

# **Session 1-2**

## **Transitional Justice**

**The Evolution of Chinese Labor Rights from a  
Multi-governance Perspective.**

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# **The Evolution of Chinese Labor Rights from a Multi-governance Perspective**

## **Abstract**

As on-going and persistent labor rights abuses in China continue to hit the headlines, it appears that progress is not being made in working conditions. However closer examination shows that substantial evolution has indeed occurred in recent years. In addition to the promulgation of new labor laws in 2008 by the Chinese state, corporate social responsibility (CSR) initiatives have been enacted by multinational corporations (MNCs) in China under pressure from international non-government organizations (INGOs). This paper will use a framework of multilayered governance to analyze how and why the Chinese government has begun to focus more on protection of labor rights. Thus interaction between these three actors at both supra-national and national levels is analyzed to see how it has affected the evolution of labor law in China. While the Chinese government attempts to balance rapid economic post-socialist development with rising labor discontent, MNCs balance the need for continued profits with public concern about labor violations. International NGOs on the other hand focus on the need for labor rights, as a form of human rights, to be brought in line with basic international standards. This paper thus seeks to show how these forces interact to compel change in Chinese labor law and to what extent these measures have improved protection of workers' rights in China. The question is also posed whether legislative changes can improve worker's rights in an atmosphere of weak enforcement, or will changes to the normative environment in the workplace be a more important factor?

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## Introduction

China's rapid economic development has been one of the major events of the late 21<sup>st</sup> century. As the 22<sup>nd</sup> century gets underway, China is poised to consolidate its position as a new international superpower. But what effect has this economic growth and accompanying globalized interaction had on the average Chinese worker? As the authoritarian Chinese state's legitimacy rests on its ability to drive continued economic growth, obstacles to this growth such as protection for workers have taken a back seat. Hence widespread violation of workers' rights across China has resulted in increasing labor unrest. Despite initial inadequate legislative efforts, the government has become more concerned with protecting workers through labor legislation to deal with this unrest. How effective is recent employment legislation? Are Chinese workers' rights and therefore basic human rights being improved?

A multilayered governance framework will enable focus on how interaction between actors at both supra-national and national levels, namely the Chinese state, multi-national corporations (MNCs) and international non-governmental organizations (INGOs), has affected the evolution of labor law in China. This paper thus seeks to show how changes in Chinese labor law are brought about and whether legislative changes or workplace initiatives such as Corporate Social Responsibility are more important. Following the introduction, this paper will outline the theoretical framework to be used before providing an overview of Chinese labor legislation. Next will follow an examination of the current state of Chinese labor rights, and then the roles of the three main actors will be analysed. Finally there will be a concluding discussion.

## **Theoretical Framework**

There are many views about how globalization affects the state in the international relations literature. Some focus on the spread of NGOs in international governance and examine how global social movements or transnational coalitions interact with domestic and international institutions. (O'Brien, 2000) (Risse-Kappen, 1995) Others look at how globalization is diffusing political power to transnational institutions. (Keohane & Nye, 2000) The rise of "non-territorial" third sector and corporate interests as a result of globalization is seen to erode the power of the state resulting in a rupture between territory and authority, (Ruggie, 1993) (Rosenau, 1997) Thus the forces of economic globalization, new technologies and evolving global norms clash with powerful domestic forces causing national governments to lose power. The view that the so-called private authority of MNCs limits the capacity of the state to carry out their own interests is a common one. MNCs actively attempt to influence state activity and even create their own systems of governance and regulation. (Cutler, Haufler, & Porter, 1999) Thus the emergence of voluntary systems of regulation, such as corporate codes, are both a "manifestation of, and a response to, the process of globalization." (Jenkins, Pearson, & Seyfang, 2002) Evaluations of voluntary codes of conduct can be positive positing that codes drive up expectations and standards, improve information and help universalize labor standards. Or more commonly they can be negative pointing to issues such as the inability of codes to reflect workers' real concerns, and difficulties in enforcement or monitoring. (Jenkins, Pearson, & Seyfang, 2002) (Seyfang, 1999)

Others see the state as continuing to play a crucial role in mediating between international and domestic forces in order to carry out institutional reform.

