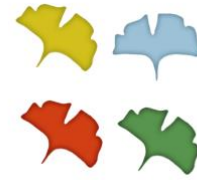




**PETER A. ALLARD  
SCHOOL OF LAW**

THE UNIVERSITY OF BRITISH COLUMBIA



ASIA PACIFIC DISPUTE RESOLUTION

# **Legal Culture on Labour Disputes of Migrant Construction Workers in China**

**Juan Li**

**Hubei University**

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# LEGAL CULTURE ON LABOUR DISPUTES OF MIGRANT CONSTRUCTION WORKERS IN CHINA

Juan Li  
Hubei University

## 1. Introduction

Over the past three decades, China has sought fast economic growth under authoritarian control,<sup>1</sup> but these economic reforms have had a negative effect on employment relations. As a result, Chinese workers have become more vulnerable and marginalized than at any time since 1949.<sup>2</sup> Labour disputes have been on a sharp rise, and industrial conflicts have become more violent and collective.<sup>3</sup> Some scholars even call China an “epicenter of world labour unrest”.<sup>4</sup> The surge in labour disputes is considered by the regime in China as the “biggest threat to social stability” and its own rule.<sup>5</sup>

On January 1, 2008, three essential labour regulations were enacted, namely the Labour

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<sup>1</sup> Feng Chen, “Between the State and Labour: The Conflict of Chinese Trade Unions’ Double Identity in Market Reform,” *The China Quarterly* 176 (2005): 1006; Gordon White, “Chinese Trade Unions in the Transition from Socialism: Towards Corporatism or Civil Society?” *British Journal of Industrial Relations* 34:3 (1996): 433.

<sup>2</sup> Ching Kwan Lee, *Against the Law: Labour Protests in China’s Rustbelt and Sunbelt* (University of California Press, 2007); Ching Kwan Lee and Yonghong Zhang, “The Power of Instability: The Microfoundations of Bargained Authoritarianism in China,” *American Journal of Sociology* 118:6 (2013): 1475.

<sup>3</sup> Jenny Chan and Mark Selden, “China’s Rural Migrant Workers, the State, and Labour Politics,” *Critical Asian Studies* 46:4 (2014): 599; Jie Shen, *Labour Disputes and Their Resolution in China* (Oxford: Chandos, 2007): 1; Lee, *supra* n. 2.

<sup>4</sup> *Ibid*; Beverly J. Silver and Lu Zhang, “China as an Emerging Epicenter of World Labour Unrest,” in *China and Transformation of Global Capitalism*, Ho-Fung Huang (ed.) (New York: RoutledgeCurzon, 2004): 50; Eli Friedman, “China in Revolt,” *Jacobin* 7/8 (January 29, 2014), accessed October 12, 2015, <http://jacobinmag.com/2012/08/china-in-revolt/>.

<sup>5</sup> Shen, *supra* n. 3: 2; Thomas F. Remington and Xiaowen Cui, “The Impact of the 2008 Labour Contract Law on Labour Disputes in China,” *Journal of East Asian Studies* 15 (2015): 271.

Contract Law,<sup>6</sup> the Labour Dispute Mediation and Arbitration Law,<sup>7</sup> and the Promoting Labour Employment Law.<sup>8</sup> The new laws represent some of the most significant pieces of labour legislation in People's Republic of China.<sup>9</sup> They reflect the Chinese government's recognition of the rising aspirations and expectations of China's workers, and the political significance of ensuring fair employment practices to avoid labour unrest.<sup>10</sup> They denote a milestone effort by the government to shift the balance of power in employment rights, away from employers and toward employees.<sup>11</sup> The new law also goes well beyond its predecessor in protecting workers' rights, and enhancing their ability to seek adjudication of labour disputes.<sup>12</sup> To date, some studies have investigated whether the new labour laws have provided more protections for workers in labour disputes. However, there remains a lack of empirical study that explores the ideas, opinions, and attitudes of workers, especially migrant workers, with regard to labour disputes and related legal system. This study chooses the construction industry as an example, and attempts to explore the migrant workers' legal culture regarding on labour disputes based on primary data collected from interviews with 34 migrant construction workers, who are all originally residents of Shuangfeng Town, Xiaogan, Hubei Province, a typical rural area in central part of China.

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<sup>6</sup> *Labour Contract Law*, [http://www.npc.gov.cn/wxzl/gongbao/2013-04/15/content\\_1811058.htm](http://www.npc.gov.cn/wxzl/gongbao/2013-04/15/content_1811058.htm).

<sup>7</sup> *Labour Dispute Mediation and Arbitration Law*, [http://www.gov.cn/flfg/2007-12/29/content\\_847310.htm](http://www.gov.cn/flfg/2007-12/29/content_847310.htm).

<sup>8</sup> *Promoting Labour Employment Law*, [http://www.gov.cn/flfg/2007-08/31/content\\_732597.htm](http://www.gov.cn/flfg/2007-08/31/content_732597.htm).

<sup>9</sup> Jeffrey Becker and Manfred Elfstrom, "The Impact of China's Labour Contract Law on Workers," *International Labour Rights Forum* (May 12, 2010).

<sup>10</sup> Mary Gallagher, John Giles, Albert Park, and Meiyan Wang, "China's 2008 Labour Contract Law: Implementation and Implications for China's Workers," *Policy Research Working Paper* 6542, The World Bank Development Research Group Human Development and Public Services Team (July 2013).

<sup>11</sup> Becker and Elfstrom, *supra* n. 9; Sean Cooney, Sarah Biddulph, Li Kungang, and Ying Zhu, "China's New Labour Contract Law: Responding to the Growing Complexity of Labour Relations in the PRC," *UNSW Law Journals* 30:3 (2007): 786.

<sup>12</sup> Thomas F. Remington and Xiaowen Cui, "The Impact of the 2008 Labour Contract Law on Labour Disputes in China," *Journal of East Asian Studies* 15 (2015): 271; Becker and Elfstrom, *supra* n. 9.

This study attempts to explore the real experiences, thoughts, and feelings of ordinary Chinese people,<sup>13</sup> and the methodology combines qualitative and quantitative approaches, with the qualitative approach mainly being oral history. As Currie explains, oral history is an approach found in the social sciences and anthropology, where a researcher reports on an individual's life, and how this life reflects broader cultural themes of a society and social histories.<sup>14</sup> For Maynes et al. oral history is "a retrospective, first-person account of the evolution of an individual life over time and in social context."<sup>15</sup> Thompson and Park define oral history as the interviewing of eyewitness participants to events of the past, for the purposes of historical reconstruction. This allows for the construction of heroes not just from among leaders, but also from the unknown majority of the people. It helps the less privileged find dignity and self-confidence.<sup>16</sup> The most significant contribution of oral history's methodology is to include within historical record the practices and views of groups who might otherwise have been "hidden from history."<sup>17</sup> In-depth interview is the key data collection method in oral history. I undertook the fieldwork in Hubei Province from December 2012, and by March 2015, I had in-depth interviews with 34 migrant construction workers in Shuangfeng Town, Xiaogan, Hubei Province.

## **2. Some Background**

A great deal of literature has focused on the sharp rise of labour disputes and protests in China. Since the mass retrenchment in SOEs by the end of the 1980s, labour disputes have increased dramatically in China,<sup>18</sup> and there also has been a dramatic increase in

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<sup>13</sup> Paul A. Cohen, *China Unbound: Evolving Perspectives on the Chinese Past* (London: Routledge, 2003).

<sup>14</sup> Dawn Currie, *SOCI 503 Course Description* (Vancouver: UBC, 2011).

<sup>15</sup> Mary Jo Maynes, Jennifer L. Pierce, and Barbara Lassett, *Telling Stories: The Use of Personal Narratives in the Social Sciences and History* (Ithaca and London: Cornell University Press, 2008).

<sup>16</sup> Robert Perks and Alistair Thompson (eds.), *The Oral History Reader* (London: Routledge, 2006).

<sup>17</sup> Paul Thompson, "The Voice of the Past" in Perks and Thompson, *supra* n. 16.

<sup>18</sup> OECD Library. Labour Market Changes, Labour Disputes and Social Cohesion in China.

labour unrest.<sup>19</sup> So far, there is no concrete evidence proving that labour disputes and protests have reduced since the new labour regulations were enacted in 2008; on the contrary, there are signs that those numbers are still rising.<sup>20</sup> These episodes of labour unrest are emerging at the same time that businesses are cutting costs, and foreign companies are relocating, or closing operations.<sup>21</sup>

## 2.1. The Main Causes and Nature of Labour Disputes

In China, labour disputes involve almost all aspects of employment relations, such as unpaid and defaulted wages, social and unemployment insurance and welfare, dismissals resulting from modification and termination of labour contracts, as well as a lack of production, protection, and training.<sup>22</sup> As stated by Wang Guanyun, Director of Guangdong Labour and Employment Service and Administrative Centre, “[t]here are several causes of worker disputes, but the leading reason is when enterprises don’t pay

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2012; Mingwei Liu, “Conflict Resolution in China,” in *The Oxford Handbook of Conflict Management in Organizations*, William K. Roche, Paul Teague, and Alexander J. S. Colvin (eds.) (Oxford: Oxford University Press, 2014): 488; Wang Jing, “Collective Consultation and Labour’s Collective Rights in China,” ILERA 16th World Congress, 2012.

