
Why China Matters: Labor Rights in the Era of Globalization

Global Labor
Strategies

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Introduction

A battle is raging over labor rights in China. It is a battle that has engaged workers, corporations, trade unions, NGOs, and politicians inside and outside of China. How it turns out will have a profound impact on worker rights, wages, and working conditions not just in China, but around the world. This report provides background information needed to understand the issues involved and why the outcome of this battle matters so much to people everywhere.

Nearly three years ago the authors of this report undertook an informal listening project to hear what was on the minds of labor leaders, labor rights advocates, and NGO staff from around the world as they grappled with the challenges of globalization. We hoped to use what we learned to make a contribution to the fight for global labor rights, to forging transnational cooperation among worker organizations and their allies, and to creating links among social and economic justice movements around the world.

It was clear that globalization had produced a host of challenges for worker and social movements. But when we asked those we interviewed what specific issues they faced were most perplexing, at or near the top of nearly everyone's list was what to do about China.

China has become a focal point for much of the questioning and insecurity that globalization has produced. There's good reason: for the past two decades China has experienced explosive economic growth that has attracted jobs and capital from around the world. No other industrializing country has ever attracted jobs at both the high and low ends of the production chain. From basic level assembly work to the upper tiers of industry and services, China is setting the global norm for working standards around the world. Workers in rich countries and poor countries alike in almost every nook and cranny of the global economy feel the effect of China.

Crucial to addressing China's global impact is the often ignored fact that the driving forces in China's labor market are the global corporations that move to China to lower labor costs and use the threat of this mobility as a lever to drive down wages and working conditions for workers in other countries, and even within China itself. China has welcomed foreign firms with open arms. A partnership has developed based on a quid pro quo: the Chinese government provides a compliant low wage labor force in exchange for massive foreign investment.

Searching for new approaches

Taking our cue from what we learned from listening to labor and social movement activists, we have spent significant time over the last three years working and writing on China. This report draws on that work. We have used a methodology that we developed during two decades of work on globalization and its consequences.

The process of globalization presents a new context for worker organizations, community based organizations, NGOs, and government. The local, national, and global can no longer be neatly separated. Decisions that affect communities are often made in distant board rooms. Communities are often forced to compete against each other for scarce jobs. Companies threaten to move operations to lower cost areas of the world unless workers accept reduced wages, benefits, and deteriorating working conditions. The search for “competitiveness” reduces the power of government to expand and enforce labor rights, to regulate corporate behavior, and equitably shift tax burdens. Government officials at all levels are increasingly forced to cater to the business demands of footloose corporations, not the needs of the people who elected them.

In response GLS has generated a perspective that seeks to identify common interests among different people and movements in different countries – people and movements that in many cases had little awareness of those common interests. In this case, the common interest was among working people in China, other developing countries, and the US and Europe, who all shared a need to raise the wages and working conditions of Chinese workers in order to reverse a competitive “race to the bottom.”

But despite the common interest in improving conditions for Chinese workers, there are significant obstacles to cooperation. On the one hand, there is a general sense among labor and social activists that old notions inherited from the Cold War of shutting China out of global markets or ignoring China’s political, intellectual, and activist leaders and institutions are no longer either viable or just. One in four workers in the global economy is now Chinese. Since China joined the WTO in 2000 its economy is becoming more and more integrated with the global economy in a tangle of industrial and financial arrangements.

On the other hand, for trade unionists and labor rights advocates engagement with China poses a particular problem. China has not ratified basic ILO conventions on

labor rights. There is no right to strike in China¹, no freedom of association, no independent trade unions. The sole legal state controlled union—the All China Federation of Trade Unions—is widely considered to be either unable or unwilling to defend workers' interests in the market economy. While China has developed some decent labor laws, they often go unenforced. Indeed, the rule of law generally is in its infancy.

A new dynamic for reform

Now, a new reform dynamic may be at work in China. The drafting and passage of a new labor code, implemented on January 1, 2008, opened a new front in the battle for labor rights and new possibilities for cooperation between labor rights activists inside and outside China.

Faced with growing civil and workplace unrest that includes large numbers of demonstrations and strikes, the Chinese government proposed a comprehensive reform of China's labor laws. In an unusual move, the government opened a public comment period on the draft law in 2006. Nearly 200,000 comments poured in, most from ordinary Chinese workers. But some were from US and European corporations and lobbying organizations that came out squarely against core provisions of the new law. The debate continued throughout the drafting process as corporations fought to weaken the law. And it continues even after the law was enacted: in the run-up to the law's implementation date of January 1, 2008 there was a public outcry in China about steps some corporations took to avoid the law's full impact. That outcry continues in the early days following implementation.

¹ Although there is no explicit right to strike in China, millions of workers do strike without legal consequences. And, in fact, there is at least some ambiguity about the right to strike in China under Chinese law. According to the International Trade Union Confederation, "The right to strike was removed from China's Constitution in 1982, on the grounds that the political system in place had "eradicated problems between the proletariat and enterprise owners". Despite expectations that the revised Trade Union Law would include the right to strike, the revised law skirts around the issue by stating (Article 27): "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". Article 27 does not employ the term "strike"(bagong), but instead refers to instances of "work-stoppage" (tinggong) and "go-slows" (daigong). There are increasing calls within China for legislation of the right to strike and continued academic debate on the issue. In reality the number of strikes (both spontaneous and planned – but always without the official recognition of the union if there is one) is increasing. In the past few years there have been a number of successful and sustained strikes involving large numbers of workers "2007 Annual Survey of Violations of Trade Union Rights" ITUC <http://survey07.ituc-csi.org/getcountry.php?IDCountry=CHN&IDLang=EN>

The dynamic at work in China is similar to what occurred in the industrial countries of the West in the early to mid decades of the 20th century. In the context of rapid industrialization and rampant booms and busts, labor markets became chaotic. They were characterized by migrant labor, highly casual and contingent work relations, high turnover, harsh working conditions, low pay, few benefits, weak labor laws, lax enforcement, court battles, rampant strikes, and labor protests.

Over the course of the 20th century, pressure from workers and concerns about social unrest led to new employment laws and policies designed to stabilize labor markets and blunt some of the sharp edges of the industrial system. Steadier jobs, better working conditions, higher pay, access to more benefits, and long-term employment meant rising living standards for ordinary people.

In each country these laws and policies were shaped by local conditions. As a result advanced capitalist countries like the U.S., Germany, France, and Japan have quite different labor laws and industrial relation systems. But each incorporates laws and institutions that create a framework for employment stability and worker rights. The provisions in China's new labor code are parallel to those found in many other countries; indeed, most are modeled on those found in Western countries. This reveals the opposition of Western corporations as consistent with their own attack on labor standards at home.

Corporations oppose new worker rights in China for the same reason that they are seeking to dismantle labor and employment laws enacted during the 20th century in countries around the world. They want total flexibility to make labor nothing more than a commodity they can purchase at will. In China they have found a de-regulated paradise and they want to keep it that way.

It will be up to Chinese workers and their organizations, as well as their supporters inside and outside of China, to confront the corporate challenge and create an economy based on worker rights and fairness. The success or failure of that effort will have profound effects for workers everywhere.

This report examines the forces at work inside and outside of China pushing for and against labor rights reforms.

Part one provides a survey of China's new global economic power and its impact on the global economy. A case study from Namibia shows how employers use China as leverage to suppress wages, working conditions, and labor rights in other countries.

Part two examines the development of the Chinese working class. We briefly look at the structure of the Chinese workforce in the period before the era of economic reform began in the 1980s. Then we look at how the largest migration in human history—the movement of 200 million people from China’s countryside to its cities—reshaped China’s working class and its labor markets. Finally, we look at the reasons migrants leave the countryside and the conditions they face in the cities.

Part three examines the role of foreign corporations in China. China has opened its arms to foreign firms and investors by providing a business friendly environment and a disciplined low wage labor force. As a result, foreign firms have been the main drivers of China’s growth. They have created a complex industrial structure with long supplier chains of dependent firms and a sweatshop industrial culture.

Part four looks at the ways that Chinese workers are pushing back against the low wages and harsh working conditions that they face. Chinese workers are not passive. Although most are new to the city and industrial culture, they are gradually developing strategies to improve their lives. We assess informal, institutional, legal, and grassroots worker responses to China’s harsh industrialization.

Part five looks at China’s new labor code, implemented on January 1, 2008, which extends additional rights to workers. We examine what the law does, then look at the on-going global battle surrounding its drafting, enactment, and implementation.

Part six describes how global corporations lobbied against the new labor code and the global debate which ensued. Foreign corporations and their lobbying organizations have long argued that they support worker rights and the rule of law, but in reality they opposed key provisions of China’s new reform labor code, touching off a global battle. We examine how foreign firms may be vulnerable to pressure from workers and their allies outside of China to get them to support worker rights and the rule of law.

Part seven examines how labor unions and social movements outside of China are rethinking old strategies and reaching out to allies inside and outside of China in an effort to promote labor rights. The fight over the labor code has prompted a paradigm shift in strategies toward China by labor and social movements. Previously, the main focus has been on pressuring the Chinese government to pass new laws and respect labor rights. Now, following corporate opposition to such reforms, the focus is on the behavior of foreign corporations in China. This shift has also led to new—and sometimes controversial—approaches to dealing with Chinese

unions and other official institutions. We assess the new paradigm and its potential to promote labor rights.

Part eight looks at what lies ahead. Will the same dynamic that occurred in other advanced industrial countries of worker insurgence, legal reform, corporate resistance, worker organization to demand law enforcement, and, finally, the institutionalization of labor rights and the rule of law happen in China? How can non-Chinese activists support the fight for worker rights in China? What effect will events in China have on worker rights around the world?

I. The World's Workshop

Three decades of rapid economic growth have transformed China from an economic backwater into the world's workshop. Its export oriented development model has attracted a flood of foreign multinational corporations seeking to take advantage of China's low wage workers and business friendly policies.

Workers, communities, and countries throughout the world are confronting the challenges posed by China's growing role in the global economy. About 25% of the global work force is now Chinese.² The "China price" increasingly sets the global norm for wages and working standards at both the high and low ends of the production chain. As a result the hard-won gains of workers in the global North are being rapidly undermined while the aspirations of workers in the developing world are being dashed as China becomes the wage setting country in many industries.

A paradox

China presents a paradox. On the one hand it still has most of the attributes of a developing country: a poor rural population, a sweatshop industrial system, an underdeveloped infrastructure, chaotic growth, inadequate laws and regulations, significant corruption, a lack of adequate health care and educational opportunities for most of its population, and an extraordinarily unequal distribution of wealth. On the other hand China is a global economic powerhouse. It will soon be the world's leading trading nation. It holds enormous foreign reserves. It's making trade deals and building projects around the world in its quest for resources to fuel its booming industries.

Andrew Ross of New York University, who recently spent a year in China studying how workers are coping with the rapid changes of the last decade, writes:

² Richard B. Freeman, "Doubling the Global Work Force: The Challenge of Integrating China, India, and the former Soviet Bloc into the World Economy", November 8, 2004, <http://www.iie.com/publications/papers/freeman1004pdf>.

“But if [China’s] breakneck growth is a threat [to workers and communities around the world], it is not because Beijing harbors sinister ambitions for its industrial expansion. The real problem is that China is playing host to the largest, and most corrosive, environment for offshore labor in the global free trade economy. For more than a decade, it served as a fast-track incubator for foreign investment in the low-wage export sector, cocooned from accountability to any principle not devoted to raw profit. ...

Free trade zones in other developing countries have hosted much the same kind of cynical runaway culture. So why is the China case so alarming? The answer lies not just in the jumbo scale of operations, but also in its all-encompassing spread. China is leapfrogging so fast up the technology curve it is attracting the highest level investments—in product design and innovation, for example—from industry leaders. ...

No industrializing country has been able to compete for the top-end slot at the same time as it absorbs jobs lower down the production chain... To command this spread--from the lowest assembly platform work to the upper reaches of industry and services—is to be in a position to set the global norm for employee standards as never before. Given the chronic disregard for job security and workplace rights in China’s foreign-invested private sector, such a norm is a clear threat to the stability of livelihoods everywhere.”³

It is one of history’s great ironies that a country still tightly controlled by a Communist Party should turn to capitalism to transform its economy, but that is exactly what has happened. It’s equally ironic that China’s government and Communist Party have found a partner in the footloose global corporations and financial institutions that dominate the world’s economy. These firms producing directly or through complex supply chains, alliances, joint ventures or other entities, which they may not own but control, are a main driver of the Chinese economy and the global economy. Global corporations move to China to lower labor costs -- and they use those lower labor costs as a lever to drive down wages and working conditions for workers in other countries.

How important are these global corporations to China’s development? Roughly 66% of the increase in Chinese exports in the past 12 years can be attributed to non-

³ Andrew Ross, “A Fast Boat to China,” delivered at the Cornell Global Labor Conference on February 10, 2006. Ross is author of the book, *A Fast Boat to China: Corporate Flight and the Consequences of Free Trade; Lessons from Shanghai*, (Pantheon, 2006)

Chinese owned global companies and their joint ventures.⁴ Foreign owned global corporations account for 60% of Chinese exports to the US.⁵ In 2004, retail giant Wal-Mart was China's 8th largest trading partner ahead of Russia, Australia, and Canada.⁶ The "Chinese threat" is less about trade with China than it is about trade with Wal-Mart and GE or any of the other of the hundreds of Fortune 500 companies that do business in China.

Income inequality is a by-product of China's export driven growth. The World Bank recently issued a warning that the gap between the rich and the poor in China, already great, is growing rapidly.⁷

Raising wages in China is one of the prerequisites for bringing the global economy and the Chinese economy into a better balance. Higher wages would not only reduce some of China's allure as an export platform, but would also stimulate China's potentially huge domestic market. More money in the pockets of ordinary Chinese could translate into more total jobs in the global economy.

But the prerequisite for higher wages for Chinese workers is greater labor rights. If the benefits of growth are to move beyond a (relatively) small urban middle class then ordinary workers and peasants need the rights and institutions to demand their fair share of the national wealth. Beyond that, new rights and institutions are needed to redirect China's environmentally destructive development model along more sustainable paths.

