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Review of Rights Discourse
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Lay Lee Tang
Human Rights Discourses in China

Introduction
A paradoxical blend of human rights principles and Confucian concepts is very much part of ‘socialism with Chinese characteristics’ today. Deng Xiaoping’s era witnessed the turning point in China’s position on human rights. During the Cold War, China was absolutely against ‘Western’ human rights as the US and other Western democracies continuously decried China’s abysmal record of civil and political rights violations. In line with Marxist theory, the socialist bloc, including China, had always maintained the primacy of economic and social rights over civil and political rights. During the debate over Asian values versus Western human rights in the 1980s, the Party-state was more of a spectator than an active advocate of the former as Singapore was championing Confucianism condemned for its class and sex oppression in China before the CPC victory in 1949. In fact, Jiang Qing had instigated a Criticise Confucius Campaign from 1973 to 1974 as an extension of the political campaign against Lin Biao and an indirect attack on Premier Zhou Enlai.¹

In the blink of an eye, China rolled out a National Human Rights Action Plan for 2009-2010² as part of the road map to a ‘harmonious society’.³ Deng’s economic liberalization unleashed hitherto pent up aspirations for democracy and freedom. The student-led Tiananmen democracy movement triggered a political crisis just as China was struggling out of the economic quagmire. The military crackdown was swift and decisive, demonstrators were arrested and jailed, or escaped, went into hiding or fled overseas. But the damage was done. The world was gripped by the images on television even though there was a blackout in China’s own media. Instead of slamming the door shut on the outside world, the CPC sorted out the factionalism between leftists and rightists internally, got rid of Premier Zhao Ziyang who sympathised with the students and installed Jiang Zemin as Deng’s heir apparent. But neither was it business as usual. The Party-state grabbed the bull by the horns and put out a White Paper on human rights in 1991.⁴ A decade on, China began putting out more or less regularly reports on its own progress in human rights.⁵ Adopting a complementary strategy of ‘attack is the best form of defence’, China started turning out its own reports on the human rights record of the USA.⁶ In 2004, China amended its Constitution declaring that the State respects and preserves human rights (Art. 33). In the same year, at the 4th plenum of the 16th Central Committee of the CPC, harmonious society was defined as ‘a socialist democracy, with rule of law, social justice, honesty and credibility, balancing human activities and natural resources’.⁷

Human rights discourses and actions are necessarily creative, strategic and collaborative in the omnipresent Party-state. Howell argues that the Party-state’s redefinition of itself was as important as the societal consequences of breathless economic reforms on the rapid growth of civil society in China (Howell 2003: 193). This, Howell says, goes against the convention wisdom that the market is the primary and sole trigger for the development of civil society as observed in Western Europe. The Party-state’s promotion of the notion of ‘small government, large society’ (‘小政府，大社会’) encouraged the formation of new associations, institutions and clubs to take on functions of state such as the regulation of different trades and the provision of social welfare services. Besides expanding the non-government sector, this strategy was aimed at
mobilising resources within society to deal with the negative social, environmental and other consequences of transiting from a planned to a market economy (Edele 2005: 7). Howell’s argument regarding the Party-state’s position and role can be extended. Another critical element in the proliferation of civil society and the expansion of human rights discourses within China is the Party-state’s shift on human rights. The Tiananmen crackdown was a salutary lesson for human rights proponents in China. The excesses of the Cultural Revolution and general repression of civil and political rights are all too true. The demand for democratic freedoms proved to be a perilous venture in the context of increasing lawlessness in the rural areas and social instability in urban areas in the first decade of economic reforms. But the abysmal socio-economic situation was equally if not more urgent especially for the most vulnerable social groups – women, children, the disabled and the elderly.

