

WORKER RIGHTS

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WORKER RIGHTS

Findings

- Workers in China still are not guaranteed, either by law or in practice, full worker rights in accordance with international standards, including the right to organize into independent unions. The All-China Federation of Trade Unions (ACFTU), the official union under the direction of the Communist Party, is the only legal trade union organization in China. All lower level unions must be affiliated with the ACFTU.
- The Commission continues to note the lack of genuine labor representation in China. ACFTU officials continue to state that it is their goal to develop stronger representation for workers. In January 2011, for example, the ACFTU announced its plan to establish a system of electing worker representatives in 80 percent of unionized public enterprises and 70 percent of unionized non-public enterprises in 2011. In March 2011, Zhang Mingqi, the vice chairman of the ACFTU, acknowledged that an increase in worker actions was due to enterprises having “neglected the legal rights and benefits of workers” for many years. Multiple localities in China also announced plans to establish collective wage consultation systems in coming years, including Qingdao, Changde, Rizhao, Qinhuangdao, and Shenzhen.
- At the same time, advocates for worker rights in China continue to be subjected to harassment and abuse. In particular, officials appear to target advocates who have the ability to organize and mobilize large groups of workers. For example, in October 2010, a Xi’an court sentenced labor lawyer and advocate Zhao Dongmin to three years in prison for organizing workers at state-owned enterprises. Authorities charged him with “mobilizing the masses to disrupt social order.” Authorities continue to detain Yang Huanqing for organizing teachers in fall 2010 to petition against social insurance policies they alleged to be unfair.
- As the Commission found in 2010, Chinese authorities continue to face the challenge of accommodating a younger, more educated, and rights-conscious workforce. In February 2011, the ACFTU released a set of policy recommendations intended to better address the demands of these young workers. Younger workers, born in the 1980s and 1990s, continue to be at the forefront of worker actions in China this year, including large-scale street protests in southern China in June 2011. These young workers also make up about 100 million of China’s 160 million migrant workers, and compared to their parents, have higher expectations regarding wages and labor rights. China’s Minister of Agriculture Han Changfu has pointed out that

many of these young workers have never laid down roots, are better educated, are the only child in the family, and are more likely to “demand, like their urban peers, equal employment, equal access to social services, and even the obtainment of equal political rights.”

- With Chinese officials charged with preserving “social stability,” the extent to which they will allow workers to bargain for higher wages and genuine representation remains unclear. In part to address official concern over the unequal distribution of wealth across China and its potential effects on “social unrest,” the government reportedly is considering a national regulation on wages. Chinese media in the past year reported that the draft regulation includes provisions creating a “normal increase mechanism” for wages, defining a set of standards to calculate overtime pay, and requiring the management of certain “monopolized industries” (*longduan qiye*) to disclose to the government and the public the salary levels of their senior employees.

- The Commission continued to monitor the progress of Guangdong province’s draft Regulations on Democratic Management of Enterprises, which reportedly would extend to workers the right to ask for collective wage consultations and allow worker members to sit on the enterprise’s board of directors and board of supervisors, represent worker interests in the boards’ meetings, and take part in the enterprise’s decision-making processes. In September 2010, the Standing Committee of the Guangdong People’s Congress reportedly withdrew the draft from further consideration due to heavy opposition from industry. During this reporting year, a major Hong Kong media source reported that Guangdong authorities would approve the draft in January 2011. However, no such action has been observed.

- Chinese workers, especially miners, continued to face persistent occupational safety issues. In November 2010, the ACFTU released figures showing a 32 percent increase in occupational illnesses in 2009, of which the vast majority involved lung disease. Officials took some efforts to close some mines and promote safety, and fatalities have been consistently reduced over the past few years, but uneven enforcement reportedly continued to hinder such efforts. Collusion between mine operators and local officials reportedly remains widespread.

- In January 2011, revisions to the Regulations on Work-Related Injury Insurance became effective. The changes include requiring officials to respond more quickly to worker injury claims, but the effectiveness of the changes is unclear. As the Commission reported last year, the claims process may last for more than a decade. The process is further complicated for migrant workers who may already have left their jobs and moved to another location by the time clinical symptoms surface.

- The extent of child labor in China is unclear in part because the government does not release data on child labor despite frequent requests by the U.S. Government, other countries’ governments, and international organizations. While a national legal framework exists to address the issue, systemic problems

in enforcement have dulled the effects of these legal measures. Reports of child labor continued to surface this past year. As an example, in March 2011, Shenzhen authorities reportedly found 40 children working at an electronics factory.

- The National People's Congress Standing Committee passed the PRC Social Insurance Law in October 2010, and it became effective on July 1, 2011. The law specifies that workers may transfer their insurance from one region to another and discusses five major types of insurance: Old-age pension, medical, unemployment, work-related injury, and maternity. No implementing guidelines have been released and some critics have said the law is too broad to be implemented effectively. In addition, the extent to which the law will enable a greater number of migrant workers to obtain social insurance remains unclear. At the same time, migrant workers continued to face discrimination in urban areas, and their children still faced difficulties accessing city schools. Employment discrimination more generally continued to be a serious problem, especially for workers without urban household registration status.

