

Université de Montréal

**STREET-LEVEL LABOUR INSPECTION IN CHINA AND
THE IMPLEMENTATION OF ILO CONVENTION NO. 155 CONCERNING
OCCUPATIONAL SAFETY AND HEALTH**

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Ce mémoire intitulé :

Street-level labour inspection in China and the implementation of ILO Convention
No.155 concerning occupational safety and health

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Résumé

Les relations de travail et d'emploi sont devenues des enjeux importants en Chine. La Chine a ratifié 25 conventions internationales du travail et a travaillé en étroite collaboration avec l'OIT pour améliorer la sécurité et la santé au travail. Malgré ces efforts, la Chine est souvent critiquée pour des violations du travail. Face à ces problèmes, un système législatif d'administration de travail a été développé au niveau national. Mais l'application de ces règlements demeure problématique.. En particulier, les difficultés rencontrées par les inspecteurs du travail dans l'application de ces lois constituent un élément clé du problème.

Notre mémoire s'intéresse essentiellement au rôle de l'inspecteur du travail dans l'administration publique de la sécurité du travail en Chine. Ces fonctionnaires jouent un rôle important et peuvent parfois exercer leur discrétion en tant qu'acteurs de première ligne, faisant d'eux de vrais décideurs politiques. Par conséquent, la compréhension de leur rôle et de leur discrétion dans l'application des normes du travail en Chine est cruciale. Notre mémoire est centré sur une étude de cas qualitative d'un bureau d'inspection du travail dans la région de Beijing. Dans le cadre de notre recherche nous avons examiné le rôle des inspecteurs du travail au moyen d'entretiens semi-structurés, d'une recherche documentaire ainsi qu'à l'occasion d'une brève observation des inspecteurs sur lors de la visite d'un lieu de travail. Les résultats démontrent que la définition du pouvoir discrétionnaire des inspecteurs du travail de première ligne en Chine est un enjeu très complexe. L'étude de cas permet cependant d'élaborer un cadre permettant l'identification des facteurs critiques déterminants pour l'évaluation et la compréhension de la nature du pouvoir discrétionnaire de l'inspecteur du travail en application de la loi.

Mots clé: OIT, la sécurité et la santé au travail, discrétion, inspecteur du travail

Abstract

Labour and employment relations have become important issues in China. China has ratified 25 international labour conventions and has worked closely with the ILO to improve occupational safety and health. Despite these efforts, China is often criticized for labour violations. China has in response built a relatively complete legal and regulatory picture of labour regulations nationwide. The problem facing China today is enforcing these laws and regulations. A key part of this problem is the critical question of examining the challenges faced by labour inspectors in implementing these laws.

This research project focuses on the role of labour inspection in the public administration of work safety in China. These public servants play an important role and may at times exercise their own discretion as street-level actors, making them the real policy decision makers. Consequently, understanding their role and discretion in the application of labour standards in China is crucial. This research is a qualitative case study of one labour inspection office in the Beijing area and examines the role of labour inspectors through semi-structured interviews, documents, and a brief observation of labour inspectors on-the-job. The results indicate that defining the discretionary power of street-level labour inspectors in China is a very complex task, but a framework is developed through this case study to identify critical issues important to evaluating and understanding the nature of street-level labour inspector discretion in enforcement.

Keywords: ILO, safety and health at work, discretion, labour inspection

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CHAPTER 1

INTRODUCTION: China, international labour standards and occupational safety and health

1.1 Introduction: China's emergence in the global economy

Labour standards and the enforcement of labour protections have been global concerns for over one hundred years. With the increasing globalization of the world economy in recent decades, this concern has only grown. Governments interested in simultaneously pursuing social protection on the one hand and economic development on the other hand have resulted in a renewed focus on the issue of labour administration generally and labour inspection in particular. Casale and Sivananthiran (2010) noted this trend in a book on labour administration.

Labour administration, in particular labour inspection, has enjoyed an increasingly high profile in recent years, both nationally and internationally. Much of the increased interest is from governments, recognizing that in a globalized world labour administration is a key actor in the elaboration and implementation of national economic and social policies (Casale and Sivananthiran, 2010; vi).

With China's emergence as a global economic power, the government has not remained isolated from these trends. This research project is an examination of one contemporary element of labour standards enforcement in China, the work of labour inspectors enforcing occupational safety and health (OSH) standards.

The development of China as the world's workshop did not occur overnight. Industrialization unfolded in three stages before the founding of the People's Republic of China (PRC) in 1949. These pre-1949 stages were the late Qing Dynasty, the Northern Warlords' Government and the Nanking National Government. During these periods China's industrialization developed with great difficulties and resulted in few achievements (Lu 2000).

The period between the years 1949 and 1978 was the period of traditional socialist industrialization. The basic characteristics of this period included a highly centralized planned economy and a national economy with a low per

capita income. The goal was to establish an independent industrial system to meet domestic demand and entailed the abnormal development of heavy industry (Wen and Wu, 2006).

China's industrialization thus began in the 1950s. Li and Vinten describe this early transformation very well: "From the beginning of the 1950s to the end of the 1970s, Chinese workers were under a highly centralized planned economy typical for many communist countries of this period, including the Soviet Union. Some industrial infrastructure was developed during this period and GDP growth was 5.5 percent" (1997). Despite development and industrialization, there were defects in resource allocation and structural conditions, namely discord between production and consumption as well as some disparities between light and heavy industries (Wen and Wu, 2006).

Political movements challenged this economic development. Some political movements such as the "Great Leap Forward" phase of rapid industrialization and the "Cultural Revolution" phase both, according to some historians of China, impacted negatively on the overall national economy. Li and Vinten explain that "by the time Chairman Mao died in 1976, the Chinese economy was on the point of collapse, with GDP being 4,536 million Chinese Yuan and a trade level of \$7742.44 million compared with the figures of 1968-1970" during which GDP had grown strongly (1997).

In Mao's closed economy, China was one of the world's most isolated countries with a tiny share of international trade; with a tiny share of trade; commodities, especially oil, accounted for most of China's exports. Foreign trade and exchange were under the monopolistic control of a central government ministry, which used the over-valued currency to support an economic policy of import-substitution articulated and administered by the central plan (Li and Vinten, 1997; 187).

In order to stimulate domestic development, "striking changes took place in domestic and foreign economic policies that would ultimately lead to China's emergence as a world economic power" (Li and Vinten 1997). This new period in Chinese economic history began roughly in 1978 with a new strategy of development focused on reform of the economic system. Deng Xiao Ping believed that "China could not become a modern industrial country

merely by importing foreign technology” (Li and Vinten 1997). He “advocated two major changes in the economic system: the transfer of decision-making powers to the producers, and the introduction, to varying degrees, of the laws of the market” (Li and Vinten 1997). National policy was working to move away from being totally reliant on the Soviet-style central planning strategy. Thus, certain market mechanisms were introduced (Li and Vinten 1997).

