

Labor Rights in China: The Role of Private Labor Rights Initiatives

By

Auret van Heerden and John Salem Shubash, II

Auret van Heerden
Executive Director
Fair Labor Association
Heerden@fairlabor.org

John Salem Shubash, II
Special Projects Officer
Fair Labor Association
Shubash@fairlabor.org

Labor Rights in China: The Role of Private Labor Rights Initiatives

In the contemporary global marketplace, competition to produce goods quickly and inexpensively often leads to morally unacceptable conditions of work, where labor relations systems and labor rights have been sacrificed in the name of economic efficiency. A number of scholars have made similar observations. Sabel, *et al* argue, “It is a brute fact of contemporary globalization-unmistakable as activists and journalists catalog scandal after scandal-that the very transformations making possible higher quality, cheaper products often lead to unacceptable conditions of work” (Sabel, *et al*, 2000). In light of such troubling observations, the role of private labor rights initiatives, such as the Fair Labor Association (FLA), become crucial.

This paper is divided into six sections. First, we briefly outline why labor relations systems are breaking down, and why this is morally and economically troubling. Second, we discuss a number of theoretical strategies for coping with the current regulatory vacuum. Next, we argue that the FLA, along with other private initiatives, plays an important role in improving international labor rights and we briefly outline how the FLA complements public regulatory regimes. We then offer a brief discussion of labor rights in China, and argue that the relocation of global supply-chains to China has outpaced the government’s ability to enforce labor rights, making industry self-regulation vital. Finally, we present a case study that demonstrates the effectiveness and potential of private initiatives in improving labor rights and in strengthening labor relations systems in China. We conclude that the FLA has gained a high level of access to factories and workers in China, and is uniquely placed to affect human and labor rights there.

The Breakdown of Labor Relations Systems

The global economy has witnessed the development of global supply-chains that have outstripped existing labor market regulations and enforcement mechanisms. Katherine V. Stone, a professor of industrial relations at Cornell University argues, “existing regulatory approaches are inadequate to ensure that the global marketplace will offer adequate labor standards to its global workforce” (Stone, 1999). Additionally, competition to reduce costs and the possibility of capital relocation has resulted in the breakdown of traditional labor relations systems, where labor and business leaders negotiate collective agreements. The International Confederation of Free Trade Unions further articulated this finding,

arguing, “Governments, made increasingly desperate to increase their countries’ exports and attract foreign investment after the Asian crisis, are finding themselves in a buyers’ market dominated by companies who can name their price. And that price all too often includes cheap labour, low standards and no trade unions” (ICFTU, 1999). This process has weakened the enforcement of labor laws and has allowed labor relations systems to breakdown. This has resulted in more persistent labor rights violations and more acute labor conflicts around the globe.

The fact that labor relations systems are breaking down and labor rights violations continue is troubling for both moral and economic reasons. Morally unacceptable working conditions, such as child labor, forced labor, discrimination, overly excessive working hours and the payment of starvation wages are far too common in global supply chains. The excessive exploitation of vulnerable members of society, such as children, women and the poor, for financial gain must be corrected for a morally acceptable global economy to be created.

A number of recent studies have outlined the positive correlation between high labor standards, and specifically coordinated labor markets, and macroeconomic performance. A recent World Bank report entitled Unions and Collective Bargaining: Economic Effects in a Global Environment found that countries with highly-coordinated collective bargaining tended to be associated with lower levels of unemployment, lower earnings inequality, fewer strikes and generally better levels of macroeconomic performance (Aidt and Tzannotos, 2003:12). Similarly, a recent OECD study attempted to analyze the effects of labor standards on macroeconomic performance by comparing the economic indicators of countries that undertook major labor market reforms before and after the reform. The report, which studied the effects of labor market reforms on macroeconomic performance in 17 countries, found that on average, GDP grew at 3.8 percent per year before the improvement in labor standards and grew 4.3 percent afterwards. The OECD further argues, “Countries which strengthen their core labor standards can increase economic growth and efficiency by creating an environment which encourages innovation and higher productivity” (OECD, 2000). Maryke Dessing summarized the economic argument for labor standards, stating, “Labour standards in general can become the source of competitiveness and economic dynamism as they transform the production process. Labour standards aim at correcting market failures, internalizing social externalities associated with firms’ activities, and thus improve factor allocation consistent with the general good” (2001:3). Given the moral and economic arguments in favor of labor standards, many actors stand to benefit from their implementation.

