

Rights of Migrant Workers in China 2007-10

A PROGRAMME REVIEW

Submitted to the Danish Institute of Human Rights
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EXECUTIVE SUMMARY

This document reviews the three year Programme on “Rights of Migrant Workers in China” conducted by the Danish Institute for Human Rights from Dec. 2007- Dec. 2010. The terms of reference for the Review call for assessment of the relevance, progress and achievements of the Programme as measured in the light of programme objectives, outputs, impacts, risks, and management variables.¹

Migrant workers in China continue to face great, and arguably increasing, difficulty in enforcing their labour rights. Particularly in the wake of tense political moments associated with the Olympics in 2008 and the subsequent global financial crisis, migrant workers have faced cycles of work instability as well as increased government reticence to counter activist strategies of rights protection. The focus of this Programme is, therefore, more than relevant to current Chinese reality.

The Programme identified four competent partners:

- Beijing Zhicheng Migrant Workers’ Legal Aid and Research Centre (BLA)
- Institute of Labour Relations, Renmin University (ILR)
- Transition Institute (TI)
- Migrant Workers’ Home (MWH)

The cooperation between DIHR and these partners followed a Partnership Approach in which the partners largely functioned autonomously but were linked by way of identification with a single over-arching Programme detailed in a Programme Document. Bi-annual joint Programme Meetings were convened for the partners. During these networking took place and information was exchanged on the contributions each partner was making toward agreed targets. Three of the four partners were able to directly use the skills of other partners in their work as a consequence of this networking.

Despite an initial year of work, the effect of which was stunted by the political situation in China during 2008, the four partners in this cooperation have progressed significantly toward all the outputs indicated by the Programme Document. In some cases, DIHR has agreed, in the light of changing circumstances, to reconceptualise the activities originally foreseen as indicators of success in achieving outputs.

The five anticipated Programme outputs were:

¹ It was agreed the Review would be forwarded to DIHR for comments by April 19 and a final Review Report submitted to DIHR by 1 May 2010.

- Elaboration of legislative recommendations
- Awareness raising of law makers
- Capacity building for legal professionals
- Awareness raising of migrant workers
- Protection of migrant workers in the company context

The elaboration of legislative recommendations was achieved by ILR in the form of contributions to the Shenzhen Harmonious Labour Relation Regulation, passed to provide local support for the implementation of the Labour Dispute Mediation and Arbitration Law. This regulation has been considered by commentators as an admirable advance.

In addition, research outputs by both ILR and BLA commenting on future legislative needs will be published in two major books. Interim reports based on the data these volumes will contain have already received significant media attention.

Achievements in raising the awareness of lawmakers are difficult to causally relate to Programme inputs. The partners responsible for this output, however, are well-connected to official networks so the success of the Programme, in this respect, is in its choice of partners who are able to bring their work to the attention of government authorities, as illustrated by the significant contribution ILR made to the successful passage of the Shenzhen implementing regulations.

Particularly impressive work was done by BLA in building the capacity of lawyers and other professionals to defend migrant workers. They were able to expand and professionalize an important network of legal aid work stations which engage, not only in providing legal services, but in educational outreach.

The Programme's contribution toward awareness-raising among migrant workers themselves has also been significant along the indicators established. In particular, BLA and MWH have contributed to an increased number of migrant workers involved in the popularization of labour laws and self-help initiatives. This approach has a multiplier effect that increases the efficacy of Programme investments. TI and ILR company trainings have also extended rights information to groups of migrant workers, though perhaps without the same dynamic results as achieved by BLA and MWH strategies.

The protection of migrant worker rights in companies, proved the most challenging output to satisfy. According to the indicators established by the Programme Document, the primarily responsible partner, TI, has now overcome initial hurdles and succeeded in facilitating the establishment of CSR committees in two Chinese factories; a significant accomplishment. Nevertheless, this has only been possible by drawing on resources outside the institutional capacity of the partner, a creative solution that nevertheless will require reflection before proceeding further. This review suggests that, in order to maximize the

significant potential of DIHR's competence in CSR normative development, other project modalities may be more effective.

These outputs have been accomplished despite challenges both foreseen and not foreseen. Not foreseen was that China has not returned to the pre-Olympics political posture of strong support for promoting labour rights via law reform and increasing popularization of labour rights consciousness. Foreseen was that some partners would have more difficulty than others in learning new skills like training as well as adjusting their working styles to accommodate DIHR's assumptions regarding optimal partnership communication, document sharing and research collaboration.

This review and partner project management were assisted by the good reporting tools that DIHR has developed over the course of the Programme and that partners have produced with increasing proficiency over time. Nevertheless, there remain some gaps in the documentation desirable to verify Programme outputs and enhance partner communication. Acknowledging that the Programme has experienced some divergent assumptions regarding partnership expectations, the review suggests some possible explanations and mitigating strategies for future Programmes.

RIGHTS OF MIGRANT WORKERS: A PROGRAMME REVIEW

1. MANDATE OF THE REVIEW

This review was undertaken by Lisa Stearns, senior consultant, further to Terms of Reference that ask for an overall assessment of relevance, progress and achievements to date of the DIHR “Rights of Migrant Workers Programme 2007-2010” (see Annex B). Assessment of these variables is to be measured in the light of Programme objectives, outputs, impacts, risks, and management variables.

2. METHODOLOGY OF THE REVIEW

The basis for this Review is documentation supplied by DIHR and 32 interviews with partners as well as selected trainers and trainees. These interviews took place between 22 March and 7 April 2010. They were conducted in Copenhagen, at DIHR headquarters; in Beijing, at the DIHR office and on Partner premises; as well as in Xi’an where I had the most interesting opportunity to visit the Shaanxi work station of the Beijing Zhicheng Migrant Workers’ Legal Aid and Research Centre; and in Qingdao where the Transition Institute worked hard to arrange a visit to their partner China Starfish Co.. DIHR has been very supportive of this Review and provided able and professional assistance at every juncture. In this regard I especially thank Tiziana Tota in Beijing and Bjarne Andreasen in Copenhagen.

With some exceptions interviews were held with individuals one at a time. They lasted, on average, 1 hour each. I was fortunate to be assisted by Mr. Zhu Weijun whose sensitive skills as interpreter helped me ensure precise communication while enabling me to maintain as much direct contact with interviewees as my Chinese skills would allow. He also patiently led me through Chinese language project materials that I otherwise would not have been able to consider in this evaluation. Zhou Wan Ee provided similar expert assistance during the interviews conducted at the China Starfish Co. factory in Qingdao and during the CSR training we observed there.

I thank all those who spoke with me for their candour and patience. I understand that all project participants and DIHR staff have very busy schedules. Despite this, my inquiries were met with only thoughtful and generous feedback. I appreciate the serious engagement which has been shown to this review process by all concerned.

For reference, the interview and site visit schedule of the Review is attached as Annex A.

3. OVERVIEW OF THE PROGRAMME

This summary statement of the DIHR Programme is not intended to be comprehensive but rather to briefly outline key elements of the Programme in relation to which this Review was conducted. More detailed commentary on some Programme elements is offered in Sec. 5.

The Programme was designed to run from Dec 2007 to July 2010. Due to initial, unavoidable, delays a no cost extension until Dec. 2010 was discussed already in late 2008 and finally agreed in March 2010. Four partners were recruited to work with DIHR on the Programme:

- Beijing Zhicheng Migrant Workers' Legal Aid and Research Centre (BLA)
- Institute of Labour Relations, Renmin University (ILR)
- Transition Institute (TI)
- Migrant Workers' Home (MWH)

The total budget for the Programme period was DKK 8.5 million. Of this the respective partners received the following DDK amounts according to their agreed outputs: BLA 2.1 mil, ILR 0.9 mil, TI 0.5 mil and MWH 0.2 mil. The first set of annual Cooperation Agreements was signed with partners in January 2008. The initial distribution of funds was made to partners end of February 2008.

The well-written, well-argued, Programme Document (PD) sets out the development objective of the Programme as follows:

Increased respect, formally and substantially, for the rights of migrants in China and compliance with exiting human rights standards.

This high level objective is reflected in the following immediate objective:

Through partnerships and capacity-building of partners to contribute to the access by migrant workers in Beijing and in the Western part of China, in particular, to strengthened mechanisms for labour dispute prevention and resolution formally and in practice in the period December 2007-July 2010.

The Programme is designed to measure partner performance against each Partner's agreed input to one or more of the following 5 anticipated outputs:

- *Output 1 (Elaboration of Legislative Recommendations):* "Elaboration of consolidated recommendations to enforcement and adoption/revision of relevant labour laws effecting the situation of migrant workers". Designated contributing partners are ILR and BLA.

