

Labour law and worker protection in emerging countries

➤ APPENDIX 2 - CHINA

The Chinese labour market and its regulations are characterised by a very fast shift from a guaranteed lifetime employment model towards a “market socialism” that leads to the set-up of new institutions but also to the rise of unemployment. The first step of liberalization gave priority to job creation, at the cost of an unfavourable flexibility for labour conditions and workers’ protection. The second step starting in the mid 2000 tends to strengthen the various forms of employment and to extend the employees’ social protection. After twenty-five years of a double-digit growth rate (a 10% annual average growth rate since 1995), China can now focus on redistributing the benefits of growth to the whole population. Chinese economy relies more on domestic consumption to reduce its external dependence; it also must halt the rise in inequalities and in the emerging social unrests, with a demography hit by a lower increase in the active population.

The aim of the labour market reforms has been to gradually unify the labour market regulation, reducing thus *de jure* and *de facto* segmentations across workers; it has also aimed at increasing replacement incomes (unemployment insurance, minimum wage, disability benefits) in order to provide a decent income, to protect against precariousness and to widen the number of recipients. Despite those efforts, unequal access to labour protection remains strong among workers, mainly for migrant workers; a thorough extension of social protection still faces deep problems to tackle, such as administrative difficulties, reluctance of employers, a weak social dialogue, and the influence of local authorities.■

🔗 LABOUR LAW AND THE LABOUR MARKET: THE TRANSITION FROM AN ADMINISTERED ECONOMY, IN AN IMPERIAL GEOGRAPHIC AREA

■ From Maoism to “market socialism”: restructuring labour law and the labour market

In a span of only twenty years, China has experienced major economic and social mutations which have changed the forms of employment and introduced new labour regulations to make the transition from a planned economy to a free-market one.

As from 1978, economic liberalisation in China drastically reduced employment in public sector companies, which lost 10% of their workforce in ten years: in 2008, the public sector represented only 15% of non-agricultural jobs, down from 27% ten years earlier⁽¹⁾. At the same time, it became easier to create private companies in both urban and rural areas. Since there are now too many farmers, restrictions on migrating from rural to urban areas have been relaxed. With the end of land collectivisation and reintroduction of the market, farmers are entitled to come and work in the city (but not to become urban residents, see below) and private companies have turned mainly to migrant workers for flexible and inexpensive labour (migrant workers from the country or more deprived areas make up 40% of the workforce in Chinese cities).

Employment conditions were relaxed considerably in the 1980s and 1990s. In 1986, the fixed-term employment contract was authorised, and in 1994 mass lay-offs no longer required government approval. This brought much greater flexibility than the lifelong employment system which existed under the former planned economy. The priority was job creation (assistance in setting-up businesses), retraining redundant workers (active employment policies, maintaining some social insurance schemes for laid-off employees from public sector companies) and reducing poverty in rural areas (public works programmes). In parallel with greater flexibility in employment, social insurance schemes, which under the lifelong employment system covered all urban workers (rural workers were not as well-covered), have been limited to public sector employees. Thus, employment protection and social protection have decreased significantly during this period, which means fewer public services and less aid.

Since the mid-1990s, and especially since the early 2000s, labour market regulation has been introduced with an impressive legal framework (see box 1). After the dismantling of the communist system based on collectivisation of the land and production facilities, all labour market institutions were created *ex nihilo*. These included the employment contract, a labour dispute arbitration court, a public employment service, labour and safety inspectorates, and recognition of the right to collective bargaining. At the same time, social insurance was extended from public sector companies to all workers in the urban formal sector in 1999, then to rural migrants in 2003. In urban areas, the company-based system has gradually been replaced by an urban social security system co-financed by employers, employees and public authorities. The new Social Insurance Law enacted in 2011 extends social protection (whether job-related or not) to urban and rural residents and to companies in both the public and private sectors. It makes all citizens eligible for five forms of social protection: retirement savings, health insurance, industrial accident insurance, unemployment insurance and maternity insurance. This system should cover more than 70 million people⁽²⁾.



[1] OECD (2011), OECD Economic Studies: China.

[2] Cai F. and Wang M. (2012), “Labour Market Changes, Labour Disputes and Social Cohesion in China”, Working Paper No. 307, OECD Development Centre.

 Box 1

Laws and regulations governing the labour market

Laws:

- *The Social Insurance Law of the People's Republic of China* (promulgated on 28.10.2010, entered into force on 01.07.2011).
- *The Labour Law of the People's Republic of China* (promulgated on 05.07.1994, entered into force on 01.01.1995).
- *The Labour Contract Law of the People's Republic of China* (promulgated on 29.06.2007, entered into force on 01.01.2008).
- *The Law on Mediation and Arbitration of Labour Disputes of the People's Republic of China* (promulgated on 29.12.2007, entered into force on 01.05.2008).

Regulations:

- *The Regulations on Labour Protection for Female Workers* (promulgated on 21.07.1988 by State Council Decree No. 9 and entered into force on 01.09.1988).
- *The Regulations on Unemployment Insurance* (promulgated by State Council Decree No. 258 and entered into force on 22.01.1999).
- *The Provisional Regulations on the Collection and Payment of Social Insurance Premiums* (promulgated by State Council Decree No. 259 and entered into force on 22.01.1999).
- *The Regulations on Industrial Accident Insurance* (promulgated by State Council Decree No. 375 on 27.04.2003, amended by the State Council Decision on Amending the Regulations on Industrial Accident Insurance).
- *The Regulations on Labour and Social Security Inspection* (promulgated by State Council Decree No. 423 and entered into force on 01.12.2004).