Recommendations

Members of the U.S. Congress and Administration officials are encouraged to:

- Support projects promoting reform of Chinese labor laws and regulations to reflect internationally recognized labor principles. Prioritize projects that not only focus on legislative drafting and regulatory development, but also analyze implementation and measure progress in terms of compliance with internationally recognized labor principles at the shop-floor level.
- Support multi-year pilot projects that showcase the experience of collective bargaining in action for both Chinese workers and trade union officials; identify local trade union offices found to be more open to collective bargaining; and focus pilot projects in those locales. Where possible, prioritize programs that demonstrate the ability to conduct collective bargaining pilot projects even in factories that do not have an official union presence. Encourage the expansion of exchanges between Chinese labor rights advocates in non-governmental organizations (NGOs), the bar, academia, the official trade union, and U.S. collective bargaining practitioners. Prioritize exchanges that emphasize face-to-face meetings with hands-on practitioners and trainers.
- Encourage research that identifies factors underlying inconsistency in enforcement of labor laws and regulations. This includes projects that prioritize the large-scale compilation and analysis of Chinese labor dispute litigation and arbitration cases and guidance documents issued by, and to, courts at the provincial level and below, leading ultimately to the publication and dissemination of Chinese language casebooks that may be used as a common reference resource by workers, arbitrators, judges, lawyers, employers, union officials, and law schools in China.

- Support capacity-building programs to strengthen Chinese labor and legal aid organizations involved in defending the rights of workers. Encourage Chinese officials at local levels to develop, maintain, and deepen relationships with labor organizations inside and outside of China and to invite these groups to increase the number of training programs in mainland China. Support programs that train workers in ways to identify problems at the factory-floor level, equipping them with skills and problem-solving training so they can relate their concerns to employers effectively.
- Where appropriate, share the United States' ongoing experience and efforts in protecting worker rights—through legal, regulatory, or non-governmental means—with Chinese officials. Expand site visits and other exchanges for Chinese officials to observe and share ideas with U.S. labor rights groups, lawyers, the U.S. Department of Labor (USDOL), and other regulatory agencies at all levels of U.S. Government that work on labor issues.
- Support USDOL's exchange with China's Ministry of Human Resources and Social Security (MOHRSS) regarding setting and enforcing minimum wage standards; strengthening social insurance; improving employment statistics; and promoting social dialogue and exchanges with China's State Administration of Work Safety (SAWS) regarding improving workplace safety and health. Support the annual labor dialogue with China that USDOL started in 2010 and its plan for the establishment of a safety dialogue. Encourage discussion on the value of constructive interactions among labor NGOs, workers, employers, and government agencies. Encourage exchanges that emphasize the importance of government transparency in developing stable labor relations and in ensuring full and fair enforcement of labor laws.

Introduction

Workers in China still are not guaranteed, either by law or in practice, full worker rights in accordance with international standards, including the right to organize into independent unions. Advocates for worker rights in China continued to be subjected to harassment and abuse. The All-China Federation of Trade Unions (ACFTU), the official union under the direction of the Communist Party, is the only legal trade union organization in China. All lower level unions must be affiliated with the ACFTU.

During the 2011 reporting year, Chinese authorities have faced the dual challenges of accommodating a younger, more educated, and rights-conscious workforce and addressing changes in economic development patterns (including inland growth, fewer workers migrating to coastal areas, rising wages, and labor shortages in some locales). Due in part to shifting labor, economic, and demographic conditions, official and unofficial reports have indicated that workers appeared to have gained increased leverage in the relationship between labor and capital. In recent years, Chinese workers have become more assertive in securing their rights, higher wages, more genuine representation, and better protection under China's labor laws. In some cases during this reporting year, workers continued to channel their grievances through, and to seek guidance, advice, and legal aid from, labor lawyers and advocates. At the same time, authorities have harassed, detained, and sent to prison labor advocates who attempted to organize workers for "disrupting social order." Some local officials reportedly beat and kicked striking workers and labor petitioners, and reports of attacks on migrant workers seeking back pay continued to surface.

With Chinese officials charged with preserving "social stability," the extent to which they will allow workers to bargain for higher wages and genuine representation remains unclear. Principles and different aspects of collective bargaining rights have been mentioned in multiple drafts of local and national regulations during this reporting year, including the draft Regulation on Wages—proposed in part to address official concern over the unequal distribution of wealth across China and its potential effects on "social unrest"—as well as trials and measures for collective wage negotiations in different localities. Some critics, however, have questioned the lack of specifics in some of these proposals and, thus, their eventual effectiveness.

Rights Consciousness, Worker Actions, and "Social Stability"

During this reporting year, Chinese officials have continued to assess the characteristics of the new generation of migrant workers as well as their significance on the shifting labor landscape, public safety, and "social stability."¹ Chinese government statistics suggest that these young workers constitute 61.6 percent of all migrant workers.² In February 2011, the ACFTU released a study identifying the characteristics unique to current young migrant workers. The document also provided several policy recommendations for "resolving the problems facing the new generation of migrant workers in realizing their rights and interests."³ The report notes that over half of young migrant workers are unmarried and

that 74.1 percent of them had “studied in school” prior to leaving home. By contrast, only 35.4 percent of the “traditional migrants,” those born before 1980, had studied in school.⁴ These young migrant workers also are mostly concentrated in secondary and tertiary industries and are overwhelmingly employed by private enterprises (84.3 percent) as opposed to state-owned enterprises (12.5 percent).⁵ On average, they receive lower wages (167.27 yuan (US\$26) lower than “traditional migrants”); are more likely to sign labor contracts that lack specific provisions detailing minimum pay in line with local regulations; have less employment stability; face “relatively more hidden dangers” in terms of workplace safety; and are less likely to join labor unions (44.6 percent of young migrant workers are union members, versus 56 percent of “traditional migrants”).⁶

