

Labour market regulations and informal employment in China: To what extent are workers protected?

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Abstract

In spite of the rapid development of informal employment in China, insufficient is understood on the nature of this type of work and employment relations, its increasingly important role in the economy, and its implications for legal and social policies. Few studies have investigated the extent of coverage of labour market regulations, how and by whom workers informal employment are being organised and represented. This paper charts the sharp rise of informal employment in urban China in the last decade. It investigates the role of labour market regulations in the shaping of employment relations for those engaged in this form of employment and their employment outcome, including the gendered implications. It also examines various forms of organization and representation of these workers and the extent to which these mechanisms meet their needs. The paper argues that informal employment is becoming a main mode of employment in the Chinese labour market and is likely to continue to be the case in the foreseeable future. It concludes that the inadequacy of the function of employment agencies, the absence of a social security system for workers in informal employment, and the lack of effective enforcement of employment related regulations means that the majority of the growing force of workers in this category will continue to be disadvantaged.

Key words: labour market regulation, informal employment, rural migrant workers, social security, trade union, China

Introduction

There have been a growing number of studies on the employment terms and conditions of migrant workers, social security issues, informal employment, labour rights, and the changing role of the trade unions in China. These studies often focus on one or two of the topics identified here. Few studies, however, investigate the extent of coverage of labour market regulations on informal employment, how workers in this form of employment are being organised and represented, if at all, both outside and within the regulatory framework and by whom. In spite of the growing attention to and the rapid development of informal employment in China, insufficient is understood in western literature on the nature of this type of work and employment relations, its increasingly important role in the economy, and its implications for legal and social policies.

The rapid growth of informal employment in the last decade in China is consequential of the radical state sector reform and the diversification of ownership forms as part of its economic transformation. The development of the labour market of socialist China has experienced three stages. The first stage was a regulated, or more precisely controlled, labour market (urban and rural divide, *danwei* system) during the state-planned economy period. This was followed by a deregulating period during the 1980s and early 2000s when millions of farmers migrate to urban areas for employment and millions of ex-state sector employees were laid off, forcing them to seek re-employment in the labour market for the first time. The third stage is beginning to happen in which the government seeks to re-regulate the labour market in order to offer better employment protections and labour rights to workers, particularly those outside the state sector. Dealing with labour market transformation has been one of the most challenging tasks facing the Chinese government (Fleisher and Yang, 2003).

Labour market regulations fulfil important redistributive roles in a market economy, particularly from the point of view of vulnerable categories of workers and this may provide

necessary insurance from adverse market outcomes. Provision of labour standards may create pressure on employers to enhance their labour productivity through skill upgrading and better health and safety protection. However, over regulation reduces the competitiveness of firms and industries where the flexible deployment of labour forms an important part of their competitive strategy. It has therefore been argued that promoting efficiency and equity are the twin objectives of labour market regulation (e.g. Buchanan and Callus, 1993; Fudge and Vosco, 2001). ‘Another [goal] is to stop recreating and exacerbating labour market segmentation through the various forms of legal regulations’ (Fudge and Vosco, 2001, p.332). To this end, labour standards and collective bargaining are not alternatives but an integral part of the strategies of regulation (Fudge and Vosco, 2001). In informal employment, market forces play an important role in shaping the employment relations between workers and their employer(s). With the exception for a small minority in the skilled and professional occupations, informal employment is an unprotected form of employment, ‘which survived within the award system and indeed flourished in the gaps created by officially sanctioned exemptions from protection and limits in the enforcement and reach of award regulation’ (Campbell, 1996, p.571). As such, informal sector remains poorly regulated or unregulated in many countries. The notion of ‘decent work’ advocated by International Labour Organization (ILO) is closely related to the job quality of informal employment (ILO, 2002). This consists of seven basic forms of security: labour market security, employment security, job security, work security, skill reproduction security, income security and representation security (see Standing, 1997, pp.8-9).

The operation of the labour market involves a number of stakeholders: government, employers, workers, employment agencies and trade unions. Each plays different but sometimes overlapping roles, as we shall see to be the case in China. This paper charts the sharp rise of informal employment in urban China in the last decade. It investigates the role of

labour market regulations in the shaping of employment relations for those engaged in this form of employment and their employment outcome, including the gendered implications. It also examines various forms of organization and representation of these workers, including the role of employment agencies and trade unions, and the extent to which these mechanisms meet their needs. The paper argues that informal employment is becoming a main mode of employment in the Chinese labour market and is likely to continue to be the case in the foreseeable future. It concludes that the inadequacy of the function of employment agencies, the absence of a social security system for workers in informal employment, and the lack of effective enforcement of employment related regulations means that the majority of the growing force of workers in this category will continue to be disadvantaged.

Informal employment in China: patterns of growth and employment conditions

Patterns of growth

The use of informal employment in the form of temporary, seasonal, casual, part-time or hourly-paid work has long existed in China albeit on a much smaller scale than recent years. This was found on farms, in manufacturing plants, in governmental and public sector organizations for ancillary work, and in the once marginal and marginalized private economy. The term ‘informal employment’, however, is a relatively new concept in China that was first introduced by the labour authority in Shanghai in 1996. Informal employment (also known as ‘non-standard employment’ or ‘flexible employment’) as a flexible labour strategy has been gaining rapid attention in China since the late 1990s as a result of the massive downsizing in the state sector, the rapid expansion of the private economy, and the mass migration of surplus rural labour to urban areas.

Workers engaging in informal employment can be found in three types of organizations: 1). organizations operating in the formal sector; 2). organizations operating in the informal sector; and 3). loosely formed informal employment organizations. The first two

types are illustrated in Figure 1 and the third type illustrated in Figure 2. Generally speaking, informal employment incorporates non full-time, temporary, seasonal, and casual work in the informal sector. It also includes full-time temporary work in formal organizations, self-employment and those employed by the self-employed (He, 2003; Wang and Tan, 2003). According to Hu and Yang (2001), the proportion of workers in informal employment is relatively low in the state-monopolized industries and monopoly service industries such as telecommunication and finance, but is much higher in competitive industries that are labour intensive such as retail, catering and community services. Informal employment has become the main mode of employment for the latter.

