

# “The Absence of Rigor and the Failure of Implementation”:

## Occupational Health and Safety in China

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Despite government concern with occupational health and safety (OHS) in China and the promulgation of new laws and regulations in 2002, a lack of rigor and lax implementation are major impediments to improvements in workplace safety. The article highlights important elements from the new Work Safety Law and the Law on the Prevention and Cure of Occupational Diseases, then analyzes key issues arising from bureaucratic excesses, the impact of government restructuring, continuing confusions and contradictions in government responsibility for OHS, and ongoing questions about the official duties and responsibilities of employing units, workers, and the trade union. *Key words:* China, OHS, ACFTU, coal mines, Work Safety Law, freedom of association.

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According to Shan Chunchang—a Deputy Director in the department of State Administration of Work Safety (SAWS)—facilitating workplace safety in China today is impeded by two broad deficiencies: “the absence of rigor and the failure of implementation.”<sup>1</sup> His comments point to a clear distinction between the theory of occupational health and safety (OHS) and its practice. In theory, the state’s concern over workplace safety has led to the promulgation of new laws and regulations; but in practice limitations in a number of areas inhibit their effective and widespread implementation.

This article outlines the new laws and regulations implemented in 2002, then discusses eight major issues. It is important to note that the regulatory environment is not only very complex but also unfamiliar in its totality to even most Chinese OHS experts. A mix of sweeping administrative and legal changes, bureaucratic intransigence, local interpretations of national

laws, an institutionalized aversion to worker participation in safety issues, and the problems of rigor and implementation mean that the existing reality across the whole of China is both hard to characterize and fluid. The descriptions and interpretations below are based on primary documentary sources along with informal discussions with government and trade union officials, academics, and workers, and as such we present only an introductory overview and some exploratory conclusions.

### PREVIOUS AND NEWLY-ENACTED OHS LAWS

The current system in which worker safety is overseen has its origins in the years following the formation of the People’s Republic of China in 1949. The first compendium of industrial hygiene standards, *Tentative Hygiene Standards for Industrial Enterprises*, was published in 1956 and based on guidelines developed in the former USSR. In the following year, the Ministry of Health published the first official list of statutory occupational diseases. Since then, the government has promulgated several lists of occupational diseases, the measures for their prevention, and the rules for reporting them.<sup>2</sup>

However, it was not until the reform era, beginning in 1979, that the Chinese government started to develop guidelines that took into account local practice and experience, rather than simply adapting OHS criteria, such as maximum allowable concentrations (MACs) for hazardous substances, straight from regulations imported wholesale from the USSR.<sup>2</sup> In doing so, criticisms of safety programs and the regulatory environment became sharper and the subject of intensified analysis.

Even though the chain of responsibility is complex, the major laws and regulations pertaining to OHS are straightforward. Key laws are listed below with particular focus on the rights and responsibilities of workers. Before listing the key elements of the new laws implemented in 2002 (the Work Safety Law and the Law on the Prevention and Cure of Occupational Diseases), we briefly outline the relevance to OHS of the Labor Law and the Trade Union Law.

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*Labor Law of the People's Republic of China  
(1 January 1995)*

Until 1 January 1995, China did not have labor laws as such. In their place was the Model Outline of Intra-Enterprise Discipline Rules, which was less a legal framework and more a set of rules aimed at enforcing industrial peace and increasing production rather than defining workers' legal rights.<sup>3,4</sup> The government saw no need for a formally articulated labor law, since Article 1 of the Constitution of the People's Republic of China states that the "People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants."

Nevertheless, Chinese labor law consists of 13 chapters and 107 articles, of which Chapter VI—Articles 52 through 57—deals specifically with OHS. Many of the important stipulations are mirrored in the new OHS laws, the most important of which include the responsibilities of employing units to "establish and perfect" OHS systems that meet standards stipulated by the state, and of workers to "abide by rules of safe operation" (Articles 53 and 53).

