

Closing Governance Gaps: How best to improve workers' rights in China

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I. Introduction – Ruggie framework as welcomed in the Chinese context; emerging workers movement

China today has now experienced more than three decades of "reform and opening" – the groundbreaking initiative that led China out of political isolation and back into the world community and, among many other things, has helped lift an estimated 400 million of people out of poverty. In November 2011, China marked its 10th anniversary of its accession to the WTO. The ensuing economic reform has allowed China to become a major player on the world stage in many aspects. China now has over \$3 trillion US dollars in foreign exchange reserves, has the world's second largest economy, and has become the world's largest exporting country. China has also become the world's largest consumer in many other key areas, from raw materials like pork, soybeans, iron ore, and copper to advanced products like automobiles and mobile phones. Surprisingly, given its status as a developing economy, China is even expected to become the world's largest market for luxury goods within just four years¹.

But despite impressive macro-economic progress and newfound wealth for some, workers throughout China are still routinely required to work illegally long hours, and employers frequently withhold wages and fail to provide mandatory labour contracts or social security benefits, and many workplaces are fundamentally unsafe or hazardous to workers' health. China's estimated 180 million migrant workers and their families continue to face widespread social and institutional discrimination. In short, the scale and depth of workers' rights violations across the country continues to be huge. Faced with the enormity of this challenge, it is often assumed by outside observers – and by many Chinese – that since China is not a democracy and independent trade unions are banned there, little can be done to advance labour rights standards for most Chinese workers, and especially for the migrant workers who have largely powered the country's economic miracle over the past decade and more.

This pessimism, although not without merits, misses a larger and equally important piece of the narrative: workers' themselves have become the primary agents of change, and indeed, a workers movement is starting to develop. This paper will argue that at the "first pillar level" of the Protect, Respect and Remedy Framework, the Chinese government, largely spurred on by workers' demands, has been doing a relatively good job in closing its "governance gaps", by promulgating labour laws that protect workers' interests, by

¹ McKinsey & Company. "Understanding China's Growing Love for Luxury", March 2011.
http://www.mckinsey.com/locations/greaterchina/InsightsChina_LuxuryGoods.pdf

addressing the wealth gap, and providing for decent labour grievance mechanisms. Workers, too, are making use of China's existing labour grievance mechanisms, and are creating their own modes of redress when the current system is deemed to be inadequate at meeting their needs. Workers often engage in extra-legal strikes and protests in an attempt to protect their interests and to seek dialogue with their employer or the government. Given this context, governments and companies seeking to carry on with the progress made in the "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework should be advised to build on the evolving dynamics of China's nascent workers movement.

II. The First Pillar: the government's duty to protect citizens from corporate harm

China's government, especially the central government, often plays a beneficial role in promoting policies, regulations, and laws that are intended to improve the situation for workers. It is important to note, however, that government's determination to address the sources of injustice is not necessarily rooted in the government's benevolent nature, but rather, it knows that it must address the staggeringly large wealth gap, reduce social instability, if it is to ensure its own survival. Indeed, reducing "social instability" is perhaps the government's most important and overriding objective. While it is impossible to know exactly how many protests, strikes, and riots occur in China each year, since the country stopped publishing statistics on what it deems to be "mass incidents" in 2005, a credible estimate by prominent academic Yu Jianrong of the Chinese Academy of Social Sciences put the number of "mass incidents" in 2009 to be roughly 90,000, of which an estimated one third are labour-related. To quell this unrest, China now spends over 500 billion yuan (€57 billion) on "stability maintenance", which is more than it spends on its military. But the government knows that it cannot rely on security measures and force alone to maintain power. It has thus tried to create a better legal framework to enhance workers' rights, while also attempting to give workers a larger piece of the economic pie.

Recent Legal Developments

Three labour laws, which went into effect in 2008, have played a largely beneficial role in improving workers' rights. The Labour Contract Law, which went into effect in January 2008, has helped protect workers and has encouraged or compelled more employers to provide them with proper labour contracts and social security insurance. Also, the Labour Dispute Mediation and Arbitration Law, which went into effect in May 2008, for the first time made labour-dispute arbitration commission rulings legally binding in a wide range of routine cases, such as those involving unpaid overtime hours or wages in arrears. It also abolished the arbitration application fee and extended the time limit for filing an arbitration case from 60 days to one year. And a third new law, the Employment Promotion Law, which also came into force in January 2008, for the first time contains a specific ban on various widespread forms of employment discrimination. All of these laws, to a significant extent, represented concessions by the government in the face of growing pressure and demands for change from the country's workforce, and were basically aimed at defusing worker unrest before it spirals out of control.

