

MADE IN CHINA



A Quarterly on Chinese Labour, Civil Society, and Rights

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WALMART WORKERS
IN CHINA
Anita Chan

CHINESE WORKERS
AND THE LAW:
MISPLACED TRUST?
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WHY MADE IN CHINA?

In the last few years, the Chinese labour movement has witnessed significant developments, not only with the occurrence of some of the largest strikes in decades but also the emergence of grave challenges for workers and activists. Made in China springs from the belief that this calls for more serious analysis from both scholars and practitioners, as well for a critical engagement with a broader international audience interested in forging international solidarity.

HAMMER TO FALL

Harder Times Ahead for Chinese Civil Society

We are pleased to announce the second issue of *Made in China*. In this issue, we open with a series of **Briefs** that provide an overview of notable stories that have taken place over the past three months. In the last quarter, one of the most important developments for Chinese civil society is the passing of the Law on the Management of Foreign NGOs' Activities within Mainland China on 28 April. Although a draft released early last year had received extensive domestic and international criticism, the Law was passed with only minor revisions. What we previously described as a sword of Damocles looming over Chinese civil society has now become reality.

To contextualise the language of the Law and shed light on its possible implications, we have compiled **The Foreign NGOs Management Law: A Compendium**. While the new legislation indeed helps to clarify what is a substantial grey area in the Chinese legal system, the specific terms of the Law have grave implications not only for international NGOs operating in China, but also for the whole of Chinese civil society. This is especially true for those organisations that operate in politically sensitive fields such as labour and human rights.

In the China Columns section, we present three articles. In **Walmart Workers in China: A Breakthrough in the Chinese Labour Movement**, Anita Chan highlights the historical importance of the recent struggles of Walmart workers in China. In **Chinese Workers and the Law: Misplaced Trust?**, Ivan Franceschini reflects on the 'rights awakening' of Chinese workers, challenging some widely held assumptions. Following up on the tribulations facing state workers in China that we out-

lined in the last issue, **Laying Off Responsibility: Microcredit, Entrepreneurship, and China's Industrial Retrenchment** by Nicholas Loubere offers an analysis of the political and ideological implications of resorting to microcredit to promote entrepreneurial activity among laid-off workers.

The arbitrary detention of rights advocates and lawyers over the last year has renewed interest in re-evaluating the meaning of the discourse of the rule of law promoted by the Chinese authorities. This issue includes a forum, **Interpreting the Rule of Law in China: A Discussion**, edited by Elisa Nesossi with contributions from legal experts Joshua Rosenzweig, Ewan Smith, and Sue Trevaskes. This discussion puts the concept of the rule of law in China in a wider historical and political perspective, and deconstructs its multiple dimensions and specificities.

Finally, in the Academic Watch section, we introduce **China on Strike**, a new book on the struggles of Chinese workers, through a conversation with one of the co-editors Eli Friedman.

This journal is hosted by *Chinoiresie.info*, a collective blog edited by young scholars and dedicated to the analysis of Chinese society. If you would like to contribute a piece of writing, you can contact us at madeinchina@chinoiresie.info. If you would like to receive this journal regularly by email, you can subscribe at this link: www.chinoiresie.info/madeinchina. We welcome any feedback and we hope you will consider sharing this journal with your friends and colleagues.

The Editors,
Ivan Franceschini, Kevin Lin

APR/JUN 2016

He Xiaobo Released on Bail, Zeng Feiyang's Mother Attempts to Sue Official Media

On 8 April, He Xiaobo, one of the labour activists taken into custody in early December 2015, was released on bail after being charged with embezzlement. A 42-year-old former migrant worker, He is the director of the Nanfeiyang Social Work Service Centre, an NGO based in Foshan, Guangdong, that specialises in providing legal aid to victims of work-related accidents and occupational diseases. Another two labour activists, Zeng Feiyang and Meng Han, of the Panyu Migrant Workers Centre, an NGO based in Guangzhou, currently remain under detention with the charge of 'disrupting social order'. In late December, Chinese state media publicly accused Zeng of having embezzled money from factory workers, having affairs with several female workers, and writing 'vulgar' messages to women online. His mother Chen Wenying later attempted to sue the official Xinhua News Agency and China Central Television, demanding one million yuan in compensation for defamation, but in April she dropped charges due to the unrelenting pressures she and her family had been subjected to in the wake of the lawsuit.

(Sources: **Guardian**, **Quartz**, **South China Morning Post**, **Xinhua**)

New Foreign NGOs Law Passed

On 28 April, the National People's Congress, China's legislative body, passed the long-awaited Law on the Management of Foreign NGOs' Activities within Mainland China. The new Law, which will come into effect on 1 January 2017, fills a grey area of the Chinese legal system, stipulating that any foreign group wishing to operate in China must register with the public security authorities. This means that the Ministry of Public Security and its local branches down to the county level will formally be in charge of supervising all activities of foreign NGOs in China. The passage of the Law signifies increasing restrictions on the activities of foreign NGOs. Not only will they be barred from engaging in political or religious activities, or acting in a way that damages 'China's national interests' or 'ethnic unity', but criminal measures can also be taken against individuals who are suspected of having engaged in activities that violate these broadly worded principles. As most foreign NGOs operating in China do not have any official registration, no official data are available on their numbers. However, according to one estimate more than 7,000 international organisations are active in the country today. In light of this widespread presence, the Chinese authorities have argued that such regulation is long overdue, with an op-ed published on the *People's Day* on 4 May rhetorically asking: 'If you do not violate the law, what are you afraid about?' Still, critics maintain that the laws amount to a crackdown. To allow our readers to have an informed opinion on the matter, on pp. 34-40 of this issue of *Made in China* you can find a compendium of the Law.

(Sources: **BBC**, **China Law Translate**, **Guardian**, **People's Daily**)



Henan Local Regulations Forbid Workers from Resorting to Extreme Measures to Pursue Back Pay

On 22 April, the local authorities of Zhengzhou, Henan Province, released a set of ‘Draft Regulations on the Construction Market’, giving the public one month to provide feedback. The Regulations, which aimed at ‘standardising the management of the construction market, protecting the order of the construction market, and guaranteeing the legal rights and interests of the actors involved’, attracted public backlash because in their initial formulation they included provisions calling for punishment against those construction workers who adopted ‘extreme measures’ when fighting to claim unpaid wages. In particular, this early draft explicitly prohibited acts such as climbing on cranes or buildings and threatening to jump—relatively common occurrences in the construction industry in China—saying offenders would be handed over to the judicial system. It also banned workers from using force or money to convince others to join protests. It is not clear how or why, but a draft subsequently released for public comment in May no longer included such provisions.

(Sources: **Caixin English**, **Caixin Chinese**, **People’s Daily**, **Dahe.cn**, **Zhengzhou People’s Congress Website**)



PC: XINHUA, LIU JUNXI

Walmart Employees Campaigning against Flexible Scheduling

On 16 May, Walmart announced a new flexible scheduling system—the so-called ‘comprehensive work hour calculation system’—to be implemented across its retail stores in China, and asked its employees to sign a written declaration in which they agree to the new system. In contrast to the current standard eight-hour working day for full-time workers, with the new system Walmart will be able to schedule any number of hours, as long as they add up to 174 hours per month. Not only would the new system reduce workers’ overtime payment, but it would also introduce an erratic work schedule. The *Jinan Daily* quoted a Walmart worker as saying: ‘We are comfortable with the eight-hour working day. After switching to the new scheduling system, if management requests us to work twelve hours today and four hours tomorrow and if we sign the agreement, then we cannot refuse. This system will bring extreme uncertainty.’ Walmart has previously attempted to implement this scheduling system but failed due to the resistance of its employees. The current opposition against the new scheduling has been led by an unofficial Walmart Chinese Workers Association (WCWA) founded by several current and former Walmart workers in 2014. With the hope of securing the support of the All-China Federation of Trade Unions (ACFTU), on 28 May the WCWA sent an open letter to the ACFTU co-signed by more than eight hundred Walmart workers. On 14 June, the Guangdong branch of the ACFTU issued a statement in which, without naming Walmart, it reiterated that the use of the comprehensive work hour calculation system in the retail sector is inconsistent with the existing regulations, and any labour dispute caused by the implementation of such system must be reported to the union for timely intervention. For further details, see Anita Chan’s article on pp. 11-14 of this issue of *Made in China*.

(Sources: **Jinan Daily**, **Sixth Tone**, **The Nation**)

Mine Murders Uncovered in Mongolia

On 31 May, prosecutors in Inner Mongolia announced the indictment of 74 people for the killing of 17 mine workers. The killings were for the purpose of faking mining accidents in order to blackmail mine owners running unlicensed operations into paying compensation. The compensation payments ranged from 500,000 to 800,000 yuan. In a scheme that brings to mind the plot of the movie *Blind Shaft*, directed by Li Yang, these suspects lured victims from poor villages, and paid them a higher than average daily wage to work in the coalmines. The victims were then murdered within days. The actual number of victims is likely to be higher, as corpses were quickly cemented and disposed of. The killing of these 17 people was discovered in January 2015, when the police were investigating a mining accident and found that some of the victims were actually alive. Newspapers have reported on similar schemes in the past. For instance, in 2009 the police discovered that several people from a village in Leibo County, Sichuan Province, were involved in buying or kidnapping people with severe mental problems only to sell them as slaves or to kill them in the mines in order to get compensation.

(Sources: **China News, Caijing, The New York Times**)



PC: TILL MOSLER

Social Media Archivists of Protests in China Detained

On 16 June, Lu Yuyu and his partner Li Tingyu, chroniclers of protests in China on their website *Wickedonna*, were detained in the southwestern city of Dali, Yunnan Province, where they lived. They are accused of ‘picking quarrels and provoking troubles’, a charge that is often used to silence activists in China. Since 2012, the couple has been gathering and posting text and images from Chinese social media, such as *Weibo* and *Baidu Tieba*, to document protests in China—providing what is arguably the most comprehensive daily updates of social upheavals across the country, including many labour protests. After dropping out of university, Lu became a migrant worker and in 2012. While in Shanghai, he had his first taste of political activism, publicly showing his support for five young people who were arrested in Guangzhou for holding up placards that called for president Hu Jintao to disclose his assets. At the time, Lu held up a similar poster in one of Shanghai’s busiest shopping districts, until the police intervened and expelled him from the city. Over the years, he continued to be harassed by state security for his activism and documentation work. His accounts on Chinese social media have been deleted more than one hundred times. In a profile published by *The Week*, Lu was quoted as saying: ‘As long as I am not in jail, I will continue to do it.’ Amnesty International has called for the couple’s immediate release.

(Sources: **The New York Times, The Week, Amnesty International, Wickedonna**)



PC: VOICE OF AMERICA

CHINA COLUMNS

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Nicholas Loubere



A group of Walmart worker activists stages a protest at a Walmart store in Shenzhen on 29 June. On their shirts is written: 'Implement the spirit of President Xi's speeches: Walmart employees stand up; oppose the elections of puppet unions.'

The Resistance of Walmart Workers in China: A Breakthrough in the Chinese Labour Movement

Anita Chan

Recently, Walmart workers in China joined hands with their international counterparts to move forward in the struggle against the American retail giant. This development has momentous implications for the Chinese labour movement, which is finally linking up with the outside world without going through any intermediary. Yet, this achievement urgently needs international support to be maintained.