The ACFTU report provides several recommendations on ways in which the government may more effectively accommodate younger workers’ unique life experiences and characteristics. Some of the suggestions include strengthening efforts to tackle wage disparities, advance social insurance programs, provide technical training to increase young migrant workers’ competitiveness and ability to adjust to changing circumstances, encourage localities to explore methods to reform the household registration system, and organize young migrant workers into unions and facilitate channels for them to address their grievances.⁷ These suggestions appear to reflect the Chinese government’s initial ideas to grapple with the aforementioned generational changes, a generation of migrant workers who, as one senior Chinese official observed, have never put down roots, are better educated, are only children, and are more likely to demand equal access to employment and social services—and even equal political rights—in the cities.⁸

Official and unofficial reports indicate that, for the most part, the young migrant workers described above have been at the forefront of recent worker actions.⁹ Worker actions have been common in China in recent years, and that continues to be the case during the 2011 reporting year. China Strikes, a Web site dedicated to “track[ing] strikes, protests and other collective actions taken by Chinese workers to defend their rights and interests,” recorded at least 32 such actions by workers from October 2010 to May 2011.¹⁰

As with the spate of worker actions that took place in the spring and summer of 2010 that garnered international attention, workers during this reporting year took action to recover back wages, protest the non-payment of wages, call for higher pay, and, for some older workers, demand due compensation in the cases of restructuring at certain enterprises. Social inequality and the lack of rule of law reportedly played a role in driving low-paid migrant workers to participate in a series of riots and protests in southern China in June 2011.¹¹ In April 2011, workers reportedly blocked the front gate of a liquor factory protesting the compensation terms during restructuring.¹² In the same month, more than 1,000 truck drivers in Shanghai municipality, reacting to rising fuel costs, protested for higher pay. In March 2011, about 80 sanitation workers in Guangzhou city, Guangdong province, took part in work stoppages to protest non-payment of wages, claiming that management owed each worker from 3,000 to 4,000 yuan (US\$464 to US\$618) for

overtime and other allowances.¹³ In November 2010, an “entire street” in Foshan city, Guangdong province, was reportedly “filled with workers,” perhaps up to 7,000, as management at Foxconn, a Taiwanese-owned company that produces electronics, allegedly forced workers to sign contracts with terms that many workers found unsatisfactory.¹⁴ Starting in October 2010, about 70 workers at a Japanese-owned factory took part in strikes to demand that the company comply with China’s labor laws, including the right to sign contracts and to be compensated with overtime payments.¹⁵

Chinese authorities during this reporting year continued to harass, detain, and imprison labor advocates and lawyers whom officials deemed to be threats to “social stability.” For example, authorities ordered Yang Huanqing, a teacher in Jingzhou city, Hubei province, to serve one year of reeducation through labor in March 2011 for “disrupting work unit order” when he supposedly organized 22 and 33 dismissed teachers in October and November 2010, respectively, to petition in Beijing. Yang reportedly led the teachers to petition against social insurance policies they alleged were unfair.¹⁶

In another case that reflects authorities’ concern with labor advocates’ and lawyers’ ability to organize and mobilize large groups of workers, the Xincheng District People’s Court in Xi’an city, Shaanxi province, sentenced labor lawyer and advocate Zhao Dongmin to three years’ imprisonment on October 2010 for “gathering a crowd to disrupt social order.”¹⁷ Zhao had allegedly organized workers at state-owned enterprises in Xi’an in April 2009 to establish the Shaanxi Union Rights Defense Representative Congress, an organization that, according to China Labor News Translations, a Web site dedicated to analyzing developments in China labor relations, was “critical of the Chinese [state-run] trade union’s failure to represent the interests of state sector employees in restructured and/or privatized enterprises.”¹⁸ Prior to Zhao’s arrest, Shaanxi authorities had warned that Zhao and others had:

seriously disrupted the normal workings of Party and government organs and have become a huge potential danger to social stability. They have made use of problems in society, including using old and frail enterprise retirees as cannon fodder to pressure the government. They have stirred up extreme delusions and fanned the flames in an extremely outrageous manner. If resolute measures are not adopted, they will grow into a threatening force and are very likely to wreak even greater havoc to social stability.¹⁹

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

The Chinese government prevents workers in China from exercising their constitutional right to freedom of association.²⁰ Trade union activity in China is organized under the All-China Federation of Trade Unions (ACFTU), a quasi-governmental organization under the direction of the Communist Party.²¹ Leading trade union officials hold concurrent high-ranking positions in the Party. The ACFTU Constitution and the Trade Union Law of 1992 both highlight the dual nature of the ACFTU to protect the legal rights and

interests of workers while supporting the leadership of the Party and the broader goals and interests of the Chinese government.²² The ACFTU monopolizes many worker rights issues in China, such as shop-floor organizing and formalistic collective contract negotiations, but it does not consistently or uniformly advance the rights of workers.²³

