

# INSTITUTIONALIZED EXCLUSION

China's economic reforms and the burgeoning demand for workers in the many factories established through joint ventures and foreign direct investment have created a new draw for migrants from the countryside to the coastal urban centers where foreign-invested factories flourish. The following excerpts of a report published by HRIC in November 2002 highlight the trade-offs migrants are forced to accept in their search for a better livelihood. The full report is available on our website: [www.hrichina.org](http://www.hrichina.org).

China's reform era has brought about a drastic increase in the mobility of ordinary Chinese citizens. With current estimates of a "floating population" of rural-to-urban migrants now estimated at 40 to 200 million people, some commentators claim that China's residence registration (*hukou*) system is no longer operational. The corollary of this is the idea that migrants who settle in China's cities are eligible for the same benefits and entitlements as urban residents. According to this view, the controls over migration originally enforced by the *hukou* system have become much like the ideology of Communism in present day China: something to which lip service is paid while the reality is entirely contrary.

In fact, the *hukou* system, under which individuals and families are tied to a particular place and divided into urban or rural categories, remains the key to understanding the institutionalized exclusion that keeps the rural poor out of China's cities. Although the Chinese government began to announce "reforms" of the *hukou* system in the mid-1990s, these were not aimed at ending the controls on migration instituted in the first years after the founding of the People's Republic of China (PRC) or at the eventual elimination of the *hukou* system. Instead, they have constructed complex new barriers to migrants' entry into the cities and a web of discriminatory

rules that effectively put them in a similar situation to "guest workers," illegal immigrants, or *sans papiers* in rich countries.

In effect, the *hukou* system is merely a means of enforcing divisions created by inequitable and discriminatory policies for investment and development. The continuing control of migration reflects the enormous gulf between countryside and city, a major factor in China achieving the dubious distinction of now being among the most unequal societies in the world. It also further entrenches the inequality resulting from state development policies that consistently favor the cities over the countryside and the coastal regions over the interior, while shutting the poorest out of the centers of power and allowing the authorities to continue to ignore their plight with relative impunity.

In the new "morphed" *hukou* system that is emerging, differences in entitlements based on fixed status perpetuate the institutionalized discrimination against rural people embodied in the original *hukou* system. It also continues the concentration of state resources on a few major "showcase" cities and their populations, while ensuring that the extreme inequality of China today does not sully these glittering images of modernity. The new *hukou* system shares many features with international controls over migration, in which high-status migrants with access to money and educational qualifications gain preferential treatment in desirable destinations while the poorest migrants may risk imprisonment or worse for trying to better their lot. As in the case of transnational migration, market logic has not been applied to the issue of movement of labor within China.

In an effort to discourage wholesale migration from rural areas, official policies authorize extensive use of intimidation and violence against the poorest people in the cities, including abusive "clean ups" of areas where migrants congregate, and punitive detention under Custody & Repatriation. Migrants are blamed for rising crime rates, and are thus more likely to be accused of crimes and to suffer from police abuse and torture. According to some judges in major cities, migrant defendants are more likely to be sentenced to death, as they do not have local advocates to plead their cases.<sup>1</sup>

The new system provides enormous opportunities for rent-seeking and what can only be termed licensed extortion, in which poor migrants are subject to endless demands for fees,

finer and protection money that can eat up a large part of their meager earnings. Aping the authorities, semi-official and private actors have developed their own illicit schemes for extracting money from migrants.

Migrants are also subjected to extreme and extensive violations of their labor rights by private employers, risking life and limb for low pay. This is often done with the complicity of officials, who turn a blind eye to abusive working conditions, ignore complaints and fail to enforce existing labor laws. Draconian regulations that seek to control births among migrants leave migrant women particularly vulnerable, with some evidence pointing to increased maternal mortality among migrant populations as a result of lack of access to proper health care. Efforts to control the rental of housing to migrants

huge shantytowns seen in cities such as Rio and Jakarta. If the government does not impose some control on population movement, the argument goes, massive rural migration will eventually compromise China's development and modernization, heightening the risk of general chaos.

This argument is based on several erroneous assumptions. The first is that it ignores the basic fact that people in China can already effectively leave their place of origin, even though they are denied full freedom of movement in being allowed to settle where they choose. The second assumption is that rural inhabitants all wish to move to the cities, and are only held back by their residency status. This ignores the extensive evidence about reasons for migration both in China and around the world, which shows that migrants do not flow "blindly"



Buying tickets at Guangzhou train station. Photo: Reuters.

mean that many live in conditions that are a threat to their health and safety, while paying higher rentals than urban residents for this substandard accommodation.

