Redefining Collective Bargaining in Asia
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**EDITORIAL: Redefining Collective Bargaining in Asia**

Collective bargaining has been one of the cornerstones for workers movement not only in their quest to achieve better working and living standards but also to carve out political and social space that allows them to shape their future. In face of the mighty ‘capital’, only the ‘collective’ power of workers has allowed them to bargain and negotiate since the inception of industrial development. By the 20th century, as a result of workers struggle, collective bargaining and freedom of association were recognised as basic rights and many countries institutionalised collective bargaining by framing laws and creating institutions predominantly acting to mediate between capital and labour. For some time, collective bargaining thrived in the West with organised labour represented by trade unions negotiating and bargaining with industry under supervision of the State. However, the past few decades have turned out to be ‘game changer’ with ‘neo-liberalism’ taking over as the predominant economic and political discourse with the agenda to re-establish capital accumulation and restore the power of economic elite. This no doubt involved restructuring of the production space forcing workers to compete in the ‘race to bottom’ for lowest wages and vulnerable employment. Living up to its character, neoliberalism also ensured hostility against any forms of social solidarity and collective actions that could constitute barriers to the unprecedented capital accumulation. This led to a serious decline in the membership of the unions – key pillars for collective bargaining, thus tilting the balance completely in favour of capital. The ‘collectivity’ of labour has been under constant threat with the restructuring of labour relations that have emphasised on the individuality of workers with ‘flexible’ work being the order of the day. Workers became ‘divisible’ into temporary, contract and part-time workers and thus turning invisible. Capital mobility and financial globalisation have further weakened the labour bargaining power. The new century is witnessing a complete mismatch between labour that is organised within the national framework, trying to take on an almighty multifaceted and multinational capital that works beyond the control of nation states.

Asia in itself has been a different story with institutionalised collective bargaining only covering a small section of the workers as despite the diversity in the Asian region, very low level of organised workforce has been a persistent constant. They have been facing similar challenges as elsewhere and the existing low membership is further declining. Within the formal or organised sector, the enterprise level bargaining has been the dominant form of collective bargaining rather than sectoral or industry-wide bargaining. On the other hand, majority of the working population in Asia continues to work in the vast informal sector beyond the control of nation states. Collective bargaining and freedom of association were recognised as basic rights and many countries institutionalised collective bargaining by framing laws and creating institutions predominantly acting to mediate between capital and labour. For some time, collective bargaining thrived in the West with organised labour represented by trade unions negotiating and bargaining with industry under supervision of the State. However, the past few decades have turned out to be ‘game changer’ with ‘neo-liberalism’ taking over as the predominant economic and political discourse with the agenda to re-establish capital accumulation and restore the power of economic elite. This no doubt involved restructuring of the production space forcing workers to compete in the ‘race to bottom’ for lowest wages and vulnerable employment. Living up to its character, neoliberalism also ensured hostility against any forms of social solidarity and collective actions that could constitute barriers to the unprecedented capital accumulation. This led to a serious decline in the membership of the unions – key pillars for collective bargaining, thus tilting the balance completely in favour of capital. The ‘collectivity’ of labour has been under constant threat with the restructuring of labour relations that have emphasised on the individuality of workers with ‘flexible’ work being the order of the day. Workers became ‘divisible’ into temporary, contract and part-time workers and thus turning invisible. Capital mobility and financial globalisation have further weakened the labour bargaining power. The new century is witnessing a complete mismatch between labour that is organised within the national framework, trying to take on an almighty multifaceted and multinational capital that works beyond the control of nation states.

Asia in itself has been a different story with institutionalised collective bargaining only covering a small section of the workers as despite the diversity in the Asian region, very low level of organised workforce has been a persistent constant. They have been facing similar challenges as elsewhere and the existing low membership is further declining. Within the formal or organised sector, the enterprise level bargaining has been the dominant form of collective bargaining rather than sectoral or industry-wide bargaining. On the other hand, majority of the working population in Asia continues to work in the vast informal sector beyond the coverage of state laws, thus excluded from the ‘formal’ and legal mechanisms of collective bargaining.

The present issue of Asian Labour Update attempts to portray what collective bargaining in Asia entails. Case study by Han Guijun on the collective contract in the catering industry in the Wuhan city, China, considered to be covering largest number of workers (450,000) in China, analyses the problems of very ‘top-down’ process of collective bargaining where workers seem to have no say in their representative or the process itself. This case study exemplifies the fears that many have with respect to China and of the role that single workers union in China can play in effective collective bargaining in absence of – freedom of association. India on the other hand, as described by Surendra Pratap in his article, has neither ratified ILO convention on Freedom of Association and Protection of the Right to Organise 1948 (C. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (C. 98), as reflected in the Chapter on India. It has to be acknowledged that the institutional framework for collective bargaining is at different levels of development in India. As reflected by the article on compulsory arbitration, Sean Cooney compares the situation of arbitration in China and Australia and reflects that the existing laws in China do not deal effectively with the problem if the employer refuses to bargain, which happens in many cases. He further shares the Australian experience, where statutory tribunal, Fair Work Australia plays a vital role in arbitration and effectively deals with employers’ refusal to bargain. Finally, in the lead article – Beyond Collective Bargaining written by Sri Wulandari explains the concept of ‘collective bargaining’ that goes beyond the regulatory framework and effectively covers majority of working population in the informal sector. Collective bargaining carries different connotations for different workers and in case of informal workers collective bargaining begins with the struggle for getting recognition as workers. Asia is home to the majority of the working poor in the world who remain marginalised and excluded. Based on the experience of workers’ organisation in the Southeast Asian region, the paper highlights the struggle of working poor in defining their identity, forging alliances and their efforts to create a democratic space that allows them to bargain for their future themselves.

In Asia, the flexibilisation of labour market, a network of supply chains with multiple layers which blurred the employer-employee relation. Capital has invaded into social spheres and generally speaking society as whole is subordinated by the circuit of capital. Therefore, the conceptualisation of collective bargaining as resistance against this subordination becomes essential. It then becomes a political act that involves recreating social solidarity and figuring out alternate social relations. It involves cross sectoral alliances between different workers – industrial workers, farm workers, and self employed urban poor to bargain collectively beyond the membership benefits and beyond nation states. Collective bargaining becomes bargaining for identity, dignity and broader political struggle for democratic control.

As observed by the Supreme Court of Canada in 2007, “Collective bargaining is not simply an instrument for pursuing external ends….. Rather, collective bargaining is intrinsically valuable as an experience in self-government”.

**ENDNOTE**

South Asia

There were a chain of workers struggle in South Asia in the late 2010 and early 2011, and some of these struggles or their after effects continued in the period between April-June 2011. In Pakistan, the state's drive to privatize the state owned enterprises was continuously challenged and strikes and demonstrations of railway and power sectors workers continued. There was a major strike of textile workers in Faisalabad, Pakistan in July 2010. The workers were demanding to implement a 17% wage increase adopted by Government.

Following three weeks of negotiations employers refused to pass on the pay increase. Subsequently 100,000 workers in Faisalabad and surrounding areas went on strike. During the strike Labour Qaumi Movement trade union leaders were labelled as terrorists by the employers and they were arrested by police. The strike ended but the repression of workers continued all through 2011.

In Nepal hundreds of industries including half a dozen Indian joint ventures were virtually facing a situation of indefinite closure due to a wave of strikes initiated by various trade unions in early 2011 for increase in minimum wages. Nepal Lever (Hindustan Unilever's subsidiary) situated in Hetauda industrial district was facing a situation of closure along with other 56 local industries. Other Indian joint ventures including Dabur Nepal (subsidiary of Dabur India) and Surya Nepal (subsidiary of ITC) situated in southern Nepal’s Bara district were also facing the similar situations. The campaign of trade unions for increment in minimum wages continued in April-June period also. One important development in trade union movement in Nepal is that all the three major trade union centers- GEFONT, NTUCI and ANTUF have come together on this issue.

In Bangladesh, in late 2010 there was a large scale strike of garment workers for a hike in minimum wages. Many workers and leaders were arrested during the strike. After effects of the strike continued in April-June period and lot of time of trade union leaders were lost in appearing in courts and pursuing the court cases against their comrades who were still in jail. In Sri Lanka also in February-March 2011, there was a worth mentioning strike of textile workers in Faisalabad, Pakistan in July 2010. The workers were demanding to implement a 3,000-rupee ($US27) monthly wage increase and recognition of their trade union. The struggle continued for almost a month.

In India, there were several strikes in late 2010 particularly on the issue of formation of trade union and recognition of trade union. Such struggle continued in the later period also. Then in early 2011 there was a wave of workers demonstrations against the skyrocketing prices of essential commodities. There was a historic march of 200,000 workers to the parliament on February 2011 demanding control on price rise, strict enforcement of labour laws, linkages of employment protection with the stimulus package, universalisation of social security, enhanced social security fund and to stop privatisation of central public sector enterprises.

In April-June period, there were three worth mentioning strikes in India and Pakistan. Strike in Maruti Suzuki and GM in India and Strike in Karachi Electric Supply Company in Pakistan.

Strike in Maruti Suzuki

Almost all of about 3500 workers of Maruti Suzuki (Manesar, Gurgaon, India) went on strike on 4th June 2011 against union busting. To completely stop the production operations, rather than going out of factory premises, the workers decided to remain inside the factory day and night. Therefore in a way they captured the factory. Therefore, 2700 workers had been there inside the factory since 4th June. The police was camping in the factory since 4th June to trying to harass them in various ways; however it was not successful in compelling the workers to move out of the factory.

To torture the workers, the Suzuki management closed the canteen and stopped even the water cooler. The height of brutality was that all the toilets except one were also closed. The workers who were outside, the relatives and friends daily came there for supplying the daily necessities to workers, but the management allowed nothing other than food. They did not allow even the supply of tooth paste, soap and cloths for workers. Two workers fell ill and they did not receive proper treatment inside, and when their condition became serious they were hospitalized.

The strike was not initiated by the workers. They were actually compelled for the strike. Their only ‘sin’ was that they formed a union and sent the application for registration of the union to the regional office of the labour department in Chandigarh (state of Haryana) on June 3, 2011. According to workers, the labour department went out of way and informed the factory management about this application and the very next day, on June 04, 2011, the management started compelling all the workers to sign on a plain paper and threatened them against any attempts to form the trade union. When workers opposed this move of management and rejected to sign on the plain paper, according to workers, some workers were beaten.
During the same time, the second shift workers were also entering in the factory, and looking at the situation they also got agitated. Then, after a quick meeting they decided to stop the work and went on indefinite strike. The same day, the management terminated (without following any legal process and violating principles of natural justice) the services of all 11 workers who were elected as executive members of the newly formed union.

The management openly said that it was not going to accept any other (independent) trade union in its company, and workers must accept the already existing trade union in Gurgaon plant, which according to workers was a pro-management union formed in 2000 after wiping out the independent trade union. The attitude of the labour department was also not favourable to workers. According to workers, the Labour Commissioner openly said that the termination of services of 11 workers by the management was justified. The strike was declared illegal. The Labour Commissioner referred the matter to the labour court to decide on the two issues: whether the strike was legal or illegal; and whether the termination action was legally justified or not. Actually this was done for throwing the central issue in dustbin and derailing the workers struggle.

There were rounds of tripartite talks including representatives of workers, management and labour department. Strike ended on 17th June 2011, but the issue was not resolved. Therefore in the later period the workers again went on strike. It is worth mentioning that trade unions of Gurgaon, particularly auto workers unions have formed a joint trade union council to fight against union repression in Gurgaon. During Maruti Suzuki strike also joint trade union council openly and actively supported the striking Maruti Suzuki workers.

### Strike in General Motors

Nearly 900 workers of General Motors India (GM) Halol plant in Gujarat went on strike from the second shift of March 16, 2011 primarily complaining against health issues as well protesting against transfer of employees from the Halol plant. Strike lasted for 51 days and was called off on May 4, 2011. The trade union in the GM Halol plant Gujarat Kamdar Mandal, affiliated to Indian National Trade Union Congress complained that 450 workers in the plant were suffering from spinal injury, but instead of reducing the work load and bringing it down to a comfortable level the management was coercing the workmen to bear the extra workload. When workers complained of pain they were forced to swallow pain killers and applied pain reliever ointment. When the workers complained of health problems, they were transferred. Fourteen employees were suspended when they approached legitimate authorities with their grievances. Workers had to work nine hours a day and six days a week. Temporary workers were performing the same tasks as that of permanent workers, but were denied equal remuneration. The workers faced so much of repression during the 51 day long strike.

On May 4 2011, a settlement between the workers and GM management was reached with the intervention of State Labour Department on the ground that suspended workers will be reinstated and pending issues of production will be decided by discussion/mediation in the presence of a Labour Officer. GM India Management negotiated with the representatives of workers’ union, Gujarat Kamdar Mandal, but it has not recognized the union yet. The issues regarding transfer of workers, workload, and wage-agreement are pending in courts of law and no settlement is done on these issues. The management has neither accepted demands on these issues nor is willing to negotiate with the workers. A committee, comprising representatives of the protesting workers and the management, has been formed to look into the dispute.

### Strike in Karachi Electric Supply Company (KESC)

There started a round of strikes of KESC workers from May 2011 onwards against the retrenchment of around 4,000 KESC staff fired earlier in the year by the privatized power company. A solidarity strike was also called by several political parties in support of striking workers. The impact of the strike was far reaching in terms that it was leading to serious power crisis to other industries. News papers frequently reported that the strike is causing severe hardship for many industries, and that some units in Sindh Industrial and Trading Estate (SITE) were facing a shutdown, while others were facing problems everyday because the KESC workers were not answering to complaints of technical breakdowns.
New Confederation

Labour movement in South Korea has been the most dynamic in the region. In the late 1980s the movement has achieved in bringing political element in their struggle which genuinely challenges the state and capital. However, the recent development has turned its path into somewhat different stage, as a new confederation established in May this year, declaring that they will avoid militancy and any political movement. The group deliberately mentioned that they are non-militant and non-political umbrella unions.

The leader, Chung Yeon-soo, chairman of Seoul Metro labour union, said that they “will not regard the government, capital and market as something it must fight against”. The umbrella unions will focus more on creating industrial harmony, the extreme position that the pro-government confederation has taken for a long time. There are big unions decided to join the new umbrella: Seoul Metro labour union with 8,640 members, Hyundai Heavy Industries, and KT Corporation (formerly Korea Telecom), among others. The Seoul Metro labour union decided on 29 April to split from KCTU, the Korean Confederation of Trade Union, right before the international Labour Day.