Most recently, the government introduced another significant law the Social Insurance Law, which went into effect on July 1st, 2011. This law has attempted to re-structure and nationalize the diverse array of social insurance schemes and policies that have been in place throughout many cities and provinces. The law should also help ensure that all workers at enterprise in China enjoy the basic "social safety net" items. Employers are obligated to make contributions towards each employee's pension insurance, medical

insurance, unemployment insurance, work-related injury insurance, and maternity insurance, while employees are only expected to make contributions towards pensions, and medical and unemployment insurance. Significantly, the law also allows for workers to transfer their accounts from one location to another. It is too early to know to what extent this law will actually be enforced, since local governments have been given leeway to adapt the law to their locality's particular circumstance. In the long run, if successful, it could protect many rights. If it does help provide for a social "safety net", then workers may also feel more confident in spending their hard-earned money, rather than saving it in case of a medical emergency. On the other hand, since many employers currently fail to pay for social insurance, the implementation of this law could become a greater source of labour conflict in the future.

Not all of these laws, defending workers rights, were wholeheartedly supported by companies and associations from Germany and Europe. The EU Chamber of Commerce in China for instance was reported to have warned that the new Labour Contract Law was "overregulating", asking for "more flexibility". They were said to fear that production costs might rise and foreign companies might be forced to rethink their planned new investments in China.²

Boosting Workers Wages

Another key part of the central government's strategy of reorienting economic development has been to boost workers' wages as a means of stimulating domestic consumption and reducing income disparity. On 1 June 2010, Vice Premier Li Keqiang wrote in an article for the Party's theoretical journal *Seeking Truth (Qiu Shi)*,³ that the key to expanding domestic demand was "raising the people's capacity to consume," and that this required "restructuring of the distribution of income, raising of income levels, particularly of those on lower incomes, and working hard to increase rural and urban income levels so that wage rises and economic growth are better coordinated."

At the time of Li's article, many regional governments had already taken the initiative to raise their minimum wage, which had been frozen on central government orders since November 2008. The first local government to raise the minimum wage was the relatively developed and prosperous province of Jiangsu, which announced a 12 percent increase in February 2010. By the end of 2010, just about every province and municipality in China had increased its monthly minimum wage by an average of 23 percent. Several jurisdictions increased the minimum wage once again in 2011, signaling a move towards annual adjustments rather than increases every two years as had been the practice before. Beijing's municipal government actually increased the city's monthly minimum wage twice within the space of six months to reach 1,160 yuan (€ 134) on 1 January 2011 – at the time the highest rate in the country. Guangdong then increased its minimum wage on 1 March, with the monthly rate in the provincial capital Guangzhou rising to 1,300 yuan (€ 150), and Shenzhen increased its rate to 1,320 yuan (€ 152) a month later. It should be noted, however, that the minimum wage is far from a "living wage". In most cases the minimum wage simply serves as a base wage, and workers feel compelled to do tremendous amounts of overtime – often surpassing the legal limit of 36 overtime hours per month – in order to make an acceptable wage.

² Informationsbrief Weltwirtschaft & Entwicklung, 01/January 2008

³ Li Keqiang (• • •), (Some issues regarding the readjustment of the economic structure and promoting sustainable development) *Seeking Truth*, No.11 (2010).

Finally, the central government sought to further boost wages and improve living standards by introducing policies to expand employment, improve the social security system and reform the income distribution system. This latter goal was to be achieved through the creation of a system of collective wage consultations at both the industry and enterprise level. The government has proposed that by the end of 2012, collective contract systems should be introduced at all enterprises that had already established unions. In the case of small enterprises without trade unions, it proposed raising the rate of coverage through the signing of regional and industry-wide collective contracts. Two months later, the State Council examined draft wage regulations which once again emphasized the use of collective wage consultations in boosting wages.⁴

As we can see from this brief summary of China's legal and policy developments with respect to labour rights, to a large extent, China's government, despite many imperfections and serious problems with implementation, is working to close, what might be termed by John Ruggie, a series of "governance gaps" that occurred with the rapid introduction of the market economy and globalization in the 1980's and 1990's, which created governance problems and legal gaps faster than the government was able to address them.