Much of the information in this report is available only because of the strong concern in Chinese society about the plight of migrants. Various newspapers have repeatedly angered local authorities for reporting critically on the treatment of migrants, occasionally exposing extreme abuses. Some Chinese scholars and activists have even compared the hukou system to apartheid in South Africa.

A recurring argument against eliminating the discriminatory nature of the hukou system and lifting controls on migration—raised by both Chinese government officials and foreign commentators—is the supposed risk of a tidal wave of rural migrants flooding the cities, creating the kind of

but along structured networks, and that they tend to move only for compelling reasons, generally to ensure the subsistence of their families. Studies from China show that where people have a choice, they would prefer not to migrate, or only to move somewhere close to home.<sup>2</sup>

The third and most fundamental flaw of the influx argument is that it mistakes the effect for the cause. Current government policies do not prevent massive rural migration, but rather generate migration through extreme neglect of rural areas. The combination of severe poverty, lack of political rights, poor or non-existent public facilities and a fiscal system managed by predatory and unaccountable local officials are the real reasons why people feel compelled to migrate to cities.

If the Chinese government is serious about averting massive and unmanageable rural migration to its cities, it should

immediately act to reverse the discriminatory policies that have created this situation, addressing the urgent need for public services and investment in the countryside and for mechanisms to make local officials accountable to the people they are supposed to serve.

This report concentrates on people who have left their places of *hukou* registration for work and business, concentrating primarily on four major cities that are magnets for migrants from around the country: Beijing, Shanghai, Guangzhou and Shenzhen. Since these cities are also the most important showcases for the image of a prosperous, modern nation that the authorities are trying to project, it is in these major metropolises that the efforts to control migration are at their most severe.

### **Abuse of Permit Schemes**

The key to perpetuation of the *hukou* system is its permit schemes, which exact high costs on migrants, both financially and in terms of social exclusion that leaves them open to abuse by public and private actors. Rent-seeking is part of the system, in that the prices of the “services” permit-issuing agencies provide to migrants are an essential source of revenue for those departments. The complexity and arbitrariness inherent in the permit schemes means compliance rates are often low, giving officials ample opportunity for collecting rents through on-the-spot fines and other forms of extortion. Migrants’ tenuous status has led to the proliferation of unauthorized schemes to exploit them, as social actors including employers and village officials create their own “permit” schemes.

According to a recent article in *Shenzhen Special Zone News*, the cost of all the permits and certificates a worker would need for full legal authorization to work in Shenzhen is approximately 800 yuan. Workers interviewed by the article’s author had to carry anything from eight to 15 types of permits for them to be considered “legal.” According to a migrant worker who had traveled all around the country for more than a decade, in the 1980s all that was required was an ID card.<sup>3</sup>

The complexity of the permit systems mean that many migrants may not be in compliance even if they want to be. One reason that migrants fail to register is that they are often simply unaware of all the permit schemes they are meant to comply with.<sup>4</sup> Information about new regulations is usually disseminated in newspapers, according to one Chinese researcher, but almost none of the migrant workers he surveyed read newspapers.<sup>5</sup> Cumbersome bureaucratic procedures and fees also contribute to low registration numbers.<sup>6</sup> Figures from the four cities highlighted in this report show that by the end of the 1990s each of them likely had upwards of a million undocumented migrants.<sup>7</sup>

Lax enforcement is a reason for low rates of compliance. Over-stretched urban bureaucracies tasked with monitoring the migrant population have in many cases simply resigned themselves to the fact that they cannot keep track of this ever-growing group.<sup>8</sup> Official graft and collusion with employers also play a significant role in keeping registration numbers low. Despite the fact that officials in urban labor bureaus generally hold a negative and exclusionary attitude toward migrant

workers, many also benefit from illicit and lucrative payoffs connected with them, accepting bribes in exchange for approving employers’ unauthorized use of above-quota laborers.