- *Output 2 (Awareness raising of law makers):* "Through strategic advocacy activities, law and policy makers and key professional stakeholders groups have an increased awareness of the necessity of adopting, changing and enforcing relevant laws in relation to dispute prevention and resolution especially with regard to the situation of migrant workers". Designated contributing partners are ILR and BLA.
- *Output 3 (Capacity building for legal professionals):* "The standard of and access to legal aid and other dispute resolution mechanisms for migrant workers has been strengthened". Designated contributing partners are ILR and BLA.
- *Output 4 (Awareness raising of migrant workers):* "Migrant workers have increased awareness of their rights and possibilities to get legal aid as well as increased ability to protect themselves by legal means including better negotiation skills". Designated contributing partners are BLA and MWH.
- *Output 5 (Protection of migrant workers in companies):* "Effectively enhanced mutual understanding and communication between management and workers of the rights of migrants and the protection of these rights in a company context." Designated contributing partners are ILR and TI.

4. ASSESSMENT OF GENERAL PROGRAMME DESIGN

4.1 HISTORICAL SETTING

In China there are reported to be some 225.42 million rural migrant workers among whom, at any given time, some 140 million are working far away from their places of residence. Another unknown number are looking for work in urban areas (China View, 25 March 2009). Their vulnerability to exploitation, in and out of the workplace, is well-documented.

In 2007, when this Programme was being designed, the Chinese government had cast a light on the problems faced by this large group. They called for a "people-centred" approach to government. Fearful of the social disruption that collective protests over poor conditions threatened, official policy statements were filled with calls for the development of a "harmonious society" to be brought about, in part, by improved legal protections for vulnerable groups. Through this window energy was breathed into law reform initiatives and relevant research. The drafting of both the Labour Contract Law, and the Labour Dispute Mediation and Arbitration (LDMA) Law moved apace. There was renewed focus on the Employment Promotion Law, and the Social Insurance Law. Optimism prevailed that public dialogue would contribute to this legislation.

It was in this environment that DIHR put together the Programme under review. It was therefore highly relevant and justified in its historical context. There was a

clear need to address the improvement of labour rights protection for migrant workers in China. There was political space to address a topic that has historically been highly sensitive and difficult for Chinese to address in partnership with foreigners. Moreover, DIHR had relevant experience to bring to the Programme via both their experience in working with legal aid in China and via their CSR project.

4.2 OBJECTIVES/OUTPUTS/INDICATORS

In general, the Programme Document lays out a persuasive logic for the objectives, outputs and indicators identified. The following comments are not intended to “nitpick” on details but rather to highlight some elements, the clarification of which might have improved partner communication.

4.2.1 DEVELOPMENT OBJECTIVE

The development objective includes reference to an “increased...compliance with existing human rights standards”. I understand that the human rights standards being referred to be international human rights (IHR) standards as agreed in UN human rights conventions. With exception of Output 5, this important element of the development objective is only indirectly promoted by the outputs and indicators adopted for the Programme. Output 5 specifically envisions the introduction of the HRCA QC in training materials. Other outputs and indicators do not specifically make reference to international human rights standards nor require Partners to employ them in their work.

Improvement in domestic legal protection for China’s migrant workers does, by implication of course, contribute to China’s improved compliance with international human rights standards. If this relationship is adequate to satisfy the Programme’s development objective then this comment is unnecessary. If, however, a more direct promotion of human rights standards by Partners was anticipated by DIHR, and if this was one area in which DIHR thought to contribute expertise to Partners, then outputs and indicators might have been designed to improve Partners’ common understanding of that.

4.2.2 INTEGRATION OF OUTPUT 5

Output 5, “protection of migrant workers in companies”, is weakly integrated into the Programme design compared to other outputs. I appreciate that the Programme is envisioned to support the weaving of a creative thread from policy design to implementation by reaching from drafting to the empowerment of migrant workers to “own” policy change and use legal resources. Following this vision, it is as legitimate to incorporate migrant workers training on the shop floor, as it is to support migrant worker training in community settings. I also admire that Output 5 was linked not just to CSR training indicators, but to an organizational goal of creating worker CSR committees; an indicator that compliments the organizational goals of community development (MWH), and legal aid systems development (BLA).

Nevertheless, this part of the Programme could not integrate in the feedback loops, or produce the synergy effects, that facilitated other outputs. In part, this may result from the considerable amount of investment that Output 5 requires in capacity-building for a stakeholder – corporate management – that is not the focus of other Programme outputs. In part, CSR promotion has a much broader focus than dispute resolution and thus TI had a valuable, but significantly different focus, from other Programme partners.

Nevertheless, as will be discussed in Sec.5.5 creative problem solving by one of the partners and DIHR has enabled interesting progress to be made also toward this output.

4.2.3 FORMULATION OF INDICATORS

Two examples of somewhat over-reaching formulations of indicators are found in the Intermediate Objective, and under Output 2. In the first, the “adoption/revision of relevant labour laws” is not an indicator that could be easily linked to Programme activities. Legislative processes are complicated and causality within them is difficult, if not impossible, to trace. In the second example, measuring whether project activities produced “an increased awareness” in stakeholder groups would also be difficult. Whether participants in a seminar take increased awareness away with them is difficult to determine without longitudinal verifications. What one might reasonably aspire to indicate is that the Programme “provided opportunities for the development of increased awareness”.

4.2.4 OVERLAPPING OUTPUTS/INDICATORS

Maintaining discrete indicators for achievement of different outputs is preferable although, granted, not always easy. The indicator of “symposia for legislators and government officials” used as an indicator for Output 2 awareness raising, could, for example, as well serve as an indicator for capacity building (Output 3) or law reform (Output 1). “Training migrant workers in legal aid and counselling” (indicator Output 3), could just as well serve as an indicator for awareness raising of migrant workers (Output 4). Symposia, workshops, training, and advocacy activities often overlap in methodology and substance unless clearly defined. These overlaps, combined with the adjustments made to partner activities because of practical constraints, served, in some instances, to complicate reporting and cloud the record, especially where one activity was credited at indicating achievement of more than one objective.

4.3 BASELINE STUDY

A baseline study is always a useful starting point for a long-term programme. This is particularly true in the context of a programme in which several partners are suppose to maintain a certain level of interaction and progress toward synergistic outputs.

The study that ILR produced in cooperation with DIHR is discussed in Sec. 5.1.2. Here I would only like to suggest that a more classic baseline study produced in a preparatory stage, or at least very early, in the Programme might have been a more useful tool. Both the Chinese partners and DIHR could have benefited from a more comprehensive reference document to inform their work. Such a document might have provided:

- 1) an in-depth analysis of the existing problems with domestic legal protection for migrant workers' rights,
- 2) an overview of the existing literature analyzing those problems
- 3) an analysis of the shortfalls between existing Chinese legislation and international human rights standards,
- 4) a mapping of existing legal services available to migrant workers
- 5) a mapping of the training opportunities available to them, and
- 6) a mapping of international experience in safeguarding migrant workers' rights protection

4.4 PARTNERS

More detailed comments, including the risks assumed in the choice of partners, will be found in the following Sec. 5 where Programme outputs are discussed. Here I would like to generally endorse the strategic planning that DIHR made regarding their partner choice. The stated aim was to link organizations based on "their position in relation to contributing to a law reform as well as the application of the laws in practice".² The four partners chosen represent an admirable cross-section of approaches to the issue of migrant workers labour rights protection. Their collective institutional strengths could have been expected to give the Programme broad and deep expertise in promotion of law reform policy, amplification of legal services, promotion of public advocacy, and hands on empowerment of the primary target group. As described in sections below, not all expectations were delivered in full, but the choice of these partners was relevant and justifiable as the overall success of the project demonstrates, and as the brief descriptions below corroborate:

Institute of Labour Relations, Renmin University (ILR) is a primarily the theoretical research project of one well-known senior professor and his students. Professor Chang Kai has close government contacts and is strategically integrated into law reform processes in the labour law field. His research and opinions are regularly cited by Chinese media. This academic component in the partnership also affords an auxiliary Programme output, i.e. influence on the next generation of labour law professionals.

Beijing Zhicheng Migrant Workers' Legal Aid and Research Centre (BLA) is an independent organization affiliated to a public interest law firm. It has a decade

² Proposal "Rights of Migrant Workers in China: A DIHR Human Rights Programme submitted to the Ministry of Foreign Affairs by DIHR recommending programming Dec. 2007-July 2010.

long track record of offering professional legal aid to targeted vulnerable populations. The case materials their work generates underpin a strong action research capacity. Their network of provincial work stations operating in cooperation with local official organs gives BLA a strong institutional reach also into China's Western region to which the Immediate Programme objective gives priority. The Director of BLA, Mr. Tong Lihua, has strong media connections facilitating advocacy. Moreover, BLA is respected by NGO and government circles alike.

Transition Institute (TI), founded in 2007, is a young advocacy organization of professionals with a strong commitment to data-based research and liberal economic analysis. It has adopted more controversial positions and strategies of work than the other partners. From a theoretical viewpoint they had conducted relevant research concerning corporate behaviour with supply chains and came highly recommended to DIHR by Chinese colleagues. One staff member, in particular, had a strong interest in pursuing CSR research.

Migrant Workers Home (MWH) is a grassroots, self-help, organization run by dedicated, creative, workers devoted to individual and community development as a path to rights protection for migrant workers. It fosters a growing network of similar initiatives, albeit to date, primarily in East Coast provinces. Their working model keeps them closely integrated in migrant worker communities and thus attune to the needs of their client base. MWH has experience in delivering popular education using active training methods. It collaborates with official organs at the local level to the extent that collaboration maximizes their room for organizational initiative.