Implementation of these labour laws is often spotty or superficial. At the local level, where implementation occurs, enterprise-level unions are usually controlled by management, labour departments do not have enough resources and personnel, local officials are primarily concerned with GDP growth, and factory bosses operate in a culture that does not value safety or labour rights. This is why the government, companies, and Chinese civil society all need to team up to reverse these trends.

III. The third pillar "access to remedies": China's grievance mechanisms

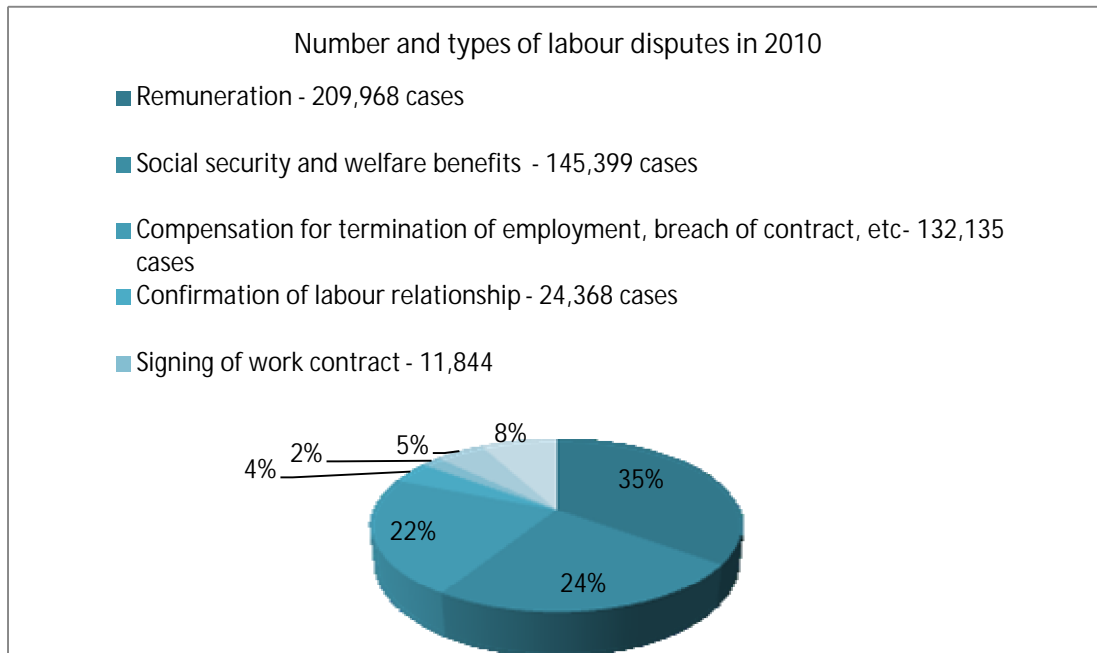
The Chinese government does not publish yearly figures on the number of labour dispute lawsuits, but it does publish figures related to the number of cases entering labour dispute mediation and arbitration institutions. The official statistics on labour disputes handled by China's arbitration and mediation institutions in 2010⁵ demonstrate two key points. First, violations of basic labour rights are still widespread and commonplace. Second, government officials are seeking to resolve more and more cases through less formal mediation channels which can speed up the process but do not necessarily guarantee that workers will get all they are entitled to. Nonetheless, the number of cases entering labour dispute arbitration committees (LDACs) institutions has gone up dramatically in recent years. In 1996, China's labour dispute arbitration committees (LDACs) handled 47,951 cases. By 2007, that number had increased seven-fold to 350,182. And in 2008, after the passage of the Labour Contract Law and the Labour Dispute Mediation and Arbitration Law, the number of labour dispute cases almost doubled again to reach 693,000. Thus, in the big picture, there has been a dramatic rise in the number of workers who have used this grievance mechanism in recent years. In some respects, this is indicative of a greater legal consciousness and rights awareness among workers these days and the fact that LDACs and the courts serve as a safety valve that decreases social tension.

