



Briefing Series – Issue 39

A LONG MARCH TO IMPROVE LABOUR STANDARDS IN CHINA: CHINESE DEBATES ON THE NEW LABOUR CONTRACT LAW

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April 2008

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Summary

The *Labour Contract Law* (hereafter called “the new law”) was unanimously approved by the Standard Committee of the National People’s Congress (NPC) on 29th June 2007. This reflects the willingness of the Chinese leadership under Hu Jintao and Wen Jiabao to improve China’s labour standards. However, it would be too optimistic to assume that the new law will significantly improve working conditions and labour standards in China, in particular those of the hundreds of millions of rural migrant workers.

The controversies generated by the new law indicate that it is affecting different political and social groups in one way or another. While China’s legislators have strong reasons to draft and ratify the new law, it is certain they will face enormous difficulties at the level of enforcement. In enforcing the new law, the Chinese government faces strong resistance from vested interests. Therefore, how the new law will actually improve China’s labour standards remains a big question.

Compared with former Chinese President Jiang Zemin, who emphasised economic growth, efficiency and political participation by newly-rising social classes, especially private entrepreneurs or capitalists, the Hu Jintao-Wen Jiabao leadership since 2002 has been trying to improve the livelihoods and basic rights of Chinese farmers and workers. Amongst others, the new labour contract law is a key battlefield for China’s new leadership as it is closely tied to the country’s poor labour standards. Without the change of leadership in Beijing, the new law would not have been passed within such a short period of time, with such a high rate of agreement, and without demands for further compromises.

Another factor that drove the drafting and approval of the new law is the absence or dysfunction of trade unions in China. While acknowledging the absence of the trade union in reality, the Chinese government and legislative body are however still not prepared to grant more space for the development of independent trade unions or other civil society organisations that can protect the rights and interests of workers. Instead, they emphasise the role of the labour authority in raising the level of labour standards through open-term contracts and detailed penalties. Due to the lack of effective participation and engagement of grassroots’ trade unions, it is thus reasonable to question whether the new law will be able to get past the stage of “progress on paper” and lead to actual progress.

From the political perspective, the new law is better seen as a signal that the Hu Jintao-Wen Jiabao-led government is paying serious consideration to the country’s poor labour standards and in particular to vulnerable groups like rural migrant workers. There is no doubt that the promulgation and effect of the new labour law will have a long-term impact on the improvement of labour standards in China.

The short-term impact of the new law, however, cannot be overstated partly because many articles such as the open-term contract set standards that are too high to be reconciled with reality. It also avoids granting any room for independent trade unions or other civil society organisations, which are key institutional elements in balancing capitalist power. As a result, the new law relies heavily on the enhancement of governmental intervention.

The impacts of the new law on different sectors, occupations, and social positions of Chinese workers will vary greatly. It will more likely benefit urban, professional and state-owned companies’ employees rather than rural, unskilled and private firms’ employees. Unless there are significant changes in local government structures and

management styles, employers who have been compliant with Chinese regulations are more likely to be affected by the new law instead of those who have never paid any respect to the regulatory system.

Based on the process of conception to implementation of the new labour law, the process of legislation in China needs to be more independent, objective and robust in terms of design procedures, methods and research. Unrealistic labour standards in legal terms are not necessarily helpful to vulnerable people and instead leave more room for abuses. However, the new labour contract law may be a good starting point in the long march toward better labour standards in China because of the Chinese leadership's recognition of workers' rights.

A Long March to Improve Labour Standards in China: Chinese Debates on the New Labour Contract Law

Bin Wu and Yongnian Zheng*

China's new labour contract law

- 1.1 The *Labour Contract Law* (hereafter called "the new law") was unanimously approved by the Standard Committee of the National People's Congress (NPC) on 29th June 2007. Some Chinese commentators see this as an indication of a high level of consensus among Chinese leaders to improve labour standards in China. In fact, since the issue of the first draft in 2005, there have been intensive debates amongst Chinese leaders, legislators, legal experts, industrial leaders and the public. The NPC received nearly 200,000 articles of comments and suggestions for revisions within one month of the draft's publication, two-thirds of which had come from front-line workers. Such wide public participation, which has never occurred before, was regarded by the Chinese media as "a milestone event of China's democracy".
- 1.2 However, it will be too optimistic to assume that the new law can be easily implemented, which will significantly improve working conditions and labour standards in China, in particular those of the hundreds of millions of rural migrant workers. Since the new law took effect in January 2008, a new wave of debates has arisen over its necessity and feasibility. During the annual gatherings of the NPC and the Chinese People's Political Consultation Conference (CPPCC) in March 2008, the new law again became a hot topic, with many delegates calling for a revision.
- 1.3 The controversies generated by the new law indicate that it is affecting different political and social groups in one way or another. While China's legislators have strong reasons to draft and ratify the new law, it is certain that they will face enormous difficulties at the level of enforcement.
- 1.4 There are gaps between the realities of poor labour standards and political motivation, and between political motivation and institutional constraints. Since the promulgation and effect of the Labour Law (hereafter called "the old law") in 1995, Chinese society has experienced drastic changes. Legislators have had to respond to a changing socio-economic environment. In enforcing the new law, the Chinese government faces strong resistance from vested interests. Therefore, how the new law will actually improve China's labour standards remains a big question.

