

NO WAY OUT

Worker Activism in China's State-Owned Enterprise Reforms



Droits et Démocratie
Rights & Democracy

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development

中国劳工通讯 China Labour Bulletin

China Labour Bulletin
P.O. Box 11362, Central Post Office
Hong Kong SAR
Tel.: (852) 2780 2187
Fax: (852) 2359 4324
E-mail: clb@clb.org.hk
Website: www.clb.org.hk

Founded in 1994 by labour activist Han Dongfang, China Labour Bulletin (CLB) is a non-governmental organization based in Hong Kong that defends and promotes workers rights in the People's Republic of China. It supports the development of democratic trade unions, respect for and enforcement of the country's labour laws, and the full participation of workers in the creation of civil society. The CLB also seeks the official recognition in China of international standards and conventions providing for workers' freedom of association and the right to free collective bargaining.

Rights & Democracy
1001 de Maisonneuve Blvd. East, Suite 1100
Montreal (Quebec) H2L 4P9
Canada
Tel.: 514 283-6073
Fax: 514 283-3792
E-mail: publications@dd-rd.ca
Website: www.dd-rd.ca

Rights & Democracy is a non-partisan, independent Canadian institution created by an Act of Parliament in 1988 to promote democratic development and to advocate for and defend human rights set out in the International Bill of Human Rights. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries.

© Rights & Democracy (International Centre for Human Rights and Democratic Development) and China Labour Bulletin, 2008.

This report may be freely excerpted, provided credit is given to Rights & Democracy and CLB.

It is available online at www.dd-rd.ca and at www.clb.org.hk.

This report is also available in French and Chinese.

Copy Editing: ARTE Communications Group
Translation: altsysmedia
Production: ARTE Communications Group
Photo: Peter Parks, AFP

ISBN: 978-2-923539-24-9

Printed in Canada

Legal Deposit: Bibliothèque et Archives nationales du Québec, third quarter 2008

National Library of Canada, third quarter 2008

NO WAY OUT

Worker Activism in China's State-Owned Enterprise Reforms



Droits et Démocratie
Rights & Democracy

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development

中国劳工通讯 China Labour Bulletin

September 2008

Table of Contents

Introduction	1
<i>The Labour Rights Litigation Project</i>	2
SOE Reforms and the Rise of Privatization-related Labour Disputes	3
<i>Abuses during the Restructuring and Forced Bankruptcy of SOEs</i>	4
<i>Privatization Disputes: Four Case Studies</i>	5
The Petitioning System	8
<i>Intensifying Conflict</i>	9
<i>Concealing Corruption</i>	10
<i>Needless Provocation of Petitioners</i>	11
Workers' Quest for Judicial Redress	11
<i>Judicial Discrimination against Laid-off Workers</i>	12
Criminalizing Collective Protests by Workers	14
<i>Trumped-up Criminal Charges</i>	15
<i>Manipulating the Criminal Justice Process</i>	15
<i>Detention without Trial</i>	17
Conclusion	20
<i>Recommendations</i>	21
CLB Research Reports	22
Rights & Democracy: Selected Publications	25

Introduction

In March 2002, Yao Fuxin, an employee at the Liaoyang Ferro-Alloy Factory in China's north-eastern Liaoning province, led over 10,000 fellow workers from across the city in a series of public protests against the alleged corruption of factory managers in the privatization and forced closure of local state-owned enterprises (SOEs). Along with fellow labour activist Xiao Yunliang, Yao was detained by local police and charged with the crime of "illegal assembly and demonstration." Both Xiao and Yao, however, were eventually tried and convicted of the much more serious crime of "subversion of state power." Yao was sentenced to seven years in prison and Xiao to four years. Xiao was released in February 2006, but Yao is still being held at the remote and inaccessible Lingyuan No.2 Prison, in poor health and limited to only occasional visits from his family.

Yao and Xiao are among tens of millions of workers and their families whose lives were thrown into turmoil during the wholesale, shock therapy-style privatization of SOEs carried out in China in the late 1990s and early 2000s. The so-called enterprise restructuring (*qiye gaizhi*) programme was designed to weed out inefficient enterprises by either closing them down or, through a range of new ownership mechanisms, merging them with more productive units. It was officially hoped that the whole process could be over and done within a few years and that everyone, including the workers, would benefit from enhanced efficiency, economic growth and new job and business opportunities over the long term. But the government's failure to implement clear policy guidelines for the process, combined with a lack of transparency, flawed auditing of company assets and widespread official corruption, left

millions of workers out in the cold, with no job and barely enough income to support their families.

Huge numbers of laid-off SOE employees sought redress, both through the official Complaints and Petitions (*xin-fang*) system and through the labour arbitration and court systems, but in most cases to no avail. Eventually, they were left with little alternative but to demonstrate publicly to bring their plight to the attention of local governments. However, many local officials perceived these worker demonstrations as posing a threat either to "political stability" or to their own positions, and saw to it that the activities of the protest leaders were banned or arbitrarily punished. Both Yao and Xiao, for example, were tried and convicted of involvement in the banned China Democracy Party, a charge they have consistently denied.

Disputes arising from the privatization of SOEs have typically dragged on for many years, sometimes even for decades, as local governments, the courts and official bodies such as the All-China Federation of Trade Unions (ACFTU) failed to address the widespread injustices committed against workers in the course of SOE restructuring. Indeed, these long-running collective labour disputes amount to a festering wound at the core of China's economic success story. Workers' leaders who fought for the rights of their colleagues have been persecuted, silenced or imprisoned, while the grievances of those they represented have been all but ignored by the authorities and the laid-off workers have been left to fend for themselves in an increasingly cut-throat market economy.

The Labour Rights Litigation Project

Initiated by China Labour Bulletin in 2003, the Labour Rights Litigation Project seeks to enable Chinese workers to obtain redress for labour rights violations through the dispute mediation, arbitration or court systems. The People's Republic of China (PRC) has a wide range of labour legislation dating back to the 1992 Trade Union Law and the 1995 Labour Law, and these formal rights have been further enhanced by the new Employment Promotion Law and Labour Contract Law, which went into effect in January 2008, and by the Labour Dispute Mediation and Arbitration Law, enacted in May the same year. The problem for workers in China is not a lack of legislation, but rather that employers routinely ignore these laws and local governments then fail to implement and enforce them. Many workers believe, therefore, that the law lacks real force to protect their rights.

Providing legal advice is useful, but what most workers need is help in actually resolving their cases. Through the Labour Rights Litigation Project, CLB seeks to demonstrate that, even if local government agencies are unwilling to enforce the labour laws, ordinary Chinese workers can still use that legislation to protect their rights in a court of law. We collaborate with lawyers in China who specialize in workplace discrimination, work-related injury cases, disputes over the non-payment of wages, and pension, redundancy and economic compensation cases. By mid-2008, CLB had taken on more than 250 labour dispute cases, and the great majority of cases concluded to date have been successful and produced substantial compensation for the plaintiffs. We provide workers with local lawyers to represent them, on a pro bono basis, in civil and administrative actions against employers and local government authorities, and also – in cases such as those discussed in this report, where labour activists have been detained by the police – in mounting an effective court defence against criminal charges.

In this report we follow five illustrative cases, dealt with under CLB's Labour Rights Litigation Project, that track the typical trajectory of SOE restructuring or forced bankruptcy, leading to collective labour dispute, worker protest, and arbitrary detention or criminal trial. All the worker activists discussed below, apart from one, were subjected to arbitrary or judicially imposed periods of detention. The final case illustrates an alternative and more commonly used means by which local authorities can retaliate against workers who insist on securing redress for labour rights violations: namely, harassment and persecution short of actual detention.

The report analyzes the overall process of SOE restructuring or bankruptcy, and shows how workers' rights and interests were systematically discarded during this process. Workers' rights to be kept informed of restructuring plans and proposals (freedom of information), to be involved in such plans (the right to participate), and to have a fair share of the economic benefits (property rights) were generally all ignored as enterprise managers proceeded to plunder state assets for personal gain. Since independent trade unions are legally proscribed in

China, the SOE workers were denied freedom of association as a channel for self-defence, and the official trade union – the All-China Federation of Trade Unions (ACFTU) – did little or nothing to provide such support.

Workers thus naturally turned to the government for help in safeguarding their rights and interests and in bringing corrupt and larcenous enterprise managers to account. However, the official complaints and petitions system not only lacked the ability to solve these problems, it often further exacerbated them. Likewise, the labour arbitration committees and the courts, for their part, were in many cases so cowed by the local governments and the Party that they dared not interfere in cases where official vested interests were at stake. Ultimately, China's Supreme Court arbitrarily denied laid-off workers the right to pursue legal redress for rights violations arising during the SOE restructuring process. Meanwhile, despite the gradual reduction in overt official repression against worker activism that has occurred in China over the past decade or so, in a significant number of cases the government and Party's control over the criminal justice system

allowed officials to frame and imprison worker activists or subject them to prolonged detention without trial.¹

The report concludes that now, more than a decade after SOE managers and government officials tried to take an economic shortcut and avoid paying the full social cost of enterprise restructuring, it is high time that all those in China whose livelihoods were ruined or derailed in the process were properly compensated.

SOE Reforms and the Rise of Privatization-related Labour Disputes

Prior to China's economic reforms of the late 1970s, the central government in Beijing exerted strict controls over the economy, all enterprises were publicly owned and managed and the workforce was deployed according to the state's political and economic priorities. Workers' wages were determined by the state, and enterprises were required to remit profits to the central government. Workers had an "iron rice bowl," a job for life, housing, schooling, medical care pensions. Known by some as "the aristocracy of labour," they had no reason to think that their status would ever be revoked. However, in 1978, following the turmoil caused by successive waves of political campaigns and conflict from the 1950s onwards, the Communist Party's new leadership under Deng Xiaoping sought to rebuild the shattered economy by making "economic reform and opening to the outside world" (*gaige kaifang*) its top priority. In 1980, four coastal cities (Shenzhen, Zhuhai, Shantou and Xiamen) were designated as Special Economic Zones in order to attract foreign investment, and in 1984 this "open-door policy" was extended to another 14 coastal cities.

