

THE TRANSNATIONAL NETWORK AND LABOR RIGHTS IN CHINA

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Two mainland scholars assess the growing influence of international NGOs and activists on the defense of labor rights in China.

In his book *Manufacturing Consent*, the American sociologist Michael Burawoy posed the following question: After they entered the stage of monopoly capitalism, why did workers accept without resistance the organization of production laid down by capitalism? Given that factory despotism is evidently unsuited to the development of modern manufacturing, can workers develop a form of voluntary servitude? How are relationships within industrial enterprises to be remolded? Applied to the China context, we might ask how the international division of labor and the role played by various countries within it under globalization has transformed the organization of production in China's industries and enterprises. As participants in the international division of labor, how do China's export-oriented enterprises handle labor-management relations? Chinese scholars and people concerned with the rights defense movement (*weiquan huodong*) would do well to explore these questions.

The involvement of a transnational network in labor rights activities in China's coastal areas has recently been receiving wider attention. This network is composed of multinational companies, consumer rights organizations, the International Labor Organization (ILO), overseas foundations, international corporate social responsibility (CSR) organizations and charities. In this essay we analyze to what extent pressure from the network's movement for "manufacturers' codes of conduct" and CSR is persuading Chinese enterprises to guarantee and advance workers' rights and interests, and we assess the network's future impact on China's industrial relations.¹

The transnational network's activities in China

The ILO and the Global Compact Initiative

The transnational network bases its labor rights activities in China on the fundamental conventions of the ILO, which promotes labor rights through a tripartite structure. ILO meetings are attended by government, employer and worker delegations, all of which are entitled to speak and vote independently.

The tripartite principle is an effective way for member states, employer organizations and labor unions to discuss and reach a common understanding about issues of common concern based on their respective interests. Since 1983, when China joined the ILO, delegations representing the PRC's Ministry of Labor and Social Security, the All China Federation of Trade Unions and the China Enterprise Directors Association/China Enterprise Confederation have participated in every International Labor Conference.

At the World Economic Forum held in Davos, Switzerland in 1999, UN Secretary General Kofi Annan challenged business leaders to join an international initiative he called the Global Compact. The initiative calls on business enterprises to abide by, support and apply a set of fundamental human rights, labor standards and environmental principles.

ILO and World Trade Organization (WTO) regulations have provided an impetus for the promulgation of China's Labor Law, Trade Union Law and related regulations. Although Chinese legislation on the establishment of independent labor unions and other areas lags behind international standards, there has been positive legislative change with respect to depoliticizing the prison and criminal justice system,² the elimination of the Custody and Investigation and Custody and Repatriation systems (*shourong zhidu*), protection against child labor, equal opportunity for women in employment, collective bargaining and the wage consultation system.³

Manufacturers' Codes of Conduct

The transnational network works through consumer groups to put pressure on brand-name multinationals to protect human rights in their manufacturing sites. Multinational companies, in turn, exercise their "vendor sourcing power" to demand that manufacturing enterprises guarantee labor rights by implementing a manufacturer's code of conduct drafted by themselves or by a third party such as an NGO or labor group.

Leading multinationals such as Wal-Mart, Nike, Reebok, Adidas-Salomon, Levi Strauss, Pentland, Disney, Mattel, Li & Fung, Sears, Hallmark, Hasbro and Tomy currently have offices or full-time human rights compliance officers in China to monitor labor rights, workplace safety and environmental protection. Chinese enterprises also receive unscheduled inspections from foreign human rights groups and third parties. The World Bank

Code of practice for SA 8000 certification

- No workers under the age of 15 (14 for “developing countries”); “young workers” cannot be employed during school hours
- No use of forced labor
- Safe and healthy work environment
- Right to form and join trade unions and bargain collectively
- No discrimination based on age, race, class, origin, religion, disability, gender, sexual orientation, union or political association
- No use of physical punishment, mental or verbal abuse, arbitrary pay deductions or threats of dismissal or personal harm
- Working hours limited to 48 hours and 6 days per week, overtime not to exceed 12 hours per week; overtime is voluntary and paid at a premium rate.
- Minimum wage ensured, with no deductions for disciplinary purposes
- Certification requires compliance standards to be integrated into management systems.

estimates that some 1,000 different standards and codes of conduct are being applied by multinational companies, most of them located in Europe, North America and Australia.

