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Review of the Work Safety and Health Inspection System in the People's Republic of China

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and Inspection Programme**

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Contents

Forward and Acknowledgements	vii
Executive Summary	x
I. Selected basic socio-economic data	13
1. General	13
2. GDP	13
3. Per capita average annual income	13
4. Total economically active population.....	13
5. Percentage of workforce with primary school education and above	14
II. Background and Justification	14
A. The System of Work Safety & Health (OSH) Inspection	16
1. Legal Basis for OSH Inspection	16
2. OSH Policies	17
3. Prospects.....	18
4. Central Government level.....	19
5. Main Functions of SAWS	21
6. Scope and tasks of WS Inspection.....	23
7. Local-level Organisation	24
8. Occupational Hygiene/Health Inspection	24
9. Registration and Reporting of Work Accidents and Diseases.....	26
10. Inspections.....	28
11. Communication, Publicizing OSH Laws and Regulations, Campaigns	28
B. WSA Inspectorate Staff	29
1. Law Enforcement Institutions and Team Building.....	29
2. Status of Inspectors.....	29
3. Recruitment	30
4. Qualification Requirements.....	30
5. Human Resource Development	30
6. Standards of Professional Conduct.....	31
C. Other Actors with OSH Inspection Responsibilities.....	31
1. General Observations	31
2. Ministry of Health	31
3. Ministry of Construction	32
4. Ministry of Agriculture.....	32
5. Other Agencies	32
D. Sanctions and Administrative Fines Procedures	32
E. Trade Union Labour Protection Supervisors (LPS).....	35
F. Coal Mines Safety Inspection	35
1. Main Functions.....	36
2. Organisational Structure	36

G.	The State Work Safety Emergency Rescue Commanding Centre	37
H.	The State Council Work Safety Committee.....	38
1.	Organisation	38
2.	Main Functions	38
3.	The General Office of the WSC and its Functions	38
I.	Work Safety Research Institutes	39
1.	The China Work Safety Research Institute	39
2.	Main Functions	39
3.	Other OSH-relevant Research Institutes (selection)	40
J.	National Work Safety Standardisation Technical Committee	40
III.	Major Conclusions of the Review Mission	40
1.	The need for a holistic approach.....	40
2.	A prevention promotion and enforcement strategy for SME's	41
3.	Employer's responsibility and liability.....	42
4.	Responsibility and liability of other duty holders.....	43
5.	Inspectors' liability	43
6.	Qualifications of inspectors	44
7.	Operational aspects of OSH inspection	46
8.	Aspects of organisation	47
9.	OSH prevention through risk management/risk assessment	48
10.	Registration and notification of work accidents and diseases	49
11.	Complaints procedures	50
12.	Issues related to sanctions	50
13.	Making better use of employers' organisations, trade unions and TU Labour Protection Supervisors	51
14.	Cooperation between different parties.....	51
15.	Road traffic safety	52
IV.	Corresponding Recommendations of the Review Mission	53
1.	Need for a holistic approach.....	53
2.	A new law enforcement and prevention strategy (including SMEs)	53
3.	Employers' responsibility.....	53
4.	A systematic approach to hazard identification, risk assessment and control	54
5.	Responsibility and liability of other duty holders.....	54
6.	Inspectors' liability	54
7.	Qualifications of inspectors	54
8.	Operational aspects of OSH inspection	55
9.	Aspects of organisation	55
10.	Registration and notification of work accidents and diseases	55
11.	Issues related to sanctions	56
12.	Making better use of employer's organisations, trade unions and TU Labour Protection Supervisors	56
13.	Cooperation between different parties.....	56
14.	Road traffic safety	56

Annexes.....	57
1. Programme of the Review Mission	57
2. List of officials meeting in Beijing, Shandong and Ningxia	57
3. Summary of discussions in Zhejiang Province and Hangzhou City (2009) ...	61
4. Summary of discussions from Shandong Province (2010).....	65
5. Summary of discussions from Ningxia Hui AR (2010)	67
6. Summary of discussions at the Meeting of Provincial Experts, Yinchuan.....	69

Forward and Acknowledgements

China's reforms and embrace of the outside world over the past 30 years have brought about far-reaching socioeconomic changes in the country. The rapid transfer of the labour force from agricultural to non-agricultural work, diversification in production, ownership of the economy and forms of employment and the recent migration of hazardous and labour-intensive industries from urban and coastal to rural and inland areas, all pose serious challenges to safety and health at work.

China has ratified the Convention No. 155 on Occupational Safety and Health Convention (2007), the Convention No. 170 on Chemicals (1995) and the Convention No. 167 on Safety and Health in Construction (2002). China promulgated two important pieces of legislation, the Law of the People's Republic of China on Work Safety and the Law of the People's Republic of China on Occupational Diseases Prevention and Control. China has recently adopted the principles of safe development. As promoted by the latest ILO Convention on a Promotional Framework for Occupational safety and Health adopted by the International Labour Conference (ILC) in 2006, China has been implementing the National Work Safety Programme (2006-2010) and the National Programme for Occupational Diseases Prevention and Control (2009-2015).

To strengthen work safety administration and inspection, China established the ministerial-level State Administration of Work Safety (SAWS) directly under the State Council, which is responsible for overall supervision, administration, direction and coordination of work safety across the country. While many local work safety offices have been extended to the community level in recent years, it is recognized that under-staffing and weak enforcement capabilities as well as poor coordination amongst the various inspection organs are two of the issues facing the inspection services. These and other outstanding concerns must be addressed in order to strengthen China's work safety and health inspection system and thereby secure the effective enforcement of the laws.

In June 2010, the ILO and SAWS conducted the first joint review on work safety and health inspection in China aimed at improving China's work safety and health inspection services. Thanks to the generous support of the Government of Norway, the review mission was made possible through the Project on Strengthening Labour Inspection Services. A team of international and national experts carried out the review mission in Shandong Province and Ningxia Autonomous Region and put forward recommendations for improvement of the OSH inspection policies and practices in China.

We would like to acknowledge the contribution of two international experts, Mr. Wolfgang von Richthofen, a former ILO official and technical advisor to the International Association of Labour Inspection (IALI) and Mr. Karel van Damme, international expert on OSH inspection, whose expertise and broad experiences contributed greatly to the success of the review. We would also like to extend our gratitude to Mr. Zhu Changyou, who very capably organized the review mission and provided technical inputs to the review report.

Finally, we would like to thank the officials from SAWS, the work safety authorities in Shandong and Ningxia for their support and cooperation and especially the other review team members from the SAWS, Ms. Shi Yanping, Mr. Wu Yanyun and Mr. Zhang Hongyuan, for their inputs and coordination.

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Executive Summary

Since several decades, the People's Republic of China has been going through a rapid economic expansion and transformation process, which has posed challenges to health and safety at work. In 2001, the Chinese government set up the State Administration of Work Safety (SAWS) to strengthen work safety and health.

China is an important member of the ILO. Its constituents are collaborating closely with the ILO in the development of various labour administration and inspection policies and programmes, including health and safety at work. An ILO/Norway Project on Strengthening Labour Inspection Services provided funding for a joint ILO/SAWS review of the OSH inspection in China with which the aim is to improve the country's OSH inspection system. Two international and four national experts, starting in Beijing, carried out a review mission to Shandong Province and Ningxia Autonomous Region to improve and strengthen OSH inspection for better protection and prevention of workplace accidents and occupational diseases. An earlier mission had visited Zhe Jiang Province to collect data on OSH inspection and discuss relevant issues.

In this report, the review team puts forward findings, conclusions and recommendations for the improvement of OSH inspection policies and practices and the development of a capacity-building strategy. Two important laws on Work Safety and Occupational Disease Prevention and Control in 2002, provide important levers for improving workplace prevention and enforcement. Indeed, these two laws would constitute an even more effective base if responsibilities and liabilities for OSH were unequivocally attributed to employers, both as legal and natural persons, and if liability cannot be deferred or delegated to other actors, especially State OSH inspectors. Considerably simplifying sanctioning procedures would also add to better enforcement potential.

In order to improve OSH protection, a good legal framework is not sufficient. Rather, it should be complemented by the availability of sufficient expertise in OSH, wherever and whenever that expertise is needed, no matter the size of the employing unit. Availability of expertise has not maintained a pace with quickly expanding economic activities and clearing one's arrears takes time. Additionally, the transfer of dangerous industries from developed to less developed areas, from large to smaller enterprises and from urban to rural areas, often implies at least temporary loss of expertise and subsequent increased risk.

Ongoing efforts to develop this expertise should result in an efficient policy to set up a pool of highly qualified, professional "prevention service providers", internal or external to employing units, operating in an advisory capacity, who can guarantee continuous identification, assessment and control of health and safety risks, which is more than inspection services could ever do. In addition, inspection services should have a sufficient percentage of experts, qualified at the same level as the experts of prevention service providers, in order to increase the inspectorate's impact and support for all other inspectors. Competent inspectors must either give advice or enforce the respect of laws and regulations, subject to their own discretion, in accordance with the ILO Convention No. 81 on Labour Inspection. A highly qualified inspection service can be given the role of assessing the quality of prevention service providers' activities in employing units, as part of a licensing procedure.

Integration and cooperation are key words in a more efficient prevention policy: Occupational accident and disease prevention should be part of the same prevention or risk management culture. This should be reflected in a holistic legislative framework. If the regulator wants employers and managers to deal with all work safety and health issues as one important management function and responsibility, - and only this will ensure sustainable, continuous improvements of OSH - then, the regulatory tools (policies, laws, enforcement procedures, etc.) must be commensurate with that objective. Merging

inspection functions of public authorities related to preventive action is therefore recommendable in most cases, but such transfer of competences should always be supported by also providing indispensable human and material resources. Furthermore, occupational accident and disease notification must be done systematically. The data must also be used as an important input for prioritizing inspection action, which requires systematic transfer of data to inspection services. Several ministries are involved in OSH issues. Integration of their inspection responsibilities should be considered.

Several visits were related to coal mining OSH. What happens in coal mining may be illustrative of the current challenges: China has a very high-level expertise in safe mining, but still suffers from dramatic incidents resulting in many fatalities. The country has extremely well integrated OSH management in many coal mines and practically none in many others. The central government has decided on strong measures to prevent these human and economic losses. Clear analysis of the combined causes – not only those of a technical nature - of mining incidents and work-related disease occurrences should result in measures that are more appropriate. OSH accidents and diseases in coal mining are likely to be considered by many within China and elsewhere as a reliable indicator of the progress made in workplace health and safety in the country as a whole.

I. Selected basic socio-economic data¹

1. General

The Peoples' Republic of China has a total surface area of 9,671,018 km² million, and a population of 1.344716 billion (end of 2006) which includes 1.31448 billion in the 22 provinces, five autonomous regions, and four municipalities under the State Council; 6.857 million in Hong Kong SAR, 499,000 in Macao SAR and 22.8 million in Taiwan Province. It is a socialist market economy and presently nearing the end of its 11th (2006–2010) National Social and Economic Development Plan.

2. GDP

China's GDP in 2007 was 24.6619 trillion Yuan², among which primary industry increased by 2.891 trillion Yuan (up 3.7 percent), secondary industry increased by 12.1381 trillion Yuan (up 13.4 percent) and commerce and services increased by 9.6328 trillion Yuan (up 11.4 percent). The proportional increase of the first industry was 11.7 percent, (same as the previous year); that of the secondary industry was 49.2 percent, up 0.3 percent; and that of the tertiary industry 39.1 percent, down 0.3 percent.

3. Per capita average annual income

In 2007, the per capita average annual net income in rural areas was 4,140 Yuan, an actual increase of 12.2 percent. The "Engle" coefficient for rural families (proportion of family expenditure on food in total family expenditure) was 43.1 percent. The same coefficient of urban families was 36.3 percent. With an absolute poverty line of 785 Yuan for rural areas, the figures for the rural poor at the end of 2007 were at 14.79 million (-6.69 million year on year). Based on low-income criteria of 786-1067 Yuan, the low-income rural population in 2007 stood at 28.41 million, (-7.09 million year on year).

4. Total economically active population

At the end of 2006, the total employed population stood at 764 million, an increase of 5.75 million year on year, among which 325.61 million were in the primary sector, (agriculture/extraction: 42.6 percent); 192.25 million were in manufacturing and construction, (25.2 percent) and 246.14 million were in commerce and services, (32.2 percent). Urban employed at end 2006 were 283.1 million, an increase of 9.79 million year on year, among which 117.13 million are formally employed in urban areas, an increase of 3.09 million year on year; 111.61 million are on the job, an increase of 3.1 million year on year.

¹ Source: 2010 ILO/China National OS&H Country Profile (draft).

² 8 Ren Min Bi (RMB) or Yuan equaled approximately 1 EUR at the time of the Review mission's visit to China in June 2010.

5. Percentage of workforce with primary school education and above

According to the 2006 workforce survey, the percentage of the workforce with primary school education out of the total workforce was 93.3 percent. Primary school education was 29.9 percent, junior middle school education, 44.9 percent, high middle school education, 11.9 percent, college education, 4.3 percent, university education, 2.1 percent and post-graduate education, 0.23 percent out of the total.

II. Background and Justification

“Responsibility for Work Safety weighs heavier than Mount Tai”³

The Government of China is committed to improving safety and health at work as evidenced by the establishment of the State Administration of Work Safety (SAWS) in 2001 and its upgrading into a ministerial-level national authority directly under the leadership of the State Council. In 2002, China promulgated two important acts of legislation: the Law of the People’s Republic of China on Work Safety (29 June 2002) and the Law of the People’s Republic of China on Occupational Diseases Prevention and Control (Order No. 60 of the President of the People’s Republic of China, 27 October 2001). Recently, China has adopted the principles of safe development and of applying a scientific perspective to people-oriented development. In line with the ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health (2006), China has begun the implementation of the National Work Safety Programme (2006-2010) and the National Programme for Occupational Diseases Prevention and Control (2009-2015).

In order to strengthen the uniform leadership and management of Work Safety (WS) nationwide and to promote the steady improvement of WS conditions, the State Council Work Safety Committee (WSC) was established. Geaded by a Vice-Premier with members composed of the heads and deputies of the State Council’s Ministries and Agencies as well as mass organizations such as the All China Federation of Trade Unions (ACFTU), the Communist Youth League, the All-China Women’s Federation (amongst others), the WSC Secretariat is located at the SAWS Headquarters.

Receiving its mandate from the State Council, SAWS is responsible for overall supervision, administration, direction and coordination of WS (and, since 2008, Workplace Health inspection) across the country. It also sees to the supervision and inspection of WS administration by other relevant national authorities and local (provincial, municipal and district/county) governments in accordance with the “Notice of the State Council on the Promulgation of Regulations on the main Functions, organizational Structure and Staffing of SAWS”, issued in July 2008. The SAWS is responsible for enforcing the laws on WS and WH (occupational diseases prevention and control) at workplaces, while the Ministry of Health for the time being continues to oversee the law on occupational diseases.

While China has strengthened its capacity for OSH inspection, its remarkable growth in recent years has set into motion far-reaching socio-economic changes - the rapid transfer of the labour force from agricultural to non-agricultural work, diversifying forms of employment, the migration of high-hazard industries from urban and coastal to rural and inland areas - that pose serious challenges to OSH inspectorates. Under-staffing, especially at grassroots levels, and poor coordination amongst the various inspection organs are two of several serious issues facing OSH inspection; these and other concerns must be

³ Theme of the first (2002) annual “Ten-thousand-mile Work Safety Tour”.

addressed if China's inspection system is to be strengthened and the effective enforcement of OSH laws to be ensured.

China has in the past, collaborated closely with the ILO on OSH issues for the development of policies and programmes. China has ratified the ILO Convention No. 155 on Occupational Safety and Health Convention (1981) as well as Convention No. 167 on Safety and Health in Construction (1988) and Convention No. 170 on Chemicals Convention (1990). Since 2002, SAWS and ILO have organized a biennial China International Forum on Work Safety. In early September 2010, the fifth Forum will take place in Beijing. In 2004, a first joint ILO-China National Profile on OSH was published to provide basic information for the further development of national policies and programmes. A second of such National OSH Country Profile is presently being finalized.

Other China-ratified ILO Conventions relevant to, or with implications on OSH Convention No. 14 on Weekly Rest (Industry) (1921), Convention No. 100 on Equal Remuneration Convention (1951), Convention No. 111 on Discrimination (Employment and Occupation) (1958), Convention No.122 on Employment Policy Convention (1964), Convention No. 138 on Minimum Age (1973), Convention No. 144 on Tripartite Consultation (International Labour Standards) (1976), Convention No. 150 on Labour Administration (1978), Convention No. 155 on Occupational Safety and Health (1981), Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) (1983) and Convention No. 182 on Worst Forms of Child Labour (1999).

Against this backdrop, the ILO/Norway Project on Strengthening Labour Inspection Services has provided funding to conduct a joint ILO/SAWS review of OSH inspection in China aiming at improving the country's OSH inspection system. A team of two international and four national experts, starting in Beijing, carried out a review mission to Shandong Province and Ningxia Hui Autonomous Region with the objective of improving and strengthening OSH inspection services for better protection and prevention of workplace accidents and injuries in China. An earlier mission had visited Zhe Jiang Province and Hang Zhou Municipality to collect data on OSH inspection and discuss relevant issues. The review team has put forward the following findings, conclusions and recommendations for the improvement of OSH inspection policies and practices and development of a capacity-building strategy.

Specifically, the mission was to:

- assess the capacity of China's OSH inspection services to fulfil its key functions as envisaged by international labour standards (in particular Convention Nos. 81 (and its Protocol of 1995) and 129⁴; the enforcement of OSH laws in an effective, credible and equitable way; provision of technical advice to promote compliance with the laws and take a 'preventive approach' to inspection; the provision of feedback to the central authorities on situations that are not adequately governed and; the improvement of laws;
- address the capacity of OSH inspection services to deal with emerging workplace issues in consultation with the concerned ministries;

⁴ Convention No. 81 concerns labour inspection services in industry and commerce. The Protocol of 1995 to Convention No. 81 extends its scope to the non-commercial services sector. Convention No. 129 lays down standards for labour inspection in agriculture. Convention No. 81 and Convention No. 129 are two of the ILO's 12 **Priority** ("Good Governance") Conventions which require reporting by ratifying States at least every two years.

- identify ways to improve and strengthen the functional efficiency and effectiveness of labour inspection vertically from national to decentralized level of work safety administration, while improving horizontal coordination and cooperation between different government agencies involved; and
- suggest some immediate short-term and long-term strategies to strengthen China’s OSH inspection system and to bring it in line with international standards and good practices with a focus on capacity building strategy.

A. The System of Work Safety & Health (OSH) Inspection

1. Legal Basis for OSH Inspection

The main laws, regulations and rules relevant to OSH inspection are:

- Law on Safety in Mines (1992)
- Fire Prevention Law (1998)
- Provisions on Coal Mines Safety Supervision (2000)
- Law on Work Safety (2002)
- Law on Prevention and Control of Occupational Diseases (2002)
- Regulations on the Safety Administration of Dangerous Chemicals (2002)
- Regulation on Work-Related Injury Insurances (2004)
- Law on Administrative Supervision (2004)
- Administrative Regulations on Work Safety of Construction Projects (2004)
- Regulations on Reporting, Investigation and Handling of Work Accidents (2007)
- Administrative Punishment Measures for Violation of Work Safety (2007)
- Regulations of Duties of Internal Bodies and Staff in SAWS (2008)
- “Interim” Rules on Administration of Occupational Health in Workplaces (2009)

SAWS administers, altogether, more than 50 laws, which include major OSH legislation such as the WS Law, Occupational Disease Prevention and Control Law. These laws also include more than 30 other WS regulations issued by the State Council, for example those on hazardous chemical mentioned above, etc. Other ministries, (i.e. MoConstruction, or MoAgriculture) supervise more than 30 laws and regulations also dealing with OSH. Thus, a total of over 80 different statutes of differing legal “quality” addressing OSH are in force (besides the aforementioned two legislations): the Labour Law (1994); the Law on Safety in Mines; the Coal Law; the Electricity Law; the Fire Prevention Law; the Law on Road Traffic Safety; the Law on Emergency Response amongst others. There are also 27 administrative regulations: i.e., Regulations on WS Licensing; Hazardous Chemical Safety Management; Reporting, Investigation and Treatment of WS Accidents; Safety Management of Large-scale Group Activities, etc.