<sup>19</sup> Murray Scot. Tanner, “China Rethinks Unrest,” *Washington Quarterly* 27.3 (2004): 137; Minxin Pei, “Rights and Resistance: The Changing Contexts of the Dissident Movement,” in *Chinese Society: Change, Conflict, and Resistance*, Elizabeth J. Perry and Mark Selden (eds.) (New York: Routledge, 2003): 29; Howard French, “Land of 74,000 Protests (But Little is Ever Fixed),” *New York Times* (August 24, 2005); Joseph Kahn, “Pace and Scope of Protests in China Accelerated in ’05,” *New York Times* (January 20, 2005); Andrew Wedeman, “Enemies of the State: Mass Incidents and Subversion in China,” APSA 2009 Toronto Meeting Paper (January 29, 2014), accessed September 16th, 2015, <http://papers.ssrn.com/Sol3/papers.cfm?abstractid=1451828>; also see Feng Chen, “Trade Unions and the Quadripartite Interactions in Strike Settlement in China,” *China Quarterly* 201 (2010): 104

<sup>20</sup> Congressional Executive Commission on China, “Report on Worker Actions in China: Recent Worker Actions in China” (July 2, 2010), accessed March 28, 2015, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=142008>.

<sup>21</sup> South China Morning Post, “Labour Disputes in China Increase as the Workforce Shrinks” (April 18, 2014), accessed September 16, 2015, <http://www.scmp.com/news/china/Clauseicle/1486398/labour-disputes-china-increase-workforce-shrinks>.

<sup>22</sup> National Bureau of Statistics of China, *The Labour Statistical China Labour Statistical Yearbooks* (*ZhongGuo Laodong Tongji Nianjian*) (Beijing: China Statistics Press, 1995-2005), in Shen, *supra* n. 3.

salaries.”<sup>23</sup> In fact, the problem of wage arrears is so serious and common in labour-intensive factories that an article argues that it has become a “custom” in Guangdong.<sup>24</sup> Some experts believe that it is necessary to criminalize wage default.<sup>25</sup> Lee argues that if getting paid for one’s labour is a fundamental feature of capitalist employment relations, strictly speaking many Chinese workers are not labourers yet.<sup>26</sup>

Registered labour disputes concerning job loss are far less frequent than those concerning unpaid wages; however, this problem is no less serious. Lee’s observations on laid-off workers’ protest in the Northeast can help to explain this. According to Lee, in the Northeast, mass protests of laid-off workers’ are “protests of desperation.” They often choose to take their grievances to the street, leveraging political bargaining by shaming local officials and disrupting traffic. Seldom do they file arbitration or engage in litigation.<sup>27</sup> Hence, it is safe to assume that the registered job losses are far less than the actual amounts. According to another study, less educated workers tend to take their grievances to the Visits and Letters Offices, local People’s Congresses, or Party organizations. At the same time, more educated and skilled employees often take their cases to legal arbitration.<sup>28</sup> Therefore, the registered amount of labour disputes about job losing is far less than the amount actually happened.

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<sup>23</sup> China Labour Watch, “Poor Working Conditions Plague Guangdong,” accessed March 19, 2015, <http://www.chinalabourwatch.org/en/web/Clauseicle>.

<sup>24</sup> Workers Daily, “ACFTU Launches ‘Concentratively Recruiting Migrant Workers Campaign’ (Quanzong Kaizhan Nongmingong Jizhong Ruhui Xingdong)” (April 16, 2015), accessed March 15, 2016, <http://acftu.people.com.cn/n/2015/0416/c67560-26854243.html>.

<sup>25</sup> China Daily, “Laws Needed to Ensure Migrant Workers’ Wages,” *China Daily* (March 9, 2006), accessed June 6, 2015, <http://www.china.org.cn/english/null/160892.htm>.

<sup>26</sup> Lee, *supra* n. 2.

<sup>27</sup> *Ibid.*

<sup>28</sup> Isabelle Thireau and Hua Linshan, “The Moral Universe of Aggrieved Chinese Workers: Workers’ Appeals to Arbitration Committees and Letters and Visits Offices,” *The China Journal* 50 (July 2003): 83.

## 2.2. The Nature of Labour Disputes

A large body of literature draws attention to the nature of labour disputes in China. Some studies characterize Chinese strikes and protests as being “reactive” or “defensive.” This is especially true for laid-off workers in SOEs who were dramatically restructured in the late 1990s and early 2000s.<sup>29</sup> In 1978, SOEs accounted for 80 percent of urban employment, while this figure declined to less than 30 percent by 2005.<sup>30</sup> In 1997 alone, SOEs lost about 13 million jobs, and 39 percent of urban households’ income dropped.<sup>31</sup> China workers were promised lifetime employment, but fell “from master to mendicant.”<sup>32</sup> Chen argues that this “subsistence crises,” corruption, and a sense of betrayal at the dissolution of the Mao-era socialism drove SOE employees into the streets, for these “protests of desperation.”<sup>33</sup> Different from the laid-off workers of SOEs, migrant workers were never given any promises, but rather suffered from “institutional discrimination.”<sup>34</sup> They are particularly vulnerable to abuse,<sup>35</sup> and are the main victims of serious labour-rights violations.<sup>36</sup> Although migrant workers resort to wildcat strikes, they adopt legal procedures more often than SOE workers.<sup>37</sup> Elfstrom and Kuruvilla highlight that the protests of migrants are also reactive, as a demand that the minimums

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<sup>29</sup> Mary E. Gallagher, *Contagious Capitalism: Globalization and the Politics of Labour in China* (Princeton: Princeton University Press, 2005).

<sup>30</sup> Albert Park and Fang Cai, “The Information of the Chinese Labour Market,” in *From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China*, eds. Sarosh Kuruvilla, Ching Kwan Lee, and Mary E. Gallagher (Ithaca: Cornell University Press/ILR Press, 2011): 17-35.

<sup>31</sup> John Hassard, Jackie Sheehan, Meixiang Zhou, Jane Terpstra-Tong, and Morris Jonathan, *China’s State Enterprise Reform: From Marx to the Market* (New York: Routledge, 2007): 86-87, 157.

<sup>32</sup> Dorothy Solinger, “The New Crowd of the Dispossessed: The Shift of the Urban Proletariat from Master to Mendicant,” in *State and Society in 21 Century China: Crisis, Contention and Legitimizing*, eds. Peter Hays Cries and Stanley Rosen (New York: Routledge Curzon, 2004): 50-66.

<sup>33</sup> Lee, *supra* n. 2.

<sup>34</sup> *Ibid.*

<sup>35</sup> Shen, *supra* n. 3: 13-16, 25-18

<sup>36</sup> Anita Chan, *China’s Workers under Assault: The Exploitation of Labor in a Globalizing Economy* (Armonk, N.Y.: M.E. Sharpe, 2001).

<sup>37</sup> Jenny Chan, “Chinese Women Workers Organize in the Export Zones,” *New Labour Forum* 15:1 (2006): 19; Aaron Halegua, “Getting Paid: Processing the Labour Disputes of China’s Migrant Workers,” *Berkeley Journal of International Law* 26:1 (2008): 254; Eli Friedman and Ching Kwan Lee, “Remaking the World of Chinese Labour: A 30-Year Retrospective,” *British Journal of Industrial Relations* 48:3 (2008): 507.

of an existing system be upheld.<sup>38</sup> Lee explores the nature of labour protests by migrant workers in the Southeast as “protests against discrimination.”<sup>39</sup>

The nature of labour disputes in China also varies by region, by different managerial regimes, and by their own networks and connections.<sup>40</sup> Su and He highlight that local authorities always maintain a close relationship with employers, and often take their side in labour disputes in many regions in China.<sup>41</sup> Cooke notes that labour disputes are excessively high in foreign-invested enterprises.<sup>42</sup> Lee and Sargeson state that workers are normally divided by recruitment networks based on hometown ties.<sup>43</sup> Pun and Smith explain that workers are divided by dormitory regimes, which put them out of reach of “geographically rooted norms” and “localized practices.”<sup>44</sup>

Chen argues that in labour protests in China workers are essentially spontaneous and leaderless, characterized by narrow and enterprise-specific claims. He highlights that such protests come and go, and can hardly establish an organizational basis for the pursuit of workers’ long-term interests.<sup>45</sup> Lee also highlights that the main features of Chinese workers’ protests are decentralization and cellular activism.<sup>46</sup> Elfstrom and Kuruvilla

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<sup>38</sup> Manfred Elfstrom and Sarosh Kuruvilla, “The Changing Nature of Labour Unrest in China,” *ILR Review* (April 2014): 453.

<sup>39</sup> Lee, *supra* n. 2.

<sup>40</sup> Elizabeth J. Perry, *Challenging the Mandate of Heaven: Social Protest and State Power in China*, (Armonk, N.Y.: M. E. Sharpe, 2002).

<sup>41</sup> Yang Su and Xin He, “Street as Courtroom: State Accommodation of Social Protest in China,” *Law and Society Review* 44:1 (2010): 157.

<sup>42</sup> Fang Lee Cooke, “The Changing Dynamics of Employment Relations in China: An Evaluation of the Rising Level of Labour Disputes,” *Journal of Industrial Relations* 50:1 (2008): 111.

<sup>43</sup> Ching Kwan Lee, *Gender and the South China Miracle: Two Worlds of Factory Women* (Berkeley: University of California Press, 1998); Sally Sargeson, *Reworking China’s Proletariat* (New York: St. Martin’s Press, 1999).

<sup>44</sup> Ngai Pun and Chris Smith, “Putting Transnational Labour Process in Its Place: The Dormitory Labour Regime in Post-Socialist China,” *Work, Employment and Society* 21:1 (2007): 27.

<sup>45</sup> Feng Chen, “Subsistence Crises, Managerial Corruption and Labour Protests in China,” *The China Journal* 44 (2000): 41.