Consequently, discourses on the rights of these social groups, particularly their economic and social rights, proved to be more acceptable to the Party-state especially in the aftermath of the Tiananmen crackdown. The emphasis fitted well with the Party-state’s insistence on the primacy of socio-economic rights over civil and political rights all through the Cold War despite its monumental economic failures. Apart from highlighting how the Party-State has upheld the people’s right to subsistence and defending China’s poor record on political rights, judicial independence, freedom of religion, rights of minority nationalities and the harsh one-child policy, the 1991 White Paper on human rights spelt out how the people enjoyed economic, cultural and social rights. In particular, it focused on the right to work and set out the whole array of achievements and services for disabled persons. Significantly, the equality with men that women enjoyed rated a mere mention. But reference to criminal law penalties for trafficking in women and children, and children labour at a time when such issues were focusing international attention was noteworthy. Concurrent international developments in human rights clearly played a part in the Party-state’s attention to these groups of women and children. However, it was Deng Pufang, son of Deng Xiaoping, who drove services and protection for the disabled (Tang & Regan 2010: ). The entry of international aid agencies and China’s efforts to join the World Trade Organization also influenced human rights discourses and facilitated local initiatives and opened up some spaces for civil society participation in the Party-state. The National Human Rights Action Plan (2009-2010) is an indication of the cumulative impact of human rights discourses in the past two to three decades and the flashpoints of concern to the Party-state from the standpoint of political control and social stability. Farmers join women, children, senior citizens and the disabled as social groups singled out for specific protection. Rural migrant workers, whose pay disputes match the intensity and volatility of farmers’ protests over land and compensation, were not separately identified. Rights which have emerged for special attention include housing rights, social security rights, environmental rights, cultural rights, the right to be informed, the right to participate and the right to oversee.

This Chapter examines the human rights discourses that are developing in a number of different ways through the strategies and programmes of local groups and international organizations particularly since the 1990s. While it is not a comprehensive study, it will highlight developments in relation to several social groups and issues. Discourse conducted by international organizations often focus on issues and rights
regarded as more sensitive and which local groups would approach indirectly or avoid until opportunity arises. These involve issues such as the death penalty, freedom of association, political participation, migrant workers, land rights, the one-child population policy and the rights of minorities and marginalized groups. Discourses conducted within the country are constructed in the context of the Party-state’s economic priorities and the social and other consequences of such priorities. Consequently, most discourses flow with the Party-state’s position on human rights and human development and the organizations advocating them remain within the political boundaries set by the Party-state. Discourses involving land rights, rights of migrant workers, rights of ethnic minorities and other marginalized groups such as homosexuals are sensitive issues because they highlight corruption by government and Party cadres, underscore poor enforcement of rights or are perceived to affect social stability or social mores. It is suggested that while discourses falling in line with Party-state policies invite cooptation or incorporation, those falling foul of the Party-state invite repression (Edel 2007: 7) and others toleration, these strands of discourses are bound to develop, interact and shape human rights culture in China. Human rights discourses are influencing the types of social groups requiring protection of their rights. Part I reviews these social groups which have extended from vulnerable social groups such as women, children, the disabled and the elderly to more volatile groups such as disaffected farmers and migrant workers. Human rights discourses have also impacted on the types of rights requiring protection that are not specific to the social groups in Part I. Part II briefly recounts the relevant discourses concerning these rights. While social and economic rights such as health, education and employment remain high on the agenda, environmental protection, rights to property, land, housing, and food safety have gained prominence in the past few decades. Political reforms have also extended the right to participate at the grassroots level as highlighted in the discussion of the political context. Other civil and political rights remain critical, even central to exercise of economic and social rights. Finally, In particular, the right to legal aid and assistance is an important strategy deployed by both civil society and the Party-state in developing their human rights discourses. This then is the context in which Party-State unveiled its human rights plan and intensified its rhetoric of a harmonious society.