On 21 June, the Walmart Chinese Workers' Association (WCWA) announced in its blog that it and its American counterpart, OUR Walmart (Organisation United for Respect at Walmart), had joined hands in cyberspace to discuss how to move forward in their struggle against Walmart. This marks a new stage in recent Chinese labour history. This time the news is not about a leader of the All-China Federation of Trade Unions (ACFTU), the official government trade union, shaking hands with a leader from a foreign trade union. Nor is it Han Dongfang, the well-known director of the Hong Kong-based China Labour Bulletin, shaking hands with the world's trade union leaders. Instead, a group of workers have themselves, through persistent efforts to break through Chinese walls, finally succeeded in reaching out to co-workers overseas. This is the culmination of a number of breakthroughs in the last ten years.

Zhang Jun: Electrician and Labour Activist

Walmart in China has more than four hundred stores in 169 cities, and employs around one hundred thousand people. The WCWA is an online network linking up a large number of these Walmart

employees across the country. It was set up in 2014 by several Walmart workers headed by Zhang Jun, a forty-year-old electrician then employed at a Walmart store in Yantai City, Shandong Province. These core members' original intention was to create a platform where Walmart workers could exchange experiences, air grievances, and provide moral support to each other. Work conditions and wages at Walmart have been sliding dramatically in recent years, to such an extent that today front line workers' monthly take-home pay is often lower than the Chinese legal minimum wage.

Zhang Jun was involved in union organising before he arrived at Walmart. In fact, he had helped organise the first democratically-elected workplace union born out of a strike. The year was 2006. A group of sixty women workers in a small Danish electronics company named Ole Wolff felt aggrieved at their work conditions and agitated to set up their own union. Zhang was then a worker in a factory nearby and became their legal consultant. They struggled for four years against management and the district-level trade union to keep their union going. At one point, Zhang was exchanging texts

with one of the ACFTU's deputy chairs, who flew to Shandong to personally instruct the provincial union to recognise the striking Ole Wolff union. The fight ended when Ole Wolff deliberately relocated the factory to South China. Zhang lost his own job and became a Walmart worker in his **neighbourhood**.

2006: A Year of Significance

The emergence of the WCWA can be traced back to 2006. At that time, Andy Stern, the president of the Service Employees International Union (SEIU), the biggest union in the United States, was launching an international campaign against Walmart. He had come to China a couple of times seeking to persuade the ACFTU to join and, for its own reasons, the ACFTU was receptive. At the same time, the ACFTU was also under strong pressure from the Chinese government to contain a rising number of strikes in the country. Under such circumstances it decided to do something that had not been done since the 1950s: to organise workers.



A group of Walmart worker activists stages a protest at a Walmart store in Shenzhen on 29 June. On the back of their shirts is written: 'Walmart employees stand up; boycott the comprehensive working hour system; oppose cheating and keep protecting our rights.'

Up until that point, whenever it had wanted to set up a branch in a company, the ACFTU had gone directly to the management to establish a workplace union that managers would be able to control. This time, however, the ACFTU experimented with organising Walmart workers ‘underground’, in much the same way that American trade unions quietly seek out workers in non-unionised factories to set up unions. In less than two months, the ACFTU was able to set up about one and half dozen Walmart union branches, holding surreptitious night-time union committee elections and founding **ceremonies**. But after two months, the ACFTU changed its mind and signed a memorandum of understanding with Walmart which effectively allowed Walmart to set up management-controlled unions in more than one hundred stores. Since then, Walmart union branches have been staffed by human resource managers, who have signed so-called ‘collective agreements’ in the name of the **workers**. Yet, as of today the ACFTU still boasts of its high unionisation rate in China’s Walmart stores.

Still, the initial spate of democratic elections in 2006 had unintended consequences. Workers who had participated in those elections and are still working in Walmart stores now want to get their unions back. All four of the labour activists who set up the WCWA are in their mid-forties, and in the past couple of years, when some of the workplace union branches were due for new elections, they fought to register as candidates. Walmart management, with the tacit support of the local unions, has put a variety of obstacles in their way and has even fired two of them—they are now suing the company for unfair dismissal. Zhang Jun did not run, but quit his job earlier this year. Thus three of the four activists now in charge of running the WCWA network are former, rather than current, Walmart employees.

The Latest Struggle: the ‘Comprehensive Working Hour System’

In mid-May, Walmart announced that it was going to use a ‘comprehensive working hour system’, which is very similar to American Walmart’s ‘open work hour system’ [see the brief at p. 7], allowing extreme flexibility in the allocation of work hours. Upon hearing of this plan the Chinese Walmart workers were mortified. If the system were implemented, regular work hours would have been thrown out of the window, there would be no more overtime and thus no more overtime pay which workers have been relying on to supplement the low income, and in addition they would have had to come to work anytime on call. Suddenly the number of people in the WCWA’s online groups jumped to around ten thousand.

One of the WCWA’s strategies to stop Walmart’s flagrant abuse of workplace conditions was to hold the trade union responsible. The WCWA sent appeals for help to different levels of the ACFTU, including two open letters signed by a thousand workers addressed to the union **headquarters**. They lodged a series of complaints about Walmart’s violations of the Chinese labour law and the company’s heavy-handedness in forcing workers to sign a consent form for the new working hour system. Employers are required to collect the signatures of the employees before they can apply for official permission to use the new work hour system. Some managers, who were under intense pressure from upper levels of Walmart to get these signatures, reportedly locked some workers who refused to sign in storage rooms, and threatened them with demotion and layoffs. Other workers were inundated by management phone calls and texts, and two workers even suffered mental breakdowns due to the incessant hounding of their superiors.

The fourth activist, who is still a Walmart worker, called the ACFTU Beijing office and insisted on talking to a responsible official. An official came on the phone and the worker recounted Walmart's illegal behaviour, saying that workers wanted to re-elect their union branch heads. The official said he would look into the matter, but nothing happened.

Strike as the last option

On 14 June, the Guangdong Province Federation of Trade Unions made a sudden public newspaper statement that a Walmart-style work hour system can only be used by workplaces that operate a special roster system. Retail stores are not eligible to apply, and using it is a violation of the labour law. Blatantly missing from this statement is any mention of Walmart, or of the fact that some Walmart workers are in rebellion. For a while, it seemed the workers had gained a small victory. But because the union had not taken any concrete action the announcement has not deterred Walmart from continuing to force workers to sign off on the new work hour system.

Having exhausted all possible channels to stop Walmart's coercion, workers in a Walmart store in Jiangxi province called 'Nanchang August First Walmart Store' 'fired the first shot'. On 1 July, starting at seven in the morning, seventy workers, all wearing the red Walmart uniforms with a protest sign stuck on their backs, went marching up and down the store yelling slogans like 'Boycott Walmart's Comprehensive Working Hours System!' and 'Defend Our Rights to the End!' The news of the strike immediately spread through the WCWA network. Supportive messages poured in and the Nanchang August First Store was hailed as a model store by the aggrieved Walmart workers.

That the first strike broke out in this particular Walmart store is itself of great

symbolic significance. August first was an important day and place for the city of Nanchang in Chinese Communist history. That day in 1927 the Nanchang Uprising led by key Chinese Communist Party leader rose up against the Nationalist Party. The Nanchang Walmart workers prided themselves for having this privilege of starting a rebellion against the world's biggest foreign capital in a store which bears this historically iconic name. They cried in unison: 'At this store, we are carrying on the glorious tradition of the Chinese Communist Party!'

But still why this particular store? Indeed, for Walmart workers in China this store has a glorious past of its own that has nothing to do with Chinese history. In 2006, this was one of those stores which were able to hold a genuinely democratic union election under the ACFTU's tutelage. An ordinary worker armed with self-taught knowledge of the labour law by the name of Gao Haitao ran as a candidate and was elected as the union chairman. He fought with Walmart management over a number of workplace issues. When Walmart issued a blanket collective agreement for all store unions to sign, Gao demanded some changes. The struggle became heated and the news



A group of Walmart worker activists stages a protest at a Walmart store in Shenzhen on 29 June.

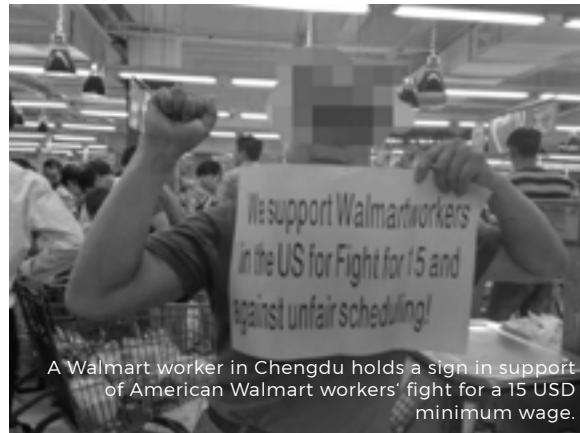
passed upward to the ACFTU headquarters in Beijing. As a model of a courageous trade union chairman, Gao was invited to Beijing to meet high level union officials. But when he continued to resist to sign the collective agreement, the ACFTU abandoned him and, in the end, he was fired. This case was widely reported in the Chinese press.

According to information circulated online in the WCWA network, the Nanchang store today is staffed by a sizeable number of older workers. Some of them must have fought alongside Gao ten years ago. It is perhaps not surprising then that when the campaign against the new working hour system began, it was workers in this Nanchang store who first came out to declare that none of them had signed nor would sign the consent form.

On the second day of the strike, city authorities finally appeared at the store to find out what the protest was about. They then left and said that they would consider their complaints. At the time of finalizing this draft, it is still unsure whether other Walmart workers would also rise up in rebellion.

An Appeal for International Solidarity

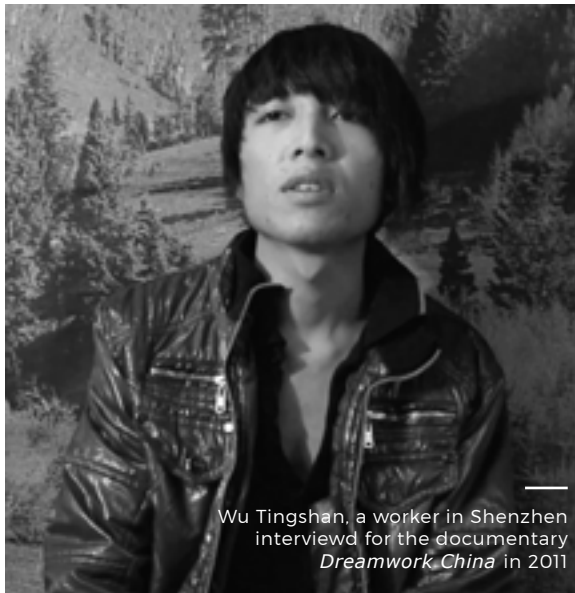
Walmart employees are among the lowest paid workers in China and also globally and are therefore some of the most vulnerable. If their recent struggles represent an important step forward for the Chinese labour movement, they still need strong international support to avoid losing what they have achieved thus far. It is therefore important that global trade unions, international NGOs, and other relevant actors mobilise their networks to put pressure on Walmart headquarters in the United States and China, and ask for the support of the ACFTU leadership to make sure that the rights of this active cohort of Chinese workers are not infringed upon once again.



Postscript, 4 July 2016: The latest news as of today is that one other store in Nanchang, one in Harbin, and in one in Chengdu have gone on strike. In addition to fighting their own battle, the WCWA has also launched a solidarity campaign in support of American Walmart workers' fight for a 15 USD minimum wage.

Anita Chan

Anita Chan is Visiting Fellow at the Political and Social Change Department, Australian National University. Prior to that, she was Research Professor at University of Technology Sydney. Her current research focuses on Chinese labour issues. She has published widely on Chinese workers' conditions, the Chinese trade union and labour rights issues. On Walmart, she published the edited volume *Walmart in China* (2011). Her other recent publications include the edited books *Labor in Vietnam* (2011) and *Chinese Workers in Comparative Perspective* (2015).