(Wilson, 2009) In Wilson's 'state-guided globalization' model, the state interacts with global actors at macro and micro levels to further its own interests and achieve state policy goals. However, it cannot fully control global actors who "stretch the boundaries of state policy reforms" and these actors "add criticism to the feedback from existing domestic actors in assessments of existing institutional models and ...reforms." (Wilson, 2009, p. 17) What does this increased interaction with the forces of globalization mean for an authoritarian state such as China? While the state will be "forced to cede sovereignty...downward...and outward..." this does not necessarily mean that there will be a decline in state capacity of authoritarian regimes." (Saich, 2000, p. 208) However, Saich acknowledges that new challenges will arise for these regimes that will require "significant amendment of previous political practice." (Saich, 2000, p. 209)

In particular, the goals of the authoritarian state in China have had a huge impact on the character and impact of labor law. Labor law is defined broadly here as law covering not only the employment relationship but also including the impact of state policy-making and regulation. (Cooney, Lindsey, Mitchell, & Ying, 2002, p. 12) A broad theme of the literature, relating to how the form and content of labor law is derived, comes from Kuruvilla's work. He states that industrial relations and labor rights are subordinated to the goals of rapid industrialization and regime stability. (Kuravilla, 1996) However, this does not fully explain the situation of China where the transition to a market economy has been accompanied simultaneously by the transformation of legal frameworks. More useful here are works by Jayasuriya and Deyo focusing on regime stability. According to these authors, in authoritarian regimes, the law is seen as an

“instrument to pursue the objectives of the state”, not as a constraint on state power. Thus corporatist policies pursued by the state influence the form and content of labor law. (Deyo, 1989) (Jayasuriya, 1999)

As mentioned, Keohane and Nye have examined the interaction of the forces of interdependence, institutions and governance in the context of an increasingly globalized world. (Keohane & Nye, 2000) Their analysis of multilevel governance forms the basis for our theoretical framework. They find that institutions “reduce the costs of making, monitoring and enforcing rules [and] provide information and facilitate the making of credible commitments” (Keohane & Nye, 2000, p. 3) Actors, either individuals or organizations, pursue their interests as they see them and are guided by internalized values using resources at their disposal to achieve their objectives. These actors are located in structures of power that provide incentives and action. These structures are affected by globalism, defined from a multidimensional perspective as “involving thick networks of interdependence organized on a transnational basis.” (Keohane & Nye, 2000, p. 13) As these networks become more intense, they have a greater effect on domestic politics. Thus domestic governance, the “processes and institutions, both formal and informal that guide and restrain the collective activities of a group” is increasingly affected.

However, while thick networks of interdependence matter a lot, boundaries and states are still very important. Thus while states are the most important actors, they are not the only actors and must contend with transnational actors and structures of transnational and interstate relations and institutions. (Keohane & Nye, 2000) As demonstrated in table 1.1 following, the nation-state is the

primary object of analysis but its power is supplemented by other actors in the private and third sector. As more actors become involved within the social and political space and their relations are increasingly complex, more governance activities take place outside the “central government” box.

Table 1.1 Multilayered Governance

	<b>Private Sector</b>	<b>Governmental</b>	<b>Third Sector</b>
<b>Supranational Level</b>	MNCs	International Governmental Organizations	International Non-Governmental Organizations
<b>National level</b>	Firms	Central Government	National NGOs
<b>Local level</b>	Local	Local Government	Local NGOs

Source : Keohane and Nye (Keohane & Nye, 2000, p. 13)

“Modalities of governance” also change; from laws created by the central government to norms, markets and architecture made by companies. For example, private companies can press the government for favourable legal regimes, domestically and internationally as do actors from the third sector which can lead to the “transformation of the nation-state and creation of politics in newly contested spaces.” (Keohane & Nye, 2000, p. 12) Thus a multi-level governance framework can show how changes to state regulatory environments and in particular, Chinese labor law, have come about and what forces have been important in driving change. Many works have been produced about China’s integration into global frameworks of governance. (Oksenberg & Economy, 1999) However, while much of the literature focuses on economic globalization, few

have examined the impact of this globalization on governance, much less on labor legislation in China.

### Part One: Overview of China labor legislation

In 1979 China was recovering from the political, economic and social chaos of the Cultural Revolution. Decisions made by post-Cultural Revolution leaders would form the basis for the resulting rapid economic and social development of China. Early reforms centred on correcting the excesses of previous political movements through legal reform but also dismantling the socialist command economy. As China opened its doors to foreign investment and international corporations, the labor market in China was resurrected resulting in dramatic changes to the life of the Chinese worker.

