Commentary

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Defending workers' rights in China

By Jerry Harris, Robin Munro and Michael Zhang

An interview with China Labour Bulletin

Abstract: China's tremendous economic growth over the last two decades has begun a historic shift away from the economic dominance of the West that is the subject of much commentary and debate. Far less known is the impact on Chinese workers themselves, who are frequently denied the rights laid down in labour laws and also lack the protection of public health services or unemployment benefits. Protests against these conditions are steadily growing. China Labour Bulletin is one NGO that acts to defend workers' rights and publicise the present situation.

Keywords: ACFTU; China Labour Bulletin; Chinese Communist Party; Hong Kong; 'iron rice bowl'; trade unions; xiagang; Xiangang strike

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Introduction

The impact of China on the global economy has been tremendous. Over the past two decades, it has become the manufacturing workshop of the world. China's emergence, alongside that of other Third World countries, has begun a historic shift away from the traditional economic dominance of the West. But while some Chinese have benefited, millions labour in sweatshops, lose their land to corrupt officials and suffer environmental calamities.

The China Labour Bulletin (CLB) is a Hong Kong-based non-governmental organisation (NGO) that has been at the forefront of defending the rights of the Chinese working class. Founded in 1994 by independent trade unionist Han Dongfang, CLB actively promotes democratic union organising and the protection of labour rights and workplace safety in mainland China. CLB's work is based on China's labour laws and on ILO Conventions nos. 87 and 98, which provide for the right to freedom of association and the right to free collective bargaining.

A core means of achieving these goals is the case intervention programme, through which CLB provides legal advice and support to Chinese workers whose basic labour rights and civil rights have been violated. By introducing such workers to activist lawyers and law firms in mainland China and providing financial support to cover the legal fees, CLB has enabled many workers to bring successful lawsuits in Chinese courts against employers who have violated the country's labour laws. In addition, CLB has a very active research and publications division. Over the past eighteen months, it has produced seven Chinese-language research reports covering a wide range of key labour rights issues in mainland China. Two of these have also been published in English, with several more currently in the translation pipeline. The interview was conducted on 21 May 2006.

Jerry Harris: Over the last year, official statistics from China report that there were 87,000 protests; can you comment on some of the most important demonstrations and their character?

Robin Munro: From our observations, there are two kinds of protests. The first are of workers from state-owned enterprises who are experiencing restructuring, such as privatisations, mergers and bankruptcies, and that process is almost finished now. Millions of workers have been laid-off under the xiagang policy introduced in the late 1990s. This was a transitional measure, while state enterprises were privatising, to lessen the unemployment impact: it means to 'step-down from your post'. It was slightly different from real unemployment because when a state-owned enterprise was restructured or privatised and tens of thousands of workers let go, they were put in xiagang status

for three years. During this time, they were still on the books as employees, but they were not expected to come to work and received about a third of their salary. That was meant to cushion the blow of unemployment. Many of those xiagang workers didn't see it that way and many were tricked into accepting this status on the false promise that the company was going through temporary difficulties, but that they would get their jobs back when things were better. Of course, there was no intention to give them their jobs back and, after three years, they were just cut off. Now formally unemployed with no subsidies from the factory, they have lost all their benefits – and these were considerable under the state enterprise system, the so-called 'iron rice bowl'.

The state restructuring process was nearing completion by 2003 or 2004, so the number of protests by state workers has been tailing off. But the numbers of protests by rural migrant workers have been getting greater and greater. The state enterprise workers have protested over demands such as better severance pay, termination packages and buying out their accumulated seniority, which is often cut short. There are also demands that the government find new jobs for them because most laid-off workers, especially in the industrial areas, if they are over forty, there is a high chance they will never work again.

JH: Can you tell us something about the nature of the migrant workers' protests?

RM: The second type of major protest has come mainly from rural migrant workers in the privately-owned sector. For the migrant workers, the major issue is wages. These are mainly demands for back-pay, because they are often not paid for months, better piece-rate pay and demands for the enforcement of overtime pay.

