

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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Reflections on Labour Law in China

John Chen

Law is not a neutral instrument of governance. There are literally countless histories of injustice – whether in a society with strong democratic institutions or at the hands of an authoritarian regime that does not recognise the paramount importance of due process – that bear bitter testament to the malleability of legal systems throughout the world.¹

This paper examines labour law in China from the perspective that progressive advances in the statutory rights of working people are not bestowed on us through benevolence or even in the name of good governance. On the contrary, they are won via collective action on our part and a fear of wider social unrest on the part of our rulers. To be sure, ruling classes are rarely unified monolithic entities. History is littered with examples of this or that faction of government or ruling party taking up working class demands for their own political reasons. But this does not alter a basic premise: the law is not neutral and to treat it as such is to ignore the record of the labour movement itself.



The rule of law in perspective

The law is ultimately an expression of power. Space precludes us from tracing and discussing the source and development of this power. Governments enact laws, and just as importantly remove them from the statute book. When China's National People's Congress (NPC) approved a revised Constitution in 1982, it arbitrarily deleted the most important weapon that workers have: the right to strike. The USA Taft-Hartley Act effectively forces workers to suspend strike action for an eighty-day 'cooling-off period'. People who have helped to organise a strike will tell you that such postponements, often dressed up in the language of 'common sense' and 'democratic process', are more often than not the death knell for effective collective action.² Proposed – and hotly contested – legislation on the issue of national security in Hong Kong places groups and individuals that provide solidarity for independent trade labour organisations in China in danger of prosecution for 'subversion'. One Chinese labour activist has already said he will have no choice but to operate illegally if he is to continue his work.³

Clearly then, the law is not separate and unbiased from daily international, national, and local affairs. On the contrary, it is formulated, interpreted, fought for, and resisted by real people with conflicting interests and allegiances. This is especially true in the area of labour law, which regulates – though by no means to the exclusion of all other law, a sphere of human activity absolutely central to our existence; a sphere where the interests of those involved are not only sharply antagonistic, but have the capacity to bring about dramatic, even revolutionary, social change.⁴

Labour law governs the process of 'work' that produces 'things'. In industrial societies, remuneration for participation in 'work' is central. Except in instances of forced labour and slavery, both of which are illegal under international labour law and most domestic legal regimes, remuneration comes in the form of wages to the worker and profits to the employer.⁵ Conflict of interest over the value of remuneration are a component of urban existence over which employer and employee can find themselves in a kind of 'endless war' – a struggle referred to by Marx and Engels as 'class struggle' and one which, in their view, formed '[T]he history of all hitherto

existing society...'.⁶ The global experience of the previous two centuries of industrialisation demonstrates that when left unrestrained, employers as a *class* will make fearful use of what Human Rights Watch (HRW) have called the 'raw power of the employer'.⁷ In response to such power, millions of working people have taken extraordinary risks to organise trade unions and other labour associations to redress and limit that power, a struggle that frequently leads to new regulations and laws. Hundreds of thousands of working class people and supporters have died violent – and often anonymous – deaths on the battlefields of this 'endless war'. For example, just eight years after China joined the International Labour Organisation (ILO) in 1919, thousands of labour organisers and worker activists were massacred in the streets of Shanghai on the orders of Kuomintang leader Chiang Kai-shek. It is in their memory that this far from comprehensive survey of Chinese labour law is conducted.

The field of labour law in China demonstrates how closely politics, ideology, economics and law are intertwined. There is an assumption that nationalised or state-owned industry equates to 'socialism'.⁸ The consequence of this assumption has been that laws and regulations pertaining to state owned enterprises (SOE) have been markedly different – and the standards higher – than those governing other types of enterprise. Historically, the benefits won by workers in large SOEs have been consistently better than those of workers in smaller SOEs and collectively owned enterprises (COE).⁹ Such divisions and differentiation were originally included in earlier drafts of China's first national Labour Law, finally passed – following a decade of discussion and thirty drafts – by the NPC in 1994. In the 1983 draft for example, labour was divided into four categories: in SOEs; in COEs; in rural collective enterprises; and self-employed workers. The point here is that these divisions, which have distinguished 'socialist' government in one form or another in China since 1949 have no particular advantage for the Chinese working class as a whole, which the Chinese Communist Party (CCP) still claims to represent.¹⁰ On the other hand, the divisions have been vital for the government's project of rebuilding and developing a modern industrial nation capable of producing 'things' on the same scale and level of efficiency as industrialised nations.

Ideology and law

‘The ideas of the ruling class are in every epoch the ruling ideas, i.e. the class which is the ruling material force of society, is at the same time its ruling intellectual force. The class that has the means of material production at its disposal has control at the same time over the means of mental production, so ... the ideas of those who lack the means of mental production are subject to it.’¹¹

If we accept Marx’s classic explanation of the source of ideas in society, our struggle to understand the use – and abuse or distortion – of ideology and its relation to law becomes a little easier. Until recently, China’s ruling class has seen fit to equate its organisation of the production of ‘things’ with socialism, albeit ‘with Chinese characteristics’. Twenty-five years of market reform have forced a rethink. No degree of theoretical acrobatics can alter the fact that at least 30 percent of gross national product is currently produced by the private sector and this has had a dramatic impact on the legal system. The ‘socialist legality’ that underpinned much of China’s law has been usurped by another concept more acceptable to the forces of globalisation: the ‘rule of law’. Labour activists, especially those struggling under authoritarian regimes, must again be aware of the pitfalls: ‘[O]n the one hand [laws] may appear just and reasonable but in fact clothe a reality of injustice and oppression and ... on the other hand, rulers who make use of legitimating devices such as the rule of law may have to pay the price of letting their powers be fettered and constrained at least to some extent by legal rules and procedures. Such constraints are by no means worthless. In minimising possible abuses of naked arbitrary power, they do achieve an ‘unqualified human good’.’¹²

For the sake of brevity a reductionist definition: the rule of law is no more and no less than ‘a legitimating device’. The experience of workers struggling to uphold and extend their rights has been at times to refer to and champion it, and at other times to discard it completely.

The current scenario: theoretical complexities and real crisis

In theory, the Constitution is the supreme legal authority in China and no law may violate it. In labour struggles it has been the point of reference for activists and govern-

ment alike. In trying to legitimise their struggles and uphold their personal security activists frequently refer to Article 35 of the Constitution which states, ‘[C]itizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.’ But as we hope has been made clear, labour law operates within a particular political and ideological context. The ‘naked arbitrary power’ quoted above comes in the form of the CCP which upholds what is effectively a one-party state in which, according to Article 1 of the Constitution: ‘[T]he People’s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants’. A theoretical conundrum emerges that has a direct impact on workers’ legal rights. Workers in struggle point to Article 35 of the Constitution while the authorities respond with Article 1 and justify arrests and imprisonment on the grounds that strikes and other forms of large-scale industrial arrest threaten the existence of the workers’ state and, more recently, to the implementation of the rule of law.