Strategies to Improve Labor Standards

A number of strategies for improving labor standards internationally have been proposed. The strategies outlined in this paper are divided into two categories: 1) regulatory approaches; and 2) cosmopolitan approaches, which employ both public and private initiatives to improve labor rights.

Regulatory approaches attempt to find methods to improve the enforcement of core labor standards internationally. One such approach involves linking labor rights to trade negotiations. Proponents of this approach argue that the US-Jordan Free Trade Agreement, which has labor and environmental rights clauses and enforcement via a dispute settlement mechanism, should be a model for future trade negotiations (Ruebner, 2001). Similarly, others argue that labor rights should be included in the World Trade Organization (WTO). They argue that the WTO’s Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets a precedent for including legal frameworks for protecting rights in the WTO, and thus could easily be applied to labor rights (Wells, 2001). They argue that the dispute settlement mechanism of the WTO, and the possibility of applying trade sanctions on noncompliant countries, would be a distinct advantage of using the WTO framework.

Others argue that an enhanced international regulatory regime using the International Labor Organization (ILO) is the best method for improving labor standards. They say that the ILO system of ‘sunshine’ (openness and transparency), ‘carrots’ (assistance and rewards for labor rights compliance), and ‘sticks’ (penalties for labor rights violations) forms the basis of an effective labor rights regulatory regime (Wells, 2001). The proponents of this view argue that the actions taken by member states to punish Burma for the use of forced labor shows the potential effectiveness of the ILO. Many critics, however, argue that the ILO is incapable of enforcing labor standards internationally, and that their ‘punishment’ is often limited to bad publicity. They argue that much more needs to be done to ensure labor standards are upheld. As outlined previously, the inability of regulatory regimes to keep pace with global economic change suggests that some other approach must be employed to complement the role of the ILO and other regulatory regimes.

Many intellectuals make the opposite argument, stating that labor standards in trade agreements are advocated by protectionist groups and by misguided NGOs, and that labor standards harm developing country workers (Bhagwati, et al, 1999). However, if a truly global approach is taken that improves labor rights across the globe, the negative competition that fuels labor rights violations can be altered, and more positive competition can be initiated to attract investment. Examples of positive competition for attracting foreign direct investment would include developing a skilled workforce, a strong infrastructure and more effective government institutions. Positive competition quickly breaks down with the absence of a globally coordinated strategy, however.

In an attempt to create such a global strategy, some argue that ‘cosmopolitan’ approaches must be taken to address labor rights violations internationally. A ‘cosmopolitan’ approach involves coordinating global responses to international problems and executing them locally, in coordination with local bodies. David Held articulates this strategy by arguing that two interrelated sets of transformations must take place to improve labor rights internationally. First, companies must adopt socially responsible rules, while public institutions at local, national, regional and global levels must enhance their regulatory regimes (Held, 2002). A similar sentiment is echoed by Amartya Sen, a *Nobel laureate in economics* and a leading development philosopher, who argues, “In dealing with conditions of working lives, as well as the interests and rights of workers in general, there is a similar necessity to go beyond the narrow limits of international relations: not just beyond the national boundaries but even beyond international relations into global connections” (Sen, 1999). This promising approach, which depends on building ‘global connections’ and worldwide coalitions, reinforces the need for ‘private’ labor rights initiatives to articulate and advocate the rights of workers on an international scale.

The Role of Private Labor Rights Initiatives and the FLA

Non-regulatory, or ‘private’ approaches promote corporate social responsibility by allowing companies to adopt a code of conduct and promote adherence to that code. Critics argue that voluntary approaches are simply public-relations activities for the corporations, which do not change their behavior as a result of voluntary codes of conduct. All voluntary approaches are not the same, however.

Some voluntary approaches, such as the UN Global Compact, have been referred to as ‘learning networks’, where companies can exchange ideas about corporate social responsibility and exchange ideas and ‘best practices’. Although these networks have no inspection regimes and do not require the remediation of labor rights violations among their members, the open exchange of ideas has a number of potential benefits (Ruggie, 2002). Other voluntary mechanisms, and specifically the FLA, are much more demanding and effectively complement public labor rights regimes such as the ILO and national labor ministries.

The FLA has a workplace code of conduct, based on ILO principles, which brand-name multinational enterprises sign and agree to implement throughout their supply chains.^[1] The Participating Companies (PCs), as they are known, agree (inter alia) to:

- inform factory managers and workers of the code,
- train their compliance staff in the code standards,
- internally monitor their production facilities to assess compliance and monitor progress, and
- remediate any non-compliance.

