

■ JUSTICE for ALL

The Struggle for Worker Rights

IN CHINA

A REPORT BY THE SOLIDARITY CENTER



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Note: This report discusses some situations and events in a general context. Current conditions in China, such as the unavailability of comprehensive and reliable statistics, limited freedom of movement, and difficulty in gaining access to Chinese workers, stand in the way of full documentation. Our foremost concern has been to exercise sensitivity and discretion toward organizations and workers in China who endanger their jobs, their freedom, and even their lives to secure worker rights and democratic reform.

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for **Worker Rights**
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FOREWORD

By **John J. Sweeney**
President, AFL-CIO

In this report from the Solidarity Center series *Justice for All: The Struggle for Worker Rights*, a team of researchers and experts led by Cornell University’s Lance Compa examines the status of worker rights in China—the global giant whose nearly 800 million workers represent one-fourth of the world’s labor force. *Justice for All: The Struggle for Worker Rights in China* holds China’s labor law and practice up to international standards enshrined in International Labor Organization conventions and the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work.

Today, China is changing. Its closed culture is opening up, and its people are experiencing new choices and new opportunities. As *Justice for All* notes, wealth in China has expanded enormously. But wealth for whom?

In the vital area of human rights, China has changed little. China has pursued a development strategy that denies its workers the most basic freedoms. Capitalism is flourishing under a political dictatorship that

competes by offering investors disciplined and exploited labor. The marketization of China’s economy has even pitted Chinese workers against one another—state-owned enterprise workers against their private sector counterparts and migrant workers against those who were born in the cities.

China’s entry into the World Trade Organization and its emergence as the country of choice for manufac-

turing have profoundly altered the world economic order and the workers who build it. China’s low wages, skilled workforce, diverse manufacturing base, and vast internal market are powerful incentives for companies throughout the world to relocate production. “Made in China” is now a prominent emblem on items as varied as manhole covers, computer chips, airframe components, children’s clothing and toys, and heavy construction equipment.

For the international trade union movement, respect for fundamental worker rights is a moral and democratic imperative as well as an essential path to development and global prosperity.

China also consumes investment flows, because investors believe that it will offer higher rates of return than other countries. In 2005, the Multi-Fiber Arrangement will end textile and garment trade quotas. Economists project that the ensuing massive shift to China of millions of garment/textile manufacturing jobs will have an enormous impact on smaller developing countries, such as Bangladesh, Cambodia, El Salvador, and Mauritius.

We believe that resolving the challenge of China is key to building a

new consensus about globalization. For the international trade union movement, respect for fundamental worker rights is a moral and democratic imperative as well as an essential path to development and global prosperity. If workers in China cannot gain their basic rights and a fair share of the profits and productivity they help generate, human rights abuses and inequality will continue to grow around the world. And if China, as a new global manufacturing center, rejects freedom of association, other developing countries will be pressured to follow suit.

As *Justice for All* notes, whatever course international economic and political relations may take in the twenty-first century, China will be a major regional and global power. The question is: Will China's power be a force for advancing democracy, human rights, and economic and social development at home, in the region, and in the world, or will China turn its back on this historic opportunity? If China chooses to pursue a vision of social and economic justice, the AFL-CIO stands ready to work with China's leaders and worker representatives to build a world in which all people prosper. Chinese workers, American workers, and workers throughout the world deserve no less.



Along the Silk Road to the Pearl River Delta: China's Worker Rights History

China is one of the world's great civilizations. Its huge land mass has thousands of miles of ocean coastlines and contains enormous and diverse natural resources. With more than 1.3 billion people living in China's 23 provinces, five autonomous regions, and four quasi-regional municipalities, China is the most populous country in the world.

The Chinese people share one of the world's oldest continuous civilizations, with a written history of close to 4,000 years that comprises the rise and fall of more than 20 dynasties and periods. For many centuries, China was a center of scientific, cultural, legal, and intellectual progress. It was the Chinese who invented paper, printing, and gunpowder.

China's workers rose to organize themselves for workplace improvements and democratic reform as far back as the Song Dynasty (420-478 A.D.), when craft workers formed their own guilds. Modern industries, such as coal mining and machinery,

began in the 1870s with imported technology and gave rise to an industrial working class. Where industrial development was heavy, as in provinces like Hubei and Hebei and cities like Shanghai and Tianjin, traditional guilds emerged with functions similar to those of trade unions.

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During the nineteenth century, the industrialized nations of the West and Japan sought to "open China" to trade. In the 1840s, Britain fought the "Opium Wars" to force China to permit imports of opium and other goods. Britain and other Western countries used military power ("gunboat diplomacy") to compel China to sign so-called "unequal treaties" granting Western nations territorial privileges and other rights. The Chinese viewed this as an attempt by the "Great Powers" to divide China among themselves and to enslave the Chinese people.¹

Labor in the Twentieth Century

After the fall of the Qing Dynasty in 1911, the republican revolutionaries of Sun Yat-sen failed to establish a central government, and regional military forces controlled by warlords rose and divided China. The suppres-

sion of these warlords and the unification of China became the main tasks of the early Republican government under Sun Yat-sen, who founded the Kuomintang (KMT), or Nationalist Party.

In the early years of the twentieth century, China was overwhelmingly poverty-stricken, and conditions for Chinese workers were difficult. Migrating workers sought industrial jobs, where they encountered low wages, long hours, desolate lodging, and, usually, no medical care or insurance. Child labor was common.

In this climate, industrial disputes occurred frequently—more than 170 strikes between 1919 and 1921 alone. In 1914, the Shanghai customs workers organized the first conventional trade union in China’s recorded history. In 1919, workers in many cities of China struck in support of the May Fourth movement, which was directed against the Versailles

peace conference decision to turn over to Japan the former German concessions in China.

In China, as in most countries during that period, a Marxist response to industrialization and capitalism emerged that led to the founding of the Chinese Communist Party (CCP) in 1921. CCP organ-

izers, including Liu Shaoqi and Mao Zedong, built trade unions in the cities and organized millions in the south into peasant organizations, generating the movement that proved to be the social base of the CCP and the Chinese revolution. As many as 60,000 workers staged work stoppages or sympathy strikes in Shanghai alone. The Canton-Hong Kong General Strike of 1925-1926, called to protest the shooting of Chinese demonstrators by British colonial forces in Shanghai, helped lead to the formation of the All-China Federation of Trade Unions (ACFTU) in 1925, in which both the CCP and the KMT played an important role. Initially, many CCP members held dual membership in the KMT as part of the “united front” policy advocated by the Comintern (Communist International, the international communist organization founded by Lenin in 1919). In the late 1920s the ACFTU claimed to represent some 2.8 million workers.²

In 1925, the nationalist general Chiang Kai-shek became leader of the KMT, which at that time was based in southern China. Chiang initially cooperated with the CCP in 1926 in organizing the “Northern



Expedition” to extend the area controlled by the KMT and to eliminate the warlords. Although the Northern Expedition campaign won many battles, the most powerful warlords, such as Zhang Xueliang in the Northeast, retained regional sway. The KMT government negotiated with the strongest warlords, winning their recognition of the central government in Nanjing in exchange for allowing them to keep their own armed forces and giving them high positions in the Nanjing government. Zhang Xueliang, for example, was appointed vice commander-in-chief of the military after he openly supported Chiang’s effort to unify the country. The KMT was the official ruling party from 1927 to 1949. However, unity became elusive, as the initial collaboration between the KMT and the CCP began to unravel, and tensions between the parties continued to grow.

In February 1927, Shanghai labor leaders called a general strike in support of the Northern Expedition. The strike brought Shanghai to a standstill for two days. Although the warlords and colonial forces in the foreign settlement areas eventually broke the strike, worker morale was strong, and a second strike was

launched in March as the Nationalist Revolutionary Army entered Shanghai.³ In April, the KMT broke its united front with the CCP and attacked the CCP-led strikers. After the Shanghai strike was suppressed, the CCP launched “insurrections” in Canton and Changsha. These were quickly defeated, forcing the CCP and its sympathizers to flee the urban centers and retreat to isolated rural mountain strongholds in the Hunan-Jiangxi border region.

Efforts to build an urban labor movement faltered under Nationalist rule for about 20 years. Communist labor organizers captured in KMT-controlled cities were imprisoned or executed. The KMT made some attempts to educate the peasantry, provide public health service, encourage scientific improvements, and build roads and lines for telecommunications. It even passed some worker rights legislation. However, these efforts failed to bring widespread prosperity or stability. The countryside was ruled by corrupt landed gentry who opposed any real reform, and the KMT could not or would not challenge them.

The Japanese invaded in 1931, took the Northeast (then called

Manchuria), and set up a puppet government. At that time, the CCP controlled a very small area in southern China, and the KMT was occupied with its efforts to suppress the “communist bandits.” The CCP escaped from the KMT encirclement and, from 1934 to 1936, undertook the “Long March” from southern China to the northern Shaanxi Province. There the CCP set up a base at Yanan and called on the KMT to join in a campaign to resist the Japanese. In 1936, former warlord Zhang Xueliang, whose military forces had been driven out by the Japanese from Manchuria in 1931 and who was frustrated with Chiang’s failure to prevent the loss of Manchuria, took Chiang hostage in the “Xi’an Incident” and forced him to accept a truce with the CCP in order to fight the Japanese. During the bitter eight-year war with the Japanese, beginning in 1937, the KMT undertook little further reform.

The need for change, heightened by the tensions between urban and rural China, served to strengthen the CCP as the KMT became increasingly corrupt. In 1945, an economic crisis caused inflation so severe that thousands of industrial workers went

out on strike following the end of the war. In 1946, more than 1,700 strikes and other labor disputes occurred in Shanghai alone.⁴

Communists in Power

At the end of World War II, the growing tensions between the CCP and the KMT erupted into a civil war for control of China. In 1949, supported by peasants and urban workers, superior military strategy and tactics, and the unpopularity of the corrupt KMT government, communist forces under leader Mao Zedong won the civil war and established the People's Republic of China (PRC). The CCP victory allowed for the creation of a strong central government to rule a unified country.⁵ The new state sought to cement support from workers and peasants by redistributing land and limiting the influence of landlords, capitalists, and foreigners. To achieve its ends, the CCP chose to follow the Soviet economic model: state ownership, central planning, and rapid industrialization.

In its early years, Mao's new government executed at least hundreds of thousands, and more likely millions, of landlords and accused counterrev-

In its early years, Mao's new government executed at least hundreds of thousands, and more likely millions, of landlords and accused counterrevolutionaries.

olutionaries. An attack on intellectuals in a 1957 "anti-rightist" campaign stigmatized China's educated elite and set back economic and technological progress. Then, in 1958, Mao implemented the even more ambitious, and correspondingly disastrous, "Great Leap Forward" (GLF). The GLF intended to modernize the country by setting up backyard steel furnaces to double steel production, and the government recruited millions of peasants to work in the newly created urban industries. Tragically, the government's decision to take away the peasants' supposedly "surplus" agricultural products induced the largest man-made famine in human history, causing an estimated 30 to 40 million deaths between 1959 and 1961. When the GLF failed, most of the new recruits, along with some urban workers, were dismissed and sent back to their home villages, becoming part of the biggest one-time mass layoff in Chinese history.⁶

For a decade, beginning in 1966, the "Cultural Revolution" attempted

to eliminate critics of Maoist policies, both within and outside the party. In June 1966, the government closed the schools and devoted student time to "political" activities. Radical students calling themselves "Red Guards" sought to destroy anything foreign or old; humiliated and removed teachers, scientists, "deviationist" thinkers, and others who did not exhibit sufficient zeal for the Cultural Revolution; and seized power from those who were said to be "taking the capitalist road," including CCP Secretary Deng Xiaoping and PRC President Liu Shaoqi. During the first three years of the Cultural Revolution, the ACFTU, like other party institutions, was attacked and paralyzed, and workers' conditions deteriorated. Ultimately, the Cultural Revolution's absolutist approach resulted in tragic and unnecessary losses for China—the experience and knowledge of its older people and the educated class, as well as significant educational opportunity and progress for its youth.

Following this period, large state-owned enterprises (SOEs), many of which had begun in the KMT era and expanded during the 1950s through nationalization and reconstruction, produced three-fourths of China's industrial output. The government set up a strict hierarchy among workers. SOE workers, drawn from the skilled and privileged two-fifths of the urban workforce, were kept quiescent through benefits such as housing, medical care, subsidized meals, bonuses, government subsidies, lifetime pensions, and welfare and state insurance arrangements. Below the SOE workers were workers in collective enterprises, and at the bottom were "temporary workers."⁷ Urban residents were much more privileged than their rural counterparts. Migration from rural to urban areas was virtually impossible.

"Market Socialism" and Economic Growth

Following Mao's death in September 1976, the remaining leaders—including Mao's wife and three aides labeled the "Gang of Four"—were arrested and deposed within a few weeks. The excesses of the Cultural Revolution had caused widespread revulsion,

and some of the most important targets of criticism were soon returned to positions of power. During the late 1970s, an economic reform movement emerged under Deng Xiaoping, who pursued economic development through what he called a Chinese form of "market socialism." This initiative aimed at maintaining the CCP's political control while

introducing capitalist free market economic policies.

Deng's goals included "Four Modernizations" in Agriculture, Industry, Science and Technology, and Defense. For example, under the "production responsibility system," based on a reform originally devised by peasants in Anhui Province,



contracts between the production team and the individual household provided more incentives to the individual farm family. Deng also encouraged foreign investors, joint ventures, and manufacturers to set up shop in China and produce goods for export to developed country markets. His policies brought dramatic macroeconomic results. Starting in 1978, the economy grew at a remarkable average rate of 9 percent a year, matched in 2003 by 9.1 percent growth. Growth tripled average incomes by the early 1990s and raised 200 million peasants out of abject poverty.⁸

Along with economic growth came the demand for more political freedom, reflected in the Democracy Wall movement of the late 1970s and even larger mobilizations in the late 1980s.⁹ For workers, a key motivation was eliminating CCP corruption, which had allowed party leaders and their families to profit from insider deals as state enterprises were sold. Wei Jingsheng, a leading figure among Chinese worker dissidents of the period, challenged Deng's government to adopt a "Fifth Modernization"—democracy. In 1981, the government responded to his recommendation by placing him in prison for almost two decades.

Although some experiments with direct union elections have been tested during the past few years, for the most part the ACFTU is run from CCP headquarters.

This incident and many others that led up to the Tiananmen Square protest and massacre of 1989 demonstrated that dynamic economic growth had failed to generate corresponding political openness in China. Nevertheless, the 1989 Tiananmen Square democracy movement remains a defining point for the country. It also marks the first time (post-revolution) that workers sought to form independent worker organizations.

ACFTU Today

The ACFTU is still an integral part of the state and CCP structures. Most full-time union representatives have not come from workers' ranks, but rather rose through the CCP and were assigned to the ACFTU. Although some experiments with direct union elections have been tested during the past few years, for the most part the ACFTU is run from CCP headquarters, whether at the municipal, provincial, or national level. Wang Zhaoguo, who was appointed head of the

ACFTU in December 2002, is a leader in the CCP, as were his predecessors. Another influential ACFTU leader is Zhang Junjiu, also a major party boss.

As part of its stabilization program in the post-Mao period, the government reestablished the ACFTU as the single federation of all local trade union councils and national industrial trade unions. It is structured on a combination of geographic and industrial lines. By law, every factory must contribute to the union fund an amount equal to 2 percent of its total wage expenditure, but many employers fail to comply. The funds are largely controlled by the local ACFTU offices.

On paper, the ACFTU is the largest national labor organization in the world, with more than 100 million members and some 500,000 full-time union staff. The consensus is that these numbers are grossly inflated and that in many workplaces where the ACFTU claims membership, workers are unaware of the

presence of an ACFTU branch. One researcher cited a 2002 organization audit, conducted by the Shaanxi Provincial Federation, showing that only 22 percent of the local unions registered in workplaces in the province actually existed.¹⁰ The ACFTU tends to be present in what remains of SOEs and in enterprises owned or co-owned by regional and local governments that deem it opportune to maintain the ACFTU as a labor control mechanism. ACFTU presence in private and foreign-owned enterprises is generally low.

The Chinese government keeps tight rein on the ACFTU and its activities. China's official labor movement is based on a one-way "transmission belt" model, where the unions' role is one of conveying government policies to workers and promoting labor discipline to implement those policies, as opposed to representing workers in dealings with employers and the government. But the future of the labor movement in China is still in flux. Just as the CCP has factions, so does the ACFTU. Some within the ACFTU would like to see the organization move toward a more progressive position that creates space for workplace policy and labor law reforms.

China's extraordinary growth in production and assembly has taken place in an environment where workers have had little or no access to power.

Although it is controlled by the CCP, the ACFTU has a weak bureaucracy whose function depends greatly on the local party structure and those who run it.

Today, Chinese workers do not unquestioningly accept the transmission belt model of CCP control over trade unions. Some workers seek new forms of independent organization and action inside and outside the ACFTU, even in the face of government repression.

Hong Kong Confederation of Trade Unions

The largest independent trade union movement in China is the Hong Kong Confederation of Trade Unions (HKCTU). The HKCTU, one of the most progressive labor movements in all of Asia, has been at the forefront of the struggle to defend Hong Kong autonomy (one country/two systems) and to advance Hong Kong democracy, the rule of law, and respect for human and worker rights. It is a voice for the working men and

women of Hong Kong in an atmosphere starkly lacking in basic labor protections, where a legal vacuum undercuts workers' rights to organize and bargain collectively.

Today, the future of democratic rights in Hong Kong remains in jeopardy. In July 2003, more than 500,000 Hong Kong citizens marched in the streets to protest a proposed security bill aimed at restricting freedom of assembly and freedom of expression. The huge turnout helped pressure Hong Kong Chief Executive Tung Cheehwa to announce the bill's deferral, but the Beijing government vowed to return later and pass an alternate version of this law. The following year, claiming that Hong Kong was still not ready for democracy, Beijing ruled out the use of direct elections to select Hong Kong's next chief executive in 2007 and all of its legislators in 2008; the government has set no timetable for political reform.¹¹

On July 1, 2004, despite attacks on newspapers and media, thinly veiled

threats that a march could produce violence, and a disinformation campaign aimed at discouraging turnout, more than one-half million Hong Kong citizens declared again with their feet their intention to press for continued democratization and reform. In September 2004 elections, close to two-thirds of a record 1.7 million voters chose pro-democracy candidates. Despite winning the popular majority, however, the democrats will hold only 25 of 60 seats. Thirty seats went to candidates chosen by business and professional groups mostly controlled by Beijing, while electoral rules gave other seats to pro-government candidates who finished behind the democrats. Even though the democrats are entering office with a popular mandate for change, they have no clear way of legislating it.

The HKCTU was key to the success of both the 2003 and the 2004 protests, enlisting the help of tens of thousands of its union members to provide volunteers and training and to participate in the rally. Because the HKCTU has also been involved in the movement to promote worker rights and democracy throughout the mainland, it is a target of the Beijing government.

A Global Giant

By many measures, China now has the world's second largest economy after the United States. Although some analysts think that China's growth trend will continue, others believe that China's rapid expansion cannot be sustained and, if it falters quickly and deeply, a global economic recession could result.¹²

Regardless of the debate over the impact of China's growth, almost all observers agree that the scale of China's industrialization is affecting more people at once than any comparable wave of factory production in history. Since 1990, China's manufacturing production has increased by more than 400 percent. In 2003 alone, China's total exports rose by 35 percent. China is the world's biggest supplier of consumer electronics, computer hardware, and steel. Chinese factories turn out 30 percent of the world's air conditioners and televisions, 40 percent of the world's mobile phones, half of the world's cameras, and half of its shoes. In 2003, Chinese workers assembled 40 percent of all laptops (after making none only three years earlier). Foreign direct investment (FDI) to China (including Hong

Kong) increased from \$46.8 billion in 2000 to \$71.3 billion in 2003. In early 2004, the largest source of investment in China was Hong Kong, followed by investment from the Virgin Islands.¹³

China's extraordinary growth in production and assembly has taken place in an environment where workers have had little or no access to power. It has been accompanied by corruption, pollution, wage and social inequalities, unemployment, precarious work, and labor exploitation reminiscent of the worst features of the Industrial Revolution in the West. One dramatic reflection of the downside of unregulated growth is the volume of workplace injuries and deaths. In 2002, workplace accidents reportedly caused 140,000 deaths in China, 250,000 workers lost body parts and suffered other injuries, and nearly 400,000 workers died from the cumulative effects of workplace illness. In Shenzhen alone, official statistics indicate that an average of 31 workers per day were disabled last year and that a worker died at work every 4.5 days. Between January and September 2004, official statistics cite 609,429 work-related accidents with a death toll of 98,809 workers.¹⁴

Throughout China, 160 million workers face hazardous working conditions, but only a third are able to get regular medical checkups. In Guangdong Province, one of China's most rapidly industrializing areas, more than half the factories have never been examined for occupational safety and health violations. Of the inspected worksites, 96 percent have been found to have such violations. Occupational safety and health standards written by the central government are not even communicated to regulatory agencies, so they cannot be enforced.¹⁵

Most of China's nearly 800 million laborers still work in rural agriculture, but tens of millions leave rural areas each year to find work in cities, in industry, and in rapidly growing export factories in special economic zones (SEZs, China's equivalent of export processing zones, or EPZs) in coastal areas.¹⁶ Beginning in the mid-1980s, the government lifted its ban on free travel by rural laborers. Since then, 150 to 200 million

surplus laborers in rural areas have migrated to urban industrial centers. Most do not have permanent residency where they are employed, and they bear the brunt of worker rights violations. Migrant workers, the vast majority of whom are women, are at the bottom of the social and economic ladder. These workers produce the bulk of export goods.

Today, approximately 160 million workers are employed in formal sector companies divided into different types of firms: SOEs, privately invested enterprises, foreign-invested enterprises, joint ventures, urban collectives and cooperatives, and township and village enterprises.¹⁷ Another 100 million workers are employed in other non-agricultural jobs in urban areas.

Major multinational corporations based in nearby Asian countries and in the United States, Canada, and Europe have set up extensive operations inside China, producing for the Chinese domestic market and

for export back to their countries of origin. Smaller companies are also investing in China, and most companies based in Hong Kong and Taiwan employ significant numbers of Chinese workers. Many non-manufacturing multinational companies such as Wal-Mart have also begun operations in China. In addition, China has spawned a growing number of multinationals of its own—such as Petro-China—that are becoming key players in the international economy.

China today faces both global opportunities and challenges on a scale that reflects its great size. Its political, economic, and social conditions are extremely complex, and the country carries enormous burdens and problems. It also has a labor force of almost 800 million workers who want to help resolve those problems and take part in building their society. They can only do so once they are allowed to develop an independent voice—a goal that remains elusive.