Clarification lies in practice. If nothing else, the *reality* of the last twenty-five years of market-orientated reform has at least undeceived labour relations and diminished the legitimacy of the constitutional rhetoric, even as the CCP continues to try and protect its historical role as liberator. The reality is so stark – and labour unrest so widespread – that the official labour media can no longer ignore it: ‘Cruel exploitation must of necessity lead to worker resistance. Don’t the strikes and appeals to higher authorities one after the other in recent years actually demonstrate a crisis in the conflict between labour and capital?’¹³

There are perhaps two plausible conclusions to be drawn from this short and almost prophetic editorial extract. First: that labour relations in China are in crisis and that labour law will play a central role in getting China through it. Second: that there is an underlying political crisis of legitimacy that cannot help but impact on labour relations.

Eight years later, the crisis is worse. In spring 2002, the contradictions raised by economic reform along with the inadequacy of legal reform were encapsulated by the workers of the bankrupt Liaoyang City Ferroalloy Factory – albeit in the politically correct language that has

evolved around the Chinese tradition of petitioning higher authority. In an open letter from the workers to Jiang Zemin, the implausibility of Article One of the Constitution was clearly revealed:

‘The vast majority of workers have been driven beyond the limits of forbearance by this group of people [Liaoyang Ferroalloy Factory management] who have colluded together with Liaoyang government leaders in a swamp of corruption to shore up their own interests, maintain their official jobs and positions, and ignore both party discipline and national laws. As such, we six thousand workers eagerly wait your being able to find time in your busy schedule to give us a clear answer and shed light on the confusion in our hearts. We do not have the capacity to take the Liaoyang government through the courts, and we currently face a future of being barely able to put food on our table. Where would we get the money? It would be prohibitively expensive and even if we had the funds, it would be impossible to win such a case.’¹⁴

The language of labour struggles continually throws challenges to the legitimacy of the Constitution and laws such as the Trade Union Law, which contradicts it. A dispute against privatisation at the Beijing Measuring and Cutting Tools Factory highlighted the problem of the All China Federation of Trade Union’s (ACFTU) obedience to the CCP and its policy of restructuring SOEs:

‘At a 250-strong picket organised by the workers on 14 August 2001, the strikers heckled the factory’s ‘union’ chairperson, Zhang Guoliang, as he crossed the picket line, calling him a ‘collaborator’. Zhang was quick to point out the pressures facing the enterprise telling a reporter, ‘[T]his is the road China must go down as we convert SOEs to stockholding companies. We’re just doing what you in the West have urged us to do.’¹⁵

Liberation: The People’s Republic

While China did not have a national unified labour law until 1 January 1995, the first set of formal nation-wide regulations in the new republic was entitled Model Outline of Intra-Enterprise Discipline Rules (MOIDR), in-

roduced in 1953. As the title of the regulations suggests, these were more a set of rules aimed at enforcing industrial peace and increasing production than a definition of workers’ legal rights. Reminiscent of a foreman’s charter, the new regulations were the CCP’s response to industrial unrest and worker resistance to an increased pace of production, especially after the first Five Year Plan in 1953.¹⁶

Emanating from the aforementioned assumptions around the ‘socialist’ nature of China’s SOEs, there remains a notion across the political spectrum of Maoists, reformers, dissidents, and economists from powerful institutions such as the World Bank (WB) and International Monetary Fund (IMF) – that China’s urban workers cashed in their tradition of militancy in exchange for job security and high levels of welfare, known as the ‘iron rice bowl’.¹⁷ While space precludes challenging this myth of passivity, paramount leader Deng Xiaoping launched reforms in 1979 signalling the beginning of the end of the so-called iron rice bowl’s much overstated benefits.¹⁸ A comparison of the MOIDR and a typical factory rulebook of the type that plagues the lives of migrant workers in today’s Special Economic Zones (SEZ) should help to dispel any nostalgia concerning the new ‘socialist’ republic. Article 17 of the former discusses punctuality:

‘Late arrival or early departure without good reason, or playing around or sitting idle during working hours shall be subject to proper punishment or dismissal as the case may require.’

And Article 21 gave workers – the ‘masters of the enterprise’ – a stern take on quality control:

‘If due to non-observance of working procedures or irresponsibility, rejects are turned out or any facilities are damaged, the worker or staff member shall be held responsible for part or whole payment of compensation for the material loss as conditions may require, whether he is punished or not. The amount of compensation shall be decided by the management and deducted from his wages until it is completely paid up, but the maximum amount to be deducted each time must not exceed 30 percent of his actual monthly wages.’¹⁹

Fifty years later in the ‘capitalist’ SEZ Shenzhen, Rule 2 from the ‘Hygiene Charter’ of a factory producing for Disney and Mattel takes a similarly high-handed

line with its migrant worker employees and again reflects management preoccupation with fines and punishments:

'Keep the toilets clean. It is imperative you keep the toilets clean, cherish the facilities, obey management and adhere to regulations. If you damage the facilities, you will be required to compensate according to the cost. If you intentionally damage them, then severe punishment will result. If you violate any of the following items whatsoever ... you will be fined Rmb5-50. In addition you will be required to clean the toilets for a day [the time for which will be arranged by the general services section]. Disgusting violations will be punished by expulsion from the factory.'²⁰

These parallels are intended to help provide labour activists and researchers with an alternative view on the simplistic tautologies that grace the international media and much academic discourse alike. Although the parallels are striking, to take them too literally would be to underestimate the complexities of post-liberation China. The 1950s saw unprecedented improvements in almost all aspects of life for the majority of Chinese people and the era up until 1958 has been described as a 'golden age' of law and legal system building by legal scholars.²¹ Few would dispute that the 1949 revolution represented progress. But this was no workers' paradise and labour law and regulations of the time were primarily concerned with policing and increasing production. Moreover the major strike waves of 1951-52 and 1955-56 were very much rooted in the 'low wage, high welfare' system that formed the basis of what became an intermittent and uneasy compromise between the state and the urban working class.

By 1957, political tensions within the CCP leadership, continued labour unrest, and the split with the USSR resulted in cathartic political campaigns, the fallout of which ruined lives: the Great Leap Forward of 1958 and the famine years that it led to; the Socialist Education Campaign of 1963; and the Great People's Cultural Revolution during which China descended into chaos that was curtailed by quasi-military rule from 1969 onwards.

While the period from the Cultural Revolution to the start of the reform period is relevant to the current condition of China's labour law, the period is too complex to

do justice to in this essay. However, a useful generalisation might be that the roots of the last twenty years of activity in labour legislation in China lie in the almost total disregard for it during the Cultural Revolution.

State unions then and now

The fifties

Constitutionally and legally, the ACFTU was required to enforce the MOIDR regulations. As such, it is no surprise that workers complained at the organisation's seventh congress in 1953 that China's state-controlled unions had 'lost their guts'.²² Conscious of the enormous potential of worker unrest to challenge the stability and legitimacy of the new regime, the CCP moved extremely quickly to monopolise working class organisation around the ACFTU. Within months of declaring the establishment of the People's Republic of China on 1 October 1949, the Trade Union Law was promulgated.

Membership of a trade union came with the job if a worker were employed in a SOE in a city.²³ As China embarked on a programme of nationalisation during the mid-50s, union membership increased accordingly. In 1945 membership was 800,000, in 1955, 13 million, and by 1958, 16 million.²⁴ This extraordinary growth was not based on the CCP's militant model of bottom-up labour organising in cities like Shanghai in the years preceding liberation. On the contrary, it was a top-down management backed policy that aimed at establishing union branches and organisations in existing SOEs, as well as newly established and newly nationalised SOEs.