Let me give you some good examples. In March 2004, at the Stella International factory, the workers rioted, staging big protests on two successive nights. This was a Taiwanese company that produced very high quality and popular shoes, with high capacity and at least five factories, but a very tough company towards the workers. Workers had not been paid for months, the food was lousy, conditions in the dormitories were very bad and discipline was enforced very strictly. Things like toilet breaks were timed and other such policies were prevalent. The workers just lost their cool, they smashed some machinery and overturned some cars – and this included thousands of workers at two separate factories. When the police came, they detained dozens of workers but ten were actually formally arrested.

So we got involved in the case and hired lawyers for six of the ten who had been formally charged. We do a lot of civil labour dispute litigation but it was a big step for us to get involved in a criminal case. We

feared the court might sentence the workers more harshly, but we felt we had to do it and it worked out very well. Although the workers were convicted at the first trial, the lawyers appealed and they were all released in the end. It was very unusual; usually if you get charged, you go to jail – there is something like a 99 per cent conviction rate.

JH: Have health and safety issues led to protests?

RM: Let me give you some more examples, such as the ones in our report on silicosis in the jewellery processing industry, which are all cases that we have litigated on. We had remarkable success after working on it for a year and a half. Out of eleven cases that were settled either out of court or through judgements, we won over US $400,000 for these workers who are dying of silicosis poisoning. One of those judgements was a record award for China, about US $60,000.

Of the seven collective cases discussed in the report, one is from the Eryou Gem factory, a Hong Kong-owned firm. In this case, there was a protest over compensation where workers blocked a railway bridge demanding that the whole workforce be given proper medical examinations. Occupational injuries and illnesses usually are not talked about enough because most strikes and protests are about wages. Health issues tend to be seen as individual problems. But they affect tens of millions of workers and it's this huge hidden cost of the Chinese economic miracle that is going to have to be paid for. Those chickens are coming home to roost fast across the country.

JH: I would think mines are another problem affecting large numbers of people?

RM: Mines are a similar issue. You tend not to get mass protests over mine disasters because you have shattered communities; the ones that don't have deaths in their own families feel so damn lucky and the ones who do are left to suffer on their own. The government tries to isolate affected families, sometimes physically detaining them so they can't get together and petition for decent compensation.

JH: Let me pose some strategic questions for you around your case intervention efforts. It seems you are using these new legal openings to make important gains. Can these efforts be used over a period of time to expand democratic space and civil society? I was reading about the Xianyang case in which, essentially, you tried to use the legal system to recognise an independent union or at least an apparatus within the All China Federation of Trade Unions (ACFTU).

RM: You can't really use the word independent. We as an organisation are dedicated to promoting independent trade unionism but, on the ground in China, anyone who puts out that banner will be arrested. So it has to be done within the framework of the ACFTU. Xianyang

was a fascinating case because the workers were demanding the right to form a union, which is a new kind of situation for China – even just the demand to form a union within the ACFTU. We're beginning to see strikes and other types of protest where that issue is coming on the top of the list of workers' demands.

There is another such case, besides Xianyang, and that is the Uniden factory. This is a Japanese-owned enterprise that makes cordless phones for home use. The workers had been having a campaign to have a union for several months, when the main organiser was secretly detained. That became one of the issues that set off a huge strike of about 16,000 workers. They also had wage and back-pay demands. But when they went on strike their main demand was the right to form a union. The protest came at the end of a wave of nation-wide anti-Japanese protests that swept China at that time. And because of the heat Japan was feeling, the company conceded to the workers and said it would allow the formation of a union. So the workers did get a union, but the company reserved the right to appoint the union committee, so it became a meaningless body and workers were left frustrated. But that the demand is coming out shows that workers are beginning to think beyond just higher wages and benefits. They're now saying, we want an organisation for the long run.

JH: Well, if we look down the road ten or fifteen years, is there the chance of making the ACFTU a more militant, or at least a more representative, body? For example, in US labour history, there was a big debate in the 1920s on whether to create independent unions or join the AFL and push it to the left. Most union radicals went into the AFL and only during the crisis of the 1930s split off to create a new labour federation, the CIO. So, strategically, do you see using these legal openings as a way to pushing the ACFTU into being a more militant labour organisation, or is it a situation where this is what you can do right now, defending people by taking advantage of the current framework?