Over 80 “Department Rules” also exist: 50 by SAWS; 5 by the (former) State Economy & Trade Committee; over 30 by Ministries of Supervision, Construction, Agriculture. Four laws are presently being amended and those include the Law on Safety in Mines and the Coal Law. Four administrative regulations are also being amended and among them are the Regulations on Hazardous Chemical Safety Management and the Regulations on Safety Inspection of Coal Mines.

Additionally, almost 1,000 compulsory National (“GB”) and more than 3,000 sectoral (e.g. ministry-level) safety standards have to be applied by employing units and supervised by SAWS or line ministry inspectors. SAWS itself has issued more than 100 compulsory technical standards on safety issues in mines, the chemical industry and fireworks production. It also issues technical Codes of Practice (their exact number was not available). Finally, the Supreme People’s Court’s jurisdiction on OSH issues also has to be taken into consideration. Under the process of “accelerated local legislation” some 30 jurisdictions: provinces, municipalities, districts have issued rules and regulations at local level, among which 29, including Beijing, have established regulations or rules on OSH or its supervision.

Safety standards include national standards (GB) and industrial standards (AQ, MT, LD, JB, etc.) Safety standards include basic standards, management standards, technical standards, methodology standards and products standards. The WS Standards (AQ) cover safety standards in mines, hazardous chemicals, fireworks, PPE, dust explosion protection, painting, etc. There are nearly 1,000 such national standards on safety, e.g. Safety Regulations for Blasting, Safety Code for Gas of Industrial Enterprises, etc. and; over 3,000 industrial standards, e.g. Safety Regulations for Steel-making, Standards for Gas Drainage, etc. and 41 OSH-relevant laws and administrative regulations issued by the National People’s Congress and the State Council and also, in principle, to be supervised by SAWS.

2. OSH Policies

The 11th National Five-Year Plan prescribes WS policy for the whole country. Based on this, the first sectoral National Work Safety Plan specifies policy targets in compliance with the National Economic and Social Development Plan, for instance on OSH in “high-risk” industries. The State Council’s WS Committee led by a vice-Premier of the State Council coordinates policy-making on WS. Its Office is situated in SAWS.

The State Council and the General Office of the State Council issued a series of “Policy Documents” on WS including the “Decision on Further Strengthening WS by the State Council”, the “Circular on Strengthening WS for State-owned Key Enterprises by the General Office of the State Council” and the Suggestions on Promoting the Healthy Development of the Coal Industry by the State Council”. SAWS, together with other departments including the Ministry of Finance, developed “Criterion Documents” and economic policies on WS, including the “Administrative Methods of Withdrawing and Utilizing the Coal WS Fund” by the Ministry of Finance, “SAWS and the State Administration of Coal Mine Safety” and “Administrative Methods on Withdrawing and Utilizing the Safety Fund of Firework Plants”, amongst others.

Specifically, with regard to high-risk sectors, all high-risk sector enterprises in China must carry out a hazard evaluation to obtain a safety administrative permit before operation. SAWS has issued methodological guidance and requirements on how to obtain a licence to operate. The qualifications of institutes that can conduct the hazard evaluation are also defined and supervised by SAWS. In all, there are some 165 “A-level” certified institutes. In addition, so-called “registered safety engineers” carry out hazard evaluation work. They have to pass a national examination organised by SAWS (in Guangdong province, e.g., some 300,000 such safety engineers are said to be present on the ground).

With regard to small and medium enterprises (SMEs), Article 20 of the Law on WS defines SMEs as employing less than 300 workers⁵. Concerning occupational health in SMEs – some of which have very serious OH problems – SAWS is establishing a pilot initiative. In SMEs, with especially hazardous working conditions, an occupational hygiene capacity has to be established and workers have to be trained. This pilot project and related activities would offer a very timely occasion to benchmark with international best practice on OSH in SMEs.

3. Prospects

Current development priorities in SAWS focus on three major issues:

- Improving laws and regulations. The laws being currently amended : Law on Safety in Mines, Law on WS and Regulations on Safety Inspection of Coal Mines. Departmental rules that have been established include: Licensing Method for Occupational Safety, Regulations on Supervision and Administration of Major Hazards and Regulations on Supervision and Administration of Geological Exploration Safety. A new Energy Law was jointly established with other departments. Furthermore, a Regulation on WS Emergency Administration was also designed. The need for new Regulations on WS Inspection and Administration, on Registered Safety Engineers and on general preventive licensing policy (a potentially effective systematic anticipative risk assessment- for improved safety (commonly called the “three simultaneous approaches”) for new employment unit construction projects)) has to be established⁶. This consists of three stages including the pre-evaluation or anticipated risk assessment for new projects. In the first stage, and before the construction starts, foreseeable hazards are compared to standards. Indeed, a detailed description on the planned application must be sent to the local government. These actions must already be certified by one of the more than 90 private or public external certifying bodies. With the support of research institutes, this should result in a project design that respects existing standards. A report of this process must be sent to the local health department. The second stage is the construction process itself, which includes measurements (from completion to the try-out stage). In addition, this stage is to be accompanied by an external institute. This should be followed-up by one or more experts of the local Health Department. The local health department is selecting the expert randomly out of a pool comprising: public health specialised medical doctors, engineers specialising in industrial hygiene (coming from research institutes or from large sized enterprises) senior management from large enterprises with responsibilities in the domain of OS&H, or from universities. A ‘senior’ will be appointed head of the evaluation group and be held liable for the quality of the advice. The third stage is the initial full operation of the new project. The employing unit is responsible for regular monitoring, warning signs and preventive measures. SAWS and the Health Department must do regular inspections. Inspectors are sometimes accompanied by experts or certifying bodies who are paid in that occasion by the inspection service. Since the safety facilities and control measures occur along the three phases at the same time, these are called the ‘three simultaneous approaches’.

⁵ In Ningxia Hui AR, however, SMEs are defined as employing less than 100 workers, perhaps a more practical approach.

- Improving OSH inspection organizations and law enforcement teams. Activities include, promoting the improvement of safety inspection organization and law enforcement teams at all levels, improving training events and enhancing law enforcement abilities for law enforcement staff, strengthening OSH standard training and enhancing inspection quality levels overall.
- Standardizing and strengthening administrative law enforcement procedures and results. Plans involve intensifying and improving on-site supervision, inspection and law enforcement by focusing on licensing and shutting-down administrative penalties (prohibition notices). Law enforcement is to be institutionalized and standardized by compiling and harmonizing administrative law enforcement procedures. Reports, investigation and prosecution of accidents procedures and penalties for responsible enterprises and personnel are also to be reviewed and made more effective.

4. Central Government level⁷

SAWS is responsible for work safety inspection within all production and operation units in China and, more recently, also for work health inspection⁸ (though this has not yet been implemented in all regional/local jurisdictions). SAWS is a special body under a minister reporting directly to the State Council. It is responsible for overall supervision and administration on WS (and health) nationwide, carries out general supervision and administration, directs, coordinates, supervises and inspects WSA by the government departments under the State Council and local governments, supervises, evaluates and reports on performance concerning the WS control index, oversees the investigation and punishment of accidents and the implementation of an accountability system. The Office of the State Council WS Committee is situated in SAWS HQ. Similar arrangements apply to various levels of local governments' WS Committees.

SAWS is composed of ten departments (each headed by a Director-General):

General Office (International Cooperation Department, Finance Department)

Responsible for drafting of work rules and procedures within the organisation; correspondence, information, confidentiality, performance, public complaints and others; work related to system reforms and organisational staffing and management; finance, expenditure, state assets management, auditing within the organisation and its affiliated organisations; international exchange and cooperation on OSH and foreign affairs administration; general coordination work for the General Office of the State Council's WS Committee.

1. Department of Policies, Laws and Regulations

⁷ Findings at SAWS Headquarters, Beijing (September, 2009): Three members of the 2010 SAWS Review team already took part in a concise briefing on OSH inspection during an earlier mission to review China's labour inspection system. As time did not allow for a similar briefing in June 2010, the main information and data of last year's briefing are summarized below).

⁸ The term "Occupational Health Inspection" needs explanation. This administrative control activity consists mainly of checking certifications or attestations that employing units are by law required to obtain after measurements or analysis of the working environment have been done by other, external institutes, not the WS inspectors. These may issue administrative fines and take sanction measures if the employing unit or other "responsible persons" (including workers) have not complied with their statutory, often merely bureaucratic (i.e. documentation) obligations.

Responsible for the drafting of WS laws and regulations; drafting general WS rules, procedures and standards and those specific for industrial, mining, commercial and trade sectors; major WS policy-making; releasing national WS information; WS enforcement supervision, administrative review and administrative litigations; WS publicity; reviewing the legality of internal procedural documents.

2. Department of Planning, Science and Technology

Responsible for the drafting of WS and R&D plans; coordination of major scientific-technical research and promotion; WS informatisation development; work related to the management of fixed assets investment projects; supervision and management of WS social (i.e. Trade Union) supervision agents; WS appraisal; labour protection appliances and safety labels; work related to the general coordination on the synchronicity of WS facilities and the main buildings in the design, construction and delivery of construction and technological renovation projects; work related to the National WS Expert Panel.

3. WS Emergency Rescue Office (and Department of Statistics)

Responsible for rules, procedures and standards of WS emergency rescue, information and statistics; the development of WS emergency rescue systems; the design and implementation of WS emergency rescue plans; coordination of emergency rescue work; design of a national WS administration evaluation index; general management of national WS and health information and statistics; accident alert and information processing; analysis of WS conditions and prediction of very serious accident incidence, release of pre-warning information.

4. First Safety Administration Department (Offshore Oil Drilling Safety Office)

Responsible for the supervision and inspection of the implementation of WS (&H) laws and regulations for mining (coal mining excluded), oil (refining, chemical and oil pipelines excluded) enterprises and their OSH conditions, the safety of equipment and facilities; organising the review on the design and delivery of safety facilities in major construction projects; managing WS permissions for mining enterprises; supervising the adoption of relevant safety standards; overseeing the closure of “less qualified” mines; general supervision and management of offshore oil drilling safety; investigating/penalising major accidents and emergency rescue work.

5. Second Safety Administration Department

Responsible for the direction, coordination and supervision of the administration of WS in those sectors with their own safety administration authorities; participating in the investigation and emergency rescue of very serious accidents; directing and coordinating special inspections and rectifications in WS with relevant authorities.

6. Third Safety Administration Department

Responsible for the supervision and inspection of WS(&H) conditions of chemical (including petro-chemical), medical, hazardous chemical, fireworks- and firecracker-manufacturing enterprises; management of permits for WS and hazardous chemicals production; investigating and penalising “less qualified” enterprises in WS; general administration of WS(&H) related to hazardous chemicals production; the compilation of the Hazardous Chemicals Index and registration of domestic hazardous chemicals; supervising the production and business management of non-medical toxic chemicals; organising the review of the design and delivery of safety facilities in major construction projects; supervising WS standardisation work and participating in the investigation, punishment and emergency rescue of very serious accidents.

7. Fourth Safety Administration Department

Responsible for the supervision and inspection on the implementation of WS (&H) laws and regulations by enterprises in metallurgic, non-ferrous, construction materials, machinery, light industry, textile, tobacco, commercial and trade sectors, their WS(&H) conditions, safety of equipment and facilities; organising the review on the design and delivery of safety facilities in major construction projects and participating in the investigation, punishment and emergency rescue of very serious accidents.

8. Occupational Health Administration Department

Responsible for the supervision and inspection of Work Health in industrial, mining, commercial and trade enterprises (excluding coal mining); drafting rules and standards on WH (if not still within the competence of the MoHealth); investigating and penalising WH accidents and illegal practices; WH permits; organising and supervising WH training; organising the report of work hazards and participating in the emergency rescue of WH accidents.

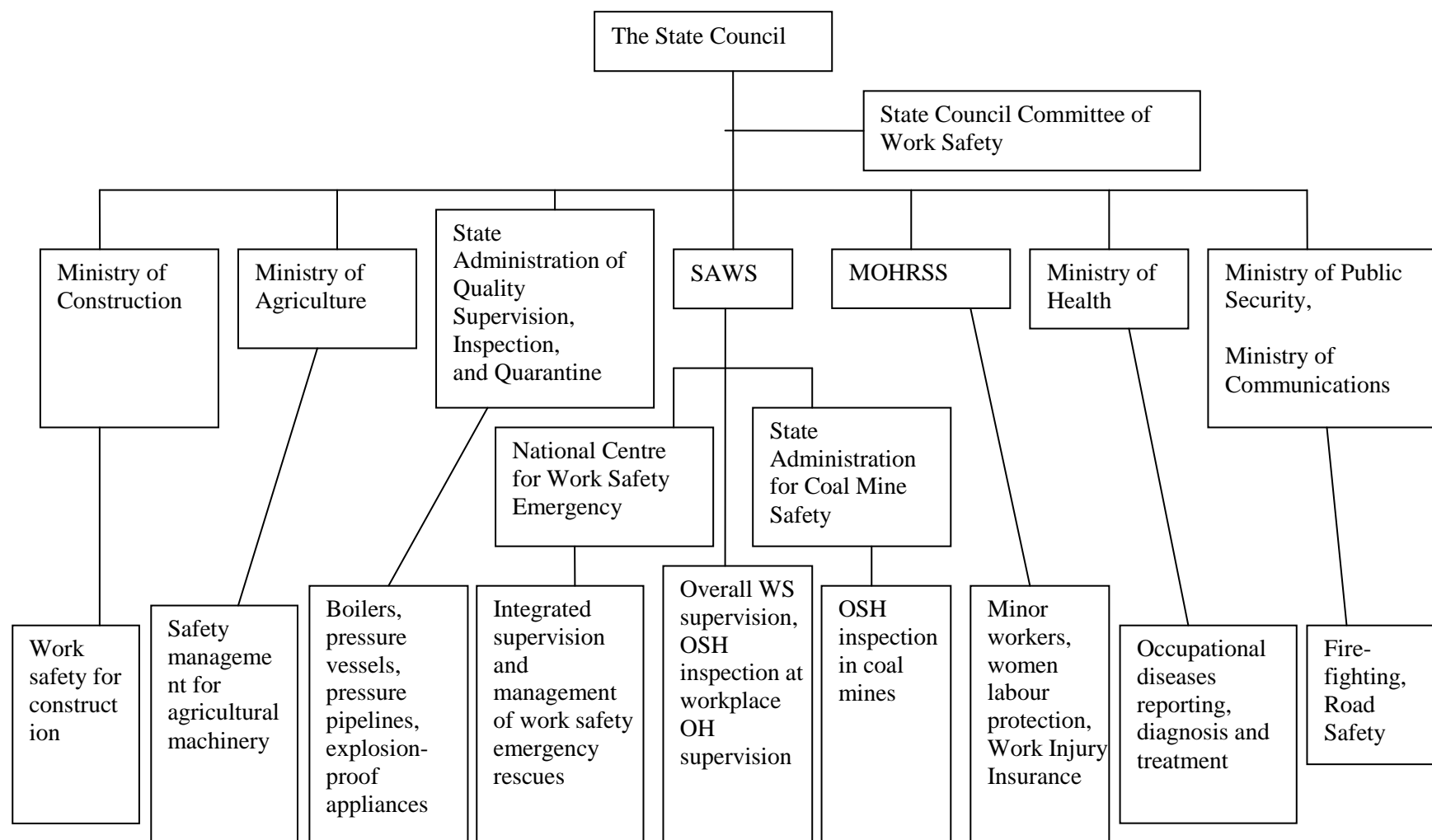
9. Personnel Department (State WS Supervision Office)

Responsible for personnel management, labour and rewards attribution work within the organisation and its affiliated organisations; management of examinations and registration of certified safety engineers; supervision of safety training of industrial, mining, commercial and trade enterprises; daily administrative work of the State WS(&H) Supervision Office. It should be noted that State OSH supervisors are responsible for the coordination of, and participation in the investigation and punishment of very serious accidents.

5. Main Functions of SAWS

SAWS' main functions are to develop WS policies and plans, draft laws and regulations on WS, direct and coordinate national WS programmes, analyse and forecast national WS trends, release national WS information and coordinate and address prominent WS issues. It is responsible for carrying out work safety and health (OSH) inspection in all workplaces except for the sectors governed by line ministries such as construction, communications, railways, transport and traffic safety, or agriculture. Under the overall responsibility of SAWS, there are two vice-ministerial levels of State agencies, the State Administration of Coal Mine Safety and the National Emergency Rescue Command Centre.

Table 1: The System of OSH Inspection



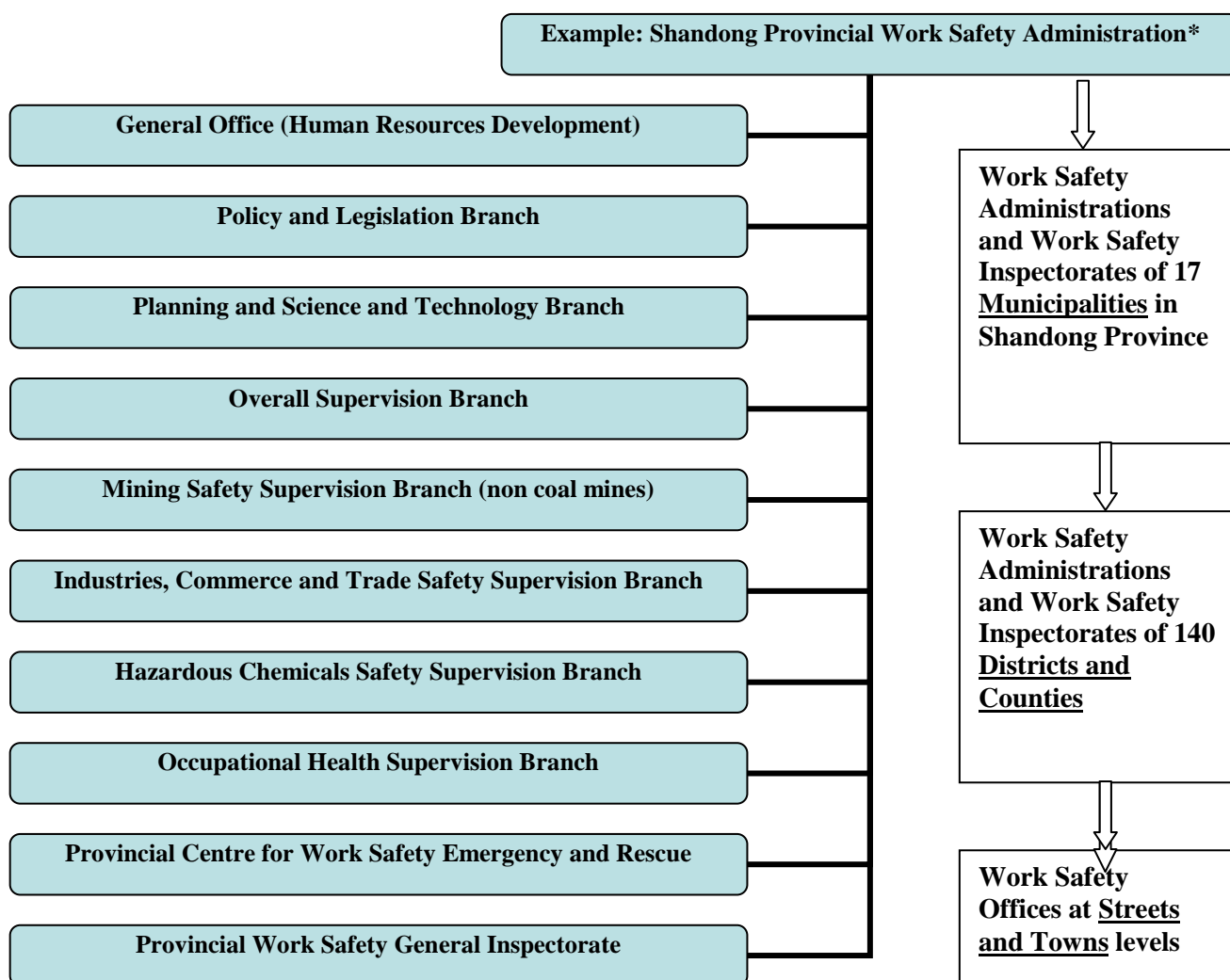
6. Scope and tasks of WS Inspection

The main activities of SAWS include:

- Drafting regulations on Work Safety;
- Managing WS(&H) inspections across the country, in particular, organising WS(&H) inspection in industrial and business sectors;
- Conducting inspection in non-coal mining enterprises and enterprises manufacturing dangerous chemicals and fireworks;
- Managing occupational hygiene inspection in industrial and business sectors;
- Developing, disseminating and implementing WS rules, standards, procedures;
- Organizing WS investigations under the supervision of the State Council;
- Organizing, directing and coordinating rescue efforts after “occupational safety incidents” (in fact accidents);
- Managing WS in non-coal mines;
- Monitoring and inspecting new, converted or extended engineering projects that fall under the jurisdiction of SAWS;
- Organizing and directing the certification and training of inspection staff (with the exception of coal mining inspectors and specialized equipment inspectors);
- Directing and coordinating product testing, WS inspection and management and the training and certification process of safety engineers;
- Directing, coordinating, and monitoring the administration of WS across China;
- Organizing the development of safety technology;
- Organizing international cooperation and exchange on WS; and
- Fulfilling general duties of the State Council WS Committee.