Additionally, labor laws provide workers with the right to "refuse to operate" if management violates "rule and regulations" (Article 56). Other chapters specify further rights for women and juvenile workers (Chapter VII) and the obligation of enterprises to provide vocational training (Chapter VIII). Chapters XI on supervision and inspection and XII on the issue of legal responsibility provide additional protection for workers with regard to OHS.

*Trade Union Law of the People's Republic of China's  
3 April 1992, amended 27 October 2001)*

The original Trade Union law was promulgated June 29, 1950. The current law superceded the original version with its implementation in 1992, while the 2001 amendments fine-tuned various aspects of the law. Trade Union Law stipulates specific rights with regard to education and organizing. Article 5, for instance, states that "Trade unions shall organize and conduct education among workers." Article 7 likewise states that the All-China Federation of Trade Unions (ACFTU) has the responsibility to "improve [workers'] . . . technical, professional [and] scientific qualities." Both provide an opening for the provision of education and training in OHS to workers. Articles 10 through 18 lay down the regulations regarding the formation of trade union committees. Article 10 states, in part, that a basic-level trade union committee may be established in any workplace "to organize the members in various activities." Article 39 further states that "election of the representative(s) from among the workers and staff members to the board of directors or the board of supervisors of a

company shall be conducted in accordance with the relevant provisions of the Company Law."

There is *potential* here for such laws to support the formation of democratically elected worker committees specifically formed to act as representatives on OHS matters. It should be borne in mind, however, that the laws have also come under fire, particularly over the ambiguities contained in Article 27 on the issue of industrial action: the law uses the terms *tinggong* and *daigong* (stop work or go slow, respectively), but does not use the term *bagong* (the Chinese term used specifically for a strike).<sup>5</sup>

*Work Safety Law (1 November 2002)*

The Work Safety Law stipulates 14 basic systems and/or measures. The important ones are:

1. A production unit must meet (*jubei*) all the relevant laws, regulations, and industry-specific laws (such as the Coal Safety Law), otherwise it may not undertake production activities.
2. An enterprise must appoint an individual who is responsible for all aspects of safety.
3. An enterprise must also implement a safety management organization or individual.
4. An enterprise must implement a system of education, training, and assessment of safety knowledge of OHS directors (that is, personnel with overall responsibility), OHS managers, and workers.
5. Enterprises must implement a system of three simultaneous [OHS] measures (*san tongshi zhidu*) at all stages of all projects (*jianshe gongcheng*); that is, OHS measures should be evident at the planning stage, during construction (of plant and so on), and when production is under way.
6. Production units must register exceptionally dangerous hazards with the local safety inspectorate (*anquan jiancha guanli bumen*).
7. Enterprises must implement a safety management system specifically addressing workplaces where explosives, working at height, and other dangers are involved.

The question of where responsibility lies for the implementation and monitoring of the law is perhaps the most serious issue. For example, the *san tongshi* system (the fifth point above) has significant implications and will require an enormous amount of coordination between parties involved in planning, construction, and overseeing management of the facility when it is functional. The law seems to imply that this will be a smooth process. However, there are often gaps between planning and execution.

For example, in Pingshan, about 80 km northeast of Shenzhen in Guangdong Province, there is a large Taiwanese-invested industrial park. In the case of one substantial manufacturing facility within the park's boundaries, original investors withdrew due to lack of funds.

Still incomplete, the facility lay dormant for some time until new investors restarted the project. However, it is unclear how the simultaneous measures stipulated under the new laws can be put into practice now that the original investors have departed. The local government in Pingshan, like many others, has worked hard to attract foreign direct investment, and it is not in its interests to complicate procedures for investors by coordinating the *san tongshi* system, particularly when there appear to be no local implementation guidelines as yet.

Moreover, it seems—insofar as can be ascertained—that there is no clear demarcation of responsibility. For instance, is SAWS responsible for ensuring the smooth functioning of the *san tongshi* system? Does it lie with the local inspection department, or the local government officials who have been put in charge of—as one official put it—the ‘bitter gourd’ (*kugua*) of OHS? None of the implications arising from this common coordination problem appear to have been seriously addressed.

