

MEANINGFUL PROGRESS OR ILLUSORY REFORM?

Analyzing China's Labor Contract Law

On June 29, 2007, at the meeting of the 28th session of the 10th National People's Congress (NPC) Standing Committee, 145 attending party members voted unanimously in favor of the Labor Contract Law. Back in March 2006, when the government posted an initial draft of the law for comment on the Internet, officials received more than 190,000 responses from the concerned public in one month. The NPC Legal Affairs Commission moved to finalize the legislation following tragic reports of slave labor conditions in the brick kilns of the Shanxi Province . . . Over these three decades, one of the most unsettling problems in our country is the blatant abuse of workers' rights . . . Labor contracts in written form, if provided at all, have been predominantly short-term. Now, with the passage of the law, we're able to better regulate the rights and obligations of both parties. We'll also strengthen the monitoring role of local labor officials. The persons-in-charge who abuse their authority or neglect their responsibilities, thus resulting in serious harm to the interests of workers, will face administrative penalties or criminal prosecution.

The NPC Standing Committee
China Central Television (CCTV)¹

CHINA'S LABOR CONTRACT LAW (LCL), which went into effect on January 1, 2008, represents a major compromise between the competing demands of many stakeholders both at home and abroad.² Legal scholars agree that the law is the most significant piece of Chinese labor law reform in more than a decade.³ Important provisions regarding: mandatory

labor contracts for new employees; strengthening worker representatives' and workplace-based trade unions' roles in representing their workers' interests; worker entitlement to severance pay upon the expiration or termination of contracts under certain conditions; the regulation of contingent labor; and the imposition of disciplinary measures on officials who neglect

their responsibilities or abuse their authority. However, workers' fundamental right to strike—the clause removed from China's 1982 Constitution—remains absent under the new law. Many of Chinese workers' legal rights have been expanded, but many are still restricted, under the post-Mao authoritarian state.

The 2008 Labor Contract Law is the most significant piece of Chinese labor law reform in more than a decade.

What are the sociopolitical impacts of the Chinese Labor Contract Law, and what are its implications for industrial labor relations? The central government attempts to enhance its regime legitimization by emphasizing workers' legal rights in the context of worsening labor conditions. The new law, at least on paper, is being hailed as a victory for Chinese workers' struggle for dignity. Aggrieved workers and labor activists have invoked their legal rights to stage protests and anti-sweatshop campaigns to achieve economic and social justice. Despite the limited practical effects that labor laws and regulations have had on the actual protection of workers in 2008, legal reform in China is gradually changing for the better.

EXPLOSIVE LABOR PROTESTS AND SOCIAL UNREST

THE CHINESE GOVERNMENT IS PERENNIALY concerned about growing social instability and political upheaval. Since the 1990s, the frequency and scale of popular unrest has increased rapidly throughout the country. The Ministry of Public Security reported 8,700 demonstrations and protests in 1993, increasing dramatically to 32,000 in 1999.⁴ That number

surged to 58,000 in 2003, involving more than three million disgruntled workers, peasants, property owners, teachers, and students.⁵ In 2004, the nationwide data of mass protests recorded 74,000,⁶ and 2005 saw an unprecedented high level of 87,000 protests; among them, violent confrontations or attacks on government

property have grown at the fastest rate.⁷ In 2006, disputes accepted by labor arbitration committees reached 317,162, involving 679,312 laborers nationwide.⁸ Still, there are many instances of labor conflict that are rejected from labor administrative or judicial systems. Far more aggrieved

workers have taken to the streets to protest, as enterprise restructuring and privatization has increased. Unofficially, at least one strike involving more than 1,000 workers occurs every day in the manufacturing hub of the Pearl River Delta region, to say nothing of the many smaller spontaneous strikes.⁹

