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RRT RESEARCH RESPONSE

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RESPONSE

1. Are there labour laws in China that regulate the hours of work?

China has a 1994 *Labour Law* that includes articles to regulate hours of work in its Chapter 4 (*Labour Law of the People's Republic of China 1994*, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on 5 July 1994, and entering into force on 1 January 1995, All-China Federation of Trade Unions website <http://www.acftu.org.cn/labourlaw.htm> – Accessed 23 August 2007 – Attachment 1). According to Article 36, an employee should work for no more than eight hours a day and 44 hours a week. Chapter 4 is reproduced below:

Chapter IV Working Hours, Rest and Vacations

Article 36 The State shall practise a working hour system under which labourers shall work for no more than eight hours a day and no more than 44 hours a week on the average.

Article 37 In case of labourers working on the basis of piecework, the employing unit shall rationally fix quotas of work and standards on piecework remuneration in accordance with the working hour system stipulated in **Article 36** of this Law.

Article 38 The employing unit shall guarantee that its staff and workers have at least one day off in a week.

Article 39 Where an enterprise can not follow the stipulations in **Article 36** and **Article 38** of this Law due to its special production nature, it may adopt other rules on working hours and rest with the approval of the labour administrative department.

Article 40 The employing unit shall arrange holidays for labourers in accordance with the law during the following festivals:

1. the New Year's Day;
2. the Spring Festival;
3. the International Labour Day;
4. the National Day; and
5. other holidays stipulated by laws, rules and regulations.

Article 41 The employing unit may extend working hours due to the requirements of its production or business after consultation with the trade union and labourers, but the extended working hour for a day shall generally not exceed one hour; if such extension is called for due to special reasons, the extended hours shall not exceed three hours a day under the condition that the health of labourers is guaranteed. However, the total extension in a month shall not exceed thirty six hours.

Article 42 The extension of working hours shall not be subject to restriction of the provisions of **Article 41** of this Law under any of the following circumstances:

1. where emergent dealing is needed in the event of natural disaster, accident or other reason that threatens the life, health and the safety of property of labourers;
2. where prompt rush repair is needed in the event of breakdown of production equipment, transportation lines or public facilities that affects production and public interests; and
3. other circumstances as stipulated by laws, administrative rules and regulations.

Article 43 The employing unit shall not extend working hours of labourers in violation of the provisions of this Law.

Article 44 The employing unit shall, according to the following standards, pay labourers remunerations higher than those for normal working hours under any of the following circumstances:

1. to pay no less than 150 percent of the normal wages if the extension of working hours is arranged;
2. to pay no less than 200 percent of the normal wages if the extended hours are arranged on days of rest and no deferred rest can be taken; and
3. to pay no less than 300 percent of the normal wages if the extended hours are arranged on statutory holidays.

Article 45 The State shall practise a system of annual vacation with pay.

Labourers who have kept working for one year and more shall be entitled to annual vacation with pay. The concrete measures shall be formulated by the State Council.

There are also regulations on working hours, which largely repeat the provisions of the *Law (The Regulations of the State Council on the Hours of Work of Employees 1994*, Promulgated by the People's Republic of China State Council Decree 146 on February 3, 1994 and amended by the Decision of the State Council to Amend "The Regulations of the State Council on the Hours of Work of Employees" on March 25, 1995, 3 February, International Labour Organisation website http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=37896 – Accessed 24 August 2007 – Attachment 2).

However, a number of sources note problems with the implementation of the *Labour Law*. Caroline Heuer, an Economist for the Research Group on the Political Economy of China, states that:

Although the Labour Law regulates issues such as wages, working hours and affirms non-discrimination in the work place, in reality most of the companies still seem to follow their own guidelines.
(Heuer, Caroline 2005, 'China's Labour Law: An Effective Instrument of Workers' Representation?', *China Analysis*, No. 45, May, p.11
www.chinapolitik.de/studien/china_analysis/no_45.pdf – Accessed 23 August 2007 – Attachment 3)

The US Department of State, in March 2007, also noted problems with the implementation of the law:

The NPC report also found that excessive overtime was common. The labor law mandates a 40-hour standard workweek, excluding overtime, and a 24-hour weekly rest period. It also prohibits overtime work in excess of three hours per day or 36 hours per month and mandates a required percentage of additional pay for overtime work. However, these standards were regularly violated, particularly in the private sector and in enterprises that use low-skilled migrant or seasonal labor. A survey conducted by a human resources firm found that 80 percent of respondents worked overtime often, while only 30 percent were paid premium wages for overtime.
(US Department of State 2007, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2006 – China*, 6 March, Sec. 6e – Attachment 4).

A 2002 report on labour standards in China (Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December
<http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Attachment 5) notes that, in relation to the Chinese *Labour Law*, the key issues are:

- o China has useful laws, but implementation and enforcement are often not effective
- o Loopholes and ambiguities (including **the key problems surrounding hours and wages, where laws are easy to legally ignore**) (p.5)

And further that:

Chinese labour law stipulates the number of hours (including overtime) that workers should be requested to work (8 hours per day, 44 hours per week, with a maximum of 36 hours overtime per month). However, it nullifies these rulings with Article 39 that allows enterprises unable to follow the law to 'adopt other rules on working hours and rest with the approval of the labour administrative department'. Approval is easily obtained

(Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December, p.26
<http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Accessed 29 August 2007 – Attachment 5)

The report examines the articles of the Labour Law that deals with hours:

Along with wages, violations of hours worked constitutes the most common breach of labour law. However, a loophole (Article 39) in Chinese labour law effectively enables an enterprise to ignore Articles 36, 38, and 41.