I. Social groups
Since the 1990s, disabled people, children, the elderly and women were regarded as vulnerable social groups most likely to be left behind in the transition from a centrally planned economy to a market economy. From a Marxist perspective, the development of a market economy would create social contradictions and result in a growing gap between the rich and the poor. This was the rationale behind the governmental national legal aid programme that developed in the mid 1990s soon after private legal aid initiatives in universities in the late 1980s and early 1990s. Hence early initiatives within the country usually focused on these groups of people. To put it into perspective, private initiatives often began in spaces and places as yet unoccupied by government or social organizations. Legal aid and assistance was such a space which the government was slow to fill in the process of rebuilding the legal and judicial framework. Discourses emerged from these services provision to add to, subtract from or challenge official rhetoric on these social groups. Meanwhile, ‘illegal’ rural migrant workers, landless
farmers and forced evictions and relocations due to development and mega-projects such as the Three Gorges Dam and the Beijing Olympics were the focus of international media and human rights community. However, it was not an either/or situation whereby local groups conducted discourses on the category of vulnerable social groups and international organizations highlighted the politically sensitive issues on rural migrant workers, farmers and minorities. Instead it may be more a question of strategy particularly on the part of local groups operating in a highly controlled political environment. Furthermore, competition between provinces and power struggles between central and local governments feature strongly in discourses on rural migrant workers and farmers. In fact, discourses on women’s rights demonstrate the impact of the developing dialogue, relationship and exchange between women’s organizations in China and the international women’s movement.

Women

Discourses on women’s rights and gender equality were among the first to revive in the reform period when China ratified the Women’s Convention in 1980 but really gained momentum with the Beijing Women’s Conference in 1995. Indeed, feminist scholars noted that ‘women’s studies in China emerge[s] from a particular history: it is not the product of a feminist movement but, rather, is one of the main forces creating that movement in the context of economic reforms’. An incredible range of women’s perspectives on gender inequality and power emerged, including liberal, radical and socialist feminism but certainly far beyond the hitherto narrow confines of Marxist analysis. Autonomous women’s groups and organizations proliferated in the run up to the Beijing Women’s Conference after which the women’s movement expanded even more rapidly through a whole new range of perspectives and projects, and support from international organizations and agencies. We will return to the relationship between these autonomous women’s organizations and the ACWF in the discussion on NGOs. For now, it is useful to note that the All China Women’s Federation (‘ACWF’) monopolised discourses on women’s rights and sex equality in China until the reform era.

Women’s rights and sex equality took a backseat after CPC defeated the Nationalists and set up the PRC in 1949. The official rhetoric declared that women’s liberation and equality was achieved with the liberation of the Chinese people (Chow, Zhang & Wang 2004:176). The newly established ACWF drafted and pushed through the Marriage Law in 1950, giving women freedom of marriage and divorce. But soon after, the ACWF changed tack. For the sake of its own political survival, the ACWF adopted the official rhetoric and focused instead on women ‘diligently and thriftily managing the family’ (Wang 2006: 919-24). This was to avoid being accused of ‘bourgeois feminism’ during the Anti-Rightist Campaign in the late 1950s (Wang 2006: 919-24). From then on, the ACWF was entrusted with the task of explaining government policies to their members and women in general instead of reflecting women’s interests and identities. In the 1960s and during the Cultural Revolution, the ACWF instead of challenging production or social arrangements focused on attitudes about women’s inferiority, especially among women themselves. Discourse on women’s rights and gender equality re-emerged with the introduction of economic reforms in 1978 and China’s ratification of the Women’s Convention in 1980. But in the early years of economic reforms, the ACWF generally continued to work in ways and issues that did not directly challenge the
Party-State. Thus, the images, myths and practices of ‘iron girls’, ‘women holding up half the sky’ and ‘equal pay for equal work’ carried over into the reform period.

Economic liberalization and new state policies produced new issues on women’s rights and deepened inequalities. Economic development beckoned young women to factories in special economic zones in the south, turned them into cheap labour and consumers of the beauty culture. The ‘feminine’ woman, as opposed to the sexless ‘iron girl’ modelled on man as the comparator, captured the imagination of younger women and girls but also promoted the commodification of beauty. The ‘one-child’ policy harshly implemented caused much grief, exacerbated the inferior status of women, and reinforced the preference for sons. The Household Responsibility System which returned economic initiative to families increased productivity and created surplus agricultural labour. These state policies engendered an increasingly unbalanced sex ratio especially in rural areas. Female infanticide, child and sex trafficking, employment discrimination and pornography were some of the main issues involving women and children that emerged in the early reform period.