7. Local-level Organisation

Table 2: Provincial-Municipal-District/County-level OSH Inspection Organisation



(*The hollowed arrow indicates the upper administration provides guidance to the lower level of administration and that work safety offices at street or town, i.e. community level have no legal powers of enforcement).

8. Occupational Hygiene/Health Inspection

Occupational hygiene and health (OH) inspection are terms that are synonymous in Chinese). Despite their synonymous nature, their meaning corresponds broadly to international definitions of occupational hygiene inspection and until recently, the agency holding responsibility concerning these two terms was the MoHealth. By decision of the State Council, SAWS established an OH Department in 2008. Under “Interim Rules on the Administration of OH in Workplaces”, issued in 2009, SAWS’ duties in OH inspection now cover the following areas:

- 1) Setting-up and staffing arrangements of bodies responsible for inspection; supervision and inspection of factories, mines and commercial enterprises;
- 2) Drafting regulations and standards on OH inspection, i.e. regulations and standards on how to inspect and enforce OH legislation. (Developing/drafting national OH

policies, laws, regulations, rules and standards, however, continues to be the responsibility of the MoHealth). This includes procedures such as a minimum of two full-time WS(&H) inspectors on every visit to an employing unit, temporary rules on OH inspection at workplaces and administrative methods on reporting OH hazards (etc.);

- 3) Investigations and prosecution of OH hazards and diseases incidents; monitoring and releasing information on occupational hazards; controlling the installations and maintenance of health facilities and the distribution of personal protection equipment;
- 4) Development of methodological guidelines to monitor and supervise OH certificates in employing units which use hazardous chemical substances (the certificates themselves are issued by OH institutes under the continued supervision of the MoHealth);
- 5) Publication, education and training on OH issues, in particular, establishing, implementing and disseminating information on occupational disease prevention systems; and
- 6) Setting-up procedures for reporting occupational hazards and their consequences, and ensuring that workplace hazards are reported; also, reporting of occupational diseases. (However, statistics of the numbers of patients suffering occupational diseases are still the responsibility of the MoHealth). These occupational diseases are to be broken down by sectors, causes, etc. It is planned to issue a new open classification of occupational diseases in line with ILO Recommendations.

Local governments above the level of district/county are responsible for the implementation and administration of WS and OH inspection. (Article 9, LWS). At district/county levels, inspectors usually perform inspections based both safety and health regulations. At municipal levels, joint inspection teams are the exception (e.g. in Shuzhou, Zhe Jiang Province). At times, teams intervene separately and not necessarily in a closely coordinated manner.

Thus, while the OH inspection function has been formally transferred to SAWS, changes have not yet been implemented at all provincial, municipal and district/county levels in the country. OH teams under provincial WS bureau, usually with a staff of six to eight had, by June 2010, been established in all but two provinces. In these latter jurisdictions, OH inspection work remains under the provincial health departments. (The MoHealth continues to operate sanitation inspections responsible for, e.g. public hygiene supervision in occupational, radiation, environmental and school areas. It is also responsible for the sanitary inspection of public areas, portable water and for the monitoring of the spread of infectious diseases.

The State Council recently published the “National Occupational Disease Prevention Plan (2009-2015)”, which aims to raise awareness of the importance of OH from the perspective of workers’ well-being, and from an economical standpoint for the employers. Lastly, “OH Services” in the sense of ILO Convention No. 161, where they exist, are mainly organized within employing units.

The mission also learnt that inter-ministerial discussions between SAWS and MoHealth are about to result in a joint proposal for a clear distribution of responsibilities and resources between the two organisations with a view to obtaining a Decision of the State Council on this issue before the end of 2010.

9. **Registration and Reporting of Work Accidents and Diseases**

Two (sets of) regulations dominate the current situation regarding registration and notification of occupational accidents and diseases.

One is on work-related injury insurances, the latest version of which came into force on January 1, 2004. This regulation was enacted not only to ensure medical care and economic compensation to victims of occupational accidents and diseases, including recovery, but also to promote workplace OS&H prevention. SAWS is not systematically informed about the data issuing from the injury insurance regulation. Above that, it is likely that the notification to the insurance system is still far from complete. The main reason for it is the fact that the work injury insurance system is still at the (fast) track of development. While all employees should be covered, the social security work injury insurance system is now covering less than 250 million people (the estimation is based on 15 percent annually increased coverage, basis 2006 = 100 million), which constitutes only a fraction of the 764 million employed (figure was obtained at the end of 2006). This implies that for the years ahead, a dramatic increase in reported work injuries might perfectly coincide with a considerable improvement in work health and safety protection, because it could be explained by a better coverage and notification. Regarding occupational diseases, the notification to the compensation system is further compromised by the limited capacity and unresolved practical problems (think of internal migrant workers⁹) for identifying occupational diseases.

The other regulation concerns what can be described as ‘major accidents’. These are the Regulations on Reporting, Investigation and Handling of Work Safety Incidents. They came into force on June 1, 2007 and constitute a kind of specification of the Law on Work Safety (29 June 2002). OSH incidents are divided into 4 categories depending on the level of severity in terms of casualties and financial damage, ranging from: (1) ‘especially serious incidents’ causing the death of at least 30 persons; (2) serious¹⁰ injuries to at least 100 persons (including acute industrial poisoning) or direct economic loss of at least RMB 100 million Yuan; (3) ‘ordinary incidents’ referring to accidents that have caused the deaths of less than 3 persons to (4) serious injuries to less than 10 persons, or direct economic losses of less than RMB 10 million Yuan¹¹. These regulations have nothing to do with compensation of victims. SAWS is systematically informed about data issuing from these regulations. SAWS statistics are based on these and might therefore provide a reliable assessment of total number of deaths at work due to accidents (not diseases!). It should also provide reliable statistics on the total number of ‘serious injuries’ because even one single seriously injured worker is ‘less than 10’ and therefore notification by the top manager of the enterprise should be sent within one hour to the work safety administration above the county level and the other responsible department for supervision. But it is extremely unlikely that this is the usual case. Illustrative in that respect is the fact that SAWS statistics for most sectors show that the total number of ‘ordinary’ incidents does not exceed the number of deaths.

⁹ It is worth noticing that the MOHRSS has been promoting the participation of migrant workers in the insurance system since 2004.

¹⁰ If our understanding was correct, the definition of ‘serious’ is part of a local appraisal system, which might confuse comparability of data at national level.

¹¹ In Shandong, for instance, these divisions in categories indicate different levels of authorities that are responsible for the investigation of the incident.

These statistics reveal that coal mining and non-coal mining show a considerably higher risk as compared to the national average with the comparative risks being respectively 18.54 standing for 173.88 deaths per 100 thousand, and 15.56 standing for 145.98 deaths per 100 thousand in 2005.¹² The national average in the same year was 9.38 deaths per 100 thousand. Coal and non-coal mining, construction industry, and chemicals raw material and chemical products manufacturing are standing for almost all deaths in excess of the national average.

Some further details on the reporting process as it should be done according to the regulations: In the case of an incident, so-called “people-on-site”¹³ must immediately report to the person-in-charge¹⁴, the person-in-charge must report to the governmental body above the county level that is responsible for OSH within 1 hour (Article 9, RRIHWSI¹⁵). In case of an emergency, the person-on-site may inform the governmental body above the county level directly. After conducting an inspection of the premises, the OSH body should report to the relevant levels of the WS administration and inform Public Security bodies, MOHRSS bodies, unions and the People’s Procurator within 2 hours (Article 10, RRIHWSI). Reports should include (1) an overview of the employing unit where the incident occurred; (2) the time, location and a brief synopsis of the immediate situation; (3) how the incident took place; (4) the number of injured and deaths (including those who are missing) that have taken place or that can be foreseen to take place and a preliminary assessment of direct economic loss; (5) procedures that have already been implemented; (6) Other relevant issues (Article 12, RRIHWSI). Any changes in the number of casualties must be reported within a thirty-day window. For traffic accidents and fires, the changes in casualties must be reported within seven days of the event (Article 13, RRIHWSI).

Investigation units have the following responsibilities: (1) investigate the cause, process the incident, the casualty situation and direct economic loss; (2) identify the nature of the accident and where the responsibility for the incident lies; (3) provide suggestions on how to handle the persons who are to be held responsible for the incident; (4) conclude what the lesson learned from the incident is and suggest prevention and correction measures; and (5) submit an investigation report (Article 25, RRIHWSI). The Investigation unit should submit the report within sixty days of the event. Under special circumstances, with permission by the local government that is responsible for the investigation, the deadline for submission of the report may be extended by a maximum of sixty days. (Article 29, RRIHWSI) The report should include information on the following areas: (1) an overview of the unit in which the accident occurred; (2) how the incident unfolded and how the rescue was carried out; (3) the number of casualties and direct economic loss; (4) the cause and nature of the incident; (5) identification of responsibility and suggestions on how to handle those who bear responsibility; and (6) prevention and correction measures (Article 30, RRIHWSI).

The local government responsible for the investigations should approve the report within fifteen days of receipt. For major incidents, the approval must be made within thirty days. Under special circumstances, the period for approval may be extended for no more

¹² This is according to the most recent figures in our possession.

¹³ The term “People-on-site” refers to any individual that is present on the scene where the incident occurred. This could be to a worker, witness or even a passer-by.

¹⁴ The person-in charge refers to the principle responsible for the administrative approval and safety supervision and administration of local governments and relevant departments of the state council.

¹⁵ Regulations on Reporting, Investigation and Handling of Work Safety Incidents.

than thirty days (Article 32, RRIHWSI). A registry system for occupational health services should be established to provide service on occupational diseases prevention¹⁶.

10. Inspections

In 2008, approximately 181,436 fireworks factories were inspected, covering 69.05 per cent of total registered fireworks companies. In that same year, 15,151 coal mines were inspected, covering 84.51 per cent of the total number in the country. 70,461 employing units in the metal and non-metal industrial sectors (78 per cent coverage) and 171,040 inspections of (hazardous) chemical industrial enterprises, amounting to 63.32 per cent of total, were carried out. In 2008, some 2,371,480 incidents, potential hazards and accidents were investigated and, if necessary, prosecuted.

11. Communication, Publicizing OSH Laws and Regulations, Campaigns

SAWS is putting lots of energy in campaigning. An important campaign concerns the work injury insurance obligation of employing units. As mentioned before, a majority of business are not yet contributing to the system, despite a legal obligation. Both labour inspectors and OS&H inspectors have the responsibility to enforce participation in the insurance system. MOHRSS and SAWS together with ACFTU launched a nationwide campaign. Given the relatively recent legislation on this matter, the relatively low attention paid by the central authorities to OS&H and related matters in the past and the very quick raise in economical activity in the same period, it is logical and in line with ILO Convention no 81 to set up a huge campaign as on onset to enforcement, which is much needed.

Together with the Propaganda Department, the State Administration of Radio, Film and Television, ACFTU, the Communist Youth League, and the Women's Federation, SAWS has implemented a host of activities during "National WS Month" and the "Spreading WS to Ten Thousand Miles" campaign in recent years. Activities like "Safety Consulting Day", contests of knowledge on WS Law and prevention, WS speech contests as well as large-scale public activities were also organized.

Special campaigns, for instance against dust exposure (pneumoconiosis) are regularly carried out in the country. "Joint" activities between SAWS and the LIB of MOHRSS usually do not involve inspections but rather studies, etc. Occasionally, when accidents are investigated, SAWS and LI&SS inspectors will jointly visit an enterprise. The former investigate the accident and the latter will focus on employment issues such as signed labour contracts and social security issues (i.e. accident insurance coverage). In June 2007, SAWS jointly held the "Safety and Development Forum on Safety Culture, Safety Law and Technology" together with the Ministry of Science and Technology, the Ministry of Land and Resources, etc.

Since 2009, the Society and Law Channel of CCTV began a programme entitled "Safety and Law". As from June, SAWS started cooperation with CETV on a programme called "Safety Spot", to publicize safety laws and knowledge through case studies. During the "WS Month", two programmes: "Potential Safety Accidents and Difficulties in Treatment in Small-scale Coal Mines" and "Safety Administration in Chemical

¹⁶ "Interim" Rules on the Governance of Occupational Health in Workplaces, Article 40.

Enterprises” were aired on CCTV. Since 2002, SAWS, together with ILO, ISSA and other partners, has also regularly organized the China International WS Forum every two years¹⁷.

Local WS bureaus are expected to report “regularly” to SAWS HQ. The SAWS website provides frequent updates on OSH incidents across the nation. Columns are divided into regional updates, specific OSH incidents updates and weekly national overviews. In the latter, information that is listed includes the number and current situation of serious incidents and a comparison with the statistical average; the number and current situation of very serious incidents, and again a comparison; and a list of follow-up measures that have been implemented.

B. WSA Inspectorate Staff

1. Law Enforcement Institutions and Team Building

By 2008, 31 provinces, autonomous regions and municipalities under the central Government, 333 other municipalities (98.9 percent) and 2,869 districts/counties (94.6 percent) had established WS supervision and administration departments. By 30 June 2008, there were 43,735 established positions for full-time civil servant WS inspectors (FTWSI), and altogether 47,656 professional staff in the safety supervision and administration departments at provincial, municipal and district/county levels, an increase of 99 percent and 108 percent respectively compared with 2003. (21,969 established posts and 22,857 staff). The principle is that whoever recruits additional inspectors covers their costs from the respective jurisdiction budget. In most provinces, only WS bureaus (at provincial, municipal, district/county levels) undertake law enforcement.

In addition, there are some 1,728 WS Law Enforcement teams (LE teams) in 12 provinces, 213 municipalities and 1,503 districts/counties with 15,714 established posts and 14,457 staff. At SAWS headquarters, the parallel existence of WS bureaus and LE teams is not considered a major problem. The LE teams’ main function is to implement the decisions of the bureaus. In the other 20 provinces and autonomous regions, it is believed that there is enough WS inspection staff. (This is for the provinces themselves to decide). Furthermore, there are 28,024 safety divisions (offices, stations) or safety committees, in 41,813 districts/counties and streets/townships with 4,724 LE teams and 87,226 full-time and part-time staff. Depending on the nature of the issues under consideration, either SAWS or regional/local WS bureaus will intervene. This is regulated by a written “Agency Agreement”. Where WS offices are represented at Streets/Townships levels, most teams are made up of part-time and full-time OSH inspectors. Only these latter are civil servants.

2. Status of Inspectors

All WS inspectors from district/county to higher levels are civil servants, as part of the respective WS administrations. Inspectors are appointed by provincial, municipal or local authorities, and report to both their respective central government authorities and the respective regional/local government.

Governments above county-level can employ both full-time and part-time inspectors. Full-time inspectors deal exclusively with OSH (or labour) inspection, as the case may be, while part-time inspectors are assigned duties other than WS/labour inspection. Part-time

¹⁷ The 5th China International WS Forum will take place in Beijing in September, 2010.

inspectors cannot impose sanctions, i.e. they have no “enforcement powers”, except in the presence of full-time labour inspectors.¹⁸

The documentation and badges of all WS inspectors are issued by the State Council. These badges are re-issued once every 3 years upon successful passing of the certification examination. Those who fail the exam do not get their badges re-issued until they take the test again successfully.

3. Recruitment

Full-time WS Inspectors are appointed by different level Inspectorates from district/county upwards. The WS Inspectorates are responsible for nominations and for filling out the WS Inspector Approval Form, which is then processed by the Human Resources Department of the same level and is submitted to the head of the Local WS Administration for approval. Part-time WS Inspectors are nominated by the relevant department for which they will work, which is then also responsible for filling out the Inspector Approval Form. This application must be approved by the WS Inspectorate and HR Department of the same level before being submitted to the head of the local WSA for final approval. Upon confirmation of appointment, the WS inspectorate is responsible for issuing the WS Inspection Certification. WS inspectors should then be included in the WS administration civil servant training programme, which is usually followed by an exam or test which, if they fail, they may take again. Inspectors who adhere to legal provisions and demonstrate excellence can be rewarded according to the provisions of the Law on Civil Servants.

4. Qualification Requirements

The basic requirements are laid out in the Law on Civil Servants. Candidates must possess Chinese nationality, be in good health, must not have a criminal record, and must not be subject to any pending administrative or criminal investigation. WS inspectors are required to be law-abiding, responsible, fair, just, incorruptible and able to respect confidentiality. They must be familiar with the duties associated with inspection, and possess a corresponding level of literacy and professional knowledge. (Article No. 61, WSL; Articles Nos. 9 and 10, Law on Administrative Supervision). There are no strict minimum education requirements, but today WS inspectors are usually recruited at graduate (BA, BSc) levels. Some work experience may also be required.

5. Human Resource Development

As a rule, new recruited inspectors receive 1 month’s induction training at provincial levels. Additionally, in 2005-2006, 455 inspectors safety-training events were organized, for a total of 16,501 inspectors (2005) and 13,171 inspectors (2006). After 2 years, shorter trainings (of around 1 week) were organized, covering, on the one hand, new laws and regulations, and on the other hand, technical issues such as new hazards, dangerous chemical substances, etc. A SAWS Training Centre provides training for 4 different groups:

- Trainers for law enforcement;
- Trainers for large-scale employing units;

¹⁸ Circular of the MOL on the Issuance of Measures Governing Labour Inspectors (2005).

- Trainers for municipal and district/county levels; and
- Leaders responsible for WS in employing units.

From 2005 to 2006, SAWS organized nine training events for 752 staff (455 from WS departments and 297 from coal mine safety departments) of different provinces, autonomous regions and municipalities under the central government. WS departments of different provinces, autonomous regions and municipalities organized training for safety departments at municipal and county level. 16,521 and 13,177 staff were trained in 2005 and 2006 respectively.

SAWS is also very active in Safety Training for employers and workers. According to available statistics, in 2008, 14,209,027 special operators (860,240 from coal mines, 239,477 from metal/non-metal mines, 222,476 from hazardous chemical plants, and 95,140 from fireworks factories) were trained, with 91.1 percent obtaining certificates. 981,333 safety management personnel (116,510 coal mines, 100,180 metal/non-metal mines, 185,051 hazardous chemical plants, and 111,261 fireworks) were trained, with 81.8 percent obtaining certificates. 710,937 principals of enterprises (17,448 coal mines, 68,689 metal/non-metal mines, 135,786 hazardous chemical plants, and 124,575 firework plants) were also trained.

6. Standards of Professional Conduct

There are standards of professional and ethical conduct common to all civil servants in China¹⁹. In addition, some of the obligations incumbent on labour inspectors under Article 15 of ILO Convention No. 81 have been adopted in the LI Regulations of 2004 (but not as such for WS inspectors). Some local jurisdictions have set their own additional ethical rules for inspectors (e.g. the “4 Don’ts” of Hubei Province).

C. Other Actors with OSH Inspection Responsibilities

1. General Observations

Other ministries, e.g. the Ministries of Agriculture, Construction, Transport, supervise more than thirty laws and regulations also dealing with WS. WS in employing units in these sectors is not inspected by SAWS but by the relevant sector ministries’ inspections. SAWS only supervises, guides and coordinates the implementation of relevant laws, but provincial WSAs (including others) do not undertake on-site visits. SAWS also supervises guides and inspects provincial governments. In practice, this amounts more to methodological guidance and sharing of good practice examples.

2. Ministry of Health

As already mentioned, the Ministry of Health (MoHealth) and its provincial, municipal and district/county departments and bureau of health until recently had the responsibility for OH inspection. Formally, this function has been transferred to SAWS in 2008, but this change has not yet been fully implemented at all provincial, municipal and

¹⁹ The 2008 IALI (International Association of Labour Inspection) “Code of Integrity” has been translated into Putong Hua with collaboration from SAWS, but has not yet been introduced to local WSAs on a systematic basis.

district/county levels in the country. The MoHealth continues to operate sanitation inspections responsible for public hygiene supervision in occupational, radiation, environmental and school areas. It is also responsible for hygiene inspection of public areas, potable water and for monitoring the spread of infectious diseases.