The public security organs’ generally hostile view of migrants is balanced by the opportunities for garnering money both through the officially-sanctioned permit schemes and through abuses of power by individual public security personnel. Side-payments for overlooking *hukou* problems are common. Despite set fee structures, migrants are often asked to pay arbitrary fines set at the scene. As police would rather repeatedly fine migrants than issue a certificate that nets a mere one-time fee, it is also common practice to refuse temporary residence permits to those migrants who try to register.<sup>9</sup>

Many unofficial organizations set up their own “permit” schemes to fleece migrants of their money. For example, some of the city villages in Guangzhou created their own temporary residence cards. In one place, migrants were required to pay 10 yuan per month for this.<sup>10</sup> One man said that in the Shenzhen shoe factory where he worked, amounts were deducted from their salaries for an “entry and exit permit” allowing them to go in and out of the factory gates, a “meal permit” so they could eat in the canteen, a “dormitory permit” to sleep in the factory provided accommodation and even an “entertainment permit” for using the activities room at the factory.<sup>11</sup>

### **Official graft and collusion keeps registration numbers low**

In one Dongguan factory, according to an informant, upon starting work new hires were required to pay a fee to the factory for “processing permits” as well as various deposits for food and lodging. They would not be paid for 40 days to ensure that they did not quit. But the factory regularly fired the workers after the 40 days were up, ending up not only with 40 days free labor but also the money for the permits.

### **Migrants’ Vulnerable Status in the Workplace**

Because of their status, migrants are particularly vulnerable to abuse in the workplace. Such abuse ranges from dangerous working conditions to physical assaults as well as unfair dismissal. As outsiders in the areas where they are working, migrants face particular difficulties in dealing with abuses of their rights, since they do not enjoy the connections with local officials or institutions that would help in accessing available mechanisms of law enforcement or redress. Given these barriers, a migrant worker challenges ill treatment against enormous odds and challenges.

What follows is a summary of some of the key concerns relating to the situation of migrant workers as reflected in research by labor-rights NGOs in Hong Kong, Chinese journalists and the handful of academics who are working on such issues. The material focuses almost exclusively on the situation of migrants in manufacturing in foreign invested enterprises in South China, particularly the Pearl River Delta.

## Hazardous Working Conditions

After leaving their rural hometowns in search of better opportunities, migrant workers often find themselves laboring in extremely hazardous work environments. According to one 1994 study, a little more than half of the 10,942 factories examined in Shenzhen could be classified as hazardous in terms of occupational safety and health (OSH) standards.<sup>12</sup> The widely publicized 1993 fire in the Zhili Toy Company factory located in Shenzhen, Guangdong, illustrates these dangerous conditions. The factory management had violated a range of occupational regulations by bribing local authorities and safety inspectors. All exits were bolted, all the windows barred and many passageways were blocked with stock. When the fire broke out, workers—mostly young female migrants from poor provinces—were trapped inside the building, resulting in 87 dead and 46 injured.<sup>13</sup>

Such incidents are not uncommon in factories that employ migrant workers. For instance, in mid-February 1998 an explosion in a Guangzhou cosmetic factory killed 11 workers. Like the Zhili toy factory, the factory did not comply with safety regulations. It had reportedly been fined several times and instructed to shut down because safety conditions did not satisfy regulation standards.<sup>14</sup> In March 2000, an explosion at a Guangdong factory producing disposable lighters killed 17 workers and injured six others. The factory had apparently been closed briefly the previous month for not having a production safety permit.<sup>15</sup>

One notable danger of work in factories is the toxic chemicals used in the manufacturing process. In January 1992, 23 workers at the Chi Wah Toy factory in southern Zhuhai City were hospitalized due to benzene poisoning. The level of benzene was reportedly nine times higher than the maximum permitted by law.<sup>16</sup> Complaints of toxic conditions are common among migrant workers. One migrant states, “When I was at Decheng Factory, the smell of the umbrella material gave me headaches. I couldn’t bear to work there any longer. Got two months of pay for three months of work.”<sup>17</sup> A similar complaint is voiced by another worker who writes in a letter home:

For a long time I have not wanted to work in the paint-spraying department. I don’t know what’s wrong, whether it is because of the spray or that I have a cold, I have such painful headaches. The painkillers only helped for a while and the pain started again. I can’t stand it. Every time father writes he tells me not to work in the spraying department. But it is not possible to switch.<sup>18</sup>

A significant number of serious accidents also result from the use of dangerous machines. The Guangdong Social Security Bureau identified an average of ten cases of fingers or arms cut off every day in 1996 in Guangdong Province alone, amounting to about 3,000 fingers or arms cut off per year.<sup>19</sup> According to Guangzhou authorities, in 1993 the number of deaths in industrial accidents in the city rose by 61 percent, to 218, and the number injured rose by 63 percent to 187.<sup>20</sup> This may be an underestimate, and in any case, represents only a small percentage of the work accidents throughout the country. One study by a *Worker’s Daily* reporter found that in 1998 there were

15,000 serious accidents in Shenzhen’s 9,582 factories. According to the study, 31 workers were rendered handicapped each day from work related accidents, and every fourth day a worker died due to an industrial injury.<sup>21</sup> One group estimates that more than 20,000 Chinese workers die every year as a result of industrial accidents.<sup>22</sup>

## Substandard and Unpaid Wages

In addition to risking physical injury, many migrants must put up with substandard wages that are often not paid for months at a time. According to the law, employers are bound by a local minimum wage rate, usually set by governments of the provinces or provincial-level municipalities, and Article 48 of the Chinese Labor Law provides that the State must enforce a system for ensuring payment of a minimum wage. Notwithstanding these provisions, many migrants routinely receive far less than the legal minimum.