The lack of consensus in China on the precise definition and classification of informal employment and the absence of any official statistics on the total number of employed in this mode and what forms of employment they take have been widely noted (e.g. Peng and Yao, 2004; Shi and Wang, 2007; Wu, 2008; Zhang, 2004). Nevertheless, it is estimated that at least 150 million workers are engaged in informal employment in the urban area, representing over 20 per cent of the total employment. They comprise of two categories of workers: 1). laid-off workers, unemployed persons and retirees from urban area; and 2). rural migrant workers employed in urban areas. There are also a group of entrepreneurs engaged in self-employed businesses who are relatively well-educated and skilled. But this only consists of a very small proportion of those in informal employment. A survey carried out by the All-China Federation of Trade Union (ACFTU) on re-employment of laid-off workers in selected cities found that 80-90% of the laid-off workers who regained employment in 1999 were engaged in informal employment (Jiang, 2003). It was reported that by mid-2000s there were over 100 million rural migrant workers working in the urban areas. They made up 58 per cent of the workers in the industry sector and 52 per cent in the service sector (The State Council, 2006). For example, In Yangzhou city, a medium-sized developed city in eastern China, about

360,000 workers were in informal employment, making up 50 per cent of the total workforce. They were mainly clustered in the construction, light manufacturing, tourist and catering, and community services sector. Over 90 per cent of them were rural migrant workers (Jiao, 2008). The Ministry of Labour and Security predicted that informal employment will become the main mode of employment within the next two decades in China (Shi and Wang, 2007).

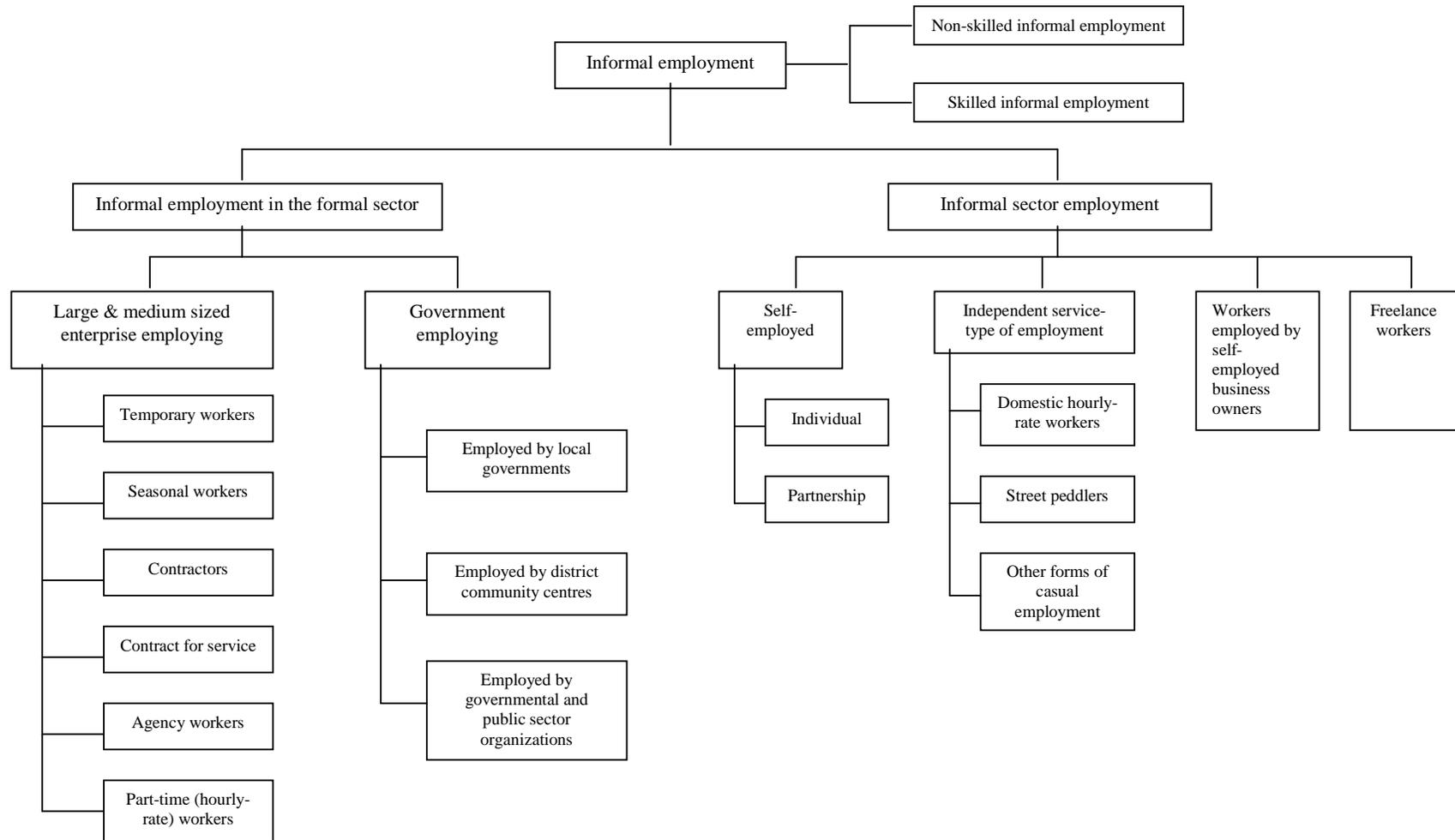
In fact, informal employment has been advocated by both academics (e.g. Chen, 2000; Jing, 2000; Tan *et al.*, 2000; Ding *et al.*, 2001; Song and Wang, 2001) and policy makers as the way forward to absorb unemployed workers since the late 1990s. As such, developing informal employment has been one of the main mechanisms for the much needed job creation promoted by the Chinese government since the late 1990s, in which job creation through developing community services is a central part of the employment strategy (Zhu, 2001). Substantial funds are made available to local governments to set up support facilities in local communities to help people find employment. Favourable policies have been issued by local governments to encourage the creation and uptake of these types of employment that provide entertainment, health, environment and security services for the community (Zhao, 2000). For example, from 1996, Shanghai municipal government has promulgated a series of favourable policies and developed a comprehensive set of government support system to facilitate the growth of informal employment labour organizations. By November 2006, there were a total of 38,000 informal labour organizations in Shanghai, providing employment opportunity to 427,000 workers. Over 56 per cent of them worked in the public welfare services sector (Xu, 2007).

The growth the informal economy therefore provides a wage income to millions of people who are most likely to be otherwise worse off and become an economic and social burden to the state. It contributes to the development of industries in the informal sector which may otherwise remain undeveloped or under-developed, since it is within this sector

that most of the non-standard jobs are found. The growth of non-standard jobs (especially that in the community services) also provides much convenience for urban residents' day-to-day life. Therefore the growth of informal businesses and employment undoubtedly has a positive impact on China's economic and social development.