<sup>46</sup> Lee, *supra* n. 2.



contend that Chinese workers have been striking offensively for more money, better working conditions, and more respect from employers since 2008. They believe that the Chinese workers have more power as a result of economic and political opportunities, including a growing labour shortage, new labour laws, and new media openness.<sup>47</sup>

The strikes in recent years suggest a shift in the nature of labour protest in China. For instance, from May 17<sup>th</sup> to June 6<sup>th</sup> 2010, 1,910 workers for the Honda Company, in the Foshan branch, engaged in a 21-day strike, asking for a wage increase, better working conditions, and a more representative union. This strike ended with a 24 percent wage increase and some improvements to working conditions.<sup>48</sup> The most striking feature of the Honda strike is that it was an organized collective action, which indicates an awakening of class consciousness among the Chinese working class.<sup>49</sup> Most of the 1,910 workers were “post-80s” or “post-90s.” They used cell phone messages and a QQ group to communicate and organize the strike.<sup>50</sup> The possibilities of information technology, the Internet, and mass media are eye-openers for the new generation.<sup>51</sup> Unlike in the past, when migrant workers were isolated in factories and had limited access to information, it is easy for this generation of workers to obtain information from the outside world.<sup>52</sup> The Honda strike in Foshan directly led to additional two strikes in other Honda branches. Moreover, it suddenly and unexpectedly turned into a symbol of this nation’s struggle

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<sup>47</sup> Elfstrom and Kuruvilla, *supra* n. 38.

<sup>48</sup> ChinahrdNet, “Our Workers are Powerful: A Review at Honda Strike,” accessed April 28, 2015, <http://www2.chinahrd.net/Authorcolumn/subject.aspx?typeid=news&id=6562dd15-1a28-4795-a1a9-ecff0b7b4bea>.

<sup>49</sup> Jieping Zhang and Yixin Zhu, “Labour Movement in China Requires Independent Trade Unions,” *Asia Week* 24:23 (2010), accessed September 26, 2015, <http://gb.udn.com/gb/blog.udn.com/yensunny/4125202>.

<sup>50</sup> Finance, “Deep Analyze the Strike in Honda Foshan Branch” (June 1, 2010), accessed September 26, 2015, <http://finance.591hx.com/Clauseicle/2010-06-01/0000057894s.shtml>.

<sup>51</sup> Zhang and Zhu, *supra* n. 49.

<sup>52</sup> Chan, *supra* n. 37; Liren Shen, *Chinese Migrant Workers (Zhongguo Nongmingong)* (Beijing, Democracy & Construction Press, 2005).

with income inequality, rising inflation, and soaring property prices.<sup>53</sup> China has experienced even more organized labour unrest in recent years. For instance, in January 2012, more than 2,000 workers at the state-owned Pangang Group Chengdu Steel and Vanadium Company struck, demanding a raise, more stable contracts, and the dismissal of “lazy, redundant personnel” (managers).<sup>54</sup> As stated by foreign observers, “[a]fter years of being pushed to work 12-hour days, six days a week on monotonous low-wage assembly line tasks, China’s workers are starting to push back.”<sup>55</sup>

Besides these aggressive labour protests, increasing numbers of Chinese workers adopt the milder strategy to “push back,” voting with their feet. The Pearl River Delta region, where most of the labour-intensive manufacturing industries are located, started to experience migrant labour shortage by the early of 2000s.<sup>56</sup> The labour shortage continued, and spread to other areas in later years, although enterprises raised wages.<sup>57</sup> Much literature explores the reasons for labour shortage in China. Liu believes that the labour shortage was caused by increasing rural residents’ income, from strong economic growth, and favourable government policies on agriculture. He also argues that new generation migrant workers are better educated and more modern-thinking than their parents, and are less tolerant of harsh working conditions and low pay.<sup>58</sup> Chan argues that the labour shortage persists because migrant workers find that working in cities is

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<sup>53</sup> Congressional Executive Commission on China, *supra* n. 20.

<sup>54</sup> China Labour Watch, “Chengdu Steel Factory Workers Strike for More Pay” (May 10, 2012), accessed October 12, 2015, <http://www.chinalabourwatch.org/news/new-410.html>.

<sup>55</sup> Congressional Executive Commission on China, *supra* n. 20.

<sup>56</sup> David Barboza, “Labour Shortage in China May Lead to Trade Shift,” *New York Times* (April 3, 2006), accessed September 26, 2015, <http://www.nytimes.com/2006/04/03/business/03labor.html?pagewanted=all>.

<sup>57</sup> Olivia Chung, “China Labour Shortage Spreads,” *Asia Times Online* (October 22, 2011), accessed September 26, 2015, <http://www.atimes.com/atimes/ChinaBusiness/MA29CbO1.html>.

<sup>58</sup> Liu Shinan, “All Hail China’s New Job-Seekers,” *China Daily* (February 27, 2008), accessed September 24, 2015, [http://news.xinhuanet.com/english/2008-02/27/content\\_7676883.htm](http://news.xinhuanet.com/english/2008-02/27/content_7676883.htm).

unpleasant, and thus choose to stay in rural areas.<sup>59</sup> Wang also suggests that since the 2010s, increasing rural workers have chosen to stay closer to their hometowns.<sup>60</sup> The growing labour shortage is often considered a main cause of increasing labour disputes in recent years. Clarke and Pringle argue that workers' capacity to strike has been significantly increased as labour shortages have spread.<sup>61</sup> Gallagher argues that these shortages are a function of three issues: the decline in the working population as a consequence of the one-child policy; policy changes in agriculture, including sharp decrease in taxes in rural areas and increases in rural infrastructure; and institutional discrimination against migrants.<sup>62</sup>

### 2.3. The Labour Dispute Resolution System

The formal labour disputes resolution system in China includes "one mediation, one arbitration, two trials." According to Labour Law of 1994,<sup>63</sup> the procedure for dealing with a labour dispute is as follows: 1) enterprise mediation committee; 2) tripartite consultation, including workers, Labour Bureau and trade unions; 3) labour arbitration; 4) court. Labour arbitration is compulsory before a case is brought to a court.<sup>64</sup> Some literature challenges that such general and abstract rules were insufficient in view of the rapid economic development and increasingly sophisticated labour disputes in China.<sup>65</sup>

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<sup>59</sup> Anita Chan, "Labour Standards and Human Rights: The Case of Chinese Workers under Market Socialism," *Human Rights Quarterly* 20:4 (1998): 886.

<sup>60</sup> Zhuoqiong Wang, "More Workers Staying near Home," *China Daily* (May 2, 2012), accessed October 10, 2015, <http://www.chinadaily.com.cn/china/2012-04/28/content15166329.htm>.

<sup>61</sup> Simon Clarke and Tim Pringle, "Can Party-Led Trade Unions Represent Their Members?" *Post-Communist Economies* 21:1 (2009): 85.

<sup>62</sup> Mary E. Gallagher, "We Are Not Machines: Teen Spirit on China's Shopfloor," *China Beat* (January 29, 2014), accessed September 26, 2015, <http://www.thechinabeat.org/?p=2538>.

<sup>63</sup> Labour Law of People's Republic of China (1994), [http://www.gov.cn/banshi/2005-05/25/content\\_905.htm](http://www.gov.cn/banshi/2005-05/25/content_905.htm).

<sup>64</sup> *Ibid*: Clauses 77-83.

<sup>65</sup> Yun Zhao, "China's New Labour Dispute Resolution Law: A Catalyst for the Establishment of Harmonious Labour Relationship?" *Comparative Labour Law and Policy Journal* 30:2 (2009): 409.

The formal labour disputes resolution system remains inefficient and ineffective.<sup>66</sup>

In this formal dispute resolution system, the Labour Mediation Commissions used to be the most important body to resolve labour disputes in the pre-reform era; however, they have been greatly devalued since the market economic reform has changed the employment relationship in China.<sup>67</sup> The Labour Arbitration Committees (LACs) are supposed to have autonomy from the Labour Bureau; however, this is seldom true in practice. Many professionals, from professors to lawyers, may serve as “part-time” arbitrators; however, Labour Bureau officials alone are able to serve as “full-time arbitrators.”<sup>68</sup> As one LAC official in Beijing stated, panels have three arbitrators only to “give the appearance of justice.”<sup>69</sup> Another notable disadvantage of this labour resolution system is the inconsistency of the manner in which labour arbitration and litigation are applied; in turn, this influences the efficacy of the entire arbitration system. An essential duty of labour litigation is to re-evaluate arbitration awards, and this is a waste of arbitration resources.<sup>70</sup> Then workers have to once again put forth a grievance to enact compulsory enforcement.<sup>71</sup>

Going to court is always a costly and time-consuming process.<sup>72</sup> A report produced by the Beijing Migrant Workers Legal Aid Station reported that the process took an average

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<sup>66</sup> Hwang, Kyung-Jin, and Kan Wang, “Labour Dispute Arbitration in China: Perspectives of the Arbitrators,” *Employee Relations* 37:5 (2015): 582.

<sup>67</sup> Zhao, *supra* n. 65.

<sup>68</sup> “Rules on Organization of Labour Dispute Arbitration Committees,” [http://www.mohrss.gov.cn/gkml/xxgk/201407/t20140717\\_136057.htm](http://www.mohrss.gov.cn/gkml/xxgk/201407/t20140717_136057.htm): Clause 13.

<sup>69</sup> Halebua, *supra* n. 37.

<sup>70</sup> Zhao, *supra* n. 65.

<sup>71</sup> Mary E. Gallagher, “Use the Law as Your Weapon!: Institutional Change and Legal Mobilization in China,” in *Engaging the Law in China: State, Society, Possibilities for Justice*, Neil J. Diamant, Stanley B. Lubman, and Kevin J. O’Brien (eds.) (Stanford: Stanford University Press, 2005).