The Chinese authorities have changed their strategy owing to several factors:

- ▶ first, demographic developments based on a foreseeable decrease in the labour force, which is expected to decline as from 2015 according to Du Yang and Wang Meiyang⁽³⁾: if a labour surplus is no longer available in rural areas, better working conditions will be required to attract and retain employees;
- ▶ second, macroeconomic conditions and the vulnerability of the Chinese model of export-led growth: stronger safety nets are needed to boost domestic growth, to limit precautionary savings and to promote consumer spending;
- ▶ microeconomic factors relating to a move in China's production towards the upmarket segment: after the initial catching-up phase, maintaining high productivity gains in industry will mean improving human capital, the only way of achieving the technological and quality levels needed to compete with higher value-added goods;
- ▶ financial environment: China can use the reserves amassed through fast growth to allocate new resources to redistribution;
- ▶ and last, political and social factors: in a context of growing inequalities (the Gini coefficient which measures income distribution is close to 0.5, compared to 0.32 in 1990⁽⁴⁾) and social protests. In this respect, if reintroducing social protection admittedly seeks to restore some equity, it is also aimed at reducing protest.

Despite this legislative framework and the authorities' ambition to gradually unify labour-related social insurance schemes, initial conditions and economic change vary so greatly from one region to another that the introduction of a national minimum wage appears unlikely, especially at a time when net lending is limited. Central government defines general rules which are then adapted in the regions. Provinces and cities have considerable scope for decision-making, including with regard to working conditions (e.g. exceptions to working hours in special economic zones). Provincial governments can set up their own regulations, which local labour judges tend to implement in preference to national legislation, even if the latter are supposed to take precedence⁽⁵⁾. The benefits paid under labour-related insurance schemes (unemployment, minimum wage, severance pay) are generally fixed according to local standards of living (local average salary and minimum income). The new Social Insurance Law has maintained these disparities. Only occupational accident insurance (see below) has been truly unified at the national level. For the other benefits, premium rates, caps

[3] Researchers at the Chinese Academy of Social Sciences, Beijing University's China Centre for Economic Research, publication pending.

[4] If the Gini coefficient is 0, distribution is completely egalitarian (i.e. each individual has the same share of the national income); if it is 1, distribution is completely inegalitarian.

[5] Cooney S. (2010), *Working Conditions Laws in an Integrating World: Regulating Time, Money and Family Life: China*, ILO.

and thresholds vary from one region to another, and municipalities have more or less the same degree of local autonomy in social insurance matters today as in the past. Social insurance premiums are still managed and collected by provincial or municipal authorities. Consequently, the unprecedented growth of coastal cities has created regional disparities in labour market regulations.

Promoting urban industrialisation is another priority, as it was in Mao's day. The State system of redistribution, which maintains the population registration system whereby people's social rights are tied to their place of residence/birthplace and to their agricultural or non-agricultural worker status - (see *hukou*, box 2), favours cities and disadvantages migrants who come to work in cities, especially those from rural areas. While social coverage for rural workers (including migrants) has been extended by various reforms, it still differs from that available to urban workers and generally offers less protection. In theory, the new Social Insurance Law recognises the portability of rights, allowing migrant workers to transfer their social benefits accounts from one region to another. In practice, however, transferability is hindered by the lack of interoperability between social agencies and local services, of which there are fewer in rural and inland areas. In this regard, China's continental size is a major challenge in terms of collecting premiums, paying benefits, and monitoring and processing files.

Since the mid-2000s, however, the balances within the country have been changing, at a pace being accelerated since the 2008 recession. Economically, the vulnerability of export-led growth and a more sophisticated Chinese economy have led authorities to focus increasingly on domestic demand, even before the Great Recession. This strategy was intensified considerably not only by the 2008 economic recovery plan, but also thanks to the 2009 rebound, in order to achieve the goal of a "more harmonious society". On a regional level, the rise in prices (housing, wages) in the wealthiest coastal areas and the return of many migrants as a result of the recession have restored greater balance among regions, with inland cities and regions (Chongqing, Chengdu, Zhengzhou, Kunming) enjoying significant growth since 2009 and benefiting from the relocation of activities formerly based along the coast. Despite the wage differential, the propensity for migrating outside one's province is lessening (a third of rural migrants are employed in their province^[6]). This has led to labour shortages in the Pearl River Delta and Guangdong Province, the most industrialized region. Socially, this new situation has given workers greater bargaining power, considerably increasing the number of labour disputes (strikes, demonstrations or lawsuits), and led them to challenge the authoritarian management of social stability, despite very strict control over labour organisations and freedom of expression.

■ A Chinese segmented labour market, from a statutory basis and geographically

The Chinese economy's transition to market socialism has produced relatively high levels of formal protection. However, due to the segmentation and fragmentation of the labour market, the greatest protection is limited to a small number of workers. Conversely, some categories of workers, such as those who have migrated from their home regions to wealthier cities, tend to suffer the most from a lack or low degree of social protection. The labour market is segmented in both statutory and spatial terms, with differences between urban and rural areas and considerable disparities between coastal and inland regions.

The *hukou* is a registration book giving each Chinese citizen agricultural or non-agricultural status and a place of residence by which individual social rights are determined (see box 2). This makes it very difficult to move from the rural to the urban market. The introduction of a temporary residence permit for people from other regions (regardless of status) has only partly resolved this difficulty, as there are many obstacles to obtaining a permit. Possession of an urban *hukou* remains the only guarantee of access to the same social services and labour protection as city residents. While maintaining this residential and professional segmentation has limited the rural exodus, less internal migration rules have provided the Chinese economy with an abundant workforce from the more deprived – though not necessarily rural – provinces, mostly located in inland China. The *hukou* system thus contributes to "statutory" flexibility, as rural residents coming to work in the city can be easily dismissed and forced to return to their home if they lose their job and consequently their right of residence. Many rural migrants living in urban areas work in the informal sector and do not even have minimal social protection. Due to their low skill levels, they often do arduous work (mines, assembly lines),



[6] 2010 estimate by the National Bureau of Statistics.

especially since some urban professions are off-limits for them. Their fragile status means they can be easily pressured by employers. They thus have the worst working conditions, often work without a contract, have few means of redress and have the poorest social insurance coverage.