As one scholar points out, illegally low wages that are paid late appear to be the norm in factories that hire migrant workers. She states, “The sporadic nature of payments was so prevalent that a very common question the workers asked each

## Illegally low wages paid late are the norm in factories hiring migrants

other was, ‘Have you been paid yet?’ and a frequent response was, ‘Not yet’.”<sup>23</sup> In fact, it is more common to be owed wages than to be paid. One migrant worker attests, “We have [finally] gotten our wages. Got December’s pay on March 15. Got 140 yuan. I’ve sent 100 yuan home.”<sup>24</sup> The practice of withholding wages directly violates Article 50 of the Labor Law, which states that an employer shall not fall behind with wage payments without a good reason.

Article 50 also enjoins an employer from making deductions from employees’ wages. The numerous fines levied against migrant workers in many factories for the infringement of rules devised by management clearly violate this provision. Fines are levied for a variety of infractions including leaving without permission, losing the factory ID, taking too many toilet breaks, losing a meal card, smoking in the workplace and being late for work. Fines in the toy industry of the Pearl River Delta region in southern China range from one to 100 yuan.<sup>25</sup>

## No Time to Rest, No Sick Leave

Chinese law defines “overtime” as any work performed beyond eight hours per day or 40 hours per week.<sup>26</sup> This standard is not usually applied to migrant workers. According to one Shenzhen migrant, 12 hours is the typical workday for many migrants:

Here the work hours are like this: 7.30 to 11.30 a.m., 1.30 to 5.30 p.m. 6.30 to 10.30 at night [i.e., 12 hours work]. Sometimes we also have to do overtime work. After 10.30 we get a 50-cent subsidy. There is a lot of work in this factory.<sup>27</sup>

Although Article 41 of the Labor Law allows employers to



**Migrant workers wait for new arrivals at Guangzhou railway station. Photo: Reuters.**

extend work hours by as much as three hours per day in some cases, overtime must not exceed 36 hours per month. Many labor monitoring groups report that overtime for migrant workers generally ranges from 60 hours to 224 hours per month.<sup>28</sup>

Long hours in dangerous work environments often lead to the deterioration of workers' health, as well as serious accidents. A widely reported 1998 case of a Sichuan migrant who had both arms cut off by a machine in a Shenzhen textile factory involved long overtime hours. This factory forced employees to work more than 100 hours overtime every month. After working 78 hours overtime from November 1 to 19, Liu Tao suffered dizzy spells that led to her collapsing against the machine that severed her arms.<sup>29</sup>

Although the Labor Law requires employers to pay employees during sick leave, many factories not only do not offer sick leave pay, but also fine workers for work absences, even when due to illness.<sup>30</sup> This may explain why many migrants fail to take leave or seek medical assistance despite suffering from physical ailments or other disabilities. Researchers have found that physical pain—headaches, sore throats, flu and cough, stomach problems, backaches, nausea, eye strain, dizziness and weakness and aggravated menstrual pain—are all common among migrant workers.<sup>31</sup>

#### Confiscation of ID Documents

It is common practice for employers to retain possession of their workers' ID cards, as well as residence and work permits. Since the 1995 Measures on Application for and Issuance of Temporary Residence Permits (see above) allow for employers to apply for the permits on behalf of their employees,

employers may feel that these documents "belong" to them, and having dealt with the bureaucratic hassle of obtaining permits, they do not wish their workers to leave without notice. With their employers holding on to their permits, migrants are unlikely to stand up against unfair labor practices for fear of being dismissed and thus losing their temporary right to reside in the city.