3. Ministry of Construction

The Ministry of Construction is responsible for the organisation, monitoring, and implementation of WS in the construction industry nation-wide. It also operates provincial and municipal structures and has its own professional WS inspectors.

4. Ministry of Agriculture

The Ministry of Agriculture has a Division of Personnel and Labour that is responsible for education, wages and benefits in the agricultural sector. The Division of Agricultural Mechanization Management has an Agricultural Machine Safety Inspectorate. Rules on the Administration of Agricultural Machinery Safety Inspection and Rules on Institution Building of Agricultural Machinery Safety were issued in April 2009.

5. Other Agencies

The Ministry of Housing and Urban-Rural Development is responsible for construction safety inspection and administration. The Ministry of Public Security is responsible for fire prevention/fighting and traffic safety. The Ministry of Communications is responsible for WS inspections in its areas of competence. The General Administration of Quality Supervision, Inspection and Quarantine is responsible for safety provisions involving special equipment such as boilers, pressure vessels, pressure pipelines, lifts, cranes and hoists.

D. Sanctions and Administrative Fines Procedures

Any individual or organization may legally report violations of any law, regulation or rules related to OSH to the WS Inspectorate. In fact, legal provisions encourage workers to file complaints about sub-standard OSH conditions. Workers may recommend someone to represent them. Complaints must be filed in writing. Individuals who have problems writing may file a verbal complaint and sign the minutes that the WSA unit has recorded. The following information must be included in the written complaint: 1) the name of the parties (plaintiffs and defendants), sex, age, occupation, employing unit, contact information, legal representative or the name of the person-in-charge, and duties; 2) the labour protection rights that have been infringed and the requests in the complaint. In case of a dispute or disagreement, a higher-level WS administration may investigate the case that is being handled by a lower WS administration.

OSH Inspectorates are given the following sanctioning authorities: 1) to impose penalties for law infringements; 2) to demand from employers that have failed to implement the necessary remedies that they implement remedies or face relevant administrative charges; 3) to drop the case against those institutions that have remedied the situation or that have only committed a minor offence. The following process must be followed when issuing any kind of sanctions: 1) verbal warning identifying that the employer has violated the law, statement of the type of sanction that is to take place and an explanation of the employer's legal rights; 2) listening to and recording the statement and defence of those involved; 3) filling out of the standard sanction form; 4) signing of the sanction form by the WS inspector; 5) handing over the sanction form to the plaintiff and having him sign to confirm receipt. The rights of employers to explain and defend

themselves when faced with charges are stated in procedures contained in the Law of Administrative Review.

This law is applied in the case of disagreement on the following: 1) warnings, penalties, confiscation of illegal earnings, confiscation of illegal property, suspension order, temporary withholding or revoking of a permit or license; 2) when an employing unit's right of movement is restricted, or when personal property is forcefully confiscated, withheld or frozen; 3) in case of changes, termination or revocation of permits, licenses, quality standard certification or other forms of certification; 4) when an administrative authority has collected resources, property or fees or required one to fulfil certain duties; 5) when an administrative authority has not fulfilled its duty in the issuance of permits, licenses, certifications or failed to investigate or record an incident; 6) when an administrative authority has failed to carry out its legal duty in protecting an individual's personal rights, property rights, right to education; 7) when an administrative authority has failed to release social protection funds; 8) any other actions by administrative authorities that have infringed upon the legal rights of an employing unit.

Specifically, fiscal penalties are imposed according to the Administrative Fines Regulations in the following manner: starting at district/county level, if OSH inspectors want to initiate administrative fines procedures, they first have to request and obtain approval from the higher-level (e.g. municipal) WS inspection bureau. The procedure then runs through the following steps:

1. A violation case is filed.
2. At least two full-time civil servant WS inspectors carry out an inspection investigation. They also have to issue a letter of enquiry to the employing unit.
3. The inspectors propose initiating sanction procedures with the head of the bureau (the deputy Director General of the municipal or district WS Department). (Up to this stage, the district/county WS Inspection team can only "mediate").
4. The employing unit is notified of the intention to initiate sanctions procedures and of its right to appeal this "intention notice" already at this stage.
5. If no appeal is made, the decision document of administrative penalties is issued to the employing unit.
6. If the employing unit then appeals, a hearing is fixed and other officials, from the case review office, either reconsider or uphold the decision.
7. If the intention decision is upheld, an "administrative penalty treatment decision" is issued to the employing unit.
8. This can be appealed either to the municipal Legal Affairs Department, or to the Legal Affairs Department of the province, where it is again reviewed.
9. If the employing unit is still not satisfied, it can appeal to the Administrative Branch of the local People's Court. At this stage, the judicial procedure sets in.
10. If the decision is upheld, the employing unit can appeal the fines decision at the next higher judicial instance.

More simplified procedures for "on-the-spot-fines" also exist in the WSA, where, as with public security, inspectors can issue a "ticket" and the employing unit then pays the fine at the bank. Not all provinces however appear to have implemented such a system of on-the-spot-fines.

Actions that constitute a criminal act can be prosecuted under Criminal Law. For serious violations, employing units may have their license revoked. Anyone who obstructs an OSH inspector, falsifies records or information, refuses to comply with the orders set out by inspectors or attacks informants or plaintiffs may be fined an amount between 2,000-20,000 RMB. Should any of these actions constitute a criminal offence, the case will be directed to the relevant authorities, and criminal proceedings may ensue.

Article 13 of the Law on WS defines the responsibility investigation system for accidents due to lack of, or violation of WS (&Health) laws and regulations. Persons responsible for any accidents due to such violations shall be investigated for their legal responsibilities in accordance with the provisions in this Law and other relevant laws and regulations. (Article 13, WS Law). Articles 35-43 of the Regulations on Reporting, Investigation and Handling of Work Safety Incidents outline the legal responsibility and penalties for infringement of these Regulations. The penalties depend on the level of severity of the accident and the party that is responsible for it. For the person-in-charge, penalties range from 30 percent-80 percent of the previous year's earnings. For the employing unit where the accident occurred, penalties range from 100,000 to 50 million RMB. If an official from the local authorities or from the OSH department is held responsible, they will be punished by their superiors and may even be subject to criminal prosecution. This is perceived by inspectors as unfair, for a diversity of reasons that were expressed: they have no authority over licensing procedures for exploiting a mine, which is shared by several institutions, none of which is related with SAWS inspectors; OS supervision in mines is shared by several authorities and the confusion is sometimes so big that the responsible SAWS representative sometimes does not know where to a particular document should be transferred; there was and still is to some extent, a continuous conflict between the eagerness of local governments -which is leading the local SAWS - to make economical progress which resulted in speeding up projects, to the detriment of a credible implementation of the three simultaneous approaches; the coal mine safety administration is under the direct control of the central authority, which makes it difficult for local SAWS to independently execute their role; there is a shortage of staff assuming all the responsibilities, especially when industries are moved from the east to the west of China, leading to discrepancy between economical development and investment in work safety protection, and putting a too huge burden on local capacity in dealing with OS&H issues. "We cannot shut down all enterprises" was a comment, which expressed that there is a lot of tension issuing from an apparent lack of clear and fair distribution of responsibilities and related liabilities.

Administrative Punishment Measures on the Violation of WS issued by the SAWS outline the administrative punishment delivered to business and production units and relevant individuals when WS laws, regulations and rules are violated. This also applies to Mines Safety. The range of punishment measures includes warnings, fines, orders to correct with or without a deadline, orders to suspend activity immediately, confiscation of coal obtained using illegal means, closure of facilities, custody, punishment in accordance with Law on WS and other regulations. The Interim Rules on the Administration of Occupational Health in Workplaces state that the penalty for failure to correct a workplace hazard by the given deadline amount to a maximum of 20,000 RMB for minor violations, 20,000-50,000 RMB for more serious violations, and 50,000-2,000,000 RMB for severe violations. Supreme People's Court rulings do not set precedence, which creates problems of interpretation and enforcement. However, prior cases are increasingly being referred to before court decisions are made.

According to available statistics, in 2008, 2,371,408 potential accidents with a correction rate of 95.9 percent and 220,196 major potential accidents (correction rate 91.4 percent) were investigated and prosecuted. 67,000 administrative sanctions were issued, among which 15,000 enterprises ordered to suspend until correction, 2,608 employing units were ordered to shut down, with 1,715 being actually shut down, a submission rate of

65.8 percent. Total penalties amounted to 1,269,620,000 RMB, a year-on-year increase of 208,400,000 RMB, with a penalty collection rate of 88.5 percent.

E. Trade Union Labour Protection Supervisors (LPS)

Articles 2, 5, 6 and 7 of the Trade Union (TU) Law provide the legal basis for the functions of TUs in labour protection. Articles 22 and 30 stipulate the functions of TUs in supervising the implementation of labour laws and regulations by employing units and in assisting employers to protect employees' OSH. Articles 23, 24 and 26 lay down the right of TUs to supervise the concurrent design, concurrent construction and concurrent completion of OSH facilities together with the construction of the project itself (Again, the "Three simultaneous Approaches" already mentioned above); the right of TUs to protect the life and health of employees when they are instructed to perform under major "hidden risks" or work hazards; and the right of TUs to participate in the investigation of OSH accidents.

The General Principles of the "Constitution of the Chinese Trade Unions" stipulate that the primary function of the TUs is to protect the legitimate rights and interests of workers. The primary task in OSH of TU committees at the operational level is: to supervise the effective enforcement of relevant laws and regulations, assist and supervise the employer in the area of wages, OSH, social security, etc; develop collective welfare schemes for workers for the improvement of workers' life; participate in the investigation and handling of OSH accidents; and protect the special interests of women workers and combat discrimination, abuse, maltreatment, and persecution behaviour against women workers.

Three sets of regulations amplify the rights and duties of the TUs of ACFTU in the area of OSH: Regulations on TU Labour Protection Supervisors; Regulations on Labour Protection, Supervision and Inspection Committees in Grassroots TUs; and the Regulations on Labour Protection Supervisors of Enterprise TU Groups (all revised in 2001). Accordingly, ACFTU has established a labour protection supervision system, nominated TU LPS in industrial federations and TU organizations at district/county level and above, established TU "Labour Protection, Supervision and Inspection Committees", and set up LPS in TU groups at employing units level (where these exist).

The TU LPS are under the leadership of the TU organization they work for. On behalf of the TUs, they monitor the implementation of OSH laws, regulations and technical standards in government offices at the same level, as well as enterprises and mines. TUs can hire external labour protection specialists to work as part-time LPS. Labour Protection, Supervision and Inspection Committees have been established in various enterprises and undertakings that are unionized. For those without a union, the TU organization at higher level will be responsible for the supervision and inspection on its working conditions. By the end of 2004, there were an estimated 126,000 trained and qualified TU LPS in the whole country, 595,000 grassroots TU Labour Protection, Supervision and Inspection Committees, and 1.431 million LPS under enterprise TU groups, forming a down-to-top "public" (or social) OSH supervision network.

F. Coal Mines Safety Inspection

In accordance with the "Notice of the State Council on the Promulgation of Regulations on the Main Functions, Organisational Structure and Staffing of the State Coal Mine Safety Administration" (CMSA) by the General Office of the State Council No.101 [2008], the CMSA has been established (at the vice ministerial-level), as a State Bureau

under the leadership of SAWS. As of September 2009, 26 provinces had established Coal Mine Safety Inspection Departments. There are 73 Coal Mine Safety Inspection Bureaus with some 2,800 inspectors.

1. Main Functions

The CMSA is responsible for:

1.1 Coal mine WS policies, participating in the draft of laws and regulations concerning coal mine safety as well as relevant rules, procedures and safety standards, industrial regulations and standards of the coal sector, make coal mine safety plan.

1.2 Coal mine safety nationwide, supervision on coal mine safety administration of local government. To supervise local government in their implementation of coal mine WS laws, regulations and standards, closure of coal mines, coal mine safety inspection and enforcement, specific rectification on coal mine safety, address to and review of accident threats and the exercise of accident accountability system. To make recommendations and suggestions to local government and relevant departments.

1.3 WS permissions for coal mines and the implementation of coal mine safety permission system, managing and supervising the examination and award of permits related to coal mine operation, supervising the relevant safety training.

1.4 Supervision on work health in coal mines, work health permits, supervising the work health conditions of coal mines, investigating and punishing coal mine work health accidents and other illegal practices.

1.5 Major supervision, specific supervision and regular supervision on the WS in coal mines, supervising their implementation of safety laws and regulations, their WS conditions, safety of equipments and facilities, and dealing with illegal practices or imposing administrative penalties on the sites.

1.6 Release of national coal mine WS information, the statistics and analysis of national coal mine work health and safety accidents, organising or participating in the investigation and punishment of coal mine WS accidents, supervising the enforcement of accident investigation and punishment.

1.7 Review and approval on the safety of major coal mine construction projects, organising the design, review and delivery of safety facilities in coal mine construction projects, investigating and punishing less qualified coal mines in WS.

1.8 Coordination of emergency rescue work for coal mine accidents.

1.9 CMS research, organising safety checks of CM equipment, materials, and instruments.

1.10 Direct the general safety management of CM enterprises, supervise the appraisal of CM productive capacity and the closure of CMs with relevant authorities and make review comments on CM technological renovation and gas usage projects.

1.11 Perform other tasks assigned by the State Council and SAWS.

2. Organisational Structure

The State Administration of Coal Mine Safety has five departments (DG level):

2.1 General Office

Responsible for the draft of work rules and procedures within the organisation; management of official documents, administrative information, confidentiality; coordinating personnel, finance and foreign affairs within the organisation.

2.2 Safety Administration Department

To supervise local government in their implementation of coal mine WS laws, regulations and standards, investigate and punish less qualified coal mines in WS conditions; to organise the design, review and delivery of safety facilities in coal mine construction projects, to be responsible for the WS permission for coal mines; to review and approve the safety of major coal mine construction projects; to supervise the closure of coal mines, to supervise the coal mine safety administration of local government.

2.3 Accident Investigation Department

To organise the investigation and punishment of WS and health accidents in coal mines; draft work health enforcement rules and standards in coal mines; supervise the work health conditions in coal mines; coordinate or participate in the emergency rescue of coal mine accidents; supervise the law enforcement in coal mine WS; carry out administrative review; supervise the statistics and analysis of coal mine accidents, work health hazards and report; release coal mine WS information; perform day-to-day work of the State Coal Mine Safety Supervision Office.

2.4 Department of Science, Technology and Equipment

To participate in the draft of coal mine safety administration laws and regulations; draft of coal mine WS plans, rules, procedures and standards; supervise the draft of industrial rules and standards in the coal industry; organise coal mine WS research and results promotion; supervise the safety of coal mine equipments, materials and instruments; review on the technological renovation and gas utilisation projects in major State-owned coal mines.

2.5 Department of Industrial Safety Administration

To supervise the safety management and standardisation in coal production enterprises; supervise the establishment and implementation of safety threats checkups, report and treatment systems; supervise local coal industry authorities in their appraisal of coal mine productive capacity; supervise the WS in central coal enterprises and coal mine services enterprises; and supervise the review and approval of coal mine-related permission and relevant safety training.

G. The State Work Safety Emergency Rescue Commanding Centre

In order to integrate emergency rescue resources across the country and enhance the State's ability to deal with major and very serious accidents, the State Work Safety Emergency Rescue Commanding Centre was set up in Beijing in 2006.

The Centre performs the administrative functions of supervising and managing national overall emergency rescue of WS accidents, coordinating and commanding the WS accidents and disaster emergency rescue work according to the national plans of WS accidents emergency rescue.

The main functions of the Centre include: participating in the process of constructing drafts and amendments of national laws and regulations concerning WS emergency rescue; making and managing national plans of WS emergency rescue; coordinating the emergency rescue work for very serious WS accidents, and mobilising rescue resources in accidents.

H. The State Council Work Safety Committee

In order to strengthen the uniform leadership of WS nationwide, promote the steady improvement of WS conditions, protect the safety of State assets and people's lives, the State Council WS Committee was established with approval of the SC.

1. Organisation

The Chairman of the WSC is one of the Vice Premiers of the State Council; Vice Chairmen include a State Councillor, the Minister of SAWS and the Deputy Secretary General of the State Council. Members consist of the heads or deputies of the State Council's ministries and agencies, other public organisations and the Army.

2. Main Functions

Under the leadership of the State Council, the WSC is responsible for research, management, leadership and coordination of WS nationwide, especially to:

- Make major guidelines and policies for WS nationwide;
- Analyse national WS conditions and address prominent problems related to WS;
- Coordinate with Army headquarters and Armed Police headquarters to mobilise military forces for emergency rescue in case of very serious WS accidents;
- Deal with any other WS-related tasks assigned by the State Council.

3. The General Office of the WSC and its Functions

The General Office (GO) is the Secretariat of the Committee, located in SAWS. The Head of the Office is the Minister of SAWS, and his deputy is the Vice Minister. The main functions of the GO are to: make suggestions on major guidelines, policies and measures concerning WS; supervise the WS administration of government departments under the State Council and the provincial governments; organise major State Council inspection campaigns on WS; participate in the research on industrial policies, funding and R&D by relevant departments that involve WS issues; organise the investigation and punishment of major accidents; coordinate the emergency rescue work for very serious accidents; coordinate national WS law enforcement; organise WSC sessions and activities, inspect the implementation of WSC decisions; and any other tasks assigned by the WSC.

I. Work Safety Research Institutes

1. *The China Work Safety Research Institute*

The Institute is a national research institution on WS sciences. Formerly known as the Labour Protection Research Institute, it was set up under the Ministry of Labour in 1980. With the transformation of the WS authorities in 2001, it was transferred to the management of SAWS. It has been renamed as the China Work Safety Research Institute in 2005.

2. *Main Functions*

- Research on WS theories and policies, provide technical assistance for the establishment and improvement of WS theories, draft WS policies, development strategies, laws and regulations and promote legal and scientific management of WS;
- Research on basic WS techniques, provide technical assistance for the drafting and revision of WS science and technology development plans, technical standards and the improvement of WS technical support systems, and lead the development of WS science and technologies;
- Perform the tasks of major WS science and technological breakthroughs and technical promotion work, research in general, crucial and prospective technologies, develop new technologies, techniques, equipments and materials, and promote the advanced and practical technologies;
- Undertake basic research on major hazard sources identification and appraisal technologies, and provide technical assistance for major hazard source monitoring;
- Basic research on major accident analysis and simulation technologies and emergency rescue technologies, and provide technical assistance for major accident analysis and appraisal as well as the emergency rescue;
- Authorised by SAWS, to engage in the examination and registration of certified safety engineers, certified safety appraisal engineers, the certification of safety appraisal bodies, and the review on safety appraisal reports;
- Participate in international exchange and cooperation in WS sciences and technology, keep updated on new developments worldwide, and introduce, integrate, apply and innovate advanced WS technologies;
- Research on OSH monitoring and appraisal techniques;
- Work as the General Office of the State WS Science & Technology Committee;
- Act as the ILO National Information CIS Information Centre;
- Any other tasks assigned by SAWS; and
- Provide WS technical services for local government and enterprises.

3. Other OSH-relevant Research Institutes (selection)

- The Work Safety Theory, Laws, Regulations and Standards Research Institute;
- The Public Safety Research Institute;
- The Occupational Hazard Research Institute;
- The Safety Administration Technical Research Institute;
- The Hazardous Chemicals Safety Research Institute; and
- The Mine Safety Research Institute.

In addition, there are some nineteen Provincial WS Research Institutes. Furthermore, the China Association of Work Safety (CAWS) was set up in 2008; it is a national non-profit organisation under the administration of SAWS.

J. National Work Safety Standardisation Technical Committee

The National WS Standardisation Technical Committee was established in 2006. Under the leadership of SAWS' State Standardisation Administration Committee, it is a national technical organisation for the standardisation of WS, responsible for the general plan, design and research on national and industrial WS standards, drafting, amending, review, publicity, implementation of relevant standards, and other scientific research on WS standardisation.