Law on multiple unions

In addition, starting from July this year, long-standing ban on plural unions at company level is lifted. Multiple unions system is now introduced in the country. Under this revised law, workers can freely set up labour unions no matter how many there are at a workplace. Two workers are enough to form a labour union.

For collective negotiation, however, this new law allows workers to choose only one union which will sit with management. In case of disagreement, a union that represents a majority of the company’s total unionized workforce is entitled to lead the negotiations. If no group has more than half of the unionists, groups with more than a 10 percent share should form a joint committee. Companies like Samsung has been preparing vigilantly, as blatantly saying that they will prevent labour unions in their workplace from gaining workers’ support.

The two issues – the mergence of new confederation and the implementation of multiple unions system – have been on heated debate among unions and general public. There are fears and hopes, and these have challenged the consolidation of the democratic unions, right when they are in difficult situation.

Workers’ struggle: the cases of Ssangyong, Hanjin, and Hyundai

Ssangyong workers’ struggle has been massive since 2009 when the company forced 2,600 workers to resign or take unpaid vacation. Fifteen dismissed workers found committed suicide for having extreme depression. According to a report by the Green Hospital in April 2011, about 80 percent of the dismissed workers desperately need therapy and other medical measures to ease their strain. The chances of them suffering from depression were also 3.74-times higher than that of the average person. Unionists say that four of the 15 deaths were suicides and each of the 4 lived in extreme poverty. The country’s social security is not sufficient to save the workers and government has to find ways to guarantee the lives of the people.

Meanwhile on 8 April 2011 thousands of workers from across Korea including the Korean Metal Workers’ Union (KMWU) gathered in Busan to protest mass dismissals and demand comprehensive revision of the Trade Union Labour Relations Act. The Hanjin Heavy Industries Local of the KMWU has been on strike since 20 December 2010 and has been calling for the company to: (1) drop criminal and civil charges, (2) withdraw the mass dismissal plan, (3) secure a future for the Yeongdo shipyard, (4) end the lockout, (5) implement employment security agreements and the collective agreement, and (6) replace the members of management who came up with the redundancy dismissal plan that provoked the dispute.

As of 28 June 2011, the Hanjin workers have had struggle for 190 days against the large-scale dismissal. Hanjin, a shipyard based in Busan, on June finally agreed to rehire 170 laid-off workers and minimize the claims for damages from the labour strikes. Around 13 unionists have continued to sit-in protest on the crane under the strong wind, pouring rain and isolation despite the call-off.
Kim Jin-suk, a member of the Direction Committee for the Busan branch of the Korean Confederation of Trade Unions (KCTU), was in the 158th day Sunday of her aerial protest in the 35-meter-high No. 85 crane demanding that the company withdraw its layoff plans. “I’m irregular worker, so it was not easy getting here. On the job, I have gained an acute sense of how bad the irregular positions are,” said Kim to The Hankyoreh. In the previous year, the company has dismissed 400 shipyard workers, arguing that they suffered a net loss of 51.7 billion won.

Union repression has also been one of major issues in South Korea. In Hyundai Motor, the largest auto corporation in the country, the repression had caused a union leader to committed suicide in mid of May 2011. In his suicide note, the worker blamed the management for interrupting his duties as a union representative. Soon after that all workers in Hyundai’s Asan site walked off their jobs demanding their basic rights. As the adage “the right wheel is done by regular workers and the left one by irregular workers” would suggest, Hyundai Motor is a workplace where the regular-irregular worker issue is a real problem. While the roughly 8,000 in-house subcontractors make just 60 percent of that of regular workers and face job insecurity, their dreams of being regular workers is a long way off. Like in many Asian countries, irregular workers are facing serious discrimination that gives an element of divide and rule among the workers and unions.

Indonesia

At the 100th ILO Conference in Geneva in mid of June 2011, the Indonesian president made his first chance to give a speech entitled “Shaping a New Global Framework for Social Justice and Equity.” However, ironically the day after his often very optimistic rhetoric, one of the Indonesia’s migrant workers named Ruyati was beheaded in Saudi Arabia. Ruyati was a bleak portrait of the country’s protection system towards workers. Hundreds of such story has often neglected, and government has continuously exaggerating Indonesia’s economic stability amidst the global financial crisis.

In fact, Indonesia has been attracting foreign investment by promoting cheap labour, since other factors including infrastructure and rampant corruption have been obstacles for the economic development. Indonesia has relatively cheap labour in comparison to other countries such as Malaysia, China, Thailand, India, and even the Philippines (Investment Body, 2009). By exploiting cheap labour, the government has targeted the investment as much as $ 2.7 billion for 2011 or 15 per cent higher than last year.

Like many other Asian countries, Indonesia has undergone export-oriented development, and has been aggressively liberalising its economy. As a result, almost all major economic sectors are dominated by foreign investment. Seventy five per cent of mining sector, particularly oil and gas, is controlled by foreign investors.

The domination of foreign investments

Foreign capital has been taking control of 50.6 per cent of national banking asset. In addition, there are 45 insurance firms throughout Indonesia, but more than half of them are foreign owned. The country’s regulation has allowed foreign companies to control up to 99 per cent of the banking shares and 80 per cent of the insurance companies shares. Meanwhile in the stock market, foreign investors have 60-70 per cent control over traded shares from all listed companies.

De-regulation has been taken place since 1970s in the Suharto time and it has expanded to the very existence of people’s life. Major state-owned enterprises have been privatised and in all those privatized state-owned enterprises 60 per cent of the shares are owned by foreign investors. In the oil and gas sector, at present the portion of national oil and gas operator is only about 25 per cent, while the remaining 75 per cent are controlled by the foreign capital (Kompas, May 23rd, 2011).

The domination of foreign investments has been expanding in many other key sectors, particularly after the implementation of ASEAN-China Free Trade Agreement (ACFTA) since January 2010. The Chinese goods have been flooded Indonesian market and growingly beyond control. As of late 2010, Indonesia’s export value to China reached $ 49.2 billion, while its import value from China reached $ 52 billion, creating a deficit for Indonesia side. The largest increase of import occurred in six products, namely children toys (72 per cent), furniture (54 per cent), electronics (90 per cent), textiles and apparel (33 per cent), machinery (22 per cent), and metal (18 per cent).

The implementation of ACFTA has been threatening almost all labour-intensive manufacturing industries. There was a response to monitor the agreement by establishing ACTFA Implementation Monitoring Task Force in February 2011 under the coordination of Ministry of Labour and Transmigration, but it was ineffective. The flood of Chinese products has already created a decline in manufacture sectors, especially footwear where 300 thousand out of 1.5 million workers in the industry have been laid off soon in 2010 alone. There were other 68 thousand workers being laid off affected by the ACFTA. There is no doubt that ACFTA and other bilateral agreements have increasingly reinforced the foreign domination in Indonesia’s market and economy.
Workers resistance in mining industry: Demanding welfare and ownership

Between April and June 2011, Sedane Labour Resource Centre (LIPS) has recorded that at least there were three major strikes taken up by union in mining companies, such as Freeport, Chevron, Pertamina, and Leighton Contractor Indonesia (LCI). The strike in Freeport has killed at least 3 workers while thousands of workers demanded wage increase and the elimination of the discrimination between Indonesian and foreign workers.

Meanwhile on 20 April 2011, there were 190 outsourced security guard workers working in various Chevrons’ plantations took up a strike demanding the assurance of their work contract, food allowance of $1 per day, and transport/other allowances of $1.5 per day. Like many other workers, Chevron’s workers are working for 12 hours a day without overtime pay. The company always turn away the demands to its sub-contractor PT Jaya Sakti Mandiri Utama.

The day after on April 21st, more than 1,000 coal mining workers in Tanah Laut District, South Borneo, took up a similar strike by blocking the road to the mining sites. They demanded the management to increase a food and housing allowance.

In the meantime, hundreds of PT Pertamina Oil workers took up a an action to protest against foreign ownership over the management of West Madura Offshore (WMO) gas and oil which produce 30,000 barrels of oil per day. Labour union of Pertamina has sent an open letter to the president, Ministry of Energy and Mineral Resources, Natural Gas, and related institutions to demand that the management of WMO should be fully managed by PT Pertamina.

Social security: a tricky issue

In Greater Jakarta, labour resistance has taken place for the issue of social security. On 16 to 20 June 2011, more than 300 workers from The Social Security Action Committee (KAJS) marched on foot from Bandung to Jakarta, travelled along 250 km for 5 days. The long march action was demanded the adoption of Social Security Administering Body Bill.

Since 2009 the demand to implement National Social Security System Law (UU SJSN) No 40 2004 continue to arise. KAJS is an alliance of labour unions, students, farmers, and NGOs that demanded government to implement social security law, and to pass the Social Security Administering Body Bill. Between April and May, KAJS in several major cities including Jakarta, Bekasi, Surabaya, and Batam mobilised protests engaging significant number of workers.

In Cikarang, the workers have blocked highway for a couple of hours.

However, other group raised a concern that the National Social Security System Law as well as Social Security Administering Body Law will give a way for private insurance firms to control and privatise the social protection. Furthermore, there will be legitimacy for the administering body to speculate the social security fund by re-investing the money into hedge-fund and the likes. Many of workers and general public have not been aware of this concern. There is a need for social movement to pay more attention on this tricky issue.

Abu Mufakhir, Sedane Labour Resource Centre (LIPS), Bogor, Indonesia

Vietnam

The Vietnam Strike Wave

In 2011 Vietnam has riveted the world’s attention not only in its vibrant and impressive economy, but also in its unrelenting strikes sweeping through the whole country. Just the first eight months this year, about 800 strikes have been recorded. This unprecedented amount of strikes has become the signature issue in Vietnam’s industrial relations in 2011.

Before 2006, strikes in Vietnam, though having increase, were still moderate. The amount of strikes hovered around 140 cases per year. However, since 2006, Vietnam’s strikes have started gaining impetus – just in 2006 there were 387 strikes a year, about 2.5 times recorded in 2005. The figure continued to grow in the next two years, with 541 and 762 strikes recorded in 2007 and 2008 respectively. Despite dipping down to 310 cases in 2009 due to the aftermath of global economic recession, yet it quickly regained its momentum to climb again in 2010 and 2011. On average there were about four strikes broken out weekly in the country. This amount of strikes has been unprecedented in the history of Vietnam since the Doi Moi (renovation) program launched in 1986.

Characteristics of Strikes in Vietnam

Not only has the amount of strikes in Vietnam impressed people around the world (especially foreign investors in Vietnam), the pattern of Vietnam’s strikes has also become a puzzle to them, including Vietnam’s government officials. Let’s look at the characteristics of strikes in Vietnam in turn:
1. **Illegal strikes**: all strikes nowadays in Vietnam are illegal, and thus all of them are called, "wildcat strikes". Under Vietnam's labour law, strikes are not organized by official trade unions are illegal. But Vietnamese workers never go to the unions when they go on strike; instead, they just strike whenever they are discontented with their work conditions.

2. **Peaceful strikes**: another peculiar characteristic found in Vietnam's strikes is their peaceful nature. Rarely have we heard of very violent strikes broken out in Vietnam. Vietnamese strikers, when they go on strikes, usually gather outside factory gates without generating big disturbance in the region, and thus local police also rarely suppress strikes. This peaceful feature has to be contrasted with other Asian's developing countries, notably China; China's strikes are usually violent and most of them turned out to be cracked down by local police.

3. **Leaderless strikes**: it is hard to find any organizers in Vietnam's strikes. At least, there are no open leaders, organizers or strike committee in every strike. Because of this, workers' demands are usually articulated when local government officials or trade unions asked in front of a large crowd of strikers. After that, local officials and trade unions, after knowing workers' demands, bargain on behalf of the workers against factory employers.

4. **Strikes with sympathetic press coverage**: local press also plays a role in Vietnam's strikes. Local news media, especially those pro-workers' newspapers (e.g. The Labour and The Labourer), usually send their reporters to the spot of strikes as quickly as they can. The reporters often interview strikers by asking their demands and their working conditions in the factories. In the end, most news reports are so detailed that not only workers' demands are reported, but also the whole process of strikes (including the bargaining process and the results of each round of bargains) is covered.

5. **Repeated and Routinized Strikes**: last but not the least feature of Vietnam's strikes is its repeated and routinized pattern. Strike experiences are common among Vietnamese workers, especially those working in foreign invested enterprises. Repeated strikes can be mounted in the same factory and strikes have become routinized. For example, in one of the Taiwanese owned footwear factories, the Hue Phong Shoe Company, which is located in Go Vap district, Ho Chi Minh City, five large-scale strikes has been recorded repeatedly in 1997, 2000, 2001, 2005 and 2008 in just a decade. In this sense, Vietnamese workers are used to strikes and strike has become workers' effective bargaining tool to improve their working conditions.

**Explaining the Vietnam's Strike Wave**

Why are there so many strikes in Vietnam? The answer can be found by studying Vietnam's macroeconomic situation. Since 2005, Vietnam's economy has suffered from double-digit inflation. In 2008, the average consumer price index (CPI) has reached 25 percent; in particular, when price index is measured in terms of major foodstuff (CPI food) the figure peaked at 31 percent in 2008. Vietnamese government seems have no way to control this runaway double-digit inflation in the past five years. The only way they can ease workers' hardship is to adjust the legal minimum wage. However, although Vietnamese government has adjusted the legal minimum wage year by year with substantial increase, the increase in minimum wage still can't catch up with the rise of inflation, thus resulting in workers' declining living standards. That is why most strikes demand substantial increase in wages. Workers simply want to have more wages to upkeep their living standards.

Indeed, should the Vietnamese government still be unable to control the runaway inflation (in just first seven month this year, inflation has climbed up another 25 percent already), more strikes are expected, and strikes originated from economic demands can easily turn political – at that time, the present authoritarian regime in Vietnam will be seriously challenged.

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**Hong Kong**

**Minimum-wage**

On May 1st 2011, the Minimum Wage Ordinance (MWO) came into force in Hong Kong with an initial statutory minimum wage (SMW) rate as HKD$ 28 (3.6 USD) hourly wage. SMW applies to all employees including disabilities, whether they are monthly-rated, daily-rated, permanent, casual, full-time, part-time or other employees, with certain exceptions such as student interns, live-in domestic workers and a family member who lives in the same dwelling as the employer. This is a result of long struggle of labour movement in Hong Kong though the SMW and exclusion were far below the demands from trade unions.

However the hourly rate is still disappointing. People's Alliance for Minimum Wage (PAMW) have been demanding for at least HKD $ 33 per hour as the minimum wage.
Beyond Collective Bargaining

By Sri Wulandari

This paper looks at the issue of collective bargaining beyond the regulatory framework. The title ‘Beyond Collective Bargaining’ suggests a process wherein informal workers are able to constitute some form of political power. This includes process of creating and recreating social solidarity among various and diverse sectors, creating representational space and identifying target/s for collective bargaining.

