

**PAYING THE PRICE:  
Worker Unrest in Northeast China**

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## I. SUMMARY AND RECOMMENDATIONS

### Executive Summary

From March through May 2002, well-organized workers' protests in three cities in northeastern China brought unprecedented numbers of disaffected, laid-off, and unemployed workers into the streets. In an area of high unemployment, extensive poverty, conspicuous wealth, and what is widely viewed as endemic corruption, workers protested non-payment of back wages and pensions, loss of benefits, insufficient severance pay, maneuvers intended to bypass elected workers congresses, and unfulfilled government promises to help the unemployed find jobs.

Like previous demonstrations in other areas of the northeastern "rust-belt," the protests emerged from several years of privatization, down-sizing, and bankruptcies of state-owned enterprises in which workers had been promised lifetime employment and broad benefits. The protests in 2002, however, involved tens of thousands of workers from dozens of factories and mines, and lasted longer than any protests since the violent suppression of the 1989 Democracy Movement.

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

This report looks in detail at protests and the government response in Liaoyang, Daqing, and briefly describes the situation in Fushun, the third city in the northeast that experienced unprecedented labor protests in March through May 2002. In all three cities, protests spilled into the streets because of workers' frustration at their inability to obtain a meaningful hearing for long-standing grievances. At root, the workers were alleging violation of economic rights—that company directors and local government officials had reneged on promises to provide a range of benefits while doing little to combat the managerial corruption that had drained resources from many of the companies.

At the same time, fundamental violations of civil and political rights, including denial of workers' rights to form independent labor unions as well as pervasive media censorship, systematically undercut the ability of workers to fully air their concerns and press effectively for redress. As documents collected during the research—including an open letter from laid-off workers in Liaoyang to President Jiang Zemin, translated and provided in an appendix to this report—make abundantly clear, workers took to the streets because of a deeply rooted sense of injustice. The workers felt strongly that they were not receiving their due under existing regulations and had virtually no outlets other than street demonstrations to push for a change in the status quo.

An important and interesting aspect of these cases, however, is the care Chinese authorities took in responding to the public demonstrations. In comparison to aggressive campaigns waged against individuals who tried to form independent political parties and against Falungong adherents, the government's response was relatively restrained. In part, this may have been because labor unrest threatens the legitimacy of the Chinese Communist Party in a way that other challenges do not: Article 1 of the Chinese constitution claims that China "is a socialist state under the people's democratic dictatorship, *led by the working class...*" (emphasis added). The government's response also suggests that authorities recognize the depth of dissatisfaction among laid-off workers and the popular support the cause might attract: authorities may fear an even greater backlash were they to be viewed as cracking down too hard on workers.

Human Rights Watch research shows that worker dissatisfaction continues to simmer and that many of the underlying grievances have not been addressed. The crisis is by no means over: there are likely to be many more

layoffs and cutbacks as China pursues reforms consistent with the terms of its entry into the World Trade Organization (WTO). So long as the underlying problems are not addressed—including violations of basic rights that leave workers without meaningful outlets for redress of grievances as well as continued government efforts to sidestep agreed-on processes and promised benefits in the wake of continued downsizing—it is only a matter of time before there are more confrontations, possibly more serious ones.

The protests described in this report are not isolated incidents. The dismantling of China's planned economy, which accelerated during the 1990s, left tens of millions of skilled Chinese workers without jobs or the prospect of comparable employment; for most the only option was low-wage, insecure labor, the kind that has become a major component of China's labor market. As workers' standard of living collapsed, newly private industries took advantage of restrictions on workers' right to freely organize to cut back pensions, medical, and other benefits that those laid-off and retired were relying on to survive—and these cutbacks came amid widespread allegations that company managers and state officials were skimming money from the industries for themselves.

In the northeast, workers have been particularly hard hit. This is reflected in the demands highlighted by workers in Liaoyang, Daqing, and Fushun, the three cases featured in this report, during a series of protests from March to May 2002.<sup>1</sup>

In Liaoyang, in Liaoning province, the Ferroalloy Company's laid-off metal workers demonstrated intermittently for at least ten weeks starting March 11—first to protest economic grievances and corruption, and, after March 17, to demand the release of workers' leader Yao Fuxin, who was detained incommunicado for four days before his detention was acknowledged by police. On March 20, public security officers and a unit of the People's Armed Police (PAP, a paramilitary force) attacked groups of unarmed workers and detained three more elected worker representatives. Yao and the three others—Pang Qingxiang, Xiao Yunliang, and Wang Zhaoming—were formally indicted on March 30 for “illegal assembly, marches, and protests.”

In Daqing, a once-model oil town in nearby Heilongjiang province, arbitrary changes in severance agreements for laid-off workers of the Daqing Oil Company Ltd. (DOCL) provoked protests that began March 1 and continued into April and May. The government responded with a massive show of force that included large numbers of local police, riot police from Harbin, the provincial capital, and army troops; there were sporadic arrests.

In Fushun, developed as a coal-mining town in the early 20<sup>th</sup> century, thousands of laid-off miners and workers from nearby factories repeatedly blocked roads and rail lines to protest the conditions of their severance. Authorities combined minimal force and minimal payouts—a single payment of 75 *renminbi* (U.S.\$9.00)—to stop the protests.

As detailed in this report, local authorities' responses to the protests demonstrated how the Chinese government has continued to deny rights to freedom of association, expression, and assembly. These rights are guaranteed in Article 35 of the Chinese Constitution as well as in the International Covenant on Civil and Political Rights (ICCPR), which the Chinese government signed in 1998 but has not yet ratified. China's Law on Assemblies, Procession and Demonstration, however, gives local authorities extremely broad discretion to deny permits for protest gatherings or to arrest those demonstrating without a permit, authority which officials did not hesitate to use. Controls on media expression were evidenced by the national media blackout on the protests—following a period when the issues leading up to the demonstrations had been extensively covered in the labor press.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), which China ratified in 2001, provides that every worker has the right to form and join the trade union of his or her choice. Beyond the right of free association, the Chinese Constitution does not specifically provide for the right to organize trade unions, and instead states that the “state creates conditions for employment, strengthens labor protection, improves working conditions, and, on the basis of expanded production, increases remuneration for work and social benefits” (article

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<sup>1</sup> Note on methodology: this report is based on interviews in China conducted by Human Rights Watch, supplemented with publicly available primary source materials, Chinese and international media reports, and other secondary sources.

42). In practice, independent labor unions are prohibited. As China has moved from a planned to a market economy during the past two decades, the official All China Federation of Trade Unions (ACFTU) has remained the only legal trade union organization, and existing trade union legislation ensures that workers' first obligation is to the state.

China also continues to fall far short of fulfilling its responsibilities as a member of the International Labor Organization (ILO), which include respecting and promoting the principles of free association and collective bargaining. Under the ILO Declaration on Fundamental Principles and Rights at Work, China is bound by this obligation even though it has not ratified the ILO conventions governing these rights (ILO Convention No. 87, Convention concerning Freedom of Association and Protection of the Right to Organize, and ILO Convention No. 98, Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively). In 1998, the ILO Committee on Freedom of Association, which examines complaints of alleged infringements of the exercise of trade union rights, found that China's Trade Union Law "prevented the establishment of trade union organizations that are independent of the public authorities and of the ruling party, and whose mission should be to defend and promote interests of their constituents and not to reinforce the country's political and economic system."<sup>2</sup>

## **Recommendations**

### ***To the Chinese government:***

- Immediately and unconditionally release all persons detained for peaceful activities to promote the rights of workers to freely associate, including the right to form and join trade unions of their own choice; to peacefully assemble to protect and advance their rights; and to exercise their right to freedom of expression on behalf of workers and their concerns. This includes persons detained for formation of autonomous trade unions during the 1989 pro-democracy movement and in 1992 and 1997-98; those held for protesting wage and pensions arrears and other conditions affecting their work or unemployment conditions; and those held solely because they exposed workers' problems to a broad audience within China or to the international media.
- Amend all relevant Chinese laws and regulations, such as the Trade Union Law, to bring them into conformity with the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China in 2001, and to fulfill its obligations as a member of the International Labor Organization (ILO) to respect and promote free association and collective bargaining for workers.
- Rescind the reservation to Article 8(1)(a) of the ICESCR, and respect the right of workers to form and join their own trade unions so as to "promote and protect" their own "economic and social interests."
- Ratify and implement ILO conventions No. 87 and No. 98, applicable to freedom of association and the rights to organize and to bargain collectively. China should agree to a direct contact mission from the ILO to discuss ways of reforming its labor laws and practices to bring them into conformity with international freedom of association standards.
- Ratify the International Covenant on Civil and Political Rights without reservations that would affect workers' rights to freedom of assembly, association, and expression; to form and join trade unions of their own choice; to bargain collectively; and to strike.
- Revise the "PRC Law on Assemblies, Procession, and Demonstration" to eliminate articles that discriminate against those whose views are politically unacceptable.

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<sup>2</sup> International Labour Office, "310th Report of the Committee on Freedom of Association," Official Bulletin, vol. 81, Series B, no. 2 (1998).

***To the International Labor Organization:***

- Continue to monitor China's compliance with the right to freedom of association with respect to workers' freedom to organize and bargain collectively.
- Continue to urge China to accept a direct contact mission from the ILO to discuss ways of reforming its labor laws and practices to bring them into conformity with international freedom of association standards.

***To the international community:***

- During human rights dialogues and in trade talks, press China to lift its reservation on the International Covenant on Economic, Social and Cultural Rights, release those detained for activities on behalf of worker rights, and accept an ILO direct contact mission.
- Urge embassy and consular officials to visit Liaoyang, Daqing, and Fushun, and to encourage Chinese authorities to allow access by foreign and domestic journalists.
- Request permission for diplomatic observers to attend the trials of worker representatives; seek to open the trials to foreign journalists.

***To corporations doing business in China:***

- Refrain from acceding to requests from Chinese authorities to discriminate against, fire, or in any way discipline workers who attempt to form their own unions, peacefully protest their conditions of work, or go on strike; require similar commitments from subcontractors and suppliers, and regularly monitor implementation of workers' rights including the core right of freedom of association.

***To the international trade union community:***

- Urge publicly and privately with Chinese officials that detained and imprisoned labor activists be released.
- Monitor workers' trials and make representations to the Chinese government based on the conduct and results of the proceedings.
- Urge publicly and privately with Chinese officials that workers facing charges in Liaoyang have access to legal counsel of their choosing.

## **II. BACKGROUND**

Beginning in the late 1970's, China's leaders turned to radical economic reform to speed the process of China's transformation into a strong, economically viable, and stable state. Centralized planning would eventually be replaced with a "socialist market economy," a mix of heavy reliance on market forces and continued state-ownership of key enterprises. Even as state factories downsized or shut down altogether as the market came to define and clarify labor relations—and as the state no longer decided who should work, where and at what—workers found themselves increasingly vulnerable and without the tools to protect their interests.

In 1978, two years after the death of Chairman Mao Zedong, and almost thirty years after the Chinese Communist Party (CCP) came to power, China was experiencing a severe economic and political crisis. Living standards were falling; voices of dissent were on the rise. Former Red Guards sent to the countryside during the Cultural Revolution (1966-1976)—ostensibly to "learn from the peasants" but with the happy coincidence of reducing urban unemployment—were illegally returning to the cities in droves, up to 10,000 in Beijing alone. By 1979, urban unemployment stood at nearly 6 percent, with many returnees living by theft, begging, and prostitution.<sup>3</sup>

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<sup>3</sup> Charlie Hore, *China: Whose Revolution* (London: Socialist Workers Party, 1987), p.15.

That same year, the Democracy Wall movement (1978-81) exploded onto the streets: people marched for democracy, against corruption, and to demand a decent standard of living.<sup>4</sup>

Deng Xiaoping, acknowledged as China's paramount leader in 1978, lost no time in setting a new economic direction. Having recognized the need to make state-owned enterprises (SOEs) economically competitive and profitable, planners began dismantling the old model. State factories that had been the engine of remarkable economic growth during the 1950s, especially in the northeast, by the late seventies suffered from poor management, outdated technology, and chronically low productivity. In addition, the need to attract foreign capital led the CCP to experiment with special economic zones; the zones' phenomenal economic success reinforced the new model.

By the mid-1990s the policy of "reform and opening up" had led to a boom in privately funded Chinese enterprises and in the number of foreign multinationals operating in China. But even in this new landscape, the government would not allow labor the same degree of independence it had granted management. SOE workers' rights and representation remained what they had been when the state guaranteed employment and retirement benefits, and when labor in state-owned factories was the subject of "emulation" campaigns.

### **Breaking the "Iron Rice Bowl"**

Until the late 1970s, China's leaders managed to impose a degree of labor stability in the country. Preoccupied with maintaining industrial peace, and fully aware of the central role SOEs played in the post-1949 economy, the government made important concessions to urban workers under a "low wage high welfare" system. The state guaranteed both "lifetime" employment with wages independent of productivity and profits, and a secure retirement.<sup>5</sup> Benefits included virtually free housing, health care, subsidized food and fuel, home-leave travel allowances, pensions, and education—what was called the "iron rice bowl."<sup>6</sup> Even so Chinese workers refused to repudiate the militancy that had begun in the 1920s and clashes with the CCP occurred periodically. But as the state gradually reneged on its promises of stable work and comprehensive benefits, the strict limits on workers' rights to form independent unions, bargain collectively, or strike left them without effective mechanisms for contesting summary dismissal, enforced early retirement, and cuts in pensions and medical benefits. And as managers and corrupt officials stripped old, bankrupted state factories of their assets or mismanaged privatized factories, workers' sense of grievance intensified.

In July 1994, after more than a decade of trial regulations and pilot projects to facilitate market reforms, the National People's Congress, China's legislature, enacted the country's first labor law.<sup>7</sup> It reaffirmed the control individual enterprise directors had over the hiring and firing of workers, their wage scales, and their social welfare benefits, and replaced lifetime employment with a limited-term contract system. A one-party state and restrictions on freedom of association gave Chinese workers no opportunity to play a part in formulating the new law.

In September 1997, the 15<sup>th</sup> Congress of the Chinese Communist Party formally announced a further restructuring of state-owned enterprises and widespread implementation of *gufenzhi*, the transfer of enterprise ownership from the state to shareholders; the process of privatizing SOEs accelerated rapidly.

### **Laid-off, unemployed, retired**

A decade ago, the official media routinely hailed Chinese workers in state-owned enterprises as the vanguard of China's workforce, the linchpins of the drive for a strong, modern state. The relatively privileged position of SOE workers led economic analysts and even some Chinese labor dissidents to regard them as a modern-day "labor

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<sup>4</sup> Tim Pringle, "Class Conflict in the People's Republic – Chinese Workers and the Struggle to Organize," Paper presented at Eighth International Conference on Alternative Futures and Popular Protest, Manchester, April 2-4, 2002 (copy on file at Human Rights Watch).

<sup>5</sup> "Workers in a State of Disunion," *South China Morning Post*, March 23, 2002.

<sup>6</sup> Workers in smaller SOEs outside the main industrial centers received much less comprehensive benefits.

<sup>7</sup> Labor Law of the People's Republic of China, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on July 5, 1994, entered into force January 1, 1995, <http://www.acftu.org.cn/labourlaw.htm> (accessed on April 9, 2002).

aristocracy.”<sup>8</sup> Now these same workers are frequently stereotyped as stuck in an old-fashioned time warp, one that no longer fits China’s economic reality. This official discourse, common in contemporary newspaper accounts, urges workers in the former SOEs to “liberate their thinking and grasp reform” (*jiefan sixiang zhua gaige*).<sup>9</sup> Membership in the World Trade Organization (WTO), they are told, will bring on more closures and bankruptcies; they must be prepared to pay the price for a transformation that, in the long run, will benefit everyone.

Government reemployment agencies and centers inform middle-aged, skilled former SOE workers that only unskilled work is available, and for such jobs “there is no longer an eight-hour day in China.”<sup>10</sup> Added pressure on the urban labor market and laid-off SOE workers comes from rural migrants willing to settle for lower wages and shorter employment contracts in the low-tech, labor-intensive sector. Han Zhili, who runs a citizens’ advice center in Beijing, summed up the problem: The current situation, he said, is “forcing workers to labor long hours for very low wages.”<sup>11</sup> Nor do these workers receive welfare benefits. The old “low wage, high welfare model” has become “low wage, low welfare.”

Between 1996 and 2000 31.4 million SOE workers were laid off, a reduction of 27.9 percent. In urban collectively-owned enterprises, the number of employees fell by 15.2 million or 50.3 percent.<sup>12</sup> Figures released by the Ministry of Labor and Social Security (MOLSS) put these figures in context.

The employees of state and collective enterprises and institutions accounted for 37.3 percent of total urban employees in 2001, down from 99.8 percent in 1978. Meanwhile, the number of employees of private, individually owned and foreign-invested enterprises has increased dramatically.<sup>13</sup>

Estimates of total urban joblessness vary. According to scholars at the Beijing-based Development Research Center (DRC), a government think tank, it averages around 8-9 percent—the official rate, by contrast, is 3.6 percent.<sup>14</sup> However, joblessness in industrial rust belts, such as northeast China is much higher, averaging at least 20 percent.<sup>15</sup> Ministry of Labor and Social Security (MOLSS) researchers and academics put the figure at 7 percent<sup>16</sup> but their estimate does not include laid-off (*xia gang*) workers.<sup>17</sup>

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<sup>8</sup> A term originally coined by Engels to describe the better-off segment of the English working class in the 19<sup>th</sup> century. During a radio interview in the fall of 1998 with reporter Li Wanfang on Radio Free Asia (RFA) “Eyewitness Report,” labor activist Zhang Shanguang used it to describe the pre-reform status of SOE workers in China. He was later imprisoned on charges of “illegally providing intelligence to overseas organizations” in part for the RFA interview.

<sup>9</sup> See, for example, “*Jiefang sixiang zhua gaizhi, qiu zhen wushi zhu huihuang*” (“Liberate Ideas and Grasp Restructuring, Go for Glory but Maintain Pragmatism”), *Datong Daily* (Shanxi province) January 10, 2001, <http://www.dtzc.gov.cn/xingyun/newpage6.htm> (accessed on April 12, 2002).

<sup>10</sup> Interview quoted in Tim Pringle, “Industrial Unrest in China – A Labor Movement in the Making,” *Asian Labour Update*, Issue 40 (July-September 2001), p. 10.

<sup>11</sup> Wu Zhenguang, “*Laozi chongtu shengji weiji shehui wending*” (“Rising labor disputes threaten social stability,”) *Xinwen Zhoukan* (published by China’s Department of Labor and Social Security, Guangzhou, China), September 9, 2001.

<sup>12</sup> Qiao Jian “*Wei danxing jiuye yingzao geng hao de fazhan huanjing – yi 2001 nian zhongguo Liaoning Anshan shi danxing jiuye diaocha wei li*” (“Flexible Employment in China – An Example from a Survey on Flexible Employment in Anshan City 2001”), paper given at Forum on Industrial Relations and Labor Policies in a Globalizing World, January 9-11, 2000 (copy on file at Human Rights Watch).

<sup>13</sup> Ministry of Labor and Social Security, “White Paper on Employment and Social Security,” issued by the Information Office of the State Council, April 29, 2002.

<sup>14</sup> Matthew Forney, “Workers Wasteline,” *Time Magazine*, June 17, 2002, <http://www.time.com/time/asia/covers/1101020617/cover.html>, (accessed on June 20, 2002).

<sup>15</sup> David Hsieh, “China jobless figures enter danger zone, Experts agree the red line of 7 percent unemployed has been crossed. Now the debate is about social unrest to follow,” *Straits Times*, June 15, 2002.

<sup>16</sup> Mo Rong, “*Dangqian zhongguo jiuye xingshi yu jiaru WTO hou de zhengce jianyi*” (“Employment Situation and Policy Advice After China Accedes to WTO”), paper presented at Forum on Industrial Relations and Labor Policies in a Globalizing World, Beijing, January 9-11, 2002 (copy on file at Human Rights Watch). See also Deng Ke, “China’s actual unemployment rate has reached a critical point,” *Nanfang Zhoumo* (*Southern Weekend*), June 13, 2002,

In March 2002, overall urban and rural unemployment stood at 170 million, with laid-off SOE workers totaling 5.15 million and formally registered unemployed workers, many of them former SOE employees, accounting for another 6.81 million.<sup>18</sup> This latter figure is expected to rise dramatically during 2002 as more SOEs shut down in the face of increased competition and in conformity with a government requirement that the laid-off (*xia gang*) category be phased out and all workers registered as unemployed (*shiye*). The MOLSS in its April White Paper on Employment and Social Security predicts the number of urban jobless will top 20 million within four years.<sup>19</sup> Although the White Paper does not say how many will come from SOEs, Vice-premier Wu Bangguo said on June 8, 2002, that SOE reform, including bankruptcy for unprofitable plants, was vital to economic restructuring.<sup>20</sup>

Human Rights Watch spoke with seventeen employed and former SOE workers, fourteen men and three women, in three areas during early 2002. Many of them expressed the view that, having given the best years of their lives to constructing modern China, they have now been sacrificed in the name of a different, imposed model of development, one which workers had no voice in designing.<sup>21</sup>

A typical story is that of Mrs. Liang, a middle-aged textile worker from Harbin city in Heilongjiang province, who said that for most of her working life she regarded her low wages as a trade-off for basic labor insurance including medical care and a pension.<sup>22</sup> In the mid-nineties, at age forty-eight, she was forced into early retirement; since March 1999 she has received only 70 percent of her monthly pension.<sup>23</sup>

A listener from Fujian province explained a similar situation in his hometown during a telephone interview with the host of Radio Free Asia's labor rights program:

I don't feel optimistic. It's especially bad for workers in their fifties and sixties. They have worked hard all their lives, but now that they are retired, there are many who don't get their pensions [entitlements]... We are a small county town down here and many work units owe their retired workers several months in unpaid pensions.<sup>24</sup>

As one former auto worker said when she and two hundred employees of the former Beijing Automobile and Motorcycle Works blocked traffic in the capital for six hours in March 2002 to protest alleged management corruption, forced retirements, and denial of worker benefits:

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wysiwyg://502/http://www.sinopolis...Archives.TOPSTORY/ts\_020621\_01.htm (accessed on April 8, 2002).

