmarks; but it is becoming increasingly 'healthy'. The major challenge remaining that affects achieving healthy working time in China concerns paid annual leave and night work. In other words, to achieve healthy working time in China, Chinese legislation must improve the substantive standards on paid annual leave and night work.

In terms of the second pillar of the house, i.e., family-friendly working time, the regulation of working time in China tends not to be 'family-friendly' compared to the requirements in the ILO benchmarks. In fact, compared to the dimension of healthy working time, family-friendly working time is a relatively marginal subject in the regulation of working time in China. Although a departmental rule specifically dealing with variable working time arrangement exists, it only refers to employer-oriented flexibility not employee-oriented flexibility. Many challenges that affect achieving family-friendly working time in China remain. To achieve family-friendly working time in China, Chinese legislation needs to provide parental leave for workers, improve the substantive standards on part-time work, and identify an employee-oriented flexibility for the variable working time arrangement.

The casco of the house, i.e., gender equality through working time, tends to be a marginal subject in the regulation of working time in China. To achieve gender equality through working time, Chinese legislation has to provide paternity leave and parental leave for workers, and improve the substantive standards on part-time work to comply with the ILO benchmarks.

With respect to the foundation of the house, i.e., choice and influence regarding working time, the procedural aspects of decent working time were not fixed in China, and they finally began to fit into the mandated configuration in the transition period. This mandated configuration applies to various types of enterprises across China, representing an ideal combination of regulatory levels and enforcement mechanisms China is using to set its working time regulations. Hence, theoretically, this configuration would be effective in formulating the desired working time standards and enforcing the established standards in China, which would lay a basis for workers to have their preferred working time schedules and make enforcing compliance fruitful. However, its operation in practice suffers from several constraints, which are particularly evident with respect to collective agreements, labour inspection, and trade unions. Collective agreements are unable to play the supplementary and effective role in regulating working time they are expected to. Workers thus have to exclusively rely on statutory legislation to acquire their preferred working time schedules, and they are unlikely to have greater choice and influence regarding working time through collective agreements

The roof of the house, i.e., productive working time, tends to be built on the basis of healthy working time in China. Even though working time has improved in China, given the less-developed notions of family-friendly working time, gender equality through working time, and choice and influence regarding working time, the achievement of productive working time in China tends to be largely hindered.

Altogether, we can see that the decent working time house in China is still not complete. As figure 9.4 shows, the developments between the five dimensions of decent working time are unbalanced. While great efforts have been made to protect workers' health and safety and working time procedural configurations, less attention has been paid to family-friendly working time, gender equality, and productive working time. Even though the regulation of working time in China is becoming increasingly 'healthy', challenges with respect to paid annual leave and night work remain. Although an ideal-type configuration (i.e., mandated configuration) finally took shape in China, its operation in practice suffers from several constraints, which are particularly evident with respect to the labour inspection system as well as collective agreements and trade unions.

9.3 Achieving decent work in China

Achieving decent working time forms an essential part of the foundation that can be sustained and built upon to achieve decent work. The main research question – to what extent is China achieving decent work? – is rather broad. The word 'achieving' underscores that China is still in this process. This thesis addresses this question through a case study of decent working time in China. As defined in Chapter 3, decent work in this thesis

refers to a development goal with four dimensions (i.e., rights at work, employment, social protection, and social dialogue) that can be achieved by meeting international labour standards set by the ILO.

9.3.1 Rights at work

The first dimension is rights at work, which mainly concerns the substantive aspects contained in labour legislation directly determining the terms and conditions of labour. As stipulated in the 1944 Declaration of Philadelphia, all human beings have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. Rights at work incorporate all elements that make up the goal of decent work, which can be best expressed as a set of concrete labour standards or rights, including those concerning working time. From the case study of decent working time in China, we can see that Chinese labour legislation is increasingly providing similar-to-higher standards than international labour standards defined by the ILO regarding most of the legal indicators of working time, with the exception of paid annual leave, night work, part-time work, and parental leave. In addition, there is an increasing quality of legislative provisions governing working time in China. In the first period, there was no clear separation between law and politics, and the Party/State/Government governance was the foundation for the daily running of the country. Statutory legislation mainly took shape through normative documents, which were titled 'orders', 'decisions', 'notices', or 'opinions', and couched in a mixture of exhortative and legal language. Although such documents could produce a regulatory effect, they were less authoritative and had the lowest legal status in the Chinese legal system. With China's transition towards a socialist market economy, normative documents were gradually replaced by laws and regulations, which are more formal legal instruments (e.g., the 1994 Labour Law) and have a higher authoritative status in the Chinese legal system. Such historical evidence indicates that Chinese labour legislation governing rights at work is becoming increasingly comprehensive in scope and providing better quality legislative provisions, although challenges remain with respect to certain rights at work, such as those on paid annual leave, night work, part-time work, and parental leave.

9.3.2 Employment

The second dimension is employment, which covers work of all kinds that must be sustained and built upon decent conditions. People must have enough work as a source of income and living. However, it is not enough to have work without taking into account its content and the conditions under which is it performed. As provided in the 1999 ILO's Director-General

Report, the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security, and human dignity. This means that the dimension of employment can be best expressed as adequate opportunities for productive and meaningful work in decent conditions. From the case study of decent working time in China, we can see that work of all kinds needs to be sustained and built on the five dimensions of decent working time. There is no doubt that all five dimensions more or less witnessed some significant developments in China. However, they still face challenges. For instance, both work-life balance and gender equality are a relatively marginal subject in the regulation of working time in China, which means conditions need to be improved.

9.3.3 Social protection

The third dimension is social protection, which covers the social security system as well as health and safety conditions at work. As stipulated in 2019 Centenary Declaration for the Future of Work, 'safe and healthy working conditions are fundamental to decent work'. This dimension preserves, maintains, and promotes the physical and psychological integrity of workers. From the case study of decent working time in China, we can see that healthy working time can claim a solid position in the safe and healthy working conditions fundamental to decent work. Given that significant effort has been made to protect workers' health and safety in terms of the regulation of working time, one can conclude that social protection is receiving increasing attention in the regulation of labour.

9.3.4 Social dialogue

The fourth dimension is social dialogue, which mainly concerns the procedural aspects of labour legislation. Social dialogue does not directly govern labour conditions but provides legal support for institutions and mechanisms of the formulation and enforcement of labour conditions. As elaborated in 2019 Centenary Declaration for the Future of Work, social dialogue and the effective workplace cooperation promote decent work. This dimension emphasizes institution-building for the promotion of decent work, in particular, through labour inspection, collective bargaining, and tripartite consultations. From the case study of decent working time in China, we can see that the operation of collective agreements, labour inspection, and trade unions in practice still suffers from several constraints. As found in Chapter 7, collective agreements are unable to play a supplementary and effective role in regulating working time. Workers thus have to rely exclusively on statutory legislation to secure their preferred working time schedules, and are unlikely to have greater choice and influence regarding working

time through collective agreements. In addition, given the limitations in the operation of labour inspection and trade unions, workers are still not empowered to seek compliance with existing working time standards, which indicates that social dialogue in China remains under-developed.

9.3.5 Decent work in China

Analysis of decent working time in China sheds some light on the big picture of decent work in China. Altogether, the case study of decent working time indicates that decent work in China has still not been achieved, but there are some significant developments. Particularly, many labour standards with regards to workers' health and safety have markedly been intensified and increased, as have the making and enforcement of Chinese labour laws, which both are signals that China has created an environment receptive to further reform and development on its path to achieving decent work.

9.4 Recommendations

A visit to a historical museum often ends with some perspectives. Looking back helps us appreciate the lessons of success or failure and identify the factors that made progress possible. And looking forward involves recommendations that will help us secure a better future. In this final section, this thesis provides a number of recommendations for the achievement of decent working time and decent work in China and for further research on decent work.

9.4.1 Recommendations for China

Recommendation 1: Respecting the international labour standards as defined by the ILO. The ILO's international labour standards are widely recognised as the minimum standards in the world of work, representing the international consensus on how a particular labour problem could be addressed at the global level. The historical evidence shows that Chinese labour legislation is increasingly providing similar-to-higher standards than the ILO's international labour standards, but it still failed to give full or some effect to a few standards, such as those concerned with paid annual leave, night work, part-time work, and parental leave. To achieve better compliance with the ILO standards, it is necessary to take account of all the relevant international labour standards in terms of decent work in the design of national legislations and policies.

Recommendation 2: Providing adequate labour inspection for the enforcement of labour provisions. The historical evidence shows that working time procedural aspects were evolving in China, and the mandated

configuration finally took shape as the dominant configuration. Under the mandated configuration, labour inspection is expected to serve as the dominant mechanism through which working time standards are effectively enforced. Given that the labour inspection system in China still suffers from several constraints that prejudice its ability to engage in the effective enforcement of working time standards, China should improve its labour inspection system, such as to clarify the jurisdiction of labour inspectors and their discretion and qualifications, the procedures to be followed in an investigation, and the parameters of the fines that can be imposed; to provide strong non-monetary remedies for employers who violate provisions if they ignore warnings and fines; and to empower labour inspectors.

Recommendation 3: Involvement of social partners in the formulation and enforcement of labour provisions. Although under the mandated configuration, the formulation and enforcement of labour provisions in China are heavily State-centric, the involvement of social partners in collective bargaining and tripartite social dialogue constitutes an essential means of making and enforcing labour provisions. In particular, collective bargaining has been used to design flexible working time arrangements that can balance workers' needs with business requirements and to the benefit both workers and enterprises. However, given that independent trade unions are still lacking in China and trade unions with greater autonomy are still not on the horizon, collective bargaining between trade unions and employers in dealing with labour matters is still largely untenable in China. Hence, efforts may be best put toward tripartite social dialogue at the national and sectoral level.

Recommendation 4: The five dimensions of decent working time must be managed in a holistic manner. The historical evidence shows an unbalanced development regarding the five dimensions of decent working time in China. While great efforts have been made to protect workers' health and safety, less attention has been paid to the other four dimensions of decent working time. To fully achieve decent working time in China, more attention must be paid to the other four dimensions of decent working time, which also indicates that the four dimensions of decent work (i.e., rights at work, employment, social protection, and social dialogue) need to be dealt with in a holistic manner.

Recommendation 5: Enhancing the cooperation of China with the ILO. The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection, and strengthen dialogue on work-related issues. The ILO has extensive experience dealing with labour matters in the world of work. Enhancing cooperation with the ILO would help China gain technical, organisational, and institutional capacities to address labour matters and make decent work a reality.

Recommendation 6: Adopting a specific Working Time Law or Labour Standards Law in China. The 1994 Labour Law provides a comprehensive legal framework governing labour matters but much of it lacks detail. It is thus necessary to adopt a specific Working Time Law or Labour Standards Law governing working time in order to achieve decent working time.

9.4.2 Recommendations for further research

Recommendation 1: To gain a better picture of the factual working time standards in the workplace in China, fieldwork by types of enterprises or sectors may be undertaken.

Recommendation 2: Given the unbalanced development of the five dimensions of decent working time in China, it will be crucial to further explore the trade-offs or relationships of these dimensions (i.e., healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time). Likewise, it will be also crucial to further explore the trade-offs or relationships of the four dimensions of decent work in China (i.e., rights at work, employment, social protection, and social dialogue).

Recommendation 3: For the ILO, further research may be undertaken to investigate the possibility of a consolidated Working Time Code encompassing various existing working time Conventions and Recommendations.

Appendix I
Profile of China

Territory and Population

China, officially the People's Republic of China (PRC, in Chinese: 中华人民共和国; Pinyin: *Zhonghua Renmin Gongheguo*), is located in the eastern part of Asia and on the western coast of the Pacific Ocean. It has an area of approximately 9.6 million square kilometres, and by 2020 a population of 1.4 billion, made up of fifty-six different ethnic groups. It is the third largest country by area and the largest by population in the world. According to the World Bank (WB), by 2020, the life expectancy was 75 (men) and 79 (women); the Gross National Income (GNI) per capita was $US 10,530.

Constitutional development

The PRC was established by the Chinese Communist Party (CCP) on 1 October 1949. It is a multinational, unitary state with twenty-three provinces (including Taiwan), five autonomous regions, four municipalities directly under the central government, and two special administrative regions (Hong Kong and Macao) that practice the policy of 'one country, two systems'. Since the establishment of the PRC in 1949, four Constitutions were passed in 1954, 1975, 1978, and 1982, subsequently.

The 1954 Constitution was the first formal constitution in China, adopted at the First Session of the First National People's Congress (NPC). It was built upon the Chinese People's Political Consultative Conference Common Programme that acted as the interim Constitution from 1949 to 1954. The 1954 Constitution safeguarded the fruits of the new political and economic victory since the establishment of the PRC. It also reflected the common wish of the broad masses of people in the building of a socialist society. This Constitution lasted until the adoption of the 1975 Constitution. The 1975 Constitution was born during the period of the 'Cultural Revolution' and had many flaws in its guiding ideology and specific provisions. It legitimised the 'Cultural Revolution' and reduced many contents that should be stipulated explicitly in the Constitution. It narrowed the scope of citizens' basic rights and freedoms and eliminated the stipulation that 'citizens are legally equal'. The 1975 Constitution was therefore widely criticised. The 1978 Constitution was the third version in the Chinese Constitution history. Due to the limitations of the historical conditions at that time, this Constitution failed to tackle the flaws in the 1975 Constitution. It was again short-lived. It worked only up to 1982 when a new Constitution was adopted with an aim at bringing the state affairs back on track, which is the current

1982 Constitution. The 1982 Constitution was subsequently amended in 1988, 1993, 1999, 2004, and 2018, generally modifying the Constitution in accordance with economic and political reforms at that time. This Constitution consists of 138 articles falling within four chapters, namely, General Principles, Fundamental Rights and Duties of Citizens, Structure of the State, and National Flag, Anthem, Emblem, and Capital City. According to this Constitution, the nature of the country is expressed as a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants; all power in China belongs to the people, and the people exercise state power through the NPC and the local people's congresses at various levels; the NPC is the highest organ of state power, and its permanent body is the NPC Standing Committee.