Wu Tingshan, a worker in Shenzhen interviewed for the documentary *Dreamwork China* in 2011

Chinese Workers and the Law: Misplaced Trust?

Ivan Franceschini

In recent years, much has been written about the ‘rights awakening’ (quanli de juexing) of Chinese workers. But what kind of rights are we talking about? Do they respond to an entirely subjective concept of justice or do they somehow coincide with the entitlements provided by the labour legislation? On the basis of a survey carried out among 1,379 employees of Italian metal mechanic companies in China, this article will attempt to answer three key questions: how do Chinese workers perceive the labour contract? How much do they know about labour legislation and how does this knowledge affect their trust of the law? What do they think about going on strike as a strategy to protect their rights?

A fuller set of data will be presented in the author’s forthcoming book *Lavoro e diritti in Cina: Politiche sul lavoro e attivismo operaio nella fabbrica del mondo* (Labour and rights in China: Labour policies and worker activism in the world factory), Il Mulino, Bologna, 2016.

One fascinating question concerning labour activism in contemporary China regards the attitude of Chinese migrant workers towards the law. In recent years, much has been written about the ‘rights awakening’ (*quanli de juexing*) of Chinese workers. But what kind of rights are we talking about? Do they respond to an entirely subjective concept of justice or do they somehow coincide with the entitlements provided by the labour legislation? And what is the relationship that binds legal awareness (*falü yishi*), rights consciousness (*quanli yishi*), and solidarity (*tuanjie yishi*)? That these elements do not necessarily go hand in hand is highlighted by the following testimony by a labour activist whom I interviewed in Shenzhen in 2014:

If ten [young migrants] come to me saying that their rights have been violated, they usually want to sue the company, but don’t know how. Although I suggest that they sue the company together, they generally choose to do it separately. I don’t think of this as a contradiction. If legal consciousness and solidarity consciousness are so low, how can they have such a high awareness of rights protection (*weiquan yishi*)? For example, if one of their fathers had his rights violated, he would choose to stay silent. If the son has his rights violated, he will explode and fight. If he didn’t sign a labour contract and gets fired, he will ask for double wage as compensation. But they don’t know anything about these compensations, they only know that their bosses have deceived them.

[Interview, Shenzhen, October 2014]

It is with these and other questions in mind that a few years ago I undertook a survey among the employees of nine Italian metal mechanic factories (either joint ventures or wholly foreign owned enterprises) in three Chinese cities: Shenzhen, Yangzhou, and Chongqing. In three rounds of interviews—respectively in

2012, 2014, and 2015— I was able to conduct 1,379 questionnaires at the gates of the various factories, without any knowledge or interference by the management. The workers in my sample were mostly men (74.2 percent); 24.5 percent of them were born before 1980, 45.4 percent in the Eighties, and 30.1 percent in the Nineties; and their educational level was medium-high, with 32.7 percent of the workers having graduated from middle school, 22.1 percent from high school, 20.2 percent from middle technical school, and 18.9 percent from higher technical school.

Were all these workers migrants? Actually, only 63.7 percent of the respondents had a rural household registration (*nongye hukou*), the traditional parameter to determine a worker's status as an internal migrant. Still, taking the *hukou* as a parameter that defines the identity of Chinese workers today may be quite treacherous, as many 'urban' employees of the factories in Chongqing and peri-urban Yangzhou were local farmers whose status had been 'upgraded' following the new policies of forced urbanisation adopted by the local authorities. Similarly, only 33 percent of the workers came from a different province—with the significant exception of Shenzhen, where only 11.3 percent of the workers were from Guangdong—a finding that mirrors the growing importance of intra-provincial migrations in China.

In my survey I attempted to measure the awareness of these workers regarding some key aspects of labour law, as well as their expectations towards wages and work hours. Yet in this article I will focus on three questions: how do Chinese workers perceive the labour contract? How much do they know about labour legislation and how does this knowledge affect their trust of the law? What do they think about going on strike as a strategy to protect their rights?

Labour Contracts

At the cornerstone of the discourse of the party-state on 'harmonious labour relations' (*hexie laodong guanxi*), labour contracts can provide some interesting insights on the way Chinese workers relate to the labour law and the relevant propaganda. 97.2 percent of the workers in my survey had signed an individual labour contract, a clear proof of the commitment of the authorities to enforce the labour contract system, at least in the industry I considered (in other sectors, for instance the construction sector, the rate is remarkably lower, and according to **official data** in 2015 only 36.2 percent of all migrant workers had signed a labour contract with their employer). But how many workers believed in the importance of the contract as an instrument to protect their rights? A question I asked is whether the workers had read the clauses of the contract before signing it. Only 26.7 percent of them had read them carefully (*zixi yuedu*), while 46.5 percent just had had a quick look (*suibian kan*), and 26.8 percent had signed without reading (*qianming eryi*). This seems to display a certain disinterest in the labour contract, as if it were an irrelevant piece of paper. Yet, when directly asked whether they considered contracts as an effective tool to protect their rights, 22.3 percent of the workers responded affirmatively (*keyi*) and 49.2 percent was relatively optimistic (*hai keyi*), compared with only 7.3 percent who expressed disbelief (*bu keyi*), and 21.2 percent who did not know how to answer. In essence, almost two thirds of the workers trusted the capacity of labour contracts to protect them.

I then asked whom they thought was the main beneficiary of a labour contract. Although the Labour Contract Law that came into force in 2008 is rather favourable to workers when it comes to the resolution and severance of labour relations, somehow unsurprisingly 82.5 percent of the respondents believed that a labour contract benefitted both employer and employee, while only 3.5 percent

declared that the worker was the one to benefit the most. Still, there was a significant minority of workers (12.8 percent) who believed that the labour contract benefitted only the company. This was because in the eyes of some workers a labour contract is a significant restraint to mobility, and mobility—i.e. ‘voting with your feet’ (*yi jiao toupiao*)—often is the only way to resist corporate exploitation. As a migrant worker whom I interviewed in 2011 for the documentary *Dreamwork China* said:

A contract? It is like this: if you sign it, you cannot leave for the next three months. If you don't sign it, you can leave whenever you want, even before a month. If it is an annual contract, you have to work for at least three months or you cannot quit. This is the labour contract. [Interview, Shenzhen, January 2011]

Legal Knowledge and Trust towards the Law

This relative confidence in labour contracts opens some further questions about how Chinese workers perceive the labour law. Without going into too much detail, I found that the workers in my sample to have a selective knowledge of the provisions of the labour legislation, exemplified by the 1995 Labour Law and the 2008 Labour Contract Law. In particular, they were very aware of clauses that affected their direct economic interests—such as those that regulate the way overtime wages are calculated (90.6 percent of the workers were aware)—while knowing very little about other aspects of the labour legislation, which they probably perceived as less relevant to their income. For instance, just 17.5 percent of the workers knew that they were supposed to work no more than thirty-six hours of overtime a month. Similarly, only 25.1 percent of the workers could write down the correct local minimum wage (on the

whole, though, I found that the higher a worker's basic wage, the less likely he/she is to know the correct minimum wage). Even more important, I found a clear divide between the knowledge of individual rights—generally low but still existing—and that of collective rights. Many workers had no clear idea about what a trade union is (11.4 percent had never heard the word ‘trade union’ before), and 98.2 percent of the respondents had no idea of what ‘collective negotiation’ (*jiti xieshang*)—the Chinese watered-down version of collective bargaining—was.

In spite of (or maybe due to) this highly selective knowledge, when I asked the workers whether they believed that the existing labour legislation was able to protect them, most of them were quite optimistic. 5.7 percent were absolutely sure that it could (*wanquan neng*) and 49.6 percent were slightly less sure, but still quite positive about it (*yinggai keyi*). On the contrary, 34.1 percent were dubious (*yexu neng*) and 10.5 percent were definitely sceptical (*bu neng*). If these results display a considerable confidence in the law, it is interesting that this perception does not derive from a personal experience with the Chinese legal system. In fact, only 3.3 percent of the workers in the sample had dealt with a labour dispute by legal means before. This apparently confirms what Mary Gallagher and Yuhua Wang found out in a **previous study**, that ‘non-users [of the legal system] tend to have vague but benevolent notions of the legal system and its effectiveness’.

Perception of Strikes

How do strikes figure within such a ‘benevolent notion’ of the legal system? My survey shows that trusting the law and resorting to strikes are not necessarily mutually exclusive. While China has ratified the International Covenant on Economic, Social, and Cultural Rights, which at article 8.1 (d) binds the govern-

ment to ensure ‘the right to strike, provided that it is exercised in conformity with the laws of the particular country’, the Chinese legislation does not mention the right to strike at all, consigning it to a grey area. Since even Chinese scholars have not reached a conclusion on the legality of industrial actions in China, I therefore did not expect the workers to have a clear idea on this issue. Yet, when I asked them whether they believed that going on strike was legal or illegal, I was surprised to find out that 38.5 percent of the respondents said that it was legal, compared with only 13.9 percent who believed the opposite (the rest did not know). That such a high percentage of workers expressed the belief that strikes are legal is quite impressive. It means that many workers in China believe that the law—and therefore the apparatus of the party-state—will support them in the event of a strike. This may be taken as a hint of the extent to which the work of propaganda and legal dissemination undertaken by the Chinese authorities in the past two decades has succeeded.

Still, the idea that going on strike is ‘legal’ does not mean that Chinese workers are willing to protest at the slightest perceived violation of their rights. The right to strike is often framed by the workers in moral rather than legal terms, as a last resort after all other avenues of redress have failed. As a young respondent said: ‘In a situation in which there is no choice other than going on strike, you cannot say that it is illegal. Still, the workers do not want to go on strike without reason’ [Interview, Shenzhen, April 2012]. Nevertheless, when I asked what they thought about going on strike as a strategy to protect their rights, 43.3 percent of the respondents were either favourable or extremely favourable, compared with only 26.8 percent who were against or absolutely against it (29.8 percent did not know).

Conclusions

The data presented in this article show that when discussing the ‘rights awakening’ of Chinese workers it is important to consider what we mean by the term ‘rights’. In particular, more attention should be paid to the way these workers respond to the official discourse on labour rights promoted by the party-state through the labour law and other relevant policy documents. As I have attempted to show, the official discourse is deeply rooted in the mind of the workers in my sample. This can be seen in two respects: the workers’ conviction that labour contracts and the labour law can protect them; and their selective knowledge of the labour law provisions, strongly unbalanced towards individual rights with direct economic implications. This ‘benevolent notion’ of the legal system even affects the perception of strikes, which are considered ‘legal’ by a very significant portion of the workforce. This means that many Chinese workers believe that the apparatus of the party-state will support them in their decision to go on strike—at least as long as they have a ‘reasonable’ motivation to do so. If these findings do not provide a definite answer to the wider theoretical questions outlined at the beginning of the article, they nonetheless warrant some further attention when discussing the ‘awakening’ of the Chinese working class.

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Laying Off Responsibility: Microcredit, Entrepreneurship, and China's Industrial Retrenchment

Nicholas Loubere

In early 2016, the Chinese government announced that state-owned steel and coal companies would be restructured, resulting in the loss of 1.8 to 6 million jobs. In April, seven government agencies jointly release a set of guidelines outlining a strategy for mitigating the fallout from this latest round of mass layoffs. One of the key elements of this strategy is the encouragement of entrepreneurial activity through tax relief and subsidised 'microcredit' for laid-off workers. Does the promotion of entrepreneurship and self-employment have the potential to meet the needs of the newly unemployed? Or is this strategy actually part of a wider ideological project aimed at individualising responsibility for social welfare and fragmenting labour?