Major labour issues since the effect of the old law

- 2.1 The new law, which is actually not entirely new, develops and revises the old law that took effect from January 1995. The old law had come about as a response of the Chinese government to China's economic transition since the reform and open door policy was implemented in the late 1970s.

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- 2.2 That period was perhaps the most painful since China started its economic reform as more than 30 million urban workers were made redundant by state-owned enterprises (SOEs) in the second half of the 1990s just after the old law had taken effect. The old law seemed to have had little impact on the unprecedented and painful process of privatisation nation-wide, hardly helping retrenched workers to protect their rights and interests.
- 2.3 Alongside the large-scale retrenchments in cities were movements of hundreds of millions of rural migrant workers to urban areas, in particular into foreign-invested factories in the coastal regions. The old law however appeared incapable of curbing the widespread phenomenon of "sweatshops" in China. The emergence and expansion of international plants in China cannot be separated from the poor working conditions, exploitations and labour abuses suffered by these workers. As capital flowed into the country, local governments were more likely to pay more attention to the interests of foreign investors than to see that the labour law was adhered to. Nevertheless in recent years, the poor working conditions have become a major cause of the shortage of rural migrant workers in many coastal cities.
- 2.4 There have been increasing concerns about the marginalisation of Chinese workers at the political and economic levels. According to a research report published by the Industrial Economic Institute of the Chinese Academy of Social Sciences, the share of employees' wages in China's GDP declined from 53.4% in 1995 to 41.4% in 2005. Not only was this due to a lower rise in workers' wages relative to economic growth, but also to an absolute decline in real income amongst groups of workers such as rural migrant labourers.
- 2.5 Reports last year of the exploitation of slave labour involving hundreds of workers including children at brick kilns in Shanxi province are a case in point. Revelations of the unacceptable working conditions at these kilns have shocked the whole nation, stimulating public debates over the costs to labour and social justice incurred in China's development. Such incidents played a major role in spurring China's leaders to agree on drafting a new labour law.
- 2.6 Like many other laws in China, the old labour law had failed at the implementation stage because it conflicted with the interests of capitalists and attitudes of local governments. Compared with 10 years ago, social justice is increasingly getting the attention of the public, media and political figures. As a result, poor working conditions have become a growing concern among the new leadership of the Chinese Communist Party (CCP), legislative institutions and the public.

What is new about the new law

- 3.1 Advocates of the new law say that a rigorous and standardised process of drawing up the employment contract is the precondition for effective legal assistance to and protection of Chinese workers. In this regard, the old law seems too general and simplistic, lacking concrete measures for the protection of employees' rights and interests. For instance, the labour contract accounted for only one chapter, consisting of 20 articles, out of a total of 13 chapters in the old law. In contrast, the new law focuses on the process of drawing up the labour contract and its implementation, taking up eight chapters that consisted of 98 articles in total. Even though the new law significantly revised the preceding statute, it does not completely replace the old law.

3.1.1 *Written contracts.* A written contract was requested in the old law but was not emphasised as absolute necessary for any formal employment relationship in China. This left plenty of room for the employer to decide whether a signed contract with the employee was needed. In contrast, the new law made a written employment contract with a full-time employee compulsory by denoting penalties for the employer who fails to comply. The penalties include having to pay double wages to the employee if there is no written contract within one month of the date of starting work; and to provide an open-term contract if there is still no written contract within one year of the start date.

3.1.2 *Fixed-term contracts.* In the old law, the linkage between fixed term and open-term contracts was weak and transition to an open-term contract was entirely dependent upon the agreement between the employer and employee. Taking into account the poor bargaining power of workers, unsurprisingly, short-term labour contracts have prevailed in China, with most of these carrying terms of less than a year -- often six months or even three. To reverse this trend, the new law treats a long-term employment relationship as the dominant form of employment in China. This requires the employer to sign an open contract with employees who have completed two fixed-term contracts or have already been in service for 10 years. Barring the refusal of the employee, any employer who fails to sign an open contract will have to pay the employee a double-salary. This marks a significant shift in China's industrial relations and society, encompassing the many varied forms of Chinese enterprises in terms of scale, ownership, product or service category, management style, and sensitiveness to market changes.