Endnotes

- ¹ Hong Kong was ceded to the British, Macao went to the Portuguese, and other territories called “concessions” went to Germany, France, and Russia. Among the rights that China ceded to the “Great Powers” were the right to collect and keep customs duties; the right for citizens to be tried by special international courts rather than Chinese courts for offenses committed in China; the right to build and operate railways, mines, and other enterprises; and the right to protect these structures with their own armed forces.
- ² See S. Bernard Thomas, *Labor and the Chinese Revolution: Class Strategies and Contradictions of Chinese Communism, 1928-48* (Ann Arbor: Center for Chinese Studies at The University of Michigan, 1983), pp. 1-2.
- ³ See Jonathan D. Spence, *The Search for Modern China* (New York: W. W. Norton & Company, Inc., 1990), pp. 349-350.
- ⁴ See John King Fairbank, *China: A New History* (Boston: Harvard University Press, 1994), pp. 299-301; Jonathan D. Spence, note 3 above, pp. 498-499.
- ⁵ With the exception of Taiwan, the then-British colony of Hong Kong, and the Portuguese colony of Macao.
- ⁶ The Chinese government never provided official figures for the death toll. However, numerous officials and scholars have commented on the vast losses. For example, Chinese National Defense University professor Cong Jin wrote: “According to the statistics, in 1959, China had a population of 672 million. In 1960, the number reduced to 662 million. The number was further reduced by 13 million in 1961. Adding the number of newborns, the total number of the population in 1961 should exceed that of 1959 by 27 million. Adding the number of deaths and of the unborn, from 1959 to 1961, the population was reduced by 40 million.” (Cong Jin, *Winding Road*, p. 272.) Well-known scholar Jin Hui wrote: “During the disaster between 1959 to 1961, the ‘abnormal death toll’ in China was at least 40 million.” (Jin Hui, “Memo on the ‘Three-Year Natural Disaster,’” *Society* magazine, 1993.) CCP Party History Institute Deputy Director He Liao Gaolong wrote that the death toll during that three-year period was 40 million. (See *Yuanhuang Chunqiu*, No. 3, March 2000.) The mass layoff had an extremely adverse impact on Chinese workers from rural areas. Millions of people not only lost their jobs, but also were “deported” to their villages, where there was no job market.
- ⁷ See John King Fairbank, note 4 above, pp. 374-375. Temporary workers worked in every sector. Most were actually permanent employees who nevertheless held a “temporary” official status.
- ⁸ *Ibid.*, pp. 409-413; see also Gordon White, *Riding the Tiger: The Politics of Economic Reform in Post-Mao China* (Stanford: Stanford University Press, 1993), pp. 9-11; Asian Development Bank, *Annual Report for 2003, 2004*.
- ⁹ During the winter months of 1978-1979, thousands of people in Beijing posted complaints and protests about China’s ills on a stretch of blank wall on Chang’an Avenue, to the west of the former Forbidden City. This became known as “Democracy Wall.” After initially tolerating the protests, the Chinese government cracked down, arresting and imprisoning the movement’s most prominent leaders. For more information, see Andrew J. Nathan, *Chinese Democracy* (Berkeley: University of California Press), 1986.
- ¹⁰ See Guan Ming, “Investigation and Thoughts on Union Organization,” *Gongren Ribao*, February 20, 2002, cited in Trini Leung, “ACFTU and Union Organizing,” *China Labour Bulletin*, April 26, 2002. Available at http://www.china-labour.org.hk/iso/article.adp?article_id=2265&category_name=Official%20Union%20%2d%20ACFTU

- ¹¹ The commitment to increase the number of elected legislators to 100 percent was made under “basic law,” the common term for the hand-over treaty from Britain to China. See Philip P. Pan, “Hong Kong Elections A Blow to Democrats,” *Washington Post*, September 13, 2004, p. A15; “Hong Kong’s Choice,” Editorial, *Washington Post*, September 14, 2004, p. A26.
- ¹² See James Kynge, “All Eyes Are on the Economic Dynamo as the World Watches for Signs that Beijing’s Ever More Restrictive Intervention Will Succeed in Bringing Expansion Under Control Without Sending the Country Spinning from Boom to Bust,” *Financial Times*, May 3, 2004, p. 15.
- ¹³ See *China Statistical Yearbook 2001*, Table 17-4, p. 587; “China’s Total Trade Volume Hit US\$851.2 billion Last Year,” *People’s Daily Online* at http://english.peopledaily.com.cn/200401/12/eng20040112_132381.shtml; John Schmid and Rick Romell, “China’s Economic Boom Hits Home,” *Milwaukee Journal Sentinel*, December 28, 2003, p. 1A; UNCTAD, “Table: FDI Flows Into Major Economies, 2001, 2002, 2003” at www.unctad.org; “Order from the Leadership of the State Council: To Watch the ‘Connection (or Transition) Station’ of Escaped Capital,” *21st Century Economic Report*, August 7, 2004. According to this report, the Cayman Islands ranked number eight in investment in China. The unusually high degree of investment coming from the Caribbean region has prompted the Chinese authorities to open an investigation into “escaped capital” and the possibility of the involvement of corruption money in foreign direct investment.
- ¹⁴ See Patricia Buckley Ebrey, *The Cambridge Illustrated History of China* (Cambridge: Cambridge University Press, 1997), pp. 321-325. Official statistics on workplace accidents are combined with statistics on work-related traffic accidents, making it difficult to establish the number restricted to worksite safety or health issues. See Congressional-Executive Commission on China, Statement of Mil Niepold (April 28, 2003); Joseph Kahn, “Making Trinkets in China, and a Deadly Dust,” *New York Times*, June 18, 2003, p. A1; <http://news.sina.com.cn/c/2004-10-21/10293990219s.shtml>
- ¹⁵ See Tim Pringle and Stephen D. Frost, “The Absence of Rigor and the Failure of Implementation: Occupational Health and Safety in China,” *International Journal of Occupational and Environmental Health*, Vol. 9, No. 4 (October/December 2003), p. 314.
- ¹⁶ This figure covers workers from all sectors, including agricultural workers.
- ¹⁷ People’s Republic of China, Census (2002).

China and International Worker Rights Instruments

China has ratified four of the principal United Nations covenants on human and worker rights:

International Convention on the Elimination of all Forms of Racial Discrimination (CERD)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Convention on the Rights of the Child (CRC)

International Covenant on Economic, Social, and Cultural Rights (ICESCR)

However, upon ratifying the ICESCR in 2001, China took the following “reservation” seeking to exempt itself from the covenant’s obligations on freedom of association for workers:

The application of Article 8(1)(a) [on workers’ freedom of association] of the Covenant to the People’s Republic of China shall be consistent with the relevant provisions of the Constitution of the People’s Republic of China, Trade Union Law of the People’s Republic of China and Labor Law of the People’s Republic of China.

China has signed but not ratified the following principal UN covenant:

International Covenant on Civil and Political Rights (ICCPR)

China has ratified three of the ILO’s fundamental conventions reflected in the 1998 Declaration on Fundamental Principles and Rights at Work:

Convention No. 100 on Equal Remuneration

Convention No. 138 on the Minimum Age for Admission to Employment

Convention No. 182 on the Worst Forms of Child Labor

China has not ratified five of the ILO’s fundamental conventions:

Convention No. 29 on Forced Labor

Convention No. 87 on Freedom of Association and Protection of the Right to Organize

Convention No. 98 on the Right to Organize and Collective Bargaining

Convention No. 105 on the Abolition of Forced Labor

Convention No. 111 on Discrimination (Employment and Occupation)

Freedom of Association, Right to Organize and Bargain Collectively

16

CHAPTER 2

Overall, China has ratified 23 International Labor Organization (ILO) conventions. Before 1949, the KMT government ratified 14 conventions. In 1983, China announced its recognition of these 14 ratifications but revoked 23 that had been ratified by the Taiwanese (Republic of China) government. By the end of September 2003, China had ratified another nine conventions. Some ACFTU leaders are now calling on the government to ratify more conventions.

However, China has not yet ratified ILO Conventions 87 and 98, the core conventions on freedom of association and collective bargaining. Conventions 87 and 98 require countries to guarantee workers' rights to freely form and join organizations of their own choosing, to choose their leaders and representatives, and to define their own activities and goals—all independently of government and of employers—as well as to bargain collectively over working conditions.

Like other countries that have not ratified one or both of these conventions (including the United States, Brazil, India, and Mexico), China is obliged to comply with the principles of freedom of association by virtue of membership in the ILO. Moreover, the ILO's 1998 Declaration on Fundamental Principles and Rights at Work says that "all members, even if they have not ratified the Conventions in question, have an obligation . . . to respect, to promote, and to realize . . . the principles concerning the fundamental rights which are the subject of those Conventions. . . ." Conventions 87 and 98 are first among the four principles cited.

The Chinese government signed the UN International Covenant on Civil and Political Rights (ICCPR) on October 5, 1998. It has not yet ratified the covenant, but the Chinese People's Congress has indicated plans to do so in the near future.

China has ratified the UN International Covenant on Economic, Social, and Cultural Rights (ICESCR), but it asserted a "reservation" purporting to

exempt it from the obligation to guarantee workers' freedom to form and join trade unions of their own choosing (see China and International Worker Rights Instruments). However, China's labor laws directly violate the treaty obligations. In particular, a clause in China's 2001 Trade Union Law declaring the ACFTU to be the only union organization allowed to exist in China rules out independent organization. This clause violates the core of Article 8(1)(a), which ensures "the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests."

Since the reservation is incompatible with the "object and purpose" of the ICESCR, it is implicitly invalid, and China's obligations under the ICESCR survive notwithstanding its reservation.¹

China's Labor Laws

China's constitution and laws provide for trade union organization, workplace "consultation," elections of

trade union “committees,” and a role for unions in case of strikes. However, these rights are tightly bound by ruling party command and state control. Trade unions are not freely chosen by workers, consultation is not genuine collective bargaining, and the right to strike is generally not recognized in practice. Workers exercise these rights at great risk to their jobs and often to their personal security.

International human and worker rights bodies, independent human rights groups, and international worker rights experts have found conclusively that China violates workers’ freedom of association. First and most obviously, China prohibits independent union organizing. Under Chinese law, the only union organization allowed to exist is the ACFTU and its branches: “The All-China Federation of Trade Unions shall be established as the unified national organization.”² Any independent organization of workers’ own choosing is illegal.

In turn, the ACFTU is organically tied to the ruling party. The Trade Union Law requires the ACFTU to “take economic development as the central task, uphold the socialist

The instruction to “uphold reform and opening up” means that trade unions must support the government’s globalizing economic policies even when those policies hurt workers.

road, uphold the people’s democratic dictatorship, uphold leadership by the Communist Party of China, uphold Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, uphold reform and opening up.”³

Contradictions abound in this formulation. The instruction to “uphold reform and opening up” means that trade unions must support the government’s globalizing economic policies even when those policies hurt workers. This negates unions’ representation role. Economic development is not the central task of trade unions. Rather, unions’ central task is to represent workers at the workplace and in the political life of a nation to ensure that economic development is not based on worker exploitation and abuse. Through collective bargaining and participation in democratic processes, trade unions seek to have workers share in the gains of development, not pay the price of development for the benefit of ruling elites and international investors and executives.

This provision, like other 2001 revisions to the Trade Union Law, shows that “neither the Party [n]or the government is willing to relax [its] hold over the ACFTU; and even less willing to allow legislative reform to move in a direction that would enable the union to represent workers’ interests . . . the revisions to the trade union law testify to the fact that the Party is not only unwilling to weaken its hold over the unions, but even wants to strengthen it.”⁴

Right to Organize

The ILO’s Committee on Freedom of Association (CFA) oversees adherence to Conventions 87 and 98, whether or not the government concerned has ratified them. The CFA has considered numerous complaints about China.

In cases concluded through 1999, the CFA has repeatedly found that the Trade Union Law violates workers’ freedom of association and their right to form and join trade unions of their own choosing. The CFA

includes its China cases in a limited category called “serious and urgent.” This category is reserved for egregious worker rights violations and signals the full weight of the ILO’s call for accountability and reform. Serious and urgent cases are defined as those “that involve murder or death threats, physical assaults . . . arrests and detentions of trade union leaders and members, obstruction of trade union meetings and activities, disciplinary measures following industrial action, legislation seriously restricting the activities of trade unions . . . and prohibition of independent trade unions.”⁵

The CFA has identified the ACFTU monopoly and its “transmission belt” role as abuses that “prevented the establishment of trade union organizations that are independent of the public authorities and of the ruling party, and whose mission should be to defend and promote interests of their constituents and not to reinforce the country’s political and economic system.”⁶

The International Confederation of Free Trade Unions (ICFTU) reported in its 2003 *Annual Survey of Violations of Trade Union Rights* that “trade union rights are not respected in

China.” The ICFTU noted, “Workers are prevented by law from organizing outside the All-China Federation of Trade Unions (ACFTU), which is strictly controlled by the Chinese Communist Party.” In March 2002, the ICFTU filed a new complaint to the CFA regarding “the use of repressive measures including threats, intimidation, intervention by security forces, beatings, detentions, arrests and other mistreatment” against worker organizers; in 2004 the CFA dryly noted that it “is still awaiting observations or information from the government” in the case.⁷

A 2002 Human Rights Watch report stated, “[T]he dual position of the ACFTU—as upholder of working-class interests and as loyal servant to the Party—makes it impossible for the union to promote free association in accordance with international standards. . . . It has not defended the principle of independent union organizing, and it has never spoken out against laws and regulations routinely employed to justify imprisonment of labor activists who organize outside its aegis.” Amnesty International says, “Independent trade unions are not permitted in China. . . . The law still upholds the existing monopoly of the ACFTU

and includes the subordination of Chinese trade unions to the Chinese Communist Party.”⁸

The U.S. State Department’s *Country Reports on Human Rights Practices 2003* said of workers’ freedom of association in China:⁹

“The Constitution provides for freedom of association. However, in practice, workers were not free to organize or join unions of their own choosing. The ACFTU, which was controlled by the Communist Party and headed by a high-level Party official, was the sole legal workers’ organization. The Trade Union Law gives the ACFTU control over the establishment and operation of all subsidiary union organizations and activities . . . Independent unions are illegal.”

Worker Organizing— and Repression

Chinese workers do not docilely accept the legal framework that allows them no independent voice. Government authorities clamp down, but they cannot prevent workers from rising up to demand workplace justice. Workers in China have a rich history of searching for ways to pursue their rights under repressive

conditions. That tradition has demonstrated itself in recent times and continues today.

Chinese workers face enormous risks when they confront abusive employers and repressive officials. Sometimes they meet with violent force from employer-hired thugs or from police breaking up assemblies, demonstrations, and protests. Authorities often arrest, detain, and prosecute worker leaders and worker advocates. The following cases are drawn from researchers at the Hong Kong-based *China Labour Bulletin*, a respected chronicler of worker rights violations in China.¹⁰

Workers' Autonomous Federations

In the democratizing movements of the late 1980s, workers in many regions organized Workers' Autonomous Federations (WAFs) separate from official ACFTU unions. Many analysts of the period believe that the government tolerated dissent by students, writers, intellectuals, and other groups, seeing no menace to CCP control. However, when workers began to organize independently, the government perceived a real threat. The Tiananmen massacre of 1989 was the

most visible reaction. Students were the main victims, but authorities decided to use deadly force when they saw students and workers beginning to link their protests. At the same time, authorities moved quickly and brutally to suppress lesser-known workers' movements and to victimize lesser-known worker organizers. Many of these

workers have been imprisoned. They wait for the awakening of respect for their rights, demonstrated by their release and compensation for themselves and their families.¹¹

- Guo Yunqiao, leader of a newly formed WAF in Yueyang City, Hunan, led a protest march against the Tiananmen massacre. He was arrested, quickly tried, and



sentenced to death in September 1989. His death sentence was commuted in 1991 to 13 years. He was released in 2000.

- Li Wangyang, an organizer of the Shaoyang City, Hunan, WAF, was arrested in 1989 and sentenced to a 13-year prison term on charges of counterrevolutionary propaganda and incitement. He was released in June 2000 but rearrested a year later and sentenced to ten more years for protesting his treatment in prison. His sister, Li Wangling, was also arrested and sentenced to three years in prison for helping to publicize Li's protests.
- Xu Wangpin, arrested in 1989 for organizing an independent union at his factory in Sichuan, served eight years in prison. He was then rearrested for "disturbing social order" and sentenced to another prison term.
- Yao Guisheng, an activist in the Changsha WAF in Hunan, was arrested in 1989 for helping other WAF members avoid police capture. He was sentenced to 15 years in prison, where he was often placed in solitary confinement for refusing to admit his guilt. Yao suffered a mental breakdown from his treatment.

Xu Wangpin, arrested in 1989 for organizing an independent union at his factory in Sichuan, served eight years in prison.

- Wang Miaogen, a member of the Shanghai WAF, was arrested in 1989, jailed, and released in 1992. A year later he was rearrested and forcibly committed to a psychiatric hospital for planning a protest demonstration during the Asian Games of 1993.
- Zhang Shanguang was sentenced to seven years' imprisonment in 1989 for organizing the Hunan WAF. He was rearrested in 1998 and charged with "passing intelligence" outside China because he filed reports with foreign radio stations about worker protests in his home county of Shupu. He was sentenced to ten more years in prison.
- Workers Chen Gang, Liu Zhihua, and Peng Shi were arrested in June 1989 for attempting to organize a factory protest in Hunan. Chen was sentenced to death and the others to life terms for "hooliganism." Their sentences were later reduced, and Chen and Peng were released in 2004. Liu is scheduled for release in 2011.

Free Labor Union of China

In the early 1990s, even with the memory of the 1989 crackdown against WAFs still fresh and WAF leaders and activists still imprisoned, a new independent organizing current called the Free Labor Union of China (FLUC) took shape. The government responded with the same kind of repression, especially against FLUC organizers in Beijing arrested in 1992 for counterrevolutionary activity. These leaders were sentenced to long prison terms after a mass trial in December 1994.

- Wang Guoqi was sentenced to 11 years in prison. Authorities suspended family visits in 1997 as punishment for Wang's failure to memorize prison rules. He was released in 2003 but reportedly disappeared soon afterward during a crackdown on dissidents.
- Liu Jingsheng, a leader of the FLUC in a Beijing chemical factory, was sentenced to 15 years in prison.
- Kang Yuchun, a hospital researcher active in the Beijing FLUC, was sentenced to 17 years in prison. He was released in 2003.

- Hu Shigen, who worked at the Beijing Foreign Languages Institute and became a FLUC leader, was sentenced to 20 years in prison.

Repression of Worker Advocates

Chinese authorities target workers' supporters as much as their leaders and activists. Journalists, lawyers, independent political activists, civil servants, and others who devote their skills to workers rather than to employers or the government are especially victimized.

- Li Bifeng, formerly an officer at Mianyang City Tax Bureau, Sichuan Province, wrote an open letter in 1997 to denounce violent police action against massive worker protests over the state's alleged misappropriations of unemployment funds. Forced into hiding, he conducted a public poll on layoffs, publicized worker demands for reforms, and appealed to international organizations to support the laid-off workers' right to organize. He was arrested in 1998 and sentenced on trumped-up fraud charges to seven years in prison.
- Zhao Changqing, a teacher at a school affiliated with the Shaanxi

Hanzhong Nuclear Industry Factory, began advocating for better conditions for factory workers and criticizing the ACFTU for failing to defend workers' interests. He was arrested in 1998 and sentenced to three years in prison for "disturbing social order."

- In 1998, Yue Tianxiang started a labor newsletter called *Chinese Workers' Monitor* and helped promote legal action seeking unpaid wages for workers at the Tianshui Auto Transport company in Gansu Province. He was arrested in 1999 and sentenced to ten years in prison for "subverting state power."
- Xu Jian was a lawyer in Baotou City, Inner Mongolia, who represented workers in state-owned factories there. After a show tour of a machinery factory by President Jiang Zemin in 1999, Xu publicized the fact that workers had not been paid for almost six months and filed lawsuits on their behalf. He was arrested and sentenced to four years in prison for "incitement to subvert state power."
- Lu Wenbin, a reporter for the Textile Daily newspaper, documented a strike and interviewed workers at the Huainan textile

factory in Dafeng. Authorities arrested him in December 2001.

- Cai Guangye, a doctor and photojournalist in Jilin Province, took pictures and wrote essays publicizing protests by workers in chemical, metalworking, paper, cement, and other industrial factories in Jilin. Police arrested him in 2001 and held him for two years before imposing a three-year sentence in July 2003.
- Wang Sen and Hu Mingjun, leaders of the banned China Democratic Party in Sichuan, publicly supported protests over unpaid wages by workers at the Dazhou steel factory. They issued statements backing independent trade union formation. Authorities arrested them in April and May 2001, respectively. First charged with "inciting to subvert the power of the state," which carried a maximum five-year sentence, they were convicted a year later on the more serious charge of outright subversion. Wang was sentenced to ten years in prison, and Hu received an 11-year sentence. Wang is reportedly seriously ill with diabetes at a prison in Nan Chong City, Sichuan, and not receiving adequate care.¹²

Liaoyang, Daqing, and Fushun: Northeast Worker Protests

Workers' fight for labor justice, in China as throughout the world, is irrepressible. Despite sustained repression against independent worker action throughout the 1990s, the beginning of the twenty-first century saw workers in China continuing to struggle for their rights.

The most notable upsurges took place in traditional industrial areas of the northeast, where workers were hardest hit by mass unemployment after the economic restructuring of SOEs. Instead of consulting with workers and negotiating restructuring plans for a smooth transition, company managers often laid workers off, looted their pension funds, defrauded them of severance pay, and pocketed months' worth of their salaries.

Liaoyang

For decades, the Liaoyang Ferroalloy factory in Liaoning Province was a source of steady employment for area workers. Workers helped make the foundry and metal processing firm a successful, profitable operation with sales in both domestic and international markets. In 2002, government officials and company managers

engineered a bankruptcy that left thousands of employees without pensions, social insurance, and payment for work performed. As Human Rights Watch recounted:¹³

“The plant’s former workers trace its terminal decline to alliances between Gong Shangwu, first Liaoyang Party Secretary and later mayor and Liaoyang People’s Congress chairperson, and corrupt managers at Ferroalloy who, they say, conspired to close the factory for their own personal gain. The accusations were supported by an official legal case against six senior figures connected with the plant, one of whom was convicted on corruption charges. As reported in the official *Liaoyang Daily*, over Rmb 5.3 million [\$689,000] in embezzled funds, assets, and bribes has been recovered; and authorities have claimed they are chasing another Rmb 2.9 million [\$377,000]. The plant started to lose money in 1995, but, according to an open letter from irate workers to the governor of the province, management continued to issue false reports indicating net profits to justify awarding themselves large bonuses.”

Workers organized mass protests. Employees of area auto parts, electrical equipment, steelmaking, and precision tool factories facing similar problems joined Ferroalloy workers in the movement. On March 11-12, 2002, some 17,000 workers rallied in protest. Police arrested four key leaders for “organizing illegal demonstrations”: former steelworker Yao Fuxin and Ferroalloy workers Xiao Yunliang, Pang Qingxiang, and Wang Zhaoming. On March 18, 30,000 workers from Ferroalloy and 20 other area factories staged an even bigger demonstration to protest the arrests and demand release of their detained leaders.

National government officials in Beijing responded by ordering a crackdown on protests and lodging more serious accusations against detainees. Police used physical attacks, arrests, and jailhouse beatings of participants to break up new, smaller protests. The arrested leaders were sentenced to up to seven years in prison, this time for the more serious charge of “subversion,” because their cases were publicized by advocates in Hong Kong and other countries. Their trial lasted one day, and they had no access to their lawyers before the trial.

The indictment handed down against protest leaders gives chilling confirmation of the government's repressive response:¹⁴

“During February and March 2002, Liaoyang Ferroalloy Factory went legally bankrupt, and some laid-off workers who did not understand [the situation] were dissatisfied. Defendants Yao Fuxin and Xiao Yunliang took advantage of these objective conditions, and plotted to organize demonstrations and protests. On March 11, defendants Yao Fuxin, Xiao Yunliang and others, without applying for permits, organized some workers of the Liaoyang Ferroalloy Factory to carry out illegal assembly, demonstration and protests, [thus] seriously disturbing functions of state organs. In front of the main entrance of the city government [compound], the two defendants also gave inflammatory speeches.

“Despite being reprimanded by the Public Security office, on March 12 Yao and Xiao organized another illegal assembly, demonstration and protest. On March 18, 19, and 20 respectively, Xiao Yunliang, Pang Qingxiang, and others again organized illegal assemblies, demonstrations and protests. Moreover, they

ignored orders to disperse, disturbed the proper work of state organs, even blocked street traffic for a long period of time, and caused a severe disruption of the public order.

“They also made contact with reporters at Agence France Presse and the *Wall Street Journal* in order to pressure the government by publicizing information about their illegal demonstrations and activities; thus having a major influence. Foreign media covered this event extensively through the Internet and exaggerated the facts of the situation, creating a despicable impression.

“Defendants Yao Fuxin and Xiao Yunliang were caught by the Public Security office and brought to justice.”

In late 2003, Yao and Xiao were transferred from Jinzhou prison to a penal colony near the Mongolian border notorious for harsh conditions and treatment. The prison's remote location meant a daylong trip for visiting family members. A U.S. reporter seeking to interview Yao's wife about his condition recounted:¹⁵

“The wives are apparently kept under some kind of house arrest. . . . Three

officials nabbed me outside Mr. Yao's home. . . . I was traveling with a colleague . . . and my intrepid 9-year-old son, and we were all taken to a nearby hotel. They let us use the bathroom—under careful escort in case we tried to break out.

“‘China is a country of laws,’ the leader explained, after offering us cigarettes. ‘So your interviews must go through State Council rules and local officials. You must go through the procedures for this to be legal. So interviews now are impossible. But you are welcome to come back to Liaoyang any time as a tourist.’

“‘Well, then,’ I suggested, ‘I'll go and talk to Yao Fuxin's family about the local tourist spots.’

“They didn't even crack a smile. Instead, they put one goon in my taxi and sent another carload to escort us to the Shenyang airport and wait there until we boarded a plane to Shanghai. My son was tailed in the airport as he went to get an ice cream.”

