

LABOR AND STATE SECRETS

BY HRIC WITH CHINA LABOUR BULLETIN

The Chinese government's use of the concept of "state secrets" to control political dissent is common knowledge. Less well understood is how the government uses state secrets to conceal the failures of the economic reform on which much of its current legitimacy rests.

"The most important aspect of our work is to maintain stable and relatively fast economic growth."—Premier Wen Jiabao, Press Conference at the Conclusion of the Second Session of the 10th National People's Congress (NPC) on March 14, 2004.

"We workers dare not talk about anything related to the mine accident, and we simply keep our mouths shut! (. . .) Now, in addition to the Public Security Bureau forces, People's Armed Police forces from Qu County and from Huaibei have been sent here. They have blocked us in here and are keeping us from leaving."—Telephone interview with a coalface miner from an accident-struck mine in Anhui Province, China Labour Bulletin (CLB), May 2003.

Every week, China receives around \$1 billion in Foreign Direct Investment (FDI), about the same as the world's largest economy, the United States. Conventional wisdom attributes much of this investor interest to the country's spectacular economic growth (reflected, for instance, in its 50 percent GDP expansion since 1998), which has transformed China into the proverbial "workshop of the world." But Beijing's popularity with international markets is greatly dependent on its carefully chiseled image of unmitigated economic success.

A starker, less adulterated reality of the Chinese labor environment surfaces from time to time, often in the form of anecdotal news reports—a disastrous mine accident, a gruesome statistic on yearly rates of industrial accidents in some locality, and even sometimes the echoes of major protests. Nevertheless, the Chinese government's monopoly over information ensures that these elements never reach a critical mass: workers are not

allowed to divulge news freely or to form independent unions; domestic media are only allowed to report problems on which the government has either acted or is about to act; Chinese academics are not allowed to study sensitive labor issues (unless they are commissioned by the government and their findings remain secret); and foreign experts are steered into either abstract macroeconomic issues or localized fieldwork.

The regulatory framework for state secrets detailed in this article is a crucial element in the architecture of control that ensnares information in China. In practice, it gives administrative agencies almost unrestricted power to determine whether information will be classified as a state secret, making the scope of classified information in China not only extremely broad and elastic, but also infinitely expandable. Labor matters are no exception, and are the subject of two specific regulations, one issued by the Ministry of Labor and Social Security (MLSS), and the other by the Party-controlled All-China Federation of Trade Unions (ACFTU). Both regulations were jointly issued with the State Secrets Protection Bureau.¹

The cumulative effect of these regulations is to transform broad categories of information pertaining to labor affairs into state secrets, from information and statistics on child labor to unemployment rates:

- **Child labor cases and statistics** are withheld under the MLSS provisions that classify "undisclosed information and statistical data on the handling of child labor cases nationwide" as "highly secret" matters.
- **Industrial accidents and occupational illnesses** are also tightly guarded secrets: "undisclosed composite information and statistics held by the ACFTU concerning major heinous accidents and occupational illnesses" are classified as "secret" matters. "Details of current investigations concerning worker casualties" are managed by the ACFTU as "internal matters" that "may not be disseminated."
- **Unemployment rates and related social security matters** are obscured under both regulations: "undisclosed unemployment rates, social insurance fund revenue and expenditure forecasts" of the MLSS, and "composite information and statistical figures held by the ACFTU concerning the unemployment and livelihood hardships of workers" are all regarded as "secret" matters. Statistics about the total number of "redundant workers" (*xiqiang*) in State-Owned Enter-

prises (SOEs)² and the “distribution plans concerning basic living guarantees and re-employment funds” are categorized as internal matters of the MLSS.

- **Wage policies** represent another area tightly controlled by the MLSS: “Investigative materials and statistical data which

Overview of the State Secrets System

Legislation on state secrets is a fundamental element in the Chinese authorities’ imposition of a state monopoly over information. The scope of what constitutes state secrets in China is not restricted to matters of national security, but covers in practice any information that has not been officially vetted prior to disclosure or publication.

State secrets laws prohibit the publication of formally classified matters, as well as information that is already publicly available if the intended recipient is a foreign or overseas individual or organization. Under these laws, administrative agencies have almost unrestricted power to determine whether information will be classified as a state secret, making the scope of classified information in China extremely large and infinitely expandable.

In addition, any information can be classified retrospectively as a state secret if law enforcement agencies determine that the consequences of its disclosure have harmed or have the potential to harm the “security and interests of the state.” Chinese citizens have no means of challenging the classification of any particular information or to request access to government-held information, and there are no administrative or judicial procedures through which agencies can be ordered to disclose information under their possession or control.

The duty to protect state secrets extends to all citizens, civil servants, media outlets, publishing units and Internet companies. Heavy penalties for state secrets offenses, including capital punishment, are set forth in both the PRC Criminal Law and the State Security Law. Other articles impose lesser penalties for domestically obtaining, possessing or disclosing state secrets.

State secrets charges have been used repeatedly to prosecute journalists, academics, lawyers, dissidents, government critics and other individuals who have attempted to communicate information about alleged violations of international human rights standards.

At the lower echelons of government, state secrets are commonly invoked by local officials attempting to conceal specific wrongdoings from the attention of higher authorities, or in evading responsibility for incidents that have taken place in their jurisdiction. This practice seems particularly widespread in instances of industrial accidents that result when local authorities ignore substandard or even unlawful operations.

reflect the macroscopic situation of wage distribution in enterprises nationwide” are classified as “secret” matters, while “revised wage policies and plans concerning enterprises at the national level” are considered “highly secret.”

