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**Labor Non-Governmental
Organizations in China:
An Increasingly Difficult
Environment**

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INTRODUCTION

The present thesis deals with labor non-governmental organizations (NGOs) in China, their role in the contemporary society and the increasing difficulties they are facing on a daily basis, which threaten their survival. To fully understand these organizations, their current situation and the prospects for their future, I divided this work in four chapters.

The first chapter is a broad analysis of the legal framework in which NGOs operate in China. First of all, I explain what NGO means in the Western societies and I illustrate the three types of Chinese organizations that are considered the Chinese counterparts of non-governmental organizations, that are social organizations, civil, non-enterprise institutions and foundations. A concise description of the foundation, registration, operation, control and termination of these organization is given by analyzing the main provisions of the “Regulations on the Registration and Management of Social Organizations”, of the “Provisional Regulations on the Registration and Management of Civil, Non-Enterprise Institutions” and of the “Regulations on the Registration and Administration of Foundations.” Then, there is a focus on funding, which is a crucial topic for today’s NGOs. Here you can read not only what the law prescribes, but also what in reality the sources of funding are. The chapter ends with a note on international NGOs in China, both those that are present in this country and those that are involved with activities there, but do not have established any offices on the Chinese territory. In 2017 the “Law on the Management of the Activities of Overseas NGOs within Mainland China” entered into force and imposes several restrictions on foreign NGOs’ operations in China which affects also Chinese grassroots organizations.

The second chapter wants to be an explanation for the reasons that led to the birth of labor NGOs. In order to better understand, I provided an overview of the Labor Law, of the Labor Contract Law, of the Trade Union Law and of the Labor Dispute Mediation and Arbitration Law. Then, I presented the relevant institutions, i.e. trade unions, the Letters and Visits Offices, the mediation committees, the arbitration committees, lawyers and courts. For each of these I described their history and tasks and did an appraisal of their advantages and disadvantages. From this analysis, it emerges that Chinese trade unions do not really represent workers, their rights and interest, but they rather focus on helping the government in maintaining social order

and, in case of protests, they side with the employers in urging production to resume as soon as possible. It is also clear that the Chinese labor dispute resolution system is weak and lacks in independence and neutrality. Finally, I reported the most common conditions in which workers live and work in the factories: they are paid miserable wages for extremely long work hours and minimum rest, without the purchase of social insurance and without care for their safety or their welfare. From this general outlook, it is easy to understand that Chinese labor NGOs were born out of a necessity.

The third chapter is the core of this thesis and it deals with the development and current status of labor NGOs. In the first section, the history of Chinese NGOs is outlined. These organizations have a short history, because the concept of NGO as such was introduced in China in 1995 during the Fourth World Women's Conference. Labor NGOs have an even shorter history: the first ones were located in Guangdong Province and were supported by Hong Kong NGOs. Over the time, the first activists learned, became more independent and opened their own organizations all over China. The stories of some of these organizations and their founders are also reported as concrete examples of real labor NGOs. Then I listed the different types of activities that are carried out by labor NGOs and can be divided into three categories: cultural activities, legal activities and mobilizing activities. Each one is supported by practical examples of real activities performed by several organizations. In the third section, the relationships between Chinese labor NGOs and the ACFTU, other labor NGOs, workers and the general public and internal donors are briefly examined. This study highlighted the problems labor NGOs face: For instance, they have to overcome ACFTU's fear of competition; they have to gain the workers' trust to cooperate with them; there is a lack of solidarity among these organizations that results from scandals and internal difficulties. Finally, I proposed a comparison between Hu Jintao's administration and Xi Jinping's administration as far as labor NGOs repression is concerned, showing how the control has become more tightened and has been re-defined under the "rule of law."

In this increasingly more difficult environment, labor NGOs' survival is jeopardized daily. These organizations are smaller and smaller, and many of them were forced to close down. Funds are scarce and since it is almost impossible for overseas NGOs and foreign institutions to fund Chinese grassroots organizations, the latter need to find other sources of income to finance their projects and pay their expenses. Some of them also changed the activities they perform, in particular to avoid being harassed by the government, and chose, for example, to help workers in collective bargaining. The situation is unfavorable, however labor NGOs are

dynamic, will adapt to the new and changing environment and will survive, even if with major changes, as their presence is essential until there are serious reforms in the governmental institutions. Also, the third sector is expanding, and young people are more and more interested in contributing for a better society. There are numerous possibilities, but, in any case, History showed us that labor NGOs have the ability to morph and adapt in order to continue with their work.

前言

本论文是关于中国劳工非政府组织（NGO），其在当代社会的角色以及每天面临的威胁它们生存的，越来越多的困难。本论文共分为四章，并以此来阐述非政府组织、其当前情况和未来的远景。

第一章为法律框架的概括分析。在中国，非政府组织在该法律框架下经营。首先我将解释NGO在西方社会的意义，并简要说明在中国被认为是非政府组织的三种形式，即社会团体、民办非企业单位与基金会。通过对《社会团体登记管理条例》、《民办非企业单位登记管理暂行条例》与《基金会管理条例》主要规定的分析，我简要介绍这三种组织的建立、登记、经营、控制以及终止的方法。其次，我将聚焦当代非政府组织的关键话题，即资金问题。在这个部分不仅有关于资金规定的相关解释，还有实际资金来源的介绍。该章以国际非政府组织在中国的注解而结束，这里的国际非政府组织既包括在中国有办事处的，同时也包括那些在中国没有办事处但是在中国进行活动的。2017年《中华人民共和国境外非政府组织境内活动管理法》实行，该法限制国际非政府组织在中国的活动。这些限制还影响到中国草根组织。

第二章说明了为劳工非政府组织诞生的理由。为了更好地了解该内容，我将介绍《中华人民共和国劳动法》、《中华人民共和国劳动合同法》、《中华人民共和国工会法》与《中华人民共和国劳动争议调解仲裁法》的主要规定。其次，我介绍其主要机构，即工会、信访局、调解委员会、仲裁委员会、律师与法院。我将描述每一个机构的历史和任务，并解释它们的优点和局限。通过该分析，我们可以了解到中国工会并不完全代表工人阶级、工人的权利和利益，反而是帮助政府保持社会稳定的一个组织。并且，如果有抗议，工会会偏向雇主方，促使工人尽快继续生产。中国劳动争议解决制度有待发展，其明显缺少独立性与中立性。最后，我将描述工人在工厂工作和生活的一般情况：他们工作的小时数不过来，休息的时间很短，但是他们的工资很低，雇主不支付社会保险并忽略工人的安全和福利。我们从该总览很容易了解到中国劳工非政府组织是因需要而诞生的。

第三章是本论文的核心，关于劳工非政府组织的发展与现状。在第一个部分将阐述中国非政府组织的历史。该组织的历史并不长，其概念于在 1995 年，在第四次妇女问题世界会议中被引进中国了。相比之下，中国劳工非政府组织的历史则更短：第一批劳工非政府组织成立于广东省并接受香港非政府组织的支持。第一批维权人士慢慢获得了经验，变得比前更加独立，并在中国各地建立了他们的非政府组织。我将阐述其中一些组织和它们的主要负责人，并以此作为实际劳工非政府组织的例子。其次，我将列出劳工非政府组织的活动。这些活动可以分为三种类型：文化活动、法律活动与工运活动。针对每种活动我都将给出由几个组织的实际活动作为例子。在第三个部分我简要介绍中国劳工非政府组织与中华全国总工会、与其他劳工非政府组织、与工人和公众、与国际捐款者的关系。该部分将指出劳工非政府组织面临的困难，例如有它们对华全国总工会竞争的恐惧和担忧；以期与工人合作而应获得工人的信任；由于内部问题和丑闻而产生的分歧。最后，关于劳工非政府组织镇压的方面，我将对胡锦涛体制与习近平体制的比较。进而得出对该组织的控制增强，与此同时，政府按照“依法治国”的观念加强控制的结论。

这种越来越艰苦的环境危及劳工非政府组织的日常生存。劳工非政府组织越来越小，并且很多劳工非政府组织被迫关闭。资金很少，国际非政府组织和外国机构几乎不能把资金转给中国造根组织，所以为了支付它们的计划和成本，非政府组织应该找别的收入来源。有一些已经改变了它们的活动，特别是为了避免收到政府的骚扰，比如说有一些选择了帮助工人进行集体谈判。该情况不容乐观，但是劳工非政府组织是能动的机构，它们将适应新和多变的环境。即使有大的变化，它们必须生活下去，因为在有正式机构的激进改革之前，它们的存在是必需的。另外，第三产业在不断发展和壮大，年轻人对改变社会越来越有兴趣。未来有无限可能，但是，无论如何，历史证明了劳工非政府组织为了继续它们的工作，必须能够改变并适应发展。

CHAPTER ONE

NON-GOVERNMENTAL ORGANIZATIONS IN CHINA: THE LEGAL FRAMEWORK

1.1 DEFINITION OF NON-GOVERNMENTAL ORGANIZATIONS

The NGO Global Network defines a “non-governmental organization” (NGO) as “any non-profit, voluntary citizens’ group which is organized on a local, national or international level. Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. Some are organized around specific issues, such as human rights, environment or health. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements.”¹ In general, NGOs share some common characteristics, namely being organizations, independent from the government, non-engaged in making profits (or if they make profits, they do not distribute gains to the members), self-governed and voluntary in membership and participation.²

The literal translation of the term “non-governmental organization” in Chinese is 非政府组织 (*fēi zhèngfǔ zǔzhī*). Scholars agree that this concept was first introduced in China in 1995 during the Fourth World Women’s Conference in Beijing. However, this term is more often associated with foreign NGOs, while Chinese NGOs tend to avoid calling themselves in this way for two reasons: First, because 非 *fēi*, which means “not”, “wrong” or even “anti”, negates the word 政府 *zhèngfǔ*, “government”, almost giving out a wrong idea, so they prefer being labelled as “non-profit organization” (NPO, in Chinese 非营利组织 *fēi yínglì zǔzhī* or 非牟利组织 *fēi móulì zǔzhī*) or “social organization” (SO, in Chinese 社会团体 *shèhuì tuántǐ* or, in

¹ Definition found on the website <http://www.ngo.org/ngoinfo/define.html>

² Lester M. SALAMON, Helmut K. ANHEIER, “Civil Society in Comparative Perspective”, in Lester M. Salamon, et al. (edited by), *Global Civil Society: Dimensions of the Nonprofit Sector*, Baltimore: Center for Civil Society Studies, 1999, pp. 3-39

the short form, 社团 *shètuán*). Second, the Chinese legislation does not mention any “non-governmental organizations”; these institutions are rather called “social organizations” (社会团体 *shèhuì tuántǐ*) or “non-governmental and non-commercial enterprises”³ (民办非企业单位 *mínbàn fēi qǐyè dānwèi*, also translated as “private non-enterprise units” or “civil non-enterprise units”).

Since the establishment of the People’s Republic of China in 1949, the Chinese government in 1950, 1988-89 and 1998 issued directions addressing the classification, registration and regulation of organizations outside the government system. In the first and second occasions, all types of institutions and associations were defined as “social organizations” and characterized by membership association. At that time no private sector existed in China, because the government strictly applied the communist model.

When in 1978 the Chinese government engaged to implement the first reforms, a private nonprofit sector started to rise and in the following years, the government founded some “non-governmental” foundations and charitable organizations whose task was to collect money coming from the private sector which was destined to various public causes. This was a new category of organizations that was no longer based on membership association. Therefore, a new regulation was needed.

On 25 October 1998 two new regulations were issued and entered into force: The “Regulations on the Registration and Management of Social Organizations” (社会团体登记管理条例 *shèhuì tuántǐ dēngjì guǎnlǐ tiáoli*) and the “Provisional Regulations on the Registration and Management of Civil, Non-Enterprise Institutions” (民办非企业单位登记管理暂行条例 *mínbàn fēi qǐyè dānwèi dēngjì guǎnlǐ zàn xíng tiáoli*). Both regulations refer to what we could call “Chinese NGOs.”

Article 2 of the “Regulations on the Registration and Management of Social Organizations” states that “the term social organization refer to non-profit organizations (非营利性 *fēi yínglìxìng*) voluntary created by Chinese citizens in order to achieve the collective desires of members, and conduct activities accord to their charters.” According to this definition,

³ MA Qiusha, *Nongovernmental and Nonprofit Organizations and the Evolution of Chinese Civil Society – An Oral Testimony at Issue Roundtable “To Serve the People: NGOs and the Development of Civil Society in China”*, The Congressional-Executive Commission on China, 2003

SOs can be only established by Chinese citizens, not by foreigners. Academic, professional or trade associations, chambers of commerce, foundations and charitable organizations are included in this category.⁴

Article 2 of the “Provisional Regulations on the Registration and Management of Civil, Non-Enterprise Institutions” states that non-governmental, non-commercial enterprises are “social groups [社会组织 *shèhuì zǔzhī*] engaged in non-profit social services, and that are organized by enterprises, social organizations [社会团体 *shèhuì tuántǐ*], other social forces, and individual citizens with the use of non-state funds [非国有资产 *fèiguóyǒu zīchǎn*].” Institutions, hospitals, schools, community-based nursing homes and health centers are part of this classification.⁵

If we examine the Chinese notion of NGO, we can easily notice that it does not mention the “self-governance” aspect that characterizes Western non-governmental organizations. Nevertheless, the Ministry of Civil Affairs (MOCA), since the 1990s, has been promoting the “three selves of polity” (三自政策 *sān zì zhèngcè*): Financially self-sufficient, self-governing, and self-recruiting.⁶ This being said, the Chinese government’s attitude towards NGOs is ambivalent: On the one hand, it is willing to delegate some of its functions to institutions outside the government apparatus, in line with the transformation advocated by the slogan “small government, big society.” This transfer of tasks is due to the changes triggered by the reforms started in 1978: The private sector flourished, creating room for independent social organizations to operate. On the other hand, the government is afraid of the increasing influence of social groups on the population which can lead to political instability. The events at Tiananmen Square in Beijing in 1989 increased this fear in the Chinese leadership who, therefore, adopted several measures to control and limit grass-roots NGOs.⁷

Also, when talking about nongovernmental organization, you could also encounter expressions like 人民团体 *rénmín tuántǐ* (people’s organizations), 群众组织 *qúnzhòng zǔzhī* (mass organizations) and 民间组织 *mínjiān zǔzhī* (folk organizations). The first category includes the so called “eight big organizations” (八大团体 *bā dà tuántǐ*), among which there are the All-China Federation of Trade Unions (中华全国总工会 *Zhōnghuá quánguó*

⁴ *Ibidem*

⁵ *Ibidem*

⁶ *Ibidem*

⁷ Andreas EDELE, *Non-Governmental Organizations in China*, CASIN, Geneva, Switzerland, 2005, p. 6

zǒnggōnghuì), the Communist Youth League of China (中国共产主义青年团 *Zhōnghuá gòngchǎnzhǔyì qīngniántuán*), the All-China Federation of Industry and Commerce (中华全国工商联联合会 *Zhōnghuá quánguó shāng liánhéhuì*), the All-China Women's Federation (中华全国妇女联合会 *Zhōnghuá quánguó fùnǚ liánhéhuì*). The second expression has only a slight variation in the nuance of its meaning, but it is almost used interchangeably with the former. Either terms are used to classify only a few prominent organizations. Lastly, “folk organizations” nowadays only refers to foreign nongovernmental organizations that are important channels linking China to the foreign countries, such as the All-China General Chamber of Industry and Commerce and the China International Chambers of Commerce.

In some instances, foundations (基金会 *jījīnhuì*) are considered NGOs as well. The “Regulations on the Registration and Administration of Foundations” (基金会管理条例 *jījīnhuì guǎnlǐ tiáoli*) is the most recent, it was issued in 2004. Art. 2 states that a foundation is a “non-profit legal entity [非营利性法人 *fēi yínglìxìng fǎrén*] established in accordance with these regulations that employs assets donated by actual persons [自然人 *zìránrén*], legal entities [法人 *fǎrén*] or other organizations [其他组织 *qítā zǔzhī*] for the purpose of engaging in some public benefit enterprise.”

One last category is worth to be mentioned and that is government-organized non-governmental organizations (GONGO, in Chinese 官办非政府组织 *guānbàn fēi zhèngfǔ zǔzhī*). These are NGOs established by and under the control of the Chinese government. They are registered as social organizations and help the government in providing welfare services. They are funded by the central government, but their status of GONGO allows them to obtain funds also from other sources. They are staffed with former government employees or members of the Chinese Communist Party (CCP), therefore they enjoy qualified personnel and good management⁸ with a wide network of relations (关系 *guānxi*). However, this category is almost overlapping with people's organizations and mass organizations, because, for example, the “eight big organizations” previously mentioned are considered GONGO. On this topic, the vice president of the China SmartStone Institute of Economics, Wei Xiangyun (卫祥云), believes

⁸ EDELE, *Non-Governmental Organizations in China*, op. cit., p. 13

that GONGOs are not NGOs, so they are not worth to be considered, nor they are a (possible) direction of development for NGOs.⁹

1.2 OPERATION AND CONTROL

The 1998 “Regulations on the Registration and Management of Social Organizations” require all NGO, in order to be founded, to receive the approval and examination of a sponsor organization called 业务主管单位 (*yèwù zhǔguǎn dānwèi*, literally, professional management unit) (Art. 3). Usually, the sponsor organization is a government agency that works in a similar subject area. Related departments of the State Council, the institutions authorized by the State Council (which are 20 selected organizations) and the local government from above the country level can undertake this position.¹⁰ The state organ that gives its approval is required to supervise the NGO’s daily activities, review its annual work, to validate its establishment, alteration and cancellation and, more broadly, to be responsible for the NGO’s conduct (Art. 27-28). For these reasons, the sponsor is referred to as 婆婆 *pópo*, mother-in-law. Finding an official sponsor is not easy, because many institutions do not want to take the consequent responsibility. Also, the rejection by an organization makes it even more difficult to get the approval from another. Hence many NGOs cannot obtain the legal status as NGO, but in order to operate, have no other choice than registering as businesses at the Bureau of Industry and Commerce.¹¹

Once the NGO has obtained the approval of the supervisor, then it can complete its registration at the Ministry of Civil Affairs (MOCA) and become a legal entity. This mechanism is called dual management.

According to the “Notice from Ministry of Civil Affairs on related problems of certain associations exempted from the registration of social association” (民政部关于部分团体免于社团登记有关问题的通知 *mínzhèngbù guānyú bùfèn tuántǐ miǎnyǔ shètuán dēngjì yǒuguān*

⁹ WEI Xiangyun 卫祥云, “‘Guānbàn NGO’ de tífǎ bùtuō” “官办 NGO”的提法不妥 (Saying “government-run NGO” is not appropriate) , in “China Development Brief” , 2 April 2015 , <http://www.chinadevelopmentbrief.org.cn/news-17325.html>

¹⁰ WANG Yaping, *Dependency and Efficacy: An Analysis of the Influence of State Interventions on NGO’s Efficacy in China*, University Thesis, National University of Singapore, 2005, p. 23

¹¹ Peter BRUNDENIUS, *China’s Emerging Civil Society: The Autonomy of NGOs in China*, University Thesis, Lund University, 2005, p. 9

wéntí de tōngzhī) and the “Notice from Ministry of Civil Affairs on certain social organizations exempted from the registration of social associations” (民政部关于对部分社团免于社团登记的通知 *mínzhèngbù guānyú duì bùfēn shètuán miǎnyǔ shètuán dēngjì de tōngzhī*), “people’s organizations”, other 11 sub-associations and the provincial level associations of the China Federation of Literature and Art (中国文联 *Zhōngguó wénlián*) are allowed to operate without registration.¹²

Article 4 states that social organizations “must not harm the unity of the country, or the security and ethnic harmony of China. Social organizations are also not permitted to damage national interests, the interests of society [...] They may not violate the prevailing social morals.” This Article is rather vague, because it does not state explicitly what “national interests”, “interests of society” nor “social morals” are. In a similar way, concepts like “unity of the country”, “security and ethnic harmony of China” are rather unclear. In practice, this is the norm that allows to incriminate somebody for a wide range of wrongdoing. As we will see later, in the past few years, many labor NGO workers and activists and, more in general, those who are considered as a threat to the social stability (社会稳定 *shèhuì wěndìng*) have been incriminated for endangering China’s national interests and security or disruption of public order.¹³

Organizations have to meet also other essential conditions in order to be established. Among those listed in Article 10, I would like to focus in particular on two of them. First, NGOs are required to have over 50 individual members or over 30 institutional members or a total number of members (both individual and institutional) that cannot be less than 50. Since Chinese NGOs tend to be quite small, at least at the beginning, reaching the necessary number of members is difficult and could hamper its foundation. Second, “[n]ational social organizations should have over 100,000 RMB in activity funds, and local social organizations and social organizations spanning administrative districts should have over 30,000 RMB in activity funds.” This could be another burden for small associations, especially because they are not allowed to raise money before their establishment.

¹² XU Ying, ZHAO Litao, *China’s Rapidly Growing Non-Governmental Organizations*, EAI Background Brief No. 514, 2010, p. 6

¹³ Ivan FRANCESCHINI, Elisa NESOSSÌ, “The Foreign NGOs Management Law: A Compendium”, in Ivan Franceschini, Kevin Lin, Nicholas Loubre (edited by), *Disturbances in Heaven: A Year of Chinese Labour Civil Society, and Rights, Made in China Yearbook 2016*, ANU Press, The Australian National University, Canberra, Australia, 2017, pp. 60-67

The same Article also regulates the decision regarding the name, which “must not violate prevailing social morals” (again, it does not specify the meaning of social morals in this context). In any case the name has also to be approved by the sponsor organization, as noted before.

The regulation imposes another restriction: If another social organization exists in the same administrative district and has the same or a similar scope of activity, another one cannot be set up because they believe there is no need (Art. 13). This entails the prohibition of establishing regional branches (Art. 19). These two norms are supposed to be against competition between organizations, but they hamper the flourishing of NGOs. In practice, this means that, for example, two labor NGOs cannot operate in the same area because they have similar scope, even though their activities could be quite different.

When all the necessary documents are provided, the registration should be completed in 30 days and a “Social Organization Legal Entity Registration Certificate” (社会团体法人登记证书 *shèhuì tuántǐ fǎrén dēngjì zhèngshū*) issued (Art. 16). At this point the social organization can open a bank account and have a seal made (Art. 18).

If any modification of the information put on record are need, the applicant should inform their sponsor organizations, get the request approved and then apply, within 30 days, to the registration and management bureau, i.e. the Ministry of Civil Affairs or its local branch (Art. 20).

In case of voluntary disbanding, division, merger or termination because of other reasons, the organization can apply to the MOCA for cancellation. Beforehand, the social organization has to complete the liquidation procedure, under the leadership of the sponsor organization, as per Articles 21-22.

According to Articles 29-30, a social organization’s expenses and income must be used for its scope of activity and must not be distributed to the members (because it is a not-for-profit organization, as noted in the previous section). Contributions and donations must be used conforming to the purposes agreed with the donors which must be in line with the scope of activity stated in the organization’s charter. Social organizations have to accept the supervision of both finance authorities and auditing authorities.

Each year a report of the previous year work and financial flows must be submitted before the 31st March. After the preliminary review and approval by the sponsor organization, the

paperwork must be sent to the competent Civil Affairs office before the 31 May for the annual review (Art. 31).