Michael Zhang: What happens in the ACFTU depends largely on the Communist Party and not the trade unions themselves.

JH: So there's no real hope?

MZ: Maybe. In theory, the whole purpose of the ACFTU is to protect workers' rights. It has 600,000 full-time cadres, so it can't simply do nothing with such large numbers, it has to act. But what it is doing now is far from what a real trade union should do. The government's policy is to balance economic development with social justice. Because the ACFTU is under the Communist Party, it has to think about doing more for social justice. So an example is its work in state-owned enterprises; it has established some types of organisations across the country

to help the poor and economically underprivileged. It has also established certain types of legal aid offices to help workers file lawsuits against the employers.

The real problem is the discrepancy between the central and local governments. The unions from the provincial level and below have to comply with the local government. So that is a real conflict between the central and local governments. The central government and ACFTU want to do something on social justice but, when it comes to the local government and the local branches of the trade unions, they don't want to; they simply want to optimise economic development. Many of the grassroots local private enterprises have colluded with local officials. Under such circumstances, even if the ACFTU wants to help local workers, they are inside those private enterprises and not in society, and the ACFTU and central government can't help them because of this structure. So the collusion of the local officials and private owners acts as a shell that is separate from society. The enterprise and the local government make up this shell, but where are the workers? The workers are inside. Even if the ACFTU and central government want to protect workers' interests, they cannot break this shell. So our senior leaders always pay more and more attention to the workers, but in fact little happens.

JH: It seems there must be a debate within the Communist Party over social justice and allowing these legal areas to exist. It just wouldn't be possible without support from the Party.

MZ: My feeling on this is that these figures, of 87,000 protests last year, are probably a big underestimate. The year before that (2004) was the first time that the government published the figures; then the number was 74,000. So that is a 10,000 or so increase in just a year. And the government has told us officially that there are now ten times more protests than a decade ago. Ten years ago, if workers protested, local governments would probably arrest them. The government would see each individual case as some kind of political challenge, saying that 'legitimate problems are being exploited by people with ulterior motives'; that it is a 'plot to undermine the Party'. But the volume now is so great and so widespread – if you go to any city in China, there are probably several big protests by factory workers going on at any given time. The government can no longer reasonably consider every one of these as a political challenge. Central and local governments are beginning to realise that there are real social justice problems.

There is official recognition of this fact. President Hu Jintao and especially Premier Wen Jiabao have repeatedly, over the last three years, talked about doing very well on economic development. But now they are having to refocus attention on 'building a harmonious society'. This has become the buzz phrase and, you know, when this

has become central government policy, when you translate it what they are really saying is: 'we are very scared and deeply anxious about growing social inequality and social unrest, we have a very inharmonious society and it's getting worse'. So at least the policy-level recognition of this fact is very important and a step forward.

Of course, the real question is whether or not the government is taking effective steps to turn the inequitable social situation around. I think it is not. But the point is that the policy statements around a harmonious society and social inequity allow local governments to view each individual protest as a normal part of the capitalist/socialist economy and they have to deal with it. It's not a political challenge. So they don't go in and arrest everybody. If it gets very big, like the Xianyang textile workers' strike, or in the interior of the country, they are more likely to start arresting people. The government's main strategy is to isolate each protest and stop it from spreading. So as long as it stays within the factory, and worker organisers don't fan out and inflame neighbouring factories or cities, the government will not treat it as a political case.

JH: Inside the Party, we are seeing both a new Left and the re-emergence of a small Maoist trend allowed to exist. What do you think these might reflect?

MZ: To the extent that there are still genuine Maoists in the Party, they hate the reforms and they would not be in favour of encouraging independent unions.

JH: What about the existence of an intellectual new Left inside the Party?