⁴ Zhao Peng (• • •),
• • • (*People.com.cn*), 28 July 2010.

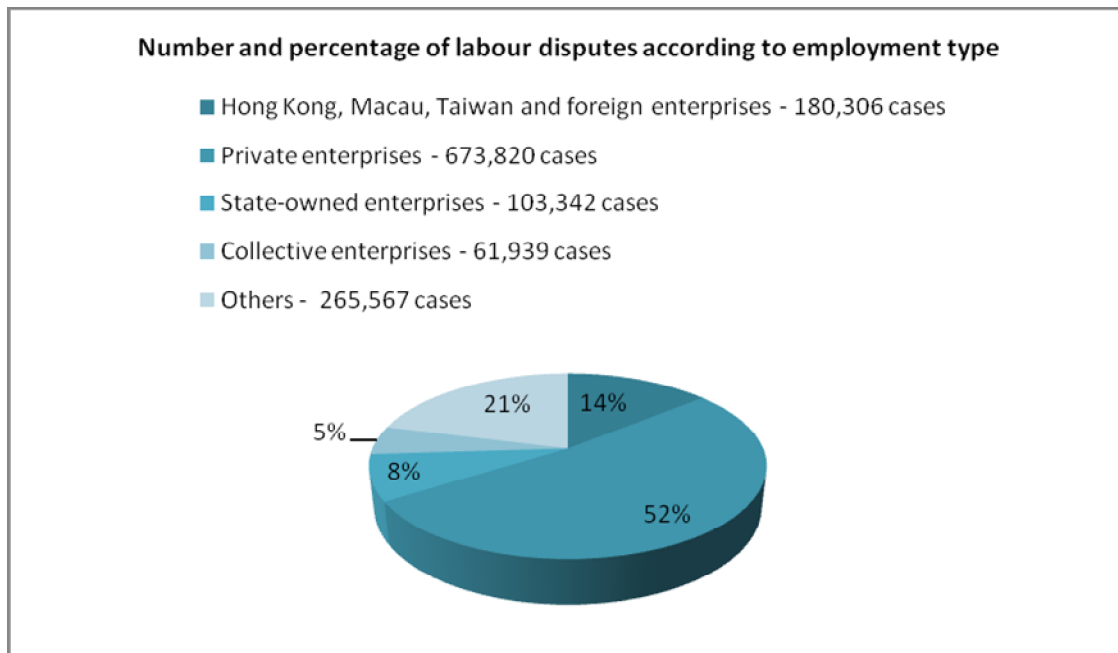
(Draft Wage Regulations Submitted to State Council),

⁵ Taken from: 2010 www.labournet.com.cn (A statistical analysis of the handling of labour disputes in 2010), available at www.labournet.com.cn

China's labour dispute mediation and arbitration institutions took on 1,287,400 cases in 2010, an increase of 3.85 percent from the previous year. A total of 1,264,100 cases were concluded in 2010, among them, 879,200 or 69.55 percent being resolved through mediation. Arbitration organizations registered 602,600 cases, a drop of 12.27 percent from 2009. Mediation organizations (including those within arbitration committees) took on 684,800 cases, an increase of 23.89 percent from the previous year, achieving a resolution rate of 91.75 percent.



An examination of the types of dispute shows that payment of wages, social security benefits and compensation are still by far the most common causes of labour disputes, accounting for 81.13 percent of all cases registered, basically on a par with the figures for 2009. One of the most common problems remains employers cheating employees out of overtime payments, underpaying social security contributions, and annulling work contracts without proper compensation.



The majority of disputes (52.44 percent) occurred in private enterprises, with an additional 14.03 percent in Hong Kong, Macau, Taiwan and foreign-funded enterprises, combining for two thirds of all cases. The number of disputes in state-owned and collective enterprises reached 12.86 percent. As we can see from the analysis above, workers are often denied their wages, social security and other benefits, and many of these problems still occur at Hong Kong, Taiwan, or other foreign enterprises, or in the private sector, which often produces for the supply chain. The fact that so many disputes occur in Hong Kong, Taiwan, and foreign enterprises and the private sector is possibly also attributable to the fact that the private sector generally desires young migrant workers – precisely the demographic that has a higher legal rights awareness compared to older migrant workers or older State Owned Enterprise workers.

