

**中国劳工通讯** China Labour Bulletin

**Research Report**

# **Protecting Workers' Rights or Serving the Party:**

**The way forward for China's trade unions**

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March 2009**

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## Introduction

*Spread the message:*

*“Rural migrants - if you have problems, go to the union!”*

*“Workers - if you have problems, go to the union!”*

Sun Chunlan, vice-chair of the All-China Federation of Trade Unions

On 25 February 2007, the Guangzhou municipal federation of trade unions organised 250 volunteers to flood the city’s train and bus stations and hand out booklets on the union’s rights protection (*weiquan* 维权) work to rural migrants returning from the Spring Festival break. Most offers were met with cold indifference, and those migrant workers who accepted the booklet did so as a mere formality. Within half an hour, the exits to the city’s main train station, Guangzhou East, were littered with discarded booklets, some ripped to shreds.<sup>1</sup>

Why would migrant workers, the most disadvantaged and exploited group in the Chinese workforce, spurn an offer of help from the trade union? The All-China Federation of Trade Unions (ACFTU) is China’s sole legally sanctioned trade union; it has a mandate to protect the rights and interests of workers and, with over 209 million members, including more than 66 million migrant workers, it should be ideally placed to fulfil that mandate. Yet when workers seek to defend their rights and interests they routinely by-pass the union altogether. They stage strikes, demonstrations and roadblocks and directly petition government agencies and the media for help, leaving the union on the sidelines handing out leaflets at train stations.

What does the ACFTU consider its role to be? Is it a defender of workers’ rights or a servant of the Chinese Communist Party (CCP) and government? The simple answer is that it seeks to be both but, as this research report demonstrates, the former role has been consistently subordinated to the latter. The ACFTU has generally not seen protecting the rights and interests of workers as an end in itself, but rather as a means to an end, namely the maintenance of social stability and upholding the political authority of the Party. And over the last two decades of economic reform and development, its role as the servant of the Party and government has come more and more to the fore, to the point where the union’s protection of workers rights is undertaken for reasons of political expediency, and is largely dependent on government authority.

This report aims to unravel the complex identity of the ACFTU and show how it has become increasingly politicised, passive and subservient to the Party and government. It is divided into three chapters. The first analyses the wave of labour disputes and protests that has swept the country in the last two decades, and shows how the Party’s misunderstanding of the nature of these disputes has heightened the problem and created the conditions for even greater social unrest. The Party sees labour disputes as

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<sup>1</sup> Chen Jie (陈捷), Luo Ruixiong (罗瑞雄) and Zhang Qinglei (张青蕾). “车站教维权，农民工冷对” (Rural migrants react coldly to rights promotion drive at stations) 新华网广东频道 (*Guangdong Xinhua channel*) 26 Feb. 2007 <[http://www.gd.xinhuanet.com/dishi/2007-02/26/content\\_9361344.htm](http://www.gd.xinhuanet.com/dishi/2007-02/26/content_9361344.htm)>.

social conflicts that have to be managed and controlled by the government rather than as conflicts between labour and management that are best resolved within the enterprise through collective bargaining, with the government only being brought in when agreement between the two parties is not forthcoming. Thus, rather than allowing the development of genuinely representative grassroots organisations in private enterprises to protect workers' rights and interests, the Party has sought to use its own organisation, the ACFTU, to fill that role as a means of enhancing the government's social and political control over the workforce.

The second chapter scrutinises Party, government and union documents, from 1988 to the present, to track in detail how and why early government attempts to give the union more autonomy were aborted in favour of using it to maintain regime and social stability. The chapter shows that, although Party and government control over the union has ebbed and flowed over the last two decades, the general shift towards greater political control has been clear. The third chapter analyses the mismatch between the labour rights protection the union currently provides and the protection China's workers actually need. It shows how the union has become so overburdened with its bureaucratic duties that it can only give workers charitable relief in times of need, and empty platitudes the rest of the time, while nearly always deferring to local government agencies and managements during labour disputes. What workers need are decent wages and working conditions but, as China's ubiquitous strikes and protests clearly demonstrate, the union has patently failed to meet this need.

The report warns that unless the trend of the last two decades is reversed, the ACFTU will become increasingly irrelevant, workers will be further marginalised and social unrest will be exacerbated. Encouragingly, the report also stresses that the conditions for positive change are all present, and that, at the grassroots level at least, there were signs in 2008 of the unions taking a more robust and pragmatic approach to protecting workers rights. However, by year's end these had been put on hold in response to the global economic crisis.

It concludes that if the ACFTU is to recover some of the ground lost over the last 20 years, regain the trust of the workers and, as a consequence, more effectively undertake its government sanctioned mission of "maintaining social harmony," it needs to clearly focus on the formation of democratically elected trade unions and the development of collective bargaining.

## Chapter One: Social conflict, “classification and control”

### Misunderstanding the nature of labour disputes

In 1994, China witnessed about 10,000 strikes, protests and public demonstrations, all categorised by the Ministry of Public Security as “mass incidents” (*qunti shijian* 群体事件), a deliberately vague and generic term used by the authorities to describe large-scale public protests regardless of their cause or motivation. As the government’s economic reforms deepened in the 1990s, social inequality and conflict intensified, and the number of “mass incidents” shot up to 40,000 in 2000. Local governments struggled to contain outpourings of long pent-up anger and resentment from workers, farmers and other ordinary citizens disenfranchised and marginalised in the process of rapid economic growth. In the first decade of the new century, the Party and government were once again faced with a crisis of political legitimacy.<sup>2</sup> In response, the authorities sought to identify the origins of this renewed and intensified social conflict, and devise means of preventing and controlling it.<sup>3</sup> The answer the Party and government came up with was the “harmonious society” (*hexie shehui* 和谐社会), in which the government would establish and utilise social conflict prevention and settlement mechanisms in order to ensure social stability and bolster its own authority.

The central government defined social conflict as “contradictions within the populace” (*renmin neibu maodun* 人民内部矛盾), in other words, not as external or direct political threats but as conflicts arising organically during the process of economic and social change. As such, the government developed a wide range of countermeasures that sought to control and manage disputes rather than crush them and punish the alleged ringleaders. These measures included “emergency response plans” (*yingji yu’an* 应急预案) for dealing with dispute outbreaks, the “[more] cautious use of police force” (*shenyong jingli* 慎用警力) for defusing social conflict, arranging for local officials to appear at the scene of mass incidents to calm things down through “dialogue,” “shared [benefit] policies” (*fenxiang zhengce* 分享政策), and the establishment of “mechanisms of socialized rights protection” (*shehuihua weiquan jizhi* 社会化维权机制) to keep a lid on social conflict. The breadth and depth of the government’s policy initiatives was a clear indication of its deep wariness of social conflicts and its desire to control them.

Despite the government’s efforts, the number of “mass incidents” continued to grow sharply in the first years of the new century, more than doubling to 87,000 in 2005,

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<sup>2</sup> He Qinglian (何清涟). “代序：改革深化的终结与重塑社会认同的困境” (Preface: The end of the deepening of reform and the difficulties of reshaping social identity), in Zai Yu (载于), He Qinglian (何清涟) and Cheng Xiaonong (程小农) eds. 中国改革的得与失 (China’s reforms: gains and losses), 2<sup>nd</sup> ed. Hong Kong: 香港博达出版社 (Xianggang Boda Chubanshe), 2007.

<sup>3</sup> In recent years, social conflict has become a main focus of study for social science research in China. To learn more please see Zheng Hangsheng (郑杭生) ed.-in-chief, 中国人民大学中国社会发展研究报告 2007 – 走向更加有序的社会：快速转型期社会矛盾及其治理 (Social development research report 2007, People’s University of China – Towards a more orderly society: Social contradictions and governance in a time of rapid transition). Beijing: 中国人民大学出版社 (China People’s University Press), 2007; and Jin Jianghao (靳江好), Wang Zhiqiang (王致强), eds.-in-chief. 和谐社会建设与社会矛盾调节机制研究 (Research into creation of a harmonious society and adjustment mechanisms for social conflict), Beijing: 人民出版社 (People’s Publishing House), 2008.

when the Public Security Ministry decided to stop publicising the figures. Although, we no longer have official figures, there is no evidence that the number of strikes, protests and public outpourings of anger are decreasing. Indeed, all the evidence is to the contrary. In an unprecedented move in November 2008, more than 500 county-level Party committee secretaries were summoned to Beijing for special training in dealing with mass incidents at the Central Party School.<sup>4</sup> In January 2009, the Hong Kong political magazine *争鸣* (*Cheng Ming*) quoted senior Party sources as saying the number of mass incidents in 2008 had shot up to 127,467.<sup>5</sup> At the same time, the Communist Party's political magazine *瞭望* (*Outlook*) issued a stark warning on the social consequences of the economic slowdown and unemployment brought about by the global economic crisis. It said: "Without doubt, now we're entering a peak period for mass incidents. In 2009, Chinese society may face even more conflicts and clashes that will further test the abilities of the Party and government at all levels."

Some commentators have suggested that the failure of the government thus far to reduce or effectively manage social conflicts stems from its traditional approach of "control, governance and organisation" (*guankong, guanzhi, guanban* 官控, 官治, 官办), a process characterised by repeated *ad hoc* intervention by agencies and officials in problems that do not fundamentally change in nature and hence keep reoccurring. This "institutional habit," they argue, has made it impossible for systematic, long-term settlement mechanisms to emerge. Moreover, it has often aggravated social problems and conflicts.<sup>6</sup> Labour disputes are an obvious case in point. Labour disputes arise from conflicts between labour and management at the enterprise level. They are best resolved within the enterprise via collective bargaining, with the government only intervening if the negotiations break down and/or the two parties call for arbitration. However, because there is no effective system of collective bargaining in China or a strong and determined union to represent the workers in negotiations, workers have been left with no option but to make their protests public and seek redress through government intervention. Once this happens, the authorities' system of official "control, governance and organisation" goes into effect. But rather than helping to resolve disputes, it actually creates the conditions for other disputes to emerge and escalate into social conflict, as illustrated in *Figure 1* below.

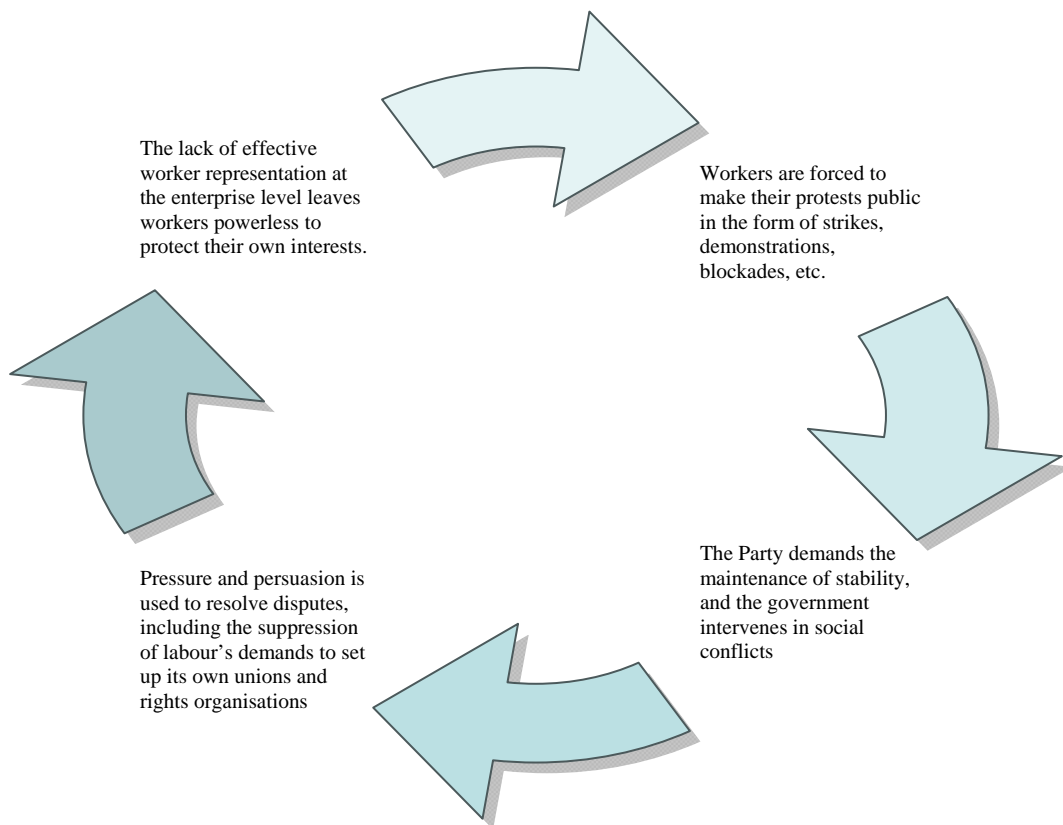
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<sup>4</sup> "中央党校县委书记轮训开始, 维护稳定成培训重点" (Party School launches rotational-basis training for County party committee secretaries, with a focus on maintaining stability), 央视网 (CCTV.com), from 人民网 (*People.com.cn*) 15 Nov. 2008 <<http://politics.people.com.cn/GB/1026/8345885.html>>.