MZ: There is no senior-level split within the Party. Ten years ago, the new Left had a stronger presence but now it has little appeal among intellectuals. But what you do get among intellectuals is two trends: one is constitutionalism and the other is liberalism. The big contention between those two schools is – should China have freedom or should it have democracy? And the debate often takes place in reference to Hong Kong. Of course, Hong Kong has a great deal of freedom, but it doesn't have democracy. The constitutionalists say, we need democracy; the liberals say no, the important thing is to have freedom and rule of law. The central government's position is that it doesn't want either of these things. It says, 'look we're in charge and fixing the problems, we'll address all the social issues'.

The real conflict is not within the top central leadership, but between the central government and the provinces. The local governments increasingly have their own economic and political interests. Premier Wen Jiabao will go down to the people and talk to migrant workers or some other group and tell the local officials 'fix that!' Then the

People's Daily headlines 'Premier Wen orders that migrant workers be treated fairly'. But after he leaves, it is even doubtful that those workers will receive back pay or have their grievances addressed. That is the level it's at; when he leaves, the local governments just ignore him and focus solely on economic development.

JH: Is there a globalist *vs*. nationalist split in this division? Are the regions more neo-liberal and tied to transnational capital, with the central government promoting more of a national modernisation strategy, or are they all integrated with transnational capitalism?

MZ: The local governments are heavily dependent on international capital and they have a whole set of favoured treatment policies for foreign companies. And this is very much responsible for the rise of China's GDP figures. But it's also responsible for suppressing the ability of national capital to develop. Take the export market in auto manufacturing, China does manage to export some of its trucks, but it still cannot export its cars.

JH: Does Hu Jintao represent more of a national line of development, or a national capitalist class?

MZ: No, it's not like that. The foreign direct investment (FDI) strategy is set by the central government. The central government is delighted by the GDP growth figures. China is locked into this strategy where it must maintain 8 per cent GDP growth per year. If it doesn't, it will have massive social problems because unemployment is high and those workers have to be given at least some type of subsidy and unemployment benefits. China is investing next to nothing in health and education. If you look at UN figures, you see China near the bottom on the amount of their GDP spent on health and education; it's a scandal. Every year there are something like 20 million new workers coming on to the labour market. So the government is locked into a strategy of growth because it doesn't really have a political strategy.

Post-Tiananmen there was a sort of forced 'new deal', whereby the Party leadership in effect said, 'as long as you the people stay the hell out of politics we will allow you to become rich'. And that's still basically the strategy. The government's legitimacy now rests almost solely on its ability to deliver the economic goods. It doesn't have any real fallback position if things get tough in this area. This is quite critical. If there was suddenly a world recession of some kind and the international demand for Chinese exports fell off drastically, it would be a disaster for the country's economy – and a political and social crisis would quickly ensue.

JH: Let me suggest a possible different developmental strategy and ask whether or not there is any discussion of this in the Party. China is

beginning to have labour shortage problems and therefore some wages are rising. If the central government's policy to improve rural conditions slows down migration to the cities, that will also decrease the industrial labour force and create pressure for better wages in the urban areas. In addition, rising skill levels, within the working class as well as the professions, will create more buying power and therefore strengthen the internal consumer market. So overall, development will be driven more by internal factors and not the external market and exports. This would produce greater stability, which is of great concern to the government. Is this an alternative for China?

MZ: The Chinese have a very high savings rate, the reason being that social services have been so drastically cut back in the course of the economic reforms. Most people do not have a pension or even proper medical insurance. One serious illness can bankrupt a family. Education is also at a very high cost now. A lot of rural families can't afford to send their kids to school. Tuition may only be 300 to 500 yuan a year, but for poor rural families their annual income is only 1,000 yuan, although the average is about 3,000. So people don't want to spend their savings. So much of China's economy is based on exports. The proportion of China's GDP that comes from exports is huge, it's unprecedented in any other country. What is seriously lacking is the consumer dimension. The big thinking now is to persuade the Chinese people to spend and consume more and that will create a much more stable economy and expand the economy in a healthier kind of way. But ordinary Chinese won't spend because they have to save to cover their basic social security needs.