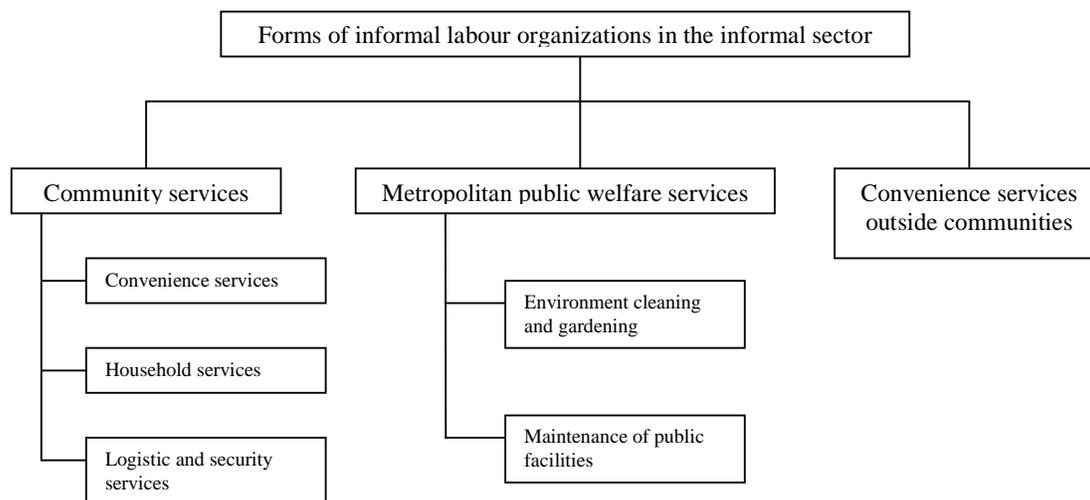
However, this achievement is not without its negative implications. There have been controversies about the term 'informal employment' ever since its introduction to China in the mid-1990s (*Yangzi Evening News*, 29th March 2001). Scholars believe that it is a term that degrades the social status of the job and therefore has a negative impact on those who are engaged in the sector, many of them enter this type of employment from a low social status already (e.g. rural migrants and laid-off workers). Among the different types of informal employment, jobs in community services attract the most attention in part because of its rapid growth and in part because this is where a relatively high proportion of female laid-off workers from the state-owned enterprises find their new employment. It is argued (e.g. Chen, 2000; Zhu, 2001) that labelling community service jobs as a form of informal employment is unhelpful to the formalisation and regulation of the sector, for which new regulations are being issued by the government and local authorities. It is worth noting that the government and official bodies tend to use the term 'flexible employment' to neutralize its negative image.

Figure 1. Informal employment in China



(Source: adapted from He, 2003, p.498 and Hu and Yang, 2001, p.70)

Figure 2. Forms of informal labour organizations



(Source: adapted from Gao *et al.*, 2007, p.119).

Employment terms and conditions

Existing studies on employment terms and conditions of informal employment have revealed a similar picture: low level of job security, low wage, poor working conditions, and lack of labour rights and social security protection. This is particularly the case for rural migrant workers, as evidenced in the statistical information revealed by the labour and trade union authorities from various provinces and major cities as part of the recent high profile campaigns to improve their working and living conditions. For example, over 72 per cent of the rural migrant workers did not receive their wage payment on time, particularly those working in the construction industry (*Workers' Daily*, 18th September 2004). Only about 10 per cent of the migrant workers in Guangdong Province earned a wage that was up to the average wage level of the Province. Only 16 per cent of the migrant workers had been given an employment contract in Shenyang City. In the non-state-owned sector in Guangdong Province, over 80 per cent of those suffered in work-related injuries were rural migrant workers. Over 80 per cent of the rural migrant workers did not participate in any form of

social insurance in Sichuan Province. Over 70 per cent of construction workers in Harbin City were found to have been working and living in extremely poor conditions. Less than 10 per cent of the rural migrant workers have ever received any training (*Workers' Daily*, 9th November 2004). In Shaanxi Province, a quarter of the rural migrant workers earned below the local minimum wage, 45 per cent of the workers had no rest days, and 30 per cent of the 1.07 million rural migrant workers had never received any training (*Workers' Daily*, 3rd December 2004).

The majority of workers in informal employment do not have an employment contract with their employer. Some employers take advantage of policy loopholes and hire and fire workers at will, rendering further job insecurity to the workers. In some situations where the employment relationship is complicated, for example agency workers and live-in nannies sent by employment agencies, it is unclear who the employer is and hiring parties tend to pass the parcel and evade their responsibilities (Cooke, 2006). It is clear that workers' labour rights are easily breached because of the informality of the employment relationships, the virtually absence of regulations specifically targeted at informal employment, the weak bargaining power of workers who lack labour market advantage, and the priority of employment over labour rights. In addition, since the majority of workers found their jobs through personal networks, workers are more likely to tolerate mistreatments by the employer due to personal ties (Zhang, 2008).

The adversarial employment situation endured by rural migrant workers is a direct outcome of the highly non-egalitarian development strategy that the Chinese government has adopted to the disadvantage of the rural population (e.g. Croll 1999; Meng, 2000; Saich 2001; Solinger, 1999). For the larger part of the socialist China era, farmers' mobility was highly restricted. According to Meng (2002), the state policy in the control of rural workers' mobility can be divided into six periods:

1. from 1958 to 1979 – forbidding movement
2. from 1979 to 1983 – controlled movement
3. from 1984 to 1988 – allowing movement
4. from 1989 to 1991 – controlling random movement
5. from 1992 to 2000 – regulating movement
6. after 2000 – fair movement

In addition, the social welfare provision for rural China has been a separate and much more limited system with no social insurance, few subsidized services available to farmers and their families and little more than a minimal safety net guaranteed for the childless elderly and other vulnerable categories of lone persons (Croll, 1999). These institutionalized discriminative practices continue when rural migrant workers enter urban employment, if not worsened by the lack of legislation and effective enforcement mechanism in the informal sector where the majority of them are employed.

Labour market regulations related to informal employment

A number of labour laws and regulations have been promulgated by the Chinese government in the last two decades, landmarked by the launch of the Labour Law of China (1995). They signal the beginning of the formation of a labour market and provide a legal framework under which employment relationship is governed in principle. In parallel, a system for labour dispute resolution was formed, albeit far from being robust (see Taylor *et al.*, 2003 for detailed discussion). It has been argued that, with ‘the major exception of freedom of association’, the labour standards established by the series of labour laws and regulations of China ‘are not markedly inferior to those of comparable countries and indeed many developed nations’ (Cooney, 2007, p.674). What remains most problematic is the lack of effective enforcement (Cooke, 2005; Cooney, 2007; Taylor *et al.*, 2003; Warner, 1996). While implementation failures are a characteristic of all regulatory systems (Cooney, 2007), the

Chinese system is frustrated by the multiplicity of employment-related laws, directive regulations and administrative policies issued at central, provincial and municipal government level, the ambiguous status of some of these regulative instruments, and the confusing channels through which workers can seek to secure compliance of laws (Cooney, 2007; Dicks, 1989; Lubman, 1995; Potter, 1999; Tanner, 1995).