The case studies used are based on the experience of workers’ organisation in the Southeast Asia region. The paper also accentuates the need for creating a democratic space for workers, especially the informal workers, where the values of democracy as political equality are being induced. The space should allow the informal workers to transform themselves to become the agents of change, fighting for their visibility and inclusion.

The paper begins by presenting the statistics and the trend of employment in Southeast Asia. This will lead us to conceptualise informalisation and what factors are driving people to engage to the informal work. Though, this is explained briefly with most of the emphasis being placed on the political consequence of informalisation. The brief explanation should become the background in understanding the nature of the society developed under given production relations.

Precarious life we are living in

Based on the ILO’s compilation of the figures in the Global Employment Trend 2011, in Southeast Asia and the Pacific, almost 180 million workers are classified as vulnerably employed. More than 50 percent of workforces are classified as working poor who earn less than US$ 2/day. Out of the total 280 million employed workers almost 65 percent are vulnerably employed that encompasses own-account and contributing-family workers. The estimation presented here, however, does not include the unemployed, those who actively pursue opportunities to engage in the labour market.

These statistical figures may not be reliable in presenting the actual number of vulnerably employed workers. Nevertheless, this gives us a broader picture about the kind of society that exists or emerges under given production or labour relations. Conceptualising this situation becomes necessary in discussing and exploring strategies of collective bargaining. The conceptualisation thus becomes a political act since it focuses attention on some dimensions and diverts interests from what some might consider the more significant.¹
We live in an era where workers, seek to anchor themselves to precarious jobs. Through the opening up of new production space, we also witness how society is being transformed without any consent or participation of the population. In order to explain the phenomenon it is convenient to refer to Marx's account on the primitive accumulation of capital that releases labour power as a commodity and 'available for exploitation'. We are also familiar with the releasing of labour power through production restructuring that entails production cost cutting, flexibilisation of workforce and adoption of informal economy characteristics within the formal economy. The institutionalisation of flexibilisation and informality through regulatory framework in Asian countries has downplayed the role of unions and collective bargaining.

Meanwhile the releasing of labour power creates “floating” surplus of labour that is made accessible to expand the production and thus the capital accumulation. Indeed, Marx also paid attention to the mobilisation of the so called reserve army of labour in the rural area. As he noted that the latent reserve army of labour in rural area surfaces once the capitalist takes over the subsistence agriculture.

The releasing of labour power as a commodity is often accompanied by curtailing of the political and legal rights of the workers. If the flexibilisation of the workforce has seen the unions losing their membership and thus the bargaining power, then what will be the effective means of struggle? If all instruments of State facilitate the capital accumulation or pre-empt any possibilities that constitutes barriers to the accumulation, then what should we do to claim our democratic space? If the prevailing “democratic system” is tilted to support the market, then how do we redefine our democracy?

In trying to answer the questions posed above, it would be apt to start with a common story of land dispossession in the rural South East Asia.

Land dispossession and releasing of labour power

Sharing his experience, Bahrun, a landless peasant, recalls the day in 1996 when a local listed plantation company, PT London Sumatra (Lonsum) in Langkat district in the North Sumatra province, grabbed his village land in order to expand the plantation estates. For more than a decade, Bahrun and 75 other families have been fighting to reclaim the land that they were cultivating for generations since 1942.

He still remembers that in 1970s, the Plantation estates sought villagers’ approval to establish a bridge for transportation of the plantation products. To Bahrun, it meant that the Plantation by then clearly recognised villagers’ ownership over the land. In mid 1970s, the villagers got their land ownership certificate authorised by the sub-provincial authorities. Everything was normal until early 1990s when the Companies started to expand their rubber plantations and also started growing palm oil. This led to the forcible acquisition of the villagers’ land to bolster the growth of the expanding company. Bahrun and other families completely lost their land and livelihood since then. He and other families in his village have been earning meagre sums of money by selling the midrib of palm oil leaves to home-based industries.

He can still recall how the villagers lived in constant fear confronting terror from the military who forced them to evacuate their land. In 1998, the political reform swept through Indonesia and almost overnight hundreds of political parties were set up. Democracy, local autonomy and freedom of association became keywords of the new political transition and a new electoral system was introduced. Bahrun and other villagers continued to remain strong in their perseverance to fight for their lost land and many political parties approached them whenever the election was approaching. Just like millions other victims of forced eviction and land grabbing in Indonesia, Bahrun merely became the target of local politicians’ election campaign. Yet all politicians’ promises come to no avail.

Such a story has become folkloric for rural people in developing Asian countries. In Cambodia, 85 companies hold concession over 956,690 ha of land (MAFF 2010), while in Laos, in 2011, there are 2000 land concession projects nationwide (farmlandgrab 2011). Most of foreign direct investment (FDI) in Lao PDR still goes into resource sector, particularly hydropower and mining (about 80% of the total FDI) (GTZ 2009). Between 1991 and 2004, there have been 1551 land disputes in Cambodia covering over 380,000 hectares of land involving more than 160,000 farming families (Landwatch Asia 2008). As of 2006, two thirds of these cases remained unsolved (Landwatch Asia 2008).

In Philippines, where 75 percent of the labour force is employed in the agricultural sector, seven out of ten farmers are landless. Indonesia and the Philippines are putting more and more of their land under corporate owned plantations; and aggressively promoting large scale mining operations; and modifying their investment laws to entice foreign capital into the country and repress any local opposition to investment project. In the Philippines, out of every one hundred peasants, twenty one are agricultural workers, twenty eight are unpaid family workers, twenty six are under some form of tenancy relation and only twenty five own small piece of land (AMRC and EILER 2010). The expansion of plantation industry in South Thailand has left around 118,125 families landless (LRN 2011).

How to start exploring collective bargaining strategies in rural area

Through the “peasant labour process”, where the traditional subsistence agriculture is gradually taken over by ‘plantations’, transnational capital coexists with various forms of family production, facilitated by State (Crichlow,
2000). In general, the accumulation of capital always requires a space functioning as a container, conduit to facilitate the mobility of the capital. Within the process, some spatial arrangement is necessary allowing capital to extract the natural resources and have access to the pool of cheap labours.

The spatial arrangement requires the reorganising of existing social structure as to create source of cheap labours who are ready to marketise themselves with the low wage. This takes place commonly through dispossession of the livelihood, land monetisation, and privatisation. We are familiar with the story of the expansion of plantation industry, privatisation of the coastal area and other stories where people are dispossessed from their livelihood and land. The ‘peasant labour process’, depicting the social transformation in the rural area where peasants and fishermen are forcibly dragged to engaged to waged labour, applies here.

Furthermore, the involvement of family members in informalisation is also seen here. For example to meet the target weight of fresh fruit bunch harvested at palm oil plantations in a day, the casual workers re-casualises the work to their wives and children. The informalisation also goes further beyond the production process. There is a process where multi-layer of labour is created. The landless peasants scraping for palm oil leaves are actually performing non-wage job for the plantation by offering free cleaning services. Indeed, the plantation benefits from this non-wage job as part of externalisation of the production costs related risks and other subsequent social costs thus enabling maximum accumulation. In a very subtle and coercive manner the society is transformed to serve the capital.

The following section focuses on the cases and examples to show the manner in which collective bargaining power is constituted on ground.

**Collective bargaining power is constituted: Re-creation of social solidarity and understanding the power relations**

In Indonesia, casual palm oil plantation workers and landless peasants agreed to set up a cross sector alliance in Langkat district in the North Sumatra Province. The process was initiated by mapping the impacts of palm oil industry on society. This also included mapping the State agents who facilitate land expropriation. The challenging issue here is horizontal conflict accompanying the ‘land grabbing’ where the foreman/supervisor at the plantation orders the casual plantation workers to destroy the peasants’ crops. Spontaneous resistance coming from peasants then is quickly directed towards the workers who are assigned to clear up the land rather than the company itself.

Recreating social solidarity between landless peasants and casual workers who are severely impacted by the plantation industry becomes the basis for collective action. Landless peasants emphasise the importance of political struggle to reclaim their land. The social solidarity was recreated in this cross sector forum when the peasants conceptualised their strategy and clearly recognised that plantation workers were also fully entitled to land and livelihood. As for the workers, who often experience violence from company goons when attempting to organise, felt reassured that community and peasants would support their struggle to organise against the plantation. Some peasants even committed to provide their houses as hiding place for workers escaping from violence.

They agreed on the idea of organising and sensitising the ‘village chiefs’ in their favour. This was based on the output of identifying power relations and understanding the role of political structure in the village. As chief of the villages are often approached by the plantation and often compromise to favour the plantation, the groups decided to approach them and try to get them on their side. Political education also became the main program as they also planned that in future some of them would become village chiefs.

Besides the general plan, each sector also develops their plan for collective bargaining. For example, a group of casual plantation workers named as “the group of the braves” would soon negotiate with the management over bonus and working equipment. The workers gained their confidence after successfully organising a strike at plantation. In a similar manner, the landless peasants planned to consolidate themselves and assessed their strategy in the past in dealing with land grabbing.

Though it has to be understood that the road to political collective bargaining power, in which this cross sector alliance is recognized as a political entity challenging the power of plantation and State, is still a long one.

In 2007 a group in Thailand, the Federation of Southern Farmers launched their land reform initiative by occupying the land and setting up communities around palm oil plantations. The federation, which consists of three communities encompassing 774 families, actively involves in the Land Reform Network (LRN). Each community set up regulation which they refer to as community constitution. The group also demanded the local government to endorse the “constitution” to recognize the rights of the community to the land that they occupy. LRN has also been active in linking up the movement in rural and urban area to fight for the rights to land. In Philippines, workers groups from seven sugarcane plantations decided to set up a platform for change. The groups drafted some demands to be negotiated before the congress members.

**Precarious society in urban area**

As Mike Davis mentioned in Planet of the Slums, urban involution happens when the village lose its storage capacity.
The landlessness pushes people to migrate to the city and compete against each other or engage in self exploitative job. In the context of Southeast Asia, the mobilisation of labour power takes several forms. Establishment of special economic zone that triggers migration influx to the zone is one of them. Yet, of course, the factories, due to flexibilisation of the work, have limited capacity to absorb all the entire workforces. What takes place then is the burgeoning informal activities either to provide affordable goods and services for workers or engage to informal work which is then integrated to the manufacturing process.

There are two salient points that we need to take into account in looking at the informalisation in urban area within the context of collective bargaining.

**First, competition among workers for the livelihood territory**

In this context, we need to look at the idea of “public space” which is constructed by the given social relation. It is a contested space between those who benefit from it and those who are marginalised. However, the contested space contains certain complexity due to the competition among workers as will be explained in the next point.

**Second, the assumption of urban poor being uprooted from the collective culture.**

Many argue that the major challenge posed by organising the urban poor is the “independent” culture of the urban poor. This gives a hint of the survival condition that they live in that the informal workers in urban area must compete against each other to survive their livelihood. Unlike the manufacture workers who are concentrated on the worksites and disciplined with the regular working hours, the nature of the work of informal workers in urban slum is highly mobile and dispersed. However, identifying common agendas is always vital in organising and sustaining the organisation. But the remaining challenge often lies on the process to solve the issue of competition among workers. Following are the example of collective bargaining process taken up by informal workers in urban area. The two brief case studies below show the example how space is contested and also competition among workers for the livelihood territory.

**Negotiation before the authority and struggle for livelihood**

In December 2007, the outflow of Bengawan Solo River in Solo, Central Java Province, Indonesia caused flood that inundated more than 6000 houses forcing thousands of families to flee from their homes. After the flood, Solo municipal government evicted slum area dwelling as part of their post disaster city renewal. The government planned to restructure the city and establish public housing flats which were unaffordable for the evicted community.

The waste pickers’ organisation initiated community organising to fight against the relocation. In their efforts to change the public policy, the organisation insisted on having direct hearing/dialog with the mayor. They refused to be mediated by sub district chief or village chief in the dialog process. Small gains have been achieved so far, with the mayor, himself, eliciting the opinion from the groups regarding the urban renewal planning. From this experience, the waste pickers group also learnt that they had to start envisioning urban planning in favour of the informal workers. The process of gaining recognition, being involved in the decision making process, has been a valuable lesson that needs to be encouraged and spread to other groups.

Tuk-tuk drivers in Cambodia, for instance, have to compete with taxi drivers. The taxi drivers themselves work for a taxi company whose service is exclusively used by big hotels. The rise of the taxi industry threatened the livelihood of the tuk-tuk drivers. The organisation of tuk-tuk drivers negotiated with the hotel to allow the drivers to pick up passengers from the hotel. The organisation also negotiated with the local authorities to guarantee the rights of informal workers to earn a livelihood.

**Role of unions in changing landscape**

In understanding the role of unions in the changing landscape, we need to look into historical trajectory of capital reasserting its power and control over full time proletariat labour. Here, we can refer to Braudelian scheme (cited by Broad,2000) to look at the process of commodification of labour. Referring to the scheme, the informalisation and casualisation of labour takes place through several historical stages. First, the corporate restructuring of capital where Fordism regime of capital accumulation through mass-production and mass-consumption set the stage for bargaining power vis a vis with capital.

The stage was seized by proletariat labour in mid of twentieth century that they gained their rights, high living standard and other benefits. Second, the proletariat labours then gained their strength as a class constituting impediment for capital dictation over production process. Third, global restructuring then was introduced in 1960s to reassert capital control over labour. The global restructuring entailing re-organisation of work and flexibilisation of labour then has been a trend of weakening workers’ collective power through casualisation and informalisation.

Then the question now is how to seize back the political space that has been reconstructed by capital through the global restructuring? In looking at the role of the union in the changing landscape, in this article, I will present two examples of strategies developed by the union to seize its political space:

Broadening the organising scope to reach out to informal economy workers. Some unions in Indonesia,
Cambodia and Thailand, for instance, are adjusting their union structure by expanding the organising scope which reaches out the informal economy. The union activists often argue that informal workers are not well equipped and experienced in developing bargaining strategy. Thus, the role of the union, commonly federation or confederation, is to be an umbrella organisation supporting the advocacy work and capacity building or skill sharing. This is also often due to the assumption that informal economy workers are not concentrated in one worksite and highly mobile, thus they are uprooted from the union collective culture.

Establishing “alternative” union to accommodate contract workers. The initiative is taken up to overcome the barrier due to the absence of rights to unionize. In some industrial zones in Indonesia, for example, the union organises contract workers and set up contract workers’ organisation outside the factory. Later, this contract workers’ organisation expands its scope reaching out other informal economy workers in the community. This, then, requires the union to adjust its structure to accommodate the informal workers.