III. Major Conclusions of the Review Mission

Hezuoliliangda – Aim for closer co-operation to bring about greater success

1. The need for a holistic approach

Preventing occupational accidents and diseases requires a systematic prevention management approach, for which the employer must have full responsibility. Because an employer is usually not specialised in occupational accident and disease prevention, he or she should rely upon the advice of different professionals. Although different professionalisms play a role in risk assessment and in advising on prevention policy, their action must be complementary and integrated. Employers must comply with laws and regulations on both health and safety matters. They must therefore develop one coherent prevention management policy, and thus not two policies.

The OSH legislative framework of employer's obligations in China consists of two key laws: The Law on Work Safety and the Law on Prevention and Control of Occupational Diseases. Not surprisingly, many dispositions of both laws are similar. However, in line with ILO Convention No. 155, which promotes a single and holistic management responsibility for employers, the legislation on workplace prevention should offer one single framework, focusing foremost on prevention and covering health, safety, hygiene, ergonomics, and psycho-social issues. Regulations then could go into much more detail on requirements for separate domains of prevention. Such an integrated new law would address a complete framework of rights and duties of employing units, employers,

employees and third parties as natural persons for preventing adverse health and safety outcomes in the workplace.

Such a legislative framework would have the advantage of clearly listing the rights and duties of employers, employing units and other duty-holders in risk management. It would be in line with ILO Conventions ratified by China, with recognized best practice from other industrialized countries, and also be in line with the already ongoing shift of tasks and duties of serving WSA inspectors, who are now responsible for control and enforcement of both work safety and occupational health (hygiene), a clear evolution towards a modern, integrated and holistic approach.

Compensation of work-related accidents and diseases should be in separate laws. Also the inspectors role and responsibilities should be addressed in a separate law.

2. *A prevention promotion and enforcement strategy for SME's*

The ultimate responsibility of all employing units, whatever their size, is rightly considered as identical in PRC's regulations. The Work Safety Law also rightly recognises that different sizes of employing units may require different solutions (for instance, Article 19 that addresses how enterprises of different size must guarantee competent control of work safety). Nonetheless, the mission has been informed that traditional OSH strategies, in particular the regulatory approach to OSH enforcement, do not necessarily work in China's small business community. The current organisational concepts and capacity related to both external expertise and WSH inspection does not reach SME's as it should. At the same time, risky work situations are shifted towards smaller companies. The recommended new, integrated OSH regulatory frame will subsequently require a new, comprehensive, integrated national law enforcement strategy, focusing on prevention through qualified advice and information services as much as on consequent law enforcement in case of uncooperative or unwilling employing units.

What might thus first of all be considered could be a new national Inspection (Prevention & Enforcement) Strategy for the SME sector, re-defining SMEs, (as in Ningxia AR for example), as any employing unit with less than 100 workers; and based on the realization that SMEs are not just down-scaled versions of larger companies, which have, or should have, (or have access to), the necessary OSH competence and required means in their own organisation. SMEs, as a rule, face different challenges and have different operational, including OSH requirements. While, of course, national legislation, regulations and standards are the same for all employing units, the way they are applied, monitored and enforced may vary considerably between SMEs and larger companies. This is good practice in most industrialized countries and we recommend that SAWS consider adopting a similar approach after thorough discussion of what best practice is internationally "available".

Systematically setting up information campaigns using different media and related activities like training sessions for employers will incite most target companies to comply with regulations and to copying identified good practices. Further instruments to be developed might be checklists. SAWS has done an extraordinary amount of efforts in setting up such activities within a few years time and is thus very experienced. The mission has the impression that generally, these efforts reached bigger employing units, but not smaller ones. Specific attention should be paid to campaigns that are focused on smaller employing units. A relatively quick and possibly successful accompanying measure might consist of systematically involving part-time inspectors in information campaigns in SME's. A side-objective of such campaigns should be to identify many indisputable high-risk companies, notify statutory inspectors of these so they could then use their enforcement power.

It is obvious that the concept of external preventive services as explained elsewhere in these conclusions (an idea also alluded to in the Law on Work Safety) will considerably contribute to upgrading the level of protection in SME's. It will, at the same time, constitute the perfect complement of an efficiently operating inspection service.

3. *Employer's responsibility and liability*

The Law on Work Safety stresses that 'principal leading members of production business units are in full charge of work safety of their own units' (art6). Article 7 of the same Law stresses that production and business units who do not have working conditions as specified by the relevant laws are not allowed to engage in production and business activities. The Law further refers to eventual criminal liability of 'the principal leading member of a production or business unit', but only in case an accident has occurred.

Unequivocal employer's responsibility and resulting liability must constitute the basis of each labour protection regulatory framework. The employer is by definition invested with the full authority to take all the necessary measures to protect worker's safety and health in respect of the legal requirements. He/she is the one who ultimately decides (even if decisions can be delegated) what to produce and how it will be produced including the organisation of the work and the training of workers. He/she can sanction insubordination against any orders he/she must give on safe and healthy work practices. He/she selects the required external service providers and internal competent persons to assist and advise in working in a healthy and safe manner, and has the full authority to do so.

Therefore, making the employer fully responsible for all aspects of prevention in his/her undertaking will lead to a dynamic that will in turn result in better compliance with the law. In contrast, not bestowing this unequivocal responsibility on the employer may easily give onset to an adverse dynamic, resulting in poor prevention. This explains why international benchmarks and all modern OSH legislation reflecting them are based on the principle of "Employers' unequivocal responsibility for OSH in all workplaces under her/his control". The employer (as a legal and natural person) is by law obliged to ensure that workplaces, machinery, equipment and processes under his or her responsibility are safe and without risk to anyone's health (ILO Convention No. 155). This is a principle of overriding importance in almost all countries' modern OSH systems. Although other parties also have obligations, it is the employer in person, who is primarily responsible and this responsibility cannot be delegated to lower echelons, only the task of organizing it.

It should therefore also be clear that obligations of other parties (for example, OSH experts in employing units, OSH services or institutes, etc. contracted by the employing unit) do not discharge the employer from his or her personal OSH responsibilities for all employees (and any members of the public affected by work being carried out under his or her authority). Delegating responsibilities to carry out OSH tasks does not exempt the employer, both as a natural and as a legal person, from his/her statutory liability. His/her eventual criminal liability as a natural person depends upon the credibility of the apparent commitment to health and safety matters, can provisionally be assessed by an inspector, and must finally be evaluated by a court. Civil liability in turn must always also lay with the legal person, because this is the best way to meet the possible claims of victims of lack of preventive measures.

Employing units' responsibilities and those of 'principal leading members of a production and business unit' are accurately and extensively prescribed in both the Law on Work Safety and the Law on Prevention and Control of Occupational Diseases, but not those of the employer as a natural and legal person. That liability is spread out over many different persons. For the above-cited reasons, this legal framework may put a significant burden on the law enforcement powers.

The fact that employers are only considered liable as legal persons (“employing units”) and not as natural persons, (while OSH inspectors can be held liable as natural persons) is astonishing. Such an approach is in contrast with the logical distribution of duties and liabilities, and counterproductive from the perspective of improving prevention and of effective enforcement where needed. The legislative framework should leave no possibility to the employer to defer his/her civil liability nor, not easily, his/her criminal liability to any other institution or person. The principle of unequivocal employer responsibility – and not just that of the “employing unit” as an organisation, but also of the leading legally responsible natural person in the undertaking, should be considered for inscription into the Law.

4. *Responsibility and liability of other duty holders*

Another issue raised in the discussions in Shandong and Ningxia was whether the concept of duty-holder is fully recognized and imbedded in the OSH system in China. The present legal context does not appear sufficiently clear as to who all the potential duty-holders in the production process may be. These may at any one time be two or more of the following: i) an employer; ii) a contractor; iii) a subcontractor; iv) a principal; v) a self-employed person; vi) an occupier of a workplace; vii) a designer, manufacturer or supplier of any machinery, equipment or hazardous substance for use at work; viii) an erector, installer or a modifier of machinery or equipment used at work; ix) an owner, a hirer or lessee of machinery moved by mechanical power, or a person who maintains such machinery for use at work.

A basic OSH law, at any one time, imposes the same duty or liability on two or more persons, whether in the same capacity or different capacities; and

A duty or liability imposed by this Act on any person is not diminished or affected by the fact that it is imposed on one or more other persons, whether in the same capacity or in different capacities.

Other duty holders, especially those who have a legal role to inform the employer on how he or she should act in compliance with legal dispositions and protect employees’ health and safety should be liable for the quality of their advices, but cannot be used by the employer to defer his/her liability.

5. *Inspectors’ liability*

Inspection for OSH may be a very complex task, especially when facing employment situations where working conditions are poor or unacceptably low. The ultimate goal of inspection should be to improve working conditions, and to stimulate employing units to continuously improve OSH protection levels through advising where inspectors can, and through enforcement by all means necessary for attaining that objective where they must.

In potentially hazardous employing units, inspectors are continuously facing not only the difficulties related to the ‘technicality’ (in its broadest sense) as well as the complexity of assessing risks (which they must somehow always do), but also the difficulty in assessing the relative impact of different variables which may explain the lack of prevention, amongst which: the employer’s lack of awareness of the risks; his/her unwillingness to comply with the rules; economic difficulties wrongly leading to lack of investment in preventive action; or even inappropriate advice by certified bodies. It is obvious that assessing all the elements possibly involved in case of poor or unacceptable working conditions that inspectors may come up against, can and even must largely affect the inspectors’ decision on what action to undertake. This is, or should be, subject to their discretion.

Where there is clear willingness by duty-holders to comply with regulations and standards, more weight will be given to the advising approach. Where there is unwillingness or lack of cooperation, more weight will be given to the enforcement approach. In any case, the inspectors' choice must lead as soon as possible to the best possible, sustainable outcome from a workers' protection perspective.

In order to come to the best possible inspection practices, especially in those employing units where their intervention is needed most, at least two conditions should be fulfilled:

- inspectors should have a solid basic training and regular further training in as many technical aspects of their work as possible that they may face in the execution of their duties; and
- inspectors must feel assured that when dealing with complex situations, it will not lead to their being held liable in cases of serious accidents or incidents subsequently occurring in an employing unit which was subject of their inspection activity. Inadvertently overlooking matters during an enterprise visit should not lead to an inspector's liability, except in cases of gross negligence or criminal intent.

If both of these conditions are not met, that may easily result in a negative internal inspection dynamic leading to avoiding inspections of employing units with poor or very poor working conditions.

Regarding this liability issue, it must be stressed that both the Law on Prevention and Control of Occupational Diseases (Articles 60 and 76) and the Law on Work Safety (Article 77) contain provisions, which could potentially undermine the confidence of motivated inspectors to tackle the more difficult OSH situations. These provisions may likely lead to deferring liability for serious shortcomings from the employer to the inspector. Such a situation is highly undesirable. The aim of these provisions may well be to prevent potentially unethical or unprofessional behaviour by inspectors, but their possible de-motivation which these clauses may engender is an overwhelmingly negative side-effect of including in the said laws. The present practice is clearly detrimental to effective OSH inspection.

The mission suggests that the rights and duties of OSH inspectors should not be part of the proposed new integrated OSH framework law. A Law or Regulations on OSH Inspection should describe all possibilities for action, both prevention and enforcement, that inspectors may take, and under which circumstances they can do so. Alternatively, provisions on OSH Inspection duties in existing WS and Occupational Diseases Prevention Laws should be cancelled and reference made to the right of respective competent authorities to enforce said Laws.

Inspectors should be trained in how to use their discretion (in line with Article 17, para. 2 of ILO Convention No. 81), and the use of this discretion should be carefully and continuously managed by their hierarchy.

6. Qualifications of inspectors

Even if China has not (yet) ratified ILO Convention No. 81 on Labour Inspection in Industry and Commerce, (1947), the mission was informed that there are plans by MoHRSS to do so, and this would, also impact OSH administration and inspection. Article 9 of this universal International Labour Standard (ratified by some 140 member States) provides a good benchmark: *“Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine,*

engineering, electricity and chemistry, are associated with the work of inspection...for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers ...and of investigating the effects of processes, materials and methods of work on the health and safety of workers.”

OSH inspection is a very complex task. The reasons for the complexity are obvious. Health and safety at work are the result of the interaction between hazards present at the workplace, the conditions of exposure to these hazards and the humans confronted with the resulting risks. Assessing each of these factors is usually complex, especially when it comes to occupational health/hygiene issues. Sufficient mastering of the skills required for all three factors is necessary to be able to do a reliable, competent health risk inspection, a task recently transferred to SAWS.

Also, evaluating the quality of employing units' OSH risk assessment/risk management requires both technical skills and experience. These skills are necessary for any person involved in advising the employer on safety and health issues: one can only control the risks that one can recognise. In the absence of sufficient external expertise services and internal experts (as for instance “persons of production and business units in charge of safety” mentioned in Article 38 of the WS Law) WSA inspectors may often be the unique or most important prevention expert for the undertakings they visit. But even if this expertise is present in the undertaking, OSH inspectors must be at their level of expertise. This is rarely the case today.

Illustrative in this respect is the fact that the control of documentation by OSH inspectors the mission observed in undertakings was limited to the presence or absence of the required documents and was not extended to their content or quality. Therefore, the question is to what extent basic qualifications and additional training and expertise of inspectors must be raised (considerably) in order to allow them to meet that challenge. It is difficult to assess to what extent current human resources in OSH inspection should be complemented (or substituted) with highly qualified experts. But our impression is that the current lack of expertise is striking.

Inputs by highly qualified experts may constitute the most solid condition for continuously raising the level of knowledge of all OSH inspectors with lower qualification and for increasing the impact of inspection visits focusing on risks in employing units. The best possible “training” for inspectors with limited qualifications consists of inspections jointly with highly qualified inspectors. Initial visits to companies with potentially risky production processes would be done together by a highly qualified and a less qualified inspector, quantitatively and qualitatively increasing the level of hazard identification and thus the resulting preventive action, while follow-up visits could then be left to colleagues with a lower level of qualifications.

In this context, the mission wishes to refer to the introduction to the 11th Five Year Plan for Work Safety in which is stated: *“At the same time there is a trend that some of the dangerous industries are now transferring from the developed areas to the underdeveloped areas, from large enterprises to small and medium sized enterprises, and from urban areas to rural areas. These changes bring along the risks for accidents and form new challenges for work safety.”*

The question here is to what extent OSH inspection capacity and expertise have been or are being adapted to this new situation? But as stated previously in these considerations, it might also be necessary to reconsider the current basic organisational concept (and/or its elaboration) consisting of subdivision into different levels of inspection, apparently also standing for different levels of expertise: if risks are being shifted towards relatively smaller companies, the best available expertise within the OSH inspection should also be shifted there.

Inspection must act in a consistent way at the different levels of multi-level structure of the inspectorate: similar risks and related shortcomings in protection must be dealt with in a consistent way, whatever the level of the administrative level of the intervening authority. Good expertise is a key element of consistency in inspectorate's action.

High-level qualifications of inspectors may also directly and indirectly contribute to the independence of the inspectorate's actions taken. Within a context of a mixed economy, with both public and private employing units, and where the leadership of public enterprises and inspectorates may be closely related, any suspicion of partiality of a public inspection authority must be avoided. Expertise is not a sufficient condition for independent action of the inspectorate, but it is a necessary condition. The less inspectors feel confident in their role because of limited expertise, the more they are impressionable.

For all the above reasons, the undeniable intention and subsequent decisions of the authorities of the PRC to make up leeway in OS&H protection of workers, which was strongly reflected in the 11th five-year plan for work safety and in the creation of SAWS, deserves to be accompanied by a considerable upgrading of the competences in the inspectorate.

7. Operational aspects of OSH inspection

Great efforts have been made during recent years to increase awareness for work safety. But the tendency to prioritise economic development to the detriment of OSH is far from eradicated. This is perhaps reflected at different levels of decision-making in the country, and may adversely affect SAWS efforts. The capacity to deal with OSH matters, in terms of human resources, knowledge, standards, legal dispositions, etc. should keep up with the rapid economic growth. Moreover, the distributing of human and technical resources available might not keep up with the ongoing changes: new technologies, shift of risks to relatively smaller companies, delocalisation of hazardous industries to rural or underdeveloped areas, etc.

Present OSH legislation refers to safety and health expertise internal or external to employing units. But there is no systematic obligation for employers to have (or regularly access) a well-defined level of internal or external expertise in OSH matters which could be called "prevention services". New SAWS Regulations on the Licensing and Certification of Qualified Safety Engineers are being drafted, and could provide a considerable step towards the creation of such prevention services, which could advise employing units (of course without enforcement powers) on a more continuous basis than OSH inspectors. Merging the existing occupational medicine capacity with the safety engineers and laboratories for environmental measurements could result in the creation of these much-needed prevention services. Their presence on a regular basis in employing units would enhance change in thinking, in considering prevention as an integrated management issue, and in management's attitude towards OSH prevention. Their actions precede technical solutions and guarantee the correct implementation of good practice. In the current operational context, it is thus strongly recommended that a system of prevention services, internal and external to enterprises, with clear expertise criteria should be developed and the certification, competences, required qualifications and role embedded in the law. Occupational safety engineers and occupational health physicians should be integrated into such services.

Several provisions in the Laws on Work Safety and Occupational Disease Prevention seem to be formulated in such a way that there is some overlap between the respective roles of WSA inspectors and other actors, including prevention services internal or external to the employing units. This may easily lead to "role confusion": it seems that OSH inspectors are to some extent considered as the "organisers" of occupational safety, delegated by the authorities to accomplish that mission on the one hand, and as

‘controllers’ invested with enforcement powers who must verify if the employing unit is acting in compliance with the legal requirements, on the other. The mission is convinced that there is an urgent need to make a sharp distinction between OSH inspectors with their enforcement powers who must act in accordance with the principles set out in ILO Convention 81, as against prevention services.

Supervision and enforcement of occupational health matters have recently been transferred from the MoHealth’s local Public Health Departments to SAWS/WSAs. This transfer of major OH functions is not yet completed. Without sufficient and qualified resources and control of, or access to OH facilities such as laboratories and occupational medicine specialists, local WSAs cannot fulfil their OH responsibilities. SAWS and the local WSAs should be given all resources they need to fulfil their OH role. More in general, the mission is of the opinion that a systematic and continuous evaluation of the needs of SAWS, and adapting the organization’s human and technical resources accordingly, is a necessity. In addition, there are the elements of context referred to above, in particular the liability issues, which co-determine the efficacy of SAWS inspection activities.

8. Aspects of organisation

Protecting workers in the country who are most at risk must be the first concern when deciding on the organisational structure of the inspection service. The current four operational levels structure of the OSH inspection should be evaluated from that perspective. The main evaluation criterion is: the number of workers really at risk, more than merely the potential risks due to hazards present at the workplace or the size of the employing units. (See also under qualifications of inspectors).

Generally, inspectors do not have the right to visit a company alone. Inspection visits have to be carried out by at least two full-time civil servant OSH inspectors. This considerably reduces the number of inspection visits. It could be argued that two know more than one, and that every single inspection visit might have a better output if conducted by two inspectors. Whatever the reason for this practice, it seems to be at a high cost. It might well be the wrong solution to a real problem.

Furthermore, the mixing-up of administrative management and enforcement function, within one inspection service is not considered the best possible structure. Although the advantage is that inspection experience is easily integrated into –for instance- the very important and legally well-framed activities related to constructing new installations, the overwhelming disadvantage is that inspection activities might be disregarded whenever the administrative work is not concluded. There already exist positive experiences in different provinces in China with the separation of management and enforcement functions. Separation of management (administration) and enforcement (inspection) responsibilities at all four operational levels through the construction of Law Enforcement Teams is recommended for nation-wide implementation.

As a provisional solution which meets the requirement of two inspectors for every enterprise visit (that is, while not continuing this practice to the detriment of more inspection visits), it is proposed that the procedure be modified: One full-time OSH inspector could be accompanied by a part-time inspector or an OH expert from the Health Department, depending upon the situation in the employing unit. (We also refer to our conclusions on qualifications of inspectors, because the training of inspectors is an important aspect of the necessary increased efficacy of inspections).

Simultaneously, the issue of inspectors’ minimum performance (i.e. productivity) standards, and time spent in employing units could be addressed, over and beyond the

present quite low number of regular/routine inspections per inspector per year. The aim should be quality inspections of the most important risks in workplaces.