<sup>5</sup> *争鸣动向* (*Cheng Ming. The Trend Magazine*) 2009. No.1 pp.10-13.

<sup>6</sup> Zheng Hangsheng (郑杭生). "总论：社会学理论视野中的社会矛盾" (Summary: Social contradictions from the perspective of sociological theory). Zheng Hangsheng, ed.-in-chief, 中国人民大学中国社会发展研究报告 2007 – 走向更加有序的社会：快速转型期社会矛盾及其治理 (Social development research report 2007, Renmin University of China – Towards a more orderly society: Social contradictions and governance in a time of rapid transition) Beijing: 中国人民大学出版社 (China People's University Press), 2007, 1-28.

**Figure 1: A vicious circle: How labour disputes turn into social conflict**



Whenever workers stage strikes or engage in public protest, the primary concern of the authorities is not the cause of the dispute but maintaining social stability and political order. Therefore, when government officials intervene in labour disputes, they meet both sides and try to persuade or cajole them into resolving their differences for the common good. Very often officials will use public funds to pay off wage arrears and other debts owed by management. And sometimes the police will be called in to uphold order at the scene, or even forcibly disperse the workers gathered there. Party and government officials often show extreme political sensitivity and concern when confronted by organised worker protests, seeing workers' demands to establish their own representative organisations as a threat to social stability. As recently as in February 2009, ACFTU vice-chair Sun Chunlan, said: "We need to keep a close lookout for foreign and domestic hostile forces using the difficulties encountered by some companies to infiltrate and undermine the ranks of migrant workers." As such, officials move quickly to stamp out independent workers' groups, leaving employees even more vulnerable to the kind of management-driven exploitation and abuse that gave rise to their protests in the first place.

The Party's obsession with political order and social stability means that the speed and effectiveness of government intervention in social conflict is in direct proportion to the scale of that conflict and its socio-economic and political impact. Conflicts involving large numbers of people that have a potentially damaging social impact are dealt with quickly and relatively efficiently, with government officials giving protesters a prompt hearing and settling some of their grievances. This experience has increasingly encouraged workers to escalate shop-floor disputes into social conflicts,

and transform economic-interest wrangles into “mass incidents,” for want of alternative means of settlement.

Hence, a set of *ad hoc* government mechanisms originally intended to resolve and prevent social conflicts has itself, paradoxically, become a catalyst for disputes, giving workers the determination and courage to intensify their once manageable workplace issues into broader social conflicts. Workers now deliberately agitate in the belief that government officials will “only step in when things have got out of hand.” As a result, at the end of 2008, officials at every level of government were led on a merry dance trying to settle disputes deliberately escalated by disgruntled workers, notably in the southeastern coastal areas of China, where workers were chasing unpaid wages owed by absconding employers, and, in large cities around the country, by striking taxi drivers. *See box.*

Moreover, the excessive focus of the Party and government on dealing with the social consequences of labour disputes rather than their economic causes has led to the ACFTU concentrating on helping workers only after rights have been violated (*shihou jiuji* 事后救济), and then only as an adjunct of the local government, helping workers claim wages in arrears through administrative means, and providing skills training and financial assistance to laid-off workers. Its role inside the factory as representative of labour, defending the rights and interests of employees on the shop-floor has become essentially null and void.

#### **How the wave of taxi strikes spread across China in November 2008**

On 3 November, about 9,000 taxi drivers in Chongqing went on strike, protesting the unfair division of fares between drivers and management companies, police harassment, increased fuel costs and competition from unlicensed cabs. Anxious to avoid major disruption in one of China’s largest cities, the municipal government swiftly intervened and brokered a deal with the taxi companies that gave drivers a better deal.

One week later, on 10 November, some 2,000 taxi drivers in Sanya, Hainan, and about 100 taxi drivers in Yongdeng county, Gansu province, also went on strike to protest high operating costs and competition from unlicensed cabs. In Yongdeng, drivers blocked the main entrance to the traffic bureau of the county government. In response, the county government established a taskforce to hear drivers’ complaints and vowed to crack down on illegal taxis. In Sanya, on 14 November, the municipal government apologised to drivers, promised to consider their demands, and ordered taxi companies to pay back excessive operating fees. It also vowed action against illegally operated vehicles.

On 20 November, more than 100 taxi drivers went on strike in Putian city, Fujian. Subsequently, the deputy mayor promised to settle reasonable grievances. At the same time, more than 1,000 taxi drivers staged a strike in Shantou, Guangdong, complaining at the high number of unlicensed taxis, inconsistent management and higher fuel prices. At a meeting with drivers’ representatives, the Shantou government promised to implement a six-month “rectification” campaign.

On 23 November, a protest by several hundred taxi drivers in Guangzhou caused disruption to traffic during which one driver was injured. Public Security and transportation officials investigated and detained three people suspected of causing criminal damage to taxis. On 1 December, anger over high operating fees prompted another strike by more than 10,000 taxi drivers. The city government immediately ordered an 800 yuan cut in monthly operating fees paid by drivers to their management companies.



## The Communist Party's "classification and control" tactics and the dual attributes of trade unions in China

The Chinese government and Party have long seen the ACFTU and other major social organisations as instruments of social oversight and control. And in order to effectively utilise such organisations, they have developed a system of social governance described by the academics Kang Xiaoguang and Han Heng as "classification and control" (*fenlei kongzhi* 分类控制). Under this system, certain social organisations, such as the government controlled ACFTU, are allowed to exist while independent unions are not. Likewise, citizens are granted limited rights of association – they can only join one trade union body – which in theory makes control and governance of those citizens more effective. Kang and Han suggest that social organisations such as trade unions have "dual attributes" (*shuangchong shuxing* 双重属性): namely they are a strategic asset for the state because they serve as an effective means of mobilising the public. They are also a prop for the state because they provide socio-economic services that should be provided by the government. In this sense, Kang and Han argue, trade unions are an effective tool for the authorities. However, if left uncontrolled, their ability to mobilise the public can pose an enormous threat to the regime.<sup>7</sup>

This concern became very real after the emergence of the Solidarity movement in Poland in the 1980s and the Chinese democracy movement of 1989, as was explicitly acknowledged in 1989 by the then newly appointed General Secretary of the CCP Central Committee, Jiang Zemin, in a speech to a roundtable meeting of ACFTU cadres on 26 July:

*The biggest concern is workers' economic grievances. If the workers rise up and rebel, we have a big problem. Trade union organisations must remain alert to any attempt to form [a Chinese equivalent of] Solidarity or similar political group.*<sup>8</sup>

On 21 December 1989, the CCP Central Committee released its *Circular on Strengthening and Improving the Party's Leading Role in Work Regarding Unions, the Communist Youth League and Women's Federations*. The circular reiterated the key role of upholding party leadership in these areas. Party organisations across the board were required to follow the central Party lead in principle, policies and measures, exercising unified leadership over the ACFTU, Communist Youth League and Women's Federation and ensuring they uphold a correct political orientation and toe the Party line in their political and ideological stance as well as their activities. The circular also made clear that the party would not allow any opposition to CCP political demands, or tolerate the existence of any political entity that opposed its four

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<sup>7</sup> Kang Xiaoguang (康晓光) and Han Heng (韩恒). "分类治理：当前中国大陆国家与社会关系研究" (Government by classification: Current relations of state and society in mainland China), *社会学研究* (Sociological Studies), No. 6 (2005): 73-89.

<sup>8</sup> "正确认识工会的作用 – 江泽民同志在同参加全总十一届三次主席团扩大会议的同志座谈时的讲话" (Correctly understanding the role of trade unions – speech by Comrade Jiang Zemin, at the 11th ACFTU in discussions at third expanded chairman's delegate meeting), 中国工运学院 (Chinese labour movement academy) ed., in *新时期工会工作重要文件选编* (Selected major works on the task of trade unions in a new era), published internally, 270-278.

cardinal principles<sup>9</sup> or threatened the regime. Once manifest, such organisations would be proscribed.

The Party required the ACFTU, as the country's sole representative of labour, to relay workers' demands to government policy makers and law makers, while at the same time exercising control over its members' activities and taking overall supervisory control of labour matters in China. For the ACFTU to be taken seriously as a representative of labour, however, it needed political gravitas.<sup>10</sup> In other words, and quite counter-intuitively, the "legitimacy" of the ACFTU's participation in social governance was contingent on its endorsement from the Communist Party, not from worker support.<sup>11</sup>

The political role of the ACFTU has grown significantly over the last two decades as economic reform has intensified and social upheaval has become more pronounced. As the perceived threats to political order and social stability from labour disputes have multiplied, so the importance of the ACFTU in controlling and neutralising those threats has increased. By focusing on shoring up the foundations of political power and keeping China's workers at an arm's length, the political stock and "legitimacy" of the ACFTU has continued to rise, to the point where it is now seen by the CCP as an integral part of its power base. As ACFTU Chairman Zhao Wangguo put it in a 2006 speech:

*Trade union organisations at every level must consciously accept the leadership of the Party, resolutely follow the Party's line, principles and policies and comply with Central Committee decision-making. ... [they must] pragmatically combine their responsibilities to the Party and the masses of workers, and by creatively fulfilling their brief, ensure that the Party's wishes are transformed into the conscious actions of the great majority of the workers; and lead workers in consolidating the prestige of the regime, bolstering the foundation of Party's rule, and helping the Party fulfil its mission.*<sup>12</sup>

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<sup>9</sup> Keeping to the socialist road, upholding the people's democratic dictatorship, leadership by the Communist Party, and Marxism-Leninism and Mao Zedong Thought

<sup>10</sup> Zhang Jing (张静). "“法团主义”模式下的工会角色" (The role of trade unions under the corporatist model), 工会理论与实践 (*Theory & Practice of Trade Unions*), No. 1 (2001): 1-6.

<sup>11</sup> Li Da (李达) and Li Huisu (李惠苏). "完善党的执政能力与工会角色的再思考" (Strengthening the authority of the party and rethinking the role of trade unions), 工会论坛 (山东省工会干部管理学院学报) (*Trade union forum*; in-house publication of the management institute of Shandong Province's school for trade union cadres), No. 5 (2005): 11-12.

<sup>12</sup> Wang Zhaoguo (王兆国). "在庆祝全总成立 80 周年大会上的讲话" (Speech to general assembly at the 80th anniversary of the establishment of the ACFTU), from the ACFTU's 中国工会年鉴 (2006) (*2006 Yearbook on China's Labour Unions*), 4-6.

## **Chapter Two: The politicisation of the ACFTU's rights protection activities**

It is important to note that the ACFTU has always been subordinate to, and acted within the bounds prescribed by, the Chinese Communist Party. However, the extent and degree to which the union's activities have been overtly politicised has varied over the last 20 years. Party control has ebbed and flowed. However, the general trend towards greater control is clear. The extent to which the ACFTU's efforts to protect workers' rights, in particular, have been politicised or bureaucratised reflects the general direction of Party policy, the social impact of economic reform, and the major political upheavals of the last two decades. This chapter examines key Party, government and union documents issued since 1988 to precisely track the process of politicisation of the ACFTU's rights activities. This is an extremely sensitive political issue in China, and as such, few mainland academics have carried out any systematic research in the area. This chapter is, in part, an attempt to make good the deficiency. The process of politicisation can be divided into three stages, outlined below.

### **Reform and Retrenchment: 1988-1992**

In the late-1980s, the CCP took its first tentative steps towards political reform, decentralisation and democratisation. Until this point, the focus of the Deng Xiaoping-led regime had been economic reform, growth and modernisation. However, the then Party General Secretary Zhao Ziyang realised the growing need to broaden the reform process and loosen, albeit very slightly, the Party's grip on power. In his report to the Party's 13th National Congress in October 1987, Zhao proposed:

*Reform of the Party's leadership system, clearer separation of the functions of the Party organisation and state administration, and enhanced relations between Party organisations and the People's Congresses, government, judiciary, mass organisations, enterprises, public institutions and other social organisations.*

With regard to the delegation of power to the lower levels of mass organisations such as the ACFTU, the Women's Federation and the Communist Youth League, Zhao suggested that:

*It is necessary to fully harness the functions of mass organisations and grassroots self-governing bodies, and ensure that matters affecting the masses are handled, within the law, by the masses themselves.*

Zhao's report further proposed that "leaders and personnel in mass organisations, and managers at enterprises and public bodies, should in principle bring management in line with the charter or rules of operation at each organisation or unit." Importantly, the report sought to create a system of consultation and social dialogue by "drafting of regulations clearly specifying which issues should be discussed and settled by which unit or group." Moreover, the report urged the:

*Alignment of Party and government entities with mass organisations, enabling each of the latter to function independently and uphold the interests of the people, in accordance with its particular nature, while at the same time more*

*effectively voicing and safeguarding the specific interests represented by each particular group.*

These groundbreaking proposals formed the basis for reform of the ACFTU. In 1988, the sixth session of the 10th ACFTU Executive Committee approved the “basic concept of union reform,” which was then developed into the work report of the union’s 11<sup>th</sup> National Congress. In these documents, the ACFTU proposed that unions, in their relations with the Party, function as mass organisations of the working class – independent entities not to be equated with operational branches of the Party. In relations with government, it said, unions should pursue shared goals but with differing approaches to the protection of the interests of the working class and the populace at large. The ACFTU proposed that unions uphold the unity of the government’s authority and fiat, resolutely implement Party and government policies and laws; at the same time, they should participate in the drafting of major government policies directly affecting workers’ interests and send union officials to work with the government in specialist areas such as wage and price policy.