After 1978, China moved from a centrally planned socialist economy to a policy called a new hybrid of capitalism, referred to as being “socialism with Chinese characteristics”. These characteristics included many market-based economy mechanisms. As Li and Vinten note “since initiating these new economic policies in the late 1970s, China has continued to pursue the twin objectives of economic reform and the expansion of international economic ties through what it calls the ‘open-door’ policy” (1997). Since this time, Chinese industrialization has accelerated to an astonishing degree and achieved in economic terms remarkable success. The gross industrial output value of China increased by 28.5 times from 1978 to 2002. The Chinese production output of many industrial products is ranked first in the world (Ke 2011). The result is a China that has developed a “generalized export-oriented industrialization (EOI) and moved towards a more successful economy through this process” (Li and Vinten 1997).

After its much-anticipated accession to the World Trade Organization (WTO) in 2001, China's growth developed even more intensively.

China entered a highly energy-intensive growth phase marked by a steady shift towards heavy industrial production and exports of materials such as steel, cement, aluminum and nitrogenous fertilizers. While overall efficiency has improved in many of these energy-intensive industrial sectors, production volume has grown at an even faster pace. China today has become the world leader in cement, aluminum, iron and steel, ammonia and nitrogenous fertilizer production. China's WTO accession and resulting trade relations has contributed to heavy industrialization in the last decade... Some industries like cement and steel, urbanization and infrastructure construction continue to be driven by domestic consumption (Aden et al., 2010: 21).

Some figures give an indication of China's remarkable growth in recent decades. Chinese per capita GDP reached US\$3,266 as of 2007. To place

this in perspective, US\$1,000 is considered to indicate a primary stage of industrialization with US\$3,000 as a middle stage of the industrialization and US\$5,000 as a late stage of the industrialization. Since GDP per capital in China had now reached over US\$5,000 today, and the country is considered by these general economic guidelines to be in the middle to late stage of the industrialization (Ke 2011). According to the latest World Economic Outlook report, Chinese per capita GDP has reached US\$5,417 (IMF 2011). Needless to say, these dramatic economic changes have also caused remarkable disruptions in society in general and in the social relations of production. Workers have been impacted by these trends in various ways, both positively and negatively.

1.2 Industrial and labour relations in China

When the PRC was founded in 1949, the characteristics of Chinese industrial relations during this post-1949 period included “the rejection of autonomous forms of workers’ organizations in favour of a single, centralized trade union federation” (Ali 2005). The importance of this decision continues to be felt across all Chinese workplaces today. The other major policy change that emerged from this period that continues to affect Chinese industrial relations was the establishment and support for state-owned enterprises and the “Iron Rice-Bowl” in employment policy. This decision was at the center of the country’s efforts to achieve productivity and at the same time the redistribution of basic necessities and services (Ali 2005).

The “Iron Rice-Bowl” policy was characterized by the idea and policy of lifetime employment. The rigid state planning mechanism that accompanied this policy deprived enterprises of the authority to recruit and dismiss employees. Employees were assigned to their work unit according to the state plan, where they might work there for their lifetime (Warner 1996). Salary was determined by various pre-determined schemes at the highest levels by the state without a direct link to worker performance. Mobility was discouraged (Warner 1996).

Chinese economic planning unfolded as if the whole economic system was one large firm or organization. The economic system was dominated by the state owned enterprises (SOEs) with participation by collectively-owned enterprises (COEs) and firms owned by individuals (DPEs). Support was

channelled into the SOEs, leaving other types of firms fewer in number and significantly less capitalized and developed than the prioritized state-owned enterprises (Ali 2005).

Perhaps the most important change for industrial relations, however, was the single, centralized trade union federation. China followed Russia and adopted the All-China Federation of Trade Unions (ACFTU) as the official intermediary between the workers and the party-state. The ACFTU had two functions: “the top-down transmission and mobilization of workers for labour production on behalf of the state and a bottom up transmission for the protection of workers’ rights and interests” (Chan et al. 2008: 110). However, the top-down transmission of Party directives regularly suppressed the bottom-up transmission relating to workers' rights and interests. The result was that workers had little means to channel their local grievances upwards through these trade unions, thus creating potentially explosive situations.

This industrial relations model has had important implications for Chinese society and economy. Industrial relations underwent significant changes since the end of the 1970s when Deng Xiaoping’s “Open Door” policy to the West (and Japan) sought “Four Modernisations” (industry, agriculture, science and technology and defence) by the year 2000. In this new direction, vast changes included decentralized planning and decision making and the introduction of responsibility systems that emphasized individual accountability for performance that have taken place in China’s enterprises (Ding et al., 2000).

Chinese economic reforms transformed labour relations in two directions. First, newly formed non-public owned sectors emerged such as joint ventures and private enterprises. These outpaced the publicly-owned sector while attacking the latter’s privileged status (Ali 2005). “These new enterprises have brought in stricter worker discipline, numerical flexibility by bringing in labour contract systems and have distanced themselves from the social burdens of unemployment, over-employment and worker welfare.” (Ali, 2005).

SOEs have also undergone considerable changes. The Chinese government implemented three interrelated labour policies. First, the government introduced new labour contract systems which have impacted the different types of employment arrangements on the shop floor in all varieties of firms and across economic sectors. These new systems introduced

“contract system employees” to the enterprise level. Such employment contracts “must be for at least one year and have provisions covering major topics such as probation, job requirements, working conditions, remuneration, discipline and penalties” (Ali, 2005). In both the SOEs and COEs there are now mixtures of employment arrangements, including permanent, temporary and contract workers. “In foreign invested enterprises (FIEs), there is a mix of temporary and contract employees, and in individual owned firms there are only temporary employees” (Ali 2005).

A second important change made by the Chinese government for employment relations was moving the fixed wage system to a market productivity-based system, which ushered in more wage disparities. “The idea behind these wage reforms is that the performance should be linked with enterprise productivity and individual performance” (Ali 2005). The thought underlying these changes was that it was time to open up the labour-market and let the market determine wage levels. A third important change for workers came when the government decided to “marketize the social security system by transferring the basic responsibility of social welfare from work units to the individual” (Ali 2005).

It is within this general employment relations backdrop, amidst rapid Chinese industrialization, that the government of China has decided to introduce more classic or traditional labour and employment law protections. In 1995, for example, a new labour law was enacted. The new law takes precedence over all previous laws and regulations on labour. It upholds basic rights of workers in China’s “socialist market economy” by codifying principles of “equal rights” in obtaining employment, selecting occupations, receiving vocational training, and in securing health and welfare benefits. This touches on very important aspects of industrial relations and human resources management across China.

The transition towards a market economy and the integration of China into the global market system has led to radical changes in the industrial relations environment within the country. In the planned economy, the reconciliation of the interests of workers, managers and the state was sought within an administrative framework guaranteed by the government and the Communist Party (Clarke et al., 2004: 235).