- **Embezzlement of social insurance funds** through official corruption has become an explosive issue due to high rates of unemployment in many parts of China. This may explain why the MLSS classifies “information concerning major cases of embezzlement and the illegal use of social insurance funds, and informants in such cases” as “highly secret.”
- **Labor unrest and worker protests** are cloaked in secrecy under both regulations: “Composite nationwide information regarding workers’ collective petitioning, strikes, and other major incidents” are classified as “highly secret” by the MLSS, while the national “composite information and statistics held by trade unions on workers’ collective petitioning, strikes, demonstrations, marches and other major incidents” are classified as “highly secret” by the ACFTU. “Information and investigative materials concerning the activities of illegal worker organizations,” i.e. independent worker organizations, must also be withheld by the ACFTU as “highly secret” matters.
- **Relations with the International Labor Organization** receive special mention: “plans and countermeasures for participating in meetings of the International Labor Organization and other important international meetings” are classified as “highly secret” by the MLSS, while “work plans and countermeasures concerning participation in the International Labor Organization and bilateral and multilateral communications with trade union organizations of other nations” are ranked as “secret” by the ACFTU.
- **General policymaking** is also typically shrouded in secrecy, especially when it concerns matters deemed “sensitive.” For instance, “undisclosed opinions on the revision of major socially sensitive policies” are classified as “highly secret” by the MLSS, while “statistical materials on labor protections” and “undisclosed implementation of major policy measures and revised plans concerning labor and social security matters” are characterized as “internal matters.”
- In addition, ACFTU regulations make a vast array of working plans or policies inaccessible, among them, “investigative and research information and materials which have a harmful effect on the stability of worker ranks,” and “undisclosed directives issued by central party and central party leaders concerning trade union work” are all “internal matters.”

STRUCTURE OF THE REGULATIONS

The MLSS and ACFTU regulations follow the classification structure and scope determined by the State Secrets Protection Bureau, which lists matters in descending order according to their degree of secrecy, from “highly secret” (*jimi*) to “secret” (*mimi*) and “internal” (*neibu*).³ Although “internal matters” do not reach the status of state secrets, they nevertheless “may not be disclosed without approval” of the relevant organ, and in practice they are still open to classification as state secrets on

the basis of the “consequences” that their disclosure or circulation may have on the “security and interests of the state.”

Although the MLSS and ACFTU regulations themselves are not classified as state secrets, they have not been publicized by their respective promulgating bodies or by other governmental agencies.⁴ They remain virtually unknown among Chinese workers and the general public, and even among Chinese labor experts. Although many media reports and scholarly analyses cover or discuss issues covered by these provisions, the regulations make clear that the initial disclosure of information remains entirely in the hands of the authorities. Independent reporting through unsanctioned channels remains strictly prohibited.

The complete absence of avenues to challenge the classification of information means that there is little to deter local authorities from arbitrarily using state secrets legislation to pursue the politicized prosecution of workers representatives and advocates or independent media.

This article takes a detailed look at how lack of access to information on major labor issues prevents effective efforts to address problems that seriously affect the rights and well-being of Chinese workers today.

CHILD LABOR

- Highly Secret—“undisclosed information and statistical data on the handling of child labor cases nationwide”

Information on child labor in China is scarce. Although the situation is commonly believed to be less severe than in many other developing countries, anecdotal evidence suggests that China has experienced a dramatic increase in child labor during the past decade. A major factor in the growth of child labor has been the rapid increase of primary school tuition fees, which pushes children out of school and into income-generating activities.⁵ In 1996, the International Labor Organization (ILO) estimated that 11.6 percent of China’s children were economically active.⁶

The government does not publish any data on the extent of child labor in China, nor does it release the number of child labor cases prosecuted every year. The number of child labor cases cited in official reports is implausibly low: provincial newspapers in early 2004 reported a total of 156 cases in Anhui Province and 464 in Yunnan Province over a period of three years.⁷ Such figures are inconsistent with anecdotal local press reports. A random investigation of 620 work units in Tongchuan, a city in Jiangxi Province with a population of about 300,000, resulted in the discovery of more than 40 cases of underage employment, or approximately 80 percent of the number of officially acknowledged cases in all of Anhui, a province with a population of over 60 million.⁸

The incidence of child labor is particularly high in certain industries, such as traditional crafts enterprises, small textile companies that outsource to a network of individual household workshops, and in the production of fireworks that often takes place in small workshops, schools or the homes of indi-

vidual villagers. Safety conditions in the fireworks industry remain abysmal, and explosions that kill and maim dozens of people are a regular occurrence.

The use of children in private enterprises and small workshops also increases the possibility that children are exposed to toxic fumes, industrial accidents and other health and safety problems that plague small and medium enterprises. Despite national regulations stipulating maximum hours of work and working conditions, in the majority of cases monitored by China Labour Bulletin these regulations are openly flouted. Dangerous and polluted working conditions affect children with particular severity.

CONCEALING A GROWING PROBLEM

Along with the elimination of drug use and prostitution, the abolition of child labor is hailed in official propaganda as a key achievement of post-1949 China. The provision that classifies “information and statistical data on the handling of child labor

Who’s Who in Labor & State Secrets

The State Secrets Protection Bureau, under the direct authority of the State Council, is the main authority on state secrets under the current legislation. It is in charge of a number of tasks relating to the protection of state secrets, including issuing or co-issuing state secrets regulations, making classification determinations and verifying the status of documents if conflicts or questions over their classification occur. The local departments of the State Secrets Bureau are also responsible for a variety of basic safety measures, including the inspection of administrative work units, monitoring of network security and handling the transfer of classified information between governmental agencies, including all court documents.

The Ministry of Labor and Social Security (MLSS) is responsible for drafting laws, regulations, standards, policies and programs for labor and social security; promoting urban and rural employment; managing the labor market; improving the employment service system; planning for the employment of laid-off workers and rural surplus labor; and a myriad of other duties. The MLSS currently plays a key role in the formation of national social insurance and social security policies.