In April 2004 the ILO's CFA rebuked Chinese authorities for their repression of the Liaoyang protest leaders. The CFA couched its con-

clusions in diplomatic language, but its import was unmistakable.¹⁶

“The Committee deplores . . . that the events in connection with the dispute were related to the bankruptcy of the factory and its consequences on the workers, yet Yao Fuxin and Xiao Yunliang were charged with and sentenced for subversion. . . . The most specific information provided by the government refers to the creation of disturbances, fabrication of rumors . . . disturbing the normal working order of the [city government], and causing a traffic jam. . . . The Committee cannot comprehend how such vague and general accusations can lead to the conviction of such a serious crime as subversion. . . . The Committee deeply regrets the government’s disregard for essentially all of its previous recommendations in this very serious case and its perseverance in the punishment of acts related to labor conflict with lengthy terms of imprisonment for acts of subversion on the basis of general and vague accusations.”

Daqing

The Daqing oil fields became a center of China’s economic development in the late 1950s. Vast oil

In newly privatized enterprises, company managers and corrupt government officials conspired to sell themselves the firms at artificially low prices, then robbed pension and benefit funds to pay themselves while laying off thousands of workers.

resources fueled national industry and gave work and good wages to a quarter-million employees.

A shift in 2000 to private ownership under Petro-China, with listing on the Hong Kong and New York stock exchanges, brought restructuring and layoffs of tens of thousands of workers. As in Liaoyang, however, government officials and company managers refused to consult with workers and negotiate a transition and restructuring plan that took workers’ concerns into account. Instead of defending employees, the official ACFTU union—headed mostly by managers—backed company moves.

Petro-China reneged on promises to maintain social insurance for laid-off workers and to pay heating allowances, an important benefit in the long winter. In early March 2002, thousands of workers took to the streets to protest their treatment. Protest organizing was decentralized, without named individuals in public leadership roles, so police made

“snatch” arrests of anyone who appeared to speak or direct activities. According to Amnesty International, “several injuries were reported on 19 March when paramilitary clashed with the demonstrators.”¹⁷ For several weeks afterward, protests continued in a similar pattern—decentralized, anonymous organization by workers met with physical violence and detentions by authorities.

Fushun

Fushun is a major coal mining center in Liaoying Province in the northeast. China’s coal industry was another pillar of its industrial development in the last half of the twentieth century. The industry is still notorious for hazardous conditions and thousands of worker fatalities each year. Estimates of coal miner deaths vary between 10,000 and 40,000 annually, but even the official statistic of 10,000 fatalities accounts for two-thirds of the world’s mining fatalities.¹⁸

The coal industry reached a crisis of overproduction in the late 1990s,

leading to mass layoffs. In Fushun, more than 300,000 coal miners lost their jobs. As in the Ferroalloy and Petro-China cases, company managers threw the workers aside with minimal severance pay and social insurance.

In March 2002, thousands of workers launched protests. To avoid arrest, protest organizers publicized the action by placing posters around the city during the night. Fushun officials distributed cash bribes to protesters and deployed police to arrest those who would not give up.¹⁹

Protests Continue

Throughout 2003, workers' assemblies and protests continued. In many cases, the same abuses sparked their actions. SOEs laid off massive numbers of workers in the name of global competitiveness. Managers and union leaders imposed layoff terms on employees, often cutting their severance pay and pension plans without consultation or negotiation with genuine workers' representatives. In newly privatized enterprises, company managers and corrupt government officials conspired to sell themselves the firms at artificially low prices, then robbed pension and benefit funds to pay themselves while laying off thousands of workers.

Victimized workers who organized demonstrations met the same pattern of response seen in the Northeast movement a year earlier. Authorities arrested and imprisoned worker leaders and advocates and used police to crush the protests:

- In early 2003, workers at the Tieshu textile factory in Suizhou, Hubei, who had been left with slashed pension funds and worthless company shares, mounted mass demonstrations at factory gates to protest the company's refusal to hold genuine negotiations over effects of layoffs. Police responded with a door-to-door hunt for protest leaders and arrested nine workers identified as protest organizers. Tried in April 2004 for "disturbing public order," the nine await sentencing.
- In March 2003, workers at the newly privatized Liangshan paint factory in Shandong Province protested pay cuts and layoffs. Management of the private firm that had taken over the plant, the Liantian Chemical Engineering company, brought in armed thugs, who hauled away and beat three worker leaders: Jing Yongqiang, Tian Junfeng, and Hou Zhaohua. They broke Hou's wrists in the beating.

- In September 2003, hundreds of workers at the Liangshan steel factory in Sichuan protested layoff terms that company managers and city officials had drawn up without consultation or negotiation with employees. Authorities sent riot police to break up the demonstrations. More than 100 protesters were detained, and many were held for weeks without charges until protests dissipated.
- In November 2003, workers at the Xiangyang auto parts company in Xiangfan City, Hebei, protested privatization plans—announced with no consultation or negotiation with genuine workers' representatives—that left thousands unemployed. At the same time, because company-provided housing was also being privatized, workers faced steep rent increases. Police detained ten leaders of the movement and released their names publicly, creating a de facto blacklist of workers who can now be shunned as "troublemakers" by all area employers.

One Worker's Lost Voice

Cao Maobing worked at the Funing County silk mill in Yancheng, Jiangsu Province. He organized an independent trade union in 2000, when

the ACFTU branch did nothing about corruption, failure to pay severance and pensions to laid-off workers, unpaid wages, and other abuses. As Cao told foreign reporters, “The factory does have a union, but it exists in name only. The current union takes no responsibility for the workers. . . . So we told them we’ll set up a trade union ourselves. Whether the trade union is independent or not, or whose administration it comes under, is not important. What is important is that it is elected by the workers themselves, and it acts on their behalf.”²⁰

For his actions and his statements, Cao was arrested in December 2000. He was forcibly committed to a psychiatric hospital, where he endured drug therapy and repeated electric shock treatments for what authorities deemed “obsessive-compulsive disorder.” He was released after several months, when workers’ protests had faded. Authorities disconnected his phone, and Cao left the city.

Right to Bargain Collectively

China’s labor laws call for “collective contracts” in workplaces with trade unions (always ACFTU affiliated) but define such contracts as resulting

from collective “consultation,” not collective bargaining. The law mostly reflects the myth that under socialism—now called market socialism—workers and employers have no differences. Instead, they must sit on the same side of a “consultation” table.

China’s Trade Union Law compels unions to make economic development their central task and to serve as a worker control mechanism for meeting development goals. In contrast to this hands-on approach toward union control, the government’s policy toward companies is hands-off, letting them find the fastest way to profitability and growth without regard for worker rights. This combination transforms unions into representatives of management toward workers rather than representatives of workers toward management.

The law does not recognize that workers and employers can have contending interests to be negotiated and compromised through arms-length, independent bargaining. However, under Article 33 of the labor law, in factories without a union, workers have the right to reach agreement with their employer on a collec-

tive contract through representatives of their choosing, and to ratify the agreement in a representative or general assembly.²¹ This provision does not measure up to standards of freedom of association. However, while not going far enough, it may nevertheless represent a small, practical opening for some workers to undertake bargaining with their employers independent of the ACFTU and democratically adopt collective bargaining agreements.

The reality is that the majority of workers in China are not allowed to engage in genuine collective bargaining or be represented by leaders of their own choosing. In a March 2003 radio interview, a woman worker at the Kang En paper factory in Sichuang County, Zhejiang, said of the state-owned company’s stock ownership scheme for workers:²²

“Before we felt we all had rights as a collective, whereas now it’s all down to the individual. And I don’t mean us workers. I mean a few individual officials. . . . The shares get divided up among the bosses, they grab them. . . . We don’t have the same status as before. We no longer feel it’s our enterprise. In the old days we were seen as ‘masters of the

enterprise,’ but now everything’s down to the say-so of a few people. That’s the difference. It’s like we’re just hired hands.”

Asked whether the trade union was any help, she replied, “Not that I can see. . . . It’s pretty much a mirage. . . . [Management] chooses the chairperson.”

Company management normally appoints top union representatives. Most elections, if they are held at all, are rubber-stamping exercises. Full-time union officials get senior management salaries and sit on boards of directors or supervisory boards of companies. They regard themselves as members of the senior management team.

Ning Jiaxin, a worker at a Velcro factory in Tangxia, told a reporter, “I don’t remember who the union chairman is. It might be the boss himself, or the deputy general manager, his younger brother.”²³

Dou Xiandong, a welder at a steel-making factory in Tangxia, said, “The union belongs to the boss. He appointed the union chairman. Most of the bosses in private enterprises appoint their own union chairmen.”²⁴

One employer said that trade unions are “just a branch of management” whose role is not so much to represent workers as to explain to workers why the company cannot increase their wages or why layoffs will help the company.

Independent scholars who have studied the consultation system on the ground report that it “encourages identification of the trade union with management’s priorities.” The researchers explain:²⁵

“It is not so much that the trade union is subordinated to management as that the trade union is an integral part of the management apparatus For most trade union cadres at the workplace, the idea of representing and protecting the legitimate rights and interests of their members in opposition to the employer is something that is unfamiliar, if not entirely alien, to their traditional practice and to their traditional conception of their role, which is to serve the interests of the enterprise.”

An ACFTU union representative told a researcher:²⁶

“When workers complained that their wages were too low, we couldn’t negotiate this issue with

the director face to face . . . if this factory was bankrupt, the workers would lose their rice bowls Whether or not there will be raising of wages will finally be determined by the director. Concerning the issue of reducing staffing, what we can do is to do ideological work with the workers . . . letting them know . . . if they have bad job performance, they will run the risk of being made unemployed.”

Many union officials are either true managers or CCP cadres who come from management jobs or party ranks. According to a survey in Zhejiang Province, more than 75 percent of union leaders came from those two sources, while only 11 percent came from worker ranks.²⁷

One officer of the Chinese employers’ federation told researchers that trade unions are “just a branch of management” whose role is not so much to represent workers as to explain to workers why the company cannot increase their wages or why

layoffs will help the company. As another research group put it, “Chinese unions function more as an offshoot of the HR department, and are primarily concerned with supporting managerial interests.”²⁸

The agreements and practices that result from the consultation system are perversions of rights to collective representation and bargaining. In a case reported in the *Workers Daily*, a Hong Kong-based company with an apparel factory in Chengdu advertised to recruit a trade union chairperson from outside the factory after plant management was unhappy with workers’ choice of a chairperson.²⁹

Most workers take shop floor problems to supervisors, not to union representatives. One company went so far as to fine workers who sought help from the union instead of going to management. In June 2003, Xiong Zhengsheng, Wu Sheng, and Wang Zhengquan, who worked at the Feng Cheng Electric Power Company in Feng Cheng City, Jiangxi Province, appealed to the city’s ACFTU for assistance in a dispute with their employer. Management responded by deducting 200 Rmb [about \$26] from the workers’ monthly salaries and issuing a company regulation

that prohibited workers from appealing to upper level ACFTU officials: “Workers will be deducted 200 Rmb if they appeal once, 400 if they appeal twice.”³⁰

When workers step forward as genuine representatives of their colleagues in dealing with management, consequences can be dire. At

the Taiwanese-owned Pan-America Plastic Cement and Glass Fiber Company in Dongguan, 200 employees chose 36-year-old Wang Zhaoming and two co-workers, Zhang Junfeng and Yuan Qing, to seek unpaid overtime from the company. After the representatives raised the workers’ demand at an August 2002 meeting, management demoted



the three from technicians to janitors and cut their pay. When they appealed to authorities, the company fired them.

In October 2002, electrician Chen Zhihong appeared as a witness for the three leaders in an arbitration case. The company fired him. When he came to the plant to question his dismissal, company security guards beat him and threw him out. Thirty-nine workers signed a letter protesting management's actions. The company dismissed them and circulated their names to all the firms in the region on a blacklist, labeling them as "trouble-makers" who should not be hired.³¹

"Bargaining" on One Side of the Table

Traditional collective bargaining almost never takes place, although some experiments have been conducted in the southern part of China with union elections and collective bargaining. Chinese press reports indicate that on rare occasions, grassroots ACFTU leaders, especially the few who have been elected, have solicited proposals from their constituencies. For example, at the Hangzhou ARCA Industrial Co., Ltd., a footwear production company with 2,500 employees in Zhejiang

Province, the company allowed the direct election of union leaders because foreign buyers exerted pressure to improve worker rights conditions. The signed union contract prevented the company from firing union leaders and provided workers with new benefits. The *Hangzhou Daily* reported that such elections are being conducted in 310 enterprises in Yuhang District, which is the industrial section of Hangzhou City, including 70 percent of its private enterprises.³²

However, most researchers have not found cases where members' proposals have been solicited or the ACFTU has submitted drafts of union proposals to members for their approval before making proposals to management. Even more startling is the complete blending of labor and management at the consultation table. Researchers reported:³³

"We found no cases of conflict between trade unions and management in the process of collective consultation. . . . In some enterprises senior members of management actually participated in the negotiations on the trade union side. In one enterprise the finance director was a member of the trade union team

in the consultation committee. In another enterprise, a senior financial manager participated on the trade union side in an advisory capacity. At the same time, the trade union President, as a member of the Board of Directors or Supervisory Board, usually participates in the formulation of management's response to the trade union proposals for the collective contract. This is an indication of the extent to which neither the trade union nor the employer distinguish[es] the trade union's role as representative of the employees from its role as representative of the enterprise."

Zhen Yinbing, an ACFTU union chairman at a Tangxia steel factory, described his role this way: "Who do I represent? Both the boss and the workers. If I speak at a meeting, I'll say, 'First, on behalf of the general manager . . .' and then I'll say, 'Second, on behalf of the union . . .' I know it's hard to understand, but it's the truth."³⁴

Most collective agreements consist of nothing more than a promise by management to pay the legal minimum wage and obey other minimum conditions set by labor laws, along with a union's commitment to help

boost productivity. If a contract has an additional clause or two, it might provide for more company-sponsored picnics than the year before.

Unions' submission of contracts to members for their approval is "more of an exercise in propaganda and persuasion than of the active participation of the membership." Where wages are discussed, ACFTU unions often support management demands for higher pay for already higher-paid workers at the expense of lower-paid workers. "In all cases," researchers reported, "the trade union endorsed the widening of differentials and took it upon itself to persuade the first-line [lower-paid] workers of the need for increased inequality and their restraint in the interests of the enterprise."³⁵

In a September 2003 telephone interview, Han Dongfang of *China Labour Bulletin* asked a trade union chair whether the union supported workers' protest of inadequate severance pay at the Suizhou fuel pump and nozzle factory in Hubei. The chair responded:³⁶

"No, not the trade union. We have to follow the party committee's instructions. . . . It is required that the trade union has to be under the

party committee. Now the party committee asked us to do ideological work with the workers, to give them the right thoughts. . . . The measures we take have to be better ways, like the more reasonable and lawful ways. This is the way we guard their rights."

An ACFTU official at a joint venture company run by a prominent multinational corporation told a senior international trade union leader that the union would oppose a wage increase even if the company voluntarily offered one. The ACFTU leader said that a raise would trigger similar demands by workers in other export zone area factories.³⁷

Wal-Mart in China

The approval of Normal Trade Relations for China in 2000 was seen by proponents as a measure that would "help open markets to American products and help export American values, especially freedom and entrepreneurship."³⁸ In Wal-Mart's case, exporting American values amounted to exporting U.S.-style anti-unionism to China. Despite the ACFTU's subservient role, and its principal role as a labor control mechanism, the U.S.-based multinational retailing giant could not bring

itself to deal with the official union.

By April 2004, Wal-Mart had 37 stores in 18 Chinese cities, with more stores in development. Under the Trade Union Law, the company is required to recognize the ACFTU union for its employees and to contribute 2 percent of its total wage expenditure to the union fund. But since entering China more than three years ago, Wal-Mart has scoffed at the law, refusing to allow ACFTU presence in its stores. ACFTU officials complain that "it is impossible for such a big company to have no trade union" and "multinational companies must abide by Chinese law." To date, the ACFTU has had virtually no success in getting government authorities to enforce the law. However, in November 2004, under heavy pressure from the National People's Congress and the ACFTU, Wal-Mart announced that it would allow ACFTU branch unions to be established in its retail operations in China.³⁹

But these relatively few retail stores do not reveal the scope of the problem. Even if Wal-Mart becomes open to a union presence, the hundreds of thousands of workers who produce in

obscurity for Wal-Mart stores throughout the world—including 5,400 factories in China alone—will still not be adequately protected.⁴⁰

In February 2004, China Labor Watch and the National Labor Committee issued a report on worker rights violations by Wal-Mart suppliers in China. A simultaneous front-page story in the *Washington Post* prompted widespread follow-up by Chinese journalists. One wrote:⁴¹

“On February 8, the *Washington Post* criticized as no longer effective Wal-Mart’s inspections of suppliers’ labor rights. The report said that factories usually received advance notice of inspections and that they then cleaned up, manufactured fake work hour sheets, and told workers how to respond to inspectors’ questions, etc.

“The next day, the National Labor Committee and China Labor Watch released a report criticizing Wal-Mart for ignoring poor work environments, paycheck deductions from employees’ lowest wages, and forced overtime in its Dongguan City supplier factories. When this reporter went to the criticized Heyi plastic cement factory in Sanbaitang district, a manager explained that it

In Wal-Mart’s case, exporting American values amounted to exporting U.S.-style anti-unionism to China.

is difficult to get Wal-Mart orders. Heyi is afraid that if Wal-Mart discovers that another supplier factory in the same category is cheaper than them, even by only a few fen [the smallest denomination in Chinese currency], Wal-Mart will immediately end its contract with Heyi and move its orders to the cheaper factory. Heyi can only cut production costs by lowering workers’ wages, extending work hours, etc., in violation of labor rights. The pressure of Wal-Mart’s low prices competition is therefore shifted onto workers. People in the industry sum up Wal-Mart’s methods as The Law of the Jungle: the most ruthless succeed.”

Right to Strike

In 1975, when China amended its constitution, Mao asked for the inclusion of the right to strike as a cosmetic gesture. In 1982, the government dropped it in honest recognition of the reality. Official ideology decreed that conflict was not possible between workers and managers in a socialist system. Today, there is still no direct acknowledg-

ment of workers’ right to strike. This situation might leave a minor opening to explore, however. Under principles of civil law, what is not expressly forbidden is permitted. Taking this concept into account, worker advocates could argue that strikes are not actually prohibited in China. However, while this interpretation may be occasionally helpful to workers inside China in a transitional environment, it is important to note that it is not sufficient to bring Chinese law into conformity with core labor standards. Moreover, the government’s practical policy is clear; any attempt by workers to strike is quickly suppressed.

The government’s political distaste for this basic element of freedom of association is reflected in the law’s avoidance of the use of the word “strike” (*bagong*) altogether. Instead, the law refers to stoppage (*tinggong*) or slowdown (*daigong*). Article 27 of the 2001 Trade Union Law states:

“In case of a work-stoppage or a go-slow in an enterprise, the trade union shall represent staff and workers in consultation with the enterprise,

institution or relevant party, and shall reflect the opinions and demands of staff and workers as well as raise solutions. The enterprise or institution shall strive for a settlement with the reasonable demands made by the staff and workers. The trade union shall strive hard in its task to assist the enterprise or institution to restore the normal order of production as soon as possible.”

Some commentators see the new provision as an implied right to strike because it concedes the existence of stoppages and slowdowns and authorizes trade unions to “strive for a settlement” rather than ban the actions. But experts at the Hong Kong Liaison Office (IHLO), the official representation of the ICFTU and Global Union Federations (GUFs) in Hong Kong, argue that “the text of the revised law provides no evidence to support this claim.”⁴²

IHLO analysts point out that local authorities decide what are “reasonable demands” and that if authorities deem such demands “unreasonable,” workers may face repression. Furthermore, the emphasis in this section of the law is on the requirement that trade unions work to restore production as soon as possible. This conditionality reflects

the position taken by CCP officials during discussions of the Trade Union Law revisions when it was asserted that “. . . trade unions also play a role in persuading and directing workers to help continue production.”⁴³

Most important, Article 27 offers no protection or legal guarantees to workers engaged in industrial action, whether strikes, stoppages, or slowdowns. In July 2003, some 1,800 workers at the Zaoyang fertilizer factory in Hubei struck to protest layoff terms imposed on them without consultation or negotiation. City officials ordered police to detain leaders and require other strike participants to report to police headquarters. Workers who reported were also detained.

In October 2003, more than 1,000 armed police attacked thousands of protesting workers at the Nanchong textile mill in Sichuan. The workers were striking against layoff plans that left half the plant’s force with slashed pensions and benefits and claimed two months’ unpaid wages for work already performed. Police arrested dozens of workers and protest leaders at the scene, and more in door-to-door sweeps through workers’ homes. Again, authorities held these activists for weeks until the

protest movement abated.

In May 2004, workers at the Xin Ang shoe factory in Dongguan City, a subcontracted supplier to several multinational firms, struck to protest withheld wages and oppressive working conditions. Management deducted workers’ pay for failing to make impossible production quotas; forced daily and weekend overtime on workers up to 15 hours per day; pulled, slapped, and pinched workers for not working fast enough; and failed to provide gloves and masks to prevent poisoning by chemicals used in the production process. When workers went on strike, management summoned hundreds of police officers, who attacked the strikers and arrested leaders. As of August 2004, they had not been released, and police continued to withhold their names as well as the charges against them. Sowing fear among plant workers, management is telling them that the arrested leaders face 15 years in prison. IHLO experts conclude:⁴⁴

“The fact is that workers arrested for organizing and leading strikes or forming independent trade unions in the past have not been dealt with under existing labour and trade union laws, but have been persecuted

under criminal laws. If this is the case, then we must ask how revisions to the Trade Union Law make any difference to workers' perceptions of how free they are to organize unions and/or engage in strike action."

ACFTU Officials on Strikes

Early in 2003, workers at the Luyuan timber company in Suichang County, Zhejiang, struck for two weeks to protest management's failure to consult workers over restructuring plans and employee stock ownership. In a telephone interview with Han Dongfang of *China Labour Bulletin*, the chairman of the ACFTU county labor federation had this to say about the local union leadership at the plant:⁴⁵

"The work of the trade union in this enterprise is rather weak. . . . [Zhang Xingqun], the chairman of the trade union, is also the vice president of the enterprise. . . . He used to be a deputy director of the Economic and Trade Committee in Suichang County. Later the factory recruited him. He is a manager of the factory."

In October 2003, Han conducted a telephone interview with a worker from a cotton spinning mill in Nanchong, Sichuan, where police had arrested leaders of a three-day strike

by 5,000 workers protesting management's layoff plan. The worker said that "more than a thousand" armed police broke up the strike: "They came at 2 or 3 a.m. [on October 10] and took away quite a number of workers, they wanted to stop our protest. You know, they filmed the strike with video cameras and came to arrest us at night . . . at our homes. They came while we were sleeping."

Han contacted a union official from the ACFTU city labor federation to ask what the trade union was doing about the conflict. The union official responded:

"Don't you know the situation in China? Do you think the trade union in China can really represent the workers to negotiate with the government? . . . Now the trade union can only represent the party committee in doing some ideological work on the workers, to explain to them the party's intentions and solutions. . . . We trade unions are under the party committee's control."

Han then contacted a local union official, who added, "So workers are not happy with us. It is like they are fighting for their rights and we are the bad guys to interfere. But you know,

we just can't say 'no' to our leaders. . . . it is just too difficult to handle, to balance the leaders' instructions and the workers' feelings."⁴⁶

Strike Over Pay Cuts

In April 2004, hundreds of workers at the Xinxiong shoe factory in Dongguan City, Guangdong Province, struck for two days to protest management's unilateral change in their work shift schedule. Workers' pay averaged \$14 for their six-day, ten-hours-per-day workweek.

Chinese labor law requires time-and-a-half pay for overtime, double pay for weekends, and triple pay for holiday work. The company eliminated the Saturday ten-hour shift at this legally mandated double salary and forced workers into weekday 12-hour shifts with all overtime paid at time-and-a-half. The company maintained a 60-hour workweek, but shoved it into five 12-hour days instead of six ten-hour days. Workers still worked a 60-hour week with 20 hours overtime per week, but now all hours were paid at time-and-a-half rather than ten hours at time-and-a-half and ten hours at double time. They effectively lost five hours' pay per week from their already rock-bottom salaries. Besides having an

impact on pay, the extension of the workday from ten to 12 hours greatly increased job safety hazards. Repeated studies have shown that workers tire, lose concentration, and suffer accidents at much higher rates during longer work shifts.

An official from the local township government told *China Labour Bulletin* that “the strike was an almost inevitable outbreak of collective anger against the management.” A mid-level manager acknowledged that “the majority of workers there, despite national regulations to the contrary, were being denied pensions and medical insurance.”