9. OSH prevention through risk management/risk assessment

The Law on Work Safety addresses risk management, but inadequately does not address employer's liability issues. It does contain, however, very important and coherent provisions regarding 'projects to be built': the phases of designing, constructing and putting into operation are subject to straightforward regulations, known as the 'Three Simultaneous Approaches'. Such a policy, if applied correctly by all actors involved in the construction of new employing units or major changes in the production activity and related hazards, will considerably contribute to preventing future OS&H problems. It is a very valuable 'anticipated' risk assessment, before the phase of potential exposure of workers. The Chinese policy is exemplary in that respect. However, the mission is of the opinion that this precautionary strategy is not complemented by sufficiently elaborated legal provisions for continuous risk assessment after that initial phase.

A good benchmark could be the European Union's Framework OSH Directive (No. 391/EEC of 1989), which states that: "The aim of this law is to introduce measures to encourage improvements in the safety and health of workers at work. To this end it contains general principles concerning the prevention of occupational risks, the protection of occupational safety and health, and the elimination of risk and accident factors...."

Directive No. 89/391/EEC sets out the measures which the employer (as a legal and natural person) must ensure, based on a series of principles of prevention:

- a. Avoid risks;
- b. Evaluate risks which cannot be avoided (Risk Assessment);
- c. Combat all risks at source (as near as possible to where they originate);
- d. Adapt work to the individual (and not the other way around);
- e. Adapt work to technological progress;
- f. Replace the dangerous by the non-dangerous or less dangerous;
- g. Develop a coherent prevention policy which covers technology, organisation of work, working conditions, social relationships and other factors;
- h. Give collective measures of protection priority over individual protection (PPE);
- i. Give appropriate instructions (OSH training) to workers; and
- j. Always ensure (by adequate and continuous supervision) that training and PPEs are properly used/applied.

Risk Assessment should be distinguished from mere evaluation or attestation of workplaces (with the aim of categorising them into "very dangerous", "dangerous", "normal", etc.) essentially for the purposes of some form of compensation such as hazard pay, shorter working hours and "therapeutic nutrition". The current legal obligation of employing units to set up an enterprise OSH policy and to organise preventive and protective measures should be based on the Risk Assessment and on the above risk prevention principles, which could take the form of a hierarchy of measures. Continuous

Risk Assessment should be obligatory for all employers and work places and it should be in written form and made available to OSH inspectors, Trade Union Labour Protection Supervisors and workers in enterprises. All this should be clearly stipulated in the regulatory frame and closely supervised in practice.

Analyses of occupational accidents and diseases should be an integrated part of the risk assessment process.

Obviously, the bigger the enterprise, the more the competence for doing risk assessments should be inside, the smaller the enterprise, the more this competence will come from external prevention services. This is in line with the current approach of the legislation of the CPR.

The combination of the ‘three simultaneous approaches’ with a continuous risk assessment practice is probably the best possible and comprehensive approach to OS&H prevention policy. It would indirectly allow increasing considerably the efficiency and thus the impact of OS&H inspectors on workplace prevention, which could then focus more on problematic companies.

10. *Registration and notification of work accidents and diseases*

Specific sources of information should constitute the basis for orienting OSH inspectors’ action. The occurrence of major accidents and occupational health incidents generally indicates an important source of possible lack of preventive measures in an employing unit, requiring consequent intervention by an OSH law enforcement (inspection) team. It is therefore of great importance that WSA inspectors are informed about any serious accidents or incidents with, at least, a given period (for instance three days or more) of work incapacity and about occupational diseases.

This is not the case under the present system. Occupational accidents are notified to the MoHRSS, but solely for Work Injury Benefits Compensation purposes, not for purposes of prevention. Work-related diseases are reported to the local Health Departments under the MoHealth. There is no systematic, let alone comprehensive forwarding of this information to SAWS or WSAs. Only very serious incidents are reported by the initially notified authority to SAWS. Moreover, it seems that of all accidents/incidents occurring in employing units, only very serious ones are reported to the MOHRSS anyway, and only a minority of occupational diseases are notified to the respective local Health Departments. In case of a serious accident, SAWS or local WSAs are supposed to undertake an investigation. In other cases, the employing unit should do the investigation itself, but no communication to the authorities regarding the results of this in-house investigation is foreseen.

Besides, it is quite likely that the notification procedures to the occupational injuries compensation insurance system produce a largely incomplete picture of injuries actually occurring. The ongoing campaign for promoting the respect of the legal injury insurance obligation must quickly lead to a general enforcement.

In so far as such data is known, it is also not systematically communicated to SAWS. In this way, a lot of potentially useful information for SAWS/WSAs is lost or left unexploited as a major source of information for orienting OSH inspection activities and subsequent preventive and enforcement action.

11. Complaints procedures

Complaints are an important further source of information on situation requiring visits and other action by OSH inspectors. Already under existing legislation, workers who are victims of illegal practices are encouraged to file a complaint with the competent authorities. This should then be an important source of information for the OSH inspection service and a key impetus in focusing preventive inspection activities on more critical situations.

Worldwide experience shows that a common problem in that respect is that there may be many barriers for workers filing a complaint, even in case of very dangerous work situations. These may be related to what could be described as ignorance of existing complaints filing procedures, or to (relative) illiteracy, linguistic, cultural, psychological and other reasons.

However, barriers may also be related to:

- fear for consequences affecting the employment situation;
- lack of confidence in the confidential treatment of a complaint; and, importantly in the case of China,
- fear of adverse effects of complaining, because the inspectors' findings may also lead to sanctioning of employees for non-compliance with some specific (usually minor) regulations or breach of discipline. Consequently, workers' perception of the inspectors' role is sometimes ambiguous.

For an inspection service to acquire and maintain the necessary credibility, its role should unambiguously be the protection of the health and safety of employees. The mission was informed that mass media is used all over China to inform workers on how they can file a complaint and which kind of complaints should go to which service, including relevant telephone numbers. This is an excellent way to increase the empowerment of workers facing unacceptable working conditions. However, there is no clear picture on the extent to which this initiative reaches different groups of vulnerable workers in possibly precarious working conditions, e.g. illiterate or migrant workers.

12. Issues related to sanctions

The mission is of the opinion that the present standard sanctions procedure is unnecessarily lengthy, cumbersome and bureaucratic. It should be possible to considerably streamline this procedure and reduce the ten or more "steps" presently required. This would still ensure employers or employing units all necessary rights of review or appeal, but would no doubt make the entire enforcement procedure more effective. Besides, the procedures presently in force are in evident contrast to the fact that, for certain violations and in certain circumstances and jurisdictions, OSH inspectors can issue "on-the-spot" fines, an effective practice also prevalent in other modern OSH inspection services.

Furthermore, even if fines of workers only occur exceptionally, and even if the employer cannot always be blamed for every situation of non-respect of preventive measures by his employees, the fact that fining employees by inspectors is legally possible will in all likelihood undermine confidence in their role and may easily lead to very dangerous situations remaining un-reported to the OSH inspection. The employer has the duty, the authority and the means to discipline employees in case of breach of discipline in respect of OSH laws, regulations and internal rules. Rules of sanctioning employees by employers could also be subject to collective bargaining. However, it is not the role of the WSA inspector to discipline workers on behalf of the employer. If criminal intent or gross

negligence is present, the WSA inspectors will investigate, and hand over the case to the police and courts.

13. *Making better use of employers' organisations, trade unions and TU Labour Protection Supervisors*

A collaboration between SAWS with the employer's organisations (in particular, the China Enterprise Confederation) and workers' representatives (the All China Federation of Trade Unions, in particular) constitutes a very effective mechanism. This collaboration is made with the view of maximising the correct implementation of Laws and regulations and minimizing unfair competition to the detriment of worker's safety and health protection. This collaboration should be established at all levels of representation: central, sector, provincial and city Tripartite collaboration (SAWS, CEC or lower level employer's organisations, and ACFTU). Indeed, it already exists at different levels, but is still very limited, not systematic and not formalised yet. Tripartite consultation and collaboration could definitely contribute to improving many aspects of OS&H inspection activities.

The same tripartite spirit should be reflected on the work floor. The mission was not able to observe the activities of any Trade Union Labour Protection Supervisors on the ground. We understand that their main role is to exercise what is called "mass supervision" over enterprises' OSH performance, in order to ensure full implementation of laws and regulations and protect workers' rights and interests on OSH. However, they do not have any status or powers similar to State OSH inspectors or the means to sanction employers, and for that (and many other reasons that crop up within the context of ILO Convention No. 81), they should definitely not be called TU "Labour (or WS) Inspectors".

It is evident that these TU LPS (in other OSH legislation, they would perhaps be called Workers' Safety "Delegates" or "Representatives") could, to a large extent, contribute to notifying unacceptable situations of employment to the competent authorities. We have no information on to what extent this very large network of TU LPS – there are said to be over 1 million of them in the country - is assuming such a role; neither do we know to what extent this TU-based network is a reliable and efficient intermediary between employing units and the OSH inspection to convey as much OSH-related information from the one to the other. Nor is it clear what their target population is and which occupational groups (if any) are not covered? What are the qualifications of these TU LPS? To what extent are they able to assess risks? Whatever the answers, one can assume that these networks can and should play an important role in notifying violations to the WSAs. But even in the assumption of full coverage of all potential harmful workplaces, (and also in SMEs) this network will presumably not be able to meet the qualifications necessary to conduct reliable risk assessments. What would be very important, as a minimum to make this system more effective, would be to regulate, in terms of standard procedure, the need for closer, systematic cooperation and information-sharing between OSH inspectors and TU LPS on the occasion of every visit by the former to an employing unit. Such collaboration and involvement should be extended to workers and/or their representatives in general.

14. *Cooperation between different parties*

One further issue that emerged was the need to address the question of how to improve cooperation among different OSH-responsible parties. As indicated, many different ministries and other organisations are working separately on WS and OH issues in China, each with their obligations concerning evaluation and control of hazards, supervising sector employing units (construction, agriculture, transport, etc.), undertaking campaigns, organising research, promoting solutions, and other duties. At the national

level, efforts are being conducted to promote good collaboration. Also at the regional level, common action and inspections are organised in some provinces/autonomous regions.

In many other industrialized countries, these issues are the subject of so-called “Agency Agreements”, by which the Ministry or Organisation primarily responsible for WS and OH policy, legislation and standards (in China’s case: SAWS) entrusts the enforcement of a common set of laws and regulations, for which it has the responsibility, to other law enforcement bodies. Only in this way can necessary high standards of OSH law enforcement be ensured throughout the country in a coherent and consistent manner, considered, as a matter of policy, essential in many countries.

Also, inter-ministerial committees at national level and interdepartmental committees at provincial or autonomous regional level could contribute to coherent practices and consistent enforcement by different authorities.

This issue also comes up in the context of diagnosing occupational diseases, monitoring occupational accidents and reporting them. Accidents and diseases are apparently often reported to different competent authorities - and it may then be difficult to make these communicate, with the aim of having a comprehensive overview on the total number of occupational accidents and diseases in the country, or a sector or branch of economic activity, or an individual employing unit; and to be able to analyse them so as to set future OSH prevention priorities, develop specific prevention programmes, target inspection and resources on the “black sheep” in the economy of provinces, municipalities, districts, etc.

The need to have separate OSH Inspection Regulations (i.e. standard procedures for the entire SAWS/WSA system) has already been highlighted - with the long-term aim of creating a single set of Labour & OSH Inspection Regulations in line with ILO Convention No. 81 for both SAWS and MoHRSS/LIB, by merging them with the existing MoHRSS Labour Inspection Regulations or revising these latter in parallel. This could be the starting point of a very important development: closer, more structured cooperation between MoHRSS/LIB and SAWS and between the Labour and the OSH inspection services. The need for such systematic cooperation derives not only from the subject matter at hand (non-respect of social laws and OS&H laws will often go together), but is also evident in the area of the revision of the existing Work Injuries Compensation legislation, which is the legal responsibility of the MoHRSS. Legal responsibility is, however, an issue in which SAWS is evidently interested, (as the mission was repeatedly informed) and that touches on the idea of ensuring greater promotion and other activities for more prevention, in the interest of both employers and workers.

15. Road traffic safety

Finally, perhaps for historical or other reasons, SAWS and local WSAs also have the responsibility for coordinating road traffic safety. This includes reporting on road traffic fatalities. The mission would have been interested to learn more about work-related²⁰ fatal, serious and other (reportable, i.e. three days or more off the job) road accidents, as well as commuting²¹ accidents, besides (fatal) general traffic accidents. There is currently no arrangement or legal requirement to aggregate separate statistics on these different categories of accidents; but this would be very important if more focused and more

²⁰ Bus, taxi, truck & other utility vehicles drivers, postmen, messengers & delivery services motorbike drivers, and many others.

²¹ i.e. on the direct way to and from work – the international definition most commonly used.

effective prevention of work- and commuting-related serious and fatal road traffic accidents is to be undertaken in future.

Furthermore, occupational road accidents, (including, in many countries, “commuting” accidents to and from work), should be covered by the occupational injuries compensation insurance or similar employer-funded social security scheme. There is, however, apparently no regulation requiring employing units to take charge of specific duties with respect to their employees’ road traffic safety – often, as the mission observed on several occasions, not even on the enterprise premises.

And lastly, the fact that hardly any battery-powered motorbike drivers (of which there are likely millions in the country) were wearing safety helmets because - at least in Ningxia, but presumably everywhere, there is no statutory obligation to do so - was striking: within a few hours on the road in Yinchuan, the mission saw four such serious road accidents, and we are therefore convinced that a legal obligation for these battery-powered and other motorbike drivers to wear safety helmets could save many lives.

IV. Corresponding Recommendations of the Review Mission

Wailaideheshanghaonianjing - A foreign monk preaches better doctrine

1. *Need for a holistic approach*

Consideration should be given to integrating the present Law on Work Safety and the Law on Occupational Disease Prevention into a new, comprehensive OSH Law. Such an integrated new law would address a complete framework of rights and duties of employing units, employers, employees and third parties as natural persons for preventing adverse health and safety outcomes in the workplace. In addition, we recommend that, in contrast with current laws on safety and occupational diseases, inspector’s role and responsibilities and issues related to occupational injuries compensation (accidents and diseases) would be treated in separate laws.

2. *A new law enforcement and prevention strategy (including SMEs)*

National legislation, regulations and standards must be the same for all employing units, but the way they are applied, monitored and enforced may vary considerably between often struggling SMEs and larger, usually capable employing units. This is good practice in most industrialized countries and the mission recommends that SAWS consider adopting a similar new inspection/enforcement strategy after discussion of what is internationally “available” as best practice models. Particular attention should thereby be paid to addressing the challenge of ongoing shift of risky work towards smaller employing units. The extraordinary experience of SAWS in setting up campaigns and training activities must allow elaborating programmes that particularly reach SME’s.

3. *Employers’ responsibility*

The principle of unequivocal employer responsibility – and not just that of the “employing unit” as an organisation, but also of the leading legally responsible natural person in the undertaking, should be considered for inscription into the Law. The legislative framework should leave no possibility to the employer to defer his/her civil liability nor, not easily, his/her criminal liability to any other institution or person.

4. *A systematic approach to hazard identification, risk assessment and control*

As a complement to the very effective existing regulations on new projects (the three simultaneous approaches), consideration should be given to embedding more systematically the concepts and methods of hazard continuous identification, risk assessment and risk control in the to-be-revised new OSH Law following international good practices and the ILO guidelines on OSHMS, and to the roles of OSH inspectors in promoting and advising on application of the systematic approach at all levels.

5. *Responsibility and liability of other duty holders*

A comprehensive, clear definition of all other OSH duty-holders and their responsibilities in the to-be-revised integrated OSH Law would make it more applicable and more effectively implementable. Attention should, however, be paid to avoiding that the employer, both as a legal and a natural person, can simply defer his responsibility to other duty-holders.

6. *Inspectors' liability*

A Law or Regulation on OSH Inspection should describe all possibilities for action, both prevention and enforcement, that inspectors may take, and under which circumstances they can do so. Alternatively, provisions on OSH Inspection duties in existing WS and Occupational Diseases Prevention Laws should be cancelled and reference made to the right of respective competent authorities to enforce said Laws. Inspectors must correctly fulfil their duties, but an employer cannot defer his legal responsibilities to an inspector. Inspectors should be trained in how to use their discretion (in line with Article 17, para. 2 of ILO Convention No. 81). Use of discretion must of course also be seen in the context of their qualifications as individual inspectors.

7. *Qualifications of inspectors*

One possible and very effective response to the complexity of addressing OSH issues would consist in a new HRD policy within SAWS, resulting in the highest possible level of qualifications of inspectors within each WSA inspection team. Highly qualified WS engineers, OH physicians, industrial hygienists, eventually ergonomists and specialists in psycho-social and organisational aspects of work should represent a considerable percentage of all serving inspectors. One could put forward an objective, realistic if ambitious percentage to strive for within a given period of time, but for a OSH inspection system as complex as that of China this, in our view, should not be less than 15 percent and ideally about 1 out of 3 at all inspection levels.

An additional recommendation is to pay attention to adapting the qualifications at the different levels of inspection to the shifting of dangerous jobs to relatively smaller companies or inland regions. The qualifications of inspecting personnel must be such that the inspectors with the highest qualification are in charge of inspecting the companies with the highest risk. It is then also up to the responsible authorities to assess how meeting this challenge might eventually require reconsidering the current basic organisational concept (and/or its elaboration) consisting of sub-divisions into different levels of inspection. The net result must be that inspection is done in a consistent way at the different levels of multi-level structure of the inspectorate: similar risks and related shortcomings in protection must be dealt with consistently.

Within the current situation, where health competences have been transferred to SAWS, but not the necessary tools, a strong collaboration between the health department and SAWS at all levels is necessary.

High-level qualifications of inspectors should be a key element in continuous efforts to promote and preserve the independence of the inspectorates actions and in reinforcing consistency of its action at different administrative levels of OS&H inspection.

From the perspective of better protecting employees in all enterprises, it would also be of great help to promote the creation of multidisciplinary, highly qualified prevention support services which could be either internal to the companies or external, the latter being particularly convenient for smaller enterprises. The presence of such services would constitute a considerable boost for accurate risk assessment and preventive measures in employing units, and at the same time a help for WSA enforcement units.

8. *Operational aspects of OSH inspection*

The mission is of the opinion that a systematic and continuous evaluation of the needs of SAWS and adapting the organization's human and technical resources accordingly, is a necessity. The recently transferred occupational health responsibilities require a quick investment in corresponding human resources at all levels.

SAWS inspectors should act in accordance with ILO Convention No 81, Article 3, para. 1: Enforcement, advice and information to employers and employees and notifying higher authorities about perceived shortcomings in legal and other aspects of OSH are their primary functions. Inspectors should weigh these possibilities at their own discretion. In addition, they could supervise Prevention Services.

9. *Aspects of organisation*

As a provisional solution which meets the requirement of two inspectors for every enterprise visit (while not continuing this practice to the detriment of more inspection visits), it is proposed that the procedure be modified: one full-time OSH inspector could be accompanied by a part-time inspector or an OH expert from the Health Department, depending upon the situation in the employing unit. (We also refer to our conclusions on qualifications of inspectors because the upgrading of inspectors is an important aspect of the necessary increased efficacy of inspections).

Separation of management (administration) and enforcement (inspection) responsibilities at all four operational levels by building Law Enforcement Teams is recommended for nation-wide implementation. Simultaneously, the issue of inspectors' minimum performance (i.e. productivity) standards and time spent in employing units could be addressed, over and beyond the presently quite low number of regular/routine inspections per inspector per year. The aim should be quality inspections of the most important risks in workplaces where they are most needed.

10. *Registration and notification of work accidents and diseases*

The respect of the legal work injury insurance obligation of employing units should be enforced.

Consideration could be given to setting up a single contact point in each province, municipality and district/county for notification of any occupational diseases, accidents or incidents, which would then forward this information to the respective competent parties

(e.g. Social Insurance; SAWS, MoHRSS and MoHealth). In this way, information, which is currently mainly insurance-related, could be used for both enforcement and preventive purposes, at both central and local level.

11. *Issues related to sanctions*

Consideration should be given to eliminating the possibility or need for OSH inspectors to sanction workers, or this should be closely limited to specific cases of criminal intent or gross negligence. When necessary, inspectors should order employing units to correctly and continuously supervise their employees and to stop unsafe work practices, but not to sanction them. Any disciplining of employees is the sole responsibility of the employer. While reviewing this issue, the opportunity should also be taken to streamline existing formal sanctions issuing procedures.

12. *Making better use of employer's organisations, trade unions and TU Labour Protection Supervisors*

The current efforts to promote collaboration between SAWS and the organisations of employers and employees should be considerably increased and should result in a formal consultation and collaboration system.