Regarding reform of union cadre and personnel systems, the ACFTU stressed that unions should gradually shift away from a system of simply implementing Party committee directives and top-down initiatives towards one of greater autonomy in which union officials administered their own organisations on the basis of their charters and regulations.

At this time, the focus of the government’s economic reforms was the state-owned enterprises (SOEs). It was seeking to make them more efficient and profitable by empowering managers to overhaul wage allocation, hiring, and firing practices. The SOE restructuring process often created conflict between managers and workers. It was in this context that the ACFTU began to emphasise its role as champion of worker rights. In the work report to its 11<sup>th</sup> National Congress, it made the following specific proposals to enhance protection of workers’ rights:

*When the legitimate interests of workers have been seriously violated, and settlement through the usual democratic grassroots channels is not possible, the unions must represent and support the masses by exposing violations, and leading workers in various kinds of lawful struggles. When localised conflicts break out, the union should stand by the masses, understand their feelings and grievances, and, without prejudice to state or long-term enterprise interests, urge the authorities and other parties to do all they can to satisfy legitimate worker demands... Unions should also persuade massed protestors to drop demands that are too onerous or pressing, allay friction and conflict, and maintain social stability and unity.*

At this time, the ACFTU still had relatively robust grassroots union organisations operating within SOEs. The work report proposed that, in order to better represent workers’ interests, grassroots unions should gradually replace the old top-down system of cadre appointment with a bottom-up process: candidates for union chair, deputy chair and committee members would be chosen in direct and multi-candidate elections, after nominations by the union membership.

However, the ACFTU's reform vision failed to materialise. After the crackdown on the democracy movement and the fledgling independent union movement in 1989, the Party put all political reform on hold, giving precedence to the need to restore economic and social stability. The December 1989 *Circular on Strengthening and Improving the Party's Leading Role in Work Regarding Unions, the Communist Youth League and Women's Federations*, required the unions to march in lockstep with the Party Central Committee in terms of politics, ideology and activities, rigorously implementing the Party's demands, policies and measures.

In late 1989, the central government sought to bring runaway economic growth under control by "reducing consumer demand, restructuring, restoring a rational [economic] order, and improving profitability." This led to steadily escalating conflict between workers and management, and increasing numbers of work stoppages at SOEs. In response, rather than "standing with the workers," the union began to assume responsibility for maintaining social stability and helping enterprises redeploy surplus labour. The then ACFTU Chairman Ni Zhifu stated at an executive committee meeting in December 1989 that unions should act with a heightened sense of political responsibility, take a pragmatic approach in their work and use every possible measure to stabilise the workforce. At this meeting, the ACFTU did not highlight its role as a protector of rights, but demanded that unions help instil in workers an appreciation of the problems facing the nation. Workers had to be persuaded to consciously subordinate personal to national interests, local to general interests, and immediate to long-term interests. Ni stressed that at a time of heightened difficulties, unions must do more to ensure that workers have "warm hearths" in the winter cold, and avoid situations that add "frost to the snow." Clearly, the more progressive role that the ACFTU was poised to take just a year earlier had been abandoned due to political and economic considerations. The ACFTU leadership's stance in late 1989 is remarkably similar to that of the current leadership's response to global economic crisis. Once again, workers are being told to subordinate personal interest to the greater good of social and economic stability.

By not prioritizing labour rights protection during the economic retrenchment of 1989-1992, the ACFTU made China's workers increasingly vulnerable to exploitation, and particularly so after the government reversed its policies in 1992 and surged full-steam ahead for economic growth

### **Workers' Rights Subordinated to the Needs of the Party: 1992-2003**

In early 1992, China's officially retired but still paramount leader, Deng Xiaoping, made his now famous "Southern Tour" of Guangzhou, Zhuhai and Shenzhen, during which he called for an intensification of economic reform and urged officials to think less about ideological correctness and more about economic development. At the Party's 14<sup>th</sup> National Congress in October, Deng got his way. The central committee proposed the establishment of a "socialist market economy". This was codified the following year in the central committee's *Decision Regarding Certain Problems in Establishment of the Socialist Market Economy System* which, together with the government's July 1992 *Regulations on Transforming the Operational Mechanism of State-owned Industrial Enterprises*, set down the road map for further reform and restructuring of SOEs, allowing inefficient, under-performing ones to overhaul their operating structure. With the rapid growth of the private economy in the 1990s,

SOE's were forced to "reform or die." In other words, SOEs had to act like private enterprises just to survive in China's increasingly cut-throat market economy.

The intensification of economic reforms gave the ACFTU another opportunity to revive its role as a champion and protector of workers' rights. However, this time the union leadership was rather more cautious. The ACFTU clearly recognised the need to enhance its protection of workers' rights but was constrained by the requirement to conform first and foremost to Party and government policy. At the 12<sup>th</sup> National Congress of the ACFTU in October 1993, the leadership outlined a working policy based on "a unified approach to promoting reform, improving productivity and protecting worker rights and interests." In private enterprises, the unions would provide "guiding ideology," by safeguarding workers' lawful rights and interests while at the same time cooperating with investors to develop the company.<sup>13</sup>

The approval by the National People's Congress in July 1994 of the *Labour Law of the People's Republic of China*, acted as an additional catalyst for the ACFTU. In December 1994, the union's executive committee approved the *Decision Concerning the Rigorous Enforcement of the Labour Law*, which was seen as a blueprint for union reform and development. In this blueprint, the ACFTU emphasised the union's rights protection role, and urged a higher profile for itself as a representative and champion of workers' rights and interests. It argued that this was the inevitable result of the evolution of labour relations, and also the sincere aspiration of most workers. It stressed that more unions were needed at enterprises with foreign investment, and greater effort should be made to set up unions at township and domestic private enterprises. To reduce cases of infringement of workers' rights at private companies, including those with foreign investment, it would be necessary to accelerate the pace of union organising, by quickly establishing consultation and negotiation mechanisms. However, the blueprint clearly placed the unions' rights protection role within the bounds of "the greater cause of Party and State" of deepening reform, broadening the opening-up process, promoting development and upholding stability.<sup>14</sup> Although the ACFTU had some success in unionising foreign funded enterprises, attempts during this period to establish unions in private enterprises were all too often stymied by local governments keen to protect their own economic interests.<sup>15</sup>

In 1995, the central government announced that the SOE reform programme had entered a "critical" stage and that an intensive three-year campaign of reform, reorganisation and restructuring would be needed to turn around the majority of larger

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<sup>13</sup> Zhang Dinghua (张丁华). "在中国工会第十二次全国代表大会上的工作报告" (Work Report of the 12<sup>th</sup> National Trade Union Congress), 中国工运学院工会学系编 (China union academy) ed., in 新时期工会工作重要文件选编 (1993-1998) (*Selected major works on the task of trade unions in a new era (1993-1998)*), published internally, pp.27-49.

<sup>14</sup> Wei Jianxing (尉健行). "在全国总工会十二届二次执委会上的讲话" (Speech to executive committee at second session of the 12th ACFTU congress), from 中华全国总工会编《中国工会年鉴(1995)》(*ACFTU's 1995 Trade Union Yearbook*), Beijing: 中国工人出版社(China Workers Press), 1995, 14-20.

<sup>15</sup> According to union figures, 35.5 percent of foreign-invested enterprises had established unions as of the end of 1998, covering 31.1 percent of the workforce. The figure for domestic private companies was just 4 percent, covering 9.6 percent of workers; for township enterprises the ratio was 7.1 percent, covering 7.3 percent of workers. See Lin Yanling (林燕玲). "应对全球化的挑战已提到中国工会的议事日程" (Addressing the challenges of globalization is already on China's trade union agenda), 清华大学当代中国研究中心 (*Centre for the Study of Contemporary China, Tsinghua University*) <<http://www.tsinghua.edu.cn/docsn/shxx/site/chinac/laogong/l1.htm>>.

loss-making SOEs. The State Council announced that, to resolve the problems of SOEs, it would be necessary to adopt a strategy of “reducing personnel and increasing efficiency, redeploing redundant workers, standardising bankruptcy procedures and encouraging mergers.” The well documented results of this “shock-therapy” stage of reform were that more than 30 million SOEs employees were laid off and enterprise managers were given free rein to illegally appropriate state assets, violate laws, and deprive employees of their legal rights.<sup>16</sup> But mindful of the “greater cause of the Party and State,” the ACFTU did not defend workers’ interests during the SOE restructuring process. Rather it instructed unions to focus their efforts on helping place laid-off workers in new jobs, and on defusing the deep anger many such workers felt at the illegal behaviour of managers and officials.

In the private sector too, largely because of the difficulties it had experienced in organising enterprise unions and establishing collective consultation mechanisms, the ACFTU switched its focus from “preventive rights protection” (*shixian weiquan* 事先维权) within the enterprise, to “post-event remedies” (*shihou jiuji* 事后救济) outside the enterprise, further weakening its ability to protect workers’ rights at the most basic level.

In October 1998, at its 13<sup>th</sup> National Congress, the ACFTU continued to emphasise its rights role in terms of the establishment of unions and collective contracts as per its blueprint. In practice, however, it was still aligning its priorities with those of the central government: continuing to facilitate SOE reform and upholding social stability. It described the unions’ “inevitable, overriding primary task” as ensuring a minimum livelihood and finding new employment for workers laid off by SOEs, and urged unions to offer professional training, establish re-employment services, self-help centres and “exchange markets” (*jiekun maoyi shichang* 解困贸易市场) for the needy. The ACFTU also launched numerous so-called “heart-warming” (*song wennuan* 送温暖) projects to help households in difficulty. *Song wennuan* literally means “giving warmth” and signifies that the giver has no contractual relationship with the beneficiary. In other words, the union was simply providing charity, not acting out of an obligation to its members.

In 2001, the National People’s Congress approved an amendment to China’s *Trade Union Law* that made “protecting workers’ lawful rights and interests” the basic role of unions, as distinct from their other core functions. However, unions continued to be hamstrung by the Party’s insistence that their work dovetail with the “greater cause” of deepening reform and maintaining stability.

### **Bringing the ACFTU into line: 2003-Present**

In 2003, China’s Party and government leaders were faced with two major threats to social and political stability. Vast numbers of laid-off workers all over China collectively petitioned the government demanding re-employment or new jobs, economic compensation and minimum livelihood safeguards. Migrant workers, lacking effective representation in the workplace, formed rights advocacy groups based on local and personal allegiances, such as “co-villager groups” (*tongxianghui* 同乡会), “brotherhoods” (*xiongdihui* 兄弟会), “fellowship clubs” (*lianyihui* 联谊会),

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<sup>16</sup> See CLB’s research report [No Way Out: Worker Activism in China’s State-Owned Enterprise Reforms](#).

“worker associations” (*laodongzhe xiehui* 劳动者协会), “worker welfare groups” (*gongren fulihui* 工人福利会) and “employee clubs” (*yuangong julebu* 员工俱乐部).<sup>17</sup> The authorities viewed these developments warily at first and then with growing alarm. In response, the Party began to formulate policies it hoped would bolster its political legitimacy and powerbase – policies that would have a major impact on the functions and status of the ACFTU, particularly in its protection of workers’ rights.

The Party Central Committee’s *Decision Enhancing the Party’s Ruling Abilities*, issued in September 2004, underscored the:

*Necessity to further consciously strengthen the authority of the ruling party and its governance of the people, by remaining vigilant in times of peace, increasing alertness to potential danger, and studying the lessons from the rise and fall of governments around the world.*

The *Decision* urged greater effort in building socialism and a harmonious society, and to this end proposed creating a social governance model based on sound Party leadership, government responsibility, social harmony and popular mass participation; These ideas were further developed in October 2006, in the Central Committee’s *Decision on Some Major Issues in Building a Harmonious Socialist Society*, which urged development of harmonious labour relations through the strict enforcement of individual and collective labour contracts, and guarantees of timely and full wage payment. The 2006 *Decision* also called for the strict enforcement of national labour standards, the establishment of a sound system of supervision for labour insurance, and arbitration mechanisms for labour disputes. However, these measures to protect workers’ rights were all framed within the “more important” context of the “harmonious society.”