The All-China Federation of Trade Unions (ACFTU) is the only workers’ federation allowed to operate in China. The ACFTU claims to be a voluntary “mass organization” of the working class, representing 135 million workers in 31 provincial, autonomous regional and municipal federations, and 10 national industrial trade unions. Any union established in China must be registered under the ACFTU.

cases nationwide” as a high-level state secret is particularly alarming because it reflects the government’s resolve to conceal the extent of child labor for the sake of its domestic and international prestige. This provision also impedes the adoption of remedial policies by preventing a rigorous public appraisal of the causes and the true extent of the problem.

Above all, the fact that this provision was not present in the previous version of the regulations, issued in 1995, but was introduced in 2000 does little to dissipate the impression that the Chinese government places greater importance on safeguarding a picture of tremendous economic achievement than on promoting the health, safety, and education of the growing number of rural children who are being pushed into the labor market as a side-effect of the economic reforms of the past 20 years. This apparent choice is consistent with many other provisions on the scope of state secrets, which serve to conceal the rising social cost of the high-growth economic policies on which the regime bases much of its legitimacy.

INDUSTRIAL ACCIDENTS AND WORKPLACE HEALTH AND SAFETY

- Secret—“undisclosed statistical figures held by the ACFTU concerning major heinous accidents and occupational illnesses”
- Internal Matter—“details of current investigations concerning worker casualties”

The protection of occupational health and safety raises is severely challenged in the context of break-neck economic growth and poorly enforced labor laws. The situation in the mining industry is particularly dire: incomplete statistics from the Ministry of Health show that more than 400,000 workers suffer from pneumoconiosis, to which medical experts add an estimated 600,000 unreported patients.⁹ Coal production, metallurgy, building materials, machinery and chemicals are the most dangerous industries for workers.

In 2001, China’s Ministry of Health reported only 13,000 cases of occupational diseases. An official of the Ministry of

The Scope of State Secrets in Labor Matters

Provisions	Level of Classification	Regulation
Worker protests and labor unrest		
Composite nationwide information concerning workers’ collective petitioning, strikes, and other major incidents	Highly Secret	MLSS(*) regulations art. 3.1.4
Composite information and statistical data held by the ACFTU concerning workers’ collective petitioning, strikes, demonstrations, marches and other major incidents	Highly Secret	ACFTU(**) regulations art. 3.1.1
Information and investigative materials held by trade unions . . . concerning the activities of illegal worker organizations	Highly Secret	ACFTU regulations art. 3.1.2
Investigative and research information and materials which have a harmful effect on the stability of workers’ ranks	Internal	ACFTU regulations art. 5.4
Industrial accidents, workers’ health and safety		
Undisclosed statistical figures held by the ACFTU concerning major heinous accidents and occupational illnesses	Secret	ACFTU regulations art. 3.2.2
Details of current investigations concerning worker casualties	Internal	ACFTU regulations art. 5.5
Unemployment and wage statistics		
Revised wage policies and plans concerning enterprises [at the national level]	Highly Secret	MLSS regulations art. 3.1.5
Composite information and statistical figures held by the ACFTU concerning the unemployment and livelihood hardships of workers	Secret	ACFTU regulations art. 3.2.3
Undisclosed unemployment rates, social insurance fund revenue and expenditure forecasts, and planning data in labor and social security matters, long-term development programs, and annual development plans	Secret	MLSS regulations art. 3.2.1
Investigative materials and statistical data which reflect the macroscopic situation of wage distribution in enterprises nationwide	Secret	MLSS regulations art. 3.2.2
The total number of redundant workers in state-owned enterprises	Internal	MLSS regulations art. 4.3
Distribution plans concerning basic living guarantees and reemployment funds for redundant workers in state-owned enterprises	Internal	MLSS regulations art. 4.4
Child Labor		
Undisclosed information and statistical data on the handling of child labor cases nationwide	Highly Secret	MLSS regulations art. 3.1.1

Health acknowledged that “[d]ue to incomplete reports, this is only the tip of a huge iceberg of health hazards at the workplace in China. The actual statistics are far worse.”¹⁰ They are also state secrets.

Piecemeal information reflects an alarming situation: a joint study by the Ministries of Health and Agriculture covering some 30,000 town and village enterprises (TVEs) across China found that about 15 percent of all employees suffered from confirmed or suspected occupational illnesses; 40 percent of work sites “were not in compliance with national occupational health standards,” and 83 percent of the workplaces surveyed featured at least one occupational hazard.¹¹ TVEs employ more than 120 million workers and account for nearly half of China’s production output.

Despite obvious gaps, official statistics reveal serious inadequacies in occupational safety, especially in the mining industry, where an average of 18 mine workers are killed each day.¹² Although figures on deaths caused by major accidents that receive national media coverage may be relatively accurate, they stand out against a backdrop of secrecy. Transparent, offi-

cial information about the root causes and human cost of accidents is lacking across the spectrum of injury, from the undefined “major heinous accidents” to minor workplace accidents, disfigurements and dismemberments of workers.¹³

Despite a new commitment to the release of statistics produced by the State Administration of Work Safety (SAWS) on workplace accidents,¹⁴ and an increasing though still selective use of the media to release related information, many accidents and hazards continue to go unreported or are covered up by managers of enterprises, often in collusion with local government officials.