In addition to the statutory difference between urban and rural workers, rights are also spatially fragmented. Income levels in Chinese provinces and cities are highly disparate, with the eastern provinces and the major cities at the top of the scale. Yet social protection schemes, including those directly related to labour (unemployment insurance and minimum wage), are administered locally due to no unified national legislation. While national authorities decide on the principle, local authorities collect, distribute and determine the amount of benefits. These thus vary according to local standards of living, as well as local budgets, the amount of which depends on economic results. That is one reason why municipalities are reluctant to give rural migrants urban resident status: they are afraid of having to limit social benefit levels for too many residents. Due to this institutional and economic fragmentation, social insurance coverage is generally higher in cities and the wealthiest regions along the coast, those that have most benefited from China's growth. The new Social Insurance Law promulgated in 2011 extends protection coverage both horizontally (increased number of beneficiaries) and vertically (increased benefit levels), but maintains local autonomy regarding social insurance levels much as in the past.

In addition to this spatial and statutory segmentation whereby Chinese statistics distinguish between urban and rural workers (for wages, migrants), a distinction inherited from the Maoist period is made between public sector and administration employees, who enjoy special protection and benefits, and less-protected workers in the private sector (whether employees or self-employed). Open-ended employment is reserved for this minority working in the public sector (20% of employees in cities) whereas fixed-term contracts (which can legally be for up to ten years) are the rule in the private sector. With the drop in public sector jobs, many former employees have ended up in casual employment or working in the informal sector.

It comes as no surprise that redundant employees from public sector companies and migrant workers are more frequently employed without contracts, a fact that veils the average prevalence of informal employment in China. Concerning an estimated 53% of the working population, informal employment in China is in the lower bracket for emerging and developing countries (informal employment rates often exceed 60 or 70% in Latin America and Asia, and are over 90% in India). While family labour (also qualified as informal) predominates in agriculture, informal work in the cities reflects job flexibility "with no constraints". It concerns three main categories of workers:

- ▶ illegal migrants in the city with no temporary residence permit and no employment contract (65% of migrant workers are informal workers according to the 2010 Urban Labour Survey);
- ▶ redundant public sector employees who are still entitled to retirement benefits, for example, and do undeclared work to supplement their income;
- ▶ self-employed or family workers (e.g. independent professionals as well as home help, small-scale artisans or itinerant street vendors, jobs which may be done by employees and some migrant workers and falling under the previous two categories) half of whom are not registered.

In addition to the segmentation caused by the planned system of *hukou* and state-owned companies, segmentation now exists between workers and employees (skilled and unskilled). Unskilled workers have the least favourable working conditions as they represent such an extensive labour supply. Migrant workers are often unskilled (according to the 2010 China Urban Labour Survey, more than half had less than nine years of schooling) and mostly employed in manual work. Working conditions for employees are generally better than for manual workers, but not as good as for skilled workers, who are increasingly in demand as China's economy develops, to such an extent in fact that supply cannot keep up with demand.

 Box 2

Rural migrants working in urban areas: legal segmentation derived from the *hukou* system

Rooted in the commitment to industrialising cities (country areas should be self-sufficient without government subsidies) and keeping tight control over population movements (and rural exodus) in Maoist China, the *hukou* system has remained despite the conversion to market socialism and maintained a legal and factual distinction between citizens from rural areas, who are still viewed as migrants in cities, and those who are “urban by birth”. The *hukou* is a registration book which documents an individual's place of residence and grants “agricultural” or “non-agricultural” status. The individual's social rights are determined by the place of residence and professional status. In principle, only an urban, non-agricultural *hukou* allows a person to live and work in the city (many job sectors are off-limits to non-residents), apply for subsidies to buy a home, enrol children in school, belong to a health insurance scheme and receive unemployment benefits in the event of job loss. An agricultural *hukou* (which may concern an urbanized area) offers far fewer social rights than its urban equivalent. Farmers are not eligible for social services, even those of a neighbouring town. These social rights and services (minimum wage, unemployment insurance), which are financed mainly by contributions from employers and employees in cities (with a residual part paid by the Government), also depend on the size and wealth of the official place of residence, since the extent of coverage is determined by local authority budgets. In addition to the urban/rural dichotomy, this geographically based system of rights creates spatial segmentation, with large coastal cities at the top of the “social” hierarchy, above mid-sized cities or villages, with rural areas ranking last.

A series of reforms initially set out to promote mobility from rural areas to cities by introducing a temporary city residence permit, then sought to reduce segmentation between urban and rural status with a number of initiatives supported by the Central Committee. These included transferring agricultural *hukou* to urban statuses in neighbouring cities authorised by the cities of Canton, Beijing and Chengdu; issuing urban *hukou* to people with a job and home, a practice that is quite common in villages and towns in inland and western regions, rarer in the wealthier coastal and eastern regions, and virtually inexistent in major cities (with the exception of Shanghai); selling *hukou*; in Shenzhen and Canton, introducing a point system for acquiring an urban *hukou* which favours skilled workers. A second series of reforms sought to extend social protection to migrant workers, with social security and employment-related rights for rural workers in cities, but without questioning the *hukou* system itself. Thus the system granting different rights according to individual status remained in place. The new Social Insurance Law in effect since 2011 aims to establish the portability of social rights for migrants (see below).

Despite the above reforms, this particular type of residential citizenship still exists, especially since local authority to issue *hukou* has been reinforced, making for highly variable practices from one area to another. It is still very difficult for holders of an agricultural *hukou* to obtain non-rural residence, especially since this status has remained hereditary (and was even matrilineal until 1998). This means that certain descendants of migrants can be born in a city without having access to social rights in their place of residence or employment, because they are registered under agricultural status, despite having never worked the land. In the same way, changing residence status from a small city to a mid-sized or large city is difficult, as local authorities still have considerable freedom concerning *hukou* and status-related services. The conditions (housing, employment) for obtaining an urban *hukou* are difficult to meet for new arrivals from rural regions. In addition to obstacles in terms of income and qualifications (some local authorities only issue their *hukou* to highly qualified workers or investors), recipients sometimes have to relinquish their right to land in their region of origin. The wealthier the area is, the stricter the conditions are.