Chapter 6 refers to illegal behaviors. The registration and management bureau, in view of the extent of the crime committed by the social organization or its members, can give a warning and impose a correction, suspend the organization's activities for a certain period of time and, in case of more serious violation of the laws, can cancel the registration of the institution in question. Some of the possible infringements listed in Article 33 include conducting activities outside the scope of the activity specified in the charter, refusing to be inspected and engaging in for-profit activities. The illegal gains will be confiscated, and the organization can be fined up to three times the value of the illegal revenue or up to five times the value of the illegal income.

As for non-governmental non-commercial organizations, the related regulation is, for the most part, similar to the one just examined. The few major differences are the following: The certificate issued by the MOCA vary according to the method of civil responsibility, therefore there are three possible certificates, namely “Non-Governmental, Non-Commercial Enterprises Registration Certificate (Legal Entity)”, “Non-Governmental, Non-Commercial Enterprises Registration Certificate (Partnership)”, “Non-Governmental, Non-Commercial Enterprises Registration Certificate (Individual)”, called respectively 民办非企业单位(法人)登记证书 *mínbàn fēi qǐyè dānwèi (fǎrén) dēngjì zhèngshū*, 民办非企业单位(合伙)登记证书 *mínbàn fēi qǐyè dānwèi (héhuǒ) dēngjì zhèngshū* and 民办非企业单位(个体)登记证书 *mínbàn fēi qǐyè dānwèi (gètǐ) dēngjì zhèngshū* in Chinese (Art. 12). Organizations registered as non-governmental, non-commercial enterprises cannot establish branch offices (Art. 13). The regulation does not mention a minimum number of members nor a minimum amount of activity funds.

Foundations are quite different from the two previous forms of establishment. They can be divided into two categories: Those that are oriented towards fundraising from the general public (called public fundraising foundations 公募基金会 *gōng mù jījīnhuì*) and those that are not (called non-public fundraising foundations 非公募基金会 *fēi gōng mù jījīnhuì*). The first category is further sub-divided by the geographic scope of their activities, that is whether they are national or local public fundraising foundations (Art. 3). National public foundations are required to have start-up funds not less than 8 million RMB, local public foundations' original

funds have to be minimum 4 million RMB, while non-public foundations have a threshold of at least 2 million RMB (Art. 8). The dual management system applies also to this type of entities. Once their registration is completed, the Ministry of Civil Affairs issues a “Certificate of Registration as a Legal Entity for Foundations” (基金会法人登记证书 *jījīnhuì fǎrén dēngjì zhèngshū*). Article 12 allows foundations to establish branches and representative organizations, previous prior authorization. The same applies for any modification or for the cancellation of the organization.

The third chapter gives all the details for the organization and structure, and in particular, foundations should establish a board of director with 5 to 25 members who have to meet at least twice a year and whose term of service must not exceed 5 years, even though a director may continue to serve if selected again.

As for the management of assets, public foundations “should make public the activities for which the money raised [...] is to be spent” (Art. 25). Donations should be used in accordance with the scope of activities stipulated in the foundation’s charter, therefore “[i]f a foundation receives donations in kind that it is impossible to use in accordance with their mission, they may auction or otherwise sell of the items” (Art. 27). Article 29 details how money should be spent, that is the annual expenditure for their public benefit activities must not be less than 70 percent of the previous year’s income for public foundations and 8 percent of the surplus from the previous year for non-public foundations, while staff wages and administrative expenses should be no more than 10 percent of the total costs. Furthermore, foundations are allowed to engage in grant making activities (公益资助项目 *gōngyì zīzhù xiàngmù*).

The regulation also covers the establishment of a representative body in China for overseas foundations. It should be noted that these representative bodies are not allowed to fundraise or accept donations within China. They are required, like Chinese foundations, to submit an annual report (which includes a financial report, an audit report, reports on fundraising activities, donations received and grants made, and has to be publicly available) and undergo an annual inspection.

Lastly, chapter 6 concerns the legal liability, but these provisions here included do not differ significantly from those applied to social organizations and non-governmental non-commercial organizations.

1.3 FUNDING

In order to implement their activities, NGOs obviously need financial resources. Not only they need the initial set-up capital as required per law, but also, they have to afford expenses that come from the implementation of projects, employees' salaries, advertisement, financial consultancy, etc. A 2001 study held by NGO Research Center at Tsinghua University showed that almost 90 percent of Chinese non-profit organizations have an expenditure of less than 500,000 RMB; 5 percent spend less than 1000 RMB and only 2 percent spend one million RMB or more. The sources of these funds are mainly four: Governmental funding, overseas funding, domestic donations and self-generated income.

Chinese NGOs can be divided into two groups based on their formation: The first includes those emerged as a state initiative, that is those created top-down; the second is composed by the so-called grassroots organizations (草根非政府组织 *zǎogēn fēi zhèngfǔ zǔzhī*), which means created bottom-up. The first group is made up of the people's organization (also called GONGO, as previously seen). As such, they enjoy a preferential treatment: They are the only type of social organization that receives governmental funding. Funding comes not only in the form of money, but it could also be products, such as land, office space, supplies, etc. However, due to administrative reforms carried out in the 1990s, the government has reduced the amount of money given to GONGOs and impelled them to become more financially independent. Before, nearly 50 percent of their income derived from government subsidies, but now, with the cut of the funds, these organizations struggle to attract other forms of donations. The state still grants them money, but it is usually for specific projects and just for certain areas, for example for environmental education or welfare provision.¹⁴ For this reason, many social organizations are becoming more independent and detaching themselves from the control of the party-state.

The second form of financing is overseas funding. Many organizations work directly in China; others instead are not present directly on the Chinese territory but cooperate with local NGOs. However, it is difficult to know the number of international NGOs that are carrying out their activities in the PRC, because of the unavailability of official statistics. Besides, since

¹⁴ EDELE, *Non-Governmental Organizations in China*, op. cit., p. 13

international NGOs have to deal with Chinese authorities in order to get sponsoring, many of them do not talk about their activities in said country.¹⁵

When it comes to grassroots NGOs, a great part of their funding (we talk even of 80 to 90 percent) comes from international sources. These include for example international NGOs (INGOs), foreign foundations, foreign embassies and multilateral agencies and international businesses. Donors come from all over the world. If we just look at foundations and NGOs, we could find Oxfam Honk Kong, the Ford Foundation (United States), the German foundation Misereor and EED, the Asia Foundation, etc. Listed among the foreign embassies and consulates we can find those from the United States, Canada, United Kingdom, Germany, France, Belgium, Switzerland, Sweden and Japan. Multilateral agencies are those such as the United Nations, the European Union, the World Bank.¹⁶

A great amount of these funding is destined to NGOs in Beijing. Other recipients are located in Sichuan, Shaanxi, Guangdong, Yunnan and Qinghai provinces. However, funds are sent also to other organizations all over China, but in smaller quantities. A wide range of activities are supported: Foundations, NGOs and multilateral agencies prefer to invest on women and gender, education, environment and public health; whereas embassies focus on migrant workers, gender and environment.¹⁷

I will talk more profusely about the new Law on Management of Overseas NGOs (中华人民共和国境外非政府组织境内活动管理法 *Zhōnghuá Rénmín Gònghéguó jìngwài fēi zhèngfǔ zǔzhī jìngnèi huódòng guǎnlǐ fǎ*) in the next section, but a note here is needed. This regulation was issued in 2016 and came into force on the following year. It was not just a tool to standardize the activities foreign NGOs carry out within the Chinese borders, but it's also a way to limit their operations which are confined in areas accepted by the party-state. Article 21 and the following ones are specifically about funding: Overseas NGOs cannot conduct fundraising activities in China; their money must have been legally raised abroad, or it can be acquired in China, but through other methods (not specified) or it could be interests derived from deposits made in Chinese banks. Overseas NGOs that run temporary activities in China are required to use the bank account of the Chinese partner organization they are working with

¹⁵ *Ibidem* p. 18

¹⁶ Shawn SHIEH, Amanda BROWN-INZ, "Mapping China's Public Interest NGOs" in *Chinese NGO Directory: A Civil Society in the Making*, China Development Brief, 2013, p. 18

¹⁷ *Ibidem*

and keep a separate account record. In this way, their finances are monitored and can be checked at any time. Furthermore, foreign NGOs' financial records will be audited by a Chinese accounting firm. As noticeable, this new law empowers the Chinese security apparatus to further control foreign NGOs, their relationships with Chinese organizations and their operations. Due to this high level of control and to these restrictions, many foreign donors face difficulties in funding Chinese social organizations, therefore in recent years there has been a reduction in the amount of money destined to support Chinese NGOs.

According to Article 32, units or individuals in China shall not accept financial support from foreign NGOs that have not legally registered a representative office or filed a record with their temporary activities in the PRC. This norm makes it almost impossible for Chinese NGOs to obtain legal funds from international NGOs and increases the level of control of the party-state.

The third category of financing is domestic donations, which includes donations by individuals, foundations or business enterprises. Although there is not a donation culture in Chinese society, Article 8 of the "Public Benefit Donation Law" (中华人民共和国公益事业捐赠法 *Zhōnghuá Rénmín Gònghéguó gōngyì shìyè juānzèng fǎ*) issued in 1999 states that "[t]he country encourages individuals, legal representatives [法人 *fǎrén*], and other organizations to donate." Also, "[t]he donor has the right to decide the type, use, and amount of the donation" (Art. 12). However, China still lacks proper channels through which citizens can send their donations. This is a weakness for NGOs because, even if there are people who are willing to share their wealth, they are unsure of how to donate their money and if the money will be really used according to their desires. This uncertainty is also fostered by some scandals that has come out in the past about misuse of NGOs' funds and other cases of corruption.

Chinese foundations are still a minor presence in the Chinese landscape, even though the Chinese government has encouraged the establishment of philanthropic organizations since the late 1980s. It has helped setting up about 70 national foundations by providing the necessary start-up funds, in hope that they would attract money both from the Chinese society and from the foreign countries.¹⁸ Shieh and Brown-Inz found out that Chinese, NGOs based in Beijing, Shanghai, Sichuan, Shaanxi, Gansu, Yunnan, Zhejiang, Jiangsu and Qinghai are those that have

¹⁸ EDELE, *Non-Governmental Organizations in China*, op. cit., p. 16

received the most endowment. These NGOs operate in sectors like environment, education, social work, disabilities and disaster relief.

Business entities fund organizations in Shanghai, Beijing, Fujian, Chongqing, Guangdong and Qinghai for projects related to disabilities, environment and education.

I want to also mention that, according to Article 16 of the aforementioned Public Benefit Donation Law, “[a]fter receiving donations, recipients should present a receipt to the donor and fine a record of the donations.” Moreover, Article 20 imposes that “[e]ach fiscal year, recipients should report to the relevant government Ministry on the use, management, and supervision of donations” so that auditing procedures can be completed. If foreign donors are involved, “[t]he Office of Overseas Chinese Affairs may participate in the management and supervision of projects sponsored by these donations.”

Lastly, Chinese NGOs sustain themselves by means of self-generated income. Article 4 of the “Regulations on the Registration and Management of Social Organizations” affirms that “[s]ocial organizations may not engage in profit-seeking business activities”; therefore, they cannot engage in street fundraising or similar initiatives. However not all NGOs respect this rule. For example, some labor NGOs have raised money by collecting used, donated clothes and re-selling them in migrant worker communities.¹⁹

Other funding comes from membership fees, interests, investment yields and other gains derived from economic undertakings specified in the charter.

Philanthropy in China is growing together with the economic growth. The total amount of donation in China in 2017 was 156 billion RMB, with a growth rate of 11 percent in the period 2011-2016. Corporate giving makes up around 60 to 70 percent of the total amount, while donations from individuals is approximately 20 percent. The number of individual donors was 91 million in 2016, which results in China having the fourth largest number of individual donors in the world, but this represents just 7 percent of the total population, therefore the room for improvement is conspicuous.²⁰

¹⁹ LI Chunyun, *Unmaking the Authoritarian Labor Regime: Collective Bargaining and Labor Unrest in Contemporary China*, University dissertation, Graduate School-New Brunswick Rutgers, The State University of New Jersey, USA, 2016, p. 85

²⁰ YIN Chen, HAN Weiwen, MING Wong, YUAN Jiakai, *Digital Philanthropy in China: Activating the Individual Donor Base*, Bain & Company, Inc., United Way Worldwide, 2018, p. 3

However, as we will also see in the third chapter, funding is becoming a problem, so those organizations that are unable to find new ways to obtain money are forced to close down.

One last remark goes to taxation. Non-profit organizations (both Chinese and foreign NGOs) are required to pay taxes: The enterprise income tax on production and operations, transfers of property, interest, leasing, royalties, dividends and other sources such as membership fees and donations; the business tax on taxable services, sell of real estate or transfer of intangibles; the value added tax (VAT); import tariffs; the real estate tax if they are owners, managers, mortgagors or users of real property; the vehicle and vessel usage tax, if they own and use vehicles or vessels; the urban land usage tax; the land value added tax if they sell land, buildings or the right to use the land; the farm land occupation tax, if they occupy or use farm land for non-agricultural purposes; the deed tax which is applied on transfers of rights and ownership of land or buildings (where transfer means sale, donation or exchange); the vehicle acquisition tax; the stamp tax, to execute or receive documents subject to this tax.

However, the Chinese government has made some preferential tax policies decisions which affects NGOs, enterprises that make donations to NGOs and individuals that make donations to NGOs,²¹ therefore for some selected items, these subjects can enjoy exemption or the deduction from tax payment. Still, norms are scattered among several regulations and there is no integrated set of tax policies specifically intended for non-profit organizations. This prevent organizations from easily enjoying all the benefits that they are entitled to. On top of this, some of them (specifically named in the regulations) receive preferential treatment, while others do not. This is not fair and violates the principle of equality. Besides, the current tax system does not encourage donations. Donations are essential for the survival of social organizations, but enterprises and individuals are not encouraged to donate more because, on the one hand, “only the part of donations made by enterprises that is less than 3 percent of their taxable income is tax deductible, while the part in excess of 3 percent is not;”²² on the other hand, individuals have low incentives to make donations and, as mentioned before, China does not have a donation culture.

²¹ For a detailed explanation on the specifics of each taxation category and for a complete list of all the exemptions granted to Chinese and foreign NPOs, to enterprises and individual donors, refer to: Leon E. IRISH, JIN Dongsheng, Karla W. SIMON, *China's Tax Rules for Not-for-profit Organizations. A Study Prepared for the World Bank*, 2004

²² Leon E. IRISH, JIN Dongsheng, Karla W. SIMON, *China's Tax Rules for Not-for-profit Organizations*, op. cit., p. 21

These preferential tax policies are not so well-known to begin with. Also, since it is not easy to obtain the registration as NGO, many organizations register as businesses, therefore they are not entitled to enjoy the aforementioned deductions, so this is another obstacle in the development of Chinese NGOs.

1.4 INTERNATIONAL NGOS

As previously seen, International NGOs (INGOs), also called Overseas NGOs (ONGOs) can be divided into two categories: Those that are directly active on the Chinese territory and those that work in China from abroad. In order to manage the activities of both of them, in 2016 the Standing Committee of the National People's Congress passed the "Law on the Management of the Activities of Overseas NGOs within Mainland China" (中华人民共和国境外非政府组织境内活动管理法 *Zhōnghuá Rénmín Gònghéguó jìngwài fēi zhèngfǔ zǔzhī jìngnèi huódòng guǎnlǐ fǎ*) which came into force from the 1 January 2017.

Overseas NGOs are defined as "non-profit, non-governmental social organizations such as foundations, social groups and think tanks that have been lawfully established outside of mainland China" (Art. 2). The PRC welcomes "Overseas NGOs that work in fields such as the economy, education, science and technology, culture, health, sports, environmental protection and in areas such as poverty alleviation and disaster relief" (Art. 3). Notice that are excluded from this list those organizations that work, for example, in the protection of labor and human rights, areas that are considered politically sensitive.

International NGOs must "not threaten China's security [... and] harm China's national interests" (Art. 5). As said for Chinese social organization, this provision is rather vague and is the legal support to incriminate a wide range of potentially threatening activities. Moreover, ONGOs "must not engage in or fund for-profit activities or political activities." While it is clear that a non-for-profit entity is not allowed to perform for-profit activities, it is not clear to what political activities the rule is referring to. This links to what was said above.

In order to pursue their missions in China, these international entities have to register and establish a representative office or file a legal record to conduct temporary activities. Otherwise, they are not allowed to operate within the Chinese borders. They have to find a Professional Supervisory Unit (业务主管单位 *yèwù zhǔguǎn dānwèi*) that will act as their sponsor, and then

apply for registration at the public security department of the State Council. Chinese NGOs are registered at the MOCA, while ONGOs must register at the Ministry of Public Security. This highlights how the party-state sees ONGOs as a threat and therefore it will keep them under strict surveillance: Everything will be checked, from ONGOs' funding sources, to their bank account, to their annual report. The emphasis is on security, while it should be on the willingness to facilitate meaningful cooperation.²³

If international NGOs want to carry out temporary activities in China, they have to find a partner organization (中方合作单位 *zhōngfāng hézuò dānwèi*), which is a state authority, a mass organization, a public institution or a social organization (Art. 16). In any case, the Chinese partner has to request the approval of the registration authorities and file the necessary documents. The duration of temporary activities is limited to one year, and a new application should be done if an extension of time is needed (Art. 17). Besides, ONGOs are not entitled to establish branch offices (Art. 18). This further restricts the operation possibilities of these international entities in China.

The Law imposes the drawing of two reports: An activity plan and an annual work report which have to be analyzed and approved. These reports consist of documents such as audited financial accounting reports, description of the activities carried out, track of changes in the staff composition of in the organizational structure (Art. 31).

Chapter four expresses the support that the Chinese government gives to foreign NGOs by means of favorable policies. In particular Article 35 states that “[r]elevant government departments at the country level and above shall provide policy advice and activities guidance to overseas NGOs in accordance with the law.” This shows that the government is willing to cooperate with foreign non-profit organizations and glad to receive their help and support, but everything has to be transparent and tracked. As for the other provisions of this chapter, they are again vague and do not clearly express what are the benefits given to ONGOs.

Then, there is a list of entitlements given to public security authorities that have to supervise overseas NGOs. They can arrange meetings with the chief representatives, conduct in-depth inspections of overseas NGOs' offices and residences, interrogate individuals, access and keep documents and materials, close down or seize equipment or properties and access the organization's or related individuals' bank accounts (Art. 41-42). On top of the high level of

²³ FRANCESCHINI, NESOSSI, “The Foreign NGOs Management Law: A Compendium”, op. cit.

control, this regulation gives public security authorities plenty of power to investigate thoroughly on the mere basis of suspicion.

Public security authorities have the right to give warnings, stop activities, confiscate illegal assets and unlawful gains and even revoke the registration certificate if the overseas NGO is committing illegal activities listed in Article 45. Under serious circumstances, individuals can also be detained for a period of time that goes from 10 to 15 days, based on their charge (Art. 46-47); if they are foreigners, they can be ordered to leave the country, deported or expelled (Art. 50). Administrative detention is considered lawful even without any judicial orders. This is against international fair trial standards.²⁴

Lastly, overseas NGOs that are deregistered, have their registration revoked or their activities have been shut down cannot establish representative offices or carry out temporary activities in China for five years (Art. 48). This is another obstacle for foreign NGOs, especially for those that just want to implement specific projects in China, but once a project is completed or one year has passed where they carried out temporary activities, they have to wait five years, which is a long period of time, before being allowed to work again in China. This goes against the interests of Chinese NGOs, but also it against the interests of the government, which is more concerned with security than with social development and welfare provision.

Even though the presence of so many restrictions and the difficulty of finding a sponsor prevent many international NGOs from legally registering as such in China, updated statistics by China NGO Project²⁵ show that, from January 2017, when the “Law on the Management of the Activities of Overseas NGOs within Mainland China” entered into force, until January 2019, every month new NGOs manage to obtain the registration certificate. The total number of representative offices as for January 2019 is 449, which means on average 18 new offices per month. The organizations that want to establish their offices in China are mainly from the United States (109), Hong Kong (83), Japan (52), South Korea (40), Germany (25), Taiwan (21)²⁶ and mainly operate in the fields of trade, relations/exchange, education, youth, health, poverty alleviation and environment.²⁷ Since this thesis is about labor NGOs in China, I want to remark that obviously no NGO that work in the human rights sector opened its representative

²⁴ *Ibidem*

²⁵ The full article can be retrieved on the website <http://www.chinafile.com/ngo/analysis/visually-understanding-data-foreign-ngo-representative-offices-and-temporary-activities>

²⁶ Here are noted only the countries of origin of those NGOs that have at least 20 representative offices in China.

²⁷ I reported only the fields where 50 or more representative offices have been established.

office, because the “Law on the Management of the Activities of Overseas NGOs within Mainland China” does not allow them. These offices are more concentrated in Beijing (149), Shanghai (92), Guangdong (25), Yunnan (25) and Sichuan (23).²⁸ The podium of the most chosen provinces or municipalities is not surprising: Beijing, Shanghai and Guangdong are the areas with the highest presence of foreigners and where many companies and factories are located.

With regard to NGOs carrying out temporary activities, the total number of temporary activity filings from January 2017 to January 2019 is 1,417, that is on average 57 per month. Home countries of the NGOs that applied are Hong Kong (724), the United States (239), Germany (65) and Macau (54).²⁹ These activities were held in the fields of education, poverty alleviation, youth, health, environment, relations/exchange and civil society capacity building³⁰ in Guangdong (329), Beijing (225), Yunnan (154), Sichuan (128) and Guizhou (111).³¹ Once again Beijing and Guangdong are on the top of the list, followed by Yunnan and Sichuan as for representative offices.

These are just a part of all the INGOs that work in China, because many did not manage to register. Among these, some withdrew from China because they were working in politically sensitive areas, while a great majority are active but work together with Chinese partners in a regulatory gray area, without formal registration, or are registered as commercial entities.³²

Furthermore, while at the beginning, when overseas NGOs just came in, they brought money, technologies and knowledge, now China is part of the middle-income countries, therefore it is no longer seen as needing international assistance, yet international aid is still essential for Chinese NGOs. Even though ONGOs tried to adapt themselves to the new situation in China, trying to cooperate with the government, businesses and NGO in order to help China exploit its international influence (for example, by supporting China’s policies of help in developing African countries), small, local grassroots NGOs are still in need of assistance, because they lack management, technical experience, influence and resources to create long lasting programs on a vast-scale.

²⁸ I listed only the provinces and municipalities where at least 20 representative offices have been opened.

²⁹ Here are reported only the countries whose NGOs filed at least 50 requests.

³⁰ Fields where with at least 100 activities.

³¹ Provinces and municipalities where at least 100 temporary activities were held.

³² FENG Chongyi, “The NGO Law in China and its Impact on Overseas funded NGOs”, *Cosmopolitan Civil Societies: an Interdisciplinary Journal*, UTS ePRESS, 2017, Vol. 9, No. 3, pp. 95-105

The weakness of Chinese grassroots organizations can be a further obstacle and can prevent them from attracting funds from overseas NGOs. However, the room to further operate in China for overseas NGOs is still consistent and new forms of cooperation can be found, despite all the difficulties.