With China's emergence and integration into the world market economy, this situation has changed. As one group of scholars has noted, "the development of the enterprise, and consequently the jobs and living standards of the employees, is subordinate to market pressure on management to be competitive in both domestic and global markets, and to secure increasing profits." (Clarke et al. 2004). The overall result of these trends is that China is now an active participant in the global economic system, including all of the obligations and responsibilities for regulation and protection in the international trade regime and, more importantly, for international labour rights protections aiming to improve working conditions.

1.3 China and the international labour standard system

Considering China's colonial history, China's labour and employment system has always held a degree of international influence. In the contemporary era of promulgating international labour and employment regulations, this influence is found today most notably through China's participation in the ILO system. As one of the founding members of the ILO, the "Beiyang or warlord government" (a series of military regimes that ruled from Beijing from 1912 to 1928) had assigned their representatives abroad to participate in early International Labour Conferences. From 1929 onward a tripartite ILO delegation was assigned by the Kuomintang government to attend the annual conference. Kuomintang was one of the dominant parties of the early Republic of China starting in 1912, and remains one of the main political parties in Taiwan. In 1934, the government of China assumed a leadership role as a member of the ILO Governing Body.

Since 1944 China has been listed as one of the ten countries of chief industrial importance, earning the nation one of the ten permanent seats on the ILO Governing Body. China's seat at the United Nations was placed in question from 1945 to 1971 as the international community recognized the Republic of China as the rightful government. As a result, the relationship between the official Chinese government and the ILO was cut off during this time. As Kent noted, "in 1971, following the decision of the U.N. General Assembly to recognize the PRC as the only legitimate representative of China" the ILO Governing Body in turn made the decision to restore China as a member. Since this change in policy, China has participated more and more actively in the ILO system (Kent 1998).

Beginning in December 1978, Chinese economic reform policies and the manner in which they were implemented resulted in immense changes in Chinese society. Poverty was reduced as incomes increased and new industrial relations practices emerged. China's overall national strength and international status has advanced since 1978. Despite being a large and powerful state, China was not a fully active member of the ILO in all regards. Positive efforts were made to change this situation between 1980 and 1982 and the ILO Director General twice visited China to discuss closer participation in the international labour standards system. As relations between the ILO and China slowly warmed, the ILO decided in 1983 to cancel the accrued dues debt representing China's membership contribution obligation back to 1971, including the arrears owed by Taiwan (Kent 1998). The following year an ILO assistant director-general from China was appointed. A member of the ACFTU also began occupying a worker delegate seat in the meetings of the ILO Governing Body (Kent 1998).

China's increasing involvement with the ILO reflected a shift in China's attitude from about 1986 onward. China changed from a low-key to a more assertive role within the international organization, seeking to realize its power, both in the governing body as well as within the various technical offices of the ILO and as a member of various ILO committees. It also expanded its participation in ILO activities around Asia. Technical cooperation became a frequent forum for Chinese involvement in this period. In 1985, the ILO opened a branch office in Beijing. The ILO-Beijing office carried out the ILO's programmes and activities in the PRC. In 1987, China became a member of the International Occupational Safety and Health Information Centre (CIS), providing workers and employers with the most up-to-date information regarding occupational safety and health available from the international community. Such technical cooperation was important to China and this style of cooperation continued to 1989 (Kent 1998).

By 1989, after a period of what Guy Standing referred to as the intellectual shrinkage of the ILO, China's attention followed the ILO's move from highly expert professional technical assistance, which was drastically curtailed, to the more traditional ILO activities of labour standards setting and supervision (Standing 2008). When the WTO started work in 1995, China had ratified only a small number of conventions. With the ongoing development of Chinese economic reforms, modernization and globalization, this shift in focus would

only heighten the importance of ensuring labour standards ratification and compliance by China through the ILO's international labour standards system.

As a result of these changes and underlying historical context, the China government promulgated "The New Labour Law of the People's Republic of China" in 1994. This new labour law demonstrated China's knowledge of and compliance with the basic ILO standards and principles governing tripartite dialog and collective bargaining. Article 7 of the new labour relations system provided that, in accordance with the law, "a trade union shall represent and protect the lawful rights and interests of workers and organize its activities autonomously and independently" (Labour Contract Law of PRC, Article 7). Article 8 of this law provided that each worker should "participate in the democratic management or consult on an equal level with his employing unit about the protection of lawful rights and the interests of workers through staff meetings" (Labour Contract Law of PRC, Article 8). The new labour law regime also endorsed other workers' rights, much to the chagrin of some employer associations like the U.S. Chamber of Commerce (Barboza 2006).

China's participation in the ILO system has continued. As of 2012, China has ratified 25 Conventions, of which 22 remain in force and thereby placing China under the ILO's supervisory mechanism. By comparison, Canada is a party to 32 ILO labour conventions that are in-force and the United States is a party to 14 labour conventions in-force (ILOLEX 2012). Workers' rights are now one of the crucial social issues recognized as a policy priority by the Chinese government. This concern is evidenced by the increasing intensity of China's communication and partnership with various ILO bodies, a trend that likely will become more and more important as China modernizes and develops going forward into the future.

1.4 Occupational health and safety in China

As China has been experiencing rapid industrialization and economic growth, a transformed industrial structure and expansion of the labour force has resulted. OSH regulations have emerged as an important area of labour law, policy and services of concern to China (Christiani et al. 2002).

China promulgated two important acts of legislation in 2002. First was the Law of the People's Republic of China on Work Safety. Second was the Law of the People's Republic of China on Occupational Diseases Prevention and Control (Arrigo et al. 2011). Currently there are "over 80 different statutes of differing legal quality" in force relating to occupational safety and health. These include laws such as the Law on Safety in Mines, Coal Law, Electricity Law, Fire Prevention Law, Law on Road Traffic Safety, Law on Emergency Response, in addition to some 27 administrative regulations on OSH, including the Regulation on Work Safety Licensing, Hazardous Chemical Safety Management, the Reporting, Investigation and Treatment of Work Safety Accidents, and Safety Management of Large-scale Group Activities (Arrigo et al. 2011).

From a national OSH supervision and administration perspective, two particular administrations have been established, the State Administration of Work Safety (SAWS), established in 2001, and the State Council of Work Safety Committee, established at the same time. The SAWS is responsible for enforcing the laws on occupational safety and health. At the same time, the State Council of Work Safety Committee is headed by a Vice-Premier with members composed of the heads and deputies of the State Council's Ministries and Agencies (Arrigo et al. 2011).

Worker safety and health supervision and administration lags far behind the pace of economic development. Unsafe working conditions and occupational diseases and injuries in mining and in labour intensive manufacturing industries dominate both Chinese and foreign media reports. Between 2008 and 2010, for example, the number of Chinese coal miners contracting occupational diseases rapidly increasing, reaching a peak after 10 years (Chen et al. 2010). This figure gives only a small indication of the situation that exists behind the curtain of China's economic miracle. Compared with other developed countries, the current situation of China's occupational safety and health is not optimistic and holds room for much improvement. Figure 1 shows this sharp spike in comparative form.