In October 1997, the American Council on Economic Priorities Accreditation Agency (CEPAA), which was renamed Social Accountability International (SAI) in 2001, published the Social Accountability 8000 standard. As the world’s first third-party certification of corporate social accountability, SA 8000 is designed to enforce existing international agreements, including International Labor Organization conventions, the Universal Declaration on Human Rights, and the UN Convention on the Rights of the Child. Companies that wish to apply for SA 8000 certification must ensure that they satisfy a code of practice broken down into nine essential areas. As of May 2004, 400 companies in 40 countries and territories, including 53 companies in China, had obtained SA 8000 certification.⁴

Timberland, a major global brand, illustrates the local effect of these global standards. In order to obtain SA 8000 certification, Timberland carried out compliance inspections on its suppliers every six to 12 months. In order to comply with Timberland’s code of conduct, Chai Da Manufacturing Ltd. in Kaiping, Guangdong Province began providing its workers with the insurance coverage required by law as well as accidental injury insurance; it also organizes social activities for its workers on a regular basis and gives each of them a monthly bonus of up to 380 yuan.⁵ Factory compliance inspection programs such as Chai Da’s are becoming increasingly widespread, obliging local companies to invest more in improving facilities, wages and treatment of workers. Although such investments raise costs and lower profits in the short term, the

manufacturer can hope to recoup its investment in the long term by ensuring continued orders from the multinational.

International NGOs and the empowerment of workers

The Global Alliance for Workers and Communities (GAWC), which was established with the support of the World Bank, Nike and GAP, runs worker development programs in China in the areas of health care, mental health, labor law and urban living. GAWC believes that empowering workers to negotiate and voice their concerns is key in protecting their rights and interests. Other companies and organizations have also established capacity-building programs in China:

- Nike, Reebok and Adidas-Salomon run worker development programs in their contract factories in China.
- Pentland, a British multinational, trains first-aid personnel, health workers and fire wardens in its contract factories in China, and also supports a research program to improve labor standards. In collaboration with the Institute of Contemporary Observation (ICO) in Shenzhen, Pentland conducted a study on workers’ dormitories and published “Dormitories in China: Research Report in the South of China”⁶ as a reference guide for local factories.
- Levi Strauss provides a grant to the Asia Foundation to support a labor service program for migrant women workers developed and delivered through Chinese partners such as Tsinghua University’s Center for the Study of Contemporary China and the Guangdong Women’s Cadre Training School. The “Training Program for Migrant Women Workers in the Pearl River Delta” has opened six training centers attended by more than 1,000 workers since 1999.

In December 2004, the British consulates general in Guangzhou and Shenzhen organized a forum entitled “The UK and the Greater Pearl River Delta: Developing Corporate Social Responsibility Together.” The forum showed how CSR maximizes corporate sustainability and business performance, and shared Chinese and British experiences in corporate sustainable development. This was a very valuable opportunity for Chinese companies.

In August 2004, the Fair Labor Association, an American NGO comprising companies and labor unions, organized a joint training seminar in Shenzhen together with five external audit organizations operating in China, including the Institute for Contemporary Observation (ICO) and the Société Générale de Surveillance (SGS). The purpose of the seminar was to improve the work environment in garment factories and increase client confidence in these factories. The client multinationals included Adidas-Salomon, Liz Claiborne, Nike, Reebok, Patagonia and Phillips-Van Heusen, among others.

The transnational network’s role in developing labor NGOs within China

Guided by local labor union organizations, in July 2001 and December 2002 Reebok helped two suppliers in Shenzhen and

Fujian establish labor unions in their factories. From the Chinese government's point of view, it was an awkward and serious matter to see a foreign multinational promote corporate democracy and preside over the establishment of labor unions in Chinese enterprises. It marked an unprecedented step in Chinese industrial relations. Reebok believes that having union representatives elected openly by the workers themselves fosters democratic awareness and advances freedom of association and the right to collective bargaining.

An increasing number of labor rights NGOs are emerging in China through the transnational network:

- The Institute of Contemporary Observation (ICO) in Shenzhen is an NGO specializing in labor rights advocacy and research.⁷ Oxfam Hong Kong provided financial support for ICO's establishment of a Labor Law Support Center that provides free legal aid to workers, and ICO has also received financial support from the University of California, Berkeley to establish a community college for migrant workers.
- The Panyu Migrant Workers' Document Service Center, which receives financial support from the German Church Development Service (Evangelischer Entwicklungsdienst), the Ford Foundation and the University of Oslo, works tirelessly to visit and provide legal aid to workers injured on the job in the Pearl River Delta.
- The Chinese Working Women's Network (CWWN) is an NGO founded in Hong Kong in 1996. In collaboration with the Nanshan District Federation of Trade Unions in Shenzhen, the women of the CWWN founded the Women Workers' Service Center, which promotes the rights and interests of women workers. CWWN carries out a variety of activities in the Guangdong Provincial Hospital for the Treatment and Prevention of Occupational Diseases and Injuries, and its trainees staff the "Women's Health Express," a mobile van provided by Reebok that visits industrial areas in the Pearl River Delta and provides workers with information on workplace health and safety.