Workers not in possession of an urban *hukou* in their region of employment are required to register and acquire a temporary one-year residence permit. They are considered as migrant workers and have become an essential workforce in cities. Although Communist Party authorities allegedly wish to end urban/rural segmentation, these workers do not have the same rights as residents. Local regulations are often less favourable in terms of employment-related (and social) protection. Severance pay, for example, is quite different. Residence permits can be subject to housing and employment requirements and administrative fees, even though the rights they confer are very limited. Consequently, many migrants cannot or do not want to register and are considered illegal. According to Herd *et al.*, approximately 23% of workers in cities are illegal migrants (without residence permits)^[7]. This means that they can be sent back to their region of origin if their papers are checked, they cannot enrol their children in school (which explains the proliferation of underground schools), and are not eligible for legal employment-related protection.

Despite these unfavourable conditions, rural citizens continue migrating to cities, spurred by the loss of jobs in farming and the prospect of higher wages in cities (where they can earn three times more). Although status change is still reserved for a privileged few, it is a major individual incentive in a society where social conditions remained unchanged for so long. Today there is great social and economic pressure to challenge the *hukou* system and reduce discrimination against rural migrants.

[7] Herd R., Koen V. and Reutersward A. (2010), “China's labour market in transition: Job creation, migration and regulation”, OECD, Economics Department, Working Paper, No. 749, February.

As in the rest of the world, casual employment is rising in the Chinese labour market, driven by the need for flexibility in sectors that rely increasingly on part-time and freelance workers and subcontractors. Casual workers do not enjoy the same level of protection as full-time employees. Freelance workers and part-time employees have to pay contributions to the social insurance system on a voluntary basis. The system gives little incentive: employers are not required to contribute by law and the benefits (e.g. for unemployment) are not very high. Many workers simply opt out. Casual employment is concentrated in the same population categories – mainly migrant workers and redundant public sector employees.

Segmentation in the labour market has nonetheless decreased considerably since the mid-2000s. Without counting the rural population, according to Du Yang's estimates based on the Urban Labour Surveys of the past ten years⁽⁸⁾, informal employment for rural migrants in major Chinese cities fell between 2001 and 2010, but is still high at 65% of employment. Informal employment for urban residents, on the other hand, has risen slightly over the same period, reaching almost 30% of employment in 2010. This is mainly due to a shift to "informal" employment practices (informal employment in the formal sector). At the same time, the labour market reforms on employment contracts, labour courts and promoting collective bargaining have tended to favour formal employment.

This decrease in segmentation is driven by a political commitment to reduce inequalities, but demographics are also a determining factor. The labour surplus, long maintained by the *hukou* system and keeping real wages low despite a double-digit growth rate, is now dwindling. Labour shortages are appearing in the most industrialised regions, in connection with the demographic shift, regional differences in inflation and decreasing potential for migration. China is reaching the Lewis turning point⁽⁹⁾, where the decrease in the rural labour surplus brings about wage increases in industry, inciting industries to relocate to inland regions. Low growth in the youngest age groups, for which demand is the highest in the export industry, and urban inflation are reducing the potential for internal rural/urban migration. At the same time, demand for unskilled labour remains strong thanks to export-led growth which gives even the most vulnerable workers greater bargaining power. Consequently, the wages of both formal and informal migrant workers have risen considerably since the mid-2000s, almost doubling in real terms from 2001 to 2009 according to the National Statistics Bureau. At the same time, the wage gap between rural migrant workers and urban workers has narrowed considerably⁽¹⁰⁾.

This change is not without consequences for the continued existence of the *hukou* system. The system is increasingly contested by the younger generation of migrants, who aspire to the same employment and enrichment opportunities as urban citizens, and by some of the intellectual and political elite, who believe that the system has become counter-productive. The very gradual approach adopted to reduce regional disparities and statutory inequality between urban residents and rural migrants has certainly allowed China to make a fairly smooth transition from a rural to an urban society. But in a decreasingly rural country and a nation aspiring to the economic and social standards of the world's wealthiest nations, yet having to count on a much smaller, thus more productive labour force, maintaining statutory segmentation is both more difficult socially and less efficient economically.

ACTUAL PROTECTION SCHEMES, WORKING CONDITIONS AND COLLECTIVE BARGAINING RIGHTS

Despite its commitment, the Government is only introducing protection schemes to replace those set up by the former planned economy at a very gradual pace. A wide gap remains between actual and legal rights, not only because of the administrative complexities of this vast country and regional disparities, but also the very fast transition from a statutory society to one that is more open but less egalitarian. This calls for a renewal of the social contract. Higher income and job growth have changed social structures and even the aspirations of the most vulnerable Chinese citizens (such as migrant workers), who demand a fairer system in which they can seize the opportunities inherent in the country's growth.

[8] "China Urban Labour Survey: 2001, 2005, 2010". These surveys only cover six major cities, provincial capitals (Shanghai, Wuhan, Shenyang, Fuzhou, Xi'an and, in the last survey only, Guangzhou) and six smaller cities close to these major cities. These cities represent the major regions of China: the Yangtziang Delta for Shanghai; central China for Wuhan; the region near Hong Kong for Guangdong (and Shenzhen); the northeast for Shenyang; the southeast for Fuzhou; and the northwest for Xi'an.

[9] Lewis W.A. [1954], "Economic development with unlimited supplies of labor", *The Manchester School* 22 (2), p. 139-191.