Worker rights violations have drawn governmental attention. According to a large-scale, 40-city survey conducted by the Ministry of Labor, only 12.5 percent of migrant workers have signed a labor contract.¹⁰ The country's 130 million migrant workers are mostly employed in the burgeoning private sector. Twenty percent or fewer of the workers in small- and medium-sized private sector companies have signed labor contracts.¹¹ This enables their employers to cut costs and evade paying benefit premiums. At private and failing state-owned enterprises (SOEs), wages and benefits, such as pensions, medical coverage, and workers' compensation are often underpaid or not paid at all. In Shenzhen, the Labor and Social Security Bureau has blacklisted 30 companies that owe at least 12,070,238.9 yuan in back pay to their workers from June to September 2008.¹² In terms of work hours, a survey by the National Bureau of Statistics (NBS) showed that migrant workers

routinely work 11 hours a day, six to seven days a week, far exceeding a normal five-day, 40-hour week.¹³ Forced overtime work, although illegal, is the norm.

Only 12.5 percent of Chinese migrant workers have signed a labor contract.

INSTITUTIONAL CONTRADICTIONS OF THE CHINESE LEGAL SYSTEM

IN RESPONSE TO INCREASINGLY CONTENTIOUS labor and sociopolitical relations, the state has taken greater lengths to promote the “socialist rule of law.” The central government has enacted or amended over 400 national laws, 1,000 administrative acts, 10,000 local rules and regulations, and 30,000 administrative procedures over the course of the past 30 years of market reform.¹⁴ This relatively fast pace of Chinese legislative reform is something of a “legal revolution.”

Local labor bureaus and trade unions fail to perform their mandatory monitoring duties.

The Chinese government and Communist Party, however, adopt an instrumental view of the law, using it as a tool of control over society, while allowing the state to remain largely unsubordinated to it. Legal scholar William Alford insightfully analyzes the subtle limitations of China’s post-Cultural Revolution legal construction measures: the Chinese authorities “wish to reap the advantages of liberal legality” with regard to “its perceived capacity to support economic growth, engage the international community, and legitimate the existing regime;” concurrently, they “aspire to do so without being

unduly subject to its constraints.”¹⁵ In effect, legal reform has substantially imbued the market economy with socialist characteristics, while failing to constrain the government’s exercise of power.

At the local level, officials bend the rules and regulations primarily to serve their own economic and political interests. Under fiscal and administrative decentralization policies, local states are driven to retain revenues and accumulate resources rather than to implement labor laws and regulations. Intense competition among localities to lure foreign investment has resulted in “flexible” enforcement of labor laws. There is a deep-seated institutional conflict between legalistic legitimation and local accumulation, rendering workers’ legal rights unprotected.¹⁶

Local labor bureaus and trade unions fail to perform their mandatory monitoring duties. A labor official from Guangdong has stated, “Our job is to educate employers on the Labor Law, not punish them.”¹⁷ Similarly, a municipal trade union official has said:

I tell [foreign investors that] our union is, after all, under the leadership of the Communist Party . . . The Party invites you to invest in our country, you need to make profits, [and] our union’s work is to protect your stability [and] help you make profits, [not to let] workers make trouble for you. If you don’t let us set up [unions], when [workers] make trouble, there won’t be anyone to resolve these matters for you.¹⁸

Local states and enterprises tend to collude with each other to maximize economic gains at the expense of workers' legitimate rights.

Lower courts are subject to the funding and hiring decisions of local governments, in spite of recent judicial reforms. Local judges lack autonomy and independence to uphold the law, especially in cases where outcomes are contradictory to powerful interests. Despite the fact that the lower courts are increasingly reaching out to other courts of equal rank for guidance in making difficult legal decisions—an impressive development of “horizontal networking” between the courts in fostering legal innovations—extensive external interference from higher courts and party officials persists.¹⁹ Under these circumstances, workers' rights often end at the courtroom door.

Notwithstanding decades of legislative reform, huge discrepancies continue to exist between workers' legal rights and the enforcement of these rights. As more workers are disillusioned and disappointed by the ineffective and corrupt legal system, the state's legitimacy is effectively undermined.