The practical contradictions inherent in such top down organising led to accusations of gutlessness, even collaboration. Many sincere trade union cadres at shop floor level complained at the difficult position they found themselves in. One cadre complained: "I am told that I should study the problems with the leadership not with the masses, and that to talk with the masses means 'becoming the tail-end of the masses' ... I am regarded as a trouble-making Party member."²⁵

During the early and mid-1950s, debates raged over the question of trade union autonomy from the party, and leaders at all levels of the ACFTU who demonstrated signs of supporting worker militancy were removed. The Trade Union Law had made no concessions to trade

union sovereignty. Unions were to: '[E]ducate and organise the masses of workers and staff members to support the law and regulations of the People's Government ... to adopt a new attitude to labour, to observe labour discipline, to organise labour emulation campaigns and other production movements in order to ensure the fulfilment of the production plans ... to protect public property ... to promote in privately owned enterprises the policy of developing production and of benefiting both capital and labour.'²⁶

The MOIDR and the Trade Union Law were uncompromisingly based on the Soviet-style notion of 'socialist legality'.²⁷ They reflected the government's aim to build up a predominantly – but by no means exclusively – self-contained economy. The fact is the politics of the day left the new government with very little room to manoeuvre. Its early policies were overwhelmingly driven by the realities of USA foreign policy, at the time defined by fears of a communist Asia.

The present

Two trade union laws later (1992 and 2001), the ACFTU remains dominated and hamstrung by the CCP. Battered – and effectively banned for 'bourgeois deviation' during the Cultural Revolution – by the wild fluctuations in Chinese politics, it has become a complex organisation with a reported membership of over 120 million workers and an on-going monopoly over trade union organising. Its traditional role, as a largely unquestioning conduit from the Chinese Communist Party (CCP) and government to the working class, has evolved into both its strength as well as its weakness. Direct links with the CCP and with SOE management give it some limited authority within enterprises and other work units, but, as in the fifties, workers criticise precisely those links as evidence that the ACFTU lacks independence.²⁸ Suggestions to workers that they approach the trade union with complaints are frequently greeted with astonishment, even anger.²⁹

Calls for more trade union autonomy – often fuelled by labour unrest – have characterised internal debates in the ACFTU since the 1950s. What has changed is the far more complex economic environment in which the ACFTU now operates. In 1982, the alleged convergence of workers' interests with those of the State was used to justify eliminating workers' right to strike from the Con-

stitution. A veteran legal scholar noted in 1982 that workers had no need of the right because 'Chinese enterprises belong to the people'.³⁰ Now, industrial ownership is far more diverse. In 2000, estimates on the private sector's contribution to GDP start at 33 percent and private firms employ over 130 million workers.³¹ During the 1990s, SOE contribution to GDP dropped from 65 percent to 42 percent.³²

However, the ACFTU has not simply remained a passive witness to the re-emergence of private entrepreneurship as a crucial component of government policy and has successfully lobbied for a Labour Law and a new Trade Union Law to meet the new realities. Its strategies have included training thousands of cadres in dispute arbitration and 'organising' drives in privately-owned companies. There have been varying degrees of success. In a speech to ACFTU cadres in 2000, the union's chairperson, Wei Jianxing, pointed out that less than half of eligible workers were unionised: '...a considerable number of trade union organisations [and branches] have collapsed and their members washed away. On the other hand, the organisation of trade unions in newly established enterprises has simply not happened. At the end of 1999, national trade union membership dropped to eighty-seven million, leaving more than one hundred million workers unorganised. When there is not even a trade union, what is the point of talking about trade unions upholding the legal rights of workers? Or trade unions being the transmission belt between the Party and the masses? Or trade unions being an important social pillar of state power?'³³

Lectures from the top do not alter the situation on the ground, described by one township-level trade union official in South China as 'at this stage, development takes precedence over justice'.³⁴ The primary duty of the ACFTU remains mired in ensuring stability and increasing production in order to facilitate the CCP's aim to create a stable political and economic environment, a task made more urgent by the need to both attract and compete with foreign capital. Organising or even supporting collective action for jobs and wages is mostly incompatible with these goals and as such cannot be supported by the ACFTU. In 1998, Hu Jintao, who is now the General Secretary of the CCP, articulated the Party's line on trade union independence and the related right to freedom of association:

‘Chinese trade unions are mass organisations of the working class under the leadership of the Party, act as a bridge linking the Party with staff and workers and play a role as a key social pillar of the state political power... *I hope that all levels of trade unions will consciously accept the leadership of the Party while independently carrying out their work...*[and] consciously submit to and serve the major tasks of the Party and the state.’³⁵ (italics added)

A worker from the aforementioned struggle at the Liaoyang factory describes the timidity that can result from such subservience: ‘We [Ferroalloy workers] have been to the ACFTU on a number of occasions, but they’ve never taken any real notice of us.’³⁶

It is not that all ACFTU cadres and officials, particularly at shop floor level, are necessarily unsympathetic. An official of the Liaoyang branch of the Federation of Trade Unions, when asked if local people were support-

ing the Ferroalloy workers’ protests, told the CLB: ‘Of course they are! The city leaders are in the wrong!’³⁷ But the union’s room to manoeuvre is extremely limited by political, legal, and ideological mechanisms.

Main themes of labour law

It has often been argued that the latest manifestation of economic globalisation, which for simplicity’s sake we trace to the oil crisis of the early 1970s, has been accompanied by the revoking of existing and hard won labour legislation.³⁸ This has certainly been the case in many parts of the world. In the context of China, we are looking at a slightly more complex situation. Contrary to the experience in other countries, the last two and a half decades have occasioned a flurry of legislation, regulation, local implementation regulations, and legally binding decisions from the central government, much of it concerned with labour. See boxes below on law-making process and major labour legislation.

Like most legal systems, Chinese law making is based on a hierarchical structure, which places the Constitution at the apex (see box 1). Below the Constitution come national laws that must avoid conflict with the Constitution. Administrative regulations should not conflict with the Constitution or national laws and local regulations should not conflict with any of the aforementioned legal norms.³⁹ While the hierarchy appears fairly straightforward, interpretation of the different legal norms is complicated by the political system and involves the status of the law in relation to party and government policy. For our purposes, we can safely borrow from one scholar’s conclusion which fits our assertion that law is not neutral: ‘law is a mature form of party and state policy which has, through the state’s legislative process, become concretised, formalised, and elevated into the will of the state’.⁴⁰ Judicial independence is another issue that space precludes us from exploring in any detail. Whereas that judicial independence is much exaggerated in the legal systems of parliamentary democracies, political influence over the courts in China remains a fact. Obviously, this can have serious consequences when workers take collective measures that do not have legal status such as a strike or overtime ban.

China’s labour legislation will continue to develop, especially as she is now a member of the WTO. Promul-

Box 1

Law-making in China

Constitution

National People’s Congress

Supreme legislative organ
Enacts basic national laws
Endorses changes to the Constitution
Meets annually

National People’s Congress Standing Committee

Enacts and amends laws except those that only NPC can enact
Supplements to laws

State Council

Administrative regulations

Local People’s Congresses

Local regulations

People’s Congresses of autonomous areas

Autonomy and Specific regulations

gated in 1995, the national Labour Law is the basis for the current and future direction of labour legislation, and below are some of its key points.