When the news broke earlier this year that Chinese state-owned steel and coal companies would be laying off anywhere between 1.8 to 6 million workers over the next two to three years, the government quickly moved to provide assurances that the socioeconomic fallout would be mitigated through 150 million yuan in assistance for the **newly unemployed**. On 15 April 2016, the Ministry of Human Resources and Social Security, along with six other national government agencies, jointly issued guidelines broadly outlining the ways in which the **laid-off workers will be supported**. While the guidelines do not provide details of how much funding will be allocated to the different types of assistance, or which agencies will be responsible for their implementation, the document does specify four key measures aimed at reducing the negative outcomes of the restructuring: career counselling and retraining for laid-off workers; the facilitation of early retirement for eligible individuals; information sharing across regions to facilitate the movement of workers to areas where they are needed; and support for laid-off workers who wish to engage in self-employment through entrepreneurial pursuits.

The government's strategy, therefore, can be seen as having two distinct objectives. The first seeks to streamline the current system of government employment through redistribution and retirement. The second is aimed at redefining what constitutes 'normal' employment in China through a re-orientation towards entrepreneurship and self-employment. The guidelines state that this second objective will be achieved through tax relief for new enterprises, and subsidised loans for the laid-off workers who initiate them. This column critically examines some of the implications that arise from replacing large-scale wage employment with credit to promote entrepreneurial activity. In particular, it shows that the promotion of micro-entrepreneurship as a 'solution' for mass layoffs shifts responsibility for livelihoods and

welfare from the state to marginal individuals and groups, while, at the same time, reducing the capacity for collective action by organised labour. [1] The column also questions—at a fundamental level—the ability of individual entrepreneurship to fill the gaping hole (in the economy and society) left by mass layoff events.

An Entrepreneurial Solution

This is not the first time that targeted credit for micro-entrepreneurship has been identified as a means of dealing with socioeconomic problems in contemporary China. In the 1980s and 1990s, various government ministries established or supported microcredit programs targeting poverty and ‘underdevelopment’ in rural areas. In the wake of the large-scale restructuring of state-owned enterprises (SOEs) in the late 1990s and early 2000s—which, according to **some estimates**, resulted in twenty-five to forty million workers being made redundant—the government established the ‘Employment Microcredit Program’ (*xiagang shiye zaijiu ye xiao’e danbao daikuan*) in urban areas most affected by the retrenchment. The program provides small loans at zero percent interest in an effort to allow the newly unemployed to unleash their ‘natural’ entrepreneurial abilities and spark ‘bottom up’ **employment opportunities**.

After being piloted for a few years, the Chinese government considered the Employment Microcredit Program to be a policy success and it was scaled up nationwide. Initially, microcredit was only available in cities to those who could provide formal documentation proving their laid-off worker status. This formal documentation was not always forthcoming, however, as navigating the bureaucracy often took certain types of knowledge and connections, and many SOEs did not even establish re-employment centres. In 2006, the program was extended to rural areas,

with the target group being expanded to include migrant workers laid off from urban enterprises who wished to return to their rural origins to start businesses. Currently, the Ministry of Human Resources and Social Security administers the program. It recommends borrowers to local branches of state-owned banks and organises for the Ministry of Finance to pay the interest on the loans. In most localities loans of 100,000 yuan are provided to individuals for up to one year. Borrowers do not need collateral, but should instead have a ‘trustworthy’ guarantor.

Shifting Responsibility for Livelihoods and Welfare

The Employment Microcredit Program is conceived of as reducing the negative impacts of retrenchment by creating an alternative to large-scale wage employment. This fundamental reshaping of how livelihoods are produced is one of the ideological goals of the microcredit movement. In the words of Muhammad Yunus, the founder of the Grameen Bank in Bangladesh and the most prominent advocate of microcredit globally: ‘One of the significant social impacts of the microcredit movement has been the realization that the key to alleviating poverty is often *not* the creation of ‘jobs’—that is, salaried work for large corporate employers—but rather the encouragement of self-employment for all individuals...’.[2] In other words, the microcredit movement considers self-employment as a valid (and even superior) alternative to large-scale wage employment, and sees entrepreneurship as being a universal human quality that, if nurtured, has the potential to allow individuals to provide for themselves.

Therefore, the promotion of microcredit as a response to layoffs should be understood as involving a transfer of responsibility for livelihoods and social welfare from the state to households and individuals. Indeed, for the majority of workers laid off

in the 1990s and early 2000s, microcredit was offered as a replacement for the ‘iron rice bowl’ (*tiefanwan*)—i.e. stable life-long employment in a state ‘work unit’ (*danwei*) that included a salary and benefits. While most workers that will be affected by the impending retrenchment no longer enjoy ‘iron rice bowl’-style employment, they will, nevertheless, be saddled with the burden of seeking out entrepreneurial ways of earning a sufficient income for survival (and repaying their loans). And failure to successfully take on these new responsibilities comes with dire consequences. This rewriting of the social contract is not only significant because it represents an individualisation of responsibility, but also—and more crucially—because this responsibility is being devolved to individuals who are relatively marginal and lacking in resources, such as low-level SOE employees and migrant workers living from pay-check to pay-check.

Labour Relations in a Society of Entrepreneurs

What does this rewriting of the social contract entail for labour relations in China? In addition to devolving responsibility from the state to individuals, the provision of microcredit in an attempt to foster entrepreneurship implicitly necessitates the fragmentation and atomisation of labour. While Ivan Franceschini’s contribution to this issue highlights the fact that many Chinese workers do not have a clear conception of what ‘collective rights’ or ‘collective action’ actually entail, the goal of microcredit to redefine ‘the household as a production unit and self employment as a natural way for people to make a living’ [3] effectively renders these concepts meaningless. The industrial proletariat—with all their collective ambitions and grievances—are replaced by marginal (and indebted) micro-entrepreneurs struggling in competition with each other for their very survival.

Ultimately, therefore, the provision of microcredit to laid-off workers is about more than simply unleashing pent-up entrepreneurial spirit and allowing people to provide for themselves. Rather, it is a key element in a wider project engaged in systematically transforming labour relations in China. After all, there is no solidarity between competing micro-entrepreneurs. Nor is any labour negotiation possible, as it is the intangible ‘invisible hand’ of the market that determines working conditions and remuneration for the self-employed entrepreneur. In this way, the shift from large-scale wage employment to a society of atomised micro-entrepreneurs is part of a strategy to deal with the spectre of organised labour unrest, which is one of the Chinese government’s **major preoccupations**.

An Answer to Unemployment?

There are also other critical questions that need to be raised with regard to the fundamental ability of individual entrepreneurship (financed through microcredit) to fill the employment gap left by industrial retrenchment. For one, this strategy neglects the fact that, even in the best of cases, many entrepreneurial endeavours fail. In the case of the most recent round of layoffs, most of the newly unemployed micro-entrepreneurs will be from just two industries: steel and coal. Moreover, if past rounds of retrenchment are any indication, they will be comparatively less educated/skilled, approaching middle age, and predominantly female with a substantially higher load of family responsibilities. They will, therefore, primarily have the same skill sets and will probably engage in the same types of entrepreneurial activity. This suggests a sudden influx of certain kinds of business in a highly competitive and unforgiving market—i.e. a ‘race to the bottom’ undertaken by a new, and increasingly desperate, ‘micro-entrepreneurial class’ composed of the newly unemployed. While

some will undoubtedly be successful, many others will fail and, as such, will be pushed further to the margins as they default on their debt and have no access to the livelihood resources previously provided by their employers.

It is also important to point out an implicit paradox in how microcredit is envisaged as assisting the unemployed. On the one hand, microcredit programs are conceived of as promoting a type of ‘grassroots’ or ‘bottom-up’ development that is separate and autonomous from the wider structural contradictions in the economy that produced the unemployment in the first place. However, in order to achieve this development, the would-be entrepreneurial beneficiaries of microcredit must become incorporated into the ‘modern’ socioeconomic system through integration into the market where they will sell their wares or services. In other words, there is really no escape from the socioeconomic processes that put these microcredit borrowers out of work. Their entrepreneurial pursuits do not exist in some alternate dimension; instead, they are intricately linked to the dominant market-oriented system operating in contemporary China that has created the conditions requiring mass layoffs. For example, in one of the townships where I conducted fieldwork the local economy appeared to be thriving, with 122 small and medium businesses operating in the township centre. However, over thirty-one percent of these businesses were directly related to the housing construction industry, which relies on the sustained flow of remittances from migrant workers in urban areas back to the township to build new houses for their ‘left-behind’ family members. In short, this was no ‘grassroots’ economy, but was instead an economy fully dependent on the system of domestic migrant work—often through employment in the large urban SOEs now engaged in mass layoffs—for its continued existence.

Conclusions

Ultimately, the issues raised in this short piece suggest that microcredit and the promotion of entrepreneurship for laid-off workers should be seen as an ideological re-orientation, rather than a ‘solution’ to the social and economic problems resulting from a sudden increase in unemployment. Restructuring SOEs and encouraging laid-off workers to become entrepreneurs through the provision of subsidised credit shifts responsibility for livelihoods and welfare from the employer (in this case the state) to the individual, while fragmenting labour relations and collective identity. Microcredit is also an objectively flawed response to retrenchment, as it is not possible for individual entrepreneurship to sufficiently meet the need for employment created by the mass layoffs. Instead, microcredit for entrepreneurship is a smoke-screen that serves to temporarily obscure the fact that China is (and has been) undergoing a sustained social, cultural, and economic transformation that is fundamentally rewriting the social contract in order to devolve responsibility to the individual, while simultaneously eroding the possibility for individuals to contest these developments through solidarity and collective action.

[1] Similar observations have been made about microcredit in other contexts. See, for example, Milford Bateman, *Why Doesn't Microfinance Work? The Destructive Rise of Local Neoliberalism*, London: Zed Books, 2010.

[2] Muhammad Yunus and Alan Jolis. *Banker to the Poor: The Autobiography of Muhammad Yunus, Founder of the Grameen Bank*, Oxford: Oxford University Press, 2001: p. 85.

[3] Ibid.

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Interpreting the Rule of Law in China

Edited by Elisa Nesossi

With the participation of

Joshua Rosenzweig
Ewan Smith
Susan Trevaskes



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Interpreting the Rule of Law in China

Edited by Elisa Nesossi,
with the participation of Joshua Rosenzweig, Ewan Smith, Susan Trevaskes

依法治国

'Yifa zhiguo', the Chinese expression often translated as 'rule of law'

With its ample resonance both within China and internationally, the 'rule of law' (yifa zhiguo) is an expression that can justify the most disparate justice reforms. It is both a political value worth defending and a reason for consternation; it is an ideal that is inherently troubling and troubled by its interlocutors, advocates, and critics. For this reason, even the term 'yifa zhiguo' has been translated differently by different interlocutors, with 'rule of law', 'rule by law' and 'ruling the country according to the law' being the most frequent renderings in the English language.

While the rule of law has become a key component of the Chinese legal-political vocabulary since the onset of the reform period, under Xi Jinping's leadership it appears to have increased in importance. Since Xi Jinping took the helm in 2012, he has chosen to adopt exactly this expression to shape his policy and justice agendas. But the authoritarian way in which the concept has been used thus far has, in many quarters, produced a palpable sense of surprise and dismay over the future of the Chinese legal system. The current leadership is shaping what at first glance seems to be quite incongruous goals—fighting corruption and the

erosion of institutional credibility; fighting criminals and dissenters who threaten stability; and guarding against national and international security threats—all under the same rhetorical and ideological rubric. During the last year, the rule of law has served the practical function of maintaining social stability and controlling dissent. It has equally justified anti-corruption campaigns targeting party officials, and the repression of civil society and human rights activism. Although their activities remained well within the legal or constitutional rights of Chinese citizens, lawyers, labour activists, and people working for NGOs became key targets of repression, with hundreds of arrests of lawyers in the summer of 2015 alone.