Workers under the socialist command economy participated in an employment system governed by the 'three irons', namely the iron-rice bowl of lifetime employment, iron wages which were fixed according to a set scale for manual workers and unchangeable or iron positions. (Zhu, 2002, p. 158) The labor regime was rigidly divided into urban and rural sectors. Those fortunate enough to hold an urban hukou (户口 household registration) were provided a job for life with wages set by the central government and housing, medical care, pensions and fringe benefits tied to employment. In rural areas, workers were denied state sector jobs, leaving them with little choice other than participating in agricultural collectives, with remuneration dependent on collective income and individual contribution. (Liu, Xu, & Liu, 2003, pp. 223-4) There was no labor market to speak of as workers were assigned to lifetime jobs in state-owned businesses or



worked on the land. (Costello, Smith, Brecher, & Torrelli, 2008, p. 13)

Economic opening led to the rapid development of an urban labor market. In particular, foreign direct investment (FDI) played a pivotal role in Chinese growth and foreign companies began to flood into China and take advantage of vast pools of cheap labor. Between 1979 and 1999 actual FDI inflows into China amounted to US\$306 billion, and in 2000 China was the second largest FDI recipient in the world after the United States. (OECD, 2000) As part of the new economic reforms, state-owned enterprises and collective sectors were dismantled, and the foreign sector played an important role in absorbing the labor surplus. (Lo & Tian, 2009, p. 226) With the breaking of the iron rice-bowl, the era of lifetime employment in state-owned enterprises, with fixed wages and employment-associated benefits was over. The transition to a new system was underway, where foreign-owned enterprises (FOEs) were given a level of autonomy in labor management. A labor market thus developed based on a labor contract system with less job security, increased labor mobility and a social security system. (Zhu, 2002, p. 157)

It became obvious that an effective legal system was needed: to govern the newly emerging labor market, to manage the transition to a market economy in a stable, orderly way, and to govern and protect complex economic activities. (Zhu, 2002, p. 157) Protecting workers within foreign private enterprise was a new challenge for the government, thus “the introduction of a system of labor market regulation [was] one of the established agendas set under the banner of establishing the ‘socialist legal system’ (shehui zhuyi fazhi)”. (Zhu, 2002, p. 157) The way the government decided to do this was by selective experimental introduction of reforms and regulations in areas of the country, like the Special Economic Zones

(SEZs) before extending these regulations to the national level. This incremental approach allowed the Chinese government to work gradually towards the development of a legal framework for China's workforce. (Lo & Tian, 2009, pp. 4,226) Instead of a comprehensive framework for dealing with labor and employment issues being established therefore, workplaces were regulated by a variety of administrative regulations, government rules and decrees. For example, the four 'Temporary Regulations' introduced in 1986 were directed at the introduction of labor contracts, recruitment system reform, right of dismissal by employers and establishment of a social insurance system. (Zhu, 2002, p. 166)

Attempts to make the Chinese regulatory framework more systematic occurred in the wake of Deng Xiao-ping's tour of Southern China in 1992 promoting further economic reform. These resulted in the development of a new comprehensive labor law in 1994 and the subsequent enactment of a series of implementation rules to provide guidance on labor management for foreign investors. (Lo & Tian, 2009, p. 228) The Labor Law<sup>1</sup> was the first comprehensive legislation dealing with labor and employment, applying to all enterprises in China. Its 'guiding principles' were to regulate labor relations and establish and maintain a labor system compatible with a 'socialist market economy'. (Zhu, 2002, p. 169) It specified written contracts detailing remuneration, overtime, social security and welfare benefits, union representation, occupational safety, dispute resolution and termination. (Lo & Tian, 2009, pp. 228-229) This new law sought to bring together and clarify a number of existing labor laws and regulations governing different aspects of labor administration approved and promulgated

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<sup>11</sup> Labor Law of the People's Republic of China adopted at the 8<sup>th</sup> Session of the Standing Committee of the 8<sup>th</sup> National People's Congress, 5<sup>th</sup> July 1994 (Lo & Tian, 2009, p. 259)

by the National People's Congress and the State Council and rules and regulations issued by the (then) Ministry of Labor. (Shi, 1999) The law aimed to "clarify and to codify the relations of the three parties: the state, the employers and the trade unions that have been affected and challenges by the reform...clarify[ing] the relations between laborers and the employers." (Zhu, 2002, p. 169) However, some basic rights and protections were omitted and the legislation has been described as having only "broad outlines and promises of regulation". (Brown, 2010, p. xi)

In addition, a new tripartite system for improving industrial relations between management and labor was introduced, with the support of the ILO's Asian Pacific Project on Tripartism (APPOT) in 1993. However, despite formation of tripartite committees at national and regional levels supported by the ILO and Chinese government, the functions of these committees were restricted in practice. (Zhu, 2002, p. 167) In addition, at this time, China lacked the right to strike, freedom of association, and independent trade unions. (Costello, Smith, Brecher, & Torrelli, 2008)