<sup>17</sup> Laid-off (*xia gang*): applies to SOE workers sent home but formally kept on the company books. Where this usage of "laid-off" is intended, this report includes *xia gang* in parentheses afterward. All other uses of "laid-off" in this report (i.e., those without the Chinese term in parentheses) carry the usual English language meaning of "out of a job" and do not imply anything about whether the worker does or does not remain formally on the company books. Legally, *xia gang* workers are entitled to monthly stipends, medical cost re-imburement, and job re-training. In practice, stipends have been paid irregularly and medical expenses reimbursed sporadically. The *xia gang* policy began to be phased out in May 2001 and affected workers became formally unemployed. They could then apply for unemployment benefits paid from monies contributed to a labor insurance fund by employers and employees. A major problem has been the failure of employers to make required contributions.

<sup>18</sup> ICFTU-APRO *Labour Flash*, Issue 1047, February 15, 2002, <http://www.icftu-apro.org/flash/flash1047.html> (accessed on June 12, 2002).

<sup>19</sup> Ministry of Labor and Social Security, "White Paper..."

<sup>20</sup> "China Vows to Continue SOE Reform," *People's Daily Online*, June 8, 2002, [http://english.peopledaily.com.cn/200206/08/print20020608\\_97438.html](http://english.peopledaily.com.cn/200206/08/print20020608_97438.html) (accessed on July 24, 2002).

<sup>21</sup> Human Rights Watch interviews, February 2002.

<sup>22</sup> Human Rights Watch interview, Harbin, March 2, 2002. The interviewee's full name has been withheld to protect her anonymity.

<sup>23</sup> Ibid.

<sup>24</sup> *Renmin Ribao de kuazhang*, Radio Free Asia, China Labor program broadcast in December 1998; transcribed in "Gaiye yu geming weiji," published by *China Labour Bulletin* (May 2000), p. 109.

When we were young, we endured hardship and exhaustion at the factory, and now we are old and sick. But they don't give any welfare for us to live on, so we get sicker. And then when we buy our medicines they don't reimburse us.<sup>25</sup>

### Corruption

Corruption, which has flourished with privatization, is made easier by workers' inability to organize, monitor management, or protest effectively. In this regard, labor activists face not only the legal limits on workers' rights and the fact that corruption contributes to bankruptcies and lay-offs, but also the government's discomfort with any unsanctioned activity that reflects badly on the new economic model. One veteran anti-corruption campaigner, for example, former Party member Zhou Wei, received a two-year administratively imposed term in a reeducation labor camp—on the bizarre charge of “reporting for the masses”—because he led an effort to expose the corruption of the mayor of Shenyang, the capital of Liaoning province.<sup>26</sup> In March 1999, Zhou accused Mayor Mu Suixin of involvement in an illegal pyramid scheme which collapsed, wiping out the life savings of thousands of people. On May 6, 1999, police took Zhou from his home; the next day he was sent to Dragon Mountain Labor Camp, where he served out all but one month of his administrative sentence. Mayor Mu was indicted on corruption charges:

When investigators searched two country houses belonging to Shenyang's mayor, they found U.S.\$6 million worth of gold bars hidden in the walls, 150 Rolex watches [and] computer files documenting years of illegal activities.<sup>27</sup>

The illegal or unsanctioned loss of SOE assets as a result of economic restructuring was the subject of a major conference held May 29-30, 2002 in Wuhan, Hubei province. Conference participants—including delegates from Petrochina (see Daqing section)—judged systemic corruption to be a major factor underlying the problem:

...a minority of leading cadres from [SOE] enterprises collaborate with directors from unlawful private enterprises or small company bosses for mutual profit, [resulting in] chaotic investments, subcontracting arrangements and loans in which they jointly embezzle and divert state assets and property.<sup>28</sup>

Labor activists in Liaoyang wrote a letter to Jiang Zemin, China's president, that made similar observations about the director (changzhang) of the Ferroalloy Company:

His close aides, friends and relatives were placed in company positions from which he could directly benefit. At the instigation of Liaoyang's former mayor and party secretary..., [the director] set up a number of independent enterprises—such as the Ya Po Company, Pengejin Factory, and the Sai De Company—and arranged fictitious domestic and foreign links and contacts. These people worked hand in glove as a team to swallow up billions of *yuan* in national funds resulting in losses of tens of billion of *yuan* in state property.<sup>29</sup>

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<sup>25</sup> Jonathan Ansfield, “Beijing retirees cry foul, protest outside plant,” Reuters, March 27, 2002.

<sup>26</sup> Zhou first led an anti-corruption delegation in 1997 when retired workers and senior cadres went to Beijing to expose the practice of asset-stripping in Shenyang; he received a fifteen-day administrative sentence. James Kynge, “China's jailed corruption campaigner tells his tale,” *Financial Times*, July 6, 2001.

<sup>27</sup> Ronald Hilton, “Corruption in China: Shenyang,” quoting correspondence from John Pomfret, WAIS Forum on China, March 6, 2002, [http://www.stanford.edu/group/wais/china\\_corruptioninchinashenyang3602.html](http://www.stanford.edu/group/wais/china_corruptioninchinashenyang3602.html) (accessed on July 24, 2002).

<sup>28</sup> “*Yanjiu shentao yufang duice, qiye guyou zichan liushi wenti yinqi guanzhu*” (“Research is required to discuss countermeasures and prevention of SOE capital and asset loss which is causing concern”), Xinhua (Online), May 30, 2002, [http://news.xinhuanet.com/fortune/2002-05/30/content\\_416469.htm](http://news.xinhuanet.com/fortune/2002-05/30/content_416469.htm) (accessed on July 24, 2002).

<sup>29</sup> “Appeal to the Leadership after a Fruitless Four Year Struggle Against Corruption. The workers are being persecuted and need your support,” Open Letter to Jiang Zemin posted by “The unemployed former workers of the bankrupt Liaoning, Liaoyang Ferroalloy Factory” on walls in the vicinity of the Liaoyang Ferroalloy Factory and government buildings in Liaoyang, March 5, 2002.

## The All China Federation of Trade Unions (ACFTU) in the New Economy

The ACFTU, a complex organization with a reported membership of over 120 million workers, is the only legally recognized trade union in China. Its traditional role, as a largely unquestioning conduit from the Chinese government and the Chinese Communist Party (CCP) to the working class, has been the ACFTU's strength as well as its weakness. Links with the CCP and with SOE management give it some limited authority within factories and other work units, but workers criticize precisely those links as evidence that the ACFTU lacks independence.<sup>30</sup> "Why should I go to the trade union?" workers frequently said to Human Rights Watch. "There is no difference between them and the boss."<sup>31</sup>

Indeed, calls for more trade union autonomy—often fueled by labor unrest—have characterized internal debates in the ACFTU since the 1950s.<sup>32</sup> What has changed is the far more complex economic environment in which the ACFTU now operates. In 1982, the apparent convergence of workers' interests with those of the state and the entire nation was used to justify eliminating workers' right to strike from the Chinese constitution. A veteran legal scholar noted in 1982 that workers had no need of the right because "Chinese enterprises belong to the people."<sup>33</sup> Now, industrial ownership is far more diverse. In 2000, the private sector contributed more than half of China's Gross Domestic Product (GDP) and private firms employ over 130 million workers.<sup>34</sup> During the 1990s, SOE contribution to GDP dropped from 65 percent to 42 percent.<sup>35</sup>

As private entrepreneurship emerged as a crucial component of state policy, the ACFTU lobbied for a Labor Law and a new Trade Union Law to meet the new realities. It trained thousands of cadres in dispute arbitration, and it launched organizing drives in privately owned companies. Such efforts were not particularly successful. In a speech to ACFTU cadres in 2000, the union's chairperson, Wei Jianxing, pointed out that less than half of eligible workers were unionized:

...a considerable number of trade union organizations [and branches] have collapsed and their members washed away. On the other hand, the organization of trade unions in newly established enterprises has simply not happened. At the end of 1999, national trade union membership dropped to eighty-seven million, leaving more than one hundred million workers unorganized. When there is not even a trade union, what is the point of talking about trade unions upholding the legal rights of workers? Or trade unions being the transmission belt between the Party and the masses? Or trade unions being an important social pillar of state power?<sup>36</sup>

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<sup>30</sup> Until recently SOE workers in urban areas belonged to work units (*danwei*). These units were usually organized according to industrial sectors; thus one *danwei* covered several SOEs. By and large, the union's responsibility within an individual SOE was confined to administering welfare benefits and organizing labor competitions and entertainment.

<sup>31</sup> Human Rights Watch interview with a migrant worker from Sichuan province, Guangzhou, February 2, 2002.

<sup>32</sup> See Tim Pringle, "The Chinese Working Class—Fiction and Reality," *China Human Rights Forum* (published by Human Rights in China), No.1 (2002), p. 12.

<sup>33</sup> Zhang Youyu, "Guanyu xiugai xuanfa de ji ge wenti" ("Questions Regarding the revision of the Constitution"), *Xuang lunwen ji (Theses on the Constitution)*, (Beijing: Qunzhong Publishing House, 1982).

<sup>34</sup> "Private Entrepreneurs Win Socialist Prizes," *Xinhua*, April 30, 2002, <http://202.84.17.73:7777/Detail.wct?RecID=65&SelectID=1&ChannelID=6034&Page=4> (accessed on June 8, 2002). According to official figures, some 80 million workers do not belong to trade unions although they are not counted as working for private firms. Two factors help explain this seeming anomaly. Many firms still exist in a kind of limbo between private ownership and what are called township and village enterprises (TVEs). In reality, these are largely privately owned. However the government designates them as "collectively owned" without ever precisely explaining what this entails. In 1997, over 120 million people, almost entirely non-unionized, were employed in TVEs. In addition, beginning in the 1980s, many ACFTU branches collapsed, often a result of management reforms.

<sup>35</sup> "Guo qi zhan gongye chanzhi jiang zhi" ("SOE share of GDP drops to forty-two percent"), *Ming Pao*, May 10, 2002.

<sup>36</sup> Wei Jianxing, "Renzhen xuexi guanche dang de shiwu ju wu zhong quan hui jingshen. Jin yi bu jia kuai xin jian qiye gonghui zu jian bufa" ("Conscientiously implement the spirit of the fifth plenary session of the 15<sup>th</sup> Central Committee and increase the pace of organizing and establishing trade unions in new enterprises"), speech delivered at a national conference on organizing in new enterprises, November 12, 2000, [http://www.bjzgh.gov.cn/jianghua/5\\_jianghua\\_13.php](http://www.bjzgh.gov.cn/jianghua/5_jianghua_13.php) (accessed on June 5, 2002).

Although some ACFTU officials would like to be more effective, given the current landscape CCP policy toward the union's role has not changed. It is still aimed at using the ACFTU to help create a stable political and economic environment, a task made more urgent by the need to both attract and compete with foreign capital. Organizing or even supporting collective action for jobs and wages is deemed incompatible with these goals, thus cannot be supported by the ACFTU. In 1998, Vice-Premier Hu Jintao (widely expected to become China's next president and Party leader), articulated the Party's line on trade union independence and the related right to freedom of association:

Chinese trade unions are mass organizations of the working class under the leadership of the Party, act as a bridge linking the Party with staff and workers and play a role as a key social pillar of the state political power... *I hope that all levels of trade unions will consciously accept the leadership of the Party while independently carrying out their work...*[and] consciously submit to and serve the major tasks of the Party and the state.<sup>37</sup>

Thus, as one worker explained about the ACFTU's participation in a campaign to keep a factory open, "We [Ferroalloy workers] have been to the ACFTU on a number of occasions, but they've never taken any real notice of us."<sup>38</sup> When the families of detained Liaoyang workers approached the ACFTU complaints office in Beijing for help in obtaining the detainees' releases, they were told to send the case details in a letter.<sup>39</sup>

It is not that all ACFTU cadres and officials, particularly at the shop floor level, are necessarily unsympathetic. An official of the Liaoyang branch of the Federation of Trade Unions, when asked if local people were supporting the Ferroalloy workers' protests, told Radio Free Asia, "Of course they are! The city leaders are in the wrong!"<sup>40</sup> But the union's maneuvering room is extremely limited. In April, the government's Central Publicity Department issued a serious critique of the *Workers' Daily*, ACFTU's official newspaper, warning that the paper was violating the Party line by featuring articles on economic restructuring and worker rights without taking into account the "overall national interest."<sup>41</sup> Given the ACFTU's dual mandate, it is hardly surprising that *Workers' Daily* failed to carry articles about the March-May protests in Daqing, Liaoyang, and in other areas in China's northeast.

### **Independent Union Organizing and China's International Obligations**

The absence of freedom of association remains a critical issue in China, but the dual position of the ACFTU—as upholder of working-class interests and as loyal servant to the Party—makes it impossible for the union to promote free association in accordance with international standards. At no point over the last twenty-five years, despite widespread unemployment, serious labor law violations, and appallingly dangerous working conditions, has the ACFTU attempted to distance itself from the CCP leadership or to question its policies. It has not defended the principle of independent union organizing, and it has never spoken out against laws and regulations routinely employed to justify imprisonment of labor activists who organize outside its aegis.<sup>42</sup>

<sup>37</sup> All China Federation of Trade Unions, "Zhongguo gonghui shisan da wenjian huibian" ("Documents from the 13<sup>th</sup> Congress of the ACFTU"), (Beijing: China Workers' Press, 1998), p. 11.

<sup>38</sup> Radio Free Asia interview with Liaoyang Ferroalloy Company worker representative Xiao Yunliang, March, 19, 2002; English translation of the transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2146](http://iso.china-labour.org.hk/iso/article.adp?article_id=2146) (accessed on April 12, 2002).

<sup>39</sup> "Liaoyang organizer released," China Labor Bulletin Press Release, April 23, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2386](http://iso.china-labour.org.hk/iso/article.adp?article_id=2386) (accessed on April 24, 2002).

<sup>40</sup> Radio Free Asia, March 21, 2002. English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2316](http://iso.china-labour.org.hk/iso/article.adp?article_id=2316) (accessed on March 30, 2002).

<sup>41</sup> Vivien Pik-Kwan Chan, "Reports on plight of workers earn rebuke," *South China Morning Post*, May 4, 2002. So far as can be determined, no specific article was singled out.

<sup>42</sup> This is not to imply that serious disagreement with the current Party leadership does not exist within the senior ranks of the ACFTU. On July 15, 2001, Han Yaxi, former Alternate General Secretary, Head of Propaganda and Education Department of the ACFTU co-authored a critique of Jiang Zemin's July 1, 2001 "Three Represents" speech welcoming entrepreneurs into CCP ranks. In a letter to Jiang and the Party's Central Committee, Han took issue with the president's claim that the status of China's working class had not changed:

In fact, most Chinese laws that address the issue reinforce the Party loyalty side of the duality. The Trade Union Law (TUL) illustrates the point. The ACFTU sought revision of the 1950 law during the late 1980s so as to reinterpret workers' rights in light of the new realities. Although revised versions of the law finally were adopted in April 1992, and again in October 2001, the section on union purposes and goals retained and even strengthened language establishing the union's subservience to Party leadership:

Trade unions shall observe and safeguard the Constitution, take it as the fundamental criterion for their activities, take economic development as the central task, uphold the socialist road, the people's democratic dictatorship, leadership by the Communist Party of China, and Marxist-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, persevere in reform and the open policy, and conduct their work independently in accordance with the Constitution of trade unions.<sup>43</sup>

The Trade Union Law goes on to specifically outlaw the formation of trade unions independent of the ACFTU.<sup>44</sup>

The Chinese government has consistently moved quickly to quash independent labor organizing efforts. For example, active involvement in organizing workers led to charges of subversion, a three-hour trial, and a ten-year prison sentence for one Gansu-based activist, Yue Tianxiang. A former driver, he had undertaken in early 1999 to represent 2,000 workers who like him had lost their jobs and could not collect months of back wages.<sup>45</sup> Between August 1998 and June 2002 at least twenty-nine workers were detained or sentenced to terms ranging up to ten years for peaceful labor-related activities.

The Trade Union Law and official practice contravene the principles of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China on March 27, 2001. Article 8(1)(a) of the ICESCR provides that states parties to the covenant undertake to ensure "[t]he right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests."<sup>46</sup> China is also a signatory to the International Covenant on Civil and Political Rights, which states in article 22 that: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."<sup>47</sup>

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Your comments are incomplete... In reality, however, what remains in the relations between the workers and businesses is a contract relationship between employees and employers.... Workers enjoy extremely little of democratic rights in enterprises, and even that little they have is not guaranteed at all.... Workers leave their work posts, and their seniority benefits are bought out, all as they are ordered. Nowadays masses of workers have lost their jobs; they can resort to no means to halt the process.... The conditions of the workers in private businesses of either domestic or foreign investment are even worse, insufferable, and without any guarantee [sic] (Ma Bin and Han Yaxi, "A Letter to Comrade Jiang Zemin and the Party's Central Committee," *Monthly Review*, May 2002, <http://www.monthlyreview.org/0502cpc3.htm> [accessed on June 19, 2002]).

<sup>43</sup> Trade Union Law of the People's Republic of China, Article 4, adopted at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001, <http://www.acftu.org.cn/unionlaw.htm> (accessed on May 1, 2002).

<sup>44</sup> *Ibid.*, Article 10.

<sup>45</sup> Yue and two other unemployed workers took the Tianshui City Auto Transport Company to arbitration, set up the newsletter *Chinese Workers' Monitor*, and wrote an open letter to Jiang Zemin denouncing corrupt management practices. Within one week they were arrested and charged with "subverting the government." Yue was sentenced on July 5, 1999. That same year, Hunan labor activist Zhang Shanguang was sentenced to a ten-year term on subversion charges for organizing the Shupu County Association for Laid-Off Workers and telling foreign reporters about it.

<sup>46</sup> "International Covenant on Economic, Social and Cultural Rights," adopted and open for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of December 16, 1966, entry into force: January 3, 1976, in accordance with article 27.

<sup>47</sup> International Covenant on Political and Civil Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966; entry into force: March 23, 1976, in accordance with

When China ratified the ICESCR, the National People's Congress declared that the application of Article 8(1)(a) must be consistent with the Trade Union Law—precisely the law that denies Chinese workers the right to organize independent unions. It is the view of Human Rights Watch that the declaration is incompatible with the object and purpose of the treaty, and thus China should be held to the full terms of the article. This is consistent with the position of the Human Rights Committee, which monitors the compliance of states parties with the International Covenant on Civil and Political Rights. The Human Rights Committee, seeking to clarify the standard set in the Vienna Convention on the Law of Treaties,<sup>48</sup> stated in its General Comment 24 of 1994 that any statement made at the time of ratification that “purports to exclude or modify the legal effect of a treaty . . . is a reservation.”<sup>49</sup> Reservations should be regarded as null and void to the extent that they violate the object and purpose of the Covenant.<sup>50</sup>

China has nonetheless used its reservation to the ICESCR to justify the legality of the ACFTU's on-going legal monopoly on trade union organizing in China and thus continuation of its underlying role as a “transmission belt” for communication between the Party and government on one hand and workers on the other. However, it does nothing to solve the problem of what happens when the interests of Party and workers clash.

China also has continued to ignore its responsibilities as a member of the International Labor Organization (ILO), which include respecting and promoting the principles of free association and collective bargaining. The ILO declaration on Fundamental Principles and Rights at Work recognizes freedom of association and the right to collective bargaining as “fundamental rights.”<sup>51</sup> As an ILO member, China is bound by this obligation even

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article 49. China became a signatory to the ICCPR in 1998.

<sup>48</sup> Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, entered into force January 27, 1980.

<sup>49</sup> Human Rights Committee, “General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the International Covenant on Civil and Political Rights,” U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994).1.

<sup>50</sup> Human Rights Committee, “General Comment 24” (“The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation”). For a fuller discussion of this issue, see Appendix 4.

<sup>51</sup> “Convention No. 87, Convention concerning Freedom of Association and Protection of the Right to Organize” (Date of Coming into force: July 4, 1950) and “Convention No. 98, Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively,” (Date of coming into force, July 18, 1951), both reprinted in *International Labour Conventions and Recommendations 1919-1991, Volume 1, (1919-1962)* (Geneva: International Labor Organization, 1992). Convention No. 87 protects the rights of workers “subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.” It further states that: “Workers and employers’ organizations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs. . . . The public authorities shall refrain from any interference which would restrict this right or impede lawful exercise thereof.” Article 98 protects workers’ and employers’ organizations against: “any acts of interference by each other or each other’s agents or members. . . . In particular, acts which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers or employers’ organizations, shall be deemed to constitute acts of interference within the meaning of this article.”

See also “Declaration concerning the aims and purposes of the International Labor Organization,” <http://www.ilo.org/public/english/about/iloconst.htm#a19p5> (accessed on July 24, 2002):

The General Conference of the International Labor Organization meeting in its Twenty-sixth Session in Philadelphia, hereby adopts this tenth day of May in the year nineteen hundred and forty-four the present Declaration of the aims and purposes of the International Labor Organization and of the principles which should inspire the policy of its Members. The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that: (a) labor is not a commodity; (b) freedom of expression and of association are essential to sustained progress; (c) poverty anywhere constitutes a danger to prosperity everywhere; (d) the war against want requires to be carried on with unrelenting vigor within each nation, and by continuous and concerted international effort in which the representatives of workers

though it has not ratified the ILO conventions governing these rights.<sup>52</sup> In 1998, the ILO Committee on Freedom of Association concluded that China's Trade Union Law "prevented the establishment of trade union organizations that are independent of the public authorities and of the ruling party, and whose mission should be to defend and promote interests of their constituents and not to reinforce the country's political and economic system."<sup>53</sup> The same criticisms apply to the current version of the law.