China's global impact: a story from Namibia

Today it doesn't matter whether you live in Cleveland or Caracas; footloose global corporations can move or threaten to move your job. The effect of outsourcing of jobs to China is the fodder of national debates in most developed countries of the Global North. But China's impact on development in the Global South may be even more pronounced. A story from Namibia about the activities of the Malaysian

⁴ Stephen Roach, "Doha Doesn't Matter Anymore," The Business Times, Singapore, August 8, 2006

⁵ Neil C. Hughes, "A Trade War With China?" Foreign Affairs, July/August 2005
<http://www.foreignaffairs.org/20050701faessay84407/neil-c-hughes/a-trade-war-with-china.html>

⁶ Jang Jingjing, "Wal-Mart's China Inventory to Hit \$18 billion This Year," China Daily, November 29, 2004 http://www.chinadaily.com.cn/english/doc/2004-11/29/content_395728.htm

⁷ World Bank, "Poverty, inequality, and social disparities during China's economic reform" (Policy Research working paper no. wps 4253) 2007

http://econ.worldbank.org/external/default/main?pagePK=64165259&piPK=64165421&theSitePK=469372&menuPK=64166093&entityID=000016406_20070613095018

transnational corporation Ramatex, painfully shows exactly what's at stake for the developing world.⁸

Ramatex, a textile and garment transnational corporation (TNC) that supplies firms like Adidas, Puma, Target, Wal-Mart, Nike, and Sears, operates plants throughout Asia. In 2002 Ramatex opened a major facility in Namibia which was the largest foreign investment in that country since independence. The company promised to hire 8,000 workers in a vertically integrated textile operation—doing everything from spinning to final sewing.

The jobs on offer at Ramatex turned out to be classic sweatshop jobs. The company—like many global suppliers—wanted young single women who had passed a pregnancy test. To add injury to insult, the women had to pay for the pregnancy test themselves. Namibian labor laws were violated, workers were cheated out of wages, overtime was forced, and workers were fired unfairly.

Namibia, in desperate need of jobs, had actively campaigned to get Ramatex to locate in the country, beating out competition from South Africa and Madagascar by offering major concession in labor law and taxes. But amazingly, one fourth of the workers employed by Ramatex in Namibia were migrant workers, recruited mostly from Bangladesh by global temp agencies. Ostensibly these temps were recruited to “train” Namibian workers, but according to unions, the workers were actually hired because they were in a more vulnerable position and therefore more passive. The migrant workers were kept segregated from the Namibian workers and worked under different rules; they sometimes fell into debt bondage; and they had their passports confiscated so they could not easily leave Namibia. When some 400 Bangladeshi workers protested, riots broke out and they were immediately fired and deported. Throughout, Asian and Namibian workers were pitted against each other in a practice as old as capitalism.

Namibian workers went on strike in 2003. Strikers were beaten and intimidated and more than 400 were fired. Eventually Ramatex did sign a recognition agreement with the Namibian Food and Allied Workers Union, but the company refused to engage in collective bargaining.

The International Textile, Garment and Leather Workers Federation (ITGLWF) was alerted and intervened. The ITGLWF launched a campaign to alert global buyers of conditions in Namibia. One effect of the campaign seems to have been a

⁸ Much of the following is drawn from Anne Cecilie Bergene, “Trade Unions Walking the Tightrope in Defending Workers' Interests: Wielding a Weapon Too Strong”, delivered at the Cornell Global Labor Conference on February 10 2006.

sharp drop off in orders as global retailers sought to distance themselves from the negative publicity. Shifting suppliers is easy in a global economy where a ready alternative exists.

As a result of the drop in orders, plants closed and workers were laid off. The Namibian government and the company blamed the union for causing trouble and driving the buyers away. Where did Ramatex move its business too after it closed its Namibian operation? China. In fact, today, companies like Nike still do business with Ramatex in China, where many TNCs can operate with much less public scrutiny.⁹ This story from Namibia is emblematic of what's happening in many parts of the developing world. Highly exploited workers employed under Dickensian conditions; Asian migrant workers recruited by global temp agencies and sent to Africa to work in slave like conditions; protesting workers deported, beaten, and fired; plants closed and production moved to low cost countries, in this case China.

Meanwhile, the global union federation and its Namibian affiliate caught the blame from the company and the government for causing the company to move. The message is clear: if you stand up for your rights, if you demand that labor laws be enforced, if you organize, if you exercise your right to strike, you will lose your job, since production can easily be moved to a lower cost area with a more compliant workforce.

There is another important aspect to the Namibia story. Some proponents of corporate globalization argue that sweatshops are a necessary step in the development process that all countries go through on the road to industrialization and prosperity. Any reasonably steady job in the developing world is a good job in this view. For instance, New York Times Columnist Nicolas Kristof, writing from Namibia shortly after these events occurred (although apparently unaware of them), penned a column entitled "In Praise of the Maligned Sweatshop,"¹⁰ in which he wrote, "Africa desperately needs Western help in the form of schools, clinics and sweatshops." Kristof and other sweatshop advocates dismiss attempts to improve conditions in sweatshops by the anti-sweatshop movement and worker activists as misguided attempts to block a necessary stage in economic development. But it is Kristof who is misguided. He misses a key point: sweatshops are a step on the road

⁹ The end of protections offered by quotas established under the Multi-Fiber Agreement which expired in January 2005 opened the global economy even more to China's efficient, low cost textile industry. Many other textile producing nations lost jobs as a result.

¹⁰ Nicolas D. Kristof, "In Praise of the Maligned Sweatshop," New York Times, June 6 2006. <http://www.google.com/search?client=firefox-a&rls=org.mozilla%3Aen-US%3Aofficial&channel=s&hl=en&q=In+praise+of+the+maligned+sweatshop+new+york+times&btnG=Google+Search>

to development only if workers and their allies fight to abolish them. Moving beyond sweatshops is not an act of nature. It takes human action. The history of the industrialized world is clear on that. Progress comes when people fight to better their conditions. One of the tragedies of the corporate globalization process is that it short-circuits this process. When Namibian workers utilized their labor rights and fought for better conditions they were simply outflanked by global companies that took their business to China where workers have few rights. Without the ability to improve things through the exercise of their labor rights, workers are condemned perpetually to sweatshop jobs.

II. The Making of the Chinese Working Class

China's working class and China's middle class are only now in the process of formation. Most workers are recent arrivals from the countryside with little or no experience of urban industrial life. They are only now developing the everyday customs and practices that would allow them to act in a collective way to improve their living and working conditions. Until the 1980s there was no labor market to speak of in China. People were essentially channeled into jobs in state owned businesses with little job mobility or they remained on the land. When the "reform era" was launched in the 1980s there were few laws or regulations governing labor markets. Millions of people were laid off from state owned companies or were pushed off the land and left to their own devices to navigate chaotic and rapidly changing urban labor markets.

China before the reform era

China scholar Ching Kwan Lee describes the layers of the Chinese working class up to the reform period in the 1980s:

"From the 1950s until the era of economic reform in the late 1970s, intraclass inequality among urban industrial workers, in terms of wages and benefits, was organized and solidified according to the type of work unit.

At the apex of this hierarchy were the permanent state workers with urban household registration. In 1981, at the beginning of reform, this labor aristocracy accounted for 42 percent of the entire industrial labor force and produced 75 percent of the total industrial output. Their employment condition epitomizes "socialism's superiority": cradle-to-grave welfare, permanent job tenure, housing provision, lifelong medical and pension benefits, and superior wages. Only 32 percent of these state workers were female. The next group down the industrial ranking consisted of workers in urban collectives—enterprises that were initially set up by local

government bureaus to absorb unemployed personnel or provide employment for state dependent workers.....Operating without protection of the state budget, and accounting for 18 per cent of the urban industrial employment, collectives varied greatly in terms of their welfare provisions. It was a feminized sector: 57 per cent of this workforce were women in 1981. Beyond these two major groups of workers, temporary workers in rural industries received even fewer benefits. Their rural residency prevented them from becoming permanent workers in state and collective industries. ...”¹¹

The reform era

All of this changed in the era of economic reform. Many state controlled industries were closed and the rural collective agricultural system was largely dismantled. Today, China’s private sector produces over half of its industrial output.¹² And foreign invested firms make up well over half of the private sector.¹³ Many of the old state owned enterprises that remain increasingly function like private firms. The cradle-to-grave system of benefits has been abolished. The private sector industrial workforce has become increasingly feminized. The result is that in the space of less than a generation a new working class is toiling in China’s workplaces.

A migrant workforce

In one of the most massive migrations in human history, up to two hundred million people have left China’s countryside for life in its industrial cities. A survey by the All China Federation of Trade Unions reports,

“More than 60% of workers in the industrial and service sectors are migrants. Around 80 percent of miners are ex-farmers and the figure is 70 percent in the construction industry and 68 percent in the processing and manufacturing industry.”¹⁴

In the time honored tradition of the textile mills of 19th century New England, and of export processing zones of today, employers in China seek out young women workers fresh from the countryside to staff the factories. In the booming factories of the Pearl River Delta women—most migrants from the countryside—outnumber

¹¹ Ching Kwan Lee, *Against the Law: Labor Protests in China's Rustbelt and Sunbelt*, (University of California Press, 2007) p. 36

¹² “Foreign, private companies top output,” *China Daily*, September 28, 2007, http://chinadaily.cn/bizchina/2007-09/28/content_6168920.htm

¹³ *Ibid*

¹⁴ 17th CPC National Congress, “Wal-Mart tip of union iceberg”, October 19, 2007 <http://english.peopledaily.com.cn/90002/92169/92187/6286460.html>

men in industrial hotbeds like the city of Dongguan by up to 3 to 1.¹⁵ The belief is that young women are more passive, less likely to stick with the job long enough to organize themselves, and faster and more efficient than other workers. The New England mill owners learned otherwise when women textile workers organized unions and went on strike for bread and roses. There is some evidence, which will we discuss later in the report, that a similar awakening is underway in China.

Migrants generally begin life in the city at a major disadvantage. China's household registration system (Hukou) ties people to their home communities in ways that makes urban life difficult. This ancient Chinese practice was adapted by the Communists government in the 1950s to control internal migration. Since then it has been significantly liberalized, but access to housing, health care, and schooling for rural-urban migrants is often still restricted. For instance, migrants who become ill often have to return to their place of registration for treatment. Schooling for their children is barred or comes only with additional fees. Access to legal redress for work related grievances is more difficult.

The migrants keep coming because life is even more difficult in the countryside where close to 800 million people, more than 60% of China's population, still live. So far rural people have not shared the fruits of China's rapid growth.¹⁶ Slight gains in household incomes—a result of rising agricultural prices and falling taxes—have been offset for many by a collapse of the social welfare and medical systems. Many live in desperate poverty, as a result estimates are that 200 million more people will join the exodus to the cities by 2020.¹⁷

According to the official People's Daily On-Line:

"The average income of urban residents was 2.57 times that of rural residents in 1978, but the gap expanded to 3.22 times in 2005. In particular, the gap has widened markedly since 1997.

"Eighty percent of medical resources are concentrated in cities. Only 22.5 percent of rural people are covered by rural cooperative medical care system.

"Half of villages do not have access to tap water. More than 60 percent of rural households do not have access to flush toilets. The houses of nearly 70 million rural

¹⁵ "Falling Through the Floor: Migrant Women Workers Quest for Decent Work in Dongguan, China," China Labour Bulletin, CLB Research Series No.2, September 2006 http://www.china-labour.org.hk/en/fs/view/research-reports/Women_Workers_Report.pdf

¹⁶ "Missing the barefoot doctors," *Economist.com*, October 11, 2007 http://www.economist.com/world/asia/displaystory.cfm?story_id=9944734

¹⁷ *Ibid.*

residents need to be improved. Some 150 million rural households face problems in fuel supply. Six percent of villages are still beyond the reach of highways. Two percent of villages have no electricity supply. Six percent of villages do not have telephones.”¹⁸

Unemployment in the country-side is in double digits.¹⁹ But force has also been a factor. Corrupt local officials frequently conspire to cheat peasants out of their land. Most Chinese peasants do not own their land, but hold long term leases from the State. Corrupt local officials are able to void leases and compensate peasants for the land at its value as agricultural land. These officials then lease the land based on its much higher commercial value, often making windfall profits in the transaction.

The land seizures have not just led to migration, they have also led to social unrest. Many of the 94,000 large scale (involving 50 or more people) protests recorded in 2006 were in response to land seizures in the countryside for industrial development.²⁰

A question of legitimacy

In fact, the land seizures and protests have become so widespread that the central government, its legitimacy at stake, has launched a campaign to curb corrupt land seizures engineered by local officials. The Financial Times reports:

Wen Jiabao, China's premier has directly blamed local governments for a rise in "mass incidents" in the countryside, saying officials had provoked unrest through illegal land grabs and unfair compensation....

Mr. Wen also acknowledged the problem of rural migrant workers who leave their villages to work in cities and large towns, and send their money home to their families.”²¹

The Chinese government says it plans to address the rural-urban gap however, according to the Economist,

¹⁸ "Facts and Figures: Widening gap between China's urban, rural areas," *People's Daily On-Line*, http://english.people.com.cn/200603/03/print20060303_247425.html

¹⁹ Dorothy Guerrero, "China, the WTO and Globalization: Looking Beyond the Growth Figures," *Yale On-Line*, February 6, 2006 <http://yaleglobal.yale.edu/display.article?id=6929>

²⁰ Bruce Einhorn, "In China a Winter of Discontent" *Business Week*, January 30, 2008 http://www.businessweek.com/globalbiz/content/jan2008/gb20080130_195483.htm?chan=search

²¹ "China's Wen blames local officials for rising unrest," *FT.com*, January 20, 2006

“Central-government spending on agriculture and rural welfare as a proportion of total spending has similarly fallen from 8-11% in the 1990s to 7-8% for most of this decade..... Outlays on health care and education, as a proportion of total spending, remain lower than they were a decade ago.”²²

The Chinese Communist Party Congress held in October 2007 focused in part on steps to address the rural-urban divide. But the government appears to be sticking to its policy of rapid industrialization and requires a steady flow of workers from the country-side.

The 200 million additional migrants to China’s cities expected by 2020 will put added strain on the country’s economy which is already unable to produce enough jobs for its people. Despite double digit growth rates China is increasing its job base by only 1% per year.²³ There are currently 150 million *unemployed* workers in China, more than there are workers in the United States.²⁴

With so many workers competing for jobs, wages are likely to remain at rock bottom rates, hovering at about \$100-\$120 month for industrial workers —this for long hours 6 or 7 days a week.²⁵ But it’s not just poor wages and unstable working conditions that workers confront. They also face an industrial system that puts them in danger of disease, injuries, even death. China has the highest rate of industrial death and injury in the world. Journalist Loretta Tofani recently documented the horrors of life on the job in China in a series of articles. She writes:

The Chinese Ministry of Health in 2005 noted at least 200 million of China's labor force of 700 million workers were routinely exposed to toxic chemicals and life-threatening diseases in factories. "More than 16 million enterprises in China have been subjecting workers to high, poisonous levels of toxic chemicals," the ministry said at a conference on occupational diseases in Beijing, which was reported by the state-controlled media. The ministry particularly blamed "foreign-funded" enterprises that exported goods.