4.5 PARTNERSHIP APPROACH

A commendable "partnership approach" was adopted for this Programme. It involved less integration among partners than the "Platform approach" adopted by an earlier DIHR Criminal Procedure Law Reform programme, but preserved the networking functions. There were no mandatory joint programme outputs, nor were finances jointly administered among project partners. The design, nevertheless, provided a regular bi-annual point of exchange at Project Meetings attended by all partners. Indications are that the Project Meetings generated networking outcomes, refined evaluations of mutual interest and difference, and produced a useful cross-pollination of ideas and expertise.

Concrete interactions that evolved from the networking in Project Meetings include: BLA and ILR assisted MWH in trainings, ILR invited MWH to present their work to students at the University, ILR was invited to present at BLA events, all partners contributed to revision of the ILR baseline study, and MWH began referring clients to BLA for professional legal aid services.

The design also enabled partners to avoid interactions in which they preferred not to engage. Thus ILR did not actively participate in assisting TI to find

companies for their trainings. Similarly, BLA and ILR were able to pursue their advocacy work for legal reform independently via their individual channels.

A concrete example, mentioned by various interlocutors to illustrate useful exchange, was the discussion over what language should be used in the baseline study to refer to migrant workers. The symbolic power of language is often discounted. This exchange was important to bring the language of the report into closer alignment with the perceived needs of its major target group. It also alerted all partners to the importance of responsive language.

A partnership model in a field as dynamic as labour rights enforcement, where partners represent significantly different stakeholders, might benefit from meetings more frequently, for example, each trimester or quarter. To make group interaction more dynamic the agenda could include not only progress reports but also discussion of a pre-determined issue of topical interest.

The study visit organized for BLA might have offered another opportunity for consolidating group cohesion. Should study visits be included in future programmes using a partnership approach, it might be helpful to design such activities to include all partners. (See also comment Sec. 5.3.6)

4.6 WORKING RELATIONS/MANAGEMENT ISSUES

4.6.1 A DIFFICULT YEAR WITH CONTINUING REPERCUSSIONS

It was noted in the PD that cooperation with a human rights institute such as DIHR should be conducted in a manner so as not to compromise the ongoing work of the organizations (p.32). This was a specific concern of all partners despite the fact that, as noted in Sec. 4.1 above, there were, at the time, apertures in the political control that has normally surrounded migrant workers rights issues as well as a sense of optimism among the organizations concerned.

Then occurred a series of escalating reasons for political retrenchment. The Olympic Year, anticipated with such enthusiasm, was replete with traumas that reverberated politically: the earthquake in Sichuan, the floods in the South, the political demonstrations in Tibet and Xinjiang, the cold splash of global financial crisis.

The controls expected to surround the August 2008 Olympics became broader, deeper, and more protracted than expected. For most of that year Chinese social organizations were at a standstill. It was a difficult year for this Programme, one in which many undertakings could not be brought to fruition.

Nor has the situation returned to normal. Official figures claim that at least 20 million migrant workers have become unemployed since the financial crisis began. SPC Ministry personnel report that labour disputes in 2009 increased 95% over the previous year, with figures nearly tripling in some eastern and southern-coastal cities. Authorities are seen to be rethinking the policy of tackling social unrest by increasing the focus on rights-based legal development. The

enforcement of the new Labour Contract has been put on systemic hold in many places. The judiciary as a whole has been re-oriented to a more conservative ideological perspective. Meanwhile, politically sensitive events continued to parade across the landscape of 2009: e.g. the 20th anniversary of Tiananmen demonstrations and the 60th anniversary of the foundation of the People's Republic. During the Programme period a number of legal aid lawyers met with strong reprisals for offering legal services to vulnerable communities in high visibility cases.

Despite these continuing reverberations from 2008, the partners got under way in earnest early in 2009. Nevertheless, the setting has rendered everyone more cautious than when the Programme was planned. Just a few examples: Tong Lihua (BLA) made a calculated decision not to get the DIHR donation officially approved out of fear that approval would be refused. In the face of intimidated provincial partners, Tong Lihua had to personally insure that he would take full political responsibility for sending DIHR staff to 2 of the work stations that the Programme supports. Chang Kai (ILR) has been less successful than usual in parlaying his good connections into permission to hold international conferences. New financial regulations threaten to curtail the ability of civil society organizations to accept international financial support. Beijing University has recently refused to continue hosting a well-known legal aid centre. This difficult context is important to bear in mind when appreciating the distance Partners have come in meeting Programme outputs.

4.6.2 PARTNER ASSUMPTIONS RE OBJECTIVES/OUTPUTS

All partners have referred to how certain of their outputs, over the course of the Programme, have needed to be reorganized, combined, or redesigned. "DIHR understands our circumstances" was a theme frequently expressed by interlocutors. It was a sentiment not entirely echoed by the DIHR project group. In some instances, DIHR staff have experienced it as a challenge to maintain the communication they felt desirable and necessary for Programme facilitation.

One factor that may have impeded communication is the differing interpretations that partners appear to have regarding the relevance of Programme objectives vs. outputs. ILR, for example, is very explicit that it understands that the most important emphasis should be placed on the higher plane programme objective of *"...access by migrant workers....to strengthened mechanisms for labour dispute prevention and resolution"* (immediate objective). The more particularized outputs agreed to in the ILR-DIHR contract function only as a backdrop to ILR work.

This interpretation results in large part from ILR's work approach which emphasizes gearing work to opportunity, whether it is sudden access to relevant information presented by a personal contact, the possibility to capitalize off the unexpected consolidation of government attention on a particular issue, or the need to "repackage" activity to avoid politically sensitive visibility. ILR is

convinced that their effectiveness, and the impact of their work, depend on this ability to manoeuvre. It was on the basis of this logic that ILR felt it was legitimate, without prior negotiation with DIHR, to use Programme resources to support the involvement of ILR in the Japan seminar where the plight of Chinese workers dispatched overseas was addressed. Prof Chang saw in this seminar an opening to address important lacunae in labour laws, i.e. the absence of a dispute resolution mechanism for such workers. He argues that contributing toward law reform in this area would strengthen “mechanisms for labour dispute prevention and resolution by migrants” (albeit of the cross-border type, not the internal type). The ILR posture, in sum, is that so long as their work serves this Programme objective, and is reported in the reporting instruments, they are fulfilling Programme commitments.

Such a posture can be persuasive in the Chinese context, especially when working with partners politically positioned as ILR is. It has its drawbacks for the closer partnership role DIHR envisioned for itself.

This brings me to a second point of divergence in assumptions which I think has occurred.

4.6.3 ASSUMPTIONS RE DIHR INPUT

The PD envisions DIHR as playing a “*decisive role*” both in terms of “facilitation” and in terms of “contributing tools and expertise” to partners. Assumptions regarding the interpretation of this role have differed, however. As a consequence, communication has suffered.

The organizational landscape of China is fast changing. International development organizations, that were once needed by Chinese organizations for the windows they opened onto the “outside world”, are now often dealing with sophisticated and self-confident Chinese partners that have well-established networks both nationally and internationally. When partnering with such organizations it may increasingly be the case that donors’ desire for close cooperation is less for what donors can offer their Chinese counterparts, and rather more for what the Chinese partners can offer the donors in terms of their desire for research access and increased insight regarding Chinese reality.

This is less the case, of course, with newer Chinese social organizations. In such cases more traditional patterns of donor contribution linked to strong donor inputs may be welcomed. The potential for achieving significant social impact, however, may be proportionately less.

With well-established NGOs, specifically framing projects in terms of generating international comparisons where foreign partners are still privileged, or explicitly seeking a collaborative relation based on clear agreement for joint research, including access to specific Chinese partner resources, might help achieve consensus regarding the levels of expected interaction.

In the Programme under review, international comparisons played hardly any role in planned outputs; nor were DIHR research interests clearly woven into output designs. While the poor communication which effected the cooperation with ILR and BLA was multi-faceted, and had distinct elements in each case, the absence of clear consensus regarding DIHR's own research interests likely contributed to the communication difficulty with both these partners.

Both ILR and BLA seem to have focused on the discretionary element of partnership as reflected in last Para of p.29 the PD: "... the relationship between DIHR and the partners may increasingly be characterized by the *partners soliciting the input by DIHR on an equal basis with input from other sources* (emphasis added)". DIHR, meanwhile, has understood their own "*decisive role*" to justify an expectation to be involved in research design, to share in research outcomes, and to have an ongoing dialogue regarding project developments.

Both ILR and BLA have a strong institutional sense that foreign expertise in Chinese labour law is limited and that interdisciplinary resources are most effectively drawn from the domestic market. When BLA needed assistance with the design of interview instruments, for example, they consulted Beijing University sociologists and the Beijing University legal aid centre that has designed a number of successful surveys.