Through a discussion between three experts on the historical and ideological development of socio-legal issues in China—Joshua Rosenzweig, Ewan Smith and Susan Trevaskes—this Forum aims at reframing our understanding of Xi's 'rule of law' agenda and enriching our sense of the meaning of this contested expression in the contemporary political context.

The expression ‘*yifa zhiguo*’ may be translated in different ways. The most common renderings in English are ‘rule of law’, ‘rule by law’, ‘ruling the country according to the law’; however, each of these translations carries different connotations. How would you best translate ‘*yifa zhiguo*’ and, in your view, what is the meaning of this expression in contemporary China?

Joshua Rosenzweig: I think that part of the reason why this expression has so many different translations is that the meaning can be very context-dependent. As with other ideologically significant phrases, there are hegemonic uses that serve to reinforce existing power structures and there are counter-hegemonic uses that work against those structures—often deliberately, sometimes less so. Most people probably have a particular understanding of what they mean when they use the phrase at any given point, but once those usages become part of the public discourse, they can be understood in ways that were not necessarily intended. Put simply, I think that the differences boil down to whether or not one believes that law has any autonomous moral authority of its own, separate from political power. When Chinese officials speak of ‘*yifa zhiguo*’, they are thinking of law purely in terms of a tool of governance. Law establishes rules that reflect the morality that is assumed to inhere in political order, and a society that understands and follows those rules is, therefore, a good and just society. I do not think it matters too much whether you call this notion ‘rule by law’ or ‘rule according to law’. When others talk about ‘*yifa zhiguo*’—or its cousin ‘*fazhi*’—it is clear that they are, in fact, thinking in terms of law as a source of authority that is distinguishable from power. As such, for them law reflects external standards that should set bounds for the behaviour of the regime, not just society. I think this is closer to what many people mean when they think of rule of

law. Because the difference comes from different understandings of ‘*fa*’, so the same phrase can connote different things to different people.

Ewan Smith: Neither rule of law nor ‘*yifa zhiguo*’ has a fixed meaning: both expressions refer to a range of contested ideas. There is a partial overlap between the English and the Chinese phrases. Sometimes, ‘*yifa zhiguo*’ means something similar to rule of law. For example, if the words are used casually, to describe an alternative to arbitrary government, the ‘rule of law’ is the best translation because it is familiar. In contrast, ‘rule by law’ and ‘ruling the country according to the law’ are unfamiliar expressions that jar the reader. They draw attention to the fact that ‘*yifa zhiguo*’ means something different, unfamiliar and even dissonant to rule of law. In some contexts, it is important to underline these differences by translating ‘*yifa zhiguo*’ in this way. It would be unwise to offer an all-purpose definition of ‘*yifa zhiguo*’, just as it would be unwise to give an all purpose definition of the rule of law. It might mean the same thing A.V. Dicey, or Lon Fuller, or Tom Bingham meant when they said ‘rule of law’. But in official discourse, this is unlikely.

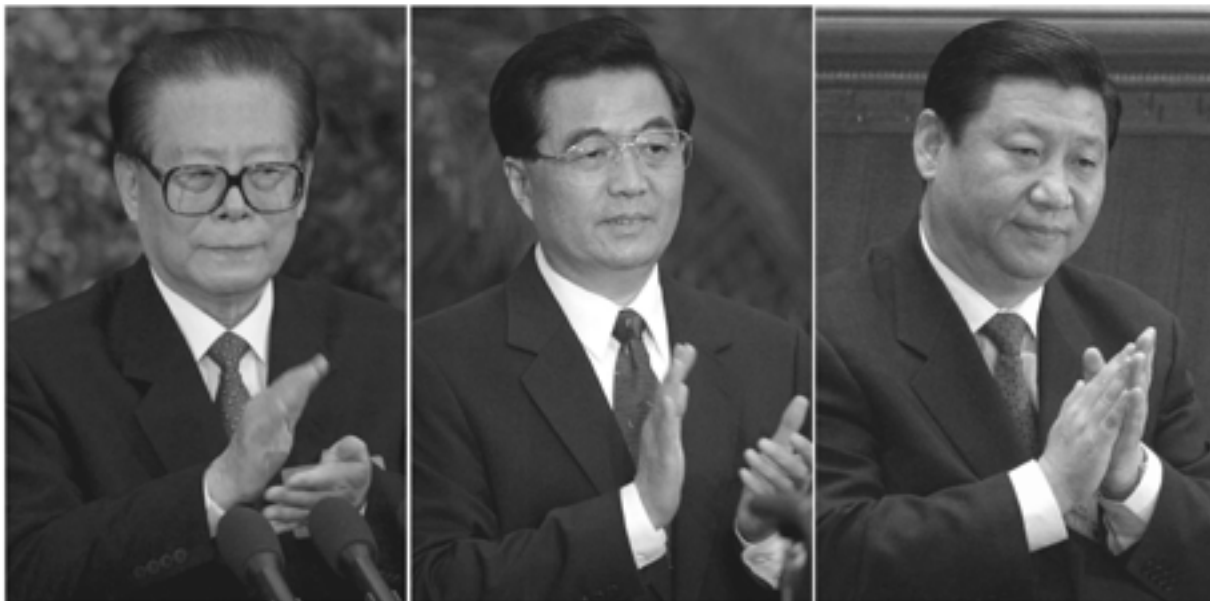
Susan Trevaskes: ‘*Yifa zhiguo*’ is probably best translated as ‘Governing the Nation [or country] in accordance with the law.’ This is a concept that developed in the mid-1990s drawing on basic ideas about socialist rule of law from the 1980s. It began in the 1990s as a slogan that stood for greater emphasis on the use of law and regulations in state administration. It does not mean a separation of the Party from the state. To the contrary, governance in China since the 1990s has seen the embedding of the Party within the state through party groups (*xiaozu*) planted in all areas of government which comprise members holding key positions (such as a governor of a province). The Party delegates authority to state institu-

tions for routine governance while continuing to lead exclusively over political, ideological and institutional matters.

In your opinion, to what extent has the use of the concept ‘yifa zhiguo’ changed in Xi Jinping’s China in comparison to the Jiang Zemin and Hu Jintao eras? Can you please highlight both continuities and changes?

JR: I do not think that Jiang Zemin or Hu Jintao had substantially different understandings of the concept of ‘yifa zhiguo’ compared to Xi Jinping. But Xi Jinping seems to have given the idea a bit of a renaissance and made it a more prominent part of his agenda. One reason is that Xi Jinping sees rule-based governance as a way to impose discipline and centralise control over the party-state bureaucracy. The stress of the previous decades had been on promoting economic growth and maintaining social stability, and there was a tacit understanding that as long as these results were achieved there would not be too many questions from above about who was getting rich

on the side or what methods were employed to maintain stability. But corruption, inequality and ‘rigid stability’ tactics contributed to a growing sense of popular injustice that needed to be addressed in some way. Moreover, given the daunting task of reorienting China’s economy, the country’s leaders need to be able to count on the bureaucracy to respond to its directions instead of playing by its own rules. Another reason for the prominence of ‘yifa zhiguo’ under Xi Jinping is that China’s current leadership is trying to restore the party-state’s ideological dominance by flooding the public discourse with its own messages and squeezing out any alternative usages. The promotion of ‘yifa zhiguo’ in the 1990s coincided with the re-emergence of a relatively autonomous arena for discussion and debate of public affairs in which matters of law and justice formed an important part. For a while, ideas about human rights, procedural justice and constitutionalism flourished and shaped critical notions of how law might function in China. Recognising the challenge posed by these alternative ideas, Xi Jinping has taken steps to iso-



Jiang Zemin, Hu Jintao and Xi Jinping have guided the Chinese Communist Party for almost three decades. PC: South China Morning Post

late and excise these views from the public discourse and ‘unify thinking’ around orthodox views of law and justice.

ES: Hu Jintao came to power less than a year after China acceded to the WTO. During Hu’s administration, the ‘*yifa zhiguo*’ policy was often presented as necessary step towards compliance with rule of law obligations, and as an instrument to achieve bigger economic objectives, such as the ‘*xiaokang shehui*’ or ‘moderately prosperous society’. Over time, we see more and more language presenting the rule of law as something that is instrumentally good. In the official discourse, rule of law became an ‘essential guarantee’ of policy goals as diverse as ‘socialist material, spiritual and political culture’, the ‘three represents’ and ‘scientific development’. In his explanation of the Decision of the Fourth Plenum from 2014, Xi mirrors this language. He describes the rule of law as a ‘fundamental requirement’ for ‘safeguarding social harmony and stability’, ‘guaranteeing the long-term peace and order of the Party and the country’ and ‘[promoting] the sustained and healthy development of our country’s economy and society’. But one important change under Xi has been a decidedly voluntarist turn in the use of the rule of law, especially with the advent of the current anti-corruption campaign. Under Xi, the rule of law has been partially subordinated to an agenda that seeks to contain power ‘within the cage of regulation’ (*ba quanli guanjin zhidu de longzi li*). It is not a tool that can rectify institutions. Instead, it is one of a series of tools that can rectify individuals.

ST: The use of ‘*yifa zhiguo*’ in the Xi Jinping, Hu Jintao and Jiang Zemin eras is essentially the same, but Xi has given it a new twist, emphasising the idea of Party leadership through the rule of law. The Resolution of the historic Fourth Plenum of the 18th Party Congress in 2014 states that the Party’s leadership [over and

through government] and socialist rule of law are identical. Crucially, the document insists that the Party will now ‘implement its leadership role through the rule of law’. The meaning of ‘*yifa zhiguo*’, or at least the purpose to which it is has been put to use by Xi Jinping and close colleagues, is to accentuate a particular relationship between the party-state and the people. After a decade of Hu Jintao’s ‘Harmonious Society’ and ‘Stability Maintenance’ in the 2000s, it had become apparent to the incoming Xi Party leadership that rigid Stability Maintenance operations were severely undermining judicial and political credibility, and could not be sustained as a long-term political solution. To win back the hearts and minds of people whose trust in the law had been seriously eroded by party corruption, Xi Jinping and Li Keqiang began talking about accountability, transparency, clean government and so on. But this new platform required a substantial reinvigoration of centralised Party power in order to regain the capacity to limit corruption at the local level on the one hand, and to deal with perceived threats to national security on the other. Hence, we find Xi Jinping bringing Party supremacy back into political fashion. The ideological role of ‘*yifa zhiguo*’ in Xi’s China, gives the Party rhetorical permission to govern China in such a way that it can deal with disunity, dissent and crime using the weapon of the law.

How does history matter to the way in which ‘*yifa zhiguo*’ is officially intended today?

JR: There are so many ways to approach this question, in part because there are different ways to think about ‘history’. Let me focus on two. First, I would say that in contemporary China ‘*yifa zhiguo*’ has always been contrasted positively against the idea of the ‘lawless’ and arbitrary years under Mao, especially during the Cultural Revolution. The Maoist period

is a useful benchmark for legal and institutional progress because, especially for the majority of people whose lives have improved since the ‘reform and opening’, there are so many reasons to be satisfied with the relative stability and security that China’s current legal system has to offer—even with its many flaws. But the utility of this referent is fading as time marches on, and there’s reason to wonder whether Chinese citizens now in their 20s, 30s, and even 40s will continue to evaluate the state of their legal system against the high point of legal nihilism under Mao. Second, I would say that history matters in the sense that, in the nearly 40 years since the beginning of the reform period, China has experienced historical changes that I would argue are transforming the way that Chinese people think about the state-centred justice model that underlies the official agenda of ‘*yifa zhiguo*’. Several decades of socio-economic change have produced a society that is far more individualistic, diverse and contentious than the authoritarian stability-harmony model acknowledges. It is within such a society that alternative ideas about rights, checks on government, and procedural rights have started to make sense. China’s current leaders seem to want to ignore the passage of time and the demands that socio-economic change has brought. They want to force society to conform to their vision of society, rather than adapt to the changed realities of that society. I do not think this is a sustainable strategy.