WEAK ENFORCEMENT OF THE LABOR CONTRACT LAW

JOURNALISTIC ACCOUNTS CONTEND THAT THE new labor laws are already having a positive impact,²⁰ but a number of Hong Kong and Chinese non-governmental organizations (NGOs) have suggested otherwise. There are severe rights violations in at least three major areas: job security; the use of contingent labor; and fair, fixed-term labor contracts.

The Dagongzhe Centre,²¹ through snowball sampling, surveyed 320 migrant workers²² about their working conditions in Shenzhen four months after the Labor Contract Law's implementation. While a majority of the respondents

had secured signed contracts, 33.4 percent revealed that they were either forced to sign “blank or incomplete contracts”—contracts failing to specify the employer or the job title, wage and benefits information, working hours, and the terms for the contract's modification, renewal, or termination. One of the most outrageous cases was at a foreign-invested toy factory, where the company's 100 workers were asked to sign contracts that were written in English, a language they could not read!

Huge discrepancies continue to exist between workers' legal rights and the enforcement of these rights.

In early 2008, Students and Scholars Against Corporate Misbehavior (SACOM) negotiated with Hong Kong-owned Hung Hing Printing Group about its unlawful practices targeting veteran workers. The 10,000-worker Hung Hing Printing (Shenzhen) factory was allegedly exploiting young migrant workers who made Disney-branded children's books in the summer of 2005.²³ After negative media exposure, the factory management had replaced dangerous machinery to improve occupational safety and health. On January 28, 2008, when the new labor law had taken effect, Hung Hing issued a company notice:

*Hung Hing is going to renew its contracts with all workers on or before January 30, 2008. A three-year fixed-term contract between February 14, 2008 and December 31, 2010 shall be concluded, or labor contracts terminated.*²⁴

The 400-plus workers who had been working in Hung Hing for more than 10 consecutive

years were the hardest hit by this new policy, as the company refused to grant open-term contracts to them (per LCL Article 14, Section 1). Several workers immediately approached the workplace-based union for help. Unsurprisingly, given the fact that both the union chairperson and vice chairperson were top-level managers, the workers' efforts were futile. In an open letter²⁵ undersigned by hundreds of his co-workers, a 38-year-old male warehouse department worker who had been at the company since December 1994, explained:

We all thought that the Labor Contract Law going into effect on January 1 would have showered us—the weak and disadvantaged masses—with blessings. Our youth is gone with the days of the growth of the company. To our profound disappointment, none of us were offered open-term contracts despite years of diligent work. In our thirties to forties, we are under heavy familial burden. We are afraid of losing our jobs. We feel this is extremely unfair and we are angry, too.

In May 2008, once the Law on the Mediation and Arbitration of Employment Disputes was enforced, the core group of 64 workers filed their collective dispute with the local arbitration committee (the Mediation and Arbitration of Employment Disputes Law Article 53 stipulates that arbitration fees, amounting to several hundred yuan, are waived). In response to public pressure to look for “Mickey Mouse’s conscience” and increased worker actions, Disney—one of the biggest customers of Hung Hing—stepped in to clear up the “misunderstandings between factory, management, and workers.” The most adversely affected workers, buoyed by both the levers of corporate social responsibility (CSR) and the new labor

laws, finally reached economic compensation agreements with their managers.

At a toy factory, the company’s 100 workers were asked to sign contracts that were written in English, a language they could not read.

Other workers have not been so lucky. On December 13, 2007, at 7:30 a.m. outside the 10,000-person Nine Dragons (Dongguan) plant, around 2,000 workers, security guards, and cleaners from the raw materials department took to the streets to protest against excessive wage deductions and illegitimate contract termination. Overnight, the regular workers were forced to become the contingent workers of two employment agencies. According to the LCL’s Article 66, contingent labor should generally only be resorted to for short-term, supplementary, and substitute positions. In this Nine Dragons department, the processing of waste papers and raw materials is the crux of the production and the entire work flow. The factory management’s one-sided, abusive use of outsourcing was a blow to the workers’ rights and interests. Yet riot police were dispatched to disperse the crowd. Most of the workers either quit upon receiving little severance pay or signed contracts with the employment agencies.²⁶ Six months after the strike, on June 16, 2008, Nine Dragons dismissed the remaining 415 contingent workers, deeming them redundant. “The paper-processing