The strike ended with the arrest and detention of ten workers.⁴⁷

On Strike . . . To Bed

An account published in a Chinese weekly newspaper suggests the frequency of strikes and their mixed results. Unusual tactics arise, too, such as striking workers returning to their dormitories to sleep, instead of setting up picket lines. A reporter for China’s *Phoenix Weekly* newspaper interviewed He Jun in 2004, describing him as “a typical Pearl River Delta migrant worker.” Here are portions of the news story, as translated by New

York-based China Labor Watch:⁴⁸

“The problems He Jun described correspond to a portion of factories in the County. He originally worked at Shatang’s Suncheng Shoe Company Ltd., in Dongguan City. Over the course of the two years he worked there, the normal work schedule was eight hours a day, but if they had to, workers at the Suncheng factory would work more, often 15 hours a day. The longest overtime shift He Jun worked was from seven in the morning until past two in the afternoon the next day. After working continuously for 31 hours, everyone collapsed. He Jun also once worked for three months without a single day off. His overtime wages were far below the labor laws standard.

“He Jun witnessed 15 strikes. He said that strikes weren’t started casually. Usually workers in the sewing and shoe shaping departments began strikes. The employees in the two workplaces, as the departments were called, felt that they earned too little money for too much work, so they would stop working and go to sleep in their dormitories. The two workplaces were the most crucial departments in the factory; once workers went on strike there, all production in the factory had to stop for a period.

“The boss could not replace striking workers immediately, so sometimes he would raise the workers’ wages. The moment the boss said he would raise wages, the workers would very happily return to work. However, this kind of promise was rarely fulfilled, He Jun said. The next time there was a strike, the boss would cheat them again; it was like acting in a play.

“After strikes, the boss would often only raise the wages of overseers, foremen, and workplace directors. Some of those who benefited from these raises would not lead strikes again. Young migrant men and women from the countryside dared not and were not able to protect their own rights, so the boss did not even need to trick them.

“No one came to help us, He Jun said. The factory would keep workers’ deposits and delay paying wages in order to prevent employees from leaving the factory. When there were injuries or sicknesses, the workers’ helplessness and weakness would be even more obvious.”

Endnotes

- ¹ Article 1(d) of the Vienna Convention on the Law of Treaties defines “reservation” as follows: “[R]eservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.” Article 19 goes on: A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation *unless* . . . the reservation is incompatible with the object and purpose of the treaty [emphasis added]. The UN Committee on Human Rights (UNCHR) stated that as a general principle, “The normal consequence of an unacceptable reservation is that the reservation must be regarded as null and void, at least in those parts that prove to be incompatible with the object and purpose of the treaty.” For a full analysis, see Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China* (2002), Appendix 4. Available at http://www.hrw.org/reports/2002/chinalbr02/chinalbr0802-08.htm#P891_192016
- ² See Trade Union Law of the People’s Republic of China, Article 10 (as amended, 2001).
- ³ See Trade Union Law of the People’s Republic of China, Article 4 (as amended, 2001).
- ⁴ See *China Labour Bulletin, Analysis of the New Trade Union Law*, February 28, 2002, www.ihlo.org/item2/clbtulaw.pdf.
- ⁵ See ILO, *Organizing for Social Justice*, Report of the Director-General (2004).
- ⁶ See ILO, 310th Report of the Committee on Freedom of Association (1998).
- ⁷ See ICFTU, *China: Annual Survey of Violations of Trade Union Rights* (2003); ILO, Committee on Freedom of Association Report, China (Case No. 2189), Report No. 334 (2004).
- ⁸ See Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China* (August 2002), p. 11; Amnesty International, *People’s Republic of China: Labour Unrest and the Suppression of the Rights to Freedom of Association and Expression* (April 30, 2002). Available at <http://web.amnesty.org/library/Index/ENGASA170152002?open&of=ENG-CHN>
- ⁹ See U.S. Department of State, *Country Reports on Human Rights Practices 2003: China* (2004). Available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27768.htm>
- ¹⁰ For more details, see the *China Labour Bulletin* web site at www.china-labour.org.hk.
- ¹¹ The groups of examples of worker rights abuses cited here and elsewhere in the report help demonstrate a pattern of violation. In some cases, the occurrence of these violations may mean that the practice is a policy. In others, it may simply be due to inadequate legal protection or poor legal enforcement. But regardless of the root cause, it represents a violation of worker rights.
- ¹² See “Hunger, Diabetes, Threaten Imprisoned Labor Activist,” China Labor Watch, April 29, 2004, at www.chinalaborwatch.org.
- ¹³ See Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China*, pp. 16-17.
- ¹⁴ The text of the indictment is reported in Human Rights Watch, HRW Documents on China, “Indictment of Yao Fuxin and Xiao Yunliang in Liaoyang, China, at <http://hrw.org/press/2003/02/chinaindictment.htm>.
- ¹⁵ See Nicholas D. Kristof, “China’s Velvet Glove,” *New York Times*, December 17, 2003, p. 39.
- ¹⁶ See ILO Committee on Freedom of Association, China (Case No. 2189), Report No. 333 (April 2004).

- ¹⁷ See Amnesty International, *People's Republic of China: Labour Unrest and the Suppression of the Rights to Freedom of Association and Expression*, note 8 above.
- ¹⁸ See Philip P. Pan, "Chinese Mines Exploit Workers' Desperation," *Washington Post*, September 9, 2001, p. A1.
- ¹⁹ See Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China*, p. 35.
- ²⁰ See ICFTU, Complaint to ILO Freedom of Association Committee, Case Nos. 1930 and 2031 (China), June 2, 2002.
- ²¹ The process is described as follows in Article 33 of the Trade Union Law:
"The employees of an enterprise as one party may conclude [*qianding*, "to conclude and sign"] a collective contract with the enterprise as another party on labor remunerations, work hours, rests and leaves, labor safety and sanitation, insurance, welfare treatment, and other matters.
"The draft collective contract shall be submitted to the workers' representative assembly or all the employees for discussion and passage [*taolun tongguo*, "to discuss and to pass"].
"Collective contracts shall be signed [*qianding*] by and between the trade union on behalf of the employees and the employer. In an enterprise that has not yet set up [*meiyou jianli*, "has not established"] a trade union, such contracts shall be signed by and between representatives recommended by workers and the enterprise."
- ²² See *China Labour Bulletin*, "A Female State-Owned Enterprise Worker in Zhejiang Discusses Enterprise Reform," March 8, 2003. Transcript at http://www.china-labour.org.hk/iso/article.adp?article_id=4125.
- ²³ See Philip P. Pan, "When Workers Organize, China's Party-Run Unions Resist," *Washington Post*, October 15, 2002, p. A11.
- ²⁴ *Ibid.*
- ²⁵ See Simon Clarke, Chang-Hee Lee, and Qi Li, "Collective Consultation and Industrial Relations in China," *British Journal of Industrial Relations*, Vol. 42, No. 2, June 2004, pp. 235-254.
- ²⁶ See Qi Li, "A Study of Labour Relations in State-Owned Enterprises in China: The Continued Dominance of the State and the Failure of the Collective Contract System" (Ph.D. thesis, City University of Hong Kong, 2000).
- ²⁷ See S. Baek, "The Changing Trade Unions in China," *Journal of Contemporary Asia*, Vol. 30, No. 1, 2000.
- ²⁸ See Simon Clarke, Chang-Hee Lee, and Qi Li, "Collective Consultation and Industrial Relations in China," 2004; D. Ding, K. Goodall, and M. Warner, "The Impact of Economic Reform on the Role of Trade Unions in Chinese Enterprises," *International Journal of Human Resources Management*, Vol. 13, No. 3, 2002, pp. 431-449.
- ²⁹ See "The Law of Trade Union Should Be Strictly Enforced," *Workers Daily*, February 28, 2003, reported in *China Labour Bulletin*, March 19, 2003. Available at http://www.china-labour.org.hk/iso/article_listings2.adp?category_id=11
- ³⁰ See *Workers Daily*, September 17, 2003. p. 1.
- ³¹ See *Nanfong (South China)* weekend newspaper, "Failed to Recover Legal Rights: 39 Workers Put on Blacklist," 2003.
- ³² See *Hangzhou Daily*, June 25, 2003.

- ³³ See Simon Clarke, Chang-Hee Lee, and Qi Li, note 25 above.
- ³⁴ See Philip P. Pan, “When Workers Organize, China’s Party-Run Unions Resist,” note 23 above.
- ³⁵ See Qi Li, note 26 above, Chapter 7; Simon Clarke, Chang-Hee Lee, and Qi Li, note 25 above.
- ³⁶ See *China Labour Bulletin*, “Interview with the Suizhou Fuel Pump and Nozzle Factory’s Trade Union,” September 2, 2003.
- ³⁷ See ICFTU, Complaint to the ILO Freedom of Association Committee, Case Nos. 1930 and 2031 (China), June 2, 2003.
- ³⁸ Most Favored Nation (MFN) status was renamed Normal Trade Relations (NTR) in 1998. Both the Clinton administration and then-candidate George W. Bush strongly supported NTR for China. See <http://www.itds.treas.gov/mfa.html>; Eric Schmitt, “Opening to China: The Overview,” *New York Times*, September 20, 2000, p. A1.
- ³⁹ See “Wal-Mart Makes Moves to Expand Its Stores,” *China Daily*, February 18, 2004, at <http://www1.chinataiwan.org/web/webportal/W5029239/A5523114.html>; “Wal-Mart-China Union Crisis,” *Jilin Workers Daily* newspaper, October 6, 2003; Christopher Bodeen, “Wal-Mart Concedes China Can Make Unions,” Associated Press, November 23, 2004.
- ⁴⁰ See Chen Huimin, *Low Price of Wal-Mart and China* (School of Financial Management, Zhongnan University of Finance and Law, 2004). Available at <http://cn.mlcool.com/~mlcool/html/ns002069.htm>
- ⁴¹ See China Labor Watch and National Labor Committee, “Toys of Misery,” February 8, 2004, available at <http://www.chinalaborwatch.org/reports/030210.htm>; Peter S. Goodman and Philip P. Pan, “Chinese Workers Pay for Wal-Mart’s Low Prices: Retailer Squeezes Its Asian Suppliers to Cut Costs,” *Washington Post*, February 8, 2004, p. A1; “Condemnation of Wal-Mart Sparks Labor Rights Self-Criticism in Zhusanjiao County,” *Phoenix Weekly* newspaper, Issue 141, May 2004, reported by China Labor Watch, May 26, 2004.
- ⁴² See *Ming Pao* newspaper, October 1, 2001, cited in Hong Kong Liaison Office, “The Revised Trade Union Law in Mainland China: Progress or Regression for Worker and Trade Union Rights?” November 20, 2001; *China Daily* newspaper, October 25, 2001, cited in Hong Kong Liaison Office, “The Revised Trade Union Law in Mainland China: Progress or Regression for Worker and Trade Union Rights?” November 20, 2001.
- ⁴³ See Hong Kong Liaison Office, “The Revised Trade Union Law in Mainland China: Progress or Regression for Worker and Trade Union Rights?” November 20, 2001.
- ⁴⁴ Ibid.
- ⁴⁵ See *China Labour Bulletin*, “The Hidden Conflicts Unveiled: The Chairman of Suichang Trade Union Talks about the Strike in Luyuan,” March 1, 2003. Transcript available at http://www.china-labour.org.hk/iso/article.adp?article_id=4247.
- ⁴⁶ See *China Labour Bulletin*, “5,000 Workers Started a Strike to Protest Against the Unjustifiable Retrenchment Policy,” October 25, 2003. Transcripts of all three interviews are on file with Solidarity Center.
- ⁴⁷ See *China Labour Bulletin*, “More Than 10 Shoe Factory Workers Detained after a Dispute of Overtime Work, Dongguan, Guangdong,” April 29, 2004. Transcript available at http://www.china-labour.org.hk/iso/article.adp?article_id=5696
- ⁴⁸ See *Phoenix Weekly* newspaper, Issue 141, May 2004, reported in China Labor Watch, May 26, 2004.

Discrimination in the Workplace

China has ratified ILO Convention 100 on equal pay for women and men doing equal work or work of equal value. It has not ratified Convention 111, the ILO's general non-discrimination instrument, which bars discrimination based on race, color, sex, religion, political opinion, national extraction, or social origin. Whether ratified or not, however, both of these conventions are among those cited as “core” in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, and member countries are bound to uphold their principles.

Discrimination Against Women Workers

China has ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Both international human rights instruments obligate governments to take all measures in their power to eliminate discrimination against women.

The Chinese constitution guarantees women equal rights with men in all spheres of life, promises to protect the rights and interests of women, and applies the principle of equal pay for equal work. China's labor laws and regulations generally require equal pay and equality of treatment for women workers.

But law and reality often conflict. The Law on Women's Rights and Interests contains many restrictions on jobs, working hours, and working conditions for women that effectively deny them employment opportunities and equality in employment. For example, the law prohibits discrimination against women in employment. It also requires protecting women from working in unspecified dangerous occupations. Employers therefore use the law to exclude women or to lower their wages. According to a national survey, people involved with women's legal issues believe that the three major problems with the legal system are unclear laws, unclear enforcement authority, and laws that are practically impossible to execute or enforce.¹

In addition, women's traditional—and commonly considered primary—role as caregivers leads employers to avoid hiring women and to get rid of women workers for being supposedly less flexible and less adaptable to workplace needs. A researcher at Beijing University Law School said, “There's a saying: Girls are like water in a basin. After a while, you pour it out. This attitude is reflected in every aspect of life. Women are the first to be laid off. Women have the hardest time getting justice in this society. Women are the first to be taken advantage of.” The main problem here is the failure to implement the law.²

China's turn to capitalism and export-led development has had profound effects on women workers, creating both opportunities and new forms of discrimination. Several decades ago, the only fate available to young women was to wait to be married off by their parents, without any hope of seeing a world outside their villages. But as migration is occurring around the establishment of export processing zones across the globe, young women in massive

numbers have moved from rural areas in the interior of the country to low-wage, labor-intensive, private investor owned manufacturing plants in the south and eastern coastal regions. In theory, this historical development could help these young women achieve economic independence and provide them with a greater range of life choices. In reality, however, this is not the predominant outcome.

In the 2000 census, women comprised 60 percent of the more than 10 million migrant laborers in Guangdong Province. In 2003, some 70 percent of the 5.5 million migrant workers in the Shenzhen special economic zone were women. In Shenzhen's industrial district of Nanshan, 80 percent of the half-million workers were women; their average age was 23.³

Young women workers are often locked into exploitation in these factory zones, because the situation in their rural homes is even bleaker. Speaking of her work in a pantyhose factory in Wenzhou, Zhejiang Province, a young woman worker told an interviewer, "The hardship working in that shop is hardly imaginable for those who have not been there. You

get up and work until dark. Not a single minute to sit down and rest."

When this worker left the factory after one year to return to her village in Anhui Province to marry, the owner failed to pay her 2,000 Rmb (\$260) in withheld wages. Withholding wages is part of an employment bonding system designed to keep workers on the job for at least a year.

After getting married and having a child, the worker returned to the same factory job in Wenzhou. Asked why, she replied, "We are in despair staying in our village. The farm village is very poor. We all live in poverty." She later quit the factory again, and again failed to obtain her deferred salary. This time she stayed in Wenzhou and took work as a restaurant server, then as a beautician.

Many of these female migrant workers—called *dagongmei*—work without contracts in private firms rife with abusive treatment and labor law violations. They often work 60 to 70 hours a week with no overtime pay. Many are packed into dormitories next to the factories, sleeping six or eight or even more than a dozen in a small room, cooking over a small

gas hot plate, and rarely leaving the premises. Working conditions are hazardous in many garment, electronics, shoe, and toy factories, with widespread use of toxic chemicals such as benzene, chromium, and vinyl chloride. In one case, 28 young women workers in a Taiwanese-owned shoe factory in Dongguan suffered toxic poisoning and nerve damage that led to loss of muscle control and partial paralysis.⁴

Older women workers in state-owned enterprises have been front-line victims of other types of discrimination as these firms are restructured into smaller private companies to compete in the global marketplace. Government regulations tacitly encourage SOEs to lay off women workers first, before male workers. (Although the law does not permit such discrimination, many local regulations state that the "main bread earners" in families should be given priority in keeping their jobs.) In this way, women are often doubly discriminated against—by both sex and age—as many are forced into an early retirement that yields much smaller pensions. A 2002 study by the World Bank detailed some of the many challenges to women's equality in China.⁵

“As in many other countries, China is having some difficulty monitoring and enforcing its own Labor Law, especially in the private sector—let alone the informal sector. State affirmative action policies have receded while traditional gender stereotypes and values have re-emerged, including increasing gender discrimination in the labor market. Women are often employed in lower status, lower paid jobs. During the transition, women have had a harder time than men obtaining and keeping jobs. . . . Women appear to be disproportionately represented among laid-off workers, suffer from higher unemployment rate and have greater difficulty finding alternate employment.”

Discrimination in Hiring

Discrimination in hiring is an open practice in China. The 2002 World Bank study reported, “Job advertisements often specify applicants should be male, or young, attractive women, although such job discrimination flouts the 1992 Women’s Law.” Employers’ job advertisements commonly say “only male,” “men preferred,” “25 years or younger,” and sometimes even stipulate girls who are “good-looking” and “taller

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“If a woman and a man apply at the same time for a job, they’ll consider the man,” says recent university graduate Li Ripeng. “They won’t talk to a woman.”

than 150 centimeters.” The World Bank found “evidence that even government departments, which would be expected to uphold non-discrimination clauses of the Labor Law, have openly discouraged female university graduates from applying for employment at recruitment fairs.” In a September 2002 survey of 1,100 women conducted by the Jiangsu Women’s Federation, 80 percent of respondents said that they had encountered discrimination in the job-seeking process.⁶

When Li Riping, a new graduate of Chinese People’s University, joined the crush of college seniors looking for jobs, she knew the rules: “If a woman and a man apply at the same time for a job, they’ll consider the man; they won’t talk to [a] woman.” In November 2002, the Beijing labor bureau wanted to hold a job fair for women to solve the difficulties that female college seniors and master’s degree holders face. The bureau sought participation from 500 companies in Beijing, including many multinational firms, but only five replied.⁷

At another 2002 fair in Beijing open to men and women job seekers, 117 of 264 employers indicated that they considered only men. Tan Lin, a professor at the Institute of Demography and Development, Nan Kai University, said that half of the companies that recruited at Nan Kai wanted to hire only males. The university had to ask them to consider some female graduates after providing them all the documents for males. A Chinese People’s University professor said that he would not admit any female graduate students, because helping them to find a job after graduation was really a headache to him.⁸

Sexual discrimination in employment is so serious that many women feel compelled to take extreme measures to get a job. Zhang Jing, an “ugly-looking” girl in Tianjin, considered facial surgery because she was rejected by hundreds of employers. Miss Wang, a university senior in Shanghai, disguised herself as a man to attend job fairs. Some graduating students have felt that they needed to

have sexually provocative pictures taken and wear sexually alluring clothes to attract recruiters.⁹

Discrimination in Layoffs

Women in China find themselves not only last hired but also first fired. The World Bank found that “women have borne a disproportionate share of the layoffs, especially early on during the restructuring of the SOEs, since the sectors targeted for retrenchment were those where women formed the majority of the workforce.”¹⁰

The Ministry of Labor and Social Security reported that in 1997, while women accounted for only 39 percent of China’s workforce, they made up nearly 61 percent of its laid-off workers. In the large-scale shutdowns, shrinking, and sell-offs of SOEs that began in the mid-1990s, women workers were laid off at much higher rates than men. According to a 1999 investigation of more than 4 million laid-off workers in Liaoning, Shanghai, Jiangsu, Heilongjiang, and Anhui, 60 to 80 percent of the laid-off workers were female. A 2002 study in Beijing, Tianjin, Nanjing, Xi’an, Changchun, and Wuhan found that 57 percent of laid-off workers were female. Official figures show that

some 75 percent of laid-off women, compared with only 50 percent of men, were still unemployed after one year.¹¹

In a 1998 interview, a female laid-off worker attending an unemployment center in Tianjin told the *New York Times*, “At our factory everyone who was laid off was a woman. Look

around you, everyone here is female. Now what we can do? We’re not young enough. We do not have experience.” “The training programs they offer have reinforced stereotypes about women’s work and skills,” added Ching Kwan Lee, a sociologist at the City University of Hong Kong. “Beautician, seamstress, domestic helper, child care.”¹²



Retirement Age Discrimination

In China, men retire at 60, and women retire at 55. The discrepancy is ostensibly meant to protect women's interests, but critics say that the policy discriminates against women.¹³

Analyst Zhang Lu found that the retirement age discrepancy causes women to receive substantially smaller pensions than men, further reducing women's financial status.

The discrepancy also induces enterprises to lay off women first. In many failing SOEs, women are forced to retire in their middle thirties to forties and wait for a tiny pension, instead of being laid off and receiving unemployment benefits.

The early retirement age for women also causes more "glass ceiling" problems for women's career development. Because women retire at age 55, a company considers only women younger than 45 for advancement. Thus, 45-year-old women at the height of their talent and energy lose the chance to be promoted to higher ranks.¹⁴

Unequal Pay and Occupational Segregation

As in many countries, some employment sectors in China are seen as

In contrast with recruitment literature seeking "only males" or "males preferred" for graduate level jobs, advertisements for low-paid and unskilled jobs in Guangzhou and Shenzhen factories express preference for young, nimble-fingered, and expendable females.

suitable only for women. These jobs include repetitive unskilled work in manufacturing; domestic work, cleaning, and other service industries; and "female" occupations such as primary school teaching. In contrast with recruitment literature seeking "only males" or "males preferred" for graduate level jobs, advertisements for low-paid and unskilled jobs in Guangzhou and Shenzhen factories express preference for young, nimble-fingered, and expendable females.¹⁵

Both the All China Women's Federation and the ACFTU perpetuate the myth that women are best suited for such jobs through their training courses for unemployed women, which deal mainly with beauty treatment, dressmaking, and housekeeping. This job segregation explains much of the wage gap between women and men. According to a study by Xin Meng of the Australian National University, gender wage discrimination accounts for 73 percent of the total gender wage gap in China.¹⁶

Data from the Chinese Bureau of Statistics show that the wage gap between women and men increased 7.4 percent between 1990 and 2000. In 2003, 19.8 percent of women workers, but only 11.6 percent of men, earned less than 500 Rmb (\$65) per month. In contrast, 6.6 percent of women workers and 12.6 percent of men earned more than 2,000 Rmb (\$260). Among workers earning more than 5,000 Rmb (\$650) per month, 14.4 percent were female and 85.6 percent were male.¹⁷

Sexual Harassment

Studies show that 84 percent of Chinese women suffer some form of sexual harassment. Half of these incidents are employment related. These studies also show that 72 percent of workplace sexual harassment incidents are committed by supervisors and 28 percent by colleagues.¹⁸

Because China has no law that explicitly defines and prohibits sexual harassment, obtaining evidence to file claims is very difficult. Without laws

to protect them, women workers who suffer harassment choose either to leave the company or to swallow the insults and humiliations. Social pressures and the tendency to “blame the victim” in harassment cases also prevent women from speaking out.

In a 2004 article, *Beijing Youth Daily* columnist An Dun wrote that most of the women whom she interviewed had been sexually harassed on the job. Interviewee Liu Jia said that she resigned after she could not bear any more of her bosses’ sexual touching and forced kisses. But when she resigned, the company refused to pay her that month’s salary because she had not given them a month’s notice. Li Mingli and her husband divorced because of her boss’s continual midnight calls. After the divorce, Li left her job and opened her own flower shop. She said that she did not want to work for companies any more because sexual harassment is so common in the workplace.¹⁹

Discrimination Against Pregnant Women

According to Chinese labor law, particularly the Law on the Protection of Rights and Interests of Women, employers are prohibited

from terminating women employees during pregnancy, maternity leave, and breast-feeding of babies under one year old. However, according to Zhang Zheng, an official from the Xicheng Labor Dispute Arbitration Center in Beijing, the laws are not consistently enforced. In 2002, this small center alone received some 80 cases involving violations of these rights, and the number is rising.²⁰

Contrary to law, some employment contracts state that during maternity leave workers will not be paid and the employer will not cover their medical expenses. A recent survey conducted by Xinhua and Beijing municipal labor authorities found that some 10 percent of employers do not respect labor law requirements for women workers’ employment contracts. Zhou Fenzhi, a postal worker in a Hunan Province, was fired after taking maternity leave.²¹

Many companies demand that women sign contracts stating that for a specified number of years, they are not allowed to bear children or they will be fired. At one telecommunications company, women workers are forced to sign a contract indicating, “I pledge that

for the duration of this contract, I will not become pregnant. If I am pregnant, I will be terminated as a voluntary resignation.”²² Many employers even demand that female applicants provide certificates of their single status as a precondition of employment.