Which rights grievances mechanisms do workers prefer?

In order to ascertain more about which labour rights grievances migrant workers would choose to use if they had a labour dispute, a small-scale survey of 40 workers in the supply chain was undertaken in a northern Chinese city.

When asked, “if you had a labour grievance, which method would you use in resolving your dispute?” The results were as follows (it should be noted that many respondents gave multiple answers):

- A) I would report the dispute to the labour department: 24 respondents (60%)
- B) I would go to the LDAC or the courts: 10 respondents (25%)
- C) I would go to a labour rights group to ask for help: 18 people (45%)
- D) I would report the offense to my company’s supplier: 2 people (5%)
- E) I would ask the union for help: 5 respondents (13%)
- F) Other: 4 respondents (10%)

When asked, “what are the biggest problem at your factory?” The results were (again, multiple answers were given by some respondents):

- A) The working conditions are not safe: 16 respondents (40%)
- B) Wage problems: 20 respondents (50%)
- C) Too much overtime: 8 respondents (20%)
- D) The canteen food is bad/the dormitory conditions are bad: 12 respondents (30%)
- E) We do not get social insurance: 9 respondents (23%)
- F) Other: 1 respondent ("personal relations are tense") (3%)

When asked whether they knew who their buyers were, 68 percent did know, while 32 percent did not. Asked whether the buyers should have a responsibility to improve factory conditions, 74 percent of respondents answered "yes", 13 percent answered "no", and 13 percent either "don't know" or were "unclear". When asked what, specifically, buyers could do to improve factory conditions, many workers seemed to strike a more pessimistic note. Many responses were along the lines of, "brands fundamentally have no role to play", "they can't do anything for workers", or "they can't do anything on behalf of workers". Many workers also did not have any suggestions, or were unclear about the question. However, many workers, 55 percent, had some sort of positive suggestion of what should be improved. The most common response was something like, as one respondent put it, "1) enhance and improve workplace safety conditions 2) improve wages and benefits; 3) ensure that we are working proper hours and in conditions that conform with China's laws".

This survey, of course, cannot represent the situation for workers nationwide, and thus, one should be careful to draw too many conclusions. Nonetheless, it seems that many workers would resolve their difference by going to the labour department, the LDAC/court, or a workers rights center. In contrast, few workers would resolve their difference through the ACFTU or brand mechanisms. Nonetheless, most workers felt that their factory's buyers had a responsibility in improving factory conditions, and many workers had specific suggestions about what they would like to be improved. Brands, perhaps, could read this survey as a welcome sign for further and deeper engagement with workers.

China's nascent workers movement

The workers' movement in China has been galvanized and invigorated over the last three years by a new generation of migrant workers. They are demanding better pay and working conditions, and are refusing to tolerate the exploitation and discrimination their parents had to endure. These young activists have not only won noticeable concessions from their employers, they have also forced the government and trade unions to reassess their labour and social policies. Perhaps most emblematic of this workers movement was the dramatic strike that took place at the Nanhai Honda factory on 31 May, 2010. It set a new benchmark for labour activism in China. Not only did the workers refuse to back down when beaten by nearly 200 union officials; they demanded and got an apology from the trade union. They demanded and got (to a certain extent) the right to elect their own union representatives at the factory. And they demanded and got a pay rise of around 35 percent. The successful outcome helped set off a wave of strikes in the automotive and other industries across China. However the movement remains fragmented and unstable because these young workers are denied the opportunity to put the experience and knowledge gained from organizing strikes and negotiating settlements with management to long-term use. This is because many worker leaders are forced out of their companies, and workers strikes – even if they achieve positive wage increases – are not successful in their attempts to reform enterprise-level unions. Thus, the sustainability of the gains are minimized. Nonetheless, we can witness a few major trends about the nascent workers movement:

- A new generation of migrant workers has emerged as one of the key forces in China's workers' movement. Those born in the 1980s and 90s are generally better educated and more articulate than their parents, have higher expectations and more opportunities to pursue their own goals and ambitions. They also feel more pressure to succeed and the intense frustration of trying to establish a life in the city while still being classified and looked down upon as a rural resident. Employed primarily in modern manufacturing enterprises, they have now become the core of China's new working class.⁶
- The ability of workers to organize is improving. The growing sense of collective identity among factory workers, combined with the use of mobile phones and social networking tools, has made it easier for workers to initiate, organize and sustain protests. Workers have been further assisted in their endeavours by labour rights groups, labour lawyers, academics who have offered their support and expertise and by journalists and "netizens" who can disseminate information about strikes and protests across the whole of China, garnering public support and spurring other workers into action.
- Protests erupt across specific regions and industries. The shared interests and common experiences of workers has stimulated and facilitated the rapid spread of worker protests within one region or industrial sector. Most obvious were the strikes in the automotive sector in Guangdong and within the foreign-owned manufacturers in Dalian in 2010, but there were also widespread strikes by bus drivers and workers in the sanitation industry. These widespread protests put an additional strain on local governments seeking to maintain social stability. They also exposed the limits of traditional social control methods.
- Workers are seizing the initiative. Whereas in the past, workers tended to wait for their rights to be violated before taking action, they are now becoming far more proactive. Workers have shown that in many cases they are not content to wait for the government to improve their lot through new legislation, new policies or increases in the minimum wage. Rather, they are taking matters into their own hands and initiating strikes for higher pay, better working conditions and, fundamentally, more respect. Many demands for higher pay have stemmed from sheer economic necessity but others from a sense of being denied their fair share of the company's profits.
- Worker protests are becoming more successful. Recent protests have secured substantial pay increases and improvements in working conditions. They have forced managements to abandon unpopular and exploitative work practices. They have even forced the authorities to halt the take-over and privatization of State Owned Enterprises. Crucially, these protests have forced some employers to change their attitude towards their employees. While in the past employers would simply dictate terms and conditions to their employees, last few years' strikes and protests have forced them to the negotiating table. And in that process, they have started to reduce the huge gap in social and economic status between workers and management.⁷ Of course, not all protests have been successful; some achieved limited success, while

⁶ Shan Guangding (• • •), "[Labour tensions increase in China](#)", • • • (*Outlook Weekly*), Vol. 25 (2010), pp. 27-28.

⁷ For example, negotiations between workers and the management at Denso Nansha, a Japanese supplier to Toyota, in Guangzhou showed that, whereas in the past the employer always had the final say, relations were now on more of an equal footing. Several workers claimed that the old "strict hierarchy mentality" of the Japanese management had improved. See Xiao Sisi (• • •), "[Guangzhou's Denso Nansha increases wages by 800 yuan to resolve strike](#)", • • • (*Xinhuanet.com*), taken from • • • (*Sina.com*), 27 June 2010.

sometimes managements refused to make any concessions. And even after successful strikes, it is not unusual for strike leaders to be sacked.

- Protests have initiated basic collective bargaining. In the short-term, the post-strike negotiations described above have generally benefited workers but if the system is allowed to develop and become more institutionalised in the long-term, there could be additional benefits for employers and the government as well. By instituting a formal system of negotiations, the need to strike may be obviated, thereby potentially saving the company millions of yuan in lost production. Moreover, because collective bargaining will always result in a wage agreement higher than the minimum wage, this will help raise wage levels throughout a specific industry and more effectively meet the central government's policy goals of boosting domestic consumption.

While these trends are encouraging, it is crucial not to lose sight of the overall context. China's workers still have very limited economic resources and lack basic civil rights such as the right to freedom of association and freedom of speech. Most protests are a reaction to repression, injustice and exploitation, and are usually spontaneous and short-lived. Any workers' organization that develops during the protest is usually disbanded after their grievances have been addressed. Some strike leaders get sacked, some leave of their own accord, while those that stay tend to keep a lower profile for fear of being branded a trouble-maker.

IV. Analysis of the "Guiding Principles" in relation to the working conditions in the supply chain

Do the "Guiding Principles" under the "Access to Remedy"-pillar cover the most burning issues?

(see A/HRC/17/31 of 21 March 2011, principles 25 – 31, pp 22 – 27)

Generally speaking, the "Access to Remedy" section of the March 2011 "Guiding Principles" report to the Human Rights Council does indeed comprehensively cover most of the important issues. The Foundational Principle, which states that, "...States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy" is particularly relevant. Indeed, one of China Labour Bulletin's major aims is to help the State fulfill its role, by producing insightful analysis of deficiencies in the State's laws, regulations, implementing agencies, and grievance mechanisms, and then subsequently making detailed and constructive policy recommendations⁸.