At the shop-floor level, the ACFTU's unions remain weak and marginalized. While the ACFTU and its affiliated unions at lower administrative levels sometimes may play an important role in legislative and regulatory development, this role is not matched with power at the enterprise level. Generally speaking, firm-level union branches are weak, non-democratic, and subordinate to management.²⁴ Despite an increase in legislation and administrative regulations that grants the ACFTU more power at the firm level to resolve disputes, the structural weaknesses of the trade union branches make improvements in trade union autonomy and worker advocacy difficult and slow.²⁵

COLLECTIVE CONTRACTING

Collective contracts and some process of collective consultation and negotiation have been part of Chinese labor relations since the 1990s, when state enterprise reform deepened and labor conflict began to increase rapidly, especially in the private sector. The ACFTU has championed collective contracts and collective negotiations as important foundations for trade union work at the enterprise level. In recent years, the collective contract system has received more Chinese government and Communist Party support as part of an attempt to institutionalize a tripartite system of labor relations at the local level between the government, the ACFTU, and the employer associations.²⁶ Moreover, some Chinese officials have stated in public that collective consultation—and, in the process, fostering more genuine representation for workers—could be an effective way to defuse labor disputes and develop “harmonious labor relations.”²⁷

In January 2011, the ACFTU published a set of “work objectives” for the new year, stating the organization’s goal to “set up trade union organizations according to law to unionize the vast majority of workers[.]”²⁸ More specifically, some of the benchmarks that the ACFTU document provided include the boosting of national unionization rates at “businesses with corporate capacity to 65 [percent],” and an increase in “the number of union memberships to make up more than 80 [percent] by the end of 2011” and “over 90 [percent] by the end of 2013.”²⁹ Even as the ACFTU supplied quantifiable benchmarks, however, it is not clear how these goals will be implemented in practice. It remains to be seen whether such goals will facilitate the approval of local and national regulations with specific implementation and follow-through directives and measures, as well as the necessary reforms to make unions more representative of workers’ interests.³⁰

During this past year, the Commission continued to follow developments concerning the Guangdong province draft Regulations on Democratic Management of Enterprises (Regulations). As the Commission reported last year,³¹ the draft Regulations would extend to workers the right to ask for collective wage consultations³² and

allow worker members to sit on the enterprise's board of directors and board of supervisors,³³ represent worker interests in the boards' meetings,³⁴ and take part in the enterprise's decision-making processes.³⁵ In September 2010, reportedly under heavy lobbying by members of the Hong Kong industrial community, many of whom operate factories in southern China and are concerned with rising production costs, the Guangdong People's Congress Standing Committee decided to suspend further deliberation of the draft Regulations.³⁶ In January 2011, a source in the Hong Kong industrial community who had met with officials in Guangdong province reported to the South China Morning Post that the Guangdong Provincial People's Congress would "very likely" approve the draft Regulations later that month.³⁷ Other unofficial sources, however, suggest that the approval process of the draft Regulations seemed to have stalled indefinitely.³⁸

Other localities in China also announced plans to establish collective wage consultation systems in the coming years. In Qingdao city, Shandong province, for example, the Qingdao City Health Bureau announced in March 2011 goals to establish a system of "equal collective wage consultation" for all contract workers within three years.³⁹ In a city with more than 40,000 medical workers, the health bureau's plan reportedly will only cover contracted workers, who number around 5,000.⁴⁰ At medical organizations where unions do not yet exist, a government document suggests that workers may choose their own representatives.⁴¹ This past year, other cities that reported plans for collective wage consultation initiatives included Changde city, Hunan province;⁴² Rizhao city, Shandong province;⁴³ Qinhuangdao city, Hebei province;⁴⁴ and Guanghaiwei city, Zhejiang province.⁴⁵ The Shenzhen Municipal Trade Union reportedly plans to sign collective wage contracts at 550 enterprises in the next year.⁴⁶

The extent to which the ACFTU's stated goals, if materialized, and other local experiments with collective consultation will expand the space for greater and more genuine worker representation remains unclear. At present, the collective contract and consultation system remains weak and formalistic in many cases because enterprise-level trade union leaders are not positioned to serve the interests of their workers. Many collective contracts reportedly solely reflect the basic legal standards in the locality and often are the result of concerted government or Party work to encourage the enterprise to enter into formalistic contracts rather than the result of genuine bargaining between management and the enterprise trade union.⁴⁷ Finally, none of the aforementioned actions taken by different localities and the ACFTU have changed the fact that freedom of association does not exist in China.