As a matter of standard nationwide procedure, OSH inspectors should meet with, invite and insist upon (also vis-à-vis any supervisors in employing units) enterprise Trade Union labour protection supervisors and other workers or workers' representatives to accompany them on every visit, in particular at the shop floor, and to listen to them. Ideally, SAWS and ACFTU could sign an agreement to promote such collaboration at the enterprise level. (In this context, reference is also made to ILO Convention No. 81, Article 5).

13. *Cooperation between different parties*

The possibility of concluding "Agency Agreements", between SAWS and other relevant ministries/organisations with responsibility for OSH law enforcement should be explored to ensure that high standards of OSH law enforcement are safeguarded throughout the country in a coherent and consistent manner. This could in particular also refer to the issue of diagnosing, monitoring, investigating and reporting occupational accidents and occupational diseases, and to the issue of better controlling multiple employers operating onsite simultaneously.

In addition, formal inter ministerial committees at national level and interdepartmental committees at provincial/autonomous regional level might represent a structured extension of current best practices.

14. *Road traffic safety*

The mission recommends as a minimum that employing units whose employees have to use electric (battery-driven) or other motorbikes for work-related purposes should be legally obliged to ensure that their employees wear a helmet at all times. Extending this safety regulation to other categories in road traffic is recommended.

Annexes

1. Programme of the Review Mission

June 15th (Tues)	International experts arrive in Beijing
June 16th (Wed)	
Morning	A briefing at ILO Office for China and Mongolia Meet with Mr. Huang Yi, Vice-Administrator of State Administration of Coal Mine Safety and Spokesperson of SAWS
Afternoon	Fly to Jinan, capital city of Shandong Province
June 17th (Tues)	
Morning	Meet with officials from Shandong Administration of Work Safety and Shandong Administration of Coal Mine Safety
Afternoon	Meeting with officials the relevant departments in Huaiyin District of Jinan and visit a safe community.
June 18th (Fri)	
Morning	Observe the working process of a work safety inspection by a local inspectorate in a coal mine.
Afternoon	Visit a small/medium enterprise.
June 19th (Sat)	Leave Jinan for Yinchuan, Capital City of Ningxia
June 20th (Sun)	
June 21st (Mon)	
Morning	Meet with officials from Ningxia Administration of Work Safety,
Afternoon	Visit an enterprise together with local inspectors to observe the inspection process.
June 22nd (Tues)	
	Meet with officials of Wuzhong City Administration of Coal Mine Safety Visit an enterprise in Wuzhong
June 23rd (Wed)	
Morning	Meet with officials from Ningxia Administration of Coal Mine Safety and visit a coal mine
Afternoon	Prepare the consultation meeting on 24 June 2010
June 24th (Thurs)	Hold consultation with officials from the members of the Ningxia Work Safety Committee including health, construction, agriculture, trade unions, and employers' organization.
June 25th (Fri)	Workshop on LI with MOHRSS at Yinchuan, Ningxia

2. List of officials meeting in Beijing, Shandong and Ningxia

June 16, 2010

The review mission met with Mr. Huang Yi, Vice Administrator of State Administration of Coal Mines Safety and Spokesperson of SAWS and Mr. Bai Ran, Executive Director of International Cooperation Department of SAWS.

June 17th 2010, 9AM

Venue: Meeting Room at Shandong Administration of Work Safety

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS

Shi Yanping, Director of International Cooperation Department, SAWS

Wu Yanyun, Director of Laws and Regulations Department, SAWS

Wolfgang, OSH expert, ILO

Karel, OSH expert, ILO

Zhu Changyou, Senior Programme Officer, ILO

Duan Sining, Programme Assistant, ILO

Hou Haiqiang, Interpreter

Hu Minsheng, Director of Law Enforcement Supervision Department, Shandong AWS

Zhang Xuechang, Deputy Director of Shandong Provincial Administration of Coal Mine Safety

Geng Lujian, Head of Discipline Inspection Group, Shandong AWS

Peng Aitian, Director of OH Department, Shandong AWS

Zhang Xiaodong, Vice Director of Laws and Regulations Department, Shandong AWS

Wang Yu, Vice Captain of Inspection team, Shandong AWS

June 17th 2010, 2PM

Venue: Meeting Room at the Administrative Building of Huaiyin District

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS

Shi Yanping, Director of International Cooperation Department, SAWS

Wu Yanyun, Director of Laws and Regulations Department, SAWS

Wolfgang, OSH expert, ILO

Karel, OSH expert, ILO

Zhu Changyou, Senior Programme Officer, ILO

Duan Sining, Programme Assistant, ILO

Hou Haiqiang, Interpreter

Li Peijie, Host

Zhou Xiaodong, Deputy Director of Jinan Municipal AWS

Meng Xiangjing, Vice Mayor of Huaiyin District

Dong Chuanshi, Secretary of Party Committee, Qingnian Park Streets, Huaiyin District

Guo Yuanlin, Director of Huaiyin District AWS

Zhang Yi, Director of Education Bureau, Huaiyin District

Tian Zhiguo, Captain of Traffic Police, Huaiyin District

Yu Dachuan, Tutor at Fire Fighting Department, Huaiyin District

June 18th 2010, 9.30AM

Venue: Meeting Room at Bucun Coal Mine

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS

Shi Yanping, Director of International Cooperation Department, SAWS

Wolfgang, OSH expert, ILO

Karel, OSH expert, ILO

Zhu Changyou, Senior Programme Officer, ILO

Duan Sining, Programme Assistant, ILO

Hou Haiqiang, Interpreter

Geng Lujian, Head of Discipline Inspection Group, Shandong AWS

Peng Aitian, Director of OH Department, Shandong AWS

Zhang Xiaodong, Director of Laws and Regulations Department, Shandong AWS

Chen Ming, Chief at OH Department, Shandong AWS

Hu Minsheng, Director of Law Enforcement Supervision Department, Shandong AWS

Zhang Xuechang, Deputy Director of Shandong Provincial Administration of Coal Mine Safety

Lv Gaoqiang, Chief at Law Enforcement Supervision Department, Shandong Administration of Coal Mine Safety
Li Yong, Director of Luzhong Branch, Shangdong Administration of Coal Mine Safety
Lv Runsong, Deputy Director of Luzhong Branch, Shangdong Administration of Coal Mine Safety
Miao Jianjun, Inspector from Luzhong Branch, Shangdong Administration of Coal Mine Safety
Li Yong, Vice Director of Luzhong Branch, Shangdong Administration of Coal Mine Safety
Zhang Chuanzhu, Senior Staff of Luzhong Branch, Shangdong Administration of Coal Mine Safety
Ji Weihua, Senior Staff of Luzhong Branch, Shangdong Administration of Coal Mine Safety
Zhou Xiaodong, Deputy Director of Jinan Municipal AWS
Zhang Ruoxiang, Vice General Manager of Zikuang Corporation
Zhang Youming, Manager of Bucun Coal Mine, Zikuang Corporation
Guo Hengbin, Secretary of Party Committee, Bucun Coal Mine, Zikuang Corporation
Wei Huaizhong, Vice Secretary of Party Committee, Chairman of the Trade Union at Bucun Coal Mine, Zikuang Corporation
Peng Mingxin, Director of the Work Safety Department, Bucun Coal Mine, Zikuang Corporation

June 18th 2010, 2PM

Venue: Meeting Room at Fenghui Equipment Co., Ltd

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS
Shi Yanping, Director of International Cooperation Department, SAWS
Wolfgang, OSH expert, ILO
Karel, OSH expert, ILO
Zhu Changyou, Senior Programme Officer, ILO
Duan Sining, Programme Assistant, ILO
Hou Haiqiang, Interpreter
Wang Yu, Vice Captain of Inspection team, Shandong AWS
Chen Ming, Chief at OH Department, Shandong AWS
Hu Minsheng, Director of Law Enforcement Supervision Department, Shandong AWS
Peng Aitian, Director of OH Department, Shandong AWS
Zhang Xiaodong, Director of Laws and Regulations Department, Shandong AWS
Zhu Weidong, Vice General Manager of Fenghui Equipment Co., Ltd

June 21st 2010, 9.15AM

Venue: Meeting Room at Ningxia Hui Autonomous Region AWS

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS
Shi Yanping, Director of International Cooperation Department, SAWS
Wu Yanyun, Director of Laws and Regulations Department, SAWS
Wolfgang, OSH expert, ILO
Karel, OSH expert, ILO
Zhu Changyou, Senior Programme Officer, ILO
Duan Sining, Programme Assistant, ILO
Hou Haiqiang, Interpreter
Niu Gang, Deputy Director of Ningxia Hui Autonomous Region AWS
Yang Wendong, Deputy Director of Ningxia Hui Autonomous Region AWS
Wang Xiyuan, Deputy Director of OH department, Ningxia AWS
Zhao Suqing, Assistant to Chief Director of Ningxia AWS
Lu Mei, Vice Director of Laws and Regulations Department, Ningxia AWS
Representatives from all departments

June 21st 2010, 3PM

Venue: Meeting Room at Ningxia Sinopec

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS
Shi Yanping, Director of International Cooperation Department, SAWS

Wu Yanyun, Director of Laws and Regulations Department, SAWS
Wolfgang, OSH expert, ILO
Karel, OSH expert, ILO
Zhu Changyou, Senior Programme Officer, ILO
Duan Sining, Programme Assistant, ILO
Hou Haiqiang, Interpreter
Yang Wendong, Deputy Director Ningxia AWS
Hou Qihong, Director of Hazard Chemical Department, Ningxia AWS
Fu Honggen, Vice Director of Hazard Chemical Department, Ningxia AWS
Lu Mei, Vice Director of Laws and Regulations Department, Ningxia AWS
Li Ruxin, Vice General Manager, Ningxia Sinopec
Bai Yucai, Director of Work Safety Department, Ningxia Sinopec
Niu Yongqian, Expert, Ningxia Sinopec
Li Chenglin, Expert, Ningxia Sinopec

June 22nd 2010, 10.30AM

Venue: Meeting Room at Qingtongxia Aluminum Co., Ltd

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS
Shi Yanping, Director of International Cooperation Department, SAWS
Wolfgang, OSH expert, ILO
Karel, OSH expert, ILO
Zhu Changyou, Senior Programme Officer, ILO
Duan Sining, Programme Assistant, ILO
Hou Haiqiang, Interpreter
Niu Gang, Deputy Director of Ningxia Hui Autonomous Region AWS
Li Xiaoming, Director of Wuzhong Municipal AWS
Hang Qingzhen, Vice Director of Wuzhong Municipal AWS
Han Zhengfa, vice Director of Qingtongxia Municipal AWS
Wu Yaojun, Inspector
Zhan Lei, Vice president of Qingtongxia Aluminum Co., Ltd
Wu Ping, Director of OS department, Qingtongxia Aluminum Co., Ltd

June 23rd 2010, 10AM

Venue: Meeting Rooms at Ningxia Administration of Coal Mine Safety and a local coal mine

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS
Shi Yanping, Director of International Cooperation Department, SAWS
Wolfgang, OSH expert, ILO
Karel, OSH expert, ILO
Zhu Changyou, Senior Programme Officer, ILO
Hou Haiqiang, Interpreter

June 24th 2010

Venue: Meeting Room at Hongqiao Hotel, Yinchuan

Meeting: Seminar on Ningxia Work Safety and Occupational Health Management

Participants:

Zhang Hongyuan, Director of OSH Inspection Office, SAWS
Shi Yanping, Director of International Cooperation Department, SAWS
Wolfgang, OSH expert, ILO
Karel, OSH expert, ILO
Zhu Changyou, Senior Programme Officer, ILO
Duan Sining, Programme Assistant, ILO
Hou Haiqiang, Interpreter
Niu Gang, Deputy Director of Ningxia Hui Autonomous Region AWS
Ma Yi, Deputy Director at Ningxia Administration of coal mine safety

Li Libo, Researcher from Ningxia Development and reform commission
 Pan Cunguo, Ningxia Economy and Information commission
 Mai Xiaoping, Assistant researcher from Ningxia Department of HR and Social Security
 Li Junfeng, Senior Staff at Office of Land and Resources
 Han Lijun, Ningxia Construction Management Station
 Yang Zhiru, Chief of Safety commission, Ningxia Department of Transportation
 Song Zhenghong, Director of Ningxia Department of Water Resources
 Chen Weibao, Ningxia Agricultural Machine Supervision Station
 Li Yongning, Vice Director of Ningxia Department of Health
 Xiao Yuanfeng, Deputy Inspector, Ningxia Geology and Mineral Resources Bureau
 Zhao Zonggang, Vice President of Ningxia Federation of Trade Unions
 Zhou Zhongping, Director at Yinchuan Municipal AWS
 Li Guangrong, Vice Researcher of Shizuishan Municipal AWS
 Li Xiaoming, Director of Wuzhong Municipal AWS
 Zhang Zhizhong, Vice Director of Guyuan Municipal AWS
 Li Shumao, Director of Zhongwei Municipal AWS
 Zhao Fuli, Director of Yongning County AWS
 Yan Ting, Chief of OS Department, Ningxia Coal Group

3. *Summary of discussions in Zhejiang Province and Hangzhou City (2009)*

3.1. Zhe Jiang Provincial Work Safety Administration

Zhejiang Provincial Work Safety Administration has a staff of fifty, supervising industry and commerce and mines (a major task). The total number of WS inspectors in the province has been continuously changing. Today there are some over 600 full-time WS inspectors (civil servants), and over 1,700 civil servants. At the provincial level, the Work Safety Administration is organized in departments comprising of a general office, a science and technological planning department, a laws and regulations department, a comprehensive supervision department, a personnel and training department and an emergency aid department. (The structure changed significantly after the 1998 civil service reform, when work safety first moved from the Labour Department to Commerce and Trade in 2002. Still later, Work Safety Administrations were established at district/county levels, in coastal provinces (e.g. Shandong), even at townships/street levels).

Occupational health is still under the Provincial and Municipal Departments of Health, but the Work Safety Administration has a “coordination role”, conducted on behalf of the Government. This also concerns other sectors such as transportation, where safety is supervised by the transportation administration, (which has the necessary special equipment to carry out “quality” inspections), but the WSA is also involved. Regarding construction safety, the WSA again only “coordinates”. Inspections are carried out by the Construction Department’s WS inspectors. However, if major accidents occur in any of these sectors, the WSA is, as a rule, also involved in the accident investigation.

The responsibility for occupational hygiene or health inspection has not yet been transferred to the provincial/municipal and district/county work safety teams but remains with the provincial/municipal district/county Departments of Health. In the opinion of the provincial WSA colleagues, integration of hygiene inspection responsibilities with SAWS would, at the moment, not be the better solution: Occupational hygiene inspection was better left with the Health Departments “because they have the laws and regulations” as well as the indispensable professional staff, laboratories and other resources.

In other provinces, responsibilities for inspection functions have been transferred, but neither the necessary specialist staff nor laboratory facilities required are equipped to

undertake occupational hygiene-related tests and examinations professionally. If the responsibility for occupational hygiene is to be transferred to the WSA at provincial, municipal and other levels, then ideally it should be done with medical (work hygiene) specialists, laboratory and testing equipment and not merely the inspection responsibility as such. Additionally, it should also be done preferably, together with the responsibility (and resources) for the administration and supervision of the work safety (disability) insurance scheme.

At streets and township levels, there are WS offices (public undertakings). “WS officers” in these lowest level offices also have powers of supervision and inspection, can visit enterprises, order corrections amongst other tasks. If they encounter serious risks to life or limb of workers, they have the right to evacuate the premises; but they do not have the right to initiate penalty procedures (note should be taken that not all of them are civil servants). These officers are funded by local budgets (and not the State-owned Enterprises Re-employment Fund, as is the case of the street-level MoHRSS/LIB Labour Inspection Assistants in many provinces, where they operate). The total number of these officers and WS assistants at street and township levels is around 2800. Two-thirds of district/county WSAs have full-time inspectors, one-third approximately are part-time. At the district/county levels, few if any inspectors have university degrees, only college or sometimes even only high-school level qualifications. However, they are given training by their senior colleagues. The Zhejiang WSA officials proposed that minimum qualification standards (e.g. university degree) should be set, and grades should be introduced to create more adequate career opportunities for university graduates. At present, no binding performance standards exist (i.e. a minimum number of inspection enterprise visits per inspector per month - but they are working on it). The officials’ opinion was that it was difficult to estimate the time spent on accident investigations, but they are promoting a pilot system: one inspector should on average spend (not more than) one week on an average accident investigation.

- Inspectors also carry out random inspections in the following order:
- First, high-risk employing units/workplaces; (some 1,800 employing units in the province produce hazardous chemical substances (HCS) and these are controlled. In addition, there are some 20.000 units, which sell or store such HCS).
- Second, investigations and follow-up on complaints regarding WS violations; and
- Third, everything else.

WS Teams are promoted at township and street levels. WS committees have the role of clarifying employing units’ responsibilities on WS. So-called “Work Safety Responsibility Documents” are signed with other government agencies, for instance the Education Department, concerning safety of pupils in schools; the Transportation Department, the Public Security Department, and the Construction Department, responsible for construction sites in Hangzhou Municipality. Some twenty “Responsibility Agreements” have been signed at the municipal (Hangzhou) level, as well as eleven more such agreements between the provincial WSA and other municipalities in the province. SAWS establishes national laws, regulations and technical safety standards, but such standards are also issued at local levels. If there is no national standard, for instance on work safety in shipbuilding, then provincial, municipal and other level standards can be set. It is felt that different standards are needed because of different local conditions. Provincial governments did likewise, in particular for sectors typical to the province, such as shipbuilding in Zhejiang.

Considerable WS training activities are being carried out:

- For officials and others in charge of WS (e.g. at least one week of compulsory training for government officials at township/street levels, followed by a test);
- For enterprise workers. In 2008, training was said to have been completed for some 20 million workers (!), with the Government providing training materials, videos, CDs, books, etc.
- For managers of employing units. In this case, different training methods are used. For high-risk enterprises, this training is compulsory and the managers have to get a work safety certificate. WS supervisors in enterprises in so-called “special positions” (usually engineers responsible for electrical safety or similar hazardous operations) also have to get a certificate. Furthermore, certain machine and other plant operators also have to get obligatory training before starting work.
- WS knowledge is also being spread through media, advertisement and campaigns to enhance WS awareness. In rural areas, cinemas show an 8-minute (free) film on WS and fire prevention before the main feature.
- WS drills are also organized in kindergartens and primary and secondary schools, generally raising safety awareness and promoting prevention.

A main concern is to strengthen WS law enforcement in municipalities and counties (but no special law enforcement department or team exists at the provincial level).

Since 2005, investigation and prosecution functions have been considerably strengthened. From 2006, instead of merely investigating incidents, the WSA also decided to prosecute. 80 percent of inspectors’ work is characterized as “prevention-focused”, concentrating on pre-accident situations. Therefore, the number of accidents has remained stable. A hotline has been set up to report illegal activities. More enterprise inspections have taken place, as well as 20 percent more accident investigations.

A considerable policy change has been implemented. In the past, penalties were only issued after accidents had occurred. Today, more activities are carried out before accidents occur. Thus, in 2009, well over 100 cases were investigated because of inspections. Good WS technology and more prevention measures are being promoted, e.g. in the mining and chemical industries. Certain new WS technology improvements are being subsidised by the provincial Government. Good WS practice in one province often becomes a national standard after due review by SAWS and is then implemented in other provinces as well. Zhejiang has made considerable inputs to this process.

3.2. Hangzhou Municipal Work Safety Administration

Hangzhou Municipality has 13 districts/counties and one so-called Development Zone. All 14 units had their own WS supervision departments, each with a professional staff of between 15 and 30 WS inspectors. Thus, the 3-level structure was complemented by a 4-level network; and in certain developed areas even down to the fifth level, that of townships/streets. While Hangzhou municipal WSA follows both national and provincial plans and guidance, they also have their own annual work plan reflecting specific (sector) activities in the Municipality.

At the municipal level, structures are similar to that of the Province, with the exception of the Emergency Case Department, which does not exist at lower levels. A staff of 35 officials, composed of civil servants – full-time WS inspectors – exists side by side with a WS enforcement team (a public undertaking) with a staff of twenty. Under the municipal WSA there is also a WS publicity and education centre with a staff of ten whose

budget will in future be funded by the City Government. Also in Hangzhou, the first mechanical/technical school, a private enterprise, carries out specialist WS training.