Article 39 state: ‘Where an enterprise can not follow the stipulations in Article 36 and Article 38 of this Law due to its special production nature, it may adopt other rules on working hours and rest with the approval of the labour administrative department.’

Enterprises can easily obtain dispensation to increase hours well beyond those stipulated. (Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December, p.59
<http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Accessed 29 August 2007 – Attachment 5)

The report also notes that workers can be forced to work double shifts or entire days (24 hours) to fulfil production quotas (p.29). Overtime is often required:

management often uses a system of ‘overtime-first-and-holiday compensation-later’ to underpay workers. Managers ask employees to work long hours of overtime during the peak season (overtime for which they are often not recompensed as the law stipulates), and then order them to leave the factory during slack times (an enforced break for which they receive no pay).

(Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December, p.30
<http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Accessed 29 August 2007 – Attachment 5)

A report by the China Labour Bulletin, a Hong Kong based NGO founded in 1994 by labour activist Han Dongfang, which notes many instances of employees being forced to work extra hours, is attached (China Labour Bulletin 2006, *Falling Through the Floor: Migrant Women Workers’ Quest for Decent Work in Dongguan, China*, CLB Research Series: No. 2, September http://www.china-labour.org.hk/fs/view/research-reports/Women_Workers_Report.pdf – Accessed 24 August 2007 – Attachment 6). It states:

The survey found that nearly all of those interviewed were working compulsory overtime hours well in excess of the limit imposed by China’s Labour Law. In the worst cases, they were expected to work up to 16-hour shifts. Moreover, while management usually explained such overtime arrangements as being a temporary necessity to cope with new orders, they were often extended over long periods of time. In most cases, it was clear that the employers’ abuse of overtime arrangements was basically a means of compensating for the growing labour shortage in Guangdong. (p.6)

... Most of the young migrant women workers interviewed by CLB in Dongguan worked 12 to 14 hours a day, seven days a week, and with only one day off a month. This meant they worked between 84 to 98 hours a week on a regular basis. According to China’s Labour Law, the standard working day is eight hours and the normal working week is 40 hours. If an

employer wishes to lengthen the working period for business reasons, this can lawfully be done only after negotiations with the official trade union and/or the workers. The working day can be extended by one hour, or under special circumstances by no more than three hours, but the total number of additional hours per month may not lawfully exceed 36 hours. The Labour law is also quite clear on how overtime pay is to be calculated: on normal working days, it is to be paid at one and a half times the regular hourly rate; on weekends or other rest days, at twice the regular rate; and on public holidays, at three times the regular rate.

Most of the women interviewed were clearly unhappy with their long working hours and low pay, but they were forced to accept the situation because overtime was compulsory, leave was very rarely granted and they would be penalised for not showing up at work. Only those working in two of the 16 factories covered in this survey said that they seldom worked any overtime. In all the other factories, the women worked substantial overtime on a regular or even daily basis. Normal overtime could be anything from two to eight hours per day, and it often continued into the early hours of the morning. In some cases, therefore, the normal working day was as long as 16 hours. In one factory, moreover, during peak production periods the workers had sometimes had to put in 16 hours of overtime – making a 24-hour working day. (pp.9-10)

The usual pretext given for these excessively long working hours was that the factories needed to meet contract deadlines or fulfil urgent new orders. But as the interviews revealed, some form of overtime was often included in “normal working hours” for protracted periods of time. This situation clearly underscored the importance of factories observing the workers’ legal right to take rest days; but as the interviews also showed, in practice most of the women workers were also obliged to work on their normal rest days and even on public holidays. (p.13)

Other examples of long working hours are given in this report on pages 9-12.

A recent *Washington Post* report states:

Laws and regulations have long been in place to protect workers. But as is frequently the case in China, the enforcement of the rules has often been frustrated by collusion between local entrepreneurs and party officials eager to promote economic development and supplement their own bank accounts.

China forbids independent labor unions. The official All China Federation of Trade Unions, tied to the same party bureaucrats, functions as an arm of the government -- and thus of economic development -- more than as a watchdog for workers.

(Cody, Edward 2007, ‘China Enacts Stronger Labor Law: New Rules to Protect Abused Migrant Workers’, *Washington Post*, 30 June <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062902270.html> – Accessed 23 August 2007 – Attachment 7)

This report notes that the Chinese government passed a new law in June 2007 to strengthen protection of workers. The new law is reported to deal with the requirement for detailed contracts spelling out what workers are entitled to in return for their time on the job. A copy of this law in English has not yet been found.

2. Are there labour laws that regulate salary?

There are laws that regulate minimum wages, overtime and allowances, although sources indicate that these are often ignored or subverted by employers. The 1994 *Labour Law* that has articles to regulate minimum wages in its Chapter 5. The most relevant articles are these:

Chapter V Wages

Article 46 The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work. The level of wages shall be gradually raised on the basis of economic development. The State shall exercise macro-regulations and control over the total payroll.

Article 47 The employing unit shall independently determine its form of wage distribution and wage level for its own unit according to law and based on the characteristics of its production and business and economic results.