China has more deaths per capita from work-related illnesses each year than any other country, according to the ILO. In 2005, the most recent year for which data are available, 386,645 Chinese workers died of occupational illnesses, according to Chinese government data compiled by the ILO and cited in the July 14, 2006,

²² Economist Magazine, op. cit.

²³ “China’s Economic Puzzle,” New York Times, October 19, 2007

http://www.nytimes.com/2007/10/19/opinion/19fri2.html?_r=1&pagewanted=print&oref=slogin

²⁴ Guerrero, op. cit.

²⁵ Ibid.

Journal of Epidemiology. Millions more live with fatal diseases caused by factory work, other epidemiologists estimated in the article.

The number of workers living with fatal diseases does not include those who suffer amputations. Primitive, unsafe machines with blades that lack safety guards have caused millions of limb amputations since 1995, according to lawyers for Chinese workers. ²⁶

After nearly three decades of stunning economic growth China's workers remain trapped in a system of low wages, economic insecurity, and rampant inequality. While a relatively small elite has prospered, the vast majority of Chinese people live in poverty or near poverty.

Whether workers and peasants finally share in China's wealth will depend on many factors including new rural development policies, the development of domestic industries and markets, the enactment and enforcement of new labor, employment, and health and safety laws, the creation of a decent social safety net, and, perhaps most importantly, the actions of Chinese workers themselves as they struggle for their share of the national wealth. We will discuss the prospects and possibilities for change below.

III. Global Corporations in China

The key driving force of the Chinese economy since the reform era began in the 1980s has been the global corporations that have flocked to China. The opening of China to foreign investment has been a central feature of the globalization process.

Global corporations often argue that they are raising human and labor rights standards abroad. The reality is that the ability of companies to shift jobs to low wage countries like China often undermines labor rights and the ability of workers around the world to improve their economic lives -- as the former workers at Ramatex in Namibia would likely attest.

The past two decades have seen a radical restructuring of corporations worldwide. The big corporations which dominate the global economy have moved away from horizontal and vertical integration, common in most of the 20th century, in which they sought to keep all aspects of production and distribution in house and toward a new "core/ring" structure in which they retain a small core of essential functions

²⁶ Lorretta Tofani, "American Imports, Chinese Deaths," *Salt Lake City Tribune Special Report*, 2007 <http://extras.sltrib.com/china/>

within the company, while contracting out the rest to suppliers around the world. The result is what might be called the "dis-integrated" corporation.

As economist Bennett Harrison wrote, global corporations "...create all manner of networks, alliances, short and long-term financial and technology deals with one another, with governments at all levels, and with legions of generally (although not invariably) smaller firms who act as their suppliers and subcontractors." But the locus of ultimate power and control "remains concentrated within the largest institutions." The result is what Harrison describes as an "emerging paradigm of networked production" based on concentration of control combined with decentralization of production.²⁷

China represents the acme of this "concentration of control combined with the decentralization of production." While tens of millions of Chinese workers are directly employed by foreign firms or joint ventures, many more millions are employed in small to medium sized supplier firms, controlled—but not directly owned—by the big global corporations.

These complex corporate structures are organized to minimize the financial risks associated with owning factories and to avoid blame for low wages, bad working conditions, or unsafe products. China business expert Mary Teagarden of Arizona State University, speaking of recent product safety issues involving lead paint in toys sold by the Mattel Corporation, described the system this way to Financial Times columnist Stefan Stern:

*"Wal-Mart squeezes Mattel, Mattel squeezes its supplier, that supplier squeezes its supplier, and at the end of the chain you have a remote business far out in the countryside that takes a different approach. They don't put lead in paint because they are wicked, it's just what works for them. China is so large, and industrialization has been so rapid, that maintaining any control over multiple sites is extremely difficult."*²⁸

In the 1990s Nike became the target of anti-sweatshop campaigners, precisely because the firm outsourced all of its production to sweatshop suppliers in China and around the world. These suppliers produced high end sport shoes and apparel

²⁷ Bennett Harrison, *Lean and Mean: The Changing Landscape of Corporate Power in the Age of Flexibility*, New York, (Basic Books), 1994

²⁸ Stefan Stern, "West must take some blame for tainted Chinese goods," FT.com, September 3, 2007

http://search.ft.com/ftArticle?queryText=west+must+take+some+blame+for+tainted+chinese+goods&y=2&aje=false&x=6&id=070903007336&ct=0&nclick_check=1

under sweatshop conditions. Many companies learned from Nike's experience and today work to keep their supply chains secret. Indeed, while how much information corporations can keep secret from the public as "proprietary knowledge" is contested in every country, in China corporations have far exceeded acceptable bounds by creating an economy based on secrecy and short term advantage.

Veteran US journalist James Fallows, reporting from China, writes in the Atlantic Magazine:

*"...In decades of reporting on military matters, I have rarely encountered people as concerned about keeping secrets as the buyers and the suppliers who meet in Shenzhen and other similar cities. What information are they committed to protect? Names, places, and product numbers that would reveal which Western companies obtain which exact products from which Chinese suppliers."*²⁹

According to Fallows, the secrecy is driven by two factors: avoiding the "Nike problem" and a desire to not share knowledge about suppliers with competitors. Since few foreign companies actually produce anything in China themselves, the art is in constructing a productive supply chain.

*"...Companies that have solved... [this] problem don't want to tell other companies how they did so. 'Supply chain is intellectual property,' is the way [one Western businessman] put it. Asking a Western company to specify its Chinese suppliers is like asking reporter to hand over a list of sources."*³⁰

This kind of secrecy is at odds with the transparency needed for the rule of law and social accountability. If labor laws, product safety standards, and environmental regulations are to be enforced, public access to a wide range of information is required.

But is transparency too much to ask of corporations? Ironically, Nike—the poster company of the anti-sweatshop movement of the 1990s—says no. The company's latest corporate responsibility report released in May, 2007 makes interesting reading on this account.³¹

After the battering Nike took from the anti-sweatshop movement, it launched an ambitious program to address labor abuses in its supply chain in order to clean up its corporate image. Nike contracts with about 700 firms in 53 countries employing

²⁹ James Fallows, "Why China's Rise Is Good For Us", *The Atlantic*, July/August 2007

³⁰ Ibid.

³¹ Nike, Inc. "Workers in Contract Factories"

http://www.nike.com/nikebiz/nikeresponsibility/pdfs/color/3_Nike_CRR_Workers_C.pdf

800,000 workers, 80% of whom are women ages 18-24. Nearly 300 of its suppliers are in China. In 2005 Nike made public the names and location of each factory in its supply chain.

According to the company,

*We continue to advocate for transparency and encourage all companies in our industry to disclose publically their supply chains. We have realized no competitive disadvantage from bringing greater transparency to our supply chain. In fact, many of our suppliers have welcomed it for leading to streamlining and harmonization of monitoring approaches, reducing the burden on them, and allowing partners to collectively focus resources and energy on more than just policing.*³²

It is important to note, of course, that transparency is a necessary but not sufficient feature for the democratic regulation of labor markets. Even with transparency, there is as yet no entity capable of harnessing this information to effectively enforce labor standards. The question that must now be asked is: are working conditions demonstrably better in Nike suppliers than they are in the suppliers for other brands?

IV. Chinese Workers Push Back

Chinese workers are not passive. Just as in the West during its period of industrialization, countervailing forces are emerging in China to confront the most brutal aspects of its industrial system. Inside China workers engage in tens of thousands of strikes and protests each year. Job turnover is extremely high as workers continually look for a better deal. Peasants struggle in the countryside against corrupt officials, illegal land grabs, and backward government policies. The courts and administrative agencies are clogged with work-related cases, mostly over back pay. Reformers inside and outside China's governing institutions promote new laws and reforms. New organizations are springing up in what appears to be a nascent grass roots movement for worker rights and social justice inside China. Outside China, activists are setting aside Cold War era China bashing and reaching out to support progressive forces inside China.

We can identify 3 main types of responses by Chinese workers to the harsh conditions that they face: informal and individual responses, official and institutional responses, and emergent grassroots responses.

Informal and individual responses

³² Ibid

The Chinese government reported that there were more than 87,000 “public order disturbances” including land seizure protests, strikes, and other forms of direct industrial action.

“Like many things in China, data about the size of the disturbances is less available. For example, in cases recently documented for 2003, a mob of 50,000 torched police cars in Chongqing to protest against the beating of a migrant worker; 100,000 stormed a government building and forced the postponement of a dam project in Sichuan due to inadequate compensation; 20,000 miners and their families rioted against lay-offs and the loss of their pensions.

Other recent instances of unrest include 80,000 retired workers who protested in China's northeast over unpaid pensions in 2002; 30,000 rioting over exorbitant bridge tolls issued by local authorities in 2004; 7000 textile workers protesting after being forbidden to form their own union in the Shaanxi province in 2004. Of the 74,000 instances recorded in 2004, 17 involved 10,000 or more people, 46 involved 5000 or more people and 120 involved 1000 or more people.”³³

By all accounts that we are familiar with, including both published sources and accounts from activists, these public protests, while worrying to authorities, are tolerated as long as they are focused on individual workplaces or issues and do not lead to independent organization or become too disruptive. One western construction company executive working in China described to GLS how the system works. He recounted a strike over safety conditions by workers at one of the firms with which he contracted in Northeast China. Local authorities let the strike continue for 3 or 4 days before key projects were affected at which point police arrested the ringleaders and broke the strike.

But workers also engage in much more passive protests. Andrew Ross describes how Chinese workers employ the oldest form of protest: they quit in large numbers. Ross reports that after the traditional week-long Spring Festival vacation in 2004 nearly 10% of Guangdong's workforce failed to return to work.³⁴ Many of these migrant workers traveled back to their home villages where they either decided to remain or they found other work when they returned to the industrial centers.

The result was something of a crisis that left employers scrambling to find new help. [E]mployers... were forced to recruit on the basis of the pathetic slogan, “paying wages on time.” This was a response to China's biggest labor problem—the

³³ John Lee, op. cit.

³⁴ Andrew Ross, op. cit.

back wages owed to migrant workers. Emboldened by seeing employers at a disadvantage, worker walkouts and wildcat strikes spread, and the aggrieved flocked to legal aid centers that were increasingly handling labor disputes as part of the country's rocky transition to a 'rule of law'.³⁵

In fact, China's migrant industrial workers often vote with their feet. Turnover is so high in industry, that many employers actually fear a labor shortage.³⁶ Not that there aren't enough workers, but as Ross reports, there are not enough young women workers and, because for workers up and down the occupational skill ladder "job hopping is a national pastime," some employers in some areas are sometimes caught short.³⁷

Institutional Responses: Official Unions and Collective Bargaining

The second type of response is institutional, through the All China Federation of Trade Unions, China's sole legal trade union, claiming 150 million workers.³⁸ The ACFTU is generally regarded as ineffective at best and counterproductive at worst in its efforts to promote workers rights and interests. But there are some indications that in response to growing protests that could be changing.

As Chinese scholar Xiaodan Zhang writes,

[U]nions still function as the state's rubber stamps... [but] the actor who uses the stamps has shifted its role...

By changing lifetime employment to a labor contract system, [the state] no longer provides workers job security and full benefits in housing, medical insurance, and pension. The new reform policies brought the bankruptcy of many state-owned companies and unemployment to many workers. A crowded labor market with a large army of unemployed urban [workers] and migrant workers further weakened workers' power at the bargaining table with their owners and managers, even if there is one [a bargaining table]. Their autonomy on the shop floor is also considerably thwarted.

The Party-state is fully aware its legitimacy of rule is at stake if it does not take into account the negative impact of the reforms on workers.....[W]hile ruthlessly

³⁵ Andrew Ross, op. cit.

³⁶ Jim Yardley and David Barboza, "Help Wanted: China Finds Itself With a Labor Shortage," *New York Times*, April 3 2005 <http://www.nytimes.com/2005/04/03/international/asia/03china.html>

³⁷ Ross op. cit.

³⁸ "Wal-Mart China sees third trade union in Shenzhen outlets," *People's Daily On-line*, August 9, 2006 http://english.peopledaily.com.cn/200608/09/eng20060809_291073.html

*quelling large-scale protests and curbing any possible development of independent organizations by workers, the state tries to reset itself as the workers protector. Instead of providing protection over job security and fringe benefits, the state [through the unions] shifted to a new arena: protection of workers' legal rights..."*³⁹

As a result, according to Xiaodan Zhang, unions at national, provincial, and municipal level have promoted efforts by workers to demand their rights in the various courts and administrative agencies available to them. In addition, labor affiliated newspapers often run stories about workers fighting for their legal rights and winning.

But if unions promote what Xiaodan Zhang calls "a rights discourse" at the national, provincial, and municipal level, the situation on the shop floor is very different.

As in the pre-reform period, unions at the enterprise level are virtually part of the management structure. Often the union officials are managers. The primary role of the union remains as it has always been to promote worker-management cooperation to increase production. According Xiaodan Zhang ,

*[E]nterprise unions, no matter what kind of ownership, do not side with the workers in any dispute between them and management; rather they play a peacemaker and only pacify workers in the dispute or do certain kinds of bargaining that can prevent disputes in advance.*⁴⁰

The ACFTU and Wal-Mart

In 2006 the organization by the ACFTU of Wal-Mart, famous for anti-union policies, became headline news around the world. Under Chinese labor law, if 25 workers petition for a union, a committee can be elected and it must be recognized. Normally this is a top-down pro-forma affair, but in this case Wal-Mart resisted and the union had to actively recruit members.

Chinese official unions are so pro-management that many wondered why Wal-Mart resisted at all. The French company Carrefour, the leading foreign retailer in China, is 70% unionized. According to the Los Angeles Times:

Christian Roquigny, the store manager of a Carrefour in Urumqi, China, said he didn't understand the commotion about unionizing at Wal-Mart.

³⁹ Xiaodan Zhang, "Do Trade Unions Bargain in Today's China?" delivered at the Cornell Global Union Conference on February 10, 2006

⁴⁰ Ibid.