It has been noted (e.g. Hu, 2004) that the existing body of employment-related regulations is primarily targeted at those in the formal employment sector with formal employment relationships. There is considerable ambiguity whether certain laws and regulations should apply to the informal sector and workers in informal employment. Employers also tend to take advantage of these regulatory loopholes and argue for exemption. Nevertheless, several pieces of labour market regulations are relevant to, or specifically aimed at, informal employment, as summarized below.

In 1999, the government introduced the Labour Market Wage Rate Guideline (hereafter the Guideline) which was piloted in 88 cities (Li, 2005). Shanghai has been the forerunner, as it has been in the implementation of other labour regulations and social security policies, in the promotion of the Guideline. By the end of 2001, wage rates for 627 occupations had been announced (china.org.cn, 2003). The publication of the Guideline increases labour market transparency and at the same time allows the labour market to have a fuller role in wage determination.

In 2000, The State Council issued the 'Regulation on Labour Market Management' (now superseded, see below) based on the Labour Law of China (1995). Local governments then devised their regulation based on this master print. These Regulations in principle provide a level of security for workers' employment rights. These Regulations are said to have some effect in regulating the labour market. However, these regulations, together with a series of other employment-related regulations, are essentially administrative policy

regulations that have limited authority and enforceability. Whilst the Labour Law of China carries more legal power, it provides little regulations on the labour market (Hu, 2004).

In 2004, the Ministry of Labour and Social Security issued a special regulation on minimum wage. It is a revision based on the 'Enterprise Minimum Wage Regulation' issued for the first time in 1993 (see Cooke 2005 for further discussion). A key feature of the revised regulation (enacted in 2004) is that it divides wages into two types: monthly and hourly, respectively applying to full-time and non full-time workers. According to the regulation, the monthly minimum wage should take into account factors such as a worker and his dependents' minimum living cost, the urban resident consumption price index, social security and housing accumulation fund fees, average salary, economic development level and employment situation. The hourly minimum wage should take into account the local monthly minimum wage, retirement pension and medical insurance fees, working conditions and intensity, work stability and welfare of non part-time workers, according to the regulation. Provincial level labour and social security authorities are responsible for setting and adjusting the minimum wage standard, deciding its application and related explanations. The regulation requires authority to consult local trade unions, enterprise unions or entrepreneur associations when setting the minimum wage standard and report it to the labour ministry. Employers who violate the regulation would be ordered to compensate for back pay and possibly receive administrative sanctions (China View, 2004).

In August 2005, the State Development and Reform Committee joined forces with other eight state committees to issue a document which specifies the removal of any discriminative regulations and illegitimate charges against workers who migrate from the rural areas or another region to seek employment in urban areas.

In 2007, the Chinese government stepped up its labour-related legislative activities, resulting in the promulgation of the Labour Contract Law of China and the Regulations on

Employment Services and Management (RESM). Both are to take effect from 1st January 2008. RESM are a set of implementation rules for the Employment Promotion Law (EPL), which superseded the Regulations on Labour Market Management promulgated in 2000. The Law on the Mediation and Arbitration of Labour Disputes was also approved to take effect on 1st January 2008. These regulations are aimed to ‘set the foundation for comprehensive employment services designed to better suit the current labour market needs’ (Huang *et al.*, 2008, p.4). However, they are considered to be far from being comprehensive enough to ‘adequately address equal employment issues’ (Huang *et al.*, 2008, p.4).

The implementation of minimum wage regulations is perhaps the most relevant case in point. Minimum wage regulations in principle should provide a floor to the labour market, thereby reducing differentiation among labour market groups, and aiding the reduction of wage discrimination – whether based on gender, place of origin (rural migrants versus urban workers), race, age or other factor. However, where minimum wage regulation is neither comprehensive nor fully enforced, the outcome may be also to increase competition and tensions between labour market groups (Cooke and Rubery 2002). In China, the biggest tension in the implementation of the minimum wage policy is perhaps that to do with the two largest groups of workers who may benefit from the policy – the laid-off workers and the rural migrant workers. Both are highly substitutable, although it has been argued that the latter is not competing with the former as rural migrant workers are only taking jobs that urban workers shunt (Cooke, 2005; Meng, 2000). Who are covered by the minimum wage regulation, what types of employers should pay a minimum wage, at what level should the wage be set, and how should the minimum wage be calculated remain issues of considerable controversy. Local governments have been less than enthusiastic in the implementation of the regulations. Employers’ violation of the regulation is common and often tolerated by workers for fear of job losses (Cooke, 2005). As a result, a large proportion of workers in informal

employment remain unprotected by a real wage floor – and their employment outcome rendered even bleaker by the absence of social security provision.

Scope and level of social security protection

Rodgers (2002) argued that the lack of social protection is not only a defining feature of the informal economy, but also a critical aspect of social exclusion to those who have never had access to formal mechanisms of social protection or are losing the protection they once had through the state and/or their workplace. This is especially true in developing countries where social protection for workers in the informal sector is either rudimentary or non-existent and where compulsory coverage, even when exists, is often not complied with in practice (ILO, 2000). Yet it is these workers in informal employment who are most in need of social protection, not just because of their job and income insecurity but more importantly, ‘because of the greater likelihood of their being exposed to serious occupational safety and health hazards. Such exposure impairs the health and productivity as well as the general well-being and quality of life of informal workers and their families’ (Rodgers, 2002, p.54).

In China, a rudimentary system of social security system has emerged to cover workers in the formal sector and gradually extending to those in informal employment (Zhang, 2007). However, the main problem is the absence of social security schemes affordable by those in low pay. Although a series of social security policy regulations have been issued by the Ministry of Labour and Social Security of China, the implementation of these schemes remains problematic and heavily biased towards urban residents. Some local governments are trying to address the situation by piloting social security schemes tailored for low-wage workers. For example, Cooke’s (2008) study found that a municipal trade union in southern China was facilitating the local government to introduce a low cost medical care scheme for workers in financial difficulty. The scheme provides subsidized medical care for registered workers at local hospitals. Another medical care scheme involves insurance co-

operatives where workers' participate in the insurance against specific types of illnesses such as breast cancer.