"Neither devils nor angels":

Multinational companies and labor rights

Economic globalization has encroached on labor rights legislation in countries around the world. Traditional labor-management relations imposed from above and long maintained through tripartite cooperation among government, industry and labor have been fundamentally altered as multinational companies and CSR groups have taken the stage. In short, globalization has forged a new form of industrial relations.

The transnational network's lodestar is the concept of human rights, which has been absorbed into its operational strategy in combination with corporate social responsibility. Under the framework of the UN's Global Compact, multinational companies and the transnational network have become an external impetus for the development of human rights and workers' rights protection and guarantees. Given the network's financial strength, national governments have no choice but to

respect ILO conventions and to draft and implement labor laws in conformity with their provisions.

The "boomerang pattern" proposed by Margaret Keck and Kathryn Sikkink may explain the transnational network's involvement in China, but only partly.⁸ First of all, China remains a "total society" (*zongtixing shehui*). The government has always had the capacity to mobilize society and control the mass media, and often handles crises as it sees fit, regardless of public pressure. Moreover, contact between China's domestic actors and the transnational network is subject to interference, not only for ideological reasons but also because of the vested interests of local governments. Some local governments have drawn criticism over issues such as establishment of minimum wage protections, disputes over overdue salaries and attracting outside investment, but as long as there is no direct conflict of interest between local governments and the central government, the transnational network is unlikely to succeed in bypassing local governments to obtain support from the central government.

The transnational network's promotion of human rights in China represents an obvious technical and political challenge to the Chinese government. A serious external challenge to the formulation and implementation of policies within China may lead to a fundamental shift in policy thinking, not only in local government, but also at the central level. For example, since China joined the WTO, tariff barriers have been removed, but a number of Western countries have put up trade barriers against Chinese products allegedly made with prison or child labor or in factories with substandard safety conditions. The Chinese government is opposed to using ILO standards for trade protectionism, but China has no excuse for refusing to implement these standards. It is also worth noting that the transnational network's use of a global selective vendor sourcing strategy to promote labor rights has been effective in bringing pressure to bear on local governments in China. As a result, the revision of labor laws and regulations has been accelerated at all levels of government.

By and large, China's current ideological system continues to reject the transnational network's activities, but in addition to their pressure on multinationals, network activists have become adept at deploying symbolically significant incidents to win public attention and support. "Promoting change by reporting facts" is sometimes referred to as the "human rights methodology,"⁹ which maximizes news value through reliable information published in a timely manner through the most appropriate channels.

As globalization unifies the world in a single system, a country's failure to find its place within the system represents a missed opportunity. A good example is the continued flouting of labor rights by private enterprises and the government in the Pearl River Delta, which has made the region a hotbed of instability and led to a serious shortage of rural workers since 2004. On the other hand, by facilitating transportation, communication and information sharing, globalization has also created the conditions for the spread of a transnational network that bases its activities on the international human rights protection mechanisms that have emerged since World War II.

Although the transnational network still keeps a relatively

A Chinese Think-Tank's View of Human Rights

Following is an excerpt from China's Political Development 2005, edited by Liu Jie, director of the Democratic Government Research Center under the School of World Economy and Politics of the Shanghai Academy of Social Sciences (SASS).¹ China's oldest research institution for the humanities and social sciences and the largest outside of Beijing, SASS receives most of its funding from the municipal government, and also draws financial support from various non-governmental sources.²

Judging from the greater international situation at the present time, respecting and protecting human rights has become an important trend in the progress of human civilization, and human rights is having an increasingly greater impact on international relations and on the international situation. Judging from the domestic situation, with the development of the socialist market economy and the socialist democratic legal construction, the broad masses of the people will certainly have a significantly stronger sense of and demand for rights, and the number of contradictions the broad masses of the people will encounter when protecting and exercising their rights will also increase significantly. At present, the increase in people's demand for rights has become a major, deep-seated issue in economic, political and social life, and the issue is taking shape and will become increasingly more prominent.