Scope of applicability

Article 2 states that the law applies to all employing units, state organs, and public institutions and labourers ‘who form a labour relationship’ with the employer. However, the law does not define the term labourer and in practice sections of the workforce are left outside the law. This includes domestic workers, sex workers, senior government officials, civil servants, and rural labourers.⁴¹ Some labour researchers argue that the traditional classification of different types of work – intellectual, urban, and rural worker – and the restrictions associated with each will gradually disappear under the pressure of the reforms: ‘The [creation] of a national integrated and operational labour market will inevitably widen the parameters of the Chinese labour law. With the exception of civil servants, all labour relations in urban areas will fall under the jurisdiction of the labour law.’⁴²

Individual labour contracts

In 1986, the Provisional Labour Regulations introduced fixed-term contracts to cover employment of new recruits in SOEs. Such contracts were already a feature of foreign-invested and foreign-owned enterprises in China’s SEZs. However, the new regulations did not apply to workers already employed by SOEs. Nevertheless many older SOE workers hired on before the 1986 regulations have recently found themselves subject to new contracts

following a partial or total buy out by foreign capital. For example, when Danone and its Hong Kong subsidiary Amoy invested in a state-owned food-processing factory in Shanghai, workers who had been working there for as long as 30 years were put on annually renewable contracts.⁴³

Article 16 of the Labour Law defines the individual contract as ‘an agreement that establishes the labour relationship between a labourer and an employing unit’ i.e. it is the legal basis for labour relations. Reliable statistics on the number of workers covered by individual contracts are almost impossible to gather, as employers are reluctant to admit breaking the law by employing workers without contracts. Such behaviour renders them liable to punishment under administrative regulations entitled Measures on Administrative Penalties for Violation of the Labour Law.⁴⁴ Cases to date have shown that if a worker can prove an actual ‘labour relationship’ (*laodong guanxi*) with an employer, then the latter is legally bound to fulfill the obligations of the Labour Law even if no contract has been signed. Article 19 of the Labour Law states that contracts must include: the length of contract, type of work, labour protection, wages, disciplinary matters, conditions for contract termination, and responsibilities concerning contract violations. The fact that, according to both the ACFTU and the Ministry for Labour and Social Security, so many labour disputes are complicated by a lack of legally valid contracts implies that many workers, especially migrants, are not covered by labour contracts. Of course, the existence of a contract does not guarantee compliance with its terms. Between 1998 and 2000, there were over 1,000 petitions to the authorities in Changchun city by workers claiming their contracts had been violated. Most of the complaints centred on early retirement, compulsory redundancy, contract alterations after restructuring or foreign investment, probationary period wage disputes, and arbitrary changes to the contract.⁴⁵

Article 20 states that non-fixed-term contracts are a voluntary option for those workers who have clocked up ten consecutive years with the same employing unit. It remains to be seen if in 2005, the tenth year of the law’s existence, employing units resort to widespread dismissals of employees approaching the ten-year benchmark.

Recruitment probation periods are limited to six months as stated in Article 21. As in other countries, dis-

Box 2

Key labour laws and regulations

Constitution Labour Law (1995)
Trade Union Law (2001)
Regulations on Minimum Wages for Enterprises (1995)
Provisional Regulations on Wage Payments (1995)
Work Safety Law (2002)
Regulations Governing the Settlement of Labour Disputes in Enterprise in China (1993)

missal at the end of a probation period has proved a focal point for labour disputes.

Collective contracts

These are a particularly difficult area as a genuine collective contract can only be the result of consultation between independently organised workers and the employer, yet Article 10 of the Trade Union Law specifically outlaws freedom of association. Article 33 of the Labour Law lists the areas that may be covered by collective contracts as labour remuneration, working hours, rest and vacations, occupational safety and health (OSH), labour insurance and welfare. Article 35 states that the standards in individual contracts must not be lower than those in collective contracts. Article 33 also states that a draft version of all collective contracts must be approved by the staff and workers' congress (see below) or, where no congress exists, by all workers. On approval by the congress, the draft is sent to the local labour bureau, which has 15 days to raise an objection. Article 35 implies that any violation of the legal process of concluding a collective contract shall render it invalid, but does not give any further explanation or detail as it does for individual contracts. Neither does it make any provision for changes or cancellation of a collective contract. Recent ACFTU figures on the number of workers covered by collective contracts boast an inclusion rate of 95 percent of workers in urban SOEs, COEs, and foreign-invested enterprises.⁴⁶ However the rate is probably no more than an extrapolation from selected local statistics. Two months before the aforementioned national figures were published, a report in *Workers' Daily* from Buji, Shenzhen also claimed a figure of over 95 percent of workers covered by collective contracts in the county's 538 foreign enterprises. Given that Shenzhen has one of the highest rates of labour disputes in the whole of China, the report's heading of 'Collective Contract Rights – Bosses Happy, Workers Happy' encourages scepticism on these figures.⁴⁷

Dismissal

Dismissal is dealt with via summary dismissal and dismissal by notice. According to Article 25, grounds for summary dismissal are: failure to meet recruitment benchmarks during the probationary period; serious violation of labour discipline or the company rulebook;

causing great loss to the employing unit as a result of negligence or malice aforethought; and the employee being the subject of a criminal investigation.

There are clear problems with these grounds for dismissal. The concept of labour discipline is neither explained nor defined. Another issue is that an employee may be dismissed simply for being investigated for criminal responsibility. Leaving aside the fact that criminal guilt does not have to be proven before a summary dismissal, the question of the degree of criminal behaviour is ignored. For example in one case a worker was picked up and investigated by police on suspicion of prostitution simply for having condoms in her handbag. She lost her job as a result.⁴⁸

Article 25 also gives great scope for blacklisting militants. Thirty-seven-year old Wang Zhaoming is currently facing charges of 'illegal assembly' in Liaoning province. Although already out of work due to the bankruptcy of his enterprise in 2001, his employment chances will be severely limited even if he is found not guilty or charges are dropped.⁴⁹

Moreover, severance payments are not required in cases of summary dismissal giving great incentive for employers to fabricate circumstances in which an unfair dismissal is rendered legal. In the case of dismissal by notice, 30 days warning must be given by the employer.

Article 27 deals with the currently volatile issue of lay-offs. Since the CCP's fifteenth Party Congress in 1997, which signalled a green light for widespread privatisation, millions of workers have been laid off under an arrangement known as *xia gang* – literally to be stepped down from one's post. A fever of lay-offs followed as SOE managers wholeheartedly embraced the notion that improving productivity and efficiency was simply a case of getting rid of workers – a strategy referred to as 'cut staff, improve efficiency' (*cai yuan zeng xiao*). Mass lay offs are covered by Article 27 of the labour law, which stresses that they must be a last resort and that the trade union must be given 30 days' notice. It also states that if the enterprise needs to re-employ workers within six months, the dismissed or laid off workers take priority. Article 20 of China's Law on Enterprise Bankruptcy (Trial Implementation) gives workers the chance to object, through the union-organised staff and workers' congress and states their opinion 'shall be heeded'. Article 37 of the same law makes it

clear that a bankruptcy cannot be approved without prior arrangements for wage arrears, severance contracts, and social insurance. While on paper these stipulations appear to give workers adequate safeguards, they are severely handicapped by a compromised trade union and widespread corruption. The case study below describes how workers, management, and local government became locked in a bitter five-year dispute over mass lay-offs and eventual bankruptcy of the Liaoyang Ferroalloy Factory.