Numerous accounts speak of the confiscation of ID cards and work permits. One worker writes, "... Besides, I can't get back my ID card. So I can't come anyway. When Xueqin and Shuhui left here they didn't get back their ID cards."<sup>32</sup>

Confiscation of ID cards has led to the borrowing of IDs among workers. For instance, one worker writes,

...my factory is keeping my ID. There's no time to get another one from home. Can I borrow yours? That factory does not keep IDs so I can return it to you fast. Now we haven't even a cent. If you don't have an ID card can you borrow one for me? You must get one for me. If you can't do it, then all I can do is die in this factory.<sup>33</sup>

According to one undercover investigation conducted in 1996, security guards are often the ones who confiscate workers' documents:

Security guards are a special class among workers. They will be any place to supervise workers and to maintain discipline. They are also given power to detain workers' documents and to charge workers 5-10 yuan before returning the documents to workers.<sup>34</sup>

Whether confiscated by factory managers, bosses or security guards, workers' documents are commonly seized

and withheld as a means to exercise power and control over them and to prevent them from complaining or changing jobs. This also means that if they do go out on the streets, workers may risk being detained in C&R<sup>35</sup> since they are unable to show their documents to police who stop them. While Guangdong has now banned employers from holding workers' documents, it is unclear whether this is being enforced.

#### Forced or Bonded Labor

The confiscation of workers' documents contributes to what can amount to a system of bonded labor for migrant workers. In places where the cost of a temporary work permit is very high, factories pay the permit cost as an advance against a worker's future wages. Under such arrangements, the worker is placed in a bonded relationship with the factory and is essentially unable to quit. In other situations, factories require that workers pay a "deposit" at the outset of their employment. Such deposits range from half a month to one month's wage. Workers who quit without the management's permission or before the contract expires are likely to lose their deposits.<sup>36</sup> Because most migrant workers cannot afford to lose such sums, they are often trapped in dangerous or abusive work environments with no ability to leave. This problem was voiced by a group of workers who worked at the Guangdong Zhaojie Footwear Company:

Those of us who came from outside the province only knew we had been cheated after getting here. The reality is completely different from what we were told by the recruiter. Now even though we want to leave, we cannot because they would not give us back our deposit and our temporary residential permit, and have not been giving us our wages. This footwear company has hired over one hundred live-in security guards, and has even set up teams to patrol the factory. The staff and workers could not escape even if they had wings.<sup>37</sup>

#### Physical Violence and Corporal Punishment

Migrant workers are subjected to a range of abuses including physical violence and corporal punishment. Labor rights monitoring groups report that "workers complain that it is common to be fined, scolded and beaten without reason by factory security guards."<sup>38</sup>

One female migrant worker was severely beaten by security guards at a factory in Shenzhen owned by City Toys Ltd., which manufactures Happy Meal toys for the MacDonalD's fast-food chain. On February 19, 1998, five to six guards beat Gou Zaifeng until she was rendered unconscious. Gou's arms and calves were swollen and bruised, she was left with a 2 cm scar on her face and she was hospitalized in a psychiatric asylum for paranoia and excessive anxiety resulting from the attack. The apparent reason for the beating was that Gou was trying to visit her sister who worked at the factory.<sup>39</sup>

According to many workers at the City Toys factory, security guards frequently strike workers for no apparent reason. "Kicking, slaps and verbal threats are common when they doze off or yawn involuntarily after over 20 hours of overtime work."<sup>40</sup> Workers are said to dread the guards like rats fear cats.<sup>41</sup>

Another example of violence against workers occurred on May 19, 1998, at the Yida Electronics Company in Shenzhen. While investigating the theft of some factory products, 15 security guards detained eight workers in a warehouse and beat them with iron rods despite lack of evidence linking them to the crime. As a result of this "investigation," one worker died. With the assistance of the factory boss, the guards forced the surviving workers to leave the area and concocted a story that the dead worker had committed suicide.<sup>42</sup>

If migrants are vulnerable to abuse because of their special status, women migrants are doubly at risk because of their sex. Although the Chinese Constitution, the Law on the Protection of Women's Rights and Interests and the Labor Law all guarantee equal employment rights to women, women migrant workers face daily infringements of their rights. Abuses against women migrant workers range from discrimination to harassment and threats to their persons.<sup>43</sup>

Apart from widespread discrimination related to age or reproduction, a number of groups that monitor labor issues in China point out that women are at risk of verbal and physical sexual harassment by managers and bosses. "Special service"—or sexual intercourse—is reportedly demanded of some women workers who may also be threatened with dismissal or salary reduction if they refuse to comply.<sup>44</sup>

#### No Job Security

In addition to the range of abuses discussed above, migrant workers generally lack any type of job security. Job changes are frequent among migrants. In one study in the late 1990s, 57 percent of migrant workers had recently changed jobs, and 41 percent had done so because of embezzlement and/or defaulted payment of wages.<sup>45</sup>