Again, the remaining basic question is to identify forms of workers organisation which is politically sufficient to seize back the collective bargaining power. In that sense, we need to assess what forms of organisations which are sustainable and representative for workers. There are some experiments which have been put into practice such as a confederation which organises informal economy workers transforms itself into a mass organisation, explicitly a political organisation of the working people and (loose) alliance between union and informal economy workers striving for common agendas. However, discussion on the best forms of organisation always goes back to the need of workers.

Beyond collective bargaining: creating democratic space for visibility

In summing up, “beyond collective bargaining” suggests a process beyond the regulatory framework. Thus, collective bargaining is not about demanding the State to create a space within the system where the rights to collective bargaining is merely to moderate the conflict between workers and capital. Its emphasis is on creating a space where political compatibility can be gained by inducing the values of democracy, not as a formal democracy but political equality as a substance of democracy. Thus, the concept of democracy here refers to transforming the very form of democracy by creating spaces which allow people, as they fight to change their circumstances, to transform themselves as well (Hanecker, 2010).

There are several strategies of collective bargaining that need to be explored further. Creating a moment to make the groups visible is one of them. Again, as emphasised before, the visibility here does not necessarily refer to formal recognition. It refers to the capacity of the groups in making themselves agents of change. This is reflected in the process of initiating cross sector alliance in Indonesia and demanding the government to endorse the communal constitution in Thailand. Collective bargaining strategy often involves the ability of the groups to seize available opportunities in the formal political sphere which can benefit workers.

The cases studies of tuk-tuk drivers organising in Cambodia and waste pickers organising in Indonesia shows how the public space, citing from Springer (2008), is a process, never a complete project, always in a state of flux between those who seek to deprive it and those who seek to expand it. Public space has been exclusionary for some and of course, accessible to those who have more political power than the marginalised.

Thus, envisioning a democratic public space is necessary. However, this contains entrapment that can misguide us to the new forms of livelihood competition where the logic of the free market applies. Claiming political space here then, needs to be translated into concrete strategies to overcome the competition between workers. Just like the case study of organising plantation workers and landless peasants in rural area, the recreation of social solidarity is necessitated here.

As mentioned briefly before, the dispossession of land and deruralisation, taking form of the opening up of production space in the rural area, have generated surplus of labours who are then engaging themselves to precarity in the urban area. Then by going to the root of the problems, we could easily come up with the conclusion that livelihood is never about having precarious and indecent jobs such as waste-picking, commercial sex work etc. But the question is always what it takes, in concrete manner, to replace the existing social relation?

In the end, indeed first of all, there is a need to link up the sporadic resistance movement against the dispossession in rural and urban area. As pointed by Harvey (2008), the common demand should be simple enough in principle that is greater democratic control over the production and utilisation of the surplus. However, to reach to that point, we need to translate the demands into concrete step-by-step political strategy.

Recreating social solidarity should be the initial step to gain a political power. Nevertheless, recreating social solidarity requires a comprehensive assessment on what issues constituted barriers for different groups to unite. Let’s say in the context of organising the urban poor, there is patron-client culture in the urban community and strong primordial boundary which constitute barrier in bridging various groups for common agendas. Privatisation of public facilities indeed has been the common issues of the urban poor. But then again the challenge is how this common issue can sustain any forms of solidarity among the poor.
Another remaining challenge is how to secure the gains which have been achieved and/or expand the impact of collective bargaining. The impact of gains such as communal land tilling, communal constitution and cross sector alliance is still provincial and localised. Some efforts need to be taken up to expand the impacts to the broader scope.

In the end, collective bargaining is way beyond that of demanding the basic rights of workers. It is about changing the society that lives in a precarious life. It is about making working people to be politically compatible to counter the power of State and market. It is a process where the genuine democratic space is created and informal workers are visible, capable to become agent of changes thereof.

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ENDNOTE

1. Conceptualizing (informalization) is a political act since it focuses attention on some dimensions and diverts interests from what some might consider the more significant (Miller 1987, 27-28 as cited by Peterson 2003)

2. Here, the full time proletariat labour refers to the “full time” waged manufacture workers dated back to the Fordism era. However the terms of waged labour nowadays applies to the society which has been subsumed to the circuit of capital as shown by the example of peasant-labour process.

standard for living since the law passed a year ago. The proposed hourly rate by PAMW was based on the least and basic living cost which is the social assistance level of two people, because one employable income should be able to support two family members include the employable. There the official minimum wage standard is actually far behind from the necessary need of workers.

Some employers specifically try to cancel paid meal breaks and worker holidays to offset the increased of hourly wages, which intensified the quarrel between employers and employees. After two month of implementation of MWO, a survey from a local labour group on the impact of minimum wage of small and medium enterprises showed that only 8 out of 100 respondents had an increased of production cost due to MWO. Actually, the largest part of production cost is the rent. Another finding from a survey conducted by the PAMW, which asked 519 workers in September about their wages, found out that workers in the catering industry benefited the most. For example, a dish washer in Hong Kong can earn up to HK$ 8,500 a month after the introduction of minimum wage. Before the minimum wage law, its salary was not expected to go beyond HK$ 5,000.

The May Day rally which was organized by Hong Kong Confederation of Trade Union HKCTU this year was to fight for decent livelihood and down with collusion of government and capital. Around 3,100 people joined the rally. Before the rally, HKCTU held a first Workers’ Festival in Hong Kong promoting values of workers in different industry and contributions of workers to the society development.
Research on ‘collective bargaining’ in China and minimum wages protection: a case study of the collective contract of the catering industry in Wuhan City

By Han Guijun

On 23 April 2011, the first ‘Collective Contract on Wages and other Specific Items of the Catering Industry’ (referred to hereafter as ‘Collective Contract’), was signed by ‘representatives’ from enterprises and employees of the catering industry in Wuhan City, Hubei Province. It is known as an industrial collective contract covering the largest number of employees in China, roughly 450,000 employees, and apparently considered by the ACFTU as a milestone.

This article would first look into the making of this Collective Contract, introduce the key players and describe how they interact and view the process. The first part is written based on newspaper clippings. Then the author will discuss the significance of this case, to see if the Collective Contract would eventually improve the working conditions of the catering workers, if the case is worthy copying or can act as a reference for workers from other industries, and what the remaining concerns are.

Part I
Significant moment: Collective contract for catering workers

Led by the Federation of Trade Unions of Wuhan City (referred to hereafter as ‘Wuhan ACFTU’), the Collective Contract was signed by representatives from enterprises and employees of the catering industry on 23 April 2011 and was approved by the city’s Labour and Social Security Bureau on 30 April 2011. The Collective Contract attempts to spell out the details on setting wages, pay rise standards and benefits for the employees of the industry.

As there is no industrial union among the catering employees in Wuhan, the Wuhan ACFTU took the ‘top down’ approach, by appointing the city’s Trade Union Federation of Trade, Finance and Tobacco (referred hereafter as ‘TUFTFT’) to represent the employees and the Wuhan Catering Association (referred hereafter as ‘WCA’) the employers.

This industrial Collective Contract is known to be covering the largest number of employees in China. Zhang Jianguo, the head of the collective contract department of the ACFTU, says that the Wuhan case is significant in introducing and exploring the area of collective bargaining on wages.

So what has been done so far? Have there been any twists and turns? Zhou Guohua and Liu Guoliang, representatives of employees and employers respectively, tell us the story.

Employees’ representative and vice-chairperson of the TUFTFT, Zhou Guohua, says that they spent two years to prepare for the 60-day period of negotiation. ‘It took barely 60 days from our first round of negotiation till the signing of the contract, but our preparation work started two years ago’.

In two years’ time, representatives from the TUFTFT have visited nearly 100 catering enterprises, talked to more than 1,000 employees and completed 600 questionnaires for both employers and employees. The draft of the Collective Contract was signed on 24 March, followed by a week of public consultation. The consultation hotline received an overwhelming number of responses, from both entrepreneurs and workers, with their concerns focusing on 17 issues.

After the public consultation, representatives from both sides negotiated again. ‘It was a tough negotiation; nobody was willing to give in, not even a bit,’ Zhou said the disagreement was mainly on Article 8 of the Collective Contract, which reads: ‘when a worker is on medical leave due to an illness or a non-work-related injury, his actual wages should not be lower than 80% of the industry’s
minimum wages, after deductions of all applicable social insurances.’ The employers’ side counter-proposed it to be ‘80% of the legal minimum wages of Wuhan city’. The negotiation came to a dead end at some point, but with further lobbying, finally the original version, which is in favour of the workers, has prevailed.

It was not an easy task from the beginning. Liu Guoliang from the employers’ side, president of WCA and director of Xiao Lanjing Hotel, describes: ‘we had three rounds of negotiations with the employees’ representatives, but we met each enterprise up to five or six times.’ WCA collected comments from several hundred enterprises, from luxury hotels to tiny canteens that have only a few tables. ‘We ran into a lot of resistance from the beginning. With repeated communications and lobbying, people started to realize that it might increase the cost in the short run but would eventually be helpful for the industry to develop as a whole.’

Liu believes that by adopting the Collective Contract, companies can improve their image and stabilize their workforce. In fact, reducing staff turnover and avoiding a labour shortage are the priority for the enterprises. ‘Generally speaking, I am quite positive. Though it might be hard for some small and medium size companies to compete under the Collective Contract, there is a market mechanism. If other companies are increasing wages and you don’t, your workers would simple vote with their feet.’

**How well can it be implemented?**

‘The Collective Contract could help the catering business to develop in Wuhan’, says another hotel manager, Mr. Xie. For his hotel, wages are offered which are higher than the minimum wages stated in the Collective Contract, so it would be not difficult to implement those terms. ‘The catering industry is indeed labour-intensive and we would have a problem in keeping our staff if we don’t offer them decent wages.’ He believes, ‘the new Collective Contract might be a burden for medium or small size restaurants, it could cause a reshuffling of the catering business.’

Zhou from TUFTFT also predicts that five percent of the smaller enterprises would have to shut down.

Most of the small restaurants in Wuhan have reached the minimum wages stated by the Collective Contract, i.e. 1,196 RMB per month. Yet some dishwashers receive extremely low wages, less than 900 RMB.

A restaurant owner says that his employees are all paid with same wages or higher than the wages from the Collective Contract, but he finds it difficult to commit to Article 7 of Collective Contract, ‘Increase on wages for 2011 should not be lower than nine percent’.

After reading a copy of Collective Contract, many workers from small restaurants tell the reporter that they find the contents quite good but are uncertain if they would apply to them. They report that overtime work is common and often without pay. The restaurants also provide no social insurance to them.

Another concern comes from the customers, do higher wages of catering workers mean dining out becomes more expensive?

Currently there are about 40,000 catering enterprises in Wuhan, of which eighty-four percent are small and medium-scale enterprises. The regular workforce is estimated at 450,000. Only four-fifths of the enterprises would offer certain welfare and security to their chefs and headwaiters, but leave ordinary workers unprotected. Since the end of 2009, the Hubei Province’s Federation of Trade Unions and Wuhan ACFTU have worked on collective consultation for the industry. Yet their work has been suspended due to the global economic crisis at the time.

As the economy recovers, the previous labour excess has become a labour shortage. ‘The catering enterprises started to notice that they need a breakthrough. Time is ripe for collective consultation on wages’, says Zhou Guohua.

Apart from implementing the Collective Contract, TUFTFT also encourages enterprises in the same region to negotiate local wages or some better off companies to negotiate internally.

Yet, the core question is, how to ensure the Collective Contract is being implemented, after the review from the Labour and Social Security Bureau of Wuhan City. WCA (the employers group) says that they are organizing entrepreneurs to study the Collective Contract attentively while the Wuhan ACFTU is promoting education and trainings for workers and organizing unions at the enterprises.

Zhu Yi, a standing committee member of the Wuhan municipal government committee and the chairperson of the Wuhan ACFTU, says that the ACFTU is gradually promoting regional and sectoral collective contracts. It will coordinate resources from the government, sectoral associations and trade unions, to push for collective negotiation on wages.

**Part II**

**Legal interpretations of the case study**

**1. The doubtful legitimacy of the ‘representatives’**

The representatives engaged in this collective bargaining are both assigned by the Wuhan ACFTU, or they take it as a mandatory order coming from the Wuhan ACFTU. Such an arrangement violates the principle of two parties with equal standing getting into a voluntary negotiation for a collective contract.
Looking into the representatives’ background, it also tells us that the employees’ representative, the TUFTFT, is inappropriately chosen to represent the catering employees. The Wuhan ACFTU calls it a ‘top down’ order, to appoint the TUFTFT as the representative for the employees. Yet how can the catering workers be sure that the TUFTFT is able to represent them, while it is a trade union from other sectors? As a general rule of representation, the approval of representation should come from the people affected, as they should know the best, who can truly represent their interests. However, the Wuhan ACFTU has not taken such a basic rule into consideration and has chosen a representative without seeking the approval from the catering workers. Then the second question is, is the TUFTFT truly and willingly negotiating for the interests of the catering employees? The motivation of the representatives and the effort they pay in the negotiation are positively related. An inappropriate representative might find himself in a difficult and embarrassing position throughout the negotiation process.

The similar problem also occurs in choosing the representative of the catering employers. A catering association functions differently from an employers’ association, though their membership might overlap. The catering association looks into all aspects for the sustainable development of the industry, develops certain rules and has certain executive and disciplinary power on the players of the industry. An employers’ association’s role is to discuss, handle cases and negotiate with the sectoral union, for issues related to labour standards. The collective contract should be a result of negotiations, communications and compromises between employees and employers. However, WCA is more of a catering association, not purely an employers’ organization.

The Collective Contract in this case study is established on an incorrect procedure of representation, which inevitably leads to flawed collective consultation and a problematic Collective Contract. One might call it a Collective Contract with Chinese characteristics, but one should not be too optimistic about it. All along, it has been violating the basic principle of representation, the legal interpretation and rationale of collective bargaining and signing a collective contract.

### 2. The so-called ‘timing’ for collective consultation

The significance of signing a collective contract is not only as a way of protecting the workers, but also as an important mechanism to coordinate the interests of the two parties in a labour relation. Having the labour legislation as a foundation, the employers and employees meet and negotiate regularly, and spell out each other’s rights and responsibilities in the collective contract by taking the general economic situation and the enterprises’ performance into consideration. It is a way for the enterprises to adapt to the market changes. Therefore, collective bargaining should not only take place during an economic recovery. The case study here gives out a wrong message, by saying that the Collective Contract is only possible when the economic crisis is over. It makes one believe that a collective contract protects only the workers and hurts the employers’ interests.