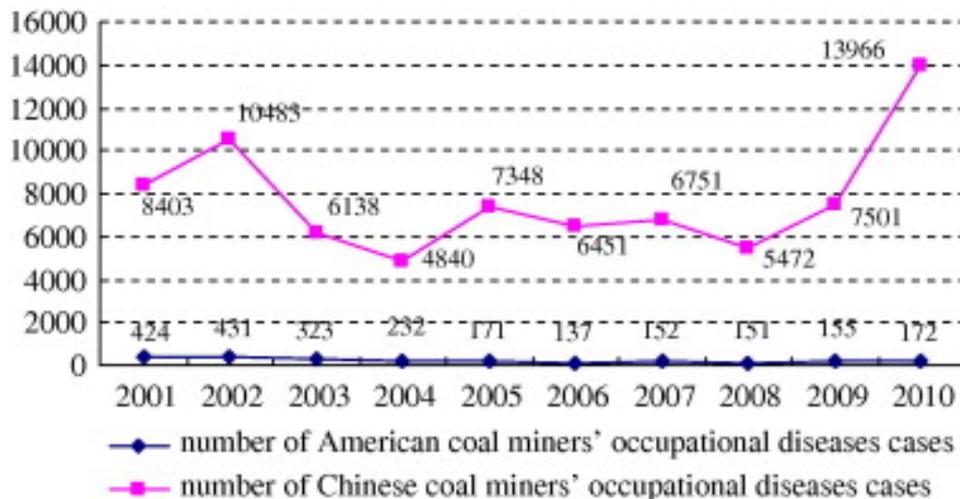


Figure 1. Ten-year tendency of the caseload of coal miner's occupational diseases in China and the US.

1.5 The Chinese ratification of ILO Convention No. 155

At the same time as China began the process of market reforms that ushered in a period of economic expansion and industrialization, a significant body of international instruments and guidance documents were being developed by the ILO in the area of occupational safety and health. OSH has always been an important issue of concern in the global labour standards system since the ILO was founded over 90 years ago. The 1970s witnessed a renewed interest in worker safety and health policy, however.

Despite this long history of treatment in international labour law and decades of experience by the ILO, safety and health has remained elusive on the global level as evidenced by global statistics. Protection is still very difficult to achieve for decent, safe and healthy working conditions in practice. According to one global estimate "every day, 6,300 people die as a result of occupational accidents or work-related diseases – more than 2.3 million deaths per year. 317 million accidents occur on the job annually; many of these resulting in extended absences from work" (ILO 2011). Statistics indicate that even today working conditions for the majority of the world's workers are not optimistic. "Progress in bringing occupational health to industrializing countries is painfully slow" (Ladou 2003). Even in some of the poorest countries, there has been no progress at all (Ladou 2003).

The ILO has worked to raise worker health as a priority internationally and to meet the challenge by promoting global awareness of the importance of worker safety and health (ILO 2009). These efforts include adopting conventions and recommendations and offering technical assistance programmes. A large number of ILO activities have occurred on topics such as child labour, the growing informal economy, gender mainstreaming, labour inspection, specific sectors of activity such as shipbreaking, HIV/AIDS and migration. Each includes at their foundation a central focus on safety and health or a key occupational safety and health component.

The International Labour Conference (ILC) has adopted more than 40 international labour standards the ILO says specifically deal with occupational safety and health topics. These are in addition to over forty Codes of Practice prepared and updated by the office on specific worker health and safety topics. Indeed, nearly half of ILO instruments deal either directly or indirectly with safety and health issues (ILO 2013). ILO conventions guide countries in the promotion of workplace safety and in managing policies and programmes related to workplace safety and health. Many of the most important and fundamental principles of OSH are found in two or three key ILO conventions. These include Convention No. 155, concerning OSH and the working environment, Convention No. 166 on occupational health services, and Convention No. 187, the promotional framework for OSH. These conventions, once ratified by national governments, have the force of international law. They entail a moral and legal commitment by each country to enact domestic legal and social policy changes to ensure national policies and practices move into compliance with the provisions of each labour convention (ILO, 2009).

ILO conventions are often times accompanied by a recommendation not open for ratification but which elaborates on the obligations assumed by a country when it ratifies the related labour convention. Recommendations can also be adopted by the International Labour Conference without the adoption of any accompanying convention. This international system of labour treaty-making and the detailed ILO supervision of compliance is the international system in which China is now an active participating member.

In addition to the international labour standards, the ILO has also adopted a large number of Codes of Practice. These attest to the great degree of professional expertise available through the ILO system on safety and health.

They provide guidance on OSH in certain economic sectors, on certain hazards, and regarding certain safety and health measures. One example is the Guidelines on occupational safety and health management systems, ILO-OSH 2001, a Code of Practice that is one of the major strategies to enhance application and implementation of ILO standards (Takala 2002). These guidelines are the only OSH management principles developed with principles defined through a tripartite consensus. This approach is said to provide an advantage for developing better occupational health and safety practices.

Despite the host of tools available to the ILO, among the most important of the ILO's strategies on occupational safety and health is Convention No. 155. Adopted in 1981 and entered into force on 11 August 1983, the labour convention outlines fundamental principles on occupational safety and health and the need for the creation of a national occupational safety and health policy. As of August 2012, 59 countries have ratified this important convention, a number that increases every year and includes many key developing world economies like Brazil, Turkey and Mexico (ILOLEX 2012).

The central organizing theme of Convention No. 155 is the implementation of a national policy focused on prevention rather than reacting to the consequences of occupational accidents and diseases. "National policy" is a common term and is said to connote a cyclical process with different stages implemented at recurring intervals (ILO 2009). Subsequent sections of Convention No. 155 focus on how to implement these policies at the national level and at the enterprise level. The convention also gives employers and workers in the enterprise certain specific responsibilities for managing worker health and safety (Zhu et al. 2004).

To demonstrate its commitment to improving OSH and prepare for ratification of Convention No. 155, China convened a seminar in 2001 about Convention No. 155 with the collaboration with the ILO. Two years later, the ILO-CIS National Center for China carried out comparative study projects between ILO Convention No. 155 and the Chinese laws and regulations on safety and health that were on the books at the time (Zhu et al. 2004). This study also included a Feasibility Analysis on Applying Implementation of ILO Convention No. 155. During this comparative study, the ILO-CIS National Center for China undertook a lot of research on the status of ratifying ILO Convention No. 155 in the various countries, including the major problems

faced in implementing the convention, and how to prepare for implementing ILO Convention No. 155 in China and so on. This conference and subsequent research was important for the ratification of Convention No. 155. It led to a national tripartite workshop held in 2006 specifically on Convention No. 155 that was run in close collaboration with the ILO (Zhu, 2007). Finally, after years of effort and discussion, China ratified Convention No. 155 in January 2007, a landmark development in international OSH law related to China and a remarkable accomplishment for the overall ILO labour standards system.