JH: So why won't the government take some of those hundreds of billions of dollars it is sitting on and put it back into education and health care? It seems an obvious strategy.

RM: Well they're basically Thatcherites, and in some ways they're more Thatcherite than the Iron Lady herself. The Chinese leadership are big fans of both her and Milton Friedman. These key neo-liberal figures are part of the pedigree of Chinese economics today. It's important to remember that China nowadays is not socialist in any recognisable sense, whether Marxist socialist or European democratic socialist. So the government is averse to paying out large sums of money to meet even quite basic social justice goals.

Economists are comparing China's performance over the last fifteen years with other countries at similar stages of economic development. This includes the Soviet Union and Japan in the 1950s and '60s, it includes Brazil, South Korea – all those countries actually achieved higher growth rates during their periods of extensive rapid economic growth. When you are starting from a relatively low economic base

and your economy takes off, the GDP growth rate is naturally very high. But these figures can't be sustained indefinitely and the experience of these other countries shows that. And when you make these comparisons, at that lift-off point where rapid extensive growth takes place, you find that China's growth rate nowadays is actually lower than what other countries experienced at a similar phase of development. And that is in a situation where China has massively more FDI coming in, much more than those other countries ever had. Given the huge amounts of FDI it has, China should be doing much better.

The question becomes, why isn't it? In China, you have massive amounts of corruption. Huge amounts of that FDI are going who knows where, re-exported to Hong Kong through bogus front companies here and there, and so on. China is making very inefficient use of that capital. Hence, underpinning the constitutionalist argument is the belief that, for China to go on to the next stage, it's not enough just to focus on the economy, it needs to reform the political system as well.

JH: A multi-party system?

RM: That is a bit too far in the future. The government is talking about inner-party democracy, extending local elections and creating greater public accountability. In Hong Kong, you don't have democracy but you have the rule of law and freedom. But what was perhaps most crucial in Hong Kong's case was the creation of the Independent Commission Against Corruption (ICAC). The ICAC is a really powerful law enforcement body that stands outside and is independent of the government, and which ruthlessly prosecutes cases of corruption. There is nothing like that in China – it's all self-monitoring instead. Corruption has gone off the screen compared to what it was in 1989, and then it was perhaps the biggest source of popular unrest during the Tiananmen Square protests of that summer. The level and scale of corruption in China is now far higher; it's endemic. Also, money is going into pointless infrastructure projects just to boost the prestige of city governments and huge high-rise buildings are lying half-empty through lack of demand for office space. These problems arise because China has no public accountability and no democratic popular monitoring of government behaviour. The elite is increasingly a corporatist-style business and political elite.

We were talking about national capital a moment ago; well, for national capital to succeed it has to have this highly dependent relationship with the local Party, it has to have its patronage. If it doesn't have the connections, it has no chance of getting bank loans. Most of the lending of the four big state banks goes to prop up state-owned enterprises. They say they've privatised many of these, but mostly they have just repackaged and restructured what are still loss-making enterprises.

And the four big state banks are still subsidising them up to the hilt, with huge yearly loans that are non-performing. That is where much of the 'investment' capital is going, it's not going to private companies unless those companies have a very close political relationship with the local Party and government authorities.

JH: One last question. In the US, there is a split in the ruling class between globalists and nationalists and George Bush and the military/industrial complex represent the most aggressive nationalist and imperialist sector. They see China as a strategic enemy. The globalists see China as a strategic partner. So how do we defend the working class in China and, at the same time, defend China from western imperialism as well as its right to have a place in the world economy?

MZ: The presence of multinationals in China should, on balance, be a good thing for workers and for workers' rights. The multinationals bring a whole set of human resources practices and a labour relations system that could, to some extent, have a positive effect on labour standards in China. Some factories run by multinationals have quite decent labour contracts that could play a useful demonstration role. In addition, most multinationals nowadays have their own corporate codes of conduct. In the best cases, these can have an educative effect on enterprises from Hong Kong, Macao and Taiwan that currently operate outside of international standards. Such factors can be used to pressure them to respect human and labour rights standards within their factories.

JH: Thank you very much.