On January 1<sup>st</sup>, 2008, China enacted powerful new protection for workers in the guise of the Labor Contract Law of the People's Republic of China (LCL). This was the first major piece of labor legislation since the 1994 Labor Law and had the goal of "reining in the worst aspects of the nation's new labor relations regime and achieving a modicum of workforce stability." (Becker & Elfstrom, 2010, p. 2) This new legislation made written contracts for all employees mandatory, required non-fixed term contracts for employees of over ten years or who had already signed two consecutive fixed-term contracts, clarified the role of trade

unions and collective bargaining and strengthened existing rules regarding work hours, wages, social benefits, and bargaining. (Becker & Elfstrom, 2010, p. 3) At the same time, the Employment Promotion Law (EPL), strengthened anti-discrimination provisions from the Labor Law of 1994, allowing migrant workers rights of action against discrimination based on their residency status. In addition, on May 1, 2008, the Law on Labor Dispute Mediation and Arbitration was enacted making mediation and arbitration quicker, cheaper and easier to access for workers. (Becker & Elfstrom, 2010) However, while in theory, the legislation provided for improved workers rights, in reality, inadequate enforcement of the law has meant that widespread violations continue to occur.

## Part Two: Actors

### The Chinese State

Why has the Chinese government begun to focus more on protection of labor rights? What are its motivations? What impact, if any, are external forces having on the Chinese state regarding workers' rights? As stated earlier, foreign trade and investment has been instrumental in creating sustained rapid economic growth in China over the last thirty years. The need for continued growth means that integration with the global economy in the form of on-going interaction with transnational actors, structures and institutions is imperative. Interaction with these increasingly "thick networks of interdependence" means that the Chinese state needs to maintain a careful balancing act by mediating between international and domestic forces to achieve its own goals. Thus it seeks to use these networks for its own benefit, while constraining unwanted effects. The state needs therefore to pursue a policy of 'selective adaptation' whereby Chinese leaders pursue an economic order that is "international in the benefits it brings

but is not necessarily global in the sense of diluting the decision-making autonomy of the nation-state.” (Saich, 2000, p. 213)

While the government is keen for China to acquire the foreign capital, technology, and management expertise which goes with economic opening, it resents outside pressure to improve labor standards, human rights and a more active and empowered civil society (Lo & Tian, 2009, p. 227). On the other hand, the government is mindful of the need to minimize social unrest through compromise. The need to maintain power by ensuring social stability is paramount for the Chinese Communist Party and all their decisions are based around this fact. These twin state policy goals of rapid industrialisation and ‘regime stability’, or the maintenance of the prevailing power structure, have had a large impact on the way the state has shaped labor law. (Cooney, Lindsey, Mitchell, & Ying, 2002)

Economic opening has contributed to the need for legal reform in China: not only has legal reform been essential to deal with complex international transactions, it has helped to provide an environment attractive to investors. It also has the added bonus of giving the regime a ‘gloss of legitimacy’ in the international arena. (Diamant, Lubman, & O'Brien, 2005, p. 3) However, the relatively new contemporary legal system is still influenced by traditional views of the law as an instrument of state power. Thus while legal reform can be an instrument of trade, it is also playing an increasingly important role in Chinese politics and society as a tool of legitimacy and social control. (Diamant, Lubman, & O'Brien, 2005, pp. 3-6) The gradualist process of reform in the area of labor law undertaken by the Chinese government demonstrates this evolving relationship with the law. The

state is coming to view the law as an important conflict management tactic for a more orderly society: a society undergoing political, social and economic development. In terms of labor market regulation, it can be characterized as being in a “transitional stage” characterized by a “hybrid economic system of mixed market orientation and party/state intervention reflecting both economic and ideological imperatives”. Thus while economic goals are important, “the political and ideological influence of the party/state is still an important factor shaping labor market regulation.” (Zhu, 2002, p. 163)

What this means is that the state is seeking to use labor legislation to maintain control over the worker in an increasingly globalized economy. Large foreign participation in the domestic economy as a result of the liberal FDI policy pursued by the Chinese government means that public goods and services are increasingly being provided by private enterprise rather than the state. (Gallagher, 2005, p. 7) This decoupling of traditional state service provision and employment has devolved decision-making power to the level of enterprise. (Zhu, 2002, p. 163) This has redefined the traditional relationship between state and society with direct state control over labor under the central planning system being replaced by indirect control of labor and enterprise in the market-orientated system.

However, as foreign business increases its control over working conditions, the state still seeks to take leadership of conflict management by improving official administrative and legal channels for unhappy workers. The state’s refusal to allow enterprises, especially foreign enterprises, to settle labor conflict directly allows it to channel workers’ discontent into officially sanctioned channels and

draw conflict away from firms. Labor legislation serves the purpose of “contributing to the state’s ability to maintain control over workers despite rapid economic and social change”. In addition to providing avenues for labor dispute resolution, the state has actively encouraged workers to make use of these channels. So while mass organised protests are sporadic, due to the repressive measures of the Chinese state, there is a steady and inexorable rise in labor conflict mediated through these new legal institutions. (Gallagher, 2005, p. 113) In 1999 there were 120,000 protests (up 30% from 1998) and this increased to 135,000 in 2000. (Ross, 2004, p. 142) By 2006, the number had risen to 300,000. (Bezlova, 2006) Thus the state increases their legitimacy through the development of the rule of law and the construction of more durable and predictable political institutions. (Gallagher, 2005, p. 102) The state thus uses labor reform to control and manage domestic change without relinquishing political power.