ENFORCED SILENCE AT CHINESE MINES AND FACTORIES

As a striking example of the potential scope and depth of official collusion in covering up catastrophic accidents, the case of the Fanglin village school firework factory deserves special attention. In March 2001, an explosion at the Fanglin village school in Wanzhai, Jiangxi Province killed at least 41 children and three teachers. Government officials initially characterized the explosion as an attack by a “madman,” while central

Provisions	Level of Classification	Regulation
Embezzlement of social insurance funds		
Information concerning major cases of embezzlement and illegal use of social insurance funds, and informants in such cases	Highly Secret	MLSS regulations art. 3.1.6"
Relations with international labor organizations		
Plans and countermeasures concerning participation in meetings of the International Labor Organization (ILO) and other important international meetings	Highly Secret	MLSS regulations art. 3.1.7
Positions, lines of action and countermeasures against trade union organizations in Taiwan	Highly Secret	ACFTU regulations art. 3.1.3
Work plans and countermeasures concerning participation in the International Labor Organization (ILO) and communication with foreign trade union organizations	Secret	ACFTU regulations art. 3.2.5
Positions, lines of action and countermeasures against trade union organizations in Hong Kong and Macao	Secret	ACFTU regulations art. 3.2.6
Labor policy-making		
Undisclosed opinions on the revision of major socially-sensitive policies	Highly Secret	MLSS regulations art. 3.1.2
Undisclosed implementation of major policy measures and revised plans concerning labor and social security matters, long-term development programs, and annual development plans	Internal	MLSS regulations art. 4.1
Undisclosed directives issued by the central party and central party leaders concerning trade union work	Internal	ACFTU regulations art. 5.1
Proposals by the central party, the State Council and relevant departments concerning questions of national economic development and workers' personal interests	Internal	ACFTU regulations art. 5.2

* MLSS: Ministry of Labor and Social Security

** ACFTU: All-China Federation of Trade Unions

Sources:

General Office of the Ministry of Labor and Social Security and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Labor and Social Security Work, January 27, 2000.

All-China Federation of Trade Unions (ACFTU) and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Trade Union Work, May 27, 1996.

Labor and State Secrets Cases

State secrets charges have formed the basis for convicting or denying fair trial to labor activists in a number of high-profile cases reported by Human Rights in China and China Labour Bulletin:

Zheng Enchong: A Shanghai lawyer who provided legal advice to hundreds of residents evicted in the course of urban redevelopment in Shanghai, Zheng was sentenced to three years' imprisonment in October 2003 after being convicted of "illegally transmitting state secrets abroad." One of the primary documents forming the basis of Zheng's conviction was a handwritten note stating that a small demonstration at a Shanghai factory had been put down by Public Security authorities.

He Zhaoxue: Originally a worker from the Chenzhou Railway in Hunan Province, He was sentenced on August 24, 1999 to ten years' imprisonment on charges of leaking state secrets abroad after he provided overseas media with information about labor unrest in Hunan.

Zhang Shanguang: A longtime labor activist and founder of the Association to Protect the Rights and Interests of Laid-Off Workers and the Hunan Autonomous Workers' Federation, Zhang was sentenced to 10 years' imprisonment in December 1998 for providing "intelligence" to "overseas hostile organizations and individuals," and "incitement to subvert state power." Zhang had given a series of interviews to foreign media, including an interview with Radio Free Asia where he disclosed information about demonstrations near his home.

Yao Fuxin and Xiao Yunliang, the "Liaoyang two": Yao Fuxin and Xiao Yunliang were core worker representatives during the mass protests led by laid-off workers at the bankrupt Liaoyang Ferro-Alloy factory in Liaoning Province in 2002-2003. On May 9, 2003, Yao and Xiao were both convicted of "illegal assembly and demonstration" and "subversion" and sentenced to seven and four years' imprisonment respectively. Yao was repeatedly denied permission to meet with his lawyer, Mo Shaoping, for over four months, on the basis that the case involved "state secrets." Public security authorities also repeatedly attempted to intimidate the families of Yao Fuxin and Xiao Yunliang from communicating with overseas media.

Li Bifeng: A labor rights activist who worked at the Mianyang City Tax Bureau in Sichuan Province, Li was sentenced to seven years' imprisonment in August 1998 on a politically motivated charge of fraud. Before his arrest, Li Bifeng had been in hiding since July 1997, when he publicized an open letter to international labor and human rights organizations on the violent crackdown of massive worker protests in Mianyang over alleged misappropriation of unemployment funds by corrupt cadres in three collapsed state firms.

authorities, including then Premier Zhu Rongji, denied reports that it was caused by the production of fireworks by child laborers.¹⁵ The cover-up was extensive: reporters trying to investigate the case were prevented from reaching the school by roadblocks, local residents were reportedly not allowed to gather in the village, and the bodies of victims were quickly cremated or buried before further investigations could take place.¹⁶ Fanglin villagers alleged that teachers had been forcing the children to make fireworks for the past three years in order to pay for their tuition, and they were openly put to work in classrooms. The incident attracted widespread media coverage,¹⁷ but negative commentary was cleared from Chinese Internet chat rooms, including Sina.com.¹⁸ Ultimately, the authorities apologized and acknowledged that the explosion had occurred because children were producing fireworks at their local school.

The suppression of such information requires oppressive restrictions on the freedom of expression of accident victims and involved officials. In monitoring accidents at mines and factories throughout China, China Labour Bulletin is regularly informed of situations in which both the victims of the accidents and government personnel involved in the aftermath of the tragedies are coerced with real or imagined threats of retribution against speaking out on the causes and responses to accidents. Following are some examples:

Hebei Xinguang Chemical Industry Limited Company, Hebei Province:

Nine workers were found dead, one was injured and four more were missing after an explosion at the factory on February 22, 2004. Several local hospital staff reported that they had been told no one could talk to the injured workers without the prior approval of the "accident aftercare" supervisory unit's approval.¹⁹

Luling Coalmine of Huaibei Mineral Group, Anhui Province:

A gas explosion at the Luling Coalmine on May 14, 2003 killed at least 81 miners. In interviews with the local ACFTU officials, CLB was informed that the local ACFTU's main task was simply to "comfort the relatives," and they did not have details of other aspects of the investigation or rescue work. A Luling miner working in the shaft reported that many workers in the miners' housing estates were dissatisfied with conditions at the mine and the reaction to the accident, but with armed police guarding the mine against the victims' families and other outsiders, such as reporters, they were too scared to comment.²⁰

Mengnanzhuang Coalmine, Shanxi Province:

A massive gas explosion broke out on March 22, 2003 at the Mengnanzhuang Coalmine in Yima Township, Xiaoyi City, Shanxi Province. By the next day the death toll had reached 53, and 19 were still missing. The accident reportedly occurred when faulty electrical wiring in the mine led to a power failure that cut off ventilation. According to eyewitnesses, some of the dead were miners who had tried to return to the surface when the power went off, but who were

forced back down into the mine by the mine manager. Miners and their families (most of whom were migrants or peasants whose farm land had been sold or transferred to development projects) recounted how the coalmine had cut off all communication between local families, the mine and the outside world in an effort to prevent the families of victims from outside the immediate area from coming in and causing “trouble” at the mine.²¹

Muchonggou Coalmine, Guizhou Province:

A huge explosion rocked the Muchonggou Coalmine in Shuicheng County, Guizhou Province on February 24, 2003, killing up to 40 miners and injuring scores more.²² Official sources state that 35 miners were killed, four were missing and 18 others were injured—four of them seriously. However, independent investigations revealed that at least 30 miners were injured, at least ten of them seriously. In addition, one of the doctors treating the injured men stated in telephone interviews that he had been instructed not to allow injured miners to talk to the media about the incident. The

director of the hospital assured China Labour Bulletin that the situation was under control but added that CLB could not speak to any of the victims.²³

Nandan Coalmine, Guangxi province:

In August 2001, having earlier denied media reports of the calamity, the authorities finally acknowledged that around 70 miners had died in a mine flood in July. The official *Peoples' Daily* reported that the mine owner had been detained, and later reports acknowledged that mine owners and regional authorities had tried to cover up the extent of the disaster. Several Chinese journalists reported that local officials had prevented them from investigating the incident.

UNEMPLOYMENT, SOCIAL SECURITY AND WAGE POLICY-MAKING

- Highly Secret—“revised wage policies and plans concerning enterprises at the national level”

China's International Obligations Concerning Labor and State Secrets

UNITED NATIONS

Universal Declaration of Human Rights (adopted by the Republic of China in 1948)

- Everyone has the right to freedom of opinion and expression; this right includes freedom (. . .) to seek, receive and impart information and ideas through any media and regardless of frontiers. (Article 19)
- Everyone has the right to form and join trade unions. (Article 23(4))
- Everyone has the right to freedom of peaceful assembly and association. (Article 20(1))

International Covenant on Civil and Political Rights (1966, entry into force 1976, signed by China 1998, not ratified)

- Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. (Article 19.2)
- Everyone has the right to freedom of association with others, including the right to form and join trade unions. (Article 22)

International Covenant on Economic, Social, and Cultural Rights (1966, entry into force 1976, ratified by China 2001) (China has lodged a reservation on its obligations under Article 8 of the Covenant)

- Everyone has the right to safe and healthy working conditions. (Article 7(b))

- Everyone has the right to form trade unions and join the trade union of his choice. (Article 8.1(a))
- Everyone has the right to strike. (Article 8(d))
- Everyone has the right to social security, including social insurance. (Article 9)

Convention on the Rights of the Child (1989, entry into force 1990, ratified by China 2002)

- Every child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education. (Article 32)

INTERNATIONAL LABOR ORGANIZATION (ILO)

Minimum Age Convention (1973, ratified by China in 1999)

- Creates an obligation to pursue a national policy designed to ensure the effective abolition of child labor. (Article 1)

Worst Forms of Child Labour Convention (1999, ratified by China in 2002)

- Creates an obligation to take immediate and effective measures to secure the prohibition and elimination of work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. (Article 3(d))

- Secret—“undisclosed unemployment rates, social insurance fund revenue and expenditure forecasts”
- Secret—“composite information and statistical figures held by the ACFTU concerning the unemployment and livelihood hardships of workers”
- Secret—“investigative materials and statistical data which reflect the macroscopic situation of wage distribution in enterprises nationwide”
- Internal Matter—the total number of “redundant workers” (*xiaqiang*) in State-Owned Enterprises
- Internal Matter—“distribution plans concerning basic living guarantees and re-employment funds”
- Internal Matter—“undisclosed implementation of major policy measures and revised plans concerning labor and social security matters, long-term development programs, and annual development plans”

The broad spectrum of protected information related to unemployment rates and related social security matters calls into question the reliability of statistics that are actually released. The PRC government’s official unemployment rate has already been revealed to be notoriously unrepresentative. The government announced its intent to keep the unemployment rate under 4.7 percent and create 9 million jobs in 2004. While this figure corresponds with the government’s own picture of controlled growth,²⁴ it is a partial and inaccurate assessment that falls far below other estimates. Scholars calculate that actual urban unemployment ranges from 12–15 percent, and various official voices have concurred.²⁵ This does not include unreported figures from the countryside, where the ILO estimates that some 30 percent of China’s working age population is either unemployed or underemployed.

The true number of laid-off or redundant (*xiaqiang*) workers from SOEs is equally murky, a situation that is not helped by the MLSS stipulation that the total number of redundant workers in SOEs is an internal matter. An official estimate puts 15–20 percent of workers on the books at state enterprises as surplus labor, while outside observers claim that hidden unemployment in SOEs could be as high as 30 percent.²⁶ Other interrelated information of potent relevance to SOE employees, such as the “undisclosed implementation” of “plans and measures,” “statistical materials” and “distribution plans” concerning social security matters, labor protection and basic living guarantees for redundant workers, are all considered internal matters. This confidentiality makes it even more difficult to disentangle information about the actual implementation of the emerging social security system and discover how many workers, especially those in SOEs, are benefiting from reforms.