ES: History provides a reference point by which we can assess what it means to run the country according to law. While international comparison dominates the debate about the rule of law outside China, historical comparison is a much more important context for Chinese official discussion of ‘*yifa zhiguo*’. Every politburo member grew up during the Cultural Revolution, and this serves as a framing device for ‘*yifa zhiguo*’. Younger Chinese people grew up while a legal system was

rebuilt from scratch around them. In the official discourse (especially the early official discourse) this sense of constant progress is offset against the type of arbitrary government that came before. In this way, history amplifies the importance of ‘*yifa zhiguo*’, it relativises it, and it emphasises the extent to which it has already been achieved. More broadly, for reasons that I touch on above, historical argument sets the tone and tempo for political reform in Chinese official discourse. During the seventeenth politburo, one reason why China needed to implement the rule of law policy was because ‘prevailing historical conditions’ meant the time was right. Likewise, at least in the official discourse, ‘prevailing historical conditions’ will dictate when China is ready for more democratic and accountable governance.

ST: The history of various discussions on socialist rule of law and a number of key political events in China have helped to shape ‘*yifa zhiguo*’ as we know it today. We can break up the term ‘*yifa zhiguo*’ into various parts – ‘*fa*’ then ‘*yifa*’ then ‘*yifa zhiguo*’ to understand the influence of history. First, in terms of law (*fa*), from the early 1950s onwards, law in the PRC was seen as a manifestation of party policy. That is not to say that all laws were party policies, but that the intent of the law was basically in harmony with Party policy. After Deng Xiaoping came to power, the Party’s ideas about the nature of law did not fundamentally change; law remained socialist in purpose and intent. As the scholar Harro von Senger noted in 1985, ‘law does not serve the function of an autonomous force for shaping the social order, independent of the CCP Party norms. It serves rather as a vehicle for making casuistic elaborations to Party norms’. Second, the phrase ‘*yifa*’ (in accordance with the law) has its origins in the 1950s, particularly during a brief period after 1954 when the Constitution was promulgated. It was taken up again with gusto in the early 1980s as a

phrase attached to various party-state actions such as ‘severely punishing in accordance with the law (*yifa yancheng*)’ or ‘[Party] Rule in accordance with the law’ (*yifa zhizheng*). Stressing ‘*yifa*’ in the 1980s was an attempt to changed public and Party mindsets from ‘rule of man’ to ‘rule of law’. This was a new consciousness of law based on the idea that law would institutionalised through courts and government agencies to create a basis for economic modernisation and a sound spiritual civilisation. Third in terms of ‘*yifa zhiguo*’ in the 1990s: It has been widely documented that the Party abandoned its aspiration of state-Party separation following the 1989 Tiananmen incident and the collapse of the Soviet Union. Therefore, progressively throughout the mid to late 1990s, the relatively simple message about the benefits of rule-of-law over rule-of-man was replaced with a more specific governance-based message about how the country should be ruled. This new political line required a new slogan, ‘Governing the Nation in Accordance with the Law’ (*yifa zhiguo*). ‘*Yifa zhiguo*’ became the platform under which the institutionalisation of the Party-state was to take place in China. It was a catchcry about how good governance should be achieved; through introduction of new laws and regulations aimed at better supervising and limiting administrative powers. In the late 1990s, ‘*yifa zhiguo*’ morphed into a political institutionalisation strategy, bolstering Party power to make concrete decisions about governance through Party groups and committees at all levels of government. President Jiang Zemin promulgated ‘*yifa zhiguo*’ at the 15th Party Congress as the Party’s ruling paradigm and it was inserted into the Constitution in 1999.

In your view, what is the relationship between ‘*yifa zhiguo*’ and ‘*yide zhiguo*’ (ruling the country according to virtue) in today’s China?

JR: I think the ideas are meant to be complementary and acknowledge the two main strands of Chinese political tradition, Confucianism and Legalism. Even though these are often taken to be opposed, the reality is that for millennia Chinese leaders governed by mixing the two schools of thought. To me, the relationship between the two goes back to the assumption of a political regime that is inherently moral. The virtue of the regime’s rulers is a manifestation of that morality but is also something that must be properly cultivated and reinforced. Law is necessary to guide virtuous behaviour among officials and society at large, but it too is intended as a manifestation of the moral regime. Both work together in a kind of balance that produces order and stability from the top down. I do not necessarily think this hearkening back to traditions of Chinese political-legal culture is part of any great ideological shift under Xi, *per se*. These ways of thinking about power and the relationship between state and society are structural elements of Chinese culture that are being laid bare because the modern ideological garb that they have been wearing for over a century has begun to wear thin.

ST: To understand the significance of ‘*yide zhiguo*’ for ‘*yifa zhiguo*’ we need to understand the Confucian mindset of the Party. Party leaders assume a paternal fosterage role in enlightening a politically and legally illiterate citizenry. Xi has been continuously enlightening China’s citizens of the necessity of a strong Party to rule in their interests

The concept of ‘rule of law’ very often seems to imply a teleological march from Marxism to a more liberal system of governance. In your view, to what extent will the ‘*yifa zhiguo*’ agenda be able to promote the development of a different, more democratic and accountable system of governance in China in the future?

JR: In and of itself, the official legal development agenda associated with ‘*yifa zhiguo*’ is not intended to lead to liberal democracy for China, and I think the sooner we all recognise that the better. For too long we have chosen to hear ‘rule of law’ every time a Chinese official speaks of ‘*yifa zhiguo*’ or ‘*fazhi*’, and we think that they are aspiring to achieve our version of legal and political culture, but they just lack the capacity or techniques to get there. So we have focused on helping them build that capacity and meanwhile our paths are still not converging—or to the extent that they *are* converging, it might be because we are actually moving closer to them, rather than the other way around. The best thing ‘*yifa zhiguo*’ really has going for it is the promise of stability and order. I do not see any hint of democratic innovation out of such a paternalistic system that puts limits on basic freedoms of expression and association precisely to stunt the development of a democratic (as opposed to populist) culture. As for accountability, I think that, so long as the system relies on self-regulation and sees the regime itself as the ultimate source of moral authority, there will not be much innovation there either. I would not say that either democracy or accountability is faring much better in Western countries right now, but I do not see any reason to hold out hope that China’s current path is leading to something superior.

ES: I do not agree that the rule of law should be thought of as a march. Political reform in China is controversial and no single idea leads inexorably towards liberalisation. If anyone is likely to think of the rule of law as a march towards a distant goal, it is the CCP. The Party’s official doctrine embraces the Marxist theory of a historical materialism. Put simply, historical materialists believe social and political progress is achieved through historical and economic development. From this point of view, political ideas like the

rule of law can be seen as waypoints on a longer march towards an inevitable, historical objective. It may also be politically convenient to think of the rule of law as something to be achieved gradually, in increments, alongside other economic objectives. Progress towards the rule of law is not the same as rule of law, and the more we think about where China is going, the less we think about where China actually is. This is not to say that the rule of law does not play an important role in Chinese politics. 85 million party members spent the latter part of 2014 talking about a version of the rule of law because it was the topic of the Fourth Plenum and, in areas where there is limited political opposition, China has made rapid progress. The current reforms to the justice sector will make life more predictable for millions of people. Both of these examples suggest ways in which the ‘rule of law’ agenda might promote a more accountable system of government in China. At the same time, we ought to resist the temptation to overstate its importance. It is official state policy to promote ‘*yifa zhiguo*’, but there is nothing fundamental about this. The policy yields to Cardinal Principles like Party Leadership.

ST: A number of basic elements of Xi Jinping’s ‘*yifa zhiguo*’ push may, in the future, become very helpful in improving greater transparency and accountability. But the concept of ‘*yifa zhiguo*’ will not promote an overall improvement in the relationship between the Party-state and society (or more precisely between the Party and ‘the people’). This is because the very purpose of ‘*yifa zhiguo*’ is to promote the idea that the law is a manifestation of the people’s will and interests, and that the Party exists in order to protect the people’s interests. Under the ‘*yifa zhiguo*’ ideology, the people cannot enjoy any rights and interests outside the leadership of the Party whose role it is to develop and protect (Party-initiated) rights and interests.



DOCUMENTS

The Foreign NGOs Management Law: A Compendium

Ivan Franceschini, Elisa Nesossi

Recently, people from the State Security who had summoned me to ‘have a tea’ said to me: ‘Us from the State Security are still quite civilised, but with this coming law that will regulate NGOs you will have to deal with the Public Security [i.e. the police]. You have to understand that their work methods are rather savage.’ Actually, this was also a pressure of kind, you can read it as some sort of well-intentioned warning.
(Interview with a Chinese labour activist, Shenzhen, June 2015)

On 28 April 2016, the National People’s Congress (NPC) passed the very controversial Law on the Management of Foreign NGOs’ Activities within Mainland China, which will enter into force on 1 January 2017. Two previous drafts of the Law were introduced respectively in December 2014 (this first draft was never circulated among the public) and in May 2015 (the draft was released publicly and comments could be filed on the NPC website). As defined in Article 1, the Law was introduced with the aim of ‘standardising and guiding all the activities carried out by overseas NGOs within China, and protecting their rights and interests’. From January 2017, those foreign NGOs that until then will have been operating in the People’s Republic of China in a legal limbo will be required to act according to the principles established by this Law. Although **some scholars** have argued that the Law can be interpreted as a positive development in China’s process of legal development and acceptance of international standards, we fail to see how this can be the case. At this stage it appears to us that the limits imposed by the Law on the practice of foreign NGOs significantly outweigh its alleged benefits. A number of provisions within the Law are extremely vague and urgently require

further explanation by the relevant authorities. Still, on this matter we are unable to share the optimism of long-time observer of Chinese civil society Shawn Shieh who, in a **valuable exegesis** of the Law that appeared earlier on his personal blog, noted that some flexibility may be allowed in the implementation phase. Here below we offer our short analysis of the legislation in the form of FAQs to explain its scope and significance. For the translation into English of the contents of the Law, we wish to acknowledge our debt to the excellent version that appeared on *China Law Translate*.

What is a NGO and what kind of activities fall within the scope of the Law on the Management of Foreign NGOs’ Activities within Mainland China?

The Law broadly defines NGO as ‘non-profit, non-governmental, social organisations lawfully established outside Mainland China, such as foundations, social groups, and think tank organisations’ (Art. 2) that can operate in fields such as ‘economics, education, science and technology, culture, health, sports, and environmental protection, and in areas such as poverty alleviation and disaster relief’ (Art. 3). In carrying out their ac-

tivities, these organisations are required to abide by Chinese laws, and not to endanger China's national unity, security or ethnic solidarity, as well as not to harm China's national interests, the common good of the society and the lawful rights and interests of citizens, legal persons, and other organisations (Art. 5). Furthermore, they must not engage in or fund for-profit activities, political or religious activities (Art. 5).

Be aware that:

The range of activities NGOs can engage in, as listed in Articles 3 and 5, exclude issues that may be deemed politically sensitive, like work for the protection of labour rights and human rights (in particular civil and political rights). Article 5 is particularly vague and potentially problematic. Firstly, the meaning of 'political activity' remains unclear. In fact, the specific work in the allowed fields of operation for foreign NGOs as well as numerous policies encouraging charity and volunteer services are political at some level, and as such, might be excluded from the protection of the Law. Secondly, while it is reasonable to expect that a foreign NGO would not violate China's key national interests like national security, national unity and ethnic unity, it is important to understand the context in which these terms are phrased within Chinese law and how they may be broadly applied to incriminate a wide range of activities within society. Indeed in recent years, there have been numerous examples of NGO workers and activists having been incriminated under the existing criminal laws for endangering China's national security and interests, and in the future, in view of this Law, these circumstances might well extend to foreign NGOs. Thirdly, expressions like 'ethnic solidarity' and 'the common good of society' remain extremely vague and easily resonate with crimes concerning the disruption of public order frequently used to incriminate various categories of citizens who are considered a potential threat to social stability.