automation process had been completed,” explained management.²⁷

SACOM condemned Nine Dragons as a “sweatshop” in its report entitled *Paper Money: The Exploitation of Chinese Workers of Nine Dragons Paper Owned by the ‘Richest Woman’ Zhang Yin*.²⁸ Zhang Yin, the CEO of the biggest papermaker in mainland China and an elected member of the National Committee of the Chinese People’s Political Consultative Conference (CPPCC), submitted a proposal to the Beijing government about canceling open-term labor contracts—warning of the country’s dangerous return to the old Maoist, socialist system of “iron rice bowl” (permanent employment)—only two months after the law’s enactment.²⁹ She also explicitly maintained that “from the perspective of development, a country will not become strong and affluent if the disparity between the rich and the poor does not exist;” in her view, “if the law overprotects labor, an enterprise can hardly operate.”³⁰ Was she not representing the shared interests of mainland China’s new capitalist class and the international business lobbyists?

The global financial crisis has exacerbated the hostility of Chinese factory owners and foreign investors toward the new labor law.

On May 12, 2008, one month after the publication of SACOM’s report, the provincial trade union intervened and demanded a face-to-face meeting with the group. The Guangdong union, after joining forces with the Dongguan city- and township-level governments, concluded that “Nine Dragons is absolutely not a sweatshop.” The union’s vice president noted

that there were “flaws in the factory management system . . . but [that] great improvements have been achieved.”³¹ The local state’s defense of Nine Dragons has attracted tremendous media attention, and even public outcry. From the corporate side, Nike, one of Nine Dragons’s clients, welcomed the Chinese union’s “independent verification.” A Nike reply to SACOM’s letter dated June 11, 2008, reads:

*Nike believes that the process undertaken by the [All-China Federation of Trade Unions] ACFTU is critically important, and we will wait for their follow-up report before advising our manufacturers on the compliance status of Nine Dragons.*³²

Evaluating this campaign in a positive light, it was unprecedented for a municipal trade union to meet with Hong Kong university students to contest the meaning of “Chinese sweatshops.” Such state-society dialogue augurs well for progressive social change, particularly since the central government did not suppress SACOM’s cross-border advocacy for workers’ legal rights.

In sum, these reported cases of workers’ rights violations are only the tip of a huge iceberg. The effectiveness of the new law on labor contracts, as demonstrated by surveys and case studies administered by NGOs, is very limited. The Chinese authorities’ September 2008 efforts to issue implementing guidelines for the LCL, providing legal criteria and standardized procedures for handling labor disputes between the courts and labor arbitration agencies, are not likely to meaningfully improve conditions. The current global financial crisis has exacerbated hostility to labor protections in China. Factory owners and foreign investors have

already protested that new labor laws intended to provide Chinese workers with a minimum of protection raise “production costs.” They are pressuring local governments and economic sectors to shelter their businesses from the inconvenience of law enforcement, further jeopardizing the legal protection of workers’ rights in China.

Chinese workers have been keen to use the new labor law as their weapon. In the first six months of 2008, Guangdong courts handled about 40,000 labor disputes—a 157.7 percent increase from last year, in which the Pearl River Delta area accounted for 96.5 percent of all cases.³³ According to the Ministry of Human Resources and Social Security statistics, in the same period, arbitrated labor disputes soared by 300 percent in Guangdong, 145 percent in Chongqing, and 92.5 percent in Shanghai.³⁴

Meanwhile, civil society organizations are increasingly using the law to fight for Chinese workers’ rights. At the community level, front-line NGO labor organizers distribute leaflets that simplify the terms of labor laws and regulations, offer workers free legal consultation hotlines and labor law training classes, and represent workers in lawsuits. In the workplace, labor rights trainers encourage sustainable dialogue between managers and workers by establishing democratic representative mechanisms. Elected worker representatives should be able to exercise their legal right to discuss with management work rules that directly bear on the workers’ interests (per LCL, Article 4). Including workers in the day-to-day monitoring process is the key to promoting workplace democracy in China’s globalized political economy.