At the time of its 14<sup>th</sup> National Congress in 2003, the ACFTU still viewed – at least nominally – rights protection as an inherent basic duty of unions. By the time of the 15<sup>th</sup> Congress in 2008 however this mission had been watered down, from “satisfying the pressing needs and aspirations of most workers” to “an important task entrusted to the unions by the ruling party.” The 14<sup>th</sup> National Congress had outlined a wide range of measures to protect workers’ rights and enhance labour-management relations.<sup>18</sup> But in December 2005 the ACFTU promulgated the *Decision on Strengthening the Coordination of Labour Relations, Effectively Safeguarding Workers’ Lawful Rights and Interests, and Promoting the Formation of a Socialist Harmonious Society*,

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<sup>17</sup> Jiang Lihua (江立华) and Hu Jiecheng (胡杰成). “‘地缘维权’组织与农民工的权益保障 - 基于对福建泉州农民工维权组织的考察” (‘Local-rights’ organisation and the protection of the rights and interests of migrant workers – based on observations of migrant worker rights organisations in Quanzhou, Fujian), 文史哲 (*Journal of Literature, History & Philosophy*), No. 298 (2007): 134-139; Han Fuguo (韩福国), etc. “新型产业工会与中国工会” (New industry unions and trade unions in China), Shanghai: 上海人民出版社 (Shanghai People’s Publishing House), 2008, 95-104; Cao Yunwu (曹筠武). “以地缘为纽带的‘维权’浮现东南” (‘Local rights as core rights’ emerges in Southeast), 南方周末 (*Southern Weekend*), 14 April 2005.

<sup>18</sup> The ACFTU proposed new or better systems of liaison meetings between local-level unions and same-level local governments; a tripartite labour relations consultative mechanism; an early warning system for industrial disputes; a labour dispute settlement system, a collective health and safety oversight system for workers; and a system of oversight and legal consultation for labour law matters and other external adjustment mechanisms. At the same time, it pointed out the need to uphold and improve systems for workers’ delegates, for fair and equal negotiation and collective agreements; the establishment of a robust enterprise transparency system, labour contract systems and worker representation on the board of directors and supervisory board.



which reduced these measures to just six major initiatives – discussed in detail in the following chapter. Moreover, during this period, the union’s rights protection role was relegated behind the need to liaise with Party and government organisations, participate in civil affairs, unite and mobilise workers, and provide them education and skills training.

The **final act of politicisation** came in December 2006 when the ACFTU came up with its own “concept of rights protection” (*weiquanguan* 维权观). In outlining this concept, ACFTU Chairman and Politburo member Wang Zhaoguo emphasised “proactive, lawful and scientific rights protection that puts workers first.”<sup>19</sup> It was the embodiment of the Party’s “general requirements” of unions in the area of rights protection,<sup>20</sup> and focused on “developing harmonious labour relations.” The ACFTU’s concept of rights protection heavily emphasised the mutual interests of labour and management, and proposed a “non-confrontational” approach to rights protection.<sup>21</sup> This sounds perfectly reasonable, but such an approach can only work effectively in a pluralistic society where political and economic power is evenly distributed – which is certainly not the case in China, where nearly all the power is in the hands of the bosses. This situation requires the union to be confrontational and staunchly defend workers’ rights, not simply to facilitate or broker a compromise between the two sides. Indeed by pursuing harmony and stability, the union is in fact abandoning its primary duty of upholding workers’ rights and leading them in collective bargaining.

A key element of the ACFTU’s “concept of rights protection,” – defending rights “proactively, lawfully and scientifically” (*zhudong, yifa, kexue weiquan* 主动、依法、科学维权) – has taken on a deep bureaucratic and political taint. The ACFTU grandiosely claims that “proactive rights protection” encourages unions to develop a stronger sense of their own responsibility, plan ahead and act resolutely, form their own understanding of the difficulties and issues faced by workers, relay those grievances, and commit to the early resolution of conflicts and the defence of rights.<sup>22</sup> In reality, unions are limited to simply collating and appraising workers’ complaints, preparing reports for local party and government organisations and participating in local law- and policymaking.<sup>23</sup> However, even in this limited capacity, grassroots unions have been ineffective, often finding it difficult to stay abreast of their own workers’ demands. On 31 March 2008, for example, more than 1,000 passengers of financially troubled China Eastern airlines were stranded in Kunming airport after 14

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<sup>19</sup> Wang Zhaoguo (王兆国). “坚持中国特色社会主义工会维权观，加强协调劳动关系，推动构建和谐社会 – 在全总十四届十一次主席团（扩大）会议上的讲话” (Upholding a Chinese socialist trade union concept of rights protection, strengthening labour relations coordination, and promoting the creation of a harmonious society – speech at the 11th Session of the 14th ACFTU, 11<sup>th</sup> expanded chairman’s delegate meeting), from ACFTU’s 中国工会年鉴（2007年）(2007 Yearbook on China’s Labour Unions), 13-17.

<sup>20</sup> Sun Baoshu (孙宝树). “认真学习和牢固树立中国特色社会主义工会维权观” (Conscientiously study and firmly establish trade union rights under socialism with Chinese characteristics), 辽宁省总工会网站 (Liaoning provincial union federation website) <<http://www.lnszgh.org/hlt/ldjh/2007117/200712121638433398.html>>.

<sup>21</sup> Lin Baichuan (林百川). “聚焦中国工会新‘维权观’” (Focus on Chinese trade union’s new ‘concept of rights protection’), 人民政坛 (*People’s Political Scene*), No. 2 (2007): 28-29.

<sup>22</sup> Special commentary No.2. “二论坚持中国特色社会主义工会维权观” (Upholding socialism with Chinese characteristics. The union’s concept of rights protection), 工人日报 (*Workers’ Daily*), 14 Dec. 2006.

<sup>23</sup> Wang Jigang (汪集刚) “新形势下工会应当主动维权、依法维权、科学维权” (In new circumstances, trade unions should pursue independent, lawful and scientific rights protection), 工人日报 (*Workers’ Daily*), 20 June 2006.

pilots working for the subsidiary Yunnan Airlines refused to fly in a protest over low pay.<sup>24</sup> China Eastern was a state-owned airline, fully unionised under the Civil Aviation Workers' Trade Union of China. The union should have been ideally placed to collect information related to the pilots' complaints and reflect their interests within the system. However, in this case, the airline employees were simply banished from the union radar.

Enterprise unions, dominated and largely controlled by management, are simply not equipped to "proactively" defend rights. On 1 November 2008, several hundred drivers of the Wenjiang Guanghua Bus Co. in Chengdu in Sichuan Province staged a one-day strike, demanding higher wages. Management agreed to increase the drivers' allowance for every trip by three yuan but the union did little to help the workers' cause. Indeed, during an interview with CLB Director Han Dongfang,<sup>25</sup> the chairwoman of the company union criticised the workers' strike action, saying it was disruptive. She later confirmed that as well as being union chair, she was concurrently a deputy manager of the company. The Wenjiang Guanghua Bus Co. strike did not receive union support because the union did not consider the protest to be "lawful." The drivers had not suffered from a specific violation of their rights; they simply wanted a pay rise to cope with the rapidly increasing cost of living in Chengdu. However the ACFTU's insistence on "lawful rights protection" means that all too often employees' interests are discarded because management has broken no specific law or labour regulation.

Under these circumstances, when unions are slow to offer support, workers are forced to take action themselves in defence of their rights. And because such protests do not qualify as "lawful" union rights activities they are not supported, and are often criticised by the union. Even in cases where workers' legal rights have clearly been violated, unions are not able to offer protection if standing up for workers rights is in conflict with the local government's political priorities of social stability and economic development. In other words, "lawful rights protection" is actually "politically expedient rights protection." This is especially true now as more and more local governments are turning a blind eye to labour rights violations as means of helping struggling enterprises stay afloat during the global economic crisis.

The ACFTU's definition of "lawful rights protection" includes activities that "reinforce the concept of legality, utilise legal channels, and use reasonable and legitimate approaches and methods to stay within the law."<sup>26</sup> The underlying objective of this definition is simply to stop unions resorting to strikes, petitions and other collective protests when no supporting provisions exist in law. Strikes are neither legal nor illegal in China. The right to strike was removed from the PRC constitution in 1982, but no law was introduced specifically banning strike action, creating a legal grey area that has prevented unions from advocating any kind of strike action.

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<sup>24</sup> For details of this incident, please see: "东航 18 架航班集体返航" (Collective protests against management by China Eastern crews on 18 flights), 新浪航空航天网 (*Xinlang aviation net*) 3 July 2008 <<http://mil.news.sina.com.cn/nz/fanhang/>>.

<sup>25</sup> See. Chengdu bus drivers strike for higher pay – union sits on the fence. <<http://www.clb.org.hk/en/node/100417>>

<sup>26</sup> Special commentary No.2. "二论坚持中国特色社会主义工会维权观" (Upholding socialism with Chinese characteristics. The union's concept of rights protection), 工人日报 (*Workers' Daily*), 14 Dec. 2006.

However, because of the inability of unions at the grassroots level to protect their rights and interests through “reasonable and legitimate approaches and methods,” workers have been forced to adopt precisely these “non-lawful” measures to defend their own interests. The only really positive result to date of the union’s “lawful rights protection” has been its provision of legal support to individual workers during labour dispute arbitration cases. Collectively, workers have received no protection and have acted on their own initiative to force local governments to make concessions or take remedial measures. In such actions and subsequent settlements, the union has been on the sidelines, excluded and ignored by both labour and management.

## Chapter Three: An analysis of the ACFTU's current rights protection activities and methods

The ACFTU's current rights protection regime dates back to the 12 December 2005 *Decision on Strengthening the Coordination of Labour Relations, Effectively Safeguarding Workers' Lawful Rights and Interests, and Promoting the Formation of a Socialist Harmonious Society*. This decision distilled the union's rights protection down to six basic activities: broad participation in government and legislative affairs; initiatives for co-ordinating grassroots labour relations; "worker democratic management" (*zhigong minzhu guanli* 职工民主管); oversight of labour law compliance; early warning systems and measures to deal with labour disputes; and mechanisms to aid workers in difficulty.

### The ACFTU's focus of rights protection

Critically, of these six activities, only two are open for grassroots enterprise unions' direct participation at present: the coordination of grassroots-level labour relations and so called "worker democratic management." The main responsibility for organising and managing the union's rights protection work lies with the local level unions (*difang gonghui* 地方工会). Unions exist at various levels, generally matching the administrative hierarchy: local government; province (autonomous region), municipality and county. In structure and thinking, these local unions are more akin to branches of government and the Party than independent representatives of labour. In the late 1990's, as part of the ACFTU's private sector unionisation drive, county and equivalent-level unions tried to set up rural township (*xiangzhen* 乡镇) and urban-district (*jiedao* 街道) level unions in areas with a high concentration of private enterprises. In 2000, the ACFTU adopted a policy of "extending its union organisation leadership system to the rural and urban district-level," and in December 2005, formally adopted this new level of administration in its bureaucracy. See *Figure 2*.