Wages

Wages for most of China's employees are determined by a mixture of market forces and government intervention. Article 48 of the Labour Law demands that the state implements a system of minimum wages set by local governments basing their calculations on local conditions stipulated in Article 49: lowest living expenses of a labourer and the average number of family members he or she supports, average wage levels, productivity, the local labour market, and regional differences in employment. The divergences in minimum wage levels that result from this formula are spectacular and testament to the dramatic regional variation in wealth. In Shenzhen the minimum wage is over double that of Gansu.

Piece rates are common in various sectors, particularly low-skilled and mining sectors. The author's own research confirms various reports that the gradual privatisation of coal mines and the sub-contracting of shafts to private operators have led to widespread piece rates. There have been instances where state-owned mines have held back wages to regular employees who have refused to work as a result. The company has responded by employing untrained farmers on piece rates and this has been a factor in China's high accident rate in the mining sector.⁵⁰

Working hours

When the current Labour Law was introduced, working hours were limited to 44 per week with the normal working day limited to eight hours a day. Overtime is limited to three hours per day with a maximum of 36 hours a month. Overtime is fixed at 150 percent of the basic wage on normal working days, 200 percent on rest days, and 300 percent on annual holidays. The statutory working week has since been reduced to 40 hours. Article 37

states that piece work quotas and remuneration should be set at levels that do not force workers to agree to excessive and illegal overtime. Annual holidays are New Year's Day, Spring Festival, International Labour Day, and National Day (Article 40).

However, there are a number of clauses in the law that allow management to extend working hours in 'special circumstances' as long as the trade union or workforce has been 'consulted' (Article 41). This loophole is enlarged by Article 39 that allows an enterprise to bypass stipulations 'due to the special nature of its production' as long as the local labour department has approved (Article 40).

A combination of investor-friendly environments, competition between local authorities to attract investment, weak or non-existent trade unions, low wages and the vulnerable position of migrants has led to an institutionalised culture of working time violations in China's low-tech, labour intensive export sectors. This culture is afforded an arguably legal status by the loopholes in the law allowing management and local authorities to make exceptions to legal standards. The results are often tragic with extreme working hours causing accidents and putting tremendous stress on migrant workers in particular.

Social insurance and welfare

China's social insurance policies are currently undergoing major reform. Pre-reform policy was based on a 'low wage, high welfare' formula for SOE workers that placed responsibility for insurance and welfare on the enterprise. For other sectors of the workforce, such as migrant workers, such benefits simply did not exist. The reforms to this system are replacing the high welfare part of the equation with a basic contributory system of insurance to which both employers and employees contribute. Insurance is divided into five basic categories: unemployment, pension, sickness, industrial (workplace) injury, and maternity (Article 70). These reforms are aimed at eventually increasing the number of those covered by insurance via the pooling of funds and making all enterprises liable. While they have allowed a certain degree of labour mobility, the reforms have been plagued by embezzlement and misuse of pension and unemployment funds, limited pooling leading to a shortage of funds, and a crisis in health care. Moreover, they are still largely based on a household registration

(hukou) system, which effectively excludes migrant workers outside their home districts.

Occupational safety and health

Occupational Safety and Health (OSH) is an area of labour law where theory completely departs from practice. China has a large body of OSH legislation, recently synthesised into the national Work Safety Law that came into effect in November 2002. Going to work is a very dangerous option in China with almost 100,000 people dying on the job every year.⁵¹ Despite campaigns and specific legislation, China's coal industry is the most dangerous in the world and was the subject of a recent editorial in the CCP's principal newspaper, the *People's Daily*. The paper pointed out that in Heilongjiang province alone investment in coal-mining safety was Rmb570 million short of the planned target figure. Many small mines, shut down in a campaign against illegal mines during 1998-1999, were found to lack even basic safety systems such as the installment of gas ventilation and monitoring equipment.⁵²

OSH falls under the jurisdiction of the State Administration of Work Safety (SAWS). It is responsible for drafting OSH laws, regulations, technical standards, as well as overseeing compliance and safety management systems. SAWS also launches campaigns on work safety. For example, June 2002 was designated 'work safety month'. In tragic irony, more coal miners (449) died in that month than in the preceding one. In July a further 482 miners died at work.⁵³

Various organs directly responsible for inspections on the ground are often ignored. The State Administration for Coal Mine Safety Supervision issued six warnings to the state-owned Jixi Coal Mining Group in Heilongjiang over its failure to meet safety investment targets. On 20 June 2002, an explosion ripped through one of the company's mines, killing 115 miners.

China's normally restrained media has spearheaded campaigns to improve work safety, especially in mines and there is no doubt that the central authorities are desperate to improve OSH in general. SAWS deputy director Zhao Tiechui recently admitted that the OSH system established in the coal mining industry existed in name

only. According to a report posted on the International Hong Kong Liaison Office Web site: 'Documents issued from the centre are simply passed on to the next level down and ignored. Meetings are held but the safety measures they discussed never got further than the conference hall. He also stated that the problems were exacerbated by outdated machinery in state-owned mines, inadequate safety procedures, and a decline in fire-prevention facilities and fire-fighting equipment.'⁵⁴

The problems in China's mines are by no means unique and certainly cannot be put down to lack of freedom of association *alone*. A report into the working conditions of miners in the Indian state of Rajasthan highlighted the same problems that plague China's mines: failure to implement laws, remote locations of some mines, poverty forcing miners to take risks, dependence on tax revenue from mines by local government, and a total lack of effective worker representation.⁵⁵ As in China, OSH in India's mines become more serious the further down the production hierarchy with large state-owned mines being safest and small privately-operated the most dangerous.

It has been argued that China's Work Safety Law could provide opportunities for organisation of a least semi-independent OSH committees that actually involve workers.⁵⁶ Article 19 states that work units producing, operating, and storing dangerous materials as well as mining and building work sites shall set up OSH management organisations or allocate full time OSH personnel to administer safe practices at work. Other work units with over 300 staff and workers must also set up OSH committees.



Japanese-invested electronics factory. (Credit: Apo Leong)

Article 45 stipulates that employees have the right to be fully aware of all hazards present at work as well as the associated preventative and emergency measures. They also have the right to make suggestions on OSH policy to their work unit. Article 46 stipulates that workers have the right to make criticisms, reports, take legal action, and can refuse orders that violate OSH rules or work in hazardous conditions. Crucially, Article 47 states that workers who encounter a situation that directly endangers their personal safety have the right to stop work and, after taking all appropriate measures, to leave the workplace.⁵⁷

It is too early to say if the new law will improve the situation and whose content is far from what are essential OSH tools: freedom of association and the right to strike. To be sure, effective OSH systems require dialogue and a level of trust with employers, but this has to be built on core rights. As China Labour Bulletin (CLB) puts it: ‘CLB has long argued that the Chinese government must fulfil its obligations as a member of the International Labour Organisation and allow workers to organise unions and elect representatives to negotiate wages and conditions with their employers, be they state or private companies. In fact, this right is supposed to be guaranteed by the Chinese Constitution itself. But the government continues to insist that only the state-controlled official trade union, the ACFTU may legally exist. The chaos of our coal industry, blighted by accidents, wage arrears, strikes, and even violent clashes between miners and the police is testament to the fact that this state-controlled, unrepresentative and often despised organisation has failed Chinese workers in general and Chinese miners in particular.