China's unwillingness to respect its obligations under international law also led the International Confederation of Free Trade Unions (ICFTU) to submit a complaint, focusing on arrests and repression of workers and on blatant denial of freedom of association in the northeast, to the ILO's Committee on Freedom of Association on March 15.<sup>54</sup> The text of the complaint includes, as an example, a declaration by a local branch of the ACFTU commenting on the emergence of an independent association of laid-off workers. The declaration emphasizes that "[T]he ACFTU will not tolerate workers organizing in this way."<sup>55</sup>

### III. CHINESE WORKERS AND ECONOMIC RIGHTS

A core principle of the human rights regime is the indivisibility of civil, cultural, economic, political, and social rights. That is, violations within one group of rights almost always impact the realization and enjoyment of a second group of rights. This is evident from the experience of Chinese workers who for decades have been restricted in their capacity to negotiate improvements in the terms and conditions of their work and therefore their economic security because of state prohibition against forming independent trade unions and restrictions on political participation.

As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Chinese government has an obligation to recognize:

- the right to work, which includes the right of everyone to have the opportunity to gain a living by work which is freely chosen or accepted (article 6);
- the right of workers to just and favorable conditions of work (article 7);
- the right of workers to safe and healthy working conditions (article 7(b));
- the right of workers to form trade unions and join the trade union of choice (article 8);
- the right of workers to strike (article 8(d)); and
- the right of all to social security, including social insurance (article 9).

Under the ICESCR, the government has an obligation to promote the economic rights of its citizens "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."<sup>56</sup>

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and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

<sup>52</sup> "[A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions." International Labor Conference, ILO Declaration on Fundamental Principles and Rights at Work, 86<sup>th</sup> Session, Geneva, June 18, 1998.

<sup>53</sup> International Labour Office, "310th Report of the Committee on Freedom of Association," *Official Bulletin*, vol. 81, Series B, no. 2 (1998).

<sup>54</sup> International Confederation of Free Trade Unions, "Letter to ILO Director-General Juan Somavia concerning Freedom of Association: Case No. 2189 (People's Republic of China)," June 2, 2002, <http://www.icftu.org/displaydocument.asp?Index=991215393&Language=EN> (accessed on June 17, 2002).

<sup>55</sup> *Ibid.*

<sup>56</sup> International Covenant on Economic, Social and Cultural Rights, Article 21.

Article 42 of the Chinese constitution states, “All working people in state-owned enterprises and in urban and rural economic collectives should approach their work as the masters of the country that they are.”<sup>57</sup> These “masters” still do not have the right to organize independent trade unions and negotiate the terms and conditions of their work.

Although poverty in China has been a persistent problem since the CCP came to power in 1949, urban industrial workers, particularly those employed in large SOEs, did enjoy significant improvements in their economic condition during the 1950s, 1960s, and early 1970s. The government introduced major reforms and legislation in the areas of healthcare, working conditions, housing, and retirement benefits. Movement to a “socialist market economy,” however, although contributing to overall economic growth in China, did bring with it a new set of problems including lack of job security and cutbacks in benefits, such as social welfare and housing allowances, that SOE workers had taken for granted.

The government’s refusal to countenance genuine citizen participation in policy formulation and its refusal to foster the development of a civil society with the capacity to contribute toward policy formulation has blocked effective responses to these problems. Independent representation of the interests of labor is essential to the development of economic rights and is expressly recognized as such in the Covenant’s clause on the right to form and join trade unions of one’s choice. The government has not maintained that it is beyond its resources to permit it.

If workers enjoyed the right to freedom of association and expression, including the right to strike, they could contribute to the enactment of reforms that would allow China to meet its obligations under the ICESCR. In short, restrictions on workers’ rights not only severely limit the ability of workers to negotiate the terms and conditions of their employment with employers, but also limit the ability of workers to pressure the Chinese government to take the steps necessary to promote economic rights.

Finally, the pervasive problem of corruption in China has a profound effect on the economic well-being of workers. As this report shows, illegal profiteering in large enterprises has denied low-paid workers their wages, their benefits, and their pensions. Combating corruption that impacts on economic rights is an obligation of the government. The Chinese government has clearly not done enough in this regard.

#### **IV. PROTEST IN THE NORTHEAST**

For China’s leaders, worried about social stability as the restructuring of state-owned enterprises accelerated and unemployment rose, March 2002 marked a turning point. It was the first time so many well-organized, laid-off workers and their sympathizers—in the tens of thousands—took to the streets simultaneously and sustained their protests for weeks rather than days. Three cities in China’s northeast, all characterized by high unemployment, conspicuous wealth, hopeless poverty, and what was widely believed to be endemic corruption, witnessed the most prolonged demonstrations. There, workers protested non-payment of back wages and pensions, loss of benefits, inadequate severance pay, employers’ machinations to bypass worker congresses and to ignore prior agreements, unfilled government promises to help the unemployed find jobs, and later, the arrests of their leaders.

For several years before the eruption in the northeast, local authorities throughout urban China had quelled labor demonstrations by paying off protesters or employing limited amounts of force.<sup>58</sup> However, in 2002, in Liaoyang,

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<sup>57</sup> Constitution of the People’s Republic of China (PRC Constitution), article 42.

<sup>58</sup> The outcome of a strike in Dafeng city, Jiangsu province and a protest by employed and laid-off workers in Jilin are typical examples. For several nights after workers occupied Shuangfeng Textile Factory in Dafeng during a strike over a pay cut, Public Security Bureau (PSB) officers attempted unsuccessfully to drive them out. The PSB did succeed in removing a few but immediately released them; most went back to the occupied factory the next day. Only when a People’s Armed Police unit joined the police were all the workers ejected. Identified leaders were arrested and rank and file workers were visited in their homes by management representatives. They told workers that the pay cut stood, but promised to pay share dividends owed and to provide welfare payments to those laid-off. Philip P. Pan, “High tide of labor unrest in China, striking workers

in central Liaoning province, Fushun in the east, and Daqing in western Heilongjiang province, officials were unprepared for the scale of the protests, the degree of organization, and the careful planning. In Liaoyang, workers from some twenty factories found common cause; in Daqing, an independent labor organization issued and took the lead in circulating handbills and posters; and in Fushun miners managed to secretly organize their demonstrations before taking to the streets.

### **Liaoyang, Liaoning Province**

Liaoyang, with its 1.8 million residents, is in many ways a typical northeastern Chinese industrial city. It flourished for some thirty years, as did the whole resource-rich region, after China's leaders ordered heavy investment in the area to facilitate quick industrial growth. During the 1970s, the Liaoyang Spinning Factory employed up to 120,000 workers; by 2002, only 500 remained.<sup>59</sup> The Liaoyang Ferroalloy Company, the enterprise whose bankruptcy led to the March 2002 protests, employed an estimated 12,000 men and women at its height in jobs ranging from iron casting to administration.<sup>60</sup> When the company declared bankruptcy on November 5, 2001, about 6,000 remained on the payroll, including laid-off (*xia gang*), retired, and injured workers.<sup>61</sup> Unemployment in the city stood at 25 percent at the end of 2001; workers as young as forty could not find jobs;<sup>62</sup> and Liaoyang residents estimated that 80 percent of the city's workforce struggled to get by on day jobs in the informal sector.<sup>63</sup> According to official figures for 2001, 80,329 workers were "not at their post," i.e. laid-off (*xia gang*); 216,892 were "at their post."<sup>64</sup> The numbers yield a laid-off (*xia gang*) rate of 27 percent.<sup>65</sup> The official registered unemployment rate, however, was only 3.4 percent.<sup>66</sup>

A former furnace factory technician's story is typical. He once made Rmb (renminbi) 1,200 a month (approximately U.S.\$150; U.S.\$1 = Rmb 8.3), but is now repairing shoes on the street. The best job offer he has had since he was laid-off (*xia gang*) came from a private employer, who offered Rmb 300 and no benefits.<sup>67</sup>

### ***The Liaoyang Ferroalloy Factory: Background to the March 2002 protests***

The demonstrations on March 11 and 12, 2002 exposed long-festering problems between the workers and management of Ferroalloy, once a medium- to large-scale SOE whose products sold well in both international and domestic markets. The plant's former workers trace its terminal decline to alliances between Gong Shangwu, first Liaoyang Party Secretary and later mayor and Liaoyang People's Congress chairperson, and corrupt managers at Ferroalloy who, they say, conspired to close the factory for their own personal gain.<sup>68</sup> The accusations were supported by an official legal case against six senior figures connected with the plant, one of whom was convicted on corruption charges. As reported in the official *Liaoyang Daily*, over Rmb 5.3 million in embezzled funds, assets, and bribes has been recovered; and authorities have claimed they are chasing another Rmb 2.9 million.<sup>69</sup>

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risk arrest to protest pay cuts, corruption," *Washington Post*, January 21, 2002. In mid-July 2001, after a three-day protest by employees of the Jishu Mine Bureau in Jilin province, the local government paid workers one month's owed wages, and laid-off workers livelihood stipend arrears. The workers had blocked the Harbin-Jilin railway line for three days, but no arrests were reported. Pringle, "Industrial Unrest in China..." p. 4.

<sup>59</sup> Fong Tak-ho, "Authorities struggling to prise [sic] once prosperous city from grip of poverty," *South China Morning Post*, March 29, 2002.

<sup>60</sup> "China-Protests: Fifty Injured During Clash Between Police, Workers" EFE News Service, May 16, 2000.

<sup>61</sup> Unemployed Workers of the Bankrupt Liaoyang Ferroalloy Plant, "Open letter to President Jiang Zemin," March 5, 2002.

<sup>62</sup> Jasper Becker, "Workers in a state of disunion," *South China Morning Post*, March 23, 2002; "Workers Block Major China Highway over Factory Bankruptcy," China Labor Rights News [Online], October 19, 2001, <http://www.laborrights.org/projects/china/labor/bankruptcy1019.htm> (accessed on June 1, 2002).

<sup>63</sup> Matthew Forney and Neil Gough, "Working Man Blues," *Time Magazine*, April 1, 2002.

<sup>64</sup> "*Liaoning tongji nianjian*" ("Statistical Yearbook of Liaoning, 2001"), (Shenyang: China Statistical Publishing House, 2001), pp. 66-68 and p. 92.

<sup>65</sup> Human Rights Watch calculated the laid-off (*xia gang*) rate by dividing the number of workers "not at their post" by the total of those at their post and those not at their post.

<sup>66</sup> "*Liaoning tongji nianjian...*," China Statistical Publishing House.

<sup>67</sup> Fong Tak-ho, "Authorities struggling to..." *South China Morning Post*.

<sup>68</sup> Unemployed Workers of the Bankrupt Liaoyang Ferroalloy Plant, "Open Letter to the Citizens of Liaoyang, 'Sack Gong Shangwu, Liberate Liaoyang,'" March 5, 2002.

<sup>69</sup> "Government spokesperson answers reporters' questions related to the Ferroalloy Company bankruptcy," *Liaoyang Daily*,

The plant started to lose money in 1995 but, according to an open letter from irate workers to the governor of the province, management continued to issue false reports indicating net profits to justify awarding themselves large bonuses.<sup>70</sup> As of 1995, the company stopped paying employees' pension and medical insurance premiums.<sup>71</sup> From 1996 on, production was periodically suspended.<sup>72</sup>

Beginning in mid-1998, workers petitioned and wrote letters to the Communist Party Central Committee, the Party's Central Disciplinary Committee, the State Council's General Office and Complaints Office, the courts, the Liaoyang procuracy, and the Ministry of Labor and Social Security at the city, provincial, and national levels.<sup>73</sup> Led by Yao Fuxin and Xiao Yunliang, a small group of workers sought to bring official attention to their allegations of corruption, as well as to non-payment of wages, forced early retirement—often dubbed “false retirement” by workers—cutbacks in severance payments and retirement benefits, and other downsizing measures.<sup>74</sup>

According to the open letter:

Older ‘falsely retired’ and laid-off (*xia gang*) workers (*jia tui zhi he xia gang lao gongren*) were supposed to have been paid a stipend of Rmb 182 per month but it was unclear how long this was to have been paid (point 12); workers unemployed due to the bankruptcy (*yin pochan er shiye*) were not receiving social insurance guarantees or the minimum livelihood allowance (*zui di shenghuo fei*) that the government is legally obliged to issue to urban residents whose incomes fall below a certain level (point 13); workers who had been promised compensation and relocation payments (*yi ci xing buchang fei anzhi fei*) still have not been paid in full (point 15); women workers of forty-five and over and male workers of fifty-five and over still have no formal copies of retirement arrangements offered by the company (point 16); housing subsidies have not been paid (point 17); medical reimbursements still have not been issued (point 18); workers laid off (*xia gang*) on a monthly stipend of Rmb 104 or put on long-term leave (*fang changjia*) on a monthly stipend of Rmb 140 prior to bankruptcy were still owed money.<sup>75</sup>

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March 21, 2002.

<sup>70</sup> Unemployed Workers of the Bankrupt Liaoyang Ferroalloy Plant, “Open letter to Governor Bo Xi,” March 5, 2002.

<sup>71</sup> Ibid.

<sup>72</sup> Beginning with the 15<sup>th</sup> Party Congress in 1997, SOEs in financial difficulty had two choices: to file for bankruptcy or increase productivity and efficiency, usually through restructuring. A Liaoyang government spokesperson explained that the Ferroalloy Company's “basic reason for bankruptcy was financial insolvency (*zi bu di zhai*) [leading to] a total inability to meet scheduled debt repayments.” “*Shi zhengfu xinwen fayan ren jiu Liaoyang Tiejiejin [jituan] youxian gongsi pochan ji youguan wenti jizhe wen*” (“Government spokesperson answers reporters' questions related to the Ferroalloy Company bankruptcy”), *Liaoyang Daily*, March 21, 2002. Restructuring involves a number of strategies, including: downsizing, merger, cancellation of welfare obligations, full or partial buy-outs by domestic or foreign investors, restructuring as a joint-stock company, and employee share-ownership schemes. Most such measures require new capital and are usually accompanied by staff cuts. SOE staff cuts are officially regulated by State Council Decree No. 10, “Notice on the practical and official provision of livelihood guarantees and reemployment of laid-off (*xia gang*) SOE workers,” issued June 9, 1998. Under this decree, laid-off (*xia gang*) workers retain their ties to the company; and enterprises are required to: establish re-employment centers which workers can attend for up to three years; partially reimburse medical costs; and pay a livelihood stipend (*shenghuo fei*). Since mid-2001, however, as the legal requirement to set up re-employment centers was gradually being phased out, former SOEs offered lump-sum severance compensation agreements (*mai duan gongling*) based on years of service; and with the phase-out of the *xia gang* category, lump-sum agreements became more common. Current government policy is for workers to register directly as formally unemployed, thus ending all ties with the enterprise.

<sup>73</sup> Unemployed Workers..., “Open letter to Governor Bo Xi.”

<sup>74</sup> Yao Fuxin never worked at the Ferroalloy factory, although his wife, Guo Xiujing, worked there for many years. Until he was laid off, Yao worked at the Liaoyang Steel Rolling Mill.

<sup>75</sup> Unemployed Workers of the Bankrupt Liaoyang Ferroalloy Plant, “Open letter to the Liaoyang Party Committee, government leaders, the Ferroalloy Bankruptcy Clearing Accounts Working Group, factory cadres, and workers and their families,” March 4, 2002.

In addition, wages were not being paid. By March 2002, some former lower level managers and machine operators were owed two years' wages, and former senior workers and technicians were owed seven months' wages, despite a pledge from the city government to cover at least 50 percent of unpaid wages by the end of 2001.<sup>76</sup>

Although the CCP Disciplinary Committee, in response to the workers' petitions, wrote to the Liaoyang government instructing it to investigate the workers' allegations, the group of workers involved was disappointed with the CCP committee response, which they characterized as a brush-off.<sup>77</sup>

In May 2000, several incidents—including arrests of workers' leaders—polarized the situation further. On May 15, in their first reported public protest against unpaid wages, approximately 600 Ferroalloy workers blocked Zhenxing Road, the main highway between Liaoyang and the provincial capital Shenyang.<sup>78</sup> According to one report, some workers had not been paid for as long as two years, pensions had been stopped, and laid-off (*xia gang*) employees were not receiving statutory livelihood stipends.<sup>79</sup>

In the early morning hours of May 16, protesters moved back to the factory grounds. According to one report, by then their number had reached 5,000.<sup>80</sup> Some 500 police and 200 members of the paramilitary People's Armed Police (PAP) broke up the gathering, beating workers with truncheons and injuring as many as fifty.<sup>81</sup> Three worker representatives were detained: Pang Qingxiang, Xiao Yunliang, and Li Run.<sup>82</sup> For Pang and Xiao it was to be the first in a series of detentions eventually culminating in their formal arrests on March 21, 2002.

By 8:00 a.m., up to 1,000 workers had regrouped and were attempting a march to government buildings, carrying banners saying, "Release the worker representatives" and "Being owed money is not a crime." Police blocked their progress, but the demonstration convinced authorities to release two of the three detained representatives that same evening. Xiao told reporters that Li had suffered a heart attack and had been hospitalized. Xiao also indicated that some form of negotiation took place with the authorities, but he gave no details. "I will only say this, we must be paid our back pay, and we do not fear the government taking revenge against us after things are settled."<sup>83</sup>

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<sup>76</sup> Chen Tai, "Liaoyang tiehejin chang gongren douzheng de qianyin houguo - Laizi Liaoyang de baogao" ("Causes and effects of the struggle by workers from the Liaoyang Ferroalloy Factory worker - Report from Liaoyang"), *Xianqu Jikan (Pioneer Monthly)*, Issue 64 (Summer 2002), p. 23. It is unclear whether the machine operators and technicians were owed back wages or livelihood stipends. The information came from workers who often refer to stipends as wages.

<sup>77</sup> Radio Free Asia interview with worker surnamed Xiao, March 19, 2002, English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2146&category\\_name=Labour%20Disputes%20%26%20Actions%20#liaoning2](http://iso.china-labour.org.hk/iso/article.adp?article_id=2146&category_name=Labour%20Disputes%20%26%20Actions%20#liaoning2) (accessed on April 2, 2002).

<sup>78</sup> "China-Protests: Fifty Injured During Clash Between Police, Workers," EFE News Service, May 16, 2000.

<sup>79</sup> "More than 1,000 mainland factory workers have besieged..." BBC Monitoring Service, from *RTHK Radio 3*, Hong Kong, May 16, 2000.

<sup>80</sup> "Five thousand workers clash with 1,000 public security," BBC Monitoring Service, May 17, 2000.

<sup>81</sup> "At least fifty workers injured in clash with Chinese police," Kyodo News, May 16, 2000.

<sup>82</sup> "Worker representative" as used in this report refers to the four arrested men and other unnamed organizers involved in the Ferroalloy workers' campaign and the ten representatives who negotiated with oil industry officials and managers in Daqing. Protesting workers all over China coined the term and similar ones in response to the government's practice of arresting workers' "leaders." As an employee at the Dafeng city Shuangfeng Textile Mill (see footnote no. 58) explained: "Don't call us leaders. We're just volunteers. We have to be very careful. I don't know who they are in the other shifts, and they don't know who I am." The more public one's activity as a representative, organizer, or volunteer, the greater the likelihood of arrest. In an interview with Radio Free Asia broadcast the day before his March 20 detention, Ferroalloy worker representative Xiao Yunliang acknowledged he was well aware of the risks: "Of course my personal safety is under threat! I don't know if they will come and get me tonight. I have been in hiding these last few days" (Radio Free Asia interview, March 19, 2002, English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2146](http://iso.china-labour.org.hk/iso/article.adp?article_id=2146) [accessed on March 28, 2002]). Some worker representatives also served as formal representatives of the Ferroalloy Company staff and worker congress. According to Article 19 of the Trade Union Law (2001), the body has the right to participate in democratic management of the enterprise and may deliberate on major company policy decisions.

<sup>83</sup> "Riot-hit northern Chinese city calm after unrest," Agence France-Presse, May 17, 2000.

During the following twelve months, worker representatives and government officials met occasionally. Each time, government officials promised to address workers' concerns.<sup>84</sup>

Then, on May 17, 2001, mirroring a scenario that occurred frequently at SOEs elsewhere in China, some fifty unidentified men in at least a dozen trucks arrived at the Ferroalloy factory in the middle of the night to remove equipment.<sup>85</sup> Workers claimed the men were members of a local organized criminal gang (generically called *heishehui* or triads). Under the direction of officials from a Liaoyang court, the men transferred raw materials, including 6,000 tons of iron ore, from the factory into the trucks.<sup>86</sup> In all probability, a legal court order permitting removal of the plant's assets existed. However, the workers argued that the timing of the removal was in violation of the Bankruptcy Law which states that all financial matters must be cleared by the "liquidation committee" (*pochan qingsuan xiaozu*) before any assets may be removed.<sup>87</sup>

Security officials at the factory immediately telephoned Yao Fuxin, one of the main worker leaders, who rushed to the site with eight other workers. Outnumbered, they failed to stop the apparent theft. Five days after the incident, between 1,000 and 3,000 workers rallied to demand an explanation.<sup>88</sup> Security personnel stood by but did not interfere with the demonstrators. The Liaoyang government promised worker representatives that they would investigate the incident and provide an explanation within seven days. According to the open letters issued by the workers in early March 2002, nothing came of the promise.<sup>89</sup>

On October 19, 2001, Ferroalloy's management convened a meeting of Ferroalloy's staff and workers congress to vote on the issue of planned bankruptcy. Although Chinese law prohibits independent trade unions, it does allow site-specific representatives congresses in SOEs. According to the 1992 Trade Union Law in effect at the time of the meeting, the workers congress "is the basic form of enterprise democratic management."<sup>90</sup> In theory, the congress, whose elected members represented the factory's workers, had the right to monitor and discuss major management decisions.