Before the ratification and due to planning, China learned that a majority of the provisions of Convention No. 155 were already reflected in Chinese laws that had been promulgated and in related regulations. For instance, Article 40 of the Production Safety Law makes reference to Article 17 of Convention No. 155 (Zhu et al. 2004). Furthermore, a number of activities for raising awareness of OSH are organized by authorities at the national and provincial levels (Zhu et al. 2004). These involve both management and workers. The social partners in China have also been active in promoting OSH. The ACFTU developed its own safety and health strategy that it implemented through its networks (Zhu et al. 2004). These measures altogether played a positive role in the process of promoting China's ratification of Convention No. 155, making the ILO's supervision of China under the convention less likely to focus on the formal legal changes needed to comply with the convention and more so on the on-the-ground translation of the fundamental OSH principles into real-world work practices at workplaces.

This introductory chapter has provided the general background for this project. The next chapter focuses on the main theme of this research, street-level bureaucrats and occupational safety and health enforcement in China. OSH is a critical issue for China and one of the important topics addressed in the international labour standards system. China's rapid industrialization over the last generation has prompted work to modernize national labour policies in response. China has pledged to the world to move Chinese labour policy into conformity with Convention No. 155 in law and in practice. To this end the Chinese government is under international supervision by the supervisory bodies of the International Labour Organization. Because these changes must occur not only in formal law but also in real-world practice, on-the-ground where people work, how labour inspectors do their work to enforce these legal obligations at the very grassroots level is thus not only a concern for workers

at risk, employers and governments. Their actions are also a concern for the international community and anyone interested in the enforcement of basic labour protections defined in the international labour and human rights system.

CHAPTER 2

LITERATURE REVIEW

Street-level bureaucrats and the enforcement of international labour standards in China

2.1 Introduction: Street-level bureaucrats as complex policy actors

This chapter reviews the academic literature surrounding the main focus of this research, the experience and discretion of street-level labour inspectors in China. A number of themes are covered here. These include the history and development of the concept and focus on street-level bureaucrats or public servants in social research related to administrative science, the re-locating of these debates within the general debates on the enforcement of international labour standards, and the challenges countries face when implementing labour standards under a competitive economic globalization, and, finally, the contextualization of all of these academic debates within the real world context of Chinese industrial and labour relations. Throughout this literature review I work to focus the debates on the key questions relevant to my study. I attempt to succinctly summarize this focus in the concluding section of this chapter.

All public policies are implemented at the local level. This fact makes the struggles and challenges faced by the public servants involved in the administration of public policy an important object of study for social scientists. Where substantial discretion in the implementation of any policy exists, these public service workers or bureaucrats themselves hold policy-making power. As a result of these important social and policy dynamics, sociologists and public administration scholars have identified and recognize the agency held by these local actors. Among the concepts that have emerged is the notion of “street-level bureaucrats” and the study of the nature of their discretion, how they respond to inadequate resources, how the performance of these officials is assessed, their relationship with non-voluntary clients, alienation from clients and their own professions, as well as numerous other research questions.

Street-level bureaucracy was coined as a sociological concept in the 1970s by Michael Lipsky, a professor at the Massachusetts Institute of Technology. Professor Lipsky was interested in studying public service workers in response to the perceived sense of a growing hostility in American society against government bureaucracy (Lipsky 1971, Weatherley and Lipsky 1977, Lipsky 2010). The publication of the book *Street-level Bureaucracy: Dilemmas of the Individual in Public Services* in 1980 led to the concept receiving wide attention across the social sciences. It continues in circulation today after being re-published in 2010 by the Russell Sage Foundation. Given the breadth of how the concept has diffused, a comprehensive review of the academic literature on “street-level bureaucrats” is not possible. According to the online citation search website Google Scholar, for example, Lipsky’s original book on street-level bureaucracy has, as of September 2012, been cited by other academic works over 5,761 times.

Citizens have numerous contacts with public authorities in their day-to-day lives. These interactions involve many different types of individual transactions. For instance, people seek social benefits or government permits or licenses of one variety or another. People hand in our tax return or are ticketed for various infractions now and again. When this happens, citizens must deal with large organizations that handle thousands of such individual cases on the basis of various routines related to public administration. Public service workers occupy a critical position within these interactions because they are the location where policy ideas translate into practices in the real world. Bovens writes, “between the individual citizens and large “decision-making factories” is the street-level bureaucrat” (2002). These public servants apply a variety of national or sub-national law, policies, rules, regulations or other administrative procedures (Bovens, 2002). Although the final decision in a case is formally handed down by a higher executive agency,

It is the street-level bureaucrats, police officers, welfare workers, adjudicating officials, tax inspectors, and police officers who, in practice, decide to grant a benefit payment, lay down the conditions attaching to a permit or determine assessment (Bovens, 2002).

The public service employees above are called “street-level bureaucrats” each of which functions according to a particular logic. Michael Lipsky began defining the term in the late 1960s as “public service workers who interact

directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work” (Lipsky 1980). It is now understood in the field of public administration that millions of decisions are made at this basic "street" level by public service workers. Their choices and decisions have a significant impact on the ordinary citizens' daily lives and on the implementation of official policies.

As a result, public policy comes alive in the daily practice of street-level bureaucracy. The reality is far more complex than the legislators writing the law and policy could have ever imagined. This situation opens the real possibility of discretionary powers for the street-level bureaucrats. These public servants become more than the faceless implementing agents of policy-makers. These street-level acts by bureaucrats can even make policy. Lipsky explains this phenomenon.

The decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out. I argue that public policy is not best understood as made in legislatures or top-floor suites of high-ranking administrators, because in important ways it is actually made in the crowded offices and daily encounters of street-level workers (Lipsky, 1980: xii).

The discretion of street-level bureaucrats is a key issue in the implementation of public policy. There is a significant difference between street-level bureaucrats and other bureaucrats in the implementation of public policy. Street-level bureaucrats must constantly make decisions and judgment when they interact with citizens. Laws and guidelines must be interpreted by street-level bureaucrats and when this occurs, they create the organization's real policy (Lipsky 2010). As a result, “unlike lower-level workers in most organizations, street-level bureaucrats have considerable discretion in determining the nature, amount, and quality of benefits and sanctions provided by their agencies” (Lipsky 2010). The exercise of discretion is thus fundamental and necessary for street-level bureaucrats to do their work (Duner and Nordstrom 2006).