Legal system

The Chinese legal system is a socialist legal system based primarily upon a civil law model. The Constitution is the supreme law but not judiciable, governing the fundamental matters of the function of the country. It empowers the NPC and NPC Standing Committee to formulate Laws (in Chinese: 法; Pinyin: *Fa*), which are inferior to the Constitution. The State Council is the central government, which is empowered to make Administrative Regulations (in Chinese: 行政法规; Pinyin: *Xingzheng Fagui*) in accordance with the Constitution and Laws. The internal departments of the State Council, such as the Ministry of Human Resources and Social Security (MHRSS), are empowered to make Department Rules (in Chinese: 部门规章; Pinyin: *Bumen Guizhang*) that have direct instructions on some specific issues, subject to the Constitution, Laws, and Administrative Regulations. Normative Documents (in Chinese: 规范性文件; Pinyin: *Guifanxing Wenjian*) are often used to elaborate upon the legislative provisions contained in the Laws, Administrative Regulations, and Department Rules, or to provide some opinions on legal matters that are not covered by these types of legal instruments. Although Normative Documents are mostly issued by the legislative institutions, they are often couched in a mixture of exhortative and legal language and have the lowest authoritative status in the Chinese legal system. The judicial 'case law' generally do not constitute a formal source of law in China, and the court only issues binding interpretations on an individual case, rather than of the law in general. However, the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) tend to be exceptions because they can issue the interpretations of laws, either in the form of general interpretations of the application of the laws or of model cases in which standards and principles are established in a judgement in a particular case, which are required to be followed nationally. The ratified international treaties are generally regarded as a formal source of Chinese law. Although the Constitution does not specify the treatment of international law in relation to the Chinese laws, according to China's legislative practice, once international treaties have been signed on behalf of the government, the NPC will ratify those and integrate them as part of

the Chinese law. However, if the government has made a reservation to a provision of a treaty, such provision is not implemented in the Chinese law.

Labour law

Labour law is an independent branch of law in the Chinese legal system. In a broad sense, labour law refers to all types of legal instruments, such as Laws, Administrative Regulations, Department Rules, and Normative Documents, governing labour matters. The major labour laws at the national level include the 1992 Trade Union Law, the 1994 Labour Law, the 2007 Labour Contract Law, the 2007 Employment Promotion Law, the 2007 Labour Mediation and Arbitration Law, and the 2010 Social Insurance Law. In a narrow sense, labour law refers to the 1994 Labour Law itself.

The 1994 Labour Law a comprehensive law governing labour in China, adopted by the NPC Standing Committee in July 1994 in accordance with the 1982 Constitution, and came into effect in January 1995. The purpose of this law is to protect workers' lawful rights and interests, adjust labour relationship, establish and safeguard the labour system suiting to the socialist market economy, and promote economic development and social progress. It has a broad application to workers who have established a labour relationship with the 'employing unit', including enterprises and individual businesses, state departments, public institutions, and social groups within the boundary of China. The content of this law is also very broad, consisting of 107 articles divided into thirteen chapters, dealing with labour matters such as employment promotion, labour contract, working time, wages, occupational health and safety, special protection for female and juvenile workers, vocational training, social insurance and welfare, and labour disputes.

Trade Unions

All workers in China have the right to form or join a trade union; however, all trade unions must be affiliated with the All-China Federation of Trade Unions (ACFTU), the unified national trade union organisation in China based on the 1992 Trade Union Law. The trade union federations are established at and above the county level. Industrial trade unions may be formed at national or local levels for single industries or several industries of a similar nature. A grassroots trade union may be set up in an enterprise, an institution, or a state organ. The ACFTU leads local trade union federations, and the national and local industrial trade unions. Local industrial trade unions are led by both local trade union federations and national industrial trade unions. The establishment of the national industrial trade unions is determined by the ACFTU. The grassroots trade unions are led by the trade union federation at the county level, and those which also belong to certain industrial trade union organisations are subject to the leadership of the local trade union federation and of the local industrial trade union as well. The trade union federation at the county level and the industrial trade union at the provincial level are led by trade union federations at the provincial level.

Employers' associations

The official national employers' association is the China Enterprises Confederation (CEC) and the China Enterprises Directors Association (CEDA) and Employers' association at the local level are established to represent the local interests of the employers. In recent years, private entrepreneurs in some localities have organised their own organisations such as the Chambers of Private Enterprises (CPE), the Guilds of Non-governmental Enterprises (GNE), and the Foreign-invested Enterprises Associations (FIEA). The 1994 Labour Law, however, is silent about the independence of employers' associations and the pluralism of the employers' organisational structure.

Ratification of ILO Conventions

China was one of the founding states of the International Labour Organisation (ILO) during its Republican era (1919-1949) governed by the Chinese Nationalist Party (Kuomingtang, KMT). In 1930, the KMT government ratified fourteen International Labour Conventions, and in 1944 China became a permanent member of the ILO's Governing Body. In 1971, the ILO's Governing Body passed a resolution to restore the People's Republic of China's membership status of the ILO in accordance with United Nations General Assembly Resolution No. 396V. The CCP government did not participate formally in the activities of the ILO until 1983 at the 69th Session of the International Labour Conference when it resumed China's position as a permanent member of the Governing Body of the ILO. In 1985, the NPC Standing Committee in China recognised the fourteen Conventions which the KMT government had ratified. By 2020, China has ratified twenty-six Conventions, consisting of four Fundamental Conventions, two Governance Conventions, and twenty Technical Conventions.

Sources:

1. The State Council of the People's Republic of China, 'China ABC' <http://english.www.gov.cn/archive/chinaabc> accessed 31 December 2021.
2. World bank <https://data.worldbank.org/> accessed 31 December 2021.
3. Dong Yan, 'In Search of Chinese "Labour Law"' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014)
4. Dong Yan, 'Multilayers and Complexity of Chinese Labour Laws Sources' in Tamás Gyulavári and Emanuele Menegatti (eds), *The Sources of Labour Law* (Wolters Kluwer 2019)
5. Ke Chen, *Labour law in China* (Wolters Kluwer 2021).
6. ILO, 'NORMLEX' <https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:103404> accessed 31 December 2021.

Appendix II
Index of the ILO legal instruments concerning working time (1919-2020)

Year	Legal instruments	Status
Constitution		
1919	The ILO Constitution (with the 1944 Declaration of Philadelphia as an Annex since 1946)	Up to date
Conventions		
1919	Hours of Work (Industry) Convention, 1919 (No.1)	Interim status
	Maternity Protection Convention, 1919 (No. 3)	Interim status
	Night Work (Women) Convention, 1919 (No. 4)	Abrogated
1921	Weekly Rest (Industry) Convention, 1921 (No. 14)	Up to date
1925	Night Work (Bakeries) Convention, 1925 (No. 20)	Outdated
1930	Hours of Work (Commerce and Offices) Convention (No. 30)	Interim status
1931	Hours of Work (Coal Mines) Convention, 1931 (No. 31)	Withdrawn
1934	Night Work (Women) Convention (Revised), 1934 (No. 41)	Abrogated
	Sheet-Glass Works Convention, 1934 (No. 43)	Outdated
1935	Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46)	Withdrawn
	Forty-Hour Week Convention (No. 47)	Interim status
	Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49)	Outdated
1936	Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51)	Withdrawn
	Holidays with Pay Convention, 1936 (No. 52)	Outdated
1937	Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)	Withdrawn
1939	Night Work (Road Transport) Recommendation, 1939 (No. 64)	Withdrawn
	Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67)	Abrogated
1948	Night Work (Women) Convention (Revised), 1948 (No. 89)	Up to date
1952	Holidays with Pay (Agriculture) Convention, 1952 (No. 101)	Outdated
	Maternity Protection Convention (Revised), 1952 (No. 103)	Outdated
1957	Weekly Rest (Commerce and Offices) Convention (No. 106)	Up to date
1970	Holidays with Pay Convention (Revised), 1970 (No. 132)	Interim status
1979	Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153))	Instrument to be revised
1981	Workers with Family Responsibilities Convention (No. 156)	Up to date
1990	Night Work Convention (No. 171)	Up to date
1994	Part-Time Work Convention (No. 175)	Up to date
2000	Maternity Protection Convention (No. 183)	Up to date

Protocols		
1990	The Protocol of 1990 to the Night Work (Women) Convention, 1948 (Revised)	Up to date
Recommendations		
1921	Maternity Protection (Agriculture) Recommendation, 1921 (No. 12)	Withdrawn
	Night Work of Women (Agriculture) Recommendation, 1921 (No. 13)	Request for information
	Weekly Rest (Commerce) Recommendation, 1921 (No. 18)	Withdrawn
1924	Utilisation of Spare Time Recommendation, 1924 (No. 21)	Withdrawn
1930	Hours of Work (Hotels, etc.) Recommendation, 1930 (No. 37)	Withdrawn
	Hours of Work (Theatres, etc.) Recommendation, 1930 (No. 38)	Withdrawn
	Hours of Work (Hospitals, etc.) Recommendation, 1930 (No. 39)	Withdrawn
1936	Holidays with Pay Recommendation, 1936 (No. 47)	Outdated
1939	Control Books (Road Transport) Recommendation, 1939 (No. 63)	Withdrawn
	Night Work (Road Transport) Recommendation, 1939 (No. 64)	Withdrawn
	Methods of Regulating Hours (Road Transport) Recommendation, 1939 (No. 65)	Withdrawn
	Rest Periods (Private Chauffeurs) Recommendation, 1939 (No. 66)	Withdrawn
1952	Holidays with Pay (Agriculture) Recommendation, 1952 (No. 93)	Outdated
	Maternity Protection Recommendation, 1952 (No. 95)	Replaced
1954	Holidays with Pay Recommendation, 1954 (No. 98)	Interim status
1962	Reduction of Hours of Work Recommendation, 1962 (No. 116)	Up to date
1965	Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123)	Replaced
1957	Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103)	Up to date
1979	Hours of Work and Rest Periods (Road Transport) Recommendation, 1979 (No. 161)	Instrument to be revised
1981	Workers with Family Responsibilities Recommendation (No. 165)	Up to date
1990	Night Work Recommendation, 1990 (No. 178)	Up to date
1994	Part-Time Work Recommendation, 1994 (No. 182)	Up to date
2000	Maternity Protection Recommendation, 2000 (No. 191)	Up to date

Sources: The ILO's NORMLEX database <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12040:0::NO:::> accessed 31 December 2021.

Appendix III
Index of Chinese legal instruments concerning the substantive aspects of working time (1949-2020)

Year	Legal instruments	Legislative Institutions	Status
Constitutions			
1949	Common Program of the Chinese People's Political Consultative Conference of 1949 中国人民政治协商会议共同纲领(1949)	Chinese People's Political Consultative Conference	Expired
1954	Constitution of the People's Republic of China of 1954 中华人民共和国宪法(1954)	National People's Congress	Expired
1975	Constitution of the People's Republic of China of 1975 中华人民共和国宪法(1975)	National People's Congress	Expired
1978	Constitution of the People's Republic of China of 1978 中华人民共和国宪法(1978)	National People's Congress	Expired
1982	Constitution of the People's Republic of China of 1982 (amended in 1988, 1993, 1999, 2004, and 2018) 中华人民共和国宪法(1982通过, 1988, 1993, 1999, 2004, 2018年修正)	National People's Congress	Effective
Laws			
1992	Law of the People's Republic of China on the Protection of Women's Rights and Interests of 1992 (amended in 2005 and 2018) 中华人民共和国妇女权益保障法(1992年通过, 2005, 2018年修正)	National People's Congress	Effective
1994	Labour Law of the People's Republic of China of 1994 (amended in 2009 and 2018) 中华人民共和国劳动法(1994年通过, 2009, 2018年修正)	National People's Congress Standing Committee	Effective
2007	Labour Contract Law of the People's Republic of China of 2007 (amended in 2012) 中华人民共和国劳动合同法(2007年通过, 2012年修正)	National People's Congress Standing Committee	Effective
Administrative Regulations			
1949	Measures on Public Holidays for Annual Festivals and Memorial Days of 1949 全国年节及纪念日放假办法(1949)	State Council	Revised

1951	Labour Insurance Regulation of the People's Republic of China of 1951(amended in 1953) 中华人民共和国劳动保险条例(1951年通过, 1953年修正)	State Council	Partially expired
1952	Interim Regulation on Living Conditions of State Functionaries during Sick Leave of 1952 (Revisions in 1954 1955) 关于各级人民政府工作人员病假期间待遇的暂行规定(1952年通过, 1954, 1955年修订)	State Council	Expired
1957	Interim Regulation on Home Leave and Wages Benefits of Workers of 1957 国务院关于工人、职员回家探亲的假期和工资待遇的暂行规定(1957)	State Council	Expired
1981	Regulation on Home Leave of Workers of 1981 国务院关于职工探亲待遇的规定(1981)	State Council	Effective
	Regulation on Living Conditions for State Functionaries during Sick Leave of 1981 国家机关工作人员病假期间生活待遇的规定(1981)	State Council	Effective
1988	Regulation on Labour Protection of Female Workers of 1988 女职工劳动保护规定(1988)	State Council	Expired
1994	Regulation on Working Time of Workers of 1994 国务院关于职工工作时间的规定(1994)	State Council	Revised
1995	Regulation on Working Time of Workers (1995 Revision) 国务院关于职工工作时间的规定(1995 修订)	State Council	Effective
1999	Measures on Public Holidays for Annual Festivals and Memorial Days (1999 Revision) 全国年节及纪念日放假办法(1999修订)	State Council	Revised
2007	Measures on Public Holidays for Annual Festivals and Memorial Days (2007 Revision) 全国年节及纪念日放假办法(2007修订)	State Council	Revised
	Regulation on Paid Annual Leave of Workers of 2007 职工带薪年休假条例(2007)	State Council	Effective
2012	Special Regulation on Labour Protection of Female Workers of 2012 女职工劳动保护特别规定(2012)	State Council	Effective
2013	Measures on Public Holidays for Annual Festivals and Memorial Days (2013 Revision) 全国年节及纪念日放假办法(2013年修订)	State Council	Effective
Department Rules			
1951	Measures on Handling Dangerous Goods of 1951 关于搬运危险性物品的几项办法(1951)	Ministry of Labour	Expired
1994	Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises of 1994 劳动部关于企业实行不定时工作制和综合计算工时工作制的审批办法(1994)	Ministry of Labour	Effective