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<sup>84</sup> Unemployed Workers..., "Open letter to President Jiang Zemin."

<sup>85</sup> Chen Tai, "*Liaoyang tiehejin chang...*," pp. 23-25. An earlier example of asset-stripping involved the merger of the Power Generation Apparatus Works in Zhengzhou, Henan province with a private company. In 1998, when a moving company attempted to remove machinery, the plant's workers and others from a nearby factory tried unsuccessfully to resist. One worker was knifed and had his skull fractured. See Matthew Forney and Neil Gough, "Working Man Blues," *Time Magazine*, April 1, 2002; and Jiang Xueqin, "Fighting to Organize," *Far Eastern Economic Review*, September 6, 2001, p. 72.

<sup>86</sup> Tonnage cited in "More than 1,000 workers protest in north China-group," Reuters, May 22, 2001.

<sup>87</sup> "Law of the People's Republic of China on Enterprise Bankruptcy (for trial implementation)," adopted at the 18<sup>th</sup> Meeting of the Standing Committee of the Sixth National People's Congress and promulgated by Order No.45 of the President of the People's Republic of China on December 2, 1986 (with the stipulation that trial implementation would not begin until three full months after the Law on Industrial Enterprises with Ownership by the Whole People came into effect), [wysiwyg://Content.261/http://www.le...d5=80d377b4cf761388169f66904a1925e9](http://www.le...d5=80d377b4cf761388169f66904a1925e9) (accessed on April 8, 2002). Article 35 states: "During the period from six months before the people's court accepts the bankruptcy case until the date that bankruptcy is declared, the following actions of a bankrupt enterprise are null and void: (1) concealment, secret distributions or transfers of property without compensation; (2) sale of property at abnormally depressed prices; (3) securing with property claims that originally were not secured with property; (4) early repayment of claims that are not yet due; and (5) abandonment of the enterprise's own claims. With respect to bankrupt enterprises which have committed acts listed in the previous paragraphs, the liquidation team has the right to apply to the people's court to recover the property, which shall be added to the bankruptcy property."

<sup>88</sup> Chen Tai, "*Liaoyang tiehejin chang...*" pp. 23-25. The incident is also referred to in Point 10 of the "Open letter to the Liaoyang Party Committee..." from the Unemployed Workers of the Bankrupt Liaoyang Ferroalloy Plant, March 4, 2002.

<sup>89</sup> Chen Tai, "*Liaoyang tiehejin chang...*" pp. 23-25.

<sup>90</sup> Trade Union Law of the People's Republic of China (1992), (Beijing: *Falu Chubanshi* [Legal Publishing House] 1992). Article 30 states "In an enterprise owned by the whole people, the congress of workers and staff members shall, as the basic form of democratic management of the enterprise and the organ by which the workers and staff members exercise their right to democratic management, discharge its functions and powers in accordance with the stipulations of the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People."

The Liaoyang government and Ferroalloy management made it clear that no opposition to the bankruptcy would be permitted. On the day of the meeting, riot police in dozens of vans and cars were deployed near the factory gates; police cars and plainclothes officers on foot cruised local neighborhoods monitoring activists. In an apparent effort to prevent a majority vote against bankruptcy, management and trade union officials split the worker representatives at the meeting into thirteen groups.<sup>91</sup> Two plainclothes police officers supervised each group, reportedly destroying any opposition votes. In the circumstances, many worker representatives walked out without voting.<sup>92</sup> The bankruptcy decision “passed.”

On October 18, the day before the congress, 1,000 workers blocked the expressway between Liaoyang and Shenyang to protest the bankruptcy plan. According to one report, four organizers were detained.<sup>93</sup> Although police and company officials declined to comment, a spokeswoman for the Baita district Public Security Bureau later said the arrests were part of police efforts to monitor a workers’ meeting at the factory, unwittingly lending support to reports of a heavy police presence there.<sup>94</sup>

Five days later, Yao Fuxin was detained for several hours.<sup>95</sup>

Less than three weeks later, on November 5, 2001, the Liaoyang Ferroalloy Factory was formally declared bankrupt. According to government officials and worker representatives, although negotiations over future arrangements for the plant’s workers did continue, by March 2002 it was clear they had stalled. The government claimed it had met with worker representatives five times;<sup>96</sup> workers claimed the government had been negotiating in bad faith.<sup>97</sup>

### ***March-May, 2002***

On March 3, 2002, another meeting, one that Ferroalloy workers referred to as a “bankruptcy discussion and vote meeting” (*pocha taolun toupiao hui*) took place.<sup>98</sup> Human Rights Watch was unable to determine whether it was another formal meeting of the staff and workers congress or a separate meeting called by company leaders or government officials. So as to minimize open opposition to a second vote on the bankruptcy, local authorities adopted the same intimidation tactics they had used in October 2001. Police detained three worker representatives and, according to an open letter from Ferroalloy workers, it was only “due to the masses and family members barring the way” that five more worker representatives escaped detention.<sup>99</sup> An open letter to Governor Bo Xi from the “Unemployed Workers of the Bankrupt Liaoyang Ferroalloy Plant” stated that police were deployed at the factory gates and the atmosphere was so tense that anyone who planned to vote against the bankruptcy was “scared by the moan of the wind and the cry of the cranes, seeing the enemy in every bush.”<sup>100</sup> In this way, stated the letter, the “life of a large-scale enterprise was forced to its conclusion.”<sup>101</sup> It is unclear which representatives were held for how long or how they were treated.

During the first week of March 2002, Ferroalloy employees issued a total of four open letters, all in the name of the “Unemployed Workers of the Bankrupt Liaoyang Ferroalloy Plant.” These were posted on the factory’s gates and on the walls in the surrounding neighborhood. Three were issued on March 5: one, as mentioned, was addressed to the Liaoning governor, Bo Xi; another to President Jiang Zemin; and the third to all ex-employees at the plant. The fourth, issued on March 4, was addressed to the Liaoyang Party Committee and government leaders, the “liquidation team” (*pochan qingsuan xiaozu*), factory cadres, and workers and their families. That

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<sup>91</sup> Chinese regulations require official worker representatives to canvas workers for their opinions.

<sup>92</sup> Chen Tai, “*Liaoyang tiehejin chang...*” p. 23-25.

<sup>93</sup> “Workers Block Major China Highway...” China Labor Rights News.

<sup>94</sup> Ibid.

<sup>95</sup> Personal communication from Li Qiang, China Labor Watch, June 22, 2002.

<sup>96</sup> “Government spokesperson answers reporters’ questions...,” *Liaoyang Daily*.

<sup>97</sup> Unemployed Workers..., “Open letter to President Jiang Zemin.”

<sup>98</sup> Ibid.

<sup>99</sup> Unemployed Workers..., “Open letter to Governor Bo Xi.”

<sup>100</sup> Unemployed Workers..., “Open Letter to the Citizens of Liaoyang...”

<sup>101</sup> Ibid.

letter accused government officials and company management of colluding in corruption, questioned the need for closing the factory, and, quoting applicable laws and regulations, argued that the liquidation process had been illegal.

Both the ‘Enterprise Law’ and the ‘Bankruptcy Law’ clearly state that an enterprise shall clear its accounts prior to liquidation. Moreover, the Liaoyang Party Committee, the city government and other leaders...have ignored the ‘Constitution of the People's Republic of China’, the ‘Trade Union Law’ and other relevant laws by disregarding the fierce opposition of the factory's workers and also the vast majority of middle and basic level cadres...What are your aims? Explain them clearly to the mass of workers.<sup>102</sup>

The letter went on to accuse former Liaoning governor Zhang Guoguang (since transferred to the governorship of Hubei province) of manipulating the bankruptcy process. And it demanded information on when unpaid wages, pensions, and medical reimbursements would be paid.<sup>103</sup>

On March 11, Gong Shangwu, chair of the city’s People’s Congress and leader of Liaoyang’s delegation to the National People’s Congress—then in session in Beijing—told a local television reporter that “there were no unemployed in Liaoyang” and that the city’s economic transition had encountered no serious problems.<sup>104</sup>

In response, on March 11-12 some 17,000 mainly laid-off (*xia gang*) workers took to the streets of Liaoyang in protest. Some 15,000 workers from the piston, instruments, leather and precision tool factories joined 2,000 Ferroalloy workers in a show of strength and mutual support.<sup>105</sup> As key worker representative Xiao Yunliang told Radio Free Asia, the demonstration marked a deliberate “change in tactics.”<sup>106</sup> Placards called for Gong’s resignation and the liberation of Liaoyang; speeches charged that the local government had stood by while industrial managers and corrupt officials had permitted embezzlement and consequent terrible hardships for workers at the former SOEs. Workers claimed that Ferroalloy general manager Fan Yicheng, with the approval of Gong and other government officials, used public funds to set up at least three independent companies.<sup>107</sup>

As protests continued on March 12, twelve local government leaders, including the deputy secretary of the Liaoyang Communist Party Committee, two deputy mayors, the secretary of the Liaoyang Political and Legal Committee, the city’s chief judge, chief prosecutor, and chief of public security, met with thirteen worker representatives to assure them of official concern and of the government’s intention to work toward solutions. One worker representative surnamed Pang told workers: “They said they are taking the problems the workers have put forward extremely seriously and solicitously. They are considering ways of solving [them] and working to calm [the situation].”<sup>108</sup>

Pang went on to say that the government was willing to consider the issues of corruption, bankruptcies, unemployment, and past arrests. Judging from the workers’ words, the issue of arrests was especially important.

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<sup>102</sup> Unemployed Workers..., “Open letter to the Liaoyang Party Committee...” The “Liquidation Team” has the responsibility for compiling a final list of creditors; convening a creditors’ meeting; overseeing asset sales; and ensuring that funds from such sales are used to clear outstanding wage and pension arrears, livelihood stipend arrears, medical reimbursements, and other miscellaneous debts to employees.

<sup>103</sup> Ibid.

<sup>104</sup> John Pomfret, “With Carrots and Sticks, China Quiets Protesters,” *Washington Post*, March 22, 2002.

<sup>105</sup> “Liaoyang Workers’ leader Yao Fuxin Secretly Detained,” China Labor Bulletin Press Release, March 19, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2129](http://iso.china-labour.org.hk/iso/article.adp?article_id=2129) (accessed on March 20, 2002). Figures quoted are based on estimates from participants.

<sup>106</sup> Radio Free Asia interview with Liaoyang Ferroalloy Company worker representative Xiao Yunliang, March, 19, 2002, English translation of the transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2146](http://iso.china-labour.org.hk/iso/article.adp?article_id=2146) (accessed on April 12, 2002).

<sup>107</sup> Unemployed Workers..., “Open Letter to President Jiang Zemin.”

<sup>108</sup> Yang Ming, “*Liaoyang wanming gongren zaici shiwei qingyuan*” (“Liaoyang workers again demonstrate and petition”), Voice of America, March 12, 2002, reprinted in *Xianqu Jikan (Pioneer Monthly)*, Issue 63 (Spring 2002), p. 27.

They were still angry about previous detentions and about the fact that not one factory manager had been detained on suspicion of corruption.

The officials bought time by arguing they had to wait for the secretary of the Communist Party Committee to return from a trip before resuming talks. But the Public Security Bureau chief did guarantee that workers could safely return to their homes; no one would be arrested. Taking officials at their word, workers called off the protests.

For four days all was quiet. Then, on March 17 around 8:00 a.m., Yao Fuxin left home alone to buy tobacco. He was still in view when his daughter saw two men in civilian clothes bundle him into a car. A policeman on duty at the station house, when asked about the incident, said he knew nothing about it.<sup>109</sup> Questioned by the media as to whether those responsible were police officers, Yao's daughter replied:

[I]f they were, they should have phoned to tell us they had detained him. That's the correct procedure isn't it? But we still haven't heard any news and this happened nearly two days ago. We don't know anything.<sup>110</sup>

On March 18 workers turned out in force to protest Yao's apparent arrest. According to participants, some 4,000 former Ferroalloy workers were joined by as many as 30,000 supporters from some twenty other Liaoyang factories in a march down Democracy Road to local government headquarters to demand Yao's release and to express outrage at the government's broken promise.<sup>111</sup>

According to participants and local taxi drivers, some 10,000 took part in the following day's demonstration. Pang, in speaking with reporters, claimed the turnout would have been much larger if the police had not set up roadblocks. He went on to say, "[We] also asked for talks with the Party and the mayor, but they refused to meet us." By the afternoon, after most of the protesters had left, bystanders saw some 250 former Ferroalloy workers leaving the government compound carrying banners. At least one read, "we have a government of hooligans."<sup>112</sup>

By March 20, police and paramilitary troops had sealed off streets leading to Democracy Road. The show of force, combined with bad weather, reduced the marchers to less than one-fifteenth their former number. Some 2,000—many of them elderly and retired, as organizers thought they were less likely to be arrested—did gather in front of government offices; worker representatives planned to go inside to try to negotiate Yao's release. His daughter described the morning scene:

Today, they deployed the People's Armed Police (PAP) and senior Public Security Bureau police officers [*ganjing*, also known as "cadre police"]. They were all out there. There were three truckloads of PAP troops right outside the gates to the city government offices. They pushed us [out of the building's courtyard] into the rain and we all were drenched. Seventy- and eighty-year-old women drenched in the rain! The guys wearing steel helmets were the anti-riot police.<sup>113</sup>

One worker representative, Gu Baoshu, was able to get past the paramilitary troops and into the government building, only to be detained by security forces. When a woman in the crowd realized what had happened and

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<sup>109</sup> Radio Free Asia interview with cadre from Liaoyang government office, "Over 30,000 Liaoyang Workers Demonstrate to Demand Yao's Release," March 18, 2002, English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2130](http://iso.china-labour.org.hk/iso/article.adp?article_id=2130) (accessed on March 29, 2002).

<sup>110</sup> Ibid.

<sup>111</sup> See, for example, "Liaoyang Workers' leader Yao Fuxin Secretly Detained," China Labor Bulletin Press Release. It should be noted that as with most parades, demonstrations, and protests, participants tend to exaggerate the numbers; opponents tend to downplay them.

<sup>112</sup> Robert J. Saiget, "Chinese police curb protests as demos enter third straight day," Agence France-Presse, March 19, 2002.

<sup>113</sup> Radio Free Asia interview with Yao Fuxin's daughter, "Update on Liaoyang Workers' Protests," March 21, 2002, English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2316](http://iso.china-labour.org.hk/iso/article.adp?article_id=2316) (accessed on April 2, 2002).

alerted others, some one hundred workers forced their way into the room where public security officials were holding Gu and secured his release. A month later police officers took their revenge. (See below.)

By midday on March 20, the workers had started home. About thirty older retired workers, under the impression that security forces would not attack them, agreed to protect worker representatives who were also returning home. Not far from the government offices, a combined group of police and PAP officers rushed the workers and seized three representatives, Pang Qingxiang and Xiao Yunliang, both in their fifties; and thirty-nine year-old Wang Zhaoming. The incident brought the number of detained worker representatives to four.

Workers now felt even more strongly that only older, retired workers would be safe in representing them; and some 1,000 appeared at government offices the next day, March 21, to demand the release of the four detainees. As Yao Fuxin's daughter described the scene: "Today, there was an older Ferroalloy worker in a wheelchair who came out... Two older women pushed his wheelchair and he represented us."<sup>114</sup> Despite the precautions, two more workers were detained, including Pang Qingxiang's wife Guo Suxiang and an unidentified worker who objected to Guo's detention.<sup>115</sup>

Later on March 21, officers of the Baita district Public Security Bureau notified Yao's family that he was, in fact, in their custody.<sup>116</sup> That night, in what apparently was an attempt to persuade workers to call off the protests, Yao was permitted to telephone his wife from the Tieling city police lockup, some one hundred kilometers from Liaoyang. She in turn visited workers to urge restraint.

Yao was reticent to talk about his own condition despite inquiries from his wife. She later recalled the conversation:

When he rang, someone else came on the line first and said, "Are you a relative of Yao Fuxin?" I said "yes." Then he said, "Well he would like to have a few words with you." That was it. Then he let Yao Fuxin persuade me to talk to everyone and ask them to call off the demonstrations. After Yao finished I asked him, "Are you ok?" He said he was and that he had already talked to [the head of Liaoyang's PSB]. I asked what he had said. Yao said, "Nothing much." That's what Yao said. He didn't give any precise day when people would be released. The main thing he talked about was that people should stay off the streets and stop demanding that the government release people; people need to calm down as he has already talked with [Liaoyang's PSB head]. I said, "So what did he say about you and the others [detainees]?" He said, "It's nothing; nothing to worry about. That's about it really."<sup>117</sup>

Also on March 21, the four detained leaders—Yao, Pang, Wang, and Xiao—received formal notices of their arrests; the men were charged with "illegal demonstration," that is, with responsibility for organizing the protests. The notice was based on allegations that the workers violated the "PRC Law on Assemblies, Parades and Demonstration" which requires advanced police permission for demonstrations.<sup>118</sup>

In the Ferroalloy case, the state-controlled *Liaoyang Daily* described "putting up posters in public places and making links [cooperation among workers from different factories]" to be evidence of criminal activity—a not-so-

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<sup>114</sup> Radio Free Asia interview with Guo Xiujing, "Two more workers arrested in Liaoyang," March 21, 2002, English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2384](http://iso.china-labour.org.hk/iso/article.adp?article_id=2384) (accessed on March 28, 2002).

<sup>115</sup> Guo was released after several hours. As of late July 2002, Human Rights Watch has been unable to identify the other worker or determine whether he is still in custody.

<sup>116</sup> Robert J. Saiget, "Chinese Police curb protests..."

<sup>117</sup> Radio Free Asia interview, "Liaoyang Workers Protest Update," March 22, 2002, English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2393&category\\_name=Labour%](http://iso.china-labour.org.hk/iso/article.adp?article_id=2393&category_name=Labour%20) (accessed on April 6, 2002).

<sup>118</sup> "PRC Law on Assemblies, Parades and Demonstration," BBC Summary of World Broadcasts, November 2, 1989, from Xinhua, October 31, 1989. "Regulations for the Implementation of the Law of Assembly, Procession and Demonstration of the People's Republic of China," (Implementing Regulations) Articles 7-12, June 1992.

oblique justification for any arrests the police might make.<sup>119</sup> The fact that workers from other plants had joined the Ferroalloy workers for some protests suggested a degree of planning. As one taxi driver said in commenting on the participation of textile, machinery, paper and other workers, “[T]hey had all linked up and organized.”<sup>120</sup>

By March 25, positions on both sides had hardened, with workers accusing the government of renegeing on promises to help them find work, suggesting instead they leave the area,<sup>121</sup> and city officials suggesting that outside agitators—hostile labor groups from Hong Kong and foreign “black hands,” including foreign media—were fanning the unrest.<sup>122</sup> In a statement read on Liaoyang’s state-run television, the city government said the detained workers had broken the law and would be dealt with accordingly.<sup>123</sup> On March 27, plainclothes police searched the homes of two worker representatives for “documents and contact books.”<sup>124</sup> It was reported that public security officers had threatened that detained leaders would face stiffer charges, and that even more workers would be detained if the protests continued.<sup>125</sup>

Reports circulated, at the same time, that Ferroalloy workers had received half their back wages and part of their severance pay, and that the city government was contributing Rmb 2.6 million (U.S.\$325,000) of the necessary funds.<sup>126</sup> Within a week, it became clear that the city would not release the worker representatives as it had hinted; and on March 30, the Liaoyang procuracy handed down indictments against the four detained leaders on charges of “illegal assembly, marches and protests.” In short, a previously tested government strategy—limited cash payments in lieu of wages, payment of welfare arrears to rank and file protesters, and severe penalties for organizers—was put in effect in Liaoyang.

In late March, after rumors surfaced that Yao had suffered a heart attack, relatives of the detained men appealed to city officials to free the men. According to one relative:

I cried and I knelt down in front of the government, but nobody talked to us... I was also trying to explain that we wanted no trouble, just the release of our loved ones. I was halfway through when some officials tried to haul us away.<sup>127</sup>

Several elderly women present argued with the officials, giving the relatives a chance to leave safely.

Within the week, it became clear that central authorities, likely concerned over the endurance and solidarity displayed by the workers, had ordered a crackdown. They informed local officials that it was their responsibility

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<sup>119</sup> “Government spokesperson answers reporters’ questions...,” *Liaoyang Daily*. Although the article does not say so specifically, “making links” refers to cooperation among workers from diverse factories and work units.

<sup>120</sup> Robert J. Saiget, “Workers Vow Defiance, keep up protests in northeast China city,” *Agence France-Presse*, March 21, 2002.

<sup>121</sup> “China worker protests rekindled despite employment offer,” *Reuters*, March 25, 2002.

<sup>122</sup> *Hei shou* is a Chinese euphemism for manipulators of public protests operating behind the scenes.

<sup>123</sup> “China worker protests rekindled...,” *Reuters*.

<sup>124</sup> Jonathan Ansfield, “Beijing Retirees Demand Overdue Pension Payments,” *Reuters*, March 27, 2001.

<sup>125</sup> “China worker protests rekindled...,” *Reuters*. The four were charged under Article 296 of the Criminal Law; see next section, below.