Discourse on women’s rights and gender equality evolved with issues generally within parameters set by the Party-state. Take for example, the one-child policy launched in the early 1980s. The policy became another blot on China’s human rights record and generated intense debate and criticism in academic and human rights circles internationally. Whereas in China, for a long time, a veil of silence cloaked issues arising from the policy, let alone discourses on women’s reproductive health and related rights (Greenhalgh 2001). As the ACWF was involved in the implementing the policy, it was privy to problems which women faced but advocating for women’s rights on this issue was thereby constrained. Furthermore, highlighting issues arising from the implementation of state policies without directly challenging the Party-state was the preferred strategy. Discourse on women’s labour rights also developed in the transition from a centrally planned economy to a market economy. However, much of the critical discourses on these rights were also initiated by scholars, researchers and human rights organizations outside China.  

Although it was politically legitimate to highlight exploitation of women as cheap labour and violations of women’s employment rights in the transition to a market economy. Nevertheless, it was strategic and necessary to highlight issues and target private enterprises and corporations, even state-owned enterprises, but not the Party-state’s policies.

The 1992 Law on the Protection of Women’s Rights and Interests culminated a decade’s work and discourses on women’s issues in the first phase of economic reforms. Wife-beating, infanticide, women trafficking, and employment discrimination were among the many issues emerging in the 1980s which led the ACWF to campaign on legal protection for the rights of women and children, to offer services such as legal counselling and hotlines to women, and to sponsor research on women (Hershatter 2004: 1037). University scholars and others also set up their own organizations on women’s research and women’s studies. These initiatives led to the inclusion of a wide range of women’s rights in the 1992 Law, always framed in terms of equality with men, covering political participation, education, work, property, freedom of the person, marital choice as well as legal remedies for violation of these rights (Hershatter 2004: 1037). While this law has been criticised as being too vague and offering no new remedies (Woo 2002; Hom 1994), it was a milestone in the context of the Party-state. Other than the 1990 Law
on the Protection of Disabled Persons and the 1992 Children’s Law, the Women’s Law was at the forefront of human rights law development in China. It provided a broad framework within and from which discourses and advocacy on women’s rights would develop in the new millennium. The enactment of these three laws protecting the rights of three vulnerable social groups almost immediately after the Tiananmen debacle may also be China’s response to critics of its human rights record.

Legal reform became an important goal and strategy for activists and organizations advocating for women’s rights and gender equality. Step by step, as issues were named, explained and publicised, amendments were made to the Women’s Law and provisions inserted in other laws and regulations to protect women’s rights recognised. At the beginning of the current millennium, the discourses have extended to rights to political participation, labour rights, property rights, marriage and family rights, and personal rights from studies on marriage and family in the 1980s (Chow, Zhang & Wang 2004: 164). In the 1990s, a proliferation of relatively more autonomous women’s organizations rose to challenge the ACWF’s monopoly of women’s sphere, especially in the run up to the 1995 Beijing Women’s Conference. The Women’s Conference offered more perspectives, introduced innovative strategies, presented fresh challenges and enriched discourses for women activists and women organizations in China. For example, by the end of the 1990s, a Domestic Violence Network had developed from legal counselling and hotlines initiated in the 1980s (Howell a 2003: 195).