<sup>72</sup> Shen, *supra* n. 3.

of 11 months.<sup>73</sup> Shenzhen's Labour Bureau revealed that it took from 11 to 20 months to go through labour arbitration and two trials in 2001.<sup>74</sup> Another report in Beijing shows a minimum cost of formal procedures is 920 yuan.<sup>75</sup> Therefore, many workers, especially migrant workers, feel that it is not worth going through the legal formal resolutions system. As stated by Wei Wei, the founder of a NGO focusing on aiding migrant workers, "once it enters that stage, the worker has already lost."<sup>76</sup> Moreover, Chinese courts normally have poor capability of enforcing judgments. Hence, even after arbitration and two trials, workers often are left with a slip of paper and no money.<sup>77</sup>

The new Labour Dispute Mediation and Arbitration Law of 2008 do not essentially shift the "one mediation, one arbitration, and two trials" structure, but it makes some important changes that could benefit workers. For instance, the new law prolongs the time span to initiate a complaint from two months days to one year.<sup>78</sup> It also provides shorter arbitration acceptance time, and required the arbitral to render an award within 45 days.<sup>79</sup> The new law makes arbitral awards legally effective for several categories of cases, including unpaid wages.<sup>80</sup> Workers could apply to the court for a payment order with the mediation agreement in diverse cases, including payment in wage arrears, medical care

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<sup>73</sup> Beijing Migrant Workers Legal Aid Station, *Report on Cases Involving Migrant Workers' Unpaid Wages* (*Nongmingong qianxin anjian yanjiu baogao*) 2:3 (October 2006), accessed October 12, 2015, [http://www.zgnmg.org/zhi/dybg/bg002\\_1.htm](http://www.zgnmg.org/zhi/dybg/bg002_1.htm).

<sup>74</sup> Virginia Harper Ho, *Labour Dispute Resolution in China: Implications for Labour Rights and Legal Reform* (Regents of the University of California, 2003).

<sup>75</sup> Tong Lihua and Xiao Weidong, *Beijing Youth Legal Aid and Research Center, Investigative Report on the Rights Protection Costs of Chinese Migrant Workers* (*Zhongguo nongmingong weiquan chengben diaocha baogao*) 4:2 (September 2005).

<sup>76</sup> Wang Wentao and Deng Jing, "The Words of a Courageous Group of Migrant Workers: How High can 'Little Bird' Fly? (*Yongwei jincheng dagong qunti daiyan "Xiao Xiao Niao" neng fei duo gao?*)," *Xinhua Net* (January 12, 2006), accessed November 20, 2015, [http://news.xinhuanet.com/focus/2006-01/12/content\\_4037149\\_2.htm](http://news.xinhuanet.com/focus/2006-01/12/content_4037149_2.htm).

<sup>77</sup> Halegua, *supra* n. 37.

<sup>78</sup> *Labour Dispute Mediation and Arbitration Law*, *supra* n. 7: Clause 27.

<sup>79</sup> *Ibid*: Clause 43.

<sup>80</sup> *Ibid*: Clause 47.

expenses for occupational injury, or compensation.<sup>81</sup> This is a significant improvement over the previous system, and helps employees to save a great deal of money and time to go through the litigation process.<sup>82</sup> It shows legislators' intention to balance the power between workers and employers.<sup>83</sup>

## **2.4. Hometown of Plasterers**

Thanks to economic development over the past decades, China has become the largest construction site in the world.<sup>84</sup> This booming industry provides sufficient job opportunities. For instance, in Xiaogan, where the fieldwork of this study was undertaken, most male adults work in the construction industry. They refer jobs and pass experiences to each other. The masters teach their sons and nephews. The local government of Xiaogan also strongly supports labour exporting in the construction industry. It established construction teams to contract projects all around China, and provided job opportunities for local residents. By May 2013, there had been more than 400,000 Xiaogan migrant workers working on construction sites throughout China. In 2012 alone, these Xiao construction workers earned over 10 billion yuan in total.<sup>85</sup> Gradually, migrant construction workers from Xiaogan, especially Xiaogan plasterers, have established a well-known brand in this industry, because of their outstanding skills, good reputation, and efficiency.<sup>86</sup> Hence, Xiaogan is also known as the “hometown of plasterers.” Xiaogan plasterers are especially popular in the Northeast of China, where they have nearly monopolized the plastering market. For instance, in Hegang City alone,

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<sup>81</sup> *Ibid*: Clause 16.

<sup>82</sup> *Ibid*: Clause 48.

<sup>83</sup> Halegua, *supra n.* 37.

<sup>84</sup> Ngai Pun and Huilin Lu, “Neoliberalism, Urbanism, and the Plight of Construction Workers in China.” *World Review of Political Economy* 1:1 (2010): 127.

<sup>85</sup> *Ibid*.

<sup>86</sup> *Ibid*.

a small city in Heilongjiang Province, there are more than 2,000 Xiaogan plasterers.<sup>87</sup>

In the highly-exploitative and multi-tier subcontracting system in the construction industry in China, the migrant construction workers from Xiaogan have been using their traditional strategies to protect their own interest, and to make their weak voices heard by unifying. In the past 30–40 years, Xiaogan people have established a national-wide network in the construction industry. The 400,000 Xiaogan people are working actively at all levels in the construction industry all around China.<sup>88</sup> There are Xiaogan developers, general contractors, sub-contractors, labour contractors, site-managers, material and facilities suppliers, logistics, and all kinds of labourers.<sup>89</sup> This nation-wide network is effective and exclusive, and is almost an autonomous system in the construction industry.

Most migrant construction workers only choose to work for Xiaogan bosses. Their reason is quite straightforward: because they know the boss, and know where his house is, if their wages are defaulted, they know where to ask for their money. Normally, the migrant workers are quite confident that the bosses will bring cash to them by December 28<sup>th</sup> of the lunar year. For instance, as Hongliang explained, “I never work for an ‘outsider’ boss. What if he runs away? How could I find him and get my money back? Not only me, but also my son and my brothers. We all only work for Xiaogan bosses.”<sup>90</sup> Some construction workers change bosses frequently; but nearly all their bosses are Xiaogan people. For instance, Peng said, “I normally work for 7 to 8 bosses within one year, back

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<sup>87</sup> Zhimin Wang, “Xiaogan Plasterers Take 0.2 Billion Every Year,” *Hegang Evening* (August 19, 2015), accessed April 26, 2015, <http://hegangnews.dbw.cn/system/2011/08/19/053348017.shtml>.

<sup>88</sup> Changjiang Times, “There Are Xiaogan Plasterers in Every Building in the Northeast (*Dongbei Meidong Lou Dou You Xiaogan Niwajiang*)” (May 2, 2013), accessed May 30, 2016, <http://www.changjiangtimes.com/2013/05/441741.html>.

<sup>89</sup> Housing and Urban-Rural Development of Hubei, “Ten Construction Brands from Hubei are Well Known,” *Hubei Daily* (January 17, 2014): 8, accessed April 26, 2015, <http://news.cnhubei.com/hbrb/hbrbsglk/hbrb08/201201/t1952689.shtml>.

<sup>90</sup> Juan Li, (December 28, 2014), Personal Interview.

and forth. Who has good projects, I [go to them]. All these bosses are Xiaogan people. There are many Xiaogan bosses in [the] Northeast.”<sup>91</sup> Xinghong also told me, “[a]s far as I know, there are at least 40 Xiaogan bosses working in Huhehaote. I also know more than 40 Xiaogan bosses in Xi’an. You know, Xiaogan is the hometown of plasterers.”<sup>92</sup> It is much harder to ask for back wages if the boss is an “outsider.”

The same is true for the other side of the coin, as Xiaogan bosses prefer to hire their co-villagers because of less financial pressure and mutual trust. In the construction industry, there is a well-accepted “custom” that workers get paid when the project is completed. But when workers and subcontractors are both from Xiaogan, there is a consensus that workers would get paid by the end of the lunar year. This long-term payment greatly relieves the financial burden of Xiaogan bosses. In contrast, if the migrant workers work for “outsider” bosses, their requirements of payment became quite harsh. They normally require the outsider bosses to pay in cash every day, and if the boss defaults on their wages for even one single day, the migrant worker would leave immediately. As Bo said, “If they don’t pay us today, no one would show up on site tomorrow!”<sup>93</sup> It is doubtless that contractors and subcontractors do not want such harsh payment terms, and thus they all prefer to recruit their co-villagers.

This powerful autonomous system of Xiaogan people in the construction industry provides protections for migrant workers at the lowest cost, and strong support for Xiaogan bosses; it also maximizes the profit and interest for both parties in long term. It is the essential foundation of the booming development of the construction sector in Xiaogan area. This autonomous system is built based on family relationships, and the

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<sup>91</sup> Juan Li, (January 21, 2015), Personal Interview.

<sup>92</sup> Juan Li, (February 5, 2015), Personal Interview.

<sup>93</sup> Juan Li, (January 21, 2015), Personal Interview.



major rule within this system is family ethic and morality, rather than the notion of rule of law, or any contract.

### **3. Migrant Construction Workers' Legal Culture Regarding Labour Disputes**

Although a lot of literature has explored labour disputes in China, less attention has been paid to migrant workers' legal culture with regard to labour dispute and related legal system in China. There has been even less attention to migrant construction workers' legal culture. Based on interviews of 34 migrant construction workers from Shuangfeng Town, this study explores the major causes and the nature of migrant construction workers' labour disputes, and their main means of resolution. Migrant construction workers' ideas, opinions, as well as attitudes with regard to labour dispute and the dispute resolution system in China are illustrated through their experiences in different cities across China.