Article 48 The State shall implement a system of guaranteed minimum wages. Specific standards on minimum wages shall be determined by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government and reported to the State Council for the record. Wages paid to labourers by the employing unit shall not be lower than the local standards on minimum wages.

Article 49 The determination and readjustment of the standards on minimum wages shall be made with reference to the following factors in a comprehensive manner:

1. the lowest living expenses of labourers themselves and the average family members they support;
2. the average wage level of the society as a whole;
3. labour productivity;
4. the situation of employment; and
5. the different levels of economic development between regions.

(*Labour Law of the People's Republic of China 1994*, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on 5 July 1994, and entering into force on 1 January 1995, All-China Federation of Trade Unions website <http://www.acftu.org.cn/labourlaw.htm> – Accessed 23 August 2007 – Attachment 1).

There are also regulations on minimum wages (*Regulations concerning minimum wages in enterprises 1993*, Source: *China Labour Newspaper* (11 January 1994), 24 November, International Labour Organisation website <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/44000/65000/E94CHN02.htm> – Accessed 24 August 2007 – Attachment 8). These regulations stipulate that each province shall determine the minimum wages for that province in consultation with the central government, the trade union and the employers association (Sec.6). Section 9 states that:

Minimum wage rates shall take into account the specific conditions of different localities and trades of the same region, and different minimum wage rates may be fixed for localities with different economic development levels and for different trades.

The regulations allow for legal action and economic penalties against companies who do not pay minimum wages (sec.25-29).

The US Department of State gave the following advice on minimum wages in March 2007:

There was no national minimum wage. The labor law requires local governments to set their own minimum wage according to standards promulgated by the Ministry of Labor and Social Security. These standards include the minimum cost of living for workers and their families, levels of economic development and employment in the area, as well as the level of social insurance and other benefits contributions paid by the employees themselves. The regulation states that labor and social security bureaus at or above the county level are responsible for enforcement of the law. It provides that where the ACFTU finds an employer in violation of the regulation, it shall have the power to demand that the department of labor and social security deal with the case, although it was not clear how that provision was implemented in practice.

In March the NPC issued a report on the implementation of the labor law, based on an intensive 2005 survey of labor conditions. The report stated that the minimum wage system was not fully implemented, that there was no regular mechanism for increasing wages in many places, and that wage arrears continued to occur. However in many locations a shortage of unskilled labor continued to push wages up, causing several major cities in Guangdong province to increase the minimum wage by 17 to 42 percent during the year.

Wage arrearages to employees of state-owned and private enterprises remained common, especially among migrant workers. According to a government report published in April, 35 percent of rural migrant workers reported having difficulty obtaining wages on time, while nearly 16 percent had trouble obtaining wages. Some migrant workers received wages once a year, when settling with employers prior to returning to their home districts for the lunar New Year. The government continued its campaign to recover payment of missing wages and insurance contributions, and some localities took action to remedy wage arrears, with varying degrees of success. Some provinces promulgated regulations requiring companies to establish wage guaranty funds, in which employers are required to deposit a percentage of project costs into government-controlled accounts for use to pay back wage claims to workers. In February the Shenzhen city Labor and Social Security Bureau sanctioned 1,300 companies and imposed \$5.8 million (47 million RMB) in fines for not paying wages. In June Guangdong authorities blacklisted 30 construction companies for failure to pay wages, making them ineligible for city-funded projects. In August the SPC issued a judicial interpretation allowing unpaid workers holding vouchers from their employers to take their cases directly to court, without first going through the lengthy process of labor mediation and arbitration. Legal aid lawyers reported that this judicial decision has been very effective in reducing the time it takes to resolve wage arrears cases.

Other widespread, illegal practices effectively reduced workers' wages. These included arbitrary fines and wage deductions levied by employers for such breaches of company rules as talking to fellow employees, talking back to supervisors, or standing or sitting improperly on the job. Many employers used an "extended shift" system, in which the employer sets an unrealistic production target that workers cannot achieve within designated work hours. Workers must then work overtime without additional compensation to meet the target, sometimes resulting in actual hourly wages that are below the legal minimum wage. (US Department of State 2007, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2006 – China*, 6 March, Sec. 6e – Attachment 4).

The 2002 Association for Sustainable & Responsible Investment in Asia report noted the following points on minimum wages in China:

Chinese law also sets minimum wages across the country, based on various considerations. Every village and every town is accounted for in this process, and the minimum wage is set to cover basic necessities (it is not a 'living wage'). As Article 49 states, the wage is based to some extent on the 'lowest living expenses of labourers ... and the average number of family members they support.'

Wages, hours, benefits, overtime compensation, and performance bonuses all form part of a workers' wage. However, the calculations are often so complex as to be incomprehensible to all but those in the company's accounting section. ... It is not surprising that when asked, workers are rarely able to explain how management arrived at their monthly wage. (pp.26-7)

In a recent interview in the *Nanfang gongbao* (*Southern Workers Daily*), Chinese academics outlined the 'devious means' to which regional governments, with particular reference to local authorities in the Pearl River Delta, will stoop to achieve their ends. The most common is to lower wages below that set by the government.