“Really, the union in China belongs to the [Communist] Party,” said Roquigny, whose 79-employee store is unionized. “They never interfere in the daily management as long as we follow Chinese labor laws. They are not a strong force as in France.”⁴¹

But Australian labor expert Anita Chan evaluates the Wal-Mart campaign this way:

“I have the feeling that there may be new developments brewing among some ACFTU trade union officials. The way that these...union branches [at Wal-Mart] got set up was very different from any other in China that I know about...”

Wal-Mart's adamant stance had provoked the ACFTU into trying out real grassroots organizing for the first time. This may be an experience the union federation will want to analyze for possible future use in similar cases.

It is often thought that there is no collective bargaining in China. Actually there is, especially in the OECD countries' big joint ventures. There is also some in SOEs [State Owned Enterprises] or former SOEs. The bargaining may not be as sophisticated, legalistic or adversarial as the ones we witness in Australia or in the US, but nonetheless they involve a kind of bargaining. In the case of Wal-Mart, having been put in the spotlight, the ACFTU may want to let its own people and the world know that the union is serious about protecting employees' rights. I don't think this is likely, but it may be too early to rule it out and to simply assert that these union branches, especially the first few, are bound to be useless like so many others.⁴²

Wal-Mart now seems comfortable with the union. “I hope to establish good relations with the ACFTU and its regional branches that would be conducive for our employees and business development,” said Joe Hatfield, president of Wal-Mart Asia, adding – and quoting the latest Communist Party line – “it is in line with Chinese government’s efforts to build a harmonious society.”⁴³

The key question is: will unionization by the ACFTU help Wal-Mart workers or is it simply a theatrical gesture designed to show that the union is doing its job? The Wal-Mart agreement did seem to break some new ground at the shop floor level.

⁴¹ Abigail Goldman and Don Lee, “No Labor Shift Seen at Wal-Mart; Activists and the retailer itself downplay the move to allow Chinese workers to unionize,” *Los Angeles Times*, August 11, 2006

⁴² China Law Professors Blog,

http://lawprofessors.typepad.com/china_law_prof_blog/2006/08/walmart_and_uni.html

⁴³ “Wal-Mart to Help Unionize all Chinese Outlets,” *China Daily*, August 10, 2006

http://www.chinadaily.com.cn/china/2006-08/10/content_661869.htm

While ACFTU officials in China often are part of management, in Wal-Mart's case, store managers, vice-managers, human resources managers, and their family members are barred from holding union posts. Officers of the new unions will be elected by secret ballot from slates nominated by employees but approved by officials of the ACFTU.

According to Chinese officials other gains have been made since Wal-Mart was organized. The Financial Times reported in October, 2007:

"We have cracked a world-class hard nut," said Sun Chunlan, executive vice-chairwoman of the All-China Federation of Trade Unions (ACFTU), referring to the establishment of 77 trade unions among the retailer's 84 branches in China. The Wal-Mart unions persuaded management to raise part-time workers' wages to six yuan (75 US cents) per hour, above the minimum wage 5.5 yuan.

*The stores also agreed to abolish the probation period for part-time workers. Meanwhile, the Wal-Mart store in Shenyang, capital of Liaoning Province, has negotiated the right to have one day off a week."*⁴⁴

It is too soon to judge the over-all impact of unionization on Wal-Mart. Our own contacts within China with some firsthand knowledge have a more pessimistic view of the results so far. The apparently new and more aggressive approach to organizing by the ACFTU evidenced by its Wal-Mart campaign may be part of a trend to reposition the union as a genuine representative of workers. That trend could accelerate with the implementation of China's new Labor Contract Law on January 1, 2008. As we discuss below, the new law requires firms to consult with employee representatives—in most cases the local branch of the ACFTU—over company policies. Provisions in the new law also encourage collective contracts. This could lead to a more active role for the ACFTU at the level of the workplace.

In any event, tracking progress at Wal-Mart should be a priority for labor activists inside and outside of China.

Union organizing efforts outside the ACFTU

While the ACFTU is the sole legal trade union in China, there have been some small organizing efforts outside of its official jurisdiction. For instance, sources in China have told GLS there has been some very small scale organizing among trash collectors and among transport workers like truck, bus, and taxi drivers in some

⁴⁴ Fu Jing "Wal-Mart, tip of union iceberg", China Daily, October 19, 2007
http://www.chinadaily.com.cn/bizchina/2007-10/19/content_6190560.htm

Chinese cities. And in a recent and remarkable turn of events the transport workers union in Hong Kong announced that it had organized 40 to 50 mainland based truck drivers.⁴⁵ It is not clear from our sources in China why and how these small efforts have been able to move forward. As with all such things in China, action by the government could end any such efforts at any time. But it is a trend that deserves greater study.

Company sponsored union elections

Since 2001 there have been a handful of contested union elections in some foreign owned supplier factories in China. These have been initiated by companies like Nike, Reebok, and Adidas as part of their “corporate social responsibility” programs. China expert Anita Chan of the Australian National University has analyzed two of these. She does not identify in the paper which of the shoe and apparel companies are involved. The story of the elections is worth an extended look since Chan’s study is unpublished and it sheds significant light not only on the limits of corporate social responsibility programs, but on possibilities and pitfalls of top down “company unionism.”⁴⁶ Chan writes,

The union elections were initiated under pressure from the brand-name Western TNC. The TNC was trying to honor one particular clause in its code of conduct that corporations normally only pay lip-service to—democratic union representation. For the previous several years, it had been finding it frustratingly difficult to get its suppliers, mostly Hong Kong, Taiwanese and South Korean manufacturing firms producing inside China, to improve labor conditions for the migrant workers from China’s countryside who toiled some 60 hours a week on production lines. The TNC, ahead of its times in the corporate world, was hoping that elected union representatives would be able to provide an alternative means to curtail labor abuses. ...

One TNC...implemented a pilot program...to set up elected workers’ representative bodies in a few of its supplier factories. The hope was that through elected representative bodies, workers would be able to channel their grievances and finally attain “sustainable compliance” of the corporate code of conduct. ...

⁴⁵ International Transport Workers Federation, “HK union wins first ever mainland recruits”, 11 July 2007 <http://www.itfglobal.org/news-online/index.cfm/newsdetail/1422>

⁴⁶ Anita Chan, “Transnational Corporation-Facilitated Trade Union Elections in China—Challenges and Possibilities for Workers,” unpublished.

A question should be asked: what was the reaction of the existing workplace union and the district union and the levels about it within the All-China Federation of Trade Union (ACFTU)? [In one plant]...the existing union branch executive committee, which had been hand-picked by management, remained a “participant-observer” while the upper levels of the union did not present themselves. The incumbent union chair, who was a middle-management Chinese national, attended all of the meetings to discuss the election but did not express any opinion. The initiative taken by [the TNC] was reported to the local government and to the ACFTU in Beijing. Non-intervention from these two quarters meant quiet consent.

Following the election, in the first plant, the foreign firms understood that without training the union would not succeed. Since the ACFTU was unlikely to provide adequate training, in one of the plants the foreign company hired a Hong Kong based labor NGO to conduct a six-month long week-end training on union administration and labor law. The owner of the factory met regularly with the union and things seemed to proceed smoothly. Some advances in working conditions were made.

But the factory was sold and the new owners took a harsh and legalistic line toward the new union. They refused to cooperate. They slashed benefits. And support for training was withdrawn.

As the regressive policies were introduced by management one after another and as the union faltered, [the TNC] did not intervene. Its position was that once a democratically elected union had been created and training had been provided, it was up to the union to fend for itself. Gone were the days when it made demands... to improve conditions.

Eventually, without management cooperation, and with little leverage, workers soured on the new union and it became ineffective.

Elections in the second plant with 13,000 workers drew 180 candidates, including some candidates holding office in existing ACFTU branches. Chan followed the election and listened to the speeches of the candidates. She reports that most were short and without substance, but there were some exceptions.

Many of the candidates had never heard of or thought about what a trade union is, or knew what a trade union representative might be expected to do. They were mostly in their late teens or early twenties, and recently from rural villages.....

One speech truly distinguished itself, by Worker Li from the stock-fitting shop floor. He attracted the largest number of votes of all the 180 candidates. He said,

“Let me ask everybody, “How much do you understand about what a union is?” In case you don’t have any understanding of it, I can also tell everybody that I don’t either! Since everyone doesn’t know what a union does, then we can clearly say that the present union’s publicity and activities are insufficient. Even the Labor Law hasn’t been displayed to everyone, hasn’t been hung up on the union bulletin board to let everyone read and understand it.

I would like to raise three questions for everybody. If you know the answer then say that you know. If you don’t know, then say you don’t know. The first question is, “Does everybody know or not know how many committee members the present union has, or who the union chair is, or where the union office is? (The audience: We don’t know!) The second question is, “Has the union told us about how our wages and piece rates are calculated? (The audience: No! Some in the audience broke into applause.) The third point is, “Does everybody know or not know how many of the complaints that are put into union letter box actually get a response? (Audience replies loudly: We don’t know!) Since everybody doesn’t know, then isn’t the present union just an empty shell? (Audience: Yes!) Therefore to carry out a fair and democratic election like this is a necessity. Can I trust that you’ll cast your ballot for me?” (Audience applauds). ...

The next day this worker’s supervisor came up to him on the production line and unceremoniously warned him to watch out. ...

In the election, the incumbent [ACFTU] trade union chair lost miserably..., Despite having gotten the largest number of popular votes, Worker Li lost out in becoming the union chair in a subsequent election among the thirty-one elected representatives. On the day of the second stage election the newly elected representatives who wanted to run for the post of union chair had to give another election speech. Li was the only one not informed of the time of the meeting. Fortunately a representative insisted that Li should be called from the production line at the last minute. Arriving unprepared, Li realized he would not have enough votes to become the chair, but ran instead to be mediation sub-committee member and got enough votes to head it.

After the election, conflict between workers and supervisors intensified. Some workers felt they could afford to confront supervisors now that they had union representatives to help them. But line supervisors were not reined in by management to accept and respect the new union committee members....

After the election, the factory continued to cheat workers in wages and overtime pay. Worker Li was determined to do something about it as he had promised in his campaign speech. He brought proof of the cheating to the attention of TNC shoes' human rights officer, trusting that she would support him. [She eventually did back Worker Li charges.] But when management and the district union found out that Li was the informant, they made life so difficult for him that he had to quit the factory....

A year after their respective elections, at both factories the democratically elected trade union committees had become passive and submissive to management and to the upper level trade unions. When in July 2003, a vice-president of the ACFTU said in a public speech that foreigners should not intervene in Chinese trade union affairs, TNC shoes further detached itself from the two unions. Without this external support, the unions gradually began to be re-absorbed into the fold of the official trade union.

According to Chan,

It was the only concrete effort by a TNC sourcing from China to honor workers' representation in the implementation of its corporate code of conduct. But by 2005, the initiative had failed. Neither of the two trade unions in the two supplier factories have attained independence from management and are far too weak to bargain with or stand up to management on their own. However, to write off such TNC-facilitated union elections is like throwing the baby out with the bathwater. I would like to argue that there are possibilities for Chinese workers in this type of TNC-initiated union election.

Two important elements were missing: continued support from the companies and the ACFTU. Since support from neither was forthcoming, the pilots failed.

Despite the original intentions of [the TNC] human rights division, which was the initiator of this program, the project was a self-limiting exercise without provisions for collective bargaining and union financial independence. TNC shoes could have insisted on including collective bargaining in the newly drawn-up enterprise trade union charter.

And even though the elections had the tacit support of the higher levels of the ACFTU and were within Chinese labor law, Chan writes,

The local district unions were ambivalent about the elections. For a TNC to be organizing workplace trade union elections was to them foreign intervention into the union bureaucracy's own turf.

Chan concludes,

With all these factors working against the emergence of democratically functioning factory-level union branches in China, the question remains, should advocates for labor rights in China and elsewhere continue to pressure TNCs to facilitate union elections or workers' committee elections in their supplier factories? My answer is in the affirmative. The entire election process, lasting a few months, was a valuable consciousness-raising experience for the workers. They learned about their own role in the global supply chain, about the Chinese labor laws, about their rights and about the possibilities of labor representation. To realize the extent to which the workers appreciated this opportunity to choose their own representatives, one had to be present at the open forums and the nights of the campaign speeches, to witness the excitement of workers on the day of voting and to interview enthusiastic newly elected committee members.

We add that this experiment has strong echoes in US labor history. In the 1920s and 1930s many big firms in the US developed “company unions”. These organizations were designed to co-opt worker militancy by providing some basic rules and rudimentary grievance procedures for workers as well as to help administer company benefits. They were funded by management. Ironically, during the great organizing waves of the 1930s some of these company unions declared their independence and joined the CIO. Whether something like that could happen in China remains to be seen.

Emergent organizations and grass roots strategies.

The grass root legal service sector

There were some 314,000 labor disputes in China in 2005, the last year for which we have official numbers.⁴⁷ Most of these find their way to administrative agencies for hearings and resolution. It is a complex—and for migrant workers—costly process. But tens of thousands of Chinese workers use the process to seek redress for their grievances, mostly to collect back wages. And they frequently win.

⁴⁷ Victorien Wu, “Labor Relations in Focus,” *China Business Review On-line*, China-US Business Council, 2007 <http://www.chinabusinessreview.com/public/0611/wu.html>

A new grass roots legal services sector has emerged in Guangdong, and elsewhere, to represent workers in official administrative hearings over workplace grievances. These organizations seem to function like legal aid centers or workers compensation law firms in the US. According to the China Labor Watch, “Their income comes primarily from helping migrant workers initiate lawsuits over on-the-job injuries, labor management [disputes], etc. They also receive fees from the plaintiffs’ lawyers at the conclusion of lawsuits.”⁴⁸ The legal service groups see themselves as part of the labor rights struggle. Sometimes they run afoul of local authorities.

The China Labor Watch reports on an incident in Guangdong at the end of 2006 when authorities raided, and temporarily shut down 12 grassroots legal groups.⁴⁹ The groups had collected 10,000 signatures on a petition in support of local efforts to cut filing fees for labor complaints before the labor boards. High fees and a complex procedure prevented many workers from accessing the law on back pay and injury claims. In response to the campaigns police raided the firms and confiscated computers and detained some staff.

The raids did not go unchallenged. Within days protests were launched and the local authorities backed down, the computers were returned, those detained were released, and the centers resumed operation. It is unclear, according to observers, why the raids were conducted in the first place, and why the authorities quickly backed down. But it is an indication of the different currents at work in China industrial relations system. The emergence of this grass roots legal service sector deserves closer study, especially since China’s new Labor Contract Law and a proposed dispute resolution law nearing passage should make access to the courts and administrative agencies easier.