Given that the CLB generally agree with the suggestions raised in the "Guiding Principles", perhaps the most pertinent issue that could be developed further is how to create an "operational-level grievance mechanism" in the complicated Chinese context. The "Guiding Principles" rightly points out two main functions of such an operational-level grievance mechanism, namely, that the mechanism help identify rights abuse or legitimate concern and provide a feedback channel for those impacted by such abuses. And second, this mechanism must have the capacity to address the rights abuse or workplace problem.

⁸ China Labour Bulletin has 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 today, and offer a series of recommendation designed to resolve the most pressing problems. For more, please see:

<http://www.clb.org.hk/en/node/100013>

One way to do this could be for responsible companies and multi-stakeholder initiatives (MSIs) to work in collaboration with rights-based, grassroots civil society as part of their due diligence and CSR initiatives in their areas of operation. For example, imagine that you run a company in which you source a lot of products from the supply chain in Guangdong province. You could talk with a local NGO or labour scholar to identify respected civil society groups (such as migrant worker organizations, lawyers, and university-based legal aid programs) that help give legal advice to workers in the supply chain and take labour cases on a pro bono basis. Once identified, companies or MSIs could fund these organizations, and these groups could subsequently help manage calls from the company's code of conduct hotline, while also handling other labour disputes. If a worker at a supplier factory has a grievance, he or she could contact the civil society organization to get legal advice, and, if need be, free legal aid in taking their case to court in order to receive remedies in accordance with the law. The advantage of this approach is two-fold:

- First, it helps give mechanism such as hotlines (non-State-based, non-judicial hotlines) more legitimacy. Currently, many workers (who are frequently coached to lie during 3rd party audits) simply do not believe that companies would be willing to help them. By partnering with a local group or institution that is respected and who understands the local context, workers may feel confident in using the mechanism. Moreover, workers would know that, if need be, their case could be adopted in the courts. Thus, workers would know that they could receive real compensation.
- Second, companies and multi-stakeholder initiatives could feel confident that they are helping to support agents for change that are helping to give workers real redress while also building a rule-of-law culture in China. As labour rights improve, as workers' legal awareness increases, and as the rule-of-law takes hold in China, the overall risk to companies also decreases.

Of course, some may doubt whether such action is possible in "authoritarian" China. Indeed, there are always some political risks. Nonetheless, generally speaking, CLB has noticed a gradual "de-politicization" of labour rights in the past five years or more. These days, labour rights groups are generally given a greater space in which they can operate. Also, several universities have legal aid programs, many of which are capable of giving advice and taking on cases too. For the past nine years, CLB has run a public interest and legal assistance program, and we have been successful in winning in the majority of cases, especially routine cases. This experience has shown us that not only is a legal assistance program possible, but, assuming the cases are adopted in a non-political way, it is often welcomed by local governments⁹.

The second major recommendation that CLB would make is for progressive companies and MSIs is to work constructively with workplaces that have experienced collective actions. As noted above, an embryonic form of collective bargaining is emerging in many Chinese factories, with workers striking or protesting in order to rectify their workplace concerns. Responsible companies could help play a positive role in ensuring that internationally recognized labour rights standards are adhered to by doing the following actions:

⁹ Of course, such a program would need to be thoughtfully designed so that labour groups could maintain independence from brands. One possible solution would be to work with labour groups that already have a diversity of funders.

1. ensuring that none of the workers' representatives and leaders are fired by their supplier;
2. intervening in negotiations in order and making sure that supplier factories listen to workers' demands;
3. working with supplier to help cover costs related to workers demands. Suppliers should not be responsible for taking all of the financial losses that might accompany an improvement in wages or installation of better occupational health and safety equipment;
4. companies can play a crucial role in ensuring that fair and free elections at the enterprise union level are undertaken, and that communication continues between workers and factory management;
5. ensure that there is "horizontal coherence" within the company. Thus, a positive deal brokered by the company, the supplier and the workers should not be ruined by a subsequent decline in orders. Purchasing departments in a company should not undermine the codes of conduct and social compliance efforts taken by others;
6. companies should have a management system in place where buyers are not only rewarded within their own company if they go for the cheapest offer, but also for choosing a supplier that observes labour rights standards.