"For example, the minimum wage of a city near Guangzhou is RMB 300, which is much less than the provincial government's recently adjusted relevant standard in Guangzhou of RMB 480. This creates an incentive for a foreign enterprise to abandon Guangzhou and move to the [low-wage] city to build a factory and continue its business". (pp.27-8)

This is not a problem confined to the Pearl River Delta. As members of the Select Committee on Labour and Social Security Law under the National Law & Society Association have admitted: "Pressuring minimum wages downwards happens in various regions across the country, not only in the Pearl River Delta. This is what we call minimum wages competition. Frankly, none of the regional governments will admit to you that they do it. Neither do they wish to tell you that it is a fact. What they will say is something wishy-washy while discussing the issue with you". (p.28)

Another serious problem with regard to wages is payment in arrears. According to the ACFTU, enterprises owed RMB 31.9 billion (US\$ 3.9 billion) in wages to 13.9 million workers in 79,000 work units.(p.29)

Another issue relating to hours and wages concerns quotas and peaks. Many workers in Chinese workplaces are not paid an hourly rate as such, but a rate based on items produced (so called 'piece-rates'). Management sets quotas (the number of items that a worker or team of workers needs to finish in a set period, usually per day), and workers are paid according to pieces (meeting quality assurance standards) completed. Quotas are sometimes set so high that workers need to work double shifts or entire days (24 hours) to meet them (p.29) (Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December <http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Attachment 5)

The China Labour Bulletin report also examines how the minimum wage system works in practice on pages 14-17. They state:

The original purpose of China's minimum wage system was to ensure that, even in the worstcase scenario, wages would not fall below the stipulated minimum level. It was clearly not to create a situation whereby workers would have to put in excessively long overtime hours simply to earn a decent final wage. But by pegging the "basic wage" to the local

minimum wage and resorting to the various other methods listed above, Dongguan's factory owners have created just such a situation. In practice, the minimum wage system – coupled with a lack of proper monitoring and enforcement by local authorities – has facilitated collusion among factory owners in maintaining low wage levels and conditions across the city.

(China Labour Bulletin 2006, *Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China*, CLB Research Series: No. 2, September, p.15 http://www.china-labour.org.hk/fs/view/research-reports/Women_Workers_Report.pdf – Accessed 24 August 2007 – Attachment 6).

3. Are there labour laws that regulate a worker's conditions of work such as sick pay?

Sick Pay

China's *Labour Law* calls for social insurance to cover sick pay in Chapter IX 'Social Insurance and Welfare', but does not stipulate that employers must cover this cost:

Article 70 The State shall develop social insurance undertakings, establish a social insurance system, and set up social insurance funds so that labourers may receive assistance and compensations under such circumstances as old age, illness, work-related injury, unemployment and child-bearing.

Article 71 The level of social insurance shall be in proportion to the level of social and economic development and the social affordability.

Article 72 The sources of social insurance funds shall be determined according to the categories of insurance, and an overall pooling of insurance funds from the society shall be introduced step by step. The employing unit and labourers must participate in social insurance and pay social insurance premiums in accordance with the law.

Article 73 Labourers shall, in accordance with the law, enjoy social insurance benefits under the following circumstances:

1. retirement;
2. illness or injury;
3. disability caused by work-related injury or occupational disease;
4. unemployment; and
5. child-bearing.

The survivors of the insured labourers shall be entitled to subsidies for survivors in accordance with the law.

The conditions and standards for labourers to enjoy social insurance benefits shall be stipulated by laws, rules and regulations.

The social insurance amount that labourers are entitled to, must be timely paid in full.

Article 74 The agencies in charge of social insurance funds shall collect, expend, manage and operate the funds in accordance with the stipulations of laws, and assume the responsibility to maintain and raise the value of these funds.

The supervisory organizations of social insurance funds shall exercise supervision over the revenue and expenditure, management and operation of social insurance funds in accordance with the stipulations of laws.

The establishment and function of the agencies in charge of social insurance funds and the supervisory organizations of social insurance funds shall be stipulated by laws.

No organization or individual shall be allowed to misappropriate social insurance funds.

Article 75 The State shall encourage the employing unit to set up supplementary insurance for labourers according to its practical situations.

The State shall advocate that labourers practise individual insurance in form of saving account.

Article 76 The State shall develop social welfare undertakings, construct public welfare facilities, and provide labourers with conditions for taking rest, recuperation and rehabilitation.

The employing unit shall create conditions so as to improve collective welfare and raise welfare treatment of labourers.

(*Labour Law of the People's Republic of China 1994*, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on 5 July 1994, and entering into force on 1 January 1995, All-China Federation of Trade Unions website <http://www.acftu.org.cn/labourlaw.htm> – Accessed 23 August 2007 – Attachment 1).

The Association for Sustainable & Responsible Investment in Asia report notes the following points in relation to Article 70:

China's social insurance system is currently in the midst of a massive overhaul. The government is transforming what was once a 'low wage, high welfare' system by changing the high welfare component into a basic contributory system of insurance to which both employers and employees contribute. The main aim is to increase those covered by the scheme, and to eventually make all enterprises liable to payments. However, embezzlement cases have undermined the system and most workers are suspicious of claims that they will receive payouts when required.

(Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December, p.61

<http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Accessed 29 August 2007 – Attachment 5)

Working Conditions

China's *Labour Law* includes guidelines on Occupational Health and Safety (OH&S) in Chapter VI, which includes the following articles:

Article 52 The employing unit must establish and perfect the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate labourers on occupational safety and health, prevent accidents in the process of work, and reduce occupational hazards.

Article 53 Facilities of occupational safety and health must meet the standards stipulated by the State.