At the same time, efforts were made to reform poorly managed, inefficient and wasteful SOEs. In the late 1970s and early 1980s, a number of pilot projects and programmes gave selected SOEs greater autonomy and more economic incentives. In the 1980s, the programme was broadened and the gov-

ernment established the "dual track" (planned and market) economy, under which profitable SOEs could sell their products outside of the state plan. However, the great majority of enterprises remained inefficient and a huge drain on national resources. In the early 1990s, the government launched a full-scale SOE restructuring programme that allowed private investors to take over and run ailing SOEs. While retaining control of the state's major and economically strategic SOEs, the government "let go" (*fang xiao*) nearly all of the rest. By the end of 2001, a survey showed that 86 percent of all SOEs had been partially or fully privatized.² The number of SOEs fell from 64,737 in 1998 to just 27,477 in 2005. But Beijing's massive sell-off gave businesses and corrupt local government officials licence to plunder state assets, while at the same time getting rid of millions of SOE employees. No fewer than 30 million SOE employees were laid-off (*xia gang*) during the privatization process from 1998 to 2004, and the number rose further thereafter.³

The mass worker lay-offs led to a huge rise in collective labour disputes, typically involving arbitrary and inequitable redundancy packages and widespread allegations of managerial corruption. Laid-off workers demanded payment of wages in arrears, continuation of pension, medical insurance and social security benefits, along with official assistance in securing re-employment. As the head of the State Bureau for Complaints and Petitions, Zhou Zhanshun, admitted in November 2003:

In recent years, there has been a huge increase in petitioning activities by the masses involving large collective cases, multiple submissions of petitions and collective petitioning visits directly to Beijing. Such activities have grown both in number and scale, with more and more people involved and emotions running higher and higher. In certain places and industries, things have snowballed and triggered serious public unrest, including in Beijing and other areas.⁴

1. For a partial list of labour activists currently jailed in China, see CLB website, *Imprisoned Workers*, <<http://www.clb.org.hk/en/node/100014>>

2. Garnaut, R., Song, L. and Yao, Y (2006), "Impact and Significance of State-owned Enterprise Restructuring," *The China Journal*, 55: 35-65.

3. Liu Yingli (March 2005). "*Jimian gaobie xiagang zhigong*" (Bidding farewell to this year's laid off workers), *China News Weekly*, vol. 220; cited in CLB Report, *Speaking Out: The Workers' Movement in China, 2005-2006*. The category "*xia gang*," applied to most of the workers who lost their jobs during SOE restructuring, meant that they technically remained on the company payroll for the following three years and received a monthly living subsidy from the company.

4. Hu Kui, Jiang Shu, "*2003 nian zhongguozuoyu xinfang hongfeng, xin lingdaoren mianlin feichang kaoyan*" (Peak in petitions in 2003 in China presents new leadership with severe test), *Liaowang Dongfang Zhoukan* (Oriental Outlook), from xinlang.org, 8 December 2003, <<http://news.sina.com.cn/c/2003-12-08/10142314186.shtml>>.

According to the authorities, the number of mass protests, demonstrations, sit-ins and strikes in China soared from around 10,000 in 1993 to 60,000 in 2003, with the total number of participants increasing from 730,000 to 3.07 million.⁵ Since then, this trend has shown no sign of abating. It is estimated that there is currently at least one strike involving over 1,000 workers every day in the Pearl River Delta alone. Indeed, in April 2008, the vice-chairman of the Shenzhen Federation of Trade Unions, Wang Tongxin, said strikes had become “as common as arguments between a husband and wife.”⁶

Abuses during the Restructuring and Forced Bankruptcy of SOEs

It was not until November 2003, long after the process had begun, that the Chinese government produced a comprehensive policy document to guide and govern SOE restructurings: the State-owned Assets Supervision Commission's *Opinion on Regulating the Work of Restructuring SOEs*. This contained a bewildering array of formats and methods, including alliances, mergers, leases, management subcontracting, joint-ventures, transfers of state-owned assets and shareholdings and joint shareholdings, and other forms of reorganization.⁷ But however defined, SOE restructuring basically meant either privatization or bankruptcy. This lack of central direction gave local authorities excessively wide discretion and latitude on how to proceed. As a senior official at the commission acknowledged in December 2003:

The restructuring process is not sufficiently regulated... transparency has been inadequate in the restructuring carried out by some companies...

*things are being orchestrated behind closed doors, and the restructuring measures at some companies have damaged both the interests of creditors and also workers' legal rights; during restructuring, some companies have also been guilty of collusive practices within and beyond their organizations, including the disciplinary and criminal offences of unauthorized concealment, transfer and embezzlement of assets.*⁸

When bankruptcy proceedings were required, for example in the case of chronically underperforming SOEs, those with longstanding and excessive debts or companies unable to attract a buyer, local governments – instead of adhering to the stipulations of the PRC Enterprise Bankruptcy Law (Trial Version) – followed a practice known as “policy-determined closure” (*zhengcexing guanbi*). This was an administrative measure, triggered by government directive, but “implemented” through court procedure.⁹ By law, bankruptcy liquidator teams should have consisted of senior enterprise executives, financial experts and other officials and specialists designated by the courts.¹⁰ Under the “policy-determined closure” approach, however, they were composed mainly of government functionaries, and so bankruptcy proceedings that were ostensibly independent and impartial were in practice government directed. Court officials complained that during liquidation hearings, “bankruptcy leadership teams” simply dictated to the courts how to handle specific cases.¹¹

In these “policy-determined closures,” whatever assets still remained after the auditing and bankruptcy of enterprises were supposed to be apportioned to the workers, rather than (as in normal bankruptcy cases) used for clearing bank debt. In

5. Chen Lihua, “Zhongguo ‘quntixing shijian’ 10 nian zeng 6 bei” (Collective incidents in China multiply six-fold), *Xinhua Meiri Dianxun*, (Xinhua Daily Telegraph), 31 July 2005; <http://news.xinhuanet.com/mrdx/2005-07/31/content_3290161.htm>.

6. “Shenzhen trade union sees strikes as a natural phenomenon”; <http://www.clb.org.hk/en/node/100241>.

7. Labour and Social Security Ministry, Ministry of Finance and State-owned Assets Supervision Commission. *Guanyu guoyou dazhongxing qiye zhufufen lifuye gaizhi fenliu anzhi fuyou renyuande laodong guanxi chuli banfa* (Labour relations management method for re-deployment of redundant labour after divestment of secondary businesses and non-core restructuring at large and mid-sized SOEs), 31 July 2003.

8. “Guozhiwei fuzeren jiu guifan guoqi gaizhi yijian da jizhe wen” (An official from the State-owned Assets Supervision and Administration Commission answers reporters’ questions on the regulation of restructuring of SOEs), *Beijing Qingnian Bao* (Beijing Youth Daily), from news.tom.com, 22 January 2006] <<http://news.tom.com/2006-01-22/000N/26259788.html>>.

9. See Article 37 of *Enterprise Bankruptcy Law of the People's Republic of China (Trial Implementation)* (*Zhonghua renmin gongheguo qiye pochancha [shixing]*), approved 2 December 1986 by Standing Committee of the National People's Congress.

10. *Ibid*, Article 24.

11. Liu Mingjun, “Xin pochancha zuihou zhengyi: Zhigong nengfou pochancha” (The final dispute in the new bankruptcy law: Can the workers go bankrupt?) *Shangwu Zhoukan* (Commercial Weekly) online, 28 March 2006, <<http://www.businesswatch.com.cn/Html/Law/0632815403723173.html>>.

practice, though, this was rarely done. Indeed, in the absence of specific government regulations, local officials and enterprise managers had a field day, using SOE restructuring and liquidation as an opportunity to carve up state assets in collusion with private property owners. According to official estimates, since China first began restructuring the SOEs, state assets valued at between 80 and 100 billion yuan went missing each year. According to Li Jinhua, Auditor-General of the National Audit Office, the main reason for this huge loss of assets was embezzlement by company managers and state officials.¹²

In the eyes of managers and local officials, workers posed an obstacle to SOE privatization and its attendant opportunities, and hence were a burden to be cast off as quickly as possible. From 1994 to the end of 2004, a total of 3,484 SOEs underwent enforced closure and bankruptcy, affecting altogether 6.67 million workers.¹³ In the SOE restructuring process as a whole, between seven and nine million jobs were axed in China each year in 1998, 1999 and 2000. But it was only in November 2006 that the central government belatedly acknowledged the true scale and nature of the price paid by workers during the SOE restructuring process. According to the official news agency, Xinhua, the two main problem areas were: firstly, a lack of regulations, insufficient transparency in the process, behind-the-scenes manipulation of events, and failure to give workers congresses advance notice of restructuring or bankruptcy plans; and secondly, widespread non-payment of laid-off workers' wages, pensions and social security benefits, often as a result of difficulties or irregularities in the calculation and realization of enterprise assets. Other serious problems included a widespread failure to find alternative jobs for the redundant SOE workers, and the fact that many of them had been rendered ineligible for

unemployment and healthcare benefits because employers had failed to keep up with their social security payments.¹⁴

By this time, however, the social damage caused by the authorities' previous neglect of these vital concerns had already been inflicted. The "labour aristocracy" found itself relegated to the bottom rung of the social ladder, with few real opportunities to climb back up. These laid-off workers could rarely find new work and so became dependent (permanently so, in many cases) on "minimum livelihood allowances" handed out by the state. If the government thought millions of cast-aside workers would quietly acquiesce to their fate and let bygones be bygones, it was sorely mistaken. As a leader of redundant workers from the Chongqing No.1 Cotton Mill involved in a long-running dispute with the local government over welfare payments said, in a 2007 interview: "The government wants to grind us down. But so long as breath lasts, we laid-off workers won't give up. We already have nothing, so what is there to fear?"¹⁵

Privatization Disputes: Four Case Studies

From the late 1990s onwards, there was a dramatic increase in the number of unemployed and laid-off SOE workers organizing and participating in protests directed against alliances of SOE managers and local government officials. We refer below to these conflicts as "privatization disputes," in order to distinguish them from the more usual type of labour disputes, which generally involve migrant workers in the private sector and mostly concern issues such as wages, work-related injury compensation and workplace discrimination. SOE privatization disputes – many of which drag on unresolved even today – involved much larger numbers of workers, were more wide-ranging and complex in

12. Shen Hua, Li Jinhua. "Guoyou zichan liushi shi zhongguo zuida de weixie" (Loss of state assets is China's greatest threat), from *Ziyou YazhouDiantai* (Radio Free Asia), 30 September. 2006, <<http://www.rfa.org/mandarin/yataibaodao/lijihua-20060930.html?searchterm=None>>.

13. Wang Yi, "Guoyou qiye zhengcexing pochān zuizhong dou jiang you guojia caizheng lai mai dan" (The final bills for forced bankruptcy at SOEs come in for financial authorities), *Diyi Caijing Shibao* (First Financial Times), 13 May 2005. On 27 August 2006, the NPC passed a final version of the PRC *Enterprise Bankruptcy Law* (*Zhonghua renmin gongheguo qiye pochānfǎ*). The government's declared plan was, from 2008 onward, to abolish the practice of "policy-determined closures" of SOEs; see xinlang.org, <<http://finance.sina.com.cn/g/20050513/04131583425.shtml>>.

14. Ren Xiang, "Wu da yuanyin dao zhi guoqi gaigezhong zhigong quanyi shousun" (Five major reasons why the rights and interests of workers at SOEs have been damaged by restructuring), [xinhuanet.com](http://news.xinhuanet.com), 15 Nov. 2006; http://news.xinhuanet.com/politics/2006-11/15/content_5334163.htm.