Migrant Workers

Migrants are generally characterized as rural residents who have left their place of residence to seek non-agricultural jobs in Chinese cities, sometimes in the same province and sometimes far from home. Official Chinese government statistics break down the total number of migrants into those who spent less than half the year as migrants, i.e., those who spent less than six months during the year away from their place of legal residence (61 million in 2010),

and those who spent more than half the year as migrants (160 million in 2010).⁴⁸ The government estimates that over the next three decades, about 300 million people are expected to relocate to urban areas.⁴⁹ As a marginalized urban group, migrant workers are often abused, exploited, or placed in unsafe work conditions by employers who take advantage of their insecure social position and lower levels of education.⁵⁰ Persistent discrimination reportedly continues to adversely affect the social, civil, and political rights of migrant workers.⁵¹

In 2011, migrant workers continued to face serious challenges in the workplace, such as wage arrears and non-payment of wages.⁵² They also lacked access to reliable social insurance, specifically payments covering occupational injuries and diseases.⁵³ Many localities have expanded efforts to provide migrants with social insurance coverage. Figures from the Chinese Ministry of Human Resources and Social Security indicated that, by mid-2011, 838 counties in 27 provinces and autonomous regions, as well as the four directly administered municipalities, had launched what the State Council has called the “new-type rural social old-age insurance pilots,” covering 24 percent of the population in these areas.⁵⁴ A 2009 State Council document also provided details on ways to make social insurance accounts transferable as migrants move around the country.⁵⁵ There still appear to be significant problems in terms of participation (for both employers and employees), coverage, and portability between rural and urban areas.⁵⁶ Migrant workers generally are able to withdraw funds only from their individual accounts, losing the larger percentage of their pensions that is paid by their employers. With migrant workers facing uncertainty about whether they will return to the same locale from one year to the next to look for new work, and with the portability of pension accounts highly restricted, some have chosen to withdraw their pensions.⁵⁷

Law on Social Insurance

The National People’s Congress approved the PRC Law on Social Insurance in October 2010, and it went into effect on July 1, 2011.⁵⁸ The law states that the Chinese government will establish⁵⁹ a system of basic old-age insurance,⁶⁰ medical insurance,⁶¹ work-related injury insurance,⁶² unemployment insurance,⁶³ and maternity insurance.⁶⁴ It specifies the respective responsibilities of employees and employers to fund contributions for different insurance programs. Under the law, both the employee and the employer, for example, are required to contribute toward the basic insurance funds for old-age pensions, medical care, and unemployment benefits.⁶⁵ For work-related injury and maternity insurance, however, only the employer is responsible for the contributions.⁶⁶ The law also requires employers to register employees with social insurance agencies within 30 days of hire,⁶⁷ delineates the legal penalties for an employer who fails to contribute the required funds within the specified time limit,⁶⁸ and grants social insurance agencies the right to seek help from government administrative units—at the county level or above—to request the transfer of funds equal to the amount of missed payments from the appropriate banking and financial institutions.⁶⁹

One of the law's stated aims is to make social insurance coverage "sustainable,"⁷⁰ and the law specifies that workers may transfer their accounts as they move from one region to another. It explicitly states that "rural residents entering cities to work may participate in social insurance."⁷¹ In the cases of old-age and medical insurance, the law seeks to enable their portability by stating that, for an individual who travels from one region to another for work, his or her basic old-age and medical insurance records "will transfer along with the individual," and the calculation of his or her contributions will be "cumulative."⁷² Once the individual reaches retirement age, basic old-age insurance benefits will be calculated by taking into account work performed in all localities, but payments will be made in a "unified" way (i.e., no distinction between work done in rural and urban areas).⁷³ The law, however, states only that "national coordination" of old-age insurance pools and "provincial coordination" of the other four insurance pools will be "gradually implemented," leaving the "specific time frame [and] steps" for the State Council to decide.⁷⁴ Moreover, one foreign law firm pointed out that since the law does not provide "national united social insurance contribution rates . . . employers would still need to refer to the local regulations for contribution rates of the social insurance schemes."⁷⁵ At this point, the law's effectiveness and ability to standardize and expand China's social safety net remain unclear and implementation regulations have yet to be issued.⁷⁶

Wages

By the end of 2010, 30 provinces had reportedly raised minimum wage levels by an average of 22.8 percent.⁷⁷ Some localities continued to establish higher levels of increases thereafter.⁷⁸ On March 1, 2011, Guangdong province announced a four-tier minimum wage level chart, categorizing minimum wage levels by region within the province.⁷⁹ Authorities assigned Guangzhou city, the provincial capital, a level of 1,300 yuan (US\$200) per month. Dongguan city, where many foreign-invested factories are located, fell into the second category, with a new minimum wage level of 1,100 yuan (US\$170) per month. In Shenzhen, effective April 1, 2011, the government raised the minimum wage level by 20 percent, to 1,320 yuan (US\$204) per month, the highest in China.⁸⁰ Other localities, such as Shanghai municipality and Shandong province, also established further increases.⁸¹ Reports indicate that some cities proceeded to raise minimum wages because they struggled to attract workers.⁸² Despite rising minimum wage levels, however, reports also indicate that inflationary pressure continued: Inflation stood at 5.4 percent in March 2011⁸³ and 5.5 percent in May 2011, with food prices rising by 11.7 percent.⁸⁴

The PRC 1994 Labor Law guarantees minimum wages for workers and requires local governments to set wage standards for each region.⁸⁵ The PRC Labor Contract Law improves formal monitoring requirements by tasking local labor bureaus to monitor labor practices to ensure rates adhere to minimum wage standards.⁸⁶ The law also imposes legal liability on employers who pay rates below minimum wage.⁸⁷ In addition, the law guarantees minimum hourly wages for part-time workers.⁸⁸