Facilities of occupational safety and health installed in new projects and projects to be rebuilt or expanded must be designed, constructed and put into operation and use at the same time as the main projects.

Article 54 The employing unit must provide labourers with occupational safety and health conditions conforming to the provisions of the State and necessary articles of labour protection, and providing regular health examination for labourers engaged in work with occupational hazards.

Article 55 Labourers to be engaged in specialized operations must receive specialized training and acquire qualifications for such special operations.

Article 56 Labourers must strictly abide by rules of safe operation in the process of their work.

Labourers shall have the right to refuse to operate if the management personnel of the employing unit command the operation in violation of rules and regulations or force laborers to run risks in operation; labourers shall have the right to criticize, report or file charges against the acts endangering the safety of their life and health.

Article 57 The State shall establish a system for the statistics, reports and dispositions of accidents of injuries and deaths, and cases of occupational diseases. The labour administrative departments and other relevant departments of the people's governments at or above the county level and the employing unit shall, according to law, compile statistics, report and dispose of accidents of injuries and deaths that occurred in the process of their work and cases of occupational diseases.

(Labour Law of the People's Republic of China 1994, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on 5 July 1994, and entering into force on 1 January 1995, All-China Federation of Trade Unions website <http://www.acftu.org.cn/labourlaw.htm> – Accessed 23 August 2007 – Attachment 1).

The US Department of State gave the following advice on working conditions and OH&S in China in March 2007:

The NPC report found that working conditions in locations it surveyed were substandard. The State Administration for Work Safety (SAWS) also acknowledged that occupational health and safety concerns remained serious. SAWS, which was elevated to ministry status in 2005, continued to develop the national framework for work safety. The Ministry of Health was responsible for the prevention and treatment of occupational illness, while SAWS was responsible for workplace health supervision. In June the law was amended to provide for criminal sanctions against individuals responsible for industrial accidents. In August SAWS announced a five-year, \$58 billion (467.4 billion RMB) plan to invest in safety projects, including coal mine accident prevention, in an effort to reduce the industrial accident rate.

While inadequate and poorly enforced occupational health and safety laws and regulations continued to put workers' health and lives at risk, there was a decline in reported accidents and fatalities compare to the previous year. During the year official statistics reported that industrial accidents killed 14,382 workers, a decrease of 9.4 percent from the previous year. There were 95 incidents involving more than 10 fatalities (a total of 1,570 fatalities), 49 percent fewer incidents than in 2005.

... The work safety law states that employees have the right, after spotting an emergency situation that threatens their personal safety, to evacuate the workplace. Employers are forbidden to cancel the labor contracts or reduce the wages or benefits of any employee who takes such action. In practice such protective provisions were difficult to enforce. There were reports of serious accidents in which miners were killed when mine managers forced them to continue work under unsafe conditions.

The NPC report stated that infringement of workers' rights was widespread in 2005, and this situation continued during the year. In addition to citing poor labor law enforcement, the NPC noted that labor contracts are seldom executed, and when they were, that contract terms were too short and not in compliance with the law. NPC inspection results in 2005 showed that only 20 percent of employees signed labor contracts in small- and medium-sized nonpublic enterprises. This situation continued during the year. The lack of written labor contracts made it much more difficult for workers whose rights had been violated to seek redress through administrative processes or through the courts. The widespread use of labor contracting agencies to supply manpower also created legal gray areas that made labor law enforcement more difficult.

(US Department of State 2007, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2006 – China*, 6 March, Sec. 6e – Attachment 4).

The 2002 Association for Sustainable & Responsible Investment in Asia report notes the following points in relation to OHS:

One of the most underrated concerns in factories across Asia is health and safety. China is no exception. Chinese workplaces have an unenviable record of failing to implement occupational health and safety standards, and in certain sectors the record is abysmal. (p.30)

China does not have a generic OHS law to prescribe minimum health and safety standards (see below for changes beginning November 2002). Instead it has numerous national rules and regulations concerning OHS, which are implemented by different government ministries. For instance, in 1995 it took fourteen authorities to draft 18 rules and regulations pertaining to the prevention of fire and explosions. Moreover, each province has the ability to pass decrees on OHS. This leads to a bewildering complexity with regard to administration and enforcement, and the resulting coordination (or lack thereof) between a myriad of departments causes problems. (p.31)

Prior to economic reforms, OHS enforcement relied on 'state monitoring, administrative department management, and mass surveillance.' This is no longer effective for two reasons: first, the power of the old industrial ministries has diminished; and second, the transformation of property rights has meant that many enterprises are no longer directly under the control of the industrial ministries. That is, the state no longer owns all property, an avenue by which it previously controlled enterprises. Although MOLSS is able to issue 'Notes of Compliance' to factories that violate the rules and regulations pertaining to OHS, managers often simply ignore them. Corruption presents a serious problem for effective implementation with well-connected owners and managers able to avoid inspections of any kind. Serious incidents often elicit a flurry of activity, but the response is ad hoc and has not led to a systematic appraisal of the problems.