We appeal to the Chinese government to repeal the Trade Union Law and grant all workers the right to peacefully negotiate work-related issues such as health and safety. This will not end the tragic accidents, but it will at least be a start.’⁵⁸

Dispute resolution

Article 70 of the Labour Law sets out a three-tier basis for settling disputes: mediation, arbitration, and courts. Enterprises with labour problems may set up a mediation committee chaired by the trade union and composed of workers’ representatives and the employing unit (Ar-

ticle 80). When this fails the dispute may be brought before a Labour Disputes and Arbitration Committee (LDAC) which is chaired by the local labour bureau and trade union representatives (or workers’ representatives where no union exists) and the enterprise. Applications for arbitration must be made within 60 days of the dispute and the LDAC has the same amount of time to reach a decision, with parties having 15 days to take the LDAC decision to court if agreement is not reached.

This system is in its infancy in China and still acquiring the expertise required, such as a sufficient national pool of labour lawyers and general awareness of how to effectively use the system among workers in order to render it effective. However, implementation will, as always depend on power, which precipitates the thorny issue of the right to strike.

The right to strike: a window of opportunity

Chinese workers do not have the right to strike. At the same time, strike action is nowhere clearly defined as illegal. The objective circumstances render the legal grey area regarding strikes of little use to workers. These circumstances include:

A lack of effective due process. Despite revisions to the Law of Criminal Procedure, the authorities’ scope to exercise political influence at various stages of the legal process remains considerable.

Administrative regulations that allow an appointed three-person committee chaired by the Public Security Bureau (PSB) to detain workers for up to three years of ‘re-education through labour’. According to the regulations, those who ‘ceaselessly and unreasonably make trouble, who disturb the order of production or work...’⁵⁹

The lack of independent trade unions with the capacity to organise and lead strikes as well as negotiate settlements with employers.

The near-blanket refusal of the ACFTU to organise, lead, or support workers taking strike action.

However, there is clear pressure on the government to agree to legal changes that would allow workers the right to strike. This pressure is coming from various sources but is led by workers who actually strike. Changes to patterns of employment, structures of own-

ership, and labour mobility have been major reasons of the pressure for the right to strike. While labour militancy, including dramatic strike waves, is by no means unprecedented in post-1949 China, the fact that the means of production were owned by the state served to give strikes a political dimension, even when strikers' demands are purely economic.

The right to strike has only made a relatively brief appearance in the Chinese Constitution and was not written into the Constitution until 1975. It was included in the 1978 version and left unmolested in 1980, despite the somewhat draconian revisions of that year. It was deleted in 1982 as already mentioned.⁶⁰

However, the prevalence of market forces and China's crucial position in the global trading system are a constant reminder of current reality. Private production is by far the most dynamic sector of the economy and employment in SOEs dropped to just over half of all urban workers by 1999. Moreover, SOE restructuring has rendered the notion that SOE employees own and control their enterprises — and therefore do not need to strike — obsolete.

China's signing and ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is another source of pressure for change. While the government lodged a reservation on the ICESCR clause pertaining to freedom of association, it accepted, without reservation, the clause on the right to strike. The government is therefore obliged to bring Chinese law into line with the standards in the Covenant as soon as possible. Meanwhile strikes and partial concessions along with targeted arrest of strike leaders that characterises the current response of employers and government will continue.

Wage arrears and the law

Wage arrears are by far the most common cause of collective disputes in China. Given the importance of remuneration in capitalist production systems noted at the beginning of this essay, the issues affords us an opportunity to take a closer look at labour law in action.

Article 50 of China's Labour Law is the only clause that deals directly with employers not paying their workers on time. It is vague and merely states: 'Wages shall be paid monthly to labourers themselves in the form of

cash. The wages to be paid to labourers shall not be embezzled nor the payment thereof delayed without justification.'⁶¹

Article 91 provides for the right to compensation. There are a number of related regulations but these appear to give the employer more power to delay wages rather than shore up employees' right to prompt remuneration in cash. A set of temporary rules regarding wage payments entitled 'Temporary Rules on Wage Payments' is still referred to by the courts and LDACs, even though they are now over seven years old. While Article 18 of these regulations states that wages may not be 'deducted or delayed without justification', supplementary guidelines to these rules by the Labour Bureau in May 1995 seemed to stress the clear loophole for employers.⁶² Taking a lead from the then new Labour Law, the supplementary regulations make it very clear that wages may be delayed by a company in economic difficulties once it has obtained the permission of the trade union. Given that trade unions in China are not independent of the state, obtaining such agreement has not proved an obstacle to state sector or private employers.

Some local conditions have been so blatantly pro-employer they have attracted scathing attention from the official labour press such as the *Workers' Daily*. The township Xiqiao in Nanhai city Guangdong province is dominated by small privately-owned textile factories. Xiqiao is so notorious for wage arrears that the practice has been dubbed a 'local custom'. A lawyer representing workers chasing unpaid wages was told by a cadre at the town's labour bureau office, 'We've got rules here in Nanhai that allow an employer to keep back one to two months wages.'⁶³ Although Nanhai Labour Bureau denied the existence of such a rule, the town's reputation appears fully deserved.

Against this background, there has been growing pressure for a national wage law that will actively punish — even criminalise — employers for indulging in such practices. However, as with the equally sensitive draft revisions to the Bankruptcy Law, it has been subject to delays and is still awaiting approval by the NPC.

One source of pressure for the bill is rooted in the growing recognition that financial difficulties are *not* the underlying cause of wage arrears but more often result from employers' deliberate malpractice, especially in companies employing migrant workers who have just

started work. A popular Guangzhou newspaper found that 'the majority of cases of wage arrears were not caused by enterprises' financial difficulties but were deliberate management [policy]...young migrant workers fear that they will be sacked by the boss if they pursue their wages'.⁶⁴

Efforts to initiate local regulations in Guangzhou city demonstrate some of the complex problems with the actual process of law making. Consultations between different government departments and related agencies, including the official trade union federation, began in 1999 but a formal proposal was not submitted to the Guangzhou People's Congress until April 2002. One reason for the delay was a disagreement over which government bodies should be involved in drafting the legislation, and at which level of government it would be passed. While the labour bureau, relevant government departments, and the Guangzhou Federation of Trade Unions began work on one set of draft regulations for the city, the provincial-level Guangdong People's Congress Standing Committee began drafting separate rules. As a result, the Guangzhou People's Congress Standing Committee passed a resolution suspending the drafting of regulations. Instead it was announced that the Labour Department would take stronger action to encourage enterprises to end wage arrears, apparently ignoring the fact that Article 14 of the Guangdong Regulations on Workers Rights 1994 also stipulates that workers can claim RMB 5,000-50,000 in compensation if their wages are overdue by more than three consecutive months.⁶⁵ Meanwhile, the proposed Guangzhou Regulations for Guarantees Against Wage Arrears by Enterprises have still not been enacted.