[10] Gagnon J., Xenogani T. and Xing C. [2009], "Are all migrants really worse off in urban labour markets? New empirical evidence from China", OECD Development Centre, Working Paper No. 278, June.

Rising social protest⁽¹¹⁾ reflects a desire for change and a debate that runs right through the Chinese Communist Party. Between the desire for a more harmonious society and the fear of social dissent, hopes of restoring a social protection floor and fears of damaging growth, ideological differences are numerous and cannot be reduced to an opposition between the communist old guard (more egalitarian) and the new liberal elite (which can be against some forms of protection and in favour of collective bargaining).

In this changing context, an assessment must be made of effective formal rights in the Chinese labour market and how they have changed in terms of collective bargaining, working conditions and employment-related social insurance.

■ Trade unions and collective bargaining: a gradual move towards social democracy?

Companies with more than 25 employees (including foreigners) are required to create a union chapter, under the Law on Trade Unions of 1992, amended in 2001. However, in China, there is no freedom of association. China has not ratified the ILO⁽¹²⁾ Convention on Freedom of Association, and the only authorized union is the Chinese Communist Party union, ACFTU (All China Federation of Trade Unions). The official union, which is a reflection of this “democratic centralism”, serves as a mediator between the Party’s directives and companies (union leaders often sit on management bodies) and functions rather as a social protection agency than as a defender of workers’ rights.

This situation is changing quickly, however, under the combined effects of unofficial strikes and social dissent backed by non-union organisations or international trade unions. With labour shortages giving workers greater bargaining power and in a political context which favours domestic consumption, tension has lessened between economic liberalisation and social protection. This change, particularly noticeable since the end of the 1990s, explains how the authorities held their ground when the new Labour Contract Law was introduced in 2007⁽¹³⁾, despite pressure from the national and international business sector (led by the American Chamber of Commerce in Shanghai). Moreover, the existence of an official union has not prevented the formation of associations, particularly for the protection of migrant workers, or “spontaneous” unions which, like the right to strike, are neither legal nor prohibited.

Legislation authorising collective bargaining in the workplace was introduced in a 2004 regulation by the Ministry of Labour and Social Security. Since this regulation encouraging unionisation in companies came into effect, the All China Federation of Trade Unions (ACTFU) has set up union branches in many companies, especially foreign ones, like the emblematic anti-union corporation, Walmart. The official union has difficulty representing workers’ demands, confining itself to a mediatory role, and company unions sometimes find themselves on the same side as management, opposing strikers from unofficial unions. On some occasions, company unions have actually come to blows with strikers⁽¹⁴⁾. This is an issue of concern for the ACFTU, which is trying to change how it organises and reintegrates the union movements which emerged in the 2000s. As mentioned in the newspaper *Xin Shiji*⁽¹⁵⁾, two types of workers’ organisations coexist in China. The first, which “lacks recruits”, is institutionalised and coordinated by the national Federation of Chinese trade unions, while the second is “organised spontaneously by workers, unites the masses but is not institutionalised”.

With regard to bargaining, the Government now encourages collective labour agreements, but these tend to simply reflect legal standards and rarely result in higher wages or better working conditions than those prescribed by law. Better standards have on occasion been negotiated, but only by a few very prosperous industrial sectors and companies most exposed to campaigns denouncing poor working conditions, and often tied to foreign companies. Improvements above legal obligations won through industrial action have never spread to other sectors.

The scope of collective bargaining is strictly controlled and restricted mainly to wages, working hours and social insurance for employees. Only official union representatives are authorised to enter into negotiations. They can be selected by the companies themselves or nominated by ACFTU members; electing representatives by workers’ vote is



[11] The Academy of Sciences counted 184,000 mass incidents in 2010 compared to 80,000 in 2007.

[12] International Labour Organization.

[13] Cooney S. (2009), *Working Conditions in an Integrating World: Regulating Time, Money and Family Life in China*, ILO, Geneva.

[14] This was the case during the May 2010 strikes at the Honda plant in Guangdong, where the strikers were forcibly dispersed by the “official union representatives”, see “Unity is strength: The workers’ movement in China, 2009-2011”, *China Labour Bulletin*, October.

[15] 21 June 2011, cited by Froissard C. (2012), “Les ONG de défense des droits des travailleurs migrants : l’émergence d’organisations proto-syndicales”, *Chronique internationale de l’IRES*, n° 35, mars.

a mere formality to confirm previously selected candidates⁽¹⁶⁾. There is no tradition of consulting workers or real dialogue. Instead, the official trade unions apply the standards dictated by the Government and attempt to stay in line with the country's overall strategy. This lack of participatory democracy and the highly centralised approach is now seriously damaging the credibility of official unions, which have been overtaken by other organisations. Social organisations and autonomous unions are tolerated, even if they cannot play a role in official collective bargaining. In reality, however, they can have much greater bargaining power, as demonstrated by the wage increases that certain strikers' unions have obtained. NGOs defending migrant workers have also been an important pressure group, both in monitoring the application of laws and promoting migrant workers' rights.

After encouraging the wholesale set up of corporate unions, sometimes directly paid by the companies with no concern for workers' representation⁽¹⁷⁾, the ACFTU is now more attentive to representativeness. Issues such as protection for migrant workers (the most vulnerable category of workers) and direct election of employee representatives in companies are now being discussed, even within the Official Confederation and with provincial authorities, which form a less united front than in the past. Ties with the Chinese Communist Party authorities, however, still predominate. Labour relations remain highly centralised, while official unionism continues to focus on preserving peaceful relations in the country's overall best interest. The issues of social democracy and political democracy are nowhere near resolved. Direct election of representatives (which exists in some places) and union autonomy would challenge the role and interests of current union representatives (who are sometimes members of company management), especially at the central level. This would also raise the question of freedom of association and political democracy⁽¹⁸⁾. Maintaining peaceful industrial relations, a concern shared by political authorities and the official union, has led to fairly concrete measures such as provisions supporting wage increases and higher social insurance benefits (increased minimum wage, increased social coverage) in order to contain dissent.