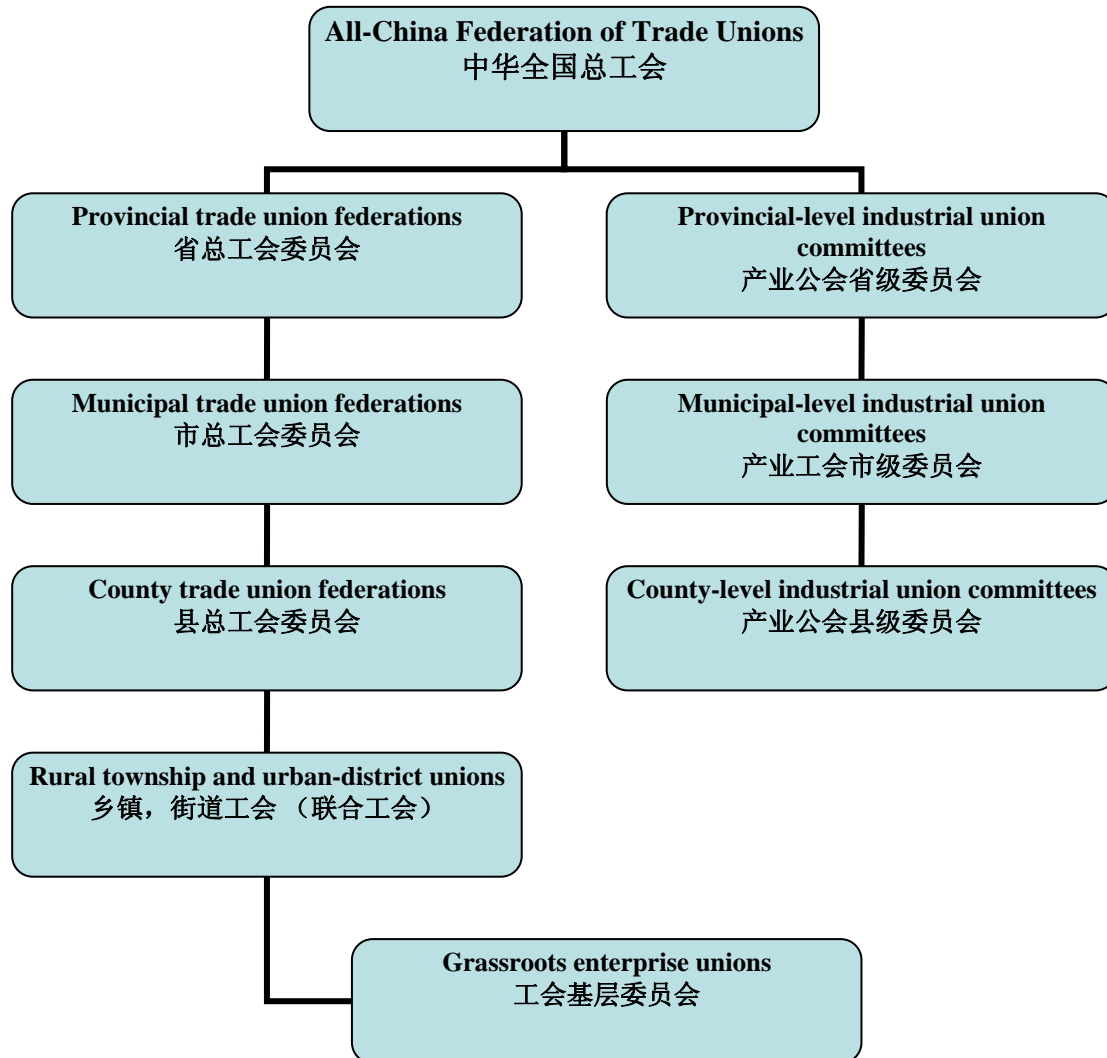
These new low-level unions have done little to help workers. In fact they have already become an obstacle to communication between county unions and workers and enterprise unions. Their offices are usually housed inside those of the Party and government. The union chairman is usually also a local government functionary.<sup>27</sup> These part-time officials have little time for or interest in union matters. To make matters worse, when a labour dispute occurs, they are much more likely to side with management so as to "to maintain a favourable local investment environment." Union

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<sup>27</sup> A research report into the rural and urban-district unions in Hubei Province in 2006 showed that 48 percent of such unions shared their offices with same-level party and government organs, typically in offices or departments handling economic development, economic adjustment, party-government administration, mass organisation, general governance, military affairs and family planning. See "关于我省乡镇（街道）工会工作情况的调查报告." (Research report into progress in the work of rural and urban-district unions in Hubei Province), 中国工会理论研究会网 (*China union theory research net*) undated <<http://yxlw.acftu.org/upload/files/1203399290398.doc>>. A study by Hunan provincial union federation in the latter part of 2007 into rural and urban-district unions across the province found that 2,412 such unions together had a total of 5,285 full-time and part-time union cadres, among whom full-time executives numbered 741, accounting for just 14 percent of the total. See 湖南省总工会组织部 (Hunan provincial union federation organisation department). "Research into the work of rural and urban-district unions in Hunan Province," 中国工运 (*China labour movement*), No. 4 (2008): 31-32.

leaders of this ilk cannot help workers form unions; nor can they help higher-level unions establish grassroots branches under the management of the ACFTU.

**Figure 2: Simplified ACFTU Organisational Chart**



In spite of their limitations, the ACFTU has made local unions responsible for organising all six rights protection activities listed in the 2005 *Decision*, and exclusively responsible for the four areas that preclude enterprise unions. In terms of union participation in government and legislative affairs, local unions must report to peer-level Party committees, liaise with peer government agencies, conduct research and help draft laws, regulations and policies affecting workers' interests, as well as participate in tripartite labour relations mechanisms. In *Trade Union Law* and *Labour Law* compliance matters, local unions must cooperate with the government in inspection work, organise workplace safety activities and ensure that enterprise unions monitor and investigate occupational health and safety compliance. With regard to early warning systems and the settlement of labour disputes, local unions must collate and analyse information garnered from their worker petitioning and hotline mechanisms, and report this information to Party and government authorities; cooperate with them in dealing with mass incidents and participate in mediation and

arbitration of labour disputes. In their relief role, local unions must provide advisory services in legal and policy matters for urban and migrant workers in need, and offer assistance in employment, livelihood, medical and schooling matters.

Over the years, these local unions have developed various “models”<sup>28</sup> of rights protection, but what they have in common is that they are all based on the locality rather than the enterprise. These models were not developed on the shop floor as long-term mechanisms to improve industrial relations or prevent violations of workers’ rights and as such have had limited effect in realising their goals.

As local unions take over their rights protection role, grassroots unions in the enterprise have been further weakened and hollowed out. Grassroots unions are dominated by managements. Employees have no say in issues such as union dues, union activities, selection of candidates, and the scope of union activities. Yet despite the blatant shortcomings of these grassroots unions, the ACFTU and its local unions have done little to wrest back control from the employers. Rather, they have transferred the focus of rights protection from grassroots unions to local unions, in a process known as “higher-level substitution” (*shang dai xia* 上代下).<sup>29</sup> On the face of it, this strategy has made up for some of the failings of enterprise grassroots unions. But the overall effect has been to further remove the union from what should be the focal point of its activities – the shop floor.

In order to accomplish their six key activities, China’s trade unions have become increasingly dependent on, and integrated with, Party and government organisations.<sup>30</sup> This in turn has saddled unions with a cornucopia of responsibilities as government departments and party organisations farm out duties they should be

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<sup>28</sup> The “Yiwu model” was established in Yiwu, Zhejiang province. In 2000, the city’s union set up a “worker legal and rights centre” to replace self-help groups set up independently by migrant workers. The centre established a cooperative network with local party authorities. The “Chengdu model” was set up in Chengdu, Sichuan province. In January 2004, the municipal union federation signed an inter-city legal-aid cooperation agreement with its counterparts in Shijiazhuang (Hebei province), Wenzhou (Zhejiang province) and Fuzhou (Fujian province). Under the agreements, any migrant worker with a Chengdu household registration who suffered rights violations in any of the three other signatory cities could get joint legal aid from union federations in any of the four cities. The “Dalian-Xinyang model,” devised in November 2003 by the Dalian union federation in Liaoning province and Xinyang federation in Henan province, allowed migrant labourers from Xinyang working in Dalian to form their own unions, later managed by the city of Dalian. In the 1999 “Quanzhou model” a network of rural and urban district-level unions, village and neighbourhood unions and non-public sector enterprise unions was created to deal mainly with “the recovery of wages in arrears owed to migrant workers,” and “provision of legal assistance.” In the “Kunshan model,” established in 2003 in Kunshan city in Jiangsu province, the municipal union proposed that some rights protection responsibilities vested in grassroots unions be transferred upward to the next union level. In the “Xiamen model” established in the early 1990s, the city government gradually extended the municipal social security system (pensions, medical insurance, workplace injury insurance and unemployment insurance) to cover migrant workers in Xiamen. This social insurance system for migrant workers has only in recent years been extended to other places across China.

<sup>29</sup> The policy of “higher-level substitution” has increased the burden on the county and equivalent level union organisations. For example, in 2004, the Kunshan union developed its “Method for assumption of certain rights protection duties by higher-level unions in place of grassroots unions.” It provided that higher-level unions could take over rights responsibilities in the event of an enterprise management stopping the grassroots union calling a meeting of worker representatives; refusing to sign collective contracts without good reason; preventing grassroots unions participating in investigations and settlements following workplace accidents leading to injury; illegally scrapping or merging union organisations and other working entities; illegally dismissing union cadres; and leaving union dues unpaid for an unreasonably long time. See Wang Wei (王伟). “昆山：上级工会代行基层工会部分职责” (Kunshan: unions at higher levels to take over some grassroots union duties), *工人日报* (*Workers’ Daily*) <<http://acftu.people.com.cn/BIG5/6848647.html>>.

<sup>30</sup> See Han Fuguo and others (韩福国等著), “新型产业工会与中国工会” (New industrial unions and trade unions in China), Shanghai, 上海人民出版社 (Shanghai People’s Publishing House), 2008, 226-227.

performing themselves. In addition to their traditional roles, such as attending workers' congresses, labour dispute settlement, legislative work, collective consultation and oversight of legal compliance, now, at the behest of the authorities, unions have to shoulder the additional tasks of helping the government deal with mass incidents, researching and evaluating the state of labour relations, and providing relief services for urban and rural migrant workers in financial difficulty. The imposition of these new political and societal duties has further undermined the key union role of representing and defending workers' economic rights and interests at the enterprise level.<sup>31</sup>

In early 2007, the union's rights protection activities were further eroded when the ACFTU developed its "five-faceted and unified" (*wuwei yiti* 五位一体) model of rights protection. The five facets were in order of importance: "leadership of the party, support of the government, cooperation of society, operation by the unions and participation by the workers." This five-faceted approach has led to government departments and organisations gradually taking over what should be core union functions, and has given the union a perfect excuse to abdicate its responsibilities for rights protection to the Party and to the government. In fact, local Party and government organisations are increasingly managing activities that should be handled by the union. In 2007, provincial and municipal governments produced a number of rulings and decrees on collective consultation. On 19 June 2007, for example, the general offices of the Liaoning provincial Party committee and government released a *Notice on the Work of Further Advancing Collective Consultations between Labour and Management at Enterprises*, which called for:

*Strengthening organisational leadership of collective consultation work in the enterprise, led by the Party committee and organised by government, with union cooperation, multilateral coordination and worker participation.*

It urged Party committee and government organisations to draft working plans and assume overall responsibility for the development of collective consultation systems. The ACFTU's official newspaper, the *Workers' Daily*, remarked that such an approach would give greater authority and working impetus to the collective consultation process. The most important aspect of the *Notice* was its specification that labour and management should collectively consult "under government leadership."<sup>32</sup>

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<sup>31</sup> Increases in the number of collective labour disputes prompted some local unions to release documents, in line with local party and government directives, demanding that unions be given broader responsibilities. For example, in February 2004, the Xi'an municipal union released its "Opinion concerning the task of further strengthening and improving petitioning work," requiring county level unions to report to the municipal union, within two hours, any case of large-scale collective petitioning and collective incidents (clashes); with regard to large-scale petitions to the municipal union that had already occurred, the chairman of the district or county level union in question should appear at the scene within a deadline stipulated by the municipal branches of party and government, launch negotiations, answer questions and use persuasive tactics, and as quickly as possible get everyone to leave the scene. Details from the "西安市总工会制订进一步加强和改进信访工作的意见" (Xi'an municipal union federation – Opinion concerning the further strengthening and improving the petitioning system), *工会工作通讯* (*Union Affairs News*) No. 10 (of 615) (2004).

<sup>32</sup> Gu Wei (顾威). "辽宁 '两办' 通知明确: 政府主导企业工资集体协商" (Liaoning 'Party and government' notice makes it clear: The government leads enterprise collective wage negotiations), *工人日报* (*Workers' Daily*) 6 July 2007.

In early 2008, ACFTU Vice Chair, Zhang Mingqi, said unions and enterprises should be equal entities in a working mechanism for collective consultation, led by local governments. He called for the establishment of a practical model of collective consultation in which the government would play the dominant role.<sup>33</sup>

The Party and government now dominate workers' rights protection mechanisms to such an extent the unions have been reduced to passively doing the government's bidding. The ACFTU's dependence on government authority has increased and local level unions have lost all initiative in rights protection. They no longer have the right to decide whose rights should be protected, within what parameters, through which methods, or using which resources. When all decisions have to be approved and implemented by the government, the rights protection role of the unions naturally withers and dies. The more serious consequence of this is that when the rights violator is the government itself, as was the case during the reform of state-owned enterprises during the late-1990s and early part of the following decade, Party and government officials may try to stop workers seeking redress, on the pretext of "maintaining stability," to cover up their own mistakes or illegal activities.<sup>34</sup>

When the ACFTU subordinates itself thus, it matters little what role it takes on, or how much it trumpets its own achievements; workers will always withhold their support, and the union will never achieve the standing it needs in the workforce to represent their interests. Evidence of this can be seen in the way the strike by the Chongqing taxi drivers played out in November 2008. As early as in August 2005, a group of taxi company employees applied to form a union. The Chongqing municipal federation turned down their request on the grounds that it was the responsibility of the enterprise to organise the union.<sup>35</sup> During the strike action in November 2008, workers did not bother with the municipal union again; instead they went straight to the municipal government with their grievances.