**The author would like to thank Professors Nelson Lichtenstein, Cindy Yin-wah Chu, Pun Ngai, Dr. Dimitri Kessler, Dorothy Young, Paul Garver, and the activists from Students and Scholars Against Corporate Misbehavior (SACOM).*

1. The June 29, 2007 press conference on the LCL was broadcast by China Central Television (CCTV). An excerpt is available at http://w1.mohrss.gov.cn/gb/zt/2007-09/29/content_198898.htm [in Mandarin]. Main points are summarized and translated from Chinese by the author.
2. Faced with strong corporate opposition, or a “sweatshop lobby,” to the proposed legislation on labor contracts, the Chinese government promulgated the LCL after multiple drafts. For a thorough review of global corporations’ “battle” against the new labor law and the “push back” of international human rights and labor advocates, see the 2007 Global Labor Strategies report, “Undue Influence: Corporations Gain Ground in Battle over China’s New Labor Law—But Human Rights and Labor Advocates are Pushing Back,” available at http://laborstrategies.blogs.com/global_labor_strategies/files/undue_influence_global_labor_strategies.pdf.
3. King Lun Ngok, “The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition,” *International Labor and Working-Class History* 73 (2008): 45-64. Ngok explains the lawmaking process in which many of the pro-labor policy principles and measures have been eventually codified in the LCL.
4. Minxin Pei, “Rights and Resistance: The Changing Contexts of the Dissident Movement,” *Chinese Society: Change, Conflict, and Resistance*, 2nd ed., edited by Elizabeth J. Perry and Mark Selden, Routledge (2003): 29.
5. Josephine Ma, “Three Million Took Part in Surging Protests Last Year,” *South China Morning Post*, June 8, 2004.
6. Howard French, “Land of 74,000 Protests (But Little Is Ever Fixed).” *The New York Times*, August 24, 2005.
7. Joseph Kahn, “Pace and Scope of Protest in China Accelerated in 2005,” *The New York Times*, January 20, 2006.
8. “China Labor Statistical Yearbook, 2007,” *National Bureau of Statistics of China*, pp. 515-16, Table 9-1, China Statistics Press (2007) [in Chinese].
9. “Labor Unrest Growing in China: Activist,” *AFP*, January 15, 2008, available at <http://www.china-labour.org.hk:80/en/node/100193>.
10. *An Investigative Report of Chinese Peasant-Migrants*, Research Department of the State Council, Zhongguo Yanshi Press (2006): 13 [in Chinese].
11. “Mass Incidents’ Involving Labor Disputes on the Rise: Official,” *People’s Daily*, July 24, 2007, available at <http://english.people.com.cn/90001/90776/6223317.html>.
12. “30 Enterprises Owing in Excess of 12 Million Yuan in Back Pay Are Blacklisted,” Shenzhen Labor and Social Security Bureau, October 22, 2008, available at <http://www.shenzhen.molss.gov.cn/main/Web/Article/2008/10/22/1003403533C23432.aspx> [in Chinese].
13. See *supra* note 10 at p. 12.
14. Ching Kwan Lee, “Rights Activism in China,” *Contexts* 7(3) (2008): 15.
15. William P. Alford, “A Second Great Wall? China’s Post-Cultural Revolution Project of Legal Construction,” *Cultural Dynamics* 11(2) (1999): 198.
16. Ngai Pun, *Made in China: Women Factory Workers in a Global Workplace*, Duke University Press (2005); Mary E. Gallagher, *Contagious Capitalism: Globalization and the Politics of Labor in China*, Princeton University Press (2005); Anita Chan, *China’s Workers under Assault: The Exploitation of Labor in a Globalizing Economy*, M. E. Sharpe (2001).
17. Ching Kwan Lee, *Against the Law: Labor Protests in China’s Rustbelt and Sunbelt*, University of California Press (2007): 20.
18. Raymond W. K. Lau, “Socio-political Control in Urban China: Changes and Crisis,” *British Journal of Sociology* 52(4) (2001): 617.
19. Benjamin L. Liebman, “China’s Courts: Restricted Reform,” *The China Quarterly* 191 (2007): 620-38.
20. See, for example, Jonathan Adams, “Chinese Union,” *Newsweek*, February 14, 2008, available at <http://www.newsweek.com/id/111027>.
21. “A Survey Report of Workers’ Conditions under the Implementation of the