Further complicating the issue is the existence of regulations that apply solely to SEZs in Guangdong province. Despite their famous reputation, wage arrears represent the flip side of SEZ success. One independent researcher found that:

'According to informed officials and factory managers, the illegal retention of workers' wages for between one and three months exists in 80 percent of foreign-financed firms. This phenomenon exists despite the fact that the firm is liable to pay one percent interest on the overdue wages from the sixth day of the following month onwards as compensation for workers.'⁶⁶

This is despite the fact that Article 40 of 'Labour Regulations Governing SEZs in Guangdong', which predates the national Labour Law states that:

'An employer unit shall issue wages at least once a month. A date shall be fixed and the issue of wages on that date shall be strictly implemented. If payment is not made by the stipulated date, the employee shall be rewarded compensation equivalent to one percent of the wage owed for each day after the sixth day in arrears.'⁶⁷

Clearly a national wage law is required immediately so that workers have a clearer, less equivocal channel of legal recourse.

Conclusion

China's emergence as a key component in the global trading system, its growing importance at the ILO, where it was recently elected to a deputy member seat on the Governing Body, and the continually expanding mass of labour regulations are a result of policy decisions taken by the government. These decisions rest on the premise that there is no alternative to the market if the government is to achieve its stated goal of transforming China into a modern state, capable of competing with developed countries for markets. This essay has merely scratched the surface of the ever-shifting topology of labour law. It has sacrificed sections on women workers and migrants in favour of the 'political' issues such as the nature of law itself, freedom of association, and the right to strike. Detailed analysis of the Trade Union Law has been substituted with a discussion of the ACFTU. As such, it has perhaps failed to meet the targets set us by editors at Asia Monitor Resource Centre. Yet it is hoped that the above will at least provide a contextual – albeit far from neutral – starting point from which activists can leap into the choppy waters of labour law in China.

Notes

1. For one of the most moving accounts of injustice see Chris Mullin, 'Error of Judgement: The Truth about the Birmingham Bombings', (Poolbeg, 1986).
2. The Bush administration in the US recently evoked Taft-Hartley to bring an end to a dispute between dockworkers and port authorities. The net result has been that the dockers have suspended all action. At the

time of writing, it appears that the employers will achieve their aim of introducing technology that the dockers' union claims will lead to job losses.

3. Interview with Han Dongfang in the *South China Morning Post (SCMP)* (15 December 2002).

4. The role of organised labour in the downfall of authoritarian regimes in Poland, South Africa and Chile for example is well documented.

5. Of course, there are other 'benefits' that may form part of a remuneration package for employees. These can include medical care, education of offspring, housing, and share options etc. For employers there are myr-

riad activities that can compliment profits from production: investment, rent, and consultancies etc.

6. Karl Marx and Friedrich Engels, 'The Communist Manifesto', reprinted in 'The Communist Manifesto Now', (Socialist Register 1998, p. 240).

7. Human Rights Watch (HRW), '*Unfair Advantage. Workers' Freedom of Association in the United States under International Human Rights Standards*', (HRW, 2000).

8. For the sake of simplicity, socialism in this paper is defined as the ownership and democratic control of the means of production that has resulted from an organised

Case study one⁶⁸

In 1997, Li XX was a 20-year old worker in a shoe factory. After an unspecified period of wage arrears he took his employer, Zhang XX to the local LDAC after refusing to accept the latter's proposal to settle the arrears. In late spring 1997, management introduced a new line of sandals for the summer season. Unexpectedly early hot weather and insufficient preparation by management meant that the factory was not ready for an early demand for cooler shoes and rival factories took advantage. The problem was exacerbated by an unfashionable design and sales were consequently sluggish.

The lack of return on investment in the sandals led management to cancel two months' bonus followed by a delay in basic wage payment. Finally management announced that cash wages would be substituted with sandals. The solution was justified by the assertion that the net value of the sandals being offered as settlement was equivalent to the owed basic wage plus ten percent more. When Li and others objected, management invoked the right to make decisions, including setting wage levels. The proposal was justified as the company was in difficulties and the burden had to be shared by everyone.

The workers took their claim to the LDAC, which accepted that the company was in a difficult financial position and therefore should have applied for permission to delay wages for a set period in accordance with the law. The LDAC accepted the company's right to decide wage levels – as long as they were in line with local minimum wage benchmarks – but added that the management was in violation of both

the Labour Law and the Provisional Regulations on Wage Payment and therefore ruled that the company pay the wage arrears in cash along with compensation.

The basis for the LDAC's ruling was that wages must be in cash and that the company had simply extrapolated the concept of management sovereignty (*zizhu quan*) into the right to manage while ignoring legal guarantees on prompt wage payment. Apart from citing Article 50 of the Labour Law as well as Articles 5 and 18 of the Temporary Regulations on Wage Payments already discussed, the LDAC also referred to a set of compensatory regulations on non-payment of wages and rules on economic compensation for contract violations. Clearly, the number of laws and regulations cited are a sign that Article 50 of the Labour Law itself has not been a sufficient deterrent against wage arrears, which now stand at Rmb6.6 billion nationally.⁶⁹ Moreover, the Provisional Regulations on Wage Payments in which an employer – with the trade union agreement – may delay wages, offers clear loopholes. This is in the light of recent research, which suggests that the vast majority of wage arrears have nothing to do with problems of economic performance, but are a deliberate ploy by employers to increase profits. The *Workers' Daily* has pointed out that employing units offer myriad excuses for wage arrears: enterprise inefficiency, poor macroeconomic environment, income falling short of expenditure, and cash flow etc. However, underlying these 'excuses' is deliberate negligence and exploitation of loopholes in the law.⁷⁰

Case study two

On 7-8 November 2000, Daqing Oil Company Limited (DOCL) issued two documents that outlined the 'voluntary' severance agreement the company was offering to approximately 80,000 retrenched employees. Although most employees over the age of 40 signed the agreement, a large-scale dispute over the mass redundancies broke out 18 months later. In March 2002, following what workers claimed were arbitrary increases in social insurance premiums and the cancellation of a heating allowance, both in violation of the original agreement, 50,000 former oil workers marched and demonstrated outside company headquarters. For their part, DOCL insisted that the severance contract was voluntary and the pay offs generous. To pursue their claims, the workers organised an unapproved and unofficial trade union committee that received considerable international support. The government responded with large-scale

deployment of police and security forces. In the ensuing confrontation, dozens of short-term detentions forced the workers' organisation underground and it has most likely dispersed. With the exception of a temporary reinstatement of the heating allowance, no solution has been found.

Clearly way beyond the parameters of the LDAC and experience of the courts, China's labour disputes resolution procedure and laws have not proved up to peacefully dealing with this kind of large scale dispute, especially as it involved an independent labour organisation. Labour activists have pointed out that China is in violation of the ICESCR, which the NPC ratified in 2001 with a reservation on Article 8 that stipulates the right to join a trade union of choice. The government is also failing to live up to its responsibilities as an ILO member by denying genuine freedom of association.

and participatory project involving the majority of workers.

9. COEs are also deemed to be owned by the people, mostly located in smaller towns and less economically developed areas.

10. However the 16th Congress of the CCP formally accepted former General Secretary Jiang Zemin's 'Theory of the Three Represents'. From calling itself the vanguard party of the working class, the new theory attempts to transform the CCP into an organisation that is all things to all men. The head of the CCP Central Committee Publicity Department, Ding Guangen, explains the Three Represents 'as a theory refers to that (sic) the CPC represents the requirement to develop advanced productive forces, an orientation towards advanced culture, and the fundamental interests of the overwhelming majority of the people in China', at <http://www.chinadaily.com.cn/highlights/party16/theory/0408.html> (2 December 2002).