### **Stirrings of a more robust response in 2008**

Late 2007 and 2008 was also the time, however, when many provincial and municipal level union officials began to voice their concern at the ACFTU's passivity, and started to demand a more robust defence of workers' rights, particularly those stipulated in the new *Labour Contract Law*, which went into effect on 1 January 2008.<sup>36</sup>

Government and union officials in Guangdong, for example, condemned one of China's most prestigious companies, Huawei, for its attempts to circumvent certain provisions of the *Labour Contract Law* by sacking about 7,000 long-serving

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<sup>33</sup> “张鸣起同志在深入学习贯彻党的十七大精神加强工会协调劳动关系工作座谈会上的讲话” (Comrade Zhang Mingqi's informal speech on studying and applying the spirit of the 17th National Congress of the CPC, and strengthening union coordination of labour relations work), 5 January 2008, 全总网站 (ACFTU website) <[www.acftu.net/template/10004/file.jsp?cid=318&aid=72728](http://www.acftu.net/template/10004/file.jsp?cid=318&aid=72728)>.

<sup>34</sup> See CLB's research report: [No Way Out: Worker Activism in China's State-Owned Enterprise Reforms](#).

<sup>35</sup> Liu Yanxun (刘炎迅), Yang Long (杨龙) and Wang Jun (王军). “聚焦出租车司机维权事件: 权益受损成罢运导火索” (Focus on taxi drivers' militancy: Rights infringement triggers strike action), 中国新闻周刊 (*China Newsweek*), from 新浪网 (*sina.com.cn*) <<http://news.sina.com.cn/c/2008-11-19/101416683882.shtml>>.

<sup>36</sup> For a detailed analysis and coverage of the ACFTU's more progressive initiatives in 2008, please go to the All-China Federation of Trade Unions section of the CLB website <[http://www.clb.org.hk/en/node/100012?q=node/100012&tid=90008&select\\_year=2008](http://www.clb.org.hk/en/node/100012?q=node/100012&tid=90008&select_year=2008)>



employees in October 2007, and rehiring them on short-term contracts. Officials also vowed to crack down on bosses who defaulted on wages, and to introduce mechanisms within the enterprise to allow for regular wage growth in line with inflation. Liu Youjun, the Party head of the Guangdong department of labour and social security, claimed on 15 January 2008 that the authorities had arrested 29 employers wanted for defaulting on wages owed to migrant workers in the province over the previous 20 months. And on 18 February, Liu Xiaogang, the chairman of the Guangzhou Federation of Trade Unions, said wages should be adjusted in line with the local consumer price index. Liu was quoted by the *Information Times* (资讯时报) as saying the establishment of an open and equal negotiation system and the signing of wage agreements between enterprise representatives and workers' (trade union) representatives would be conducive to normal wage growth in a market economy.

Earlier, in December 2007, the Shenzhen Federation of Trade Unions co-hosted with the Shenzhen Lawyers' Association a Forum on Collective Bargaining and Corporate Social Responsibility. According to a report in the *Southern Metropolis Daily* (南方都市报), the conference heard that: "Most collective labour contracts are not worth the paper they're written on, and that the negotiating and bargaining capacity of trade unions must be strengthened."

In April 2008, the vice-chairman of the Shenzhen Federation of Trade Unions, Wang Tongxin, called for a more relaxed approach to strikes, which he said were the inevitable result of market economics and something society would have to learn to accept. "Labour disputes and strikes are as natural as arguments between a husband and wife. Right now, people take strikes too seriously," Wang said, adding that labour disputes were economic issues, pure and simple, and had nothing to do with politics, religion, culture or anything else.

He stressed that the majority of strikes resulted from employers' violations of the law and the failure to pay decent wages. If employers were willing to engage in collective wage negotiations with workers, a lot of problems could be resolved at source, he said. His comments were backed up by Chen Weiguang, chairman of the Guangzhou Federation of Trade Unions, who told a conference on 15 July that: "The trade union is a matter for the workers alone," adding that the role of enterprise unions must change from "persuading the boss" to "mobilising the workers."

And Zhang Youquan, head of the Shenzhen Federation's legal department, said the city's new *Implementing Regulations for the Trade Union Law* would help create a "responsible, empowered and battle-ready union." The *Implementing Regulations*, enacted on 1 August, stress that collective bargaining is the core responsibility of trade unions, and they provide clear guidelines on how the bargaining process should work. Zhang told a press conference to announce the new regulations that this was the first time the term "collective bargaining," (*jiti tanpan* 集体谈判) as opposed to the previously-used but much weaker concept of "collective consultations" (*jiti xieshang* 集体协商) had been applied in China's local legislation.

However, the advent of the global economic crisis soon after the enactment of the *Implementing Regulations* put a brake on Guangdong's more pragmatic and progressive approach to workers' rights protection. The crisis triggered a reversion to

type, with union officials once again towing the central government line and putting the needs of Party, government, economic development and social stability above those of the workers. In November 2008, the central government demanded that local governments across the country freeze the minimum wage. The ACFTU immediately followed the government lead and urged local unions to come up with a range of other proposals to help enterprises through the economic turmoil. The response of the Guangdong provincial federation of trade unions was to temporarily suspend collective wage consultations, a measure the Guangzhou municipal federation had been actively promoting earlier in the year.<sup>37</sup>

### **The rights protection the ACFTU claims to provide**

In practical terms, the ACFTU claims to protect workers' rights and interests through union organising in the private sector (in particular the unionisation of migrant workers), promotion of the collective consultation and collective contract systems, and providing help and support to migrant workers and all other workers in need. When seen in terms of unions established, contracts signed, and numbers of workers receiving assistance, the ACFTU's efforts do look impressive. However, the numbers, in many cases, are meaningless.

The ACFTU began forming unions in foreign-funded and domestically owned private enterprises in the late 1980s but it was not until its 13<sup>th</sup> National Congress in October 1998 that the ACFTU finally asserted: "wherever there are workers, it is necessary to establish union organisations." From that point on, union organising became a priority of the ACFTU, but its organising activities have mainly been driven by political concerns rather than a concern for the rights of workers. The restructuring of the SOEs in the late 1990s effectively marked the end of the Party's system of social governance based on the *danwei* employment unit. And so, the Party sought to restore its control over the workforce by using the ACFTU to unionise the private sector.<sup>38</sup> The ACFTU did not base its unionisation drive on the organisation of workers; rather it sent high-level officials to visit private companies, including those with foreign investment, to persuade employers to set up trade unions. This gentle persuasion naturally led to these newly set up enterprise unions being directly or indirectly controlled by management or having no authority to stand up for workers' rights and interests in negotiations with management.<sup>39</sup>

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<sup>37</sup> See: Wu Zhe (吴哲). "广东省总工会：困难企业可暂停工资集体协商" (Guangdong provincial union federation: Companies in difficulty may temporarily suspend collective wage consultation), 南方报网 (Southern Daily Net), <[http://www.nfdaily.cn/gd/content/2008-11/22/content\\_4721247.htm](http://www.nfdaily.cn/gd/content/2008-11/22/content_4721247.htm)>.

<sup>38</sup> In a 2005 speech, ACFTU Chairman Wang Zhaoguo said, "We must ground ourselves in the strengthened authority, class foundation and ruling status of the party, and fully recognise the real significance of building union organisations amid new circumstances." See 王兆国：“在工会法执法检查组第一次全体会议上的讲话” (Wang Zhaoguo's speech to the first plenary meeting of the legal enforcement and inspection team), 全总网站 (ACFTU website) 14 March 2005 <<http://www.acftu.net/template/10005/file.jsp?cid=318&aid=1448>>.

<sup>39</sup> In many private small and medium-sized enterprises, union cadres serve jointly as head of administration, business manager, factory foreman, human resources management chief or even vice general manager. In a Shanghai municipal union survey of 1,716 unionised foreign invested companies, only 13 (0.76 percent) had a full-time union chairman. A Guangzhou federation survey in 2006 found that the proportion of union chairmen serving concurrently as corporate officers at private domestic and foreign invested companies in that city was as high as 98.7 percent. See Jiao Jing (焦晶). "工会-理想与现实的差距", (Unions: The gap between ideal and reality). *中外管理* (Sino-Foreign Management), 2006, No. 10, 28-29; and 上海工会管理职业学院干部培训中心 (Shanghai union management professional academy cadre training centre), "关于上海市工会干部队伍现状及其对教育培训需求的调查" (Survey into current status of Shanghai trade union cadre teams and their impact on education and

Under this *modus operandi*, local unions can meet the targets set for them by the ACFTU, nominally increasing the “unionisation rate” but doing nothing to help the workers so unionised. The collective consultation and contracts system has likewise been imposed in a quota system from above with little regard for actual conditions on the factory floor. Launched in various pilot projects in the early 1990s, the collective consultation and contracts system<sup>40</sup> has grown to the point where according to ACFTU statistics, nearly 130 million workers are covered by collective agreements.<sup>41</sup> However, the process is usually no more than a ceremony in which management and representatives of enterprise unions under management control sign and stamp documents supplied by the local union. There is no true process of negotiation, and it does not reflect the issues actually dividing management and labour, much less involve broad worker participation. The much publicised signing of collective contracts at Walmart’s more than 100 stores in China last year is a case in point. When Guo Haitao, the union chairman at Walmart’s outlet in Nanchang attempted to add specific clauses to the framework agreement negotiated by the ACFTU and senior Walmart management that would benefit his members, he was simply bypassed by management, who got a union representative from another store to sign the original agreement. Gao resigned in frustration on 9 September 2008.

As the proportion of migrant workers in the overall workforce steadily increased in the 2000s, the central government and ACFTU began to pay more attention to the specific problems they faced. In March 2006 the State Council issued its *Certain Opinions on Resolving Issues faced by Rural Migrant Workers*, calling on ACFTU-affiliated unions to take a greater role in strengthening protection of the rights and interests of migrant workers. Almost immediately, at an ACFTU press conference on 9 March 2006, vice chair Xu Deming outlined the “ten things” the union would do to help migrant workers including: implementing a three-year action plan for the labour contract system, safeguarding income distribution, health and safety, and social security rights and interests of migrant workers, providing them with legal help, welcome services, professional/technical training and employment assistance, and spiritual and cultural help, safeguarding their democratic political rights, and ensuring

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training demand), 中国工运 (*China labour movement*), No. 1 (2008): 38-40. A survey in 2006 by the Hubei provincial federation into 174 private domestic and foreign invested companies found that some of the unions existed only on paper, and did not operate union institutions, while others had the institutions, but did not put them to work; most workers had not completed procedures to join them, and had not received a membership card. See “当前企业工会工作存在的主要问题与对策建议” (Main problems currently facing the work of enterprise unions, and proposed countermeasures), 湖北工会网 (*Hubei union net*) <[http://www.hbzgh.org.cn/content/MODULE\\_1/GYSL/GYSL\\_DCYJ/2007-04/6375.html](http://www.hbzgh.org.cn/content/MODULE_1/GYSL/GYSL_DCYJ/2007-04/6375.html)>.

<sup>40</sup> In legislation and administrative regulations governing collective contracts, the full name of the system is “平等协商和集体合同制度” (fair and equal consultation and collective contract system), but “fair and equal consultation” is nothing like the collective bargaining of Western countries. What this concept emphasises is not the process of adversarial negotiation over rights and interests by labour and management, but a process of formal and informal consultation aimed at resolving matters of joint concern to both sides, and a means of seeking ways of resolving issues through cooperation.

<sup>41</sup> According to its own statistics, at the end of 2007, the ACFTU had signed 975,000 comprehensive collective agreements across China, covering 1.704 million enterprises and 128.237 million workers; 103,000 regional collective contracts had been signed covering 744,000 enterprises and 31.651 million workers; 55,000 sector collective contracts had been signed covering 212,000 enterprises and 13.234 million workers. See 全总研究室 (ACFTU research office). “2007 年工会组织和工会工作发展状况统计公报” (2007 statistical bulletin on progress in the work of trade union organisations and trade unions), 22 May 2008, 中国工运 (*China labour movement*), No. 6 (2008): 51-55.

they have smooth journeys home for the Spring Festival.<sup>42</sup> Conspicuously absent from this list was any move to let migrant workers set up their own unions. Instead, the ACFTU sought to incorporate migrant workers into its own essentially toothless enterprise unions, while handing out books and DVDs, train tickets and other gifts in times of need.

The ACFTU has also sought to provide relief for urban workers in need. In September 2002, it proposed as one of its working goals the “establishment of help centres for workers in difficulty in 200 large cities across the nation, over a three-year time period.” A few months later, it issued an *Opinion Regarding the Establishment of Help Centres for Workers in Difficulty*, which urged unions to take a front-line role in its charitable ‘heart-warming’ projects and serve as effective vehicles for help and relief measures. These Help Centres established by local unions had four roles: arranging job-placement and training for the jobless; providing subsistence help to workers in difficulty and helping with livelihood, medical and schooling expenses; arranging petition letters and visits and offering advice; and legal support work, with free advice and assistance to workers whose rights have been violated. While these are important functions that do give workers some measure of relief, and help them seek legal redress for rights violations, they do little to address the serious imbalance of power within enterprises which is the root cause of rights violations.