<sup>126</sup> Fong Tak-ho and agencies, “Workers threaten to resume protests unless arrested workers released,” *South China Morning Post*, March 25, 2002. According to a government spokesperson, as of March 15, 2002, the government had issued a total of Rmb 9.9 million in lump-sum, [job] resettlement allowances to 664 people and Rmb 2.4 million lump-sum economic compensation payments to 622 people. Six hundred seventy former contract workers (*hetong zhigong*) were to receive unemployment insurance; 814 workers who had not received lump-sum payments would be covered by pension agreements. In addition, benefits would be adjusted for workers who retired before bankruptcy, for former workers within five years of retirement age, and for those who retired early or who had incurred serious injuries. See “Government spokesperson answers reporters’ questions...,” *Liaoyang Daily*. Industrial injuries are graded in China; those up to grade six are considered serious enough to hinder employment prospects.

<sup>127</sup> “PRC: Relatives Seeking Release of Labor Leaders, Others Flee Officials in Liaoyang,” in Federal Broadcast Information Service (FBIS), April 1, 2002, from Hong Kong iMail, March 30, 2002.

to isolate workers from their counterparts in other provinces and industries and from foreign backers.<sup>128</sup> To back up the directive, the Chinese press was prohibited from reporting the protest story.<sup>129</sup>

The government's use of force and the charges against the protest leadership effectively stopped the demonstrations for a while, but the situation was far from calm. On April 11, Yao Fuxin's wife was permitted to see him in detention and reported that, although her husband could speak clearly, the right side of his body was numb and he was suffering from migraines. She also reported that Yao told her he had been kept in leg irons for the first four days of his detention.<sup>130</sup> With the exception of that visit, at this writing, there are no confirmed reports that detainees' relatives have been able to visit them or verify their condition during the more than four months they have been held. (Typically, families do not have access to criminal detainees until both trial and appeal are over and the prisoner is transferred from detention to a prison or labor camp.)

On April 16, police officers entered Gu Baoshu's home, ripped out the telephone line, bound, gagged, and beat him, then took him away. He was released, in a dazed condition, some eight hours later, but required hospitalization for chest pains and blood clots in his eyes.<sup>131</sup>

On April 22, Ferroalloy workers applied to hold a demonstration demanding the release of their jailed representatives but were denied permission. According to Guo Xiujing, Yao Fuxin's wife, "[The police] wanted to know the name of the organizer, but it goes without saying that anybody whose name appeared [on the permit application] would be arrested."<sup>132</sup> A second application on April 29 and a third on May 8 were also denied.<sup>133</sup>

A protest on May 1, the Labor Day holiday, ended without incident but with no concessions from local officials. On May 7, at the start of a three-day protest rally in front of government offices, the City Complaints Bureau told workers that officials were willing to meet with worker representatives. Fearful of detention, the workers refused but handed over a petition with five major demands. The petition urged officials to: 1) immediately and unconditionally release the four detainees or else try them quickly; 2) make arrangements for Ferroalloy workers to visit with their jailed representatives; 3) investigate and issue a public report on forced bankruptcies; 4) increase government efforts to clamp down on corrupt officials; and 5) punish officers responsible for beating Gu Baoshu.<sup>134</sup> Violence erupted on May 15, when some dozen plainclothes police charged into a crowd of protesters, kicking and punching indiscriminately in an effort to seize the workers' banners. After an elderly woman was beaten and her son remonstrated with the police, he, too, was beaten and dragged away. The Complaints Bureau arranged for his same-day release.<sup>135</sup>

### Legal issues

Freedom to demonstrate is guaranteed in Article 35 of the Chinese constitution. However, the provisions of the PRC Law on Assemblies, Procession and Demonstration and the law's implementing regulations make it almost impossible to hold protest demonstrations if the relevant authorities object.<sup>136</sup>

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<sup>128</sup> Vivien Pik-Kwan Chan, "Beijing orders protest crackdown," *South China Morning Post*, March 30, 2002.

<sup>129</sup> "Chinese Labor Leaders Indicted for Illegal Assembly," Agence France-Presse, March 31, 2002.

<sup>130</sup> "Press Release on Detained Workers in Liaoyang," *China Labour Bulletin*, April 11, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2254&category\\_name=Press%20Release](http://iso.china-labour.org.hk/iso/article.adp?article_id=2254&category_name=Press%20Release) (accessed on April 12, 2002).

<sup>131</sup> "Hundreds Demand Protesters' Release," *South China Morning Post*, May 10, 2002.

<sup>132</sup> "Police abuse alleged by Liaoyang workers," *South China Morning Post*, April 24, 2002. The Implementing Regulations require a "responsible individual," (Article 8) who must "submit in person a written application" together with "his own resident card" (Article 9).

<sup>133</sup> "*Liaoyang gongren zuixin de baodao*" ("Latest report on the Liaoyang workers"), *China Labour Bulletin*, March 8, 2002, [http://big5.china-labour.org.hk/big5/article.adp?article\\_id=2287](http://big5.china-labour.org.hk/big5/article.adp?article_id=2287) (accessed on May 2, 2002).

<sup>134</sup> *Ibid.*

<sup>135</sup> "*Liaoyang jingfangzaici dui heping qingyuan gongren shiyong baoli*" ("Police authorities again use violence against peaceful workers' protest"), *China Labour Bulletin*, May 15, 2002, [http://big5.china-labour.org.hk/big5/article.adp?article\\_id=2320](http://big5.china-labour.org.hk/big5/article.adp?article_id=2320) (accessed on June 12, 2002).

<sup>136</sup> "PRC Law on Assemblies, Parades and Demonstration," see Articles 8-13.

The assembly and procession law contravenes the International Covenant on Civil and Political Rights, which China signed in 1998. Article 21 of the ICCPR provides that no restrictions may be placed on the exercise of the right to peaceful assembly “other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedom of others.”<sup>137</sup> Any restrictions on the right to assembly must be absolutely necessary to attain a valid state purpose and must correspond to a minimum democratic standard.<sup>138</sup>

Applications to demonstrate are decided on by the Public Security Bureau and can be denied if what is proposed is deemed to “infringe upon the interests of the state, society and collectives,” or would “endanger national unification, sovereignty or territorial integrity...or there is ample evidence to prove that the assembly, parade or demonstration will directly jeopardize public security or severely undermine public order.”<sup>139</sup> Such a broad and loosely worded regulation gives local authorities extraordinary discretion and invites arbitrary and politically motivated denials. In addition, an application to demonstrate cannot be considered if “the placards and slogans to be used...and the names, occupations and addresses of the sponsors” are not included.<sup>140</sup> Sponsors have three days within which to “request a re-examination” of a rejection; the authorities have three days to respond.<sup>141</sup>

Demonstrating after failing to obtain permission carries a possible prison term; thus, the four accused leaders of the Liaoyang protests face up to five years in prison under Article 296 of the Criminal Law on charges of responsibility for “illegal assembly, marches and protests.”<sup>142</sup>

Workers, with precedent to draw on, had no reason to believe an application to demonstrate would be dealt with in good faith. During December 1997-January 1998, workers from Beijing's 3501 Factory embarked on a campaign against the introduction of limited one-year contracts subject to annual renewal. Management retaliated by dismissing those who refused to sign. After negotiations failed, workers applied to demonstrate. Two police districts denied the request, stating, “There are sufficient grounds to maintain that a parade or demonstration will endanger public security [sufficient] to seriously endanger social order.”<sup>143</sup> As mentioned, in April and May 2002 police turned down three applications to demonstrate submitted by Liaoyang workers. The Liaoyang Public Security Bureau's refusal to issue a permit did not meet the applicable conditions.

Human Rights Watch has serious concerns about the Liaoyang detainees' access to due process, given the harshness of the law, the inadequacy of protections offered at trial, and the difficulties the defendants face in obtaining independent, qualified counsel. For example, the families of the four detainees, Yao Fuxin, Pang Qingxiang, Xiao Yunliang, and Wang Zhaoming, spent April and May trying to find lawyers willing to represent the men. Only Xiao Yunliang's family had succeeded as of this writing, and, when Xiao's lawyer tried to meet with him in early April, the Public Security Bureau refused him permission, claiming that Xiao had refused to hire him.<sup>144</sup>

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<sup>137</sup> International Covenant on Civil and Political Rights, Article 21.

<sup>138</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Strasbourg: N.P. Engel, 1993), p. 379.

<sup>139</sup> “PRC Law on Assemblies...,” Articles 4 and 12.

<sup>140</sup> *Ibid.*, Article 8.

<sup>141</sup> *Ibid.*, Article 13.

<sup>142</sup> “Whoever holds an assembly, parade, demonstration without application in accordance with the law or without authorization after application, or does not carry it out in accordance with the beginning time and ending time, place, and road as permitted by authorities concerned, and refuses to obey an order to dismiss, thereby seriously sabotaging social order, those personnel who are in charge and those who are directly responsible are to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control or deprived of political rights.” “China: Text of Criminal Law,” FBIS, March 25, 1997, from Beijing Xinhua Domestic Service, March 17, 1997.

<sup>143</sup> “PRC Law on Assemblies...,” Article 12, Section 4 (4).

<sup>144</sup> Much has been written about the severe deficiencies of the Chinese legal system and of the particular problems faced by defendants in politically sensitive trials. Among major concerns are the lack of presumption of innocence, prolonged incommunicado detention, procedural shortcomings that compromise defendants' rights, use of illegally obtained evidence, secrecy, politically driven verdicts, and administrative sanction substituting for formal criminal punishment. For a full

## Daqing, Heilongjiang Province

During the 1960s and 1970s, Daqing became renowned throughout China as the model for rapid oil field development. Even now, thirty-two years after his death in 1970, it is difficult to find an urban resident in China who is not familiar with the personification of that model, Wang Jinxi, better known as Iron Man Wang. Wang's reputed selflessness, his patriotism, and willingness to work long hours in terrible conditions to support the nation's development were frequently lauded in nationwide "emulation" campaigns.<sup>145</sup>

Ironically, it is protesting workers in Daqing, most in their forties, fifties, and sixties, who invoke Wang's spirit and determination. One flier handed out in the city's Iron Man Square on March 25, 2002 called on protesters to "follow the Iron Man's example. It is better to die twenty years early and struggle with all one's might to the end...."<sup>146</sup>

Oil was discovered in the Daqing area in 1958 at the beginning of the Great Leap Forward (GLF), an ultimately disastrous campaign aimed at forcing the pace of China's modernization so as to "catch up and surpass Britain in the output of major industrial goods" within three years.<sup>147</sup> The result was a near collapse of industry, a dramatic decline in agricultural production, and at least thirty million people dead from starvation.<sup>148</sup>

The fledgling oil industry in Daqing was one bright spot in a nearly bankrupt economy, at the time 90 percent dependent on imported oil.<sup>149</sup> In 1960, to speed Daqing's development, Mao approved the transfer of 30,000 demobilized troops to join workers already there,<sup>150</sup> by June 1, the first barrels of oil left Daqing; and by 1963 the regime declared dependence on foreign oil over.<sup>151</sup> During the next four decades, Daqing, with over 26,000 wells, became one of the largest oil fields in the world.<sup>152</sup> By 1976, oil production had reached fifty million metric tons, an annual output that was sustained until the late 1990s.<sup>153</sup>

According to the State Statistics Bureau, in 2000, urban residents' per capita disposable income was almost twice the national average;<sup>154</sup> average wages were in the top ten for cities nationwide.<sup>155</sup> But restructuring, the drying up of some wells, and lower international oil prices slowed production and led to serious unemployment. Further cuts are planned, tens of thousands of workers in 2002 alone, to allow PetroChina, owner of most of Daqing's oil fields, to fulfill its obligations to shareholders in the face of increased competition and pressure to improve productivity following WTO entry.<sup>156</sup>

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discussion of the issues, see Lawyers Committee for Human Rights, *Opening to Reform? An Analysis of China's Revised Criminal Procedure Law* (New York: LCHR, 1996) and Lawyers Committee for Human Rights, *Wrongs and Rights: A Human Rights Analysis of China's Revised Criminal Law* (New York: LCHR, 1998).

<sup>145</sup> Perhaps the most famous incident is when a concrete mixer broke down and a mix of concrete was in danger of being wasted. Wang jumped in the mix and used his legs—one of which was artificial—to keep it fresh.

<sup>146</sup> "8 wan mai duan zhigong tongbaomen!" ("80,000 Fellow Retrenched Workers"), a leaflet produced by former oil workers, reprinted in *Xianqu Jikan (Pioneer Quarterly)*, March 25, 2002, Issue 63 (Spring 2002), p. 19.

<sup>147</sup> Mao Zedong, speech at the 8<sup>th</sup> Party Congress, 2<sup>nd</sup> session, May 18, 1958, quoted in Nigel Harris, *The Mandate of Heaven – Marx and Mao in Modern China* (London: Quartet Books, 1978), p. 49.

<sup>148</sup> Jasper Becker, *Hungry Ghosts – China's Secret Famine* (London: John Murray, 1996), p. xi.

<sup>149</sup> Daqing City Profile,

[www.wcep.org/tradeweb/nmsruntime/saveasdialog.asp?3Fname%3DDaqinsertpdf.pdf%26location%3Dupload%252FDaqin sertpdf.pdf+Daqing+Profile&hl=en](http://www.wcep.org/tradeweb/nmsruntime/saveasdialog.asp?3Fname%3DDaqinsertpdf.pdf%26location%3Dupload%252FDaqin sertpdf.pdf+Daqing+Profile&hl=en) (accessed on June 13, 2002).

<sup>150</sup> Chen Tai, "Daqing gongchao zongshu" ("Summary of Daqing labor unrest"), May 12, 2002.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Daqing City Profile.

<sup>154</sup> "Per Capita Annual Income of Urban and Rural Households and Their Related Index," China Internet Information Center, <http://www.china.org.cn/e-Internet/RM/HTML/10-3.htm>, (accessed on July 5, 2002); see also Daqing City Profile.

<sup>155</sup> Jin Yan and Tian Lei, "Daqing zaiyuan de gaoan chengben" ("The High Cost of Daqing's Downsizing"), *Sanlian shenghuo*, Issue 14, April 8, 2002, p. 36-39.

<sup>156</sup> Source for the figure only: James Kynge, "Labor protests worry Chinese premier," *Financial Times*, March 16, 2002.

### ***Background to the March-April protests***

The wave of daily workers' protest demonstrations that began on March 1, 2002, emerged from over five years of major restructuring in the oil industry and the gradual decline of Daqing as China's most important oil center. Oil imports steadily increased through the 1990s; by 2001, 30 percent of China's oil was imported.<sup>157</sup> In 1998, to enhance China's position in the international oil market, its oil fields were assigned to one of two vertically integrated state-owned corporations, the China National Petroleum Corporation (CNPC) and the China Petrochemical Corporation (Sinopec). CNPC absorbed the Daqing oil field.<sup>158</sup> In early 2000, CNPC went a step further. As part of plans to list on the Hong Kong and New York stock exchanges, CNPC transferred most of its high quality domestic assets into a subsidiary named PetroChina which became the parent company of the Daqing Oil Company Ltd (DOCL), the former Daqing Petroleum Administration Bureau (DPAB).<sup>159</sup> The initial public offering (IPO) of PetroChina went ahead in April 2000.

Although the Daqing field still accounts for 30 percent of China's crude oil production, output continues to be down and DOCL faces an uphill struggle to regain profitability.<sup>160</sup> Senior figures in the DOCL management believe the effort is going forward on a less than level playing field. Referring to PetroChina separating out its most profitable assets for the IPO, Zeng Yukang, head of Daqing Oil and the target of oil workers' wrath, told the *People's Daily* just before protests started in March, "[A]nyone left in the remaining subsidiary companies would scream injustice."<sup>161</sup>

Aging wells, high production costs, and a drop in the international price of crude oil were cited by Daqing Mayor Wang Zhibin as causes of the production cutback.<sup>162</sup> During the protests, he went on to say that Daqing's traditional economy was in trouble and making "all-out efforts to restructure is the only option we have."<sup>163</sup>

Estimates for the number of Daqing workers laid off since Daqing Oil began restructuring vary considerably, from 38,000 by January 2001,<sup>164</sup> to "86,000 of the company's 260,000 employees [in] recent years."<sup>165</sup> A Daqing resident told a Human Rights Watch researcher that over 50,000 had signed severance contracts in "late 2000."<sup>166</sup> A PetroChina official put the figure at 58,000.<sup>167</sup> A leaflet distributed among former oil workers on March 25, 2002, was addressed to "80,000 fellow retrenched workers."<sup>168</sup> One account put the total number of oil workers at 300,000 (plus nearly 800,000 dependents) out of a population of two million.<sup>169</sup> The report went on to say that there were few jobs outside the oil industry.<sup>170</sup>

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<sup>157</sup> John Gittings, "Strikes convulse China's oil-rich heartlands: Unrest said to be worst since Tiananmen," *Guardian*, March 21, 2002.

<sup>158</sup> Anthony Kuhn, "Ex-Workers Face off with China Oil Firm, Shift toward a market economy has left thousands in the northeast unemployed," *Los Angeles Times*, March 19, 2002.

<sup>159</sup> Workers still refer to the newly named Daqing Oil Company Ltd. as the Daqing Petroleum Administration Bureau.

<sup>160</sup> *Energy Information Administration*, "China," June 2002, <http://www.eia.doe.gov/cabs/china2.html> (accessed on July 6, 2002).

<sup>161</sup> Anthony Kuhn, "Ex-Workers Face off...", *Los Angeles Times*.

<sup>162</sup> James Kynge, "Labor protests...", *Financial Times*.

<sup>163</sup> Nan Chen, "Making all-out efforts - interview with Daqing Mayor Wang Zhibin," BBC Monitoring, March 13, 2002, from Xinhua, March 13, 2002.

<sup>164</sup> John Pomfret, "Chinese Oil Country Simmers as Workers Protest Cost-Cutting: Thousands Laid Off, Benefits Reduced," *Washington Post*, March 16, 2002.

<sup>165</sup> Damien McElroy, "Chinese police face 'iron men,'" *Daily Telegraph*, March 20, 2002.

<sup>166</sup> Human Rights Watch interview, Daqing, March 10, 2002.

<sup>167</sup> Wang Fucheng, vice-president of PetroChina, Daqing Oil Company's parent company, quoted in "PetroChina buys Indonesian oilfields," *South China Morning Post*, April 4, 2002.

<sup>168</sup> Reprinted in *Xianqu Jikan (Pioneer Monthly)*, Issue 63 (Spring 2002), p. 19. In the same issue, a Daqing labor activist reports, "50,000...were retrenched with compensation on November 20, 2000 and 30,000 the following year." The term "retrenched worker" (alternatively "redundant worker") refers to a laid-off worker. Some such workers volunteered to be among those laid off; others had no choice.

<sup>169</sup> Jin Yan and Tian Lei, "*Daqing zaiyuan* ...," p. 37.

<sup>170</sup> Mark O'Neill, "Quarter of city's oil workers left out in the cold," *South China Morning Post*, April 10, 2002.

On November 7-8, 2000, Daqing Oil issued two documents that outlined the severance agreement the company was offering some 80,000 of its laid-off employees, more than one-quarter of the city's oil workers.<sup>171</sup> According to a workers' handbill issued two years later and sent to the Heilongjiang provincial government, the agreement was forced on them.<sup>172</sup> According to the Daqing government, Daqing Oil, and PetroChina, all the laid-off workers voluntarily signed the severance contracts; and all three insisted the process was entirely legal.

After a March 25, 2002, meeting with what authorities claimed were representatives of an organization called "workers compensated for contract termination," the leader of a State Council Investigation Team that had been sent to Daqing to look into the dispute, made the same points in a speech broadcast over loudspeaker in Iron Man Square. He asked pointedly, "Why are people complaining now?"<sup>173</sup>

Laid-off workers told a different story. In a leaflet criticizing the process, they charged that there had been no consultation with the company's workers congress:

Surely such decisions that are not discussed by the staff and workers congress, but simply announced and implemented, violate the Enterprise Law and the Trade Union Law. Why didn't the Daqing Petroleum Administration Bureau trade union protect the rights of the workers? So much for the DPAB's stressing of "legality."<sup>174</sup>

Although Daqing Oil did not make full details of the severance payments public, it reportedly offered workers relatively large sums of money for years of accumulated service.<sup>175</sup> Accounts vary, but the compensation ceiling was on the order of Rmb 100,000 (U.S.\$12,500).<sup>176</sup> But it was not the amount of money, *per se*, that angered workers. Rather, their grievances related to ongoing suspicions that management had not informed them of relevant information before the agreement was finalized, and resentment of the unilateral changes made to it since. The banners of protesting workers expressed their outrage: "We don't want to be tricked again!" "Give me my job back!"<sup>177</sup>

Workers had been offered the severance package with no alternative, they say, and then the terms had been changed. As one laid-off employee, who had opened a shop with her severance money and did not plead poverty, recalled the situation:

When the company made the offer they made it clear we had no choice; they had to reduce the workforce or the company was finished. Take the money now or you'll get nothing later on, was the message. So everyone took it, because they [the company] said when we reached retirement age we would get the same treatment as the workers kept on. Now they've changed it. They lied.<sup>178</sup>

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<sup>171</sup> The workers' leaflets referred to the documents as DPAB Document Nos. 2000117 ("Methods for the printing and distribution of compensated dismissal contracts") and 2000118.

<sup>172</sup> "Leaflet 1 – Retrenched workers cherish the memory of Mao Zedong," March 3, 2002, cited in *Xianqu Jikan (Pioneer Monthly)*, Issue 63 (Spring 2002), p. 17. According to the handbill, the documents issued by the company "do not tally with the compensated redundancy contract, do not possess any legal validity...and the announcements [documents] are therefore void." See also Anthony Kuhn, "Ex-Workers Face off..." *Los Angeles Times*; Mark O'Neill, "Quarter of city's oil workers..." *South China Morning Post*.