Overall, ensuring that workers have a say in their own workplace affairs may not only be good policy, it may be necessary for being profitable. Since China is undergoing a demographic shift, with the supply of young workers declining significantly, many manufacturing areas could face a perpetual labour shortage. A satisfied and experienced workforce in the supply chain may become much more important than in the past. Some people contend that as labour costs in China go up, production will inevitably move to Vietnam, India, Bangladesh and other developing countries. While this will certainly be the case to some extent, others note that China will continue to be a leader in infrastructure, public order, workplace efficiency. As one economist for Credit Suisse recently put it, "there is no developing country that can match half the efficiency that China offers"¹⁰.

Advise for the Chinese government

As China becomes a bigger player on the world stage, it is investing in other countries on a large scale, bringing great economic benefits to other developing countries. However, the behavior of its companies are, unfortunately, often engaging in severe abuses of workers rights, and thereby tarnishing China's image. Recently Human Rights Watch published a thorough report about China's mining companies operating in Zambia, and the report notes that these companies "... routinely flout labor laws and regulations designed to protect workers' safety and the right to organize"¹¹. A recent survey by the Chinese Academy of Social Sciences found that CSR is still in its "infancy" in China and that over 70 percent of companies had a "bystander" or reactive attitude towards CSR¹².

Although the picture may seem bleak, an optimist might see the glass as half full: the Chinese government wants to increase its "soft power" and the country hopes to create many internationally competitive companies. What better opportunity could there be than to make sure that workers at Chinese companies enjoyed a full array of human rights, and

¹⁰ Jacob, Rahul. "Chinese look overseas for cheap labor". Financial Times, 11 November, 2011. <http://www.ftchinese.com/story/001041671/en?page=1>

¹¹ Human Rights Watch. "Zambia: Workers detail Abuse in Chinese-Owned Mines", 3 November, 2011. <http://www.hrw.org/news/2011/11/03/zambia-workers-detail-abuse-chinese-owned-mines>

¹² *Beijing Morning Post*. "Qiye Shehui Zeren Zhishu Zongti Biandi" 4 November 2011. <http://www.morningpost.com.cn/yaowen/2010-11-04/80413.shtml>

to make “working in a Chinese company” seem like a great privilege, rather than a dangerous proposition.

To this end, the “Guiding Principles” Working Group should consider making engagement with China a top priority. The Chinese government and Chinese companies, in recognition of their own strategic interests to bolster “soft power” and create a more favorable image, should foster a shift in the current corporate culture towards a more inclusive and open attitude that recognizes the importance of workers rights and the value of workers in society.

How the EU and the German government could strengthen the third pillar

The EU and the German government could first and foremost help strengthen the voices and actors within China that are helping to shrink the “governance gaps” and decrease the potential for businesses to cause human rights harm. Local actors, who are familiar with the complicated social, legal, and political contexts, are in the best position to have the greatest impact and help rights holders seek redress.

However, sometimes workers with grievances in China are denied access to justice for various reasons. Common problems might include: workers cannot prove their labour relations because they were not given a contract; the system of redress, especially for occupational illnesses, involves many procedures, is extremely time consuming, and is too complicated; or local governments may view a case as being “sensitive”, especially if it involves numerous people or involves any major investors in the local area. In such instances, local governments may influence a court’s decision.

Buyers of products “made in China” that come from other countries, including Germany and the EU, should have legislation and/ mechanisms in place to provide for grievance mechanisms in the home country of the company concerned in case that company has a negative impact on workers rights in China. For example, there have been incidents of large-scale poisoning of workers by chemicals that were used in the supply chain of major electronics manufactures. If serious illness or death were to result in such a case, workers may be denied their lawful compensation due to the deficiencies in China’s grievance mechanisms, or they may be denied justice due to political interference, or they may be denied justice because the mother company can avoid to take any responsibility and be held accountable. In other sectors, such as in the extractive industry, or in other developing countries with even weaker legal systems, the potential importance of such legislation and mechanisms available in home countries could be even greater. Home state countries also have a duty to ensure that companies from their state are not engaged in conducting human rights harms abroad and therefore have a duty to protect as well.