The FLA then conducts independent external monitoring of a random sample of those facilities to ensure that the PC is implementing its compliance program. It is important to note that the FLA independent external monitoring is unannounced and that the results are published. The process of internal and external monitoring involves consulting knowledgeable local sources, worker and management interviews, a review of wage and hour records and an inspection of the factory. In addition to the brand name PCs, there are 175 universities affiliated with the FLA. They require that their licensees join the FLA and implement compliance programs. There are presently some 4000 facilities in over 80 countries covered by the FLA program.

By consulting and working closely with local groups around the world, the FLA has participated in the formation of a global network dedicated to improving labor rights. By working globally and without national allegiances, the FLA takes steps to ensure that all workers in the PC supply chains, regardless of their country, experience the benefits of improved labor rights. This global approach helps prevent a 'race to the bottom', and helps create positive competitive pressures for suppliers engaged in business relationships with FLA PCs.

How the FLA Complements Regulatory Regimes

Given the breakdown of labor relations and regulatory regimes and the national and international levels, 'private' initiatives like the FLA attempt to fill this regulatory vacuum and create the 'global networks' necessary to advocate improved labor rights. The FLA complements regulatory regimes in three principle ways: 1) because the PCs commit to a stringent monitoring and remediation process, and because the results of the process are published, they have strong incentives to correct labor rights violations in their supply chains; 2) because the FLA works in coordination with PCs and local NGOs, it has a large physical presence in China, where other efforts to address the human and labor rights situation have been limited; and 3) because of the economic leverage of PCs with their suppliers, remediation is negotiated from a position of relative power.^[2] This process is particularly relevant in China, since the relocation of multinational enterprises to the country has taken place so quickly that the Chinese authorities cannot effectively enforce labor laws throughout the country.

The FLA is a framework for collaboration among different actors to improve respect for labor rights. By involving the participation of global brands, the FLA is able to bring attention to violations wherever they occur, and promote the accountability of brand-name companies for the protection of labor rights in their supply chains. The FLA also engages local groups in the monitoring and remediation process. By coordinating with PCs and local NGOs and targeting compliance efforts at specific factories, the FLA is well placed to respond to the speed of change in global sourcing. This is particularly advantageous in China, where the pace of global investment and sourcing has overwhelmed the regulatory regime.

In 2001, the FLA PCs had 497 factories in China. Of these 497 factories, the FLA conducted independent external monitoring visits at 53 factories, or 10.66% of the total. Although concern about human rights in China is high in the international community, an alarmingly few number of organizations have been able

to conduct concrete, hands-on human and labor rights work there. Given the rare experience of the FLA in practicing human and labor rights work in China, the organization's various 'people on the ground', and our unique access to factories and workers, the FLA is well placed to affect human and labor rights in China in a very practical and tangible way.

Given the economic leverage that FLA PCs have over their contractors, the FLA can negotiate with labor rights violators from a position of relative strength. While the FLA encourages PCs to 'remediate rather than terminate', the possibility of losing an important business relationship is a powerful incentive for factories to work with PCs in order to address labor rights violations. Regulatory regimes, while possessing a great deal of moral authority, are seldom able to mobilize the financial resources of the FLA PCs.

Ensuring respect for international labor standards is a lengthy and complex process, highlighting the need for systematic efforts to monitor, remediate and verify compliance. The FLA participates in this process in an era when regulatory regimes, and particularly the Chinese authorities, cannot do it alone. While the FLA does not substitute for labor law enforcement and collective bargaining, the FLA serves as a complement to the efforts of regulatory regimes.

Labor Rights in China

According to the World Bank, China has a population of 1.272 billion people, a workforce of 706 million people, and is categorized as a lower-middle-income economy based on Gross National Income (GNI) per capita.^[3] Given the size of the Chinese workforce and the relatively low costs of labor, companies have been relocating to China at an amazing pace; FDI has been flowing into China at an average of over \$40bn for more than a decade, and in 2002, China became the world's largest recipient of foreign direct investment (FDI) (Economist, Feb. 13, 2003). This has fuelled a 116.2% growth in GDP since 1991, an average growth of 9.7% annually, making China the fastest growing large economy in the world (World Bank, Sept. 14, 2002).