Workers centers

The emergence of worker centers represents a different kind of grass roots strategy—one geared toward teaching workers the tools and techniques of self-organization. As in the rest of the world the centers rise and fall with the availability of funding and the capacity to stay below the threshold that would attract repressive action. Some of these centers have been established by Hong

⁴⁸ “Police Begin to Compromise: Shenzhen Migrant Workers Association Plans Law Suit,” China Labour Watch, November 16, 2006

<http://www.chinalaborwatch.org/Police%20Begin%20to%20Compromise.htm>

⁴⁹ “China Labor Watch Calls on the International Community to Pay Close Attention to the Shenzhen Government’s Suppression of a Campaign by Twelve Grassroots Organizations to Eliminate Arbitration Fees” China Labour Watch, Press Release, November 14, 2006

Kong based labor rights organizations that work in the PRC; others have grown up entirely in the PRC. We have had conversations and correspondence with activists involved in the workers center movement over the past few years and continue to do so. The worker centers we're most familiar with are focused on women migrant workers in massive industrial parks in the Pearl River Delta. Often these women live in barracks style housing where worker center organizers can approach them and conduct classes and training sessions. Such work is difficult in an authoritarian country with a regime that is sensitive to independent organizing. These activists, therefore, request anonymity.

One such worker center is described by Jenny Wai-ling Chan of the University of Hong Kong and the Chinese Working Women Network (CWWN). She describes conditions for workers at some of Wal-Mart's thousands of Chinese suppliers.⁵⁰ It is a picture of super-exploited, mostly young, women migrant workers. Working conditions are harsh, workers are often cheated out of wages, and laws and corporate promises such as Wal-Mart's "code of ethical practice" rules are regularly ignored. But it is a work-world in which workers are beginning to fight back. And because unions are part of the state apparatus and "are not adversarial or confrontational" workers are "...actively exploring other forms of organized labor."

One form of organization which may offer great potential is the development of Worker Committees. Says Jenny Wai-ling Chan:

*A workers' committee at the workplace level is a collective platform that promotes workers' participation and workplace democracy. It is not a branch under the auspices of an official trade union.*⁵¹

Chan describes how CWWN helps workers' get organized:

Firstly, CWWN and partner NGOs prepare a comprehensive training curriculum covering the major topics such as globalization and workers' rights, international labor standards, local labor laws and regulations, and collective bargaining. Second, CWWN collaborates with either international NGOs (such as Social Accountability, Clean Clothes Campaigns, and Ethical Trading Initiatives) or multinational corporations (for example Reebok) in selecting medium-sized factories of about 400 to 500 workers on average for holding training programs. Third,

⁵⁰ Jenny Wai-ling Chan, "Chinese Women Workers Organize in the Export Zones," New Labor Forum, Spring 2006

⁵¹ Jenny Wai-ling Chan, "Chinese Migrant Workers in Global Production: Bringing Wal-Mart to Corporate Social Responsibility," delivered at Cornell Global Union Conference, February 10, 2006

CWWN coordinates two-phase frontline training sessions. The first part is provided for all the production workers in the factory. Then, in the second-part, we will facilitate those who are more enthusiastic to learn about the mechanisms of worker representation and democratic election by providing them with follow-up trainings. Finally, the candidacies of a Workers Committee are ready to compete. The ratio of committee members and workers is usually around 1 to 30, making a Workers Committee of totally 12 to 14 members. The candidates will take turns to make a speech in the election period. By secret ballot, a Workers Committee will be successfully formed.⁵²

Even though independent unions are against the law in China, workers' committees have been able to take root in some shops through careful attention to what can and can't be done. The result is a new form of bottom-up organization that could serve as a model for future organization.

Providing support for the development of these new models of organization should be a priority for the global labor movement's outreach to Chinese workers.

V. China's New Labor Law

Protests and grassroots organizing activity aimed at China's low wages and harsh working conditions have prompted the Chinese government to draft a new, fairly comprehensive, labor code.

According to the New York Times,

"Having grown increasingly concerned about the nation's widening income gap and fearing social unrest, officials in Beijing now seem determined to improve worker protection. In recent years, more and more factory workers have gone to court or taken to the streets to protest poor working conditions and overdue pay.

"The government is concerned because social turmoil can happen at any moment," says Liu Cheng, a professor of law at Shanghai Normal University and an adviser to the authorities on drafting the proposed law. "The government stresses social stability, so it needs to solve existing problems in the society."⁵³

In 1994, after the reform era was well underway, China adopted a labor law that mandated individual contracts between workers and companies. (Soon after it also adopted a law allowing collective contracts negotiated by trade unions in some

⁵² Ibid.

⁵³ David Barboza, "China Drafts Law to Boost Unions and End Abuse," New York Times, October 13, 2006
[ytimes.com/2006/10/13/business/worldbusiness/13sweat.html?_r=1&hp&ex=1160798400&en=a6f855fccccf9c59&ei=5094&partner=homepage&oref=slogin](http://www.nytimes.com/2006/10/13/business/worldbusiness/13sweat.html?_r=1&hp&ex=1160798400&en=a6f855fccccf9c59&ei=5094&partner=homepage&oref=slogin)

industries.) The new Labor Contract Law, passed in June 2007, which became effective on January 1, 2008, builds on that legal foundation.

Problems with the 1994 law

According to Liu Cheng, three problems with the existing labor code—enacted in 1994—and its enforcement led to the new law.

First, under the terms of the old law, labor contracts are supposed to stipulate wages, basic terms of employment, and the duration of employment. In reality, approximately 80% of all firms did not conclude contracts with their employees even though they were required to. According to Liu Cheng,

*“The lack of contracts leaves workers in a legal limbo: they cannot seek revocation or termination benefits should they be asked to leave; they have no right to medical treatment even in case of a workplace accident; and employers do not contribute their share to the pension fund.”*⁵⁴

When contracts were signed many were for very short period of time. According to Liu,

*“The employers refused to sign long-term contracts to avoid legal obligations, and many contracts only prescribed the obligations of employees and the rights of employers. Some contracts even stated that the employer holds no responsibility for the illness or even death of its employees, even when injuries occur in the workplace.”*⁵⁵

The second problem, according to Liu Cheng was that minimum wage laws were not enforced and failure to pay wages on time or at all was common. Liu says,

“According to an investigation in 2005, 12.7 per cent of employees' salaries were lower than the national minimum salary and 7.8 per cent of employees surveyed did not receive payments on time or at all, 2184 yuan in arrears per capita. Many private companies also refused to insure their employees.

*Figures from the All-China Federation of Trade Unions show that more than 100 billion yuan (US\$12.1 billion) was owed in unpaid wages to migrant labourers in China in the year 2004.”*⁵⁶

The third problem, according to Liu Cheng, is that overwork and overtime rule violations are rampant.

⁵⁴ Liu Cheng, “The Draft Labor Contract Law of the PRC and its Background”, delivered at the University of California and Berkeley, Spring 2006, unpublished.

⁵⁵ Ibid.

⁵⁶ Ibid.

“Working hours are getting longer in China; overworking hours are prevalent and regarded normal by many employers. Plenty of enterprises ask workers to work overtime illegally without overtime pay. According to a survey in Shanghai, 42% of the workers work overtime. In some enterprises workers even work 15 or 16 hours every day. Some enterprises even provide that normal working hours are 10-14 hours; within these “normal working hours”, there is no overtime pay.

In some enterprises, working conditions are very poor, work accidents often occur and occupational diseases are severe.

Besides, the coverage of social insurance is very low with much premium in arrears; labor supervision is poorly enforced, and labor disputes settlement is not efficient.”

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What the new law does

The new Labor Contract Law which came into effect on January 1, 2008 is modeled on European style labor codes. These codes differ from US law which generally assumes that private sector workers are employed on an at-will basis—that is, they can be discharged for “good reason, bad reason, or no reason at all”—unless covered by a personal or union contract with a “just cause” clause or by some civil rights law. Chinese law, following the European model, establishes “just cause” by statute following a probationary period after which an employer must give a valid, legal reason for discharge.

Similarly, Chinese law prescribes by statute things left to private bargaining in the US such as the length of probationary period, severance pay, and layoff procedures.

Among its provisions, the new law does the following: ⁵⁸

Ensures all workers have contracts as required by law. Under the new law, if an employer has not given a worker a contract after 30 days a contract is automatically assumed providing wages and working standards prevalent in the industry in which the worker is employed. Contracts can be either individual or collective. This means that all workers will be able to access the full range of rights and benefits available to them.

⁵⁷ Ibid.

⁵⁸ “Labor Contract Law of the People’s Republic of China—Unofficial English Translation,” National People’s Congress Standing Committee, Cornell University, 2007 <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1026&context=intl>; For a detailed analysis see, “Undue Influence: Corporations Gain Ground in Battle over China’s New Labor Law, But Human Rights and Labor Advocates Are Pushing Back” Global Labor Strategies, 2007 www.laborstrategies.blogspot.com .

Restricts the use of fixed or short term contracts. In the past workers were often given short term “fixed” contracts which were renewed (or not) when they expired. This created instability in the labor market and undermined any kind of job security. The new law discourages fixed contracts and requires an open-ended contract after two fixed contracts. Any worker who has been employed for 10 years or more is automatically entitled to an open-ended agreement. Dismissal from any kind of contract is by just cause only.

Establishes standard probationary periods. Some workers faced unreasonable long probationary periods under the old law. The new law establishes a standard length—from no probation for very short term agreements to 6 months for long term and open-ended agreements—and sets some terms and conditions of employment and wage rates during the probationary period.

Regulates lay-offs and severance pay. The new law requires consultation with worker representatives prior to layoffs and sets severance pay based on years of service.

Expands the scope of bargaining over company policies and work rules. It requires companies to negotiate company rules and regulations on a broad array of issues from compensation to health and safety issues, to vacation and days off.

Expands the role of unions and the use of collective contracts as opposed to individual contracts. The new law expands the role of unions by allowing a broader scope for collective bargaining at the enterprise level and by permitting bargaining on a regional or industry wide basis.

Regulates the use of temp workers. The new law sets strict standards on the use of temp workers including what jobs they can be hired to perform, how long they can remain “temp” workers, and what their rights are as temps.

Establishes non-compete rules. The new law sets limits on terms and conditions of non-compete clauses in contracts. Given the high turnover in the Chinese workforce, regulating non-compete agreements is important for both employees looking for better jobs in a booming economy and employers looking to protect trade secrets. This provision was the subject of heated debate as the law was drafted.

Strengthens overtime rules. The new law restates and strengthens existing overtime rules.

Defines part-time work rules. The new law excludes worker employed less than 4 hours per day or 24 hours a week from the requirement of a written contract.

Establishes a stronger enforcement regime. The new law increases penalties, expands enforcement efforts, and penalizes government officials who are negligent in enforcing labor laws.

VI. Corporate Responses to the New Labor Contract Law

In an unusual move, prior to the draft law's finalization, the Chinese government opened up a period of public debate and comment on the new law. Nearly 200,000 responses poured in, most from ordinary Chinese. But some were from US and EU based corporations or their lobbying groups and they opposed the new laws prompting a global debate. As the debate on the new law unfolded, something of a paradigm shift occurred as labor and human rights advocates switched the global attention from the actions of the Chinese state to the action of global corporations. Globalization had been promoted by its corporate sponsors as a way to improve rights and standards. Now corporations seemed to be blocking those rights.

Foreign corporations not only lobbied the Chinese government to gut labor protections in the law, but they threatened that some might leave China if the new legislation were passed.

The American Chamber of Commerce in Shanghai (AmCham) issued a 42-page critique warning that the law may “reduce employment opportunities for PRC workers” and “negatively impact the PRCs competitiveness and appeal as a destination for foreign investment.”⁵⁹

Dr. Keyong Wu, an expert for the British Chambers of Commerce, stated,

*“Business is attracted to China not only because of its labour costs but also because of its efficiency. If regulation starts to affect that and flexibility, then companies could turn to India, Pakistan and South-East Asia.”*⁶⁰

Their aggressive tactics of the global corporations appear to have worked. In December 2006, the Chinese government released a revised draft of the Labor Contract Law with many important protections for Chinese workers seriously weakened or eliminated wholesale.

The corporate community quickly claimed credit for these revisions. The US-China Business Council declared the draft a “significant improvement.”⁶¹ Individual corporations were also pleased with the results of their lobby campaign. Scott Slipy, director of human resources in China for Microsoft, explained to *Business Week* “We have enough investment at stake that we can usually get someone to listen to

⁵⁹ “Comments and Suggestions on Revision to Labor Contract Law,” *American Chamber of Commerce in Shanghai*, April 19, 2006.

⁶⁰ Christine Buckley, “Foreign Investors may quit if China tightens up labour law,” *Times Online*, June 19, 2006 <http://business.timesonline.co.uk/tol/business/markets/china/article676240.ece>

⁶¹ “Comments on the Draft People's Republic of China Law on Employment Contracts (Draft of December 24, 2006) US China Business Council <http://www.uschina.org/public/documents/2007/01/comments-employment-contracts-english.pdf>

us if we are passionate about an issue.”⁶² According to a lawyer representing numerous corporations in China,

*Comments from the business community appear to have had an impact. Whereas the March 2006 draft offered a substantial increase in the protection for employees and a greater role for union than existing law, [the new draft] scaled back protections for employees and sharply curtailed the role of unions.*⁶³

A corporate split

But the solid wall of corporate resistance to the new law did not last. When GLS and subsequent media reports exposed the role of foreign corporations in lobbying against the new code, a series of fissures emerged within the corporations operating in China and the organizations that represent them. While much of this turmoil took place behind closed doors, we have been able to piece together a partial account of what happened.

Nike, for example, distanced itself so far from AmCham’s position that a release by the International Textile, Garment and Leather Workers’ Federation was headlined, “Nike Repudiates AmCham Position on Chinese Labour Law Reform.”⁶⁴

An even more remarkable shift occurred in the attitude of the European Union Chamber of Commerce in China. Initially, the E.U. Chamber of Commerce joined AmCham in sharply criticizing the law. But on December 8, 2006, the E.U. Chamber issued a stunning “clarification,” which it attributed specifically to the public attention its previous position had received:

“In light of recent media attention concerning the European Chamber’s position on the draft Labour Contract Law, the Chamber would like to take this opportunity to clarify its position on this important piece of legislation.

The Chamber believes that there is a serious need to improve working conditions in China and stands firmly behind the Chinese government’s efforts to improve working conditions.