#### **3.1. Major Cause of Labour Disputes: Wage Default**

Among the 34 interviewees, only two claimed they have never been involved in any labour disputes. One is Chutian, born in 1953; the other is Guohui, born in 1964. Of the remaining 32 interviewees, almost all of their labour disputes regard wage default, no matter how old they are, their education background, or the cities in which they work. Most interviewees have been involved in wage arrears more than once. For migrant construction workers, in most cases, "labour dispute" simply means wage default. In fact, they never expect other kinds of labour rights. As they consistently explained, "We only want money, nothing else." As Liang said, "We never ask for any other things, better food, accommodation, or insurance. And they would not give us even if we asked. We only

work for money. As long as the bosses pay us by the end of the year, it is good enough.”<sup>94</sup> Renhai also told me, “We work for money, only for money. If we can get cash by the end of the year, we are very satisfied.”<sup>95</sup>

Unfortunately, the construction industry is one of the hardest hit areas of wage arrears in China. Thanks to the “efficient” subcontracting system in this industry, there are many chances for migrant workers at the bottom tier of this industry chain to lose their salaries. In a typical construction project, owner, developer, and general contractor all transfer their financial burden and risks to subcontractors. The subcontractors at higher tier also transfer part, or even all, of their burden to the subcontractors below them. By the end, labour subcontractors and migrant workers have to walk at the edge of a cliff. Moreover, in the construction industry, contractors and subcontractors are often paid based on the process, and workers normally get their wages after the project is completed, or even by the end of that lunar year. The long-term payment and multi-tier subcontracting system greatly increases the risk and amount of wage defaults. If one of the subcontractors ran away with money or refused to pay to the subcontractor at lower tier, which often happened, the migrant workers ended up with no wages. Hence, when I asked my interviewees whether they had been involved in wage defaults, they always responded, “Yes, of course! Who hasn’t?”

What is worse, it was very difficult for migrant workers to recover their wages in arrears, especially before 2003. The formal legal procedures remained ineffective, expensive, and time-consuming for migrant workers, while governments preferred business over

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<sup>94</sup> Juan Li, (December 28, 2014), Personal Interview.

<sup>95</sup> Juan Li, (January 16, 2015), Personal Interview.

workers.<sup>96</sup> Hence, when migrant workers turned to government agencies for help, many officials tended to push them out, and claimed that it was not their duty to deal with labour disputes. In most cases, migrant workers could do nothing but leave. As a result, migrant construction workers choose to stay in their autonomous system built by Xiaogan people in the construction industry, because it was much easier to get their money back in their hometown.

Among all the frustrating stories of wage defaults which happened before 2003, there were only a few successful cases that I heard in my fieldwork. For instance, Renhai told me of his experience of wage default in 2002 in Beijing. When the project was finished, the big boss refused to pay, and drove the migrant workers and their little boss out of the site. They had to sleep in the street. Many workers left, and only five of them stayed to ask for money, including Renhai. They tried everything, called 110,<sup>97</sup> appealed to the Labour Bureau, went to the Beijing Government, and went to the Public Security Bureau. But nothing worked. Many times, they were not even allowed to enter the buildings of the government agencies, and could only stay in the gatehouse. None of the agencies provided help, and most claimed that it was not their duty to deal with labour disputes. The migrant workers decided to stick to the Public Security Bureau in Beijing. They stayed there day after night, and refused to leave. They claimed they would appeal to a higher level of government if the Public Security Bureau would not help them. By the end, the policemen agreed to help. They called the contractor and required him to pay off the wages. These five migrant workers were finally paid in full amount after more than one month persistent arguing and appealing in Beijing. As Renhai said, “We could not swallow the grievance and anger. It is our money, earned by sweat and blood! I must get

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<sup>96</sup> Chen, *supra* n. 1; White, *supra* n. 1.

<sup>97</sup> 110 in China is an emergency number like 911 is in Canada.

it back!”<sup>98</sup>

Shen underscores that there is no statistical evidence reporting the full extent of labour dispute cases in China due to the complexity of labour disputes and their resolution mechanisms; therefore, official statistical reports only indicate part of the story, as these are only labour disputes registered for arbitration.<sup>99</sup> The primary data of this study also shows that although most interviewees have experienced labour disputes, few attempted to resolve their disputes through a formal legal resolution system. Instead, most resolve disputes by informal and traditional means. A large amount of labour disputes that interviewees have experienced have not been registered into any formal or informal statistics. There is also a massive increase in the use of the formal dispute resolution mechanisms from 2008. This may indicate an increased willingness to use the reformed legal system.<sup>100</sup>

### **3.2. Decrease in Wage Defaults Since 2003**

Nearly all interviewees agreed that wage defaults had happened much less in recent years, especially in the 2010s, and they believed that favourable policy since 2003 was the main reason for these changes. For instance, Xinghua, born in 1970, a tilling master, said, “Nowadays, our workers’ wages are seldom defaulted. In the past, it always happened. Since the policy is better. In the past, there is no place that we could turn to (if there was a wage default), but now we can turn to [the] Labour Bureau.”<sup>101</sup> Aiguo also said, “Now it is OK to delay payment for bosses, but it is not OK to default our workers’ wages,

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<sup>98</sup> Juan Li, (January 16, 2015), Personal Interview.

<sup>99</sup> Shen, *supra* n. 3: 47.

<sup>100</sup> Ronald C. Brown, “Defusion of Labour Disputes in China: Collective Negotiations, Mediation, Arbitration, and the Courts,” *China-EU Law Journal* 3:2 (2014).

<sup>101</sup> Juan Li, (January 4, 2015), Personal Interview.

because we can [report] them to [the] Labour Bureau.”<sup>102</sup> Many of them mentioned the Labour Bureau; however, only a few have actually contacted it, and most had merely heard about it. For instance, Aiguo explained, “I heard that the Labour Bureau would call the bosses and require them to pay off the wages. But I’ve never been there.”<sup>103</sup>

For many respondents, 2003 was the beginning of these changes. For instance, Xiaozhan pointed out that, in that year, Premier Zhu Rongji helped a construction migrant worker recover his unpaid wages. Subsequently, as Xiaozhan explained “Zhu Rongji [published] a new policy, prohibiting wage defaults to migrant workers.”<sup>104</sup> In fact, Xiaozhan recalled it was Premier Wen Jiabao who pioneered these efforts, rather than Zhu Rongji. In October 2003, Premier Wen Jiabao helped a migrant construction worker to recover his wage arrears of 2,240 yuan.<sup>105</sup> This event was often regarded as the initiation of the Wages Campaign around China from 2004 to 2007. According to Biddulph et al., since the late of 1990s, at both local and national levels, there had already been growing awareness of, and concern about, the increasing social disruption flowing from exploitation and abuse of migrant workers in cities. However, prior to the Wages Campaign, Chinese regulations did little to address issues related to wage defaults in construction industry.<sup>106</sup> The Wages Campaign was declared a success. As the chairman of the NPC Standing Committee, Wu Bangguo, reported that in most provinces the “historical problem” of non-payment of wages to migrant workers had been “basically resolved.” Wu announced that by the end of 2006, the unpaid wages accumulated before 2003 amounting to RMB 33 billion had all been paid. In some areas where problems

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<sup>102</sup> Juan Li, (February 1, 2015), Personal Interview.

<sup>103</sup> *Ibid.*

<sup>104</sup> Juan Li, (February 1, 2015), Personal Interview.

<sup>105</sup> Verna Yu, “Pay Day at Last after Premier Aids a Peasant: Wen Jiabao is Quick to End Impoverished Worker’s Plight,” *South China Morning Post* (October 29, 2003): 6.

<sup>106</sup> Sarah Biddulph, Sean Cooney, and Ying Zhu, “Rule of Law with Chinese Characteristics: The Role of Campaigns in Lawmaking,” *Law & Policy* 34:4 (2012): 373-401.

were ongoing, Wu anticipated the problems would be resolved by mid-2008.<sup>107</sup> This Wage Campaign, as well as the related regulation and police changes, may explain why most interviewees of this study felt that there have been much less wage arrears since 2003.

Some interviewees mentioned an important policy in the construction industry: deposits for migrant workers' wages. For instance, Guohui, a site manager, told me that construction companies in Guangdong need to pay a wage deposit in advance when they contract a project, "If you want to contract or subcontract a project, you must pay a deposit of 1 to 2 million yuan. This deposit only will be returned after the project is completed and all the workers' wages are paid off."<sup>108</sup> He was not sure the department to which the "deposit" should be paid, and assumed it was the Urban Construction Administration Office (Chengshi Jianshe Guanli Bangongshi)<sup>109</sup> Guohui also mentioned that subcontractors needed to pay a deposit to general contractors, as well. Hongliang thought this wage deposit should be paid to the Labour Bureau,<sup>110</sup> while Jinyun believed that banks held the wage-deposits.<sup>111</sup>

### **3.3. Wage-Deposit System in the Construction Industry**

Although respondents were unclear as to which premier helped migrant workers to recover wages, or to which department wage deposits should be paid, they did perceive the changes and trends correctly. The regime started to change policies and regulations

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<sup>107</sup> "Most Provinces in China Have already Fundamentally Resolved the Historical Problem of Delayed Payment of Wages," *China News Web* (March 8, 2008), accessed June 10, 2017, <http://www.chinanews.com.cn/gn/news/2008/03-08/1186062.shtm>.

<sup>108</sup> Juan Li, (December 23, 2014), Personal Interview.

<sup>109</sup> 城市建设管理办公室.

<sup>110</sup> Juan Li, (December 28, 2014), Personal Interview.