Who assumes responsibility for OHS is further complicated by the implementation of guiding principles such as “Safety first with prevention the key” (*anquan diyi, yufang wei zhu*). In theory, it is the responsibility of government leaders at all levels to make certain that safety is a key content of all projects, workplaces, and places that they visit and/or inspect. In approving development plans, relevant government departments are responsible for safety via a system where those sectors and projects that are determined to be technically backward are eliminated through selection (*taotai*), which implies selection through a market-tendering mechanism. Thus, all projects and tenders that do not meet national legal requirements should not gain approval.

The relevant departments of the State Council are responsible for updating safety standards and requirements. Given the size and scope of the relevant government bureaucracies, the newness of the standards, and our familiarity with the problems relating to the administration of previous standards, it will likely be some time before the system is even communicated to—let alone implemented by—to the relevant departments countrywide. Moreover, the effective implementation of the new standards is closely linked to the planned reforms of government bureaucracies, which, interestingly, have been put on partial hold and thus further retarded the process. Giving form to this process is extraordinarily difficult, particularly when very few in China—even at senior levels—fully grasp it.

Nevertheless, the duties and responsibilities of employing units (such as state-owned and private factories) and OHS officers at a practical level of implementation are clear. The chief duties of employing units, for instance, are threefold.

1. Ensure various managerial aspects of OHS, which involves planning, organization, directing (*zhihu*), control, and coordination.

2. Set up an OHS responsibility system based on the special characteristics evident in the sector in which they are involved. The person with overall responsibility in the company for implementing the system must also ensure that all departments are linked to and administer a bonus-and-punishment system related to all aspects of OHS.

3. As stipulated in Article 93, those enterprises that have been informed to temporarily halt production in order to rectify OHS systems but fail to do so can be closed down and have their licenses revoked. Detailed punishments are provided in Chapter Six of the law.

The responsibilities of OHS officers in different types of employing units are likewise clearly demarcated under the new laws. In companies that fall within the definition provided under China’s Company Law (which lists limited liability and shareholding companies), the chairman or the president of the board of directors is ultimately responsible for OHS. If the enterprise appoints a managing director of OHS, then ultimate responsibility lies with this individual. In enterprises that do not fall under Company Law the factory director or manager is accountable for OHS.

Interestingly, Article 5 of the law states that with regard to accountability, a person with responsibility for OHS is liable should accidents take place in violation of laws; that is, chairmen, directors or managing directors are not ultimately liable. Thus, the responsibilities of chairmen, directors, or managing directors are to ensure that the person in charge of OHS is taken seriously, and that this person’s recommendations and systems are adequately funded and implemented.

The rights of workers vis-à-vis the new OHS laws and regulations are also clearly outlined. There are six key rights. Workers have the right to:

1. be educated about all dangers in the workplace, which includes the right to take active steps to prevent OHS dangers;
2. be provided with safety equipment that conforms to national standards;
3. criticize and make suggestions with regard to any aspect of OHS;
4. refuse to carry out instructions from management that violate laws and/or regulations;
5. stop work in life-threatening situations; and
6. receive insurance compensation following an accident at work.

#### *Trade Union Participation*

The role of the trade union is also spelled out in the new laws, with two key points.

The first relates to the theory of OHS laws. Several articles in the law enable the trade union to take a proactive role in ensuring worker safety. For instance, Article 7 stipulates that unions shall organize workers

to participate in democratic management and supervision of OHS managers. Likewise, Article 52 states that the trade union has the right to make suggestions and present the members' opinions about OHS arrangements and their design, operation, and monitoring. The union has the right under law to demand the rectification of OHS violations and to make suggestions to management on any matter concerning OHS, to which work units must respond promptly.