Discretion does not mean that street-level workers are unrestrained by rules, regulations, and directives from above. On the contrary, the major

dimensions of boundaries of public policy, for example, the nature of rules, any regulations and the basic services are shaped by policy elites and political and administrative officials. “These influences establish the major dimensions of street-level policy and account for the degree of standardization that exists in public programs from place to place as well as in local programs” (Lipsky 2010). The lack of a transparent set of outcomes, autonomy and less supervision can also lead to broad interpretations of the goals and objectives which street-level bureaucrats may take advantage of in order to adjust policies to meet their own situation-specific goals. Piore and Schrank argue, for example, that one of the limitations of labour inspection in the Latin world is the difficulty of monitoring and evaluating the inspectors’ decisions in a way that can ensure consistency and equity of treatment across all enterprises that are regulated over time (2008).

Academic research on street-level bureaucracies is still in an early stage and relatively less frequent in China. One obvious difference is that street-level workers in China are administrative law enforcers considered civil servants. The teachers or social workers that Lipsky studied and classified as street-level bureaucrats are not considered civil servants per se in China. For example, according to Article 14 of The Civil Servant Law of People’s Republic of China, civil servant posts shall “according to the nature, features and necessity of administration of civil servant posts, be classified into such categories as comprehensive administrators, technological professionals and administrative law enforcers” (Civil Servant Law of PRC, Article 14). So, there is a different type of classification of workers in China than in the west, yet the street-level character of these functions nevertheless exists where they interact with the public and implement policies in practice on the ground.

Many street-level civil servants in China enforce various administrative laws whose functions are market supervision and social management. These functions often only exist at the primary level of these organizations. Among the most important street-level public servants regulating the private market economy is the labour inspector. Labour inspectors and officers from different levels of work strive to regulate occupational safety and health. They are key administrative officials with street-level bureaucratic functions that operate in many locations all across China. As China strives to develop its national labour policies in accordance with international standards, studying these

street-level bureaucracies and their unique dynamics in China are important questions.

2.2 Factors that have influenced street-level public servants

Although street-level public servants are complex actors and do hold a degree of discretion, it is also important to recognize that environmental or external factors also restrain the degree and nature of discretion of the street-level bureaucrat. Focusing in greater detail on the Chinese context and on labour inspection within the Chinese context in particular, specific factors can be identified that do likely serve to limit or shape the discretionary authority and functioning of most Chinese labour inspectors. First, I identify some of these factors from the general literature on street-level bureaucracy. Next, I identify specific features of the new Chinese labour and employment relations context that are likely to affect the discretion of labour inspectors. This project then articulates a conceptual framework that merges these two groups of factors in a cohesive way that will allow for applying this unique research framework into the Chinese context. Thus to begin, we identify from the general literature on street-level bureaucracy some of the commonly cited and discussed factors that have influenced discretion.

Inadequate material resources

One fairly universal factor is the problem of scarce resources. Street-level bureaucrats feel that “their own resources are chronically and seriously insufficient” (Winter 2002). Policy decision makers are constrained by the costs of obtaining information to their resources, by their capacity to absorb information, and by the unavailability of information. The lack of resources is extremely severe in China. According to a 2006 survey China suffers from a severe shortage of trained labour inspectors. State Administration of Work Safety has approximately one officer for every 35,000 workers (Tunon 2006).

Scarce resources for law enforcement capabilities continue as other important developments in labour relations unfold across China. Since 2003, labour conflicts between workers and capital have been increasing. According to a survey, the number of labour dispute cases increased from 19,098 in 1994 to 226,000 in 2003, and the number of workers involved increased from 77,794 to 800,000 during the same period (Chanet al. 2008).

In 2005 alone, the number of labour dispute cases accepted and heard by labour dispute arbitration committees at all levels of government reached 314,000 and involved 744,000 workers. Among these cases, the number of collective labour dispute cases hit 19,000 and involved 410,000 workers. Most of disputes were classified as involving labour remuneration, economic compensation, and insurance and benefits (Ngok 2008).

Worse still, because local governments are obsessed with economic growth, they tend to stand up for capital and oppress labour. These local conditions can serve to limit the actions of labour inspectors across China, even not allowing labour inspectors to enter the factories and exacerbating resource scarcity among these public servants (Yue and Zhuang 2009).

Performance measurement and evaluation

Lipsky's original treatment of street-level bureaucrats indicated that the job performance of public servants is extremely difficult to measure (Lipsky 2010). The reasons for this difficulty are the lack of quantitative assessment of bureaucratic performance and that the current evaluation measures are not efficient or are otherwise inadequate (Lipsky 2010). To some extent, a bureaucracy itself may be defined as a large organization whose output cannot be evaluated through market-type transactions. This view distinguishes public bureaucracies from otherwise private business organizations, whose behaviour is in a sense assessed through profitability. Nevertheless, the challenge of performance measurement was recognized early on as one of the factors influencing street-level bureaucracy, necessitating evaluation and assessment tools that were sensitive to the particularities of these dynamics and the general qualitative nature of how street-level bureaucrats function in different social contexts.

Difficulty evaluating performance is a characteristic of bureaucracies. This tendency becomes obvious when studying the work of street-level bureaucracy. One explanation for this difficulty is that goal ambiguity, intrinsic to street-level bureaucracy work, affects performance measurement (Lipsky 2010). There are too many variables to take into account in performance measurement, the public may grant differing degrees of deference and autonomy to street-level bureaucrats in decision making, street-level bureaucrats tend to perform in jobs that are freer from supervisory scrutiny

than most organizational jobs, and work norms prevailing in these job minimize such scrutiny (Lipsky 2010).

Although the performance of street-level bureaucrat is hard to measure and evaluate, bureaucracies do establish standards and measure worker performance against these standards (Lipsky 2010). For instance, as for a labour inspection organization or a work safety administration, the more work the public servant does, the more problems such as illegal employment he or she will find, regardless of whether the issues they measure indicate an increase or decrease in better or worse work performance. So, for example, more labour inspections become the quantitative measure by which to evaluate performance, regardless of effectiveness. Lipsky gives a similar example tied to police work and social workers:

Policemen typically are asked to make a certain number of arrests per month. Social workers are asked to maintain a certain monthly intake and case-closing rate. But these measures are only problematically related to public safety, or to clients' ability to cope with problems that are in part the objectives of these interactions. And they have nothing to do with the appropriateness of workers' action, or the fairness with which they were made, the net results of which determine the rates on which workers are judged (Lipsky 1980: 50).

To sum up, when we are not able to measure correctly the performance of street-level bureaucracy we cannot monitor and control effectively their discretion, and thus the overall implementation of a public policy may be challenged or impeded altogether. Thus the ILO practice of seeking conformity with international labour standards in both law and in practice would seem to require the qualitative focus on street-level public servants and the nature of any discretion they may exercise. In the case of China and the implementation of the ILO's Convention No. 155, this means in part a turn to the qualitative study of the work of street-level labour inspectors.