<sup>111</sup> Juan Li, (January 20, 2015), Personal Interview.

regarding migrant workers from the early 2000s. Subsequently, in 2006, an important policy was issued, *Some Opinions of the State Council on Solving the Issues of Migrant Workers* (hereafter, *Opinions*).<sup>112</sup> Clause 6 established a wage-guarantee system to protect migrant workers' interests. It demanded government agencies strictly regulate employers' payment behaviours, and ensured that migrant workers were paid fully, and on time. Employers with histories of wage arrears would now be required to deposit money in advance, in a special wage-account. This wage-account must be supervised and managed, and cannot be used for other purposes. The *Opinions* also underscored that payment arrears in government projects must be resolved effectively. If funds were not sufficient in advance, construction permits would not be granted. The regulation also punished employers who default on migrant workers' wages. The punishments could range from suspending businesses, to reducing, or cancelling construction qualifications, or revoking a business license.<sup>113</sup>

The *Opinions* is one of the most important policies regarding migrant workers in China. It introduced a series of measures to increase migrant workers' income, to enhance their occupational skills, to raise the proportion of being covered by social insurance, and to protect their labour rights.<sup>114</sup> Many local governments published policies regarding the implementation of the *Opinions*. For instance, in 2009, the Guangzhou government enacted the *Administration on Wage Payment in the Construction Industry in Guangzhou*.<sup>115</sup> It explicitly requires that construction companies open wage-deposit accounts before starting projects. The owner or the developer must transfer wage deposit,

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<sup>112</sup> *Some Opinions of the State Council on Solving the Issues of Migrant Workers*, accessed December 23, 2016, [http://www.gov.cn/zhuanti/2015-06/13/content\\_2878968.htm](http://www.gov.cn/zhuanti/2015-06/13/content_2878968.htm).

<sup>113</sup> *Ibid*: Clause 6

<sup>114</sup> *Some Opinions of the State Council on Further Improving the Service for Migrant Workers*, accessed December 24, 2016, available at: [http://www.gov.cn/zhengce/content/2014-09/30/content\\_9105.htm](http://www.gov.cn/zhengce/content/2014-09/30/content_9105.htm).

<sup>115</sup> *Administration on Wage Payment in the Construction Industry in Guangzhou*, accessed December 24, 2016, <http://sfzb.gzlo.gov.cn/sfzb/file.do?fileId=E91163A788CF4113B5B8459D20D478B7>.

which is 2 percent of the total contract price, into the wage-deposit account. The wage deposit should be between 100 thousand yuan and 3 million yuan. This policy in Guangzhou underscores that if the wage-deposit is not fully paid, a construction permit will not be granted.<sup>116</sup> It explicitly points out three conditions under which the wage-deposit should be used to pay workers, including: 1) the construction enterprise has financial difficulties, and cannot pay workers; 2) the project is completed or stopped, but workers' wages have not been paid fully; or, 3) other necessary circumstances that have been approved by the Human Resources and Social Security Department.<sup>117</sup>

In 2014, the State Council issued another important policy regarding migrant workers, *Some Opinions of the State Council on Further Improving the Service for Migrant Workers*.<sup>118</sup> Only by comparing the titles of these two policies of 2006 and 2014 can we get a sense of the different attitudes of the regime. Clause 8 of the 2014 *Opinions* further requires enhancing the wage-guarantee system in the construction industry. It obliges the establishment of a wage-deposit system in the construction industry, and building wages-emergency-fund system in some areas. It also requires improving and implementing a general-contractor-responsibility system, which obliges the general contractor to be responsible for wages of all migrant workers involved in a project. It demands a joint system of labour security administration and criminal justice, and requires local governments to take full responsibility to resolve wage default problems. It obligates the promotion of a real-name debit card system for wage payment. Most importantly, it clearly points out the agencies in charge of implementing Clause 8, including the Ministry of Human Resources and Social Security, the Ministry of Public

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<sup>116</sup> *Ibid*: Clause 5.

<sup>117</sup> *Ibid*: Clause 10.

<sup>118</sup> *Some Opinions of the State Council on Further Improving the Service for Migrant Workers*, accessed on December 24, 2016, [http://www.gov.cn/zhengce/content/2014-09/30/content\\_9105.htm](http://www.gov.cn/zhengce/content/2014-09/30/content_9105.htm).



Security, the Ministry of Housing and Urban Construction, the People's Bank, the High Court, and the All-China Federation of Trade Unions.<sup>119</sup>

Many local governments amended their policies on the wage-deposit system based on the *Opinions* of 2014. For instance, Guangzhou amended the *Administration on Wage Payment in the Construction Industry in Guangzhou* in 2014.<sup>120</sup> This explicitly outlines the process of using wage-deposits: when workers' wages are defaulted upon, the relevant administrative department will instruct the general contractor and bank to use the wage-deposit. The contractor should pay workers' wages under the supervision of related administrative department. The stipulation also reduces the maximum amount of wage deposit from 3 million to 2 million yuan.<sup>121</sup> The "related administrative department" varies in different regions, but refers to the Labour Bureau in most circumstances.

It is doubtless that these policies at all levels in China since the beginning of 2000s have established a more effective system for protecting migrant construction workers' payment rights. These policies have been more effectively implemented in developed areas, such as Beijing and Guangzhou; they have gradually become influential in less developed areas, such as Hubei and Northeast. They have significantly improved the conditions of wage arrears in the construction industry in China.

### **3.4. The Nature of Labour Disputes in the Construction Industry**

The nature of migrant construction workers' labour disputes combines reactive and proactive, defensive and offensive tactics. Migrant workers normally take proactive

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<sup>119</sup> *Ibid*: Clause 8.

<sup>120</sup> *Administration on Wage Payment in the Construction Industry in Guangzhou*, amended 2014, accessed December 24, 2016, [http://www.gzns.gov.cn/longxue/bmfw\\_1/ldjy/201504/t20150422\\_161094.html](http://www.gzns.gov.cn/longxue/bmfw_1/ldjy/201504/t20150422_161094.html).

<sup>121</sup> *Ibid*.

actions before deciding to accept job offers, and act reactively after their wages have been defaulted upon. When a boss is a co-villager, as in most cases, migrant workers are defensive initially, and become increasingly offensive as the issue persists.

In order to reduce the possibility of wage default, workers carefully choose their bosses. All interviewees said they choose bosses based on two criteria: their financial capability and reputation. Thanks to modern communication, and a tradition of clan living, it is convenient for migrant workers to know fair market prices for jobs on construction sites in different cities. Information travels among workers from the same hometown. All migrant workers return to their hometown sooner or later in the twelfth lunar month, and rest for the winter. Families and friends get together every day. They drink wine, smoke cigarettes, and play poker and Majiang (mah-jong) together. Naturally, they chat about their bosses and jobs. With most leaving their hometowns in March, or after the Qingming Festival, which is April 4<sup>th</sup> or 5<sup>th</sup>, there is plenty of time to exchange information, and make clear decisions on which city they are going to work in, and the boss for which they will work in the upcoming year. Because of labour shortages in recent years, migrant construction workers, especially those with good skills, have more choices. In order to recruit employees, bosses often visit workers' houses during Spring Festival, bringing presents and warm words, and sometimes even paying 10 thousand or even 20 thousand yuan in advance to workers. However, popular workers do not want to take any advance money, as they want to carefully choose their best option.

When they accept a job offer after careful consideration, their behaviour tends to be more reactive. Migrant construction workers never demand rights or benefits beyond wages. They never regard themselves as “workers,” but rather as “peasants,” and do not believe they are eligible for other “‘labour’ rights.” Labour contracts? Medical insurance?

Weekends with payment? Pension allowance? “No, those are for the ‘formal’ workers and urban residents, not for us,” Chutian explained.<sup>122</sup> What is more, they accept the unwritten rule in the construction industry and their hometown that they only get paid at the end of every lunar year. As long as the boss pays them by then, he is a good boss.

Another unwritten rule is that migrant workers only ask for money from their little boss – the immediate subcontractor who recruits them – who is always their co-villager. Whether the general contractor or subcontractor at a higher tier pays their little boss, the migrant workers do not care. They believe it is the little boss’ responsibility to ask for money. Only when a little boss organizes them to take progressive actions to ask for money from the “bigger boss,” will they follow; however, they regard this as a favour to the little boss, rather than their own labour dispute. They support their little boss by many aggressive means, such as blocking the site entrance, cutting off electricity and water on site, demonstrating in front of the contractor’s company or even Labour Bureau, or even threatening to commit suicide. The purpose is to attract enough attention from local authorities and media, in order to put pressure on the contractor and local government to resolve the problem.

For instance, Zhao told me of his experience in the Northeast. There, a general contractor refused to pay Zhao’s little boss, who was Zhao’s co-villager. As Zhao explained:

Our boss asked us to stop working, to ask for money with him. Normally it’s not our business. But this time the project is about to finish, and our boss could not get the money yet. So we all went to the company with him, around fifty people, all Xiaogan workers. We blocked the gate, and our boss went inside to talk with the company.<sup>123</sup>

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<sup>122</sup> Juan Li, (January 6, 2015), Personal Interview.

<sup>123</sup> Juan Li, (February 5, 2015), Personal Interview.

When asked about the dispute's result, Zhao thought for a while, and answered, "I am not sure. We all left when the project finished, and our boss stayed there asking for money. I don't know the result, but the little boss paid me by the end of that year."<sup>124</sup>

Another young boy, Wei, also had an adventure in the Northeast. Once, the general contractor had not paid Wei's little boss for a long time, and the little boss could not even buy food for the migrant workers. The little boss asked his workers to stop working, block the gate of the site, and cut off electricity and water. He asked three young boys, including Wei, to climb up to a high tower, which was tens of meters high, and threatened that if the contractor would not pay, the migrant workers would commit suicide. Although this seems shocking, Wei shrugged, "It's not a big deal. I would not jump anyway."<sup>125</sup> Their aggressive actions successfully attracted attention from the media, and journalists arrived on site in a short time. The contractor agreed to pay right away under the pressure. However, the saddest part of this story is that, after Wei and his friends climbed down from the tower, and the journalists left, the general contractor only paid Wei's little boss a small part of the arrears. As with Zhao, he did not care much about the result of the dispute, and did not know whether the contractor paid his little boss later. He left the site when the project finished and received his wages in full by the end of lunar year.