The Wuhan ACFTU takes the lead in deciding when and who to conduct collective bargaining for the catering workers. To a certain extent, such an approach, by intervening in so many aspects, is unhelpful. The responsibility as an upper level trade union is to organize and provide necessary education to a lower level trade union, and let the lower level union run by itself. As the journalists find out, most of the catering workers in Wuhan are paid with the Collective Contract’s wages, i.e. 1,196 RMB or higher (the current legal minimum wages in Wuhan is 900 RMB). The higher wages of the catering workers show that even without this Collective Contract, the demand and supply of labour have already set the market wages and are accepted by the employers. In other words, the articles on wages in this Collective Contract are not particularly helpful for workers, as their wages have already been higher than the one introduced in the Collective Contract. For the upper level trade union, its priority should be set to help workers and the lower level unions understand the trends and developments of the industry, the relations between the profit ratio and workers’ contribution. Training and organizing workers and their representatives should include negotiating skills, tactics, how to formulate reasonable demands, and how and when to achieve them. However, ACFTU never try to educate ordinary workers in organizing Union and help them develop bargaining skills.

### 3. Distortion of the concept and intention of ‘collective bargaining’

The Wuhan ACFTU and other similar authorities have been using an administrative order to come up with the following model in signing a collective contract:

Assigning representatives > distributing and collecting questionnaires > drafting a collective contract > public consultation > redrafting the collective contract > signing the contract = one success case

More surprisingly, the ACFTU has called this model an experience for exploring and developing a mechanism to conduct collective negotiation in the future, without seeing how it distorts the basic meaning of collective bargaining. Collective contracts should be based on the law, while the national labour laws are respected, and both employers and employees should enjoy equal legal status, to mediate and resolve labour conflicts through equal consultations. The local setting, the economic situation and the performance of the enterprise should all be taken into consideration. The three essential factors of a collective negotiation are: an independent trade union with negotiation skills, an inde-
pendent employers’ organization which respects the trade union, and a stringent and rational consultation procedure.

This case study demonstrates again that the ACFTU has not stepped out of its mindset of a planned economy; it still orders administrative directives to achieve superficial success. In other words, it has not taken proactive moves to adapt to the market economy for its functions as a trade union. Such backward behaviour could only lead the trade union movement in China onto a winding path, pulled by the ever-changing market economy (rather than defending workers’ rights in the face of it).

4. A Collective Contract that has not been collectively and voluntarily reached

A proper collective contract should include the definitions of the two involved parties, the contract period, the rights and responsibilities of each party, the implementation methods, the consequences of violations, and accountability and dispute resolution. However, the Collective Contract for the catering workers in Wuhan contains very few precise definitions that a proper collective contract should contain. It is a so-called ‘contract’ but looks more like a set of regulations imposed by the local government. As many of the workers interviewed by the journalists say, they are worried whether the contract could be implemented.

For agreements in reality, those made under mutual goodwill often have a higher rate of being respected. It is not rocket science to understand that, when an agreement reflects both sides’ interests, people are more likely to follow the agreement. It goes back to the core problem of the procedure of this Collective Contract, in which both employees and employers are given a ‘mission’ to come up with a contract from an outsider, instead of reaching an agreement out of their free will. Thus, as a vicious cycle, it seems reasonable for the outsider to ensure the contract’s implementation, while the two key players have very little say from the beginning.

In a labour relation, the distribution of rights and responsibilities is often not something an outsider can determine. The two players, i.e. the employees and the employer, should be in relatively equal positions, going through rounds of negotiations, compromises and finally coming up with an agreement reflecting both sides’ interests. Yet, in the Wuhan catering industry’s case, the employees lack the power of self-organizing; they are not involved in the actions and determining their own interests. Overall, it is not a valuable experience of collective consultation and forming a collective contract. To be precise, it is just an example of window dressing by the ACFTU to boost its image through administrative orders. The quantity of collective contracts signed, instead of the quality, is what the ACFTU is after.

5. ACFTU’s neglect of workers’ education

The Wuhan ACFTU has the responsibility to provide workers with trainings on union organizing, negotiation skills and how to operate a basic level trade union. Yet, this case study tells us that the Wuhan ACFTU is taking a shortcut. It fails to conduct the slow but decent education work, to train the workers to be finally capable in bargaining themselves. That is why it is called a Collective Contract with Chinese characteristics, with a trade union from another industry to bargain for the catering workers. Sad but true, and ridiculous…

Workers’ rights and interests are extensive but with limits according to Chinese labour law. They cover many aspects, such as equal employment, freedom to choose work, right to pay and safety, vocational training, right to terminate a labour relationship, democratic management at workplace, solidarity among workers, social security and etc.. The limits of these rights and interests are shaped by the socio-economic conditions, the national laws and the performance of the enterprise. In China, workers’ rights and interests are often seen and discussed only in the context of an individual and his employer, while the collective labour relation is often deliberately ignored or even oppressed.

As mentioned above, due to the neglect of the Wuhan ACFTU, workers have not received trainings on organizing and consultation for collective bargaining, legal issues or how to evaluate their own interests. Many of them are not even informed of their own rights and interests. It can lead to two unfortunate situations: either workers’ rights are violated without access to justice, or workers seek for long-term legal procedures when they consider their rights to have been violated – even if what they want to claim is not even within the current set of rights granted to them in the law.

6. Loopholes of the current legal minimum wage in China

Legal minimum wage protection is known as a basic component of China’s wage protection system, as a minimum payment an employer has to offer for ordinary labour of a worker. It also serves as an important component of the labour laws, with an objective of offering workers basic protection of their livelihoods, and preventing employers from taking advantage of the workers, who might be in a less privileged position than the employers. Its original purpose was indeed positive. Yet, in the process of implementing it, many problems have arisen and the positive aspects of the legal minimum wages have been buried. In some occasions, the employers even use this system to harm the workers’ rights and interests.
6.1. Unfairness and complexity of the legal minimum wages

The provincial government is entitled to set the standard of the local legal minimum wages. As each province’s economic development is different from the other, each province has its own legal minimum wages. Within a province, many different wages zones are divided, as a reflection of the local economy. Therefore, workers’ legal minimum wages are different, depending on where they work in the province. It might be unfair but to a certain extent understandable to have some 30 different minimum wages standards across the country. However, when it comes to the provincial level, even though there are different levels of prosperity within a province, the costs for living, children’s education and workers’ self-enhancement are more less the same. Currently, there are four wage zones of Hubei Province, with legal minimum wages from 600 RMB to 900 RMB. For example, if a worker receives lower wages in the less developed county of Hubei (let say Badong County, with legal minimum wages of 600 RMB per month), while his child goes to a school in Wuhan City (where the legal minimum wages are 900 RMB). His child’s tuition fee is in fact a lot higher than the local classmates, as his household registration is from another city. In other words, this worker is earning less while paying more for his child’s education. Therefore, to divide a province with various legal minimum wages standards is incredibly unfair.

6.2. Legal minimum wages as the maximum wages

Since the legal minimum wages are introduced, most of the labour contracts are adopting them as standard wages. Furthermore, many employers do not pay extra, even when the workers have been asked to work overtime, which means that the workers’ effective hourly wages are lower than the legal minimum hourly wage. Many workers dare not demand higher wages, and their employers are never punished for such exploitation. The legal minimum wages sometimes act as the reason for low wages. The situation might not improve in the short run, if the right to collective bargaining is not protected.

6.3. Flawed wages-setting mechanism

While setting the legal minimum wages, the provincial government would invite the representatives from the provincial labour and social security bureau, the ACFTU at provincial level and the employers’ associations to participate. Yet, as discussed earlier, the sectoral unions and local ACFTU branches are poorly equipped in terms of personnel, functions and operations. They are mainly administrative organs, highly bureaucratic and not interested in the workers’ urgent demands. On one hand, it does not represent the workers; on the other hand, the union officials’ position, income and promotion are in the hands of the government, so they are actually working along with the official lines. For a provincial government, its priority is to achieve higher GDP, even it comes at the sacrifice of the workers’. Thus, workers’ interests are often not reflected in the legal minimum wages. The legal minimum wages system can only be truly meaningful, when workers can freely elect their representatives.

Conclusion

The method to get Collective Contract of the Catering Industry in Wuhan City should not be as model for the future. It would be better for Wuhan ACFTU to work hard in educating, organizing, and developing workers’ ability to bargain. The representative of collective bargaining should be elected by workers rather than be appointed. As far as minimum wage, each province should consider granting fair for all citizens and try to set out the standard of minimum wage using each county no matter where it lives.

ENDNOTES

1. In China, the expression Collective Agreement is often used instead of Collective Contract, in contradistinction to individual labour contracts. This seems to bear the intention of downplaying the binding nature of a collective contract.

2. According to laws and regulations, the restaurants should provide five items social insurance including pension, medical, working injured, unemployment, Maternity insurance. In fact, most of the restaurants did not provide any item for ordinary workers in Wuhan.

3. In China, the government also prefers to use the term collective consultation rather than collective bargaining. This reflects the government fears conflict of interests between employers and employees.
Collective Bargaining in India: Recent Trends

By Surendra Pratap

The collective bargaining in India remained limited in its scope and restricted in its coverage by a well defined legal structure. Actually, the labour laws systematically promoted and perpetuated a duality of labour-formal sector workers enjoying better space for collective bargaining and informal ones with no scope for collective bargaining. To understand this, we can discuss in brief about the labour legislations in India and their scope and coverage.

It is interesting to note that the applicability of different sections of labour laws is limited by number of workers engaged in an establishment. The limitations put in applicability of labour laws is haphazard and there is no logic behind it, but in overall terms it systematically denies any protection and any social security to those employed in smaller factories with less than ten workers. The Factories Act provides for the health, safety, welfare and other aspects of workers while at work in the factories. Under this Act, an establishment with power employing 10 workers and 20 workers in case of no power connection is a factory, but following provisions of the act are not applicable to all factories: Provision for crèche: applicable only if 30 or more women are employed; Provisions of a rest room: applicable only if there are 150 or more workers; Provisions of canteen: applicable only if there are 250 or more workers; Provisions for ambulance, dispensary, and medical and para-medical staff: applicable only if there are 500 or more workers.

Employees Provident and Miscellaneous provisions Act, Maternity Benefit Act and Payment of Gratuity Act apply to all establishments with 10 or more workers. But Employees State Insurance Act applies to only those establishments with 20 or more workers. Minimum Wages Act applies to all establishments and all workers, but the Payment of Wages Act applies only to those establishments with 10 or more workers, and also only to those workers getting wages less than Rs 1600 per month. On the other hand, the Payment of Bonus Act is applicable to only those enterprises employing 20 or more workers and only to those workers getting wages less than Rs 3500 per month.

Industrial Disputes Act, 1947 lays down the procedures for the settlement of industrial disputes. Its procedural aspects are applicable to all enterprises for the settlement of industrial disputes. However, really protective clauses for the workers pertaining to layoffs, retrenchments and closures are contained in Chapter VA and Chapter VB, which have limited applicability. Chapter V B does not apply to any establishment employing less than one hundred workers, and Chapter VA does not apply to any establishment employing less than 50 workers. Industrial Employment (Standing Orders) Act makes it compulsory to have Standing Orders in each enterprise to define misconducts and other service conditions, and also entails that for any misconduct no worker will be punished without due process of law using the principles of natural justice. But this law does not apply to those enterprises employing less than 100 workers (only in few states like Uttar Pradesh, it is made applicable to all factories (i.e. employing 10 or more workers). Trade Union Act applies to all establishments with 7 or more workers, since a minimum of 7 members are necessary in order to register a trade union.

To sum up, if we look at the general picture, only a tiny section of workforce is protected by the labour laws and has guaranteed space for collective bargaining in well defined legal boundaries. According to the Fifth Economic Census (1999) more than 97 percent of the enterprises employ less than ten workers, and most of these employ less than five workers. Therefore, protective labour laws apply to only less than three percent of the enterprises; and in rest of the 97 percent enterprises only Industrial Disputes Act (minus its protective sections like section V-A, V-B), Minimum Wages Act, the Workmen's Compensation Act, Equal remuneration Act, and the Shops and Establishments Act (enacted by each state separately) and some pieces of labour legislation enacted for specific occupations are applicable. Generally these 97 percent enterprises are said to represent industrial informal sector (those not covered under Factories Act) and the three percent as formal sector (those covered under Factories Act). Total workforce employed in different sectors in India (principal plus subsidiary employment) is about 456 million, of which informal sector accounts for about 393.2 million (86 percent).

It is also to be noted that informalization of the workforce that was accelerated with the advent of liberalization, has transformed the formal sector also in terms of shifting the jobs from formal to informal sector and also by informalisation of jobs with in the formal sector units. Now, in the formal sector, number of formal workers is about 33.7
million and informal workers about 28.9 million (2004-05). Increase in the employment (in whatever amount) in the formal sector has largely been of informal in nature.

India has neither ratified ILO convention on Freedom of Association and Protection of the Right to Organize 1948 (C. 87), nor the Right to Organize and Collective Bargaining Convention, 1949 (C. 98). Trade Union Act of India provides right to association only with a limited scope and limited coverage. The Trade Union Act 1926 was amended in 2001 and after the amendment it became more difficult to form the trade unions. In the Act of 1926, only seven members were required to register a trade union, but after amendment at least 10% or 100, whichever is less, subject to a minimum of 7 workmen engaged or employed in the establishment are required to be the members of the union before its registration. The amendment also introduces a limitation on the number of outsiders among the office bearers. Collective bargaining is limited within the scope provided in Industrial Disputes Act 1947.

It is worth mentioning that only when the unions are recognized by the management then only they have the full-fledged rights as bargaining agent on behalf of workers. But there is no legal obligation on employers to recognize a union or engage in collective bargaining. The statutes of only few states of India like Maharashtra, Gujarat, Madhya Pradesh and Rajasthan have made some provisions for recognition of unions with a specific percentage of the workforce.

In India, right to protest is a fundamental right under Article 19 of the Constitution of India; but right to strike is not a fundamental right. Right to strike is also the right to lock-out is a legal right governed by Industrial Disputes Act 1947. Under the law, all strikes needed due notices and in this period if management requests for a conciliation, then strike is not legal until the conciliation continues. Even if conciliation fails, the government may refer the dispute for compulsory arbitration or to a labor court for a final decision, and during this period the strike is considered to be illegal. The State Governments, may also for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or maintaining industrial peace, make provisions for prohibiting strikes or lock-outs. Large number of special economic zones (SEZs) and proposed National Manufacturing Investment Zones are already declared public utility services and therefore the legal strike becomes almost impossible in the zones.

Moreover, in recent decades, a number of judgments came from the Supreme Court setting precedents against the right to strike.