Moreover, the union also has a responsibility under law to take the lead in promoting the workers' rights listed above. We believe that the new laws, in particular Article 7, provide perhaps as proactive a legal clause as is possible in China right now. It is also worth noting in this regard that commentaries on the new law (of which several already exist) refer to the union's duty to take a proactive role, a further hint towards the law's active role in drawing the ACFTU into assuming some responsibility for ensuring worker safety.

The second point relates to the practical role of the trade union. In theory, the ACFTU can take a leading role in pressuring enterprises to comply with the new standards and laws. However, in practice the ability of the union to do this is severely curtailed, for several reasons. In its current form, the union is neither legally empowered nor practically capable of organizing workers, and is unlikely to have the capacity to do so any time in the near future. This inability prevents it from playing an active role with regard to OHS and inspections. Furthermore, the ACFTU has no presence in many foreign-invested or private companies, which disables its effectiveness completely in those enterprises. There is, in short, a significant gap between theory and practice.

Another impediment to the effective implementation of OHS is that although laws are enacted by the central government, the main responsibility for the system rests with local government. Once again, the law is too complex to examine all of its intricacies. However, there are four key points to note in this respect.

1. First is the contradiction between promoting a safe workplace environment and inducing more foreign investment, much of which enters China to minimize costs (one of which is the expense of providing such a workplace). The relevant sentences are: "Under the socialist market economy, the government does not interfere with production as this is an area where market forces shall inform the necessary adjustments. However, in matters relating to OHS in a company, an area that directly affects the life of workers and also public safety, the role of government is to direct the work of supervision and inspection."<sup>6</sup> In other words, local government considerations, financial and otherwise, determine the level to which OHS laws will be implemented, monitored, and enforced.

2. Second, in response to this, the State Council established SAWS (under whose ambit are organiza-

tions such as the State Administration of Coal Mine Safety), a government department with the responsibility to oversee inspection work.

3. Third, there is clear evidence that local governments are themselves incapable of achieving a balance between development and OHS that enables both investment *and* a safe working environment. This point was recently elaborated upon in no uncertain terms to one of the authors by a local trade union representative. In a discussion of the new laws, the latter pointed out that "all this talk about balance was so much hot air" and that for the time being "development would take clear precedence over fairness." The Work Safety Law is nevertheless clear that ultimate responsibility lies with local governments.

4. Keeping these points in mind, the function of closing down enterprises that fail to meet standards is the direct responsibility of governments at the county level or higher.

#### *Law on the Prevention and Cure of Occupational Diseases (1 May 2002)*

This law came into effect May 1, 2002, and stipulates the responsibilities of enterprises with regard to safe working conditions, industrial accident insurance, the measures adopted to prevent occupational diseases, and the level of information they should provide to workers.

*Article 4:* . . . the employing unit shall establish working conditions that conform to national standards and requirements concerning occupational health and shall adopt measures that guarantee the occupational health of workers.

*Article 6:* The employing unit shall take out industrial accident insurance in accordance with the law on industrial insurance.

*Article 20:* The employing unit shall adopt effective measures to prevent and guard against occupational diseases and provide equipment to individual workers that guard against such diseases.

*Article 30:* On drawing up a labor contract with a worker, the employing unit shall actively inform the worker of all potential occupational illnesses that may result from processes used and their harmful results. The employing unit shall also include in the labor contract all measures and treatment against occupational diseases and shall not conceal dangers or cheat the workers. . . . [W]here the employer has violated the previous two clauses, the worker has the right to refuse to work in an area where there are occupational hazards. The employing unit shall not terminate or cancel the labor contract in these circumstances. . . . Workers shall study and fully grasp the appropriate information on occupational safety and respect the relevant laws, regulations, rules and operating procedures. They shall use correctly and maintain occupational health installations and individual