CHAPTER TWO

LABOR LAW AND PRACTICE: REASONS FOR A NEED

2.1 LEGAL FRAMEWORK

After Mao's death in 1976, China was not a developed country and definitely not part of the global economy. In this setting, Deng Xiaoping at the end of 1978 implemented the so called 改革开放 *gǎigé kāifàng* “reforms and opening up”, introducing some elements of capitalism, which resulted in the formation of the socialist market economy. China in a short period of time has become a highly industrialized country. This was possible also thanks to the massive investment coming from the Western countries. Many entrepreneurs opened or moved part of their business in the PRC in the form of joint venture before, and wholly foreign owned enterprises after. Moreover, many companies started outsourcing or offshoring, meaning that they exploited China's favorable low costs in terms of raw materials and labor to manufacture their products or part of them. These companies produce any type of goods, from garments to technological objects, from toys to furniture. The most industrialized area is along the East coast and the Pearl River Delta, where cities like Guangdong and Shenzhen are located.

In order to regulate labor and align with Western countries, the National People's Congress issued several laws and regulations. The most important ones are the “Labor Law of the People's Republic of China” (中华人民共和国劳动法 *Zhōnghuá Rénmín Gònghéguó láodòngfǎ*) in 1994, which came into force starting from 1 January 1995 and the “Labor Contract Law of the People's Republic of China” (中华人民共和国劳动合同法 *Zhōnghuá Rénmín Gònghéguó láodòng hétongfǎ*), issued in 2007 and in force since 2008. Not less relevant is the “Trade Union Law of the People's Republic of China” (中华人民共和国工会法 *Zhōnghuá Rénmín Gònghéguó gōnghuì fǎ*), effective since 1992.

Moreover, in order to better protect workers, the National People's Congress approved the "Provisions of the State Council for Home Leave for Workers and Staff" (国务院关于职工探亲待遇的规定 *guówùyuàn guānyú zhígōng tànqīn dàiyù de guīdìng*) in 1981; the "Law of the People's Republic of China on Safety in Mines" (中华人民共和国矿山安全法 *Zhōnghuá Rénmín Gònghéguó kuàngshān ānquán fǎ*), in effect since 1993; the "Law of the People's Republic of China on Prevention and Control of Occupational Diseases" (中华人民共和国职业病防治法 *Zhōnghuá Rénmín Gònghéguó zhíyè bìngfáng fǎ*), adopted in 2001; the "Law of the People's Republic of China on Work Safety" (中华人民共和国安全生产法 *Zhōnghuá Rénmín Gònghéguó ānquán shēngchǎn fǎ*), promulgated in 2002; and the "Law of the People's Republic of China on Promotion of Employment" (中华人民共和国就业促进法 *Zhōnghuá Rénmín Gònghéguó jiùyè cùjìn fǎ*), in effect since 2008; the "Law of the People's Republic of China on Labor Dispute Mediation and Arbitration" (中华人民共和国劳动争议调解仲裁法 *Zhōnghuá Rénmín Gònghéguó láodòng zhēngyì tiáojiě zhòngcái fǎ*), approved in 2008, and the "Social Insurance Law of the People's Republic of China" (中华人民共和国社会保险法 *Zhōnghuá Rénmín Gònghéguó shèhuì bǎoxiǎn fǎ*), effective since 2011.

The Labor Law is the fundamental Law that states what are the rights workers enjoy. Its issuance marked the transition point from a country based on planned economy, where most of its companies were run by the state, to a country whose economy is increasingly made up by private companies and where workers and employers' relations are regulated by contracts. The Labor Law general principle is that "[l]aborers shall have equal right to employment and choice of occupation, the right to remuneration for labor, to rest and vacations, to protection of occupational safety and health, to training in vocational skills, to social insurance and welfare, to submission of labor disputes for settlement" (Art. 3). This article sums up the most important points that are further delineated later on. The same article also mentions that "[l]aborers shall fulfill their labor tasks, improve their vocational skills, follow rules on occupational safety and health, and observe labor discipline and professional ethics", so labor is a right but also a duty.

According to Article 7, "[l]aborers shall have the right to participate in, and organize, trade unions" which "shall represent and safeguard the legitimate rights and

interests of laborers.” Alongside, the Chinese government set up the All-China Federation of Trade Unions (ACFTU, in Chinese 中华全国总工会 *Zhōnghuá quánguó zǒnggōnghuì*). No trade union can exist outside this federation. Moreover, “[l]aborers shall take part in democratic management or negotiate with the employing units on an equal footing about protection of the legitimate rights and interests of laborers through the assembly of staff and workers or their congress or other forms as provided by law” (Art. 8). This is an important point, as we will see later, because workers struggle to negotiate with employers and often the ACFTU does not help them, so they need to seek for external help which comes from the Non-Governmental Organizations object of the present thesis. Trade unions are also supposed to conclude a collective contract on behalf of the workers, or otherwise concluded by the representatives elected by the workers (Art. 33) and to “safeguard the legitimate rights and interest of laborers and supervise the implementation of laws” (Art. 88), as stated also in the Trade Union Law. In case of violation of rules, “[a]ny organizations or individuals shall have the right to expose and accuse” these acts (Art. 88). However, workers do not have enough power to unmask employers’ misbehaviors and trade unions do not ask for redress, because they do not effectively represent workers.

This regulation forbids discrimination in employment (Art. 12), protects women’s right to be equal with men (Art. 13), as well as protects disabled, people part of ethnic minorities and demobilized army men (Art. 14). Minors under the age of 16 are not allowed to be employed (Art. 15), however child labor is still a common occurrence in China, even though the government is working towards the elimination of such practice.

As stated also in the “Labor Contract Law”, the labor contract, defined as the “agreement that establishes the labor relationship between a laborer and an employing unit and defines the rights and obligations of respective parties” (Art. 16), shall be concluded in the written form (Art. 19).

Chapter four concerns working hours, rest and vacations. The law imposes that “laborers shall work for no more than 8 hours a day and no mere than 44 hours a week on the average” (Art. 36), which entails that in a week, laborers should work for five days

and would have 4 hours of overwork.³³ Also, at least one day off a week should be guaranteed (Art. 38). However, working hours can be extended if necessary, because of the production or business operation, but the employing unit has to make consultations with the trade union and overwork shall not exceed one hour a day, or three hours in special circumstances. The monthly total amount shall not be over 36 hours (Art. 41). Overwork hours should be paid no less than 150 percent of normal working hours if during the working week; overwork hours during off days should be paid no less than 200 percent of normal working hours and overwork hours during holidays should be paid no less than 300 percent (Art. 44). Art. 40 lists national holidays: New Year's Day, the Spring Festival, the International Labor Day, the National Day and other holidays. Art. 45 states that "[l]aborers who have worked for one successive year or more shall be entitled to an annual vacation with pay." Compensation or remuneration should be paid to workers; if employer embezzle wages or pay in delay without reasons, refuses to pay remuneration for extended working hours, pay wages that are below the minimum standard or does not provide the economic compensation after the cancellation of the labor contract (Art. 91).

The following chapter is about wages. The law regulates that there should be equal pay for equal work (Art. 46) and that "[t]he State shall implement a system of guaranteed minimum wages" (Art. 48). Minimum wages are decided by the government at the province, autonomous region or municipality level. According to Art. 50, "[w]ages shall be paid monthly to laborers themselves in the form of cash" and cannot "be embezzled or delayed without justification." This norm is very important and often is not followed, as I will mention later.

Employers are requested to "provide regular health examination for laborers engaged in work with occupational hazards" (Art. 54) and give laborers a specialized training (Art. 55) and, more in general, they must keep the workplace safe and healthy. "Juvenile workers", who are workers between 16 and 18 years old, as well as female

³³ Some sources affirm that the working week, according to the Law, should be made of 40 hours, so 8 hours a day, 5 days a week. However, after checking the text of the Law in Chinese (available at http://www.npc.gov.cn/npc/xinwen/2019-01/07/content_2070261.htm or at http://www.gov.cn/banshi/2005-08/05/content_20688.htm) and the translation (the one published by the Congressional-Executive Commission on China on the website <https://www.cecc.gov/resources/legal-provisions/labor-law-of-the-peoples-republic-of-china> and the one published by the International Labor Organization at <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/37357/64926/E94CHN01.htm>), I verified that the Law prescribes the working week to be on average of 44 hours.

workers enjoy a special protection (Art. 58). In particular, pregnant women are entitled to at least 90 days of maternity leave (Art. 62).

Social insurance is established by law; workers “may receive assistance and compensations under such circumstances as old age, illness, work related injury, unemployment and child birth” and social insurance is to be paid “on schedule and in full” (Art. 70, 73).

In case labor dispute between employer and a worker arises, the parties should first undergo mediation. If it fails, the dispute can be settled by an arbitration committee and either party can then appeal to the people’s court (Art. 77-78). Labor dispute resolution system is regulated more in detail in the Labor Dispute Mediation and Arbitration Law that will be covered at the end of the present section.

The Labor Contract Law further rules that before employing a new worker, the employer is required to “truthfully inform him of the job description, the working conditions, the place of work, occupational hazards, conditions for work safety, labor remuneration” and other relevant information if asked by the worker, who has to provide all the required data about himself (Art. 8). Art. 17 lists all the items that have to be included in the draft of the labor contract, such as personal information of both parties, job description, workplace, working hours, remuneration, social insurance, etc. If “[t]he labor contract is concluded or modified against a party’s true intention by means of deception or coercion”, the agreement shall be invalid (Art. 26). According to Art. 16, both parties should keep a copy of said document (that has to be drawn up in written form). In case the contract is not concluded in the written form, the employer has to “pay the worker two times the salary for each month” (Art. 82). In reality, such practice never happens, even though the employer many times do not grant their workers a copy of the contract.

Art. 39 lists the conditions by which the labor contract can be revoked, and I would like to point out the condition number 6, according to which, if the worker is “being investigated for criminal responsibility”, they can be dismissed. As I have mentioned previously, people taking part in manifestations or strikes can be detained, investigated and charged for “disruption of public order” and similar accuses. Under such

circumstances, the employer can decide to fire those workers without prior notice. In normal situation, if the employing unit needs to dismiss workers, they have to inform the trade union beforehand, especially when laying off more than 20 laborers or more than 10 percent of the total number of workers (Art. 41). Other circumstances where the labor contract terminates are presented in Art.38, 40 and 44 and include, inter alia, when the employer fails to provide occupational protection, do not pay wages or social insurance premiums, in case of bankruptcy of the employing unit, its dissolution or closure, and when the worker starts earning the pension³⁴ because of their age or if they are unable to complete their tasks. The law states that when the contract expires, or when the company closes down for any reason, the employer has to pay financial compensation, the sum of which has to be calculated on the number of years the laborer has worked in said company and on the monthly salary (Art. 47). In the same way, compensation has to be paid if the employer does not pay on time and in full the workers' salary, the pay is lower than the local minimum wage rate, overtime hours have not been paid according to the provisions of the Law or other financial compensation mandatory by law (Art. 85).

Section 1 of Chapter 5, which is related to special provisions, is about the collective contract. Art. 51 reaffirm that employees as one party, or the trade union on their behalf may negotiate a collective contract on topics such as wages, health and safety, working hours, rest and holidays, insurance, etc. Then, the draft of the collective contract is to be submitted to all the employees for confirmation and finally submitted to the administrative department of labor. The contract becomes valid within 15 days (Art. 54).

The following section concerns labor dispatch (劳务派遣 *láowù pàiqiǎn*). A labor-dispatching unit is defined by Art. 58 as “an employing unit which performs the obligation of an employing unit to the workers. Dispatched workers have the right of equal pay for equal work (Art. 63), which means that they should not be paid less than their colleagues that have been hired directly by the receiving company. Unfortunately, this discrimination happens frequently, and it is the prime reason for which some employers prefer to hire dispatched workers. Because some factories were reported to

³⁴ Retirement age is fixed at the age of 60 for men and 50 for women, with the exception of female civil servants who retire at the age of 55.

extensively use dispatched workers,³⁵ the Labor Contract Law was amended in 2012, specifying that they are supposed to be employed only for temporary, auxiliary, or substitute positions (Art. 67) and their number should not exceed 10 percent of the total workforce.³⁶ Not only they receive lower pay, but also lower contribution to social insurance than formal workers³⁷ (or none at all). Dispatched workers also enjoy the right to organize or join a trade union to protect their interests and rights (Art. 64). Furthermore, in case the labor-dispatching unit breaks the law, it will be ordered to rectify its behavior and, if circumstances are serious, it will be fined from 1000 to 5000 RMB for each worker, or its business license can be revoked (Art.92).

If a worker's rights are infringed, they "have the right to request the relevant department to deal" with it, apply for arbitration or bring a lawsuit (Art. 77). The trade union has the responsibility to protect their rights and interests and, in case the employing units violates the law or breaches the contract, the trade union is entitled to express its opinions on the matter and request rectification. Moreover, trade union should support workers when they apply for arbitration or bring a lawsuit (Art. 78).

The role of trade unions, anticipated in the Art. 7 of the Labor Law, is extensively explained in the Trade Union Law. The Trade Union Law states that "[t]rade unions are mass organizations formed by the working classes of their own free will. The All-China Federation of Trade Unions and all of its trade union organizations shall represent the interests of the employees and protect the legal rights and interest of the employees" (Art. 2). From just this Article, one point is clear: Trade unions can exist only under the All-China Federation of Trade Unions (ACFTU); other than that, they are illegal. Indeed, as per Art. 11, the establishment of any grassroots trade union "must be reported to the trade union organization at the next highest level for approval." Art. 3 clarifies that all laborers have the right to participate in and form trade union organizations, regardless of their work, being it physical or mental, regardless of where they work, being it in an enterprise,

³⁵ It has been documented that the use of agency workers and interns from vocational schools, especially in the electronics sector and by State Owned Enterprises in China, is a common occurrence. (FIDH, *China's Workers are Calling for Change. What Role should Brands Play?*, 2013, pp. 24-25)

³⁶ Congressional-Executive Commission on China, *2017 Annual Report*, U.S. Government Publishing Office, Washington, USA, 2017, p. 96

³⁷ TSE Fuk Ying, *How to enforce the Labour Contract Law?*, in "The Asian Dialogue", 2014, <https://theasiadialogue.com/2014/10/09/how-to-enforce-the-labour-contract-law>

public institution or government organ, and regardless of their nationality, race, sex, religious belief or education.

The tasks trade unions are required to carry out are listed in Art. 5 to 8, and mainly consists of educate employees to exercise their democratic rights, participate in the management of national affairs, economic and cultural institutions and social matters, assist the governments in their work, support the worker-peasant alliance, which is the basis of the Chinese state, coordinate labor relations and safeguard the rights and interests of the enterprise employees by means of negotiation and collective contract system (集体合同制度 *jítǐ hé tòng zhì dù*), organize the employees to participate in the democratic management of their employing units through the employee representative assembly or other forms, assist workers in overcoming difficulties, educate them to improve themselves and handle the relations with trade unions of other countries. The ACFTU itself has summarized its rights protection activities into six points, namely: “[B]road participation in government and legislative affairs; initiatives for coordinating grassroots labor relations; ‘worker democratic management’ [职工民主管理 *zhígōng mínzhǔ guǎnlǐ*]; oversight of labor law compliance; early warning systems and measures to deal with labor disputes; and mechanisms to aid workers in difficulty.”³⁸ These are just part of the tasks the ACFTU is in charge of, because others have been given by the Chinese authorities, such as deal with “mass incidents”, appraising labor relations, offer services for migrant workers in financial difficulty.

Trade union committees are elected by the general assembly or their representative assembly (Art. 9); a basic-level trade union committee shall be established where the enterprise, public institution or government organ has 25 or more members, while a basic-level trade union committee can be established separately or made up of the members of two or more units when the working unit has less than 25 members (Art. 10).

The trade union has the right to request corrections if an enterprise or public institution violates the provisions of the employee representative assembly system or the democratic management system (Art. 19). Art. 20 further charges the trade union to the

³⁸ China Labour Bulletin, *Protecting Workers’ Rights or Serving the Party: The way forward for China’s trade unions*, 2009, p. 20

duty of assist employees in signing labor contracts, to represent them carrying out negotiation and sign collective contracts, as stated also in Art. 51 of the “Labor Contract Law.” “If the enterprise violates the collective contract [...], the trade union may ask the enterprise to bear liabilities according to law; if the dispute over the performance of the collective contract can't be settled through consultation, the trade union may submit it to the arbitral agency of labor dispute for arbitration, if the arbitral agency refuses to accept the case or the trade union refuses to accept the finding of arbitration, a lawsuit may be brought before a people's court.” This is the same procedure applied to every dispute, as I will further explain later.

When the enterprise unilaterally cancels the labor contract with a worker, they have to notify the trade union, explaining the reasons in advance;³⁹ then, the trade union has the task to support the employee in the labor dispute if such dismissal is against the worker's labor rights (Art. 21). The Law empower the trade union of the right to investigate in case of infringement of legal rights (Art. 25) and if occupational hazards are discovered during the production process, it has the right to suggest a resolution (Art. 24). Unfortunately, workers, especially migrant workers, are forced to work in poor conditions, as I will describe more profusely in section 2.3, and trade unions do not intervene.

Although the 1978 Chinese Constitution expressly mention the right to strike (罢工 *bàgōng*),⁴⁰ in 1982 Constitution this right was not present,⁴¹ but no law bans the strike action, nor sanctions are prescribed. Strike is then a gray non-regulated area. Art. 27 of the Trade Union Law mentions stop work (停工 *tínggōng*) and slow down measures (怠工 *dàigōng*). In such instances the trade union shall represent employees and negotiate with the relevant authorities to “make known the employees' views and requirements and propose resolutions.” Also, it has to assist the enterprise or the public institution so that the normal production process can be resumed as soon as possible. Looking at this norm,

³⁹ As ruled in the Labor Contract Law, Art. 41

⁴⁰ Art. 45: “Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike (罢工 *bàgōng*), and have the right to speak out freely, air their views fully, hold great debates and write big-character posters” (*cfr.* <https://china.usc.edu/1978-constitution-peoples-republic-china> and http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4365.htm)

⁴¹ Even though China has ratified the International Covenant on Economic, Social, and Cultural Rights, whereby the Chinese government commits to ensure the right to strike.

we can understand how trade unions have to side with the workers, but at the same time, they have to safeguard the employers' needs, that is resuming the production process as quickly as possible. This ambivalence puts Chinese trade unions in a difficult position, because protecting workers is not their only objective, as it should be, but they have to put social order before everything else and they end up being more a third party in workers-employers disputes, rather than workers' advocates. However, at the same time, the enterprise or public institution should support the trade union in carrying out their work (Art. 38), because the fundamental point for the Chinese government is social order, therefore this norm pushes employers to cooperate in order to solve any dispute in the shortest period of time possible.

The working personnel of the trade union committees are entitled to have their own wages (Art. 41). This is a cost for the trade union, while the sources of funds are membership fees, 2 percent deduction from the employees' wage, income turned in by the working unit, government subsidies and other incomes (Art. 43). The trade union is then asked to compile its budget and final accounts and undergo inspection (Art. 44).

Chapter 6 regards legal responsibilities. However, for any violation, the procedure to follow is once again the same illustrated in Art. 20, that is seek for consultation first, and if it fails, bring the dispute to an arbitration committee, or to court if the arbitral agency refuses to accept the case.

This same process is explained in detail in the "Law of the People's Republic of China on Labor Dispute Mediation and Arbitration." When a labor dispute arises, the worker first of all should have a consultation with the employing unit (with also the support of the trade union) (Art. 4). If "the parties are not willing to have a consultation, or the consultation fails, or the settlement agreement reached is not performed, they may apply to a mediation institution for mediation. Where the parties are not willing to have mediation, or the mediation fails, or the mediation agreement reached is not performed, they may apply to a labor-dispute arbitration commission for arbitration. Where they are dissatisfied with the arbitral award, they may initiate a litigation to a people's court, unless otherwise provided for in this Law" (Art. 5).

Chapter two is about mediation. There are three possible institutions where the parties may apply for mediation: Labor-dispute mediation commission established within a company, people's mediation institutions lawfully established at the grassroots level and labor-dispute mediation organizations present in towns, townships and neighborhoods (Art. 10). The role of a mediator is to consider carefully the facts and the points made by each party, persuade them with patience so that they can reach an agreement (Art. 13). If such agreement is reached, it has to be written and signed by both parties and sealed by the institution, but if the mediation attempt fails or one party does not fulfill its duties, the dispute can be brought to an arbitration court for its settlement.

An important point is expressed in Art. 27: "The limitation period for application for arbitration of a labor dispute is one year, which shall be calculated from the date a party comes to know or is expected to know the infringement of its rights." This limitation period has been extended to one year, when it was originally of the previous 60 days. "To apply for arbitration, the applicant shall submit a written application", but if "the applicant has difficulty in writing an application for arbitration, he may make an oral application, which shall be transcribed by the labor-dispute arbitration commission and be made known to the other party" (Art. 28). The same Article lists also what is required to state in such application, that is detailed personal information about the applicant, their employer and legal representative; the claims for arbitration and the facts that prove the claim; evidence and its source as well as witness' personal information.

The arbitral tribunal is composed of a sole arbitrator for simple cases, or three arbitrators, of whom one is the chief (Art. 31) and arbitrators must not have interest in the case, be related to either party or their impartiality must not be affected by any other reason (Art. 33). These rules applied in China reflect the standards required by an arbitral tribunal also abroad. Also, the Law in Art. 42 prescribes that before making an award, the arbitral tribunal shall mediate and if such mediation attempt fails, the award has to be made "in a timely manner." The award is final and binding from the date it is made in case of disputes regarding labor remuneration, medical expenses, economic compensation or damages, working hours, rest and vacation and social insurance (Art. 47). However, Art. 48 states that if the worker is dissatisfied with the award, he or she can bring the lawsuit to a court within 15 days from the date of the award, while Art. 49

says that the employing unit has the right to bring the lawsuit to court within 30 days if there has been irregularities, such as the Laws has been applied erroneously, the evidence on which the award is based has been forged, the other party has concealed evidence, or the arbitrator has accepted bribes, etc. If either party objects the arbitral award, they may initiate a litigation to a court within 15 days (Art. 50).

2.2 INSTITUTIONS

In this section I will introduce the institutions that are supposed to protect workers and defend their rights. First of all, trade unions should be on the front line, representing workers; then the Letters and Visits Office, a governmental department created, *inter alia*, to solve labor disputes; finally, I analyze mediation committees, arbitration committees, lawyers and courts, which are all part of the standardized procedure, illustrated in the Labor Dispute Mediation and Arbitration Law examined in the previous section.

2.2.1 Trade Unions

As said previously, Chinese trade unions exist under the supervision of the All-China Federation of Trade Union (ACFTU), therefore they are not politically independent, but are controlled by the government in a top-down mechanism and consequently higher officials inside the ACFTU are not elected by the members democratically, but are appointed by the government and belong to its administration.

Reading the Trade Union Law, trade unions' multiple objectives emerge, which can be summarized in three principal tasks: Assist the government in its administrative functions in order to maintain social and political stability; cooperate with management of companies to increase production efficiency; represent and protect the rights and interests of the workers. These three tasks are listed in their respective priority order. It is thus clear that there is a fundamental contradiction: The federation has to be loyal to the government first and put workers after, when the reason for a trade union to exist is to protect workers above all.

