

Government's Labor Policies vs Ideal Labor Code Taking Labor Legislation in China as an Example

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The so-called “ideal labor code” has never existed in the real world, as employers’ expectations for labor laws may never be in tandem with employees’ aspirations. While the French labor laws might have played its part in the relocation of the office of the *New York Times*, unions in France still resort to strikes as a result of perceived failure of France’s labor laws to well protect its workers. Can we call a labor law “ideal” as long as both its formulation and enforcement promote relatively balanced industrial relations? In practical terms, an ideal labor code means first of all, standards set up in the labor code are neither so low as to be meaningless in terms of protecting workers’ rights nor so high as to constrain workers’ employment or make it impossible for businesses to make a profit; secondly, the law provides both practicality and clarity of the rules so that they can be effectively enforced. Thirdly, the labor code is responsive to a changing economy and society; and last but not least, the labor code reflects the concerns of both workers and employers, and it is developed based on consensus of the workplace partners.

Economic globalization has significantly strengthened the power and influence of the capital. Governments leverage their comparative advantages and many of them choose to loosen labor regulation in order to cater to the needs of the capital, which has led to further worsen the imbalance between the strong capital and the weak labor. This imbalance has resulted in increased exploitation, labor disputes and unfair competition, especially after the 2008 financial crisis. Economic development and economic interests become the very starting point for labor legislation in many countries. Excessive expansion of the informal economy driven by government policies has negatively impacted the protection of workers’ rights, including the fundamental principles and rights at work, social protection and decent working conditions. While specific situations of each country are not identical, this trend of labor legislation and labor policy represents a common challenge confronting the world.

According to the International Labour Organization (ILO), more than half of the world’s labour force is working and producing in the informal economy. Although the informal economy is largest in the developing countries, informality continues, and is even growing in the developed countries. In order to tackle this global challenge, the ILO adopted a historic labour standard at the 104th Session of the International Labour Conference in June 2015 dealing with this issue in its entirety. The newly adopted Recommendation on the transition from the informal to the formal economy provides strategies and practical guidance on policies and measures that member States are expected to put in place in order to move hundreds of millions of workers and economic units out of informality. This also represents a crucial step in assisting countries to set up necessary polices to promote decent job creation and sustainable enterprises in the formal economy. These measures, if put in place, would serve to protect rights at work, provide quality employment and social protection and improve productivity through tighten regulations in both the formal and the informal economy.

In 1995, China promulgated its first *Labor Law* that provided labor protection based on the principles of the market economy. *The Labor law* defined the basic rights of workers, and established the labor contract, the collective contract and the labor dispute settlement system in China. However, the law was too general in nature and lacked necessary practicality and clarity for the effective implementation and enforcement. For example, in 2005, after ten years of the implementation of *the Labor Law*, the rate of signed labor contract was less than 20% in the non-public sector. While the focus of the government's policy on economic growth benefited the population at large, social development and workers' rights protection were very much neglected. In order to strengthen the labor contract system, in 2008, *the Labor Contract Law* came into effect. *The Labor Contract Law* provided mandatory requirements for employers and employees to sign labor contracts as well as specific restrictions for the lay-off of employees. In the lead up to the development of the legislation, there were fierce oppositions from corporations and businesses, including multinational enterprises. They argued that the proposed law would limit businesses' rights and increase labor costs, all of which would seriously hamper the social and economic development in China. On the other hand, workers and their representatives were of the view that protecting workers' rights through labor contract system would help stabilize labor relations and contribute to sustainable enterprises. The government, in large part, sided with workers. *The Labor Contract Law* has been implemented for 7 years. The 7 years experience has shown that the law not only stabilized labor relations on the enterprise level and enhanced business competitiveness, but also had positive impact on social and economic development in China.