<sup>173</sup> "Guowuyuan diaocha zu fuze ren Daqing jianghua yaodian" ("Main points of the speech by the coordinator of the State Council's Investigation Team"), broadcast over the public address system in Iron Man Square on March 25, 2002, transcription in *Xianqu Jikan (Pioneer Monthly)*, Issue 63, (Spring 2002), p. 21.

<sup>174</sup> Former oil workers leaflet "Women bixu tao hui gongdao" ("We Must Have Justice"), March 26, 2002, reprinted in *Xianqu Jikan (Pioneer Monthly)*, Issue 63 (Spring 2002), p. 24. In the leaflets, the workers consistently refer to Daqing Oil as the Daqing Petroleum Administration Bureau.

<sup>175</sup> Jin Yan and Tian Lei, "Daqing zaiyuan..." *Sanlian shengguo*, p. 38.

<sup>176</sup> John Pomfret, "Chinese Oil Country Simmers..." *Washington Post*; Mark O'Neill, "Quarter of city's oil workers..." *South China Morning Post*.

<sup>177</sup> "Daqing Oilfield Workers' Struggle (1)," *China Labor Bulletin*, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2116](http://iso.china-labour.org.hk/iso/article.adp?article_id=2116) (accessed on March 12, 2002).

<sup>178</sup> Human Rights Watch interview, Daqing, March 11, 2002.

She was referring to increases of 46 percent in pension premiums and medical insurance between the time the agreement was signed in November 2000 and early 2002.<sup>179</sup> Daqing Oil also unilaterally reneged on other aspects of its severance agreement with the workers, including eliminating heating subsidies of Rmb 3,000 (about U.S.\$375) a year.<sup>180</sup>

Corruption was a factor in Daqing, as in Liaoyang. In May 1997, the listing of the Lianyi Petrochemical Company, a Daqing-based enterprise, on the Shanghai stock exchange engendered a major scandal.<sup>181</sup> According to an official with the China Securities Regulatory Commission “The majority of the certification it submitted...was false, including its business license.”<sup>182</sup> In contrast with Liaoyang, in this case thirty-nine officials were punished for illegal activities. But the accusations of unilateral and illegal behavior leveled at Daqing Oil’s management did not move the government to investigate or intervene.

### **March and April, 2002**

The changes to pension and insurance premiums came on top of other losses that put many former employees on the verge of poverty. Many ex-oil workers had seen their compensation money disappear after they followed government advice and opened small businesses which quickly failed.<sup>183</sup> The final straw came on February 12, 2002 when Daqing Oil, despite former promises, announced that it would no longer pay heating allowances. Within three weeks, on March 1, some 3,000 former oil workers marched on Daqing Oil headquarters under the banner of an independent labor organization, the Daqing Petroleum Administration Bureau Retrenched Workers’ Provisional Union Committee (DRWPU).<sup>184</sup> Few leaflets were issued in the committee’s name but by March 4, its organizing efforts rallied over 50,000 workers in protest.<sup>185</sup>

Deliberately elusive, the core organizers seem to have been a small group. One demonstration participant told Radio Free Asia: “There were maybe four or five people. They all seemed pretty clued up and well-educated, able to write well and speak articulately, and they understood the law as well.”<sup>186</sup>

Although they became increasingly intermittent, demonstrations persisted through March and into April and May. A group of some 1,000 protesting workers spearheaded the gatherings in Iron Man Square, with the number swelling regularly to between 7,000 and 8,000 despite police roadblocks. By mid-March, the demonstrations were being monitored each day by some 800 PAP troops; and at least twelve truckloads of soldiers were out of sight but available at a moment’s notice. By that time, too, fear of copycat protests led to a total domestic media blackout. A search of the *Workers Daily* website postings from the middle of March to the end of May and of various local labor publications produced no reports—not even a mention—of the unrest. In quieter times, the issues that sparked the protests, such as wage arrears, severance deals, and allegations of corruption, are regularly covered in the official labor press.<sup>187</sup>

<sup>179</sup> Figures on the size of the increase in medical and pension premiums vary. The percentage given is based on figures quoted in a report by Lin Jin, “Laizi Daqing de baogao” (“Report from Daqing”), *Xianqu Jikan (Pioneer Monthly)*, Issue 63 (Spring 2002), p. 14.

<sup>180</sup> “50,000 Daqing Oilfield Workers Organize Independent Trade Union,” China Labour Bulletin Press Release, March 6, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2059](http://iso.china-labour.org.hk/iso/article.adp?article_id=2059) (accessed on March 10, 2002); “Chinese worker protests ease as government digs in,” Reuters, March 26, 2002.

<sup>181</sup> John Pomfret, “Chinese Oil Country Simmers...,” *Washington Post*.

<sup>182</sup> “Chinese petrochemical firm listed on false grounds: official,” Agence France-Presse, May 25, 1999.

<sup>183</sup> Lin Jin, “Laizi Daqing de baogao,” *Xianqu Jikan (Pioneer Monthly)*, Issue 63 (Spring 2002), p. 15.

<sup>184</sup> “Daqing Oilfield Workers’ Protests,” China Labour Bulletin Press Release, March 6, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2059&category\\_name=Press%20Release](http://iso.china-labour.org.hk/iso/article.adp?article_id=2059&category_name=Press%20Release) (accessed on July 24, 2002).

<sup>185</sup> “50,000 Daqing Oilfield Workers Organize Independent Trade Union,” China Labor Bulletin Press Release, March 6, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id\\_2059](http://iso.china-labour.org.hk/iso/article.adp?article_id_2059) (accessed on March 10, 2002).

<sup>186</sup> Radio Free Asia interview, April 1, 2002, English translation of transcript, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2262](http://iso.china-labour.org.hk/iso/article.adp?article_id=2262) (accessed on April 12, 2002).

<sup>187</sup> See for example, “How have wage arrears become a national custom,” *Workers Daily*, September 5, 2001, an article critical of the practice and its violation of workers’ legal rights; Hou Yongdong, “Shenyang ‘xiehe’ da caiyuan, yiqian bai

The largest crowds gathered on March 4 and 5. The first day, workers blocked a train heading for Russia for thirty minutes in a successful attempt to attract international attention to the protests. One participant—who would be detained twice in connection with the protests—described the scene:

From 7:00 onwards...more and more people arrived, well over 20,000. We headed towards the railway tracks because some people were saying that an international train was due to come through and it would have foreigners on board; if we hold them up, we will have more impact.... We blocked it for half an hour but then dispersed as we were afraid that a long delay might cause an accident.<sup>188</sup>

In the four months since the start of the protests, plainclothes police made “snatch” detentions of anyone who appeared to play a leading or organizing role. At least sixty and reportedly as many as 300 were held at least briefly at either the Dongfeng Detention Center in Daqing or the Daqing Reeducation through Labor Center in Dong Feng New Village.<sup>189</sup> On March 5, ten worker representatives were taken into custody after they entered the Daqing Oil building at the invitation of officials who had implied a willingness to negotiate.<sup>190</sup> They were released three days later on condition they would not return to Iron Man Square.<sup>191</sup>

That same day, March 5, plainclothes police detained a Mrs. Ma, who had earlier pleaded with the crowd in Iron Man Square to uphold public order and, not to smash any windows or public property. As one worker reported:

She was saying to everyone that we're all laid-off workers and there was no need to smash things up as it would only play into the hands of bad people like the Falungong who would manipulate [the protests]. She said we must respect public order and not break windows and doors.<sup>192</sup>

Reports indicate that some minor unprovoked acts of vandalism occurred. Human Rights Watch recognizes that Chinese authorities have the right and the responsibility to investigate and prosecute those responsible for acts of violence. The authorities made no allegations that those taken into custody were apprehended for participation in such acts. Indeed, Mrs. Ma urged against any vandalism.

The police detained Mrs. Ma around 4:00 p.m., and, according to another participant who witnessed the incident, officers hit her hard enough to make her mouth bleed.<sup>193</sup>

According to the same source, a laid-off worker, Mrs. Ma was still in custody as of April 1 and had managed to send out a letter saying she was refusing food. The source reported on two other detentions. Li Yan, a retired worker, was in detention as of April 1; as of this writing in mid-July, his whereabouts and condition remained

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*ming yuangong wuyi xingmian – mei jing dongshihui he zhigong daibiaohui taolun*,” (“None of the 1,100 workers at Shenyang City’s Harmony Company escape the mass lay-off. Neither the board of directors or the staff and workers representative congress discuss the issue”), *Liaoning zhigong bao (Liaoning Staff and Workers Daily)*, June 3, 1996, an article critical of the “ornamental trade union,” and its lack of democratic consultation and dictatorial management leading to mass layoffs. Foreign reporters came in for their share of harassment. Zhang Xueqin, a Canadian citizen and reporter for the *Globe and Mail*, was held for two days and expelled for filming protests.

<sup>188</sup> “*Yi ming bei gongan liang zhua fang Daqing mai duan zhigong zishu*,” (“Twice Detained and Twice Released – A laid-off oil worker from Daqing tells his tale”), *Xianqu Jikun*, Issue 63 (Spring 2002), p. 22.

<sup>189</sup> Ibid.

<sup>190</sup> “Crackdown in Daqing with 60 Arrests and Police Beating,” *China Labor Bulletin*, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id\\_2262](http://iso.china-labour.org.hk/iso/article.adp?article_id_2262) (accessed on April 3, 2002).

<sup>191</sup> International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM), “China’s Protesting Oil Workers Get Global Union Backing,” ICEM Update, Issue 16, April 3, 2002, <http://www.icem.org/update/upd2002/upd02-16.html> (accessed on May 12, 2002).

<sup>192</sup> Radio Free Asia interview with former oil worker in Daqing, April 1, 2002, English translation of the transcript, “Crackdown in Daqing with 60 Arrests and Police Beating,” *China Labour Bulletin*, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2262](http://iso.china-labour.org.hk/iso/article.adp?article_id=2262) (accessed on June 12, 2002).

<sup>193</sup> Ibid.

unknown.<sup>194</sup> Another worker was detained for some twenty days for hanging a banner, and released after he paid Rmb 200 to the detention center. Workers in the Square also reported that detainees had to pay a daily charge of Rmb 100 for lodging (*pugai fei*) and Rmb 10 for food.<sup>195</sup>

According to participants in the protests, police released some detainees if they signed pledges not to return to Iron Man Square. One worker recounted her experiences in the police station:

She [the police officer] read the contents of the pledge to me clause by clause. Clause 1 said “guarantee not to go take part in disturbances.” I told her that of course I have to go [to the square]. If I don’t, then I’m finished. This is a matter of my rights.<sup>196</sup>

As the weeks passed, the situation became increasingly tense. On March 20, a gray Volkswagen Santana careened into workers demonstrating in Iron Man Square injuring at least five people, several seriously.<sup>197</sup>

Witnesses described the incident:

He was looking for trouble. People were saying the government had put him up to it... The police had to load him into a police van for his own protection or the crowd would have killed him. In the end, they flipped his car onto its back.<sup>198</sup>

A leaflet distributed among workers on March 26 reflected workers’ suspicions that the car could not have entered the area—which was sealed by roadblocks—without the complicity of the authorities:

We would like to ask how this car got through with the curfew on all vehicles [in the area]. Not one [other] got through the roadblocks. So how did Zhu Dayong get through in broad daylight and knock people down?<sup>199</sup>

A combination of threats, a police directive, and bad weather dampened a protest planned for April 4, the traditional *Qing Ming* festival, a day for sweeping graves and commemorating the dead. Workers had planned to commemorate Iron Man Wang, but the Public Security Bureau issued a notice banning the burning of offerings in public places and “suggested” that enterprises demand that workers guarantee that laid-off family members not participate. Workers who failed to stop their kin might find themselves out of work.<sup>200</sup>

As workers became exhausted and the demonstrations became smaller, the authorities became more assertive. On April 19, at about 10:00 a.m., a combination of police, PAP, and Daqing Oil security guards surrounded Iron Man Square and the Daqing Oil building. Public Security Bureau loudspeakers announced, “Owing to the presence of Falungong activists and people of unknown identity in the square, we need to carry out identity checks. Please do not leave the square.”<sup>201</sup> There was no evidence of Falungong involvement in the protests.

At about 10:40, police moved in, detaining anyone who had not left. According to one man who was present, the detainees filled twelve public buses. He described the scene in the police station:

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<sup>194</sup> Ibid.

<sup>195</sup> Lin Jin, “*Daqing dangju jajin zhenya, kangyi qunzhong shiqi diluo*,” (“Authorities in Daqing increase repression, protesters morale drops, report from Daqing”), *Xianqu Jikan (Pioneer Monthly)*, Issue 64 (Summer 2002), pp. 5-7.

<sup>196</sup> “*Yi ming bei gongan...*,” *Xianqu Jikan*.

<sup>197</sup> Crackdown in Daqing ...,” *China Labour Bulletin*.

<sup>198</sup> Ibid.

<sup>199</sup> “*8 wan mai duan zhigong tongbaomen!*” (“80,000 Fellow Retrenched Workers”), a leaflet produced by former oil workers, reprinted in *Xianqu Jikan (Pioneer Quarterly)*, March 25, 2002, Issue 63 (Spring 2002), p. 19.

<sup>200</sup> “Why doesn’t the government take steps to resolve its conflicts with the people?” *China Labour Bulletin*, May 6, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2523](http://iso.china-labour.org.hk/iso/article.adp?article_id=2523) (accessed on July 24, 2002).

<sup>201</sup> Lin Jin, “*Daqing dangju jajin zhenya...*,” *Xianqu Jikan*.

I saw this older guy. He was retired, not laid off. The police really steamed into him and were screaming at him, “What good is there in your going to Iron Man Square? What are you doing there? Are you from the Falungong? Tell us, are you Falungong?” The old guy was crying in terror.<sup>202</sup>

Three days later, on April 22, with some 7,000 workers filling the Square, a Public Security Bureau truck announced that the area was to be cordoned off. After demonstrators were squeezed into areas on the sides of the Square, police dogs sniffed for explosives near Iron Man Wang’s statue. None were found.<sup>203</sup> During that same week, police on the lookout for employed workers taking part in the protests, stepped up their investigations and ID checks.<sup>204</sup> At the same time, former colleagues who were still employed visited laid-off workers to report that Daqing Oil had not paid March bonuses or May 1 holiday bonuses, nor could they expect future bonuses if the protests continued.<sup>205</sup>

The threats and intimidation may have put a damper on protests; nevertheless, a month later, on May 13, a reported 20,000 workers gathered in front of Daqing Oil to demand negotiations.<sup>206</sup>

Intimidation was not confined to locals. Daqing authorities also attempted to stop foreign journalists covering the protests. Jiang Xueqin, a Canadian journalist for the Toronto *Globe and Mail* was deported on June 5 after being detained by police for two days.<sup>207</sup> Police had taken him into custody as he filmed protests in and around Iron Man Square.

Despite the media blackout, protests spread to oil fields in Xinjiang, Liaoning, and Hebei provinces. Several thousand laid-off workers from the Huabei Oilfield in Hebei staged demonstrations at the Changzhou city Petroleum Administration Bureau on March 4 in support of the Daqing workers.<sup>208</sup> In 2001, workers from the Shengli oil field in Shandong unsuccessfully attempted to file a lawsuit about payment arrears. After the Daqing protests, their stepped up pressure succeeded in persuading a Hebei province court to take the case.<sup>209</sup>

### **Fushun, Liaoning Province**

China is the largest producer of coal in the world and its largest user, accounting for almost one-fourth of the world’s total.<sup>210</sup> However, since the late 1990’s the country has been experiencing severe oversupply, leading the government to begin restructuring the mining sector.<sup>211</sup> In Fushun, a city of over two million residents, which has an open pit mine that has been in operation since the 12<sup>th</sup> century and which was further developed as a coal mining town at the beginning of the 20<sup>th</sup> century, the change has meant a steady decline in the city’s short-term prospects, in contrast to the sustained growth that began in the 1950s. Protests by laid-off mine workers in March 2002 followed on similar protests dating back at least four years.

As late as 1996, the official *China Daily* was still reporting that the city “has been one of China’s important industrial bases, with its value of fixed assets and pre-tax profits among the country’s top twenty cities” thanks to

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<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

<sup>206</sup> “The Daqing workers’ protest continues,” China Labour Bulletin Press Release, May 13, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id=2527&category\\_name=Press%20Release](http://iso.china-labour.org.hk/iso/article.adp?article_id=2527&category_name=Press%20Release) (accessed on May 14, 2002).

<sup>207</sup> Jiang Xueqin, “China’s Powerful Police,” *Asian Wall Street Journal*, July 9, 2002.

<sup>208</sup> “Daqing Oil Workers’ Action Rages On with Solidarity Demonstrations,” *China Labour Bulletin*, March 18, 2002, [http://iso.china-labour.org.hk/iso/news\\_item.adp?news\\_id=1838](http://iso.china-labour.org.hk/iso/news_item.adp?news_id=1838) (accessed on May 25, 2002).

<sup>209</sup> “Hebei Shengli Oilfield Workers Sue Employer Over Retrenchment,” *China Labor Bulletin*, May 5, 2002, [http://iso.china-labour.org.hk/iso/article.adp?article\\_id\\_1888](http://iso.china-labour.org.hk/iso/article.adp?article_id_1888) (accessed on June 12, 2002).

<sup>210</sup> *Energy Information Administration*, “China,” June 2002, <http://www.eia.doe.gov/emeu/cabs/china.html> (accessed on July 6, 2002).

<sup>211</sup> Ibid.

foreign investment and trade.<sup>212</sup> And in 2001, city planners were still trying to encourage development of a high-tech sector and new extractive industries to replace overwhelming dependence on heavy industry in general and coal in particular.<sup>213</sup> By 2002, the minister in charge of the State Economic and Trade Commission reported to the Standing Committee of the Chinese People's Political Consultative Congress that a majority of mining townships could no longer depend on natural resources to sustain economic viability.<sup>214</sup>

Fushun's growth strategy did not save its coal miners from layoffs or keep industrial unrest at bay. When a coal mine threatened to lay off 20,000 miners in 1994, they responded with petitions and slowdowns until the provincial government agreed that no one would be laid off and all workers would receive their wages, bonuses, and allowances.<sup>215</sup> By 1995, however, the city was experiencing severe unemployment as was the rest of the region.<sup>216</sup> In 1997 Premier Zhu Rongji in a tour of the province defended the layoffs and bankruptcies using the coal industry as a model:

One important reason behind state enterprises' problems is their excessive workers or overstaffing. Only with fewer workers can they lower costs, increase efficiency, and survive and develop... This method has been adopted by the coal industry for several years and has been proven to be effective.<sup>217</sup>

In Fushun, the premier also stressed the need for private ownership of living quarters, rather than industry-provided housing at almost no cost.

In 1999, Longfeng State Mine was allowed to declare bankruptcy, throwing close to 100,000 miners out of work.<sup>218</sup> During 2000, the Tiger Platform coal mine laid off 24,000 of its 30,000 miners, awarding them compensation of U.S.\$220 for each year of service, but with cutbacks on state-provided medical and heating benefits.<sup>219</sup> Workers from other industries were also laid off. By 1998 and 1999, retired miners were blocking roads and the rail line and occupying the train station in Fushun to protest lack of pension payments.<sup>220</sup> By 2001, according to official figures, 396,596 people were "at their post," but 305,128 were "not at their post," for a 43 percent laid-off (*xia gang*) rate. The registered unemployment rate was only 2.7 percent.<sup>221</sup>

In 2002, an air of poverty-induced crisis haunted the city:

Block after block of crumbling factories, their grounds covered in weeds, surround a few streets of mobile-phone retailers and gaudily fronted restaurants that offer a life few believe they will ever be able to afford. "People have a real sense of crisis," said a shopkeeper in Fushun.<sup>222</sup>

Sustained protests began in mid-March 2002 when as many as 10,000 laid-off workers from coal mines and cement, steel, and petrochemical factories blocked the railroad and the main road into Fushun over inadequate

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<sup>212</sup> Song Lijun and Xu Guangfa, "Fushun to become magnet for more overseas investors," *China Daily*, July 12, 1996.

<sup>213</sup> Chinese Business Information Network, *Financial Times*, December 19, 2001; Zhou Wanfeng, "Coal City Turning to Other Industries," *China Daily*, June 4, 2001.

<sup>214</sup> "PRC: CPPCC Urges Mining Cities To Find Alternative Industries," FBIS, June 28, 2002, from Xinhua, June 27, 2002.

<sup>215</sup> "Hong Kong Paper Catalogues Current Labor Unrest – Strikes, Rallies, Petitions," BBC Monitoring, April 16, 1994.

<sup>216</sup> Uli Schmetzer, "A Widening Wage Gap The Only Product of Many Factories in China," *Chicago Tribune*, February 21, 1995.

<sup>217</sup> "Zhu Rongji inspects state firms, mines in Liaoning Province," BBC Monitoring, August 9, 1997.

<sup>218</sup> "China's Coal Mine Closure Campaign Runs Into Opposition," *Dow Jones Energy Service*, July 11, 1999.

<sup>219</sup> Robert Marquand, "China faces growing labor unrest; Workers in Liaoyang are threatening to march again this week if protest leaders are not freed from jail," *Christian Science Monitor*, March 25, 2002; Charles Hutzler, "Chinese Labor Protests Die Down, for Now – Local Governments' Measures Defuse Tensions," *Asian Wall Street Journal*, March 25, 2002.

<sup>220</sup> "Rebellion in China," *Jane's Intelligence Review*, January 1, 2001.

<sup>221</sup> See footnotes 64-66.