⁶² Dexter Roberts, “Rumbles Over Labor Reform: Beijings’s Proposed Workers Protections are Giving Multinationals the Jitters,” *Business Week*, March 1, 2007
http://www.businessweek.com/globalbiz/content/mar2007/gb20070301_446878.htm?campaign_id=twxa

⁶³ Andreas Lauffs, “Employers Face Tougher Rules: Upcoming changes to employment contract law are likely to further constrain the policies of foreign companies in China,” quote in the *Financial Times*, January 31, 2007

⁶⁴ “Nike Repudiates AmCham Position on Chinese Labor Law,” Press release, International Textile, Garment and Leather Workers Federation, December 20 2006
<http://www.itglwf.org/DisplayDocument.aspx?idarticle=15269&langue=2>

The European Chamber welcomes the fact that many of the articles presented in the draft law stem from labour laws in Europe. There is no doubt that if such a law was passed and strictly implemented, working conditions in China would drastically improve.

The Chamber believes that the introduction of the new labour contract law will assist Chinese firms in improving working conditions.”⁶⁵

The EU Chamber also emphasized the importance of implementation of existing regulations, and the need to apply standards equally to domestic and foreign companies.

AmCham and the US China Business Council made no such public changes in direction during the course of the debate.

A number of corporations tried to put distance between themselves and the original positions of the foreign business organizations. Ericsson, for example, dissociated itself from the threats of withdrawing from China initially made by the EU Chamber of Commerce:

“Ericsson supports the Chinese government’s legislative efforts to improve the labor law and regulations for working standards . . . Ericsson is in no way actively lobbying against the proposed legislation by the Chinese government. Nor has Ericsson threatened to pull out of China if the new labor laws were to be passed. . . . Just because we are a member of the European Chamber of Commerce does not necessarily mean we endorse every lobbying initiative.”⁶⁶

But other corporations stuck by their antagonism to the law. GE, for example, says it made comments to the Chinese government to make the law better achieve objectives “essential to sound employer-employee relationships in the global economy in which China must compete.”⁶⁷ According to GE, its comments “reflect our perspective, as a global employer, that greater flexibility in the employer-employee relationship is preferable to locking in fixed costs that far exceed the useful working life of a particular relationship.”

Intel Corp took a similarly aggressive stance. When questioned, it expressed its serious “disagree[ment] with aspects of the law,” including the increased role of

⁶⁵ “Statement on Draft Labour Contract Law,” EU Chamber of Commerce, <http://www.eurochamber.com.cn/events/news.php?id=286>

⁶⁶ “Ericsson’s Response to the Business Human Rights Resource Center,” January 5, 2007 <http://www.business-humanrights.org/Documents/Ericsson-response-China-labour-law-16-Jan-07.pdf>

⁶⁷ “GE’s Response to the Business Human Rights Resource Center” <http://www.business-humanrights.org/Documents/Chinalabourlawreform>

unions in setting company policies.⁶⁸ (Last year Intel suppliers were found to be paying Chinese workers below the minimum wage and forcing them to work 15-hour days.)⁶⁹

Other companies like Google, Wal-Mart, Microsoft, and UPS either argued that they bear no responsibility for the positions taken by their trade organizations or refused to respond. According to letter written by a Google representative on January 16, 2007, "We belong to numerous large-scale trade and industry associations, and don't necessarily agree with every position they take on every issue."⁷⁰ Google regularly promotes its socially responsible business practices.⁷¹ However, it has done nothing to disassociate itself from the attack on worker rights undertaken by its representative associations. (Ironically, Google's corporate motto is "Don't Be Evil.")

The role of proxy organization like the Chamber of Commerce in lobbying on labor rights issues in other countries deserves more study. Whether in Washington or Beijing, hiding behind proxy organizations is a well-established way for companies to avoid accountability. Corporations finance business associations to lobby on their behalf but claim an arm's length relationship when organizations like AmCham take unpopular or unethical positions. It may well be unrealistic to think all of the members of business and lobbying organizations like AmCham will agree or even be informed on every issue, but when companies like Google and Wal-Mart are informed that their representatives are blocking new rights for Chinese workers, they have a responsibility to speak out if they disagree with their representatives' positions. Silence means consent.

The corporate view following passage of the new Labor Contract Law.

After months of lobbying and public debate a new draft of the law was produced that weakened some key provisions to address corporate complaints. The final version received mixed reviews. In public, corporations pledged support for the new law, while in private they still had major reservations.

According to the *New York Times*:

⁶⁸ Intel's response is available at: <http://www.reports-and-materials.org/Intel-response-re-Chinese-labour-law-12-Jan-2007.doc>

⁶⁹ "Chinese Ipod Supplier Withdraws Lawsuit," Sunday Morning Herald, September 4, 2006 <http://www.smh.com.au/articles/2006/08/30/1156816956026.html>

⁷⁰ <http://www.business-humanrights.org/Documents/Google-response-re-Chinese-labour-law-16-Jan-2007.doc>

⁷¹ However Google has been strongly criticized for tailoring the Chinese version of its search engine to meet the PRC's censorship demands. For more on Google's role in China see: <http://www.nytimes.com/2006/04/23/magazine/23google.html?ex=1303444800&en=972002761056363f&ei=5090>

“Many multinational corporations had lobbied against certain provisions in an earlier draft of the new labor law. An early draft gave unions greater powers and made it more difficult to fire workers.

Companies argued that the rules would substantially increase labor costs and reduce flexibility, and some foreign businesses warned that they would have little choice but to move their operations out of China if the provisions were enacted.

International labor experts said several of the most delicate clauses had been watered down. But lawyers representing some big global companies complained that the new law still imposed a heavy burden.

“It will be more difficult to run a company here,” said Andreas W. Lauffs, head of Baker & McKenzie’s employment law group, which represents many of America’s biggest corporations in China. ⁷²

The American Chamber of Commerce (AmCham)—the organization that led the opposition which succeeded in weakening key provisions in earlier drafts of the bill—issued a statement supporting the law’s passage. AmCham writes,

We support the law and the process by which it has been developed.

We stand firmly behind the Chinese government’s efforts to protect the rights and interests of employees through a balanced and fair Labor Contract Law for China. The new law will set standards for China’s rapidly changing labor market, and in particular address standards for labor contracts. ...⁷³

As we have previously stated, consistent enforcement of the labor laws will be crucial to solving many of the labor practice problems in China.”

The European Union Chamber of Commerce also issued a statement of support.

The European Chamber welcomes the fact that many of the articles presented in this law stem from labour laws in Europe. There is no doubt that the passing of the law and its strict implementation will drastically improve the working conditions in China.... ⁷⁴

⁷² Joseph Kahn and David Barboza, “China Passes Sweeping Labor Law,” June 30, 2007 <http://query.nytimes.com/gst/fullpage.html?res=9E04E4D8173EF933A05755C0A9619C8B63>

⁷³ “Response to China’s New Labor Contract Law,” American Chamber of Commerce in Shanghai, July 4 2007 NR/rdonlyres/14CDC976-019E-483A-9A05-6A7B27DF4E41/4492/AmChamShResponsetoLCLJuly2007.pdf

⁷⁴ “The European Chamber of Commerce in China Welcomes the Promulgation of the Labour Contract Law,” European Chamber of Commerce, July 1, 2007 <http://www.european-chamber.com.cn/events/news.php?id=398>

After the comprehensive drafting process, the European Chamber is not concerned about the effect of the law on European investment in China.

In private, many US companies have a somewhat different view of the law's effects.

A poll of 435 businesses in China released in the spring of 2007, after the basic provisions of the new law were known, by Baker & McKenzie, a big corporate law firm, and Hewitt Associates, a corporate consultancy, revealed that more than half of all respondents thought that law would have a “negative” or “very negative impact” on their operations in China.⁷⁵

This antagonism toward the law by foreign corporations squares with conversations that we at GLS have had about corporate attitudes with knowledgeable people in China.

VII. Labor and Human Rights Groups Worldwide Fight for Rights of Chinese Workers

The complicity of U.S. and other global corporations in fighting against rights for Chinese workers became a cause célèbre for labor organizations around the world. A leading role in this process has been taken by the International Textile, Garment, and Leather Workers Federation (ITGLWF). It issued a statement entitled “Multinationals Accused of Hypocrisy over China Labour Law Reform,” demanding that EU and US corporations halt their lobby campaigns against the modest improvements embodied in the new law.⁷⁶ Neil Kearney, General Secretary of the ITGLWF, approached numerous apparel and footwear employers to request that they “distance themselves from the position of their industry associations.” Corporations soon responded publically. For example, according to the Federation, Nike “repudiated” AmCham’s position on the Chinese labor law.⁷⁷

The ITGLWF further asked Nike to demand that AmCham “withdraw the representation that it has made to the Chinese government, on the grounds that the submission does not appear to have been the subject of a proper consultation process and does not reflect the views of one of AmCham’s key members.”

The European Trade Union Confederation [ETUC] played a primary role in forcing the E.U. Chamber of Commerce to “clarify” its position after its aggressive lobby

⁷⁵ “China’s Labor Contract Law and Implications for Workforce Management, Draft 2,” Hewitt Global Report
MetaBasicCMAssetCache/Assets/Legislative%20Updates/HGR_China_Labor_Contract_Law_Draft_II.pdf

⁷⁶ <http://www.itglwf.org/DisplayDocument.aspx?idarticle=15186&langue=2>

⁷⁷ ITGLWF press release, op. cit.

campaign against the new labor law was exposed. After the Chamber's initial actions, John Monks, General Secretary of the ETUC, demanded that,

European companies should behave outside Europe as they are supposed to do inside. They should certainly not act to drive standards down. I must say that recent reports that European companies in China may reconsider new investment or continuing their activities in response to proposals to improve labour laws give us food for thought to say the least. I think it urgent that we reach some understanding about what is acceptable behavior and propose that we have a proper discussion about this. ⁷⁸

In June 2006 the ETUC brought the issue to the attention of the European Commission, condemning the “disgraceful occurrences” of “threats by the European Chambers of Commerce in Beijing to reconsider new investment or continuing their activities in China in response to proposals to improve labor laws.” ⁷⁹ In response the Commission raised the unions' concerns with the European Chamber, and soon afterward on December 8th, 2006, the Chamber reversed its position in a public statement recognizing the “serious need to improve working conditions in China” and saying the Chamber “stands firmly behind the Chinese government's efforts to improve working conditions.” ⁸⁰

Other unions and their officials, including the AFL-CIO, European Metal Workers and the Dutch Federation of Trade Unions, soon issued press releases, exposed E.U. and U.S. Chambers' efforts on their blogs, and used a host of other campaign techniques to draw attention to the issue. ⁸¹ The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) called for action by unions throughout Europe, and offered concrete opportunities for unions to block the EU Chambers' lobby efforts:

EU-based corporations are now lobbying the government of China to kill minimum standards which have, for the most part, long been established in European law, beginning with the right to an employment contract...

⁷⁸ See ETUC General Secretary John Monks statement, “Europe Trade and Investment with China: Challenges and Choices,” at www.etcu.org/a/2612

⁷⁹ “Response to Public Consultation of the European Commission by the European Trade Union Confederation,” at www.etuc.org/IMG/pdf/China_Consultation_150606rev.pdf

⁸⁰ EU Chamber statement available at:

<http://www.eurochamber.com.cn/events/news.php?id=286>

⁸¹ See for example: <http://blog.aficio.org/2006/11/12/democrats-call-on-bush-to-support-china%E2%80%99s-draft-labor-law/>

Unions worldwide have a vital interest in defeating this corporate offensive...US unions have sounded the alarm. Unions in Europe should similarly work on exposing the lobbying activities of EU-based transnationals, and push for political action at national and EU-level. Politicians—and in particular those in trade and industry ministries—should be publicly challenged to reconcile this sordid lobbying for the maintenance of sweatshop conditions with their ideological claims for the civilizing mission of liberalized trade and investment flows. ⁸²

Recent statements from trade union officials around the globe show that the global labor movement is increasingly viewing the plight of Chinese workers to be intrinsically tied to working conditions in their own countries. According to Bruce Raynor, President of UNITE-HERE,

*China plays a key role in setting wages and working conditions around the world. Improving conditions for Chinese workers matters to workers everywhere. A major way to stop the global race to the bottom in wages and labor standards is to support efforts to raise wages in China.*⁸³

It is also becoming clear to many in the labor movement that global corporations, not just governments, are driving standards down to the lowest common denominator. As Julius Roe, the President of the Australian Manufacturers Workers Union and one of the most prominent labor voices in the fair trade vs. free trade debate, explained this unholy alliance: *“The exploitation of workers in China is driven by the profit interests of the multi-national companies and by the Chinese Government's desire to maximize foreign investment and economic growth, especially in the export sector.”* ⁸⁴

Corporations and the media have frequently characterized labor unions as dinosaurs that only know how to say “no.” These new initiatives from the global labor movement represent a step toward a constructive China policy that can ally workers both inside and outside of China, all of whom have an interest in stopping the race to the bottom.

Many human rights groups and other NGOs have also been involved in the fight to protect worker rights in China. The Business and Human Rights Resource Centre, chaired by former UN Human Rights Commissioner Mary Robinson and affiliated

⁸² “China and Global Sweatshop Lobby” posted December 18, 2006. Available at: http://www.iuf.org/cgi-bin/editorials/db.cgi?db=default&uid=default&ID=505&view_records=1&ww=1&en=1

⁸³February 23, 2007 interview with GLS staff.

⁸⁴ February 16, 2007 interview with GLS staff.

with Amnesty International, asked leading companies about their role in opposing the law, then posted their responses on its website. As Chris Avery, Director, and Gregory Regainon, Senior Researcher for the Centre explain:

Respect for labor rights is a core aspect of companies' human rights obligations. Companies' position on labor rights issues, including on labor law reform in countries such as China, are a major part of their human rights impacts, as are the lobbying activities of companies' associations . . . Raising concerns about companies' and business associations' lobbying on the draft Chinese labor reform . . . has led to a closer examination of their positions and how they relate to the companies' stated human rights commitments.⁸⁵

Labor's new opening to China

The furor over corporate opposition to labor laws in China has had important ripple effects on the US and global labor movement.

A 10-day trip in May, 2007, by a high profile delegation from Change to Win (CtW), and a recent letter on China's proposed draft labor law from the General Secretary of the International Trade Union Confederation (ITUC) to China's President spotlight new approaches by the world's trade unions as they grapple with how to deal with China's emergence as a global economic powerhouse—and how to promote labor rights for Chinese workers.