Although there are serious gaps in enforcement, some observers believe that China’s enforcement of women’s legal right to be paid pregnancy and maternity benefits is more effective than that of any other labor law provision. However, selective or partial enforcement of these norms, or enforcement in the absence of concrete laws on gender discrimination, can actually exacerbate other forms of discrimination. For example, if only the pregnancy-related laws are enforced, employers are encouraged to discriminate against women of childbearing age in order to avoid the cost of such benefits.

Forced Searches

The ACFTU’s 2004 annual report described serious violations of women’s physical integrity in some non-SOEs. Some employers have imposed strict disciplinary regulations aimed at women workers. If women employees violate the poli-

cies, they are insulted, searched, and beaten. A female cleaner in Shanghai attempted suicide after being forced to undress when the supervisor at her workplace claimed that he had lost 1,000 Rmb (\$130) and suspected her of the theft. At a wig-making factory in Shenzhen, a Korean employer, suspicious that some women workers had stolen a wig, searched 56 of them and made them stand still for one hour with their arms on their heads.²³

On August 6, 2002, supervisors at a diamond factory in Zonghua City, Guangzhou Province, arbitrarily undressed some 80 female and ten male workers to check for stolen diamonds when one employee lost a pack of four diamonds. Workers were forced to sign an agreement that allowed the factory supervisors to search their belongings and bodies. Even menstruating women were made to remove all their clothes. “They forced us to strip off clothes and checked us,” said one woman. “This is illegal, infringing our rights. We are working here, but were stripped off to check. If it spreads to our hometown, how shall we meet people there? This case has created huge mental hurt for us.”²⁴

The number of Chinese who have left farms and now trawl the cities for work probably exceeds the entire workforce of the United States.

Discrimination Based on Social Origin: China’s Migrant Workers

Article 2 of the UN Universal Declaration of Human Rights prohibits discrimination on the basis of social origin. So does the International Covenant on Civil and Political Rights. China has ratified the International Covenant on Economic, Social, and Cultural Rights, committing itself to guarantee those rights “without discrimination of any kind as to . . . social origin . . . or other status.”

Although China has not ratified Convention 111, it is bound, like all member countries, by the convention’s principles related to “equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.” The convention defines discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or *social origin*, which has the effect of nullifying or

impairing equality of opportunity or treatment in employment or occupation” [emphasis added].

Migrant workers have powered much of China’s export growth and construction industries. As part of the government’s market-oriented economic development strategy, 150 to 200 million rural peasants have moved from the countryside to urban centers in the past decade. The rural-to-urban flow is most intense in Beijing, in the coastal industrial areas (in the SEZs) around Shanghai and Guangdong province near Hong Kong, and in Fujian Province across from Taiwan. In the past quarter-century, Guangdong’s Pearl River Delta region has grown from an area of mostly farming villages into a massive manufacturing center with a population of 50 million people. Pearl River Delta factories account for one-third of China’s foreign trade. As one analyst notes, “The number of Chinese who have left farms and now trawl the cities for work probably exceeds the entire workforce of the United States.”²⁵

Migrant worker movement into SEZs is only part of the broader transformation of the labor market in China and the transfer of surplus agricultural labor from countryside to city. Millions of migrant workers also labor in the construction sector, fueling the rapid pace and high volume of new building and transport construction. Others have gone into the mining industry, the world's largest, where illegal private mines now exist.

Hukou System

Chinese migrants' living and working conditions are similar to those of many migrant workers who move from poor to developed countries. The difference in China is that this discrimination based on social origin is codified and applies to workers migrating inside their own country. As in other countries, Chinese migrant workers commonly receive below minimum wage pay, put in above maximum hours of work, and confront illegal workplace hazards and sexual harassment, among other violations of their rights. Migrant coal miners in China now face the deadliest mine working conditions in the world. Official figures cite 5,000 to

10,000 coal miner deaths per year, and unofficial estimates are as high as 40,000.²⁶

Many city dwellers derisively call China's migrant peasant workers *Mang Liu*. This term, which literally means "drifting" or "wandering without direction," was applied from the late 1950s to the early 1990s to the millions of peasants who moved about the country illegally looking for food or jobs. Today, these migrant workers labor in cities and factories far from their rural homes, but they carry permanent agricultural worker status under the system of household registration called *hukou*. In China, a person's social status is largely decided by *hukou* and whether it is agricultural *hukou* or non-agricultural, urban *hukou*.

The *hukou* system is a creation of government policy going back to 1953. Although migration was severely restricted in 1956, the real implementation of the *hukou* system began in 1958, the year of the Great Leap Forward. Ostensibly, the *hukou* system was a grain-rationing arrangement. But the government's main goal was to tie the peasants to the land, thereby keeping city growth under control. The system implicitly

supported heavy industrialization over the more labor-intensive light industries, and it favored urban dwellers by maintaining a cheap, steady food supply line to the cities.

Hukou status is inherited. The children of peasants can change to urban *hukou* status only by going to university or sometimes by entering the army and being promoted to an officer's rank. On the theory (and it is only a theory, not borne out in practice) that their life on the land guarantees security, peasants are not entitled to pensions, health insurance, and other social welfare benefits reserved for urban *hukou* holders. Those who have migrated to cities still hold peasant status, performing urban workers' jobs without enjoying urban workers' benefits linked to urban *hukou* status. This type of regulatory discrimination is felt most by married workers with families, who are the most likely to need the benefits reserved for legal residents, such as public education and health insurance.

Local officials maintain limits on migrant workers' employment opportunities. In 1998, for example, Beijing adopted prohibitions on migrants working in finance, insur-

ance, management, accounting, and sales and in jobs as cashiers, telephone operators, taxi drivers, airline crew members, and wait staff in tourist hotels.

Permits, Documents, and Freedom of Movement

Under China's *hukou* system, migrants must obtain a departure permit to leave their home, a residence permit to live in a new city, and a work permit for employment. Like foreign guest workers, China's migrant workers are often forbidden to bring family members with them.

Migrant workers' entry and work in fast growing industrial areas like the Shenzhen and Zhuhai SEZs in the Pearl River Delta near Hong Kong are particularly monitored and controlled. Workers often have to pay high fees to government officials to obtain their various permits. Many officials in urban receiving cities demand payments for more permits and identification documents, such as proof of unmarried status, proof of birth within China's one-child policy, proof of good health, proof that their landlord holds urban *hukou*, and other papers.²⁷ Some impose fees of 400 Rmb (about \$50)—equal to a month's wages for most migrant workers.

Under China's hukou system, migrants must obtain a departure permit to leave their home, a residence permit to live in a new city, and a work permit for employment.

Migrant workers lack freedom of movement when employers take and hold their papers, which they must have on their person at all times if they venture into the surrounding community. Not having permits to show police or other authorities, who can demand to see documents at any time, can mean immediate expulsion back to the countryside—or worse. In January 2003, five rural workers without papers who were loaded onto a truck in a sweep by the Security Team of the Qingfengju Neighborhood Committee of Baiyun district in Guangzhou fell out onto the road as the truck sped out of town. Three were killed.²⁸

In March 2003, Sun Zhigang, a college-educated 27-year-old fashion designer who had traveled to Guangzhou in search of work, forgot to take his permit with him when he went out on the street. Police apprehended him and sent him to a migrant worker detention center. Three days later, he was pronounced dead. An autopsy revealed that Sun had been

brutally beaten to death while in police custody.²⁹

The incident provoked national outrage. As a result, the State Council ordered the whole nation to stop the practice of arresting and sending away “drifters.”³⁰ Several cities, including Shenyang in Liaoning Province, revoked the temporary permit system. But it remains intact in areas with large numbers of migrant workers.

Exclusion from Social Benefits

On the basis of their rural *hukou* status, migrant workers are not eligible for social insurance and social benefits—including health care, housing allowances, food subsidies, and education assistance—that local residents enjoy. Residency permits for migrants do not allow free choice of housing. Unable to afford their own lodging, many migrant workers are forced by circumstance into dormitory-style, company-owned quarters, with rent and meal expenses deducted from their paychecks. For many workers,

the sheer volume of mandatory overtime hours makes it impossible for them to do more than return to the dormitories to eat and sleep.

To obtain a job, migrants sometimes must pay a deposit amounting to several months' wages and repayable only if they remain on the job for a long period. In addition to such bond payments, many employers withhold migrant workers' wages to ensure that they remain at work. Workers forfeit the bonds and deferred wages if they leave the job before a specified time, usually not less than one year. However, completing the cycle of exploitation, many employers pocket the money when workers leave the job even if they stay the requisite length of time, knowing that migrant workers rarely have the time or money to take legal action to regain lost pay.

Migrant workers also may face obstacles to placing their children in public schools (see Chapter 4 on Child Labor). A 2004 report by the Congressional-Executive Commission on China (CECC) states:³¹

“Many city governments see migrant children as an unwelcome and expensive nuisance, and therefore

simply forbid them from attending public schools, or charge their parents substantial additional fees. Over 80 percent of migrant children pay more than their urban counterparts to attend school. Private schools for migrants often find themselves in conflict with local governments and residents seeking to close them.”

Ironically, migrant workers may suffer discrimination not only in the urban centers where they move to find work, but also in their home villages. The CECC report notes that a large number of legal cases have been filed in Shaanxi Province over the property rights of people who have left their village either temporarily or permanently (for example, migrants in search of work or women who marry outside their villages). In these types of cases, when the village distributes funds from collective assets, such as compensation for the government's requisition of village-owned land, the villagers may consider migrant workers to be outsiders and deny them their share.³²

Minimum Wage, Working Hours, and Effective Wages

China's national law provides that

minimum wages are to be set at regional and local levels on the basis of six considerations:

- Average local living expenses
- Social security and housing investment paid by individuals
- Average wage
- Unemployment rate
- Local economic development
- Other variables

These factors allow ample leeway for provinces, counties, and cities to modify their minimum wages, including the latitude to *lower* them.³³

Some analysts believe that this policy generates migration to the regions with the best wages, pointing to the pull of migrant workers to the eastern seaboard or the race of Shandong migrants to the south to avoid the northeast. But the higher jurisdiction's minimum wage is actually not a wage floor, but a ceiling. A province's minimum wage, for example, does not prevent a county or city in the province from setting a lower minimum. This reasoning turns the basic idea of a minimum wage on its head, provoking yet another type of “race to the bottom” among different provinces, counties, and cities to reduce wages in order to attract investors. Many analysts suggest that the so-

called minimum wage is really a *maximum* wage. One study notes:³⁴

“The very large difference in wages between regions in China effectively pits them against each other to attract investment and new industry. . . . For example, the minimum wage of a city near Guangzhou is Rmb 300 [about \$39], which is much less than the provincial government’s recently adjusted standard in Guangzhou of Rmb 480 [about \$63]. This creates an incentive for a foreign enterprise to abandon Guangzhou and move to the [low-wage] city to build a factory and continue its business. . . . Pressuring minimum wages downward happens in various regions across the country, not only in the Pearl River Delta. . . . Frankly, none of the regional governments will admit . . . that they do it. . . . The so-called minimum wage has become a maximum wage.”

Many migrant workers are also forced to work excessive overtime hours. China’s labor law specifies a normal workday of eight hours and a workweek of 40 hours. The legal maximum overtime limits are three hours per day, 36 hours per month,

and 432 hours per year. But loopholes in the law create exceptions based on waivers by local authorities, “special circumstances,” the “special nature” of a company’s production processes, and other spurious factors. Companies use these loopholes to force workers to perform massive overtime labor under threat of dismissals or wage penalties.³⁵ A survey

conducted by the Guangdong labor department found that 85 percent of the 26 million migrant workers in the province work 10 to 14 hours per day and that half work seven days per week.³⁶

Unfortunately, workers do not necessarily receive overtime pay for their extended hours. The official



minimum wage ranges from approximately 300 to 600 Rmb per month (\$36 to \$72 per month or 21 to 42 cents per hour, based on a standard 40-hour day and five-day week), depending on regional differentials, with higher minimums in urban centers. Even at the \$72 minimum wage, workers putting in more common 12-hour days with unpaid overtime, on a five-day-per-week basis, or 260 hours per month, would see their actual pay reduced to 28 cents per hour.

One survey found, however, that “it is common for workers in export factories to work up to a total of 360 hours per month, the equivalent of 11.5 hours per day, every day of the month.” Even applied to the highest minimum wage of \$72 for a standard workweek, a 360-hour month with unpaid overtime amounts to 20 cents per hour pay, lower than the lowest minimum wage. Moreover, employers may doubly penalize workers by forcing them to “rework” flawed production pieces—the workers are not paid at the regular piecework rate for work performed, plus they are not paid for the overtime hours required to rework the pieces. Analysts Peter Alexander and Anita Chan summarize the situation:³⁷

A recent survey found that it is common for workers in export factories to work up to a total of 360 hours per month, the equivalent of 11.5 hours per day, every day of the month.

“[T]he wages cited for China do not reflect the hourly wage in Chinese factories, as employers make the workers labour for illegally long hours—up to 70 hours a week—to obtain the monthly legal minimum wage. When these additional hours are taken into account, wages in China are lower than elsewhere in the region, often lower even than those in Cambodia and Vietnam, two countries that are poorer than China. The fundamental cause, we think, is China’s household registration [*hukou*] system, which is central to the maintenance of cheap migrant labour.”

SARS and Migrant Workers

In 2003, migrant workers also bore the brunt of the economic impact from Severe Atypical Respiratory Syndrome (SARS). For quarantined workers who were barely earning poverty level wages, periods of forced, unpaid unemployment caused a precipitous drop in family income. The crackdown on SARS at construction sites, coupled with a

temporary ban in Beijing on all non-essential decorating work, left thousands of workers laid off or temporarily unemployed.³⁸

In addition, the SARS crisis exacerbated negative attitudes toward migrant workers, partly because Chinese citizens mistrusted outsiders, but also because government policies targeted the migrant and rural population as being the main avenue for the potential spread of SARS. Increased restrictions on migrant travel, as well as heightened surveillance and monitoring of migrant residences and workplaces, encouraged many urban residents to believe that migrants carried the disease.³⁹

Case Studies

Employers often violate migrant worker rights with impunity. They know that migrant workers are unaware of their legal rights, unfamiliar with legal claims and processes, and fearful of losing their jobs. “Most migrant workers don’t have much education,” explained Ning Jiaxin, a migrant worker advocate in

Tangxia. “They have no sense of the law. They don’t know how to protect themselves or where they should go when they’re in trouble.”⁴⁰

Chinese researchers from the Beijing Dajun Economic Observation and Research Center conducted case studies of migrant workers in several SEZ factories. Published in 2004, their interviews brought to life the reality of the discrimination that migrants face in the workplace.⁴¹

- A 32-year-old worker in a Taiwanese investor-owned garment factory told researchers that he works on average 13 hours per day. The worker said that the company seized and held his and other migrant workers’ employment permits to prevent them from leaving. The employer told workers the permits would be “lost” if they tried to leave—meaning they could not find other jobs. Asked why migrants did not bring legal action against this unlawful practice, the worker replied that it was “useless” because government agencies do not enforce the law.
- A 24-year-old worker in a Taiwanese-owned plastics factory told of working 12 hours a day, seven days a week, in hot, exhausting conditions that caused widespread

breathing disorders among workers. The plant operated on a piece-work pay system, giving each worker a required daily production quota that was impossible to meet in eight hours. They had to work overtime to meet their quota but received no overtime pay. The employer fined workers for lateness, carelessness, not following instructions, poor quality, and other supposed work rule violations, even though such monetary fines against workers are illegal.

- A worker said that he had to bribe managers and supervisors to get jobs in export factories. He said that a manager told him and co-workers openly, “The owner doesn’t pay me enough, so where can I get the extra money? From you, the workers.”
- Young women workers in a Taiwanese-owned apparel factory told researchers that they labor from 7:30 a.m. to 11:30 p.m. to complete their production quotas, with no overtime pay. Asked why they stay on the job, they replied that their labor contract calls for three years’ employment and the employer would fine them if they left early. Moreover, they said, the company withholds two months’ pay per year as an additional em-

ployment bond to be forfeited if workers leave early.

The press reported more examples of migrant worker rights violations:

- Many migrant workers are hired without a written employment contract, in clear violation of Chinese labor law. In Zhejiang Province, another center of SEZ factories near Shanghai, a 2003 report from the official Xinhua news agency found nearly 2 million workers employed without individual labor contracts. In one factory center in Wenzhou, 80 percent of employees had no contracts. Nearly all were migrant workers.⁴²
- Workers at Ningbo City factories told reporters, “We have been working here more than two years and we don’t have the slightest idea what an employment contract looks like. Our wages, they depend on how much the boss feels like paying. . . . What can we do about unpaid wages? Well, nothing.”⁴³
- An apparel company in Chepo-shi’ershe Industrial Area of Guangzhou City forced migrants to work overtime. According to a worker who had been employed at the factory for four years, workers’ shifts went from 8:00 a.m. to noon, then 1:30 to 6:00 p.m., then 7:00 to

10:00 p.m., and often past midnight. The employer admitted that she had not signed contracts with more than 50 workers and said, “Employees are allowed to have one day to rest every month.”⁴⁴

Death at Bainan

In 2002, 19-year-old migrant worker Li Chunmei, who was employed at the Bainan Toy Factory in Song-gang making stuffed animals for export to the United States, died after completing a 16-hour shift with no break. She had not had a day off for two months, despite her repeated requests to her manager. In the middle of the night, Li began coughing up blood. Her alarmed dormitory mates called an ambulance, but Li died before it arrived.

A new term has entered Chinese for the phenomenon: *guolaosi*, or “over-work death.” A *Washington Post* reporter wrote, “There has been little research on what causes these deaths, or how often they occur. Local journalists say many of them are never documented but estimate that dozens die under such circumstances every year in the Pearl River Delta area alone, the booming manufacturing region north of Hong Kong.”⁴⁵

Workers at Ningbo City factories told reporters, “We have been working here more than two years and we don’t have the slightest idea what an employment contract looks like.”

Is the *Hukou* System Changing?

Some emerging signs suggest that aspects of the *hukou* system are being modified, albeit haltingly and with local and regional differences. The CECC 2004 annual report noted that the Chinese government had improved the general treatment of migrants. One important step was the 2003 abolition of the notorious “Measures for the Custody and Repatriation of Vagrant Beggars in Cities.” That regulation had allowed summary detention of migrant workers without papers and had given rise to widely publicized cases of workers’ deaths during detention. The report also cited the Hangzhou Public Security Bureau’s elimination of mass dragnet sweeps aimed at rounding up migrants. In addition, a new national identification card law limits police ability to request identification in certain situations.⁴⁶

Migrants can enter some occupations formerly denied them, such as work in hotels. In recent decrees and regulations, higher levels of government have ordered local officials to stop

charging extortionate fees for permits and other documents that migrants need in order to move and find work. It is unclear how the new regulations are being implemented or enforced.

In addition, some local schools have been opened to children of migrant workers, and in some cities and counties, schools for migrant workers’ children have been accredited and given assistance. *China Labour Bulletin* reports:⁴⁷

“Xiamen in particular has been praised by official Chinese media for its handling of migrant schools and its attempts to help such schools register and improve standards. The city government has reportedly set aside three million Rmb [\$390,000] to raise the standards of migrant schools by training teachers and improving school facilities and safety standards of the premises. Huang Yang of the Xiamen Education Bureau’s development and planning department stated . . . ‘Our city government leadership has recognized that a large number of our

migrant workers will eventually settle down here. Their children's education will affect the quality of our future residents.’”

In what the official press calls “experiments,” some county governments have taken steps to allow migrant workers to obtain urban *hukou* status in localities where they have lived and worked for a long period. In Shenzhen, for example, a new regulation allowed local residents with rural status to change to urban residency status up until October 31, 2004.

Peng Juan, a 34-year-old migrant worker in Yancheng County, in the inland province of Henan, received urban *hukou* status from county authorities. She also obtained a permanent job with social benefits at a fast growing local factory after performing “odd jobs” in the area for four years.

“For me, it’s like a pie falling from the sky,” said Peng.⁴⁸

While some experts believe that the *hukou* system will continue to be driven by China’s oversupply of labor, others note that in today’s China the labor supply is also in flux and varies by region. A recent report issued by

Some hukou reform measures are slowly shifting the existing system into a set of officially recognized class divisions based on wealth, with an urban underclass composed of rural migrants.

China’s Labor and Social Security Ministry noted the emergence of labor shortages of 2.8 million workers—2 million alone in the Pearl River Delta area—particularly of young female workers in factories with low wages, bad working conditions, and intense labor. The report cites the causes of the labor shortage as wage stagnation, lack of protection of worker rights, rapid increase in labor demand, and economic transition issues.⁴⁹

The Pearl River Delta’s falling reputation among migrant workers is not the only factor contributing to the area’s labor shortage. Many coastal factories are moving inland, not only offering workers employment opportunities closer to home, but also improving the rural economy. Some workers have chosen to stay in their home villages to take advantage of farm wages that have risen 15 to 40 percent during the past year. In addition, the Yangtze Delta region, which has attracted higher technology, higher wage enterprises, is increasingly attractive to migrant workers and foreign investors alike.⁵⁰

In response to the labor shortage, Pearl River Delta area factories have reluctantly begun to hire workers over 30. A manager at Starlite Holdings in Shenzhen, which makes greeting cards for Hallmark as well as packaging materials for Microsoft, Fisher-Price, and other well-known brands, explained that it would be hard to increase wages since profit margins were already so narrow. Large-scale companies such as Hallmark, he said, can name their price or look elsewhere for lower cost production.⁵¹

Working conditions in the Dongguan part of the Pearl River Delta, where companies are notorious for violations of labor standards, are still miserable. The 50 workers employed at the Daojiong Hequn faux hair factory, for example, “share two toilets, sleep eight to a closet-sized room in bunk beds and are forbidden to use radios or watch television in their dorms in order to conserve electricity.”⁵²

Some plants in the area use deceitful tactics to attract workers. An executive at a Shenzhen doll factory told a reporter that the company promised monthly wages of \$100 if business was good, even though it actually intended to pay only half that amount. Although most workers left within weeks, the factory would replace them by tricking new arrivals.⁵³

The Pearl River Delta situation suggests that the conditions for exploitation may be about to diminish. In other parts of China, however, where new business has not replaced closed SOEs, mass unemployment continues to leave migrant workers vulnerable to abuses of their rights. Fourteen million are still laid off from SOEs. Ninety-five million migrants are seeking work. An estimated 150 million surplus laborers are in rural areas, and 10 million workers per year enter the urban employment market. Every day, thousands of laid-off workers take to the streets in protest.⁵⁴

The CECC warns that although national and local authorities are reforming the *hukou* system, “some of these measures are slowly shifting the existing system into a set of offi-

cially recognized class divisions based on wealth, with an urban underclass composed of rural migrants.” The commission cautions that many of the reform measures “merely allow a limited number of relatively well off rural *hukou* holders to obtain urban residence status by demonstrating they have a fixed place of residence and a ‘relatively stable source of support.’”⁵⁵

These requirements are difficult for low-income rural migrants to fulfill. In Nanjing, for example, new 2004 regulations define “fixed place of residence” as ownership of an apartment or possession of one issued by a work unit. In Hebei Province, applicants for local *hukou* cannot live in rented apartments. Both sets of regulations define “relatively stable source of income” in relation to either a professional job or a job that provides income above the government-established minimum wage. Such restrictions are common in other *hukou* reforms as well.⁵⁶

Millions of migrant workers remain unregistered and cut off from social services. Although the State Council’s 2003 regulations do not condition legal aid on an applicant’s residence status, the Chinese news media has

reported that fewer than 3 percent of migrant applicants usually receive legal aid. Local governments often do not have sufficient financial resources to extend these services to migrants. But while some pilot medical projects in western China exclude migrants on the basis of cost, the more prosperous southern municipalities have begun to allow rural *hukou* holders to buy into government-run urban health plans, and the local governments sometimes subsidize the migrants’ portion of the cost.⁵⁷

In spite of the central government’s efforts at reform, says the CECC, the *hukou* system continues to facilitate discrimination “because it divides Chinese society into clear categories and provides a convenient method for local authorities and residents to identify migrants.” China’s 20 million migrant children are especially affected. In some cases, the 2003 regulations that ordered urban public schools to admit migrants have backfired.⁵⁸

“[C]entral government pressure on local schools to admit migrant students has led to the extortion of additional fees. Sometimes such pressure prompts even more creative forms of discrimination. Facing

central pressure to admit migrant children to local public schools, township governments in Ningbo have responded by adopting a 'separate but equal' policy. Local authorities have designated one particular public school as the 'migrant' school, replaced the full-time teachers with part-time instructors, and redirected local government education subsidies to the schools serving local students."