Shanghai and Beijing municipal governments adopted different insurance initiatives tailored for workers in informal employment respectively. In Shanghai, workers employed in the informal labour organizations can participate in all sorts of social security schemes. Both employees and employers are given a lower rate of contribution but the employees can enjoy the same benefits as those social security participants in formal employment. The objective of this favourable policy is to encourage the growth of informal labour organizations through government subsidy of contribution (Jia, 2007; Ren, 2008). This scheme is considered not efficient due to the high cost to be borne by the government. It triggers opportunistic behaviours of informal labour organizations which provide employment opportunities mainly to unemployed urban citizens, particularly the laid-off workers, instead of rural migrant workers (Ren, 2008). In contrast to the 'Shanghai Model' (Jia, 2007; Ren, 2008), the 'Beijing Model' (Jia, 2007) targets rural migrant workers by providing special regulations for their health insurance. According to the 'Temporary Regulations on Basic Health Insurance for Rural Migrant Workers in Beijing' (2004), contribution to the basic health insurance scheme for the rural migrant workers is to be borne by their employer instead of the workers. Rural migrant workers who suffer from major illnesses enjoy the same insurance benefits as others during their insured period, disregarding the number of years they have been insured. This model essentially shifts the financial burden from the rural migrant workers to the employer (Jia, 2007), making some low-profit businesses unsustainable.

Larger organizations, especially those in the formal sector, tend to provide better social security insurance for workers in informal employment. Those in certain types of occupational category, for example catering, will receive some health related benefits (e.g. regular health check up) as part of the compulsory requirement for the industry. But in

general, unemployment insurance and pension schemes for rural migrant workers are non-existent. In spite of the policy regulations that employing organizations must set up a pension scheme for the workers, rural migrant workers have no awareness of the availability of such schemes, nor do they realize the importance for them to do so. Those who wish to participate in the scheme may not be able to afford it. For example, Jiao (2008) reported that in 2004, only 15,000 workers in informal employment in Yangzhou – a developed city in eastern coast, participated in health insurance schemes. This was less than 5 per cent of the 303,000 rural migrant workers working in the city in the same year. The ‘Temporary Regulations on Health Insurance for Workers in Flexible Employment in Yangzhou city’ introduced in September 2003 played only a marginal effect due to the high cost of insurance and the bundled nature of insurance schemes (one must participate in the pension scheme prior to joining the health insurance).

It is clear that how to strike the balance between fairness and efficiency through reasonable allocation of the cost of insurance among the individual, employer and government remains a challenge to local governments. Each of them is coming up with its own initiatives, often implemented in a trial-and-error manner with varying degree of success.

Emerging forms of organization, representation and protection of migrant workers

The healthy development of a labour market requires not only a sound legislative framework and a balanced social security system, but also an effective representational mechanism through which the interests of employers and workers are adequately represented. Unfortunately, workers in informal employment ‘represent the largest concentration of needs without voice, the silent majority of the world economy’ (ILO, 2001, cited in Rodgers, 2002, p.70). The changing characteristics of the constituencies of employers and workers, the competing demands on the Chinese government to protect labour rights and interests on the one hand and to stimulate economic growth on the other, and the deficiency of the Chinese

trade union in the new industrial relations environment have been widely noted by authors on industrial relations in China (e.g. Chan, 1998; Clarke, 2005; Howell, 1998; Lee, 1999; O’Leary, 1998; Taylor *et al.*, 2003; White, 1996). A central issue in shaping and regulating the labour market of informal employment is the need to protect the rural migrant workers’ rights and interests, as evidenced in the above discussion. This section focuses on the role of local governments, the trade unions and other service bodies as alternative forms of organizing the rural migrant workers. It needs to be pointed out here that the word ‘organizing’ is used in broad terms so that methods and activities of organizing (including servicing) by the trade unions can be discussed in the light of that adopted by other stakeholders since there is a level of overlaps among them.

Apart from the trade unions (including trade union headquarters of the local governments), there are a number of organizations, both public and private, which are gearing up to organize the rural migrant workers and provide somewhat similar services to them (see Table 1). These include: local governments (mainly the labour authority), job centres/employment agencies, training centres, and legal centres. These organizations emerge as a result of certain governmental initiatives or business opportunities. They may be branch outs or sub-contractors of local government departments. Nonetheless, they constitute the main sources of service provision and official representational function for the rural migrant workers.

Table 1. Emerging forms of organization, representation and protection of migrant workers

Organizers	Functions	Effects
Local governments	Employment information Facilitating job selection Training Social insurance schemes Delivery of migrant workers from hometown to workplace	Greater match of demand and supply of labour and skills Enhancing the skill level of rural migrant workers Greater protection of rural migrant workers Greater social inclusion of rural migrant

	Sanctioning private job centres Administrative policy for greater labour rights protection and social inclusion Public service (e.g. legal advice centre, library, educational and cultural centre)	workers
Trade unions (public)	Training Pursuing outstanding wage payment for workers Employment services Monitoring implementation of labour regulations	Enhancing the skill level of rural migrant workers Greater protection of rural migrant workers Greater match of demand and supply of labour and skills
Employment agencies and job centres (public and private)	Employment information Facilitating job selection Becoming the employer to offer more job security and guarantee labour rights	Greater match of demand and supply of labour and skills Greater protection of rural migrant workers
Training centres (public and private)	Training Employment information	Enhancing the skill level of rural migrant workers Greater match of demand and supply of labour and skills
Legal centres (mostly public)	Education/training to workers on their employment rights Protection and representation of workers in labour disputes	Greater protection of workers Greater awareness from workers of their legal rights
Workers' self-organizing network	Organizing social events Handling grievances and disputes amongst workers and with employers Disseminating job-related information	Some protection for workers Support for each other Providing a sense of identification and belonging amongst workers Increased labour market transparency in terms of job vacancies and employment terms and conditions

The role of the local governments

As we can see from Table 1, local governments play an important role in organizing the rural migrant workers, either through direct involvement in service provision or through the introduction of administrative policies and initiatives. In particular, pre-employment training has been a major function provided by the local governments in response to the 'Sunshine Project' initiated by the government in 2003 that aims to deliver training to rural workers in large scale.

Some local governments have a more comprehensive strategy that links training, employment opportunity and labour standard monitoring together. For example, the municipal government of Qingdao City launched six key measures in 2004 to combat *mingong huang* (shortage of rural migrant workers). These include providing training to farmers, setting up a labour resource data base, increasing the wage level of migrant workers, issuing information pamphlets, providing training and employment funds, and setting up labour market information networks. Inspectorates were deployed to tighten the monitoring of labour regulation adherence by employers (*Workers' Daily*, 29th October 2004).