This is a double-edged sword however: labor laws may strengthen worker’s rights but they also can lead to greater empowerment and conflict as workers agitate for more change. Thus the appearance of increasing social problems arising from wage gaps, growing inequality, health and safety issues, and discrimination against the vast pool of floating migrant workers and other workplace abuses have the potential to destabilize the regime. While the government has been successful at managing economic change, they “have not displayed the necessary skills at confronting the social and political consequences that arise from this change.” (Saich, 2000, p. 224) The resulting unrest is thus a huge concern for the government and provides impetus for labor reform to appease discontented workers and maintain social stability.

## MNCs

Active encouragement of trade and foreign direct investment (FDI) has resulted in foreign enterprise playing an important role in China's rapid economic growth. Between 1992 and 1998, the average annual rate of growth of exports and combined trade were 24.83 percent and 22.85 percent respectively and in 1998 annual realized FDI inflows were 45.46 billion US dollars, total exports 183.76 billion US dollars and combined trade 323.93 billion US dollars. (Liu, Xu, & Liu, 2003, pp. 229-230) Of these inflows, 65 percent of Chinese exports in 2003 were traceable to outsourcing by Chinese subsidiaries of MNCs and Joint Ventures. (Roach, 2005) Foreign investment, and in particular MNCs, have benefited from the huge pool of cheap labor in China and been attracted as well by the huge potential domestic market. This 'paradox of globalization' has meant that foreign capital continues to be attracted to China because it is willing to "rent workers for falling returns." (Kahn, 25/01/2004)

The weakness of onerous government regulation and enforcement in such areas of workers' rights and environmental protection has traditionally given business greater relative freedom to pursue business and this has led to persistent labor abuses. While domestic firms are often the worst offenders, this paper confines its focus to MNCs and their interaction with the Chinese state. This is because multinational corporations which are defined here as "those economic enterprises, manufacturing, extractive, service and financial, that are headquartered in one country and pursue business activities in one or more foreign countries" are the "most visible vehicle for the internationalization of the



world economic system.” (Blake, Walters, & Walters, 1991, p. 90) Has the proliferation of MNCs in China affected the way that the Chinese government has approached labor legislation? And what has been the impact of MNC preference for voluntary codes of conduct on the Chinese worker?

As stated, MNCs have been attracted to the vast cheap labor pool available in China. As, like with any business, their primary motive is profit, it is to be expected that strengthened labor legislation in China would not be popular with MNCs operating there. The submissions made by the three main foreign business representative organisations to the government regarding the 2008 Labor Law are illustrative of their strong opposition. Between them, the American Chamber of Commerce, the US-China Business Council and the European Union Chamber of Commerce represent 1260 companies. The American Chamber of Commerce submission, which ran to 42 pages, attacked the law for “reducing employment opportunities for PRC workers [and]...negatively impacting the PRC’s competitiveness and appeal as a destination for foreign investment.” More specifically, they opposed contract protection for workers, collective bargaining, limited probationary periods, payment for training, severance pay and seniority-based lay-offs. (Costello T. , Smith, Brecher, & Torrelli, 2006, p. 21) In addition, some MNCs applied pressure directly to Chinese lawmakers, implying that foreign business would be forced to relocate away from China. (Costello T. , Smith, Brecher, & Torrelli, 2006)

While MNCs have resisted being subject to stricter labor regulation, they have promoted the use of systems of internal regulation. Thus rather than support labor laws they have been keen to create their own standards through voluntary

codes of conduct. As MNCs seek to fulfil goals of increased power and profitability, they are wary of negative publicity from media reports highlighting abuses in China and abroad as well as high profile consumer campaigns in the West driven by NGOs. Since the early 1990s, therefore, there has been a huge growth in these voluntary codes. Codes can be a manifestation of and response to the processes of globalization. As MNCs' activities expand to operation on a global scale, the critical reaction of developing countries to their activities leads to the adoption of transnational codes. This is followed by waves of CSR and corporate code development resulting in company level initiatives as response to negative consumer feedback (Jenkins, Pearson, & Seyfang, 2002)