3.1.3 *Inclusion of severance payment.* The employer has to pay the employee a financial compensation except in cases of contract expiration or termination due to major errors committed by the latter. The compensation is calculated as one month's salary per year of service. Any period of six months or more will count as a full month. This regulation makes it harder for employers to dismiss employees without paying an economic cost or having proper justification.

3.1.4 *Removal of obstructions to workers' mobility.* In contrast to the short-term mode of contracts, some employers have various measures to restrict employees' mobility. These may involve the detainment of personal ID cards or large amounts of "deposit". Such tactics are prohibited in the new law. Employees can terminate their contracts upon giving his/her employer 30 days' prior written notice, without having to give a special reason. Exceptions to this rule are beneficiaries of training courses and workers with access to commercial secrets, whose resignations need to be specially clarified in the written contract.

3.1.5 *Protection of secondment or agency staff.* Staffing agencies, according to the new law, shall perform an employer's obligations towards its employees. They shall advise workers of the content of their placement agreements; they are not allowed to retain part of the labour remuneration paid by their clients; neither staffing agencies nor their clients are allowed to charge any fees to the workers. It is very important that the employee's labour remuneration and working terms are in line with the standards at the location of the placement client.

3.2 In short, the new law attempts to tackle several key issues related to labour standards in China, emphasising on the protection of workers' rights and interests. A written contract between all employers and employees is required to provide the basis for regulation and inspection. However, the feasibility of making the open-term contract a dominant mode of labour contracts in China is questionable, considering that this type of contract has only recently been promoted and put into practice in the EU.

Difficulties in the enforcement of the new law

4.1 The promulgation and effect of the new law have sparked an intensive debate across the country because of its profound impact on the economic and social systems. Unsurprisingly, different opinions on and approaches to the new law exist. An Internet survey indicated that 87.4% of respondents doubted the new law's ability to protect employees' interests.

4.2 The implementation of the new law, according to many delegates to the NPC and CPPCC, has significantly increased labour costs by more than 20% compared with the previous year. While state-owned monopolies may not consider this a big issue, numerous medium- and small-sized private enterprises may not be able to stand up to such extra costs.

4.3 Many counter-measures have emerged to get around the new regulation. For instance, some employees have been asked to sign a contract with another staffing agency although they continue to do the same jobs; some firms try to recruit retired workers instead of entering into full employment contracts; subcontracts instead of labour contracts are employed; some firms terminate and restart all their employees' contracts in order to delay entering into any open contracts in the near future, etc. For many employers, they are perhaps not at all concerned about the new law because they know that neither their employees nor the local authorities will take the new law seriously, therefore they do not bother to change their management systems and styles.

4.4 In face of such obstacles to the implementation of the new law, different opinions exist, of which there are two conflicting approaches: the enhancement of administrative inspection and intervention (hereafter referred to as administrative intervention), and the revision of inappropriate articles (hereafter known as modification).

4.5 Those advocating administrative intervention, which is the driving force behind the drafting and approval of the new law, defend the necessity of raising labour costs in order to increase the share of Chinese workers in China's economic development. This does not pose any problem for many enterprises in China whose labour standards are higher than those defined by the new law. However, for enterprises whose working conditions have been lagging and unacceptable, it is time that they improve their labour standards by changing their strategy to focus on innovation rather than cheap labour.

4.6 On the other hand, the group that advocates modification argues that the new law has overreached its capacity to effectively protect the rights of Chinese workers. The higher standard it imposes is actually limiting its wide adoption and implementation. This is particularly true for the article on open-term contracts, which has a negative impact on a company's management of human resources in general, threatening the survival and development of medium- and

small-sized enterprises which are unable to stand up to any additional labour costs. Professor Zhang Wuchang, a well-known economist in Hong Kong, is one of the critics who attribute a lack of understanding of the relationship between the Chinese economy and labour to the designers of the new law, saying that the forced implementation of the law may harm national economic and social development.

Why has the new labour law been approved?