<sup>222</sup> Charles Hutzler, "Chinese Labor Protests Die Down..." *Asian Wall Street Journal*.

severance payments.<sup>223</sup> During the second half of the month, laid-off coal miners, including some from the Tiger Platform Mine and Victory Mine planned and executed more sit-downs on the railroad tracks. To avoid being arrested, the organizers publicized the time and place of protests by putting up anonymous posters in the streets and buildings within workers' quarters.<sup>224</sup> It was illegal to put up posters in these locations without permission and required a group effort, darkness, and lookouts to accomplish. The method succeeded in recruiting some 3,000 participants who blocked the railroad twice more. To end the protests, Fushun officials distributed 75 renminbi (U.S.\$9.00) to each of the protesters and deployed the People's Armed Police to remove those who wouldn't disperse.<sup>225</sup>

## V. ANALYSIS

Reconciliation of two potentially conflicting goals—furtherance of economic restructuring and maintenance of social stability—has challenged the Chinese leadership ever since the reform process gathered momentum following Deng Xiaoping's 1992 tour of South China's special economic zones. But even as layoffs, inadequate re-employment, and shortfalls in social welfare programs fueled a rise in blue-collar militancy, China's leaders, cognizant of the argument of domestic and foreign advisors that there is "no alternative" to reform, however painful, expressed their determination to move ahead, confident in their ability to manage perceived threats to social order.<sup>226</sup>

Past policy for controlling protests has been to severely punish vulnerable members of the leadership, move aggressively to re-educate "diehard elements," and reintegrate rank and file followers into the social fabric. By so doing, religious activity has come under state control; opposition political parties have been destroyed as they surfaced; and the scope for ethnic nationality resistance has been significantly narrowed. But China's leaders also demonstrated their willingness to resort to overwhelming force: the 1989 massacre in Beijing and the on-going campaign to wipe out the Falungong being the two most recent examples.<sup>227</sup>

Worker protests represent a qualitatively different kind of problem for Chinese authorities. They challenge the legitimacy of the Chinese Communist Party, which claims to rule in the name of the working class, in a way that other social movements do not. CCP leaders, moreover, are likely wary of the potential power of a united labor movement given the role of such movements in overturning regimes in, for example, Poland and South Africa. In its effort to avoid worker cohesion across occupations, industries, and regions, the Chinese government has tried to avoid fanning worker unrest; it has not, therefore, seized large numbers of labor protesters as soon as they took to the streets. Instead the government has managed protests through a seemingly successful low-key combination of limited force and limited payouts. According to a report, Beijing also instructed officials in the northeastern provinces to avoid coercion whenever possible.<sup>228</sup> The provincial governments, in turn, instructed local governments to keep security forces on high alert.<sup>229</sup>

Although local governments deployed large numbers of security personnel to intimidate protesters, there were few clashes, arrests were selective, and formal charges limited to some few organizers. In Liaoyang, some 30,000

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<sup>223</sup> John Chan, "May Day in China: Government glorifies the rich, workers protest inequality," WSWS, May 8, 2002, <http://www.wsws.org/articles/2002/may2002/chin-m08.shtml> (accessed on June 12, 2002).

<sup>224</sup> "6,000 Liaoning Miners, Guizhou Pensioners Protest," *China Labour Bulletin*, April 10, 2002, [http://iso.china-labour.org.hk/iso/newsbrief\\_pv.adp?news\\_id=1856](http://iso.china-labour.org.hk/iso/newsbrief_pv.adp?news_id=1856) (accessed on July 6, 2002).

<sup>225</sup> Charles Hutzler, "Chinese Labor Protests Die Down..." *Asian Wall Street Journal*.

<sup>226</sup> The "TINA" or "there is no alternative" argument is popular among government officials in post-WTO entry China. The phrase was coined in the 1990s by then British Prime Minister as justification for large-scale lay offs and legislation widely perceived as anti-union.

<sup>227</sup> For an overview of China's campaign against the Falungong, see Human Rights Watch, *Dangerous Meditation: China's Campaign Against Falungong* (New York: Human Rights Watch, 2001).

<sup>228</sup> "Ming Pao on Daqing, Liaoyang Worker Protests; Anti-Corruption Petitioning in NE China," FBIS, April 1, 2002, from *Ming Pao* (Internet Version-WWW), March 28, 2002.

<sup>229</sup> *Ibid.*

workers took part in protests; to date, four have been indicted. In Daqing, although workers were held for brief periods and some leaders may be in detention, no one has been formally charged.

The policy appears to be working, in part because much of the protest has come, not from still-employed workers who could shut down production and seriously jeopardize economic growth, but from laid-off (*xia gang*) or formally unemployed workers who have little, if any, ability to affect production even in key industries such as oil or coal.

Treatment of protesting workers in the northeast is not a reflection of a generalized hands-off attitude to unsanctioned labor organizing. During the 1989 crackdown on the pro-democracy movement, the government singled out workers' autonomous federations for particularly harsh treatment.<sup>230</sup> In 1994, labor organizers received unusually long sentences.<sup>231</sup> Since then, treatment of organizers and representatives trying to instigate workplace-based protests has continued to be harsh. On May 30, 2002, Hu Mingjun and Wang Sen, both from Chengdu, Sichuan province, were sentenced to eleven- and ten-year terms respectively for helping steel workers win concessions related to wage arrears. The whereabouts of seven coal miners, Wang Changchun, Wang Fanghua, Wang Heping, Wang Ligu, Wang Qun, Zhang Jun, and Zhu Wanghong, from Damuhe coal mine in Neijiang city, Sichuan, are still unknown. They were detained in 1999 during a protest against the mine's closure.

A better explanation of the less aggressive response in the northeast relates to the government's understanding of the inherent power of militant, independent, and democratic unions, and its preoccupation with preventing emergence of a national labor movement. The key for the government is maintenance of divisions within the working class. Laid-off (*xia gang*), unemployed, and retired workers have been responsible for the vast majority of labor protests. With production unaffected, the authorities usually can afford to wait out demonstrations. In Daqing, Liaoyang, and Fushun, the government offered lump-sum payments and temporary compromises; detentions were sporadic; and formal arrests a last resort. Yet differences emerged in local government responses to demonstrations. In Liaoyang, where protesters received sympathy and support from most of the town's workers, their representatives were treated most harshly. At the same time, to further prevent an even more dangerous round of protests, officials promised to pay workers 50 percent of what was owed them. The city is reeling from unemployment estimated to run between 25 and 50 percent, and due to climb as more factories are closed.<sup>232</sup> Officials have told the unemployed they had best go elsewhere to find jobs.<sup>233</sup>

Daqing, which still provides 30 percent of China's oil, thus making a key contribution to the Chinese economy, is a wealthier town. Its unemployment rate does not match that of Liaoyang, and oil workers who still have jobs could seriously disrupt the national economy.

Employed workers not directly connected to the oil industry expressed only qualified sympathy with the laid-off workers; no solidarity action from within the town has emerged. A bus driver in Daqing explained:

I am working. As far as these demonstrations by laid-off workers are concerned, I definitely stand on the side of workers who have a job. Sometimes it's very hard to get these things straight. Are there really some people among the laid-off workers who are smashing things up and deliberately causing trouble?<sup>234</sup>

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<sup>230</sup> See for example, Asia Watch (now Human Rights Watch/Asia), *Punishment Season: Human Rights in China After Martial Law* (New York: Human Rights Watch, 1990), pp. 37-40; Asia Watch (now Human Rights Watch/Asia), *Anthems of Defeat: Crackdown in Hunan Province 1989-1992* (New York: Human Rights Watch, 1992), pp. 13-37.

<sup>231</sup> See Human Rights Watch/Asia, "Economic Reform, Political Repression: Arrests of Dissidents in China since Mid-1992," *A Human Rights Watch Report*, Vol. 5 No. 4 (C), March 1993; "Human rights groups condemn China dissident trial" Agence France-Presse, December 17, 1994.

<sup>232</sup> "*Liaoning tongji nianjian*" ("Statistical Yearbook of Liaoning, 2001"), (Shenyang: China Statistical Publishing House, 2001), pp. 66-68 and p. 92.

<sup>233</sup> "China worker protests rekindled despite employment offer," Reuters, March 25, 2002.

<sup>234</sup> Interview in pamphlet "Workers Remember," released by the International Confederation of Free Trade Union's International Hong Kong Liaison Office in memory of June 4, 1989.

A Daqing taxi driver told Human Rights Watch:

These guys [the laid-off workers] have a point and didn't really have any choice but to sign the severance agreements. But they got a lot of money.<sup>235</sup> I can't risk supporting them. I've got two kids to feed and school.<sup>236</sup>

Nevertheless, the government was taking no chances, especially given the family ties among many laid-off and employed workers. The Daqing Oil Company was quick to blame the protests for its failure to issue March bonuses; former colleagues visited protesters to urge demonstrations be called off to protect future bonuses.<sup>237</sup>

As labor activist Lin Jin's report explained:

Right now the oil company is concentrating on public opinion and sowing discord among current and former employees. As of this writing, the March bonus has not been issued and the company's explanation to all employees has been, "this is a direct result of the demonstrations. Go ask the protesters."<sup>238</sup>

As the protests in the northeast have illustrated, however, government policy has emboldened workers. Instead of short-term, spontaneous protest limited to a group from one factory, one mine, or one school, worker leaders and representatives in the three cities reviewed in this report, through well thought out strategic goals and tactics, organized tens of thousands of protesters. Nor were the leaders—or the rank and file—reluctant to publicize that, yes, they had organized, and sufficiently so as to enable them to sustain their protests over weeks rather than hours. The risk to workers—escalation of the punitive element of the government's response—was obvious.

But escalation poses a well-understood risk to the regime as well, as is evident in their hesitation to move aggressively against protesters in the northeast. A crackdown of the intensity and ferocity that has characterized the Falungong campaign might well bring workers together sufficiently not simply to protest but to strike. In the Falungong case, the government's strategy appears to have been based on a careful appraisal of Falungong's limited capacity to seriously disrupt the normal running of the state and, despite a large membership, its limited support base.

Coordinated strike action, by contrast, threatens foreign investment and economic growth; and retaliation threatens stability and brings international condemnation. The fact that Chinese authorities did not launch an aggressive crackdown against the vocal protests of laid-off workers in the northeast may have been designed precisely to avoid such a scenario.

The grievances—economic and civil and political—highlighted during worker protests in Liaoyang, Daqing, and Fushun have not been addressed in any systematic way by government officials, ACFTU leaders, or enterprise managers. Until the Chinese government and the Chinese Communist Party ensure that workers have the right to freely form and join non-government sponsored trade unions, they will continue to lack a meaningful avenue for effective redress and may seek other more confrontational avenues to make their grievances known.<sup>239</sup> As this report has indicated, workers who try such routes, risk severe retaliation.

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<sup>235</sup> As noted on page 29, the chief grievance of laid-off Daqing oil workers was not the amount of compensation in their severance contracts but the fact that management had unilaterally changed the terms of the accord.

<sup>236</sup> Human Rights Watch interview, Daqing, March 6, 2002.

<sup>237</sup> Lin Jin, "Daqing dangju jajin zhenya...", *Xianqu Jikun*.

<sup>238</sup> Ibid.

<sup>239</sup> See for example Keith Bradsher, "Factory Dispute Tests China's Loyalty to Workers Rights," *New York Times*, July 18, 2002.

**APPENDIX 1: OPEN LETTER TO THE GENERAL SECRETARY OF THE CHINESE COMMUNIST PARTY, JIANG ZEMIN<sup>240</sup>**

*“Appeal to the Leadership After a Fruitless Four Year Struggle Against Corruption;  
the workers are being persecuted and need your support”*

March 5, 2002

Esteemed General Secretary Jiang Zemin: Greetings!

At a time when government policies are going well, the people live in peace, and the nation continues to develop and prosper, the workers of Liaoyang Ferroalloy Factory in Liaoning Province send sincere greetings to our nation’s highest leader.

Formerly, the Liaoyang Ferroalloy Factory was a comparatively profitable large-scale state-owned enterprise producing for both the domestic and international markets. In those days, the living standards of the workers continuously improved.

But now our factory is bankrupt and the overwhelming majority of its workers have been reduced to unemployed vagrants and we are furious. Most of us here have met with disaster and, as we have no other option, we address this open letter to you in order to recount the events leading up to, and since, the bankruptcy. We express to you, as a respected elder, the heartfelt aspirations of the entire workforce and fervently request that you find time in your busy schedule to address the uncertainties and perplexities in our hearts.

Liaoyang Ferroalloy Factory was a medium-size state-owned enterprise with a long history of over fifty years. All the property and assets of the factory were derived from the hard work, blood and sweat of generations of workers. In the early days, the factory was no more than a small-scale workshop that did smelting and produced phosphorus-based products. All the facilities, equipment, and buildings were crude and simple. Production capacity was negligible and it was only after liberation and under the subsequent solicitude and support of the Party and government,<sup>241</sup> combined with the hard work of a generation of older workers who suffered great hardships that the Ferroalloy Factory transformed gradually from a small-scale, backward workshop into a medium-scale state-owned enterprise. Every year, Ferroalloy contributed billions of *yuan* in tax and profits to the national treasury and the standard of living of the whole workforce rose. This success did not come easily. It was the result of our pioneering efforts to overcome countless challenges in conditions that were reminiscent of wartime hardships.

Following the introduction of the reform and opening up policy, Ferroalloy faced the mighty torrent of the market and its economic performance came up against an unprecedented test. However, it was certainly not the case that domestic and foreign customers were not interested in our branded products. What we needed to overcome the various problems that were facing us was a competent policy maker and honest leadership capable of taking advantage of the ready market for our goods. At the same time, this would have raised the nation’s revenue from profits and tax. The workers would have continued to live in peace and prosperity and the factory would have flourished.

Who could have foreseen that once Ferroalloy’s former director, Party committee secretary and general manager Fan Yicheng usurped his positions at the factory, the workers’ days were numbered? With the factory facing the massive challenge of the market and already in trouble, it was Fan Yicheng’s duty, in his official position as both managing director and legal representative, to construct a strategy for improving the overall economic performance. It was his responsibility to provide leadership in improving product quality, output performance,

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<sup>240</sup> Translation by Human Rights Watch.

<sup>241</sup> “After liberation” refers to events post-dating October 1, 1949, when the Chinese Communist Party formally declared the founding of the People’s Republic of China.

and the profitability of the enterprise so as to inspire the entire workforce to grasp and overcome the difficulties in front of us.

Fan Yicheng did none of this. Following his appointment, he adopted a policy of cronyism in which all those who submitted to his will did well and anyone who resisted was dealt with accordingly. All dissent was outlawed. His close aides, friends, and relatives were placed in company positions from which he could directly benefit. At the instigation of Liaoyang's former mayor and Party secretary Gong Shangwu, Fan Yicheng set up a number of independent enterprises—such as the Ya Kuang Company, Borronalloy Factory, and the Sai De Company—and arranged fictitious domestic and foreign links and contacts. These people worked hand-in-glove as a team to swallow up billions of yuan in national funds resulting in losses of tens of billion of yuan in state property—we have detailed evidence of all this. Ever since this group of corrupt people linked up in 1995, they have acted in cahoots to reduce, by double-dealing and plotting, a perfectly good SOE to absolute chaos. Production stopped, workers were laid off (*xia gang*), and employees driven to indescribable despair. The sweat and blood of workers has been used to nurture a colony of parasites. Under the pretext of procuring goods, Fan took holidays abroad and gathered up large amounts of foreign exchange to fill his own personal coffers to the brim. At the factory he bullied and intimidated workers and used hundreds of thousands worth of public funds to refurbish his house and send his two children abroad to study. Fan and his corrupt friends used state funds to eat, drink, gamble, whore, and anything else they felt like doing. There were no limits to their extravagance.

Even more serious was the refusal to pay employees' pension insurance contributions from 1995 to 2000, resulting in a deficit of Rmb 27 million. As a result, now that the factory is bankrupt we are unable to draw our pensions and have no way of meeting our livelihood expenses. Forced into a corner by these circumstances, we began to organize collectively in 1998 to expose and denounce Fan Yicheng and his gang's corrupt behavior. We have petitioned and reported to the relevant departments at city, provincial, and central levels. At the time, city officials reassured us with moving promises to solve the above problems to everyone's satisfaction. But matters have turned out very differently from how we hoped they would. Far from addressing our concerns in a conscientious manner and criticizing Fan and his fellow insects, they resorted to repression, defaming public opinion, and enforcing the planned bankruptcy in an attempt to cover up the heinous crimes of these blood-sucking ghosts. False bankruptcy and real corruption have been the strategies for achieving their wicked aims, leaving the workers in wretched circumstances.

The events of the meeting convened to vote on the bankruptcy, held the day before yesterday, have left us boiling with anger. On that day, the government ordered the police to arrest three worker representatives for no reason and place them in detention in the police station. On the same day, when the results of the vote were announced, police were deployed at the factory gates in full battle array, and police cars were cruising around everywhere. It was as if they were preparing for a full-scale attack from a formidable enemy. Workers, who for special reasons were unaffected by the bankruptcy, were manipulated into casting their votes in favor of it.

All this amounts to a bankruptcy that seriously violated the Bankruptcy Law's regulations. The financial affairs of the factory were left unsettled, those responsible were not dealt with, no measures were put in place to implement statutory re-employment or welfare policies, and even several years of unpaid wages were left in arrears. We believe that company bankruptcies can be caused by a whole range of internal and external matters. But no matter what the circumstances, if there is no other alternative, the bankruptcy proceedings must follow the national Bankruptcy Law and procedural documents released by the central government. Ferroalloy's bankruptcy was not the result of the economic restructuring any more than it was brought about by poor sales. It was the direct result of coordinated embezzlement of national assets and leaching on the workers' sweat and blood by Fan Yicheng and his gang of parasites with the collusion and support of former mayor Gong Shangwu. These people do not care if working people live or die; they neglect their managerial duties, wreak havoc with financial discipline, and lend or borrow public funds at their own whim. Many forms of open and covert waste, totally unmanaged and unquestioned, dripped, leaked, and oozed their way out of the deeply flawed production process. Billions of yuan of national property simply disappeared as a result of shocking criminal behavior that has left us so angry that not even the death penalty would atone for such losses.

The entire workforce at Ferroalloy, reacting with profound indignation in the face of such contrary and even perverse behavior, organized a three-year struggle against corruption. To our regret, we failed to achieve any effective results, and the enforced bankruptcy of our factory has been implemented, leaving the workforce in a state of poverty. We have no pensions or medical insurance, and there is also no minimum livelihood fund. To date, the promises of adequate welfare that the government made in a draft document prior to the bankruptcy have not been met. The bankruptcy went through, leaving the workforce in tears and the corrupt officials laughing all the way to the bank. Moreover, they are now using the embezzled funds to set up a new privately-run enterprise(s). As if by magic, they have metamorphosed into entrepreneurs using the workers' sweat and blood as building blocks for their nest of corruption. Illegal activities have produced a legal company, and the government has done its utmost to cover up and collude in this almost perfect crime. Where on this earth are we to go to find reason and justice? Is it possible that a Chinese nation under the leadership of the Communist Party can leave no space for workers? Is there no other road except this road to tragedy?

The Chinese Communist Party has led the broad mass of the Chinese people through eighty years of bitter struggle that continues to this day. The party's aim has been to serve the people and their pursuit of prosperity and peace. Ever since the deeply-respected Chairman Mao conceived of serving the people to Your Respected Self's concept of the "Three Represents," all levels of the people's government have worked unstintingly, especially following your "July 1" speech, to take root in the hearts of the people, encourage the people's aspirations, inspire their energy, and provide hope!<sup>242</sup> But to our regret, the Liaoyang government leaders have simply paid lip service to the concept of the "Three Represents," and failed to implement your directives. In reality, rather than represent the interests of the broad mass of the people, they have represented the interests of venal officials. When workers put forward reasonable and legal propositions to oppose corruption and provide welfare, they resorted to myriad perfunctory solutions, procrastination, delay, connections, gerrymandering, and the use of force to counter the workers. In essence, the Liaoyang government leaders have openly shielded and tolerated a clique of corrupt people who have committed the crime of harming the people, clearly not followed the Central Committee's instructions. In fact, they have sung an entirely different tune from the government's policies of making proper arrangements for laid-off (*xia gang*) workers and the livelihoods of workers from the bankrupt factory—a case of publicly agreeing but privately sabotaging [central government policy], deceiving their superiors, and duping those below them in their obscene behavior. Fan Yicheng and the other parasites' few days in detention was billed as house arrest accompanied by regular reporting to the authorities. But they are all now safely in their homes and have got off scot-free.

Respected and beloved Secretary General Jiang, we do not oppose the leadership of the Party or the socialist system. Aside from demanding our legitimate and legal rights, all our efforts were aimed to help the country dig out and eliminate all the corrupt worms boring away at and ruining our socialist economic system. The Liaoyang government used violent suppression against us while corruption was glossed over, leaving nearly all of us wondering and perplexed. We fear that bankruptcy has no precedent in China and is a strange and new experience that has come into our lives. We believe that pushing several thousands of workers to the edge of destitution will have a profoundly negative influence on social stability and totally goes against the spirit of the directives in your "Three Represents" theory.