The formulation of realistic estimates is hampered by difficulties in collecting reliable data, the tendency of local administrators to embellish their figures and the omission of specific groups of workers from aggregate assessments.

An equally important obstacle is the longstanding history of secrecy and false reporting on these issues, validated by sweeping provisions that protect all manner of labor policy-related information from public scrutiny. Given the present incoherence of information concerning unemployment and its

related problems, such secrecy prevents a proper accounting of the problem, inhibits the formulation of an effective policy response and ultimately threatens the survival of increasingly desperate workers.

CORRUPTION AND FRAUD

- Highly Secret—“information concerning major cases of embezzlement and the illegal use of social insurance funds, and informants in such cases”

A significant proportion of worker disputes in China can be traced to retrenchment and reforms within SOEs, where wages and benefits promised to workers by factory management and local government officials often go missing or unpaid. In many instances, pension funds or worker compensation funds are embezzled or otherwise “reallocated” during restructuring, leaving laid-off workers with nothing but promises of pensions and insurance payments for their years of service. In other cases, actual redundancy payments turn out to be much lower than promised.

The pervasiveness of official corruption in undermining SOE reforms is obliquely referenced in the addition of Article 3 of the 2000 MLSS regulations, which classifies as “highly secret” “information concerning major cases of embezzlement and illegal use of social insurance funds and informants in such cases.” More generally, distribution plans concerning basic living guarantees and reemployment funds for laid-off workers are given *neibu* protection.

In practice, workers who attempt to publicize or divulge information on corruption within their own enterprises frequently find themselves the target of official repression, leading in some cases to arrest and sentencing on criminal charges.

The mass demonstrations in Liaoyang, which received international attention and scrutiny, are a case in point. On March 11, 2002, several thousand workers from the Liaoyang Ferro-Alloy Factory in Liaoning Province marched on Democracy Road, the main street of Liaoyang City, to the headquarters of the city government. They were demanding an official investigation into the malpractice and misappropriation of funds that had led to the bankruptcy of their factory, and the failure to pay wages, pensions and other basic living subsidies that had been promised to them.

Six days into the daily street demonstrations, which by then involved over 10,000 workers, the Liaoyang police detained several of the workers’ representatives, including Yao Fuxin and Xiao Yunliang. The “Liaoyang Two” were eventually convicted on May 9, 2003 on charges of “illegal assembly and demonstration” and “subversion” on the grounds of their alleged “links with foreign hostile elements” and membership in the banned China Democracy Party.²⁷

Although the sentences for the factory owner, Fan Yicheng, and several of his associates²⁸ were quite severe, no mention was made at the trial of more politically sensitive charges that the workers had been raising for the past year and more: namely, that the deeply entrenched network of official corrup-

tion within the Ferro-Alloy Corporation—presided over by Fan Yicheng in collusion with the local government—had led directly to the collapse of the Ferro-Alloy Factory and to the forced redundancy of most of the workforce. The workers' demands for a full investigation into the malpractice at the factory have never been satisfactorily answered—and Yao Fuxin and Xiao Yunliang, two workers who attempted to highlight corruption, remain imprisoned.

WORKER PROTESTS AND LABOR UNREST

- Highly Secret—“composite nationwide information regarding workers' collective petitioning, strikes, and other major incidents”
- Highly Secret—“information and investigative materials concerning the activities of illegal worker organizations”
- Secret—“composite information and statistics held by trade unions on workers' collective petitioning, strikes, demonstrations, marches and other major incidents”
- Internal Matter—“investigative and research information and materials which have a harmful effect on the stability of worker ranks”

Apart from illustrating the close relationship between managerial corruption and labor unrest, the Liaoyang campaign illustrates a number of fundamental tools that the state secrets system uses to silence dissent.

First was the attempt to exercise complete control over the flow of information. The ACFTU, along with other Chinese media outlets, refused to acknowledge the labor protests. The name Liaoyang did not appear in any ACFTU public sources, and there was a complete blackout of the incident in its official newspaper, the *Workers' Daily*.²⁹ In contrast, foreign media reported extensively on what has been deemed “the largest and most sustained incident of organized worker unrest in China since the 1989 nationwide pro-democracy movement.”³⁰ At his trial, Yao Fuxin responded to charges of criminal communication with overseas media—a classic state secrets charge—by stating that he had tried to publicize the protest movement by contacting several domestic media outlets, including the *Liaoyang Daily* and the *Liaoning Provincial Daily*, but was told that journalists who tried to report on the case would lose their jobs. It was then that Yao contacted reporters from Agence France Presse and *The Wall Street Journal*.

Second, state secrets provisions were used to deny meaningful due process for worker representatives. For example, despite repeated requests over a four month period, Yao Fuxin was only able to meet with his lawyer, Mo Shaoping, five days before his trial. The Liaoyang PSB told Mo it had the right to deny Yao meetings with his legal counsel because the case “involved state secrets.”³¹

The mechanisms at play in the suppression of the Liaoyang demonstrations embody standard practice in the official management of labor policy. And yet the combination of secrecy and corruption do nothing to defuse social tensions, but rather aggravate and intensify them. The exigencies arising out of

China's reform of SOEs, exacerbated by endemic managerial corruption that enriches a few at the expense of many broken promises made to workers, have led to increasingly sophisticated organizing strategies and protests conducted mostly by *xiaogang*, retired or unemployed laborers throughout China, especially in the ‘rust-belt’ of the Northeast.