15. A redundancy programme was launched at the Chongqing No.1 Cotton Mill in 2003. Over the subsequent four years, redundant workers only received the minimum subsistence allowance of 235 yuan a month, although the official standard retirement allowance for the city was 1,500 yuan. In 2007, the laid-off workers were further hit by rapidly rising inflation. The price of pork more than doubled, while the cost of cooking oil rose about 70 percent and the cost of vegetables more than doubled.

nature, and frequently (because of the direct involvement of local governments) involved issues of administrative and criminal law as well as of civil law.

Just about every SOE restructuring programme and forced bankruptcy eventually led to some kind of privatization dispute. Indeed, it is hard to find convincing examples of “stable restructuring” (*pingwen gaizhi*) having been reported in the official Chinese media. This is quite an indictment, given the length and scope of the restructuring programme, its importance to the government and the overriding role of the official media as a forum for government views.

The four privatization disputes discussed below illustrate the wide range of social problems engendered during the SOE restructuring process and reveal some of their many adverse consequences.

— The **Liaoyang Ferro-Alloy Factory**, a well-established, medium-sized SOE in Liaoning province, was the focus of a major, several week-long series of citywide worker protests against unfair restructuring practices in March 2002.¹⁶ In the 1990s, the Ferro-Alloy Factory manager, Fan Yicheng, had blamed the mysterious disappearance of enterprise assets on various “tricks and swindles” by foreign investors. From 1995 onward, the factory failed to pay its staff's pension contributions and constantly fell behind with wage payments and medical and home-heating reimbursements. On 5 November 2001, the factory was officially declared bankrupt. A team of bankruptcy liquidators from the Liaoyang municipal government fobbed the workers off with minimal economic compensation – only around 600 yuan for each year of service at the company¹⁷ – and then failed to deliver on promises that all wages in arrears would be paid to the work-

ers, together with the healthcare and home-heating subsidies owed. In addition, for a period of two years after receiving this compensation package, the workers would be considered ineligible for unemployment benefits and have to pay social insurance and home-heating expenses out of their own pockets. (Heating alone, in frigid Liaoning province, could amount to 1,000 yuan per year.) Angered by the proposed retrenchment terms, the workforce raised two main demands: first, that the local government – the de facto bankruptcy administrator – take urgent steps to assure them their basic livelihoods; and second, that a criminal investigation be launched into alleged embezzlement and other corrupt activities by the factory's senior management. A citywide wave of protests by local workers then followed.

— The **Tieshu Textile Factory** in Suizhou, Hubei province was a relatively large SOE established in 1966. At the end of 2002, a bankruptcy liquidator team sent in by the Suizhou municipal government and the enterprise Party committee announced that the workers' longstanding subsistence allowance of 127 yuan per month had been cancelled, along with a transportation and utilities' allowance previously paid to all retirees, “internally retired” (*neibu tuixiu*) employees¹⁸ and laid-off (*xia gang*) members of staff who retained employment contracts. The authorities claimed, variously, that these different subsidies were not authorized under state policy; that once bankrupt, the company could no longer afford to pay them; and that local government finances also were insufficient for the purpose.¹⁹ Furthermore, on 7 February 2004, the bankruptcy liquidator team announced that the workers would receive only 27 percent of the original value of the company shares that they had been pressured by management into buying several years earlier. In all, the textile facto-

16. For a full account and analysis of the Liaoyang worker protest movement of spring 2002, see *The Liaoyang Workers' Struggle: Portrait of a Movement*, China Labour Bulletin research report, July 2003. <<http://www.clb.org.hk/en/node/100163>>.

17. The proposed system of calculating redundancy compensation was as follows: the maximum amount, 18,000 yuan, was reserved for workers with at least 30 years of service; and for those with shorter service records, the amount of redundancy compensation dropped by 502 yuan for every two years less than the 30 years. Hence, for example, an employee with ten years of service would receive 12,980 yuan in compensation.

18. The policy of “internal retirement” was adopted by many SOEs as a means of shedding workers who had not actually reached retirement age and were thus not formally eligible for pensions. In such cases, the companies themselves pledged to pay the workers' monthly “retirement” pensions, and – in the event of the enterprise going bankrupt or after restructuring – to transfer their pension accounts to the local labour and social security department so that regular payments could continue. In practice, this informal policy frequently led to serious and long-term problems for the workers concerned. (See below: discussion of the Tianyuan Holdings case.)

19. “*Zhigong qunzhong guanxinde redian wenti jieda*” (Response to flashpoint issues of concern to the mass of workers and employees), edited by Party committee of Tieshu Textile Company, internal document, 6 April 2003.

ry owed the workforce around 200 million yuan in shareholding values, unpaid housing subsidies, healthcare insurance premiums, medical treatment reimbursements and other such entitlements. The announcement of the proposed redundancy package thus sparked outrage among the workers, who proceeded to picket the main entrance of the company and launch a sustained petitioning campaign. When some workers eventually blockaded a railway in protest, nine were taken into police custody.

— **Unit 804**, located at Beining, near Jinzhou in Liaoning Province, was a warehouse owned by the cotton and hemp bureau of the All-China Federation of Supply and Marketing Cooperatives (ACFSMC) and used for the storage of state cotton reserves. The background to the labour dispute at this workplace lay in longstanding allegations by employees that the warehouse leadership were engaged in various corrupt activities including the embezzlement of company funds. From 1998 onwards, **Wu Guangjun**, a security officer at Unit 804, and six of his colleagues had submitted numerous petitions to local Party and government offices claiming that warehouse managers and officials of both Unit 804 and the Liaoning Cotton and Hemp Company, an affiliated entity, had squandered company funds and profited through the illegal trading of state cotton reserves. But the dispute itself was directly triggered by SOE restructuring plans.

In April 2001, the Liaoning Cotton and Hemp Company issued a notice ordering 34 of the workers at Unit 804 either to sign voluntary severance agreements or to accept “internal retirement”. However, Liaoning Cotton and Hemp was responsible only for handling the commercial operations of Unit 804, while the latter’s personnel affairs fell under the control of the Liaoning provincial branch of the ACFSMC. So the first major problem with the proposed “restructuring plan” at Unit 804 was that it was initiated by an entity other than the actual employer. The second, equally serious problem was

that since Unit 804 was officially classified as a “public institution” (*shiye danwei*), rather than as a production enterprise, it was ineligible for state enterprise restructuring in the first place. On both counts, therefore, the cotton company’s demand that Unit 804 terminate the 34 employees’ labour contracts and give them early retirement had no legal basis or validity. As a result, after the layoffs had been forced through, the local authorities refused to provide the workers concerned with the requisite redundancy papers. Lacking these documents, the “retirees” were thus ineligible to receive either unemployment benefit payments or even the official minimum subsistence allowance. As a final blow, Unit 804 and the local social welfare authorities then refused to honour the “retirees” pension entitlements. In effect, therefore, the workers had lost everything. Subsequently, Liaoning Cotton and Hemp recruited new staff on a temporary basis but refused to rehire any of the forcibly laid-off workers. Several of the more activist-minded workers then sought redress through the labour arbitration and court systems, but ultimately to no avail.

— Company restructuring activities at **Tianyuan Holdings**, a chemical products plant in Yibin, Sichuan, began in September 2003, and management extensively applied the above-mentioned policy of “internal retirement” in an effort to reduce the size of the workforce. This was in itself controversial, but what mainly triggered employee resentment in the Tianyuan case was the company’s refusal to pay any “loss-of-status compensation” to over 1,000 of the workers slated for early retirement. While no formal legal basis exists for the “internal retirement” policy in China, in practice workers are usually paid a one-time “loss of status” award in compensation for accepting early retirement, as well as a token monthly pension. Since the pension payments are often considerably lower than the full state pension, the “loss of status” award forms a key part of the package for most workers concerned.²⁰

20. The early or “internal” retirement policy is ostensibly aimed at reducing pressure on local employment, but as several mainland scholars have noted, in practice the mainly 40 to 50-year-old workers who accept it usually go straight back into the labour market thereafter. However, they generally do so as low-paid, temporary workers for whom employers pay no medical or social security insurance premiums. (See, for example, Du Wulu, “*Zhiyi ‘Neibu Tuixiu’*” [Casting Doubt on ‘Internal Retirement’], *Gongren Ribao* (Workers’ Daily), 27 December 2002, available at: <http://www.china.com.cn/zhuanti2005/txt/2002-12/27/content_5253395.htm>.

Several hundred “internally retired” workers petitioned the city authorities many times without any success, and so in late July 2005, they blockaded the factory entrance in protest and demanded that management provide them with proper compensation for the loss of their jobs. Although the protesting workers had no real leaders, the police nonetheless detained four of them on the spot and accused them of being the “ringleaders.” Two of the detainees were subsequently sentenced to two years’ imprisonment.

These four examples of SOE worker protest (all further discussed below) are reflective of a much wider and more serious problem. In March 2007, the vice-chairman of the ACFTU, Xu Deming, stated that, as of June 2006, a total of 2.05 billion yuan was owed in unpaid wages by SOEs undergoing restructuring, closure or bankruptcy proceedings in 11 different provinces and cities across China, together with a total of 700 million yuan in unpaid worker compensation. He further noted that in enterprises that had already completed such proceedings, 25 percent of the laid-off workers were not receiving any form of social security benefits.²¹

Having placed their faith in the government’s promises of a job for life, millions of former SOE workers turned to the government in search of justice. This they did initially through the government’s official complaints and petitions system, demanding reasonable compensation for themselves and investigations into the corrupt and larcenous activities of enterprise managers.

The Petitioning System

In China, the so-called petitioning process is one whereby citizens, either individually or collectively, can make appeals to the authorities over particular grievances, present proposals and opinions about local governance issues, or submit complaints and demands to the relevant branches of government. This can be done through personal visits to a Complaints and Petitions Office, or via e-mail, regular mail, fax messages or telephone calls.²² The petitioning system (*xin-fang zhidu*) has its roots in China’s traditional top-down system of government, in which there were few institutional avenues of public redress and therefore citizens’ only option was to seek the personal intervention of an “upright official.” The *xin-fang* system has been in place since the founding of the PRC in 1949 but is now widely seen as over-burdened, unresponsive, overly complex and almost entirely ineffective. Although millions of ordinary citizens seek redress through the petitioning system each year (there were 18.6 million cases in 2004 alone), surveys have shown that as few as two or three in a thousand petitions to the authorities result in any form of grievance resolution.²³

Petitioning is a relatively simple procedure. The petitioning party queues up at the Complaints and Petitions Office to get the attention of an official; and if the petition is submitted in writing, it can be targeted at the appropriate government body. However, the system’s simplicity gives citizens the misleading impression that once they have met with an official at one of these offices and submitted the relevant documentation, their problem is then on

21. Liu Sheng, “Gonghui jiebie weiyuan pilu 11 shengshi tuoqian guoqi zhigong gongzi 20 duo yi” (Delegates from trade union circles reveal that over 2 billion yuan in unpaid wages are owed by state-owned companies of 11 provinces and cities), *Zhongguo Qingnian Bao* (China Youth Daily), 13 March 2007, from [www.people.com.cn <http://politics.people.com.cn/GB/1026/5464228.html>](http://politics.people.com.cn/GB/1026/5464228.html).