This campaign is an excellent demonstration of how activism of non-government feminist activists in China ‘generated new knowledge through their engagement with international gender equality activism and global human rights norms’ (Milwertz & Bu 2007: 131). It is also an example of how discourse developed from diverse opportunities, experiences and spaces, and collaboration between more autonomous women’s organizations and the ACWF turned discourse into law. Women lawyers and journalists who discovered wife-beating in the course of addressing other gender inequality issues, reinterpreted the phenomenon as a women’s issues and renamed as domestic violence after investigating the characteristics and extent of wife-beating Milwertz & Bu 2007: 131, 136-140). The activists began with viewing it as a couple not getting along and the women probably were to blame so the advice to women seeking help was to improve their behaviour. The extent of the violence experienced by the women led the activists to rename it as domestic violence. After discovering through a study that women in both rural and urban areas, uneducated women without their own incomes as well as wives of well-educated university professors, journalists and companies were beaten, these women activists became aware that it was a social phenomenon. They took a further step in viewing domestic violence as a reflection of unequal gender relations between men and women in society. Such unequal relations, where men always controlled power and regarded women as their property, are perpetuated through feudalistic and Confucian ethical codes of patriarchy and clan authority. Finally, they arrived at the view that such behaviour was unacceptable as violating women’s rights and domestic violence should be regarded as a human rights issue. Women’s right to freedom from violence has extended from the private sphere of the family to the public sphere including the workplace today.

Women’s labour and political participation rights which emerged in the 1980s and 1990s are key issues today. Women’s labour rights overlap with women’s participation rights because retirement age and social security issues straddle the economic and
political spheres. Women’s inferior status institutionalized through the earlier retirement age for women in the Mao era extended to women in CPC and government positions. Political survival of the ACWF swept this issue under the carpet. Employment discrimination against women during economic reforms in the 1980s, including women losing their jobs or being sent home to be housewives so men could keep their jobs eventually focused attention on unequal retirement age for women. The issue intensified as attention turned to the small numbers of women in political office, from the top right down to grassroots village committees which were being established. By the end of the 1990s, earlier retirement age was named as an issue of gender inequality. The ACWF carefully maintains the politically correct ‘Marxist perspective of women’ (Chow, Zhang & Wang 2004: 164-65) which informed studies and practical research on emerging women’s issues since the 1980s. The discussion centred on how women can improve their quality (素质) and how women can succeed in life (妇女成才); and whether the obstacles were themselves or society (Chow, Zhang & Wang 2004: 165). Feminist scholars noted that in promoting the ‘quality’ of rural women, the ACWF participated in the Party-state’s language of ‘quality’ so as to link the situation of women with the welfare of the nation. While that campaign highlighted women’s role in their own subordination (Hershatter 2004: 1037), the language served to gain legitimacy and support from the Party-state. The ACWF continues to tread the fine line between carrying out the task set by the Party-state and representing women’s identities and interests and advancing gender equality. In the climate of gradual recovery from the world economic recession, equality in retirement age has not been achieved, but continues to generate vigorous debate, research and analysis and remains a symbol of gender inequalities.

Women’s land rights which emerged towards the end of the 1990s are key issues related to women’s property rights today. Stories of some women losing contract land, denied benefits and compensation bubbled to the surface while farmers’ protests and land disputes were mounting especially during the 1990s and heated debates raging over the direction of property and land rights reform gathered momentum in the new millennium. Accusations of ‘empty hukou’ and traditional customs rendering women ‘outsiders’ when they marry, worse when they marry ‘outsiders’ not from their own village, or when they’re divorced or widowed justified withdrawing or depriving these women of contract land. Often the final touch was a majority vote by the village committee, economic collective or assembly officially excluding the women from access to contract land or compensation. Studies by the ACWF, government and an autonomous women’s organization revealed that the extent of the problem was wider than expected and far more intractable. As land is a very sensitive issue, some provincial women’s federations in the name of social stability preferred not to touch, let alone frame it as an issue of gender equality. While collaborative advocacy by women’s organizations has achieved provisions in national laws specifically protecting the rights of these groups of women, gaps in legislation, local protectionism and weak enforcement of judicial decisions continue to obstruct effective protection of women’s land and related rights today.