1995	Measures on the Implementation of the <Regulation of the State Council on Working Time of Workers (1995 Revision)> of 1995 劳动部贯彻《国务院关于职工工作时间的规定》的实施办法(1995)	Ministry of Labour	Effective
	Measures on the Implementation of the <Regulation on Working Time of Workers (1995 Revision)> in State Departments and Institutional Organisations of 1995 人事部关于《国家机关、事业单位贯彻＜国务院关于职工工作时间的规定＞的实施办法(1995)	Ministry of Personnel	Effective
	Measures of the Ministry of Posts and Telecommunications on the Implementation of Working Time Provisions of 1995 邮电部关于职工工作时间的实施办法(1995)	Ministry of Posts and Telecommunications	Effective
	Measures of the Ministry of Transport on the Implementation of Working Time Provisions of 1995 交通部部属企业职工工作时间实施办法(1995)	Ministry of Transport	Effective
2008	Measures on the Implementation of Paid Annual Leave for Workers of Enterprises of 2008 企业职工带薪年休假实施办法(2008)	Ministry of Human Resources and Social Security	Effective
Normative Documents			
1952	Decisions on Employment Issues of 1952 政务院关于劳动就业问题的决定(1952)	State Council	Expired
1955	Notice on Maternity Leave for Female Workers of 1955 国务院关于女工作人员生产假期的通知(1955)	State Council	Expired
1956	Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work, and Performing State and Social Obligations of 1956 劳动部关于工矿、基本建设、交通运输企业工人职员节日假日工作和延长工作时间以及履行国家义务、社会义务时的工资问题的通知(1956)	Ministry of Labour	Expired
	Provisions on Eight Working Hours in the Construction Sector of 1956 国务院关于建筑业实行八小时、小礼拜工作制度的规定(1956)	State Council	Expired
	Provisions on Working Conditions of Loading, Unloading, and Handling Workers of 1956 劳动部关于装卸、搬运作业劳动条件的规定(1956)	Ministry of Labour	Effective
1959	Opinions on Wage Benefits for Workers during Overtime, Personal Leave, Sick Leave, and Suspension from Work of 1959 劳动部对企业单位工人、职员加班加点、事假、病假和停工期间工资待遇的意见	Ministry of Labour	Effective
1965	Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965 卫生部关于从事放射线工作人员的工时和休假的意见(1965)	Ministry of Health	Effective

1980	Notice on Wedding and Funeral Leave for Workers in the State-own Enterprises of 1980 国家劳动总局、财政部关于国营企业职工请婚丧假和路程假问题的通知(1980)	State Labour Bureau and the Ministry of Finance	Effective
1981	Opinions on the Implementation of <Regulation of the State Council on Home Leave for Workers> of 1981 国家劳动总局关于制定《国务院关于职工探亲待遇的规定》实施细则的若干问题的意见	State Labour Bureau	Effective
1982	Notice on the Restriction regarding the Excessive Overtime Payments of 1982 国务院关于严格制止企业滥发加班加点工资的通知(1982)	State Council	Effective
1989	Interpretation on the Issues regarding the <Regulation of the State Council on the Labour Protection of Female Workers> of 1989 劳动部关于《女职工劳动保护规定》问题解答	Ministry of Labour	Effective
1994	Interpretation on Certain Provisions of <Labour Law> of 1994 劳动部关于《劳动法》若干条文的说明	Ministry of Labour	Effective
1995	Interpretation on the Issues regarding the <Regulation of the State Council on Working Time of Workers (1995 Revision)> of 1995 劳动部《国务院关于职工工作时间的规定》问题解答(1995)	Ministry of Labour	Effective
	Opinions on the Issues regarding the Implementation of <Labour Law> of 1995 劳动部关于贯彻执行《劳动法》若干问题的意见(1995)	Ministry of Labour	Effective
1997	Reply to Working Time Issues of Employees of 1997 劳动部关于职工工作时间有关问题的复函(1997)	Ministry of Labour	Effective
2003	Opinions on Part-time Work Issues of 2003 劳动和社会保障部关于非全日制用工若干问题的意见(2003)	Ministry of Labour and Social Security	Effective
2009	Notice on the Application of Non-standard Working Time Systems in the Outsourcing Service Enterprises of 2009 人力资源和社会保障部、商务部关于服务外包企业实行特殊工时制度有关问题的通知(2009)	Ministry of Human Resources and Social Security and Ministry of Business	Effective

Sources: National Database of Laws and Regulations (in Chinese: 全国法律法规数据库) <https://flk.npc.gov.cn/> accessed 31 December 2021; Chinalawinfo Database: Laws and Regulations Database (in Chinese: 北大法宝: 法律法规数据库) <https://www.lawinfochina.com/search/SearchLaw.aspx> accessed 31 December 2021.

Note 1. Clarification concerning the translation from Chinese to English

Chinese	**English**
Fa法	Law
Tiaoli条例	Regulation
Guiding规定 (administrative regulations adopted by the State Council)	Regulation
Guiding规定 (normative documents adopted by the legislative institutions)	Provisions
Shixing/Zanxing Guiding试行/暂行规定	Interim Regulation
Jueding决定	Decisions
Yijian意见	Opinions
Tongzhi通知	Notice
Jieda解答	Interpretation
Xiuzheng 修正	Amendment/Amended
Xiuding修订	Revision/Revised

Note 2. Clarification concerning transformation of the related institutions

(a) Ministry of Labour (劳动部, 1949-1970) – withdrawn and incorporated into the National Planning Commission (国家计划委员会, 1970-1975) – State Labour Bureau (国家劳动总局, 1975-1982) – Ministry of Labour and Personnel (劳动人事部, 1982-1988) – Ministry of Labour (劳动部, 1988-1998) – Ministry of Labour and Social Security (劳动和社会保障部, 1998-2008) – Ministry of Human Resources and Social Security (人力资源和社会保障部, 2008-present).

(b) Ministry of Personnel (1950-1954) – State Council Personnel Bureau (国务院人事局, 1954-1959) – withdrawn and incorporated into the Ministry of Internal Affairs (内务部, 1959-1980) – State Personnel Bureau (国家人事局, 1980-1982) – Ministry of Labour and Personnel (劳动人事部, 1982-1988) – Ministry of Personnel (人事部, 1988-2008) – Ministry of Human Resources and Social Security (人力资源和社会保障部, 2008-present).

Appendix IV
Index of Chinese legal instruments concerning the procedural aspects of working time (1949-2020)

Year	Legal instruments	Legislative Institutions	Status
Constitutions			
1949	Common Program of the Chinese People's Political Consultative Conference of 1949 中国人民政治协商会议共同纲领(1949)	Chinese People's Political Consultative Conference	Expired
1954	Constitution of the People's Republic of China of 1954 中华人民共和国宪法(1954)	National People's Congress	Expired
1975	Constitution of the People's Republic of China of 1975 中华人民共和国宪法(1975)	National People's Congress	Expired
1978	Constitution of the People's Republic of China of 1978 中华人民共和国宪法(1978)	National People's Congress	Expired
1982	Constitution of the People's Republic of China of 1982 (amended in 1988, 1993, 1999, 2004, and 2018) 中华人民共和国宪法(1982通过, 1988, 1993, 1999, 2004, 2018年修正)	National People's Congress	Effective
Laws			
1950	Trade Union Law of the People's Republic of China of 1950 中华人民共和国工会法(1950)	Central People's Government Committee	Expired
1992	Trade Union Law of the People's Republic of China of 1992 (amended in 2001 and 2009) 中华人民共和国工会法(1992年通过, 2001, 2009年修正)	National People's Congress	Effective
1994	Labour Law of the People's Republic of China of 1994 (amended in 2009 and 2018) 中华人民共和国劳动法(1994年通过, 2009, 2018年修正)	National People's Congress Standing Committee	Effective
2000	Legislation Law of the People's Republic of China of 2000 (amended in 2015) 中华人民共和国立法法(2000年通过, 2015年修正)	National People's Congress	Effective

2007	Labour Contract Law of the People's Republic of China of 2007 (amended in 2012) 中华人民共和国劳动合同法(2007年通过, 2012年修正)	National People's Congress Standing Committee	Effective
	Labour Dispute Mediation and Arbitration Law of the People's Republic of China of 2007 中华人民共和国劳动争议调解仲裁法(2007)	National People's Congress Standing Committee	Effective
Administrative Regulations			
1954	Internal Code of Conduct for State-owned Enterprises of 1954 国营企业内部劳动规则纲要 (1954)	State Council	Expired
1956	General Organisational Rules of the Ministry of Labour of the People's Republic of China of 1956 中华人民共和国劳动部组织简则(1956)	State Council	Expired
1980	Regulation on Labour Management of Chinese-Foreign Joint Ventures of 1980 中外合资经营企业劳动管理规定(1980)	State Council	Expired
1986	Interim Regulation on Implementing the Labour Contract System in State-Owned Enterprises of 1986 国营企业实行劳动合同制暂行规定(1986)	State Council	Expired
	Interim Regulation on Recruitment of Workers in State-Owned Enterprises of 1986 国营企业招用工人暂行规定(1986)	State Council	Expired
	Interim Regulation on Dismissal of Workers in State-Owned Enterprises of 1986 国营企业辞退违纪职工暂行规定(1986)	State Council	Expired
	Interim Regulation on Unemployment Insurance in State-Owned Enterprises of 1986 国营企业职工待业保险暂行规定(1986)	State Council	Expired
1987	Interim Regulation on Small Private Business of 1987 城乡个体工商户管理暂行条例(1987)	State Council	Expired
	Interim Regulation on Labour Dispute Resolution in State-owned Enterprises adopted by the State Council of 1987 国营企业劳动争议处理暂行规定(1987)	State Council	Expired
1988	Interim Regulation on Private Enterprises of the People's Republic of China of 1988 中华人民共和国私营企业暂行条例(1988)	State Council	Expired
	Guangdong Provincial Labour Regulation in Special Economic Zones of 1988广东省经济特区劳动条例(1988)	*Guangdong Province People's Congress*	Expired
1990	Regulation on Town and Village Enterprises of the People's Republic of China of 1990 中华人民共和国乡村集体所有制企业条例(1990)	State Council	Expired

1993	Regulation on Labour Dispute Settlement in Enterprises of the People's Republic of China of 1993 中华人民共和国企业劳动争议处理条例(1993)	State Council	Expired
1994	Regulation on Working Time of Workers of 1994 国务院关于职工工作时间的规定(1994)	State Council	Revised
1995	Regulation of the State Council on Working Time of Workers (1995 Revision) 国务院关于职工工作时间的规定(1995 修订)	State Council	Effective
2004	Regulation on Labour and Security Inspection of 2004 劳动保障监察条例(2004)	State Council	Effective
2005	Regulation on Complaint Letters and Visits of 2005 信访条例(2005)	State Council	Effective
Department Rules			
1950	Provisions on Labour Dispute Settlement Procedures of 1950 劳动部关于劳动争议解决程序的规定(1950)	Ministry of Labour	Expired
	Rules on Organisation and Procedures of Municipal Labour Dispute Arbitration Committees of 1950 市劳动争议仲裁委员会组织及工作规则(1950)	Ministry of Labour	Expired
1989	Interim Provisions on Labour Management of Private Enterprises 1989 劳动部关于私营企业劳动管理暂行规定	Ministry of Labour	Effective
1992	Provisions on Labour Management in Town and Village Enterprises of 1992 乡镇企业劳动管理规定(1992)	Ministry of Agriculture	Expired
1993	Provisions on Labour Inspection of 1993 劳动监察规定(1993)	Ministry of Labour	Expired
1994	Measures of the Ministry of Labour on the Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System in Enterprises of 1994 劳动部关于企业实行不定时工作制和综合计算工时工作制的审批办法(1994)	Ministry of Labour	Effective
	Provisions on Collective Agreements of 1994 集体合同规定(1994)	Ministry of Labour	Expired
2004	Provisions on Collective Agreements (2004 Revision) 集体合同规定(2004)	Ministry of Labour and Social Security	Effective
Normative Documents			
1949	Interim Measures on Labour Relations of 1949 中华全国总工会关于劳资关系暂行处理办法(1949)	*All-China Federation of Trade Unions*	Expired
	Interim Measures on Establishing Collective Agreements in Private Enterprises of 1949 中华全国总工会关于私营工商企业劳资双方订立集体合同的暂行办法(1949)	*All-China Federation of Trade Unions*	Expired

1950	Decision on Labour Relations between Provincial and Municipal Labour Bureaus and Local State-owned Enterprises of 1950 政务院财政经济委员会关于各省、市人民政府劳动局与当地国营企业工作关系的决定(1950)	Finance and Economy Committee of the State Council	Expired
	Instructions on Signing Collective Agreements in Public Enterprises of 1950 关于公营企业签订集体合同的指示(1950)	*Northeast People's Government*	Expired
1951	Interim Provisions on the Recruitment of Workers in Various Regions of 1951 劳动部关于各地招聘职工的暂行规定(1951)	Ministry of Labour	Expired
1953	Joint-Instructions on Signing Collective Agreements in Public Enterprises (textile industry) of 1953 关于在国营工厂中签订集体合同的联合指示(1953)	Ministry of Textile Industry and National Committee of China Textile Trade Unions	Expired
1954	Decision of the State Council on the adoption of the Internal Code of Conduct for State-owned Enterprises of 1954 政务院关于颁布"国营企业内部劳动规则纲要"的决定(1954)	State Council	Expired
	Measures on Signing Labour Contract for Workers Recruited in Construction Sectors of 1954 关于建筑工程单位赴外地招用建筑工人订立劳动合同办法(1954)	Ministry of Labour	Expired
1955	Instructions on Signing Collective Agreements in Mines Sectors of 1955 关于生产厂矿签订集体合同的指示(1955)	Ministry of Heavy Industry and National Committee of China Railway Trade Unions	Expired
1985	Interim Provisions on the Work of Labour Protection Supervision Inspectors of Trade Unions of 1985 工会劳动保护监督检查员暂行条例(1985)	*All-China Federation of Trade Unions*	Expired
	Provisions on the Work of Labour Protection Supervision and Inspection Committees of Grassroots Trade Unions of 1985 基层工会劳动保护监督检查委员会工作条例(1985)	*All-China Federation of Trade Unions*	Expired
	Provisions on the Work of Labour Protection Inspectors of Trade Union Groups of 1985 工会小组劳动保护检查员工作条例(1985)	*All-China Federation of Trade Unions*	Expired

Sources: National Database of Laws and Regulations (in Chinese: 全国法律法规数据库) <https://flk.npc.gov.cn/> accessed 31 December 2021; Chinalawinfo Database: Laws and Regulations Database (in Chinese: 北大法宝: 法律法规数据库) <https://www.lawinfochina.com/search/SearchLaw.aspx> accessed 31 December 2021.