22. Article 2 of the *Complaint and Petitioning Regulations (Xin-fang Tiaoli)* promulgated on 10 January 2005 by the State Council. The act of using the *xin-fang* system, especially in cases where citizens have to make numerous repeated visits to the relevant offices, is colloquially known as “*shangfang*” (petitioning.)

23. Despite the evident futility of petitioning, the trend has further accelerated in recent years. Statistics compiled by the Petitions Bureau of the NPC Standing Committee showed that in 2005, the total number of petitions greatly increased. The number of visitors received by the Bureau was 40,433, along with a total of 124,174 letters, up 50.4 percent and 83.9 percent respectively from 2004. In 2007, the number of petitions filed in Ningxia Hui Autonomous Region, for example, also continued to rise, as did instances of collective and higher-level petitioning. There was a 54 percent increase in the number of collective petitions submitted to the Regional Complaints and Petitions Bureau, and a 53 percent increase in individual petitions. (See: Liu Wenxue and Lin Yuanju, “*Yiju yidong zong guanqing? 2005 nian quanguo renda changweihui jiguan xinfang gongzuo huigu*” (Every move covered: A review of the work of petition-handling by organs of the National People’s Congress Standing Committee in 2005,” 10 March 2006, website of the National People’s Congress; and Zhai Xuejiang and Ge Nuannuan, “*2007 nian Ningxia xinfang zongliang chixu pansheng, chaoji shangfang liang zengjia*” (Total number of petitions continued to soar, and unauthorized petitions to higher authorities rose, in Ningxia in 2007), online *Ningxia Ribao* (Ningxia Daily), 28 January 2008, <http://www.cnradio.com.cn/nx/xwzx/xw/200801/t20080128_504689573.html>.)

track to be dealt with and resolved. But the petitions offices are not actually authorized to handle or resolve specific cases, much less to interpret – as is often required – questions of government policy or local legislation. At best, they can act as grievance transmitters for the petitioning party, although in practice most officials are unable to accomplish even this much. Instead the system essentially serves as a protective buffer for government officials, absorbing the impact of petitioners' anger but without reducing it in any meaningful way.

Intensifying Conflict

For laid-off SOE workers, the petitioning system has all too often turned out to be a bureaucratic trap, with complainants being sent off on an endless paper chase and bounced from one government office to another, while bureaucrats simply pass the buck and cover each other's backs. A major problem with the petitioning system in general is the institutional process of "referrals" (*zhuan ban*). According to Article 21 of the Complaint and Petitioning Regulations, a grievance case can be referred by the receiving office to any "relevant" government or Party departments. In reality, the referrals system generally leads to petitions ending up in the hands of the same organizations and officials named in the complaint. So besides having little prospect of obtaining a fair hearing, petitioners also put themselves at risk of retaliatory action by those targeted in the complaint.

In the **Tianyuan Chemicals Plant** case, after the company refused to pay workers slated for early retirement their "loss-of-status compensation," workers' leaders petitioned the Municipal Development and Reform Office, Municipal Economic and Trade Commission and other government organizations in Yibin. The more than 1,000 workers involved later stepped up their campaign by sending a delegation to the State Council's Complaints and Petitions Bureau in Beijing. The State Council office referred their case back to the Sichuan provincial government office, and the com-

plainants were told that it was "being processed." But the provincial government then returned the case files to various local government offices, including the Yibin State-owned Assets Supervision Commission and the Municipal Development and Reform Office, both of which were directly involved in the restructuring process at Tianyuan. Ultimately, the case was referred all the way down the complaints and petitions hierarchy, from the State Council in Beijing and back into the hands of Tianyuan Holdings itself, the original target of the complaint. After 20 months of effort, the workers' petitioning efforts had fruitlessly come full circle. Unsurprisingly, the company continued to refuse all payment of "loss-of-status compensation" to the workers it had forced into early retirement.

In the case of **Unit 804**, Wu Guangjun and his associates provided Party and government offices in Beijing and Liaoning Province with evidence indicating that a warehouse manager named Zhao had colluded with the Liaoning Cotton and Hemp Company to illegally trade state reserves of cotton. In 2000, the Discipline Inspection Commission of the All-China Federation of Supply and Marketing Cooperatives sent a team of investigators to Unit 804. After the investigation, a member of the team warned Wu not to pursue the case anymore, because "illegal trading of cotton and grain reserves happens all the time— it's a common problem all over China." A deputy manager of Liaoning Cotton and Hemp also warned him that if details of the case were "leaked," he would become "the sworn enemy of everyone in the cotton trading industry."²⁴ In 2000, Wu wrote a letter to the then-secretary of the Liaoning provincial Party committee, exposing the alleged corruption of the warehouse manager. It soon ended up in the hands of the accused party himself, who then publicly announced at a meeting of employees: "You can sue me in any court you like. Go ahead, I'll even pay your travel expenses!" In May 2005, Wu was beaten up by unidentified assailants, resulting in damage to his fourth and fifth spinal vertebrae and the fracture of two ribs.²⁵

24. "Fanfubai fan cheng qianggu zairen?" (Will fighter against corruption become an enemy for all time?), an account of Wu Guangjun's anticorruption campaign (part 1); CLB website at <http://www.clb.org.hk/schi/node/3937>.

25. "Chuchu dou shi yili budaode tequan—Wu Guangjun fanfubai jingli" (Unethical privilege met with at all stages – Wu Guangjun's anti-corruption campaign, part 2); CLB website at <http://www.clb.org.hk/chi/node/3989>.

After being made redundant in 2001, Wu undertook a protracted campaign to secure job reinstatement at Unit 804. He petitioned the People's Congress (the legislature) at local, regional and national levels, the Political Consultative Conference, the Party's Commission for Discipline Inspection, the Labour and Social Security Bureau, the Department of Supervision, the All-China Federation of Supply and Marketing Cooperatives and also the local ACFTU branch. None of these bodies was able to offer him constructive assistance of any kind. As Wu later observed:

The Trade Union Petition Office at first reacted with sympathy, saying worker rights and interests had been violated. Later, they helped me send out higher-level petition documents. But their people told me in private that it was not something they could handle. They advised me just to "drop it." People at government offices like the Labour and Social Security Bureau said it was all Liaoning Cotton and Hemp's doing, and not a case of a government-backed severance package. And the people at the All-China Federation of Supply and Marketing Cooperatives referred me to the provincial branch, which was tantamount to saying that they couldn't do anything either.²⁶

After the 2008 Spring Festival, Wu again visited the Petition Office of Liaoning provincial government. A staffer named Liu gave him a friendly word of advice: "You're just an ordinary guy," he said. "You can't get through to these people. If you ask to see anybody, it will be very tough to arrange. Why don't you just go home?"

Concealing Corruption

Corruption among officials is endemic in China, and many complaints and petitions from members of the public, including in SOE privatization disputes, concern allegations of corruption. However, such complaints are rarely made public by the authorities, and when wrongdoing by a government department is involved or the accused person is a high-level official or business associate of the government, cases are quietly shelved. Moreover, senior

local government officials can use their powers to suppress petitions and take measures to prevent the accused from being investigated and brought to account.

As the **Liaoyang Ferro-Alloy Factory** case showed, risky and politically unwelcome displays of mass protest or other forms of direct action are often seen as the only means available to workers to compel the authorities to address such cases. Between 1998 and 2001, workers at the Ferro-Alloy Factory submitted numerous petitions to a wide range of government bodies accusing plant manager Fan Yicheng and others of embezzlement, but received no response from any of them. Fan was only investigated after more than 10,000 workers took to the streets in March 2002 and publicly pressured the government to take action. According to an article titled "The Facts of the Investigation into the Liaoning Province Ferro-Alloy Factory Case," published in the May 2003 edition of *Dangfeng Yuebao* (Party Workstyle Monthly):

Starting in 1999, prompted by allegations from workers, an investigation was launched into disciplinary and criminal wrongdoing by Fan Yicheng, the director and general manager of Liaoyang Steel Group... By the end of 2001, some of the facts had become clear. However the workers were not notified of the results of the official investigation. Representatives of the Liaoyang Municipal Party committee and city government later went to the enterprise to inform the assembled workers of progress on the case. But after the meeting, a small group of people with ulterior motives provoked the workers to briefly surround the municipal Party committee and city government leadership. They posted fliers, chanted slogans and spread rumours that the investigation team was shielding Fan Yicheng.

Fan and his associates were informally detained under a Party anti-corruption measure known as "double stipulation" (*shuanggui*) for several days at the end of 2001, but were soon released. However, as the *Dangfeng Yuebao* report observed:

26. CLB telephone interview with Wu Guangjun, 10 March 2007.

This event was immediately taken up as a priority matter by leading comrades in the central government. The leadership of the Liaoning Party Committee promptly and explicitly demanded that Liaoyang make every effort to complete the tasks of thoroughly and effectively investigating corruption allegations that have caused collective worker resentment, do more to ensure new job placements for the laid-off and uphold social stability. On 12 March, the Liaoyang Discipline Inspection Committee convened a working meeting that resolved to resist pressure, eliminate interference, step up commitment and ensure a thorough investigation, so as to win the trust of the mass of workers by achieving a successful result. This meeting was a significant turning point in the whole Liaoyang steelmaking group case.

The report's use of terms such as "resist pressure" and "eliminate interference" suggests that the project team had to contend with a high level of obstruction, most likely from senior officials linked to Fan and his allies in government. In the end, Fan was tried and sentenced to 13 years' imprisonment for corruption – thus amply demonstrating that the workers' complaints were fully justified. The official investigation into corruption allegations at the Liaoyang Ferro-Alloy Factory would not have occurred without the repeated petitioning activities of the workforce. But if the workers had relied on petitioning alone, Fan and his associates would probably never have been legally brought to account. It took a series of massive public protests by workers – resulting in arrests – to achieve that outcome.

Needless Provocation of Petitioners

When laid-off workers come face to face with officials at China's complaints and petitions offices, they often experience obstruction or even ridicule. And when they discover that the system has no real authority to resolve their problems, and moreover can serve as a shield for the corrupt and expose complainants to the risk of retaliation, they soon lose all faith in it. As a result, many workers, like those in Liaoyang, Suizhou and Yibin, developed a confrontational attitude and proceeded to take their

campaign public. Others, however, resorted to more extreme or even self-harming behaviour.

Wang Guilan was a laid-off worker from Enshi City, Hubei, who used her severance pay to set up a medicine stall in her local shopping centre, only to be evicted four years later after the authorities slated the centre for redevelopment. She was awarded 50,000 yuan in compensation by the courts, but the Wuyang Shopping Mall violated the order and failed to pay her the full amount. Wang then sent numerous petitions to the local court authorities seeking enforcement of the ruling. They consistently failed to respond. On 22 November 2001, after yet another judicial rejection, Wang poured a can of petrol over her head at the courthouse entrance and threatened to set herself alight if her case was not settled. Court security officials not only failed to dissuade Wang, they deliberately provoked and taunted her, saying she would have to "move fast, otherwise the petrol will evaporate."