Labor disputes have the dubious distinction of being triple-classified under state secrets law. Although already considered secrets controlled by the public security police, information on “incidents of public order” is also protected by the MLSS, the ACFTU and its affiliates. Through the MLSS and ACFTU regulations, a wide range of legitimate behavior is stigmatized as “highly secret,” including collective petitioning, strikes, marches and demonstrations. Correspondingly, state secrets regulations treat labor disputes similarly to social unrest, where information that may be widely known, publicly available, or having arisen from incidents occurring in the public domain can be reclaimed as a state secret.

The All-China Federation of Trade Unions (ACFTU)

A significant portion of the proscribed statistics and data pertaining to labor “belong” to the All-China Federation of Trade Unions (ACFTU). Described on the organization's official Web site as “the voluntary choice of hundreds of millions of workers,” the ACFTU is the only workers' federation allowed to operate in China, representing 135 million workers in 31 provincial, autonomous regional and municipal federations and 10 national industrial trade unions. Any union established must be registered under the ACFTU.

Because no independent trade unions are allowed to operate outside government control, the very fact that the ACFTU (along with the State Secrets Bureau) is the co-issuer and co-enforcer of one of the state secrets regulations indicates that the government considers the ACFTU to be a quasi-governmental body. Indeed, the ACFTU remains essentially an arm of the government and a subsidiary organ of the Chinese Communist Party, designed to facilitate and support government policies within enterprises and to ensure the continued control of the working population.

When workers organize work stoppages, strikes or demonstrations, the ACFTU is at best an observer and at worst a co-instrument in putting down labor unrest. In some cases, the ACFTU is known to have directly restrained or detained workers representatives.

As the co-drafter and co-enforcer of secrets provisions that in effect cloak the true dangers of the industrial workplace and curtail the potential for increased awareness and information that would benefit workers, the ACFTU's stance is fundamentally contrary to the very purpose of a trade union, let alone its own mandate.



The family of a miner watches as his body is recovered after a mining accident. Photo: Reuters

These provisions, in turn, saddle workers with a double burden: not only do their demands for information fall under the category of questions the government is authorized not to answer, but information regarding their only means of seeking redress, through legitimate nonviolent protest, has been eclipsed into state-secret protected behavior.

CONCLUSION: OBSCURING THE HAZARDS AND VULNERABILITIES OF WORKERS' LIVES

The increasing vulnerability of Chinese workers poses a direct threat to the cornerstone of the Chinese government's legitimacy, which is based on the stability achieved through sustained economic growth. Concerted attempts to manipulate information to artificially drive labor markets and obscure the high costs of economic policies is made possible in part because of state secrets regulations. At the same time, increasingly desperate workers are deprived of meaningful, informed choices in a "race to the bottom" with no guarantees of basic economic security.

Further, the punitive aspects of state secrets regulations—those that can be used to prosecute an individual and simultaneously deprive him of essential criminal procedural protections—cast a long shadow. While media and press strategies play important roles in labor-organizing campaigns in other countries, Chinese labor activists who seek to gain inde-

pendent exposure or support for workers' issues through contact with foreign media or organizations are put at risk of prosecution on state secrets offenses.

Regulations defining the scope of state secrets for labor and employment policy focus primarily on obscuring the hazards and vulnerabilities of workers' lives in China. While allowing the government to manipulate key information of overriding public interest and concern, they also help to conceal the true extent of labor unrest, including labor disputes, strikes and collective petitioning. In the final analysis, it is hard to see China's state secrets regulations on labor matters as anything else than an indirect acknowledgement that the reality of working conditions in China is unacceptable, and therefore detrimental to the image of the Chinese government and unsuitable for public consumption.

1. "Regulations on the specific scope of State secrets and other secret matters in labor and social security work," promulgated jointly in January 2000 by the Ministry of Labor and Social Security (MLSS) and the State Secrets Protection Bureau; "Regulations on the specific scope of State secrets and other secret matters in trade union work," promulgated jointly in May 1996 by the All-China Federation of Trade Unions (ACFTU) and the State Secrets Protection Bureau.
2. The *xiagang* redundancy system in State-Owned Enterprises is now being phased out, and laid-off workers now have to register as unemployed.
3. Note: The regulations do not list matters under the highest level of classification available under the state secrets legislation, "top secret" (*juemi*).
4. Neither of the regulations is available on the official Web sites of the MLSS or ACFTU, for instance.
5. "China's Education System: Reading Between The Lines," *China Rights Forum*, No.1, 2004.
6. *Child Labour Today: Facts and Figures*, ILO, (1996).
7. "The Child Development Situation Is Clearly Improved," *Anhui Daily*, June 1, 2004; "Yunnan Province's 'Child Development Regulations' See Substantial Results," *Yunnan Daily*, May 31, 2004.
8. "Tongchuan: Head Chef's Child Labor Case to Be Investigated Thoroughly," *Santai Metropolitan News*, Oct. 28, 2003.
9. "Mining disease tops one million in China," *CNN.com*, April 3, 2002.
10. Quoted in "Occupational Health Hazards Facing China's workers and Possible Remedies," *World Bank Transition Newsletter*, Volume 13, Number 4-5, July-August-September 2002.
11. *Ibid.*
12. For 2003, SAWS noted a marked improvement in work safety, despite a decrease in work-related and road traffic deaths of just 1.9 percent from 2002. Official statistics show that 963,976 work-related accidents occurred nationwide in 2003, causing 136,340 fatalities, a decrease of 112,963 accidents and 2,591 fatalities compared with 2002. Road traffic accidents make up the vast majority of accidents in China, followed by mining accidents at 9.3 percent. According to SAWS, coal mine accidents were responsible for 39.8 percent of total industrial and mining accidents in China and accounted for 42.3 percent of the death toll of 17,315. This amounts to 7,324 deaths in mine accidents in 2003.
13. In Shenzhen, an average of 13 factory workers a day lose a finger or an arm, and one dies every four and a half days. A 2003 survey showed that in just one county in Zhejiang Province, more than 1,000 workers lost fingers while at work.
14. After a major mine accident in Heilongjiang in 2004, it was reported