The trade union movement in India comprises of over 70,000 registered unions (politically affiliated and independent) and an unaccountable number of non-registered organizations engaged on the issue of promoting and protecting workers’ interests. Trade unions in India largely represent only formal sector workers. There are now 12 Central Trade Unions in India:

1. BMS - Bharatiya Mazdoor Sangh (linked with far right political party BJP) - members: 6 million
2. INTUC - Indian National Trade Union Congress (linked with centrist Congress Party), members: 3.8 million
3. AITUC - All India Trade Union Congress (linked with Communist party of India)- members: 3.3 million
4. HMS - Hind Mazdoor Sabha (independent-socialist) - members: 3.2 million
5. CITU - Centre of Indian Trade Unions (linked with Communist Party of India (Marxist) - members: 2.6 million
6. UTUC (LS) - United Trade Union Congress (Lenin Sarani) (linked with the party named Socialist Unity Center of India)
7. UTUC - United Trade Union Congress (linked with political party-Revolutionary Socialist Party)
8. TUCC - Trade Unions Co-ordination Centre (linked with political party-All India Forward Bloc)
9. SEWA- Self-Employed Women’s Association (independent)—recently included in the list
10. LPF- Labour Progressive Front (linked with political party-Dravida Munnetra Kazhagam)---recently included in the list
11. ICCTU- All-India Central Council of Trade Unions (linked with Communist Party of India (Marxist-Leninist)-Liberation group)- recently included in the list
12. INTTUC-Indian National Trinamool Trade Union Congress (linked to the political party-All India Trinamool Congress)- recently included in the list

Union density in India is only 8 percent and in this regard it ranks at 48th position in the world. In the new verification of membership in 2001, the growth in trade union membership is very visible, but largely this growth is from informal sector or most importantly from rural labour.

Recent Trends in Collective Bargaining

1. Decentralised and Individualized Bargaining

The collective bargaining in India remained largely decentralized, i.e. company or unit level bargaining rather than Industry level bargaining. But in some sectors (mostly public sector industries) the industry level bargaining was
dominant. However, privatization of public sector transformed the industry level bargaining to company level bargaining. On the other hand, due to drastic informalisation of workforce and downsizing in the industries, the strength and power of the trade unions is heavily reduced. The trade unions mainly represented the interests of formal workers. Increasing number of informal workers in the companies soon transformed the structure of the workforce in such a way that the formal workers became a minority. Moreover, in some sectors like garment, there is almost complete informalisation of the work force with only a tiny section of formal workers. It happened in almost all sectors. Due to various reasons informal workers are not able to form their own trade unions, and on the other hand they are not represented by the trade unions of the formal workers. These situations resulted in spurt of individualized bargaining.

High level of informalisation of workforce combined with the individualized bargaining actually changed the character of the trade unions also. In relevant sectors and industrial regions, it converted many trade unions (particularly in sector dominated by informal workers) in to legal consultants (pursuing individual cases and charging fees for their services) rather than collective bargaining agents.

2. Declining Wage Share

Declining strength of collective bargaining is also reflected in sharply increasing share of profit and drastically declining the wage share (since 2001-02), resulting in depressing purchasing power. Approximately 73 million out of 173 million wage earners throughout India do not receive minimum wages. About 30–40 per cent of these low-paid wage earners belong to poor families.

We call look in to following figure provided by the ILO’s World of Work Report to get an idea about how seriously the conditions are worsening:

3. New Wave of Labour Movement for Unionisation

A new wave of workers struggle for unionisation is emerging from below by and large independent from the central trade unions. This is mainly emerging in the formal sector. The workers are realizing by their own experiences that they can not change their fate without organizing themselves in a trade union. In many cases the workers do not get even the legal benefits like minimum wages, premium rate of overtime and holidays and casual leaves. Once the union is formed, at least the minimum benefits guaranteed by law are easily available to all workers. Actually large numbers of informal workers are illegally put in the category of informal, and they can convert their status in to formal workers only by organizing themselves in a trade union. It is in this background that even when the workers are facing unimaginable repression for their attempts to form a union, they are fighting for it and more and more workers in new factories are also choosing the same.

In 2009-10, most of the well known workers struggles were on the issue of formation or for recognition of the trade union for collective bargaining, e.g. Hyundai Workers Struggle for Recognition of the Union, Nokia Workers Struggle for Wage Hike and Against Victimization, MRF Workers Struggle for Recognition of Union, Pricol Workers Struggle for Recognition of Union, Graziano Workers struggle for Unionization, The Case of Trade Union Repression in Nestle, Vivva Global Workers Struggle for Minimum Wages and Unionization, Rico Auto Workers Struggle for Unionization and Sunbeam Workers Struggle for Democratisation of the union.

It is also interesting to note that in almost all the above cases both formal and informal workers came together in these struggles. It explains that the conditions have already entered in a new phase when the numbers of informal workers in factories are either equal to or more than formal workers.

**Declining Wage Share in India, 1993–2007**

workers and generally with same competence levels. Therefore the enmity of formal workers with informal workers has gone. Now rather than trying to oust informal workers, the formals are uniting with informals and demanding regularization of their jobs so that they get the same status and benefits as formal workers. Unionizing all the formal and informal workers under the same union is actually one major step in this direction.

On the other hand, the industrialists are not ready to accept trade unions in their factories at any cost. They are unleashing unimaginable repression on workers and trade union leaders when there are efforts to form trade unions in their factories. Even after the trade unions are formed, managements are not ready to recognize them and therefore deny them space for collective bargaining.

According the data of Government of India on strikes and lockouts (Indian Labour Statistics 2010), causal factor of 34.8 percent cases of industrial disputes is recorded as indiscipline. 22 percent cases of industrial disputes are around demands for wages and allowances (in many cases demanding only minimum wages fixed by the government). Actually these two categories of industrial disputes largely reflect on the sufferings of informal workers and repression unleashed by factory managements on unionization efforts of the workers. Moreover, after the liberalization, man days lost in the lockouts are far more than the strikes by the workers. This is a consistent trend.9

In the meantime, the central trade unions are also increasingly realizing the importance of unity among trade unions. This is reflected in formation of a Coordination Committee of eight Central Trade Unions on the other. First joint action of this coordination committee was the one day All India General Strike on 7th Nov 2010, which is said to be the biggest strike in India since independence with participation of about 100 million workers from all over the country.

There are also new initiatives to organize informal sector workers particularly the agriculture workers. After the implementation of National Rural Employment Guarantee Act, the new possibilities emerged to unionize the rural workers around the NREGA. Many local level unions of rural workers and also regional platforms of rural workers have started emerging. However, the system of collective bargaining in this sector is very different; it is mostly on general issues like proper implementation of the act itself, ensuring minimum wages, employment guarantee and workplace facilities. Since the wages (minimum wages) and facilities are fixed by law, the struggle is actually for implementation of the NREGA. There are also initiatives to organize other informal sector workers also like forest workers, fish workers and other self employed categories. But the movement is still very weak and informal sector workers are by and large not able to realize the right of collective bargaining.

ENDNOTES
4. Any federation of trade unions, with at least 500,000 members spread over at least four states and in four industries is eligible to be considered as a National Federation or Central Trade Union Organization. But it does not mean that there are only these national level federations. There are some more national level federations but because they do not have required membership and therefore they do not qualify to be put in the list.
5. Minimum wage is fixed by the government and it is different in different regions and sectors of the economy. Presently it is around Rs 100 (USD 2) per day.
Introduction

This article considers whether the Australian practice of compulsory arbitration for certain kinds of labour conflicts has relevance to China. China continues to emphasise collective negotiation and collective contracts as a major method of regulating labour relations issues such as wage adjustment. In recent years, there has been considerable experimentation at the provincial and local level that goes beyond negotiation at the enterprise level. Some cities have introduced industry-level negotiation. For example, Guangdong province has been debating rules which better recognise that collective contract negotiation process is not simply one of amiable consultation, but often involves hard bargaining.

However, there is a fundamental structural problem in the Chinese approach to collective negotiation. This derives in part from its modern regulatory origin in state owned enterprises, where labour-management boundaries have been blurred and deadlocks could be resolved by bureaucratic intervention. The problem is that Chinese legislation on collective contract negotiation does not deal effectively deal with employer refusal to bargain. In other countries, employer intransigence may enable employees to take strike action, or it may trigger the intervention of a statutory tribunal (such as Fair Work Australia or the National Labour Relations Board in the United States). In Australia's case (unlike the United States), that tribunal agency may, in certain limited circumstances, have the power to order compulsory arbitration of the dispute. In other words, the tribunal will ultimately determine the content of the collective agreement itself and require the parties to observe it. The threat of compulsory arbitration can persuade otherwise recalcitrant employers (and indeed unions) to come to the bargaining table, on the basis that it is preferable to negotiate an agreement rather than having one imposed on it.

This article considers whether Australian experience of compulsory arbitration suggests possible strategies for China. The institutional differences between the two countries are so great that direct ‘transplantation’ of the Australian practices would be very unwise. My main purpose is to suggest that the question of whether compulsory arbitration has a role to play in China deserves greater attention. I begin with a brief overview of the current state of Chinese labour law.

The challenges facing work regulation in China

When the new forms of enterprises began to emerge in the post-1978 reform period, there was no formal regulatory framework for labour contracting. Central and local governments were therefore determined to reintroduce legal procedures after the chaos of the Cultural Revolution. They initially passed a number of temporary measures for different kinds of enterprises that established basic contracting rules and labour standards. These were consolidated and unified in the Labour Law of 1994. The Labour Law was a very remarkable achievement, but it had a number of weaknesses. Some of these have been corrected by later regulatory initiatives, notably the Labour Contract Law and the Labour Disputes Mediation and Arbitration Law. However, a number of problems remain.

These include what sort of work relationships fall within the protection of labour standards, and how labour standards are to operate in complicated contractual environments such as those characterised by labour hire and high levels of casual work. Again, China has developed some fairly sound systems for resolving disputes and for dealing with compliance issues since the enactment of the Labour Disputes Mediation and Arbitration Law. However, these have struggled to cope with the rising numbers of formal and informal labour disputes and they do not adequately address disputes about interests (as opposed to existing rights) – the type of dispute that occurs in a collective negotiation context.

A third area in need of overhaul concerns the long-standing rules about working time and leave. These were set out in the Labour Law. However, the provisions are quite brief, and allow many vague exceptions. For example, while the Labour Law regulates working time, including by setting limits, and establishing premium rates for overtime and work on holidays, it allows for opt-out arrangements in a wide range of industries. This is understandable for industries, such as transport, which do not operate regular hours, but they can be readily extended too far.

By Sean Cooney
The criteria for avoiding standard working hours rules are not stated in any detail in the Law. This lack of detail was partly intentional. The drafters of the Labour Law envisaged that the specifics of the standards would be spelt out in supplementary regulations produced by national and local governments. This has indeed proved to be the case. The capacity for local governments, in particular, to develop detailed rules is one of the major sources of regulatory innovation and dynamism in China. However, there are several problems with this kind of decentralisation. One is that some local governments, having close relationships with businesses, have allowed wide exceptions to regular standards, and thus undermined them. Another problem is that innovation has occurred in some areas but not in others. There is thus a need to revisit the setting of labour standards, as today’s China is quite different from that in which they were originally formulated, almost twenty years ago.

A fourth problem with recent Chinese legal reform is that it has not overcome difficulties with Chinese unions (the Trade Union Law was last amended in 2001). As many writers have pointed out, Chinese unions are expected to carry out two functions which are in mutual tension. They are required to be a transmission belt between the Party and the working masses. They are also required to protect workers’ rights and interests. ACFTU leaders have long struggled to find a balance between these functions; maintain enough autonomy from the Party on the one hand to be seen as a credible voice for workers, but also remaining subject to the overall direction of Party leadership.

The problem for Chinese trade unions has been compounded by their long connection to the state sector, where their advocacy, dispute resolution and welfare work took place within a particular enterprise culture. That culture was characterized by close relations between union leaders, party officials and firm management. This worked very well when state owned enterprises were the major employer. Unfortunately, unions have, at least until recently, been much less successful in organising private firms or engaging in the hard negotiation frequently characteristic of private sector bargaining. To be sure, China has promoted collective contracts, which unions have an important role in negotiating. However, again until recently many of these have seemed to reflect the general labour standards, with little individual terms.

The situation appears to be changing. There have been intensive efforts by the ACFTU to organize large private firms, to introduce more professional union workers and to extend collective negotiation across China, but it is too early to say how successful these efforts will be.

To summarize the position of Chinese labour law, while there have been many very positive advances in recent years, there remain a number of serious weaknesses. There is a need for ongoing development of labour standards to both extend their application and to device new rules to deal with increasingly complex forms of work relationships. While national and provincial initiatives can contribute to this process, it would be preferable if this could be
complemented by dynamic bargaining processes, where negotiations between employers and unions produced not just pay rises, but innovative responses to standard-setting in workplaces.

At the moment, limitations in the capacity of Chinese unions, and of the dispute resolution processes restrict the potential for more active bargaining. I’ll now turn to consider what role compulsory arbitration could play in this situation, by looking at the Australian experience.

**Compulsory arbitration in Australia**

Unusually for a common law jurisdiction, Australia’s regulation of labour relations has entailed quite extensive involvement of governmental institutions. In the lead up to Federation (1901), Australia experienced intense waves of industrial conflict. The response of the early Australian political leaders was to create an institution which would, in a famous phrase, create ‘a new province for law and order’ (as an alternative to ‘rude and barbarous’ strikes). They established a ‘Conciliation and Arbitration Commission’ (the Commission). The Commission, now known as Fair Work Australia, has often been thought of as a fair ‘umpire’ which ensures that work relations are governed by reasonable principles, and do not become socially disruptive.

As the system was originally designed, when industrial disputes arose a party would notify the Commission, which could then compel unions and employers to meet and discuss their dispute. Striking was not permitted during this process. If the parties could not resolve their dispute, the Commission could commence compulsory arbitration and issue an ‘award’, which was binding on the parties (an award could also be made by consent).

Originally, awards in the federal system covered particular enterprises. Eventually, however, they covered workers in industries. Therefore, there were awards for transport workers, retail workers, construction workers and so on. These awards dealt with matters such as remuneration, hours of work, classifications and leave. In many ways, an award resembled a collective agreement that operates on an industry level, such as those in many European countries. An important difference was the role of the Commission, which represented the public interest. As a governmental agency, the Commission was supposed to ensure awards did not have adverse economic or social impacts.

It is useful to consider the composition and structure of the Commission. It has not been a strictly tripartite institution, although governments have tended to appoint some members from employer and others from unions background. Senior members of the Commission have enjoyed the status of judges, which is very high in common law countries. However, the Commission is not a court. It is sometimes described as ‘quasi-judicial’.