Other analysts offer similar caveats on reform. "Despite recent revisions to the *Hukou* residency system which underlies many of the problems facing migrants and their children," said *China Labour Bulletin* in a recent report, "there has been little impact for the majority of migrants and it is estimated that most of the changes and relaxation in the residence permit system will benefit the wealthy white collar migrants working in larger cities and not the vast numbers of migrants working in unskilled manual jobs." Moreover, as in other countries competing for foreign investment, the Chinese government faces the challenge of confronting its own vested interest in ignoring employer abuses to maintain an investor-friendly environment. Alexander and Chan put it this way:⁵⁹

"Will the household registration [*hukou*] system collapse or be rescinded in China in the foreseeable future? We do not think it likely. The security minister was emphatic in 2002 about the need to perpetuate the system: it is 'an important component of our country's administrative system and will exist for a long time. . . . The *hukou* will not be abolished, not now and not in the future.'"

Expert opinions vary widely on where the *hukou* system is headed. But all agree that recent developments show a country in the midst of chaotic change, driven by several factors. Migrant workers, increasingly frustrated by their ongoing poverty, abusive working conditions, government corruption, and broken social contract, are beginning to try out different ways of defending their rights. In areas with labor shortages, enterprises may improve conditions to attract migrants. In addition, many companies that need highly skilled staff may be willing to improve working conditions to attract university graduates. Some cities have enough available jobs to absorb large numbers of migrant workers.

Still, the future of *hukou* is not yet known. As the sending provinces

develop their own industries, rural residents may not leave their homes in the same numbers as in the past, but this factor alone will not end discrimination against migrant workers. Local political/economic elites established over the past couple of decades have a huge economic stake in keeping salaries low, since some of them own portions of the factories and receive profits from them. Moreover, because the central government's authority over local governments is weak, the impact of its efforts to improve circumstances for migrant workers will continue to be uneven. Further, migrant workers will not easily overcome decades of prejudice from urban dwellers.

The Chinese government's own ingrained harsh approach to the *hukou* issue has not yet disappeared. Witness the July 2004 arrest of Wang Feiling, a Chinese-born U.S. researcher who was studying the household registration system in Shanghai. Accusing Wang of spying and possessing state secrets, authorities seized the Anhui Province native, now a Georgia Institute of Technology professor with a master's degree from Beijing University and a doctorate from the University of Pennsylvania. Shanghai police held Wang in solitary confine-

ment for four days and in detention for two weeks before releasing him, expelling him, and barring him from returning to China. “My two-week nightmare in Shanghai is not only persecution for my academic work . . . and punishment for my non-cooperation with the Shanghai state security police, but also part of a pattern of security police activities that must be curbed,” Wang said upon his release.⁶⁰

Incidents like these clearly indicate that fundamental reform of the *hukou* system still faces significant obstacles. The CECC notes:

“Guangzhou public security officials . . . continue to regard the residence

permit system as an indispensable tool of social control, particularly of migrants. Although the NPC is currently considering draft proposals for a Law on the Protection of Peasant Rights, similar legislation has been under study for years without much progress. Instead, Chinese leaders have favored administrative pronouncements to address the status of Chinese migrants. As one Chinese critic notes, [Central government] policy attention cannot completely replace legal protection. Protecting the interests of peasants requires [that] the law give them corresponding rights, rather than merely letting peasants run around from place to place seeking protection by

waving national “policy documents.” Unless the Chinese government affords effective legal protections to migrants and ends the social inequalities perpetuated by the hukou system, discrimination against migrants will continue to create serious social problems.”⁶¹

The Chinese government’s goal of maintaining social peace and political control simultaneously is unrealistic in a turbulent economic environment rife with corruption and the abuse of those who are generating the country’s wealth. Long-term change can be secured only through the legal protection and enforcement of migrant workers’ rights.

Endnotes

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- ¹⁹ See <http://www.southcn.com/lady/zt/shengcun/zhi/200403060019.htm> (in Chinese). The article was published in 2004; dates of interviews and events recounted in the interviews are not given.
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- ³² *Ibid.*, p. 64.
- ³³ The "average local living expenses" level in major cities and export zones ranges from 250 to 350 Rmb (\$30 to \$42) per month. The highest subsistence level is in Shenzhen, in the Pearl River Delta area near Hong Kong. Beijing is mid-range, at about 300 Rmb (\$36) per month. Official minimum wages in these areas range from 450 to 635 Rmb (\$54 to \$76.50) per month, highest in Shanghai. The minimum wage in Shenzhen varies from 465 to 600 Rmb. Beijing's minimum wage is 545 Rmb (\$66) per month. According to the official regulation, it is 610 Rmb within the SEZ and 480 Rmb outside the zone. The Shenzhen government also announced in May that the minimum wage will increase by 8 percent this year. In 2004, white collar workers in Shenzhen were making approximately \$3,400 per year. In comparison with migrant factory workers, white collar workers in the Pearl River Delta region made salaries averaging 2,400 Rmb (\$312) per month, about four times a migrant factory worker's wage. See Alexandra Harney, "China's Answer to Los Angeles," *Financial Times*, June 5, 2004, p. 19.
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CHAPTER 4

Child Labor

China has ratified ILO Convention 138 on the Minimum Age for Admission to Employment and ILO Convention 182 on the Worst Forms of Child Labor. China also has ratified the UN Convention on the Rights of the Child.

ILO Convention 138 sets varying ages for commencement of work by young people. Age 16 is the standard minimum for full-time work (age 18 for industrial or hazardous labor), with carefully defined exceptions for part-time work and for developing countries. Convention 182 defines “worst forms” of child labor as bonded or other forced labor, child labor in sex or drug trade, and “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

China’s 1994 National Labor Law and 2002 Regulations on Prohibiting the Use of Child Labor forbid the employment of children under 16 as well as hazardous labor between 16 and 18. The law specifies administrative review, fines, and revocation of

business licenses of establishments that illegally hire minors.

The 2002 regulations introduced more detailed civil and criminal penalties for child labor violations. Labor authorities can fine an institution or individual 5,000 Rmb (\$650) per month for each child laborer employed. Employers who fail to inspect ID cards and maintain personnel records are subject to a fine of 10,000 Rmb (\$1,300). Certain violations, such as the death of a child, carry criminal liability.

China’s laws and regulations impose an affirmative duty on employers to ensure that workers are at least 16 years old.¹ In addition, they require employers to maintain personnel records. Institutions and individuals have a legal right to report violations of the regulations that prohibit child labor. The ministries of Labor and Social Security, Industry and Commerce, and Public Security share responsibility for implementing and enforcing the child labor laws.

In sum, China’s child labor laws and regulations basically comply with

UN and ILO standards. Still, as in every country, analysts must examine the relationship between law and practice and the effectiveness of labor law enforcement to ascertain whether international standards are respected.

Forward to the Past

Most analysts agree that child labor was rampant in pre-revolutionary China and that government policies during the socialist period greatly reduced it. The Chinese government maintains that the country does not have a widespread child labor problem and that the majority of children who work do so at the behest of their families, particularly in impoverished rural areas, to supplement family income. While very little empirical data are available, lax enforcement by provincial and local officials appears to be widespread.²

However, the authoritarian political culture makes child labor hard to assess and document comprehensively. As *China Labour Bulletin* points out, “the practice has not been eradicated and indeed appears to be on the increase,” cautioning that “the

extent of child labor remains difficult to assess due to a lack of official reporting on cases and the lack of transparency in statistics in China more generally . . . in the majority of cases, the existence of child labor is not discovered.” One study notes, “[T]he availability of a large adult migrant labor force, often willing to work long hours for low wages, has reduced the attractiveness of child labor for employers.”³

Nonetheless, some commentators say, many child workers aged 12 to 15 migrate to the southern coast and Guangdong, often with their parents, and end up working in the special economic zones, using false identity papers. An investigation found that “the numbers of children working in export-oriented factories is difficult to establish because both the workers and the employers make efforts to conceal their ages.” According to Hong Kong news reports, instead of acknowledging the lack of adequate information, officials at the labor ministry “claim that no government figures are available because child labor is not a problem in China.”⁴

Even without official statistics, however, ample reporting from many sources is sufficient to estab-

Researchers for a television program on child labor in Jiangxi Province found hundreds of child workers in enterprises of all types, along with the existence of organized child labor recruitment gangs.

lish the existence of a child labor problem in China. According to Chinese press reports, child labor appears frequently in family businesses, where children, especially girls, must participate in extensive labor. These children often receive no pay, since they are working for their adult relatives. Businesses such as restaurants and barbershops are mostly owned by families and individuals, who frequently hire their relatives to work. *The People’s Daily* reported on December 20, 2002, that a 15-year-old girl was working full-time at her aunt’s barbershop for 200 Rmb (\$26) a month.⁵

A January 8, 2003, *Workers Daily* investigation revealed that children between the ages of 13 and 15 were working in private businesses, mostly in the service sector. In Kunming, for example, reporters visited 20 workplaces and found 12 workers under 16. Reporters asked two girls, one 15, the other 16, about their wages. The girls said that they made the very low wage of 350 Rmb (about \$45) per month, plus housing and meals.⁶

Children often work under abusive conditions. An April 7, 2004, report in the *Life Daily*, along with similar reports in other papers, revealed that the parents of many children, some as young as nine, “rent” them to flower sellers at a price of 300 Rmb (\$39) per month. The children are required to sell flowers for 14 hours every day. They have strict sales quotas. If they fail to meet their quotas, their employers physically abuse them.⁷

Child labor is also a problem in the manufacturing sector. Researchers for a China Central Television program on child labor in Jiangxi Province found hundreds of child workers in enterprises of all types, along with the existence of organized child labor recruitment gangs. According to some reports, the Zhejiang and Fujian provinces, located in China’s southeast region where foreign direct investment is heavy, are also regions with large numbers of child laborers, many of them 13 or 14 years old. In July 2003, Fujian provincial authorities issued new child labor regula-

tions after local authorities found hundreds of children working in coastal region factories.⁸

Many children get jobs in China's coastal regions by using fake, borrowed, or stolen ID cards that falsify their age. Many employers are prepared to ignore the law to meet production deadlines. When the labor bureau in Nanhai City, Guangdong Province, looked into the problem of the use of fake ID cards to get work, it found that more than 80 percent of employers felt that their job was to maintain production and that fake ID cards were not their concern, as long as production deadlines were met. One employer told the *Workers Daily*, "For every piece produced by an adult worker, I have to pay one dollar while I only have to pay a child 70 cents. Children's food and lodging costs are also cheaper."⁹

Although systematic, sector-by-sector analysis is lacking, apparel, footwear, and toy manufacturing appear to be industries where children work in large numbers. The evidence, albeit anecdotal, is disturbing. One news report brought home the reality of child labor in an export factory in Dongguan:¹⁰

"During the Chinese New Year celebrations, Cai Jie worked more than 14 hours a day, locked in a small room with other teenage girls in a factory where they glue the soles of sneakers headed for store shelves in the United States.

" "They always make more work for us over the holidays,' said the 13-year-old, who dropped out of school a year ago to work in the factory. 'It's busy this time of year and the managers don't care.'

"Cai, who makes roughly 20 U.S. cents an hour, said the hours are long and the smell from the chemicals in congested assembly rooms makes some workers faint.

" "Lots of girls get sick, from the chemicals. When they get too sick to work, the bosses send them home without money,' she said. 'Last year, there was a fire and some of the workers died.'

"Many of the child workers come from other provinces and live under systems that prevent them from leaving the factories and shantytown complexes where they live and work.

"A young woman from Anhui Province, who did not wish to be identified, claimed she assembles Mattel-brand Barbie dolls at a large factory in the city's suburbs, for the equivalent of \$3 a day.

" "We live at the factory, in very cramped dormitories,' said the 15-year-old. 'The managers are cruel and tell us we'll never see our families unless we work harder. I don't like it very much.'"

Speaking to a U.S. journalist in 2002 on condition of anonymity, an official with the provincial labor bureau in Shenzhen explained that factories hire children because they can be paid less and worked much harder than older, more experienced workers, who are likely to complain over low wages. "When government officers or foreign business executives come to inspect the factories, the managers are tipped off beforehand, and underage workers are sent home," he said. "It's a game to them, when the bosses come to check the factories they make everything look good for the inspection. But after they leave it's back to business as usual."¹¹

Education and Child Labor

China ranks nearly last in the world in per capita expenditures for education. While schooling is compulsory and is supposed to be free for the first nine years, the government has reduced its subsidies to local schools. In September 2003, the UN Special Rapporteur on the Right to Education visited China and reported its failure to provide education to many children of migrant workers. The Special Rapporteur said that the recent privatization of fees for public education compels parents to pay nearly half the costs of schooling, often amounting to a month's pay each term, as well as additional costs for books, uniforms, and other items. Rising costs make education inaccessible to many children.¹²

Chinese experts concur that the main cause of widespread child labor in rural areas is the lack of funding for education. Sometimes the central government forces unfunded mandates on provincial budgets, and local authorities make up the shortfall by raising taxes for rural peasants. Recently, the central government ordered provincial authorities to rescind some of those taxes, but local governments are finding new ways to

In Fanglin village, Jiangxi Province, a deadly explosion killed dozens of third graders who were making fireworks in their elementary school.

raise money from the peasants—for example, through road tolls and land theft. In addition, some local companies that own services such as water make deals with friends in the local CCP government to shut down the local well or otherwise force the rural villagers to buy their water and/or other services from the company.

In some cases, local authorities routinely charge education fees to parents. Although these practices vary from community to community, they collectively decrease the average farming family's income and drive many children of poor families, especially those of migrant workers, out of school. In one notorious case, a student committed suicide because he could not pay an \$80 entrance examination fee.¹³

A November 2003 survey of 7,817 migrant workers' children, conducted by the State Council's National Working Committee on Children and Women, found that 9.3 percent of the children interviewed either had dropped out of school or had

never gone to school and that 60 percent of those between 12 and 14 were also employed illegally.¹⁴ In many areas, migrant workers' children do not even have legal access to local public schools. Some migrant workers have set up their own private schools in response.

Sparse funding also has resulted in wage arrears for teachers. Teachers may thus ask for payments directly from families, adding to the financial burden that parents must assume to keep their children in school. Wage arrears also prompt teachers' migration to the cities. When the authorities do not pay teachers' salaries for many months, economic need motivates teachers to move to urban areas to find higher paying factory jobs.

Death in Fanglin

The UN Special Rapporteur also recommended the immediate prohibition of children performing manual labor at their schools to raise funds or to supplement teachers' pay.¹⁵ In March 2001, this type of practice led

to tragic consequences in Fanglin village, Jiangxi Province, where a deadly explosion killed dozens of third graders who were making fireworks in their elementary school.

With nearly \$160 million worth of fireworks sales to the United States in 2003, China accounts for more than 95 percent of U.S.-imported fireworks.¹⁶ The county surrounding Fanglin is a center of fireworks manufacturing in China.

Local government policy promoted working instead of learning in school. Cutting resources for education, the government spurred schools to take on business ventures to raise funds. It also exempted school-based production from taxes, inducing local factories to move production into schools.

In Fanglin, local fireworks manufacturers paid teachers to have their students insert fuses and detonators into large firecrackers. The students, who were not paid, had to meet production quotas before they could go home. Parents complained of the practice to local officials but received no response.

The explosion—which took the lives of more than 40 victims, almost all

children¹⁷—spurred massive public outrage, statements of contrition, and promises of reform. In 2002, new child labor regulations tightened rules and strengthened penalties. But although fireworks production was removed from schools, children were not removed from fireworks factories or from factory work countrywide.

The Fanglin explosion was not an isolated case, just the one with the highest death toll. In 1999 a fireworks factory in Sanshi Pujin township, Anhui Province, exploded, killing 14 persons. Among the dead were 11 child workers between 8 and 13. The explosion occurred on the second story of a building being used to produce fireworks without a permit.¹⁸



In October 2003 an explosion in a fireworks factory located in a small village in Hunan Province killed a 14-year-old boy and injured nine other students under 15 who were helping factory owners fill an urgent order. One child lost both arms and was badly burned. The next day, one of the co-owners committed suicide by drinking pesticides.¹⁹

McDonald's and Child Labor

In 2000, worker rights advocates affiliated with the Hong Kong Christian Industrial Committee (HKCIC) reported that McDonald's Happy Meal toys were being produced by a supplier that employed child labor from mainland China. Simon Marketing, the supplier, had entered into an agreement with City Toys, a subsidiary of Pleasure Tech Holdings, to produce Snoopy, Winnie the Pooh, and Hello Kitty toys. Children as young as 14 were earning \$3 for 16 hours of work each day. During a site visit, HKCIC members interviewed factory workers. Xiao Ching, a 14-year-old girl, said:²⁰

“I came from Gun-Zhi High School. I have not finished my high school to work here. I came here a few days after the batch of 160

In 2000, worker rights advocates affiliated with the Hong Kong Christian Industrial Committee reported that McDonald's Happy Meal toys were being produced by a supplier that employed child labor from mainland China.

children. How could I work in the factory under-aged? Borrow others' ID card of course. It's common. I used my sister's ID card. She's 17 years old.’

“Why did I come to work in the factory? My family is poor. My parents can't even raise us, three brothers and sisters. What are the toys we are making? Hello Kitty key rings. I pull the thread through. I work till midnight every night. It's very tiring. Have I ever cried for this? Tell me who in this factory hasn't cried?”

More Reports

A review of news reports confirms ongoing use of child labor in China. For example, hundreds of children work in privately owned canned food companies in Nanning City, Guangxi Zhuang Autonomous Region. The average age of these child workers is 13, and the youngest is only nine. They earn 9 Rmb (approximately \$1) per

day peeling pineapples. Miss Chen, 13 years old, comes from the village of Aijichili in a suburb of Nanning City. She said that after working six consecutive days in the plant, her right hand becomes red, swollen, and infected.²¹

In a Japanese wholly owned garment company in Shanghai, a journalist received a note from a young girl working there. The note said, “The workload is heavy and wage is too low. I get only 100 Rmb (\$13) [per month, one-third of the lowest minimum wage] after working four and a half months. The accommodation is also bad. The food is not clean, there is no drinking water and no water to do laundry, but they deduct lots of utility fees from our wages every month. Ten to twenty people live in a room. Please help us and please keep this confidential.” Some of the girls are only 14 years old, but they have to begin their work at 8:00 a.m. and end at 9:00 p.m., with one hour at noontime and without any weekends and holidays.²²

On July 10, 2001, 17-year-old Liu Li died of heatstroke after working continuously for 16 hours in a hot apparel shop in Wuhan City. While Liu Li was not a “child worker” under international standards, she shared the same working conditions with 12- and 13-year-old girls in a cramped, tenement-style sweatshop. As *China Labour Bulletin* described the situation:²³

“The total floor space was 23 square metres, in which were placed several sewing machines, an ironing board and an electric iron. The room had been divided into three separate levels using planks of wood as false ceilings. Beneath the workshop was another workroom and above was a kind of attic where the employees slept. There was just one metre between the makeshift ‘floor’ and the apartment’s ceiling, rendering even the most basic of activities such as dressing an ordeal. In winter, the girls slept in the attic but during the unrelenting heat of Wuhan’s summer, they slept on mats on the floor of the lower workroom.”

These tragedies illustrate the need for officials at the highest level of government to acknowledge and

deal with the problem of child labor in China. Incidents such as the Fanglin fireworks disaster show that the government is unresponsive and that no organized force—including the ACFTU—is acting as a watchdog for worker rights.

Trafficking of Children

China’s Ministry of Public Security estimates that 1,000 children are kidnapped and sold illegally each year. According to the Chinese press, during the first six months of 2004, in Dongguan City, Guangdong Province alone, 33 children between the ages of two and seven were reported missing.²⁴

Most human trafficking in China is aimed at providing brides or sons to lower and middle income farmers. A minority of cases involve girls forced into prostitution and children sold into forced labor. According to the U.S. Department of State’s *Country Reports on Human Rights Practices: 2003* (published in 2004), children trafficked to work usually were sent from poorer interior areas to relatively more prosperous areas; traffickers often enticed parents to relinquish their children with promises of large

remittances that their children would be able to send to them.²⁵

According to some reports, women and girls are also trafficked into and out of the country. Women and girls from Burma, Laos, North Korea, Vietnam, and Russia were trafficked into China either to work in the sex trade or to be forced to marry Chinese men. Human rights groups in Thailand say that 12- to 18-year-old girls from southern China, Burma, and Laos are trafficked to Thailand to work in the sex industry. Victims from Yunnan Province, for example, were promised restaurant or household work in Thailand and then pressured or forced into prostitution.²⁶

The U.S. State Department’s 2004 *Trafficking in Persons Report* notes:²⁷

“China is a source, transit, and destination country for persons trafficked for the purposes of forced labor and sexual exploitation. The domestic trafficking of women and children for marriage and forced labor is a significant problem. . . . Many Chinese are smuggled abroad at enormous personal cost and are forced into prostitution or other forms of exploitative labor to repay their debts.”

The report goes on, “China does not fully comply with the minimum standards for the elimination of trafficking but is making significant efforts to do so. The Government has adopted laws to fight trafficking and is working with NGOs and international organizations to improve law enforcement training and victim support services.”

Endnotes

- ¹ Affirmative duty is a legal obligation to do something. Failure to carry out this obligation will render the person guilty and punishable in a court of law.
- ² See U.S. Department of State, *Country Reports on Human Rights Practices 2003: China*, Section 6(b). Available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27768.htm>
- ³ See *China Labour Bulletin*, “Child Labour in China: Causes and Solutions,” November 24, 2003. Available at http://www.china-labour.org.hk/iso/article.adp?article_id=5116&category_name=Child%20Labour%20
- ⁴ See Hilary Murdoch and Daniella Gould, *Corporate Social Responsibility in China: Mapping the Environment*, Global Alliance for Workers and Communities/Impact Limited (April 2004), p. 24. Available at <http://www.theglobalalliance.org/documents/ChinaReport-web.pdf>; Shek Ping Kwan and Trini Leung, “Export Processing Zones in China,” Hong Kong Christian Industrial Committee and Hong Kong Confederation of Trade Unions, cited in Murdoch and Gould, p. 24; *China Labour Bulletin*, “Child Labour in China,” December 31, 2000. Available at http://www.china-labour.org.hk/iso/article.adp?article_id=1620&category_name=Child%20Labour%20
- ⁵ *People’s Daily*, December 20, 2002, at http://news.xinhuanet.com/fortune/2002-12/20/content_665186.htm
- ⁶ *Workers Daily*, January 8, 2003, at http://www.grrb.com.cn/news/news_detail.asp?news_id=113758&type_id=0
- ⁷ *Life Daily*, April 7, 2004, at <http://www.dzwww.com/shenghuoribao/shenghuozhongdianxinwen/200404080057.htm>
- ⁸ See *China Labour Bulletin*, note 3 above.
- ⁹ See *Workers’ Daily* newspaper, June 6, 2000, cited in *China Labour Bulletin*, “Child Labour in China: Causes and Solutions,” note 3 above.
- ¹⁰ See, for example, National Labor Committee, “Toys of Misery: A Report on the Toy Industry in China,” December 2001, at <http://www.nlcnet.org/campaigns/china/chinatoy01.pdf>; Christian Wade, “Child Labor Fuels Billion-Dollar Toy Biz,” United Press International, *Financial News*, February 25, 2002.
- ¹¹ *Ibid.*
- ¹² See U.S. Department of State, *Country Reports on Human Rights Practices 2003: China*, note 2 above, Introduction.
- ¹³ See Joseph Kahn and Jim Yardley, “Amid China’s Boom, No Helping Hand for Young Qingming,” *New York Times*, August 1, 2004, p. A1.
- ¹⁴ See Vernon Yu, “Misery of Migrant Children Exposed: One in 10 Has Dropped out of School and Many Work Illegally, Survey Finds,” *South China Morning Post*, November 11, 2003.