In anger and desperation, Wang then carried out her threat, and in the ensuing blaze suffered third-degree burns all over her face and head. After prolonged emergency medical treatment, followed by several months in which a mainland lawyer who had been assigned to the case on a pro bono basis negotiated intensively with the local authorities on her behalf, the Enshi city government agreed to provide Wang with a disability pension for life and also to cover the full costs of a much-needed series of remedial and cosmetic surgery operations to repair her face. This traumatic experience served to politicize Wang, setting her on an eventual collision course with the authorities. (See below for details.)

Workers' Quest for Judicial Redress

Nowadays, in most individual labour rights cases, and some collective ones, China's court system works fairly well. In the majority of cases, the courts tend to deal with workers' grievances impartially and to render verdicts broadly on the basis of law. (In many cases, the labour rights violations are so blatant and egregious that judges have little option but to rule in favour of the plaintiff.) And in recent years, individual workers, in particular migrant

workers, have been winning increasingly significant compensation awards.²⁷ On the basis of China's existing legal framework, it is entirely feasible for SOE privatization disputes likewise to be fairly settled in court. However, in reality this rarely happens. Since these disputes arise as a consequence of local government policy, they generally involve issues of administrative law as well as of civil law. This was especially problematic in cases that affected the personal interests of enterprise managers and government officials. Government departments and officials acted as organizers and decision-makers throughout the SOE restructuring process and were often direct beneficiaries of the final outcome.

Judicial Discrimination against Laid-off Workers

As the number of privatization dispute cases rose rapidly around the turn of the century, China's senior judicial authorities simply took the line of least resistance and instructed the courts to stop hearing such cases. On 28 October 2000, the Supreme Court's deputy chief justice Li Guoguang stated:

When enterprises make workers redundant, all issues relating to unpaid wages are specific phenomena arising from the process of enterprise and employment system reform. They are not issues arising from the performance of labour contracts. Therefore, such disputes should be resolved by the competent authorities in line with overall policy provisions for enterprise reform. These cases are not labour conflicts and so should not be heard in the civil courts.²⁸

And on 26 March 2003, Huang Songyou, also a deputy chief justice of the SPC, stated at a session of the All-China Civil Law Working Conference:

No collective disputes triggered by wage arrears at SOEs due to state industrial policy or corporate

restructuring can be accepted [by the courts] for the present... Persuasion must be used, conflicts must be defused, and settlements reached in coordination with the branches of government concerned.²⁹

These rulings meant, in effect, that tens of millions of laid-off workers were arbitrarily stripped of their constitutional right to seek legal redress through the courts. Instead, they were to be "persuaded" – and if necessary coerced – into accepting their fate. At around the same time, provincial and local courts lengthened the list of cases they would not accept. The Guangdong Provincial Higher People's Court, for example, in its Guiding Opinion on Various Questions Concerning the Hearing of Labour Dispute Cases, issued in September 2002, indicated that it would refuse to accept any cases involving wage arrears' disputes triggered by worker redundancies following government-led SOE restructuring. Similarly, in the Guangxi Zhuang Autonomous Regional Higher People's Court's Circular on Categories of Cases Subject to Temporary Rejection by the Courts, issued in September 2003, 13 categories of case were listed as off-limits on grounds of their "deep and wide-ranging sensitivity and social concern." They included: "disputes involving wages in arrears for laid-off workers due to corporate restructuring and poor profitability, redundancy disputes arising in the wake of labour system reform," and also "cases involving violation of democratic principles or re-employment of workers after [enterprise] restructuring." To date, the court authorities have shown no indication that they intend to repeal these decrees stripping SOE workers of their right to judicial redress.

On 27 July 2007, **Wu Guangjun** filed a lawsuit against the Liaoning Cotton and Hemp Company seeking reinstatement of his employment contract at Unit 804. The Huanggu District Court in Shenyang

27. For example, the Shenzhen Commercial Daily reported that on 16 October 2007, a 36 year old migrant worker was awarded 440,000 yuan (around US \$50,000) in compensation by a court in Shenzhen after being paralyzed in an accident on a construction site the previous year. The award was more than twice the government's recommended compensation for the families of workers killed in coal mining accidents. Other recent cases have significantly broadened the scope of labour rights litigation. The Southern Daily (*Nanfang Ribao*) reported that on 22 October 2007, a Guangdong court awarded a migrant worker named Song 45,000 yuan in compensation even though he had signed a labour contract waiving his rights to work-related compensation. The court deemed the contract to be invalid.

28. Taken from *Opinion Concerning Various Problems in the Hearing of Labour Dispute Cases (Trial Implementation)* (Hubei Sheng Gaoji Renmin Fayuan "Guanyu shenli laodong zhengyi anjian ruogan wenti de yijian" [shixing]), Hubei Province Supreme People's Court, issued 21 March 2004.

29. Supreme People's Court deputy chief justice Huang Songyou, "Fengfu he wanshan xiandai minshi shenpan zhidu wei quanmian jianshe xiaokang shehui tigong sifa baozhang? jiu quanguo minshi shenli gongzuo fang zhigao renmin fayuan fuyuanzhang Huang Songyou" (A fully equipped and comprehensive modern civil judicial system provides the judicial safeguards for establishment of a basically affluent society), Supreme People's Court deputy chief justice Huang Songyou, ChinaCourt.org, 3 April 2003, from Xuzhou City government website www.xz.gov.cn.

initially accepted the case and issued a summons to Liaoning Cotton and Hemp; but after a “communication” between the company and court officials, Wu was told that the court “could not accept” the case after all. The court refused to give a reason or to provide any supporting documentation. After the 2008 Spring Festival, Wu again approached the district court and this time was told explicitly by the presiding judge that “the court cannot handle this case.”

Because Wu was unable to get a written copy of the rejection ruling, he could not initiate legal proceedings, and had no means of appealing to a higher court. His arbitrary and illegal treatment by his former employer in effect had left him destitute. Since being forced out of Unit 804 in April 2001, he had been unable to obtain either basic social security benefits or even the government-provided “minimum subsistence allowance” for those with no means of support. By April 2008, Wu had sold his home to meet the costs of endlessly petitioning the authorities, his wife had left him, and finally – in weather conditions of under minus 10°C – he was reduced to becoming a street sleeper.³⁰

In April 2003, over 400 retired or “internally retired” workers of the **Tieshu Textile Factory** reacted to a decision by the bankruptcy liquidator team to cancel their 127-yuan monthly subsistence, transportation and utilities allowance by bringing the matter to mediation and then filing a lawsuit. Both applications were rejected by the relevant authorities. In February 2004, the workers then staged a series of high-profile public protests, notably involving a several-hour blockade of the local railway line, in an attempt to draw the local government’s attention to their case. As a result, two of the workers’ leaders, Wang Hanwu and Zhu Guo, were arrested and prosecuted for “gathering a crowd to disturb public order,” and several others later received arbitrary sentences of “re-education through labour.” As one worker commented at the time:

They say it's illegal for us to blockade the railway, picket the factory entrance or appeal to the government. But when we try to do things the legal way, first by mediation and then through litigation, our case is always rejected. We couldn't resolve matters through blockades or picketing, or even by talking with city leaders, but taking the legal route got us nowhere either!³¹

Shortly before taking their complaint to the streets, the Tieshu workers learned to their dismay that between 1996 and 2002 the company had consistently underreported total worker salary payments to the local Social Security Bureau, and as a result the Bureau had allowed insurance premiums to fall below the minimum level required to provide standard retirement pensions. In December 2003, the more than 1,500 forcibly and “internally” retired workers whose pensions had thus gone up in smoke launched an administrative lawsuit against the Suizhou Municipal Labour and Social Security Bureau. The case dragged on for 18 months and the workers lost their case at the initial trial. At the appeal hearing in June 2005, however, the Suizhou City Intermediate Court ordered the Social Security Bureau to recheck all its figures on the pension and social security payments made by Tieshu during the years in question, and moreover instructed the bankruptcy liquidator team to ensure that the company’s pension obligations to all retired workers were duly honoured.³² But the government departments concerned refused to comply with the court’s ruling, claiming that they “lacked the capacity to implement it” (*wu zhixing nengli*).

The retired workers then embarked on the long road of petitioning in an effort to secure enforcement of their pension rights. Finally, in March 2007, they issued an appeal to the National People’s Congress stating that they had “no means of making a living” and expressing despair at their situation. The petition letter read:

30. In a surprise move, in July 2008, the Beining Municipal Court agreed to accept Wu’s case, with a hearing scheduled for 11 August. No legal reason was given for this sudden about-face. At the time of going to press, the hearing had not yet taken place.

31. “*Yi faweiquan yaoqiu fahuan tuixiu jin butie_Tieshu babai tuixiu zhigong jixu kangzheng*” (800 retired workers of Tieshu company continue their legal campaign demanding payment of retirement benefits), 9 July 2003, on CLB website. <http://www.clb.org.hk/schi/node/6773>.

32. Administrative Judgment No. 6 (2005), issued by Suizhou City Intermediate People’s Court.

*What is the point of suing under the Administrative Procedure Law promulgated by the National People's Congress if officials can get away with things even when they lose the case, pleading inability to enforce the court ruling and using administrative devices to avoid compliance?*³³

To make matters worse, the legal profession itself, at the government's behest, took steps to block potential litigants' access to legal representation in cases of this type. The Guiding Opinion of the All-China Lawyers Association [ACLA] on the Handling of Collective Incidents, issued on 20 March 2006,³⁴ covers collective incidents relating to "land appropriation levies, [home] demolitions and relocation, displaced migrants from major project areas, enterprise restructurings, environmental pollution and rural workers' rights and interests." According to the directive:

When lawyers agree to take on collective cases, they must enter into prompt and full communication with the judicial authorities and give a factual account of the situation, highlighting any points needing attention. They must actively assist the judicial authorities in their verification work.

The directive further stated:

After accepting a collective case, lawyers must promptly explain the facts through the appropriate channels to the government organizations involved, and if they discover a major issue that could intensify conflict or escalate the situation, the emergence or potential emergence [of such a situation] should immediately be reported to the higher-level judicial administrative organs.

In other words, in a wide range of cases involving citizens' disputes with government authorities, including any and all SOE privatization-related cases, plaintiffs' lawyers are now obliged to report to and, in essence, collaborate with the accused party in the case. The ACLA directive thus severely limited the rights of Chinese workers to secure independent legal counsel in privatization dispute cases

and obtain a fair and impartial hearing of their grievances. In addition, it violates the basic legal principle of lawyer-client confidentiality.³⁵ In a system already heavily biased against worker litigants, such arbitrary measures by the authorities served only to drive workers adversely affected by SOE restructuring further in the direction of extra-legal protest activity.