Voluntary codes serve two major functions. Internally, they function to define the terms of employment as enforceable by managers. Externally they have a more complex function which involves "mimic[ing] the rhetoric, forms and processes of law to convince conscientious investors, consumers, NGOs and government of the legitimacy of the usually unequal or exploitative employment relations." (Arthurs, 2004, p. 476) Thus they are an important part of a firm's public relations campaign. But how effective are voluntary codes? Do they result in improvement of working conditions, or are they just window dressing? Opinion is divided. The positive view suggests that codes drive up expectations and standards. Moreover, globalization is seen as bringing positive multidimensional aspects such as increased information and connection of consumer and workers on a global scale leading to greater transparency and improved work practices. (Jenkins, Pearson, & Seyfang, 2002, p. 4) However while codes of conduct are an important part of corporate social responsibility initiatives, they have been widely criticized as vague and unenforceable, lacking procedural arrangements,

as well as independent monitoring and third-party enforcement. (Arthurs, 2004) (Jenkins, Pearson, & Seyfang, 2002) Moreover, studies in the toy industry in China have shown that voluntary codes tend to have little relevance to workers as their lives are regulated more by internal company bylaws. These bylaws govern every aspect of working life and are heavily restrictive, highly specific and punitive. (Kwan & Frost, 2002)

Corporate codes of conduct, outlining basic standards that suppliers must adhere to if they want to do business with MNCs in China should, in theory, have the effect of raising the standard of suppliers' factories. However, it is well known that widespread abuse of workers' rights is continuing and regularly covered up by suppliers. (Harney, 2008) This is a major problem in China, and the degree to which suppliers of MNCs are complying with the standards outlined in the voluntary codes of conduct is generally found to be low in the academic literature. (Frenkel, 2001) (Egels-Zanden, 2007) This demonstrates that MNCs' codes of conduct are not "achieving the envisioned alterations of working conditions at supplier's factories....[and] operationalising MNCs' extended responsibility for working conditions at suppliers' factories." (Egels-Zanden, 2007)

This is mainly due to the economic incentives that exist for non-compliance. While MNCs push suppliers to be socially responsible manufacturers, they are unwilling to pay more to reflect the higher costs of compliance to codes or labor legislation. A common complaint by suppliers is being caught between the differing expectations of departments within the same MNC. For example, one manager was taken to task by an MNC's social compliance department for not adhering to standards, while the sales department of the same MNC refused to

accept the minimal price increases necessary for compliance. Problems thus occur when suppliers do comply, as they price themselves out of the market. The manager complains: “the brands want something for nothing and that’s not fair...if you are looking for the same working environment as developed countries, then you have to pay for it.” (Harney, 2008, p. 183) In addition, corporate codes provide only a ‘veneer of compliance’ as suppliers find multiple ways to evade inadequate auditing systems. Double sets of books and ghost factories are but two ways in which suppliers ensure competitiveness while appearing to adhere to standards. Thus “the framework that many brands and retailers use to safeguard their reputation is not encouraging significant improvement in conditions for Chinese workers.” (Harney, 2008, p. 184)

### INGOs

A major phenomenon of the post-Cold War era has been the boom in the creation of NGOs across the world seeking to provide services or change in diverse areas such as labor rights, environmental protection or poverty alleviation. (Chen, 2006) As globalization has increased, these NGOs are able to develop thicker networks of cooperation and communication internationally. At the same time, there has been a “global associational revolution” characterized by an upsurge of organised voluntary activity. This third-sector proliferation is thought to be altering the relationship between the state and citizens as people pursue public purposes outside the formal apparatus of the state. (Salamon, 1994) Thus transnational networks are empowering citizens in their efforts to tackle issues such as workers’ rights. And INGOs have gained prominence through increasing use of international law, backing from prominent international bodies (such as the UN), participation in policy debate, and as shapers of opinions and norms.

(Chen, 2006)

INGOs focused on labor concerns in China include China Labor Watch, the Asia Monitor Resource Centre, the Hong Kong Christian Industrial Committee and the China Labor Bulletin. INGOs such as these have been instrumental in bringing attention to the plight of the worker in China, through on-the-ground initiatives in cooperation with local groups, providing funding for Chinese domestic NGOs as well as transnational publicity campaigns. While they have played a significant role in highlighting violations of workers' rights, their efforts have been hampered by the Chinese government through strict registration procedures as well as monitoring. The state, fearful of the threat posed by an organized network of workers' organizations, monitors NGO activity in China and Hong Kong through the Ministry of State Security and the Public Security Bureau. In addition, in 2005, a task force was formed specifically to increase government scrutiny of NGOs. (Harney, 2008, p. 133) Thus, while INGOs are permitted to provide foreign funding for local NGOs, publish reports, and apply for travel permits, they are restricted to operating in a narrow space defined by the government. Where INGOs have been effective is firstly in providing support to local NGOs through funding, advice and so on. In addition, they have pushed for greater focus on international human rights and labor rights standards. This has contributed to increasing Chinese workers' awareness of their rights.