- ¹⁵ See U.S. Department of State, *Country Reports on Human Rights Practices 2003: China*, note 2 above, Introduction.
- ¹⁶ See U.S. Census Bureau, “Facts and Features: The Fourth of July 2004,” at http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/001798.html
- ¹⁷ See John Pomfret and Philip P. Pan, “Blast Kills 37 Students in China,” *Washington Post*, March 8, 2001, p. A1.
- ¹⁸ See *Ming Pao* newspaper, January 13, 1999.
- ¹⁹ See *China Labour Bulletin*, “Fatal Firework Factory Explosion Kills Child Labourers,” *News Review*, November 3, 2003.
- ²⁰ See “USA: McDonald’s Uses Sweatshop,” Associated Press wire story, August 27, 2000; “McDonald’s Toys: Do They Manufacture Fun or More Exploitation?” Hong Kong Christian Industrial Committee, August 27, 2000.
- ²¹ See *Ming Pao* newspaper, July 19, 2001.
- ²² See Xinhua news agency report, August 27, 2001.
- ²³ See *China Labour Bulletin*, “In Memory of Liu Li (1984-2001),” September 3, 2001. Available at http://www.china-labour.org.hk/iso/article.adp?article_id=1615&category_name=Child%20Labour%20
- ²⁴ See *Morning News Post*, July 15, 2004. Available at <http://news.rednet.com.cn/Articles/2004/07/582632.htm>
- ²⁵ Trafficking problems in China are intensified by the country’s one-child policy (See Chapter 3, Endnote 27). Many girls are trafficked to meet the demands of the tens of millions of men who have no one to marry because of the gender differential and because young women are migrating to the cities. See U.S. Department of State, *Country Reports on Human Rights Practices 2003: China*, Section 6(f).
- ²⁶ Ibid. See also U.S. Department of State, *Country Report on Human Rights Practices 2003: Thailand*, Section 6(f) (2004). Available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27790.htm>
- ²⁷ See U.S. Department of State, *Trafficking in Persons Report, Country Narratives: China*, June 10, 2004. Available at <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm>

Forced Labor

China has not ratified ILO Conventions 29 and 105, the two core standards on forced labor. Convention 29 forbids the use of prison labor for profit-making ventures in the wider national and international economy. The World Trade Organization (WTO) states in its Article XX that products of prison labor should not enter the flow of international trade and that countries may ban imports of prison-made products: “[N]othing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures relating to the products of prison labor.”¹

ILO Convention 105 prohibits the use of prison labor “as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a means of labour discipline; or as a punishment for having participated in strikes.”

China openly violates these international standards.

Some employers use security guards, gang members, and thugs to confine migrant workers to their dormitories when they are not working and threaten physical reprisal if they try to leave.

Forced Labor and Migrant Workers in SEZs

Problems of discrimination against migrant workers in special economic zone factories are compounded by even worse employer abuse (see Chapter 3 on Discrimination in the Workplace for discussion of forced overtime). Beyond the previously discussed instances of employer-hired thugs assaulting workers who protested working conditions (see Chapter 2 on Freedom of Association), reports from several sources indicate that some employers use security guards, gang members, and thugs to confine migrant workers to their dormitories when they are not working and threaten physical reprisal if they try to leave. This is a classic manifestation of forced labor under international human rights standards.

In 2001 and 2002, Chinese researchers from the Beijing Dajun Economic Observation and Research Center conducted case studies of migrant workers in several SEZ factories.² “The factory was in fact a slave camp,” researchers reported. “Workers are not allowed to contact anyone outside.”

Fu, a young worker recruited from her village to work in a factory in Yiwu, Zhejiang Province, told researchers, “It is a living hell.” She said she was almost beaten to death. Eventually, Fu was rescued with the help of her father and local police. Management allowed the girl and a few workers from the same village to return home, but without paying them a penny. Asked whether the workers had thought of suing the factory, Fu responded, “I did but the local police said, ‘This is a labor dispute, [it] should be handled by the

labor department, we cannot offer any help in this regard.”

This example illustrates the problems posed by an environment of lax enforcement. Even if a path to justice exists, workers may not be able to find it. In this case, the police were uninterested in dealing with what was clearly a criminal offense, vaguely passing off the responsibility to a large state bureaucracy where securing redress would be, if at all possible, expensive and time consuming.

Chinese Emigrant Workers

In addition to moving from the countryside to urban areas, millions of Chinese workers migrate out of the country for work. Much of this emigration is to other Asian countries and to the Middle East. As major receiving destinations of smuggled Chinese workers, the United States and U.S. territories are also implicated. The late 1990s saw many exposés of abuse and exploitation of Chinese emigrant workers at garment factories in U.S.-controlled Saipan, located in the Northern Marianas Islands territory.³

Chinese state agencies are actively involved in exporting laborers to the

rest of the world. According to the 2001 state economic plan, China intended to export millions of laborers. These agencies charge large sums to migrating workers. One official advertisement recruiting workers for Macau required “18-28 female, healthy, good-looking, elegant” applicants to submit—along with full-figure, half-figure, and side

photos—a fee of 45,000 Rmb (approximately \$5,000) for most areas and 50,000 Rmb (\$6,500) for Fujian. Another ad charged prospective butchers 70,000 Rmb (approximately \$10,000) to secure a year’s work in England. This fee did not include the cost of airfare, health clearance, notary, and visa.⁴



Often, conditions for emigrant workers are tantamount to forced or bonded labor, and sometimes they can have fatal consequences. In June 2000, for example, 58 Chinese emigrant workers died while being smuggled into England in a truck loaded with tomatoes. In January 2000, four Chinese emigrants were found dead of starvation and dehydration in the hold of the cargo ship *Cape May* when it docked in Seattle harbor after a ten-day voyage from Hong Kong. The four were among 18 workers who had paid smugglers \$40,000 apiece to be confined in the 40-foot container.⁵

Thousands of Chinese migrants labor in the United States in virtual bondage, working to pay off debts incurred for being smuggled into the country. According to one report, Chinese garment workers in New York owed \$50,000 to loan sharks who paid illegal recruiters, sometimes called “snakeheads,” to bring them into the United States illegally. The ILO notes, “The challenge confronting the global community is to manage migration so that it can serve as a force for growth and development, and not lead to clandestine movements and the dangers these pose for estab-

lished institutions and the respect for labor standards.”⁶

Prison Labor

China puts a vast labor force of prisoners to work in the *laogai* system. *Laogai* is a Mandarin word that means “reform through labor,” but today it has a wider colloquial meaning that refers to the entire system of forced labor in China. Official figures put the working prisoner population at more than a million, but most independent estimates are many times that.⁷

The actual size of the *laogai* system is a state secret of the PRC, and knowing the precise number of inmates or facilities is therefore impossible. The Laogai Research Foundation (LRF) is the leading authority on the *laogai* system and is chiefly responsible for most of the data available on the *laogai* today. The foundation publishes an updated *Laogai Handbook* that contains information on more than 1,200 *laogai* facilities as of 2000, with an estimated prisoner population of 4 to 6 million. The LRF estimates that since the *laogai* was established in the early 1950s, between 40 and 50 million prisoners have gone through the system. The LRF has documented

a vast network of *laogai* facilities producing many items exported to other countries.⁸

The term “prison labor” is too narrow a term to describe the *laogai* system, for prison evokes criminal incarceration. There is ample evidence that many who fill the ranks of the *laogai* did not receive a criminal sentence and also that many actual criminal sentences resulted from politically motivated prosecutions.

According to the LRF, the *laogai* system in China encompasses a broad range of forced labor manufacturing units that include normal prisons, “reeducation through labor” (RTL, also called “administrative discipline” or *laodong jiaoyang*) facilities, detention centers, juvenile offender facilities, and “forced job placement.” “Forced job placement” is reserved for convicts who have served out their formal sentences and are considered to still need rehabilitation; they are “placed” in the forced labor system with prisoners who are still serving their sentences.

RTL is a sentence of up to three years handed down by the Chinese Public Security Bureau. The sentence also can be extended by one year. It involves

no charges or court proceedings of any sort. Amnesty International notes that the RTL system remains in place and continues to be imposed in contravention of international human rights standards.⁹

“People receiving terms of RTL have no right of access to a lawyer and there is no hearing for them to defend themselves. ‘Sentencing’ or assignment to a term of RTL is usually decided by the police alone, without judicial supervision or review.

“The use of this form of administrative detention has increased considerably in recent years. . . . Although recent official figures are not available, the number is believed to have further increased . . . due to the continuing campaign against the Falun Gong and the ‘strike hard’ campaign against crime which has continued since April 2001.

“RTL contravenes various international human rights standards, including the Universal Declaration of Human Rights, the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, and the International Covenant on

There is ample evidence that many who fill the ranks of the laogai did not receive a criminal sentence and that many actual criminal sentences resulted from politically motivated prosecutions.

Civil and Political Rights (ICCPR) which was signed by China in 1998. In particular, RTL contravenes Article 9 of the ICCPR which prohibits arbitrary detention and Articles 8(3)(a) and (b) of the ICCPR which prohibit forced or compulsory labour unless imposed as a punishment for a crime by a competent court.”

A 2003 report by a non-governmental organization (NGO) contains a 2001 document (No. 56) from the State Bureau of Taxation under China’s Ministry of Finance. This document clearly states that if the property rights of a company are solely owned by a prison or forced labor camp system, the company is exempt from corporate income tax and the land inquisition levy.

The report includes a translation of an advertisement designed to attract foreign and domestic investment in *laogai* production, in this case a mining company. The ad flaunts the government support of its operations as a bonus for would-be investors:¹⁰

“*Xinsheng Coal Mine of Hunan Province*, also known as *Southern Hunan Prison of Hunan Province*, located in Huangshi, Laiyang of Hunan Province . . . offers cheap, abundant labor forces, . . . (cheaper labors are available if prison inmates are used), relatively low operating costs. . . . Our business is a special enterprise, enjoys an amicable relationship with the local government and relevant offices, and is a recipient of various preferential policies granted by the government. We provide a flexible, harmonious investment environment. . . . *Xinsheng Coal Mine* warmly welcomes both domestic and overseas investment.”

Laogai Labor Cases

In a 1996 White Paper, the government of China insisted, “China prohibits export of products made with prison labour. No competent Chinese authorities have ever given any reform-through-labour unit the right to export commodities. The Chinese Government is very

strict on this point and any violations of these regulations are dealt with severely.”¹¹

The report goes on:

“In China, products are produced by prison labour mainly to meet needs occurring within the reform-through-labour system. Only a small proportion of such products enter the domestic market through normal channels. Profit from reform-through-labour work activities is mainly used for improving the prisoners’ living conditions, upgrading their common living areas and facilities and maintaining production.”

Despite these attestations, compelling evidence indicates that prison manufacture of products for export into the global economy is widespread, in clear violation of international labor standards on forced labor.

The 2003 NGO report contains detailed testimonials of prison laborers producing for export-oriented companies. In 2001, for example, Beijing Mickey Toys Co., a producer of soft toys since 1987, had an order to do handwork on toy rabbits produced at Beijing Xin’an

Compelling evidence indicates that prison manufacture of products for export into the global economy is widespread.

Female Labor Camp. Beijing Mickey Toys was itself a subcontractor for Nestlé, which used the toys for promotions around the world. The testimony of Jennifer Zeng describes in detail how and under what conditions the toy rabbits were produced:¹²

“Usually we began work after getting up at 5 o’clock in the morning, and worked until 2 or 3 o’clock in the morning the next day. Sometimes we had to work overtime, otherwise we could not finish the job. At the busiest time, I did not dare to wash my hands after going to the toilet, in order to save a few minutes. At night, sometimes I was so exhausted that I could not even count clearly from 1 to 9. Yet I still had to force my eyes open to knit sweaters. The pattern of the sweater was quite complicated; sometimes we finally finished the knitting after much effort only to discover the next morning it had been knitted completely wrongly. So, we had to unpick the stitches and redo it. Long hours of highly intensive workload and severe lack of sleep

made me feel, for a very long period of time, that the only thing I needed in my life was sleep.”

Lanzhou Zhenglin Nongken Food Ltd. was established in 1988. In 1992, the company embarked on a joint venture with Lanzhou Dashaping Detention Center and Lanzhou No. 1 Detention Center (also known as Xiguoyuan Detention Center). According to the report:

“Some 10,000 detainees . . . were forced to use their hands to peel the shells off melon seeds, and were engaged in intensive physical labor work. Those detainees were forced to crack the seeds of a large variety of melon between their teeth, and then peel the husk off with their bare hands to remove the kernels. In winter, they had to do this work outside in the freezing cold. Many of them suffered frostbite and the skin on their hands split, with pus and blood from the wounds oozing onto the melon seeds. In the summer, the cracking and extracting of kernels from shells continued unabated. Many had their teeth

cracked and damaged from cracking melon seeds, and even lost their fingernails in the process of extracting the kernels from their shells. The detainees were forced to squat on their heels to do the work from early morning till evening for more than ten hours continuously, with no pay.”

The report claims that Lanzhou Zhenglin Nongken Food Ltd. is China’s largest producer of roasted seeds and nuts, that its annual sales were 460 million Rmb (about \$70 million) in 1999, and that it exports to more than 30 countries.

Next, the report details the relationship between Jinan Tianyi Printing Co. and Shandong No. 1 Female Labor Camp (Jinan Female Labor Camp). It describes the working conditions within the camps in the following terms:

“Due to working overtime for long periods of time, a lot of detainees had difficulty standing, and it was very common for someone to faint in the workshop. Those who refused to work would be put into a ‘confined solitary compartment’ which was totally dark. The practitioners confined there were not

allowed to go to sleep, to wash their faces or brush their teeth. They were also not allowed to come out of the compartment to go to toilet and were forced to stand continuously for more than 20 days until they became unconscious. These people would then have such swollen feet that they could not wear shoes and could not walk. . . . In the workshops, where the colored patterns are printed, the smell of chemical paints causes severe irritation to the eyes and the respiratory system of the practitioners doing the forced labor. . . . In some cases, in order to finish the work sent in by these enterprises, the labor camp would force the practitioners to work through the night. For those . . . who could not finish their workload, they would have their terms in the labor camp extended.”

Another testimonial in the report comes from a November 2003 statement by prisoner Lin Shenli:

“In the labor camp, every morning I was forced to get up to start work around 6:00 a.m. I was not allowed to stop until 9:00 p.m. The work was manual labor, making rubber sports balls. It involved using iron needles to punch holes and then

using threads to stitch through the holes and the two threads had to be pulled and tightened at the end of the process. After long periods of the same repeated tasks, my hands got mutilated by the threads and started to bleed. The threads were waxed and prisoners informed me that wax is poisonous. That explained why both of my hands were swollen and infected. Due to long hours of intensive labor work, a large area of my chest and buttocks began to bleed and ulcerate. Especially, in the ulcerated buttock area, blood seeped onto my underwear and tracksuit pants. Every day my clothes were like they had been soaked in blood and water. As the blood dried up on my underwear and then became wet again, several times a day, the underwear would eventually get stuck onto my skin. This made walking very difficult, including taking off my underwear when going to the toilet. Every time when I had to force it off, a layer of my skin would be peeled off as well. At night, I couldn’t sleep properly because I couldn’t lie down. Coupled with the long hours of hard intensive labor, I was exhausted. If I did fall asleep at night, it was restless as, if I accidentally touched the sore parts of my body, I

would be woken up by the most excruciating pain. Even though I was in this condition, I was not allowed to rest. I was still forced to work intensively. Through forced labor, the cost of the production of goods in China was kept very low.”

The report also details working conditions in the Shuanghe Labor Camp, where prisoners were made to package toxic agricultural fertilizer by hand for Qiqiha'er Siyou Chemical Industry Co. Ltd. The report describes the conditions within the camp:

“The polluted air in this chemical plant is so bad that even from a distance, you could smell a strong, rancid odor. Manufacturing work itself is dirty, painful, tiring, and toxic. In production, heavy smoke full of chemical dust floated around the entire production unit, and settled all over a person’s clothes, eyebrows, and eyelashes. Even wearing a few protective masks, [prisoners] were choked from the chemical exposure, with nasal passages and eyes becoming swollen. In addition, the agricultural chemical plant is very toxic to people’s health. Some incurred red eyes and faces, chapped hands, as

well as major skin irritations all over their bodies. Some of the females stopped menstruating for a few months or even the entire year. There are no hazardous material suits provided and masks are only assigned to practitioners once. Gloves have never been assigned. It is clearly stipulated that all who handle or are in proximity to toxic substances, must take showers at the end of every day. However, [prisoners] were not permitted to take showers. . . . With the combined heat, over-exhaustion and sweat (combined with chemical dust), skin became very itchy and painful. When the sweat evaporated from their skin, a ‘ringworm’ shaped rash appeared.”

The report appendix contains one final testimonial of experiences in the *laogai* in 2003:

“I only want to let you know how some products from China are made and why they are so cheap. In prison, I was forced to work on export products such as toys and shopping bags without pay. I still remember one of the shopping bags was printed with ‘National Gallery of Art.’ The cell was only about 300 square feet in size, with 20 pris-

oners and one toilet inside. They slept and worked in the cell. Sometimes we were forced to work until 2:00 a.m. to keep up with the schedule. They only provided two meals a day (only once a week you have meat in your food). In other words, being hungry, you still need to work more than 15 hours per day. The police used a wire whip to beat you if you did not do a good job or you could not keep up with the schedule. During this desperate time in prison, I was always wondering who gave them the business and who helped them to abuse us.”

China-U.S. Memorandum of Understanding and Continued Prison Labor

In 1992, China and the United States signed a groundbreaking memorandum of understanding (MOU) titled *On Prohibiting Import and Export Trade in Prison Labor Products*. Among key MOU provisions: China must “promptly” investigate companies that were violating the ban on export of *laogai* products, exchange information on enforcement at the request of one signatory, share evidence of violations of the MOU, and arrange inspection visits by “responsible officials.” Specif-

U.S. Customs Service has conceded that it does not have the capacity to enforce the agreement fully, saying that “the AIMCO case highlighted . . . a vital aspect of our prison labor investigations . . . that is our need for reliable investigative leads, including those provided by outside sources.”¹⁷

A 2002 U.S.-China Economic and Security Review Commission policy paper on the *laogai* concluded that the main obstacle to the Customs investigations was that “the PRC is not abiding by the 1992 and 1994

agreements it negotiated with the U.S. government.” The commission recommended shifting the burden of proof from the PRC to corporations suspected of importing *laogai* products into the United States. Specifically, it called for a certification based on “good faith efforts” of U.S. companies that import Chinese products into the United States, as well as more prompt inspection of Chinese facilities suspected of forced labor.¹⁸

The commission called on the U.S. government to maintain a list of “suspicious companies” suspected of importing *laogai* products into the United States, a bonding procedure to give companies an incentive to follow the ban, an addition to the annual U.S. State Department country human rights reports containing detailed information on *laogai* facilities, and the appointment of a special counsel devoted to the prosecution of violators. None of these recommendations has been adopted.

Endnotes

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- ¹⁵ See Thomas L. Friedman, Elaine Sciolino, and Patrick E. Tyler, "Clinton and China: How Promise Self-Destructed," *New York Times*, May 29, 1994, p. A1; Associated Press, "China Lets U.S. Agents Inspect Plant," September 12, 2000.
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- ¹⁷ *Ibid.*
- ¹⁸ The U.S.-China Security Review Commission is a 12-member bipartisan group created by statute in October 2000. Commissioners are appointed by Congressional leaders. The commission's primary role is to monitor, investigate, and report to Congress on the implications for U.S. national security posed by our bilateral trade and economic relationship with China. See *U.S.-China Security Review Commission Policy Paper on Prison Labor and Forced Labor in China* (2002). Available at http://www.uscc.gov/researchpapers/2000_2003/pdfs/flabpol.pdf

A Global Power in the Balance: The Future of **Worker Rights** in China

Whatever the course of economic and political relations in the twenty-first century, China will be a major regional and global power. The question is: Will China's power be a force for advancing democracy, human rights, and social and economic well-being, or will China choose to lead a race to the economic and political bottom, based on political oppression and worker exploitation?

China is undergoing a twofold transformation. It is rapidly changing from a poor, rural nation in which peasant farmers constitute the vast majority to an urbanizing and industrializing country whose millions of peasants leave their rural villages each year to take up factory work in new industrial cities. At the same time, China's party-state monopoly, once held in every sphere—in politics, in the economy and in civil society—is breaking up. A burgeoning open market within a highly competitive capitalist economy is transforming the economic landscape, while the one-party state continues to rule in the political

realm and in civil society. These profound changes have unleashed powerful new forces that increasingly collide with existing institutional structures. Chinese intellectuals, who often have led the forces seeking to extend economic reforms to the political sphere, have repeatedly clashed with opposing powers committed to maintaining the status quo and denying basic human rights. The resulting series of confrontations have often begun as peaceful mass protests and ended with violent state suppression followed by long jail sentences for the leaders, as in the Tiananmen Square movement and the Liaoning labor protest.¹

Today's Challenges

The primary victims of this upheaval have been China's workers. Their government violates workers' fundamental rights in both law and practice, a fact widely accepted in multiple international arenas. Robert Rosoff, an analyst writing for the US-China Business Council, the leading association of U.S. multinational companies investing in China, says:²

“The attraction of doing business in China is undeniable. The country's low labor costs, in particular, enable companies to manufacture apparel, footwear, toys, and many other products very cheaply. . . . At the same time, terrible labor rights and human rights conditions persist even as China's economy develops.

“Generalizations are difficult, but are possible based on evidence of labor rights abuse in PRC factories:

- Labor rights violations are so widespread in China that violations can be presumed to exist in every factory until proven otherwise. . . .
- Although China has an adequate labor law, it is poorly enforced.
- China has a virtually inexhaustible supply of migrant workers, most of whom are ignorant of their rights under Chinese law and are willing to work under any conditions without protest.
- The Chinese government prohibits the existence of independent trade unions, leaving workers without representatives who can discuss violations with manage-

ment. Workers who have tried to form independent unions or lead labor protests have been imprisoned.

“Labor protests are increasing in China as a result of labor rights abuse, rising unemployment, lack of a social safety net, fraud by some factory owners, and lack of responsiveness by government officials. Often, when workers protest in large numbers, the Chinese government will arrest and imprison the protest leaders and pay off the workers.”

China has not yet become a nation governed by the rule of law, an ideal cited in its constitution. Misallocations of power are institutionalized. China’s local courts are financed by local governments that select the judges, pay their salaries, and often influence the outcome of cases. They focus on pursuing their own purposes instead of enforcing national law. Many judges are poorly trained. Both officials and the Chinese public criticize corruption in the courts.³

One must take care, however, not to portray China as nothing but a giant sweatshop where all workers and all efforts at worker advocacy are brutally suppressed. Reality is more subtle and

complex. Recent developments suggest to some experts that workers and their allies have new openings they can use to pursue progress, but the value of these openings is hotly debated. One expert is pessimistic:⁴

“We have not seen fundamental improvements in civil and political rights since 1989. . . . The regime continues to deny people the right to organize politically, and decisively crushes any political or religious movement that challenges its hold on power. . . . [T]he political reforms that we see are aimed at improving the Party’s legitimacy without allowing any opposition to take shape.”

Others discern opportunities to create more space for freedom of association. One analyst notes that the Chinese government is working to strengthen legal institutions, systematically reviewing proposed laws and regulations for consistency with existing laws, and experimenting with the use of hearings to promote greater transparency in the legislative and regulatory development processes. Unfortunately, the judicial system is not sufficiently funded, and local governments tend to resist structural reforms that

would diminish their power. Even if the law guaranteed freedom of association, the current legal environment could not support it.⁵

The ultimate value of these openings will depend on whether they are used as springboards to consistently move toward winning ever greater measures of freedom of association, or whether they serve only as short-term, stop-gap approaches that merely relieve popular pressure for change and diffuse support for democratic reform.

New Responses Within the ACFTU

In the sphere of civil society, the state-party control of labor organization is enforced through the legal monopoly of the All-China Federation of Trade Unions. The ACFTU has traditionally taken a top-down, bureaucratic, and reactive approach to workplace issues, more aimed at workforce control than at worker representation. Its monopoly is a gross violation of the basic human right of freedom of association.

Some elements within the ACFTU are now beginning to recognize that labor law is weak and ineffectively enforced. The ACFTU’s own 2004

annual report highlighted discrimination in employment, sexual harassment, the wage gap between men and women, and serious violations of labor law as continuing problems.⁶

A few ACFTU cadres realize that the “transmission belt” model of monopolistic unionism under government control is a failure, and thus they support a more proactive ACFTU role. These groups, which are probably closely linked to reform factions within the CCP, are looking for ways to be more independent of the government and of employers. They aim to act more like leaders of genuine trade unions that defend the workers they represent instead of lecturing them about government policy.