There are also signs that local governments are looking into providing a more diverse range of services to the rural migrant workers. These include, for example, providing free health check up, holding job fairs to free employment consultation, setting up employment centres and training centres, inspecting profit-making job centres and publicizing a list of reputable ones (*Workers' Daily*, 25th February 2005; *Workers' Daily*, 15th April 2005). Public facilities and services (e.g. legal advice centre, library, educational and cultural centres) are also made available that are specifically tailored for rural migrant workers.

More importantly, the physical and mental health of rural migrant workers, their skill training, social well-being, education provision for their children and other forms of their social needs are becoming topics for public debate and receiving policy attention. It is now acknowledged, at least by some, that if rural migrant workers were to be integrated into the urban life, then measures need to be taken to stop them and their family from being exploited, discriminated against and socially marginalized. Some municipal governments are beginning to take positive measures to reduce this inequality, for example, making education more accessible to the children of rural migrant workers by allowing them to be recruited into urban schools and reducing the fees charges set for non-urban children.

Trade union's strategy and barriers to organizing

The extent of development of the trade union function is a useful indicator of the development of the labour market. This can be assessed in four dimensions: 1). Union membership level; 2). the level of unionization across different ownership forms and industrial sectors; 3). the unions' role in and effect of collective bargaining; and 4). the proportion of workers in collective contract agreement in the whole workforce. On these accounts, the Chinese trade union's performance has been very poor in organizing the private and informal sector.

Until recent years, the trade union's response to the growing presence of rural migrant workers as a potential group to be organized and represented has largely been passive. Since the turn of the 21st Century, the need for organizing and representing rural migrant workers has ascended in the union agenda as part of the government's priority to improve rural migrant workers' adversarial employment conditions. In August 2003, the All-China Federation of Trade Union (ACFTU), the only trade union that is recognized by the government and one that is under the leadership of the Communist Party, made an announcement which officially classified rural migrant workers in urban areas as 'members of the working class'. ACFTU required trade union organizations at different levels to organize rural migrant workers by recruiting them into the trade unions in accordance to the instructions set out in the Trade Union Law (2001) and the Labour Law (1995) (*Yangcheng Evening News*, 8th August 2003). This was the first time that the ACFTU had made such an official announcement related to the labour rights protection for rural migrant workers. The ACFTU's strategy is to recruit as many rural migrant workers as possible into the union, disregarding where they are from, what types of jobs they do and how long they work (*Workers' Daily*, 25th February 2005). Migrant workers are to be recruited into the union before they gain employment or after they gain employment. Trade unions in different regions are to liaise with each other to transfer the management of the union members so that they can continue to receive union services. Other plans are also being formulated at local level with

the aim to maximize union memberships among the rural migrant workers and provide an increasing range of services to the union members.

Two major approaches are adopted by the trade unions to organize the migrant workers (see Table 2). One is ‘workplace organization’, i.e. to gain recognition at the workplace and then unionise the workers with the support of the company. Membership level is usually high at over 90 per cent once a union is recognized. Workers are told to join the union as part of the workplace requirement or are registered as members without their knowledge or consent. However, gaining employer recognition remains a difficult task given the persistent resistance of private firms (see further discussion later). The other way of organizing is ‘distant organization’, i.e. to recruit migrant workers (those already in employment or are seeking jobs) outside the workplace by offering them a range of services (see Table 2). This is usually carried out by operating in the labour market and in ways similar to what Kelly and Heery (1989, 198-9) classify as a ‘distant expansion’ recruitment strategy. The trade unions often carry out these activities in conjunction with other governmental departments and functional bodies such as training centres, legal centres, and employment centres.

Table 2. Characteristics of two models of unionising migrant workers

	<i>Distant organization</i>	<i>Workplace organization</i>
<i>Governing framework</i>	Labour regulations Government administrative policies	Labour regulations Collective agreement Company procedures
<i>Recruitment targets</i>	Migrant workers seeking work Migrant workers already in employment	Migrant workers in the workplace
<i>Methods of recruitment</i>	Public campaign to raise trade union profile Attraction of free or low cost services and advice Collaboration with local government authorities and community bodies Grievance-based recruitment Word-of-mouth	Use of labour regulations and mobilising local government authorities to seek employer's recognition Once employer's recognition is secured, then recruit members at the workplace en mass through employer's support and peer pressure
<i>Activities</i>	Service provision (e.g. training, employment information, legal advice) Representing function (e.g. negotiation with employers, representation in tribunal and court)	HR function (e.g. organizing productivity enhancement initiatives, such as skill competition, problem-solving task force) Welfare role (e.g. employee care programmes) Representation function
<i>Outcome/effect</i>	More costly Recruitment and organizing not integrated Possibility of recruiting a large number efficiently, e.g. in job fairs and employment and training centres Possibility of disseminating the benefits of joining trade union through word of mouth across the country More difficult to organize, retain and represent migrant workers collectively Lack of continuity in communication Individuals less likely to identify themselves with the trade union and only turn to trade union when help is needed Dependence of full-time union officials to undertake activities Results more individual oriented rather than collective Need to coordinate with other functional organizations (e.g. local labour authority, employment and training centres) Potential competition with other functional organizations	Less costly as part of the operating cost absorbed by employers Integration of recruitment and organizing Easier to organize workers once access is allowed by employers Easier to maintain communication Easier to represent collectively Easier to identify key supporters to establish a core team to strengthen union presence and function Shared problems and shared solutions to maximise the impact of trade union Members more likely to identify themselves with the trade union Less opportunity of disseminating widely the benefits of joining the trade union Less competition from other functional organizations

Operating in the labour market enables the trade union to play a bridging role between labour demand and supply in which workers expect the trade union to guarantee jobs and find them a good employer whereas employers expect the trade union to find them skilled workforce and 'good workers'. In many ways, the individual services offered by the trade unions are effective in meeting some of the needs of the rural migrant workers in different employment circumstances. However, these organizing techniques are essentially logistic innovations, whereas a key issue here is for the trade union to gain power and be able to prevent rampant exploitation and mistreatment at workplace. Without the recognition from the employer, union effectiveness is more difficult to achieve as it is more difficult for the union to represent workers collectively outside the workplace. In addition, dependence on the trade union and union impact are likely to be weakened where union organizing attempts are duplicated and diluted by other functional bodies offering similar services in the labour market. Similarly, the effect of ACFTU's recruitment drive and local recruitment initiatives should not be over-estimated. Even with optimistic estimation from the trade union authorities, no more than 30 per cent of the private organizations have established unions (*Workers' Daily*, 2nd November 2004). Trade union efforts in organizing rural migrant workers remain weak below major municipal level. Resource constraints make it very difficult for union officials at grassroot level to fulfil the tasks set by their state employer (full-time union officials are funded by the state fiscal budget). Lack of knowledge in certain areas is another obstacle to effective representation (Cooke, 2007a).