### **3.5. Major Means of Resolution: Conservative, Informal, and Violent**

The nature of migrant construction workers' dispute resolution remains primarily conservative and informal. They adopt different strategies whether dealing with labour disputes within their autonomous system or out of it. Within their autonomous system, the

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<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

ambiguous identity of “migrant workers” returns to that of “peasants,” though they rarely do farm or agricultural work. In these internal situations, wage disputes defaults simply become personal debt disputes between two rural residents, rather than labour disputes between employees and employers. Workers essentially try to resolve the problem by pressuring on ethical and familial grounds. Considering that most Xiaogan migrant construction workers choose to work for Xiaogan bosses, ethical pleas and family relationships remain a major means with which to resolve labour disputes in the construction industry, at least in Xiaogan area.

Migrant construction workers normally do not regard wage default as a “dispute” in the first two or three years. They still have faith that the little boss has a conscience and capability to pay them back. They visit the boss’ houses frequently, expressing grievances; for instance, “My daughter-in-law will have a baby soon, and the medical fee is very expensive,” or “I need to take a training course for a driver’s license, but I don’t have that money.” In most cases, bosses will try every means possible to pay them back, and disputes will be resolved amicably, or at least will not turn hostile.

In other cases, normally after repeated disappointments, workers lose hope, and many turn to violence. They stay at the bosses’ houses and refuse to leave. They force the boss to pay them back, and initiate fights. I even heard stories of kidnapping, harm, and murder.<sup>126</sup> For instance, Yafang had a labour dispute in 2007. The little boss was his co-villager, owed him around 3,000 yuan. It took him five years to get the money back. Every year, Yafang went to the little boss’s house asking for the money. During the Spring Festival of 2013, Yafang finally lost patience and stayed in the little boss’s house,

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<sup>126</sup> These are second-hand stories that I heard from my interviewees, but not my interviewees’ personal experiences.

refusing to leave. They fought with each other, and ultimately the little boss paid Yafang in full. For Yafang the reasoning to turn violent was simple: “What else can I do? My kids need to go to school, and I need money! He must pay me back!”<sup>127</sup>

Based on the primary data, I found that the ethic among family and clan members is surprisingly powerful. In most cases, bosses try every means possible to pay workers’ wages on time. They stay in host cities quite late every year to ask for money from contractors; they use their own money to pay off wages if they have not been paid, and they even borrow to fulfill their promise. In rural China, “face” and reputation mean a lot, especially for those who want to run their own business in the construction industry. However, despite best efforts, sometimes subcontractors cannot fulfill their duties. Especially since the beginning of 2010s, due to the global economic crisis, and the “anti-corruption and clean-government campaign,” the construction industry in China has been shrinking. Many projects were cut, and many developers and investors’ cash flow was cut off. When losing too much, sometimes subcontractors cannot save “face” or take reputation into consideration.

Some workers may simply give up on collecting bad debts if the amount is not significant, because they do not have time to argue, or because they do not want to argue with relatives or good friends. However, in these cases, workers will not work for that boss again, and will spread information about the boss to relatives and acquaintances. For instance, Jinyun told me his experiences of labour disputes, “The boss owed me a couple of thousand yuan. It was not much. I have no time to argue with him all the time, and had to let it go. But definitely, I would not work for him anymore.”<sup>128</sup> In some cases, some

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<sup>127</sup> Juan Li, (December 10, 2014), Personal Interview.

<sup>128</sup> Juan Li, (January 20, 2015), Personal Interview.

bosses have to choose to flee from their hometowns, and never return. For a rural resident who cares much about clan and family relationships, the cost is too high.

In other cases, when migrant workers have very good relationships with their little bosses, they may feel awkward about pushing the boss too hard. For instance, in 2007 Wei worked for his brother's classmate, who owed him six months' wages, more than 20,000 yuan. This little boss had a good relationship with Wei and his brother. He offered Wei a second-hand van to balance the defaulted wages, but Wei refused. Then the little boss claimed he gave the van to Wei's brother; Wei's brother insisted that he had not accepted the offer. Wei said with a wry smile, "We are too familiar with each other. Now it's impossible to figure out the truth. Just let it go. He is very nice to us though. Every time when we need help, he shows up. How can I play hard ball with him?"<sup>129</sup> Wei also showed his understanding to his little boss, because the big boss did not pay him, and he lost around 400,000 yuan in that year. Therefore, this little boss could no longer do business in the construction industry.

### **3.6. Disorganized Disputes in Hometown**

Many scholars have noted that the main features of Chinese workers' protests are decentralization and cellular activism.<sup>130</sup> Labour disputes in the construction industry are even more disorganized and individual than those in the modern factories. Different from the disciplined work in production lines requiring cooperation and teamwork, there is barely any discipline or cooperation among plasterers. They work by themselves, or in families. They are their own bosses. When wages are defaulted upon, migrant

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<sup>129</sup> Juan Li, (February 5, 2015), Personal Interview.

<sup>130</sup> Lee, *supra* n. 2; Friedman and Lee, *supra* n. 37; Chen, *supra* n. 46.

construction workers tend to regard it as a personal issue between two rural residents, rather than as a labour dispute between employer and employee. In such a situation, it is hard for migrant workers to have organized and unified labour protests.

For instance, Jianguo, told me about his dispute with a subcontractor. In 2012, Huang, the subcontractor, owed Jianguo, and 30 other migrant workers from Inner Mongolia around 300,000 yuan. They waited at the construction site for around 20 days after their project completed, and had to leave when it got cold. After returning to their hometown, they went to Huang's house nearly every day in the twelfth lunar month, but Huang avoided them. On New Year's Eve, six migrant workers, including Jianguo, finally caught Huang when he attempted to return home under the cover of darkness. They demanded that Huang pay their wages; Huang explained that he had no money, and would pay the workers right away when the big boss paid him. Then some workers required Huang to write an IOU,<sup>131</sup> but Huang refused. They remained there for hours. As Jianguo explained, "Some of us insisted to stay, until we got the IOU note; but others wanted to leave. So we all left by the end with nothing. You know, everyone has different ideas. It was New Year's Eve, some wanted to go back home to celebrate the festival, and some said it was useless to stay there. Anyway, it is very hard for our peasants to do anything together."<sup>132</sup>

Jingming also mentioned a similar opinion when talking about his experiences of wage disputes: "Our peasants are really lack cohesion, you know. We cannot do anything together. I want to go, but he does not want to. Every time, there are only a few people show up, or sometimes only myself. It is useless that I went there all by myself. You

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<sup>131</sup> IOU means "I owe you."

<sup>132</sup> Juan Li, (February 10, 2015), Personal Interview.



know, strength lies in numbers. If we could go together, it would be better.”<sup>133</sup> Based on the primary data, it is safe to assume that in most circumstances, there is still a lack of working class awareness and cohesion among migrant construction workers, which prevents the migrant construction workers from having more organized and unified labour protest.

### **3.7. Organized Labour Protests in Host Cities**

In contrast, migrant construction workers are relatively more organized and unified when in host cities. There, workers may organize or participate in “mass actions” in order to attract attention from local government. The most organized labour protest I heard of during the fieldwork was from Xiaohua, one of the three high school graduates. Xiaohua worked in Yingkou city, Liaoning Province, in the early half of 2014. The contractor was a construction company from Anhui Province. It had not paid workers’ wages since October 2013. The workers stopped working in April 2014, and asked for their wages. They appealed to the Labour Bureau, and waited for one month, but both the owner and contractor were in financial crisis, and were incapable of paying. The migrant workers independently organized a parade of around 500 migrant workers. Xiaohua was one of the leaders of that protest.

The group demonstrated in front of the Yingkou government. Policemen attempted to stop them, saying, “This is not the government’s duty, and you should go to the Labour Bureau or Court!” The workers refused to back off, and Xiaohua challenged the policemen saying, “If the City Government Office cannot resolve our problem, we will go to the Municipal Party Committee; if they cannot help us either, and we will go to

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<sup>133</sup> Juan Li, (February 13, 2015), Personal Interview.

appeal to the Central Government in Beijing! We are not afraid. And we can always call China National Radio.”<sup>134</sup> Ultimately, this parade forced the Government Office to send representatives to talk with the workers, and promise they would take control of the situation. Xiaohua was one of the workers’ representatives. By the end, the government required the owner to pay the contractor; the Procuratorate froze the money as soon as it reached the contractor’s account. The Labour Bureau took charge of wage payment. All workers were paid in full. It was very effective and efficient.

I was impressed by Xiaohua’s experience and his opinions. This organized labour protest in Yingkou may indicate an awakening of class-consciousness in the construction industry which lacks cooperation and discipline. The assumption under which I had operated was that such organized and large-scale labour protest was rare. However, Xiao responded, “It happens a lot! You seldom heard about it because you take the interviews in Hubei! Hubei is the worst! If our case happened in Hubei, it [would be] impossible to resolve.”<sup>135</sup> He further explained that the government agencies in Hubei Province always try to push migrant workers out when there is a labour dispute, and claim it is not their duty. Xiaohua became excited, striking the table, and questioned, “Then what are [the officials’] duties? As a government official, your duty is supposed to serve the people! Otherwise, you’d better go back home and plant potatoes!”<sup>136</sup> Your salary is from our taxes, it is our money with sweat and blood!”<sup>137</sup>

It is also interesting to find that migrant workers do not always uphold the unwritten rule within their autonomous systems that they only ask for wages from their immediate

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<sup>134</sup> Juan Li, (February 8, 2015), Personal Interview.