- that SAWS would begin to distribute work safety indexes every quarter to all organs under the control of the central government. These would include the national death toll from accidents, the death rate per 100 million yuan of GDP, the death rate per 100,000 people, the death toll of industrial enterprises, the death rate per 100,000 people in industrial enterprises, the death toll of mines, and the death rate per one million tons of coal. China to establish work safety indexes this year, Xinhua, February 24, 2004.
15. In a *New York Times* report, Zhu Rongji was quoted as stating in a television interview that the blast was set off by a recently divorced deranged suicide bomber and that "Certainly," he said, "it's not the case that this primary school was trying to earn some money by renting out space to store materials for fireworks. That's not the case." *The New York Times*, March 9, 2001.
 16. *Ibid.*
 17. The case and the government's denial of illegal firework production by the schoolchildren received widespread coverage both in China and overseas. The British National Campaign for Firework Safety called for a blanket ban on the import of all fireworks from China until the European Commission President and the Health and Safety Executive of the European Commission had visited China to ensure proper health and safety measures in Chinese firework factories and that no child labor is used in the production of fireworks.
 18. "Chinese chatrooms cleared of school blast critics," *CNN.com*, March 10, 2001.
 19. Chinese audio file of the interview conducted on February 24, 2004 is available at www.clb.org.hk in the Workers Views section for February 2004.
 20. "Gas Explosion at Luling Coalmine—victims relatives moved away," broadcast on May 15, 2003, transcript available on China Labour Bulletin's Web site.
 21. Conversations with miners' families raise suspicion that the disastrous Mengnanzhuang Coalmine blast in Shanxi may have been a man-made calamity: broadcast on March 24, 2003, transcript available on China Labour Bulletin's Web site at http://www.china-labour.org.hk/iso/article.adp?article_id=4124.
 22. This explosion was not the first at Muchonggou mine—a very similar gas explosion occurred on September 27, 2000, killing as many as 162 miners out of a total workforce of about 241.
 23. Similar incidents occur almost monthly. For example, on March 30, 2003, a major gas explosion occurred at the Mengjiagou Coalmine in Liaoning Province. According to reports, out of some 45 miners working at the time, 18 were confirmed dead with a further eight missing. According to interviews, the families of victims and victims themselves were not allowed to speak to the media or to CLB about the accident for fear they may say something which was not "right or correct".
 24. White Paper on Employment, China's Employment Situation and Policies, Information Office of the State Council, April 26, 2004.
 25. The official urban unemployment rate incorporates only workers who have lost their jobs due to SOE bankruptcies or who have registered as unemployed with the government labor departments. Excluded from this figure are *xiagang* workers (laid-off or redundant workers at SOEs who are still under contract), rural surplus laborers, migrant laborers, and those who have dropped out of the labor force. Official media have reported that almost 30 million SOE workers have been laid off since 1998. Sources: Michelle Chen, "The Jobless: Victims of China's economic success," *Asia Times* (April 1, 2004) available at www.atimes.com (citing scholars at the Chinese Academy of Social Sciences as pegging the urban unemployment rate at 12 percent and rising); *Beijing Review*, "Urbanization: A Long-term solution to unemployment" available at <http://www.bjreview.com.cn/lh2003/>
- NPC%20Special-16-BR12-05.htm, (interview with a researcher at the State Development and Reform Commission who calculates that the total unemployment rate is 12–15 percent).
26. Bank of Finland, Institute for Economics in Transition, BOFIT, *BOFIT Weekly*, 7, February 13, 2004.
 27. In March 2002, police detained five workers' representatives, Yao Fuxin, Xiao Yunliang, Wang Zhaoming, Gu Baoshu, and Pang Qingxiang. Gu was forcibly removed from his home after being beaten by police officers, but was released after workers threatened to deliver a petition to Beijing or blockade the railway line if he was not promptly released. Charges against Wang and Pang were dropped in early January 2003. However, Yao Fuxin and Xiao Yunliang were kept in detention while awaiting trial. In March 2003, the International Labor Organization (ILO) upheld a composite complaint against the Chinese government concerning its detention and prosecution of the Ferro-Alloy workers' leaders and also its repressive handling of various other labor disputes. The ILO's Governing Body formally endorsed recommendations from its Committee on Freedom of Association calling upon the Chinese authorities to release all Ferro-Alloy workers still in detention and to drop any charges against them. In addition, the UN Working Group on Arbitrary Detention found the detention of Yao Fuxin to be arbitrary on November 28, 2002 (E/CN.4/2004/3/Add.1), noting that the version of facts presented by the PRC government was contradicted by other sources, and the government had not supported its allegations with convincing documentary evidence.
 28. The former governor of Liaoning Province was expelled from the Communist Party for corruption and the former head of the Liaoning Provincial People's Court was sentenced to life imprisonment for corruption.
 29. "Workers on the March: Behind Unrest in the Northeast," *China Rights Forum*, No. 2, 2002. China Labour Bulletin, "The Liaoyang Protest Movement of 2002–3, and the Arrest, Trial and Sentencing of the 'Liaoyang Two'" (July 2003), available at http://www.china-labour.org.hk/iso/article.adp?article_id=4403.
 30. *Ibid.*
 31. For the procedural violations in the prosecution of Yao Fuxin and Xiao Yunliang, see China Labour Bulletin, "The Liaoyang Protest Movement of 2002–3, and the Arrest, Trial and Sentencing of the 'Liaoyang Two'" (July 2003), *op cit*.