Rural Migrant Workers

Today delegates representing rural migrant workers are making their appearance at people’s congresses. Rural migrant worker committees are being established in some urban districts where they reside. The ACFTU has extended membership and services to
rural migrant workers. There are public and private legal aid services dedicated to rural migrant workers. Migrant children, in principle and in some places in practice, go to public schools like children with urban hukou, instead of unregistered private schools that run the risk of being closed down. Temporary resident permits are being issued to some rural migrant workers. Recent estimates from the National Bureau of Statistics place numbers at 145 million and another 90 million surplus rural labour. The government forecasted an additional 18 million moving to the cities for work in 2009/2010 as the economy emerges from recession. Problems remain and discrimination persists but it is a far cry from the early decades of economic reforms.

Citizenship and migrant rights, freedom of movement and residence rights shaped the discussions on rural migrant workers. Economic reforms since the 1980s generated massive surplus labour in the countryside which was required and rapidly absorbed by urban and industrial development. The face of rural migrant workers was male even though one-third was young women, ‘dagongmei’ or ‘working younger sister’. They were the backbone of the economic boom taking on the dirty, dangerous and difficult jobs shunned by urban dwellers for low wages, unsafe working conditions and poor living conditions, labelled as ‘waidiren’ or ‘people from other places’ in their own country. Rural migrant workers emerged as a social category which the authorities preferred to ignore as they transgressed administrative and social policies on movement and residence. The rural/urban divide created through the hukou or household registration system and underpinned by the danwei or work unit system turned these workers who moved from the countryside to urban areas into ‘illegal’ migrant workers (Cheng & Selden 1994). Without urban resident permits, they risked arrest by police, detention and ‘deportation’ to their home province. Not only were they ‘illegal’ in their own country, they were not entitled to the housing, unemployment benefits, education, health care, welfare and other services, including legal aid, enjoyed by residents with urban hukou. Migration and citizenship scholars framed these injustices in terms of citizenship rights, comparing their situation with foreign migrant workers who were being extended social rights in the host countries despite their status as non-citizens (Solinger 1999). Others, from the perspective of freedom of movement and residence, compared the hukou system to the passbook system during Apartheid in South Africa (Alexander & Chan 2004).

With sustained economic growth of 10% annually, discourses on rural migrant workers extended to their value as economic assets to both their home and host provinces. Regional economic competition drove incremental improvements in the situation of rural migrant workers. Apart from contributing to the economic boom of the eastern coastal regions such as Guangdong, Shanghai and Zhejiang, rural migrant workers remitted millions of yuan which sustained agricultural, rural and general economic development in their home villages, counties and provinces in central and western China in the first phase of economic reforms. At the same time, local governments in their home provinces were saddled with the consequences of their workplace and other injuries, medical, health and unemployment problems in times of recession while receiving regions shouldered no responsibilities. At the turn of the millennium, the economies of these sending provinces began to accelerate as attention turned to developing the poorer and western regions during Jiang’s presidency. While the hukou system defied total uprooting, conditions have been relaxed in fits and starts as local governments competed to hasten economic development and manage economic downturn in their own regions.
At 145 million strong and mostly male, rural migrant workers were becoming a visible social force that could no longer be denied. Marginalized yet central to economic growth, rural migrant workers began to ‘become’ the ‘rights’ and ‘assets’ discourses raging about them. Pay disputes before Spring Festival, which became a regular feature, threatened to turn and at times became violent. The tide turned in 2002 with the reported death in police custody of a young male migrant worker arrested for not having urban resident permit. The unprecedented public outcry over police brutality signalled a change in public perception of rural migrant workers, underscored extreme dissatisfaction with arbitrary police powers, the power of the media or an awakening to their humanity and identity as rural migrant workers. Perhaps it was all of the above. In 2003, the Premier, Wen Jiabao, gave the green light to protect the rights of migrant workers. Overnight, public legal aid was officially extended to rural migrant workers previously excluded because they lacked urban hukou and without having to prove financial hardship. The national public legal aid centres at all levels and in all provinces went into overdrive to coordinate and facilitate pay and compensation claims of rural migrant workers. The municipal legal aid in wealthy Shanghai led the change even before the Premier’s nod. The timing of the change in government attitude and response was not accidental. Hu’s government was about to roll out the ‘harmonious society’ which would include ‘soft’ methods of resolving volatile social issues. The extension of public legal aid to rural migrant workers was a dry run.