Quite on the contrary, the ACFTU was created as a “transmission belt”, as an extension of the Chinese government through which the Party-State can reach and keep

under control most of the working population. This top-down approach is not equally balanced by its complementary bottom-up approach, as the grassroots mobilization of workers is often hindered. However, the ACFTU does promote the establishment of bottom-up trade unions. Their number is on the rise, counting 2.80 million grassroots trade unions,⁴² with more than 303 million members and employing over one million full-timers, but these are just numbers, because when workers protest and go on strike, unions usually avoid representing them; conversely, they criticize them, side with the employing unit and push for mediation. The reason of such behavior lies in the task of ensuring social order: Strikes are not seen as a tool workers use to communicate their need, but they are rather seen as a threat to social order, therefore they have to be suppressed.

When it comes to collective contracts, trade unions should negotiate with the management to obtain the best conditions possible for the workers they represent. The “2014-2018 ACFTU Plan on Further Promoting Collective Bargaining”, which followed the “2011-2013 ACFTU Plan on Promoting Collective Bargaining”, showed that ACFTU intended to extensively promote collective bargaining. According to the union, even though there has been an improvement, significant problems persist, such as “inadequate participation of workers, emphasis on formalities rather than actual effects, lack of specific content, [and] unsatisfactory outcome of collective agreements.”⁴³ In reality, more often than not, trade unions once again side with the employers, so the resulting collective contract is nothing more than the minimum terms of employment prescribed by the Labor Law, with few or no extra benefits. This is because they do not represent workers, but act as a neutral third party, position that should be covered by the local governmental officials.

With the Xi administration, the ACFTU was required to initiate a series of reforms, in particular Li Yufu, the ACFTU first deputy-chairman, in November 2015 announced that the reforms aimed at the elimination of the “four impediments”, that are regimentation, bureaucratization, elitism and frivolousness, and “increase the three

⁴² National Bureau of Statistics of China, *China Statistical Yearbook 2018*, 2018, 24-24 Basic Statistics on Trade Unions, <http://www.stats.gov.cn/tjsj/ndsj/2018/html/EN2424.jpg>

⁴³ Daniel BLACKBURN, The ACFTU’s collective bargaining agenda, in Daniel BLACKBURN (edited by), *International union rights*, International Centre for Trade Union Rights, 2015, Vol. 22, No. 4, p. 10-11

attributes”, namely political consciousness, progressiveness and popular legitimacy.⁴⁴ However, it seems that the ACFTU work is not in line with workers’ real needs; local trade unions are still largely inefficient and are still reluctant to fully represent workers. ACFTU has become too much politicized, and its top-down approach has been ineffective, as lower-level unions manipulate targets set by higher level unions.⁴⁵ It has also emerged that its tasks are contradictory: Because of their first priority is not protecting workers’ rights and interests, trade unions just safeguard the basic rights, they do not actively pursue the rise of wages or the increase of benefits. Quite on the contrary, they help enterprises persuade workers to accept the basic conditions.

Trade unions depend on enterprises and governments, because, as mentioned above, economically speaking, unions’ funding comes from membership fees and from a 2 percent contribution that employers deduct from workers’ wages, while unions leaders need to be approved from the Party. This insufficient independence blocks unions from completely representing workers. Their identity is similar to a “puppet,”⁴⁶ meaning that they lack initiative.

In such an environment, trade unions do not have enough own power to really stand for workers against employers, they can only help workers in a limited way, organizing some entertainment events, some educational classes or offering legal help at most. For these reasons, labor NGOs’ work is essential to supply for the shortcomings of trade unions.

2.2.2 Letters and Visits Offices

Letters and Visits Offices (信访局 *xìnfǎngjú*) are a governmental offices where to send comments or suggestions, but, over the past several decades, it has become an office mainly where to appeal about labor injustice. The State Bureau for Letters and Visits is a department of the General Office of the State Council.

⁴⁴ China Labour Bulletin, *The Worker’s Movement in China 2015-2017*, 2018, p. 38

⁴⁵ China Labour Bulletin, *The Worker’s Movement in China 2015-2017*, op. cit., p. 43

⁴⁶ LI Mengdi, *Role Conflict of Trade Unions in China: A Perspective on “puppet” mechanism*, 2017 International Conference on Advanced Education, Psychology and Sports Science (AEPSS 2017), Francis Academic Press, UK, 2017, pp. 564-568

While skilled workers with relatively high educational background and some financial means prefer to settle their disputes with employers through arbitration, poorer workers, usually those engaged in manual works, try to seek help at these offices. Their task is to offer consultation on the legal rights workers think their employer has violated, and to “focus on the political and social norms they believe should be applicable to the workplace and that management should be obliged to practice.”⁴⁷ Letters and Visits Offices, like arbitration committees, are a means to resolve labor disputes, but they also try to negotiate with the management of the employing unit, or help workers file a lawsuit.

Their history goes back to the early 1950s. During the years, they have expanded and diffused capillary all over the country. They are established under different departments; for instance, workers bring their grievances to the Letters and Visits Offices that are under the Labor Bureau (劳动局 *láodòngjú*). They work also via phone call or e-mail.

Letters and Visits Offices “are implicitly assigned five purposes: To preempt social protest, monitor the administration, provide information to identify social problems, maintain a channel contact between ‘the government and the masses’, and offer a means for Chinese citizens to participate in a form of officially legitimate public action.”⁴⁸ They not only read and analyze letters and visits from China, but also those from abroad, and they may carry out their own investigations and research to finally report the important information and making relevant suggestions. For some aspects, their tasks overlap with those of the arbitration committees, for example they step in collective conflicts and act as mediators, in order to ensure that the conflict does not escalate and possibly threats social order.

The officer that handles the case acts accordingly to what he or she think it is better to do. For instance, they may contact the employer and inquiry about the situation at issue, convince both parties to negotiate, also by means of mediation procedure organized and supervised by the office itself or they may sanction the employer if necessary. The final

⁴⁷ Isabelle THIREAU, HUA Linshan, “The Moral Universe of Aggrieved Chinese Workers: Workers’ Appeals to Arbitration Committees and Letters and Visits Offices”, *The China Journal*, 2003, No. 50, pp. 83-103

⁴⁸ *Ibidem*

response may not be based on norms, but on a shared viewpoint of what is fair and what is unfair, therefore such a decision cannot be foreseen with certainty. If the mediation attempt fails, the officer can only suggest resolving it through arbitration.

A particularity of this institution is that workers can send anonymous letters and the offices must accept all the complaints it receives, there are no particular requirements to be accepted, therefore there is a margin of freedom linked to it. However, the writer has to be a witness of that they report, even if they are not the direct victim.

Another advantage is that the services provided that such offices are free, while the judicial procedure has to be paid. For this reason, workers with low income, such as manual workers, prefer to seek their help first. Also, the overall procedure is much simpler if compared to the complicated procedure necessary to bring a case to court.

Finally, the petition system is more efficient and quicker, and the final settlement can be more favorable to the applicant, because while arbitration and courts strictly apply the law, competent authorities who handle the cases forwarded by the Letters and Visits Offices sometimes make concessions to avoid the petition to be sent to a higher governmental level.

The complaints that the Letters and Visits Offices handle concern wage arrears, excessive overtime hours, refusal to sign a written contract, arbitrary dismissal, unpaid social insurance, job accidents, but also physical harassment, poor living conditions and similar. While most of these problems relate to the employer breaking the Labor Law, some of them are situations that the Law does not cover. Most of the letters are written by a worker representing a wider group of workmates, collectively signed or with just an indication of the name of the company the work for.

However, such institution has some flaws. First, these offices receive thousands of petitions every year, because the Chinese people particularly trust this system in resolving their problems. People trust this system more than courts and the central government more than the local government, that is the reason why they try to petition through the Letters and Visits Offices rather than using the judicial procedure or even if such procedure is in

progress. Indeed, they think they have more chances to succeed if they are backed up by this official institution.

The government has hindered the use of the petition system by punishing petitioners: For example, they have been detained and imprisoned or sent to re-education camps, or otherwise by bribing petitioner, giving them some benefits if they withdraw their application. However, despite such attempts to reduce the number of letters and visits, this is still the most effective and inexpensive way to solve labor disputes, so the number of petitions does not decrease.

When applications are reviewed, the department accepts them if they are within its authority, otherwise it forwards them to the competent institution, then they are processed. This happens because the officials that work in Letters and Visits Offices have very limited power: They can only accept the petition, forward it to the relevant institution and giving advice. It is thus clear that they do not have the power to truly solve problems.

As previously mentioned, Letters and Visits Offices can be under differed administrative departments. Such departments lack coordination among them, so applicants could be required to visit several different authorities for the same request, in average they visit more than six organs.⁴⁹

Officials working in this institution are subject to appraisal, therefore if they believe that the dispute is rather troublesome and it could damage their reputation, they can find reasons to avoid dealing with the problem or, since they are obliged to accept the application, they can send petitioners to receive “compulsory mental health treatments”, or to be re-educated through labor.⁵⁰

2.2.3 Mediation Committees

The first step when a labor dispute arises, according to the Labor Dispute Mediation and Arbitration Law is mediation. Mediation institutions are of three types: 1) labor-dispute

⁴⁹ GAO Xujun, LONG Jie, “On the Petition System in China”, *University of St. Thomas Law Journal*, Vol. 12, No. 1, 2015, pp. 34-55

⁵⁰ *Ibidem*

mediation commissions of enterprises;⁵¹ 2) people's mediation institutions at the grassroots level (that is administrative mediation); 3) organizations with the function of labor dispute mediation established in towns, townships or neighborhoods.

The application for mediation can be written or, if it is oral, the mediation institution is required to note down the basic information about the applicant and the matter of the dispute. Mediators are required to be familiar with laws and policies, well-educated and fair-minded. They have 15 days to help the parties reach an agreement which has to be signed by both parties and by the mediator and sealed by the mediation institution. This agreement is binding for both parties and is to be enforced immediately. If the parties do not reach an agreement, either party can apply for arbitration. If one of the parties fails to perform what stipulated, the dispute can be settled by arbitration procedure. Also, if one of the parties is unwilling to mediate, no mediation may occur, and the applicant can apply for arbitration.

In reality, there is a limited probability of reaching an agreement through enterprise mediation. If an agreement is reached, it is often at the expenses of the employees: The enterprise mediation commission is supposed to be neutral and independent, however there is presumably an imbalance in the power of the two parties, reason for which the final agreement, if reached, would favor the company. The enterprise mediation commission is even less fair if trade union members represent workers, because, as already noted, the trade union usually sides for the employer rather than for the workers. Also, it receives funding from the company, therefore it is economically dependent from the company, which causes a bias in favor of the employing unit.

Moreover, not many companies have established an inside mediation commission and even if they have, workers are not aware of its presence or do not believe in its fairness, so they may decide to directly apply at the arbitration institution. Other mediation bodies at times lack the expertise required to be effective and the regulations that govern them

⁵¹ The mediation commission of an enterprise is made up of both representatives of the workers (trade union members or chosen among the employees) and of the company who together decide to appoint a director of the mediation commission.

is weak, because it is lacking in several aspects, for example about establishment, operation procedure, personnel composition, funding sources.⁵²

Lastly, the mediation agreement is not enforceable, which also pushes toward directly applying for arbitration. Also, mediation is based on voluntary participation. This has two meanings: First, if one of the parties does not agree to trying to settle the dispute through mediation, this first step is skipped, and the parties bring their dispute in front of an arbitration tribunal. Second, if the parties reach an agreement and sign such agreement, they should honor it, but if they do not fulfill their part, the agreement cannot be enforced in any other way and the other party can only apply for arbitration.

Supporting these criticisms, the National Bureau of Statistics of China in 2017 has registered 208,491 cases of labor disputes mediated in a descending trend since 2015 when they were 258,114.⁵³ On the contrary, in 2017 there has been 390,278 cases of labor disputes settled by institutional mediators. This figure is instead part of an increasing trend, if we look at the previous five years: In 2013 such cases were 311,806, which grew to 362,814 in 2015 and to 389,109 in 2014.

Historically, Chinese people have been against legal processes, and preferred consensual dispute resolution methods, where both parties were supposed to mutually make concessions and reach a final solution, which was a compromise. “The Chinese word for mediation or conciliation, *tiaojie* (调解), literally means to ‘mix’ or ‘bind together’ to reach a ‘solution’. Thus, mediation stands for the reestablishment of unity through a process of give and take, sacrifice, and forgiveness.”⁵⁴ This cultural preference can be associated with Confucianism. Confucius preached harmonious social order, result of people being governed by rites (礼 *lǐ*), therefore law was not necessary, because legal punishments cannot teach kindness, benevolence or compassion.⁵⁵

⁵² ZHANG Jiaqi, “Thoughts on Perfecting Labor Disputes Mediation System in China”, *Advances in Social Science, Education and Humanities Research*, Atlantis Press, 2017, Vol. 101, pp. 1263-1267

⁵³ National Bureau of Statistics of China, *China Statistical Yearbook 2018*, 2018, 24-23 Disposal of Labor Disputes, <http://www.stats.gov.cn/tjsj/ndsj/2018/html/EN2423.jpg>

⁵⁴ Joshua KARTON, “Beyond the ‘Harmonious Confucian’: International Commercial Arbitration and the Impact of Chinese Cultural Values”, in Chang-fa Lo et al., *Legal Thoughts between the East and the West in the Multilevel Legal Order: A Liber Amicorum in Honour of Professor Herbert Han-Pao Ma*, Springer, 2016, pp. 519-542

⁵⁵ *Ibidem*

Chinese culture was shaped also by other traditional Chinese schools of thought, for example Taoism, Mohism and Buddhism and they were all favorable to mediation. Taoism, as well as Confucianism, considers law sanctions not necessary, because each person should fulfill their obligations not because of the fear of punishments, but because of a motivation that comes from inside each individual. Mohism is very similar to Confucianism, as Mencius was a Confucian scholar. Finally, Buddhism also has had a considerable influence on Chinese culture, even though it came from India, it was not originated in China, but it discouraged litigation like the other schools of thought.

At the same time, we have to remind that Chinese people have always lived in small villages until urbanization led to the formation of modern-days metropolis. In those small villages people used to work together and cooperate to maintain harmony and foster prosperity. For this reason, for mediators maintaining the relationship between the quarreling people was more important than finding who was right and who was wrong, because they had to continue working together. The agreement was reached putting the community, its interest and its harmony first and the interests of the two parties second.

Another reason that traditionally pushes towards mediation is the fact that going to court entailed being punished, for both parties, for the reason of having altered social harmony by reaching to the court. Also, judges had to be paid and they lacked legal training, refraining people from reaching out for them. However, things changed starting from the 1970s: Chinese judges has become more professional and their formation was strengthened; attorney fees are reduced for labor dispute litigations, encouraging workers to bring their lawsuit to court.

2.2.4 Arbitration Committees

Arbitration Committees (仲裁委员会 *zhòngcái wěiyuánhùi*) are the institutions that are designated to resolve labor disputes.

Workers bring their dispute to an arbitration committee when the mediation attempt has failed. However, arbitrators are required to try to mediate before starting the arbitration procedure whose final decision is based upon the law, like the legal procedure in courts. This practice of combining mediation and arbitration is typical Chinese, it's due

to the strong importance culturally attached to mediation, as described above. Some Western lawyers criticize this procedure because they believe there is the risk that the arbitrator could be influenced by one of the parties during mediation and become empathetic, therefore this could compromise their impartiality. But from the Chinese point of view, having the same person perform mediation and arbitration procedures is better because they are already familiar with the case. Knowing about the case would not influence the arbitrator's impartiality. In any case, this practice of combining arbitration and mediation can be found only in China and Taiwan and accepted but not promoted in Hong Kong and Singapore.⁵⁶

As specified above, the law prescribes a limitation period of one year for the application for arbitration; such period of time is calculated from the date a party comes to know the infringement of their rights. The labor-dispute arbitration commission has five days from the date it receives the application to accept it and notify the applicant. If the application is rejected, the applicant may bring the lawsuit to a court. Indeed, differently from the Letters and Visits Offices, arbitration committees have the right to refuse cases and the name of the plaintiff must be disclosed, they cannot remain anonymous, as it is possible when sending a letter to the Letters and Visits Office.

The arbitration committees handle both individual labor disputes and collective disputes. The total number of labor disputes settled by arbitration in the past few years can be illustrated by a curve: There was an increasing trend until 2015, where it reached its peak of 368,409, but then it started decreasing in 2016, reaching 366,742 in 2016, to 336,073 in 2017.⁵⁷ The labor dispute arbitration commission is composed by representatives of the administrative department of labor, the workers (who could be represented by trade union members) and the enterprises and the total number of the members must be odd. This commission is required to choose three arbitrators, with one acting as chief arbitrator, or one arbitrator for simple cases to make an award. The law gives 45 days of time to the arbitral tribunal to finish making the award. The award is final and is to be enforced from the date it is made.

⁵⁶ *Ibidem*

⁵⁷ National Bureau of Statistics of China, *China Statistical Yearbook 2018*, 2018, 24-23 Disposal of Labor Disputes, <http://www.stats.gov.cn/tjsj/ndsj/2018/html/EN2423.jpg>

This procedure has some advantages: It is more flexible and rapid than a lawsuit; it is confidential, therefore the case is not disclosed to the public while a lawsuit is; arbitrators are professionals, experts in the matter that they have to judge and are theoretically part of an independent institution, which should make them less affected by impartiality.

However, there are also a few shortcomings. First of all, labor arbitration committees in reality show a strong administrative tendency and lack in neutrality and independence.⁵⁸ This is due to the fact that full-time arbitrators come from the labor administration department, while part-time arbitrators are from the enterprise or trade union. Also, the former are those who decide upon most of the cases. For this reason, if the local government aims for economic development, it would favor enterprises in order to attract foreign investors, meaning that it would close an eye if companies violate workers' rights, therefore it would pressure the arbitration committee to side with the employers, reducing its impartiality.

Moreover, arbitrators do not have supervision, therefore it is possible to encounter arbitrators who accept bribery, conduct favoritism or abuse their power; at times arbitrators have met the parties in private, and this should not be allowed to avoid corruption, because there has been cases where the arbitrator has accepted gifts from the parties or their representatives.⁵⁹ If such unlawful behavior is ascertained, the award is dismissed, the arbitrator fired or born with the corresponding legal responsibility, which are not legally specified.⁶⁰

Lastly, the arbitration procedure used to be not free, differently from the help Letter and Visits Offices offer. Expenses were usually divided among the parties and included a case accepting fee and a hearing fee. However, since the enforcement of the Labor Dispute Mediation and Arbitration Law in 2008, it has been ruled that labor dispute arbitration must be free of charge, as the funding is provided by the government (Art. 53).

⁵⁸ ZHAI Yujuan, LI Han, "The Situation and New Legislation of China Labor Dispute", *Willamette Journal of International Law and Dispute Resolution*, Willamette University College of Law, 2007, Vol. 15, No. 1, pp. 111-131

⁵⁹ LI Jiangyong, *Labour Arbitration in Mainland China: Its Current State, Characteristics, and Tendencies*, Asia Pacific Dispute Resolution Project Working Paper No. 16-3, Peter A. Allard School of Law The University of British Columbia & Asia Pacific Dispute Resolution, 2016

⁶⁰ *Ibidem*

Before 2008, this used to be a deterrent, but this change gives the opportunity to poor workers to applying for arbitration.

2.2.5 Lawyers and Courts

According to the Law, the prerequisite for the court to judge upon a labor dispute case is that the dispute has been arbitrated before. If either party is not satisfied with the award made by the arbitration committee or if such award has not been implemented, either party can file a lawsuit. Also, if either party disagree with the court award, they have the right to appeal to the second instance court. To do so, they need to file an appeal within 15 days from the date the award has been made. The second judgement can take a longer period of time, because the court is judge is required to make an award within three months. Once the labor dispute is brought to court, it is quite uncommon for it to be resolved after the first-instance trial. Indeed, in Guangzhou Province, about 30 percent of first instance court decisions are appealed to the higher court, while in Jilin Province, only 42 percent of all labor dispute cases handled by the courts are first-instance trials; the remainder are second-instance trials (appeals), re-trials and enforcement actions.⁶¹

The People's Courts follow the Civil Procedure Law of the People's Republic of China (中华人民共和国民事诉讼法 *Zhōnghuá Rénmín Gònghéguó mínshì sùsòngfǎ*), as there is no specific procedural law for dispute litigation.⁶² According to what the law prescribes, they have 45 days to resolve the labor dispute and make the award.

Private lawyers are often reluctant to represent workers, because, first of all, the economic compensation is lower than usual because workers have low income. In large cities, lawyer demand from 3,000 to 5,000 RMB for each stage of litigation or even more: For instance, a survey in Chengdu found out that the legal fee was beyond 5,000 RMB and often even 10,000 RMB.⁶³ These sums of money are clearly too high for a low-wage worker, even if he would win the cause and obtain a compensation because lawyers are required to demand the payment upfront, without waiting for the procedure to end. For

⁶¹ Aron HALEGUA, *Who Will Represent China's Workers? Lawyers, Legal Aid, and the Enforcement of Labor Rights*, U.S.-Asia Law Institute, New York University School of Law, 2006, p. 12

⁶² ZHAI, LI, "The Situation and New Legislation of China Labor Dispute", op. cit.

⁶³ HALEGUA, *Who Will Represent China's Workers?*, op. cit., p. 19

this reason, in particular migrant workers who has been laid off, are injured or are claiming unpaid wages cannot afford it.

Second, labor disputes could be potentially political sensitive, especially when the case involves a group of workers, and even more so if these workers cooperate with grassroots NGOs. However, in recent years the number of collective legal cases has increased. The current labor dispute resolution system was created for individual labor disputes, therefore collective cases seldom have to be broken down into individual cases. This obviously increases the expenses and the extend the time required to resolve a dispute. For all these reasons, law firms rarely decide to handle collective cases and if they do so, they have to report it to the local chapter of the All China Lawyers Association if the case involve 3 or more workers, or to the Municipal Bureau of Justice if there are more than 20 workers.⁶⁴

It is not surprising, then, how workers are less successful in court than in arbitration. Reasons are multiple. First, it has been noted that arbitration committees are less strict than courts and more worker-friendly. Second, a report on labor disputes in Shanghai found that the first-instance court overturned 40 percent of arbitral awards, while the second-instance court only overturned 4 percent of the cases appealed from the lower court.⁶⁵ However, the main reason explaining why workers lose or partially lose in court is linked to the fact that employers can afford paying a good lawyer and that workers' lack of knowledge of the law and the legal process. Both these factors could be mitigated if workers were able to hire professionals of good quality. Quite on the contrary, four out of ten workers in court lack legal representation.⁶⁶

Overall, it would take around one year even for simple labor disputes to go through the whole procedure. Because it would take so long and workers cannot directly file a lawsuit, many avoid bringing claims at all. This shows that the current procedure for the settlement of labor disputes has still room to be improved. This is also the reason why

⁶⁴ Darcy PAN, "Agents of Change or Status Quo? Labor NGOs in South China", in E. Paul Durrenberger (edited by), *Uncertain Times: Anthropological Approaches to Labor in a Neoliberal World*, University Press of Colorado, 2017, pp. 135-160

⁶⁵ HALEGUA, *Who Will Represent China's Workers?*, op. cit., p. 17

⁶⁶ *Ibidem* p. 2

workers are increasingly using other ways to have their rights enforced, for example going on strike, blocking roads, organizing sit-ins, etc.