Do foreign universities fall within the reach of this law?

Article 53 of the Law states that 'where foreign schools, hospitals, natural science and engineering technology research institutions or academic organisations carry out exchanges or co-operation with Mainland Chinese schools, hospitals, natural science and engineering technology research institutions or academic organisations, it is handled according to the relevant national provisions, unless these activities violate the principles listed in Article 5'. This provision—which was inserted only in the final version of the Law and is one of the very few concessions made by the legislators to the critics—indicates that certain forms of educational exchange could be exempted from the registration requirements imposed on foreign NGOs, and that other laws should govern these kinds of activities instead.

Be aware that:

Much clarification is still needed in relation to what constitutes 'exchanges' and 'co-operation'. As some commentators have mentioned already, it is unclear whether exchanges and co-operation may include programmes between foreign schools and Chinese entities which do not operate schools (for example, third party providers of abroad programs or student internships), and unilateral programs of foreign schools (e.g., a faculty-led short-term summer program that is organised without affiliation with any Chinese partner). It is also unclear whether a foreign university that goes to China to recruit, or to meet with its alumni, is required to either register as a representative office of a foreign NGO or work with a Chinese co-operative body and secure an approval and record filing for temporary activities from relevant Chinese authorities.

What are the organs in charge of the registration and supervision of foreign NGOs?

According to the Law, the Ministry of Public Security (MPS) and the provincial public security bureaus (PSBs) are in charge of the registration of foreign NGOs carrying out activities within Mainland China (Art. 6). The PSBs at the county level or above are required to supervise and manage the activities of foreign NGOs and to provide services for their activities (Art. 7) (note that the Law refers to public security departments as ‘registration and management organs’). In order to register with the public security authorities and establish a representative office, foreign NGOs should receive the consent of Professional Supervisory Units established under the State Council (Arts. 6 & 11). Once registered, they will be supervised first by the PSBs, then by a Professional Supervisory Unit at the local government level and by any other supervisory authorities responsible for national security, finance, foreign affairs, customs or tax (Art. 43).

Be aware that:

Foreign NGOs’ supervision by the public security authorities is one of the most problematic aspects of the legislation. Currently, Chinese NGOs are supposed to register with the Ministry of Civil Affairs, but most of them—especially those that work in politically sensitive areas—are in fact refused registration and therefore are informally supervised by the State Security. Very few foreign NGOs are registered within China and, given their unclear legal status, their activities are informally monitored through their local partners. Giving control to the public security (rather than the Ministry of Civil Affairs) reflects the Law’s emphasis on security, rather than a willingness to facilitate meaningful co-operation. It signals that, according to Chinese authorities, foreign NGOs have the potential to threaten social stability and security and, for this reason, they should be kept under control by one of the most politically powerful ministries within China. It remains to be seen whether the

MPS—which lacks any relevant experience in managing civil society organisations—actually has the capacity to manage NGOs.

How to register a representative office in China?

In order to carry out any activity in Mainland China, foreign NGOs should register and establish a representative office. The Law sets out the following five requirements that a foreign NGO should satisfy in order to register and establish a representative office within China: a) it should be legally established outside of Mainland China; b) it should be able to independently bear civil liability; c) the objectives and scope of activities defined in its organisational charter should be beneficial to the development of social welfare; d) it should have continuously carried out substantive activities outside of Mainland China for two or more years; e) other requirements provided by other laws and regulations (Art. 10). A foreign NGO that meets the above criteria should submit an application for registration within thirty days after having received consent by a Professional Supervisory Unit listed in a directory published by the public security organs (Arts. 11, 12). The application should include the following materials: a) a written application; b) supporting documents and materials certifying that the NGO complies with the requirement outlined in Art. 10; c) proof of identity, resumé and materials or attestations showing proof of no criminal record for the proposed chief representative; d) materials showing the proposed premises for the representative office; e) materials showing the sources of capital; f) documents of consent from the professional supervisory unit; g) other documents and materials required by law or by administrative regulations. If the registration is granted, the foreign NGO representative office will obtain a registration certificate that it will use to register for taxes, get an official seal and establish

an account at a bank in Mainland China (Art. 13).

Be aware that:

First, some of the criteria included in Article 10 are extremely vague and may easily exclude some foreign NGOs from the possibility of registering within Mainland China. Indeed, it remains unclear according to which standards an activity can be deemed ‘beneficial to the development of social welfare’ and what the ‘other requirements provided by other laws and regulations’ could be. Second, the Law does not specify whether a foreign NGO has the right to appeal decisions by the public security authorities and Professional Supervisory Units if registration is not granted. Finally, foreign NGOs are supposed to choose a local Professional Supervisory Unit from a list published by the public security organs ‘together with the relevant departments’ (Art. 11). This will clearly limit their choices and introduce an additional layer of supervision and control that will further restrict their ability to operate in China.

Is it possible to operate without a representative office?

Unregistered foreign NGOs that wish to conduct temporary activities within China should legally file a record (Art. 9). Foreign NGOs that have not registered and established representative offices or filed a record to carry out temporary activities are not entitled to carry out activities within Mainland China, and must not entrust or fund, or covertly entrust or fund, any unit or individual in Mainland China to carry out activities within the country (Art. 9). Temporary activities can be carried out only in co-operation with state organs, mass organisations, public institutions, or social organisations (Art. 16). It will be the Chinese partner unit who will have to file with the public security organs for the proposed activity at least fifteen days before activities

are carried out (except for emergency situations) (Art. 17). The Law provides that ‘temporary activities’ cannot last for more than one year and that where ‘there is truly a need to extend the period’, a new filing shall be made (Art. 17). Beside this, the law clearly states that ‘units and individuals in Mainland China must not accept retention, funding, agency, or covert agency to carry out foreign NGOs’ activities in Mainland China, from foreign NGOs that have not registered a representative office or filed to carry out temporary activities’ (Art. 32).

Be aware that:

This process entails the establishment of a closer relationship between the Chinese partner organisation—which needs to be officially sanctioned, for instance the official trade union, a university, or an NGO with a regular registration as a social organisation—and the public security authorities. This will inevitably lead to a closer scrutiny of the local partner by the police organs. Given the fact that most Chinese NGOs, especially in politically sensitive fields, cannot register as social organisations, the restrictions imposed by Article 32 of the Law make it almost impossible for international entities to fund most local NGOs, severely curtailing the ability of local civil society organisations to access foreign funding and putting even more pressure on Chinese activists (as highlighted by the quote which we added at the beginning of this compendium). The parameters for renewing a one-year permit for temporary activity remain unclear and it is not clarified whether multiple temporary activities can be carried out either simultaneously or in subsequent years.

Can a foreign NGO establish more than one office in Mainland China?

The Law establishes that the representative office of a foreign NGO in China can

carry out activities only within their registered operational scope and region, and it cannot establish branch organisations within China, except as otherwise provided by the State Council (Art. 18).

Be aware that:

Prohibiting the establishment of branches and restricting the work of NGOs only within their registered region impose very serious operational limitations on the type and scope of activities that can be carried out. This provision has the potential to limit multiple partners' co-operation and diversification of activities. The option for approval by the State Council is left extremely vague and it remains completely unclear what the scope and significance of exception might entail.

What are the planning and reporting requirements?

There are two types of reports that a representative office has to submit annually to the Chinese authorities: an activity plan and an annual work report. First, the NGO representative office is required to submit to the Professional Supervisory Unit before the end of each calendar year an activity plan for the following year, including a description of project implementation, use of funds, and other similar content (Art. 19). Within ten days of approval, the representative office has to file the plan with the public security authorities (Art. 19). When variations of the activity plan are necessary, these must be promptly filed with the public security authorities (Art. 19). Second, foreign NGO representative offices are required to file annual work reports to Professional Supervisory Units before 31 January each year (Art. 31). These reports shall include content such as audited financial accounting reports, and reports on the situation of activities, as well as personnel or institutional changes (Art. 31).

When dealing with 'temporary activities',

foreign NGOs must send written reports to the public security authorities within thirty days of concluding temporary activities. These reports must include information on the state of activities and the use of funds (Art. 30).

Be aware that:

While planning and reporting are very reasonable requirements for a NGO to operate legally, the Law however is fairly vague on the level of detail required by the annual plan. It is unclear the extent to which such planning will allow a degree of flexibility for the implementation of ad hoc activities or activities in an emergency situation. In case of both temporary and planned activities, it remains unclear how reports will be used, whether they will be simply filed by the relevant authorities or whether they will constitute the basis for approving future activities by the same NGOs.

What funds can be used to support activities within Mainland China?

The Law explains that foreign NGOs are allowed to use the following funding: a) funds from lawful sources outside of Mainland China; b) interests on bank deposits within Mainland China; and c) other funds lawfully obtained within Mainland China (Art. 21). Foreign NGOs and their representative offices must not fundraise within Mainland China (Art. 21). These funds—which must be used only in accordance with the registered scope of operations (Art. 23)—must be deposited in the bank account that is recorded on the official registration documents or, in the case of temporary activities, the bank account of the Chinese partner unit (Art. 22). Any other strategy to receive funding from abroad is explicitly forbidden (Art. 22) and wire transfers will have to be used in accordance with China's relevant provisions on regulation of foreign exchanges and payments (Art. 25).

Be aware that:

While these provisions might have been thought of as a way to control illegal money movements from outside and within China, they however present some contradictions and limitations. Article 21 allows for funding to be obtained within Mainland China but excludes the possibility of fundraising within the country. As the activity of fundraising is not defined in this Law, it potentially excludes a significant portion of funding that could come from within the country. It also creates opportunities for funding obtained lawfully to be considered illegal because it is attained through alleged fundraising. The Law also excludes the possibility, or makes it extremely difficult, for Chinese citizens to donate to foreign NGOs operating in China, closing avenues for China's wealthy to contribute to international philanthropy.

What about accounting and taxes?

According to the Law, foreign NGO representative offices are required to implement China's unified accounting system, hiring accountants with Chinese professional certifications to carry out their accounting (Art. 24). Mainland Chinese accounting firms are required to audit foreign NGOs' financial accounting reports (Art. 24). Tax registration, tax declarations, and payment of taxes must be dealt with in accordance with the law (Art. 26), but it is explicitly stated that foreign NGO representative offices enjoy tax and other policy benefits according to the law (Art. 36).

Be aware that:

There are at least two main problematic issues concerning the required system of accounting and taxes. In terms of accounting, foreign NGOs are financially accountable to their donors, which generally impose strict accounting reporting standards. The imposition of carrying out accounting within China according to China's unified

accounting system may either benefit the process of accounting for international donors, or hinder the process if the two systems are completely different, imposing significant operational burdens on the foreign NGOs. The requirements concerning taxes are utterly vague. It remains unclear what taxation regime will apply to foreign NGOs and what benefits, if any, they could potentially enjoy. It is also left unspecified whether these accounting requirements and taxes provisions apply to foreign NGOs conducting temporary activities.

Who should staff a representative office?