Criminalizing Collective Protests by Workers

The actual number of worker activists currently imprisoned in China remains unknown, since only a minority of such cases is publicized in the official news media. In general, however, whereas up until the late 1990s the authorities were highly diligent in arresting and prosecuting workers who staged strikes or public protests, in recent years there has been a gradually increasing level of official tolerance (albeit grudging and uncertain) for such activities. The simple fact is that, in an era of market reform marked by widespread violations of basic labour rights, worker protests have become so frequent and numerous across the country that local governments nowadays are under increasing pressure to concede that the protesting workers have a well-founded point. They are therefore generally more willing than before to adopt conciliatory tactics in such situations, as a means of defusing local labour unrest and other such factors of "political instability" in society. However, misuse of the law to scapegoat and punish labour activists remains a serious problem in China, and one that may be considerably more widespread than presently known.

The right to freedom of the person is enshrined in the PRC Constitution. According to Article 37:

The personal liberty of citizens of the PRC is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be carried out by the public security organs. Unlawful deprivation or restriction of citizens' personal liberty by detention or other means is prohibited; as is the unlawful search of the citizen's person.

33. CLB case notes.

34. See ACLA website: <http://www.chineselawyer.com.cn/pages/index.html>.

35. See: *A Great Danger for Lawyers: New Regulatory Curbs on Lawyers Representing Protesters*, Human Rights Watch, December 2006; available at <<http://hrw.org/reports/2006/china1206>>.

In other words, the right to personal liberty can be restricted or deprived only in cases where citizens are suspected of involvement in a criminal case and where due legal process has been followed. Personal liberty is the foundation of all freedoms, and in a society ruled by law it should be accorded the highest priority. As the following accounts show, however, the workers involved in the cases discussed above benefited from no such constitutional protections.

Trumped-up Criminal Charges

In the case of the **Liaoyang protest movement**, the workers' leaders Yao Fuxin and Xiao Yunliang were found by the court to have committed the crime of "subversion of state power" – an essentially political offence and one of the gravest in the PRC Criminal Law. The Liaoyang Intermediate People's Court deemed that both defendants "were aware that their actions would necessarily result in a threat to society, and moreover they desired this outcome." On that basis, the court pronounced that they had "organized, planned and carried out actions aimed at subverting state power and overthrowing the socialist system." During the trial, however, Yao explained as follows his real motivation in organizing the worker demonstrations:

For more than 20 months, the Ferro-Alloy Factory workers had not received their wages, the older ones were unable to pay their medical bills, and some couldn't even afford to eat. I couldn't bear seeing the workers suffer like that, so I stood up to help them put food on the table.

According to Yao's wife, Guo Xiujing, the two main goals of the workers' protests were to bring factory managers to account and to secure payment of outstanding wage arrears. She continued:

It's not that we don't consider the position of the local government or the state in all this; we know that sorting out the problems at our factory is far from an easy or straightforward matter. At the time, though, the dispute could have been settled if those "worms" had been smoked out during the anti-corruption drive and the loot and back pay returned to their rightful owners... That's what we

thought. But the further things went, the messier the situation became.³⁶

Noting that the other defendant, Xiao Yunliang, was owed 23 months in back pay, Xiao's lawyer argued that his client's involvement in the demonstrations was aimed purely at defending his personal economic interests. There had been no intent on his part either to "subvert state power."

Similarly, in more recent cases, Zhu Guo, one of the leaders of the **Tieshu Textile Factory** protests, and also Luo Mingzhong, Zhan Xianfu, Luo Huiquan and Zhou Shaofen, four workers involved in the **Tianyuan Chemicals Factory** dispute, were all detained by police and charged with the offence of "assembling a crowd to disturb social order." At their respective trials, the defendants were deemed by the courts to have gathered a mob with "disruptive intent" and (in the Tianyuan case) to have "inflicted grave impact on work, production, management, and training and research activities, leading to significant [economic] losses." The defence lawyers argued in court that the evidence presented by prosecutors was grossly insufficient, and moreover that there had been no intent at all on the part of the accused to "assemble a crowd to disturb social order." Nonetheless, court convictions predictably followed in both sets of trials.

The workers in these cases had certainly been involved in public protests, in some cases as organizers, but the police and prosecutors failed to provide evidence to prove that their actions had indeed either posed a threat to social order or been aimed at subverting the government. But the core defect of the judicial proceedings lay not so much in the prosecution's failure to provide evidence of guilt, but rather in the nature of the charges themselves, which sought – in contravention of international legal standards – to penalize the workers for exercising their basic rights to freedom of association and demonstration.

Manipulating the Criminal Justice Process

In Article 126 of the PRC Constitution, "independent exercise of judicial power" is defined as "the right of courts to exercise independent judicial

36. "Kengqian meigui?ji tiehejinchang bei dei gongren daibiao jiashu" (Dangerous Roses: Recollections of the wives of worker representatives arrested at the Ferro-Alloy Plant," 2 June 2003; CLB website, <http://www.clb.org.hk/schi/node/5805>).

powers in conformity with laws and regulations, without interference from administrative organs, social groups, or individuals.” As numerous mainland legal scholars have pointed out, however, the reality is quite different. The main problem at issue arises from the longstanding PRC doctrine that the Communist Party must exercise “unified leadership” over all important matters, including the operation of the legal system. According to two legal commentators,

*In China, the principal of independent judicial process means, firstly, the People's Courts must knowingly subordinate all their activities to leadership by the Chinese Communist Party. In political, ideological and organizational terms, they shall accept the leadership of the Party in legal proceedings at court.*³⁷

In the official view, therefore, sweeping control by the Party is viewed as being a “guarantee” of judicial independence. In practice, courts accept the “unified leadership of the Party” through the latter’s powerful system of “politics and law committees” (*zheng-fa weiyuanhui*) – political bodies whose function is to supervise and direct the work of the police, procuracy and courts at all levels. Moreover, the politics and law committees are usually chaired by the local police chief, thus vividly illustrating the subservient position of the prosecution and judicial authorities within the legal system as a whole. These committees can interfere at will in the areas of law enforcement, court procedure and individual case adjudication, including (especially during the periodic “crackdown on crime” campaigns) by ordering the courts to deal with cases more harshly and rapidly than usual. According to Wang Yi, another mainland scholar, since the Constitution does not empower any outside organization to intervene in the workings of the justice system, the authority wielded by the politics and law committees is both excessive and unlawful.³⁸ Such external interference

in judicial independence in China, although resorted to less frequently nowadays than in the past, is still routine in cases of political or religious dissent and also in most criminal cases involving collective protests by workers.

Within the courtroom, judges are further hampered in hearings and rulings by another authority – the “adjudication committee” (*shenpan weiyuanhui*).³⁹ The ultimate decision-making body within the court system, these committees have the final say in all judgments concerning “difficult or thorny cases” (*yi-nan anjian*.) Whenever a case is so categorized, the adjudication committee meets in advance of the trial to decide on the verdict, and the hearing then becomes a formality. The presiding judge can then only go through the motions of conducting a trial. (This longstanding practice is quaintly referred to by Chinese legal scholars as “verdict first, trial second” [*xian pan, hou shen*].) And the adjudication committees, in turn, take their cue from the local politics and law committee. In short, as other scholars have noted,

*China... lacks safeguards ensuring the independent exercise of judicial power. The functions of Party and government are confused with those of the judiciary, and judges' positions, duties and remuneration all lack legal safeguards. The courts are beholden to the administrative apparatus.*⁴⁰

For the above reasons, when SOE-related privatization disputes spill over into the public domain, with workers staging demonstrations, sit-ins and blockades aimed at exposing corruption or malfeasance by local officials, the same officials and their allies find it easy to use the judicial system to take coercive or repressive measures against the protesters. The police can readily be mobilized to break up demonstrations and detain workers’ representatives, and the judicial process can arbitrarily be used to charge protesting workers with major criminal

37. Wei Dingren and Gan Chaoying, “21 shiji faxue congshu?xuanfaxue” (21st Century Series of Legal Studies), Beijing University Press, p.157, January 2001, 1st edition, p.537.

38. Wang Yi, “Zhengfawei qianghuale sifa jiguan de bianyuanhua” (The Political and Judicial Committees have deepened the marginalisation of judicial organs), Independent Chinese Pen Centre, Aug. 2003, http://www.boxun.com/hero/wangyi/41_2.shtml.

39. According to Article 11 of the Organic Law of the Courts of the People’s Republic of China, (approved on 1 July 1979 by the second session of the 5th National People’s Congress), “People’s Courts at all levels must establish adjudication committees and implement democratic centralism.” The adjudication committees are responsible for summarizing court proceedings, deliberating upon “thorny” or “difficult” cases and dealing with other key issues arising in judicial work.

40. Shen Deyong, et al. “Ying jianli yu shichang jingji xiangshiyi de fayuan tizhi” (We need to build a justice system suited to the market system) Renmin Fayuan Bao (People’s Court Daily), 6 June 1994.

offences such as “disturbing public order” or “subversion of state power.” And since cases of this type relate directly to the all-important issue of social and political stability, they are accorded high priority by the authorities and salutary sentences are likely to follow.

In certain prominent cases, officials have used the politics and law committee and adjudication committee system in order to frame protestors and send them to jail for many years. In the Liaoyang workers' case, for example, the prosecution indictment against Yao Fuxin and Xiao Yunliang claimed that since 1998 the two had been involved in:

...the establishment of the 'China Democracy Party, Liaoning Province branch' and carried out illegal activities in its name... Between mid-February and 20 March 2002, the pair created disturbances, spread rumours, and repeatedly provoked mob attacks on the municipal government and people's congress as well as security, procuratorial and judicial organs of Liaoyang, severely disrupting the functioning of state organs and transportation networks.⁴¹

The charge that Yao and Xiao were involved with “an illegal political party” was a complete fabrication – as was a later claim, made at the ILO in Geneva by a leading Liaoning official, that the two had engaged in acts of “terrorism and sabotage.”⁴² Once made, however, such allegations sufficed to redefine the act of leading the Liaoyang worker demonstrations into the serious criminal and political offence of subversion of state power. All this occurred under the auspices of the Liaoyang Municipal Politics and Law Committee. As a court official confirmed after the sentences were handed down, “The Liaoyang Politics and Law Committee and the Municipal Party Standing Committee met on numerous occasions to study this case.”⁴³

The case of the Tieshu Textile Factory protests offered another example of this general type. At the trial of Zhu Guo, the presiding judge based his guilty verdict on two sentences allegedly spoken by the defendant. First, during a mass protest at the factory's main entrance on 8 February 2004, Zhu allegedly had called out from the crowd: “Push open the door and get in there! We must get our money back.” And second, later that morning during a blockade of the Han-Dan Railway Line by the Tieshu workers, he had pointed to the Mayor of Suizhou, who was directing police operations at the scene, and shouted, “Look, it's the old [term of abuse deleted by court authorities], we've got things to discuss with him!”⁴⁴ While the former comment might conceivably constitute unlawful incitement, the latter was at worst an overheated instance of freedom of expression. During Zhu's trial, however, his defence lawyer pointed out that the evidence provided by the prosecutor on both these allegations had come from three police officers whose testimonies, in terms of time, place and detail, all failed to tally. In the view of his wife, Zhu's real offence was simply that he had “tarnished the image of local government leaders.” According to the account of an eyewitness who was at the court that day, a visibly shaken and distraught Zhu Guo cried out to his family in court that he had been “beaten black and blue” while in detention. Ignoring the obvious evidence of police abuse, the judge sentenced Zhu to one year's imprisonment.