Both BLA and ILR make a point of how their staffs are working quickly and under pressure; how there is little time for consultations. Moreover, they are both concerned with the political sensitivity of labour law advocacy in China. Neither has seen the reward for sharing more information with DIHR as justifying the political risk. Both understand this option to be consistent with the choices open to them under the partnership agreement. The core vehicles of partnership communication, in their perception, are to produce the reporting documents required and to participate in the biannual Programme Meetings. It may also be that they are accustomed to low levels of interaction with other funders. Prof. Chang Kai, for example, says that the "guidance and suggestions" ILR has received from DIHR has been far greater than they experience with Ford Foundation cooperation in which only the final project output report is discussed.

MWH also avoids international sponsors who are likely to be too hands-on. For them the willingness of DIHR and Oxfam, their two international sponsors, to be flexible is key to the success of those two co-operations: "They understand us and our difficulties. They are willing to let us make adaptations according to our needs".

In the particular context of this project, the partners had some difficulty in identifying what added value they could obtain from closer cooperation with DIHR experts. TI was the exception. It is one of those organizations that fit the "new" profile where the more traditional development relationship still functions well. TI was identified as a partner out of DIHR's ambition to find an organization to promote CSR with a human rights perspective. Choices are few. Most CSR

training is now run as business in China. TI had a recent track record of innovative research and advocacy. It was known when TI joined the Programme that it did not have a strong background in CSR training, or a ready-made access to companies, but it was perceived that TI's previous research on supply chain management, and interest in the field helped to make them a relevant partner. It was planned that through the project TI would develop the requisite capacity to engage in CSR training and CSR committee development.

In this context, TI has welcomed, and sought, extensive input from DIHR. The communication between the DIHR expert and TI has been fluid and constructive leading to many creative solutions to problems that developed in achieving outputs.

In sum, it may be that if DIHR wants closer collaboration with Chinese partners they will need to: 1) choose partners in an early stage of institutional development, 2) design outputs to require international comparisons, or 3) establish with partners, in writing, the joint research expectations.

4.6.4 CHANGING CAST OF CHARACTERS

Over the course of three years in a Programme involving five organizations, it is inevitable that personnel changes will take place; that continuity will be interrupted. Certain organizational elements, however, exacerbated this difficulty over the course of this Programme.

ILR, for example, relied on graduate students rather than a group of faculty for executing its part of the Programme. Students study for exams and graduate. For their mentors, participation in research projects is a valuable part of the training they give their students. Extreme delegation, however, can impact the quality of research and exacerbate the effects of a changing cast of characters.

TI, in its search for the expertise it needed, brought in a series of different persons at various junctures during the Programme period. This resulted in a somewhat hazy chain of authority among DIHR, TI, and seconded consultants; a situation that was, at times, disconcerting for those involved.

DIHR had several changes of personnel attached to the Programme. Both experts and managers in Copenhagen shifted between the planning phase and the implementation of the Programme. In China, parental leave by the DIHR programme officer required an interim arrangement. This change of personnel joined with the impact of the Olympics to increase the challenge of maintaining close personal relations with the partners. A complicated division of authority within the DIHR project group also probably exacerbates the impact of personnel changes on communication flows.

It is beyond this scope of this Review to suggest how the impact of these personnel changes might have been mitigated.

4.6.5 REPORTING

DIHR has developed an admirable set of reporting tools. The PD has been backed up each year by an appendix to the annual contract with each partner. This appendix sets out revised partner outputs and indicators for the year based on the previous year's experience. In addition, biannual narrative reports identify differences between plans and accomplishments for each partner. An annual matrix-formatted Implementation Plan identifies how each partner is anticipated to contribute to each Programme output. These tools are well-designed and useful.

The partners who are already experienced with international donors found the reporting obligations sufficient to promote transparency and oversight while not being so onerous as to compete with implementation priorities. The partners less experienced in international cooperation, found the tools helped them to learn a structured approach to project implementation. Partners find that the tools have become increasingly easy to use as they have been adapted over the course of the Programme. All expressed appreciation for the manner in which DIHR has been willing to adapt the tools to their needs (e.g. bilingual format).

While there remain inconsistencies among partners in complying with reporting requirements, the Review confirms partner self-reports that their reporting has improved over the course of the Programme. This capacity-building process should not be undervalued. Organizations seeking international funding must have the skills to meet donor reporting requirements and these requirements, of necessity, are becoming more stringent with challenging financial times.

From the perspective of a reviewer, the reporting tools are a significant assistance in trying to analyze the progress and challenges that the Programme has encountered over time.

What is sometimes missing, however, is the systematic collection of the verification documents anticipated by the PD. At a minimum, meeting agendas, participant lists (preferably indicating name, gender, and institutional affiliation of participants), training material summaries, research questionnaires, research trip schedules, and summary research findings are needed. Partners should be clear that accountability requirements placed on donors necessitate such verification of partner activity. Such record-keeping is also a matter of good management practice for the Chinese organizations concerned. Well-organized files on activities undertaken provide organizations with an institutional memory, useful reference information, and an efficient means of orienting new personnel.

While acknowledging the very helpful reporting tools developed by DIHR, I suggest here some possible approaches to further improving the management of verification:

1. Include clear requirements for the submission of specified verification materials in the terms of original partner contracts. The general

requirement to “submit on DIHR's request at any time all other information having bearing on the implementation and progress of activities to DIHR” is rather more difficult to implement. It might be desirable for partners to negotiate a confidentiality clause regarding use of these specific materials.

2. Reiterate in the annex to annual partner contracts the relevant verification materials expected in respect of each activity in the revised activity plan.
3. Require that verification materials for each activity reported as completed in a biannual narrative report, be appended to the narrative report, as was voluntarily done by BLA.
4. Alternately, require that each narrative report include a list of the supporting documentation copied, or available upon request, to the donor in respect of each completed activity.
5. Revise the annual Implementation Plan matrix to include a checklist of the verification materials expected so that their receipt can be easily registered by the DIHR.

Such systems would help provide agreed upon bench marks for accountability and would provide the basis for early clarification of what information partners consider too sensitive to share. If the clarity suggested by these administrative measures is perceived as inconsistent with the mutual trust that DIHR wants to have with partners, then the DIHR's accountability system must accept the inconsistent document/information sharing implied. This reviewer is of the opinion, however, that clear administrative requirements enhance, rather than threaten, mutual trust.

5. PROGRESS AND ACHIEVEMENTS ON OUTPUTS

5.1 OUTPUT 1: ELABORATION OF LEGISLATIVE RECOMMENDATIONS

Contributing partners to Output 1 are ILR and BLA. Early passage of the LDMA Law, and the unlikelihood that the Supreme Court would issue an interpretation, undermined the potential role of these partners to submit draft recommendations at a useful juncture in the national law-making process. Nevertheless, ILR was able to make a significant contribution to the passage and content of important LDMA implementing regulations in Shenzhen.

Output 1 can also be measured by the quality of partner research in producing a baseline study, assessing the early implementation of the LDMA Law, and analyzing where further law reform is necessary to enhance migrant worker rights protection.

According to research criteria, BLA will more than have fulfilled its commitments and ILR will also have made a significant contribution. More than three major studies, including policy recommendations, will have been published by the end of the Programme period. Their outcomes will have been shared formally and

informally with key stakeholders. This satisfies the research part of the agreed-upon indicators. Successful seminars, consultations, and roundtables contributed to these research outcomes, as well.

The following are the individual partner contributions:

5.1.1 ILR-SHENZHEN HARMONIOUS LABOUR RELATIONS REGULATION

A particularly important output of the Programme was that it supported ILR input to the passage of LDMA implementing regulations in Shenzhen. The successful implementation of LDMA law depends on regional implementing rules and regulations. Shenzhen is often looked to as a pilot site for innovative legal developments, not least because, as a special economic zone, the Shenzhen People's Congress has autonomous law-making authority. Although the Regulation only covers the Shenzhen Special Economic Zone and not the neighbouring areas where the majority of factories are based, legal developments in Shenzhen SEZ can pave the way to similar action elsewhere.

With this strategy in mind, members of the ILR project team carried out investigative work in Shenzhen to inform development of constructive suggestions for implementing regulations. During 2008 Prof. Chang Kai made advocacy presentations on the development of dispute and arbitration law to key stakeholders including the Central Group of Shenzhen City Council; officials in the Bureau of Labour; and companies, such as Fu Shi Kang Co. Ltd, Shenzhen Airline, and Construction Bank of Shenzhen, etc..

His suggestions were also directly conveyed to the Shenzhen legislative department with whom he conferred on several occasions. His suggestions advocated the recognition of the right to strike, the recognition of unions as representatives of worker demands, and the promotion of unions as social platforms (a means of addressing freedom of association). In July 2008 a particularly influential meeting was held between Prof. Chang Kai and key officials including the director of Shenzhen Legislative Committee. The implementing regulations eventually passed in Shenzhen strongly reflect many of Prof. Chang Kai's arguments and suggestions, including recognition of a 30 day cooling off period before industrial action. Prof. Chang's points of view were incorporated in an official report on the *Shenzhen Labour Relations Regulation*. DIHR supported investigation, and workshops convened by Prof Chang Kai, contributed to this result. The promise of the new regulation was widely commented upon, especially, in on-line media.