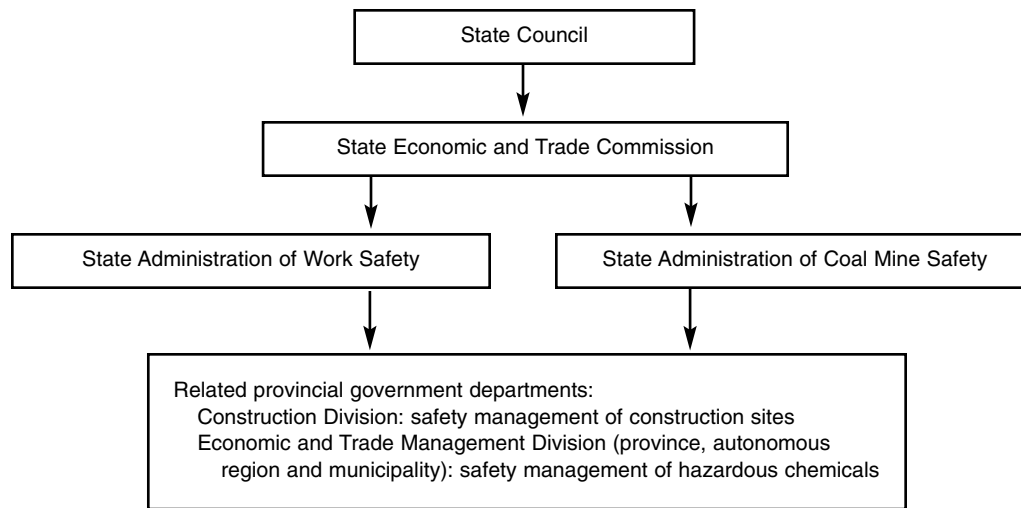


Figure 1—The Chain of Responsibility.<sup>6</sup>

protective equipment. Workers . . . shall also promptly report accidents or hidden dangers relating to occupational hazards.

Finally, in addition to the Work Safety Law, there are number of other relevant laws that also cover some aspects of workplace safety. The list below is by no means exhaustive. It includes only those regulations that are of a general nature or, if more specific, laws that cover sectors in which the rates of industrial accidents or disease are among the worst; for example, coal mining, construction, and the use of hazardous and toxic materials.

- Regulations on the Protection of Women Workers (guiding principles)
- Regulations on Industrial Accidents and Dealing with Accidents (guiding principles)
- Coal Safety Law
- Regulations on Labor Protection for Using Toxic Materials in the Workplace (12 May 2002)
- Regulations on the Safe Management of Dangerous Chemicals (15 March 2002)
- Regulations on Radioisotopes and the Installation of Protective Equipment Against Radiation (24 October 1989)
- Regulations on the Prevention and Cure of Pneumoconiosis (3 December 1987)

As noted above, the chain of responsibility for ensuring the implementation of the laws is a crucial aspect of the Chinese regulatory environment, and is a popular theme for analysis in the wealth of Chinese-language material on OHS. It is, as might be expected in light of the discussion so far, quite a complex system. Nevertheless, it can be simplified diagrammatically as shown in Figure 1.

For reasons of space, we are unable to deal with the ramifications for workers of the OHS system outlined

above in the detail they warrant. However, a number of essential issues require mentioning if only to raise them as important for future research. They are the problems associated with the top-down approach towards workplace safety, and the lack of worker involvement. These limitations can be categorized by way of the following premises:

1. Regulatory bodies discharged with the duty of protecting worker safety have failed to move beyond the limitations imposed by earlier statutory guidelines.
2. Although the relevant laws are implemented by the central government, the main responsibility rests with local government.
3. The government's authority to implement rules and regulations has declined in recent years.
4. Investment in safety systems has not been adequate.
5. The safety inspectorate is unable to legally enforce notices of factory closure.
6. Legal impediments prevent the ACFTU from organizing workers in ways that would allow them greater control over workplace safety issues.
7. The regulatory environment has become increasingly complex.
8. Administrative changes due to government restructuring have further complicated the chain of responsibility for OHS matters.