Trade unions are still very much under the control of central government. Paradoxically, however, employers' representation has increasingly broken free of Communist Party leadership. In some provinces, such as Guangdong, new independent trade associations have been encouraged alongside the very official China Enterprise Confederation, Chinese Enterprise Directors Association and the official network of Chambers of Commerce and Industry⁽¹⁹⁾.

■ Individualising labour law and setting up oversight institutions

With the development of collective bargaining, the Chinese labour market has gradually individualised social rights after introducing the Labour Contract Law and the Law on Mediation and Arbitration of Labour Disputes, both promulgated in 2008. Tighter regulation of the labour market and difficulties enforcing standards, such as collusion between entrepreneurs and local authorities, have led to an unprecedented increase in disputes over the past years. In theory, the resolution of labour disputes in China begins with a mediation process organised by the single union federation – a process which has remained confined to public sector companies. Thus, most disputes are brought before the court after being approved by a tripartite arbitration court (for employees, only the single union federation is authorised). They tend to be individual rather than collective and the vast majority concern wage arrears⁽²⁰⁾.

The increase in labour disputes has led certain company unions and social organisations, particularly those aimed at helping migrant workers, to provide legal assistance for employees, especially migrant workers, who are the most vulnerable in labour relations. In spite of help from unions and associations, access to justice is still a problem, mainly due to the lack of independent courts and the hierarchy in legal standards. Moreover, filing a lawsuit is especially difficult for vulnerable workers, who have neither the time, nor financial resources nor intellectual means to take legal action. The court often rules in favour of the employees, but court processing times are long and rulings not always applied. This is where individualising labour law meets its limits in a country where human capital remains fragile and institutions have yet to acquire real enforcement capability.

[16] Sio-jeung Hui E. et al. [2011], "Where is trade union reform and labour legislation in China heading to?", *Global Labour Column* No. 61, May Global Labour University.

[17] Union representatives used to be paid by the companies, but are now paid by the Government.

[18] Zhu Y., Warner M. and Feng T. [2011], "Employment relations "with Chinese characteristics". The role of trade unions in China", *International Labour Review*, Vol. 150[1-2].

[19] Ma Z. [2011], "Industrial relations in China: A review based on a six-party model", *International Labour Review*, Vol. 150[1-2].

[20] Cai F. and Wang M. [2012], "Labour market changes, labour disputes and social cohesion In China", OECD Development Centre, Working Paper No. 307.

Finally, regulatory monitoring institutions have been set up. The law of 2004 created two government labour inspection departments in the 22 provinces, five autonomous regions and two special administrative regions (Hong-Kong and Macao): 1) the Occupational Safety Inspectorate with 43,000 civil servants, which reports to the Government Occupational Safety Administration, and 2), the Labour Inspectorate, with 23,000 civil servants, which reports to the Ministry of Human Resources and Social Security and is tasked with contract monitoring, payment of wages and social contributions, and compliance with the minimum wage and working hours. The Safety and Labour Inspectorates suffer from the same shortcomings as those observed in other emerging and developing countries: poorly performing, underqualified staff (understaffing, poor quality equipment, low pay leading to corruption); difficulty monitoring agricultural and domestic work; poor understanding and knowledge of labour rights by employees themselves, especially in the informal sector and among vulnerable workers, who do not file complaints with the Labour Inspectorate; mistrust of institutions may also be an obstacle. Consequently, a real gap remains between labour law and its enforcement, and worker protection is caught between the desire for immediate cost-effectiveness and a longer-term strategy for improving working conditions and job quality.

Aware of these weaknesses and the need to improve job quality to promote development, Chinese authorities have introduced a reform of the Labour Inspectorate information system and its inspectors' working practices. The reform aims to increase labour productivity by both penalising offending companies and informing workers of their rights. In keeping with ILO recommendations, this dual strategy identifies "the obstacles that keep companies from observing the law and developing innovative solutions"⁽²¹⁾, combining compliance with labour protection⁽²²⁾ and improved cost-effectiveness.

■ Working conditions still poor

Working conditions are formally governed by a strong legal framework, but various factors make them difficult to enforce: i.e. fragile social dialogue, the Labour Inspectorate's difficulty implementing the many new regulations⁽²²⁾, the local autonomy of provincial governments which allows them to set rules differing from national law, and the prevalence of informal employment.

Under the Chinese Labour Code, legal working hours are eight hours per day and 40 hours per week, except in special circumstances, in which case, legal working hours can be extended by an additional one to three hours per day, up to a maximum of 36 hours per month. Exceptions are frequent in the special economic zones set up for export enterprises, which are eligible for exemptions to the labour laws in force. One such example is the Foxconn plant in Guangdong Province, which has been granted the "right" to derogate from the 40-hour work week. In 2010, Foxconn (a subcontractor for Apple, Sony and Dell) experienced a wave of suicides attributed to poor working conditions at the plant. The situation at Foxconn is no exception by any means. Actual working hours often exceed the legal limit. According to a survey by the Social Research Centre at the University of Beijing⁽²³⁾, 30% of Chinese people work more than ten hours per day. In urban areas, workers work an average of 53 hours per week in the formal sector and 64 hours per week in the informal sector (see table 1). Yet overtime is often poorly or improperly paid. Wage arrears, mainly affecting rural migrants working in the industrialised eastern regions, are the leading cause of disputes brought before the labour courts.

Table 1

Actual working hours per week in urban areas

	2001	2005	2010
Formal workers	53.6	53.6	53.2
Informal workers	72	75	63.8

Source: China Urban Labour Survey 2001, 2005, 2010.

[21] Pires R. (2008), "Vers un respect durable de la législation : résultats des modèles d'inspection du travail", *Revue internationale du travail*, vol. 147 [2-3], Genève : Bureau international du travail.