In many cases, migrants are clearly discriminated against in favor of urban workers. This is, in part, due to official policies to keep urban unemployment rates at around three percent.<sup>46</sup> As part of this effort, the Ministry of Labor launched a nationwide "re-employment project" in 1996. The project gives the urban unemployed preference over migrants in hiring, and further encourages "orderly" labor migration, including channeling migrant workers into small and medium-sized rather than large cities. Beijing's municipal government had enacted a similar scheme the previous year, which specified sectors that migrants could and could not be employed in, and further required that preference be given to unemployed and laid-off city workers in hiring for all jobs.<sup>47</sup> Moreover, it stipulated that if jobs occupied by migrant workers could be handled by local laid-off workers, then the migrants should be phased out. The project also called for annual reconsideration of the jobs that migrants would be allowed to take, and the setting of quotas for migrant employment in these jobs.

As competition for jobs in a tightening labor market increases, migrants are likely to become the targets of further prejudice, and possibly harassment, from city-dwellers whose own livelihoods are now threatened. In fact, based on one researcher's surveys of urban unemployed workers across the country, many laid off workers resent migrants as perceived

competitors for scarce jobs.<sup>48</sup>

While Article 3 of the Chinese Labor Law provides that employees shall have equal opportunities of employment and the right to choose their occupations, this provision has evidently not been extended to migrants.

#### No Social Security

Given the job insecurity many migrants face, social assistance is a critical issue. Some local governments have begun implementing various types of assistance programs such as medical insurance, pension schemes and unemployment insurance. However, these regulations are neither consistent nor comprehensive, and they generally discriminate against and exclude migrant workers.

In 1995, approximately 4.18 million workers in Guangdong were covered by unemployment security established by the local government.<sup>49</sup> This figure, however, does not include migrant workers who are considered ineligible for social assistance. Instead, migrants were expected to return to their hometowns once they became unemployed. Social security insurance is similarly denied to migrant workers. In 1994, only 450,000 out of a total 2 million workers participated in an old-age insurance program established in Shenzhen.<sup>50</sup> The low participation rate of 20 to 30 percent may be due to the exclusion of migrants from the program.

Starting in the mid-1990s as the effects of urban lay-offs became increasingly apparent, central authorities ordered city governments around the country to provide subsistence payments to people with no source of income. It is unclear to date how widely this program has been implemented, but it is not available to those whose *hukou* is not registered in the city in question.

Likewise proposals for health insurance schemes to replace the fraying urban social safety net focus entirely on the urban population, excluding those with rural registration, including rural-to-urban migrants.

#### Lack of Remedies to Fight Against Discrimination and Abuse

Migrants who have suffered violations of their rights, including discrimination, at the hands of public or private actors in the cities have few effective remedies. Apart from the area of labor rights, where some legal protections do exist, putative protection of the rights of migrants is largely administrative in nature.

As “outsiders” in the cities, migrants have little in the way of effective social support networks, and independent trade unions or NGOs that could potentially provide assistance to migrants are illegal in China. Migrants’ outsider status means that even when their legally-protected rights are violated, city agencies are often unwilling to enforce laws that might provide them with redress. In addition, those migrants who do not hold the relevant permits for the city where they are living are likely to face C&R if they try to complain about abuses of their rights.

Many migrant workers are aware of their legal rights, but most are pessimistic regarding their chances of enforcing

these rights. In fact, when asked in an NGO survey what they would do if their rights were violated, more than half of the workers interviewed replied, “Dare not speak up” or “Unwilling to say anything.”<sup>51</sup> These responses are one indication of the lack of effective channels for protecting the rights of migrant workers.

#### Labor Law

China has relatively progressive laws protecting worker rights in many areas aside from freedom of association and collective bargaining. However, as the violations of the rights of migrant workers described in this report show, these laws are hardly enforced in many areas of the country, with the situation varying enormously between different industries and types of ownership.<sup>52</sup>

While migrant workers have not been passive in the face of the injustices they face, the nature of their workplaces means that taking action is often difficult, if not impossible. Collective action in the workplace has proven more effective, and there has been exponential growth in the number of labor disputes that have become known, mainly because the workers involved seek the help of outside parties such as the media, local labor bureaus, local governments, lawyers, or the few service centers that exist around the country. While no concrete figures exist on the number of times workers have staged protests within the workplace against employers ignoring the law, it is certain that there have been strikes, slowdowns and work stoppages, as well as other forms of protests. But the response to collective actions may be harsh, particularly in the case of marches and demonstrations, depending on their extent and the attitudes of local government officials. The authorities prefer to channel labor grievances through the legal system set up for this purpose. As Anita Chan writes, “Increasingly the authorities have come to realize that a legal system can serve as a useful mediating mechanism to resolve labor disputes and preempt social disturbances.”<sup>53</sup>