The relatively low level of union density in the private and informal sector where the majority of rural migrant workers are employed is to a large extent an outcome of employers' formidable resistance to union recognition and the lack of demand from workers to establish a trade union. This is partly because workers are unfamiliar with the concept of workplace representation but more so because of the perceived inefficacy of the trade union in advancing

workers' interests. While the sense of grievance and injustice caused by the employer is high amongst rural migrant workers, trade unions have either not been able to gain access to these workplaces or failed to demonstrate their strength in protecting the workers. Given the extent of social injustice, inequality of income and opportunity, work intensification, and employment insecurity commonly experienced by the rural migrant workers at the workplace and more widely in the society, it is not surprising that the servicing model associated with the distant organization approach adopted by the trade unions cannot satisfy the representational needs of rural migrant workers.

The ineffectiveness of the trade unions is reflected in the finding of the Fifth Survey of Private Enterprises (*China Private Economy Yearbook*, 2003), which revealed that union recognition appears to have little impact on wage level or coverage of social insurance. Other survey studies (e.g. Cooke, 2007; *Workers' Daily*, 7th September 2004) also revealed that migrant workers had little knowledge about the existence and role of the trade unions. Few would seek help from the union if they get into dispute with the management. Instead, they would put up with their poor working conditions and any maltreatment from their employer until it became intolerable. Their coping strategy include: turning to their friends at work and family members for help, speaking to their line managers directly to sort out grievances at work, or voting with their feet when situation become intolerable.

The transient nature of the migrant workers and the precariousness of their employment also present logistic problems for the trade union to organize and retain them as union members. While it is much easier to access rural migrant workers in large numbers through distant organization, there are a number of drawbacks in this form of organizing (see Table 2). In the absence of an established nation-wide union network, rural migrant workers recruited by the trade unions in their hometown area may not be able to transfer their union membership to the new place where they work or seek support from the local trade union if

they encounter problems at work. Therefore, it is likely that rural migrant workers recruited through distant organizing mainly benefits from the union's services at individual level on an *ad hoc* basis. Such a form of organizing makes it difficult to cultivate union identity and commitment among the members that ultimately lead to growing union strength.

The absence of a strategic approach to recruitment and organizing at the national level and the insufficiency of professional competence among union officials at operational level present further challenges to unionizing the rural migrant workers. While ACFTU is keen to unionise rural migrant workers, this desire has not been translated into a coherent set of formal policy guidance for union operations. Instead, union organizations at local level operate within their traditions and resource constraints, with some more systematic and active than others. Even where local governments issued administrative documents to 'encourage' enterprises to recognise the trade union, employers continue to find excuses to resist union recognition. Even when succeeded, such a coercive policy is less likely to gain real co-operation from the employers other than superficial compliance. However, it does show that trade union alone has no power to penetrate employers' fort, and to a large extent, the existence and functioning of the grassroot trade union organizations is dependent on the support of the local government.

The role of employment agencies and job centres

There has been a significant growth of employment agencies and job centres in recent years that are tailored for the lower end of the labour market. In 2001, there were a total of 26,793 employment centres/agencies, 70 per cent of them funded by the labour authorities at various levels as part of the multi-level employment service network. By 2005, the number of employment centres/agencies had increased to 35,747, 67 per cent of them were funded by the labour authorities. The number of employees working in these employment centres/agencies had increased from 84,440 in 2001 to 111,000 in 2005 (*China Labour Statistical Yearbook*,

2002 and 2006). In principle, these employment centres/agencies represent an institutional presence in the labour market by playing a number of roles. These include: providing labour market information, training, screening, recruitment and placement of workers, influencing wage setting, regulating the contingent labour market, redistributing the risks associated with contingent employment and acting as employers. In the latter, it is believed that this form of employment relationship benefits both the worker and the client in that the worker enjoys a higher level of job security and labour rights protection, whereas the client will have a continuous supply of labour (*Workers' Daily*, 22nd February 2005). In practice, this triangle employment relationship proves to be complicated and prone to abdication of responsibilities due to ambiguity of status, as mentioned earlier.

The Employment Centre/Agency Regulation promulgated by the state in 1995 stipulates that employment centres/agencies established by the local labour authorities should be non-profit making, whereas those set up by private firms or organizations unrelated to the labour authorities can be profit-making or non-profit-making. In reality, most job centres and employment agencies make service charges, often beyond the price set by the local authority. Employment agencies have been criticized for being lack of professionalism, lack of up-to-date market information and lack coordination between various organizations related to labour market services. Their training function is under resourced and poorly equipped. Their training content is out-dated and fails to reflect what is most needed by employers (Li, 2000).

The legitimacy of employment agencies as a labour market broker remains questionable amongst job seekers. Li (2003) reported that 70 per cent of laid-off workers from had never visited an employment agency and only 3 per cent of the re-employed laid-off workers found their job through employment agencies. Other research evidence shows that employment agencies are not a main channel for rural migrant workers to seek employment. For example, a survey conducted by the labour authority of Guangxi Province in 2004 found

that nearly 70 per cent of rural migrant workers still rely on their friends and relatives to find employment, less than 3 per cent found their jobs through government organizations, and less than 2 per cent through employment agencies (*Workers' Daily*, 15th April 2005). Liu *et al.*'s (2006) study of 1,424 migrant workers similarly revealed that less than five per cent of the migrant workers found their job through technical college or government organizations. Only 10 per cent of them found their job through employment agencies, whereas 62 per cent found employment through their family and personal networks. The majority of employment agencies and job centres funded by local labour authorities are primarily providing services to laid-off workers. Rural migrant workers get their service from a designated 'migrant labour market' that provides services at a fee. There is little skill training provision other than general training of occupational ethics and citizen's conduct (Mu, 2003). Worse still, Mu's (2003) study revealed that the majority of rural migrant workers had never visited an employment agency, believing that they were dishonest organizations with a motive of exploiting them.

The role of legal centres

Legal centres, often supported by the trade union and the local government, are set up to provide legal advice to rural migrant workers and handle labour disputes for them. These legal centres play an education, protection and representation role and have a tangible impact in protecting the workers' interests. For example, a legal centre set up under the auspice of the trade union in Wuyi City (Zhejiang Province) had dealt with over 3,000 cases in the four years from 2000 to 2004. It had represented, free of charge, workers in 167 cases in tribunals and helped them gain over 90 million yuan in compensation (*Workers' Daily*, 8th March 2005). However, it must be noted that what legal centres can do is perhaps only a drop in the ocean, given the extent of violation of labour rights and the limited resources available to combat injustice.