[22] In 2001, the Law on Prevention and Control of Occupational Diseases; in 2002, the Production Safety Law; in 2003, the regulation on industrial accident insurance; in 2004, the regulation on supervising occupational safety; in 2007, laws on the employment of disabled persons, labour contracts, promoting employment and the annual leave; in 2008, the labour contract regulation, and in 2011, revision of the Law on the Employment of Disabled Persons.

[23] National survey of 30,000 people. Quoted in The French Embassy in China (2012), *La protection sociale dans les pays émergents Le cas de la Chine*, September.

Regulation is still weak in terms of working conditions and occupational safety. Issues relating to occupational safety are not included in collective bargaining, nor do they take into account working conditions, which for rural migrant workers at plants in the Pearl River Delta can be prison-like. The existence of “authorised” trade unions does not ensure adequate monitoring of compliance with decent working conditions.

Lastly, China’s rapid industrialisation and its pivotal role as the “workshop of the world” have an impact on health and occupational safety. With 136 deaths per day from industrial accidents, including 1,973 in mine accidents⁽²⁴⁾, and 18,000 cases of occupational disease⁽²⁵⁾, of which half involve migrant mine workers suffering from pneumoconiosis, China’s growth is very costly in terms of human life and health. Several factors account for these high figures:

- ▶ the highly industrial nature of Chinese growth and work in coal mines mean that many companies are exposed to occupational disease (16 million companies and 200 million workers are partially exposed to an occupational disease risk⁽²⁶⁾);
- ▶ poor supervision by both inspectorates and unions limits grassroots capacity to oversee safety;
- ▶ fast economic growth is a top priority for some local authorities, which leads to a relaxation of monitoring;
- ▶ lack of commitment from employers, who rarely perform medical checks on their employees and do not always comply with safety standards;
- ▶ poorly skilled and casual workforce with little experience of occupational risk prevention, workers do not dare or know how to assert their rights in the event of occupational disease or industrial accident.

In addition to the recent inspectorate reform already mentioned, other reforms have focused on the industrial accident/occupational disease protection scheme to address this issue. As poor compensation for occupational disease and industrial accidents does not incite employers to take appropriate measures, disability and death benefits have not only been raised, but also unified at the national level. It is currently the only income substitution benefit to be based on the employee’s monthly wage, rather than varying from one region to another. Premiums are paid only by the employer and the amount varies depending on how dangerous the work is. This is regularly reviewed in light of accident frequency. An industrial accident compensation fund has been created to ensure the payment of benefits if the company defaults. The new Social Insurance Law of 2011 has also expanded the scope of industrial accident insurance, which is now mandatory for private companies (whether national or foreign), public sector or state-controlled companies and collectively owned companies (usually rural), as well as for independent associations and private offices.

While the formal sector tends to receive the most media attention, especially subcontractors for multinationals, such as Foxconn, labour relations in these companies are actually more formalised and protected than in many local companies. Overall, the least favourable labour conditions and least formalised labour relations (with almost no union representation) are found in private Chinese companies targeting the domestic market, especially small and medium-sized enterprises where the exploitation of workers can be likened to that observed in western societies during the first Industrial Revolution. The best working conditions and most formalised labour relations (worker protection and representation) are in state-owned companies and joint-ventures with foreign companies. Foreign-owned companies (primarily holdings from Hong Kong, Taiwan and Macao) and subcontractors for multinationals are between these two extremes. They have more formalised employment and labour relations, yet strong resistance to union representation, and recurrent problems with very high weekly working hours and unpaid wage arrears, due to a per-item billing system which opens the door to violations. Workers are expected to make parts within timeframes that in no way reflect the actual workload. This means that workers must work overtime, which leads to recurrent disputes over the extra hours due.



[24] 2011 data from the Government Occupational Safety Administration.

[25] Source : Ministry of Health, data for 2009.

[26] The French Embassy in China [2012], *op. cit.*

■ Minimum wage and unemployment insurance

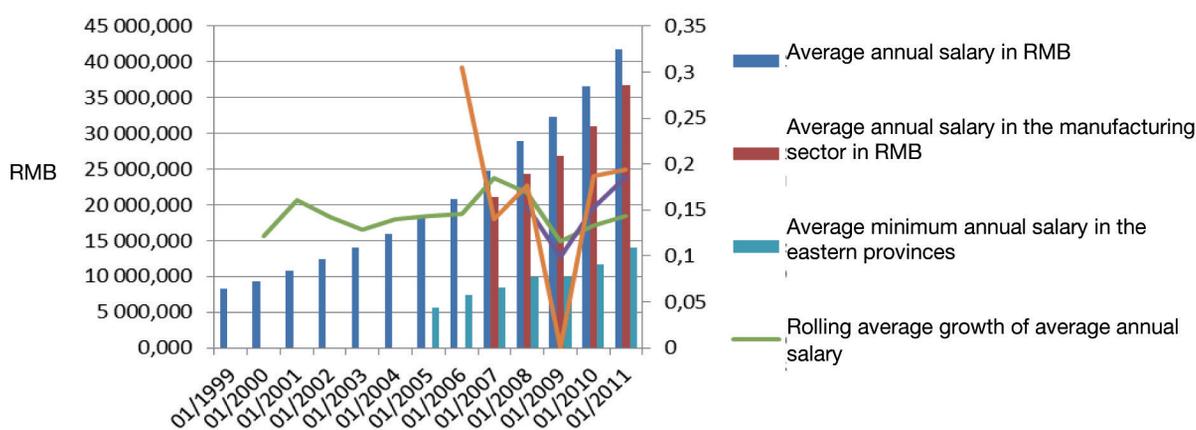
The Chinese authorities have introduced regulations and allowances ensuring workers a decent income (minimum wage) and an income substitution benefit in the event of job loss. However, such schemes still vary considerably from one person to another and cover few workers.