Furthermore, in Chinese courts corrupt behavior has been reported. Although it is difficult to determine how serious this issue is, because of lack of data and studies on the topic, it is possible to distinguish several different types of corruption: It could be bribery and favoritism, that is accepting money in exchange of favors or making favors that are a payback for others received in the past; then there are cases of embezzlement, misappropriation, swindle and serious negligence and even cases of physical violence and illegal detention.⁶⁷ However, eliminating corruption is part of Xi Jinping's anti-corruption campaign. Last January at a high-level annual meeting on political and legal affairs, he expressly said that officials must "resolutely guard against slack law enforcement, miscarriage of justice, breaking the law while enforcing the law and judicial corruption."⁶⁸

2.3 INEFFICIENT PROTECTION OF RIGHTS

Even though the National People's Congress has issued the aforementioned laws and regulations and has set up bodies to protect workers, their rights and interests, this is apparently not enough, because the whole mechanism needs to be further implemented.

First of all, the problem should be addressed from its roots, that is how Chinese workers are treated. China Labor Watch, an NGO based in New York, over the past years has conducted in-depth investigations in some Chinese factories that produce clothing, shoes, bikes, toys, electronics and furniture for some multinational companies.⁶⁹ They usually send a volunteer to be recruited in the target factory and they will live and work as any other worker, so that they can report on the living and working conditions inside

⁶⁷ LI Ling, "Corruption in China's Courts", in Randall Peerenboom (edited by), *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, Cambridge University Press, 2010, pp. 196-220

⁶⁸ Nectar GAN, *Xi Jinping tells judiciary and law enforcement agencies to 'scrape away the poison' amid investigation into missing documents for US\$56 billion coal mine*, South China Morning Post, 17 January 2019, <https://www.scmp.com/news/china/politics/article/2182551/chinas-president-xi-jinping-tells-judiciary-law-enforcement>

⁶⁹ The full presentation of the organization can be found at http://chinalaborwatch.org/who_we_are.aspx

the factory, they can interview their colleagues and take some photos. In summary, comparing several factories producing different goods, they have found out that during the hiring process discrimination may occur, because applicants older than 40 or 45 are not accepted. However, no child labor has been proved, as the youngest workers are 16 years old or 18 years old according to the policies of each company. Sometimes, discrimination against women is also proved, since pregnant women are not hired. Also, in some instances, extra clauses requesting the woman not to get pregnant in the following years are included in the labor contract, even though it is illegal. If female workers get pregnant, even after the period they have signed not to get pregnant, they are often pressured to resign.

Some employing units do not provide a pre-job physical examination.⁷⁰ This constitutes a problem, because then it is difficult for a worker to prove that their disease has originated from working at the factory (or if they were already sick before being hired). The factory does not provide the mandatory pre-job safety training, which means that workers are not aware of which substances they use are toxic, which are dangerous; they do not know how to avoid peril, which measures to take when facing problems. They usually receive a short explanation of how to do their work and how machinery works, but they are not taught to recognize malfunctions before the machinery breaks, so work injuries happen quite often. It has been found that many injuries in the workplace happen to workers when they are quite new to their job or when they get distracted, even for a while.

When it comes to contract, it has been reported that often workers do not have enough time to read it thoroughly and are hurried to sign. No one explains them the content of the contract and sometimes they have to sign blank contracts, which are later filled in. They do not receive their copy as prescribed by law, or they have to wait for a long period of time before getting it. Moreover, it happened that, during litigations in court, employers have brought labor contracts where they have faked workers' signatures, but it was difficult to prove, because workers do not have their copy of the contract.

⁷⁰ If they do, it is paid by the worker, and may consist of a blood test and chest x-rays. The cost usually is around 30-35 RMB. Also, workers do not receive a copy of the results

As for working hours, after the 8 normal hours, laborers usually work overtime. It happens that in some factories overtime is even mandatory. When it is not, workers are willing to stay longer because it means extra pay. However, overtime hours are many more compared to what the law says. As mentioned before, Art. 41 states that overtime hours must not exceed 36 hours per month. In reality, during peak seasons, workers could undergo 80 to 175 hours per month of overtime. This means that work days are from 26 to 29 days a month, with just one day off. Workers often lament they do not have enough rest time, because when they finish work, they immediately go to bed and sleep, but it happens that they have less than 8 hours of sleep at night. Some factories implement the double shift system, and every two or three weeks, workers swap shift, who had the day shift now has the night shift and vice versa. This results in shifts overlapping, therefore people, in particular during peak season, do not even have the chance to meet and socialize. Rest days can be limited to one day each month, as I have just mentioned, and workers could be asked to work even during holidays.

The work is consuming. Working hours are usually from 8 AM to 8 PM with two major breaks for lunch and dinner for which workers are given 30 to 90 minutes. Sometimes overwork hours are included because meal breaks are shorter, some other times overwork hours last until 10 or 11 PM. Workers could be required to stay or sit for the whole day, even though they are entitled to take short breaks for drinking and going to the restroom. They may come into contact with toxic chemicals, dust and the working environment could be very noisy or very hot (even though it is usually provided with fans or air conditioning system). However, some employing unit does not provide protective equipment, or provide them only if requested. Due to the lack of pre-job safety training, some workers do not use the protective equipment at all or use them in the wrong way, for example some workers do not cover both mouth and nose with facemasks. Most of the times no occupational health and safety committees are established.

The Chinese Ministry of Human Resources and Social Security (MOHRSS, 中华人民共和国人力资源和社会保障部 *Zhōnghuá Eénmín Gònghéguó rénlì zīyuán hé shèhuì bǎozhàng bù*) reported that in 2017 1.04 million workers suffered from work-related injury, about the same number of the previous year, while 529,000 were disabled,

30,000 less than the previous year.⁷¹ The director of the State Administration of Work Safety (中国国家安全生产监督管理总局 *zhōngguó guójiā ānquán shēngchǎn jiāndū guǎnlǐ zōngjú*), Wang Yupu (王玉普), said that, in the same year, deaths in the workplace were 38,000, dropping by more than 40 percent.⁷² This registers a new minimum record, meaning that work safety is improving. However, proving work injury is strenuously difficult and it could require several years, reason being the lack of coordination of laws and regulations and the lack of dialogue between the numerous departments. Even when it is attested that the injury is work-related, more inspections are to be carried out to verify the degree of the injury, to determine the amount of the compensation the workers deserve. Without medical insurance, the employer is responsible for all costs (included the disability payment), therefore he will try to protract the litigation, objecting to the degree of the injury or the fact that it is not work-related, so that the worker will give up or accept a smaller sum of money.

In the reports that I have read, there is no mention of physical harassment, but several workers said that they are often yelled at, they are scolded because they do not work fast enough. Even so, they do not complain and just endure the mistreatment.

Wages are usually low, not much higher than the minimum wage established by the local government.⁷³ In some factories, especially during peak season, the total wage can reach up to 4,000 RMB or slightly more, but in several instances, during off seasons, the average wage is around 2,000 RMB which is far less than what they are entitled to earn⁷⁴ and which is not sufficient to have a good standard of life. Indeed, workers often have to cut expenses and struggle to save money. Even though usually the piece rate system to

⁷¹ Chinese Ministry of Human Resources and Social Security Zhōnghuá Rénmín Gònghéguó rénli zīyuán hé shèhuì bǎozhàng bù 中华人民共和国人力资源和社会保障部, “2017 niándù rénli zīyuán hé shèhuì bǎozhàng shìyè fāzhǎn tǒngjì gōngbào” 2017 年度人力资源和社会保障事业发展统计公报 (Statistical Bulletin on the Development of Human Resources and Social Security), <http://www.mohrss.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/201805/W020180521567611022649.pdf>

⁷² ZHAO Yan 赵妍, “Qùnián zhōngguó ānquán shēngchǎn xíngshì liánghǎo shìgù zǒngliàng xiàjiàng” 去年中国安全生产形势良好事故总量下降 (Last Year China’s Production Safety Was Good, and the Total Number of Accidents Dropped), in “CRI online”, 29 January 2018, <http://news.cri.cn/20180129/b6052ed2-e1f8-d842-da0c-6768408ecc19.html>

⁷³ For reference, check the report “Minimum Wage Standards in China” compiled by China Labor Watch (retrievable on the website http://www.chinalaborwatch.org/upfile/2018_06_28/Minimum%20Wage%20Final%202018.pdf)

⁷⁴ In certain cases, workers’ base salary is even less than the minimum wage.

calculate wages is applied, workers keep track of how many hours a day they work. Even so, the calculations are often not clear. According to the law, as illustrated above, overtime hours should be paid no less than 150 of regular working hours if during the working week, no less than 200 percent if during days off or no less than 300 percent during holidays. However, this is not always what happens in reality, because at times overwork hours are not even compensated. Sick leave or leave for other reasons sometimes they are not paid, as it happens for holidays. The salary therefore includes the base wage, overtime pay, eventual bonus and subsidies, while social insurance contribution, housing fee and meal expenses are deducted. In some instances, employers do not pay regularly every month, but after several years or even after a whole year.

The law also prescribes that the employer has to purchase social insurance together with the worker, but not all employing units do purchase it or, when they do, contributions are paid on the base salary and not on the total amount. Besides being illegal, this means that the workers will receive a lower pension⁷⁵ than what they are supposed to. Also, at times there is age limit discrimination in purchasing social insurance, for example it has been registered that workers under the age of 45 are not allowed to pay social insurance contribution and workers themselves are quite reluctant to spend money for it because their wages are already low. For this reasons, pregnant women or unemployed staff do not receive respectively maternity benefits and unemployment insurance. Social insurance is very important because it includes medical, work injury, unemployment, maternity, pension and housing provident fund. Another aspect is that workers are not always willing to pay their share, because their wage is already very limited, and they prefer to keep the money for their family's needs. However, when they become closer to the retirement age, they realize how important contributions are and they go on strike or open a labor dispute because the employer had not paid the necessary contributions.

Many workers live in dormitory houses that are usually built near the factory. Some are equipped with recreational facilities like basketball court, ping-pong tables, badminton courts, libraries, dance studios, gymnasium, television room, etc. or other

⁷⁵ Retirement age is fixed at the age of 60 for men and 50 for women, with the exception of female civil servants who retire at the age of 55.

facilities such as clinics, lounges for pregnant women, etc.⁷⁶ Living standards are quite low: Rooms are small and can be inhabited by 2 to 10 people,⁷⁷ some showers do not have hot water, but there are faucet in other places, therefore hot water has to be transported using buckets. Most of the times, dorms are not free, but for those who live there a housing fee is deducted from the salary (the amount is variable and other expenses such as meal, water and electricity fees can be included or not). If workers rent a house, they do not pay the dormitory fee, but they are not given extra subsidies. Dorms usually have one or more cafeterias and the food is quite cheap.⁷⁸

Lastly, it has been observed a lack of independent unions to represent workers' interests. If representative unions have been established, they do not serve any real purpose. They are affiliated with the All-China Federation of Trade Unions and their managers are managers from the factory who appoint the unions leaders, even though they are supposed to be elected by workers. For this reason, the union is not able to defend workers' interests and rights, because the workers' representatives do not know what their role is or what they are supposed to do. Also, effective complaint channels are often missing as well, so if laborers encounter problems, they either endure the difficulties or resign. Hotlines or "suggestion boxes" may have been set up, but they are not frequently used.

The construction industry is another sector where low-cost workers are engaged. Besides, they are the workers that suffer from unpaid wages the most. This happens because the employer provides housing and meals but pays wages once the project is concluded or before the Chinese New Year, when workers return to their families. The government is working to solve this problem, which is widespread and the cause of many protests, but it persists.

⁷⁶ It has to be noted that not all of them have many facilities, indeed some dormitories can have only a basketball court.

⁷⁷ Rooms are usually furnished with bunk beds with very thin mattress and even if there are 8-10 of them, some room can host only 4 people, so several beds are not used. Workers often lament that there is no enough room for their belongings, because the number of closets is limited, and they are not spacious. Even though workers' clothes and personal items are not much, some of them go back home once a year, so they need more storage space.

⁷⁸ When there are two cafeterias, sometimes one is for workers and one for the management staff; in the latter the food is of better quality and workers cannot buy their meals there, even if they pay more.

Most of these workers described so far are the so-called migrant workers (外出务工人员 *wàichūdǎgōngrényuán*), “a specific population under the household registration system, living in a place or engaging in various jobs, who are stranded across the country for more than six months and whose household registration is typically in a village.”⁷⁹ Hence, migrant workers are usually part of the surplus laborers that has been created in rural China starting from the 1980s with the de-collectivization of the land. They moved to big cities looking for an employment to sustain their family. Because of the *hukou* system (the household registration system), migrant workers cannot bring their children with them, because they would not be able to access school education and healthcare. In addition, schools for migrant workers’ offspring exist, but they are very expensive. For these reasons, they usually live in the countryside with their grandparents. They have the chance to visit their parents during the school summer holidays, but if it is not possible, they will meet their parents only once a year, for the Chinese New Year. Migrant workers therefore sacrifice their family to work far away and make the money needed to raise their children and sustain their parents.

The number of rural migrant workers has been constantly on the rise. In 1989 they were around 30 million; 4 years later they were the double. In 2003 their number exceeded 100 million.⁸⁰ According to China Statistical Yearbook 2018 published by National Bureau of Statistics of China,⁸¹ in 2017 the floating population was reported to be of 244 million people.

Now, the first generation of migrant workers has aged and a new generation, born after 1980 has come in. “The term ‘new generation of migrant workers’ generally refers to the 125 million migrant workers in the PRC born in the 1980s and 1990s.”⁸² Compared to their elder co-workers they are better educated, have higher occupational status, and expect more from their jobs; “perhaps [they are] less tolerant of abuse and injustice, as

⁷⁹ SHAO Cenyi et al., “Income-related health inequality of migrant workers in China and its decomposition: An analysis based on the 2012 China Labor-force Dynamics Survey data”, *Journal of the Chinese Medical Association*, No. 79, 2016, pp. 531-537

⁸⁰ Data retrieved from LI Shi, “The Economic Situation of Rural Migrant Workers in China”, *China Perspectives*, 2010, No. 4, <https://journals.openedition.org/chinaperspectives/5332>

⁸¹ Available on the website <http://www.stats.gov.cn/tjsj/ndsj/2018/indexeh.htm>

⁸² Ivan FRANCESCHINI, Kaxton SIU, Anita CHAN, “The ‘Rights Awakening’ of Chinese Migrant Workers: Beyond the Generational Perspective”, *Critical Asian Studies*, 2016, Vol. 48, No. 3, pp. 422-442

well as readier to defend their interests, [...] unlike the first generation of peasant-workers who were lost and passively accepted their fate, the second generation has refused to remain quiet.”⁸³ However, this is not completely true: The differences between the two generations are not as stark as they appear, because there is still a low level of awareness of one’s right, and usually this awareness increases with the age, due to a process of education and auto-education that is carried out during the years of work. It is usually those who suffer injuries, those who do not receive the compensations they are entitled to when the factory they work in decides to relocate,⁸⁴ those who want to fight for a better condition that start to study the Law. Moreover, labor non-governmental organizations, subject of the present thesis, take part into this process in several ways, as I will explain in section 3.2.

⁸³ *Ibidem*

⁸⁴ Nowadays, Chinese workers’ condition is improving, their salary is rising, and the economic growth has slowed, therefore many factories decide to relocate in inner provinces within China, where the labor cost is still low. The new location of the factory is usually too far away for many workers who are laid off. According to the Law, they are entitled to receive a compensation, but many employers inform their workers without discussing the decision with them and at times they pay a minimal compensation or none at all. Also, these same employers have never paid social insurance and other welfare benefits mandatory by law, for this reason workers would not have any medical insurance nor pension and often they risk not finding another job because of their advanced age. This has led to strikes and mass protests, like those in 2014 and 2015 at the Lide shoe factory after its workers heard that the factory was going to be relocated.

CHAPTER THREE

DEVELOPMENT AND STATUS OF LABOR NGOS

3.1 HISTORY OF LABOR NGOS IN CHINA

Social Organizations have existed in China since the Sui Dynasty (581-618). Missionary and academic organizations, as well as private school have a long history. Moreover, international organizations such as the Rockefeller Foundation were present in China already in the 1920s. It is just after the foundation of the People's Republic of China in 1949 that social organization has been absorbed in the structure of the Communist Party because the Chinese leadership deemed social organization as a possible cause of instability. For this reason, no true NGO operated in China in the first decades of the PRC. On top of that, during the Cultural Revolution (1966-1976) many organizations were shut down.⁸⁵

Things changed again when, starting from 1978 with the reforms enacted by Deng Xiaoping, China opened up again. In the 1980s, the Chinese government imposed little control on NGOs, restrictions were also minimal, and no precise government department was in charge of managing NGOs registration and administration. This was later considered as “a chaotic period when there was no rule to follow and no person in charge.”⁸⁶ Tables turned again after the Tiananmen incident on the 4 June 1989. Indeed, it is exactly in that year that the “Regulations on the Registration and Management of Social Organizations” were issued. As seen in the first chapter, through these regulations the double registration system was implemented. As a consequence, many grassroots organizations could not register, so they were forced to register as business enterprises,

⁸⁵ JIN Tao, *Essays on International Development: The Development of China's NGOs: Constraints and opportunities – and – Is Globalization Pro-poor in China?*, Zhejiang University, 2008

⁸⁶ MA Qiusha, *The Governance of NGOs in China Since 1978: How Much Autonomy?*, in *Nonprofit and Voluntary Sector Quarterly*, Vol. 31, No. 3, 2002, pp. 305-328

not register at all or close. These restrictions allowed only NGOs working in non-political sensitive areas to operate in China. Hence, such organizations are required to be apolitical.

However, the presence of NGOs in China is essential: The government has understood that its capabilities alone are not enough to deal and solve all the problems China is facing at the moment. For this reason, it has decided to delegate some of its responsibilities to organizations that are outside the state structure, according to the strategy “small government, big society.” Also, this policy allows the government to save money, but it also weakens the government’s ability to provide social welfare.

In 2004 Wen Jiabao (温家宝), at that time Prime Minister of China, during the Second Session of the 10th National People's Congress (第十届全国人民代表大会第二次会议 *dìshíjié quánguó rénmin dàibiǎo dàhuì dìèrcì shuìyìshang*), affirmed the importance of NGOs⁸⁷ by declaring that more activities were going to be handled by private ventures, NGOs and intermediary agents. This was the first time the government recognized the importance of NGOs’ activity. However, no concrete actions were really taken after that speech. Quite on the contrary, starting from 2013, when Xi Jinping (习近平) became President, his administration has increased the level of control on NGOs, resulting in the limitation of NGOs’ actions and in jeopardizing their survival, as I will further explain in the next chapter.

Labor NGOs are usually created bottom-up, and appeared in China from the mid-1990s when, despite the restrictions and difficulties created by the new Regulations, Social Organizations experienced a new boom.⁸⁸ Since they operate in a sensitive field, they could not register as NGO, but they could only register as companies or not register at all.

⁸⁷ Literally called 社会组织 *shèhuì zǔzhī* social groups cf. The Second Session of the 10th National People’s Congress on 3rd March 2004 – 2004 State Council Government Work Report “2004 nián 3 yuè 5 rì zài dìshíjié quánguó rénmin dàibiǎo dàhuì dìèrcì shuìyìshang - 2004 nián zèngfǔ gōngzuò bàogào” 2004年3月5日在第十届全国人民代表大会第二次会议上 2004年政府工作报告 available on the website: http://www.gov.cn/test/2006-02/16/content_201193.htm

⁸⁸ Ivan FRANCESCHINI, “Labour NGOs in China: A Real Force for Political Change?”, *The China Quarterly*, 2014, pp. 1-19

The first labor NGO followed the Fourth World Women's Conference of 1995. As previously mentioned, this conference brought the concept of NGOs in China and it also raised awareness of the women's condition. This led to the foundation of the Home of Beijing Migrant Women (北京打工妹之家 *Běijīng dǎgōngmèi zhī jiā*),⁸⁹ and then of the Beijing Action for the Community Sisters (北京社区姐妹行 *Běijīng shèqū jiěmèi xíng*), both registered as enterprises in 1996. That same year, another NGO was founded, this time in Shenzhen, Guangdong Province, by the name of The Chinese Working Women Network (女工关怀 *nǚgōng guānhuái*).⁹⁰ A couple of years later, other NGOs were founded, this time without being specifically addressed to women. In 1998 the Migrant Workers' Document Handling Service (打工族文书处理服务部 *dǎgōngzú wénshū chǔlǐ fúwùbù*) was established in Guangzhou and in 1999 the Little Bird Mutual Aid Hotline (北京小小鸟互助热线 *Běijīng xiǎoxiǎoniǎo hùzhù rèxiàn*)⁹¹ was set up in Beijing. This was the beginning of the blooming of these organizations.

The National Bureau of Statistics of China has reported that in year 2017 there were 354,794 social organizations, 400,438 non-enterprise units run by NGOs and 6,307 foundations nationwide.⁹² The top 3 Provinces with the highest number of institutions are Jiangsu (87,024), Guangdong (63,784) and Zhejiang (51,368).⁹³ However, when it comes to labor NGOs, calculation is more difficult because, as I have already explained, only few of them manage to register as social organizations, while those who are unable to do so can only register as business entities or not register at all. Therefore, the total amount of labor NGOs is not a precise number and it is also not agreed upon by all scholars. Zhang Zhiru (张治儒), founder of the Shenzhen Chunfeng Labor Disputes Service Center (深圳市春风劳动争议服务部 *Shēnzhènshì chūnfēng láodòng zhēngyì fúwùbù*), conducted an unpublished survey and among the 30 labor NGOs that answered, 12 were registered in Shenzhen, 7 worked in Beijing, 3 in Guangzhou, 2 in Dongguan (Guangdong Province) and the remaining 6 were scattered respectively in Zhuhai (Guangdong

⁸⁹ <http://blog.sina.com.cn/dagongmei>

⁹⁰ <http://www.cwwn.org/>

⁹¹ <http://www.xiaoxiaoniao.org.cn/>

⁹² National Bureau of Statistics of China, *China Statistical Yearbook 2018*, 2018, 22-25 Statistics on Social Organizations and Autonomy Organizations <http://www.stats.gov.cn/tjsj/ndsj/2018/html/EN2225.jpg>

⁹³ *Ibidem*

Province), Huizhou (Guangdong Province), Qingdao (Shandong Province), Chongqing, Yongkang (Zhejiang Province) and Xiamen (Fujian Province).⁹⁴ Liu Kaiming (刘开明), founder of the Institute of Contemporary Observation in Shenzhen (当代社会观察研究所 *Dāngdài shèhuì guānchá yánjiūsuǒ*), believes that only in the Pearl River Delta Region there are about 50 labor NGOs, while Huang Yan (黄岩) of the South China Normal University said that in the same area there are about 30 labor NGOs.⁹⁵ In 2016 Li Chunyun collected and published information about 100 labor NGOs present in China, even though we can conclude that most of them are active in Beijing and in Guangdong Province.⁹⁶

According to Anita Chan's research, labor NGOs underwent a process of evolution that she divided into three stages. In the first stage, labor activism among the migrant workers in Guangdong was limited. Then labor NGOs operating out of Hong Kong set up some labor NGOs in Guangdong Province. They had great influence over those small organizations that they used in order to attract potential worker activists. Gradually, these activists learned from the foreign NGOs until they started organizing their own organizations which worked in equal partnership with foreign NGOs. The third stage is quite recent: Workers has started organizing protests to have their voices heard and their requested accepted by the management of the factories they work in, but the current government has repressed many of these protests and cracked down on labor NGOs.⁹⁷

Due to the strong control present in China, foreign trade unions, foreign labor NGOs, foreign embassies and consulates, human rights groups and other organizations decided to not operate directly in China, but to fund Hong Kong labor NGOs which were able to establish offices in China. However, these offices have to keep a low profile and are usually just a means to transfer funds. They also have a role of control on how the money is spent.