China does have specific performance measures for civil servants. Ordinary civil servants at different times, places and conditions of use are evaluated based on different standards. China's unique public servant assessment system cannot meet all different purposes. The civil servant law of PRC provides a fundamental framework of performance measures, job

assignment, and remuneration, whose main purpose is to improve policy implementation. In places where the cadre of responsibility operates as designed, a local government assigns a variety of their own targets to its subordinates when the public servants assume office. Read Article 33 of the Labour Inspector Law of the PRC:

In the assessment of a civil servant, the morality, capability, diligence, achievement, uprightness thereof shall be assessed in an all-round manner according to the power limit of administration, where focus shall be put on the practical achievements of his work (Labour Inspector Law of PRC, Article 33).

This framework is clearly too broad and leaves much to the discretion and the interpretation of the labour inspector. Should different departments use a different standard? Should different areas with different functions have different evaluation system and standards depending on the work? These questions remain unanswered.

Another problem is unsound incentive mechanisms. Peng and Su have interviewed 70 public service personnel from a community health service organization in Beijing in order to study the public servant performance measurement system. The result indicated that one of the existing problems was an imperfect incentive mechanism. They argued that within the same organization, the difference of performance pay grade between different positions were negligible or differed very little (2011). Almost everyone was able to get their merit pay. Furthermore, what constituted the wage was not clear (Peng and Su 2011). The ambiguity and uncertainty of the organization goals and thus the national policy goals trickles down to merit pay decisions. This ambiguity clouds the challenge public servants face but also indicates the environment is one of high discretion due to this lack of clarity in goals and objectives. The lack of and the unavailability of effective performance measures in street-level bureaucracies can at times allow workers to exercise their own discretion.

The non-voluntary nature of the clientele

The relationship with clients is also one of the key factors that determine the way in which street-level bureaucrats implement policies. The clients of street-level bureaucracies are non-voluntary clients. They are in a legal or structural sense likely obligated to interact with the public servant. This point is obvious in coercive public agencies because street-level bureaucracies often supply essential public goods and services which citizens cannot obtain elsewhere (Lipsky 2010).

Health care and legal services can be obtained privately but only at relatively high cost. Poor people are forced to seek assistance through public agencies or not to seek assistance at all. The migrant worker in China is a typical example. Zong and Zhu interviewed 897 migrant workers; the results showed that 89 percent of the migrant workers could afford less than 600 yuan (\$100) a year on medical expenses, with an average of only 50 yuan (\$8) per month. When they get sick, 2 percent prefer to stay at home rather than go to the hospital, 20 percent of migrant workers go to the pharmacy to buy medicine, and 27.7 percent go to private clinics. Most of these clinics have no business license (Zong and Zhu 2007). Because of the expensive medical charges, more than 50 percent of them do not go to the public hospital.

The result of these non-voluntary social dynamics is that the participation of the clients is non-voluntary and thus the client has less power and cannot decide to readily change a public service worker on their own accord (Lipsky 1980). There is no way on an institutional level that those clients can discipline street-level bureaucracies and street-level public workers. Street-level bureaucracies therefore often have nothing to lose by failing to satisfy clients, although there are different local situations that could in some way alter these dynamics. As a rule however, the public bureaucracy is an organizational form that is different than a private market organization where a single customer can, at least in theory, punish the organization by buying service elsewhere.

Alienation

Lipsky uses the word “alienation” to describe street-level bureaucrats at work and their work relationship (Lipsky 1980).

Worker alienation summarizes several concerns including the extent to which the worker makes decisions about the work, has control over what is made and how it is fashioned, and the influences the public servant has on the final disposition of the product. Sometimes, alienation also refers to the extent to which workers are able to express themselves, or the need to which they are required to suppress their viewpoints, including their creative and human impulses through work activity (Lipsky 2010: 75).

Street-level public servants are thus inevitably going to make some compromises or concessions when protecting clients' rights and interests. As a result, the dynamics of alienation reduce the extent to which the street-level worker is able to respond to the clients in a fully human way.

Clients are the main objects for street level bureaucrats and public servants are alienated from clients during their work time. Four specific dimensions of alienation have been mentioned in the literature. Public servants tend to work on only a small segment of the overall product of their work. They are in effect Taylorized in that their work is often rationalized and broken into parts, and to a degree deskilled away from their work, further alienating the worker from the work result (Lipsky 1980). Third, the public servant is a public servant; they do not control or own the raw materials with which they do their work. They are employees, not owners. Finally, "the public servant at the street-level does not control the pace of their work" (Lipsky 2010: 78). Work is often compartmentalized and thus increasing the pace can be easily requested by upper management based on some factors management feels corresponds to performance (Lipsky 2010).

In Chinese official government documents the phrase "relevant departments" is used widely to refer to the responsible parties. However, this phrase is vague to the general public seeking assistance. It also causes street-level bureaucrats to pass the buck and avoid direct responsibility. The absence of specific, clear laws and regulations worsens this phenomenon. For instance, labour inspectors lack a variety of coercive measures and local-level authorities. Inspectors do not have the writ of search, and they cannot arrest the suspect like law enforcement agents, making the investigation and evidence collection process more difficult. This is, however, used as an excuse that street-level bureaucrat use to pass the buck or responsibility to other agencies not responsible for labour standards.

The factors identified in this section are common across the literature on street-level public servants. In addition to alienation, performance measurement, the non-voluntary relationship with clients, and limited resources, numerous other environmental or external factors also influence the work of public servants depending on the social, economic and political context. Labour inspection in China, for example, has unfolded in a period of dramatic changes in the economy and structure of the labour market. Examples of these changes are the emergence of dispatched workers, part-time employment, and the migrant worker, all of which makes the current labour market very complicated.

Street-level bureaucrats work with a relatively high degree of uncertainty in China because of the complexity of the subject matter and the people they serve. Turning to the question of China and the identification of China-specific issues in labour standards enforcement, we try to identify China-specific factors that would influence street-level bureaucrats in Chinese labour inspectorates. Following the section on these Chinese factors, this literature review moves into a discussion of broader debates on labour standards enforcement in labour and employment scholarship. It then concludes with a summary of the salient issues of concern and the key research questions related to street-level bureaucrats and labour inspection in China that this research project will investigate.

2.3 China-specific issues cited in labour standards enforcement

China is an excellent case study to determine if the current international context of global competition is conducive to upholding labour standards and improving employment relations (Frenkel 2001). While China has ratified four of the eight core conventions and a number of other ILO standards, there are also clear challenges for the Chinese government in labour standards enforcement. To begin to try to understand the Chinese context, five topics of importance will be discussed here: Migrant workers and the Hukou system controlling internal migration, the freedom of association and collective bargaining, protests and the fragmented labour movement, the use of dispatched workers, and the more general complexity of Chinese government and bureaucracy.

Migrant workers and the Hukou system

A meaningful analysis of rural–urban migration in China cannot be made without making reference to the Hukou system, which affects the migration experiences of many migrant workers in the cities (Chan et al. 1999). The Hukou system was established in the 1950s. The Hukou system “registers every person at a specific place, and requires all changes in residence to be registered with and approved by both the government of the place of origin and that of the destination” (Chan et al. 1999).