Illegal labor practices, however, continue to undermine minimum wage guarantees. Wage arrears remain a serious problem, especially for migrant workers.⁸⁹ Subcontracting practices within industry reportedly also exacerbate the problem of wage arrearages. When investors and developers default on their payments to construction companies, workers at the end of the chain of labor subcontractors may lack the means to recover wages from the original defaulters. Some subcontractors neglect their own duties to pay laborers and leave workers without any direct avenue to demand their salaries.⁹⁰ The Ministry of Human Resources and Social Security, in conjunction with other government agencies—including the Ministry of Public Security and the State-Owned Assets Supervision and Administration Commission—reportedly formed a “united investigative group” and examined wage arrear problems in provincial-level areas such as Tianjin, Hebei, Inner Mongolia, Jilin, Zhejiang, Jiangxi, Liaoning, Guangxi, Qinghai, and Xinjiang.⁹¹

DRAFT REGULATION ON WAGES

In part to address official concern over the unequal distribution of wealth across China and its potential effects on “social unrest,” Chinese media sources indicated that the Chinese government reportedly has assembled a “basic framework” for a national regulation on wages.⁹² The Ministry of Human Resources and Social Security (MOHRSS) began formulating the regulation in 2007, and officials reportedly started soliciting comments and suggestions for a completed draft in early 2009.⁹³ Some media reports indicated that the regulation would be approved sometime in 2010, though one MOHRSS official later said that was never the case.⁹⁴ It appears that deliberations surrounding the pending regulation likely will continue throughout 2011.⁹⁵

Based on media reporting, the draft contains 10 sections, including provisions that delineate the “parameters for collective contracts, collective consultations, and minimum wages.”⁹⁶ In addition, the draft reportedly lays out standards to determine minimum wage level increases, and mandates certain enterprises to “periodically and publicly release average wage levels, increases, and bonuses”;⁹⁷ requires that overtime compensation, time off given on days with extreme temperatures, as well as various kinds of state subsidies may not be factored into the calculation of wage levels;⁹⁸ calls upon provinces to consider local consumer price indexes in setting minimum wage levels;⁹⁹ and establishes a “normal increase mechanism” to “create a system” of collective wage consultations and “open a scientifically logical space for wage increases.”¹⁰⁰

Labor experts cited in Chinese media reports also commented that the draft lacks clarity on certain points. For example, it reportedly does not delineate whether or not employers will be required to answer workers’ demands for collective wage negotiations, nor does it lay out the consequences for failing to do so.¹⁰¹ One labor expert also supported the idea to “link wage increases to the growth of enterprises,” which apparently was introduced in an earlier version of the draft.¹⁰²

Reportedly, the draft regulation attempts to bridge the wealth gap with additional provisions such as requiring the disclosure to

both the government and the public of plans to adjust salary levels and benefits within what one state-run publication called “monopolized industries.”¹⁰³ These so-called “monopolized industries” (*longduan qiye*) refer to state-owned enterprises in industries such as electricity, telecommunications, insurance, and finance.¹⁰⁴ Another provision reportedly also would require these enterprises to seek approval from three different government departments before issuing bonuses or raises.¹⁰⁵ One media report suggested that these provisions have contributed to the delay in the regulation’s approval.¹⁰⁶ One academic cited in the same report stated that the draft’s proposed “interference with or even control of wages through administrative methods are not compatible with the trends of market economics.”¹⁰⁷

PRESSURE TO EXAMINE WAGE POLICIES

In 2011, three developments continued to exert pressure on Chinese officials at all levels to examine their policies on wages: Labor shortages in certain areas, growing income inequality, and the central government’s acknowledgement of the need to rebalance China’s economy. During this reporting year, the Commission monitored reports of labor shortages surfacing in China’s manufacturing centers, particularly in the south and coastal areas.¹⁰⁸ As early as 2006, the PRC State Council Development Research Center found that 75 percent of the 2,749 villages surveyed in China “no longer have young laborers to move” outward,¹⁰⁹ and other reports also suggest that more migrant workers are opting to pursue opportunities in their home provinces.¹¹⁰ Such developments reportedly have contributed to the upward pressure on wage levels and, combined with other factors, have made some factory owners consider moving their operations further inland or to Southeast Asian countries in order to keep production costs competitive.¹¹¹ At the same time, it has been pointed out that “improved productivity can pay for more than half of these wage increases, while the other half can be passed in the form of higher customer prices.”¹¹² Moreover, despite moderate increases, wages actually have fallen for 22 straight years in proportion to China’s gross domestic product.¹¹³

The unequal distribution of wealth received much attention in recent years. The National People’s Congress and the Chinese People’s Political Consultative Conference featured this issue prominently during their March 2010 meetings.¹¹⁴ In 2011, the Chinese media continued to report on the growing gap between the rich and the poor.¹¹⁵ The current “income ratio among China’s eastern, central, and western regions” is roughly 1.52:1:0.68.¹¹⁶ Moreover, the distribution has grown more unequal over time, with rural areas lagging far behind the urban regions.¹¹⁷ According to a November 2010 Chinese report, the ratio of “urban to rural income” was 2.9:1 in 2001, 3.22:1 in 2005, and 3.31:1 in 2008.¹¹⁸ The difference between the top and bottom 10 percent of China’s income earners has increased from a multiple of 7.3 in 1988 to 23 in 2009.¹¹⁹