Note 1. Clarification concerning the translation from Chinese to English

Chinese	**English**
Fa法	Law
Tiaoli条例 (administrative regulations adopted by the State Council)	Regulation
Tiaoli条例 (normative documents adopted by the legislative institutions)	Provisions
Guiding规定 (administrative regulations adopted by the State Council)	Regulation
Guiding规定 (normative documents adopted by the legislative institutions)	Provisions
Shixing/Zanxing Guiding试行/暂行规定(administrative regulations adopted by the State Council)	Interim Regulation
Shixing/Zanxing Guiding试行/暂行规定(normative documents adopted by the legislative institutions)	Interim Provisions
Jueding决定	Decisions
Zhisi指示	Instructions
Banfa 办法	Measures
Guize 规则	Rules
Xiuzheng 修正	Amendment/Amended
Xiuding修订	Revision/Revised

Note 2. Clarification concerning transformation of the related institutions

(a) Ministry of Labour (劳动部, 1949-1970) – withdrawn and incorporated into the National Planning Commission (国家计划委员会, 1970-1975) – State Labour Bureau (国家劳动总局, 1975-1982) – Ministry of Labour and Personnel (劳动人事部, 1982-1988) – Ministry of Labour (劳动部, 1988-1998) – Ministry of Labour and Social Security (劳动和社会保障部, 1998-2008) – Ministry of Human Resources and Social Security (人力资源和社会保障部, 2008-present).

Appendix V
Comparison between the ILO benchmarks and Chinese working time standards (ILO-DWT-China database)