However, individual migrant workers who want to challenge an employer, whether in a labor dispute arbitration committee or in a court, face many problems. The levels of income below which people are eligible for legal aid—where such services exist—are generally too low to cover anyone who is actually employed. Few lawyers specialize in labor law, and in any case, their fees may be prohibitive. A handful of advocates have emerged who specialize in labor cases, with the most celebrated being Zhou Litai, a lawyer from Chongqing who has helped migrant workers in Shenzhen who have been disabled by industrial accidents with compensation claims against employers. However, these rare advocates face hostility from local officials; one self-taught migrant lawyer in Panyu has been chased out of the business,<sup>54</sup> and Shenzhen authorities have disbarred Zhou, a decision he is currently seeking to challenge.<sup>55</sup>

One of the main reasons for the lack of enforcement of labor laws is local protectionism. Migrant workers who have a labor problem may try to seek help from the local labor bureau, but meet with significant barriers. First of all, they may fear retribution if they complain, and as migrants lacking local

support and channels of influence they may be particularly vulnerable. Secondly, the dispute resolution process requires that workers provide evidence to substantiate any complaint about abuses or breach of contract. But many migrant workers are not given a copy of their contract, if they have one at all, and they are highly unlikely to have access to company documents.<sup>56</sup>

In addition, the labor bureaus are not obliged to take up every complaint that is filed. Officials within the labor bureaus may tend to be sympathetic to management because they can benefit personally from this type of “cooperation.”<sup>57</sup> Powerful interests in local government often militate against effective enforcement of labor law: “The blurred line between the local governments and businesses creates an environment where those designated as the protectors of labor are either intimately connected with or even the same as those who are violating workers’ rights.”<sup>58</sup> According to Chan, “Zhou [Litai] finds that his main antagonists are local bureaucracies. The bureaucracies connive to undercompensate workers who are covered by local government industrial-insurance schemes by paying compensation at rates that have not kept up with inflation.”<sup>59</sup>

This means the barriers to winning a lawsuit against a local employer are often formidable. Despite the difficulties, migrant workers have been able to win legal victories against employers in some cases. It appears that in general, workers are much more likely to get a decision in their favor from an administrative Labor Dispute Arbitration Commission than from a court. The fact that the law is one of the only avenues

available to workers is demonstrated by the large number of cases that are filed, rising from 17,000 in 1992 to almost half a million by 2000, according to government figures.<sup>60</sup>

Enforcement of any awards or judgments is another problem, however, reflecting the low level of enforcement of judgments in general in China.

#### Freedom of Association and Assembly

Given local governments’ failure to ensure protection of migrants’ rights, whether as workers or in other respects, freedom to organize and assemble, and access to independent organizations are crucial to migrants’ efforts to win redress for a range of grievances. However, both freedom of association and assembly are highly circumscribed in China.

The Chinese government imposes severe restrictions on the right to form associations, requiring that all groups be registered, and setting stringent conditions for registration, such as the requirement that any group must be sponsored by an existing official entity.<sup>61</sup> This means that any unregistered group, however ad hoc, can be declared illegal. Migrants frequently associate in loosely-formed native place associations (*tongxianghui*), providing mutual support. But the existence of such groups is tenuous at best, as any move toward formalization may result in their being banned at any time.

Like all other workers in China, migrants are denied the right to join and organize independent trade unions of their choice, although Article 7 of the Labor Law states that they have the right to “join and form unions according to law.” The 1992



Photo: Reuters.

Labor Union Law sets down a national structure for unions, mandating “supervision” over lower level unions by their superior level organizations, and setting the All-China Federation of Trade Unions (ACFTU) at the apex of this pyramidal structure. Any union organization can only be established with the “permission” of the higher levels.<sup>62</sup>

A recent case shows that even when local officials have been supportive of action to help migrant workers, the ACFTU has blocked the establishment of independent organizations to represent them. In Tangxia, Zhejiang Province, an organization sponsored by the local government and run by migrant workers was reportedly providing significant assistance in mediating labor disputes and diminishing conflict between migrant workers and employers. But when national and provincial officials learned of it from a newspaper report in another province, the group was ordered closed on the grounds that it was “illegal.”<sup>63</sup>