One of the shortcomings of *the Labor Contract Law* was the lack of regulations on labor dispatch, which has resulted in an abusive use of dispatch workers. The proportion of dispatch workers stood at more than 80% in many companies. According to the data of All-China Federation of Trade Unions (ACFTU), by 2011, there were 60 million dispatch workers, accounting for one-fifth of all employed workers in China. Such use of dispatch workers has created a situation where workers' rights were seriously violated, causing instability for labor relations and social instability. Consequently, the Chinese government revised the law and promulgated the "Provisional Regulations on Labor Dispatch". The Regulations provided specific requirements on job descriptions, benefits, duration of work for dispatch workers. Under the Regulations, dispatch workers in any business entity shall not exceed 10% of the entire employees in the business unit.

The Chinese government has established a relatively comprehensive labor legislation regulating individual labor relations, e.g. labor contracts, labor standards and workplace safety. However, challenges remain as to the implementation of the *Labor Contract Law*, especially in small businesses where the number of employees is less than 10. In such circumstances, flexible application of labor regulations may be considered. The principle of "consensual" might be used as legal basis for the establishment of employment relationship. This flexible approach cannot be applied to enterprises of larger scale.

Now, turning to the question concerning the right level of collective bargaining. In the context of globalization, the expansion of supply chains, the change of organizational approach, and the continued decrease of union density, combined with strengthening corporate human resource management, all have posed challenges to the traditional model of collective bargaining in different countries. One challenge is that it is increasingly difficult to negotiate at industry level,

instead, a "decentralized" trend of bargaining on the enterprise and grassroots level becomes more prominent.

The right level of collective contract system in China has also garnered a debate. *The Labor Law* in 1995 stipulates that "Workers and enterprises can sign collective contract on remuneration, working hours, rest and leave, work safety and hygiene, insurance and welfare." *The Labor Contract Law* in 2008 added a new provision that "at the county and below county level, economic sectors such as construction, mining, catering services may enter into sector level collective contracts, or regional collective contracts." Although the Chinese government and the ACFTU promote collective contracts at industrial/sector and regional levels, due to lack of mature organization and representation on these levels, the industry/sector level collective negotiation is currently confined to individual pilot stage.

Collective negotiations are still largely occurred at the enterprise level in China. The enterprise level collective agreements have made remarkable achievements, at least in statistics. By the end of 2013, the ACFTU claimed that there were 2.42 million collective contracts signed, while the Ministry of Human Resources and Social Security indicated that there were 1.555 million signed collective contracts across China. The two official figures represent a significant gap of nearly 865,000 collective contracts. Obviously, these enterprise level collective contracts are merely formalized through administrative arrangements, not through meaningful collective bargaining. The main reason for this problem is that trade unions in China are not truly representatives of the workers. The collective contracts were signed to meet the quota assigned by the higher level authorities without workers' participation. Therefore, the question for China is not about the right level of collective bargaining stipulated by the law, it is about defining and realizing collective labor rights of workers. In order to enable workers' participation, workers have to have the right to organize, right to collective bargain and right to strike. As we all know, the right to organize forms precondition for collective bargaining, and the right to strike provides needed protection for meaningful collective bargaining. The effective realization of these rights for workers in China might be a long and difficult process.

The question of "is there an ideal labor code in our open world?" touches the fundamental debate on efficiency and fairness. At the national level, an ideal labor code involves, as indicated at the beginning of this paper, meeting four tests, i.e. good calibration, practicality and clarity, relevance in changing circumstances and consensus-building. At the international level, globalization has reduced the relevance of national boundaries for production and has generated the continuing internationalization of the world's production system through increasingly prevalent global supply chains. While globalization has opened up considerable new opportunities for economic development, it has also brought the danger of global competitive processes placing downward pressures on working conditions and respect for fundamental rights. In this context, nationally-based labour-market institutions, legislation and processes have become doubly important in the age of globalization. Therefore, an ideal labor code should not only serve the national objective of fostering balanced industrial relations at home, but also contribute to eliminating poverty, reducing inequality, fostering prosperity and social advances globally.