- 5.1 The difficulty of implementing the new law raises many questions: Why did such a controversial law get approved at such a high rate of agreement? What rationale lies behind the pushing of the new law? What lessons can be learned from the difficulties of putting it into practice?
- 5.2 From the perspective of improving labour standards in China, the following factors seem to be significant: changes in leadership and political atmosphere; the absence or dysfunction of trade unions; “discount rate” for the implementation of any law; and ways of communication between legislative experts and stakeholders.
- 5.3 Compared with the former Chinese President, Jiang Zemin, who emphasised economic growth, efficiency and political participation by newly-rising social classes, especially private entrepreneurs or capitalists, the Hu Jintao-Wen Jiabao leadership since 2002 has been trying to improve the livelihoods and basic rights of Chinese farmers and workers. Without a fundamental change in China’s political system, the government has taken many measures, including mobilising propaganda machinery to disseminate people-centred development ideas, establishing high-profile examples (e.g. Premier Wen Jiabao himself had asked some employers to pay the wages due to their workers), and abolishing some regulations that obstruct the mobility of rural migrant workers. Amongst others, the new labour contract law is a key battlefield for China’s current leadership who try to improve the country’s poor labour standards. Without the change of leadership in Beijing since 2002, the new law would not have been passed within two years, with such a high rate of agreement, and without demands for further compromises.
- 5.4 Another factor that drove the drafting and approval of the new law is the absence or dysfunction of trade unions in China. This is particularly true at the grassroots level where trade union officials are more likely representatives of the owners or managers of companies than representatives of workers. In the old law for instance, the title of the specific chapter was a combination of “labour contract” and “collective contract” to emphasise the role of the trade union in bargaining and monitoring the process of implementing labour contracts at the level of the firm. While acknowledging the absence of the trade union in reality, the Chinese government and legislative body are however still not prepared to grant more space for the development of independent trade unions or other civil society organisations that can protect the rights and interests of workers. Instead, they emphasise the role of the labour authority in raising the level of labour standards through open-term contracts and detailed penalties. Due to the lack of effective participation and engagement of grassroots’ trade unions, it is thus reasonable to question whether the new law will be able to get past the stage of “progress on paper” and lead to actual progress.

- 5.5 Difficulties of putting the new law in practice, however, may not bother its advocates because of a so-called “discount rate” they have in their minds. In a situation where any national legal article can be negotiated between the local authorities and employers, they try to set a higher labour standard or harsher penalty in the interests of workers. During the process of bargaining or interaction between local authorities and employers, some progress, regardless of its magnitude, could actually come about in improving the working conditions of labourers. This approach however may not necessarily help workers who are vulnerable to exploitation. It may instead have negative impacts on China’s economic and social systems. Firstly, it can be used by corrupt officials as a means of “seeking rent” from local companies. Secondly, the higher labour standards would have different impacts on different types of enterprises. For those which are more likely to comply with the new law, they have to pay more than those which have never been punished for not following the rules. Thirdly, it certainly helps some Chinese workers and in particular white-collar workers in securing their jobs. For the vast majority of Chinese workers and rural migrant workers, it is hard to say whether the new law will have any significant impact on them before independent trade unions or other civil society organisations are allowed to develop.
- 5.6 Finally, many methodological questions have arisen from the debates over the new law, which have to do with scientific policy research and effective communication between legislative experts and stakeholders in the implementation of new labour laws. For instance: How did they know what the real needs of vulnerable groups of Chinese workers like rural migrant workers are? What are the differences between these groups of workers and others such as professionals? What are the differences in attitudes and consequences between big and small firms; state-owned and private firms; as well as Chinese and foreign employers? It may be difficult to draft an appropriate law without first carrying out comprehensive, independent and robust research that will address all these questions.

Likely consequences of the new law

- 6.1 From the political perspective, the new law is better seen as a signal that the Hu Jintao-Wen Jiabao-led government is paying serious consideration to the country’s poor labour standards and in particular to vulnerable groups like rural migrant workers. There is no doubt that the promulgation and effect of the new labour law will have a long-term impact on the improvement of labour standards in China.
- 6.2 The short-term impact of the new law, however, cannot be overstated partly because many articles such as the open-term contract set standards that are too high to be reconciled with reality. It also avoids granting any room for independent trade unions or other civil society organisations, which are key institutional elements in balancing capitalist power. As a result, the new law relies heavily on the enhancement of governmental intervention.
- 6.3 The impacts of the new law on different sectors, occupations, and social positions of Chinese workers will vary greatly. It will likely benefit urban, professional and state-owned companies’ employees more than rural, unskilled and private firms’ employees. Unless there are significant changes in local government structures and management styles, employers who have been compliant with Chinese regulations are more likely to be affected by the new

law compared to those who have never paid any respect to the regulatory system.

- 6.4 The case of the new labour law seems to suggest that the process of legislation in China needs to be more independent, objective and robust in terms of design procedures, methods and research. Unrealistic labour standards in legal terms are not necessarily helpful to vulnerable people and instead leave more room for abuses. However, the new labour contract law may be a good starting point in the long march toward better labour standards in China because of the Chinese leadership's acknowledgement of workers' rights.