11. Marx, 'The German Ideology', at <http://www.marxists.org/archive/marx/works/1845/german-ideology/>

12. Albert HY Chen, 'An Introduction to the Legal System of the People's Republic of China,' (Butterworths Asia, 1998, p. 4). Chen is paraphrasing EP Thompson and referring to the latter's discussion of the rule of law in 'Whigs and Hunters: The Origin of the Black Act', (Penguin Books, 1977, pp. 258-259).

13. Liu Yuanyan and Zhou Shan, 'Blood and Tears: Migrant Workers go on Strike', *Zhuhai Laodong bao Zhuhai Labour News*, (24 October 1994).

14. HRW, 'Paying the Price. Worker Unrest in North-east China', (HRW, August 2002), at <http://www.hrw.org/reports/2002/chinalbr02/>

15. Tim Pringle, 'Industrial Unrest in China: A labour movement in the making?', paper presented at the Forum on Industrial Relations and Labour Practices in a Globalising World, Beijing, 9-11 January 2002. Also *Asian Labour Update*, Issue 40, (July-September 2001, p. 6).

16. For a more detailed discussion see Nigel Harris, 'The Mandate of Heaven', (Quartet Books, 1978, pp. 89-13) and Chang Kai, 'Lun bagong quanli The Right to Strike', paper presented at the Forum on Industrial Relations and Labour Practice in a Globalising World. Beijing, 9-11 January 2002.

17. The term is generally used to refer to job security and basic welfare.

18. For a detailed discussion see Tim Pringle, 'The Chinese working class—fiction and reality', published in *China Rights Forum*, Issue No. 1, (2002).

19. Quoted in Marx and Mao.

20. From a rulebook obtained by the author.

21. Chen, op.cit. p26. Chen is quoting from J.A. Cohen, 'The Criminal Process in the People's Republic of China 1949-1963', Harvard University Press, 1968, p11.

22. Jackie Sheehan, 'Chinese Workers—A New History', (Routledge, December 1998, p13).
23. Movement from the countryside to urban areas has been strictly controlled in China. This control centres on the concept of 'hukou' or household registration system formalised to keep starving peasants out of the cities during the famine that followed the Great Leap Forward.
24. Harris, op.cit. (p. 104).
25. Lo Yuwen, 'Distressing Contradictions' *Renmin Ribao*, 21 May 1957, quoted in Harris, op.cit. (p. 106).
26. Harris op.cit. (p. 104)
27. See Albert HY Chen (p. 26).
28. Until recently SOE workers in urban areas belonged to work units. These units were usually organised according to industrial sectors; thus one unit covered several SOEs. By and large, the union's responsibility within an individual SOE was confined to administering welfare benefits and organising labour competitions and entertainment.
29. Based on interviews by the author.
30. Zhang Youyu, 'Guanyu xiugai xuanfa de ji ge wenti Questions Regarding the revision of the Constitution, *Xuang lunwen ji Theses on the Constitution*', (Beijing: Qunzhong Publishing House, 1982).
31. In fact figures on the proportion of the private sector's contribution to GDP vary considerably and are complicated by the continuing lack of clarity over property rights. See 'China in the World Economy: The Domestic Policy Challenges', (Organisation for Economic Cooperation and Development, 2002, p. 30). 'Private Entrepreneurs Win Socialist Prizes,' *Xinhua*, 30 April 2002, at <http://202.84.17.73:7777/Detail.wct?ReclD=65&SelectID=1&ChannelID=6034&Page=4> (8 June 2002).
32. 'Guo qi zhan gongye chanzhi jiang zhi SOE share of GDP drops to forty-two percent', *Ming Pao*, (10 May 2002).
33. Wei Jianxing, 'Renzhen xuexi guanchedang de shiwu ju wu zhong quan hui jingshen. Jin yi bu jia kuai xin jian qiye gonghui zu jian bufa Conscientiously implement the spirit of the fifth plenary session of the fifteenth Central Committee and increase the pace of organising and establishing trade unions in new enterprises', speech delivered at a national conference on organising in new enterprises, 12 November 2000, at: http://www.bjzgh.gov.cn/jianghua/5_jianghua_13.php (5 June 2002).
34. Comment from the floor from a township-level trade union official during the Asia Pacific Regional Network fourth Annual Conference, theme: 'China and the WTO: The Implications and New Challenges of China's Accession to the WTO', Guangzhou, (4-6 November 2002).
35. 'Zhongguo gonghui shisan da wenjian huibian Documents from the 13th Congress of the ACFTU', (Beijing: China Workers' Press, 1998 p. 11).
36. Interview with Liaoyang Ferroalloy Company worker representative Xiao Yunliang, 19 March 2002; English translation of the transcript at *China Labour Bulletin*, at: http://iso.china-labour.org.hk/iso/article.adp?article_id=2146 (12 April 2002).
37. Radio Free Asia, 21 March 2002. See *China Labour Bulletin* for English translation of transcript, at: http://iso.china-labour.org.hk/iso/article.adp?article_id=2316 (30 March 2002).
38. Remarks by Daniel Gluckstein, National Secretary of the Workers' Party of France, during his presentation at the Forum on Industrial Relations and Labour Practices in a Globalising World op.cit. Also Gluckstein, 'Class Struggle and Globalisation', (Apio Publishing Company, 1999).
39. See Albert HY Chen op.cit (p. 90).
40. *Ibid.* (p. 94).
41. For example, a farmhand is classified as a 'peasant' and does not have the paper work to qualify as an internal migrant worker and therefore covered by the labour law.
42. Shi Meixia, 'The Trend of Industrial Relations after China's Entry into WTO'. Paper presented at the Forum on Industrial Relations and Labour Practices in a Globalising World. Beijing, 9-11 January 2002.
43. Author's research conducted in 1998.
44. 'Weifan 'Zhonghua renmin gongheguo laodong fa' xingzheng chengchu banfa Administrative methods concerning violations of PRC Labour Law'.
45. Guifan laodong hetong shi zai bixing Regulation of labour contracts is imperative', *Gongren Ribao Workers' Daily*, (24 September 2001).
46. 'Pingdeng xieshang jiti hetong zhidu fugai 7600 wan zhigong Equitable Collective Contract System Covers 76 million workers', *Workers' Daily* (21 November 2001).
47. 'Buji zhen waiqi jiti hetong fugai lu da 95 percent Collective Contract rates among foreign enterprises hit 95 percent in Buji township', *Workers' Daily*, (17 September 2001).
48. Information supplied by Ziteng, an organisation for sex workers in Hong Kong.
49. See HRW, 'Paying the Price', op.cit.
50. This practice contributed to the deaths of 115 workers at the state-run Jixi Coal Mine in Heilongjiang. See Chinese language broadcast at: http://www.china-labour.org.hk/iso/search_result.adp?str=Jixi&type=broadcast
51. 'Close to 100,000 die in work accidents', *SCMP*, (30 October 2002).

52. *Renmin Ribao* People's Daily, (26 September 2002).
53. <http://www.chinasafety.gov.cn>
54. www.ihlo.org Due to be uploaded in December 2002.
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