5.1.2 ILR-BASELINE DOCUMENT

The baseline document envisioned in the PD was not seen as a classic baseline document for whole Programme. It was originally intended primarily to inform ILR's drafting output. When that output was eclipsed by the early passage of the LDMA law, the use of the baseline study became less focused and its submission was delayed. Nevertheless, a joint document: "Migrant Workers Rights in the PRC: a baseline study" was produced by ILR and DIHR. It perceptively outlines

current general challenges faced by migrant workers such as free movement inhibitions (hukou regulation), limits on political participation in urban areas, and problems in the protection of labour and social security rights. It also provides a useful general overview of relevant domestic and international legal provisions, including international human rights provisions concerning migrant workers rights protection.

The study, nevertheless, falls short of providing a careful analysis of potential legal reforms needed to meet these challenges. Nor does it include a systematic analysis of how domestic law does and does not comply with international norms. Its utility would also have been enhanced by including a comparative study of legal approaches to dispute resolution.

Although DIHR did not intend that this study to serve as more than an internal working document, these elements might have made the study more relevant to overall Programme research. In addition, these elements would have raised the potential for publication of this work product, or an edited version thereof, thereby adding value to the investment that DIHR and the partners made during its production. As executed, the value of the baseline report was more limited: it provided a focus of constructive exchange between DIHR and ILR during the drafting process and it was a useful focal point for discussion at the Programme Meeting, during which all Programme partners gave input to, and approved, the draft.

5.1.3 ILR-RESEARCH

Field research leading to a major publication is ongoing as of this review. Negotiations with the publisher indicate that some careful “packaging” may be needed in order to get publisher’s approval. The Programme’s data output on the implementation challenges faced by the LDMA law may therefore constitute a part, rather than the whole, focus of the volume.

Reporting documents and interviews suggest that field work for this research has been conducted in Guangzhou, Shanghai, Shenzhen, Shandong, Liaoning, Shanxi, Sichuan, and Hubei locations. The research methodology is reported to have been a combination of quantitative and qualitative research. Between late May and early June 2008 DIHR and ILR had a fruitful exchange regarding methodology for one part of the research. Subsequently, however, neither questionnaires nor interview data were shared with DIHR. It is, therefore, not possible for this reviewer to comment on the scope of the quantitative information collected, the consistency in compilation methods, etc... “Sensitivity” is often cited as rationale for the high degree of confidentiality insisted upon by the partner. In such circumstances a balance between the often legitimate political concerns of Chinese partners, and the concurrent legitimate needs of donors for accountability, must be handled on a case by case basis. Inevitably the acceptable balance will be coloured by the level of trust that has been developed between the parties. As suggested above, clear initial agreements

regarding the verification materials required for reporting and specific confidentiality conditions can be helpful in building that trust.

Access to research sites is based on personal contacts. It is therefore likely that convenience rather than quantitative sampling methods were employed. Semi-structured interviews are reported to have taken place with government and company personnel. Research students shared some of the frustrations they encountered in documenting the worker perspective. Impressionistic indications are that interesting documentation of historical significance has been accumulated on specific collective actions, as well as, general information on dispute settlement practice.

The research team's intention is to use the materials to analyze the law-related causes of disputes, scenarios for dispute resolution, and potentials for a rights-based approach to avoiding similar disputes in the future. The research data collected are likely adequate to guide this legal analysis even if they fall short of meeting sociological survey standards. The research results will form a major input to the book that ILR will publish this year as a primary output of this Programme.

Since Prof. Chang Kai is regularly requested to consult with national and local authorities regarding labour law implementation and reform, it is undoubtedly the case that the research results will be fed back into the law-making system as happened during the drafting of the Shenzhen regulation.

An auxiliary output of this research is that graduate student researchers have clearly benefited from their experience in conducting the field work.

5.1.4 ILR-SEMINARS

The major output along this indicator was a Nov. 2009 international conference in Guangzhou. It was attended by some 100 persons, including officials and 30 international experts. The location was chosen after repeated difficulty in getting permission for international conferences on labour issues in Beijing. The opportunity of Guangzhou official support led ILR to combine various priorities. Given the difficulties it faced in organizing international conferences on dispute resolution, ILR perceives this large-scale conference as having met its seminar commitments under both Outputs 1 and 2 of the Programme implementation plan.

Rather than a conference dedicated to migrant workers and dispute resolution according to the PD, one of this conference's sections was devoted to these issues. Although the Guangzhou authorities were not willing to give attribution to a Human Rights Institute as a co-sponsor, ILR did acknowledge DIHR under the alias of the "Danish International Research Institute" (guoji yanjiu zhongxin). According to ILR, the DIHR budget was charged on a pro-rated basis for how much of the conference addressed DIHR project objectives.

There exists a significant difference of opinion as to how much DIHR was invited to participate in the design of this conference. ILR project staff indicate that the draft programme and speaker lists were shared with DIHR and that their input was requested prior to confirmation of the programme. DIHR feels it was presented with a *fait accompli*. DIHR was invited to present, but on a topic deemed unsuitable. Invitation lists were not developed collectively. What is clear is that ILR was addressing multiple objectives through this event, many beyond the scope of the DIHR cooperation.

Participants, including one from DIHR, confirm that the conference was professionally arranged, valuable in content, and well-attended by a large range of important government and non-government stakeholders in the labour rights protection community, including known international experts. This is an example of how, in sensitive areas, a pragmatic Chinese approach to organizing can produce useful, relevant, outputs for multiple partners while arguably failing to fully meet individual project accountability standards.

Earlier, in May of 2009, ILR organized a "symposium on the governance of labour disputes and the tripartite mechanism" held in the Department of Labour Relations of the Ministry of Human Resource and Social Security. The symposium gathered a small group but one that contained well-positioned participants: 3 members of the Ministry at the levels of director, deputy director and officer; 4 labour relations professors from 3 universities, and 4 graduate students from ILR. The narrative reports indicate that this group continues to meet regularly to exchange viewpoints: a potentially important channel for legislative influence.

ILR also has ongoing interaction with ministries and educational institutions. In many of these settings dispute resolution is an issue addressed. The positive potential of these activities is difficult to causally link to the DIHR Programme but should be considered the benefit of working with this partner.

5.1.5 BLA-RESEARCH

BLA has completed and launched two important research reports based on a thorough, quantitative, analysis of their extensive case data in addition to supplementary interviews: "*Analysis of the Implementation Results of the Law on Employment Contract and the Law on Mediation and Arbitration of Labour Disputes*", and "*Report on Industrial Injury Insurance for Rural Migrant Workers*". Both reports offer quality analysis and will be certain to reach the attention of political insiders. In the first report 865 cases of implementation are analyzed, producing interesting insights into judicial practice and issues calling for attention. The second report surveys 329 cases and offers detailed recommendations for revision of the current public draft of the Law on Social Insurance and the draft Industrial Injury Insurance Regulations.

On the basis of the data collection, BLA will publish a book containing these 2 papers plus another 7 topical reports on labour dispatch (employment agency) issues, overtime payments, termination, contingency fees for legal aid, binding

arbitration, waiver of overtime limitations, and impact case analysis; all of which issues have a direct impact on migrant workers' labour rights protection.

The questionnaires used in this research were not shared with DIHR, nor were DIHR experts involved. BLA did consult, however, with Chinese social science experts regarding methodology.

5.1.6 BLA-SEMINARS

In 2009 a half-day seminar for judges and arbitrators was convened to give input to a draft of BLA's research report on arbitration and mediation. Five judges and 4 arbitrators met with 9 members of BLA staff to discuss the draft.

5.2 OUTPUT 2: AWARENESS RAISING OF LAW MAKERS

Contributing partners to this output are ILR and BLA. Both of these partners may be said to continuously contribute to strategic media advocacy for workers rights, albeit in the case of ILR, migrant workers' rights, are not usually in specific focus. The work of both partners also routinely provides opportunities for the development of increased awareness on the part of lawmakers regarding the need for workers' rights protection. The difficulty is to distinguish how specifically the DIHR Programme has contributed to the general trajectory of the partners' work.

The PD established 2 indicators: symposia for law makers/government officials and media outreach. Both partners have continuing contact with influential members of the government and other key professional stakeholders. Their informal communications can be as, if not more, effective than exchanges made during formal meetings. Strategy often depends on political judgment and sense of timing. The meeting schedules of legislators and government officials, in particular, are overloaded. If the agenda and timing of any additional gathering is not strategically appropriate, then serious, high-level, participation is hard to generate in this community. The fewer than planned symposia do not, therefore, mean that partners have under-achieved on Output 2.

I would argue, in fact, that media outreach is a better indicator of Output 2 than the number of meetings convened with "legislators and government officials". What is clear in this respect, however, is that both institutions maintained an engagement with official stakeholders and were consistently engaged in advocacy outreach during the period of the Programme.

5.2.1 ILR-MEDIA OUTREACH

It would have been helpful if ILR has systematically collected documentation of Prof. Chang Kai's interactions with government officials and the media on issues related to the DIHR Programme. Nevertheless, it is well known that Prof. Chang is a routine participant in meetings and conferences convened by officials and academics alike. He is also an expert frequently called upon by print and TV media to make comments when labour issues are in focus. In addition, he maintains an active public profile by writing for the media. Several of his media

statements and articles relevant to the Programme's focus were supplied for this review.