### **The protection workers need**

The most fundamental demand of any worker is decent pay for decent work. And it is the basic role of the union to help ensure that this demand is met. However the ACFTU does not seem to see this as a priority. Its *Key Points for the Protection of Migrant Workers’ Lawful Rights and Interests in 2008*, issued on 4 March that year, runs to more than 6,000 characters in length and details a total of 32 tasks facing the union. Within this document, however, little more than 70 characters are devoted to migrant labourers’ rights to better pay:

*Promote reasonable growth in rural migrant workers’ pay levels. Vigorously implement collective wage consultation activities, establish mechanisms for collective wage consultation in the enterprise and for normal wage growth, monitor employer performance in meeting overtime pay pledges to migrant workers, and encourage reasonable growth in wages of migrant workers at enterprises.*

While official government statistics for wages have shown an impressive year-on-year growth for the last decade, the national average rising from just 500 yuan a month in 1997 to over 2,000 yuan a month in 2007, the 130 million migrant workers, who now form the core of China’s workforce, have seen wages remain stagnant or even decrease in real terms. In September 2004, for example, a Ministry of Labour and Social Security task force found that in the Pearl River Delta average monthly wages had risen by only 68 yuan over the previous 12 years. In Foshan, workers at a good many enterprises were earning between 600 and 1,000 yuan in 2004, no more than ten years earlier. Meanwhile, the cost of daily necessities in these areas had risen

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<sup>42</sup> Cui Qingxin (崔清新) and Wu Jing (吴晶). “中国工会承诺为农民工维权办实事” (Chinese trade unions’ practical commitments to defend rural migrant workers’ rights), *新华网(Xinhuanet.com)* 9 March 2006 <[http://news.xinhuanet.com/society/2006-03/09/content\\_4280979.htm](http://news.xinhuanet.com/society/2006-03/09/content_4280979.htm)>.

sharply.<sup>43</sup> In 2007, a survey of 176 migrant workers in Panyu, Guangzhou, showed that the average income for the majority of migrant workers was still only around 750 yuan, while the average monthly wage for urban workers in the district was over three times higher, standing at 2,453 yuan.<sup>44</sup> In the south-western province of Yunnan, the discrepancy between migrant and urban workers' wages was even greater. In 2006, the average monthly income for migrant workers was only about 400 yuan, while the average income for urban workers was 1,559 yuan, nearly four times higher.<sup>45</sup>

For the most part, the only way migrant workers can get a pay rise is if the local government raises the minimum wage. Once again workers have to rely on the government to do the job the union should be doing. But raising the minimum wage is of limited benefit to workers and often causes more problems than it solves.

Employers of migrant workers in the Pearl River Delta and other areas often see the minimum wage not as a minimum but as a standard or even maximum wage for their employees. Once the government sets a legal minimum, employers will pay the minimum and no more – very often they will pay less by forcing employees to work excessive overtime to get the minimum wage or by making arbitrary deductions from workers' pay packets or imposing fines for alleged violations of company rules. For example, in September 2008, the *Guangzhou Daily* reported the case of a young migrant worker from Guangxi, employed at a garment factory in Panyu, Guangzhou. The employee said the factory paid piece-rate wages and that working hours were 11 hours a day Monday to Saturday, and eight hours on Sunday, with 0.5 yuan extra per hour for evening overtime. Most workers, paid on a monthly basis, got about 800 yuan for 30 days' labour, or 3.3 yuan per hour. At that time, Panyu's minimum wage was 790 yuan based on a 40-hour week or around five yuan an hour.<sup>46</sup>

The payment of little or no more than the minimum wage would not be such a serious problem if the minimum wage was a living wage but in the majority of provinces and cities across China, the minimum wage cannot sustain an individual worker let alone provide for their family. The minimum wage was first introduced in 2003 by the then Ministry of Labour and Social Security, in an attempt to strengthen the protection offered to workers. The ministry stated that, when determining the monthly minimum wage, provincial governments should take into consideration factors such as the cost of basic necessities for employees and their dependants, as well as the local consumer price index. It also recommended that local and regional minimum wages should be set at about 40 to 60 percent of average monthly wages. In reality, the minimum wage in most provinces is well below or barely reaches the recommended level of 40 percent. In major cities, such as Beijing and Shanghai, the minimum wage in 2006 was around 20 per cent of the average monthly wage. In Beijing in 2006, for example,

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<sup>43</sup> 劳动和社会保障部课题组 (Ministry of Labour and Social Security Research Group). “关于民工短缺的调查报告” (Research report into the shortage of migrant workers), 9 September 2004, 中国劳动社会保障出版社网站 (*China Labour & Social Security Publishing House website*) <<http://www.class.com.cn/newsdetail.cfm?iCntno=2392>>.

<sup>44</sup> Chen Chuyu (陈楚玉) and Feng Xiujuan (冯秀娟) 2008. “广州番禺区某工业园 176 名外来工社会保障统计调查报告” (Statistical survey into 176 migrant workers' social security arrangements in a Panyu industrial zone in Guangzhou, Guangdong Province). *医学信息 (Medical Information)* 2008 8 (Volume 21), pp.1240-1243

<sup>45</sup> “云南省农民工基本状况调查报告” (Investigative report into current basic living conditions of rural migrant workers in Yunnan Province) 云南省总工会 (Yunnan provincial union federation) 2006. *中国工会理论研究会网 (China Trade Union Theoretical Research Net)* <<http://yxlw.acftu.org/template/6/file.jsp?cid=14&aid=99>>

<sup>46</sup> Li Ying (李颖). “80 后民工 ‘卧底’ 维权” (Migrant workers' ‘under-cover’ rights protection since the 1980s), *劳动保障世界 (Labor Security World)*, No. 11 (2008): 42-43.

the gap between the minimum wage and the average monthly wage in monetary terms was 2,703 yuan. And the gap between the minimum wage and average monthly living expenses in Beijing reached as high as 595 yuan. Even though many local governments have raised the minimum wage annually rather than biennially as recommended by central government,<sup>47</sup> these increases have failed to close the wage gap between migrant workers and local employees.

Apart from low wages, by far the most pressing concern for migrant workers in particular has been the non-payment or delayed payment of wages. According to the then Ministry of Labour and Social Security, the total wages in arrears bill across China from 2005 to July 2007 reached 66 billion yuan.<sup>48</sup> The problem of wages in arrears is especially serious for construction workers. For example, in one construction project alone, the wages in arrears amounted to about 3.3 million yuan.<sup>49</sup> The problem is so widespread and severe that labour departments have for many years made it a priority to monitor the payment records of companies employing large numbers of migrant workers. Many local governments require construction companies to bank a reserve fund to guarantee payment of wages, or have set up their own contingency funds to pay workers in case manufacturing firms declare bankruptcy.<sup>50</sup> The ACFTU has been active in recovering wage arrears for migrant workers but typically it has had to utilise government resources or act in the government's name to get anything done. However, when local governments are not serious about recovering unpaid wages, they can restrict this kind of "influence-borrowing" (*jieli*借力), and the unions have no other resources to fall back on.

Some local unions have joined forces in their efforts to recover wages in arrears. For example, on 4 July 2006, union representatives from 18 cities held a study session in Fuzhou at which they proposed an alliance of local unions to help migrants recover unpaid wages and workplace injury compensation.<sup>51</sup> The original idea was that after a dispute broke out with an employer over unpaid wages, the unions of the area in which the migrant workers involved had their household registrations (*hukou*) would step in and contact the unions of the area where the dispute arose. Local unions of both areas would then cooperate to recover unpaid money. If this programme can be made to work, and migrant workers can count on the support of unions in their home area, it really could be an effective way of resolving disputes over wage arrears. However, joint rights-protection initiatives like this are expensive and difficult to organise, and would be beyond the means of most local unions in the underdeveloped parts of China where most migrants come from. These local unions tend to lack funding as well as experienced and qualified officials. Consequently, they find it

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<sup>47</sup> For example, in Shenzhen, the official minimum wage in 2003 was 600 yuan. In 2004, it went up to 610 yuan, in 2005 to 690 yuan, in 2006 to 810 yuan, in 2007 to 850 yuan, and in 2008 to 1,000 yuan.

<sup>48</sup> "今年中國失業率 4% 創五年新低" [China's unemployment rate dropped to a five year's low at 4% this year], published in China Review on 23 Oct. 2007

<<http://www.chinareviewnews.com/doc/1004/7/5/8/100475839.html?coluid=7&kindid=0&docid=100475839>>

<sup>49</sup> "300萬元欠薪暴露工程承包'潛規則'" [The 3 million wage in arrears has exposed the 'latent rules' of the subcontract system of construction industry], published on Economic Daily on 25 Jan. 2008; available at Renmin Wang. <<http://house.people.com.cn/BIG5/98374/101031/6822843.html>>

<sup>50</sup> 北京市农民工法律援助工作站 (Beijing legal aid workstation for migrants). "农民工欠薪案件研究报告" (Research report into cases of wage arrears owed to migrant workers), 中国农民工维权网 (*China rural migrants rights protection net*) <[http://www.zgnmg.org/zhi/dybg/bg002\\_1.htm](http://www.zgnmg.org/zhi/dybg/bg002_1.htm)>.

<sup>51</sup> Qiu Wenhui (邱文辉). "18市工会为农民工联动追薪和招工" (Unions in 18 cities link up in arrears recovery and recruitment joint initiative for migrant workers), 海峡都市报 (*Straits Metro Daily*), on 新浪网 (*sina.com.cn*) <<http://news.sina.com.cn/c/2006-07-05/03019372175s.shtml>>.

difficult to represent workers in their own area, let alone in cities and provinces far away.

For example, in May 2005, after a long running dispute over the non-payment of 260,000 yuan in wages, a group of migrant construction workers in Guangzhou contacted their local union in Xiangtan township in Hunan for help. In August, union officials travelled to Guangzhou to meet the workers. With the help of the Guangdong union federation, a case was filed in the Dongshan District Court, which ruled in favour of the workers. The construction company however appealed to the Guangzhou Intermediate People's Court, further dragging out the proceedings. The Intermediate court finally ruled for the workers, who publicly thanked the Xiangtan union for its help. However, in the process of helping the workers claim their wages, the local union ran up expenses of nearly 4,000 yuan, an excessive amount for a small rural union. After the first trial in Dongshan, the union's vice-chairman commented: "The unions really want to do everything they can to help but financially things are very tight. The spirit is willing but the flesh is weak (*li bu cong xin*力不从心)." <sup>52</sup>

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<sup>52</sup> Long Julan (龙巨澜): "讨薪成本工会难承受，农民工维权高成本症结何在" (Cost of arrears recovery too high for unions; pinpointing the main cost burden in defending migrants' rights) *工人日报* (Workers' Daily), [http://www.gov.cn/jrzq/2006-06/23/content\\_317827.htm](http://www.gov.cn/jrzq/2006-06/23/content_317827.htm). Liu Ju (刘炬) Liu Fangming (刘放明) "80位农民工7年后拿回欠薪" (After seven years, 80 Migrant workers get back pay) *长沙晚报* (Changsha Evening News), <http://news.sohu.com/20070129/n247898507.shtml>

## Conclusions and recommendations

The rapid pace of economic growth in China since the beginning of the 1990s has depended to a large degree on the exploitation of low-cost labour. Employees at state-owned enterprises, deemed surplus to requirement, were discarded in their tens of millions, while even greater numbers of migrant labourers crossed the country to work long hours in hazardous conditions for very little pay. For a long time, the central government focused solely on its economic goals without really considering the social consequences but as social unrest increased and the number of protests and demonstrations rose alarmingly in the new decade, the authorities were forced to listen and respond to workers' grievances. After long debate, in 2008, the Chinese government introduced a raft of policies and laws including the *Labour Contract Law*, *Employment Promotion Law* and *Arbitration Law*, all designed to ease the exploitation of the workforce and enhance the protection of their rights.

This period should have been the ideal time to develop a strong and independent union movement capable of protecting workers' rights and representing their economic interests in the workplace. However, as we have seen in this report, a strong union movement did not emerge. On the contrary, China's sole legally mandated union, the ACFTU, became increasingly ineffective and was unable to satisfy even the most basic demands of migrant workers – decent pay for decent work.

The reasons for the ACFTU's ineffectiveness in representing workers' rights and interests are clear: **Firstly**, the authorities did not understand the true nature of the labour disputes and protests that have erupted across the country in recent years. The Party and government saw labour disputes as social conflicts that had to be managed and controlled by government agencies and its own social organisations case by case. This *ad hoc* interventionist approach to social governance only dealt with the symptoms and failed to get to the root of the problem – the imbalance of power between labour and management, and the lack of effective employee representation in the workplace. Indeed, the government's approach actually created the conditions for more conflict to arise. See *Figure 1*, above.