Labor Contract Law," Dagongzhe Centre (2008), available at www.workerempowerment.org [in Chinese].

22. Of the 320 interviewees, 46.9 percent are assembly workers, 32.5 percent skilled workers, 19.7 percent low-level managing staff, and 0.9 percent security guards and service workers. They are employed in the manufacturing (including electronics, toys, garment, shoes, machineries, furniture, and plastics) and service industries, owned by private domestic enterprises (50.3 percent), Hong Kong firms (26.3 percent), Taiwanese-invested enterprises (14 percent) and other foreign-invested enterprises (9.4 percent).

23. "Looking for Mickey Mouse's Conscience—A Survey of the Working Conditions of Disney's Supplier Factories in China," SACOM Research Report (2005), downloadable from www.sacom.hk [in both Chinese and English]; "Those with Justice—A Disney Supplier Factory in China," an 11-minute documentary co-produced by SACOM and Sweatshop Watch (2005), downloadable from www.sacom.hk [in Mandarin, with both Chinese and English subtitles].

24. Hung Hing company notice dated January 28, 2008, translated from Chinese by the author.

25. The open letter, dated March 18, 2008, was addressed to Walt Disney Co. (Hung Hing's buyer) and copied to SACOM. The excerpt is translated from Chinese by the author.

26. "Six Hundred Workers from Nine Dragons Paper Factory Strike," *Ming Pao*, December 14, 2007, available at www.mingpaonews.com/20071214/ccal.htm [in Chinese].

27. Chengtao Wu, "Zhang Yin Clears Up 'Sweatshop,'" *Zhongguo Jingyingwang*

(*China Business*), June 23, 2008 [in Chinese].

28. "Paper Money: The Exploitation of Chinese Workers of Nine Dragons Paper Owned by the 'Richest Woman' Zhang Yin," SACOM (2008), downloadable from www.sacom.hk [in both Chinese and English].

29. "Zhang Yin: Make a Conclusion, No More Comments," *Nanfang Dushibao* (*Southern Metropolis News*), March 13, 2008 [in Chinese].

30. "Zhang Yin: Suggestion for a Labor Law with Chinese Characteristics," *Yunnan Info*, March 3, 2008, available at http://news.yninfo.com/china/gsyw/200803/t20080303_595186.htm [in Chinese].

31. Nine Dragons Paper (Dongguan) imposed fines totaling 1.07 million yuan on its several thousand workers in the past 12 months (on average, the management levied a punitive fine of 89,166 yuan per month)! Still, the Guangdong provincial trade union said "there were no major violations like those mentioned in the SACOM report, but minor mistakes like fines did exist." Quoted in "Firm Admits Fining Workers," *China Daily*, May 8, 2008, available at http://www.chinadaily.com.cn/cndy/2008-05/08/content_6669098.htm.

32. "Nike: A Reply to SACOM—In Response to Nine Dragons Paper (Holdings) Limited," SACOM, June 11, 2008, downloadable from www.sacom.hk.

33. Hong Chen, "Maneuver on Labor Law Faces Block," *China Daily*, July 22, 2008, available at http://www.chinadaily.com.cn/china/2008-07/22/content_6865144.htm.

34. Yijiang Yao and Bingqing Wu, "Abide by the Labor Contact Law: Labor-Capital Negotiations," *Nanfang Zhoumo* (*Southern Weekly*), July 31, 2008 [in Chinese].