5.2.2 ILR-ADVOCACY SEMINARS

The November Conference detailed under Output 1 was reported by ILR as an indicator attributable to Output 2 as well. The government sponsorship of this conference is a good indicator that provincial law-makers did pay attention to the discussion and that information about the conference did reach the ears of others higher in the political system. A summary document of the papers was distributed to all participants.

In addition, a well-received activity was hosted by the Shenzhen Municipal Lawyer Committee on Dec 20th 2009. Entitled "Training Class on Labour Policy and Labour Law under the Economic Crisis", it was advertised for lawyers and attendees were awarded four continuing education points. Approximately 100 participants include lawyers, judges, and labour administrators attended.

5.2.3 BLA-MEDIA OUTREACH

In December 2008 BLA convened a media meeting on migrant workers rights protection. This meeting was attended by more than 20 journalists from over 10 media outlets.

In December 2009 BLA convened a media meeting to launch two of their Programme outputs; their report on the implementation of LDMA law and their report on industrial safety protections. Both reports received significant media coverage. That media coverage has been collected by BLA for its archives.

In conjunction with BLA's 10th Anniversary a large event was held to publicize the work of their legal services network.

In December 2010 another media conference is planned to launch the book comprised of 9 empirical studies.

Tong Lihua, like Prof. Chang Kai, is a common figure in media coverage of labour rights protection. In addition, the BLA internet site has been expanded and now serves as an advocacy site for labour protection issues. This results in part from BLA's management capacity building which they attribute to the DIHR Programme. They have also established cooperation with China Law Digest in which they publicize two cases per week. As of June 2009, 32 cases had been publicized in this manner. This journal is read in political circles as well as by lawyers, NGOs, scholars and corporations interested in Chinese legal issues; central stakeholders targeted by the Programme.

5.3 OUTPUT 3: CAPACITY BUILDING FOR LEGAL PROFESSIONALS

Contributing partners to this output are ILR and BLA. The planned contribution of ILR was limited to a single training for labour dispute mediators, arbitrators and judges. That training has not taken place at the time of writing. Arrangements

for permission and cooperation are being done via personal contacts and the process has encountered complications. Current plans are to convene the training in Aug. 2010.

BLA, on the other hand, has made great strides in fulfilling the indicators set for it by visibly and impressively increasing its own institutional capacity to provide full-time, professional legal aid services to migrant workers. These efforts were directed in large part toward strengthening the viability and professionalism of BLA's legal aid provision to migrant workers in the Western Region, a regional emphasis which directly responds to an important part of the DIHR Immediate Programme objective. A summary of their activities follows:

5.3.1 BLA-LEGAL AID NETWORK EXPANDED

New migrant workers legal aid stations have been established in 6 provinces emphasizing the Western region: Chongqing, Gansu, Ningxia Hui Autonomous Region, Shaanxi, Sichuan, and Yunnan. Since verification visits by DIHR staff were very difficult to organize, in April 2009 BLA submitted a specific progress report on the Legal Aid Working Stations in Western China. The data-backed description of activities it contains is impressively concrete and extensive. Subsequently 2 site visits have been arranged for DIHR. One of these was organized for this review and I can report that the Shaanxi work station is engaged in energetic, professional, and committed work on behalf of migrant workers via legal representation and educational activities.

5.3.2 BLA-TRAINING IN LEGAL ADVOCACY

In December 2008 BLA trained 24 full-time lawyers from 23 provincial stations. International speakers were invited to lecture on comparative legal aid practice. DIHR was not consulted regarding these speakers, nor informed of their participation until after the event had taken place. This appears to be another example of how BLA has been intent to maximise its activity within the parameters possible without seeking government approvals. The international speakers in question were all, at the time, residents in Beijing. Their participation thus did not require approval from the authorities. In all likelihood, experts recommended by DIHR would not have been similarly situated. The failure to communicate in a timely fashion with DIHR, however, is one example of less-than-optimal openness and inclusiveness between partners.

In Dec. 2008 a workshop was held for 63 persons including BLA station lawyers, and representatives of local lawyers' associations. Conference details were submitted to DIHR. In April 2009, 18 lawyers from provincial stations received a 3-day training.

5.3.3 BLA-INTERNSHIPS

BLA runs an internship programme for lawyers from provincial work stations to be mentored by more experienced lawyers in the Beijing station.

5.3.4 BLA-INCENTIVES

Monetary incentives were given to exemplary lawyers in 6 provincial stations to promote full-time commitment to migrant worker representation.

5.3.5 BLA-MANAGEMENT SKILL PROMOTION:

Dec. 2008 a workshop on standardized administrative practice was held for provincial stations. A standardized operating manual for all stations was issued and distributed. An impressive system of intra-net work-logs, periodic reports, and supervision visits was established in order to improve consistency and quality of services as well as management capacity among stations. This network is working rapidly toward viability as an independent public law system for target groups; a model that BLA would like to promote to the government as a valuable supplement to the government legal aid system which does not employ full-time lawyers but rather depends on the part-time services of lawyers unlikely to be experienced in the particular laws and regulations relevant to their legal aid cases. The professionalization of BLA's network is a major contribution to their long-term sustainability and the expansion.

5.3.6 BLA-STUDY VISIT

A study visit to Nepal and India in Nov 2009 was organized by DIHR for BLA staff members. It required considerable organizational and financial inputs on the part of DIHR, not least because of delays around the Olympics. The result of that investment was an interesting and high-level programme arranged for 2 BLA staff and 1 DIHR staff member. The participants enjoyed exposure to professional colleagues in other countries. That said, language difficulties impaired the ability of the BLA participants to absorb much of the content. Participants reported back to others in the Beijing work station but no long-term contacts seem to have been established, and limited use appears to have been found for the materials gathered. I would suggest, therefore, that this activity was not an effective use of resources in achieving Output 3.

5.4 OUTPUT 4: AWARENESS RAISING OF MIGRANT WORKERS

Contributing partners to this output are BLA and MWH. Both organizations are dedicated exclusively to migrant worker services. Both also work with the philosophy that, in addition to providing legal aid to address rights violations, it is necessary to empower migrant workers with legal knowledge and the negotiating skills they need to increase their own rights protection and strengthen law enforcement. The indicators established for them under Output 4 emphasize migrant worker training activities. Both are institutionally positioned and adequately experienced to organize training activities. Both organizations are, therefore, well on their way to fulfilling the indicators set for them.

5.4.1 BLA-INFORMATION MATERIALS

Targets were set to revise information handbooks and brochures in order to incorporate advice on the use of the new Labour Contract and LDMA Laws. These revisions were made and by spring 2009, more than half of the targeted number (10,000 handbooks and 100,000 brochures) had been distributed. Avenues of

distribution are readily available given the large number of migrant workers who come to BLA's 23 work stations for advice, or who attend the various training activities in which these work stations participate.

It may be that there is some degree of overlap between this initiative and local initiatives. In almost half of the provincial work stations, the Beijing-edited handbooks are supplemented by local versions that address local regulations. The production of these local handbooks is often supported by the local justice bureau. There is therefore an incentive to use the local version. A careful comparison of local and Beijing handbooks would be necessary to evaluate whether, in some locations, there is no need to distribute the Beijing version.

5.4.2 BLA-TRAINING OF MIGRANT WORKERS

Each of the work stations is involved in migrant worker education via a number of different channels. These include, visits to worksites, in-office training sessions, collaboration with NGOs or educational institutions working with migrant workers, and training activities done in conjunction with government authorities. BLA trains at least two target groups: individual migrant workers with a general interest in understanding their legal rights, and migrant workers who have been identified as potential advocates for popularization of law, i.e. migrant workers who then, themselves, participate in training other migrant workers. Training topics vary from training to training but always include labour law developments and negotiating skills.

The numbers of migrant workers trained thus far through the various initiatives of the work stations is somewhat difficult to detail given the different modalities used. Site visits confirm that these activities are ongoing, however, and constitute a core commitment of BLA's work. The reviewer has no doubt that the network-wide target of 1,000 workers trained in rights protection, will be satisfied.

This reviewer notes with appreciation the self-conscious manner in which BLA staff in Beijing, and in the field, are continuously reviewing how to make their training most effective and how to maintain a high level of trainer engagement. Internal reviews of training effectiveness have led to four developments. *Firstly*, the BLA's Beijing office is moving much of its training function off-site in order to team up with official institutions such as local construction bureaus, local labour bureaus and local ACTFU branches that have the ability to inform and mobilize potential trainees. One such training takes place every Wednesday from 10-11.30am at the human resources centre of one local labour bureau where they announce special job placement assistance to persons attending the training. *Secondly*, an increasing emphasis is being placed on capacity building for migrant workers willing to be trainers. This adds an advantageous multiplier effect to the training activities being funded. *Thirdly*, a creative recent initiative is to text periodic updates on legal development to migrant workers who have

agreed to receive such information on their cell phones. *Finally*, various means have been adopted to ensure modest compensation to trainers for their inputs.