Labor rights in China are defined in a very particular way, and critics argue that they have not kept pace with the growth in FDI and GDP. The Chinese Constitution guarantees Freedom of Association, but this right is subject to the interests of the State and the Communist Party. Only one trade union, the ACFTU, is recognized. It has traditionally seen its role as protecting the interests of the Party, the government, the employer and the worker. The shift from state-controlled to private enterprise is bringing about a reevaluation of that role, and many local union officials are adopting Western trade union techniques and adapting them to their circumstances. According to the ACFTU, there were 103 million trade union members in China in 2000, and 67,000 unions in foreign-invested enterprises, with a membership of 6 million workers. However, unofficial estimates of ACFTU presence in foreign-invested enterprises suggest that less than 10% are organized. It has been government policy to promote collective bargaining since 1995, and by the end of 2000, some 240,000 agreements had been registered with the Ministry of Labor and Social Security. Most of these agreements, however, are products of an administrative process rather than collective bargaining.

Although the right to strike was removed from the Constitution in 1982, more than 100,000 strikes take place each year, particularly over late or non-payment of wages, severance payments in cases of bankruptcy and lay-offs resulting from the downsizing of enterprises. In Freedom of Association Case #2031, the Committee on FOA noted that while the government of China believes that its laws guarantee the rights of workers to form and join organizations of their own choosing, the Committee concluded that many provisions of the Trade Union Act were contrary to the fundamental principles of FOA. The Committee also recalled that it had concluded in two previous cases (1652 and 1930) that the Trade

Union Act prevented the establishment of trade union organizations independent of the Government and the Party.

Additionally, the China Daily reported a number of highly publicized industrial accidents recently. The latest statistics show that in the first two months of 2003 there were 1,639 deaths from 1,417 workplace accidents in industrial and mining enterprises, prompting the government to announce the formation of a new State Administration of Work Safety to promote safety at work. According to the paper the problem stemmed from the “prevailing ignorance among employers of working conditions resulting from irrational pursuit of profits” but the “main reason is that many local officials have tolerated some employers' malpractice in a bid to pursue economic development at the cost of work safety.”

Given the rapid relocation of multinational corporations to China, the inability of the Chinese authorities to enforce existing labor laws, and the continued restrictions on freedom of association in China, industry self-regulation becomes vital. In the following section, two case studies that detail the positive impact of private labor rights initiatives and codes of conduct in China are presented.

Case Studies

As mentioned before, China presents a unique set of remediation challenges for FLA PCs. In an attempt to address persistent health and safety and freedom of association violations that were reported by FLA independent external monitors, three FLA PCs, three Taiwan-based footwear manufacturers, and four Hong Kong-based labor rights non-governmental organizations (NGO's) developed a joint project to build the occupational health and safety (OHS) capacity of local groups in southern China. According to one of the companies,

“Engaging workers in problem solving with management significantly reduced the amount of time spent on myriad small, recurring problems (e.g. mistakes made by factory administrative staff, miscommunications between management and workers). In a few cases where worker representatives acted in a sophisticated and professional manner, serious problems have also been attended to and resolved without Reebok's involvement. This emphasis represents the next generation of strategies to honor code commitments that respect the rights of workers to freedom of association.”

Acting on the principle that an organized workforce can create a more sustainable system of labor relations and can improve a number of labor rights problems, the stakeholders established plant-wide health and safety committees, drawn from workers and management, to develop action plans to help correct workplace health and safety hazards. By organizing the workers into such groups, the stakeholders have found a way to sustain improved labor relations and adherence to the FLA Code in China.

The international training team consisted of industrial hygienist Garrett Brown (from Maquiladora Health and Safety Support Network), health educators Pam Tau Lee and Betty Szudy (from the Labor Occupational Health Program at the University of California at Berkeley), as well as professor Dara O'Rourke (Massachusetts Institute of Technology). The project team worked with China Working Women's Network (CWWN), Asia Monitor Resource Center (AMRC), the Hong Kong Christian Industrial Committee (HKCIC), and the Association for the Rights of Industrial Accident Victims to develop the project.

CWWN and the project staff conducted group discussions with participating organizations prior to the training to assess the needs of the workers. They also held discussions with the labor practices managers of Adidas and Reebok in Hong Kong, and visited a 60,000-worker shoe complex in Dongguan City.

Using interactive, participatory techniques, the trainings covered topics such as identifying safety hazards, industrial hygiene controls, chemicals effects on the body, ergonomics, noise, machine guarding, and fire evacuation. The trainings also addressed workers' legal rights, and workplace inspection techniques. All training materials were translated into Chinese; English-speaking instructors had simultaneous translation for their presentation and activities. After the training, each factory's participants reunited to create a proposal for setting up the health and safety committee in their respective factories.