**Secondly**, the work of ACFTU has been based on its provincial, municipal, county and district level unions rather than enterprise unions. These local level unions are more akin to government agencies than representatives of labour. And over the last two decades they have been saddled with a cornucopia of tasks and duties that should be the responsibility of local governments, such as dealing with “mass incidents,” researching and evaluating the state of labour relations, and providing relief services for urban and rural migrant workers in financial difficulty. However they have not been given the resources to fulfil these tasks and have had to rely on the resources and the authority of the local government to get anything done.

**Thirdly**, because the ACFTU's focus has been on its local unions, the numerous enterprise unions that it has set up have, more often than not, become mere empty shells, controlled or dominated by managements and unable to represent workers' interests. Likewise, the collective labour contracts negotiated by the union have been imposed in a top-down manner more designed to fulfil quotas than address the actual needs of workers. Worse still, when enterprise unions have attempted to negotiate



meaningful contracts, they have often been bypassed by management and higher level union officials.

**Finally**, for decades, the main role of the ACFTU has been to assist the authorities in the process of social governance. The ACFTU does have a mandate to protect workers' rights and interests but this has been consistently subordinated to the need to maintain social stability and to bolster the political legitimacy of the Communist Party. However, over the last two decades, this latter role has come more and more to the fore, while the ACFTU's rights protection role has been relegated even further down its list of priorities.

The ACFTU is now essentially a charitable organisation, providing assistance only after workers' rights have been violated. Moreover, the ACFTU's protection of workers' rights is guided largely by political expediency and can be withdrawn or refocused as and when the government requires. This has clearly been the case during the current global economic crisis when the Guangdong provincial union put collective wage consultations on ice. During an economic crisis, when workers' rights and interests are at their most vulnerable, the union should redouble its efforts to protect its members, not meekly tow the government and Party line and pander to the needs of managements. This is precisely the time when the ACFTU should be pushing collective wage consultations. This would not only protect workers but allow management and employee representatives to negotiate a mutually beneficial contract that could safeguard jobs as well as the economic viability of the enterprise. Under such agreements, employees might, for example, be quite willing to accept a temporary pay cut, in order to see the business through the crisis, on condition that wages return to previous levels as soon as economically viable and that workers are later compensated for their sacrifice. It is highly likely that there are union officials in Guangdong who understand the benefits of pushing ahead with collective wage consultations during the economic crisis, but they have for the time being been overruled by leaders too timid to defy the wishes of the government.

This short-sighted response encapsulates all that is wrong with the ACFTU today. It is reactive rather than proactive; it only reacts within the bounds prescribed by the government, and only when the government instructs it to do so. The ACFTU is stuck in a rut, overly dependent on the Party and government, and cut off from the workers it is supposed to represent.

CLB is confident, however, that there are officials within the ACFTU, as shown in Chapter Three of this report, who recognise the need for change and for a more robust defence of workers' rights. Their voices may have been temporarily silenced during the economic crisis but the need for change remains very real.

With this in mind, CLB has drawn up a series of recommendations that, if adopted, would allow the ACFTU to gradually recover some of the ground lost over the last 20 years, regain the trust of the workers and as a consequence, more effectively undertake its government sanctioned mission of "maintaining social harmony."

At the heart of CLB's recommendations is the need to establish **democratically elected grassroots unions** within the ACFTU, and press ahead with **collective bargaining** in China's factories, offices and service industries. China is now, to all

intents and purposes, a market economy. And in a market economy, labour relations are governed by the laws of supply and demand and the legal constraints of the state. Disputes emerge because of a divergence of economic interests between workers and management within the enterprise. That is to say, they are a civil society matter. These disputes are the result of a natural dynamic; they do not represent a threat to the state and can in most cases be resolved within the enterprise without recourse to government intervention. Only when the two parties cannot reach an agreement should the government step in – as a neutral facilitator – to seek resolution.

In a market economy, the key to stopping labour disputes escalating into social conflict is the establishment of an effective dispute resolution mechanism within the enterprise, namely collective bargaining. In the more than 200-year history of the trade union movement, collective bargaining has always been the core task. Workers do not form unions for the sake of it; they join or organise unions to gain greater bargaining power *vis-a-vis* their employer. Currently, all the conditions exist in China for collective bargaining. Indeed, China's *Labour Law*, *Trade Union Law*, and *Labour Contract Law* all require unions to represent the economic interests of workers through the collective contract system. The problem is that the ACFTU has failed to implement a meaningful collective contract system. If, however, the ACFTU can embrace a genuine collective bargaining system in which the economic interests and rights of the employees are the union's only concern, then not only will workers' rights be protected, the number of strikes, stoppages and worker protests will be significantly reduced. And once the number of mass incidents decreases, local governments will not have to devote so much time and money to dealing with those incidents. The multi-million yuan contingency funds that local governments have been forced to create in order to deal with wage arrears from bankrupted companies would no longer be so crucial if workers in those companies had a strong union presence to protect their interests *before* the company folded and the boss skipped town.

In order to promote democratic union building, facilitate the implementation of a genuine collective bargaining system in China and allow the ACFTU to concentrate on its fundamental role of protecting workers' rights and interests, **CLB recommends** the following.

- **Set up democratically elected and representative grassroots unions.** By far the most effective means of protecting workers' rights and interests is to have a strong and representative union presence in the workplace. If employees are allowed to freely elect their union chair, vice-chairs and committee members rather than having those positions filled or controlled by management, the union will have a direct link to the workforce, and be more willing and able to promote and defend their interests in negotiations with management. Because independent unions are illegal in China, these grassroots unions will have to be affiliated to the ACFTU. However the key point for workers in China's factories is not so much that the union is independent of the government or the Party but that it is independent of management.
- **Develop an enterprise-based collective bargaining system.** As stated above, collective bargaining should be the core role of such democratically formed

enterprise-level unions. The union should negotiate and agree meaningful collective labour contracts with the management that safeguard, as far as possible, the economic interests, health and safety, and long-term security of the employees. Higher level unions can assist in the process by guiding enterprise union officials through the process but they should not attempt to control the process or impose terms and conditions that are not acceptable to the workforce.

- **Transfer the relief activities of local unions to local government.** The ACFTU's network of Help Centres for Workers in Difficulty, first established in major cities in 2002, are responsible for arranging job-placement and training for the unemployed; providing assistance to workers in financial difficulty, and helping with livelihood, medical and schooling expenses; arranging petitions and offering free legal advice and assistance to workers whose rights have been violated. While these are important functions, they should not necessarily be the responsibility of an already overburdened trade union. CLB recommends the responsibility for providing relief for workers in financial difficulty and arranging job-placements and retraining should be transferred to local government departments, freeing the union to concentrate more on its core duties and responsibilities.
- **Broaden the scope of the ACFTU's legal advice centres.** The one item in the above list of responsibilities that should be retained by the union, and indeed expanded, is its legal advice role. Rather than just providing free advice, CLB recommends the ACFTU offer free legal representation for workers in arbitration and civil litigation hearings. CLB has pioneered a model over the last six years, its [Labour Rights Litigation Project](#), in which workers who cannot afford legal and court fees, and who have a legitimate grievance, are provided with a free, high-quality and effective legal defence in court and/or determined representation in mediation or arbitration proceedings. Official figures show that once a labour dispute case is accepted by a court of law, the worker plaintiff has a much greater chance of winning than the employer defendant. In both 2005 and 2006, plaintiffs were nearly four times more likely to win labour dispute cases outright than defendants, according to the *China Labour Statistical Yearbook*.
- **Gradually abolish rural township and urban district unions.** These local unions have formed the lowest tier of the ACFTU's vertical hierarchy since early in the new decade. However they have done little to help protect workers' rights or facilitate the development of grassroots enterprise unions. Indeed they have often been an obstacle to union organising. CLB proposes that these local unions be gradually removed from the union hierarchy, allowing county-level unions with more resources and expertise to focus on the core business of union organising.
- **In their place create specialist union organising and collective bargaining training centres.** Especially in areas with a high concentration of enterprises, rural and urban district union offices could be transformed into county union-

administered specialist organising and collective bargaining training centres. In areas with large numbers of factories in one particular sector, e.g. electronics, textiles, shoe manufacturing, the county union could also set up sector-based unions (*hangye gonghui* 行业公会) to organise the workforce.

- **Establish rapid response teams to help workers resolve disputes.** The establishment of a collective bargaining system would lessen the need for local unions to intervene in labour disputes that have escalated into social conflict. However, there will always be public protests by workers. As such, the ACFTU should establish rapid response teams comprised of expert negotiators and mediators whose first responsibility would be to represent workers' interests, and not, as is now the case, try to restore social order. The latter is a natural by-product of dispute resolution – not the immediate goal in itself.
- **Restore the constitutional right to strike.** The right to strike was removed from the PRC Constitution in 1982, ten years before the advent of the “socialist market economy,” on the grounds that it was not necessary under China's socialist system. Since then the status of strikes in China has been a legal grey area – they are neither legal nor illegal. This has prevented the ACFTU (with its focus on “lawful” activities) from advocating strike action as a means of defending workers' rights and interests. The right to strike is a fundamental tool for both workers and trade unions that can be used, as a method of last resort, to force managements to the negotiating table. Strikes are already a daily occurrence in China, and restoring the right to strike would not in and of itself increase strike action – indeed if enterprise unions were allowed to engage in genuine collective bargaining with managements, the need to take strike action would actually decrease.

## **CLB's Research Reports**

China Labour Bulletin is committed to promoting workers' rights, as well as raising international awareness and understanding of labour issues in China. To this end, we have produced an extensive series of Chinese and English language research reports that provide an in-depth analysis of some of the key labour rights issues in China today, and offer a series of recommendations designed to resolve the most pressing problems.

### **English Language Reports**

#### **No Way Out: Worker Activism in China's State-Owned Enterprise Reforms**

A joint-report with Canada's Rights and Democracy that reveals how the lives of millions of workers were thrown into turmoil during the wholesale, shock therapy-style privatisation of China's state owned enterprises in the late 1990s and early 2000s.

Published September 2008

#### **Bone and Blood: The Price of Coal in China**

A report on the coal mining industry in China, which focuses on the industry's appalling safety record, the collusion between mine owners and local government officials, as well as the government's system of post-disaster management, which is systematically eroding the rights of the bereaved.

Published March 2008

#### **Speaking Out: The Workers' Movement in China, 2005-2006**

Following on from CLB's initial workers' movement report, this survey provides a comprehensive overview and analysis of the major events and developments in labour relations from 2005 to 2006. It discusses government labour policies, the response of China's workers to those policies and the role of the ACFTU.

Published December 2007

#### **Breaking the Impasse: Promoting Worker Involvement in the Collective Bargaining and Contracts Process**

An introduction to China's collective contract system that details the legal framework and practical implementation of the system so far, and advocates the use of collective bargaining as a means of promoting and protecting workers' rights, as well as improving relations between labour and management.

Published November 2007

#### **Small Hands: A Survey Report on Child Labour in China and the Failings of the Rural School System in China**

Child labour is a widespread, systemic and increasingly serious problem in China. This report explores both the demand for child labour in China and the supply of child labour stemming from serious failings in the rural school system.

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### **Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China**

Migrant women workers in Dongguan and other key cities of the Pearl River Delta have consistently been denied their fair share of the rewards of China's rapid economic growth over the past decade. In this survey, Chinese women workers tell us in their own words about their arduous experiences of trying to earn a decent living in China's boomtowns.

Published September 2006

### **Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers**

The main focus of this report is on the labour rights litigation work undertaken by CLB during 2004-05 to assist jewellery workers who had contracted chronic silicosis to win fair and appropriate compensation from their employers.

Published December 2005

### **The Liaoyang Workers' Struggle: Portrait of a Movement**

A report on the landmark protests that occurred during the privatisation of state-owned enterprises in the north-eastern city of Liaoyang in 2002, and the subsequent trial and imprisonment of workers' leaders Xiao Yunliang and Yao Fuxin.

Published July 2003

## **Short English Reports**

### **Public Interest Litigation in China: A New Force for Social Justice**

One of the first English language overviews of the newly emerging field of public interest litigation (PIL) in China, the study examines the social, economic and legal background to PIL's development, shows its relevance to labour rights in China, introduces a range of illustrative cases, and discusses the current obstacles to PIL and its prospects for the future.

Published October 2007

### **Help or Hindrance to Workers: China's Institutions of Public Redress**

A report on the numerous problems in China's labyrinthine and often bewildering labour arbitration and court system that confront workers seeking redress for violations of their rights, particularly work-related illness and injury, and suggests ways in which these issues can be resolved

Published April 2008

## Chinese Language Reports

### 中国工人运动观察报告(2007-2008)

The Workers Movement in China, 2007-2008

March 2009

### 谁来维权 为谁维权 --- 论全总维权的政治化及中国工会运动的出路

Who is the protector, and who the protected: A discussion of the politicisation of the ACFTU's rights protection activities, and the way forward for China's trade unions.

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### 终结“法外运行”的雇佣关系 —— 论《劳动合同法》对工会角色的定位

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