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
Group 1: working time duration								
Indicator 1.1: Daily limit	1.1.1 Topic	**Daily limit:** it refers to a limit on normal daily hours of work; hours of work mean the time during which the persons employed are at the disposal of the employer; normal hours of work refer to the number of hours that may legally be worked during the day, week, month and/or year, excluding overtime (C30, art 2; General Survey of 2018, pp18-19).	**Daily limit:** it is regulated in the 1949 Common Program, the 1951 Measures on Handling Dangerous Goods, the 1952 Decisions on Employment Issues, the 1956 Provisions on Eight Working Hours in the Construction Sector, and the 1965 Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works. It refers to a daily limit on hours of work. However, there is no explicit definition or clarification on hours of work in the legal instruments.	1	**Daily limit:** it is regulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers. However, there is no explicit definition or clarification on hours of work in the existing legal instruments.	1	**Daily limit:** it is regulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers. However, there is no explicit definition or clarification on hours of work in the existing legal instruments.	1
	1.1.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and serve the need related to production (General Survey of 2018, p5).	a. It aims to safeguard the health of workers, improve their production efficiency and promote the employment (Common Programme of 1949, art 32; Decisions on Employment Issues of 1952); b. It aims to safeguard the health of workers and improve their knowledge and expertise in the construction sector (Regulation on Eight Working Hours in the Construction Sector of 1956); c. It aims to safeguard the health of radiological workers and enable better services for disease prevention and treatment (Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	1	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to ensure a reasonable working time arrangement for employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to ensure a reasonable working time arrangement for employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.1.3 Scope of application	a. It applies to persons employed in any public or private industrial undertaking (mines and quarries; industries in which articles are manufactured or materials are transformed, such as shipbuilding and energy generation; construction, maintenance and demolition of roads, bridges and tunnels; and transport of passengers or goods by road, rail, sea or inland waterway) (C1, art 1.1; General Survey of 2018, p16); b. It applies to persons employed in any public or private commerce and office sectors (commercial or trading establishments, including postal, telegraph and telephone services and commercial or trading branches of any other establishments; establishments and administrative services in which the persons employed are mainly engaged in office work; mixed commercial and industrial establishments, unless they are deemed to be industrial establishments) (C30, art 1.1; General Survey of 2018, p16).	It applies to the publicly and privately operated enterprises, particularly including works regarding handing toxic substances, the construction sector, and the radioactive works, as well as cities (Common Programme of 1949, art 32; Measures on Handling Dangerous Goods of 1951; Decisions on Employment Issues of 1952; Provisions on Eight Working Hours in the Construction Sector of 1956; Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	1	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, individually owned economic organisations, as well as state departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, individually owned economic organisations, as well as state departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.1.4 Material content	a. 8-hour limit on normal hours per day (C1, art 2; C30, art 3); b. Daily hours can be averaged within the 48-hour week, allowing the 8-hour limit to be extended to 9 hours in industry and 10 hours in commerce and office (C1, art. 2 and art. 5.2).	a. A principle of 'eight to ten working hours per day' shall apply to the publicly and privately operated enterprises (Common Programme of 1949, art 32; Decisions on Employment Issues of 1952); b. The daily working hours shall be less than eight hours in work that is arduous or harmful to workers' health (Decisions on Employment Issues of 1952); c. The daily working hours for workers engaged in handing toxic substances shall be six to eight hours, and their continuous work shall not exceed two hours (Measures on Handling Dangerous Goods of 1951); d. An eight-hour working day shall apply to the construction sector (Provisions on Eight Working Hours in the Construction Sector of 1956); e. The daily working hours shall be less than eight hours in the radioactive works (Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	1	Daily hours of work shall not exceed eight hours (Labour Law of 1994, art 36; Regulation on Working Time of 1995, art 3).	1	Daily hours of work shall not exceed eight hours (Labour Law of 1994, art 36; Regulation on Working Time of 1995, art 3).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
Indicator 1.2: Weekly limit	1.2.1 Topic	**Weekly limit:** it refers to a weekly limit on normal hours of work; hours of work mean the time during which the persons employed are at the disposal of the employer; normal hours of work refer to the number of hours that may legally be worked during the day, week, month and/or year, excluding overtime (C30, art 2; General Survey of 2018, pp18-19).	It is not regulated in the legal instruments.	0	**Weekly limit:** it is regulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers. However, there is no explicit definition or clarification on hours of work in the legal instruments.	1	**Weekly limit:** it is regulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers. However, there is no explicit definition or clarification on hours of work in the legal instruments.	1
	1.2.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and serves the need related to production. (General Survey of 2018, p5)	It is not regulated in the legal instruments.	0	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to ensure a reasonable working time arrangement of employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to ensure a reasonable working time arrangement of employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.2.3 Scope of application	a. It applies to persons employed in any public or private industrial undertaking (mines and quarries; industries in which articles are manufactured or materials are transformed, such as shipbuilding and energy generation; construction, maintenance and demolition of roads, bridges and tunnels; and transport of passengers or goods by road, rail, sea or inland waterway) (C1, art 1.1; General Survey of 2018, p16); b. It applies to persons employed in any public or private commerce and office sectors (commercial or trading establishments, including postal, telegraph and telephone services and commercial or trading branches of any other establishments; establishments and administrative services in which the persons employed are mainly engaged in office work; mixed commercial and industrial establishments, unless they are deemed to be industrial establishments) (C30, art 1.1; General Survey of 2018, p16).	It is not regulated in the legal instruments.	0	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, individually owned economic organisations, as well as state departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, individually owned economic organisations, as well as state departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.2.4 Material content	a. 48-hour limit on normal hours per week (C1, art 2; C30, art 3); b. A reduction to 40-hour limit on normal hours per week should be promoted gradually (C47, art 1; R116, para 4)	It is not regulated in the legal instruments.	0	a. Weekly hours of work shall not exceed 44 hours on the average (Labour Law of 1994, art 36); b. Weekly hours of work shall be 40 hours per week (Regulation on Working Time of 1995, art 3); c. The 40-hour weekly limit conferred in the Regulation on Working Time of 1995 is the more favourable standard than the 44-hour weekly limit conferred in the Labour Law of 1994 (Reply to the Working Time Issues of Workers of 1997); d. Saturday and Sunday shall be the days of weekly rest for State organs and State institutions (Regulation on Working Time of 1995, art 7).	1.5	a. Weekly hours of work shall not exceed 44 hours on the average (Labour Law of 1994, art 36); b. Weekly hours of work shall be 40 hours per week (Regulation on Working Time of 1995, art 3); c. The 40-hour weekly limit conferred in the Regulation on Working Time of 1995 is the more favourable standard than the 44-hour weekly limit conferred in the Labour Law of 1994 (Reply to the Working Time Issues of Workers of 1997); e. Saturday and Sunday shall be the days of weekly rest for State organs and State institutions (Regulation on Working Time of 1995, art 7).	1.5
Indicator 1.3: Overtime limit	1.3.1 Topic	**Overtime limit:** it refers to the maximum of additional hours to the normal hours of work (C1, art 6.2; C30, art 7.4; R116, para 11; General Survey of 2018, p18, 55)	**Overtime limit:** it is only briefly mentioned in the 1952 Decisions on Employment Issues. However, there is no explicit definition or clarification on overtime work limits in the legal instruments.	1	**Overtime limit:** it is regulated in the 1982 Notice on the Restriction regarding the Excessive Overtime Wages, the 1994 Labour Law and the 1995 Regulation on Working Time of Workers. In general, it refers to the additional hours to the eight hours per day and 40 hours per week.	1	**Overtime limit:** it is regulated in the 1982 Notice on the Restriction regarding the Excessive Overtime Wages, the 1994 Labour Law and the 1995 Regulation on Working Time of Workers. In general, it refers to the additional hours to the eight hours per day and 40 hours per week.	1
	1.3.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and also serves the need related to production. (General Survey of 2018, p5)	It is not regulated in the legal instruments.	0	It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress (Labour Law of 1994, art. 1).	1	It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress (Labour Law of 1994, art. 1).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.3.3 Scope of application	It covers certain circumstances permitted under the derogations to normal hours of work in the case of permanent exceptions (intermittent work, complementary and preparatory work, cases of public interest, exceptions allowed in view of the nature of the work, the size of the population, or the number of persons employed) and temporary exceptions (abnormal pressure of work and unforeseen additional work, accidents or force majeure, the occurrence of a national emergency) (C1, arts. 3, 6, 14; C30, arts 7, 9; R116, para 11: General Survey of 2018, p34).	It is not regulated in the legal instruments.	0	It (overtime work) covers certain circumstances, specifically relating to needs of production or business of the employer; it is not subject to restrictions under specific cases, such as the need for emergency treatment during the occurrence of natural disasters, accidents or other situations that threaten the life, health or property safety of workers, the need for timely rush-repair of production equipment, transportation lines or public facilities that have gone out of order and as a result affect production and public interests, and other cases stipulated in the laws and regulations. (Labour Law of 1994, arts. 41, 42).	1	It (overtime work) covers certain circumstances, specifically relating to needs of production or business of the employer; it is not subject to restrictions under specific cases, such as the need for emergency treatment during the occurrence of natural disasters, accidents or other situations that threaten the life, health or property safety of workers, the need for timely rush-repair of production equipment, transportation lines or public facilities that have gone out of order and as a result affect production and public interests, and other cases stipulated in the laws and regulations. (Labour Law of 1994, arts. 41, 42).	1
	1.3.4 Material content	Although no ILO instrument or General Survey establishes a specific limit on the number of overtime hours, such limit must be reasonable. When deciding what should be considered as a 'reasonable', the public authority should make a thorough evaluation of the intensity of the respective work, its ability to produce physical or mental fatigue, and of possible negative consequences of fatigue for the respective employee and the public at large (General Survey of 2018, p46)	Overtime hours shall be subject to strict restrictions (Decisions on Employment Issues of 1952).	0.5	Overtime work is allowed due to needs of production or business after consultation with trade union and workers; the hours of overtime are limited to 1 hour per day in general and three hours at maximum under the conditions that the physical health of workers is guaranteed; the hours of overtime shall not exceed 36 hours per month (Labour Law of 1994, art 41).	1.5	Overtime work is allowed due to needs of production or business after consultation with trade union and workers; the hours of overtime are limited to 1 hour per day in general and three hours at maximum under the conditions that the physical health of workers is guaranteed; the hours of overtime shall not exceed 36 hours per month (Labour Law of 1994, art 41).	1.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
Indicator 1.4: Weekly rest	1.4.1 Topic	**Weekly rest:** it refers to the rest period comprising at least 24 consecutive hours in every period of seven days. (C14, art 2.1; C106, art 6; R103)	It is only briefly mentioned in the 1956 Notice on Wage Issues of Working on Holidays, Extending Working Hours and Performing State and Social Obligations of Workers in the Industry, Mining, Infrastructure Construction, and Transportation Sectors, in which 'Sunday' is specified as the 'public day'.	1	**Weekly rest:** it is regulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers.	1	**Weekly rest:** it is regulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers.	1
	1.4.2 Aim/ purpose	It aims to protect the health and safety, as well as the well-being of workers (General Survey of 2018, p92, 95 & 101)	It is not regulated in the legal instruments.	0	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to ensure a reasonable working time arrangement for employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to ensure a reasonable working time arrangement for employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.4.3 Scope of application	a. It applies to the whole of the staff employed in any public or private, or any branch of industrial undertaking (mines, quarries, and other works for the extraction of minerals from the earth; industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding and the generation, transformation and transmission of electricity or motive power of any kind; construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure; transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand) (C14, art 1 & 2);	It applies to the industry, mining, infrastructure construction, and transportation Sectors (Notice on Wage Issues of Working on Holidays, Extending Working Hours and Performing State and Social Obligations of Workers in the Industry, Mining, Infrastructure Construction, and Transportation Sectors of 1956).	0.5	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, individually owned economic organisations, as well as state departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, individually owned economic organisations, as well as state departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		b. It applies to all persons, including apprentices, employed in commerce and offices sectors (trading establishments; establishments, institutions and administrative services in which the persons employed are mainly engaged in office work, including the offices of persons engaged in the liberal professions; establishments under certain conditions, such as the trading branches of any other establishments, the branches of any other establishments in which the persons employed are mainly engaged in office work, and mixed commercial and industrial establishments) (C106, art 2); c. It may also apply to persons employed in establishments in consequence of a formal declaration made by a Member State at the time of ratification of Convention No. 106 such as establishments, institutions and administrative services providing personal services; post and telecommunications services; newspaper undertakings; and theatres and places of public entertainment (C106, art 3.1).						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.4.4 Material content	An uninterrupted weekly rest period comprising not less than 24 hours during each period of seven days (C14, art. 2.1; C106, art 6.1)	Sunday is specified as the 'public day' (Notice on Wage Issues of Working on Holidays, Extending Working Hours and Performing State and Social Obligations of Workers in the Industry, Mining, Infrastructure Construction, and Transportation Sectors of 1956).	0.5	a. The employer shall provide workers with at least one day off a week (Labour Law of 1994, art 38); b. Saturday and Sunday shall be the days of weekly rest for state departments and social groups (Regulation on Working Time of 1995, art 7).	1.5	a. The employer shall provide workers with at least one day off a week (Labour Law of 1994, art 38); b. Saturday and Sunday shall be the days of weekly rest for state departments, social groups (Regulation on Working Time of 1995, art 7).	1.5
Indicator 1.5: Paid annual leave	1.5.1 Topic	**Paid annual leave:** it refers to the period during which workers are given time away from their work while continuing to receive an income and to be entitled to social protection (General Survey of 2018, p103).	**Paid annual leave:** it is only briefly mentioned in the name of 'annual rest' the Opinion on the Working Hours and Rest for Workers Engaging in the Radioactive Works of 1965. However, there is no explicit definition or clarification on paid annual leave in the legal instruments.	1	**Paid annual leave:** it is regulated in the 1994 Labour Law.	1	**Paid annual leave:** it is regulated in the 1994 Labour Law and the 2007 Regulation on Paid Annual Leave of Workers.	1
	1.5.2 Aim/ purpose	It aims to protect the health and well-being of workers, allow them to be with their families and help them to be more productive, and limit working time over the course of the year (General Survey of 2018, p103).	It aims to protect the health of workers engaging in the radiological works and prevent disease (Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	0.5	It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1).	0.5	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to safeguard the right to rest and leave of employees and to promote their working efficiency (Regulations on Paid Annual Leave of Employees, art 1).	0.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.5.3 Scope of application	It applies to all employed persons except seafarers (C132, art 2.1).	It applies to workers engaging in the radioactive works (Opinion on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965)	0.5	It applies to all workers who establish labour relationships with employing units after working for more than one year continuously (Labour Law of 1994, art 45);	0.5	a. It applies to all workers who establish labour relationships with employing units after working for more than one year continuously (Labour Law of 1994, art 45); b. It applies to workers in organs, groups, enterprises, public institutions, private non-enterprise entities and individual industrial and commercial households hiring labour, who have worked continuously for one year or more are entitled to paid annual leave (Regulations on Paid Annual Leave of Employees, art 2).	0.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	1.5.4 Material content	a. Workers shall enjoy at least three working weeks of annual paid holiday for one year of service (C132, art 3.3); b. Workers whose length of service in any year is less than the required period such as one year of service shall be entitled in respect of that year to a holiday with pay proportionate to his length of service during that year (C132, art 4.2); c. Absence from work for reasons beyond the control of the employed persons concerned as illness, injury or maternity shall be counted as part of the period service (C132, art 5.4); d. Public and customary holidays shall not be counted as part of the minimum annual paid holiday; (C132, art 6.1); e. Regarding the divisions of the annual paid holiday, unless otherwise provided in an agreement applicable, one of the parts shall consist of at least two uninterrupted working weeks (C132, art 8.2).	An annual rest of two to four weeks shall be provided to radiological workers (Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	0.5	Workers shall be entitled to the annual leave with pay after working for more than one year continuously (Labour Law 1994, art 45).	0.5	a. Workers shall be entitled to the annual leave with pay after working for more than one year continuously (Labour Law 1994, art 45); b. The annual leave shall be five days for employees who have accumulatively worked for 1-10 year(s); 10 days for workers who have accumulatively worked 10-20 years; and 15 days for employees who have accumulatively worked for 20 years or more; the annual leave shall be additional to national legal holidays and off days shall not be counted as part of annual paid leave (Regulations on Paid Annual Leave of Employees, art 3); c. In general, the annual leave can be taken once and for all or for several times within the current year; it may not be rounded up to the next year; however, where an employing unit needs to round it up to the next year for special production or working reasons, it can be rounded up to the next year (Regulations on Paid Annual Leave of Employees, art 5);	0.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
							d. Where an employing unit is unable to give annual leave to a worker or staff member due to the needs of the work, it is allowed to do so as long as it gets the consent of the employee; As for the annual leave time due and not taken by the worker or staff member, the employing unit shall pay him or her 300% of his or her daily wage income for each day of the annual leave due and not taken (Regulations on Paid Annual Leave of Employees, art 5).	
Group 2: Working time organisation								
Indicator 2.1: Standard working time arrangement	2.1.1 Topic	**Standard working time arrangement:** It refers to an eight-hour day and a 48-hour or 40-hour week under Conventions Nos. 1, 30 and 47 and Recommendation No. 116 (General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble); It can be further elaborated as the fixed working hours each day for a fixed number of days, usually a Monday-to-Friday (for a 40-hour normal workweek) or Monday-to-Saturday (for normal weeks longer than 40 hours) daytime shift (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and a number of ILO working time reports)	**Standard working time arrangement:** it is generally confined to eight-hour working day and six working days per week. It can be indicated by the 1949 Common Program, the 1952 Decisions on Employment Issues, the 1965 Provisions on Eight Working Hours in the Construction Sector; and the 1965 Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works.	1	**Standard working time arrangement:** it is regulated in the 1994 Labour and the 1995 Regulation on Working Time of Workers.	1	**Standard working time arrangement:** it is regulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers.	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.1.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and serve the need related to production (General Survey of 2018, p5).	a. It aims to safeguard the health of workers, improve their production efficiency and promote the employment (Common Programme of 1949, art 32; Decisions on Employment Issues of 1952); b. It aims to safeguard the health of workers and improve their knowledge and expertise in the construction sector (Provisions on Eight Working Hours in the Construction Sector of 1956); c. It aims to safeguard the health of radiological workers and enable better services for disease prevention and treatment (Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	1	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to provide a reasonable working time arrangement for employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish, and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress. (Labour Law of 1994, art 1); b. It aims to provide a reasonable working time arrangement for employees and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.1.3 Scope of application	No ILO instrument or General Survey establishes an explicit scope of application on the standard working time arrangement. However, according to the ILO instruments as well as a number of ILO reports on working time, it should have a similar scope of application with the elements of daily and weekly limits, and often with a focus on the formal economy (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and a number of ILO working time reports).	It applies to the publicly and privately operated enterprises, particularly including works regarding handing toxic substances, the construction sector, and the radioactive works, as well as cities (Common Programme of 1949, art 32; Measures on Handling Dangerous Goods of 1951; Decisions on Employment Issues of 1952; Provisions on Eight Working Hours in the Construction Sector of 1956; Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	1	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, enterprises, individually owned economic organisations, as well as State departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1	a. It applies to all workers who establish labour relationships with employing units; the employing unit includes enterprises, enterprises, individually owned economic organisations, as well as State departments, institutional organisations and social groups (Labour Law of 1994, art 2); b. It applies to all employees of state departments, social groups, enterprises and institutions and other organisations (Regulation on Working Time of 1995, art 2).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.1.4 Material content	a. Monday-to-Friday (for a 40-hour normal workweek) daytime shift (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and a number of ILO working time reports); b. Monday-to-Saturday (for normal weeks longer than 40 hours) daytime shift (with reference to the implications from General Survey of 2005, p77; C1, art 2; C30, art 3; C47, art 1; R116, Preamble; and directly from Resolution concerning the measurement of working time and several ILO working time reports)	a. A principle of "eight to ten working hours per day" shall apply to the publicly and privately operated enterprises (Common Programme of 1949, art 32; Decisions on Employment Issues of 1952); b. An eight-hour working day shall apply to the construction sector (Provisions on Eight Working Hours in the Construction Sector of 1956); c. A working day with less than eight hours shall apply to radioactive works (Opinions on the Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965).	0.5	a. Workers shall work for no more than eight hours a day and no more than 44 hours a week on the average (Labour Law of 1994, art 36); b. Workers shall work eight hours a day and 40 hours a week (Regulation on Working Time of 1995, art 3); c. Saturday and Sunday shall be the days of weekly rest for State organs and State institutions (Regulation on Working Time of 1995, art 7).	1	a. Workers shall work for no more than eight hours a day and no more than 44 hours a week on the average (Labour Law of 1994, art 36); b. Workers shall work eight hours a day and 40 hours a week (Regulation on Working Time of 1995, art 3); c. Saturday and Sunday shall be the days of weekly rest for State organs and State institutions (Regulation on Working Time of 1995, art 7).	1