The Change to Win delegation, which included Teamster President James Hoffa, SEIU President Andy Stern, United FarmWorkers President Arturo Rodriguez, CtW Chair Anna Burger, and CtW Executive Director Greg Tarpinian, met with Chinese government officials, executives from US based companies doing business in China, and significantly, with officials from the All China Federation of Trade Unions (ACFTU), the government controlled union federation to which all Chinese unions must belong.

The trip broke a decades' long boycott of the ACFTU maintained by US unions, and many other unions around the world, and attracted considerable media attention. So far there has been little direct comment on the trip from the AFL-CIO or other national or global labor organizations.

According to CtW Executive Director Greg Tarpinian:

⁸⁵ Email from Gregory Regainon, February 20, 2007

Corporate America has been [in China] for decades, or at least 15-20 years, and we've been behind the curve. Engagement is not acceptance, engagement is not endorsement. We're not joining the ACFTU nor are they joining us... We have to engage, we have no choice.”⁸⁶

The meetings resulted in an agreement to exchange visits, to share information and strategies, and to work together to confront US and other foreign based corporations doing business in China, although CtW Chair Anna Burger would not characterize the agreement as “formal.” A delegation from the ACFTU toured the US in late November and December of 2007.

Citing the massive job loss in US manufacturing, Teamster President Hoffa said in China,

Who do we blame for that? We blame American industries...Ford Motor, General Electric, people that are here. You can't blame the Chinese government for that. I blame, you know, the Fortune 500 that wants to make money be moving here and laying off Americans and I think that's terribly wrong.”⁸⁷

Another approach to China from the global labor movement came in a letter to Hu Jintao, China's President, from Guy Ryder General Secretary of the International Trade Union Confederation (ITUC), the newly expanded international organization of labor federations, formerly known as the International Confederation of Free Trade Unions.⁸⁸ (Change to Win is not a member.) The ITUC does not have any formal relations with the ACFTU, which it does not consider a legitimate independent union federation, but the tone of the letter shows a certain degree of engagement.

The letter sent in late May 2007 offers support for the new draft labor law but focuses on lack of any provision in the law for freedom of association or the right to organize unions.

We note with concern that many workers, especially rural migrants, remain unprotected by a written contract and that many, despite having contracts, are working long hours in excess of national legislation and in conditions which break both Chinese and international occupational health and safety regulations. We also note the by-products of the rapid economic changes which include mass lay-offs

⁸⁶ “US Labor Leaders Bring Bargaining Tips to Rival Chinese Workers,” International Herald Tribune, May 21, 2007 <http://www.iht.com/articles/ap/2007/05/21/asia/AS-GEN-China-US-Labor.php>

⁸⁷ Ibid.

⁸⁸ “Proposed New Draft Contract Law Fails to Guarantee Fundamental Rights: Letter From the ITUC to President Hu Jintao,” ITUC, available at: <http://ihlo.org/IS/250507.html>

from state owned industries and the discriminatory practice of female workers being laid off first---and being rehired last. We very much hope this law will help ameliorate some of the issues.

We believe that the new law currently under discussion attempts to address some of the most crucial failings of current labour legislation... We also observe that the draft law, although the revised version is somewhat reduced, could help bolster the extent and practice of collective consultation for ordinary workers....

However the ITUC also wishes to express its concern that no mention of the right of workers to form and join independent trade unions has yet been raised in current and forthcoming Chinese legislation and legislative discussion. While we are aware that there has been some public discussion over the draft law, we remain concerned that there remains little effective tripartite consultation over such issues. This is no doubt because of a lack of freedom of association and of a balanced and effective collective bargaining system.

The Chinese government has not ratified either of the two fundamental ILO Conventions on freedom of association and on the right to organize and to bargain collectively (ILO Conventions No. 87 and No. 98). ...

... While advances appear to have been made toward revision, refinement, and improvements of many other aspects in the legislation governing workers' lives and their livelihood, we believe that without determined movement toward freedom of association there can ultimately be no real progress.”⁸⁹

What are we to make of the two approaches signified by the trip and the letter? Those who advocate working more closely with the ACFTU hope that it is evolving into a more aggressive union capable of addressing some of the worst abuses of the raw capitalism that has emerged in China. According to Change to Win's Anna Burger *“[the ACFTU] demonstrated to us that they have a sincere commitment to representing the workers of China and making sure that prosperity is shared in this country.”*⁹⁰

Those labor rights activists inside and outside of China who favor increased engagement with the ACFTU argue that it must be the starting point for efforts to develop a workers movement in China. They argue that attempts to establish

⁸⁹ Ibid,

⁹⁰ Tim Johnson, US unions woo Chinese Labor Group, McClatchy Newspapers, May 23, 2007 <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20070523/NEWS/705230374/1018/OPINION>

independent unions are bound to fail for at least two reasons. First, because Chinese state repression is very effective. The government tolerates local strikes and civil disturbances but ruthlessly suppresses any effort to link workplace struggles or to create organizations which could rival the Communist Party or state sponsored groups.

Second, the majority of workers are newcomers from the country-side with little experience in industrial organization. They are only beginning to develop the kind of collective awareness needed to develop independent unions and organizations. Absent vigorous civil society organizations where workers could learn needed organizational skills, an invigorated ACFTU could serve as a school for collective action. Indeed, some argue, the Chinese state may have an interest in a more assertive ACFTU, both as a way to smooth out the worst aspects of its sweat shop sector, and preserve social stability and to deflect some attention away from the government's failure to protect worker rights. Of course, whether or to what degree the ACFTU can be transformed is an open question—the experience of a number of countries shows that transformation from state or employer controlled unions is highly unpredictable.

Other, equally well informed labor rights advocates inside and outside of China insist that the ACFTU is simply a tool of the Chinese state with little concern for workers' interests or in taking meaningful action against employers. Indeed, they argue, the stated aim of the ACFTU is to build “harmonious” relations with employers. The union does not engage in strikes or advocate for the right to strike; its leaders are hand-picked and are often company managers rather than workers. The ACFTU, according to many activists on the ground in China, is often either invisible in the workplace or unpopular with workers, who tend to view it as part of the repressive apparatus of management in the workplace. Working with the ACFTU serves only to legitimate it, according to these critics. After all, they say, some European and Japanese trade unions have been “engaged” with the ACFTU for almost a decade with little to show for their efforts. The better course, they argue, is to invest resources in the small but growing contingent of independent grassroots workplace and community based groups advocating for worker rights.

We think there may be value in many different approaches to China by the world's labor movements. The CtW trip may very well have opened up an important avenue to reach out to, and work with, progressive elements in a rapidly changing union. Engagement, as Greg Tarpinian points out, is not endorsement. But because those who are developing new relationships with the ACFTU run the risk of granting legitimacy to a state controlled union with a history of promoting the employers

interest more than that of workers, they have the added obligation of using whatever new leverage they might have to vigorously promote the rights to freedom of association, to reform the existing unions or form new unions, and to strike. These are rights that workers all over the world have fought for over the past 150 years. And even if they are under attack everywhere they must remain at the center of trade union struggles. In addition, the international labor movement must also back up its support for labor rights by working with grassroots organizations in China.

At the same time the ITUC and other labor organizations might step up their activity in China by seeking out progressive elements within the ACFTU and offering some concrete support.

One thing that CtW officials, the ITUC, and most independent labor rights advocates are in strong agreement on is support for concrete struggles such as the fight against international capital's effort to limit Chinese workers' rights undermining China's draft labor law.

VIII.Looking Ahead

As the implementation date for the new law approached, new controversies about corporate attempts to evade the new law filled the Chinese press and set off a national debate. How that debate unfolds and is resolved will to a large extent determine the future of labor rights in China in the foreseeable future.

Does law matter? After all, China has had labor laws on its books for over a decade. They have largely gone unenforced. Many expect the new Labor Contract Law to fall victim to the same fate. But there are some indications that forces have been set in motion that may lead to enforcement and to genuine improvements in labor rights for Chinese workers.

In the interim period between the law's passage on June 29th, 2007 and its effective date on January 1, 2008 employers were forced to bring personnel policies into compliance. Among its provisions, the new law requires a written contract for each employee; encourages open ended contracts rather than fixed term agreements; makes dismissals more difficult; automatically grants open-ended contracts to workers with 10 years of service; and requires that many company policies and procedures be negotiated with employee representatives.

Corporations are looking after their own interests: as 2008 neared, law firms and HR consultants were hard at work giving advice and holding seminars on how to best deal with the new law and HR staffs were drafting new contracts and policies.

For workers it was a different story. At a meeting here in the US in late October 2007 a visiting Chinese scholar called the situation “a-symmetrical.” Citing the example of one firm that has laid off workers to avoid provisions of the new law he asked, “Who is looking out for the interests of the employees?” It is a good question. Against the power of the employers, workers have seem to have been largely left to their own devices.

Reports abound that many companies are taking evasive action to avoid the law’s impact. In October, 2007 a story broke in the press that received a great deal of attention in China. It involved efforts by the huge Chinese telecommunications company Huawei—which has joint ventures, partnerships, or other legal ties with IBM, Siemens, Motorola, Microsoft, Sun Microsystems, and HP among many others—to evade the impending law. According to the China Daily, the English language newspaper published in China,

“More than 7,000 loyal employees of Huawei, China’s largest private telecom gear maker based in the southern city of Shenzhen, have quit in exchange for the chance to work for the company again.

The mass resignation triggered by the company management started... [in September]. Many legal experts believe it was an irresponsible decision to exploit a legal loophole before the Labor Contract Law takes effect on January 1 next year....

Huawei employees who have been serving the company for at least eight years.... will soon sign new contracts, lasting one to three years, but may have to leave when they expire.”⁹¹

But the Chinese owned Huawei is but one of many companies that have been exposed in the Chinese media. Wal-Mart, for one, has been charged with a similar move. According to the independent Asia Sentinel:

“Dong Yu Guo, Public Relations director of Wal-Mart China, told the Jing Hua Times newspaper that the reshuffle of its employees is not aimed at the new labor contract law. Dong noted that Wal-Mart China has two business areas[:] procurement for its worldwide operations and stores for the local market. Yu said

⁹¹ Chen Hong, “Thousands of Huawei Staff ‘Quit’,” China Daily, November 3, 2007 http://www.chinadaily.com.cn/bizchina/2007-11/03/content_6228248.htm

the staff reduction is not going to affect its nearly 100 department stores and Sam's Clubs, and that more hiring beyond the current 44,000 employees in the retail division is expected.

However, on October 22, the Global Procurement Center for Wal-Mart announced in an internal meeting that more than 100 employees had been laid off, including 40 in Shanghai and 60 in Shenzhen. A woman who works in the Shenzhen center, who asked not to be named, said she has been working there for four years and was laid off last month. She was told she would receive three months salary plus some additional compensation. She said she expected to be off for one to two months before returning to the company.”⁹²

In response to the furor that followed the press reports, Huawei backed off its plan. Instead it reached a deal with the local ACFTU to resolve the dispute. Of course, given the pro-employer record of the ACFTU one has to be very skeptical of any deals that it negotiates, but according to press reports the Huawei accord includes the following:

-- The company needed to create a welfare system to guarantee the workers' benefits and rights and in return, the trade unions supported the company's reform and innovation to unite the workers for the company's future development.

-- The company needed to abide by the law, and to solicit workers' opinions and negotiate with trade unions while making regulations related to workers' rights and benefits.

-- The company needed to consult with the workers on an equal basis while making contracts for workers' pay, workings hours, vacations, work safety and insurance.”⁹³

There have some violent incidents that may or may not be directly related to the impending law, but which demonstrate the tensions present in China's industrial landscape. One involved an attack in November, 2007 by company thugs on Huang Qingnan, a labor rights activist employed in a worker center in Shenzhen. The worker center was also trashed in the attack. The incident has been widely

⁹² Catherine Jiang, "Employers may find China's tough new labor law hard to evade," *Asia Sentinel*, November 12, 2007

http://asiasentinel.com/index.php?option=com_content&task=view&id=868&Itemid=32

⁹³ "ACFTU: Huawei agrees to suspend controversial employment scheme after union talks," *China View*, November 10, 2007 http://news.xinhuanet.com/english/2007-11/10/content_7047070.htm

publicized. A report in the *Wall Street Journal* makes a connection between the attack and what is happening more broadly in the labor rights battle:

...The 34-year-old activist is hospitalized with severe injuries and could lose a leg because of infection, according to friends who visited him. Shenzhen police said they are investigating.

"If justice is not done for this case, it will give a misleading message to the attackers, and more labor groups and their staff would be harmed," a consortium of Hong Kong labor groups said in a statement Monday. The consortium includes Workers' Empowerment, Labor Action China, Asia Monitor Resources Centre, Globalization Monitor, and Students and Scholars Against Corporate Misbehavior.

The organizations are appealing to Chinese authorities to help reopen Mr. Huang's worker center, provide him with proper medical treatment and improve the protection of civic groups. Mr. Huang's organization has been in operation for about four years. Its staff of five has offered counseling, including advising laid-off workers on how to seek fair compensation from employers.

Such advice appears to be in heavier demand in recent months following increasing reports of layoffs at small factories in southern China, said Dominique Muller, Hong Kong spokeswoman for the Brussels-based International Trade Union Confederation. Labor analysts say they believe employers are laying off workers now in anticipation of the stricter new laws. Early this month, Chinese telecommunications-network equipment maker Huawei Technologies Co., asked employees who had worked for eight consecutive years to reapply for their positions, according to state news agency Xinhua. The plan sparked controversy, and Xinhua said Huawei later agreed to suspend it after discussions with China's umbrella trade group, the All China Federation of Trade Unions.⁹⁴

But the controversy surrounding highly publicized cases like Huawei may be good news for a number of reasons.

First, while some companies are worried about the law and are conducting covert campaigns to circumvent its impact, the government and the ACFTU seem serious about its implementation. This could be a step in the direction of establishing the rule of law in China. The ACFTU issued a statement in December, 2007 in which it

⁹⁴ Mei Fong, "Protest Spotlight China Labor Tension," *Wall St Journal*, November 28, 2007 http://www.europe-solidaire.org/spip.php?page=article_impr&id_article=8419

“.....pledged to work closely with authorities to issue a detailed regulation on the Labor Contract Law as soon as possible, to assist its application starting January 1.

"We'll actively promote and participate in the legislation and relevant legal interpretations to make the law more applicable, especially by making suggestions on some hotly debated issues," Liu Jichen, head of the legal affairs department of the All China Federation of Trade Unions, said at a press briefing.