During the early years of the reform era, official discourse on worker safety pinpointed a number of major problems. For instance, a summary report published in January 1985 by the leading monitoring group OHS Month argued that local authorities were only paying lip service to OHS and were not taking instructions from the central authorities seriously. Worse still, they were guilty of willfully ignoring problems that existed. The report cites evidence to show that township and village enterprises (TVEs) often failed to fill OHS positions or

**TABLE 1. Accidents in Selected Sectors and Provinces in China, 2000-2001\***

|                      | Accidents | Deaths | Permanent Injuries |
|----------------------|-----------|--------|--------------------|
| Total                |           |        |                    |
| 2000                 | 10,770    | 11,681 | 3,999              |
| 2001                 | 11,402    | 12,554 | 4,141              |
| By selected sector   |           |        |                    |
| Coal mining          |           |        |                    |
| 2000                 | 2,863     | 5,798  | 445                |
| 2001                 | 3,082     | 5,670  | 503                |
| Manufacturing        |           |        |                    |
| 2000                 | 3,477     | 1,946  | 2,012              |
| 2001                 | 3,755     | 2,147  | 2,173              |
| Construction         |           |        |                    |
| 2000                 | 1,378     | 1,306  | 426                |
| 2001                 | 1,674     | 1,647  | 556                |
| By selected province |           |        |                    |
| Shanghai             |           |        |                    |
| 2000                 | 1,569     | 295    | 289                |
| 2001                 | 925       | 349    | 397                |
| Guangdong            |           |        |                    |
| 2000                 | 803       | 698    | 373                |
| 2001                 | 782       | 576    | 369                |
| Sichuan              |           |        |                    |
| 2000                 | 568       | 866    | 84                 |
| 2001                 | 473       | 696    | 57                 |
| Liaoning             |           |        |                    |
| 2000                 | 652       | 661    | 219                |
| 2001                 | 726       | 661    | 211                |

\*The figures are official<sup>13</sup> and thus may not reflect the actual numbers of accidents.

implement systems designed to protect workers. They also failed to provide adequate training to new workers. In short, OHS Month argued that organizations across the board failed to provide adequate resources to ensure the implementation of OHS laws and systems.<sup>7</sup>

In 2002, publications from SAWS itself (the department overseeing OHS) showed that despite a gap of nearly two decades there was a direct correlation between problems identified in the mid 1980s and action taken subsequently. Compare the comments above with the measures SAWS outlined in a circular published in 2002 that the government frequently adopts to improve safety in coal mining, the most dangerous sector in China.

## REGULATION IN THE COAL MINES

The discussion below concentrates on the coal industry by way of example, and to demonstrate how even in the industry in which workers' lives are most at risk, OHS laws and regulations remain ineffective. (Table 1 shows statistics on workplace injuries and deaths.) SAWS responsibilities and strategies include:

1. Publicity campaigns focusing on OHS, including convening meetings and conferences of safety officials

and the regular issuing of OHS documents and guidelines.

2. Closing down small coal mines that fail safety inspections.

3. Suspending production in state-owned coal mines that fail safety inspections.

4. Demanding that local governments and employers take OHS concerns seriously as well as guarantee investment in safety procedures and equipment, and adequate training for personnel.<sup>8</sup>

Despite these lofty strategies, Chinese miners still face significant OHS problems. These are further exacerbated by the decline in the "government's capacity to govern," as He Qinglian, the former editor of *Southern Weekend*, one of China's most progressive newspapers, put it.

For instance, Zhao Tiechui, a Deputy Director in SAWS, argued during an emergency national telephone conference on coal mining safety convened in Beijing on 7 July 2002 that the OHS system established in the coal mining industry existed in name only. His criticisms included that documents issued from the central government are simply passed on to the next level of government and ignored. Meetings were held, he said, but the safety measures discussed never got further than the conference hall. He also stated that old and outdated machinery in state-owned mines, inadequate safety operation procedures, and a decline in the fire prevention facilities and fire-fighting equipment in such mines exacerbated the problems.