Indicator 2.2: Variable working time arrangement	2.2.1 Topic	**Variable working time arrangement:** it mainly refers to adjustments in the distribution of hours of work, particularly consisting of averaging normal weekly hours of work over a defined period, to allow the extension of working hours beyond their normal length on certain days, and their shortening on other days, without resorting to overtime (General Survey of 2018, p21).	It is not regulated in the legal instruments.	0	**Variable working time arrangement:** it is regulated in the 1994 Labour Law, the 1994 Measures on Working Time and the 1995 Regulation on Working Time of Workers.	1	**Variable working time arrangement:** it is regulated in the 1994 Labour Law, the 1994 Measures on Working Time and the 1995 Regulation on Working Time of Workers.	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.2.2 Aim/ purpose	It aims to adapt to the production requirements and technical variations inherent in certain sectors of activity, to respond to exceptional circumstances or to meet the specific needs of workers or the establishment (General Survey of 2018, p21).	It is not regulated in the legal instruments.	0	It aims to meet the needs of enterprises due to their special characteristics of production (Labour Law of 1994, art 39; Regulation on Working Time of 1995, art 5).	0.5	It aims to meet the needs of enterprises due to their special characteristics of production (Labour Law of 1994, art 39; Regulation on Working Time of 1995, art 5).	0.5
	2.2.3 Scope of application	It covers four certain circumstances mainly through averaging: the distribution of working hours within the week; the distribution of working hours over a period longer than a week; averaging in the case of shift work in continuous processes; and averaging in the case of shift work (General Survey of 2018, p21; C1, art 2, 4 & 5; C30, art 4 & 6).	It is not regulated in the legal instruments.	0	It applies to all enterprises that are unable to adopt the standard working hours system of eight hours per day and 44 or 40 hours per week stipulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers (Measures on Working Time of 1994, art 2 & 3).	1.5	It applies to all enterprises that are unable to adopt the standard working hours system of eight hours per day and 44 or 40 hours per week stipulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers (Measures on Working Time of 1994, art 2 & 3).	1.5
	2.2.4 Material content	f. Daily hours can be averaged within the 48-hour week, allowing the 8-hour limit to be extended to 9 hours in industry and 10 hours in commerce and office (C1, art 2; C30, art 4); g. Over a period longer than a week, the average hours of work per week shall not exceed forty-eight hours per week and that hours of work in any day shall not exceed 9 hours in industry and 10 hours commerce and office (C1, art 5; C30, art 6);	It is not regulated in the legal instruments.	0	a. Comprehensive calculation of working time can be undertaken on a weekly, monthly, quarterly or yearly basis, as long as the daily and weekly hours of work on the average are the same or equivalent as the standard working hours system stipulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers (Measures on Working Time of 1994, art 5);	1.5	a. Comprehensive calculation of working time can be undertaken on a weekly, monthly, quarterly or yearly basis, as long as the daily and weekly hours of work on the average are the same or equivalent as the standard working hours system stipulated in the 1994 Labour Law and the 1995 Regulation on Working Time of Workers (Measures on Working Time of 1994, art 5);	1.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		h. It allows for the possibility of the averaging of hours of work in the case of shift work and permits the extension of normal hours of work on condition that the average number of hours over a period of three weeks respects the limits of eight hours a day and 48 hours a week (C1, art 2); i. It allows for the possibility of the averaging of hours of work in the case of shift work in continuous processes and provides for a limit of 56 hours a week on average (C1, art 4); j. The hours-averaging arrangement should be approved by the competent authority or by agreement between workers' and employers' organisations. (C1, art 2; C30, art 6)			b. The enterprise should take employees' health into consideration and listen to their requirements, and then take appropriate measures to guarantee the employees' right to rest and holidays as well as to ensure the completion of production (Measures on Working Time of 1994, art 6).		b. The enterprise should take employees' health into consideration and listen to their requirements, and then take appropriate measures to guarantee the employees' right to rest and holidays as well as to ensure the completion of production (Measures on Working Time of 1994, art 6).	
Indicator 2.3: Overtime work arrangement	2.3.1 Topic	**Overtime work arrangement:** it refers to how the additional hours to normal hours of work are organised (C1, art 6.2; C30, art 7.4; R116, para 11; General Survey of 2018, p18, 55).	**Overtime work arrangement:** It is only briefly mentioned in the 1956 Notice on Wage Issues of Working on Holidays, Extending Working Hours and Performing State and Social Obligations of Workers in the Industry, Mining, Infrastructure Construction, and Transportation Sectors and the 1959 Opinions on Wage Benefits for Workers on Overtime, Personal Leave, Sick Leave and Suspension from Work.	1	**Overtime work arrangement:** it is regulated in the 1982 Notice on the Restriction regarding the Excessive Overtime Wages, the 1994 Labour Law, and the 1995 Regulation on Working Time. In general, it refers to how the additional hours are organised; the additional hours refer to the eight hours per day and 40 hours per week (Labour Law of 1994, art 41; Reply to the Working Time Issues of Workers of 1997).	1	**Overtime work arrangement:** it is regulated in the 1982 Notice on the Restriction regarding the Excessive Overtime Wages, the 1994 Labour Law, and the 1995 Regulation on Working Time. In general, it refers to how the additional hours are organised; the additional hours refer to the eight hours per day and 40 hours per week (Labour Law of 1994, art 41; Reply to the Working Time Issues of Workers of 1997).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.3.2 Aim/ purpose	It aims to safeguard the health and well-being of workers, and serves the need related to production (General Survey of 2018, p5).	It is not regulated in the legal instruments.	0	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress (Labour Law of 1994, art. 1); b. It also aims to meet the needs of production or business for an employing unit (Labour Law of 1994, art. 41); c. It aims to ensure a reasonable working time arrangement of workers and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1	a. It aims to protect the legitimate rights and interests of workers, regulate labour relationship, establish and safeguard a labour system suiting to the socialist market economy, and promote economic development and social progress (Labour Law of 1994, art. 1); b. It also aims to meet the needs of production or business for an employing unit (Labour Law of 1994, art. 41); c. It aims to ensure a reasonable working time arrangement of workers and to safeguard their right to rest, promote their working efficiency and the development of the socialist modernisation (Regulation on Working Time of 1995, art 1).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.3.3 Scope of application	It (overtime work) covers certain circumstances permitted under the derogations to normal hours of work in the case of permanent exceptions (intermittent work, complementary and preparatory work, cases of public interest, exceptions allowed in view of the nature of the work, the size of the population, or the number of persons employed) and temporary exceptions (abnormal pressure of work and unforeseen additional work, accidents or force majeure, the occurrence of a national emergency) (C1, arts. 3, 6, 14; C30, arts 7, 9; R116, para 11: General Survey of 2018, p34).	It is not regulated in the legal instruments.	0	It (overtime work) covers certain circumstances, specifically relating to needs of production or business of the employer; it is not subject to restrictions under specific cases, such as the need for emergency treatment during the occurrence of natural disasters, accidents or other situations that threaten the life, health or property safety of workers, the need for timely rush-repair of production equipment, transportation lines or public facilities that have gone out of order and as a result affect production and public interests, and other cases stipulated in the laws and regulations. (Labour Law of 1994, arts. 41, 42).	1	It (overtime work) covers certain circumstances, specifically relating to needs of production or business of the employer; it is not subject to restrictions under specific cases, such as the need for emergency treatment during the occurrence of natural disasters, accidents or other situations that threaten the life, health or property safety of workers, the need for timely rush-repair of production equipment, transportation lines or public facilities that have gone out of order and as a result affect production and public interests, and other cases stipulated in the laws and regulations. (Labour Law of 1994, arts. 41, 42).	1
	2.3.4 Material content	a. The limits to hours of overtime work must be reasonable. To decide what should be considered as a "reasonable", the public authority should make a thorough evaluation of the intensity of the respective work, its ability to produce physical or mental fatigue, and of possible negative consequences of fatigue for the respective employee and the public at large (General Survey of 2018, p46);	a. The rate of pay for overtime permitted shall be 150 per cent of the normal wages if work is arranged on Sunday; 200 per cent of the normal wages if work is arranged in statutory holidays (Notice on Wage Issues of Working on Holidays, Extending Working Hours and Performing State and Social Obligations of Workers in the Industry, Mining, Infrastructure Construction, and Transportation Sectors of 1956);	1.5	a. Overtime work is allowed due to needs of production or business after consultation with trade union and workers; the hours of overtime are limited to 1 hour per day in general and three hours at maximum under the conditions that the physical health of workers is guaranteed; the hours of overtime shall not exceed 36 hours per month (Labour Law of 1994, art 41);	1.5	a. Overtime work is allowed due to needs of production or business after consultation with trade union and workers; the hours of overtime are limited to 1 hour per day in general and three hours at maximum under the conditions that the physical health of workers is guaranteed; the hours of overtime shall not exceed 36 hours per month (Labour Law of 1994, art 41);	1.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		b. For each instance of overtime work, the public authority shall fix the maximum of additional hours after the consultation with the organisations of employers and workers (C1, art 6.2; C30, art 7.3); c. The rate of pay for overtime permitted shall not be less than one-quarter times the regular rate (C1, art 6.2; C30, art 7.4).	b. Workers in the enterprises may enjoy overtime pay when they work overtime (Opinions on Wage Benefits for Workers on Overtime, Personal Leave, Sick Leave and Suspension from Work of 1959).		b. The rate of pay for overtime permitted shall not be less than 150 per cent of the normal wages; 200 per cent of the normal wages if work is arranged on off days and no make-up off days can be arranged; 300 per cent of the normal wages if work is arranged in statutory holidays (Labour Law of 1994, art 44). c. No employing unit or individual shall extend the working hours of their workers without authorisation; when the working hours are necessary to extend for the purpose of special case or emergent assignment, it shall be implemented according to the relevant provisions of the State (Regulation on Working Time of 1995, art 6).		b. The rate of pay for overtime permitted shall not be less than 150 per cent of the normal wages; 200 per cent of the normal wages if work is arranged on off days and no make-up off days can be arranged; 300 per cent of the normal wages if work is arranged in statutory holidays (Labour Law of 1994, art 44); c. No employing unit or individual shall extend the working hours of their workers without authorisation; when the working hours are necessary to extend for the purpose of special case or emergent assignment, it shall be implemented according to the relevant provisions of the State (Regulation on Working Time of 1995, art 6).	
Indicator 2.4: Night work	2.4.1 Topic	**Night work arrangement:** it means all work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m. (C171, art 1; R178, para 1)	It is not regulated in the legal instruments.	0	**Night work arrangement:** it is only briefly mentioned in 1988 Regulation on Labour Protection of Female Workers and the 1994 Labour Law of 1994. According to the 1989 Interpretation of the Ministry of Labour on the Issues regarding the <Regulation on the Labour Protection of Female Workers>, night work is defined as work performed from 22 p.m. to 6 a.m.	1	**Night work arrangement:** it is only briefly mentioned in 1988 Regulation on Labour Protection of Female Workers and the 1994 Labour Law of 1994. According to the 1989 Interpretation of the Ministry of Labour on the Issues regarding the <Regulation on the Labour Protection of Female Workers>, night work is defined as work performed from 22 p.m. to 6 a.m.	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.4.2 Aim/ purpose	It is intended to protect night workers' health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately (C171, art 3.1)	It is not regulated in the legal instruments.	0	a. It aims to safeguard to the legitimate rights and interests of female workers , reduce and solve the special difficulties encountered by them during work, protect their health and promote socialist modernisation (Regulation on Labour Protection of Female Workers of 1988, art 1); b. It aims to provide special protection to female workers (Labour Law of 1994, art 58).	0.5	a. It aims to safeguard to the legitimate rights and interests of female workers , reduce and solve the special difficulties encountered by them during work, protect their health and promote socialist modernisation (Regulation on Labour Protection of Female Workers of 1988, art 1); b. It aims to provide special protection to female workers (Labour Law of 1994, art 58).	0.5
	2.4.3 Scope of application	It applies to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport, and inland navigation (C171, art 2; R178, para 2; General Survey of 2018, p158).	It is not regulated in the legal instruments.	0	It applies to female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old (Regulation on Labour Protection of Female Workers of 1988, art 7, Labour Law of 1994, art 61).	0.5	It applies to female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old (Regulation on Labour Protection of Female Workers of 1988, art 7, Labour Law of 1994, art 61).	0.5
	2.4.4 Material content	a. Night work hours contains not less than seven consecutive hours, including the interval from midnight to 5 a.m. (C171, art 1; R178, para 1);	It is not regulated in the legal instruments.	0	a. Night work is defined as work performed from 22 p.m. to 6 a.m. (Interpretation of the Ministry of Labour on the Issues regarding the <Regulation on the Labour Protection of Female Workers> of 1989); b. Female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old are not allowed to work on night shifts (Regulation on Labour Protection of Female Workers of 1988, art 7; Labour Law of 1994, art 61).	0.5	a. Night work is defined as work performed from 22 p.m. to 6 a.m. (Interpretation of the Ministry of Labour on the Issues regarding the <Regulation on the Labour Protection of Female Workers> of 1989); b. Female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old are not allowed to work on night shifts (Regulation on Labour Protection of Female Workers of 1988, art 7; Labour Law of 1994, art 61).	0.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		b. Normal hours of work for night workers should not exceed eight in any 24-hour period in which they perform night work, except in the case of work which includes substantial periods of mere attendance or stand-by, in cases in which alternative working schedules give workers at least equivalent protection over different periods or in cases of exceptional circumstances recognised by collective agreements or failing that by the competent authority (R178, para 4.1); c. The normal hours of work of night workers should generally be less on average than and, in any case, not exceed on average those of workers performing the same work to the same requirements by day in the branch of activity or the undertaking concerned (R178, para 4.2); d. Night workers should benefit to at least to the same extent as other workers from general measures for reducing normal weekly hours of work and increasing days of paid leave (R178, para 4.3);						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		e. Night workers have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work (C171, art 4.1); f. Suitable first-aid facilities shall be made available for workers performing night work (C171, art 5); g. For reasons of health, night workers certified as unfit for night work, shall be transferred to a similar job for which they are fit, and if the transfer is not practicable, they shall be granted the same benefits as other workers who are unable to work or to secure employment (C171, art 6. 1 & 6.2); h. Night workers certified as temporarily unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who were prevented from working for reasons of health (C171, art 6.3) i. Measures shall be taken to ensure that an alternative to night work is available to women workers concerning maternity issues; at any point during pregnancy, once this is known, women night workers who so request should be assigned to day work, as far as practicable (C171, art 7; R178, para 19);						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		j. Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work; the compensation should be additional to the remuneration paid for the same work performed to the same requirements during the day and should respect the principle of equal pay for men and women for the same work, or for work of equal value, and may by agreement be converted into reduced working time (C171, art 8; R178, para 8); k. Where financial compensation for night work is a normal element in a night worker's earnings, it should be included in the calculation of the remuneration of paid annual leave, paid public holidays and other absences that are normally paid as well as in the fixing of social security contributions and benefits (R178, para 9);						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		l. Appropriate social services shall be provided for night workers and, where necessary, for workers performing night work, such as to limit or reduce the time spent by night workers in travelling between their residence and workplace, to avoid or reduce additional travelling expenses for them and to improve their safety when travelling at night, to improve the quality of rest for night workers, and to enable workers performing night work to obtain meals and beverages (C171, art 9; R178, para 13, 14, 15 & 16); m. Before introducing work schedules requiring the services of night workers, the employer shall consult the worker representatives concerned on the details of such schedules and the forms of organisation of night work that are best adapted to the establishment and its personnel as well as on the occupational health measures and social services which are required; In establishments employing night workers this consultation shall take place regularly (C171, art 10.1; R178, para 10);						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		n. In determining the content of the tasks assigned to night workers, account should be taken of the nature of night work and of the effects of environmental factors and forms of work organisation; special attention should be paid to factors such as toxic substances, noise, vibrations and lighting levels and to forms of work organisation involving heavy physical or mental strain; cumulative effects from such factors and forms of work organisation should be avoided or reduced (R178, para 11) o. Overtime work by night workers should be to avoid as far as possible before or after a daily period of work which includes night work; and in occupations involving special hazards or heavy physical or mental strain, no overtime should be performed by night workers before or after a daily period of work which includes night work, except in cases of force majeure or of actual or imminent accident (R178, para 5);						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		p. Where shift work involves night work: in no case should two consecutive full-time shifts be performed, except in cases of force majeure or of actual or imminent accident; a rest period of at least 11 hours between two shifts should be guaranteed as far as possible (R178, para 6); q. Daily periods of work which include night work should include a break or breaks to enable workers to rest and eat; the scheduling and total length of these breaks should take account of the demands placed on workers by the nature of night work (R178, para 7); r. Except in cases of force majeure or of actual or imminent accident, workers should be given reasonable notice of a requirement to perform night work (R178, para 21); s. Workers who have spent a considerable number of years as night workers should be accorded special consideration with respect to opportunities for vacancies that they have the necessary qualifications, and voluntary early or phased retirement where such opportunities exist (R178, para 23 & 24)						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
Indicator 2.5: Part-time work	2.5.1 Topic	**Part-time work:** it means the work in which the normal hours of work are less than comparable full-time work; normal hours of work can be calculated weekly or on average over a given period (C175, art 1; R182, para 2).	It is not regulated in the legal instruments.	0	Part-time work: it is regulated in the 2003 Opinions on the Part-time Work Issues; it refers to a form of employment where payments are calculated on an hourly basis, and workers generally work for no more than 5 hours per day on average and 30 hours per week in total for the same employing unit.	1	Part-time work: it is regulated in the 2007 Labour Contract Law; it refers to a form of employment where payments are calculated on an hourly basis, and workers generally work for no more than 4 hours per day on average and 24 hours per week in total for the same employing unit.	1
	2.5.2 Aim/ purpose	It aims to safeguard productive and freely chosen employment for all workers, to facilitate additional employment opportunities, to ensure protection for part-time workers in the areas of access to employment, working conditions and social security, as well as to assist workers with family responsibilities (C175, Preamble; General Survey of 2018, p201).	It is not regulated in the legal instruments.	0	It aims to meet the flexible working time requirements of employers and the freely chosen employment for workers (Opinions on the Part-time Work Issues of 2003).	0.5	a. It aims to meet the flexible working time requirements of employers and the freely chosen employment for workers (Opinions on the Part-time Work Issues of 2003); b. It aims to improve the labour contract system, clarify the rights and obligations of both parties of labour contracts, protect the legitimate rights and interests of workers, and establish and develop a harmonious and stable labour relationship (Labour Contract Law of 2007, art 1).	0.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	2.5.3 Scope of application	It applies to all part-time workers, excludes wholly or partly particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature, such as temporary, casual or seasonal work, or workers engaged in temporary, seasonal or casual employment relationships, unless they work shorter hours than their full-time colleagues (C175, art 3; R182, para 3; General Survey of 2018, p216).	It is not regulated in the legal instruments.	0	It applies to all workers who belong to a form of part-time employment (Opinions on the Part-time Work Issues of 2003).	0.5	It applies to all workers who belong to a form of part-time employment (Opinions on the Part-time Work Issues of 2003; Labour Contract Law, art 68).	0.5
	2.5.4 Material content	a. Normal hours of work may be calculated weekly or on average over a given period of employment (C175, art 1; R182, para 2) b. Part-workers shall be entitled to the same protection as full-time workers in respect of the right to organise, bargain collectively and act as workers' representatives, occupational safety and health, and discrimination in employment and occupation (C175, art 4);	It is not regulated in the legal instruments.	0	The average working hours of a part-time worker per day shall not exceed 5 hours, and the aggregate working hours per week for the same employer shall not exceed 30 hours (Opinions on the Part-time Work Issues of 2003).	0.5	a. The average working hours of a part-time worker per day shall not exceed 4 hours, and the aggregate working hours per week for the same employer shall not exceed 24 hours (Labour Contract Law, art 68); b. Both parties to part-time employment may reach an oral agreement; a worker who engages in part-time employment may conclude a labour contract with one or more employers, but a labour contract concluded subsequently may not prejudice the performance of a labour contract previously concluded (Labour Contract Law, art 69);	0.5