⁹⁴ FRANCESCHINI, "Labour NGOs in China: A Real Force for Political Change?", op. cit.

⁹⁵ *Ibidem*

⁹⁶ LI, *Unmaking the Authoritarian Labor Regime*, op. cit., pp. 228-233

⁹⁷ Anita CHAN, "The Relationship between Labour NGOs and Chinese Workers in an Authoritarian Regime", *Global Labour Journal*, 2018, 9(1), pp. 1-18

As previously mentioned, the 2017 Foreign NGOs Management Law puts a constraint on foreign funds, even those coming from Hong Kong.⁹⁸ For this reason, international funders have begun to establish direct contact with Chinese LNGOs⁹⁹ or to not work with or within China if the limitation did not allow them to do so.

In the meantime, NGO staff had trained the Chinese labor activists, in particular those living in the Pearl River Delta Region. When foreign NGOs started to retire, Chinese labor activists were ready to take over and establish their own organizations.

The founders can be divided into two categories: Urban intellectuals and migrant workers.¹⁰⁰ Urban intellectuals are usually urban journalists, scholars and lawyers. NGOs like in the case of the Home of Beijing Migrant Women, whose founder, Xie Lihua (谢丽华), was a retired official from the All-China Women's Federation. After serving in the army for 14 years, she became a journalist for the China Women's News, a newspaper affiliated with the All-China Women's Federation. She was later promoted editor, director and eventually assistant editor-in-chief. In 1993 she started her own magazine titled Rural Women and in all those years she came to know the grievances of Chinese women, especially the rural workers. This gave Xie Lihua the idea to set up the Home of Beijing Migrant Women.¹⁰¹

Other organizations, especially in Beijing, were founded by white collars such as Facilitator (北京市协作者社会工作发展中心 *Běijīng xiézuòzhě shèhuì gōngzuò fāzhǎn zhōngxīn*),¹⁰² established by Li Tao (李涛) and Li Zhen (李真), two former journalists, as well as the Beijing Zhicheng Migrant Workers' Legal Aid and Research Center (北京致诚农民工法律援助与研究中心 *Běijīng zhìchéng nóngmíngōng fǎlǜ yuánzhù yú yánjiū*

⁹⁸ Hong Kong in 1997 was handed back to China, because it was a British colony before. So even though the policy is “one country, two systems” for a period of 50 years starting from 1997, Hong Kong is still considered not part of the PRC.

⁹⁹ *Ibidem*

¹⁰⁰ Such division was taken from the IDE Discussion Paper of Mami YAMAGUCHI, *The Voices and Protests of China's Labour NGOs and Their Effort to Promote Migrant Worker Rights*, Institute of Developing Economies, IDE Discussion Paper No. 508, 2015 and Diana FU, *Mobilizing without the Masses: Control and Contention in China*, Cambridge University Press, 2017, pp. 38-39

¹⁰¹ ZHAO Liangfeng, *Xie Lihua: Serving Rural Women*, article available at: <http://www.womenofchina.cn/womenofchina/html1/special/15/6131-1.htm>

¹⁰² <http://www.facilitator.org.cn/>

zhōngxīn),¹⁰³ which was set up by Tong Lihua (佟丽华), a public interest lawyer. His organization was registered as an NGO in 2009 and since then it opened branches in twenty other localities across China.¹⁰⁴

The second category is made up of NGOs founded by migrant workers. For instance, the Little Bird, one of the most famous, long-lived NGO, was founded in Beijing by Wei Wei (魏伟), a migrant worker who had worked in the construction industry before he started operating the migrant workers' hotline¹⁰⁵ and now present also in Shenzhen, Shenyang (Liaoning Province) and Shanghai. Another rural migrant Chen Mingyu (陈明钰) founded the Little Chen Hotline (青岛小热陈线服务社 *Qīngdǎo Xiǎo Chén rèxiàn fúwùshè*) in Qingdao (Shandong Province) in the year 2005. Chen Mingyu studied law in a night school program in order to obtain a law certificate. At the beginning, this hotline was just a number to contact him directly.

Other organizations were set up by migrant workers after they suffered injuries or after they went through legal procedures, for example for claiming compensations, wage and social contribution arrears. For example, the founder of the Shenzhen Migrant Worker Center (深圳市打工者中心 *Shēnzhènshì dǎgōngzhě zhōngxīn*), Huang Qingnan (黄庆南) in 1999 was disfigured by sulfuric acid. The factory owners paid him 150,000 RMB for his medical expenses, but after that, they ignored him. After volunteering for a Hong Kong NGO, in 2003 he found his own. In 2007 he almost lost a leg to a machete attack. The reason behind this attack is supposed to be linked to his work as an activist.¹⁰⁶

Shenzhen Chunfeng Labor Disputes Service Center was funded by the famous Zhang Zhiru, as mentioned above. He moved from the Hunan Province to Shenzhen to gain some money, because already at that time he had big ambitions. He wanted to set up an organization to defend the rights of migrant workers, but he was told such an organization would be illegal, therefore he tried to establish a trade union in his factory.

¹⁰³ <http://www.zgnmg.org/beijing/>

¹⁰⁴ FU, *Mobilizing without the Masses*, op. cit.

¹⁰⁵ *Ibidem*

¹⁰⁶ Sina News, 深圳打工者中心负责人被砍 “Shēnzhènshì dǎgōngzhě zhōngxīn fùzérén bèi kǎn” (The leader of the Shenzhen Migrant Worker Center was attacked), 17 December 2007, <http://news.sina.com.cn/o/2007-12-17/111413093946s.shtml>

He even received the necessary permission from the local government, but his attempt failed, and the company fired him. He went back to his hometown to mobilize young people living in the countryside, but his job there suffered big losses, so he had to migrate back to Shenzhen. There he fractured his clavicle during work in 2002 but failed to obtain a compensation from the factory owner. Building on his experience, in 2004 he opened his NGO to help workers who were in a situation similar to his. However, no sponsor would have approved his organization, therefore he could not register as an NGO, but his association works in a gray zone.¹⁰⁷

Some rural migrant workers, after working in Guangdong Province, returned to their hometown and established NGOs to serve local migrants.¹⁰⁸ Xinchén Workers' Home in Wuhan (武汉新晨工友家园 *Wúhàn xīn chén gōngyǒu jiāyuán*) is a non-profit organization established in Wuhan (Hubei Province) by Huang Xiaoyong (黄小勇) in 2010. After living as a migrant worker, Huang came back to Wuhan where he founded his NGO whose objectives are enhancing migrant workers' working and life standards and help them blend in in Wuhan.¹⁰⁹

In recent times, Chinese labor NGOs has reached a third stage of development. An increasing number of workers are more conscious of their rights and are knowledgeable about the Law, therefore they are more assertive, organize protests, strikes, collect signatures, etc. Indeed, China Labour Bulletin (中国劳工通讯 *Zhōngguó láogōng tōngxùn*), a Hong Kong NGO active in defending workers' rights in the PRC, has registered an increasing number of strikes in the past years.¹¹⁰ From January 2011 to December 2018, China Labour Bulletin registered almost 11,000 strikes. From 2011 to 2015, the number of strikes each year increased exponentially, from 184 to 2774. In 2016 the total amount decreased, but remained quite stable, then dropped in 2017, going from 2664 to 1258. Finally, in 2018, it slightly increased to 1702.

¹⁰⁷ LI Qian, *How Zhang Zhiru became one of China's top defenders of labor rights*, in "Global Times", 19 Sep. 2014, <http://www.globaltimes.cn/content/882289.shtml>

¹⁰⁸ LI, *Unmaking the Authoritarian Labor Regime*, op. cit., p. 84

¹⁰⁹ Description of the story and objective of Xinchén Worker's Home taken from the website <http://www.chinadevelopmentbrief.org.cn/org2247/>

¹¹⁰ The strike map of China by China Labour Bulletin is available on the website: <https://maps.clb.org.hk/strikes/en>

The highest number of strikes was registered in the Guangdong Province and, in view of what said before, such figure is understandable: Guangdong Province is where the Pearl River Delta Region is located, and in this area is where there is a high concentration of factories, therefore the number of strikes is higher than in any other Province. I would also like to stress the fact that these data do not only include strikes organized by factory workers, but it counts also strikes by taxi drivers, teachers, retired people, shopping mall workers, etc.

In the examined eight years, there were only 9 strikes where more than 10,000 people participated, 359 with 1,000 to 10,000 participants, 2012 where 100 to 1,000 workers took part and 8,254 with less than 100 protestants involved. It is noticeable, as Anita Chan argues, that “most strikes are still isolated at single workplaces rather than coordinated.”¹¹¹ This is a shortcoming that workers have to overcome, because if they organize protests in several places, across several factories, they are more likely to succeed in having their requested accepted and to enhance the working situation in a more widespread area. A step towards the realization of coordinated mass protests can be embodied by Walmart workers: When in 2016 Walmart introduced the new work hour scheduling system, which made the work schedule extremely flexible, Walmart workers in Nanchang (Jiangxi Province) refused to sign the new contract. They started a strike on 1 July 2016. Walmart workers in 2014 had already created an on-line forum called “Walmart Chinese Workers’ Association” (WCWA) to gather the Walmart workers across China. Thanks to this network, employees were able to exchange opinions, and, in this circumstance, the news of the strike spread all over China, triggering other strikes in other stores. Also, for the first time, the WCWA reached out to their American counterpart, OUR Walmart. Their first talk happened on 20 June 2016, even before the first strike.¹¹²

The Chinese government, facing the increasing labor unrest, believes NGOs are the instigators, because with their work, they encourage social instability. Therefore, the government decided to increase control and repress some Chinese NGOs. As I will further

¹¹¹ CHAN, “The Relationship between Labour NGOs and Chinese Workers in an Authoritarian Regime”, op. cit.

¹¹² Nandita BOSE, *Exclusive: U.S. and Chinese labor groups collaborated before China Wal-Mart strikes*, in “Reuters”, 28 July 2016, <https://www.reuters.com/article/us-walmart-china-idUSKCN0ZY0SV>

explain in section 3.4, Xi Jinping's policy aims to use the rule of law to strengthen control over the life of these organizations and this has led to a "natural" close down of NGOs. On the other hand, a more physical, violent repression was carried out. In December 2015 there was an "unprecedented" crackdown on labor NGOs in Guangdong Province. Several staff members of various organizations were arrested and detained with general charges such as "disruption of public order." Among these activists, Zeng Feiyang (曾飞洋), Zhu Xiaomei (朱小梅) and Tang Huanxing (汤欢兴), members of the Panyu Migrant Worker Service Center (广东番禺打工族文书处理服务部 *Guǎngdōng Pānyú dǎgōngzú wénshū chǔlǐ fúwùbù*) were found guilty of "gathering a crowd to disturb social order." In particular in September 2016, Zeng was sentenced to 3 years imprisonment with a four-year suspension, while Zhu and Tang were sentenced to 1 year and 6 months imprisonment with a two-year suspension.¹¹³

3.2 LABOR NGOs' ACTIVITIES

Chinese labor NGOs offer several different types of assistance. Usually, each NGO is focused only on one or two activities and it happened that these organizations changed their offer according to the changes in the workers' situation and according to their own development. Most of these NGOs help migrant workers working in factories, but they are also opened to and willing to support workers in the service industry, such as "waiters and waitress, security guards, and domestic works who faced maltreatment or sexual harassment in the workplace."¹¹⁴ However, I will focus more on those helping migrant workers, since this category is the weakest and, as I have just said, most of these NGOs was especially created by and for them.

The activities that they perform are various and can be summarized in cultural activities, legal activities and mobilizing activities.

¹¹³ Congressional-Executive Commission on China, *Prosecution of Labor Advocates Has Chilling Effect on Labor NGOs, Strikes Continue*, 22 February 2017, <https://www.cecc.gov/publications/commission-analysis/prosecution-of-labor-advocates-has-chilling-effect-on-labor-ngos>

¹¹⁴ FU, *Mobilizing without the Masses*, op. cit., pp. 38-39

Cultural activities usually refer to recreational activities. Some NGOs provide room for workers to meet and become friends. At times it is also a way to help workers integrate in the life of the city where they live. Indeed, since migrant workers come from a different part of the country, they do not know the city, its people, their traditions and sometimes they also have problems with the language. This may sound odd, but it has to be considered that China is a big country, and, in each city or Province, there are different dialects. For example, one female worker who led a collective bargaining in Gaoya Jewelry Factory in Guangzhou was born in the northern part of Guangdong and became a migrant worker when she was 16 years old. She could barely speak Mandarin, because she grew up speaking Cantonese, but then she joined the Panyu Migrant Worker Service Center. Participating in their activities helped her improving her Mandarin and build confidence, so that she was no more afraid of speaking up and become an activist leader.¹¹⁵

As we have seen in section 2.3, most workers do not have recreational facilities in their dormitory, so some NGOs provide a library with newspapers and magazines or a room with a tv where workers can watch movies or dramas. Some centers are also equipped with a PC room, where PCs are usually dismissed devices given by a company which wanted to get rid of them, so these NGOs organize classes to teach how to use computers. They also offer other classes where people can learn English and other practical skills. Workers are given room to cultivate their hobbies, which means they can enjoy or perform music or drama; there are several group activities organized, among which excursions, hiking, Chinese chess, table tennis and many more. In occasion of festivities, for example for the Chinese New Year or the May Day, NGOs hold large-scale cultural activities.¹¹⁶ They also organize discussion groups to increase awareness around themes such as gender, labor rights, literature, poetry, art, etc. Besides, workers and staff members pay visits to injured works in hospital, also to offer their help and to promote the NGO and its activities.

¹¹⁵ LI, *Unmaking the Authoritarian Labor Regime*, op. cit., pp. 128-129

¹¹⁶ Chris King-Chi CHAN, "Community-based organizations for migrant workers' right: The emergence of labour NGOs in China", *Community Development Journal*, 2013, Vol. 48 No. 1, pp. 6-22

Rather big organizations offer also education to migrant workers' children by building daycare centers, kindergartens or schools exclusively for them, because, due to the *hukou* system, these children cannot go to the public school in the city or their parents have to pay really high tuition fees. Moreover, as I have mention previously, some NGOs sell second-hand goods and clothes to make some money for the organizations' activities and, at the same time, help migrant workers save some money because their prices are quite low.

Thanks to these opportunities, workers relax, make friends, and learn new knowledge and skills in a relaxed, convivial environment.¹¹⁷

The second category is legal activities. NGOs stress the importance of the education on the Labor Law: Workers are often not aware of the rights they are entitled to enjoy as prescribed by Law, such as the number of working hours and overtime hours, minimum compensation, pre-job medical examination, etc.¹¹⁸ For this reason, NGOs organize classes where workers can learn the Law and therefore, they have the knowledge that allows them to speak up against their employers in case of mistreatment and, hence, improving their working conditions. These trainings also aim to increase workers' self-confidence, analyze the balance of power within factories, create a collective identity, and see what can be done within the prevailing system.¹¹⁹ Another aim is to encourage workers to become activists in their workplaces, share their knowledge with co-workers, help them and organize them for collective actions.

Legal consultation is provided by lawyers activists that work in the organizations or collaborate with the NGO (such as the Yilian Legal Aid Center in Beijing and the Friends Protection Worker Service Center in Dongguan, Guangdong Province)¹²⁰ or by non-layer staff members, also called "civic agents" or "barefoot lawyers" (公民代理

¹¹⁷ XU Yi, "Labor non-governmental organizations in China: Mobilizing rural migrant workers", *Journal of Industrial Relations*, 2013, Vol. 55, No. 2, pp. 243-259

¹¹⁸ For a more in-depth analysis on this topic, please refer to Ivan FRANCESCHINI, "Chinese Workers and the Law: Misplaced Trust?", in Ivan Franceschini, Kevin Lin and Nicholas Loubere (edited by), *Disturbances in Heaven: A Year of Chinese Labour, Civil Society, and Rights, Made in China Yearbook 2016*, ANU Press, The Australian National University, Canberra, Australia, 2017, pp. 84-87

¹¹⁹ Chloé FROISSART, "NGOs' Defending Migrant Workers' Rights", *China Perspectives*, 2011/2 | 2011, pp. 18-25 <https://journals.openedition.org/chinaperspectives/5549>

¹²⁰ LI, *Unmaking the Authoritarian Labor Regime*, op. cit., p. 92

gōngmín dàilǐ), who have an ample knowledge on the Law, especially in relation to the labor field. They are usually workers, in particular men, who have injured during work and have gained experience fighting for compensation. This has turned them into labor law experts and hardened them to fight back, so they have begun helping other workers gain compensation through the court system.¹²¹ They help them not only with the paperwork, that is writing legal documents and petitions, sometimes they even defend them during the trial. Indeed, workers cannot afford paying a professional lawyer, because a licensed lawyer representing a worker in the arbitration tribunal would cost between 4,000 and 5,000 RMB and it would rise to 7,000 or 8,000 RMB if the case is brought to court.¹²² This price is far too high for a migrant worker, even if he manages to get the compensation he is entitled to. Here is where “barefoot lawyers” come in: according to China’s civil procedure law, Chinese citizens can represent and defend somebody else in a legal proceeding, even though they do not have the license. According to the Civil Procedure Law, this legal agent is not allowed to charge any fees for their service, nevertheless some of them charge a fee that goes from a few hundred to a few thousand RMB.¹²³ However, in January 2013, the Civil Procedure Law was amended, and now civil agents can no longer represent Chinese citizens in court. This revision is clearly the expression of the government’s tendency of increasing control and restrictions for labor NGOs.

Another aspect of the legal consultation is the establishment of free legal hotlines. As previously mentioned, some NGOs started their activities by providing a hotline, like, for example, the Little Bird Mutual Aid Hotline and the Little Chen Hotline. Hotlines are set up also to handle complaints or provide help for other labor related issues.

The third type of activity NGOs carry out is mobilizing. NGOs try to transmit information to both the general public and the companies. To do so, they held exhibitions; they organize sit-ins, consumer boycotts and petitions,¹²⁴ even though collecting signatures for petitions is forbidden. During these campaigns, NGOs fulfill also another

¹²¹ CHAN, “The Relationship between Labour NGOs and Chinese Workers in an Authoritarian Regime”, *op. cit.*

¹²² PAN, *Agents of Change or Status Quo? Labor NGOs in South China*, *op. cit.*

¹²³ *Ibidem*

¹²⁴ XU, “Labor non-governmental organizations in China”, *op. cit.*

important task, which is connecting workers with media, intellectual and consumers: in this way they hope to increase pressure on employers and managers to pursue fair treatment in the workplaces.

As previously mentioned, the current Chinese Constitution does not list the right to strike. However, Chinese workers do go on strike anyway if they feel the need to, because their request are not listened to. Labor NGOs prefer not to intervene in such situations, showing that they prefer cooperation and dialogue to confrontation. Quite on the contrary, they tend to suggest workers to engage in collective bargain with the employers or the management staff. In the last few years, NGOs has pondered that they should work on preventive measures, therefore they organize workshops where they train workers to be more effective when negotiating with their bosses. Once again, to do so, workers need a solid preparation on the Law, which comes both from individual study and from NGOs' classes. Shenzhen local government, in April 2008 guidelines for applying the Law on Unions, specified that workers, unions and employers should prevent and resolve conflict by means of collective bargaining, thus replaced the term “collective consultations” (集体协商 *jítǐ xiéshāng*) with “collective bargaining” (集体谈判 *jítǐ tánpàn*).¹²⁵

In this direction, NGOs also help establish local trade unions or sustain the already existing workers' committees and workers' representatives. Combined with the practice of collective bargaining, they hope this will help the negotiation of collective contracts and will make workers' requests heard by the management.

Finally, labor NGOs conduct interviews and investigations inside and outside the factories and the workers' dormitories to collect information about workers' working and living conditions and wage level. This is helpful in two ways: the first is to modify their offer and their effort to sustain workers in the best and most useful way; the second is to draft reports to spread awareness among the public.

All the activities explained so far make it clear that the role NGOs play in Chinese society is crucial, because they fulfil functions the official institutions are not able to carry out. Besides, NGOs intervention is necessary since the existing laws do not fully protect

¹²⁵ FROISSART, “NGOs' Defending Migrant Workers' Rights”, op. cit.

workers' interests, especially weaker ones, such as migrant workers and since there is a lack in the enforcement of the law and punishments for those who break the law are minimal.

So far, I have explained what kind of the activities NGOs usually perform. Now, I would like to briefly illustrate some concrete cases.

Beijing Peer-workers Home was founded by Sun Heng, a music teacher from Henan Province. Bored with his life, he came to Beijing in 1998 together with his guitar, hoping to find his ideal life. He started singing his songs for the workers outside a construction site and he got a discreet success, because his songs were about workers' and gave strength to those who listened to them. In 2002 he created a three-member band with other migrant workers. The trio became a quartet the following year and the group toured around, playing their music for workers performing several different jobs. They released three albums and with the money they made they established the Beijing Peer-workers Home. This NGO, as many others, support migrant workers with legal matters, also by cooperating with the Beijing Migrant Workers' Legal Aid Center; it has opened a library equipped with PCs and sells second-hand clothes, electronics, furniture and other goods both to collect some money and to help workers save up by buying cheaper items. In particular, in 2005, this NGO built and opened a primary school for migrant workers' children who cannot attend local schools because of the *hukou* system. There are 1500 students for a total of 12 classes, plus the kindergarten classes. Lessons are provided by 20 salaried teachers and university students volunteers. The NGO opened also a museum, the "Migrant Workers Culture and Art Museum", with exhibitions on migrant workers' lives, and a theater where Sun Heng and his band members perform.¹²⁶

Another example of what Chinese labor NGOs managed to achieve is the case of Xu Yan'ge in 2006: he was a dispatch laborer at the Kentucky Fried Chicken (KFC). He had worked there for 11 years, signing a contract with the dispatch agency, but just for the first year and 5 months. For this reason, the KFC company paid him 3,660 RMB of compensation instead of the 20,130 RMB he ought to have received. The arbitration

¹²⁶ Information about the Beijing Peer-workers Home found in YAMAGUCHI, *The Voices and Protests of China's Labour NGOs and Their Effort to Promote Migrant Worker Rights*, op. cit.

committee rejected his complaint because he had not signed any proper contracts with KFC, even though Xu furnished proofs attesting he indeed was working for KFC. The Zhicheng Center helped him claiming his compensation. Their professional help was essential and thanks to them, the court sentenced that the contract with the dispatch agency was null and therefore the work relationship with KFC illegal. They highlighted how Xu was fired because of a minor fault and that his overtime hours were more than those permitted by law. KFC acknowledge its mistakes, ended the dispatch labor practice and Xu was compensated.¹²⁷ This is just an example, but the Zhicheng Center confirm they handle numerous cases similar to this.