The Law states that foreign NGO representative offices can hire employees in Mainland China as long as they follow local laws and administrative regulations, and that all the information regarding employed personnel must be reported to the professional supervisory units and to the public security organs (Art. 27). Representative offices can designate a chief representative and up to three representatives as required for operations, but they must not be: a) persons lacking or having limited civil capacity; b) persons with a criminal record; c) chief representatives or representatives of representative offices that have been de-registered or had registration certificates cancelled within the past five years; d) other situations provided by the law or regulations (Art. 29). As for the expatriate staff, the Law provides that 'the chief representative and other representatives that are foreign employees of foreign NGO representative offices may use the organisation's registration certificate, documents proving the representative's status, and other materials to process employment and work permits in accordance with the law' (Art. 38).

Be aware that:

The clause 'other situations provided by the law or regulations' included in Article

29 is extremely vague and may be broadly interpreted by the public security authorities to exclude anybody who is deemed inadequate according to undefined standards. The Law is also silent in relation to the conditions for hiring volunteers.

What does supervision and management by the Chinese relevant authorities entail?

The Law provides that public security authorities are not only responsible for the registration of the NGOs' representative offices, annual inspections and the filing of temporary activities, but they have also a duty to investigate and punish illegal activities carried out by foreign NGOs. When public security organs suspect that a foreign NGO is violating this Law, they may adopt the following measures: a) question the chief representative and other responsible persons from the foreign NGO representative offices; b) enter the foreign NGOs' domicile and venues of activities within Mainland China to conduct on-site inspections; c) question units and individuals related to the investigation, and request an explanation; d) examine and reproduce documents or materials related to the matters being investigated, and seal documents or materials that might be removed, destroyed, concealed or tampered with; e) seal or seize venues, facilities, or assets suspected of being involved in illegal activities (Art. 41). Public security organs can also make inquiries into bank accounts of units or individuals related to the matter being investigated and request the courts to freeze bank account funds in accordance with the Criminal Procedure Law (Art. 42). Other departments, such as those for national security, foreign affairs, finance, financial oversight, customs, tax, and foreign experts are to conduct oversight and management of foreign NGOs and their representative offices in accordance with the scope of their duties and relevant laws (Art. 43).

The anti-money laundering departments shall supervise and manage the opening and use of bank accounts by foreign NGOs, Chinese partner units, and also of units or individuals in Mainland China who receive funds from foreign NGOs (Art. 44).

Be aware that:

It appears that while the Law is fairly specific on what the public security authorities and other departments can do in case of suspicious activities, it imposes very few limitations on their actions. For example, on the basis of a simple suspicion, the public security can indiscriminately get access to individuals, their properties and domiciles without any significance restriction been imposed by the Law.

What are the penalties for non-compliance?

If a foreign NGO representative office or a foreign NGO carrying out temporary activities in China do not comply with the clauses that govern registration, filing, scope of activities, funds, reporting, supervision and inspection, they and the Chinese partner units will be given warnings or ordered to suspend activities for a given period by the public security organs, have illegal assets or unlawful gains confiscated; where the circumstances are considered serious, their registration certificate or temporary activity permit documents will also be withdrawn by the registration management organs and the temporary activities shut down (Art. 45). The same penalty applies where the representative offices of a foreign NGO, a foreign NGO carrying out temporary activities, or a Chinese partner unit provide false information to obtain registration certificates for representative offices or to obtain an authorisation to carry out temporary activities; or where there are acts of counterfeiting, altering, buying and selling, renting, or loaning registra-

tion certificates or seals (Art. 45). NGOs that have been de-registered cannot re-apply to set up representative offices in Mainland China or carry out temporary activities for five years from the date of de-registration, cancellation, or closure (Art. 48).

Article 46 explains that in circumstances where NGOs carry out activities without registration or filing, the public security organs can stop their activities, confiscate their illegally obtained property and unlawful gains, give directly responsible personnel warnings, and, in serious circumstances, detain them for up to ten days (Art. 46). The same applies to circumstances where units and individuals in Mainland China know that a foreign NGO has not registered or filed for temporary activities, and co-operate with them or accept their retention or funding, or act as their agent or covert agent to carry out activities for them or accept and spend funds for a project (Art. 46).

More serious penalties are provided for those foreign NGOs and foreign NGO representative offices that: a) incite resistance to the implementation of laws and regulations; b) illegally obtain state secrets; c) create rumours, engage in defamation, or the publication or dissemination of other harmful information that endangers state security or damages the national interest; d) engage in or fund political activities or illegal religious activities; e) other situations that endanger state security or damage the national or public interest (Art. 47). In such circumstances, the public security organs should cancel their registration certificates or shut down temporary activities; where a crime is not constituted, they will detain the persons who are directly in charge and other directly responsible personnel for up to fifteen days; and where a crime is constituted, criminal responsibility is pursued in accordance with the law (Art. 47). The same applies where foreign

NGOs or foreign NGO representative offices exhibit criminal conduct such as separatism, undermining national unity, or subverting national sovereignty (Art. 47). These organisations may be added to an unwelcome list by the public security department under the State Council and must not again establish representative offices or carry out temporary activities within Mainland China (Art. 48).

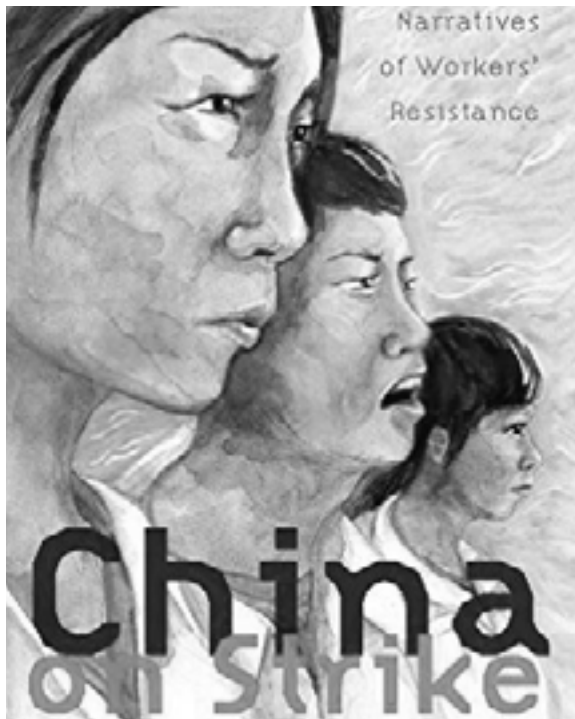
When foreign persons violate this law, relevant organs may lawfully order them to leave the country within a given period of time, deport them, or expel them (Art. 50).

Be aware that:

Besides including a number of very vague clauses that can be easily used to justify arbitrary actions by the public security authorities in the name of protecting social order and stability—for instance, the publication of any critical report can be easily considered as ‘dissemination of harmful information’—one problem that emerges from these provisions relates to the use of administrative detention for the personnel of foreign NGOs for up to fifteen days. It is well known that the public security authorities generally implement administrative detention without any judicial supervision and is in strict contrast with international fair trial standards.

ACADEMIC WATCH

Eli Friedman on *China on Strike*



A unique contribution to the literature on the resistance of Chinese migrant workers, ***China on Strike*** is a collection of stories of collective actions undertaken by migrant workers in the Pearl River Delta since the turn of the century. Authored by Chinese labour activist Hao Ren as part of an activist network and edited in English by Zhongjin Li and Eli Friedman, the book draws its strength from the author's in-depth interviews with workers, an extraordinary set of voices and perspectives that come alive on the page. Besides examining different kinds of strikes, the book focuses on the experience of worker leaders, offering a rare

glimpse into the world of informal labour activism in China. For our *Academic Watch*, we spoke with the book's co-editor Eli Friedman, an Assistant Professor of International and Comparative Labor at Cornell University's ILR School.

This book has an interesting and unusual origin. How did you learn about the Chinese-language edition? And why did you decide to help translate and publish it in English?

Eli Friedman: I first found out about the activist collective behind *China on Strike*, as well as the worker magazine *Gongchang Longmenzhen* [from which the book project emerged], through friends in Guangzhou. These activists had already published several editions of the magazine before embarking on the book project. The book was translated in piecemeal fashion by dedicated activists from various different countries. The reason I'm so excited to have this book in English is because it provides quite simply the best, most detailed, accounts of strikes in China. Not only do we get to see all the nitty gritty involved in launching and sustaining strikes, but it also includes workers' own reflections. People outside of China may have heard about the huge number of strikes, but the actual process, outcomes, and implications of these thousands of strikes remains something of a mystery for most people—even for labour scholars or activists. So bringing this book out in English is meant both to educate, and to inspire similar kinds of worker resistance elsewhere.

There has been a proliferation of studies on Chinese workers over the last decade, including your own Insurgency Trap. What does China on Strike tell us about strikes and their organizers that perhaps other academic studies do not?

EF: One of the outstanding features of this book is that it really personalises the strike participants. Rather than seeing them simply as strike participants, as might be the case in an academic study, we get a much more comprehensive view as to who these workers are, where they come from, how they feel about

their work, and their reflections on participating in collective action. It shows very clearly how workers' tactics and strategies evolve, how workers learn from each other, and how they teach others based on their experiences. Another thing—something that poses a real conundrum for thinking about how to politicise worker struggle—is the ephemerality of protest. In case after case, we see that workers leave as soon or shortly after the strike ends. There is a sense of constant churn, an inability or perhaps disinterest in establishing durable forms of organisation. This is something we knew from academic studies, but the book shows that this isn't simply because of state repression. Workers themselves feel very little sense of attachment to the workplace, or to a worker identity. While this desire to escape the drudgery of factory work and the precarity of the life of a migrant is more than understandable, it does raise questions about the locus of working class politics.

The author of this book was a university graduate who decided to dedicate herself to labour activism. The phenomenon of student-turned-activists seems to have certain similarities with student radicals taking up factory jobs in the sixties and seventies in Europe and North America. Could you tell us more about it? What effect do you think this may have on the labour movement in China?

EF: This phenomenon of student activists, or students going to work in factories, is still very limited. To my knowledge, there are a handful of folks in the Pearl River Delta, and students in Beijing have also gotten involved in activism. While we shouldn't make too big a deal of this, given its limited scope, the fact that any intellectuals are pursuing labour activism is noteworthy. Any connection between intellectuals and workers is highly politically sensitive, given the role that such alliances have played in revolutionary movements of the past. The fact that even a handful of students are willing to pursue ideals other than material self-enrichment is a promising development.

What has been the reception of the book in the United States? What are the challenges of explaining the Chinese labour movement to an American audience?

EF: The book's reception in the United States has been quite positive. Some of the authors recently completed a book tour here. I think there's a real hunger among labour activists in particular for thinking about a different mode of politics. *China on Strike* presents this alternative—militant action at the workplace to force concession from the boss. I do feel a little conflicted about this, however, since I have sometimes felt that people in the United States place unrealistic hopes on Chinese workers. When people hear about thousands of strikes every year, it is (understandably) very exciting, and raises hopes of a powerful new labour movement. So the real complexity for me is helping people to understand the political meaning of these strikes. I am of the opinion that incredibly high levels of worker unrest in China is really only a first step. As is so clear in many of these stories, workers' gains from direct action are as tenuous as their own self-organisation. Indeed, one possible interpretation of this huge expansion in strikes is that it derives from workers' weaknesses—this is the only way they can get anyone to take them seriously. So until they can establish the capacity to coerce state and capital in a consistent, politicised, and proactive way, workers will remain largely reactive to exploitation and domination. So I think the fundamental challenge in introducing labour politics to an American or any international audience, is to allow people to see clearly that this is an exciting moment in that it presents certain potentialities—but that we can't count on Chinese worker militancy to single-handedly reinvigorate a more or less moribund global labour movement. The real takeaway, I hope, is that wherever in the world workers find themselves, self-organisation and militant resistance must form the foundation of expanded working class power.

MADE IN CHINA



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