Chinese officials have appeared more willing to openly acknowledge that a higher consumption rate within China is an important part of the government’s efforts to rebalance the country’s economic development. The PRC Outline of the 12th Five-Year Plan on National Economic and Social Development, for example, noted that

Chinese officials “must be soberly aware of the fact that the problems of lack of balance, lack of coordination, and lack of sustainability in China’s development remain prominent” and that the imbalance in the “investment and consumption relationship” poses a challenge to the country’s future growth.¹²⁰ More pointedly, Premier Wen Jiabao has also described China’s current growth model as “unbalanced, unstable, uncoordinated, and unsustainable.”¹²¹ Although some experts have said that reforms can be done in the short term via “administrative fiat,” such as “mandatory wage hikes,” any rebalancing efforts will be difficult, as “state-backed and private corporate sectors are likely to protest reforms that threaten their margins, as will these sectors’ support bases associated with their interests, such as the commerce ministry and the Ministry of Industry and Information Technology.”¹²²

Occupational Safety and Work Conditions

LEGAL FRAMEWORK AND DEVELOPMENTS

The PRC Law on Safe Production, which took effect in 2002, delineates a set of guidelines to prevent workplace accidents and to keep “their occurrence at a lower level, ensuring the safety of people’s lives and property and promoting the development of the economy.”¹²³ Specifically, the law charges principal leading members of production and business units to educate workers on safety issues and formulate rules of operation;¹²⁴ protects workers’ right to have knowledge of, speak up about, and address work safety issues;¹²⁵ sets forth trade unions’ rights to pursue workers’ complaints over safety issues;¹²⁶ tasks local governments at the county level or above to inspect and handle violations and potential dangers in a timely manner;¹²⁷ and lays out the consequences for non-compliance.¹²⁸

Workers in China, however, continued to face persistent occupational safety issues, especially those working in the mining industry. On November 9, 2010, Zhang Mingqi, the Vice Chairman of the All-China Federation of Trade Unions, spoke to reporters at the National Mining Industry Health and Safety Experience Exchange Conference and stated that China had 18,128 reported cases of occupational-related illnesses in 2009, which represented a 32 percent increase from the previous year.¹²⁹ Of the 2009 cases, 14,495—about 80 percent—involved the lung disease pneumoconiosis.¹³⁰ The People’s Daily has reported that a total of 57,000 Chinese coal miners suffer from pneumoconiosis annually, and more than 6,000 of them die from the disease each year.¹³¹ Reportedly, “pneumoconiosis is now responsible for nearly three times as many deaths each year as mine accidents.”¹³²

Miners are limited in their ability to promote safer working conditions in part due to legal obstacles to independent organizing. Collusion between mine operators and local government officials reportedly remains widespread.¹³³ Chinese authorities reportedly closed 1,600 small coal mines with “outdated facilities” during the first 10 months of 2010.¹³⁴ The State Administration of Work Safety issued a directive in September 2010 requiring mine managers to spend time in the shafts with workers in an effort to focus their attention on safety issues; the directive also laid out specific fines

for managers who refused to do so.¹³⁵ The China Daily, however, reported that some managers skirted the new requirements by handpicking “people to be promoted to ‘assistants to managers’ and to accompany the miners” in their place.¹³⁶

WORKING CONDITIONS

Workplace abuses and poor working conditions remained a persistent problem this reporting year. Allegations of unsafe working environments, for example, continued to surface at factories operated by Foxconn, a Taiwanese-owned company that manufactures electronic products. In July, a worker died after falling from his dormitory at one of Foxconn’s factory complexes in southern China.¹³⁷ The Commission reported last year that more than 10 employees committed suicide in 2010, reportedly as a result of the harsh working conditions at the company’s production plants.¹³⁸ Workers often cited low wages, forced overtime, military-style management, and social isolation as some of the major problems that they face.¹³⁹ Reports also indicated that some workers are also exposed to chemicals known to be harmful.¹⁴⁰ In May 2011, a blast at Foxconn’s factory in Chengdu city killed 3 people and injured 16 others; the families of the factory’s workers complained at the time that Foxconn management “turned down” their demand for “a list of dead and injured.”¹⁴¹ Poor conditions and other workplace abuses also surfaced at other factories, including “routine excessive overtime” that averaged 120 hours per month, use of harmful chemicals, poor ventilation, arbitrary calculation of wages, and mistreatment by management.¹⁴² The Commission also observed one recently published report detailing a past case involving Chinese prisoners who, in addition to doing hard labor during the day, were “forced to play online games” at night “to build up credits that prison guards would then trade for real money.”¹⁴³

WORKERS COMPENSATION

One major problem facing injured workers or their family members seeking to receive timely compensation is China’s “complicated and incredibly time consuming” work-related injury compensation procedure.¹⁴⁴ Some cases reportedly can last for decades.¹⁴⁵ It is difficult to determine the total number of cases in part because many cases never are reported due to the complicated nature of the compensation process.¹⁴⁶ Moreover, Chinese courts and doctors do not routinely recognize some occupational diseases. While traumatic work injuries and deaths have been widely recognized and reported, experts on workers compensation litigation in China report failure to diagnose diseases like silicosis and failure to recognize that the condition may be caused by exposure to chemicals at work.¹⁴⁷ As a result, the extent of work-related diseases like silicosis remains difficult to measure and report on and, therefore, in many cases goes largely unrecognized.¹⁴⁸