Workers' self-organizing networks

The inadequacy of Chinese trade unions and other official bodies in defending workers' rights has to some extent led to a reliance on a number of alternative routes, often unofficial and informal, for workers to voice their grievances, to resolve their disputes with employers, to share labour market information and to provide peer support and a forum for social bonding (Cooke, 2008). In some workplaces and local areas where a large number of migrant workers work and live, workers set up their own *tongxiang hui*, (association of workers from the same region/village) to carry out a variety of activities. Whilst offering a level of protection and compassionate support to fellow rural migrant workers, *tongxiang hui* are unofficial, unprofessional and sometimes take extreme measures in handling disputes between groups of workers and between labour and management. Some even use the name of the association to seek 'protection fees' from workers or coerce workers into joining the association and conform to its agenda. It is beyond the scope of this paper to discuss this kind of organizations in detail, but they do present a potential competing source of attention against the trade unions. It has been noted (Gao and Jia, 2005) that in developed cities such as Beijing, informal employment of rural migrant workers proves highly efficient. They consist of a group of highly physically able workers in their prime age, and they are highly sensitive in capturing and responding to labour market information. Nevertheless, the self-organization of rural migrant workers tends to be loose and inadequate in protecting their labour rights.

Gender implications

While a much higher proportion of people working in the informal than the formal sector are poor, it is 'even more true that a larger share of women relative to men working in the informal economy are poor' (Rodgers, 2002, p.3). According to a report issued by the Chinese State Council in 2003, over half of those in informal employment in the urban sector were women (cited in Zhao and Ma, 2007). A report released by the All-China Women's

Federation (ACWF) in 2006 showed that over 50 per cent of female rural migrant workers were engaged in informal employment compared with 40 per cent of men (cited in Wei, 2007). Gao's (2006) survey of 1,916 migrant workers in five major cities in China in 2003 revealed that men on average earned a much higher hourly wage (4.8 yuan) than women (3.4 yuan). Industrial sector plays a more important role in accounting for the wage differentials than the small differences in age and educational level between the genders.

Other studies (e.g. Jin, 2006; Liu and Li, 2007; Liu and Zhang, 2005; Xu, 2000) have all point to the gendered pattern of informal employment in which women are more likely to be employed in this sector, concentrated in the manufacturing and service industries, and receive a lower wage than men. Liu and Li's (2007) study further revealed an M shape pattern in the age of women rural migrant workers, indicating the need for them to remain in the rural family home during child caring period. In addition, a much higher proportion of women (45 per cent) migrate with their spouse than men (23 per cent) do. Wang (2006) observed an increasing trend of family migration instead of single migration amongst rural migrant workers. As trailing spouses, the wives of migrant family with child caring responsibilities are more constrained than single female migrants in their mobility and job opportunities due to family commitment. They tend to play the home carer role, often taking some casual and short time jobs to supplement family income instead of being a main income provider. This primary-secondary earner family model breaks away from the modern Chinese dual-earner family model in the urban area where husband and wife are co-earners with shared, albeit not always equally divided, family responsibility. This migration model in which the wife moves as a 'tied migrant' conforms to the international migration patterns identified in other countries (e.g. Boyle *et al.*, 2001; Cooke, 2001; Spitze, 1984). In this sense, the allocation of work-home responsibility amongst Chinese rural migrant families living in urban areas converges to that in other countries such as the UK, US, Korea, Japan and India (Cooke,

2007b; Kreimer, 2004; O'Reilly and Fagan, 1998; Stockman *et al.*, 1995) instead of urban Chinese families. In other words, married women rural migrant workers enjoy less equality than their urban counterparts in general.

Conclusions

Creating opportunities for informal employment is a necessary step to fulfil the Chinese government's employment priority during its labour market transition period. Informal employment also supports the efficiency argument in that both individuals and employers benefit from this employment. For the former, it is a vital source of income to support their livelihood. For the latter, it helps the survival and increases competitiveness of many businesses. Within a decade, informal employment has become a major form of employment in the labour market, a trend that is likely to grow. It is clear that workers in informal employment are by no means a homogenous group (see for example Wang and Chen, 2000). Even at the lower end of the labour market, laid-off workers and rural migrant workers fare very differently in terms of the policy support they receive, the types of jobs they crowd in and the treatment they receive from their employers and other stakeholders.

This paper shows that there is still much to be done in improving the labour market regulations, labour market services, social security provisions and representation mechanisms for those in informal employment, particularly rural migrant workers. According to Standing (1997, p.10), statutory regulations come in five forms in labour market terms: protection regulations, fiscal regulations, repressive regulations, promotional regulations, and facilitating regulations. It is clear that the growing number of labour market regulations in China do aim to provide the above functions, albeit far from being as extensive and effective as they should be. The implementation of labour market regulations has so far been carried out in a decentralized and pragmatic manner by local governments. A more comprehensive labour market regulations system as well as a more practicable social security system are needed to

facilitate the healthy growth of informal employment and to provide ‘decent work’ for millions. Policy interventions are also needed to regulate the operation of employment agencies, to promote skill training and to eliminate barriers to labour mobility. This will not only enhance the image of Chinese enterprises internationally and raise their competitiveness, but is also an inevitable step towards building a harmonious society that is one of the top priorities of the government. It is also in line with the global trend of government commitment to improve labour standards through more comprehensive labour laws (ILO, 2008).

This paper has also reviewed the roles and activities of a number of public and private organizations in organizing and providing services to the rural migrant workers. The co-existence of these bodies suggests that trade unions do not have the exclusive access to rural migrant workers. Rather, there may be situations where they find themselves competing against other organizing bodies and that they may need to work in partnership with them to access, organize and represent the rural migrant workers. However, the legitimacy of employment agencies and trade unions as labour market information providers and representational institutions still need to be established. It is clear that one model of workers representation cannot accommodate the needs of the diverse groups of workers emerging in informal employment across different industries and types of businesses. More innovative transitional models of representation are needed that are accessible to the growing diversity of the labour force. What is also clear is that, with only one union officially recognized by the government and under the auspices of the Communist Party, the ACFTU is in a unique position to police the enforcement of labour laws, provide labour market services and facilitate the implementation of expansionary fiscal programmes. This would require an enhanced level of professionalism and competence from union officials (and labour authorities) at grassroot level. If the ‘erosion of representation security’, a key contributing

factor to 'all other trends towards growing insecurity' (Standing, 1997, p.22), in many countries is partly an outcome of adversarial climate for unionism including suppressive regulations from the government, then trade unions in China are instrumental to government regulation and policy implementation. In this sense, representation security for Chinese workers is likely to increase in the longer future, at least in principle.

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