Currently, weak factory monitoring, poor law enforcement, and inadequate public education curtail the effectiveness of OHS in China. Workers are unaware of safety and health issues, and are often not aware that a workplace could be safer. (p.32)

Nevertheless, since the middle of 2000, China's leadership has been slowly moving towards overhauling the country's OHS regulations. In what amounts to an admission that a decades

old regulatory system has not kept pace with rapid industrialisation, privatisation and the consequent rise in workplace fatalities, diseases and accidents, the government has implemented a number of changes designed to move China's law and enforcement procedures closer to international standards. Signs of change are apparent in the:

- Chinese media's increased attention to workplace health and safety (including a 4,400 kilometre 'long march' by select reporters to interview business leaders on work safety in 2002)
- Raft of senior Party officials and departmental heads publicly stating that the Chinese government is committed to stepping up efforts to improve workplace safety standards
- ...
- Increase in the number of enterprises and workers undertaking training on workplace safety

(Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December
<http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Attachment 5)

In relation to Article 52 of the Labour Law, the report states:

The state of occupational safety and health (OSH) standards across the region (excluding countries like Japan, South Korea, and Singapore) ranges from poor to virtually non-existent. China does not have a comprehensive set of OSH regulations and specifications that conform to international standards. Accident rates are high (which I discuss below in more detail), but perhaps most important here are the ways in which management use legal loopholes to either prolong or stifle compensation claims to injured workers. In brief, the main strategies are as follows: For instance, if arbitration does not settle a case (and it usually does not), it moves to court. In Shenzhen, court hearings for common occupational injuries run on average to 1,070 days. Migrant workers have neither the time nor money to pursue a case for this long. (Association for Sustainable & Responsible Investment in Asia 2002, *Labour Standards In China, The Business And Investment Challenge*, December, p.60
<http://www.asria.org/publications/lib/LabourStandardsInChinaReport.pdf> – Accessed 29 August 2007 – Attachment 5)

4. What is the attitude of the Chinese authorities towards workers demanding better working conditions such as a reduction in working hours and an increase in salary?

Workers are expected to pursue their demands through the All China Federation of Trade Unions (ACFTU) and follow a process of negotiation, mediation and arbitration. However the ACFTU has been criticised as ineffective (see below), and many workers seek to gain their demands through protest action, which is sometimes met with force by the authorities.

The 1994 *Labour Law* that has articles governing the settlement of labour disputes in its Chapter 10 (*Labour Law of the People's Republic of China 1994*, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on 5 July 1994, and entering into force on 1 January 1995, All-China Federation of Trade Unions website <http://www.acftu.org.cn/labourlaw.htm> – Accessed 23 August 2007 – Attachment 1). These call for arbitration and mediation through a labour dispute committee, then a labour dispute arbitration committee (Arts. 77-82). Where a party involved in a labour dispute is not satisfied with the adjudication, the party may bring a lawsuit to a people's court (Arts.83-4).

Nevertheless, there are concerns that Chinese workers are not able to effectively engage in collective bargaining, due to constraints on their ability to organise freely or take industrial action. A 2006 report on labour standards in China by the International Confederation of Free Trade Unions (ICFTU) states:

Workers are deprived the right to organize freely, to form independent trade unions, and to engage in collective bargaining. The right to strike is not recognised. **The state and government use a variety of anti-union tactics to control workers, including crack downs on industrial actions and imprisonment of those fighting for worker's rights.**

(International Confederation of Free Trade Unions 2006, *Internationally recognized Core Labour Standards in the People's Republic of China: Report For The WTO General Council Review Of The Trade Policies Of The People's Republic Of China*, 6 April, p.8

<http://www.icftu.org/www/pdf/clschinacor2006.pdf> – Accessed 28 August 2007 – Attachment 9)

The report includes the following information on workers' bargaining rights:

China has not ratified the ILO core Convention on the Right to Organise and Collective Bargaining, nor the Convention on Freedom of Association and Protection of the Right to Organise. Workers are deprived the right to organize freely, to form independent trade unions, and to engage in collective bargaining. The right to strike is not recognised. The state and government use a variety of anti-union tactics to control workers, including repression of industrial action and imprisonment of those fighting for workers' rights. (p.1)

China's Trade Union Law was adopted in 1950. It was amended in 1992 and again in October 2001. Workers are not free to form or join the trade unions of their choice. Only one "workers" organisation is recognised in law, the All China Federation of Trade Unions (ACFTU). (p.2)

There is currently no law governing collective bargaining procedures, only regulations on collective contracts. However, if a collective contract is established in line with the regulations, it is legally binding. The new labour law (effective from 1995) adopted collective consultation as a key medium for settling disputes between employers and workers, with the government instructing the ACFTU to "consult" with employers on labour terms for workers as a way of pre-empting independent efforts at negotiations. Article 33 of the Labour Law states that workers have the right to conclude a collective contract "in an enterprise where the trade union has not yet been set up". The regulations governing collective contracts reinforce this.

The 2004 government 'white paper' on employment encourages the ACFTU to conclude "collective contracts" in order to protect workers' rights, and the labour law permits collective consultation and contracts to be concluded between the ACFTU (or workers' representatives) and the management. According to official statistics, collective contracts cover almost 100 million workers, with some 80,000 sectoral and industrial contracts for 33 million workers while 61.7 million workers are parties to contracts with their individual employers. In May 2004, amendments to the Provisions on Collective Contracts that call for more detail in collective contracts came into force. The regulations outline the procedures involved in the consultation and the theoretical equality of both parties. However, despite greater opportunities for collective bargaining and the obvious need for protection for many workers – including migrants – there has been little progress towards any form of genuine collective bargaining.