Detention without Trial

When security officials are unable to concoct a criminal case against worker activists, they nonetheless have at their disposal an extensive system of “administrative punishment” under which those seen as troublemakers can be detained and “re-educated,” solely on police authority, for up to three years without trial. The RTL system as a whole violates U.N. standards that prohibit detention without

41. Judgment No. 1 (2003), issued by Liaoyang Intermediate People's Court, Liaoning Province.

42. *The Liaoyang Workers' Struggle: Portrait of a Movement*. CLB research report, July 2003, p.26.

43. “*Liaoyang tiehejinchang 4 ming gongren daibiao beidei jin liuge yue, tiehejinchang gongren jixu hefa kangyi*” (Nearly six months after the arrest of four of their leaders, Liaoyang Ferro-Alloy Factory workers continue their legal struggle), CLB interview, 31 August 2002, <<http://www.clb.org.hk/schi/node/4009>>.

44. Judgment No. 133 (2004) of Zengdu District People's Court, Suizhou City.

trial, including the International Covenant on Civil and Political Rights (ICCPR).⁴⁵ The Re-education through Labour (RTL) system was first developed by the Communist Party in the 1950s to deal with “counter-revolutionary and other undesirable elements” and was formally implemented in January 1956. According to the government, RTL is an extra-judicial measure aimed at punishing citizens deemed to have committed “minor offences not meriting criminal sanction.” In any given year nowadays, upwards of 250,000 Chinese citizens are subjected to this arbitrary form of punishment.⁴⁶ An unknown number of them are labour rights activists. Indeed, two of the workers from the few cases discussed here were arbitrarily sentenced to RTL as a punishment for trying to secure economic justice for themselves and their families.

Wang Hanwu, a leader of the Tieshu Textile Factory protests, was taken into custody by the Zengdu sub-bureau of Suizhou Public Security Bureau on 14 February 2004 and charged with “assembling a crowd to disturb social order.” While his was a typically unjust case (there had been no such criminal intent on his part), the subsequent course of events nonetheless showed that outside legal intervention on behalf of detained labour activists can, in certain cases, be surprisingly effective. Wang was formally arrested on 25 February, but his lawyer pressed for the case to be sent back to Zengdu Public Security Bureau for further investigation on grounds of lack of evidence. The authorities ignored this request, and at that point two defence lawyers from a high-profile Beijing law firm were independently hired to represent Wang. When they arrived at the detention centre a few days later and demanded to meet with their client, the effect was salutary: they were grant-

ed an immediate, two-hour meeting with Wang – much longer than is usually allowed in such cases. Moreover, two prosecutors involved in the case then sought a meeting with the defence lawyers, and by the end of it one of the prosecutors basically admitted that they had no case against Wang, while the other agreed that the lawyers had given him “serious pause for thought.”

The following week, the Suizhou police – clearly with much-reduced confidence in its ability to nail Wang in court – dropped the criminal charge and instead sentenced him without trial to two years and three months of RTL.⁴⁷ Subsequently, however, after intercepting a letter mailed by the Beijing lawyers to Wang Hanwu’s wife that contained the draft of an administrative lawsuit which the lawyers planned to wage on Wang’s behalf, accusing the police of wrongful detention, the police summoned his wife and informed her that they would release Wang on condition that she agreed to drop the planned lawsuit. She declined to comply, on the grounds that only her husband could make such a pledge. But despite her “lack of cooperation” the police went ahead and freed Wang anyway.⁴⁸ Showing considerable audacity, Wang then proceeded to sue the police for wrongful detention. He lost the case at both the initial hearing and the appeal stage, but later petitioned the court for a retrial. In another substantial departure from normal judicial practice in such cases, in December 2005 the Suizhou Municipal Intermediate Court gave its consent for a retrial to be held; but again, the court’s final verdict was in favour of the police. Since then, Wang has continued his fight for justice by submitting repeated petitions to the higher authorities, most recently to the National People’s

45. According to Article 9 of the ICCPR, “Everyone has the right to freedom and security of the person. No-one shall be subjected to arbitrary arrest or detention. No-one shall be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.” The Chinese government signed the ICCPR in October 1998, and although it has not yet ratified it, in so doing it committed itself to the observance of the fundamental human rights principle that citizens’ personal freedom can be restricted or deprived only in accordance with due legal process. The right to a fair and open trial is fundamental to the latter.

46. The only recourse available to citizens seeking to challenge sentences of RTL is to bring an administrative lawsuit against their local police chief. Moreover, this risky step has to be taken from the invidious position of a police detention centre or labour re-education camp – and (unlike in the case of persons held under the Criminal Procedure Law) the detainee has no legally stipulated right to meet with legal counsel. In response to mounting domestic and international pressure over its practices in this area, the Chinese government has announced plans to reform the RTL system, in the form of a forthcoming “Law on the Punishment of Minor Offenders.” However, the law as thus far presented contains no provisions for making all such sentences subject to a fair and open hearing in a court of law, with the accused having the right to be represented by legal counsel. As such, the core detention-without-trial feature of RTL looks set to remain unaltered.

47. According to the Suizhou RTL Management Committee’s sentencing document, issued on 25 March 2004, Wang Hanwu had “stirred up a mass disturbance, blocked railway lines, and hindered Public Security officers in the performance of their legal duties.” The Suizhou police’s decision to drop the criminal charge against Wang and sentence him to RTL even upset the local procuracy, whom the police had failed to notify of this abrupt change of plan. As a result, the procuracy continued for at least a fortnight afterwards to prepare the criminal indictment against Wang.

48. On 12 April 2004, Suizhou RTL Management Committee formally agreed to let Wang undergo RTL “outside the usual facilities.”

Congress. His case vividly shows that Chinese workers, in a growing number of cases, are no longer content to be passive victims of employer or police abuse: instead, they are actively using the legal system to defend and promote their fundamental rights as citizens.

Much less encouraging was the case of **Wang Guilan**. In July 2005, the newly politicized Wang tried to meet in Beijing with Louise Arbour, the U.N. High Commissioner for Human Rights, and briefly staged a demonstration in front of the American embassy, in an attempt to attract international attention and pressure the Chinese government to intervene on her behalf. She was immediately detained by the Beijing police and escorted back to her hometown by six officers of the Enshi Public Security Bureau. On 2 August, she was taken to a police station near her home and ordered to name the instigator of her “attack on the embassy” and to confess to her “crime.” When she refused to do so, she was sentenced without trial to seven days’ administrative detention.

During this period, local officials informed Wang’s family that the agreement she had reached with the Enshi government on payment of her medical treatment costs now constituted a “problem.” Should they agree to hand over the original copy of the compensation and redress agreement, however, “Everything would be negotiable.” The family refused, and the police then spitefully increased Wang’s sentence. On 1 September, midway through a major series of cosmetic surgery operations to reconstruct her face, the Enshi RTL committee sentenced her to one year and three months in an RTL camp.⁴⁹ After completing her sentence, however, Wang went on to become a prominent civil rights activist. In spring 2008, for example, she was one of the chief organizers of an internet petition drive

calling on the Chinese government to pay greater attention to human rights concerns in the run-up to the Beijing Olympics.

As noted, RTL is officially presented as being a method for dealing with minor criminal offences and violations of administrative law not deemed worthy of criminal sanction. However, the maximum RTL penalty of three years (extendable to four if the sentenced person subsequently resists or displays a lack of contrition) is much harsher than several minor sanctions available to judges under the Criminal Law: for example, “control” (*guan zhi*), a non-custodial sentence of between three months and two years’ duration; or “detention” (*ju yi*), involving short-term custody for periods of up to six months. Those sentenced to RTL are held in conditions of detention no less arduous than a prison, and often in remote and inhospitable locations.⁵⁰ In practice, RTL is frequently used in cases – such as those of Wang Hanwu and Wang Guilan – where the police have insufficient evidence to justify arrest, or where arrests are not subsequently authorized by the procuracy and so criminal prosecutions cannot be brought.⁵¹

In short, the system has become a convenient, one-size-fits-all punishment for those viewed as “criminals” by the public security authorities but for whom no clear evidence of guilt exists.⁵² The police authorities’ control over all matters relating to RTL affords them enormous legal and institutional power to restrict the personal liberty of Chinese citizens, and this is one of the main reasons they are so widely feared by the general public.⁵³

49. Decision No.47 of the Enshi Municipal RTL committee (2005).

50. Huang Zhiyong, “Dui woguo laodong jiaoyang zhidude fansi” (Reflections on China’s re-education-through-labour system), *Jinan Xuebao (Renwen Kexue yu Shehui Kexue Ban)*, Journal of Jinan University (Humanities & Social Science Edition), 2005, Vol. 1, pp.17-23.

51. Qiao Jinru, “Wo guo xianxing laodong jiaoyang zhidu cunfei wenti zhi sikao” (Thoughts on retention or abolition of China’s current RTL system), *Falü Shiyong (Journal of Law Application)*, Volume 6, 2003, pp. 64-66.

52. *Ibid.*

53. The process for examination and approval of RTL cases is as follows: 1) The Public Security Bureau’s (PSB’s) case-handling office sends files on a person earmarked for RTL to the legal affairs office of the local PSB sub-bureau. 2) After the legal affairs office arranges expert examination, and consent is obtained, the file is sent to a local RTL facility for approval by its director, and, if so approved, the paperwork is then sent to legal assessors at a higher level of the Public Security apparatus. 3) Once the higher-level review is concluded, a decision on whether or not to approve the RTL sentence, and for what term, is reported back to the local RTL facility. And 4), the decision is then formalized in the name of the RTL Management Committee, a body ostensibly composed of officials from the local PSB, civil affairs bureau and labour bureau.

Conclusion

The Constitution of the PRC formally guarantees workers and other citizens most internationally recognized human rights, including the right to personal liberty. But in practice, they can be deprived of these rights at the authorities' discretion. When government and Party officials felt challenged or threatened by worker protests arising from the SOE restructuring process, they generally interpreted such activities in two ways: as a threat to their personal interests, and as a threat to the state. In practice, therefore, the authorities had little hesitation in using the security and judicial apparatus to crush such protests, threaten and intimidate workers and detain and imprison their leaders.