Some ACFTU leaders are becoming more directly involved with workplace problems and support the workers’ position at times, particularly in foreign-owned companies. An ACFTU division director told *China Daily* in August 2004 that many private and foreign companies in China deprive workers of their constitutional right to establish trade unions and that “workers need unions more than ever to represent and protect their interests.” ACFTU head Wang Zhaoguo said, “[T]rade

Under principles of freedom of association, the real indicator of progress will be not the number of contracts signed but the extent to which rank and file workers have participated in the process and taken ownership of their negotiating role.

unions have assumed the responsibility of speaking out for the workers and seeking fair solutions for them.

... We should punish those who have prevented the establishment of trade unions in line with the law.”⁷

These departures from the traditional approach can also be seen in the efforts of a few regional ACFTU organizations, which are pressing firms to sign citywide or regional framework agreements for collective contracts in different industrial sectors to standardize wages and benefits for that sector in the city or region. The ACFTU indicates that by the end of 2003, some 672,900 signed collective contracts covered 1.214 million enterprises with 103.5 million workers, but the extent to which rank and file workers participated in that process has varied widely. On September 13, 2004, the ACFTU announced that it intended to cover 60 percent of workers with collective bargaining contracts by the year 2008. Under principles of freedom

of association, the real indicator of progress will be not the number of contracts signed but the extent to which rank and file workers have participated in the process and taken ownership of their negotiating role.⁸

Government authorities have tolerated a few “wildcat” work actions. In Wenling City, Zhejiang Province, for example, 12,000 workers in 113 privately owned wool sweater factories secured a collective contract after four years of protests. Beginning in the late summer of 2001, workers citywide conducted strikes annually during the busy season. Workers pushed for wage negotiations, prompting employers to create an employer negotiating committee. The local ACFTU organized bargaining sessions. In October 2004, a collective agreement was signed, providing workers with a minimum wage of 800 Rmb (\$104) per month. In addition, a sector-based union (which differs from the typical enterprise-based union) was subsequently formed.⁹

The ACFTU also claims that it has been conducting a campaign for the past four years to hold shop floor elections at a number of coastal area factories that mostly produce for foreign-owned companies. It indicates that one-third of its 120,000 local unions in the Guangdong Province have held such elections, although the lack of independent verification leads experts to doubt their legitimacy. The ACFTU announced last September that it was working on a law for local elections, to be applied throughout the country. Its discussion of the need for elections is encouraging.

But occasional democratic shop floor elections have not supplanted the predominant method of factory executives appointing managers as union leaders in China. The transmission belt model still permeates ACFTU activity, and there is no sign that tight CCP control of the labor movement will change in the foreseeable future. Like other labor-related issues in China, this situation is in flux. The unknown factor is the extent to which workers and their advocates can use the nascent but limited openings within ACFTU structures to increase their defense of existing rights, while at the same

time advocating for their government to fully honor freedom of association in law and in practice.

Multinational Companies

At a few workplaces linked to global brand name companies, workers have chosen their ACFTU shop union leaders. In July 2001, for ex-

ample, company and ACFTU officials at the Kong Tai shoe factory, a Reebok supplier firm in Longgang, organized a secret ballot election of shop floor union representatives. In October 2002, Reebok and another big supplier firm in Fujian Province conducted a similar election. In both cases, Reebok management promoted the vote after



finding that most appointed union representatives in the largely female workforce were male managers, white collar employees, and security officials. After sustained lobbying by Reebok, plant management and the ACFTU agreed to follow up with an education program for the new union leaders. Independent Hong Kong-based NGOs conducted the training.¹⁰

While these elections may represent a step toward freedom of association, it would be premature to label them as a trend. The Reebok elections are isolated cases that took place in two among tens of thousands of global supply chain workplaces in China. Most “grievances” in these two plants have involved harsh treatment by supervisors, not classic bargaining issues like wages and benefits. The longer-term sustainability of democratic union action in these two plants is yet to be determined.

The impact of the application of codes of conduct must also be carefully assessed. Many multinational enterprises, for example, have codes of conduct that call for freedom of association and respect for international and national worker rights.

The use of codes of conduct can sometimes soften abuses of labor standards in selected workplaces without ever calling into question systematic violations of core worker rights.

But some codes provide a loophole that allows enterprises to operate in places such as China, where freedom of association is prohibited. The loophole requires only that companies adopt “parallel means” to facilitate worker communication with management on employment issues. These “parallel means,” generally of the “suggestion box” type, are demonstrably ineffective in facilitating real worker representation.¹¹

Moreover, the use of codes of conduct can sometimes soften abuses of labor standards in selected workplaces without ever calling into question systematic violations of core worker rights such as freedom of association. Perhaps more typical than the Reebok example is the case of a closely studied supplier to Switcher, a Swiss multinational company. Hong Kong-based researchers interviewed workers at the Wongsheng Garments factory in Changzhou to assess implementation of Switcher’s code of conduct. On an initial visit, they found that contrary to Chinese law, no union or anything resem-

bling a union existed at this 1,000-worker factory and that “no effective complaint mechanism was in place.” Follow-up interviews on the researchers’ recommendation to establish “an effective channel enabling workers to voice their concerns” revealed that the company had taken only limited action.¹²

“By the time of the follow-up visit, a union affiliated to the local Changzhou Garments Industry Trade Union had been set up, composed of management staff and workers. It had 95 members by January 2003 but only 10 were production workers and half were management staff. Its activities since July 2002 when it had been set up were the organization of social events. Its composition and mode of interaction with management were not clear to the auditors. The workers were not interested in joining this union, as they considered that it had been set up in a top-down way and were not contacting the union committee members whose phone numbers were

displayed at different locations to voice their grievances.

“In addition to the trade union, a five-member ‘social compliance committee’ had been set up, composed of staff members, some of whom were also sitting on the union committee. This other committee had devised a quite complex grievance procedure distinguishing between minor and major complaints. Only three grievances (minor) had been reported over several months and the workers did not use the suggestion boxes that had been set up and did not trust these communication channels. In spite of the sophistication of these different procedures, and given the attitude of workers, the auditors were not convinced that they offered an adequate solution to the important question of effective communication channels between workers and management.”

The Organization for Economic Cooperation and Development (OECD), an international organization grouping 30 member countries that “share a commitment to democratic principles,” has developed Guidelines for Multinational Enterprises that include recommendations

on labor and employment relations, notably freedom of association and the right to collective bargaining. Although these guidelines are not legally enforceable, the governments involved have agreed to use their influence to press multinational enterprises to follow these recommendations. Further, in the revised Guidelines (2000), language was added on supply chains to support worker rights.¹³

Unfortunately, the vast majority of multinational enterprises do not follow the OECD guidelines in their operations in China. The handful of corporations that have tried to influence PRC government policy in favor of freedom of association have failed.

Many companies have instituted “independent monitoring” programs, hoping that these programs might substitute for independent worker representation, at least to the extent of guaranteeing certain minimum standards. One company representative responsible for “code compliance” programs publicly noted the importance of worker involvement in the monitoring process. “It’s our hope,” he said, “that issues can be taken up by the worker representa-

tives. . . . We have inspections of factories, both announced and unannounced. But you just don’t have the assurance that things will be the same the next day. Factories in China are incredibly sophisticated at finding ways to fool us. The best monitors are the workers themselves.”¹⁴

The recognition of this principle is encouraging. But since the only guarantee of long-term improvement in working conditions is freedom of association, codes of conduct can be effective only if they support and affirm full freedom of association. They are not effective if they are used merely to make minimal improvements or enhance a company’s public image. Accordingly, the few multinationals that have attempted to facilitate worker representation by holding elections for worker representatives have ultimately not been successful in securing a sustained, democratic, effective voice for workers.

Legal Assistance

In some cities and export zones, legal aid centers outside trade union structures are taking shape to assist workers with claims before courts and arbitration boards. Workers are demanding the application of the

rule of law in labor affairs separate from union organizing. Their complaints and declarations often invoke laws and legal rights.

In addition, the government has authorized the development of a private bar and has required private lawyers to take on a certain number of pro bono cases each year. To coordinate these legal aid cases and to handle appeals, the government began to sponsor legal aid programs in 1994, and set up regional legal aid bureaus. Most of the cases handled by legal aid bureaus deal with labor law. They address such issues as unpaid back wages, harassment of migrant workers, inappropriate discipline, employer constraints on worker mobility and free exit, unsafe working environments, and industrial accident compensation. Legal clinics devoted to labor law and women's issues, some university-affiliated clinics, and law school clinical training programs supplement this work. While these developments are a positive step, the demand for lawyers who are available to workers far exceeds supply.

A small number of cases filed are designed to obtain decisions with

impact on regional or national worker rights. Some are group cases with potentially high monetary compensation. In a 2004 case, for example, 1,000 retired workers from the Tieshu textile factory brought a class action lawsuit against the Suizhou City Social Insurance Bureau for failure to pay pensions due workers after their forced retirement from the plant. Other textile workers announced that they would sue the city government for alleged ill treatment during their detention by police in earlier protest demonstrations.¹⁵

Several legal clinics have begun to assist women migrants in filing claims against employers and local labor bureaus. In one case in Beijing, 24 migrant women workers from Laishui County, Hebei Province, who worked for Beijing's Hua Yi garment factory from 1995 to 1997 sought help from the Peking University Center for Women's Law Studies and Legal Services when their employer withheld their wages. The company forced the women to work overtime under extremely harsh conditions, and managers routinely beat and insulted them. With the help of the legal aid attorneys, the

women were eventually awarded 170,000 Rmb (about \$14,000) in back wages and compensation after several filings and judgments.¹⁶

In a few locations, lawyers, clinics, and legal aid organizations also work to increase rank and file workers' understanding of Chinese labor law and worker rights. These groups fax copies of laws and regulations, distribute informational pamphlets, hold evening and weekend training sessions in parks and factory dormitory areas, and provide telephone and in-person legal consultations.

Individual workers can bring claims, mostly related to minimum wage and hour laws, through an established mediation and arbitration process; sometimes these workers prevail. In a few locations, laid-off workers deprived of pensions and severance pay in industrial restructuring are creating formal and informal associations to help one another and to seek justice from authorities.

The fact that some workers can use the legal system to rectify violations of their rights is good news, but changing the system requires far

insight that journalists cannot create news. Instead, “almost every case of labor rights violations in China’s private, foreign-invested . . . enterprises has only come to light because migrant workers took some kind of collective and organized action to fight against it.”²⁰

This development either can lead toward building increased support for worker rights or can jeopardize them. Media exposés and anecdotal accounts of progress on the worker rights front do not mean that civil and political freedom, including workers’ freedom to form organizations of their own choosing and bargain collectively with employers, is just over the horizon. If the government allows the press to publish accounts of outrageous abuses against workers merely as a calculated “safety valve” policy, worker discontent and public anger can be vented without ever bringing long-term change. If, however, the increased reporting represents a shift toward expanding freedom of the press, it can become a powerful tool for increasing the knowledge of Chinese workers about violations of their rights and pinpointing opportunities and vehicles for resolving them.

U.S.-China Engagement

The U.S. government has a variety of initiatives with stated objectives aimed at improving the human and worker rights situation in China, including the Congressional-Executive Commission on China (see Chapter 3, Endnote 31) and the U.S.-China Economic and Security Review Commission (see Chapter 5, Endnote 18). The U.S. government also funds initiatives to encourage different aspects of democratic development and human and worker rights through the National Endowment for Democracy (NED) as well as the U.S. Departments of State and Labor. All Labor Department programs are official government-to-government programs that require active cooperation with the Chinese government.

The U.S. government policy community agrees that China’s labor practices violate international standards. The U.S. Department of State’s *Country Reports on Human Rights Practices: 2003* catalogues a myriad of ways in which China violates core labor standards. The CECC’s 2004 annual report reveals that the “Chinese government has continued its record of violating workers’ rights and punishing

workers who advocate for change” and that the “monopolization of power under a one-party system and the resulting absence of democratic accountability have led to widespread corruption and a loss of faith in government.” The USCC’s 2004 annual report notes that China’s “system denies workers’ rights of freedom of association and collective bargaining, and it enforces a system of work permits that discriminates against rural workers.” Unfortunately, inconsistent application and enforcement of U.S. policy send mixed signals to both the Chinese government and Chinese workers.²¹

On March 16, 2004, for example, the AFL-CIO and 14 affiliated unions filed a groundbreaking petition with the U.S. Trade Representative. The petition documented how China’s repression of worker rights gives the country an unfair trade advantage over the United States and other countries, especially those in the developing world, that have suffered investment and job losses. Filed under Section 301 of the U.S. Trade Act of 1974, the petition represented the first use of the 301 provision to protest a country’s labor practices.

achievable solutions—through compliance, in law and practice, with ILO core labor standards. The call to resolve these problems is echoed by China’s international commitments and the voices of China’s workers. Recommended measures are cited below.

Role of the Chinese Government

The Chinese government can adopt the following steps to halt worker rights violations and ensure respect for worker rights:

- Bring the law into full compliance with ILO core labor standards, particularly those on freedom of association and the right to organize and bargain collectively.
- Give workers a voice in their own labor system. End the ACFTU monopoly on worker representation. Give Chinese workers the opportunity to transform the ACFTU into a genuine workers’ organization rather than a government-run agency, or to select alternate representation.
- Strengthen the rule of law and improve labor law enforcement capacity and effectiveness on core labor standards. To promote effective enforcement, consider imposing statutory fines—sufficient to serve as deterrents—on

employers who commit repeated or egregious labor law violations.

- Create independent labor courts and a mediation system immune from pressure by local government and party officials.
- Release and compensate workers and supporters who have been imprisoned for worker rights advocacy.
- End discrimination against women workers and migrant workers. Grant migrant workers full protection under Chinese law and in practice, including residency rights, so that they can receive benefits and services and hold local officials accountable in places where they live and work.
- Improve enforcement of child labor laws and immediately halt child labor in schools.
- Stop the forced labor of political dissidents and dismantle the prison labor system.
- Allow the HKCTU to carry out its responsibilities as an independent trade union to represent its members without interference, consistent with ILO principles on freedom of association, and ensure

that ILO standards on the right to bargain collectively are incorporated into Hong Kong’s law.

The key to halting labor law violations is consistent enforcement. Many labor problems in China are similar to those experienced in other countries that have failed to enforce their labor laws and international obligations. When labor standards are not enforced at the national level, in the courts, and all the way down to the plant level, the stage is set for illegal labor cost competition. Employers who violate labor laws have lower costs. Without effective remedies or sanctions, the incentive to violate labor law is strong. Employers inclined to abide by standards feel compelled to violate the law just to stay competitive. Even if Chinese law is brought into conformity with all international labor norms, it will not be effective until it is enforced.

These problems are exacerbated by a lack of democracy. In the long term, only democracy will solve them. Over the past several decades, Chinese

Even if Chinese law is brought into conformity with all international labor norms, it will not be effective until it is enforced.

workers have shown in many ways that they are ready to organize if not barred from doing so. Supporting industrial democracy—trade union freedom—is key to developing political democracy in China.

Role of Multinational Enterprises

A fundamental tension exists between China's legal and political denial of freedom of association to Chinese workers and the inclusion of freedom of association provisions in codes of conduct adopted by multinational companies operating in China. To strengthen the credibility of such codes, multinational companies have a particular responsibility to reduce this tension by actively promoting greater respect for freedom of association in both law and practice.

In the current Chinese political and legal framework, multinational companies with codes of conduct that affirm freedom of association are automatically violating these principles if they are operating in China. In the interest of promoting the growth of global political stability and sustained economic development, companies that choose to operate in China under those conditions should at least do whatever

they can to promote freedom of association and other internationally recognized rights of their Chinese employees, especially the core labor standards contained in the ILO Declaration on Fundamental Principles and Rights at Work.²⁴

Multinational companies should publicly call on the Chinese govern-

ment to legally recognize unions as independent organizations and to enforce those rights. In their own factories and other enterprises, with or without the existence of an ACFTU unit, companies should permit their employees to exercise all of their existing rights, including the right to hold workers' assemblies, elect representatives, and



negotiate and democratically ratify collective contracts covering wages, hours, and working conditions, as provided for in Article 33 of the Trade Union Law of the PRC.

Companies should certainly not call on government authorities to repress workers' attempts to exercise these rights. Further, companies should avoid practices that encourage corruption, such as bribing local officials to support the suppression of workers.

Although the limited corporate efforts to increase support for freedom of association have thus far been unsuccessful, companies should continue and strengthen their efforts while finding additional ways to advance the cause of worker rights in China. For example, they should open their doors to Chinese and other NGOs, including labor and labor support organizations, so that the working and living conditions of their employees can be observed, and so that workers can be educated by outside organizations about their rights under Chinese law and international conventions.

Companies also should provide space in which workers can meet and discuss their conditions, with no

Through persistent and growing domestic and global demand from multiple stakeholders, Chinese workers will see real advances in the legal recognition of their rights.

interference or observation by management and no fear of retaliation. They should encourage their employees to select representatives, and then they should meet with those representatives to negotiate collective contracts, as permitted by Chinese law. Once workers have ratified the contracts, companies should respect and follow contract provisions. Companies also should encourage the local government to register the agreements so that they have the force of law. And of course, companies should not resort to intimidation or pressure, either directly or by threatening to call in the authorities.

Such efforts would not be without risk. A company threatened with expulsion or the loss of a significant contract will likely be reluctant to press for change. But if companies do not support freedom of association for Chinese workers beyond the realm of public relations, they are complicit in denying Chinese workers their rights and are choosing to profit from the unethical exploitation of their em-

ployees. Supporting worker rights repression in China also makes companies contributors to political instability and the delay of democratic development in the country.

It is unrealistic to assume that most multinational enterprises working in China will rapidly and voluntarily implement these recommendations. Those that do not, however, will be vulnerable; the suppression of worker rights for profit is shortsighted. Chinese workers will inevitably protest the unjust treatment and the kinds of abuses that are common in Chinese factories, as workers have done before them in China and all over the world, generating pressure from within. Labor, labor support, and human rights groups committed to global justice will also press for change, exposing companies' unfair labor practices to the global public. The reputation of companies that do not respect worker rights will be tarnished among global consumers and civil society. Ultimately, through persistent and growing domestic and

global demand from multiple stakeholders, conditions in Chinese factories will improve, and Chinese workers will see real advances in the legal recognition of their rights.

Role of Trade Union Solidarity

Through targeted, cooperative strategies, unions and labor movements throughout the world can and must support Chinese workers' efforts to pursue freedom of association, the right to organize and bargain collectively, and freedom from discrimination, forced labor, and child labor.

- The international union movement must develop a coordinated approach and action plan based on adherence to the ILO's Fundamental Principles and Rights at Work. It must support ICFTU efforts to encourage its affiliates and all trade union organizations having contacts with official organs of the Chinese state, including the ACFTU, to raise worker rights concerns and report regularly to the ICFTU about these contacts. In addition, it must promote a greater understanding of the impact that worker rights violations in China have on the status of worker rights in developing countries. This understanding will

lead to action-oriented alliances with worker organizations and unions in those countries.

- Promoting the development of indigenous labor NGOs operating on the ground in China should include intensifying international trade union solidarity in support of trade union rights in Hong Kong; ensuring that democratic unions in Hong Kong are included in international meetings; and providing technical assistance to Hong Kong unions' efforts to advance democracy and respect for worker rights.
- Strengthening the global alliance among worker organizations, labor NGOs, human rights groups, international law organizations, academics, and citizens of conscience who seek to promote basic worker rights in China is crucial. To help achieve that goal, international unions must promote information flows and partnerships on labor in China with universities and academics in the United States, inside China (including Hong Kong), and around the world. In addition, they should support research and reporting to combat the emergence of alternatives to legitimate worker organizations, such as the promotion of

“parallel means” of association, that fail to meet ILO standards on freedom of association.

- The international union movement must support Global Union Federation initiatives with individual companies that open real space for legitimate experiments to promote freedom of association in China.
- Finally, it must use every international arena to campaign against the suppression of core worker rights: promoting broader and more effective use of OECD Multinational Guidelines to expose the widespread violation of basic worker rights in facilities throughout China that produce for multinational companies; expanding multilateral efforts to raise the Chinese government's worker rights violations at the various bodies of the ILO; supporting the introduction of a resolution at the annual meeting of the UN Commission for Human Rights that describes the Chinese government's systematic violation of human rights, including core worker rights; and intensifying international efforts to seek the release of worker activists in China.

sands of cases. In this endeavor they will undoubtedly have the wholehearted support of the worker and human rights movements throughout the world.

The Choice to Lead

China joined the World Trade Organization (WTO) in 2001. But becoming a modern industrial power and a leader of developing country coalitions is not just a matter of joining the WTO and adopting policies of privatization, deregulation, foreign investment, and other attributes of the market-driven model of economic development. China's new economic strength and leadership carry responsibilities in the social justice arena, too. With a seat on the ILO's governing body, China must take steps to comply with its ILO obligations on core labor standards, not just its obligations under WTO trade rules.

China is an ancient civilization that has contributed significantly over many centuries to the world's ethical treasury—not least through the development of Confucianism, Taoism, and Chinese Buddhism. In more recent times, China “stood up” in 1949 against a century of interference, intervention, and occupation. The revolution offered a vision of equality, justice, and an end to exploitation and abuse against workers and peasants, but that vision was darkened. The recent turn to a “robber baron” approach to industrial development under the slogan “to get rich is glorious” threatens to erase it altogether.

China remains a one-party state with a state party-controlled labor movement. Chinese workers are oppressed and exploited in ways that depress conditions throughout the world. Their condition is unacceptable. Yet it is clear that current institutions will not contain the powerful

forces growing within China's new industrial districts and that these forces will inevitably bring great change to Chinese society. What will be the nature of that change, and who will shape it?

Today, China has a choice: to turn its back on the future, or to stand up again and help lead the world toward a new vision in a common project for sustainable economic development with democracy, human rights, and social justice at its core. The opportunity begins with a commitment to increase respect for the dignity of work and human rights in China. In the meantime, China's workers and their allies can use the small existing openings to push forward, to begin to build organizations, to call for improved conditions, and to advocate for freedom of association. In the interest of all workers everywhere, China's millions of workers must win respect for their rights.

Endnotes

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AREA MAP



GLOSSARY

ACFTU	All-China Federation of Trade Unions
<i>bagong</i>	strike
CCP	Chinese Communist Party
CECC	U.S. Congressional-Executive Committee on China
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
CERD	UN International Convention on the Elimination of all Forms of Racial Discrimination
CFA	ILO Committee on Freedom of Association
CRC	UN Convention on the Rights of the Child
<i>dagongmei</i>	rural migrant female workers
<i>daigong</i>	slowdown
EPZ	export processing zone; see SEZ
FLUC	Free Labor Union of China
GLF	“Great Leap Forward”
GUF	Global Union Federation
<i>guolaosi</i>	overwork death
HKCIC	Hong Kong Christian Industrial Committee
HKCTU	Hong Kong Confederation of Trade Unions
HKTUC	Hong Kong Trades Union Council
<i>hukou</i>	household registration system instituted in 1953
ICCPR	UN International Covenant on Civil and Political Rights
ICESCR	UN International Covenant on Economic, Social, and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICO	Institute of Contemporary Observation
IHLO	Hong Kong ICFTU-GUF-HKCTU-HKTUC Liaison Office
ILO	International Labor Organization
KMT	Kuomintang

GLOSSARY

<i>laogai</i>	China's forced labor system; literally, "reform through labor"
LRF	Laogai Research Foundation
<i>mangliu</i>	term applied to peasants who moved about the country illegally looking for food or jobs; literally, "drifting" or "wandering without direction"
MFN	Most Favored Nation status (see NTR)
MOU	memorandum of understanding
NGO	non-governmental organization
NTR	Normal Trade Relations
OECD	Organization for Economic Cooperation and Development
PRC	People's Republic of China
Rmb	<i>Renminbi</i> , China's currency, also informally called the <i>yuan</i> ; 1 Rmb = 13 cents; \$1.00 = 8.3 Rmb
ROC	Republic of China (Taiwan)
RTL	Reeducation through Labor (<i>laodong jiaoyang</i>), part of China's prison system
SEZ	special economic zone, similar to export processing zone
SOE	state-owned enterprise
<i>tinggong</i>	work stoppage
"transmission belt"	Chinese labor relations model whereby unions convey government policies to workers and promote labor discipline to implement those policies, as opposed to representing workers in dealings with employers and the government
UNCHR	United Nations Committee on Human Rights
USCC	U.S.-China Economic and Security Review Commission
WAF	Workers' Autonomous Federation
WTO	World Trade Organization
<i>yuan</i>	see Rmb