As reported above, some NGOs help workers carrying out collective bargaining. Among the few of them¹²⁸ there is the Red Flower Worker Assistance Center,¹²⁹ a labor NGO based in Shenzhen. This organization used to keep a low profile; however, in 2013 it reported to had successfully helped 5000 workers coordinate a strike, engage in collective bargaining and finally obtain 20 percent wage raise and the compensation for those who left the company.¹³⁰ In the same year, the Spring Wind Center made it possible for 100 workers from Xinxing Textile factory to organize a month-long protest against layoffs,¹³¹ while the previous year, the Olewolff Center led 170 Walmart employees in Harbin, Heilongjiang Province, to elect their representatives, carry out a three-week protests and bargain with the managers the conditions for the store closure.¹³²

In situation such these, NGOs' work is crucial: first of all, they help workers elect their representatives. Elections are carried out in the factory cafeteria or in the dormitories and once representatives are nominated, they are given different tasks. One of these is to negotiate with the management. In order to do so, NGOs help workers list their requests and give priority to the most relevant ones. Then, they send a letter to the management staff with the demands and a request to meet for negotiate. If they do not accept to meet

¹²⁷ The full story can be found in FROISSART, “NGOs’ Defending Migrant Workers’ Rights”, op. cit.

¹²⁸ According to LI Chunyun (*Unmaking the Authoritarian Labor Regime*, op. cit., p. 114), By the end of 2014, only 10 NGOs in mainland China used to practice collective bargaining. Among these, 9 were located in Guangdong Province and one in Shandong Province. Moreover, other 4 NGOs scattered all over China offered collective bargaining training but have not practiced it themselves.

¹²⁹ *Shēnzhènshì hónghuācǎo shèhuì gōngzuò fúwù zhōngxī* 深圳市红花草社会工作服务中心 *n* <http://9hhc.com/>

¹³⁰ LI, *Unmaking the Authoritarian Labor Regime*, op. cit., p.111-112

¹³¹ *Ibidem*

¹³² *Ibidem*

and discuss, workers can organize a protest until the management gives in and the negotiation begins. It could be necessary more than one meeting to conclude the deal.

A concrete example of such process happened in 2014: thanks to the help of a Shenzhen-based labor NGO, workers at the QLT Golf Supplies Factory in Shenzhen were able to elect their representatives who were sent to negotiate with the management. However, the latter refused to meet, which caused a strike of 200 employees. The threat of the strike spreading to the rest of the workers, plus the pressure from the local government persuaded the managers to meet the workers' representatives. The collective bargaining was a success for the workers who obtained the payment of social insurance arrears and the formal acknowledgement of the workers' elections. During the whole process, the professional help offered by the labor NGO was essential, because it trained the workers' representatives in how to proper conduct a collective bargaining and "transform[ed] the anger of a divided workforce into negotiable demands that formed the material basis for a stronger solidarity."¹³³

On a similar note, in 2014-2015 the Panyu Migrant Worker Service Center helped the workers at the Panyu Lide Shoes Co. Ltd. obtain the payment of social insurance, housing fund arrears and compensation for the relocation of the factory. In that situation, the management tried to scam the workforce forcing the sign of a new labor contract with the wrong dates, so that their working period would be shorter. Workers reacted going on strike, asking the management to agree to their nine demands. Three weeks in the strike, the director of the Panyu Migrant Worker Center Zeng Feiyang was attacked in his office, his assailants unknown. This episode of violence is seemly related to the NGO's involvement in the Lide dispute. Several months later, in April 2015, the police attempted to break up the meeting of around one hundred activists who wanted to elect new workers' representatives, since the current ones were reluctant to take the matter further. In that occasion, the police detained Meng Han, a member of the Panyu Migrant Worker Center, and other workers. They were all released some days later. However, the workers were still unsatisfied and went on strike again. The following meeting between the workers'

¹³³ Tim PRINGLE, "Going to Market: Comparing Labour Relations Reform in China, Russia and Vietnam", in William BROWN and CHANG Kai (edited by), *The Emerging Industrial Relations of China*, Cambridge Press University, 2017, pp. 210-237

representatives and the management was also attended by local government officials acting as mediators. Finally, at the end of April 2015, workers' efforts ended in a success and the Lide company and the local government issued a declaration promising to address all of the workers' demands.¹³⁴

3.3 PROBLEMATIC RELATIONSHIPS

Labor NGOs every day interact with different people and institutions. However, these relationships are not always easy to manage and are often causes of problems that jeopardize the organization's survival. In this chapter I want to briefly describe the relationships that link labor NGOs with the ACFTU, with other labor NGOs, with workers and international donors.

3.3.1 ACFTU

In section 2.2.1 I have already discussed about ACFTU and its inefficiency. Here I want to discuss about the relationship between labor NGOs and Chinese trade unions.

What ACFTU does not understand is that labor NGOs do not want to replace trade unions. Labor NGOs were born to cover the gap created by the inadequacy of trade unions' work, because, as already explained, they are not able to protect workers' rights and interests. What labor NGOs are trying to do is to provide a model. According to the previous analysis, labor grassroots organizations now aim to help workers in the negotiation with their employers, as a form of prevention of incidents that lead to mass protests or disputes. Therefore, such model is for trade unions to follow in order to assist workers in collective bargaining. With reference to China Labour Bulletin, this model is divided into six stages. The first is to accept workers' request for help: They have several demands for the employers, but do not know how to present them and how to obtain a meeting. Since the enterprise unions are controlled by employers, workers can only reach

¹³⁴ The whole and detailed story can be read in the article by China Labour Bulletin, *The Lide shoe factory workers' campaign for relocation compensation*, 22 June 2015, available on the website: <https://clb.org.hk/en/content/trying-hit-moving-target-lide-shoe-factory-workers%C3%A2%E2%82%AC%E2%84%A2-campaign-relocation-compensation>

out to labor NGOs, whose activists are always ready to help them, even though their resources are limited. The second step is to channel workers' dissatisfaction into clear demands, which are listed in order of importance. In this way, workers are more organized, feel more united because they can see what they want to obtain as attainable goals put down in black and white. Then NGOs help them elect their representatives. Once these people are chosen, workers need to sign a document whereby they authorize these workers to represent them. This document is crucial, because these new elected representatives do not enjoy the same legal protection that trade union officials do. At this point solidarity among workers is enhanced. However, these delegates do not know how to sustain collective bargaining, they have no prior experience, so NGOs provide them with the necessary training on the rules, stages and techniques to use, inform them on what duties and responsibilities they have and suggest them how to make concessions and compromises. At the bargaining table, the labor NGO will continue to guide and advise the delegates throughout the whole process, helping them to keep calm, not feel pressured and do not be afraid of the threats made by the management. Finally, the last step is to protect workers' representatives from the intimidations by the management and the local government officials, who, at times, resort to retaliation measures. In such circumstances, labor NGOs can mobilize the workforce to pressure the perpetrators, suit them and defend the workers' delegates in court.

Furthermore, labor NGOs provide a place where workers can meet, discuss their problems and obtain the knowledge to understand where there are violations of the law. These are tasks that unions should fulfil, but they do not, or are extremely lacking in.

On its side, ACFTU sees labor NGOs as a threat to its power, because it is afraid that labor NGOs can substitute trade unions. This is a unfounded fear, because these grassroots organizations were born as a consequence of the unsatisfactory performance of Chinese trade unions; they do not aim to replace trade unions, but rather they focus on helping workers in their struggles, showing that labor NGOs and trade unions should be on the same side and should cooperate, since they have the same goal.

Labor NGOs and trade unions did cooperate in pilot projects starting from 2011: the Shenzhen Municipal Federation of Trade Unions has set up legal service centers and has employed labor NGOs' staff there; while the Guangdong Federation of Trade Unions

and the Guangdong Federation of Labor-Service Social Organizations invited a several of labor NGOs to join the federation.¹³⁵ The Guangdong Federation of Labor-Service Social Organization itself was set up in 2012 as a result of a seminar where academics, labor NGOs and experts were invited. This institution, whose members include NGOs, trade unions, academics, journalists and lawyers, was created to provide services to migrant workers. These projects are, as we will see in section 3.4, an attempt by the government to limit labor organizations integrating them in state-controlled institutions. Indeed, trade unions started sub-contracting services to NGOs because they were pressured by the Guangdong provincial Party Secretary, Wang Yang. Also, this partnership does not include actively participating in collective bargaining or rights advocacy; the parties just offer “a-political” services, such as classes to raise legal awareness, skill trainings and cultural events.

3.3.2 Other labor NGOs

Among Chinese labor NGOs, the climate is quite tense. The relationship that links some of them could be defined of cooperation, since some of them were founded by the same person, like they were branches, and others were founded by former members of other organizations. Most of the times, in this latter case, friendly relations that were created while members worked together lasted. Duan Yi, a well-known Chinese labor lawyer, sustained that especially “labor-movement type” NGOs,¹³⁶ because of their intrinsic characteristics, tend to assemble, support each other and work closely together.¹³⁷

However, recently, because of the current situation where funding is scarce and repression is increasing, these grassroots organizations are more and more becoming rivals, isolating themselves from the others. Also, during interviews, it emerged that there is mutual distrust among the members of different NGOs: they point the finger at each other, revealing each other’s problems and flaws, suggesting to not trust other organizations and telling the corruption scandals happened to others; they sometimes

¹³⁵ XU, “Labor non-governmental organizations in China”, op. cit.

¹³⁶ According to Duan Yi, NGOs of labor-movement type are those NGOs that pay close attention to collective labor disputes and assist workers in fulfilling collective requests.

¹³⁷ DUAN Yi 段毅, “Gōngyùnxíng láogōng NGO de qiánjǐng yú tiáozhàn” 工运型劳工 NGO 的前景与挑战 (Prospects and challenges of labor movement type NGOs), in “Gongmin”, 2015, <https://cmcn.org/archives/17927>

even go so far as to fight each other through legal channels.¹³⁸ This attitude, of course, does not foster solidarity among NGOs, creating an environment of mutual suspiciousness, where organizations are reluctant to cooperate. Quite on the contrary, they should put aside their rivalry and cooperate. In this way, they could overcome the difficulty resulted by the shortage of funds by merging together, they could help each other to survive the government's harassment and could provide better services to the workers by collaborating and monitoring each other.

3.3.3 Workers and the general public

Although labor NGOs' work seems necessary and wanted by the workers, in reality, they face great difficulties in gaining their trust. It is easier if workers take the first step and contact the organization on their own initiative, but other times it is NGOs that have to reach out to workers, make themselves known and offer their help. In this latter situation, it could take many months to build trust with workers. For this reason, in the past, some labor NGOs were not able to participate in some high-profile strikes, such as "the 4000-worker strike at Nokia Dongguan in December 2013, the 1000-employee strike at IBM Shenzhen in March 2014, and the 40 thousand-worker strike at Yue Yuan in April 2014."¹³⁹

There are several reasons that explain why it is so hard to gain workers' trust. First, the majority of the workforce that needs NGOs' help is made up of migrant workers, and their intrinsic characteristic is a high mobility rate. Because the turnover rate is quite high, when workers and volunteers leave, labor NGOs have to start again the process of building trust.

A second reason could be linked to the fact that in some organizations, part of the volunteers or employees that work there are young university graduates. Thus, they do not share the same experiences with workers, nor have the same cultural background. This obstacles empathy and the creation of relation between the two sides.

¹³⁸ FRANCESCHINI, "Labour NGOs in China: A Real Force for Political Change?", op. cit.

¹³⁹ LI, *Unmaking the Authoritarian Labor Regime*, op. cit., p. 125

The third reason is that workers hardly believe that somebody who is not the state wants to help them altruistically, without asking for money or without ulterior motive. This fear is indeed grounded, because, for example, many of the so-called barefoot lawyers offer them the same services, but they want to be paid, therefore workers are afraid of being scammed. To gain credibility, labor NGOs should cooperate with governmental institutions or have their approval. As said before, Chinese people have confidence in the government, therefore they tend to trust less those institutions that are not associated with it.¹⁴⁰ Therefore, the lack of connection with the government weakens labor NGOs. However, even if labor organization were close to the government, they would become distant from workers, who would think they are “the same as the government.”¹⁴¹ This is proved by the fact that, as happened with the collaboration project between labor NGOs and trade unions discussed above: Once these grassroots organizations start such partnership, they become more distant from workers and would not involve themselves in activities such as collective bargaining. In this way, they would lose the support of those that do not have blind faith in the government. Also, the favor of the party-state is important, because the NGO that enjoys it can carry out its activities without being harassed by the government.

A fourth reason is linked to scandals and other internal problems. Over the year, several scandals have weakened the credibility of NGOs. For example, the case of Red Cross Society of China caused a sensation: in 2011 a young woman called Guo Meimei has posted pictures of her luxurious lifestyle on a popular Chinese social media. The problem is that she appeared to be a manager of Red Cross and citizens believed that it was the proof that the donations were being embezzled. The Red Cross denied any relations with the woman, who confessed in television that she was lying about her job.¹⁴² Despite their declarations, the image of the organization had been damaged. Also, other scandals followed: among others, The Red Cross was accused of keeping part of the funds

¹⁴⁰ FRANCESCHINI, “Labour NGOs in China: A Real Force for Political Change?”, op. cit.

¹⁴¹ LU Yiyi, *The Growth of Civil Society in China: Key Challenges for NGOs*, Briefing Paper Asia Programme ASP BP 05/01, Chatham House, London, 2005

¹⁴² Shannon TIEZZI, *Charities and Corruption in China*, in “The Diplomat”, 13 August 2014, <https://thediplomat.com/2014/08/charities-and-corruption-in-china/>

that were destined for the treatment of a girl with leukemia.¹⁴³ These are examples of scandals that taint the reputation not only of the organization directly involved, but also of all the other NGOs.

Another instance occurred in 2009, when the labor NGO On Action (在行动 *zài xíngdòng*) was guilty of violating its employee's rights: former employees reported that the organization repeatedly enrolled the same workers for their training programs, the leader did not sign employee's labor contracts, paid miserable salaries and did not purchase social security.¹⁴⁴ Unfortunately, such paradoxical situation is not uncommon.

Fifth, internal problems also contribute to giving a poor image of the organization. Some NGO leaders have not funded their organization because of their values and ideals, but rather for their personal gain, such as self-fulfillment, fame and rewards. This would not be a problem per se, but it has a negative effect in the management of the NGO, because there is lack of transparency and democratic decision-making.¹⁴⁵ These leaders treat the organization as their personal property and are unwilling to share the power and the spotlight; for example, they do not allow employees to represent the NGO, nor let them take advantage of other opportunities. Many affirm that the leader does not accept any criticism and any forms of disagreement; they are not able to create an environment of mutual trust; therefore, many leave the organization. But employees also have their flaws: some of them bad-mouth their leaders to workers and donors; or they do not verbally disagree with any decision taken, but if there are against it, they would find other ways to have it changed; some even try to have the leader dismissed, rather than pursuing a direct confrontation. These occurrences not only stain the NGO's reputation, but also weaken its organizational stability.

Finally, NGOs, and in particular labor NGOs, are often exposed by the media only for their scandals or for those activities that are considered not in line with the party,

¹⁴³ Asia News, *New corruption charges against the Red Cross and other charities*, 18 August 2011, <http://www.asianews.it/news-en/New-corruption-charges-against-the-Red-Cross-and-other-charities-22395.html>

¹⁴⁴ FRANCESCHINI, "Labour NGOs in China: A Real Force for Political Change?", op. cit.

¹⁴⁵ LU, "The Growth of Civil Society in China", op. cit.

therefore they are pictured as swindlers and organizations that go against the government, creating a negative and wrongful image in the minds of the general public.

Because of the aforementioned reasons, when labor NGOs reach out to workers, they have to convince them in order to gain their trust. This is what Zhang Zhiru did when he wanted to help workers at the Yuyuan Factory in 2014. More than 2000 workers went on strike to protest against the missing payments of the social insurance contributions, but they were not well organized. Zhang joined the group chat made up by more than 500 workers. After a few days of monitoring, he introduced himself and his organization. To further reassure workers and dispel any doubt, he answered their questions; then, he explained his point of view on the dispute, and calculated for them the estimated sum of money they were entitled to receive from the employer. In this way, Zhang had gained the workers' trust, which allowed him to exercise his influence and organize workers more effectively.

3.3.4 International donors

The relationship between international donors and Chinese labor NGOs have always followed a top-down model.

The first foreign donors were Hong Kong labor NGOs which established the first labor NGOs in China, in particular in Guangdong Province, as it is close to Hong Kong. These newly fund organizations served as a hub to distribute funds to other labor NGOs and to supervise not only the work of these organizations, but also how they employed the funds, making sure they were spent properly. Hong Kong labor NGOs, aside from sending the money to carry out the various activities, also trained and helped the first labor NGOs, so they could effectively help workers.

With time, new Chinese grassroots labor NGOs were set up, and the relationship with Hong Kong labor NGOs became more symbiotic. However, the provision of funds is still an important component of the partnership. Also, as Chinese organizations started having contacts with other international donors, they needed help in communicating, because their staff was not able to speak other languages. Hong Kong labor NGOs' help went beyond: They taught them "how foreign funding systems worked, how to draft

programme applications and reports to funders, or to participate in international conferences and study tours.”¹⁴⁶

In a second moment, as just said, donors from developed countries decided to give their contribution in China, funding several projects. However, overseas NGOs would rather cooperate with the local government for project delivery. This gave the foreign organization a strong power, which made the relationship with local organizations unbalanced, with the local party in a position of dependence from the other. This type of relationship had some implications: First, the funds were linked to project which could last from few months to a couple of years at most, meaning that the relationship was not stable and meant to be long-lasting. For this reason, the Chinese counterpart could not formulate long-term plans and its survival, which was linked to international donations, was periodically at risk. Second, the local NGO was almost forced to accept the project and the conditions imposed by the donor, because, otherwise, it could not survive. However, such conditions were at times hardly feasible and they could require extensive paperwork. Finally, as remarked previously, the scarcity of funding created competitions between Chinese labor NGOs, which would compete against each other in a continuous struggle to attract capital and survive.

Moreover, there could be some misunderstanding in the relationship, because, as just said, international donors would set several rules, but the Chinese NGOs’ employees would attain to more general principles. Therefore, in order to meet the expectations, they could produce fake documents, such as invoices, reports of non-existent activities, etc. The same happens when Chinese organizations try to attract international donors and win their trust: “[T]hey have no other choice but to adapt to the rhetorical devices that emerge from the international discourse on democracy and human rights,”¹⁴⁷ but they have to do so presenting their ideas in a way that could be accepted by the Chinese government, i.e. “by emphasizing the participative approach of their projects, as well as the capacity-building component.”¹⁴⁸

¹⁴⁶ CHAN, “The Relationship between Labour NGOs and Chinese Workers in an Authoritarian Regime”, op. cit.

¹⁴⁷ FRANCESCHINI, “Labour NGOs in China: A Real Force for Political Change?”, op. cit.

¹⁴⁸ *Ibidem*

Nevertheless, today the relation is increasingly difficult, in particular since the Foreign NGOs Management Law was issued. As already explained, this law requires more transparency in the transfer of funding. For this reason, less and less foreign donors want and are able to fund Chinese NGOs. It is still possible to send small amounts of money, especially if they use cash or other elusive methods, but for considerable amounts, it is almost impossible. However, transfer of funding was becoming more and more difficult even before the law was issued. For instance, in 2015, one of the EU-funded projects was suspended because the bank of the Chinese NGO refused to change the foreign currency into RMB.¹⁴⁹

Furthermore, foreign donors are funding less and less projects in China because they think that it would be more profitable investing elsewhere, especially where the government is more friendly. Also, they believe that China is now a more developed country and thus, needs less help from other countries. For this reason, they are progressively abandoning operations in China. This scarcity of funding is a serious problem and has a chilling effect on the operations of Chinese grassroots organizations.

3.4 INCREASING GOVERNMENTAL CONTROL

In this section I am going to analyze the Chinese government's behavior towards NGOs, with a focus and evidence on labor NGOs. To do so, a comparison between Hu and Xi administrations is needed.

In the period going from 2002 to 2012, Hu Jintao (胡锦涛) was the President of China, and Wen Jiabao was the Prime Minister. During their administration, the government objectives were fostering the economic growth, but also maintaining social stability, under the motto of "harmonious society." For this reason, the government had an ambiguous behavior towards NGOs: "On the one hand, the party-state has encouraged the growth of organizations that provide social services without challenging social stability. [...] On the other hand, the party-state has sought to repress and contain the growth of organizations that could potentially mobilize opposition to the regime and its

¹⁴⁹ *Ibidem*

policies.”¹⁵⁰ The government was aware that the help of NGOs was necessary to maintain social stability and to perform those tasks that the government itself could not fulfill. However, some of them were considered dangerous, for instance those working in sensitive fields like human rights, labor rights and religion. According to this understanding, the party-state strictly controlled and repressed those NGOs considered as a threat.

The government used several methods to constrain NGOs. The first is the registration system. Through the double registration system, the government can control which associations obtain the status of NGOs and it gives the authorities the power to inspect and collect annual reports on the activities of these organizations. However, not giving the license is not a deterrent for such organizations which often register as business enterprises, not decide to operate without registration, as explained previously.

Moreover, staff of several labor NGOs reported that local authorities keep them under daily surveillance: they said that “the director needs to report to the PSB [Public Security Bureau] about everything, including who comes to visit, what activities they have done, what events are going to take place, whether there are any collective cases, and so on.”¹⁵¹ Members are controlled while performing their activities, they are photographed and their identities recorded by local police.¹⁵²

One of the most common practices is “drinking tea” (喝茶 *hé chá*): Activists are invited to have a cup of tea by state security officials to talk and give warning. Sometimes these meetings are very informal, they take place in a laid-back environment like in a McDonald’s and the frequency of these rendezvous varies according to the political situation: during calm, it could pass also several months between meetings, but when it is close to politically sensitive events, such gatherings could be more frequent. They do not involve physical harassment usually, quite on the contrary, at times NGOs’ members have friendly relation with officials, who also give them little gifts, but if officials want to put pressure on the activists, they harass their families even if they live in other

¹⁵⁰ Diana FU, “Fragmented Control Governing Contentious Labor Organizations in China”, *Governance*, 2017, Vol. 30, No. 3 pp. 445-462

¹⁵¹ PAN, “Agents of Change or Status Quo?”, *op. cit.*

¹⁵² XU, “Labor non-governmental organizations in China”, *op. cit.*

provinces. This has led several NGOs' members to leave their positions. These gatherings have a double intention: on the one hand, officials can obtain information about NGOs' activities, on the other hand, they are a way to "subtly warn, inform or remind activists about boundaries that they must not cross if they want to avoid severe repercussions."¹⁵³ For this reason, these meetings are useful for both parties: for officials because they can obtain information, but at the same time remind NGOs that they are surveilled, and for NGOs because they discover "what is already officially known about them and what the current priorities of the authorities are, and through this they are able to avoid unnecessary risks."¹⁵⁴ Indeed, activists do not have other sources to understand where to draw the "line of acceptability", but thanks to these rendezvous, they can understand how to take action being relatively safe.

The following step is repression. Officers visit NGOs' offices every day, to ask question, to check payments, to collect photocopies of documents, included identification documents of the employees, so that they have difficulties in doing their work. Other times officers are specifically from various local departments, for example water department, tax department, etc., that fine the organization for trifles. After that, landlords, pressured by the authorities and the police, evict NGOs, even illegally, making excuses, so they have no other option than to relocate. For example, one labor activist, during an interview, lamented the fact that, from 2013 to 2015, his organization had to move office at least 15 times, which means once every two or three months.¹⁵⁵

These forms of repressions were defined by Diana Fu as "soft repression", since they were meant to "contain rather than to exterminate the organizations."¹⁵⁶ She assumed that agents use these methods because they have low political risk, and they might be accused if something goes wrong during their operations.