<sup>135</sup> *Ibid.*

<sup>136</sup> Xiaohua said the old Chinese saying, “当官不为民做主,不如回家种红薯.”

<sup>137</sup> Juan Li, (February 8, 2015), Personal Interview.

subcontractor, rather than the big boss. When in their hometown, they stick to this unwritten rule and only ask for money from the little boss who is their co-villager. They claim that, because it is the little boss who recruits them, it is the little boss' responsibility to pay their wages, no matter whether the little boss has been paid. But when migrant workers have to ask for wages from a big boss under unusual circumstances, they approach the matter differently. For instance, Yafang told me of his experience in 2012, in Inner Mongolia. His little boss, who was not his co-villager, ran off with money, and left workers unpaid. All of the workers went to the general contractor's company asking for wages. The contractor said that he had already paid the little boss, and could not pay to the workers again. But the migrant workers refused to leave, claiming, "We have not received a penny. We worked in this site, and you are the boss of this site, so you should pay us. Otherwise, we would [report] you to the Labour Bureau." They also declared, "We don't care what happened between you and the little boss. We only want our salary! We worked hard, and we deserve it!"<sup>138</sup> Before Yafang and his workmates appealed to the Labour Bureau, the contractor paid them in full. In reality, the migrant workers are quite sophisticated and practical, and tend to choose the best strategy according to the situation. It is safe to assume that the reason they adhere to this unwritten rule in their hometown is not because of their loyalty to the autonomous system, but rather because of the close relationship between them and their immediate subcontractor. It would be much easier to put pressure on the little boss who directly recruits them, and easier to get their money back.

### **3.8. Aggressive and Violent Rural Youth**

It is notable that the rural youth in Shuangfeng Town are more aggressive and violent

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<sup>138</sup> Juan Li, (December 10, 2014), Personal Interview.

than the older generation migrant workers. Among the ten interviewees born after 1980, five of them mentioned they were punished or even dismissed from middle school because of fighting. Three of them, all born after 1990, gave me a similar astonishing answer when replying the question of whether law was important in their lives. They said law was important sometimes, because if there was no law, they might hurt someone badly or even kill others in fighting. It is because of law they knew they had to control themselves, and could not beat others too hard.

In many cases, it is impossible for migrant workers to settle labour disputes peacefully and quietly. Only when they make trouble for the bosses or local governments is their grievance heard, and acknowledged by mass media, and authorities, and hence resolved effectively. The rural youth learn to believe that violence and confrontation is the best way to resolve problems. As Zhen explained, “We are not afraid of making trouble. In fact, if there is a trouble, the bigger the better. As the old saying goes, ‘nothing I have nothing I fear.’ A person with bare feet is fearless!”<sup>139</sup>

Even when young migrant workers use conservative means of ethical pleas on their bosses, they act differently from their fathers. For instance, Zhen, born in 1990, told me what he would do in the coming Spring Festival of 2015. In Zhen’s case, the little boss was Zhen’s uncle, and the big boss was also their co-villager. Zhen’s uncle owed 7,000 yuan to Zhen in 2010, because the big boss, who was also a subcontractor, in this case, had not paid him. Zhen went to his uncle’s house during every Spring Festival since 2010, but his uncle was really incapable of paying. During the Spring Festival of 2014, Zhen broke the unwritten rule in his hometown and directly went to the big boss, asking for money:

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<sup>139</sup> Juan Li, (December 29, 2014), Personal Interview.

The boss said that he had no money, and I told him not to be a boss then! Don't be a boss if you cannot pay a couple of thousand yuan. I abused him, with all kinds of bad words. Shame on him! I will go to his house with my classmates this year, and we will stay there until he pays me. We will eat in their bowls, and sleep in their beds. This is quite effective! I did this before, helping my friend to ask for his money.<sup>140</sup>

Although the rural youth, such as Zhen, seem quite confrontational, they are, in fact, more practical and sophisticated than they appear. They take violent actions as strategy to attract attention from the authorities. They clearly know what they can and cannot do. Violence is a carefully chosen strategy. For instance, Zhen said that he was not afraid for the boss to call 110; in fact, this was what he wanted. As Zhen explained, "If the policemen come, they would require him to pay me, too. We know how to do this, and we won't beat him badly." He would not, however, call the police himself, as, "The police would say that they are not in charge of wage disputes, and refuse to come. But if we fight, and he calls 110, the police must come."<sup>141</sup> This is partly a consequence of China's political system, and the Party regime's deep fear of public unrest. It also could be considered as an interaction between political and legal strategies for resolving conflicts in modern China.

### **3.9. Going to Court: Not Worth It**

Obviously, arbitration and legal trials are not options for migrant construction workers to resolve labour disputes, no matter whether in host cities or hometowns. When I asked interviewees why they did not go to court or arbitrators to resolve disputes, they provided two general answers, first, "He did not refuse to pay me. He is just out of money

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<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

currently;” or second, “It is not worth [it].”

For instance, a stone factory owed Zhiliang around 80,000 yuan in 2012. Zhiliang went to the owner’s house every Spring Festival, asking for his money. Every year, the boss said a lot of nice words and made promises, and gave him some money. By the end of 2014, the owner still owed Zhiliang around 50,000 yuan. Zhiliang told me he was really worried about this debt. Then I asked him whether he had considered taking legal action to resolve this problem, such as going to arbitrator or court with the IOU notes. Zhiliang thought for a while, and answered, “It is not the right time. They did not refuse to pay me. They only said they also had lots of difficulties, because the construction company did not pay them either. It is true. He owed a lot of people, not only me. We are all at the bottom of the construction industry. The developers owe the construction companies, and the companies owe him. What can he do? And the owner is my friend, and I cannot be too tough to him. He, of course, would pay me, and it just takes a little longer.”<sup>142</sup>

Another example is Xinghua who was owed 3,000 yuan by a relative in 1998. Xinghua went to this little boss’ house every year, but could not find him. This little boss owed many people in his hometown, and chose to disappear. Xinghua was very angry because, “he is so indifferent, and acts like nothing happened.” When I asked Xinghua whether he was willing to take the IOU to the arbitrator or court, he replied without hesitation, “No. It is not worthy, only for a couple of thousand yuan! One should do anything following his conscience. It depends whether he has conscience. Actually, I can find him if I really want to. I know his mother-in-law’s house, and he would go there every Spring Festival. But you know, only for such a small amount of money, how could I keep watching him

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<sup>142</sup> Juan Li, (December 29, 2014), Personal Interview.

every day? It all depends on whether he has a conscience or not.”<sup>143</sup> Just as all other interviewees, both Zhiliang and Xinghua avoided settling their problems by formal legal procedures. It is true that the formal labour dispute system in China is time-consuming and expensive, but the migrant workers never attempt to use it. They simply do not consider the formal legal procedure as an option. The traditional culture of valuing harmony, and despising litigation, prevent the migrant workers from pursuing lawsuits.

#### **4. Conclusion**

As for migrant construction workers in China, in most cases, labour disputes simply refer to wage defaults, and they never expect any other kind of labour rights. Unfortunately, thanks to the “efficient” multi-tier subcontracting system, the construction industry is the hardest-hit area in China with respect to wage arrears. There are too many situations where migrant workers at the bottom of the industry ladder are losing their salaries. What is worse, there is a well-accepted “custom” in Xiaogan area that workers normally are paid when the project is completed, or at the end of the lunar year. The long-term payment schedule significantly increases the risk and amount of wage default in the construction industry.

There is clear consensus among interviewees that wage defaults have occurred far less frequently in recent years. Most interviewees believe the major reason for this change is improved policies. Since the beginning of 2000s, the central and local governments of China have tried to improve administration over the construction industry, and to better protect migrant workers’ interests. It is doubtless that many causes, including booming economy, increased income in rural areas, preferred policies in agricultural section,

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<sup>143</sup> Juan Li, (January 4, 2015), Personal Interview.

growing labour shortage, new labour policies and regulations, as well as new media openness, all work together to make these changes in the construction industry.

In theory, the new Labour Dispute Mediation and Arbitration Law in China establish a more efficient and effective dispute resolution system, compared with older regulations; however, in reality, the formal legal procedure remains ineffective and unfriendly to migrant workers. Hence, arbitration and legal trials are not an option for migrant construction workers, no matter whether in host cities or hometowns. Hence, migrant construction workers' dispute resolution primarily remains conservative and informal, and sometimes quite violent.

The migrant workers adopt different strategies and means when dealing with labour disputes in their hometown than in host cities. In their hometown, wage defaults simply become personal debt disputes between two rural residents, rather than labour disputes between employees and employers. Hence the dispute is disorganized and individual. Migrant workers often try to resolve the problem using ethical pleas and appeals to their familial relationship. However, when bosses refuse to pay after several attempts at negotiation, migrant workers would become increasingly violent. In host cities, and when the boss is an "outsider," migrant workers can be quite offensive from the beginning. They are relatively more organized and unified, and may choose more "modern" means in order to attract attention from the local government.

The primary data illustrates that the ethic among family and clan members, as well as the pressure of establishing a good reputation in the construction industry, is surprisingly powerful, and much more effective than law or contracts. In most cases, bosses try every means possible to pay workers' wages on time, even taking the risk of borrowing from



usurers. This is likely the most important reason why migrant construction workers in Xiaogan choose to stay in their autonomous system, and only work for Xiaogan bosses.

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