### Part Three: Concluding Discussion

This paper uses a framework of multilayered governance to analyze how and why the Chinese government is focusing more on protection of labor rights. The three main actors in this situation have been identified as the authoritarian

Chinese state, multinational corporations and international NGOs. They all have differing goals and expectations that interact in complex ways to influence employment conditions for Chinese workers. It has been seen that the Chinese government seeks to maintain both rapid economic growth and social stability; MNCs prioritize profit-making with a socially responsible public image while international NGOs focus on promotion of labor rights, as a form of human rights. It is this interaction at both supra-national and national levels which ultimately impacts domestic change in employment conditions in China. But to what extent does this interaction compel change in Chinese labor law and to what extent have these changes improved protection of workers' rights in China? And are legislative changes or voluntary industry codes more important?

The answers to these questions are necessarily complex. Interaction of the Chinese state, MNCs and workers is complex and multifaceted. Labor law reform initially occurred within the context of increased interaction with foreign enterprise as a result of economic opening. As economic growth continued, early reforms were seen to be inadequate as violation of workers' rights was endemic throughout the labor market. Under increasing pressure from INGOs and domestic workers, the government recognized the need for further reform and strengthening of labor laws. This reform was intended to provide greater protection for workers and forestall unrest. The government also strengthened labor conflict resolution procedures. In this way they sought to provide more durable and predictable political institutions that would enable state control over labor unrest to be maintained. Thus as state control over labor weakened with the influx of foreign companies, improved legislation and institutions ensured that the state retained control over Chinese workers in an increasingly globalized

economy.

While minimizing labor unrest is a major motivation for the government to strengthen labor legislation, another important factor is the need to build a stable foundation for the transformation of China's economic development path. According to the recent media reports, Chinese officials have been quoted as saying that the 'Made in China' model has reached a turning point, and improved conditions for migrant workers are essential for China going forward. Official commentators have been quoted as saying that "While transforming the mode of economic development, we must ensure the fundamental subsistence rights, labor rights and development rights [of workers are protected]. Raising the income levels of the worker stratum and adjusting the gap between rich and poor is not merely an emergency response to protect stability; it should also be a social transformation to match the transformation in the mode of economic development." Hence, the government's tacit support of workers' demands for higher wages suggests that the future focus is to be on stimulating domestic demand and moving away from reliance on the low wage export sector towards more high-tech, value-added sectors. This entails the creation of a more highly skilled workforce earning higher salaries.

A spate of suicides at Foxconn, an electronics maker with a large plant in southern China, as well as a series of strikes by workers at foreign-owned factories in southern China, in particular Honda vehicle plants and parts suppliers, has resulted in statements by top officials signalling their support for workers' demands for better conditions. While still wary of protests that could threaten regime stability, official newspapers such as the People's Daily, have said

that China needs to increase workers' incomes both to protect stability and promote domestic spending. Echoing comments made by Premier Wen Jiabao, the paper stresses the need to narrow the gap between rich and poor to allow consumer demand to grow. (Reuters, 2010)

MNCs are also adjusting to the changing industrial situation in China. While traditionally business in China has taken advantage of the huge low-cost, unskilled workforce to produce cheap exports, as the manufacturing sector matures, companies are seeking to move up the value chain and for this they need skilled, happy workers. Thus, companies need to provide competitive working environments and be willing to listen to workers' needs in order to retain staff. The strikes also demonstrate the changing attitudes of MNCs to operation in China. Threats that improved labor legislation would result in foreign business moving off-shore have largely not materialized with many firms preparing to negotiate with labor as the price of accessing the huge domestic Chinese market. Surveys show that while some companies are considering relocating inland to lower costs (28 percent in 2009 up from 17 percent in 2008), most (83%) state their primary motive for locating manufacturing in China as access to the Chinese market. (Parich, 2010)

The threat for businesses posed by strikes is thus off-set by the benefits offered by the greater spending power from Chinese consumers in the long-term as a result of wage rises. (Ranasinghe, 2010) This will entail a review of China strategies for MNCs, but company executives have signaled in recent media reports that they will not be deterred from doing business. Chinese labor costs



are on a rising trend, but still remain low as a fraction of the cost of goods made there. Honda's Chief Financial Officer Yoichi Hojo was quoted in recent news reports as saying that the automaker does not expect lasting impact on earnings from the labor unrest, and that the impact on earnings was minimal as labor costs comprised only two percent of total manufacturing costs. (Ranasinghe, 2010) Executives have also been quoted as saying that the recent unrest can be seen as part of China's economic development and expressed views that higher wages among factory workers would help fuel consumption, benefiting the global economy. They acknowledge that with improvements in living standards and disposable incomes, China becomes a more attractive market to MNCs. (Ranasinghe, 2010) Thus if MNCs are in China for the long run, they must find a way to work within the new labor legislation. Thus we can see that while "MNCs may have enhanced their power vis-à-vis other actors, they are not totally free to do as they please. States retain residual powers, both in theory and reality." (Costello T. , Smith, Brecher, & Torrelli, 2008, p. 472)