In some instances, the police use physical violence, "employing thugs to turn up at an LNCO's office to smash furniture and ransack the office, intimidate them or even beat

¹⁵³ Ivan FRANCESCHINI, Elisa NESOSSI, "State Repression of Chinese Labor NGOs: A Chilling Effect?", *The China Journal*, The University of Chicago Press, 2018, No. 80, pp. 111-129

¹⁵⁴ *Ibidem*

¹⁵⁵ *Ibidem*

¹⁵⁶ FU, "Fragmented Control Governing Contentious Labor Organizations in China", op. cit.

them up.”¹⁵⁷ A concrete example happened in October 2007, when three young people with steel tubes smashed the office main door of the Panyu Migrant Worker Center, and not even a month later, the furniture inside the office was smashed by thugs.¹⁵⁸ One week later, on the 20 November, Huang Qingnan (黄庆南), a member of the Panyu Migrant Worker Center, was attacked by two men with knives.¹⁵⁹ They stabbed his legs, shoulders and back; he was severely injured, lost his legs, but stayed alive. A similar episode happened a week prior, on the 13th of the same month, Li Jinxin (李金薪), a “barefoot lawyer”, was kidnapped and beaten by unidentified men.¹⁶⁰

In other situations, NGOs can have their licenses withdrawn, banned from getting one or renewing theirs. For instance, in 2007, citizen agents and labor NGOs who supported workers in legal matters were barred from operating as litigant agents by eight departments of the Shenzhen local government, and some had their licenses withdrawn.¹⁶¹

Those NGOs that were deemed useful, but the government wanted to constrain their activities, it has tried to co-opt them, that is it tried to incorporate them in the bureaucratic system by institutionalizing them. A concrete example are the Shenzhen Municipal Federation of Trade Unions and the Guangdong Federation of Trade Unions, which both incorporated labor NGO to work with them in providing legal services to workers and organizing cultural events. This move was especially beneficiary to the trade unions: because of their weaknesses, they were losing legitimacy, but this new partnership helped them re-gaining trust. An exception is made for several labor NGOs that are on a “blacklist”, because they receive foreign funds, therefore local governments would not invite them to cooperate. Also, a consequence of this experiment is that it affects labor NGOs, which, intentionally or not, limit their own activities and “become more adjutants of the government rather than of workers.”¹⁶² Indeed, some NGOs members said that

¹⁵⁷ CHAN, “The Relationship between Labour NGOs and Chinese Workers in an Authoritarian Regime”, *op. cit.*

¹⁵⁸ LONG Zhiben 龙志本, “Shēnzhèn láogōng wéiquán zǔzhī fùzérén bèi kǎn shìjiàn diàochá” 深圳劳工维权组织负责人被砍事件调查 (Investigation on the incident about the leader of the Shenzhen labor right organization being stabbed), in “Sina News”, 16 December 2007, <http://news.sina.com.cn/c/2007-12-16/023413086539s.shtml>

¹⁵⁹ *Ibidem*

¹⁶⁰ *Ibidem*

¹⁶¹ XU, “Labor non-governmental organizations in China”, *op. cit.*

¹⁶² Jude HOWELL, “Shall We Dance? Welfarist incorporation and the politics of state-labour NGO relations in China”, *The China Quarterly*, NYP, 2015, pp. 702-723

working with trade unions implies not crossing a certain line, so they would no longer support workers in disputes for salaries or compensations.

After this analysis, we can conclude that during the Hu-Wen administration, NGOs still had some space for their activities, even if they were harassed. Activists agree that repression occurred in cycles and the peaks were concomitant with important events, like a Party congress, the National Day or following a major strike. Repression was reactive to mass incidents,¹⁶³ because the state control was fragmented and heterogeneous.¹⁶⁴ This fragmented approach was the result of decision taken by the central government, but “everyday governance of contention – spontaneous protest, petitioning, and organizing – allowed local governments considerable discretion to deploy whatever control tactics they saw fit.”¹⁶⁵ We also have to consider that local authorities were evaluated on the basis of how well they were able to maintain social stability. This spurred them to use extralegal methods to intimidate activists, such as those reported above. Also, “[b]y shifting responsibility for maintaining social stability downward, [...] delegat[ing] the dirty work of repression to local authorities”¹⁶⁶ somehow justified the use of such methods.

Howell and Pringle defined this as “pragmatic authoritarianism,”¹⁶⁷ i.e. a type of authoritarianism where a certain degree of oppression, necessary to maintain social order, is wisely combined with enough flexibility to foster economic growth.

Xi Jinping took office in 2013, together with Li Keqiang (李克强) as Prime Minister. Although there is continuity with his predecessor, since maintaining social stability is still a fundamental object, “the Chinese Communist Party under the new leadership of Xi Jinping has moved towards tightened political and ideological control,

¹⁶³ Diana FU, Greg DISTELHORST, “Grassroots Participation and Repression under Hu Jintao and Xi Jinping”, *The China Journal*, University of Chicago Press, 2017, No. 79

¹⁶⁴ FU, “Fragmented Control Governing Contentious Labor Organizations in China”, op. cit.

¹⁶⁵ FU, DISTELHORST, “Grassroots Participation and Repression under Hu Jintao and Xi Jinping”, op. cit.

¹⁶⁶ *Ibidem*

¹⁶⁷ Jude HOWELL, Tim PRINGLE, “Shades of Authoritarianism and State-Labour Relations in China”, *British Journal of Industrial Relations*, 2019, Vol. 57, No. 2, pp. 223-246

and an increasingly repressive approach to worker activism.”¹⁶⁸ The Chinese government has always been suspicious of the activities performed by NGOs, but such fear has intensified, especially since Xi has been nominated President. Indeed, in the “Communiqué on the Current State of the Ideological Sphere” (关于当前意识形态领域情况的通报 *guānyú dāngqián yìshì xíngtài lǐngyù qíngkuàng de tōngbào*), also known as Document No. 9,¹⁶⁹ passed at the Third Plenum of the 18th Congress of the Chinese Communist Party (中国共产党第十八届中央委员会第三次全体会议 *Zhōngguó gòngchǎndǎng dì shíbā jié zhōngyāng wěiyuánhùi dì sān cì quánǐ huìyì*) on 12 November 2013, the Party identifies several threat to the stability of the country, inter alia, the promotion of “Western constitutional democracy”, “universal values” and “civil society.”

It is in this climate of increasing xenophobia, where the party-state is afraid of “dangerous Western ideas” (for example democratic ideas) that can penetrate into China by means of Western help for grassroots NGOs, that the National People’s Congress issued the Foreign NGOs Management Law. As extensively explained in section 1.4, this Law strengthen the control over foreign NGOs from their registration, which is complex and pushes some of them to refrain from working in China, to the funding of Chinese NGOs and their projects, which require the disclosure of much information. This Law was indeed issued to target those grassroots NGOs that work in sensitive fields, like rights protection.

This move has to be framed in a broader context: Xi Jinping strictly applies the concept of the rule of law, in Chinese 依法治国 *yīfǎ zhìguó*, expression that can be translated also as “rule by law” or “rule the country according to the law.” This concept is not new; indeed, it was added in the Constitution in 1999.¹⁷⁰ During the previous administration, the “rule of law” was passed as necessary for the economic growth, for

¹⁶⁸ ZHANG Lu, “The Struggles of Temporary Agency Workers in Xi’s China”, in Ivan Franceschini and Nicholas Loubere (edited by), *Made in China Yearbook 2018 Dog Days*, Australian National University Press, 2019, pp. 50-53

¹⁶⁹ Full text (in Chinese) is available on the website http://www.xinhuanet.com/2019-02/27/c_1124171974.htm and the English translation on the website <http://www.chinafile.com/document-9-chinafile-translation>

¹⁷⁰ Elaine Sio-ieng HUI, “The Neglected Side of the Coin: Legal Hegemony, Class Consciousness, and Labour Politics in China”, in Ivan Franceschini, Kevin Lin and Nicholas Loubere (edited by), *Made in China Yearbook 2016 Disturbances in Heaven*, Australian National University Press, 2017, pp. 80-83

achieving the “moderately prosperous society” (小康社会 *xiǎokāng shèhuì*) and for maintaining social harmony and stability.

However, Xi Jinping took it one step further. According to Joshua Rosenzweig, a Business and Human Rights Strategy Advisor/Analyst at Amnesty International’s East Asia Regional Office in Hong Kong, “Xi Jinping sees rule-based governance as a way to impose discipline and centralize control over the party-state bureaucracy. [...] the country’s leaders need to be able to count on the bureaucracy to respond to its directions instead of playing by its own rules.”¹⁷¹ The Party needs to restore its ideological dominance against unorthodox views, needs to regain power and credibility that has lost because of corruption and other flaws. This policy of “rule of law” should not be seen as leading to democracy, but rather as an instrument for exercising social and political control.

The current Chinese leadership is creating “‘a perfect dictatorship’, a dictatorship so sophisticated and working so well that it in many ways does not even look dictatorial,”¹⁷² and where the Party is above the law and is the law. In such a framework, new laws have been issued to protect the state, and a new security body has been established. The National Security Commission (中央国家安全委员会 *zhōngyāng guójiā ānquán wěiyuánhui*) was set up at the Third Plenum of the 18th Congress of the Chinese Communist Party mentioned above and Xi Jinping himself is the chairman. Xi wants to create a new national security system, whose summit is the Commission. It is mainly a symbol expressing Xi’s goal is to re-consolidate the political authority of the party and his ambition of concentrating the power in the hands of the leadership.

This shows how there has been a shift in the repression of labor activism under his administration: harassment has become more frequent and consistent, so that there is no distinction between periods of intense harassment and quiet times. Also, in accordance with the concept of “rule of law”, the law is applied to incriminate activists, striking workers and rights lawyers, but not just them. To cite an instance, in 2016 Peter Dahlin,

¹⁷¹ Elisa NESOSSA (edited by), “Interpreting the Rule of Law in Xi Jinping’s China”, in Ivan Franceschini, Kevin Lin and Nicholas Loubere (edited by), *Made in China Yearbook 2016 Disturbances in Heaven*, Australian National University Press, 2017, pp. 99-105

¹⁷² FENG, “The NGO Law in China and its Impact on Overseas funded NGOs”, op. cit.

a Swedish activist, was detained for 23 days before being deported. He is a human rights activist and was working in a NGO in China called “Chinese Urgent Action Working Group” (中国维权紧急援助组 *zhōngguó wéiquán jǐnjí yuánzhù zǔ*) that he co-founded. Their project created to train and assist legal representatives and supported by foreign donors was considered a violation of the criminal law because they were carrying out illegal and subversive activities using foreign funds. For this reason, he was kidnapped in January 2016 and brought to a secret prison where he was interrogated, deprived of sleep and of the possibility to reach out to his embassy. He was then forced to take a video, later on released by China Central Television (CCTV), where he confessed that he and his organization have violated the law and apologized for what happened.¹⁷³

This episode is on the path of a major crackdown happened in 2015 in Guangdong Province. In the previous years, local grassroots organizations were periodically harassed, and their offices forced to close down or relocate, but, because of the fragmented control exercised by the state, activists could reorganize their activities. But, as we have just mentioned, this was no longer the case with Xi Jinping. In December that year, the government arrested at least 25 activists and members of several NGOs. Among them, Zeng Feiyang, the director of the Panyu Migrant Worker Center and three of his employees, Meng Han, Zhu Xiaomei and Tang Huanxing. They were arrested and tried for “gathering a crowd to disrupt social order” (except for Tang). Zeng was sentenced to 3 years imprisonment, suspended four years; Zhu and Tang were sentenced to 1 year and half imprisonment, suspended 2 years. However, Xinhua News Agency accused Zeng of embezzlement of funds coming from foreign organizations and of “sexual misconduct.” Reacting to this unfounded accusation, Zeng’s mother sued the news agency for defamation, asking for a 1 million RMB as compensation. However, she was forced to withdraw the suit because of police threats.¹⁷⁴

Ivan Franceschini believes that the fact that labor NGOs were helping workers in collective disputes “and promote[ing] a confrontational model of collective bargaining

¹⁷³ Full story by Tom PHILLIP, *A human rights activists, a secret prison and a tale from Xi Jinping’s new China*, in “The Guardian”, 2 January 2017, <https://www.theguardian.com/world/2017/jan/03/human-rights-activist-peter-dahlin-secret-black-prison-xi-jinpings-new-china>

¹⁷⁴ Chinese Human Rights Defenders, *Zeng Feiyang 曾飞洋*, 31 August 2016, <https://www.nchrd.org/2016/08/zeng-feiyang/>

very different from the official narrative of ‘collective negotiation’ (jiti xieshang), that triggered the latest crackdown against them,¹⁷⁵ because they were a threat for the state and for the ACFTU.

Moreover, in July 2015, in another crackdown, police raided right lawyers of the Beijing Fengrui law firm. They were notorious for working on “sensitive” cases regarding human rights. More than 300 lawyers, law firm employees and activists were detained, and many of them were charged with subversion or inciting subversion. Thanks also to international rights groups that exhorted the Chinese leadership, many were released after a short detention, but some had their license revoked.¹⁷⁶

These are just examples, but there have been many more cases in the past few years. They are enlightening from several points of views: First, we can understand that activists are treated as enemies, as threat to the national security and we can notice the shift of focus from social stability to national security. Second, the government’s growing fear of Western infiltrations is evident. For this reason, the it has tried to block NGOs’ access to foreign funding, which is essential for their survival, by issuing the Foreign NGOs Management Law, because with funds come also ideas and without the necessary capital NGOs cannot spread such ideas.

Another shift occurred during Xi’s administration is that repression, which under Hu Jintao was mainly reactive to mass incidents, is now proactive, which means that repression is used to contain such events before they happen. This can be explained by that fact that strikes are seen as incidents that compromise the social stability and Xi’s administration has chosen a hard-line policy to pacify labor activism.¹⁷⁷ Activists are arrested as a pre-emptive measure. For instance, the “feminist five”, a group of five feminist activists, had planned to distribute leaflets about gender equality and sexual harassment on buses for the 2015 International Women’s Day. However, they were

¹⁷⁵ Ivan FRANCESCHINI, “Revisiting Chinese Labour NGOs: Some Grounds for Hope?”, in Ivan Franceschini, Kevin Lin and Nicholas Loubre (edited by), *Made in China Yearbook 2016 Disturbances in Heaven*, Australian National University Press, 2017, pp. 46-49

¹⁷⁶ Radio Free Asia, *China Abolishes Top Beijing Law Firm Known For Human Rights Cases*, 13 November 2018, <https://www.rfa.org/english/news/china/abolishes-11132018112433.html>

¹⁷⁷ Chris King-Chi CHAN, “Changes and Continuity. Four Decades of Industrial Relations in China”, in Ivan Franceschini, Nicholas Loubre (edited by), *Made in China Yearbook 2018 Dog Days*, Australian National University Press, 2019, pp. 28-31

preemptively arrested even before they could hand out their pamphlets. They were “charged with ‘picking quarrels,’ later changed to a charge of illegal assembly [...] even though they appeared to be lobbying for a goal the Chinese Communist Party propagated – against sexual harassment.”¹⁷⁸

In January this year at least five activists have been detained in a new police crackdown in Shenzhen. Guangdong and Changsha. Among them, Zhang Zhiru, the leader of the Chunfeng Labor Dispute Service Center, the well-known labor activist Wu Guijun, who has been already detained for over one year in 2013 after he had joined a strike against the relocation of the company where he worked, but then was released in June 2014 without being charged,¹⁷⁹ Jian Hui and Song Jiahui, former members of Zhang’s organization and He Yuancheng, who has worked for several years in a law firm where worker representatives were trained. The reason of this crackdown seems to be linked to the dispute at Jasic Technology. However, in that period they were not part of any labor NGOs, they were not in the same city and therefore they were not working on a same project, much less helping workers at Jasic Technology. Indeed, Jasic workers’ representatives had intentionally decided to not involve NGOs activists.

Once again, the detained activists have been charged of gathering a crowd to disrupt public order, but such accuses were moved a month after the crackdown. Kevin Lin presumes that the arrest could be linked to their past involvement in collective cases and now, their arrest may be pre-emptive.¹⁸⁰

This analysis proves that the fragmented repression of Hu’s administration has been overcome and now repression is more centralized and consolidated. At the same time, Xi’s government is still integrating certain NGOs “into a formal law-based system of governance under the principles of social governance and socialist rule of law.”¹⁸¹ The party-state has understood the importance of NGOs’ work in society, and has, therefore,

¹⁷⁸ FU, DISTELHORST, “Grassroots Participation and Repression under Hu Jintao and Xi Jinping”, op. cit.

¹⁷⁹ China Labour Bulletin, *Well-known labour activists detained by Shenzhen police*, 22 January 2019, <https://clb.org.hk/content/well-known-labour-activists-detained-shenzhen-police>

¹⁸⁰ Kevin LIN, “State Repression in the Jasic Aftermath. From Punishment to Preemption”, in Ivan Franceschini, Nicholas Loubre (edited by), *Made in China: Smashing The Bell Jar*, Australian National University Press, 2019, Vol. 4, No. 1, pp. 16-19

¹⁸¹ HAN Heejin, “Legal governance of NGOs in China under Xi Jinping: Reinforcing divide and rule”, *Asian Journal of Political Science*, 2018, Vol. 26, No. 3, pp. 390-409

decided to develop some of them, as stated in the “Decision of the CCCPC on Some Major Issues Concerning Comprehensively Deepening the Reform”¹⁸² in November 2013. The goal is to include different actors in the decision-making process, including NGOs, to achieve social governance, showing in this way its intention to cooperate rather than to repress, but this is not valid for NGOs working in sensitive fields, like rights protection, which are always under surveillance.

CONCLUSIONS

The environment where Chinese labor NGOs operate has changed significantly in the last few years. First of all, the economic slowdown has brought many factories to close or relocate, either in other areas in the inner part of China, where wages are lower, or in other countries, especially in South-East Asia, where the workforce is abundant and wages are lower than in China.

Second, there is an increase of dissatisfaction among workers: They are dissatisfied with the current labor standards and want more economic benefits than the basic ones granted by the law. For this reason, they organize protests in form of strikes, sit-ins, etc., even though the Chinese Constitution does not express the right to strike, because they feel this is the only way they can have their voice heard and can push the government to intervene. Also, the official institutions that are charged with the task of helping workers are not effective: the ACFTU is more concerned with maintaining social order and increasing production efficiency, therefore trade unions do not really represent workers, quite on the contrary, they often side with employers, creating a deficit that requires NGOs intervention. The official system for the resolution of labor disputes, made up of mediation committees, arbitration committees and courts, has several shortcomings, such as being weak, expensive, lacking in neutrality and independence.

Third, the increased repression since Xi Jinping took office in 2013 has jeopardized their survival. Although also under Hu’s administration labor NGOs were kept under surveillance and harassed, Diana Fu described it as “soft repression”, because the

¹⁸² http://english.court.gov.cn/2015-10/08/content_22130532.htm

objective was to contain the operation of these organizations, rather than to eliminate them. Indeed, the party-state was aware of their role in society, that is the reason why some of them were co-opted, so that they could continue performing their activities, but under the government's supervision. However, this fragmented control became a more tightened ideological and political control. The government used the "rule of law" to centralize the power and exercise such control. Activists are now incriminated with vague charges like "gathering crowds to disrupt social order" and incarcerated. Crackdowns on Chinese labor NGOs has become more frequent and harsher, the last being at the beginning of this year and said-to-be linked to the Jasic struggle.

Chinese grassroots labor organizations also have changed in response to the mutation of the environment. The funding problem is perhaps the greatest difficulty: with the Foreign NGOs Management Law, it is almost impossible for local NGOs to obtain the necessary funding to sustain their activities. Therefore, many organizations had no other option than to close down, while others had to reduce in size. Hence, atomization is not only due to the increasing scarcity of funding, but also a consequence of the heightened governmental control: organizations had indeed become smaller so that they can avoid the pressure and the incessant scrutiny.

Also, Chinese labor NGOs are quite scattered and isolated. This factor also reflects in the lack of solidarity and cooperation among different labor NGOs. As seen in this thesis, there is a low level of trust among them because of scandals and internal problems, both on the leadership side, who is sometimes driven by material gains, does not want to delegate power and does not accept critiques, and on the employees side, who find roundabout routes to have decisions changed if they do not agree and badmouth their leaders. This lack of trust is present also in the workers and has to be overcome before labor NGOs are able to efficiently work with them.

Lastly, labor grassroots organizations have been somehow forced to focus on different types of activities. In the last few years some of them have tried to stay away from collective protests, in order to avoid the government's retaliation, and have put all their efforts towards collective bargaining, helping workers writing down their request in order of importance, carrying out elections for the workers' representatives, teaching

them how to negotiate with the management and sustaining them during the bargaining process. In this way, labor NGOs hope to create a model that trade unions can follow.

Despite the difficulties, NGOs are flexible and will adapt to the environment they live in. “Strikes and other forms of labor protests will not be eliminated without structural change in industrial relations;”¹⁸³ workers do not have other ways to make their voice heard, they will continue to need labor NGOs’ help to negotiate with employers for better working conditions.

Labor NGOs have different options to reorganize and continue helping workers, for example, they can, for the moment, embrace less risky activities, even though their effect is limited, and they can try to involve the ACFTU and cooperate with local authorities, showing them that they are pursuing the same goals and highlighting how labor NGOs’ work is not a threat to social stability, but, on the contrary, they are “a key pillar that prevent the current system from collapsing.”¹⁸⁴

Moreover, although the situation is depriving, there is still some hope: “The third sector is growing in China and young, educated urban youths are looking for space and exploring their roles to take part in social reform.”¹⁸⁵ They are a resource for China and a possible leverage for labor NGOs, as these young people are looking for opportunities and space to step in and manifest that they do not want to accept social injustice and are ready to take action to improve these aspects of society, so that they can live in a better place. Since there is such impulse in the Chinese society, activists now should try to bring the labor issue to the whole Chinese society and involve them, so they can learn the truth about the current situation and not just blindly believe what they are told by the national television system. They should focus more on gaining sympathy and support, not only for the workers, but also for themselves, and this could benefit labor NGOs because they could find a new source of income – that is the spontaneous donations by Chinese citizens.

¹⁸³ Chris King-Chi CHAN, “Changes and Continuity”, op. cit.

¹⁸⁴ HUANG Zheping, *NGOs are under threat in China’s latest crackdown against ‘foreign forces’*, in “Quartz”, 5 January 2017, <https://qz.com/873489/ngos-are-trying-to-stay-alive-in-chinas-latest-crackdown-against-foreign-forces/>

¹⁸⁵ Chris King-Chi CHAN, *The future of labour NGOs? A Response to Two Mindsets*, in “Hong Kong Confederation of Trade Unions”, en.hkctu.org.hk/node/150

In the future, labor NGOs will continue living a precarious existence, they will be kept under close surveillance and will be the target of other crackdowns. Although such restrictions can have a chilling effect on labor grassroots organization, labor activism will continue, as it cannot be eliminated unless the official institutions undergo a radical change and start really protecting workers and their interests. Labor NGOs have the ability to adjust and their survival so far is the proof that they are resilient entities, able to make the best out of any situation, despite how difficult it is. Also, it is important not to forget that they are dynamic entities, therefore it is in their nature to be able to change and shift, adapting their organization and their activities to the social and political context.

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