Due to the controls on freedom of association mentioned above, very few organizations exist that can assist migrants facing abuse of their rights. A handful of groups—generally run by members of the elite or linked to government agencies—currently provide help for a lucky few migrants who seek to challenge employer abuses. These groups run hotlines and service centers for migrant workers in certain cities. For example, one report noted the case of a group of migrant women working in a clothing factory in Beijing, where they were forced to work 16 hours a day without a weekend break, in a building where doors were padlocked from the outside to prevent unscheduled bathroom breaks, and whose employer was withholding their wages. With the assistance of a free legal advice center for women run by staff and students at Beijing University, these migrant women were taking their employer to

## As “outsiders” migrants have few social support networks

court for damages and lost wages.<sup>64</sup>

Protest is usually the last resort of migrants who have suffered abuse of rights, and the number of labor disputes resulting in action in the streets has skyrocketed in recent years. But police almost never grant permits for demonstrations, and without a permit, a march or demonstration is illegal. Thus protesting migrant workers risk arrest by taking their grievances to the streets.

In conclusion, internal migrants in China are discriminated against by the government, as well as by private actors, in every aspect of their economic, political and social life. But they are unable to seek enforcement or redress in relation to violations of their human rights based on their membership in a distinct group identifiable by social, economic and geographical characteristics. Administrative remedies are ineffective due to the fact that the government organizations responsible for abuses are expected to correct their own mistakes, and in any case are not subject to penalties except for infringement of labor rights. And while China has enacted relatively progressive labor legislation that does provide judicial remedies for

workers whose rights have been violated, it is often inaccessible to migrant workers due to factors of cost and local protectionism. The failure of official bodies to act to protect migrants from human rights abuses is often itself due to prejudice against migrants and partial towards “local” parties who are the rights abusers.

### Recommendations

HRIC believes that the only solution to the iniquitous, systematic discrimination associated with the unequal development policies enforced through the hukou system is the abolition of the rural/urban distinction, combining real freedom of movement and measures to address the rural-urban divide. Such measures as increasing the number of urban-registered people through allowing some rural residents living in country towns to have “urban” hukou (*nongzhuanfei*) is evidently not a solution to the problems of discrimination inherent in the hukou system.

In this report, HRIC outlines a series of recommendations to the Chinese government and to local governments in the PRC that can be summarized under the following main headings:

- Eliminate discriminatory laws and ensure freedom of movement;
- Halt violence and ensure equality;
- Recognize and address internal displacement;
- Begin to tackle the roots of inequality;
- Act to prevent discrimination against women;
- Ensure freedom of association for migrants; and
- Request assistance from international human rights experts.

Specifically in relation to migrant workers, HRIC makes the following recommendations:

- Governments at all levels should make enforcement of existing laws protecting the rights of workers a top priority, and ensure that such efforts specifically target all sectors in which migrant workers are employed. To this end, immediate measures should be taken to strengthen the ability of labor bureaus to enforce legal guarantees for worker rights. An independent labor inspectorate, funded by provincial governments, and thus not beholden to local interests, should be set up as an autonomous agency inside the labor bureau. The labor inspectorate should establish complaint offices in areas where many migrants work that are open in the evenings and on weekends.
- China should enact and/or reinforce penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence in the workplace, as specified in the Beijing Declaration and Platform for Action.
- Freedom of association for migrants is essential to protecting their rights and combating discrimination against them. Migrants’ efforts to represent their own interests should be actively encouraged. To be effective, civil society organizations providing services to migrants need the political space to operate freely and extend their operations beyond the handful of groups currently

operating. National and local governments must lift restrictions on the setting up and operation of groups representing migrants or seeking to help them, including independent trade unions and native place associations (tongxianghui).

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7. See statistical analysis in Section III for the available figures.
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9. Interview with Dorothy Solinger, Hong Kong, August 1, 1998.
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18. Ibid, quoting Letter 9.
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23. Chan, "The Culture of Survival."
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25. Asia Monitor Resource Center, *The Working Conditions of the Toy Industry in China*, March 1999, p. 6.
26. Articles 36 and 38 of the Labor Law states that the working time for an employee shall not exceed 8 hours a day, or 44 hours a week on average. Further, employers must ensure that workers have at least one day of rest each week.
27. Chan, "The Culture of Survival," quoting Letter 49.
28. Asia Monitor Resource Center, *The Working Conditions of the Toy Industry in China*, March 1999, p. 7.
29. Hong Kong Christian Industrial Committee, *Change* July 2000, p. 2.
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31. Pun Ngai, "Life full of hardships," *China Daily*, January 24, 2000.
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33. Ibid, quoting Letter 7.
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