Minimum wage

Introduced in China in 1993, the minimum wage principle was reconfirmed by the law of 2004 which defines an hourly wage based on a 40-hour working week (beyond which workers are paid overtime at 150% of the standard hourly rate) and various penalties for non-compliance. The minimum wage is fixed at the local rather than national level and applies only to major cities (not mid-sized cities). The minimum monthly salary and hourly rates are fixed by the Ministry of Labour and Social Affairs for 31 provinces, autonomous regions and municipalities, based on proposals from local authorities. Consequently, pay scales vary considerably, ranging from 1500 Yuan per month to less than 850 Yuan in Jiangxi Province. The highest monthly rate is in Shenzhen Province (in Guangdong, where major strikes took place in 2010) and the highest hourly rate is in Beijing. Minimum wages are generally higher on the coast than in inland regions. They are based on local standards of living in the different provinces, which have very different income and inflation levels, and can also vary between job sectors.

The strategy adopted by China since the late 2000s, aimed at balancing growth in favour of domestic consumption, and the rise in industrial disputes have driven the minimum wage up. According to the Ministry of Health and Labour, 16 Chinese provinces and municipalities raised their minimum wage in 2012, by almost 20% on average, despite forecasts of sluggish growth in the country. Yet the minimum wage is still below the average salary, particularly in the eastern provinces, which have seen significant wage increases in the manufacturing industry (see graph 1). The minimum wage in the most industrialised regions of China was 1.5 time higher in 2011 than 2005, whereas at the national level, the average salary almost tripled over the same period. In these eastern provinces, which are the wealthiest in the country, the minimum wage is only about one third of the average annual salary. This ratio has been stable since 2005 but is quite low compared to international standards (in France, the minimum wage represents 60% of the average salary).

Graph 1
Salary growth, 1999-2011



Source: The French Embassy in China [2012], *op. cit.*

The system for fixing minimum wages is reviewed every one or two years, but is not institutionalised by rules that are applicable at all regional levels. This leaves local authorities a considerable degree of autonomy. Collective bargaining with representatives of employers and the ACFTU is not mandatory, and review criteria are not set out in standards either. Since the major strikes of 2010, which received considerable media coverage, the Chinese authorities have demonstrated an ambition to unify the rules for fixing all – and not just minimum – wages, at the provincial or sector level through collective bargaining.

Regardless of its level and how it is determined, the minimum wage has yet to be effectively applied, particularly for rural migrants and holders of an urban *hukou*. Thirty per cent of urban residents in China are paid below the minimum hourly rate, while the figure increases to sixty per cent for urban migrant workers (2007 data)⁽²⁷⁾. However, monthly minimums are generally met, as wage increases in cities concern all workers regardless of status. The vast majority of employees not paid on an hourly basis (more often local residents than migrant workers) are now paid above the minimum wage⁽²⁸⁾.

Severance pay and unemployment insurance

Unemployment insurance has developed in China with rising income levels and the need to secure career paths rather than protect jobs. Over the past ten years, the unemployment insurance system has undergone two major changes:

- ▶ it is now mandatory for all urban employees;
- ▶ only those actively seeking employment (or training) can claim benefits.

Financed by individual or collective premiums, unemployment insurance is characterised by the low level of benefits, the small number of beneficiaries, and difficulties in extending and unifying it, despite the new Social Insurance Law.

The amount of unemployment benefits is fixed by provincial governments, autonomous regions and municipalities. It depends on the local standard of living and is bound by two limits: it must be higher than the minimum subsistence allowance for city residents in the region and must not exceed the region's minimum wage. The amount and duration of benefits also depend on how long employees have paid into the system. The longer contributions have been paid, the higher the benefits will be and the longer the period over which they are paid will be (between twelve months and twenty-four months). Since steady employment is marginal in China, as it is in the rest of the emerging nations, and high job turnover mainly affects the most vulnerable categories of workers, the unemployed are rarely eligible for maximum benefits. These benefits are not based on the wages received while in work, which reduces the appeal of unemployment insurance for those who contribute individually (the self-employed). As the allowance must be below the minimum wage, which is generally quite low and varies from region to region, it does not cover the needs of the unemployed and their families. While the absolute level of unemployment insurance has gone up over the past ten years, it has risen less than the average salary. Thus, in terms of standard of living, the income substitution benefit has fallen.

Not only does unemployment insurance provide a meagre income substitution benefit, it also covers too few people. Despite steady progress, coverage remains very low, since only holders of employment contracts or self-employed workers who have opted to make contributions are eligible. In 2011, only 1.97 million people received unemployment insurance benefits. This means that only 18% of the unemployed were covered. Migrants, in particular, are not covered simply because they pay little in premiums (as they have no employment contract and because of status-related segmentation). Of the 143.17 million workers who paid into the unemployment insurance scheme in 2011, 18% were migrant workers.



[27] ILO (2010), *Global Wage Report*, Geneva.

[28] World Bank and Development Research Center of the State Council of China (2012), *China 2030: Building a Modern, Harmonious, and Creative High-Income Society*, Washington: World Bank.

Owing to a lower unemployment rate, particularly in cities where most of the contributors to unemployment insurance are concentrated, unemployment revenue exceeds expenditure, leaving surpluses.

Under the 2010 Social Insurance Law, unemployment insurance is transferable when a worker changes from one company to an other or from job location. According to the *China Labour Bulletin* ⁽²⁹⁾, migrant workers' rights are not transferred or properly transferred when they are sent back to their residence of origin as some rural regions do not have organisations to collect contributions and distribute benefits. The workers' unemployment benefit is therefore paid in one lump sum at the time of dismissal, often for a lower amount than that provided by law.

APPENDIX 2 - CHINA

La Note d'analyse n° 301 - Novembre 2012

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[29] *China Labour Bulletin*, [2012], "China's social security system", 13 September, article translated in *Metis*, September 2012.