Using a recent accident at a mine owned by the Jixi Mining Group as an example, Zhao pointed out that the State Administration of Coal Mine Safety Supervision (SACMSS) had issued six warnings to the group. The warnings stated that its investment in safety systems and operations had fallen and as a result there were serious safety hazards. Yet the group both refused and procrastinated over instructions to rectify the situation, citing economic difficulties. On June 20, just as an inspection team dispatched by the State Council had completed its work and issued yet another notice to cease production until safety standards were met, an explosion and fire ripped through the mine, killing 115 miners.

The lack of investment in safety systems Zhao mentions has been the subject of widespread discussion. It is well known that the formation of gas underground causes the most serious threat to coal miners. According to a report quoted in the *People's Daily*, gas-related accidents caused 43% of all fatalities in coal mines during 2001.<sup>9</sup> Furthermore, in the ten-year period from 1991 to 2000, the number of coal miners killed in gas-related accidents nearly doubled.

In recent years, investment in safety in China's key mines has fallen between 3 and 4 billion *yuan* short of previously set targets. In Heilongjiang Province alone, investment in coal-mining safety was 570 million *yuan* short of the planned target figure. Moreover, the same

report stated that over the previous two years (2001–2002), investigations had revealed that many of the small-scale mines closed down by local authorities had failed to follow even the most basic safety procedures such as the installment of gas ventilation and monitoring equipment.

The Jixi coal mine disaster of 20 June 2002 and its aftermath provide an excellent example of how the rules are ignored. After the accident, Meng Zidong, head of the Jixi Mine Safety Inspectorate, was reported in the *People's Daily* as saying:

It wasn't just the shaft where the explosion took place that was refusing to follow our instructions and stop production to put things right, it's every mineshaft in the company. This year we have put out 54 notices . . . to management operating various coalfaces and shafts to stop production. They have all been ignored.<sup>10</sup>

The same article detailed the lack of Inspectorate staff and how the State Council had issued a national regulation/notice that ordered the safety inspectorate in enterprises to separate themselves from production departments and management. The *People's Daily* argued that because the Mine Safety Inspectorate does not have the power to order production to stop, their hands are tied.

## CHALLENGES IN OHS IMPLEMENTATION

There are several key obstacles to effective enforcement. The first is that the ACFTU is unable to organize workers (an inability that is legally enforced). The second and interrelated point is that the solution to the lack of inspectors could involve workers themselves being able to present their grievances to local union representatives who could in turn liaise with the Inspectorate, which is not possible given the ACFTU's position. Third, the new Work Safety Law clearly provides workers with the right—and in fact the obligation—to attend training sessions that enable them to recognize hazards and report them. The fourth issue is that inspectors must have the backing of local government to enforce closure orders, but that this presents obvious problems in poorer areas and is restricted by corruption. As Meng Zidong asked: "The courts have the power of enforcement, why don't we?"<sup>10</sup>

While in no way do we seek to absolve enterprises from the responsibility they bear for injuries and deaths caused by negligence and greed, it is true that the complexity of the regulatory environment is partly to blame. For instance, during the period covering 2000–2001, the State Council Central Office released 184 rules, regulations, and related documents. Departments and ministries of the State Council published another 135. Relevant departments in provinces, municipalities, and autonomous regions issued a further 107.

The sheer weight of administrative excess is exacerbated by the fact that rules, regulations, and documents of this type have various levels of authority and must not contradict the law. Although the Chinese legal system is not based on precedent, officials may need to refer to all sets of rules when attempting to determine the various levels of responsibility for breaches of OHS regulations; that is, whether the law, government, a specific department, the company, or some other body is accountable.

Administrative changes in 1998 have further complicated the task of determining which department assumes responsibility for which sector. Major government restructuring has seen the management and monitoring of OHS shift from the old Ministry of Labor to the State Economic and Trade Commission (SETC). For example, the management and inspection of pressure boilers has shifted to the Department of Technical Inspections, while the prevention of industrial diseases has been passed to the Ministry of Health. The new Ministry of Labor and Social Security (MOLSS) now manages industrial accident insurance. The SETC now oversees OHS departments in each ministry responsible for specific sectors, for example, railways.