The municipal WSA enjoys good cooperation with both the Labour and Social Security and the Health Department. Often they will carry out joint activities with these two departments, for instance in the summer in the construction sector, when working conditions are difficult. WS inspectors will control safety and accident prevention and the labour inspectorate will control wages and other general conditions of work. Likewise, during the Spring Festival, both inspectorates will carry out joint activities with the Transport Department. Furthermore, the Hangzhou municipal WSA has a major supervising role in the mining and hazardous chemical products sector.

The municipal Government also issues local WS regulations, for instance Decree No. 200 regarding responsibility in WS, which lays down the WS responsibilities of Heads of Government (mayors), at all (municipal, county, township, etc) levels, these should be the primary persons responsible for WS in their jurisdiction. Likewise, vice-mayors responsible for industrial sectors (e.g. construction) should be the first responsible person for WS in that area. Hangzhou, with a reputation for innovation, was the first municipality to introduce this responsibility concept.

Hangzhou WSA is also said to be a leader in China in the field of WS publicising (awareness rising) and education (training). The provincial goal for 2007-2008 was 20 million workers trained. In Hangzhou, the WSA had reached out to 2.2 million employees. This training is not legally compulsory, but it is well recognized by the provincial Government. The concept focuses on enterprises as the main “training objects”. In so-called hazardous sectors (mining, chemical, fireworks-making, construction), basic WS training is compulsory and a pre-requisite for obtaining the permission to operate (certificate). Working at high-risk workstations likewise requires WS training. For relatively low-risk sectors such as paper-making (along with other activities), the law does not require obligatory WS training. Nevertheless, Hangzhou Municipality inspectors carry out voluntary training in these sectors also, followed by a test. The municipal or county/district Government (depending on whether the employing unit is registered at municipal or district/county levels) provides the necessary funds for these extra activities, considered a useful tool in preventing accidents and incidents.

Many resources go into publicity and awareness raising. One television channel carries a half-hour programme called “Safety 365” introducing laws and regulations to a wide audience. Films are produced by a private company with funds from the municipal government. Older episodes of this fortnightly programme are also shown in other provinces. June of each year is designated as the National Work Safety Month. It involves campaigns, the press, speeches by high-ranking politicians, and messages to employing units, etc. to expand the scope of WS awareness.

There are no fixed standards to inspect/visit all employing units in a given period, (e.g. at least once per year). Different industries have different regulations: high-risk enterprises are to be inspected once every 3 months; hazardous chemical products industries once every six months; others (including such potentially unsafe/unhealthy workplaces as textile manufacturing sites) much less often. At present, resources only allow high-risk industries to be covered adequately. On average, some twenty of these exist in every county/district, but there may sometimes be several hundred textile-manufacturing enterprises in a single district or county as well.

At least two full-time WS inspectors must go jointly on every inspection visit to an employing unit. Inspectors have checklists for different sectors and forms for accident investigations. They can issue both improvement notices and prohibition or compulsory work-stoppage notices. These latter have immediate executory effect. They are not infrequently applied, for instance if chemical enterprises operated without a licence

4. Summary of discussions from Shandong Province (2010)

Shandong province has more than 100 million residents.

The structure of the Shandong Provincial Work Safety Administration is described in Table Two of this report. The province is divided into seventeen municipalities and 140 counties. Almost 10,000 persons are involved in OS&H inspection: some 2,800 at the provincial and city levels, a small 2,000 at the street level and the remaining at the county level. There are 7,000 full time inspectors. These FTI's did 300,000 visits altogether in 2009, which is slightly over forty visits per inspector per year. The so-called 'part time' (OS&H) inspectors are mainly involved in employment promotion, social insurance and dispute settlement. Only about 20 percent of their time can be spent on OS&H issues.

The transfer of responsibilities in occupational health to SAWS, which took place in November 2009, was discussed, and the relatively limited scope of it was clarified. In Shandong, occupational health issues are spread over three administrations:

- The provincial Department of Health still drafts the local regulations and OS&H standards; they regulate protection, control, inspection and treatment related to occupational diseases; they license and control OH service providing organisations; they are still responsible for the assessment of the toxicity of chemicals and of OH in general.
- The responsibilities of the provincial SAWS and the division of OS&H in local SAWS are dealing with the following: health in non-coal mines: administration of OH certificates (just started); investigation of activities and sites in violation of OH regulation; administrative reports on violations; training of personnel for its new OH responsibilities; and participation in emergency rescue operations.
- The responsibilities of the Labour Department are: administration of accident insurance, which includes acute health problems; regulating welfare compensation for occupational disease victims and the administration of occupational health incidents.

The current situation is described as complex and non-efficient.

Coal mining safety is under the supervision of the Shandong Administration of Coal Mine Safety. They are responsible for occupation health inspection in coal mines, the safety of mining activities and other related activities in coal mines. It consists of several divisions: policies, regulations and standards; law enforcement supervision regulation; division of onsite safety inspection (hazard inspection activity); division of accident/incident investigation (including emergency and rescue operations); training of personnel for specific operations and technological equipment (promotion and application of advanced equipment and materials).

There are four sub-bureaus (territorial basis). Staff totals 155 full time public officers, 60 of whom are at the provincial level (45 field inspectors) and 95 in the four sub-bureaus (83 field inspectors). They surveyed 233 coal mines of which 225 are operative and eight under construction. 140 million tonnes were produced last year. Only eight people died in six incidents. This stood for 0.043 deaths per million tonnes. The central government's decision to close all mines in the PRC with a production quote below 90,000 tonnes was mentioned by the Shandong Administration of Coal Mine Safety. It affects especially privately exploited mines and is believed to contribute considerably to reducing the overall incident and fatality rate in the country.

The good safety result in the Shandong mines is explained by a series of factors mainly related to a combination of the absence of private coal mines and governmental alertness: stable employment of staff members in mines; highly elaborated laws and regulations with reference to very high standards; high professionalism and systematic and intensive training of coal mine staff; huge importance given to abiding laws and strict enforcement policy (inspection is done regularly and systematically by an inspection team). In a coal mine that was visited, Trade Union supervisors were integrated into the prevention policy: they received training in which the pillar of safety mindfulness was paramount and their 24-hour-on-24 presence at the work floor was considered very valuable.

The rules in the cases of incidents were explained. Coal mines have to report gradually, depending on the gravity of an incident, to the sub-bureau, the county and district governments. In the case of incidents with less than three deaths, the sub-bureau and local government must be informed and the local government is responsible for the rescue operation. In the case of ten or more deaths, the provincial administration takes the lead and professional rescue teams are mobilised. An important comment was that the competition between provinces (economic progress) has negatively affected health and safety at work in the PRC, over a long period. The creation and work of SAWS is seen as a turning point and the expression of a great concern for OS&H protection.

Further discussions with local OS&H authorities revealed the following comments:

- The Laws on Work Safety and Occupational Diseases should make a more clear division of responsibilities and should clarify more how to make risk assessments;
- The use of safer and healthier technologies is promoted and implemented through liberating money at different governmental levels (also at the county level!); horizontal communication exists in that respect (e.g. demonstration enterprises, conferences); there is a 5 year plan at provincial level for improving technologies;
- A provincial emergency rescue command centre guides and organises several provincial rescue units, trains rescuers and participates in rescue operations;
- Twelve cities, out of 17, and fifty out of 140 counties have established rescue centres. There are 245 mine rescue teams and 12 regional rescue command centres in Shandong;
- Shandong has separated administrative functions and law enforcement. The province has independent work safety enforcement teams. Administrative tasks are related to licensing, policymaking, training activities and penalty administration. Administrative fines are transferred to the law enforcement teams. The law enforcement teams are also responsible for incident investigations. Regarding the three simultaneous approaches (licensing procedure for new establishments), the law enforcement teams are acting as consultants for the administrative management. These initiatives are being supported by the national SAWS, and are in fact considered to be experiments at the provincial level (Shandong as a ‘laboratory’), with possible relevance for the whole country.

A common inspection visit consists of the following parts: credentials; introduction; explaining OS&H issues of the company; documents verification; randomly selecting and inspecting operational site. Any illegal facts are subject to administrative or penal sanctioning initiatives.

In a typical inspection in a coal mine, the following items are inspected: assessment of the occupational health management system; training in occupational health; use of

personal protective devices; monitoring of occupational hygiene at operational sites, including data collection and documents verification; the information given to employees on the hazards and onsite inspection. Bigger companies are inspected several times a year! The mission attended a work floor visit in a dynamic metal construction company. This revealed that inspectors –despite full dedication to their job- are not sufficiently familiar with several risk factors and unaware of existing methods to protecting workers in some risky tasks.

A very interesting and particular experience in this province was the meeting with the officials of the relevant departments in the Huaiyin district of Jinan and the subsequent visit of a safe community. It can be considered a nice and successful experiment on how to raise people's awareness of, and involvement in, safety issues in different aspects of daily life and in different contexts (school, road traffic, in house...) and on how to make people perceive safety both as a right for all and as a duty to strive for. It is highly likely that such a systematic approach to safety at the community level has a very positive impact on job safety even in very small enterprises (a relatively neglected part of workplace inspection activities in the country as a whole), because the first requirement for safer work practices is risk awareness and safety mindfulness and those are precisely what is being instructed systematically in the visited community.

5. *Summary of discussions from Ningxia Hui AR (2010)*

Ningxia is one of the five autonomous regions in PRC. There are 6.18 million residents.

The region is divided into two county level cities, eleven counties and seven districts.

It is well known for irrigation works and for big reserves in a relatively huge variety in coal (11 out of 14 types in the CPR as a whole). In 2009, 5.8 million tonnes were mined. Power plants are producing more than 260 million Kilowatt-hours. There are unexploited oil reserves.

The region is facing the well-known problem related to the transfer of enterprises from Eastern to Western China, with work safety knowledge and supervision lagging behind as a direct consequence. Safety supervision did not keep up with economical development. Some counties have only three or four inspection staff members (in eastern China more than ten or twenty at the county level and seven or more at the city level!), not to mention the problems at the lower level. So, more investment in human resources is needed.

Notwithstanding these difficult challenges, work safety is a political priority in the region and the responsible persons are very ambitious and determined in improving health and safety at work. The focus in this field is on dealing with safety risks and enforcement, work safety education, safe construction sites, capacity building in work safety and investing in reducing the number of work accidents. The number of fatal accidents in the region is being reduced year after year. Since traffic accidents are included in the statistics and no separate statistics are available for work and traffic accidents respectively, it is difficult to assess to what extent the successful reduction is attributable to work floor accidents, to occupation related traffic accidents and to other traffic accidents. Traffic accidents in total are estimated to be at least 85 percent of all fatalities.

Some of the major measures, which were taken in the autonomous region to improve work safety and health, consist of the following:

1. Regulations. Law that pertains to production safety and regulations relating to work safety regulation of Ningxia (2006). The 'spirit' of this Law is similar to the Work Safety Law of the PRC. More emphasis is put on elements of concrete implementation. A remarkable element is that a work related fatality leads to compensation by the employing unit of at least twenty years of full salary, which is considerably higher than common practice all over the CPR. A system for performance evaluation on work safety is set up and continuously improved. Employing units are clearly held responsible for OS&H. Governments have their own responsibilities, without prejudice to employing unit's responsibilities.
2. Awards and sanctioning procedures. Governmental officials and business unit managers will miss a promotion if their safety performance is below expectation. The standards are set at the provincial level. All accidents/incidents are taken into account. Any award (also of officials) is dependant (amongst other things) on safety performance. Performance indices are: death rate per 100 million GDP; death rate per 100,000 workers (still higher than the national average: 6.31 versus 3.4); death rates per 10,000 vehicles in road traffic; death rate per 1 million tonnes in coal mines (0.42 versus the national average which is higher than 1). These indices are included in the economic performance evaluation system. Awards – also of officials- are dependent on safety performance. There is a multi level agreement system on administrative sanctions, including fines, which is connected to the licensing processes.
3. Strict control on coal mine exploitation. There are more than 100 coal mines in the region. There is strict control on resources allocation. There is a huge problem of gas release in many mines, which enhances explosion risk. This 'gas' problem leads to either the closing of mines or the draining of gas before exploitation is allowed. Coalmines are shut down immediately if the necessary rectifications are not implemented.
4. Joint Law enforcement. Different departments work closely together and focus on high-risk industries.
5. Dangerous chemicals/hazards. The administrative control of these is subject to continuous improvement.
6. Grass root level. Efforts are being made to strengthen the quality of standardisation work in all high-risk activities including at the grass roots level.
7. Special campaigns are set up to prevent major traffic accidents.
8. Systems are being developed to prevent major fire risks.
9. Risk assessment. A strategy is developed. This must be applied by different actors: employing units; service providers and work safety administration. Very important in that respect is that the role of each of these is clearly defined and deferring responsibility is therefore discouraged.

The same problems in the Shandon province that are related to transferring some occupational health related tasks previously exerted by the health department were also observed in the Ningxia province: no transfer of the role in the legislative process and no transfer of necessary human and technical resources.

The experience with inspection visits: very dedicated inspectors are systematically controlling a series of items, but there is a lack of knowledge. This results, for instance, in controlling the presence of documents related to OS&H, not their content.

6. Summary of discussions at the Meeting of Provincial Experts, Yinchuan

(Meeting of Experts on the preliminary findings of the ILO/China Review of the system of OSH Inspection (SAWS) in Yinchua, Ningxia Hui AR, 24 June 2010)

I. Provincial Work Safety Admin. (WSA)

It is necessary to define the liability of the employer as a natural person in real practice. The 2002 WS Law contains no specific definition or explanation of this concept. A more accurate definition would be needed. Furthermore, during law enforcement (LE) activities, if inspectors did not discover problems during the inspection, i.e. if they are required to carry out on-the-spot controls and do not find hazards, this constitutes a real problem, as they may be held liable for any inadvertent oversight. Lastly, a more detailed description of rights and duties of inspectors would be needed to help them play a more dynamic role.

II. Provincial Occupational Health Supervision

To combine the two Laws (on WS and on Occupational Disease Prevention) is a very good point as is integrating OH into WS inspection. In the past, the OH department operated as in the former Soviet Union. Later, much thought was given to integration. Now, the Bureau had very good proposals on how to combine and integrate. Going to employing units (EUs) with two separate teams, as in the past, meant putting unnecessary pressure on employers' time. Integration would be a very good solution: one single law and integrated inspection teams would mean a reduced burden on employers. This was necessary to accomplish the transition from a planned to a market economy. The OH teams in China were huge and should be well utilized.

III. Provincial MoHRSS/Labour Inspection Bureau

Coordination and consultation on legal revision should also take place with the MoHRSS, which issues regulations on Reporting of occupational diseases and personal protective equipment (PPE) back in 1995, as well as social protection regulations e.g. that workers involved in labour protection activities could not be sacked. It would be important to inquire from MoHRSS, what regulations they already had that touched upon OSH issues. Issues concerning labour protection were also contained in the Labour Inspection Regulations (1995), as well as the Labour Law itself (e.g. on the protection and safety of children and young workers). It would be important to avoid overlap when revising the WS Law.

IV. Deputy Director General, Ningxia Provincial WSA

First, the issues presented were, overall, very good. Combining the two laws under review into one was in line with today's WSA work and international best practice. From 1998 to 2008, there were no delivery mechanisms for OH, no clearly defined tasks and responsibilities for OH work. MoHRSS/LIB was responsible for accident insurance, SAWS/WSA for occupational safety, and the MoH for what? (Certainly not correct OH supervision). It would be necessary to provide clear Law Enforcement duties and responsibilities.

Second, regarding institutional development, Coal Mining (CM) supervision was, in his opinion, not very effective. At many CM meetings organised by SAWS very diverse delegations from different bureaus and departments had participated, but these never resulted in the development of a unified system. The responsibility for gas control treatment lay in the MoEnergy. The provincial WSA sometimes did not even know to

which department to send its reports to. And who should be supervising on behalf of the local government authorities? There was no unified solution to this problem between different govt. departments.

Another problem concerned the relations between inspectorates at national and local levels. Inspection responsibilities between different levels were anything but clear. Again, this had been discussed at many meetings without positive results. It was a very important issue. Often, local WSAs would be held liable for CM accidents. This was unfair. The local WSAs had NO inspection means for CM supervision. Any CM, in order to operate legally, needed six different operating licenses from as many different govt. ministries. None of these was coordinated, and none was related to local WSAs, but these might be held liable in case things went wrong. This was a big problem, which should be studied carefully. It included the issue of whom and where to send documents and report.

A further point was how to ensure that inspectors could independently ascertain their rights and duties under the CM WS Law, which was directly under the control of the Central Authority. Under vertical supervision, how could local WSAs exercise their duties? In today's China, there were conflicts between economic interests and local legal WS requirements, e.g. when implementing the "Three Simultaneous Approaches". If local governments and investors wanted to establish a project quickly, and then the WS inspectors demanded the adoption of the 3SA regs. there could easily be conflict. And as the local WSAs were under the control of the local governments this could create real difficulties.

Another point concerned investments. In China, as was well known, there were big differences between different provinces and regions in terms of economic development. So, as concerned investments in Safety Protection, Regions like Ningxia simply did not have the necessary resources. Without investment and support in staff and equipment, local WSAs could not carry out their tasks at the county level, where they often only had three or four professional staff. It was entirely unfair that they should then be held liable if accidents occurred. The issue was how to improve the local WSA resource base in line with investments in other areas? This was crucial. Working conditions of local WSAs (e.g. in the South of Ningxia were substandard) and in many other parts of the country, conditions were similar. That was unjust and demoralized inspectors, affecting their work.

Lastly, one had always to keep in mind the overall situation in China, a country of some 9 million square kilometres, and with great differences between East (coastal) and West (inland). Policies and regulations (and their implementation) should consider this, and this applied to OSH and WS supervision. EUs did not have surplus investments for OSH, yet for economic development reasons local WSAs could not prohibit them from operating.

V. Provincial ACFTU Labour Protection Department

All points presented were very necessary. Regarding the issue of whether to separate management and administrative tasks from law enforcement, he wished to seek clarification. Licensing (and related issues) was needed, but also effective inspection. In Shandong, where the system reached all four levels, WS inspection and law enforcement were the same in all four levels. In addition, the administrative department was completely separate, thus concentrating resources on the essential task: increasing the presence of inspectors in workplaces, particularly SMEs at "Street and Community" levels. It was explained that SAWS HQ are considering this issue for nationwide implementation, but no decision had yet been taken.

VI. Provincial Construction Bureau

In terms of policy and legislation, many areas and issues were not covered by existing WS laws and regulations. Such laws, if enforceable in the construction sector, often are difficult to apply, when accidents occur, because it is unclear which institution is responsible. Many different departments are involved. It is not very convenient; i.e. the food safety department inspects canteens on construction sites. Additionally, it is very difficult to identify the responsible EU with so many different workers working for different companies and who is responsible within each EU. A new OSH Law is very necessary. As to new WS Inspection Regulations, construction WS inspectors have a huge burden: they cannot sleep because they always fear to be held legally responsible for any accident that occurs, including fines, demotion and losing their job. Clear definitions of the rights and liabilities of inspectors are needed.

VII. Provincial Coal Mining Safety Supervision Bureau

At the end of the 1990s, there were more than 10,000 fatalities in the CM sector (officially acknowledged: 8,000). After ten years, the number of fatal accidents had gone down to 3,600 (2009). Today, CMs can rarely afford to hide accidents due partly also to China having learned a lot from foreign experience. Ten years ago, investments in CM OSH were 2 Yuan per ton, today: 30 y/t, only by CMs, excluding (additional) government investments. The ‘vertical’ inspection system in CMs was very effective. “Simple” inspection did not work in this sector. Twelve on-site inspection visits per month per CM (a CM WS regulation). 80 percent of staff in sub-bureau CM WS Inspectorates are professional staff (at provincial levels, only 50 percent). There is very strict performance evaluation of number and results of CM inspections/inspectors.

The issue of discretion was not clearly defined in China, but the scope of fines was considerable. Conflicts between vertical and local WS inspection exist in the CM sector, in particular when there were accidents. It was fair to penalize inspectors if they did not respect the Law or report accidents or violations but it was strictly unfair to punish them for involuntary oversight. Over 90 percent of the accidents in CMs were caused by workers. They were paid according to the amount of coal they produced (“piece-rate”) and so they neglected work safety rules and took short cuts to work faster, thus risking their lives to earn more money.