In interviews with trainees, I heard moving stories from migrant workers who had, in the first instance, received help from BLA legal services, then gone on to be their trainees, and who are now working as volunteer educators in the migrant worker communities. This multiplier effect and ownership of partner activities by important stakeholders is commendable.

5.4.3 MWH-TRAINING OF MIGRANT WORKERS

MWH is a smaller, more grassroots organization than BLA. It employs a relatively stable cohort of 50-60 persons, and has attracted a growing community of volunteers. Both directors have strong backgrounds in organizing and training. In that context the DIHR Programme set training as MWH's main Programme contribution. The PD target was a minimum of 4 trainings. Reporting documents indicate that as of September 2009, four trainings had already been completed. In interviews, Mr. Jia and Mr. Wang indicated that 6 training sessions have now taken place.

The free courses are advertised in affiliate community organizations in Beijing, Xi'an, Suzhou and Guangzhou as well as via network contacts in Shenzhen and elsewhere. These are extended sessions of 10 days each during which building group dynamics is as important as the classroom education received. The aims of training are firstly to foster trainee skills for integrating into urban life and protecting their rights, and secondly to inspire in them a commitment to community development. MWH argues persuasively that without breaking the isolation of migrant workers and integrating them into urban life, migrant workers' rights protection cannot be accomplished.

An effort is made to identify future core members of the organization through the trainings. Thus about 10 former trainees have gone on to work in the income-generating facets of the organization. One, who now works in MWH's second-hand clothing shops, saw the course advertisement while working in Shenzhen and came to Beijing just for the training, attracted by learning law so that he could help his family members recoup unpaid wages. This decision has strongly influenced the path of his life over the last year and made him into an eager rights advocate.

DIHR staff who have observed trainings give positive feedback. Trainees verify that the law teaching methodology was active and engaging. Groups did not exceed 20. Participant lists were not provided for this Review thus no comment can be made about the extent of outreach accomplished by the trainings. A summary version of the MWH training topics was provided, however. A strong component on legal knowledge is included. The training methodology used is suitably active including roles plays, case studies, and site visits to the institutions with which migrants must interact if they take complaints. Social work students from local colleges are sometimes invited to run complimentary

group activities. Materials are developed by the teachers invited to participate, and by workers who also bring their own experience to the classroom. MWH has collected past training materials and the trainings have been documented with transcribed tapes and photos that testify to their dynamism and useful content. It is not clear to what extent this material is systematized to ease replication, however. If such systematization is needed, it would be a useful project follow-up.

In the last year MWH has retreated from providing legal advice to emphasizing its community-building agenda. This has impacted their ability to attract students to rights-oriented training. Legal advisory work gave them a regular basis of trainees interested to have more legal skill in order to pursue their own complaints. Now MWH finds that workers generally are not disposed to take time off from work for a 10 day course that they do not think will be substantive enough to make a concrete difference in their lives. MWH also screens out casual participants by their criteria for participation which require applicants to demonstrate: interest in the topic, some history of participation in a social organization, and relevant personal experience.

The content of the most recent training sessions has therefore been diversified to attract more participants. In addition to basic legal knowledge trainers introduce principles of cooperative management, life-skills, and vocational skills like computer repair. An enhanced skills base increases the potential for migrant workers to escape abusive work situations. Therefore skills training can be seen as a reasonable response to the demands of the target group and a compliment to capacity-building on rights protection.

5.5 OUTPUT 5: PROTECTION OF MIGRANT WORKERS IN COMPANIES

Contributing partners to this output are ILR and TI. Output 5 is arguably the most challenging part of the Programme. Above, in Sec. 4.4, I generally commend the original logic of bringing the chosen partners together. Nevertheless, in the course of this Programme, these two partners have encountered difficulties achieving Output 5. ILR lacks an institutional commitment to an agenda of worker training. TI lacked both the experience in training necessary to design a manual for use in a company setting, as well as the contacts necessary to gain entry to companies for training purposes. These risks were understood at the initial stage of the Programme but were more difficult than anticipated to overcome.

Via creative problem-solving on the part of the TI and DIHR staff, however, interesting contributions to Output 5 will be made via a close collaboration with personnel seconded to TI in conjunction with strong inputs from the DIHR expert. It is worthy of note, also, that TI as an institution has benefited from the experience of participating in the Programme, not least, in that they have clarified their own mission concept. Nevertheless, there remain a number of

questions that DIHR might wish to reflect upon in designing a new CSR-related project (see comments in Sec.6.2).

5.5.1 ILR-TRAINING

ILR reports having conducted company trainings at Yizhuang Development Zone, Beijing (Sept 2009) and Nanjing Plastic Mechanical Factory Co. Ltd (March 2009).

An unclear number of participants including development zone managers, printing company managers and worker representatives from printing companies attended the one-day activity in Yizhuang. It appears from documentation to have been arranged more as a seminar with presentations combined with question and answer exchanges.

The Nanjing training took place over 2 days, the first attended by 38 managers from various company departments, and the second day attended by 45 first-line workers. The main presenter was a director in the Chinese Institute of Labour Relations - a consultant for the ACFTU. The topics addressed were: fundamentals of occupational safety and health, responsibilities of the company in safety security, occupational disease, prevention of the labour disputes, and management of labour disputes.

The "training" methodology adopted by ILR was distinct from the "training" methodology promoted by TI. The Programme is supporting TI training activity in the sense of helping them set an agenda using carefully prepared and targeted materials to engage trainees through a participatory methodology in the objective of developing trainee capacity to use a defined set of information and pass on that knowledge. Strategically, there is likely to be less multiplier effect with ILR's one-off company engagements using ad hoc training materials. DIHR might wish to strategize toward more synergy effect between training components of a future programme. This would require indentifying the most appropriate partners.

Prof. Chang Kai acknowledges a lack of institutional commitment in ILR to training. He feels strongly that such training has very limited potential as a means to create sustained positive impact on workers' rights protection. He sees his institutions' time better spent on theoretical research, contributions to law reform and advocacy.

5.5.2 TI-TRAINING MANUAL

TI was invited to join the Programme without experience of shop floor training and with theoretical rather than pedagogic understanding of CSR. At the time TI was identified as a potential partner, a senior TI staff member had specific interest and experience in this field. Unfortunately he left TI soon after. DIHR was not informed of this at the time and only realised the significance later. Nonetheless, remaining TI staff invested energy and enthusiasm in tackling the steep learning curve necessary to meet the demanding expectation that they

would draft a comprehensive training manual for CSR company training as well as conduct in-company trainings and establish pilot projects within companies willing to create CSR committees.

One partner output, a 3-part CSR training manual directed to different target groups - management, labour, and CSR committees - is now in its 3rd revision. Both through practice application and consultation with national and international experts, TI says the quality of the training manual has dramatically improved. The comments from DIHR on the third draft, the comments of the very experienced trainer recently brought into the Programme, and my own impression, however, is that the manual still requires substantial revision both in content and presentation before it will be useful in a corporate setting.

The remaining challenges for the manual are to meet the goal of incorporating international human rights norms as an integral part of CSR training while not alienating managers, and integrating teaching methodologies that will engage managers and workers. TI's trainer at China Starfish Co. also points out perceptively that management skills promotion should be clearer incorporated in the management manual since good work organization and adequate procedures can go a long way to encouraging implementation of workers rights.

5.5.3 TI-TRAINING AND CSR COMMITTEE FORMATION:

Although three initial trainings were held in 2 firms, it proved difficult for TI to organize trainings before an outside consultant and trainer were brought on to the TI team in spring of 2009. Neither of the first firms involved was interested in organizing a CSR committee. With the help of the consultant brought in to advise TI, 2 companies have now been located that are both being asked by international partners and/or clients to upgrade their CSR compliance. The managements are thus keen to cooperate. They have agreed to the election of CSR committees, to receive advisory input on improving management practices, and to make personnel available for a package of trainings directed at management, workers, and CSR committees. The revised indicators for Output 5 emphasize more long term and comprehensive "collaboration" with these two companies. This encouraging development, however, is unlikely to provide sufficient time before the end of the Programme to entrench the new corporate culture necessary for sustained training commitment and an active, institutionalized, role for the CSR committee.

For the purpose of this Review I was on-site at the China Starfish Co. factory the day the CSR committee was elected (tactfully being named the worker communication committee). During the visit I interviewed management and workers as well as observed a training introducing CSR committee work. The trainer now being used by TI, is excellent. She has both training and human resource management experience, is knowledgeable regarding CSR, is clear on the objectives of the training, and is able to interact with, and motivate,

intimidated workers equally well as she engages management in constructive planning.

The teaching materials, which incorporated elements of the HRCA QC, were devised by the consultant after determining that the manual was not yet mature to use as a training tool. Her materials were didactic and her teaching style was participatory. After 3 factory visits significant steps have been taken by management but the level of knowledge and commitment to CSR norms implementation is still, not surprisingly, very low. The CSR committee was elected without workers' knowing its functions. Indeed the management has yet to develop a clear understanding of its functions or plan for implementing them. The potential impact of training on production is a very real management concern. Only two of the workers elected to the CSR committee were able to attend the training I observed; training directed to the functions of a CSR committee. It is unreasonable to imagine that this process will be anything but slow, and labour intensive. Its ultimate sustainability is difficult to predict. The multiplier effect that can be expected is low.