Have changes to legislation and the introduction of corporate codes led to an improvement in workers' rights in China? Again, precise answers are difficult to find in the light of the complexity of the Chinese labor market and with a lack of quantifiable data. This is an area of research that deserves further study. It can be said however that while challenges remain in ensuring that all workers enjoy basic protection, progress is being made as illustrated by the recent labor unrest in China. The recent strikes and unrest in southern China are indicative of the rising demands of younger generations of workers. They expect better wages and conditions than their parent received and are willing to take action to

achieve it. While this usually results in workers quitting their jobs to go to factories with better pay and conditions, sometimes more extreme measures such as strikes are occurring. Thus foreign-owned factories need to deal successfully with them if they want to keep their global supply chains operational.

Liu Kaiming, executive director of the Institute of Contemporary Observation, a privately funded group in Shenzhen that focuses on labor issues was quoted in recent media reports as saying that strikes are increasing. "We've already seen a growing number of strikes in previous years, especially in 2007 and 2008, when the new labor contract law was introduced, and then there was a gap in 2009, but now we're seeing the trend resume. The Honda strike is an extension of that... It also shows that there is a trend that is being driven by a new generation of migrant workers. They are more willing to speak out about their grievances, and are less tolerant of long hours and tough conditions than the older generation," he said. (Reuters, Honda China strike could spur broader worker demands, 2010) And companies are showing that they are willing to listen to workers. Workers at Foxconn for example have recently received a 66 percent wage increase. (Reuters, Q&A: What's behind China's recent labor unrest?, 2010)

Finally, is labor legislation or voluntary codes more important in improving conditions for Chinese workers? The major weakness of Chinese labor legislation is the lack of enforcement. Enforcement of centrally promulgated labor legislation is difficult in part due to the decentralized nature of the Chinese political system. Local officials have traditionally had the authority to implement policies according to local needs. With local government relying heavily on

revenue from taxes and fees, they have little incentive to strongly implementing labor legislation and threaten their income stream. (Harney, 2008, p. 257) In addition, enforcement of labor legislation is difficult in a context of a weak legal system, on-going corruption and the priority of continued economic growth. While the central government has strived to strengthen labor regulation, if it is not implemented on the ground, then it will not be a force for improving labor rights. However, increasing enforcement will entail fundamental reform of the decentralized political system to ensure local implementation as well as an increase in the number and authority of monitoring institutions. The fact that the government is either unable to unwilling to improve enforcement means that the inexorable rise of worker expectations and consciousness may lead to more unrest than the government can control.

In the meantime, the government appears to be relying on not only improving institutions for labor conflict resolution, but also on corporate social responsibility initiatives to improve labor conditions. While it has been acknowledged that corporate codes are not necessarily effective in improving working conditions, they have been shown to drive up expectations, standards and information available to workers. As we have seen with the recent labor unrest, workers are now showing increased awareness of their rights and the ability to articulate them. The Chinese government has promoted the practice of corporate social responsibility “as a means to fill developmental gaps and meet social objectives.” (Parich, 2010) However, it is not willing to strengthen the third sector or civil society that can enable successful implementation of CSR in developing countries. (Fox, Ward, & Howard, 2002) In fact, it actively harasses labor NGOs to prevent them from organizing on too large a scale and this

minimizes their influence.

The relationship between the state and enterprise has undergone fundamental shifts and the Chinese government is attempting to deal with this, without forfeiting power. It appears likely that the usual piecemeal approach to labor reform will be continued as they try to balance appeasing workers and upgrade the economy without upsetting the current reliance of foreign enterprise on cheap labor. While Chinese leaders have indirectly signaled their support of improved incomes for workers, they must manage this process carefully. However, a fine balance must be kept, between appeasing workers' demands and maintaining an attractive investment environment for continued economic growth. Thus the government is in a difficult position as legislation and globalization lead to greater worker awareness which poses a grave threat for regime stability if not managed carefully.

The authoritarian nature of the government means that legal reform can only go so far: it must be carefully managed so that popular empowerment/participation does not get out of hand and compromises need to occur to keep a lid on popular unrest. The government responds to pressure from domestic groups and also international NGOs as a way to shore up its own power and legitimacy, but only as much as needed, as it also seeks to balance keeping big business happy as well. The nation-state thus plays the primary role in providing legislation but its power is supplemented by other actors in the private sector, leading to more governance activities taking place outside the "central government" box.

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