There are clearly some features in common with China’s labour disputes arbitration committees (LDAC). Like the Chinese committees, the Australian Commission has historically used conciliation and mediation, as well as arbitration to solve disputes. As with the position in China since the enactment of the LDMA, there are limitations on the rights of parties to appeal a decision of the Australian Commission. However, one way in which the Commission has been functionally quite differently from the Chinese LDACs is its power to settle interest disputes rather than disputes over the operation of existing contracts. It has used its powers of compulsory arbitration to create labour standards. It did this so extensively that until 2005, the federal Australian government did not have a labour standards law. Much dynamism and innovation in standard setting came from disputes before the Commission. The regulation of hours of work, the minimum level of wages in an industry, the amount of annual leave, personal leave and equal pay for women were all matters that first appeared in awards.

Let me explain how this worked. I will first use the example of increased pay.

Every year until 2005, unions, led by the Australian Council of Trade Unions, would lodge a dispute with the employer associations demanding employers increase wages levels. The employers would refuse and the matter would be taken up by the Commission. Usually conciliation would not entirely succeed and the matter would be referred for arbitration. Very often, no strike action was involved. The Commission would focus on major industries and consider how much minimum wage rates should be adjusted. It would conduct a hearing in public and the federal government would be independently represented. The Commission would listen to both sides, and also take advice from experts, such as economists. At the end of the process, pay would be adjusted by an amount that was somewhere in between what the unions wanted, and what employers wanted. If the economy was weak, the wage adjustment might be small. This was how Australian wages were regularly updated.

It was also how new standards were created. I will take as an example the creation of a labour standard about improved parental leave. In the early 2000s, unions demanded that employers increase the leave to mothers and fathers of small children. Employers in various industries refused these demands, although they did compromise on some aspects of the new standard. After an extensive hearing, the Commission altered standards to take a middle position between the employer and unions claims.

Before I go on to compare this with China, I should first indicate how the system has changed in recent years. From the 1980s, employer groups complained that the Commission had too much power, and also gave unions too great a role in standard setting. They objected to the industry awards and argued that negotiation should take
place at an enterprise level. They also maintained that basic standards should not be set by Commission but by the Parliament, since it is a democratic institution.

Some of these criticisms were reasonable, in part. Awards had become very complex and restrictive. There was inadequate flexibility at the enterprise level. Also, unions were too quick to take matters to the Commission rather than resolving matters locally. In response to these concerns, Australian governments made a number of incremental modifications to the system. However, in 2005, the then conservative government tried to radically change the system; this meant, for example, that the Commission could use not compulsory arbitration in most cases. These changes were strongly criticised by many scholars, who pointed out that employers were increasingly refusing to co-operate with unions and using individual instead of collective contracts. The changes were not acceptable to the public and the conservative government lost power in 2007. The current government, the Australian Labor Party has partly restored compulsory arbitration, in a law known as the Fair Work Act. This law has the following aspects:

- the ‘Commission’ is now called ‘Fair Work Australia’;
- a number of basic labour standards common to all workers have been legislated by the Parliament, but awards still provide additional standards in each industry;
- compulsory arbitration is used in three situations;
- to solve a collective bargaining dispute where one of the parties is acting in bad faith;
- where strike action leads to significant economic or social harm; or
- where there is a request by unions on behalf of certain groups of low paid workers who have no bargaining power;
- Fair Work Australia otherwise provides voluntary mediation and arbitration; and
- strike action is permissible but only under strict conditions, and it must be related to bargaining.

This system seems to be working reasonably well at the moment, although it has received some recent criticism from employers. One major problem is that there have been many changes over the last few years and this has meant that there are much too many ‘transitional provisions’, so many employers and employees are confused about which standards apply. This situation should improve when the transitional period ends in 2014. If it doesn’t, then the system will need to be made simpler. There are also some concerns that aspects of the system may inhibit job growth. However, generally speaking Australia is performing much better economically than most OECD countries with around 5% unemployment.

The Chinese situation in light of Australia’s labour relations institutions

In this last section of the paper, I will consider whether compulsory arbitration may be of relevance to China. Australian experience suggests that the ability for an authoritative tribunal empowered to set working conditions for an enterprise, or an industry, as a matter of last resort, can promote innovation and labour standards. It can also sometimes bring an end to long-running and/or highly inflamed disputes and enable boundaries to be set around lawful industrial action. Moreover, compulsory arbitration can force employers to a bargaining table, since if they refuse to negotiate with employees and their representatives, they risk having terms imposed on them.

As I understand Chinese labour law, neither LDACs established under the Labour Disputes Mediation and Arbitration Law, nor other parts of labour departments have explicit power to solve disputes by compulsory arbitration. Local governments in practice are frequently engaged in solving disputes and sometimes have considerable influence over employers, but this is not regulated by laws specifying clear powers and procedures.

One possible way of introducing compulsory arbitration into China would be to explicitly give this power to LDACs in cases of interest disputes. This could be achieved by amending the Labour Disputes Mediation and Arbitration Law or perhaps by interpreting the existing Law very broadly.

However, there are several difficulties with this proposal. One is that, China’s tiao-kuai system means that labour relations institutions in China have both a central government and a local government relationship (whereas Fair Work Australia is solely a federal agency). This means that LDACs are susceptible to improper local influence. Moreover, they are housed within labour departments and do not have the same degree of institutional autonomy as Fair Work Australia. Under these conditions, there is a risk that compulsory arbitration could be misused, for example by preventing strong employee bargaining and imposing a solution favourable to the employer.

A second problem is that, as is sometimes claimed to have occurred in Australia in the past, unions will become reliant on compulsory arbitration and fail to develop capacities to bargain and to engage in industrial campaigns. On the other hand it can be argued that, since Chinese unions are unlikely to develop these capacities on a wide scale in the foreseeable future.

A third problem is that local and national governments are likely to be reluctant to permit LDACs to set standards that go beyond individual enterprises, since they will impinge on their own power to regulate working conditions.
Nonetheless, consistent with China’s experimental approach to labour regulation, it may be possible to trial a formal compulsory arbitration procedure, at least for enterprise-level disputes, in parts of the country where LDACs are relatively well resourced and professional. A limited, local, initiative would enable an assessment to be made as to whether the process is viable in China.

It would be also important to explore whether the system could operate as between employers and groups of workers not represented by a union. The present Australian system of compulsory arbitration is not now dependent on the presence of a union. In many Chinese labour interest disputes, either there is no union or the official union does not actively represent employees.

Conclusion

The history of compulsory arbitration in Australia suggests that excessive resort to compulsory arbitration can have counterproductive effects. It can displace effective bargaining between parties and can lead to rigid rules. On the other hand, in the absence of compulsory arbitration, disputing parties may not have sufficient incentive to reach agreement. Powerful employers (and sometimes unions) can take advantage of their superior bargaining position at the expense of vulnerable parties. In view of these conflicting considerations, Fair Work Australia does not use its compulsory arbitration powers very often, but the threat of those powers would seem to induce some parties to reach agreement.

As existing Chinese collective negotiation and dispute resolution processes are frequently failing to address employee grievances, there is perhaps room for an experiment in an alternative approach that has proved both enduring and productive elsewhere.

ENDNOTES

1. This is a reworked version of a longer paper presented to International Symposium on Chinese Labor Relations: Trends, Prospects and Limitations, held at Beijing Normal University in August 2011.

2. Among common law jurisdictions, Australia has a comparatively high rate of collective agreement coverage, at around 40%.

3. Chinese labour law scholars have also investigated this issue: See 王全兴, 侯玲玲, 我国劳动争议处理体制, 中国劳动, 8期, 13, 2002


8. Although the labour relations systems of India, Malaysia and Singapore are in part similar to Australia in this regard. New Zealand was formerly similar but it radically revised its system in the early 1990s.


Tea plantations: context

The tea industry in India is one of the oldest industries and one of the largest employers in the organized sector. Over 12 hundred thousand permanent and almost the same number of casual and seasonal, workers are employed in the tea industry. Over 50 per cent of the workers, and in some operations like tea plucking, over 80 per cent of the workers, are women.

Relations on the plantations:

There are broadly four categories of personnel on the plantations – management, staff, sub-staff and workers. But the workers who work on the plantation comprise the bulk of the workforce of the plantation. The ‘field workers’ are engaged in plucking and activities related to the maintenance of the plantation and the bushes. These include hoeing, weeding, pruning, drainage, spraying of pesticides and insecticides, etc. Nearly all of this most difficult and hazardous work, involving carrying very heavy loads, is performed by women workers. Women carry more than 40 kgs of green leaf on their backs every day for years since they are very young, and later whether they pregnant or old.

Over 90 per cent of the tea workers are either Scheduled Tribes or Scheduled Castes – the lowest in the caste, ethnicity, class and resource hierarchy. Most of the families of the workers have been forcibly or fraudulently brought to the tea gardens several generations ago.

The work of tea workers is arduous in addition to being low paid and insecure. Tea pickers are on their feet all day with heavy baskets on their backs, often on uneven terrain and in harsh weather conditions. Injuries are common, as are respiratory and water-borne diseases. There is often exposure to pesticides and insecticides, which the ILO cites as one of the major health and safety hazards tea workers face.

The Picture of Industrial Relations in the Tea Industry:

Tea plantations have employed women as pluckers since the inception of the tea industry. In the initial period, there was a great deal of family labour. The 15th session of the Indian Labour Conference in 1957 decided that the formula for fixing minimum wages for an adult worker should be based on the costs of three units of consumption. The employers in the tea industry argued that since employment was family based, the ratio of 1:3 was too high and only 1.5 units of consumption should be taken into account for fixing minimum wages.

It is a matter of grave concern and an interesting point of research how the employers have been able to keep the wages of tea workers abysmally low, even over six decades of legislative provisions. The wage of the majority of tea workers is less than US$ 2 per day in large parts of the country and would come within the definition of extreme poverty. Tea is an example of a sector where several generations of workers have been kept in systematic poverty, despite almost all of them being members of unions. These conditions have drastically and systematically worsened in the last ten years.

All these factors contribute to the skewed structure of rewards in global the tea industry, as the War on Want report brings out:

- 53% retailer (e.g. supermarket)
- 33% blender (e.g. Typhoo, Tetley)
- 7% factory
- 6% trader/buying agent
- 1% tea auction/broker
- <1% tea picker

It is obvious that this structure and system is unjust and perpetuates and deepens the anomaly of hard work, especially that of women, being undervalued on the one hand and branding and marketing ruling the roost on the other. Taking on this structure and system and reversing it is a challenge to institutions and processes that seek justice and equity in the tea industry.

Collective bargaining and the Right to organize:

Trade unions were almost non-existent in the tea plantations till Independence in 1947, while there were large sections of workers like the textile workers, port and docks, manufacturing etc. where trade unions were relatively strong. On the other hand, the employers were very well organized for a long time – as early as 1859. This Association was formed with the intention of regulating
the supply of indentured labour. It was instrumental in the enactment of repressive legislation like the Workmen’s Breach of Contract Act.

Over the years, however, the majority of workers came to be members of one trade union or the other. Most unions in India, including those in the tea plantations, are affiliated to and controlled by political parties. What this means for workers, their wages, and their rights is a different matter, given that the wages are possibly the lowest in the so-called organized sector.

Though women workers constitute the majority of the workforce, most top level leadership consists of men. The higher level positions in the union are generally occupied by non-(tea) worker male leaders, mainly middle-class men. Either there are no elections, or elections are held which tend to be uncontested, and the same (male) leaders get elected over and over again. This could be one of the reasons why a vicious cycle of ineffective trade unions and non-representation of the interests of the majority of workers exists and this surely needs to be addressed.

Worker control over unions and the role of women workers:

However, one of the main impediments for this structure to change is that the people who control trade unions and those who ultimately sign settlements and agreements are not tea workers themselves, leave alone women workers. Those who have over the years signed the meagre wage increases and the massive work loads are not the women pluckers themselves.

A look at the gender compositions of trade union leadership in tea plantations shows that women constitute over 50% of the workforce and union members, and that in many cases women make up about 40% of the Union Committee members. However, in terms of decision-making in union policies and participation in negotiations, it is almost 100% men. In most unions relatively unimportant positions are given to women, often reserved for women workers. These are for example Joint Secretary, Joint Vice-President etc.

Whether it is availability of water or safe housing or provision of PPEs for spraying, it is only when workers who are actually affected by the issue have a say in the negotiations that things will change for the better.

Our experience as women activists in tea as well as other sectors has been that legal literacy, trade union consciousness, awareness of workers’ rights, human rights and women’s rights are important elements of training. However, actual participation in negotiations with management and government officials is the main aspect that gives workers confidence and makes management less complacent to deal with trade unions.

Violence against women in the family / home, in the community, at the workplace -- from domestic violence to sexual assault and harassment -- is usually not discussed in negotiations, although women workers do experience them very frequently. These are issues that are not considered union issues. However, when women workers come together, discussion on violence against women in different areas of life is almost inevitable as women workers locate violence as one of the major reasons for their continual disempowerment.

What seems crucial for any long-lasting changes in workers’ lives and their empowerment is that the leadership is truly representative of workers, especially women workers, who constitute the majority in this sector. For this to actually take place on the ground, regular, free and fair elections at different levels of the unions are needed.

Similarly, given the history of this sector, its workforce and its indentured nature, and the history of the unions, what is crucial is that workers, especially women, be given trade union training. This could begin with functional literacy and numeracy, legal literacy, Know Your Rights training and negotiations training. Some all-women training sessions would greatly facilitate this process.

In a process that the Progressive Tea Workers’ Union (PTWU), a new union in West Bengal and IUF began in April 2010, a series of workshops were organized where over 100 women from about 30 tea plantations participated. All the women workers had participated in several struggles and in the process of organizing.

The issues focused upon were:

- Why a women worker activists meeting?
- Maternity Benefits Act
- Plantation Labour Act
- Why is women’s leadership in trade unions necessary – for women and for trade unions?
- What is an independent trade union?

This resulted in a process whereby women workers from different plantations and also different ethnic groups began meeting and looking at common issues, including questioning the union on why women are not represented in their committees. This is a new beginning and an ongoing process.

ENDNOTES

Japan is one of the most advanced countries globally, economically and in terms of technology. Since 1973, the country embarked on the use of nuclear energy to solve its excessive energy dependence. Before the earthquake and nuclear reactor meltdown in March 2011, about 30% of the country’s electricity needs were provided by Japan’s 54 main nuclear reactors, and this was expected to increase to at least 40% by 2017. Much of this information was reported after Japan’s disastrous earthquake and tsunami in March 2011, which not only created hundreds of thousands of refugees but also damaged nuclear reactors, especially Fukushima Daiichi nuclear power station.