The 2007 laws on labour contracts and mediation and arbitration in labour disputes were a milestone as discourse on migrant workers’ rights gradually focused on root causes of pay disputes. Employers simply refused to provide written contracts, which frustrated workers’ attempts at claiming wages, benefits and compensation for workplace injuries. In September 2005, a private legal aid office started helping rural migrant workers settle pay and other disputes in Beijing regardless of their lack of urban resident status. This private initiative was a spin-off from a children’s rights committee, both of which were established under the All China Lawyers’ Association. Most of the lawyers at this legal aid office are from rural areas in other provinces and many have relatives who are rural migrant workers. Within the space of a few years, it has rapidly expanded to 15 major cities all over China with support from the UNDP, including funds from Belgium. Significantly, the China Legal Aid Foundation, a government initiative, extended funds to this private legal aid network during the recent worldwide economic recession. It could be due to its high-profile founder, a lawyer named in recent years as one of the top ten lawyers in China honoured for their contribution to society. It could also be due to the need to harness all resources to manage rural migrant workers’ disputes before they spiral out of control. Although its aims include public interest litigation on issues confronting migrant workers, most of their cases involve time consuming negotiations and mediation between their angry migrant worker clients and recalcitrant employers.

The rise of rural migrant workers also catalysed fresh discussions on the right to organise and to form trade unions, the true meaning of trade unionism, the role of the ACFTU and experimentation with ‘sea elections’ (‘海选’) since the 1990s (Howell b 2008). The official rhetoric that the Communist victory in 1949 liberated the working class implied that there was no more contradiction of interests between workers and the state. Established as a matter of course, the ACFTU remains trapped in Pravda and Ruble’s ‘classic dualism’ – responsible for mobilising production and for protecting
workers’ interests at the same time (Howell b 2008: 849 n 15). Howell endorses Schmitter’s critique of the ACTU as a state corporatist institution (Howell b 2008: 849) which ensures that the ACFTU, with the exception of a few major occasions in its history, prioritize Party-state interests over workers’ interests well into the reform era. It is arguable that the relationship between the ACFTU and the Party goes beyond Schmitter’s critique as key leadership positions especially at the top in the ACFTU are held by CPC cadres. Whichever is the case, production goals and bureaucratic welfarism which characterise the ACFTU’s approach and attitude towards its members reflect its lack of independence from the Party. Ambivalence towards rural migrant workers stemmed initially from their ‘illegal’ status and competition for jobs with union members who have urban household registration. Attitudes have evolved as rural migrant workers have become a social force in economic and urban development which equals the 150 million strong membership of the ACFTU. The threat rural migrant workers pose to social stability underpinned the change in attitudes in the Party and the ACFTU.

Reformists within the ACFTU also saw direct elections as an opportunity to change the nature of grassroots trade unionism in favour of workers’ interests, transform the ACFTU into a societal corporatist institution or better still a civil society institution and undermine bureaucratic welfarism (Howell b 2008: 851). The dominance of rural migrant workers in the private sector in Special Economic Zones in the south provided the local branches of the ACFTU opportunity to experiment with democracy – sea elections or direct elections of trade union grassroots leaders nominated as candidates by workers and not by trade union committees. This was not possible in state-owned enterprises as trade union leaders were subordinate to Party leaders, Party leadership and Party interests even during economic reforms. However, unlike village and urban grassroots elections, trade union grassroots democracy has yet to go nationwide. The election of rural migrant workers who are not Party cadres as trade union chairs would undermine the system of Party control (Howell b 2008: 859). Ultimately, the fear of not being able to maintain the status quo of prioritizing production, economic development and hence Party interests is likely to constrain further democratization within the ACFTU and genuine prioritization of workers’ interests.