State-owned enterprise privatization disputes first arose, in the late 1990s, mainly because the lack of clear government policies and guidelines on SOE restructuring allowed corrupt and larcenous enterprise managers to line their own pockets with public money while systematically violating the workforce's basic labour rights. Local governments, for their part, failed to provide laid-off workers with fair and reasonable compensation and alternative employment, while at the same time refusing to investigate or deal with well-founded allegations of managerial corruption. The transformation, virtually overnight, of SOE managers into a new class of politically well-connected freeloaders was viewed by workers with nothing short of outrage. If this new elite, or its government backers, imagined that the enterprise restructuring process would be a smooth and straightforward process and that laid-off workers would meekly accept their fate, they were sorely mistaken.

Laid-off workers initially turned to the government in their quest for redress. However, the essentially toothless complaints and petitions system not only failed to resolve the escalating conflicts over inadequate or non-existent redundancy payments, wages in arrears and medical and pension benefits, it steadily exacerbated them, with workers' complaints mostly ending up in the hands of the same government officials being targeted. The official redress system remains fundamentally flawed by its reliance on one set of officials correcting the misdeeds and wrongdoings of their colleagues elsewhere in the bureaucracy.

In principle, court litigation should have offered a more effective means for workers to secure redress for the wholesale labour rights' violations committed in the name of SOE restructuring and privatization. The Labour Law and Trade Union Law, and more recently the Labour Contract Law and the Employment Promotion Law, provide – on paper at least – clear and detailed protections in this area. And as noted above, the majority of labour rights cases that make it to court nowadays end in a victory for the employee. In SOE-related privatization disputes, however, the Supreme People's Court early on in the process imposed arbitrary barriers to workers' quest for a legal resolution of their complaints and grievances – and in so doing it stripped tens of millions of citizens of a fundamental and constitutionally guaranteed right. In effect, privatization disputes were deemed “too politically sensitive and complex” for mere courts to decide upon. The underlying reality was that the courts were unwilling and unable to tackle cases that directly threatened the interests of local Party and government authorities.

With all official channels for public redress effectively barred to them, workers had no option but to adopt more direct and confrontational tactics in the form of marches, demonstrations, strikes, sit-ins, and road or railway blockades, all of which were designed to escalate matters to the point where the dispute would reach the attention of local and central government leaders. This proved to be a highly risky strategy, however, as officials could then use such actions – via the secretive Party-led politics and law committees and the adjudication committees within the courts – as a pretext for framing workers' leaders on trumped-up criminal charges. And when all else failed, police and government officials had another ace up their sleeve in the form of Re-education Through Labour, a draconian relic of the Maoist era that allows the police to detain “undesirables” and “troublemakers” for up to three years without even the formality of a trial.

The central government latterly went some way toward accepting responsibility for the arbitrary deprivation of workers' rights and interests, during the SOE restructuring process, and for their consequent severe loss of economic and social status. For example, measures were implemented to help

forcibly laid-off workers undergo job retraining and find fresh employment. But thousands of SOE privatization-related labour disputes drag on around the country, unresolved even today. If the government is serious about its declared goal of fostering the Harmonious Society, this longstanding malaise at the heart of urban life today must be squarely addressed and a fundamental and durable solution must be devised.

Recommendations:

- Local governments should take prompt action to guarantee a basic livelihood and standard of living for the tens of millions of workers and their families who have effectively been discarded in the national drive for economic reform and development. This can be done partly through welfare and pension payments, but for those still willing and able to continue working, every effort should be made to find them decent employment at a fair and reasonable wage, in place of the temporary, minimum-wage jobs that most of those lucky enough to gain reemployment have found.
- The government owes China's traditional urban working class – the former “backbone of the national economy” – a huge and as yet unpaid debt in the form of fair and adequate compensation for the loss of their jobs, together with the restitution of full pension and medical insurance benefits for the large numbers who saw these unlawfully evaporate in the course of SOE reform and restructuring. In the interests of basic social justice, this debt must be settled – if not in full, then at least to the satisfaction of those directly concerned.
- The country's legal system provides, in principle, full opportunity for the wide range of worker grievances arising from the SOE restructuring process to be resolved peacefully, and the government should take immediate steps to remove all arbitrary barriers and obstacles to workers who wish to avail themselves of the existing legal channels of redress. Rule of law implies equality of all before the law, and it is fundamentally unacceptable that a large section of the population should continue to be denied the opportunity of judicial redress simply for reasons of governmental policy or convenience.
- Finally, all citizens, including Yao Fuxin, unjustly imprisoned for fighting for the rights and interests of their fellow workers must be unconditionally freed and allowed to return home to their families. Such workers played the role of human rights defenders in mobilizing justified public protests by countless fellow workers caught up in the SOE reform debacle. It is no exaggeration to say that the future of China's emerging labour movement – and hence the cause of social justice more generally – will depend upon the continued commitment and involvement of grassroots labour activists like them around the country.

CLB Research Reports

China Labour Bulletin's mission is to promote fundamental workers' rights and foster international awareness and understanding of core labour issues in China. To this end, we have produced a series of Chinese and English-language reports offering an in-depth analysis and overview of some of the most important labour rights' concerns in the country today. The reports will be of particular use to scholars and researchers but will also provide the general reader with a valuable introduction to specific issues such as the workers' movement, child labour, migrant workers, healthy and safety, the coal mining industry and the legal framework of labour rights in China. All reports are available on the CLB website (www.clb.org.hk).

Reports in English:

Bone and Blood: The Price of Coal in China (March 2008)

A report on the coal mining industry in China, which focuses on the industry's appalling safety record, the collusion between mine owners and local government officials, as well as the government's system of post-disaster management, which is systematically eroding the rights of the bereaved.

Speaking Out: The Workers' Movement in China, 2005-2006 (December 2007)

Following on from CLB's initial workers' movement report, which covered the period 2000-2004, this new survey provides a comprehensive overview and analysis of the major events and developments in labour relations from 2005 to 2006. The report discusses the government's legislative and economic policies, the response of China's workers to those policies and the role of the All-China Federation of Trade Unions.

Breaking the Impasse: Promoting Worker Involvement in the Collective Bargaining and Contracts Process (November 2007)

An introduction to, and overview of, China's collective labour contract system that provides a detailed account of the legal framework and practical implementation of the system so far, and advocates the use of collective bargaining and collective contracts as a means of promoting and protecting workers' rights and improving relations between labour and management.

Small Hands: A Survey Report on Child Labour and the Failings of the Rural School System in China (September 2007)

Child labour is a widespread and increasingly serious problem in China. This report explores both the demand for child labour in China and the supply of child labour stemming from serious failings in the rural school system. In 2005, CLB researchers interviewed government labour officials, school teachers and administrators, factory owners, child workers and their parents to build up a picture of the living and working conditions of child labourers and explore the reasons these children drop out of school early and go into work.

Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China (September 2006)

Migrant women workers in Dongguan and other key cities of the Pearl River Delta have consistently been denied their fair share of the rewards of China's rapid economic growth over the past decade and more. Indeed, they are increasingly falling below the ILO-defined minimum standard for socially acceptable work. In this survey report, Chinese women workers tell us in their own words about their arduous experiences of trying to earn a decent living in the boomtowns of the Chinese economic miracle today.

Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers (December 2005)

The main focus of this report is on the labour rights litigation work undertaken by China Labour Bulletin during 2004-05 to assist jewellery workers who had contracted chronic silicosis to win fair and appropriate compensation from their employers. The report highlights the severe health cost to Chinese workers of the country's current model of economic development and reveals the daunting procedural obstacles that occupational illness victims must surmount in order to secure compensation.

Short Reports:

Help or Hindrance to Workers: China's Institutions of Public Redress (April 2008)

A report on the numerous problems in China's often bewildering labour arbitration and court system that workers seeking redress for violations of their rights have to confront. The report focuses particularly on work-related illness and injury, and suggests ways in which these issues can be resolved.

Public Interest Litigation in China: A New Force for Social Justice (October 2007)

One of the first English-language overviews of the newly emerging field of public interest litigation (PIL) in China. The study examines the social, economic and legal background to PIL's development, shows its relevance to labour rights in China, introduces a range of illustrative cases, and discusses the current obstacles to PIL and its prospects for the future.

Reports in Chinese:

从“状告无门”到“欲加之罪” --- 对工人集体行动演变过程的分析

No Legal Recourse: Why collective labour protests lead to conflict with the law (March 2008)

公力救济在劳工维权过程中的异化：对三起工伤（职业病）索赔案的分析

Help or Hindrance: An analysis of public protection procedures in three occupational injury cases (December 2007)

集体合同制度是调整劳资关系的必然选择

Breaking the Impasse: Promoting Worker Involvement in the Collective Bargaining and Contracts Process (September 2007)

中国工人运动观察报告

Speaking Out: The Workers Movement in China, 2005-2006 (May 2007)

“以人为本”：煤矿矿难遗属谈话的启示

Putting People First: A Critique of China's Compensation System for Bereaved Coalminers' Families (November 2006)

关于中国童工现象的实地考察报告

Small Hands: Survey Report on Child Labour in China (May 2006)

有效的工人组织：保障矿工生命的必由之路——中国煤矿安全治理研究报告

Bloody Coal: An Appraisal of China's Coalmine Safety Management System (March 2006)

致命的粉尘：中国广东地区珠宝加工业矽肺病个案分析报告

Deadly Dust: The Silicosis Epidemic in the Guangdong Jewellery Processing Industry

(December 2005)

中国工人运动观察报告

Standing Up: The Workers Movement in China, 2000-2004

English Executive Summary (September 2005)

挣扎在去留之间：中国广东省东莞女工状况的调查笔录整理报告

Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China

(June 2005)

官商较量与劳权缺位：中国职业安全卫生报告

Occupational Health and Safety in China – Labour Rights Lose Out to Government and Business

(April 2005)

利益的冲突与法律的失败：中国劳工权益分析报告

Conflicts of Interest and the Ineffectiveness of China's Labour Laws

English Executive Summary (November 2004)

Rights & Democracy: Selected Publications

Public Interest Litigation and Political Activism in China,

Yiyi Lu, Rights & Democracy, 2008.

Human Rights Impact Assessments for Foreign Investment: Learning from community experiences in the Philippines, Tibet, Democratic Republic of Congo, Argentina and Peru,

Rights & Democracy, 2007.

Canada's Bilateral Human Rights Dialogue with China: Considerations for a Policy Review, 2005,

Sophia Woodman and Carole Samdup, Rights & Democracy, 2005.

Economic Dimensions of Autonomy and the Right to Development in Tibet,

Andrew Martin Fischer, Rights & Democracy, 2004.

Human Rights at Risk on the Cyber-battlefield,

Rights & Democracy, 2004.

Tibet China Negotiations: A Case for Canadian Leadership,

Rights & Democracy, 2004.

China's Golden Shield: Corporations and the development of surveillance technology in the People's Republic of China,

Greg Walton, Rights & Democracy, 2001.

The Bilateral Human Rights Dialogue with China: Undermining the International Human Rights Regime,

with Maire O'Brien, Rights & Democracy, 2001.

NO WAY OUT

Worker Activism in China's State-Owned Enterprise Reforms



Droits et Démocratie
Rights & Democracy

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development

中国劳工通讯 China Labour Bulletin