The lack of a consciousness and sense of human rights is a widespread phenomenon in our society. First, a significant number of cadres and public service personnel have little knowledge or sense of human rights, and are only aware of human rights from the angle of international human rights struggles. They are unable to conscientiously associate human rights with the basic goal of our country to build our socialist democracy and socialism with Chinese characteristics, and they are unable to correctly understand the relationship between public power and the rights of the people. The mentality of "rule of man," the "privileges" mentality and the government-oriented mentality still exist to a certain extent and in various forms.

Second, a significant percentage of the public has only a vague understanding of the concept of human rights. They are not aware of the rights they enjoy, they do not know how to exercise and preserve their rights, and they do not know what actions violate the law and human rights. Third, owners of some enterprises have no sense of human rights. They force workers to do overly strenuous work and pay them far less than what they deserve. They make workers live, eat and work in abominable conditions, employ child labor, and even subject workers to verbal abuse, restrictions on personal freedom and corporal punishment.

How to propagate and spread knowledge about human rights in a country like ours with its long feudal history, how to strengthen human rights consciousness in society as a whole, and how to lay the ideological groundwork for respecting and protecting human rights are important tasks

that we face in human rights construction in our country.

Developing a system of promoting human rights is a key task. In 2004, the concept of human rights was introduced into the Constitution for the very first time. Experts believe that this is a major event in the construction of democratic constitutional government and political civilization, as well as an important milestone in human rights development in China. It also means that the country has pledged, through the establishment of a fundamental principle, that it has a constitutional duty to protect human rights. . . .

Upgrading "human rights" from a political concept to a legal concept is only the first step toward development of the human rights cause. In order for ordinary citizens to protect their rights more legally and more effectively, the focus will have to be placed on perfecting the system overall, including legislation before the fact, judicial fairness, equal protection of rights and public monitoring, as well as a series of other procedures. Preventing the development of the human rights system from lagging behind the current state of development may be the key to whether or not China can make a breakthrough in its human rights endeavors. From numerous experiences and lessons learned, we have come to the conclusion that systematization is the key: it can produce predictability and thus is the most effective means to achieve a relatively democratic state. Only when there is a sound system and procedures that preserve human rights by way of laws or ordinances can we have rules to follow in protecting legally defined human rights, and only then can the human rights endeavors of our country develop in a healthy direction.

In the human rights movement in our country, there are still some system- and standards-related problems that need to be solved immediately. For example, there are still gaps in human rights legislation. In addition, the judicial process is still plagued with practices such as overriding laws on the basis of power, personal relations and money; relying on punishment, power and words as substitutes for laws; and generally disregarding and failing to strictly enforce laws. Furthermore, human rights principles such as "all people are equal before the law," "presumption of innocence," "judgment and punishment based on provisions of laws" and "commensurability between crime and punishment" have not been fully observed. How to expedite the development of the human rights system, enhance its quality and truly protect the rights defined by the Constitution and other laws of our country is an important task our country faces in our human rights construction.

Translated by David Cowhig

NOTES

1. Liu Jie, ed., *Zhongguo Zhengzhi Fazhan Jincheng 2005 Nian*, Shisi Chubanshe, March 2005. This excerpt comes from Chapter 7.
2. For further information on SASS publications, see <http://www.sass.org.cn/kyc.jsp?sortid=1149&artid=10664>.



Globalization works both ways: Wal-Mart employees in China were allowed to form unions before those in the U.S. Photo: Associated Press

low profile in China and disagrees with many official labor protection policies, it has succeeded in widening the channels to advance labor rights, and has given the domestic social movement resources to provide workers with protection, legal aid, on-the-job injury and illness counseling and education. At the same time, the network has stepped up pressure on every level of government in China, particularly local governments, to draw on international experience in the formulation of labor protection policies. The network's buying power pressures Chinese enterprises to improve human rights, which not only improves China's position in international economic competition but also benefits the image of the Chinese government.

From a theoretical perspective, the transnational network challenges the role of the nation state by its unprecedented integration of the world's financial, manufacturing and trade sectors in the manufacture and distribution of goods. States cannot continue to monopolize the public sphere, nor are they any longer the sole players in international relations, where transnational networks are developing a new platform based on transnational civil society.

The impact of the manufacturers' codes of conduct movement is not a passing phenomenon. Under globalization, states have transferred some of their sovereign powers to international organizations such as the UN, the World Bank, the International Monetary Fund (IMF) and even the ILO, as well as to multinational corporations and regional organizations such as the European Union or the Association of South-Eastern Asian

Nations. Although China has traditionally regarded labor problems as domestic affairs, "the problems we face are global, but countries are national constructs and global problems cannot be dealt with within the confines of the nation-state."¹⁰ For that reason, the Chinese government should approach the transnational network's activities with an open-minded attitude. Moreover, the labor rights standards promoted by the network are precisely what Chinese laws require. In terms of working hours and employment discrimination, Chinese regulations are ahead of the ILO conventions; the trouble is that these regulations have long been ignored. If the transnational network contributes even partially to the implementation of existing labor laws and regulations, it will have made an important contribution.