This disaster is both natural and human. By now, many aspects of the post-nuclear disaster have been pinpointed as due to known and preventable human risks being taken. The tragedy continues at the individual level as well as social. Parts of the immediate area of the nuclear plant and earthquake are highly radioactive, and estimated to be uninhabitable for at least one hundred years. Recently, some hot spots have been detected as far as Tokyo. It looks as if a huge area of North-east Japan became a sort of “controlled zone”, the appellation for the zones exposed to radiations in a nuclear plant. At Fukushima Daiichi, workers are still required to clean the garbages of the disaster so as to reduce the harm to the rest of the country and the world. It is a Faustian bargain, yet the bargain is made by the corporation, while workers work in danger out of compulsion of their economic necessity. Those lacking work are ‘willing’ to face the deadly work environment of nuclear rubble to earn for their families.

From January to September 2002, Paul Jobin had conducted interviews with contract workers of Fukushima Daiichi to compare their situation with the case of France. In June and July 2011, Paul went back to Fukushima prefecture where he could meet with TS, a qualified worker who has been employed many years at a mid-level subcontractor specialized in nuclear plants, working in particular for TEPCO’ Fukushima plants. TS is one of the rare workers now at Fukushima who accept to speak to journalists and researchers. He does so because he believes this is the only way to put some pressure on TEPCO and the government. But TS asked not to reveal his identity for fear he would be fired. The following excerpt focuses on the inspection periods and the compromises on safety made by TEPCO before the 3.11 disaster, as well as the failure of the company to provide guidebooks on radiation management during the aftermath of the crisis.
According to your experience, why the plant of Fukushima was hit harder than the plant of Onagawa, though the latter was closer to the epicentre of the seismic?

TS: In Onagawa, the plant is in a bay, so I guess it was not hurt directly, while in Fukushima, the plant is right by the seaside. But another reason might be that the Tohoku Electric Company invests more time for the safety inspections, around 100 days, compared to 40 to 60 days for TEPCO. To raise 'efficiency' the inspection period is made shorter and shorter. So the problem is what happens to the safety in the long term. During normal times the machinery might be working fine but with a severe earthquake like this one, the risks are increased that machinery will not react as usual.

Of course nobody could talk about the possibility of a severe accident. Nobody even thought of the possibility that it might occur. Rather, if anyone talked about the fact that it could occur, they were treated as oddballs, like 'what a strange guy'. So, regarding the occurrence of a severe accident, the possibility of it and what the world after such an accident would be like, nobody would even try to speak of it.

In April, there were some recruitment advertisements in the Northeast of Japan, to work ‘at a nuclear power plant in Fukushima Prefecture’, without stating the nature of the job. The salary was not even that high, at 10,000 yen per hour, with a maximum of three work days. Do you know what sort of jobs these people have to do?

The salary was not even that high, at 10,000 yen per hour, with a maximum of three hours of work per day.

TS: I guess they are part of those who are cleaning up the debris of the explosions. In three days, they can be exposed to 100 millisieverts. All workers should be given clear guidelines regarding safe limits of radiation and how to ensure the least dangerous exposure. However these people, they do not realize that they can be dangerously exposed. They just say yes to the job, and nobody will check about it.

What about the radioprotection for other workers?

TS: Before the disaster, we were required to have a copy of the radiation monitoring handbook. Without it, we could not work. But for the rubble-cleaning work right after the earthquake, it was a waste of time to even explain about the handbook so people just went ahead with the work. In March, these workers were told that they would monitored later. However it was only in May that the company really required that all workers must have radiation management handbook. But what about their exposure for March and April?

Through this excerpt, we can see that workers and citizens are deprived of important information for their own safety. As in many industries in the world where the employer is not disciplined by the presence of an active union, the company makes choices in favor of ‘efficiency’ and cost reduction, over the safety of its workers. The situation is particularly serious for workers down the ‘supply chain’, i.e. subcontractors and outsourced workers.

While working in a nuclear power plant seems to be a unique job, not comparable to other industries, in fact there is a simple common denominator with all those who do dirty, dangerous and demeaning jobs all around the world – insecurity or plain lack of work, and thus inability to subsist without wage work, forces workers to accept compromises to their health and safety as a precondition of their work. It is in fact a false ‘choice’ if the workers are beholden by the industry to keep their jobs.

A bargained right

On March 14, the Ministry of Health and Labour rose the annual exposure limits from 20 to 250 mSv, following the recommendations of the International Commission on Radiological Protection (ICRP) in case of emergency, while in normal times, the maximum exposure limit is set at 100 mSv over five years, or 20 mSv per year. Activists from the Citizen’s Nuclear Information Center (CNIC) and the Japan Occupational Safety and Health Resource Center (JOSHRC, a friend organization of AMRC) were outraged: is this a way to legalize death or limit foreseeable compensation claims? On 15 April 2011, the Ministry agreed to enter into negotiations. At the session in June, an official admitted that the decision came from TEPCO and NISA, the Japanese Nuclear Safety Authority under the Ministry of Economy (METI). So the labour activists
made a strong request: if you need to send more people to Fukushima to limitate the levels of radiations exposure, then why don’t you stop the nuclear plants all over Japan and send these workers there?

After further tough discussions from July to September, on October 14, the Minister of Health and Labour announced that the maximum exposure level will be brought back to 100 mSv a year, but only for those who will start to work after November, thus excluding all those who have already bypassed this limit.

The contract workers in Fukushima have not yet succeeded to build their organization to protect themselves. The RENGO and other big unions do not care for them, as these organisations are still devoted to the interests of the top managers. This is why CNIC, JOSHRC and other marginal labour organizations—what Paul Jobin names “labour NGOs”—are spending a lot of efforts to defend the basic rights of these workers. These are indeed very basic rights: rights for life and health protection. Workers and their organizations might seek protection of their health as a right. Yet from the government and industry point of view, the workers’ health is something negotiable, something that can be bargained over, in order to reduce the cost that must be paid by the country.

In the immediate aftermath of the nuclear crisis, the government and TEPCO should have placed safety of the citizens and accurate information as highest priorities. Yet the world has seen that they have repeatedly misinformed the public about risks and basic facts like radiation levels. In spite of the public outcry, the authorities continue to shroud the nuclear clean-up and restoration work in secrecy. As ‘emergency’ measures the government has vastly raised the permissible mSv of radiation exposure. But for what reason did the government risked such a horrible disaster as a nuclear meltdown? And now, for whom does it hide and downplay the health risks and social costs of using nuclear energy, to the point of binding nuclear plant workers to extreme secrecy?

For the moment, it seems that the government and the nuclear industry in Japan continue to assume there is ‘no choice’ but to accept the dangers of nuclear reactors for the sake of its power needs, and thus they continually obfuscate the dangers of the industry, sacrifices of its workers and risks to citizens. But it can change. The vigilance of ordinary citizens and workers, their willingness to unite and speak, could hold companies and the government accountable.

**Doris Lee**
ANTI-CAPITALISM
By Ezequiel Adamovsky
Published by Seven Stories Press, New York, 2011.

This illustrated book by an author from Argentinean author Ezequiel Adamovsky is a short and sweet introduction to capitalism and basic concepts relating to it, the past attempts to overcome capitalism and replace it with other systems, and the “new” horizontal and locally democratic ways of anti-capitalism.

“Old” anti-capitalists would likely feel they must read and grasp all three volumes of Capital by Marx, as well as other classic authors like Lenin, Trotsky, Rosa Luxembourg and so on. In this book, some of the main contributions of those writers are summarized in paragraphs and in simple cartoons. Without doubt there will be some serious intellectuals who take issue with particular oversimplifications. But the book is clearly aimed at those who are not yet at the level of scholarly debates yet, but rather at those who want to have a simple explanation understanding of how capitalism works in society and in the world, what’s wrong with it, and what can be done about it.

The book has several main sections. The 1st section answers the question what is capitalism? It simply lays out many of the main concepts about capitalism according to the Marx and the other important contributors to the thought about capitalism such as Eric Hobsbawm, Rosa Luxembourg, John Holloway and others, regarding concepts such as globalization, the states, the hegemony of the dominant classes, and so on.

Later sections are on resistant to anti-capitalism, differences between the traditional Left and new anti-capitalism, anti-capitalism, networks, and actions; and finally, a section on some of the various ideas of the so-called new anti-capitalism.

All of these pivotal events and concepts are summarized in one to 2 pages, including a graphic. The section describing the “long history” of anti-capitalism includes: Marxism, The 1st International, the split among Social Democrats, the Russian Revolution, Leninism, Maoism, national liberation movement, the failure of the socialist project, the failure of the national liberation project, the advance of neoliberalism and the “end of history”.

As Einstein has said, if you can’t say it simply, you don’t know it well enough. This writer has shown he knows the topic of anti-capitalism pretty well, and more importantly makes it interesting and clear enough, so a wider audience will be drawn to the subject, and read more for them from the referred book once their interest has been stimulated.

Doris Lee

THE ATLAS OF GLOBAL INEQUALITIES
By Ben Crow and Suresh K Lodha
Published by University of California Press, 2011.

The Greek philosopher Aristotle said 2,300 years ago that “there is nothing more unequal than the equal treatment of unequal people”. This illustrates not only the fact that there is nothing new about inequality as it has been the phenomena since thousands years ago, but also explains what equality is: it’s all about equal opportunity.

Recent publication of The Atlas of Global Inequalities (2011) provides a global perspective on what are the key problems of inequalities we are facing today at global level. The atlas gives shape and meaning to statistics, making it an important resource for understanding global inequalities, and provides perspective for social and political action.

The authors, Ben Crow and Suresh K Lodha, cautiously define inequality by describing the goal of equality which expresses the idea that each person should have comparable freedoms across a range of dimensions. Inequalities, according to the authors, are constraints that impede accomplishment of those freedoms; it is the differences in society which considered unjust, violate a moral norm, and when it is capable of being changed (p.9).

Four causes of inequality
Crow and Lodha who are Professor of Sociology and Professor of Computer Science at the University of California Santa Cruz respectively, briefly explain four key causes of inequality. First is exploitation which is an extraction of value by a superior group from an inferior group, for example, employers using low-paid labor. Second is exclusion, that is the discrimination by one group excluding another such as racism. Third is distination which reflects in economic mechanisms such as the bonus culture that result in a
widening distance between low-ranking workers and CEOs. And fourth is hierarchy, which is a number of advantages or privileges within formal organizations such as rank within an administration, corporation, or army (p.9-13).

Categorized in thematic parts, The Atlas of Global Inequalities maps a comprehensive picture of inequality that underlies many of the challenges facing the world today. It covers seven key themes with all their issues and dimensions: (1) economic inequalities, (2) power inequalities, (3) social inequalities, (4) inequalities of access, (5) health inequalities, (6) educational inequalities, and (7) environmental inequalities. By presenting a concise narrative, showing innovative and eye-catching graphics, and intriguing world, regional and country maps, the authors unravel the complexity of every single issue of inequalities in the global context.

Under economic inequalities, the issue of “work and unemployment” provides the fact that in China and India the contribution of agriculture fell with an increase in service and industry (p.22), which also applies to many Asian developing countries.

Developing countries like many countries in Asia have a higher proportion of its population employed in agriculture than in industry and service, but agriculture does not add as much to the economy as industry and service do. The graphic in this section shows the sectoral contribution to world’s GDP: 63 per cent from service, 31 per cent from industry, and 6 per cent from agriculture (data 2007, p.23). This part is also highlights that in some countries more than 70 per cent of people are employed in the informal sector.

Women, child and hunger

“Gender” issue under social inequalities explains a serious problem of discrimination against women. It is the most widespread and longest standing inequality. The section highlights that the “bias against women is reflected in their unequal political and economic participation and influence, in their longer hours in unpaid work, and in the preference for sons over daughters” (p.41). In China in 2007, for 100 boys aged 0-4 years there were only 80 girls (p.41), and women in India spend 9 times the hours in 2007, for 100 boys aged 0-4 years there were only 80 girls (p.41), and women in India spend 9 times the hours in unpaid work (p.40).

The authors also describe how inadequate health services, unsafe water, and barriers to education that hinder people’s ability to attain their wish and live their lives to the full. Women and children are the most vulnerable to most of inequalities, particularly to the incidence of chronic hunger that related mostly to power and politics rather than scarcity of the food.

As more than 60 per cent of chronically hungry people are women, and a child dies every 6 seconds from hunger and related causes, the issue of hunger is one of the most devastating dimensions of inequality. Asian countries including India, Bangladesh, Nepal, Pakistan, Indonesia, Philippines, Thailand, and China are among the highest

rank in child mortality and malnutrition, as between 67 per cent (India) to 35 per cent (China) of child deaths in these countries are attributable to the effects of mild to severe malnutrition (p.55)

The graphic for this part highlights the regional incidence of chronic hunger during the period of 2003-2005, which shows not less than 849 million people in the world were suffering from chronic hunger: 231 million people in India, 123 million in China, 189 million in Asia & Pacific, 212 million in Sub-Saharan Africa, 45 million in Latin America and Caribbean, 33 million in Near East and North Africa, and 16 million in industrialised countries.

Despite the ratio of people who are hungry has generally been declining, the actual number of malnourished people has been increasing. And even though the countries with the highest prevalence of under-nutrition are largely found in Sub-Saharan Africa, but India contains the largest number of undernourished people (p.54-55).

Deforestation

Rapid deforestation is another dimension of the global inequalities. It has a negative environmental impact and threatens the livelihoods of a quarter of the world’s population, and especially for some people forest is essential for their life: 60 million indigenous people in the world depend completely on forest, while 350 million others depend heavily on it.

However, deforestation, particularly in Brazil and Indonesia, is shrinking the forested areas, putting hundreds million of people’s life on stake. Brazil and Indonesia accounted for 68 per cent of the world’s deforestation or 178 thousands hectares per year! (p.90-91).

One should not expect much on what authors will say on “Towards Equality” on part 8. Like many other atlases, The Atlas of Global Inequalities is more descriptive rather than analytical, and the last chapter only suggests general points on addressing inequality, state and international action, and actions to be done. At the international level, it says, the repertoire of action is still limited and achieving the goal of equality may require more creativity, vision and resources (p.98-99).

Overall the atlas is rich in data and statistics. Among other key figures provided a country-wise, it included with the latest statistics of total population, GNI per capita, Gini index, Human Development Index, food expenditure, military expenditure, national minimum wage, and number of child labor (p.102-117). Depending on our purpose, for instance by comparing specific statistics of all Asian countries, it will tell us the real problems of Asia and its position in the global injustice, which gives us better understanding and perspective on what should be our social and political action.***

Fahmi Panimbang