5.6 EXTRA OUTPUT-FINANCIAL MANAGEMENT TRAINING

Notwithstanding my observation in Sec. 4.6.3 that some Chinese social organizations have rapidly professionalized, I would like to point out here that all partners particularly welcomed participation in the financial management and reporting seminar organized by DIHR in Beijing in September 2009. All partners found the course well-prepared, well-targeted, and useful for their organizational development. This indicates a kind of capacity building that is very relevant to social organization partners in this historical moment of rapid professionalization. Many donors to not invest in this kind of core development and DIHR is to be commended for doing so.

6. A GLIMPSE AHEAD

This Review was asked to comment on the "continued relevance of cooperation on the rights of migrant workers in China between DIHR and the existing or other Chinese institutional partners working in this area". It was agreed that a full survey of potential partners in this field, was beyond the functional scope of this Review. More than half a year remains of the existing Programme as well, so it is premature to comment on a next stage.

That said, below are some comments on the relevance of the issues, and preliminary indications concerning partner priorities. They are offered as suggestions of the issues that may influence future planning.

6.1 RELEVANCE OF MIGRANT WORKERS' LABOUR RIGHTS PROTECTION

The need for attention devoted to migrant workers' rights protection has never been more necessary. The new labour laws brought into force in 2008 are not being systematically enforced. Indeed, there is every indication that there is

often systemic approval for non-enforcement. High-profile cases are increasingly difficult to represent. While improved labour protection still implies the need for law reform, the requisite reforms are most needed at the level of subordinated legislation rather than national legislation. The challenges of improving implementation and improving enforcement of judgments, now arguably eclipse lawmaking as priority issues among partners.

Implementation challenges need to be monitored, researched, and kept visible in the public debate. The institution-building to improve legal aid services continues to be worthwhile.

Such work is likely to remain politically sensitive and dependent on creative, sensitive, strategies. Partner organizations will need flexible frameworks for cooperation that do not sacrifice accountability. Programming in politically sensitive areas can complicate the potentials for joint research with some partners. The Partner Approach to programming has advantages in this sense, however. Under the same umbrella of shared programme interest, DIHR can promote synergy by supporting cutting-edge work with some partners who are not positioned to conduct joint research, while creating joint research relationships with other members of the Partnership. This requires careful strategizing and a clear realization that DIHR can function constructively in two interdependent roles: donor and research organization.

6.2 INDICATIONS OF PARTNER PRIORITIES

ILR has asked DIHR for last-phase funding to widen the scope of the materials they have been gathering regarding implementation of the LDMA law. To ensure improved communication between partners in this last phase, a written consensus needs to be reached between DIHR and ILR regarding what information will be shared, what DIHR input will be, and what role DIHR will have in the research, or conference planning processes. It is also advisable to have clear, written, agreement on what will be produced as verification material regarding each funded activity.

Regarding any new phase of cooperation, ILR has made its philosophy clear regarding institutional priorities. General labour law reform will remain the focus of their work; research and professional exchanges, their primary working methods. There is an initial indication that that legal lacunae faced by workers dispatched overseas is coming into political focus. They are currently left without a dispute resolution mechanism. ILR may wish to pursue this issue.

BLA is easily one of the most professionally run organizations the reviewer has encountered in over 20 years of working with Chinese NGOs. Recruitment, staff capacity-building, institutional management and quality of outputs are remarkable. BLA is a key player with growing influence. Their work is worth supporting. They may, however, be moving away from project-based cooperation. They anticipate receiving a substantial grant from the China Legal Aid Foundation shortly. This contribution will result in them widening their client

base dramatically to include a wide range of vulnerable groups, including women, the elderly, the disabled, etc... They also a plan to open one section of the centre devoted to "justice in rural areas" where they will deal with the highly sensitive issue of land rights disputes. For strategic reasons, their goal is to expand domestic funding and increasingly solicit only large, core funding, grants from abroad.

TI has concluded that its strength lies in research and policy advocacy. Their research interests are unlikely to focus on CSR. They remain interested, however, in the broader impact of the current economic order of China on the various facets of migrant workers' lives, including, but not limited to, their labour rights' protection. Continuing to providing bridges between them and more traditional research communities has the potential for interesting synergy effects. Consultants brought into TI to work on the CSR training have breathed life into TI's Programme contributions but they do not amount to an alternative institutional partner, as currently organized.

MWH is likely to be effected by general removal plans being imposed by developers on the community in which they are now located. They are already planning for relocation. This will no doubt place them in particular need of support in order to continue their innovative work. They indicate that internal priorities for their work are shifting away from providing legal services to an increased focus on community development training and empowerment activities. The popularization of law is likely to continue as part of their work but in combination with a wider set of training objectives. Future cooperation would need to be adjusted accordingly. There is room for support to institution-building and professionalization of their initiatives, but it is unclear if that is consistent with their philosophical approach to organizing and their strong sense of being uniquely positioned in the grass roots where "we see things differently".

Based on these indications of current partner priorities, a new phase of cooperation would likely need to reach out to some new partners and, on the basis of experience during this phase, learn what negotiations are necessary to reach clearer consensus with former partners on desired levels of materials exchange and communication.

6.3 MAXIMIZING DIHR'S EXPERTISE ON CSR

The pilot projects undertaken in this Programme to promote protection of migrant workers in companies have been labour intensive and arguably less sustainable than other elements of the Programme. If DIHR is to pursue the protection of migrant workers in the company context for another programming cycle and wishes to retain the current company-based working model, it would be advantageous to seek programming designs that could maximize potential synergy among programme elements. This might be achieved, for example, if company training could be done in a pilot company in the same community where MWH has a centre, or if the pilot company for CSR activities could also

agree to allow researchers from an academic partner to study the development of the CSR work.

Nevertheless, the sustainability of factory-based projects will depend on long-term and labour intensive investments. This seems to me to beg the following questions: Are the linkages between the improvements in human rights indicators that can be expected from improved management practices in individual factories sufficient to justify DIHR as the appropriate institution for this investment? Would there be more multiplier effect if DIHR could work with educational partners to influence the content of human resource education in China; or work with employer's associations to take on a role in providing the kind of good management consultancy services that DIHR is now directly funding; or is there a way DIHR could influence the way "CSR business" is run by working with trainers/evaluators in that milieu? DIHR's work in the CSR field is ground-breaking and deserves to make the most forceful impact possible.

ANNEX A– INTERVIEW/SITE VISIT SCHEDULE

Rights of Migrant Workers Programme Review 2007-2010

<p>Mon. 22 March: DIHR, Copenhagen headquarters Mads Holst Jensen – Advisor Bjarne Andreassen – Programme Manager</p>
<p>Thurs. March 25: DIHR, Beijing office Hatla Thelle – Senior Researcher Tiziana Tota – Human Rights Officer</p>
<p>Fri. March 26: Shaanxi Migrant Workers Station in Xi'an, part of the BLA network of Beijing Zhicheng Migrant Workers' Legal Aid & Research Center (BLA) Ms. Sun Rong – Lawyer Mr. Zhou Wei – Lawyer Mr. Shao Bin – Lawyer</p>
<p>Sun. March 28: Transition Institute's (TI) discussion of CSR training material Zhu Weijun – interpreter</p>
<p>Mon. March 29: Migrant Workers Home (MWH) Mr. Wang Dezhi – Director Mr. Jia Zhiwei – Director Pan Zhenfen – Worker Lu Shuibin – Worker</p>
<p>Tues. March 30: Beijing Zhicheng Migrant Workers' Legal Aid & Research Center (BLA) Tong Lihua – Director Wang Fang – Lawyer Yu Hui – Lawyer Shi Fumao – Lawyer Li Kefeng – Lawyer Yang Xianwu – MW trainee/volunteer Ma Yuhui – MW trainee/volunteer Wang Guojun – MW trainee/volunteer</p>
<p>Wed. March 31: Transition Institute (TI) Guo Yushan – President Wu Aoqi – Researcher Amanda Xu – Trainer</p>
<p>Thurs. April 1: Institute of Labour Relations (ILR) Prof. Chang Kai – Project coordinator Sheng Long Fei – PhD student Meng Quan – PhD student</p>
<p>Tues. April 7: Transition Institute (TI) partner China Starfish Co., Ltd., Qingdao Cui Jiangtao – Manager's Assistant Wang Guozhi – Human resource manager Shen Jiafei – Production manager Chen Anqiang – Worker Li Xingzang – Worker elected to CSR committee Wan Lili – Worker Also observed CSR training for CSR committees</p>

ANNEX B – PROFILE OF THE REVIEWER

The reviewer, Lisa Stearns, has law degrees from University College Cardiff in Wales, UK and Columbia University in New York, USA. She has taught in law faculties in China, Norway, the United States, and the United Kingdom. For the past 20 years she has been involved with development planning and project implementation in China having held posts with the Ford Foundation, Beijing Office, and as Director of the China Law Programme at the Norwegian Centre for Human Rights. She is currently on leave from the University of Oslo and working as an independent consultant based in Havana, Cuba.