As noted above, there is potential for OHS to improve, especially in large industrial cities and towns and special economic zones. The new laws and standards provide the legal framework that could, if utilized, force enterprises to comply with adequate standards. There is more than adequate information available and there is also a large number of officials with sufficient expertise. The problems therefore lie in a lack of confidence and experience among younger workers and managers. Workers are in general ignorant of the laws and the vast body of expertise on OHS, while younger managers often feel compelled to manage facilities more in line with profit than fairness.

The potential for change is also seriously undermined by a complete lack of freedom of association and a pre-occupation on the part of OHS managers and managers in general with the "quality" (*suzhi*) of their employees. The former prevents workers and the trade union from being able to bargain collectively on issues of workplace safety. The latter prevents moves towards freedom of association because it is assumed that worker quality must be raised before they can enjoy "rights."

There is clearly a need for China to draw further on the experience of other countries. However, this is at present not possible due to the political problems associated with any form of deep engagement with the ACFTU. Until the Chinese trade union attains legitimacy in the eyes of the international trade union movement, the links necessary to drive OHS forward will remain insufficient. Some organizations, such as China Labor Bulletin and the Hong Kong Confederation of Trade Unions, have made a strong case for worker

involvement, but even with freedom of association, worker participation, while absolutely crucial, is often oversimplified.<sup>11,12</sup>

The objective conditions for migrants—especially in China where they face restrictions with regard to residency—mean that the issues of unionization in general and OHS in particular are very low on the agenda for many migrant workers. The raw power of capital is in a much stronger position than labor, even where freedom of association exists, and the forces of globalization have done nothing to ameliorate or temper this power. Workers die in well-regulated working environments, but are at much greater risk in poorly regulated ones. Workers die in countries where freedom of association exists in law, and they also die where it doesn't.

The arrival of vast numbers of untrained farmers in industries such as coal mining, construction, and manufacturing has, in the present environment, had a negative impact on OHS; a view overwhelmingly supported by statistics on deaths and injuries in those sectors (see Table 1). At the same time, many argue that those in the best position to monitor health and safety are workers, because they have a vested interest in their own safety. However, as is the case the world over, ironically, these are often the people most vulnerable and with the least power over workplace safety. Usually very poor and often working for a short time in order to earn as much money as they can, migrant workers will take enormous risks and threaten organizers—sometimes with physical violence—should they suggest the implementation of OHS measures or anything else that might hinder their ability to earn money quickly. This reality should not be interpreted as a justification for denying workers direct control over their own safety. On the contrary, we simply seek to acknowledge the huge challenges of which union organizers on the ground are all too well aware.

## CONCLUSION

Despite the promulgation of new laws, it is clear that Chinese workers still face major barriers to workplace safety. The major ones include the responsibility for administration resting with numerous and diverse local authorities, the decline in government authority, the lack of investment in safety systems, the inadequacy of the inspectorate, the failure of the ACFTU to organize workers around OHS, the complexity of the regulatory environment, administrative changes due to government restructuring, the lack of freedom of association, and the influx into many sectors of an impoverished and untrained migrant workforce.

Reliance on the enforcement of laws may be too optimistic an approach, but equally problematic is the belief that organized workers can take control of monitoring and ensuring their own workplace safety. Train-

ing programs rooted in local cultures, and based on small steps that make sense to workers in their own terms, may be a more viable approach than simply imposing a top-down structure of rules and regulations. Sustainable systems of workplace safety will require patient work that builds committees and trains leaders from the bottom up.

There is *potential* for this approach, but it will require alternative approaches to those now dominant in China. We should be mindful that the absence of rigor and failure of implementation may hinder old as well as new approaches aimed at helping Chinese workers.

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