Since the reforms started, the Chinese working class has been the Party's source of fresh, combat-ready troops in the economic battles that have faced our country. From our studies of Central Committee documents and your "Three Represents" speech, we know that the working class is still society's foremost source of wealth and also its driving force. To ignore this truism would be an irreversible mistake and could even put the country in great peril. The vast majority of workers have been driven beyond the limits of forbearance by this group of people who have colluded together with Liaoyang government leaders in a swamp of corruption to shore up their own interests, maintain their official jobs and positions, and ignore both party discipline and national laws. As such, we six thousand workers eagerly wait your being able to find time in your busy schedule to give us a clear answer and shed light on the confusion in our hearts. We do not have the capacity to take the Liaoyang government

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<sup>242</sup> Jiang Zemin's "three represents" theory is aimed at attracting the broadest possible political support for the Chinese Communist Party. The three refer to "advanced productive forces," "advanced culture," and "the interests of the people."

through the courts, and we currently face a future of being barely able to put food on our tables. Where would we get the money? It would be prohibitively expensive and even if we had the funds, it would be impossible to win such a case. Over the past three years, we have petitioned the Disciplinary Committee, the courts, the procuratorate at the provincial level and in Beijing, as well as the General Office of the State Council, and the Economy and Trade Committee on many occasions. We have sent documents and materials by post and delivered them personally by hand, but all to no avail. Faced with this tragic scenario and with no other option or way out before us, we hope that you, as our leader, can lead us out of this darkness and put us back on the right track. Send us a team of good cadres to investigate and clean out the crimes of these corrupt people and deal with this matter in the spirit of justice. We fervently hope that you will read this letter. It is perhaps more than we deserve that you use up your valuable time, but there are genuine reasons for our actions. We had no option but to write directly to you.

Finally we wish you a long and healthy life and offer our deepest respect.

Yours sincerely,

The unemployed former workers of the bankrupt Liaoyang Ferroalloy Factory, Liaoning province.

Front Page

Headline:

**City Government News Spokesman responds to journalist's questions regarding Liaoyang Ferroalloy (group) Ltd. Bankruptcy case**

Body:

Recently, the paper's reporter interviewed the city spokesman regarding the case of the Liaoyang Ferroalloy bankruptcy

Question: What was the reason for and basis of the Liaoyang Ferroalloy company's bankruptcy?

Answer: The bankruptcy was implemented according to the "Law of the People's Republic of China on Bankruptcy (trial implementation)," the "State Council notice on matters related to the trial implementation of bankruptcies of state-owned enterprises in certain cities (*Guo Fa* No.59 1994)" and the "State Council supplementary notice matters related to the trial implementation of mergers, bankruptcies and re-employment of workers of state-owned enterprises in certain cities (*Guo Fa* No.10 1997)." The basic reason for the bankruptcy was that the value of debts far exceeded assets; there was no way the loans could be paid on time. Accumulated losses had surpassed 316 million *yuan* (U.S.\$1 = Rmb 8.3) by the end of June 2001.

The bankruptcy of the Liaoyang Ferroalloy company took place according to legal procedures. On April 28, 2001, the National Leading Small-Group on Mergers, Bankruptcies and Re-employment of Workers of State-Owned Enterprises formerly endorsed the bankruptcy of the company via Document No.9 (2001). On October 19, 2001, the second session of the company's second employee's representatives' meeting passed the bankruptcy plan. After the management notified the Liaoyang City People's Government of the decision, the city authorities, on October 24, 2001, agreed to the bankruptcy according to Document 75 (2001), and requested that the bankruptcy take place in a lawful and stable manner. The Liaoyang Intermediate People's Court accepted a formal application for bankruptcy made by the company on October 26, 2001. On November 5, 2001, the court officially declared the company bankrupt through the ruling of the 2001 *Liao Jing Po Zi* (Bankruptcy Order, Civil Ruling) Document No.5. The court also immediately declared the setting up of a liquidation committee; the company was taken into receivership and its assets and files were sealed up. By March 15, 2002, the receivers had already completed the relevant work and had entered into the evaluation stage.

Question: What did the government do during the bankruptcy procedure?

Answer: From the beginning and right through to the end, the city's party committee and government maintained that the process should be carried out according to the principle of law, the principle that national assets should not be lost, the principle that employees' interests should be protected and the principle of maintaining stability.

The city government set up a Leading Group on Bankruptcy headed by the main leaders. This group carried out a thorough inquiry at the enterprise, listened to the workers' views and drew up a preparatory plan for the bankruptcy. The vice-mayor was assigned to lead a working group of fifty people to explain and publicize policies and answer questions at the grassroots level. This facilitated the relatively smooth progress of the bankruptcy. By March 15, 2002, 664 people had received lump-sum settlement payments totaling 9.892 million *yuan*, 622 people had received lump-sum economic compensation payments totaling 2.348 million *yuan*, and 155 people had received lump-sum disability allowances for workplace injuries totaling 890,000 *yuan*. Unemployment certificates were prepared and issued to 670 contract workers entitled to unemployment insurance; procedures are

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<sup>243</sup> Translation by Human Rights Watch.

currently underway so payments should be made soon. Agreements are currently being drafted for 814 people who are not taking settlement payments and have agreed to make lump-sum retirement insurance payments. Individual payments are being worked out and should be completed by the middle of April. The city Labor Insurance Company has already taken over the cases of 1,438 workers who retired before the bankruptcy, realizing [the goal] of the provision of retirement pensions through social welfare. Work to investigate and confirm [the claims of] 365 people who are less than five years short of retirement age, the 280 people engaged in special categories of work who are eligible for early retirement and 22 people who have work-related disabilities or illnesses of classes one to six has been completed. Once the social security institutions have confirmed the scale for payments, they will be able to undertake procedures for retirement immediately.

Under the circumstances of the assets remaining as they are and in order to protect the interests of the workers, the city government has raised funds to facilitate the issue of back pay owed to employees. So far, 50 percent of the total has been paid already. At the same time, the city government has gathered some of the money and pre-paid the costs of bankruptcy and workers' settlement payments in order to ensure the smooth implementation of the bankruptcy.

During the bankruptcy process, the key leaders of the city government met five times with worker representatives from various levels in order to listen to opinions and answer questions.

Since February 5, 2002, we have entered the evaluation phase. It is forecast that the liquidation committee will draw up a report by the end of March in preparation for the first meeting of the creditors.

Question: Regarding the question of corruption amongst the staff of the former company raised by the masses, how has that been investigated and handled?

Answer: The city party committee and city government take this very seriously. They have indicated clearly that it doesn't matter who is involved, this must be investigated thoroughly. In order to do this, they have specifically set up a task-force made up of personnel from the judicial and discipline enforcement organs. They have carried out extensive investigations and confirmation work based on numerous reports and lines of inquiry provided by the masses. Up till now, six cases have been taken up by the judicial authorities. Of these, one has been sentenced, one has been charged, one is in custody and three are awaiting trial on bail. The discipline enforcement organs have taken up the cases of seven people. Funds recovered so far are 5.26 million yuan and some material goods. Investigations to recover a further 2.9 million yuan are ongoing. The task-force is currently stepping up its work. The city government and party committee would welcome the public to actively make reports and provide new clues for the investigation. We will undertake the investigations earnestly; those who should be treated by law will be treated by law, and those who should be dealt with will be dealt with.

Question: How should we regard some recent unlawful actions that have taken place lately?

Answer: Recently, a tiny minority of people with ulterior motives have used the problems associated with the bankruptcy and reform of the Liaoyang Ferroalloy Company to incite, make links and organize illegal activities that disrupt social order. They have stuck numerous posters in public places, organized links [with other enterprises and organizations] and held illegal marches and rallies without the permission of public security organs. They have caused traffic chaos and prevented government departments from carrying out their normal operations. With regard to the tiny minority of organizers of these illegal activities, the public security organs have given them numerous educational criticisms and admonishments according to law and ordered them to stop unlawful behavior. But they did not listen to the pleas. At the same time, they joined up with overseas media to distort the facts and spread rumors. They severely disrupted our city's normal production, city life and working order. Their actions violated the relevant laws and regulations. Because of this, the public security organs dealt with them according to law.

NOTICE:

In order to help the workers of the laid-off (*xia gang*) workers of the Liaoyang Ferroalloy Company to regain employment, the city's Labor Bureau will hold a conference in front of the company's office building on March 25, 2002 (Monday). The enthusiastic participation of workers from the Liaoyang Ferroalloy Company is welcomed.

The Liaoyang Labor and Social Security Bureau  
March 20, 2002

### APPENDIX 3: TWICE-DETAINED AND TWICE-RELEASED – A LAID-OFF OIL WORKER FROM DAQING TELLS HIS TALE<sup>244</sup>

I got there [Iron Man Square] as early as seven in the morning on March 4. More and more people kept arriving, I'd say about 20,000 all in all. Some people were saying that an international train full of foreigners was due to pass through on that day so everybody headed off toward the tracks as delaying foreigners would have a big impact. The train arrived about ten minutes after we got to the tracks, but we only blocked it for about a half-hour as we were afraid that any longer would cause a serious accident. We all dispersed except for one old couple who refused. A few Public Security Bureau guys lifted them off the tracks.

When we originally arrived at the train station, everyone crowded around the station doors and I couldn't get in. I was just about to climb over a barrier when a young cop held me back. I said, "What do you think you are doing blocking me?" He said that it was wrong to climb over the barrier and that his Dad and brother had been laid-off and his family was a victim too. I said, "So why are you still stopping me from going in [the station]?" We ended up in a long shoving match.

It was after four o'clock by the time I took a bus back home. I had just stepped off the bus and onto the pavement when a few plainclothes cops appeared from nowhere and, without a word, pushed me into a taxi. The taxi drove directly to the Dong Feng New Village lock up where they dealt with detained protesters immediately. A young guy in plainclothes processed me. He said he was a policeman but wouldn't give me any proof. He asked me, "Why are you Falungong people always stirring up trouble?" I said, "Who are you calling Falungong? Have I got 'FLG' stamped on my forehead?" I showed him my severance agreement and he just said, "Oh. You should be next door. Next."

I went next door where a girl in plainclothes dealt with me. The first thing she wanted me to do was write out a "pledge." When I asked to see her ID she said, "You want to see what? When we detained a load of you on February 28 for breaking up public property and causing trouble, we didn't mess around showing IDs."<sup>245</sup> When she asked me to sign a bail bond I said, "Lately I've become one of these social vagrants who can't read or write." She started to read the "pledge" aloud line by line. She [the police officer] read the contents of the pledge to me clause by clause. Clause 1 said "guarantee not to go take part in disturbances." I told her that of course I have to go [to the square]. If I don't, then I'm finished. This is a matter of my rights." The second article said, "Guarantee not to start rumors or agitate." I said, "Surely I could talk about my own affairs and this was not the same as creating rumors. Who in Daqing didn't know all about that nasty business with Zeng Yukang?"<sup>246</sup> She went on reading the rest of the articles, eight in all, but I can't remember them. I just kept saying, "I don't know!" When I wouldn't sign, she put me in a cell on the third floor and said she was going to talk to the boss to see if people like me should be released or not.

By seven o'clock in the evening I was getting pretty hungry so I started banging on the cell door. A male guard came down the corridor and said, "What do you want now?" I said, "I want to eat something." He replied, "You've ended up in this cell and you're still thinking of your stomach." I told him, "You've eaten so why can't I?" He said, "You've done nothing but make up stories since you got here. Don't make things worse on yourself by causing a big fuss."

They had taken my beeper when I arrived at the lock up, but I had managed to hide my mobile phone. I shouted out [to the guards], "I want to use the toilet" and told them not to mess me around. Once in the toilet, I rang home and a few friends who were there drove over to the lock up. By this time the guards were a bit embarrassed and bought me a take-out meal and some drinks and let me go.

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<sup>244</sup> "Yi ming bei gongan liang zhua fang Daqing mai duan zhigong zishu," ("Twice Detained and Twice Released – A laid-off oil worker from Daqing tells his tale"), *Xianqu Jikun*, Issue 63 (Spring 2002), p. 22, translation by Human Rights Watch.

<sup>245</sup> On February 28, 2002, a large-scale clash between PSB and laid-off workers occurred. Human Rights Watch was unable to obtain a detailed account of the incident.

<sup>246</sup> Zeng Yukang is the head of the Daqing Oil Company Ltd.

On March 5, the cadres from the DPAB attended a meeting.<sup>247</sup> People on the Square were saying that the bosses were all inside treating themselves to expensive wine. We went inside and occupied the canteen. We got the cooks to fry us up some eggs or whatever and had a drink as well. I didn't drink any strong liquor, just a little wine but I still felt dizzy. In the evening I left the Square and had hardly set off when I was surrounded by two men and three women and was again shoved into a taxi. This time they took me to the Daqing Reeducation Through Labor Center, which is also in Dong Feng New Village. A male plainclothes cop dealt with me, but like before he wouldn't show me any ID. He said, "This is your second time. You've been drinking, causing trouble, and ruining public property." When I refused to acknowledge this, he said, "We don't just detain people for nothing. We only take people in when we've got evidence." He put on a video cassette and had me look at it. I said, "That's not me."

Afterwards, I had to attend a study session with three others. I was really tired out and didn't bother to listen. They kept us in overnight and my friends came to pick me up the next day.

Nobody knows how many people have been picked up or remain in custody. There are rumors of up to three or four hundred but I haven't seen anything like that. The ones who stood up at the beginning are not active now. There was a woman called Du Jun who was yelling through a megaphone but she was detained. People who are picked up are mainly told to write a "pledge" not to go to the Square. Right now there are police from the counties surrounding Daqing who have been brought in to deal with us. And there are even more People's Armed Police (PAP) on the railway tracks. They [the authorities] are afraid that we'll commandeer a train and go to Beijing. They brought in some riot police from Harbin [the provincial capital] as well. The police are on Rmb 50 [approximately U.S.\$6] a day during all this but I am not sure what the PAP and riot cops are on. Everybody is really angry about that and think the authorities ought to give the money to the ordinary people.

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<sup>247</sup> The informant is referring to cadres from the Daqing Oil Company, Ltd., formerly the Daqing Petroleum Administration Board (DPAB).

#### **APPENDIX 4: CHINA’S STATEMENT MADE UPON RATIFICATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), AND WHAT EFFECTS THAT STATEMENT HAS ON CHINA’S OBLIGATIONS UNDER THE COVENANT**

On February 28, 2001, “In accordance with the Decision made by the Standing Committee of the Ninth National People’s Congress of the People’s Republic of China at its Twentieth Session, the President of the People’s Republic of China hereby ratifies the International Covenant on Economic, Social and Cultural Rights.”<sup>248</sup> The statement went on to say, “The application of Article 8(1)(a) of the Covenant to the People’s Republic of China shall be consistent with the relevant provisions of the Constitution of the People’s Republic of China, Trade Union Law of the People’s Republic of China and Labor Law of the People’s Republic of China.”<sup>249</sup> As discussed below, the Trade Union Law denies Chinese workers the right to organize independent unions.

#### **Is China’s Statement a Reservation?**

Article 1(d) of the Vienna Convention on the Law of Treaties defines “reservation” in terms of the effect of a statement, rather than the name given it:

“[R]eservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.

Commenting on the general question of identifying reservations, the U.N. Human Rights Committee noted that the intent, rather than the form, is the basis for classification.

It is not always easy to distinguish a reservation from a declaration as to a State’s understanding of the interpretation of a provision, or from a statement of policy. Regard will be had to the intention of the State, rather than the form of the instrument. If a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation.<sup>250</sup>

In accordance with this standard, despite the fact that China’s statement uses the word “declares,” it should be considered a reservation, because it purports to exclude or modify the legal effect of the provision it addresses.

#### **The “Object and Purpose” Test and the Validity of Reservations**

Article 19 of the Vienna Convention on the Law of Treaties states that: “A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless...the reservation is incompatible with the object and purpose of the treaty.”

The Human Rights Committee, in its General Comment 24 of 1994, applied the “object and purpose” standard, and further argued that an incompatible reservation invalidates itself. “The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation.”<sup>251</sup>

In other words, a reservation that violates the object and purpose of the treaty is in most cases to be considered severable: “the reservation must be regarded as null and void, at least in those parts that prove to be incompatible with the object and purpose of the treaty.”<sup>252</sup> In *Kennedy v. Trinidad and Tobago*, the Human Rights Committee

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<sup>248</sup> People’s Republic of China, “Statement made upon ratification of the International Covenant on Economic, Social and Political Rights,” March 27, 2001, [http://www.unhchr.ch/html/menu3/b/treaty4\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty4_asp.htm) (accessed on July 24, 2002).

<sup>249</sup> *Ibid.*

<sup>250</sup> Human Rights Committee, “General Comment 24,” U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994), para. 3.

<sup>251</sup> *Ibid.*, para. 18.

<sup>252</sup> Antonio Cassese, *International Law* (New York: Oxford, 2001), p. 131.

clarified that “this assumption cannot apply when it is abundantly clear that the reserving state’s agreement to becoming a party to the Covenant is dependent on the acceptability of the reservation.”<sup>253</sup>

Although the severability argument has been criticized by some states, it has been supported by the European Court of Human Rights in two important cases.<sup>254</sup> By arguing that incompatible reservations are severable, the Human Rights Committee and the European Court support a presumption in favor of the integrity of human rights treaties. Without this presumption, there is little to prevent states that ratify human rights treaties from entering reservations so contrary to the goals of the treaty so as to render their obligations meaningless.

As the Human Rights Committee noted, “Human rights treaties...are not a web of inter-State exchanges of mutual obligations. They concern the endowment of individuals with rights.”<sup>255</sup> In the case of treaties which are simply an exchange of obligations, an incompatible reservation is usually considered to nullify the *ratification* of the treaty, rather than the reservation itself.<sup>256</sup> Traditionally, the determination as to whether a reservation is valid is left to other states party, who are expected to object to a reservation that is incompatible with the object and purpose of the treaty.<sup>257</sup>

In the case of multilateral human rights treaties, however, states parties rarely object to other states’ reservations, because no reciprocal obligation is threatened; when there are objections, “most objecting states are making perfunctory objections with no discernable policy.” States therefore may enter reservations without fear of serious challenge.<sup>258</sup>

Negating the ratification of the treaty is sensible for reciprocal-obligations treaties, where states enter into a contract-like agreement with each other and failure to recognize one obligation can threaten the whole agreement. But it would be inconsistent with the purpose of human rights treaties to free a state from all its commitments under the treaty because the state had refused to accept the obligations of one article. As the European Court wrote in *Loizidou*:

In addressing this issue the Court must bear in mind the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings....[T]he special character of the Convention regime....mitigates in favour of the severance of the impugned clauses since it is by this technique that the rights and freedoms set out in the Convention may be ensured...<sup>259</sup>

Weighing the interests involved in this issue, one scholar writes, “If there is a conflict between the two requirements (the international community’s need for contracting parties to remain bound as far as possible by

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<sup>253</sup> Kennedy v. Trinidad and Tobago (845/99), para. 16.

<sup>254</sup> See European Court of Human Rights, *Belilos* case, Series A, no. 132 (1988), para. 60; *Loizidou* case (preliminary objections), Series A, no. 310 (1995), paras. 90-98.

<sup>255</sup> Human Rights Committee, “General Comment No. 24.”

<sup>256</sup> This standard derives from a 1951 decision of the International Court of Justice, “Advisory Opinion on Reservations to the Genocide Convention,” ICJ Reports, 15, at 29; and from the Vienna Convention on the Law of Treaties, entered into force Jan. 27, 1980, 1155 U.N.T.S. 331.

<sup>257</sup> Vienna Convention on the Law of Treaties, art. 20, para. 5. The other states party have twelve months to object; if they do not, the reservation is considered accepted.

<sup>258</sup> The United States, for example, when ratifying the ICCPR entered five reservations, five understandings, and four declarations to twelve articles of the Covenant. According to one commentator, “the net effect of these reservations was to eliminate every Covenant obligation that would require any change in U.S. law or practice...Eleven states objected to the U.S. reservations, but none moved to block the U.S. ratification under the object and purpose test. Under the Vienna Convention procedure, the U.S. reservations were then tacitly accepted one year after ratification.” Elena A. Baylis, “General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties,” 17 Berkeley J. Int’l Law 277, at 306. See also William Schabas, “Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child,” 3 Wm. & Mary J. of Women & L. 79.

<sup>259</sup> *Loizidou* case, paras. 93-96.

international standards on human rights, and the intent of one of these parties to eschew the legal impact of such a standard), the former must prevail.”<sup>260</sup>

### **The Effects of China’s Reservation on its Obligations Under the ICESCR**

China’s statement declares that:

The application of Article 8(1)(a) of the Covenant to the People’s Republic of China shall be consistent with the relevant provisions of the Constitution of the People’s Republic of China, Trade Union Law of the People’s Republic of China and Labor Law of the People’s Republic of China.

Article 8(1)(a) of the ICESCR obligates states parties to ensure:

The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

At least one of the laws referred to in China’s reservation seriously conflicts with these obligations. China’s Trade Union Law prescribes in detail the organizational structure, allotment of funds, and other obligations of trade unions. In this sense, the law directly contravenes the right to form and join unions that are “subject only to the rules of the organization concerned.”

In its specific provisions, the law further violates the “object and purpose” of Article 8(1)(a). Article 11 of the Trade Union Law says, “The establishment of a primary trade union, federations of trade unions at a local level, and national or local industry-specific trade unions must be reported to the trade union organization at the higher level for approval.” Article 10, which says, “The All-China Federation of Trade Unions shall be established as the unified national organization,” facilitates the inconsistencies with the Covenant illustrated by the above quotations. It is the practical application of this clause that rules out independent organization and violates the core of Article 8(1)(a).

The reservation is additionally problematic in light of the Human Rights Committee’s view that “reservations should not systematically reduce the obligations undertaken only to those presently existing in less demanding standards of domestic law.”<sup>261</sup> This is clearly what China has attempted to do with its reservation.

The laws referred to in China’s reservation in effect outlaw independent labor unions as conceived by Article 8(1)(a). It can therefore be argued that the reservation is incompatible with the “object and purpose” of the ICESCR. This implies that the reservation is invalid, and China’s obligations under the treaty survive.

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<sup>260</sup> Antonio Cassese, *International Law*, p. 131.

<sup>261</sup> Human Rights Committee, “General Comment No. 24,” para. 19.

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