Instead the ACFTU continues to 'represent' the workers to management and government structures. **In the private sector, where branches of the ACFTU are largely inexistent, workers denied the ability to organise independently face almost insurmountable obstacles to collective bargaining and representation.** (p.3)

Where detailed reports of social unrest are available, workers generally dismiss the official trade union as unhelpful or ineffective at best. ... While claiming that its key concern is the welfare and protection of the more than 21 million workers who have been dismissed in this restructuring process, the ACFTU appears to be helpless in negotiating, let alone enforcing, any social safety provisions that may have been obtained. The privatisation of state or other collectively owned assets frequently goes hand in hand with the corruption of local and regional government officials, over which the ACFTU appears to have no influence. It should be noted however that, while major labour unrest is generally not reported, there are increasing accounts of smaller collective actions, thanks chiefly to the initiatives of workers, and the courage of individual journalists and editors in reporting them.

Collective disputes are defined as involving three or more people. The overwhelming majority are small-scale incidents – an average of 38 people in 2003 – that are mostly settled via mediation at enterprise-level, arbitration or the courts, with the latter channel becoming increasingly popular with workers in large cities, as seen above. Workers feel they will get a fairer hearing in court than at arbitration committees, despite the lengthy processing time and low success rates. On average, half of the judgements and arbitrations or more are found in workers' favour although serious problems remain over the timely enforcement of court decisions in favour of workers.

While it remains difficult, if not impossible to estimate the total number of worker protests in China due to media censorship and continuing secrecy regarding statistics, is clear that the trend of increasing protests has continued throughout 2005. According to figures from the Ministry of Public Security there was a sharp rise in officially registered public disturbances in 2005 – large scale incidents of “mass gatherings to disturb social order” rose by 13 percent. In one report “mass protests” or “mass incidents”, including riots, demonstrations, and collective petitions, had risen from 58,000 in 2003 to 74,000 in 2004. Many mass disputes were about land seizures in rural areas and about half are labour related. Low and missing back wages were the main causes of mass labour disputes. In addition to regular collective protests against non-payment of wages, fake and genuine bankruptcies and corruption involved in the privatisation of state-owned industrial assets, there has also been a rise in individual protests. Some media reports have concentrated on workers who have jumped or threatened to jump off buildings to claim unpaid wages. (pp.5-6)

(International Confederation of Free Trade Unions 2006, *Internationally recognized Core Labour Standards in the People's Republic of China: Report For The WTO General Council Review Of The Trade Policies Of The People's Republic Of China*, 6 April <http://www.icftu.org/www/pdf/clschinacor2006.pdf> – Accessed 28 August 2007 – Attachment 9)

The US Department of State has a survey of workers rights in Section 6 of their most recent report (US Department of State 2007, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2006 – China*, 6 March – Attachment 4). In relation to the government's treatment of workers who act outside the ACFTU structure, the report states:

Some workers acted outside the ACFTU structure to demand back wages, pension or health insurance contributions, or other benefits owed by employers. The government took action against some of these workers, especially when they engaged in organized campaigns. Some workers who complained to local labor and social security bureau offices about working

conditions reported that they faced harassment from their employers and police, and sometimes from labor bureau officials. During the year labor rights activists complained throughout the year of police surveillance, including interviews with police and police background investigations of their family members. In November Shenzhen officials investigated the activities of five labor NGOs for their involvement in an organized petition drive to reduce labor arbitration fees. Shenzhen authorities confiscated several computers and shut down two of the NGOs.

... Labor activist Xiao Yunliang was released on February 23, three weeks before the end of his four year prison sentence. According to human rights NGOs, Xiao and his family continued to suffer harassment after his release. Other labor activists, detained in previous years, were reportedly still in detention at year's end. These included Yao Fuxin, Shao Liangchen, Hu Shigen, Wang Sen, Zhang Shanguang, He Chaohui, Yue Tianxiang, Miao Jinhong, Ni Xiafei, Huang Xiangwei, Li Xintao, Kong Jun and Du Hongqi, Gao Hongming, Hu Mingjun, Li Wangyang, Liu Zhihua, Luo Mingzhong, Luo Huiquan, Ning Xianhua, She Wanbao, Wang Miaogen, Yang Jianli, and Zhao Changqing.

Civil rights lawyer Gao Zhisheng, who had defended the rights of Chinese workers, labor activists and other rights activists for many years, was detained in August and later arrested on September 21 on "suspicion of inciting subversion of state power." His office was suspended by the Beijing Bureau of Justice for one year in November 2005 shortly after he sent a letter to the president and premier, calling for an end to widespread detention of activists and after he had refused to withdraw from politically sensitive legal cases as demanded by Beijing officials.

(US Department of State 2007, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2006 – China*, 6 March, Sec. 6a – Attachment 4).