Of course, multinational companies do not promote and participate in the code of conduct movement because they are angels. The movement's global impact is closely tied to the multinationals' own interests, which are not nearly as altruistic as their PR campaigns claim. Moreover, when it comes to implementing codes of conduct, some companies simply go through the motions, and compliance officers often turn a blind eye to code infractions when manufacturers are on tight project schedules. Moreover, when multinationals refuse to sacrifice their profit margins to the improvement of workers' rights, they impose higher costs or even losses on local manufacturers.¹¹

In the Pearl River Delta region, one of the main centers of the export processing industry, the arrival of the transnational

network has greatly complicated industrial relations. First of all, the central government and local governments do not think along the same lines, and governments in areas that export labor do not have the same interests as governments in areas that import it. Secondly, under the current system, minimum wage, minimum social security benefits, per capita GDP statistics and old-age insurance policies are based on local census statistics that take no account of migrant workers; multinational companies can only impose labor rights standards on their suppliers; and China currently has two separate labor policies for state-owned enterprises and foreign enterprises—a gap that will require a series of institutional reforms.

The transnational network has made a major contribution to the advancement of labor rights and the development of civil society through vendor sourcing pressure and moral suasion on multinational companies and Chinese manufacturers; indeed, the labor rights that Chinese workers currently enjoy are largely the result of pressure from the outside world. Strengthening labor rights greatly contributes to the growth of civil society. While conducting research in the Pearl River Delta area, we found that a number of labor rights leaders started helping other workers after having on-the-job accidents themselves. One labor rights group promoting occupational safety for migrant workers throughout the Pearl River Delta region with the support of a multinational company founded by a worker who had spent two years in hospital because of benzene poisoning. His employer, a contract manufacturer for Disney, only agreed to pay him compensation because of pressure from Disney.

The protection of workers' rights will ultimately depend on the normal channels of government policy, the application of laws and collective action by workers. In stressing the importance of the transnational network's activities, we are not advocating the abandonment of these regular channels, nor are we underestimating the significance of workers asserting their own rights. But it will take a long time for workers to be able to defend their rights while economic development is the paramount goal, while there is an unlimited supply of labor and while the interests of entrepreneurs and local government are closely intertwined. For now, China's labor rights movement can only exist with the help of transnational networks. This does not imply an undermining of China's national sovereignty. Clearly, China's labor rights movement is hampered by registration problems, a shortage of funds and a lack of legal protections and public understanding. Even so, the transnational network cannot replace the function of the state, nor can international codes of conduct be a substitute for the improvement and enforcement of China's labor laws and regulations. Labor rights progress will ultimately depend on institutional transformation.

Translated by Paul Frank

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NOTES

1. Industrial relations is a branch of sociology focusing on the relationship between workers, labor unions and management from the perspective of labor rights.
2. Translator's note: Literally, "separating politics and prisons" (yuzheng fenkai).
3. Translator's note: The "Custody and Repatriation" (shourong qiansong) system, under which migrant workers and other unregistered people in cities could be rounded up and held in detention centers until they paid to get out or were sent home, was abolished in June 2003.
4. Li Huanyou, *SA8000 Yu Zhongguo Qiye Shehui Zeren Jianshe* [SA 8000 and the Building of Corporate Social Responsibility in China], (Zhongguo Jingji Chubanshe, 2004), 64.
5. Chai Da story: China on the Path to Corporate Social Responsibility], *Nanfang Zhoumo* [Southern Weekend], July 21, 2005.
6. Translator's note: Published in Chinese and English by ICO and Pentland Group PLC, UK, May 2002.
7. See *Forum*, published by ICO's China Labor Research and Support Network.
8. Translator's note: According to Keck and Sikkink, "When channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks may occur: domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside. This is most obviously the case in human rights campaigns." Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998), 12.
9. *Ibid.*, 9.
10. Manuel Castells et al., "Liudong de Kongjian yu Quanqiuixing Zhuanxing" [Space Flows and Global Transformation], *Dushu*, Vol. 10 (2005): 76.
11. Pan Yi, "Quanqiuhua Gongchang Tizhi yu 'Daode Linian Chonggou'" [An Ethical Reconfiguration of the Globalized Factory System], *Kaifang Shidai* [OpenTimes], Vol. 2 (2005).

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