In January 2011, the State Council’s revisions to the Regulations on Work-Related Injury Insurance (Work Injury Regulations) became effective.¹⁴⁹ The revisions made 24 changes to the old Regulations, clarifying the definitions of what constituted “occupational injuries”;¹⁵⁰ adding law firms and accounting firms, among others, to the list of contributors to the occupational injury insurance

fund;¹⁵¹ and stating that in applications where “the facts are clear” and “rights and obligations are apparent,” the social insurance administrative department shall render a decision within 15 days of accepting the applications.¹⁵²

In addition to the aforementioned Work Injury Regulations, the PRC Law on Social Insurance, which went into effect in July 2011, also addressed the topic of work-related injury insurance.¹⁵³ It clarifies that the “employing unit,” not the worker, is responsible for contributing to the work-related injury insurance fund.¹⁵⁴ The law states that the contribution rates will be determined by the “risk level” of each industry, as well as the number of workplace injury cases that occur in that industry, and leaves the task of setting the specific rate figures to the State Council.¹⁵⁵ Though the law’s language maintains that workers are entitled to receive work-related injury insurance benefits if their injuries or illnesses are certified as work related and that certification of such injuries should be “straight-forward [and] convenient,” it does not provide a specific time requirement for the certification process.¹⁵⁶ The law does, however, detail the types of expenses that may be paid with money from the insurance fund. These may include, for example, a worker’s medical treatment and rehabilitation fees as well as food and travel allowances if the worker obtains treatment outside of the area where the injury took place.¹⁵⁷

At this point, it is not clear to what extent the revisions to the Work Injury Regulations or the new PRC Law on Social Insurance will streamline the complicated and time-consuming compensation processes for injured workers. Central government directives have, in previous years, encouraged local governments to pressure bereaved families into signing compensation agreements and to condition out-of-court compensation settlements on forfeiture by bereaved families of their rights to seek further compensation through the court system.¹⁵⁸ Moreover, there have been reports of local officials preempting class actions by prohibiting contact among members of bereaved families in order to forestall coordination.¹⁵⁹

Child Labor

Child labor remained a problem in China during this reporting year.¹⁶⁰ As a member of the International Labour Organization (ILO), China has ratified the two core conventions on the elimination of child labor.¹⁶¹ The PRC Labor Law and related legislation prohibit the employment of minors under 16 years old.¹⁶² Both national and local legal provisions prohibiting child labor stipulate fines for employing children.¹⁶³ Under the PRC Criminal Law, employers and supervisors face prison sentences of up to seven years for forcing children to work under conditions of extreme danger.¹⁶⁴ Systemic problems in enforcement, however, have dulled the effects of these legal measures. The extent of child labor in China is unclear in part because the government does not release data on child labor despite frequent requests by the U.S. Government, other foreign governments, and international organizations. One recent report by a global risks advisory firm, however, suggests that China is rated as “amongst those with the most widespread abuses of

child workers” and estimates that there are “between 10 to 20 million underage workers.”¹⁶⁵

Child laborers reportedly work in low-skill service sectors as well as small workshops and businesses, including textile, toy, and shoe manufacturing enterprises.¹⁶⁶ Many underage laborers reportedly are in their teens, typically ranging from 13 to 15 years old, a phenomenon exacerbated by problems in the education system and labor shortages of adult workers.¹⁶⁷ In March 2011, a Hong Kong newspaper reported that authorities in Longgang district, Shenzhen Special Economic Zone, rescued 40 children who were found working at a factory that manufactured electronics.¹⁶⁸ The children were reportedly between the ages of 12 and 14, holders of “fake identity cards” that apparently demonstrated that they were of legal working age, and had worked there for at least three months for about five yuan (US\$0.77) an hour.¹⁶⁹ In another case reflective of the child labor problem, Apple acknowledged in February 2011 that, in 2010, it had discovered 91 children under 16 years old working in 10 “Chinese factories owned by its suppliers”; in contrast, in 2009, the company discovered only 11 such cases.¹⁷⁰ In the case of one factory that reportedly hired 42 of the children, Apple learned that the “vocational school involved in hiring the underage workers had falsified student IDs and threatened retaliation against students who revealed their ages during [Apple’s] audits.”¹⁷¹

The Chinese government, which has condemned the use of child labor and pledged to take stronger measures to combat it,¹⁷² permits “work-study” programs and activities that in practical terms perpetuate the practice of child labor and are tantamount to official endorsement of it.¹⁷³ National provisions prohibiting child labor provide that “education practice labor” and vocational skills training labor organized by schools and other educational and vocational institutes do not constitute use of child labor when such activities do not adversely affect the safety and health of the students.¹⁷⁴ The PRC Education Law supports schools that establish work-study and other programs, provided that the programs do not negatively affect normal studies.¹⁷⁵ These provisions contravene China’s obligations as a Member State to ILO conventions prohibiting child labor.¹⁷⁶ In 2006, the ILO’s Committee of Experts on the Applications of Conventions and Recommendations “expresse[d] . . . concern at the situation of children under 18 years performing forced labor not only in the framework of re-educational and reformative measures, but also in regular work programs at school.”¹⁷⁷

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