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		c. Part-time workers shall enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to the basic wage, hours of work, contributions or earnings, or through other methods consistent with national law and practice (C175, art 5 & 6); d. Part-time workers shall also enjoy conditions equivalent to those of comparable full-time workers with regard to maternity protection, termination of employment, paid annual leave and paid public holidays, sick leave, and other forms of leave including paid educational leave, parental leave and leave in cases of illness of a child or another family member of a worker's immediate family, as well as the scheduling of annual leave and work on customary rest days and public holidays (C175, art 7, R182, para 13 & 14); e. Measures shall be taken to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers, provided that the protection described above is ensured (C175, art 9);					c. No probation period may be stipulated by both parties for part-time employment (Labour Contract Law, art 70); d. Either of the parties to part-time employment may inform the other party of the termination of labour at any time, and upon the termination of part-time employment, the employer will pay no economic compensation to the employee (Labour Contract Law, art 71); e. The criteria for the calculation of part-time employment on an hourly basis shall not be lower than the minimum hourly wage prescribed by the government of the place where the employer is located; the maximum remuneration settlement and payment cycle for part-time employment shall not exceed 15 days (Labour Contract Law, art 72).	

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		f. Where appropriate, employers should give consideration to requests by workers for transfer from full-time to part-time work that becomes available in the enterprise, and also for transfer from part-time to full-time work; such transfers shall be voluntary and should not in itself constitute a valid reason for termination of employment (C175, art 10; R182, para 18 & 19).						
Group 3: Care-related leave								
Indicator 3.1: Maternity leave	3.1.1 Topic	**Maternity leave:** it refers to the leave to which a woman is entitled to a continuous period allocated before and after giving birth in accordance with national legislation and practice (C183, art 4; R191, para 1).	**Maternity leave:** it refers to a period of leave for female workers. It is regulated in the 1951 Labour Insurance Regulation (amended in 1953) and the 1955 Notice on Maternity Leave for Female Workers.	1	**Maternity leave:** it is regulated in the 1988 Regulation on Labour Protection of Female Workers, the 1992 Law on the Protection of Women's Rights and Interests, and the 1994 Labour Law.	1	**Maternity leave:** it was regulated in the 1992 Law on the Protection of Women's Rights and Interests, the 1994 Labour Law, and the 2012 Special Regulation on Labour Protection of Female Workers.	1
	3.1.2 Aim/ purpose	It aims to promote equality of all women in the workforce and protect the health and safety of the mother and child, and to recognise the diversity in the economic and social development and of enterprises (C183, Preamble).	It aims to protect the health of paid workers and ease the special difficulties in their livelihood (Labour Insurance Regulation of 1951, art 1).	0.5	a. It aims to safeguard the rights and interests of female workers, reduce and solve the special difficulties encountered by female workers during work due to their physiological characteristics, and protect their health and promote socialist modernisation (Regulation on Labour Protection of Female Workers of 1988, art 1);	1	a. It aims to protect women in the context the equal treatment between women and men (Law on the Protection of Women's Rights and Interests of 1992); b. It aims to provide special protection to female workers (Labour Law of 1994, art 58);	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
					b. It aims to protect women in the context the equal treatment between women and men (Law on the Protection of Women's Rights and Interests of 1992); c. It aims to provide special protection to female workers (Labour Law of 1994, art 58).		c. It aims to reduce and resolve the special difficulties which female workers may have during their work due to their physiological characteristics and to protect their health (Special Regulation on Labour Protection of Female Workers of 2012, art 1).	
	3.1.3 Scope of application	It applies to all employed women, including those in atypical forms of dependent work; exclusions are allowed for limited categories of workers when its application to them would raise special problems of a substantial nature, after consulting workers' and employers' organisations (C183, art 2.1 & 2.2).	a. It applies to state-operated, joint state-private, private and cooperative factories, mines and their subsidiary units and business management organisation, each of which employs more than 100 workers members, as well as each railway, shipping or postal and telecommunications enterprise and its subsidiary units (Labour Insurance of 1951, art 2); b. For those enterprises that are not covered within the scope regulated in article 2 of Labour Insurance of 1951, revised in 1953, the administration or capital of them and their grass-roots trade union committee shall consult with each other and enter into a collective contract on this matter (Labour Insurance of 1951, art 3)	0.5	a. It applies to female workers of all state agencies, mass organisations, enterprises and units (Regulation on Labour Protection of Female Workers of 1988, art 2); b. It applies to female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old (Labour Law of 1994, art 61).	1	a. It applies to female workers of all state organs, enterprises, public institutions, social organisations, individual economic organisations and other social organisations (Special Rules on Labour Protection of Female Workers of 2012, art 2); b. It applies to female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old (Labour Law of 1994, art 61).	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
	3.1.4 Material content	a. A female worker shall be entitled to a period of maternity leave of not less than 14 weeks, including a period of six weeks' compulsory leave after childbirth (C183, art 4.1 & 4.4); b. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without a reduction in any compulsory portion of postnatal leave (C183, art 4.5); c. An extension of maternity leave of to at least 18 weeks should be promoted; an extension of maternity leave should also be made in the event of multiple births; and regarding the extensions, the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth (R191, para 1);	a. A female worker or staff member shall be entitled to a period of maternity leave of 56 days before and after the childbearing and their wages shall be paid as usual during maternity leave (Labour Insurance of 1951, art 16.1; Notice on Maternity Leave for Female Workers of 1955); b. A female worker or staff member who has a miscarriage shall be entitled to a period of leave of 30 days if she is pregnant for less than seven months and her wages shall be paid as usual during maternity leave (Labour Insurance of 1951, art 16.2; Notice on Maternity Leave for Female Workers of 1955);	0.5	a. The maternity leave of female workers shall be 90 days, including 15 days of antenatal leave; an extra maternity leave of 15 days shall be granted in case of dystocia; female workers who have borne more than one child in a single birth shall be granted an extra maternity leave of 15 days for each additional baby borne; female workers who have a miscarriage shall be granted a certain period of maternity leave by the employing unit according to a certificate from a medical department (Regulation on Labour Protection of Female Workers of 1988, art 8);	0.5	a. The maternity leave of female workers shall be 98 days, including 15 days of antenatal leave. An extra maternity leave of 15 days shall be granted in case of dystocia. Female workers who bear more than one baby in a single birth shall be granted an extra maternity leave of 15 days for each additional baby borne. Female workers who have a miscarriage before the fourth month of pregnancy shall be granted 15 days of maternity leave; and female workers who have a miscarriage in or after the fourth month of pregnancy shall be granted 42 days of maternity leave (Special Regulation on Labour Protection of Female Workers of 2012, art 7);	1

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		d. Measures should be taken to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child (C183, art 3; R191, para 6); e. A woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy (R191, para 6.6); f. On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth (C183, art 5); g. Cash benefits shall be provided to female workers, and such benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living, and which shall be no less than two-thirds of her previous earnings or a comparable amount (C183, art 6);	c. An extension of maternity leave of 14 days shall be entitled to a female worker or staff member in the event of a difficult delivery or twin births (Labour Insurance of 1951, art 16.3; Notice on Maternity Leave for Female Workers of 1955); d. If a female worker or staff member is unable to work at the expiration of her maternity leave, she shall be dealt with in accordance with the provisions for the remuneration for diseases after being certified by a doctor (Labour Insurance of 1951, art 16.5; Notice on Maternity Leave for Female Workers of 1955).		b. Female workers who need to feed a baby under one year of age shall be provided with a thirty-minute break for feeding for two times; each feeding break of female workers who have borne more than one child in a single birth shall be extended by 30 minutes for each additional baby borne; the two feeding breaks can be combined; the time spent on feeding and the time spent on route to and from the place of feeding inside the workplace shall be considered as working hours (Regulation on Labour Protection of Female Workers of 1988, art 9); c. During the pregnancy of female workers, the employer shall not arrange them to engage in work involving physical work of the third degree of intensity as specified by the state or any kind of work to be avoided during pregnancy and may not extend their work hours beyond the usual working day. For those who are no longer competent at their original work, the volume of work shall be reduced, or other work shall be arranged, according to a certificate from a medical department.		b. No employer shall prolong labour hours or arrange night-shift labour for female workers who have to feed a baby under the age of one. Employers shall, within the working hours every day, arrange one hour of feeding time for female employees during lactation period; and female workers who have borne more than one baby in a single birth shall be granted an extra feeding time of one hour for each additional baby. (Special Regulation on Labour Protection of Female Workers of 2012, art 9); c. No employer shall reduce the wages of, dismiss, or rescind the labour or employment contract with a female worker due to pregnancy, childbirth or breastfeeding (Special Regulation on Labour Protection of Female Workers of 2012, art 5);	

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		h. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave, and a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave; the burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer (C183, art 8); i. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breast-feed her child, and these breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly (C83, art 10).			Generally, no night-shift work may be arranged for female workers in or past the seventh month of pregnancy and they shall be given certain rest periods during their working hours. The time spent by pregnant female workers on antenatal examination shall be considered as working hours (Regulation on Labour Protection of Female Workers of 1988, art 7); d. During the pregnancy, maternity leave and nursing period of female workers, their basic salaries may not be reduced, and their labour contracts cannot be terminated (Regulation on Labour Protection of Female Workers of 1988, art 4); e. Women shall be under special protection during the menstrual period, pregnancy, obstetrical period and nursing period (Law on the Protection of Women's Rights and Interests of 1992, art 26); f. Female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old are not allowed to work on night shifts (Labour Law of 1994, art 61).		d. Where a female work is no longer competent at her original labour during the period of pregnancy, the employer shall, based on the certificate of a medical institution, reduce the volume of work, or arrange other work that she is competent at. The employer shall not prolong labour hours or arrange night-shift labour for female work in or after the seventh month of pregnancy and shall give certain rest time during their work hours. The time spent by pregnant female work on antenatal examination during labour hours shall be included in working hours (Special Regulation on Labour Protection of Female Workers of 2012, art 6); e. Female workers who are seven or more months pregnant, or who are breast-feeding their babies of less than one year old are not allowed to work on night shifts (Labour Law of 1994, art 61).	

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
Indicator 3.2: Parental leave	3.2.1 Topic	**Parental leave:** it refers to the leave during a period following the expiry of maternity leave (R191, para 10.3; R165 para 22.1).	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0
	3.2.2 Aim or purpose	It aims to promote equality of opportunity and treatment in employment for men and women workers with family responsibilities as well as between such workers and other workers (C156, Preamble; R165, Preamble; General Survey of 1993, p9)	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0
	3.2.3 Personal or material scopes	It applies to all branches of economic activity and all categories of workers with responsibilities in relation to their dependent children (C156, art 1.1 & 2).	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0
	3.2.4 Material contents	a. The employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave, without their relinquishing employment and with their employment rights protected (R191, para 10.3; R165, para 22.1);	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0	It is not regulated in the legal instruments.	0

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		b. The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits and the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any other manner consistent with national practice (R191, para 10.4; R165, para 22.2); c. It should be possible for the employed mother or the employed father in relation to a dependent child to obtain leave of absence in the case of its illness (R165, para 23.2); d. All measures compatible with national conditions and possibilities should be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities, such as vocational training facilities and paid educational leave arrangements to use such facilities (R165, para 12 & 13);						

Legal indicators		Benchmarks	China: Period 1 (1949-1978)		China: Period 2 (1978-2007)		China: Period 3 (2008-2020)	
			Substantive aspects/explanation	Score	Substantive aspects/explanation	Score	Substantive aspects/explanation	Score
		e. Where national law and practice provide for adoption, adoptive parents should have access to the system of protection, especially regarding leave, benefits, and employment protection (R191, para 10.5).						

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Summary

Achieving decent work in China
A case study of decent working time

This thesis is about achieving decent work in China. The word 'achieving' underlines that China is still in the process of securing this aim. The main research question is therefore: to what extent is China achieving decent work? Because decent work is a very broad subject, it is beyond the capacity of this thesis to analyse every aspect in detail. Therefore, a case study is conducted representing a core aspect of decent work, namely decent working time. Hence, the main research question is addressed by the following five sub-questions:

1. How did the concept of decent work take shape in the International Labour Organization (ILO)?
2. What is the definition of decent work?
3. What is the definition of decent working time?
4. What analytical frameworks are needed to analyse the achievement of decent working time?
5. To what extent is China achieving decent working time?

As to the first question, the thesis finds that the words 'decent work' as such were officially introduced by the ILO in 1999, however, the basics of it, such as social justice, human rights, and social concerns, date back to long before 1999. Nonetheless, it is since 1999 that the ILO uses the concept of decent work to advance its activities and as the contemporary vision of its 'personality', embracing the essence of the Organisation's mission and its four areas of work, namely: rights at work; employment; social protection; and social dialogue. Building on the historical development of the concept of decent work, the thesis continues with a comprehensive analysis of the doctrinal literature, to formulate a working definition of decent work. The findings of the analysis lead to three major implications for a better understanding of the concept of decent work. First, decent work can be interpreted as a multi-faceted subject that covers all labour-related issues. Second, decent work can be interpreted as a development goal with a floor but no ceiling. Third, decent work has been interpreted and operationalised as a framework to measure its achievement. Based on these indications and for the further purpose of this research, decent work is defined as a development goal with four dimensions (i.e., rights at work, employment, social protection, and social dialogue) that can be achieved by meeting international labour standards set by the ILO.