People with Disabilities

Discourses and developments concerning people with disabilities in China continue to be monopolised by the China Disabled People’s Federation (‘CDPF’), almost to the exclusion of other organizations not under its wings. Despite being a latecomer as a mass organization sanctioned by the Party-state, the CDPF has moved quickly. Disabled people were the first vulnerable social group to have a national law protect their rights. The driving force behind this initiative was Deng Pufang who was either thrown or fell from a window during the Cultural Revolution apparently because he refused to denounce his father, Deng Xiaoping, as a capitalist roader. Deng Pufang became a quadriplegic. Rehabilitated after the Cultural Revolution, Deng Pufang threw himself into reviving and consolidating all the national welfare associations for the blind, the deaf and the mute which had stopped functioning from 1966 to 1977. The China Disabled People’s Federation was set up at the national level in 1988 with Deng Pufang elected as Chairman. In 1990, he mobilized resources to participate in drafting a law on the protection of disabled persons, which was passed by the Standing Committee of the 7th
The China Disabled People’s Federation (‘CDPF’) was anointed the voice and representative of China’s disabled population which has increased to 83 million and extended beyond traditional groups such as blind, deaf and mute to people with mental health issues and multiple disabilities today.

While the social model of disability is shaping discourse concerning people with disabilities in China, the medical model of disability continues to underpin programmes and services of the China Disabled People’s Federation. The protective, welfare approach worked well when the state owned all enterprises which facilitated separate workshops employing disabled people. The challenge today is an employment market where disabled people have to compete with women and migrant workers for jobs. For a developing country, China is quite advanced in accommodating people with disabilities in terms of urban public facilities and amenities over which the Party-State has full control. This is reflected in the 2008 amendments to the law protecting disabled people. But disability discrimination is the most intractable issue for disabled people looking for jobs in the open market. The amendments are silent on the definitions of discrimination and reasonable accommodation, key elements of the social model of disability, which are fully set out in the 2006 Convention on the Protection of People with Disabilities. China has not only ratified it, China was an active participant in the drafting process and among its delegates were national staff of the CDPF. Discourse on disability discrimination in relation economic and social rights has yet to gather momentum.

Discourses on other issues affecting disabled people are generally overshadowed by the focus on China’s progress on rights of disabled people. Public legal aid priority in criminal cases for the blind, deaf and mute has been a showpiece of the Party-State since the launch of public legal aid in the mid 1990s. Discussions on disability discrimination, disabled women and integration of disabled people into the community hover on the periphery at the initiative of autonomous organizations.

Farmers’ Rights
Land expropriation and compensation, property and land ownership, land use and dwindling arable land area have shaped discourses on farmers’ rights in China since economic reforms. State and collective ownership of land continue to constrain the parameters of farmers’ rights over land with the passage of the Property Rights Law in 2007. Increased agricultural productivity, development fever and endemic corruption in the 1980s and 1990s created a class of landless farmers. An estimated 40 million farmers have lost land since economic reforms and more continue to lose land. The fact that 90 million rural labourers are currently looking for work indicates that development may no longer absorb all the surplus labour generated by loss of land and other factors. Furthermore, an estimated 50,000 rural land disputes reportedly occurred in 224 cities and counties from 2003 to March 2008. Other reports estimated a high of 168,000 cases in 2003 and a drop to 80,000 in 2005. Reliable or otherwise, the core of these contradictory statistics often involves inadequate compensation. Compensation rates are very low yet farmers often receive only 10-22% of compensation meant for them. Fraud, corruption, embezzlement and delayed compensation payment by local authorities and officials were the norm. In fact, many farmers were cheated of rightful compensation. But farmers’ rights are no longer only a matter of compensation, adequate or otherwise, for land legally or illegally acquired by local government. Technically, individual farmers...
or farming households do not own land but hold usufructuary rights over land contracted to them by village collectives. However, the 2007 Property Rights Law extends property rights beyond ownership to include usufructuary and security rights (art 2) but forbids mortgage of land use rights for farmland and house sites (art 184).

II. Rights Protected

1 wiki
4 State Council Information Office, ‘’, 1991;


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10 Legal aid