This pioneering effort involving cooperative efforts among brands, NGOs and factories has had a positive impact:

- Factory management have since come together to share their experiences in setting up the Health and Safety committees;
- NGOs have become more knowledgeable about health and safety issues;
- The worker-management committees are young, but they are functioning; and
- A democratically elected union now supports one committee.

In an interview with the AP, Garrett Brown argued, "Clearly the workers, supervisors and managers who participated learned a great deal and are now able to put that into real life practice in the plants." This case demonstrates the ability to improve labor rights in China, even when regulatory regimes are incapable of doing so.

Conclusion

Because of the inability of the Chinese authorities to monitor and remediate labor rights violations in the rapidly expanding industrial zones, labor rights in China are suffering. Consequently, private labor rights initiatives, such as the FLA, have attempted to fill the resulting regulatory vacuum. Although the FLA is no substitute for local, national, regional and global regulations, it does complement the regulatory process by using the economic force of PCs, which have committed to the rigorous FLA monitoring and remediation process in order to improve labor rights worldwide. Given the unique access of the FLA to factories and workers in China, the organization is capable of taking concrete steps to improve the human and labor rights situation in the country.

Bibliography

Aidt, Toke and Zafiris Tzannatos (2003) Unions and Collective Bargaining: Economic Effects in a Global Environment (Washington, DC: World Bank).

Bhagwati, Jagdish (1999) Third World Intellectuals and NGOs-Statement Against Linkage (http://www.columbia.edu/~jb38/TWIN_SAL.pdf)

Dessing, Maryke (2001) "The Social Clause and Sustainable Development" ICTSD Resource Paper No. 1 (Verdun: International Centre for Trade and Sustainable Development)

Economist (April 6, 2000) "Discrimination against rural migrants is China's apartheid" (http://www.economist.com/displayStory.cfm?Story_ID=299640)

Economist (Feb. 13, 2003) “China’s Economic Success”
(http://www.economist.com/displayStory.cfm?story_id=1576786).

Held, David (2002) “Globalization, Corporate Practice and Cosmopolitan Social Standards”
Contemporary Political Theory vol.1, pp.59-78.

ICFTU (1999) Building Workers’ Human Rights into the Global Trading System (Brussels: ICFTU).

ICFTU (Nov. 29, 2002) “ICFTU CHINA POLICY”
(<http://www.icftu.org/displaydocument.asp?Index=991217172&Language=EN>).

OECD (Oct., 2000) International Trade and Core Labor Standards (Paris: OECD).

Ruggie, John (2002) “The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact” Journal of Corporate Citizenship issue 5, pp.27-36.

Sabel, Charles, Dara O’Rourke and Archon Fung (2000) “Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace” Faculty Research Working Paper Number:RWP00-010 (Cambridge: Harvard).

Sen, Amartya (June, 1999) “Globalized Ethics in a Globalized Economy” **Keynote Speakers at the 87th International Labor Conference, Geneva, Switzerland.**

Stone, Katherine V. (1999) “To the Yukon and Beyond: Local Laborers in a Global Labor Market”
Journal of Small and Emerging Business Law vol. 3, no. 1, p. 93.

Wells, Gary (2001) Trade Agreements: A Pro/Con Analysis of Including Core Labor Standards
(<http://fpc.state.gov/6119.htm>).

World Bank (Sept. 14, 2003) “China at a Glance” (http://www.worldbank.org/cgi-bin/sendoff.cgi?page=%2Fdata%2Fcountrydata%2Faag%2Fchn_aag.pdf)

World Bank (2001) “China Data Profile”
(<http://devdata.worldbank.org/external/CPProfile.asp?SelectedCountry=CHN&CCODE=CHN&CNAME=China&PTYPE=CP>)

^[1] Where there are discrepancies between the code and national law, the higher standard applies.

^[2] There are a number of reasons why companies sign on to the FLA or other private initiatives, such as improved brand reputation, improved and more efficient labor relations systems, and a lower likelihood of crisis following the discovery of a major labor rights violation.

^[3] The World Bank classifications are: low income, \$745 or less; lower middle income, \$746-2975; upper middle income, \$2976-9205; high income, \$9206 or more. This calculations is based on GNI per capita. The entire list can be seen at <http://www.worldbank.org/data/countryclass/classgroups.htm>.