Liu did not elaborate or disclose a timetable, but the Outlook Weekly, a magazine under the official Xinhua News Agency, reported on Monday that an implementation regulation of the Labor Contract Law was expected by the end of the year. It also reported that a judiciary interpretation, drafted by the Supreme People's Court, would also be adopted soon to regulate loophole jumping.⁹⁵

Second, what happens at big companies like Huawei could have a ripple effect, at least in some industrial sectors, by setting the tone for what happens at smaller firms. For instance, one HR official at a smaller IT company, quoted by China.org, an official on-line news and information service, says, “I have paid great attention to Huawei’s ‘voluntary resignation scheme’ since the beginning...I want to know how relative departments will deal with...problems so we can use [it] as a reference in the future.”⁹⁶ This kind of pattern setting is extremely important in an economy where hundreds of thousands of small to medium sized supplier firms employ tens of millions of Chinese workers who actually produce a significant portion of China’s goods and services. Huawei’s retreat could be a warning to others wishing to avoid the law.

Third, the agreement reached at Huawei looks a lot like a conventional collective bargaining agreement. Of course, whether and what kind of bargaining actually takes place will depend in part on the actions of the ACFTU which, to date, has generally worked in close collaboration with management—indeed, is often staffed by managers. The ACFTU could become an agency to help impose the new law in China’s workplaces and economy, or it could continue to be just a vehicle for quieting down worker upheavals. Finally, the Labor Contract Law may function like the National Labor Relations Act did when it was enacted in the US 70 years ago, defining rights that employers try to ignore, evade, or repress—thereby creating the conditions in which workers demand implementation of the rights that

⁹⁵ Zhu Zhe, “Union to help refine labor law application,” *China Daily*, December 6, 2007
http://www.chinadaily.com.cn/china/2007-12/06/content_6301602.htm

⁹⁶ Xang Xi, “Huawei Staff Shakeup Sparks Public Debate,” *China.org.cn*, November 12, 2007
<http://www.china.org.cn/english/government/231649.htm>

they have been told they possess. We may be witnessing an early skirmish in that battle.

In the years before the passage of the National Labor Relations Act—which granted workers a legally enforceable right to organize and strike—there was a massive upsurge of working class activity, including three general strikes in 1934 alone.

Largely in response to this upsurge, in 1935 the Federal government passed the National Labor Relations Act [NLRA] hoping to legalize the labor movement and divert it into more moderate channels. American workers did not get their rights by waiting for the government to provide them; rather, they began asserting rights they believe they were entitled to, and thereby forced the Congress and the courts to acquiesce.

Could this be happening in China today? Time will tell.

The debate outside of China

China's impact on the global economy is so great that workers in the rest of the world have a right and a duty to argue, cajole and fight for the adoption of internationally recognized labor rights in China—rights workers around the world fought for elsewhere in a century of struggle. Each industrialized nation has found its own path—none perfect—toward guaranteeing basic rights for workers, and China must be encouraged to do the same.

Much of the U.S. discussion about China and globalization has been trapped in a century-old debate between “free trade” and “protectionism.” But this way of defining the issue is deeply flawed. “Free trade” is a prescription for allowing huge global corporations to dominate the global economy and pit workers and communities against each other for scarce jobs. Classical economic “protectionism” is rarely effective in a global economy that has become increasingly integrated and complex.

A growing sector of the labor movement and its allies are trying to develop an alternative to this simplistic “free trade vs. protectionism” debate. AFL-CIO president John Sweeney wrote in the Financial Times, “The trade debate has changed dramatically in the past couple of decades, but many editorial writers and

academic economists remain mired in the outdated debate about free trade versus protectionism.”⁹⁷

At the same time the hollow promises made by the promoters of corporate-led globalization are being questioned around the world. As Julius Roe, the President of the Australian Manufacturers Workers Union, recently told GLS,

*The rhetoric of the US Government about “human rights” is phony given that the most dramatic abuse of human rights is the abuse of the basic rights of workers in China—extreme long hours, underpayment and late payment of wages, appalling health and safety and suppression of strikes. The US Government is not seriously interested in improvement of workers rights in the US or anywhere else in the world and their silence on the question of the new Chinese labor laws demonstrates this.*⁹⁸

Rather than supporting the modest efforts of the Chinese government to make labor markets less like the “Wild West,” U.S. and European corporations have aggressively demanded a reduced role for trade unions, weaker protections for contingent workers, more stringent non-compete agreements, and other restrictions on worker rights. These demands all too closely echo those they have made to policymakers throughout the world. Several of the concessions the corporations and their lobbyists pushed for during the debate on the new draft labor contract law have already proven devastating to workers in other countries, including the United States. And these global forces have promised to continue to pressure the PRC to further reduce protections for Chinese workers.

Meanwhile, organized labor and pro-worker allies in the human rights movement, civil society, and government have begun to reframe the “trade debate” in terms of global corporations’ role in suppressing the right of workers everywhere—especially in China. By putting the role of U.S. corporations front and center, labor and its allies are exonerating themselves from charges xenophobia and chauvinistic “China bashing.”

The labor movement has begun to express its traditional identification with and support of the common interests of workers and oppressed groups worldwide. Such a focus makes it possible for U.S. labor to visibly act in the interest of its members and of workers everywhere by challenging the behavior of corporations whose headquarters are as near at hand as New York, Atlanta, Chicago, and Los Angeles.

⁹⁷ John Sweeney, “Fairer Trade Does Not Mean an End to Free Trade,” *Financial Times*, November 28

⁹⁸ February 16, 2007 interview with GLS.

As China's draft labor contract law was being revised, Professor Liu Cheng, an architect of the law, warned in an interview that support within China was not enough "if there is no support from labor supporters outside China."

"Some National People's Party Congress representatives are influenced by the employer lobby. Although the principles of the amendments are secure, there may be concessions on the details, so we call for help." ⁹⁹

Liu Cheng sought support by travelling abroad:

"I found it necessary to get support from outside China, to counter the foreign corporations lobby, otherwise there may have been something worse for the Chinese workers. So I made USA visits explaining to the NGO anti-sweatshop lobby, unions and Congress the debates. I argued with four lawyers from the American Chamber of Commerce, but did not convince them.

I received good responses from European unions and NGOs who made contact with National People's Congress delegates to support the changes. I interviewed some European government leaders, some employer organisations and spoke to about 50 foreign journalists at a press club. European employers now support the new Employment Contract laws...so although the end represents compromise, with some details in the protections for workers and the union role curtailed, it is a victory." ¹⁰⁰

One thing is certain: the battle is only beginning. Influential Chinese activists, lawyers, and intellectuals in China are calling for still further rights. Professor Chang Kai, a distinguished labor law scholar based at Renmin University and a drafter of the Labor Contract Law, argues that labor standards should be regarded as a system. Such matters as wages, job security, social security levels, occupational health and safety and job training, and particularly collective labor rights such as the right to strike, should be included.

A new law on mediation and arbitration of labor disputes was adopted by the National People's Congress on December 29, 2007. Since Chinese workers lack the right to strike, arbitration has been one of the few institutional ways for workers to address grievances with their employers. But the current system is failing, triggering an increasing number of worker protests and social unrest. The proposed new law streamlines the arbitration and mediation procedure by:

⁹⁹ March 2007 interview with GLS.

¹⁰⁰ Ibid.

- Ensuring that workers can petition courts for cancellation of unfair arbitration judgments or parties' failure to comply;
- Extending the deadline for initiating arbitration from 60 days to six months from the day the parties know or should have known of the harm;
- Mandating that if an arbitration court fails to deliver a verdict within 45 days workers may file a lawsuit in people's court;
- Granting workers the right to petition the court to take enforcement measures if employers refuse to comply with mediation agreements on wages, benefits or work injuries (although this right appears to be severely limited by the fact that if the employer answers the charge in writing, the enforcement order abates).

At the same time some Chinese labor scholars are far from pleased with the initial draft and are now pushing for major revisions.

The law in its current form has a major flaw in that it is silent on the most important kind of Chinese labor arbitration disputes. According to Professor Chang Kai: "The current law is drafted for solving the labor disputes of individual workers rather than those involving a group of workers. But in reality, a lot of labor disputes concern a group of workers."¹⁰¹

Recent studies show that group labor disputes have been on the rise and now represent roughly 60% of all workers involved in disputes. Professor Chang argues that the new law needs to be grounded in China's existing realities by elevating the importance of group labor disputes: *"If the law remains focused on solving individual labor disputes, in 10 years we will have many problems that cannot be solved under the current legal system."*¹⁰²

Still, coming on the heels of the new Labor Contract Law, this law may indicate that momentum continues to build for labor rights reforms.

Another new law, currently in the early stages of being drafted according to scholars interviewed by GLS, would allow free elections of local trade union officials. Passage of such a law could help transform labor relations in China by giving workers voice at the workplace and venue to learn the tools and techniques of

¹⁰¹ Feng Jinhua "Workforce Watches Labor Law," Beijing Review, September 22, 2007 http://www.bjreview.com.cn/nation/txt/2007-09/20/content_77270_2.htm

¹⁰² Ibid.

democratic trade unionism. More broadly, such a law could help advance demands for democratic decision making in the society at large.

The role of non-Chinese unions and activists

How can non-Chinese organizations and activists help advance the cause of worker rights in China?

- Begin with a focus on foreign corporations' compliance with the new contract labor law. Given the public controversy over corporate opposition to the law, trade unions, worker rights advocates, and political figures around the world can insist that foreign companies and their suppliers prove their compliance and respect for their employees' rights under the new law. They should demand that foreign corporations take the following three steps to prove compliance:
 1. Make public the templates of the contracts that they are offering to their employees to comply with the new law.
 2. Make public copies of company policies and procedures handbooks required under the new law with a description of how they were written.
 3. Make public any instructions that they have issued to their suppliers and the measures that they are taking to insure compliance by their suppliers.

Foreign companies and their business associations regularly insist that they are law abiding and committed to promoting strong labor rights and legal standards in China. By making key documents public they can demonstrate that commitment, on paper at least.

- Labor rights supporters should demand that governments in countries around the world take steps to insure that multinational companies headquartered in their jurisdictions comply fully with both the letter and spirit of China's Labor Contract Law. Such pressure by unions and labor rights activists not only builds support for new rights, but creates a practical bond of solidarity with Chinese workers.
- Labor and its allies should demand transparency from global corporations doing business in China. US based and other foreign corporations must

reveal their supplier chains and other details of their business practices in China. The secrecy with which corporations act in China is at odds with the transparency needed for the rule of law and social accountability. If labor laws, product safety standards, and environmental regulations are to be enforced, public access to a wide range of information is required.

- Global corporations should immediately disassociate themselves from lobbying efforts to block new laws. Those that do not should be publicly identified and condemned.
- Global corporations should publicly pledge that they and their subsidiaries and suppliers will fully obey the new labor contract law.
- Politicians should condemn the corporate opposition to expanded labor rights and act to put legislatures on record in favor of the expanded rights.
- Political organizations, trade unions, and civil society groups should investigate other international venues for action, such as charging corporations with violations of OECD guidelines when they lobby against new labor rights. Article IV of the OECD Guidelines for Multinational Enterprises states that multinational employers should “observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.” The OECD Guidelines also enjoin employers to abstain from “improper involvement in local political activities.”
- International trade unions and labor oriented NGOs should offer their technical assistance and support to the ACFTU to help monitor its implementation of the new law, thus drawing on international labor experience while recognizing the unique characteristics of the Chinese labor scene.

Workers, unions, and their allies worldwide have a vital interest in ensuring that the new law is interpreted, implemented, and enforced in as broad a manner as possible . And they have a vital interest in expanding rights for Chinese workers to include freedom of association, the right to independent trade unions, and the right to strike. A full range of core labor rights for Chinese workers is essential to halt and reverse the race to the bottom in the global economy.

IX. About Global Labor Strategies

Global Labor Strategies is a non-profit resource center providing research and analysis on globalization, trade and labor issues. GLS staff have assisted numerous unions, government officials, and NGOs in developing the strategies and research needed to function effectively in the global economy. These organizations range from trade unions to civil society groups, spanning North America, Asia, Europe and Latin America.

GLS staff have published many previous reports on a wide array of issues, including *Outsource This! American Workers, the Jobs Deficit, and the Fair Globalization Solution*; *Contingent Workers Fight for Fairness*; and *Fight Where You Stand!: Why Globalization Matters in Your Community and Workplace*. They have also written and produced the Emmy-nominated PBS documentary, *Global village or Global Pillage?*

GLS runs the Global Labor Blog which is regularly read by journalists, academics and union officials around the world. GLS has offices in New York, Boston, and Montevideo, Uruguay.

For more on GLS visit: <http://laborstrategies.blogs.com>

To contact GLS email: info@laborstrategies.org

GLS STAFF

Tim Costello has over 40 years of work and union experience. He helped organize and served (until July 2005) as Coordinator of the North American Alliance for Fair Employment a network of 65 unions and community based organizations in the US and Canada. Costello was a truck driver and workplace activist for many years; following that, he worked on the staff of SEIU in Boston. He has extensive collective bargaining experience in a many of industries. He has co-authored 4 books and written scores of articles on labor and globalization.

Brendan Smith is a legal expert (J.D. Cornell University Law School) specializing in national and international labor law and policy. Besides his work at GLS, he is currently co-director of the UCLA Law School Globalization and Labor Standards Project. He has worked previously as a senior legislative aide for Congressman Bernie Sanders and staffed the Subcommittee on Domestic and International Monetary Policy, where he organized a series of hearings and legislative efforts on the Asian financial crisis. Smith has also consulted for the AFL-CIO Solidarity

Center, International Labor Rights Fund and Service Employees International Union, as well worked and traveled extensively throughout Asia, including China.

Jeremy Brecher is a leading labor historian, writer, and documentary script writer best known for the labor history *Strike!*. For more than two decades Brecher and Costello have studied and written about labor and globalization, writing such well-known books as *Building Bridges: The emerging Grassroots Coalition of Labor and Community* and *Global Village or Global Pillage?*. For the past 8 years they have been joined by Brendan Smith, who collaborated with them on the book *Globalization from Below: The Power of Solidarity*. Their Emmy-nominated documentary *Global Village or Global Pillage?* has been used by unions and other groups in the US and throughout the world to present an international grassroots response to globalization.

Claudia Torrelli is an international trade activist specializing in Latin American trade and economic relations with the Europe and the world. Besides her work with GLS she is on the staff of REDES (Friends of the Earth, Uruguay). She is also an activist in the Hemispheric Social Alliance, a Pan-American network of civil society and labor organizations, and works with the Netherlands based Transnational Institute's Alternative Regionalism Program. She holds a degree in International Relations from the University of Montevideo.