The 2006 survey of trade union rights in China by the ICFTU states that the *Trade Union Law* was revised in 2001, but the ACFTU maintains a monopoly over all unions, "local, national or industrial". The report comments that the right to strike was removed from China's Constitution in 1982 "on the grounds that the political system in place had 'eradicated problems between the proletariat and enterprise owners'". The *Trade Union Law* skirts around the issue by avoiding the term "strike", instead referring to "work-stoppages" and "go-slows". Of independent unions the report states:

No independent trade unions are allowed to exist, and all attempts at establishing independent workers' organisations are repressed, sometimes violently. **Organisers of worker groups or protests are often arrested. Some are sentenced to terms of imprisonment (officially called reform through labour" or "lao gai") after criminal trials which fall well short of international standards. Others can be assigned to terms of "re-education through labour" ("lao jiao", sometimes called "rehabilitation through labour"), an administrative process which bypasses the few safeguards of the criminal justice system.**

The result of such repressive measures is that examples of independent unions are rare and short-lived. Organisers of collective actions operate at great risk. The fear of detention also makes negotiations between workers' representatives and the authorities and employers extremely difficult. However, there has been a marked trend of worker organisers being prepared to take this risk, and a rise in collective action generally ('People's Republic of China: Annual survey of violations of trade union rights' 2006, ICFTU International Confederation of Free Trade Unions website

<http://www.icftu.org/displaydocument.asp?Index=991223931&Language=EN> – Accessed 15 August 2006 – Attachment 10).

In 2002, Human Rights Watch released a comprehensive report on the treatment of workers in dispute with their companies. This is attached (Human Rights Watch 2002, *Paying the Price: Worker unrest in Northeast China*, August, Vol 14, No.6 (C) – Attachment 11). The report gives many examples of arrests of workers' representatives who organised protests against their companies:

Government assurances of concern and payment of some benefits and wage arrears were coupled with a massive security force presence, refusal to issue permits for demonstrations, in some cases violence against unarmed demonstrators, short-term detention of protesters with release conditional on pledges to forgo further protests, interference with the right to counsel for detained and arrested workers, and threats to dock the pay of employed workers whose family members took part in rallies. In the city of Liaoyang, four protest organizers were formally indicted on March 30, 2002 after leading a four-year effort to bring workers' grievances to the local authorities. In Daqing, at least sixty workers reportedly were detained for periods ranging between twenty-four hours and two weeks. (p.2)

The Trade Union Law ... specifically outlaw[s] the formation of trade unions independent of the ACFTU.

The Chinese government has consistently moved quickly to quash independent labor organizing efforts. For example, active involvement in organizing workers led to charges of subversion, a three-hour trial, and a ten-year prison sentence for one Gansu-based activist, Yue Tianxiang. A former driver, he had undertaken in early 1999 to represent 2,000 workers who like him had lost their jobs and could not collect months of back wages. Between August 1998 and June 2002 at least twenty-nine workers were detained or sentenced to terms ranging up to ten years for peaceful labor-related activities. (p.13)

Although Human Rights Watch have not release any further long reports on workers' rights, their most recent annual report on China has a short update on workers:

The Chinese government continues to prevent workers from forming independent trade unions, arguing that the party-controlled All-China Federation of Trade Unions (ACFTU) sufficiently ensures their rights. As a result, increasing numbers have taken to the streets and to the courts, seeking redress for lost wages and pensions, forced and uncompensated overtime, unlawful wage deductions, employers' violations of minimum wage regulations, and unhealthy and dangerous working conditions.

In what has been viewed as a victory for workers, Wal-Mart accepted unionization within its stores in China in 2006 after the ACFTU, rather than following traditional top-down organizing, began store-by-store grassroots organizing. However, the ACFTU's insistence on a "trade union with Chinese characteristics" and its commitment to work with management in setting up local ACFTU braches have cast doubt on its commitment to advocate for workers on rights such as freedom of association and collective bargaining.

(Human Rights Watch 2007, *World Report – China: Events of 2006*, January, pp.263-4 – Attachment 12).

Amnesty International also last produced a major report on workers' rights in China in 2002 (Amnesty International 2002, *People's Republic Of China: Labour unrest and the suppression of the rights to freedom of association and expression*, AI Index: ASA 17/015/2002, 30 April – Attachment 13). This stated:

Labour unrest in China continues to be widespread. Workers are demonstrating against layoffs, redundancy terms, wage arrears, illegal working conditions, management corruption and delayed welfare payments. Some protests have been met with excessive use of force by

police, and many protesters have been detained. Often such demonstrations go unreported as the local authorities attempt to conceal the severity or extent of the protests. Protests are often forcibly repressed by public security personnel, and labour activists, workers' leaders and those who appeared to be outspoken face detention and imprisonment. Journalists and lawyers are also targeted by the authorities and often face intimidation and arrest if they speak out in defence of protesters.

The China Labour Bulletin has compiled a list of labour rights activists currently imprisoned (China Labour Bulletin 2007, 'Labour Rights Activists Imprisoned in China', 7 August <http://iso.china-labour.org.hk/public/contents/article?revision%5fid=48794&item%5fid=38202> – Accessed 29 August 2007 – Attachment 14). Many of these are quite high profile leaders who attempted to form independent unions or led large public demonstrations which sometimes criticised government officials as well as company owners. The report notes that “Information about imprisoned labour-rights activists in China is difficult to obtain, since many of the worker activities or protests that lead to their arrest and sentencing take place in cities without any independent news media presence, and so tend to go unreported”.

A 2004 report by Human Rights In China notes that, although working conditions are often deplorable and although unions are banned and although workers are subject to low wages and long hours, there are some avenues for workers to collectively negotiate with their employers through the formation of workers committees and these may improve conditions in some workplaces (Human Rights In China 2004, *The Other Toy Story: Workers' Rights in China: An HRIC Briefing, China Rights Forum*, No. 4 <http://www.hrichina.org/public/PDFs/CRF.4.2004/ToyStory4.2004.pdf> – Accessed 29 August 2007 – Attachment 15).

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