The third question addressed in the thesis concerns the definition of decent working time, which is needed to build the case study to gain more

detailed insights into and understanding of the achievement of decent work by China. The literature study on this topic revealed that the ILO has defined decent working time with five interrelated dimensions, namely: healthy working time; family-friendly working time; gender equality through working time; productive working time; and choice and influence regarding working time. For the purpose of this research, the interpretation of decent working time has been subdivided into substantive and procedural aspects. The substantive aspects refer to the concrete working time standards contained in the legal instruments that directly determine the terms and conditions of labour, which are related to the dimensions of healthy working time, family-friendly working time, and gender equality through working time. The procedural aspects refer to the processes by which the desired working time standards are formulated and enforced, which are related to the dimension of choice and influence regarding working time.

To assess China's achievement of decent working time, the thesis then continues with the formulation of two analytical frameworks. The first analytical framework enables the assessment of the substantive aspects of decent working time, and is based on a set of benchmarks derived from the ILO's labour standards which enjoy universal recognition as the minimum standards in the world of work and as such what is expected by an individual country, *in casu* China, implementing those standards. Based on the benchmarks, China is considered to be achieving decent working time when it has set similar-to-higher standards than the ILO benchmarks. To assess China's progress towards the substantive aspects of decent working time, a comprehensive historical examination in three periods has been conducted: 1949-1978 (pre-transition period); 1979-2007 (transition period); and 2008-2020 (post-transition period). As to be expected, growing with the variety of working time aspects, China's working time standards have developed with the ILO's benchmarks providing similar-to-higher standards. However, on some substantive aspects, such as paid annual leave, night work, part-time work, and parental leave, China is persistently failing to meet the ILO benchmarks.

To assess China's procedural aspects of decent working time, an analytical framework is developed based on existing approaches to the making and enforcement of working time standards as found in the doctrinal literature. The analytical framework formulates four ideal-type configurations, each representing the ideal combinations of regulatory levels and enforcement mechanisms a given country may use to set its working time standards. The configurations are: mandated; centralised negotiated; decentralised negotiated; and unilateral. The idea behind the analyses of the framework is that the closer China comes to a certain ideal-type configuration, the more effective it is presumed to be in setting and enforcing the desired standards in the real world. The closer China gets to an ideal-type configuration, the more 'decent' it is regarding the procedural aspects of working time. For the assessment of China's progress on the procedural aspects of decent working

time, again a comprehensive historical analysis, following the same three periods, has been conducted. The analysis shows that China has undergone serious changes in regulatory styles, but seems to have stabilised since 1994 at a form that comes closest to a mandated configuration which allocates strong roles to statutory laws for the regulation of working time standards and to the labour inspectorate for the enforcement of those standards. However, the potential impact of China's mandated configuration is constrained by several practical limitations, particularly with regard to the labour inspection system.

By bringing the substantive and procedural aspects of decent working time together, an overall analysis of achieving decent working time in China can be drawn. The findings show that the development goal of decent working time has not been achieved in China. The developments between the five dimensions are unbalanced. While great efforts have been made to protect workers' health and safety and enhance working time procedural configurations, less attention has been paid to the dimensions of family-friendly working time, and gender equality, which together have a negative impact on productive working time. For the achievement of decent work by China, the case study indicates that there are some significant developments. Particularly, many labour standards with regard to workers' health and safety have markedly been intensified and increased, as have the making and enforcement of Chinese labour laws, which both are signals that China has created an environment receptive to further reform and development on its path to achieving decent work.

Samenvatting (Summary in Dutch)

De realisatie van fatsoenlijke arbeid in China
Via een casestudie over fatsoenlijke arbeidstijden

Deze dissertatie gaat over het realiseren van fatsoenlijke arbeid in China. Het woord 'realiseren' onderstreept dat China in een proces is om dit doel te bereiken. De belangrijkste onderzoeksvraag is daarom: In hoeverre is er sprake van fatsoenlijke arbeid in China? Omdat fatsoenlijke arbeid een zeer breed onderwerp is, kan dit promotieonderzoek niet elk aspect daarvan in detail behandelen. Daarom wordt de hoofdvraag onderzocht aan de hand van een casestudy op een kernonderdeel van fatsoenlijke arbeid, namelijk fatsoenlijke arbeidstijden. De hoofdonderzoeksvraag wordt dan ook beantwoord aan de hand van de volgende vijf deelvragen:

1. Hoe heeft het concept fatsoenlijke arbeid vorm gekregen binnen de Internationale Arbeidsorganisatie (IAO)?
2. Wat is de definitie van fatsoenlijke arbeid?
3. Wat is de definitie van fatsoenlijke arbeidstijden?
4. Welke analytische kaders zijn nodig om het realiseren van fatsoenlijke arbeidstijden te analyseren?
5. In hoeverre is er in China sprake van fatsoenlijke arbeidstijden?

Wat de eerste vraag betreft, is de conclusie dat de woorden "fatsoenlijke arbeid" als zodanig officieel door de IAO werden geïntroduceerd in 1999, maar dat de grondbeginselen ervan, zoals sociale rechtvaardigheid, mensenrechten en sociale zorgen, dateren van lange tijd daarvoor. Niettemin gebruikt de IAO sinds 1999 het concept 'fatsoenlijke arbeid' om haar activiteiten te bevorderen en als hedendaagse visie op haar 'persoonlijkheid', die de essentie van de missie van de IAO en haar vier werkterreinen omvat (arbeidsrechten; werkgelegenheid; sociale bescherming; en sociale dialoog). Voortbouwend op de historische ontwikkeling van het concept fatsoenlijke arbeid, vervolgt het onderzoek met een uitgebreide analyse van de doctrine met als doel een werkdefinitie van fatsoenlijke arbeid te formuleren. De bevindingen van de analyse leiden tot drie belangrijke implicaties voor een beter begrip van fatsoenlijke arbeid. Ten eerste kan fatsoenlijke arbeid worden opgevat als een veelzijdig onderwerp dat alle arbeidsgerelateerde kwesties omvat. Ten tweede kan fatsoenlijke arbeid worden geïnterpreteerd als een ontwikkelingsdoelstelling met een ondergrens, maar zonder bovengrens aan wat bereikt dient te worden. Ten derde is fatsoenlijke arbeid geïnterpreteerd en geoperationaliseerd als een kader om het realiseren ervan te meten. In navolging van deze implicaties, is voor het verdere doel van dit onderzoek fatsoenlijke arbeid gedefinieerd als 'een ontwikkelingsdoel met vier dimensies (arbeidsrechten, werkgelegenheid, sociale bescherming en

sociale dialoog) dat kan worden gerealiseerd door te voldoen aan de door de IAO vastgestelde internationale arbeidsnormen.'

De derde vraag die in het onderzoek aan de orde wordt gesteld betreft de definitie van fatsoenlijke arbeidstijd. Uit de literatuurstudie over dit onderwerp is gebleken dat de IAO fatsoenlijke arbeidstijd heeft gedefinieerd in vijf onderling samenhangende dimensies, namelijk: gezonde arbeidstijd; arbeidstijd die rekening houdt met de balans tussen arbeid en het privéleven; gelijkheid van mannen en vrouwen door middel van arbeidstijd; productieve arbeidstijd; en keuze en invloed over de arbeidstijd. Ten behoeve van dit onderzoek is de interpretatie van fatsoenlijke arbeidstijd onderverdeeld in inhoudelijke en procedurele aspecten. De inhoudelijke aspecten verwijzen naar de concrete arbeidstijdnormen in de rechtsinstrumenten die rechtstreeks de arbeidsvoorwaarden bepalen en die verband houden met de dimensies gezonde arbeidstijd, werk-privé arbeidstijd, en gendergelijkheid door middel van arbeidstijd. De procedurele aspecten hebben betrekking op de processen waarmee de gewenste arbeidstijdnormen worden geformuleerd en gehandhaafd en houden dus verband met de dimensie keuze en invloed over de arbeidstijd.

Om te beoordelen in hoeverre er in China sprake is van fatsoenlijke arbeidstijd, zijn er twee analytische kaders uitgewerkt. Het eerste analytische kader maakt de beoordeling mogelijk van de inhoudelijke aspecten van fatsoenlijke arbeidstijden. Dit kader is gebaseerd op een aantal benchmarks die zijn afgeleid van de arbeidsnormen van de IAO. Deze normen zijn universeel erkend als leidend en geven als zodanig aan wat van een individueel land, zoals *in casu* China, wordt verwacht als het die normen ten uitvoer legt. Op basis van deze benchmarks wordt China geacht fatsoenlijke arbeidstijden te realiseren wanneer het in de nationale wet- en regelgeving soortgelijke tot hogere normen heeft vastgelegd dan de IAO heeft gedaan. Om de voortgang in het bereiken van substantiële aspecten van fatsoenlijke arbeidstijden door China te beoordelen, is een uitgebreid historisch onderzoek over drie perioden uitgevoerd: 1949-1978 (pre-transitieperiode); 1979-2007 (overgangsperiode); en 2008-2020 (post-transitieperiode). Zoals te verwachten viel, hebben de Chinese arbeidstijdnormen zich op redelijk gelijke voet ontwikkeld met de benchmarks van de IAO. Ten aanzien van de meeste aspecten heeft China vergelijkbare tot hogere normen gesteld, maar voor een aantal belangrijke aspecten, zoals betaalde jaarlijkse vakantie, nachtwerk, deeltijdwerk en ouderschapsverlof, blijft China opvallend achter op de IAO-Benchmarks.

Ter beoordeling van de procedurele aspecten van fatsoenlijke arbeidstijden in China is een analytisch kader ontwikkeld op basis van bestaande benaderingen voor het opstellen en handhaven van normen op het gebied van arbeidstijden. Het analytisch kader formuleert vier ideale configuraties die elk de ideale combinaties van regelgevingsniveaus en handhavingsmechanismen vertegenwoordigen die een bepaald land kan gebruiken om de normen op het gebeid van arbeidstijden vast te stellen. De configuraties zijn: gemandateerd; gecentraliseerd onderhandeld; gedecentraliseerd

onderhandeld; en unilateraal. Het idee achter de analyses van het kader is dat hoe dichter China bij een bepaalde configuratie van het ideale type komt, hoe doeltreffender het verondersteld wordt de gewenste normen in de echte wereld van arbeid te kunnen vaststellen en handhaven. Hoe dichter China bij een ideale configuratie komt, hoe 'fatsoenlijker' de procedurele aspecten van arbeidstijd zijn. Voor de beoordeling van de vooruitgang van China met betrekking tot de procedurele aspecten van fatsoenlijke arbeidstijd is opnieuw een uitgebreide historische analyse uitgevoerd, waarbij dezelfde drie perioden zijn gevolgd. Uit de analyse blijkt dat China serieuze wijzigingen heeft doorgemaakt in de wijze waarop het de arbeidstijdennormen reguleerde en handhaafde en dat dit sinds 1994 lijkt te zijn gestabiliseerd op een vorm die dicht in de buurt komt van een gemandateerde configuratie. De gemandateerde configuratie kent voor de normering van arbeidstijden een sterke rol toe aan wetten in formele en materiele zin en aan de arbeidsinspectie voor de handhaving van die normen. Het potentieel positieve effect van het feit dat China's configuratie dicht bij de ideaaltype van de gemandateerde configuratie komt, wordt echter beperkt door een aantal praktische beperkingen, waaronder een gebrekkig systeem van de arbeidsinspectie.

Door de bevindingen van de inhoudelijke en procedurele aspecten van fatsoenlijke arbeidstijden samen te brengen, wordt een algemene analyse gemaakt in hoeverre er sprake is van fatsoenlijke arbeidstijden in China. Uit de bevindingen blijkt dat de ontwikkelingsdoelstelling van fatsoenlijke arbeidstijden niet is gerealiseerd door China. De ontwikkelingen op het gebeid van arbeidstijden ten aanzien van de vijf dimensies zijn onevenwichtig. Terwijl grote inspanningen zijn geleverd om de gezondheid en veiligheid van de werknemers te beschermen en de procedurele configuraties voor de normering van arbeidstijden te verbeteren, is minder aandacht besteed aan de dimensies die zien op arbeidstijden die rekening houden met de balans tussen werk en privé en die gendergelijkheid bevorderen. De laatste twee hebben een negatief effect hebben op de vijfde dimensie – productieve arbeidstijd. Voor het realiseren van fatsoenlijk werk door China valt uit de casestudy een aantal interessante ontwikkelingen te halen. Hoewel er nog veel te verbeteren valt, zijn er ook belangrijke stappen voorwaarts gezet. Arbeidsnormen, vooral met betrekking tot de gezondheid en veiligheid van werknemers, zijn in de loop der tijd aanzienlijk aangescherpt en uitgebreid, en er is ook veel verbeterd ten aanzien van de procedurele aspecten die gemoeid zijn met de regulering en handhaving van de Chinese arbeidswetgeving. Beide kunnen worden opgevat als signalen dat China een omgeving heeft gecreëerd die openstaat voor verdere hervormingen en ontwikkeling op zijn weg naar het realiseren van fatsoenlijke arbeid.

Curriculum Vitae

Weidong Zhang is a Ph.D. Candidate at Leiden Law School of Leiden University. Before he came to the Netherlands, he studied political science and law at the Southeast University in China, where he obtained a Bachelor of Law and a Master of Public Administration both with distinction, and where he was also awarded with the Honour of 'The Best Graduate'. In March 2017, he started to work as a Ph.D. researcher at the Leiden Law School on the topic of the International Labour Organization's decent work and decent working time under the supervision of prof. dr. Beryl ter Haar and prof. dr. Guus Heerma van Voss. He was a visiting researcher to the International Labour Organization in Geneva, Switzerland and the Institute for Labour Law and Industrial Relations in the European Union of Trier University, Germany. He also conducted an internship at the Beijing Arbitration Commission for Labour and Personnel Disputes, where he gained practical experience on China's labour dispute resolution. He has been involved in several projects sponsored by the Chinese Ministry of Human Resources and Social Security, the Scientific Research Foundation of Jiangsu Province, and the Nanjing Municipal Government. He presented his research at several international conferences, such as the 18th World Congress of the International Labour and Employment Relations Association, the 5th bi-annual Conference of the Labour Law Research Network, and the 15th Annual Conference of the European China Law Studies Association.

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