This policy on internal migration in China became even more restrictive when the Chinese government introduced the food stamp system which provided low-priced rationing of foods to each individual residing in his or her place of residence. There were two main consequences that resulted from implementing these new policies. First, it became almost impossible for an individual to move from one place of residence to another. Second, the division between rural farmers and urban city dwellers was widened, with the rural farmers lagging behind in economic and social resources (Wong et al. 2007).

Indeed, entitlement to public and social services depends entirely on the type of Hukou held by the individual. As an urban resident, a person is entitled to have employment, health care, housing, pension and food subsidies. None of these basic privileges, however, are available to people with a rural registration (Fang 2007).

With the introduction of a socialist market economy and establishment of the responsibility system in rural China, it has become very difficult to restrict people from migrating to the cities. Unfortunately, the Hukou system has done little to accommodate to the changing economic situation in China. As the previous analysis indicates, the Hukou system has been largely responsible for creating a marginalized group of migrant families, and in turn employees, who are not allowed to enjoy the same employment, housing, health and welfare benefits as the legal urban residents in China (Wong et al. 2007).

Most of the migrants go to the urban cities in the eastern coastal areas of the country where they can find more employment than back home in the western and central inlands (Wong et al. 2007).

Migrant workers are a special group in urban cities in China. They need economic opportunities, particularly in the major cities, and they do not enjoy the rights of urban residents and are not sufficiently protected either inside or outside of work (Shi 2008). They take up jobs that the urban residents are unwilling to do and live in very poor housing conditions. Their children do not have access to public school systems in their adopted home cities. All this information points to the fact that rural migrant workers are a marginalized group within urban China (Wong et al. 2007).

The specialization of migrant works and the Hukou system makes labour protection difficult for the street-level public servant. Evidence to this effect can be seen from two angles, employment and working conditions first and second, access to social security systems and benefits, including medical benefits.

Little overlap is found between migrant workers and local residents across industries and occupations. Unlike urban residents, who are primarily employed in manufacturing and other industries, rural migrants are concentrated in service and construction industries (Shi 2008). Moreover, most migrant workers take up physically demanding jobs as manual labourers, textile and garment factory workers, toy factory workers and service workers. Migrants mainly occupy jobs that local residents disdain (Fang 2003). Unsurprisingly, these jobs are often more dangerous and hazardous than other jobs that are held by the legal urban residents, placing these migrant workers at greater risks.

Another of the characteristics of rural migrant workers is their low educational attainment (Shi 2008). According to statistics collected by the 5th national census during the year of 2004, 42.09 percent of the employed population obtained middle school education and below, 33.58 percent have obtained high middle school, and 24.33 percent have obtained junior college and above (He and Song 2011). This is a great challenge in developing labour protection because “they do not know how to protect themselves and do not know that working in a poisonous environment violates their rights” (Chan

2001). These migrant workers have little knowledge and lack information about how to gain protection by accessing their basic rights at work.

Coupled with a lack of knowledge of their legal rights, migrant workers have been subjected to a great deal of exploitation. To begin with, quite a large number of migrant workers complained of delays in wage payment, which is a tactic used by the factories as a way of preventing the migrant workers from leaving freely (Tan 1998). It is therefore not surprising to find that conflicts relating to overdue salaries between employers and migrant workers occur fairly frequently in China. Indeed, drastic measures such as strikes and holding managers or employers hostage have been taken by disgruntled migrants.

The working conditions of rural migrants are also disconcerting. Migrant workers are perceived as cheap labour and are paid a very low wage. A number of small factories have even refused to reimburse workers for their medical expenses. Yet, in some foreign-invested enterprises, the owners are not willing to do anything to protect the health of migrant workers, putting these people in hazardous environments with dust, toxic substances, noise and poor ventilation. Migrant workers are often powerless and have little government protection. Invariably, this is related to their official status of migrant workers living in urban cities under the Hukou system in China (Wong et al. 2007).

In China, social welfare benefits are closely tied in with one's residence status within the Hukou system. Therefore, migrant workers are excluded from social security and medical benefits in the urban cities because they are not official residents of cities. Although it is compulsory for employers in urban cities in China to contribute to unemployment funds set up by the government, these funds apply only to the local residents. Migrant workers who work in the very same work units are not entitled to these unemployment benefits. Thus, it is not surprising to find that respondents in one study mention the lack of social security protection as a source of stress (Wong et al. 2007).

Some scholars have tried to analyze the possibilities of the abolishment of Hukou system. However, the conclusion is that the Hukou system, directly and indirectly, continues to be a major wall in preventing China's rural population from settling in the city and in maintaining what is called the rural-

urban “apartheid.” The current system is still very relevant in present Chinese society today and most certainly influences the discretion and decision-making of all street-level public servants, including the labour inspectors.

Freedom of association and collective bargaining

China’s trade unions are on paper the largest in the world in terms of their membership. They have altogether over 103 million members in more than 586,000 primary trade union organizations. All of these worker-members belong to the social state-sponsored union federation. This was, and remains, the only body permitted to represent Chinese workers since the “Liberation” when the Communists took power nationally in 1949. Independent unions may not freely organize, and if they attempt to do so are vigorously suppressed. Although there is no official “right to strike” (the right was deleted from the Chinese Constitution in 1982), there is an elaborate arbitration and conciliation machinery for dealing with workplace disputes (Wong et al. 2007).

The official Chinese trade union body is the All-China Federation of Trade Unions, established in 1925. There are thirty-one subordinate federations of trade unions under the ACFTU in China, which are based in each province, autonomous region, and municipality directly under the Central Government. There are sixteen national-level industrial unions. The supreme organ of union authority is the National Congress of Trade Unions, which is convened once every five years. The ACFTU Executive Committee, composed of 258 members, is the ruling body when the National Congress is not in session (Daniel et al., 2000).

In theory, the ACFTU can take a leading role in pressuring enterprises to comply with the new standards and laws. In practice, however, the ability of the union to do this is severely curtailed, for several reasons. In its current form, the union is neither legally empowered nor practically capable of organizing workers and is unlikely to have the capacity to do so any time in the near future. This inability prevents it from playing an active role with regard to protect the workers, leaving a shop-floor vacancy where a traditional union steward might play a key enforcement role. Furthermore, the ACFTU has no presence in many foreign invested or private companies that disables its effectiveness completely in those enterprises. There is, in short, a significant gap between labour theory and practice (Pringle and Frost 2003). Freeman

has argued that China's government-controlled trade union monopoly is a major obstacle in China's inability to enforce its laws. Despite these limitations, Chinese unions are sometimes able to influence the outcomes of labour disputes positively and to protect workers' interests. Overall, there are major challenges remaining.

Protests and fragmented labour movements

The hands of China's workers have been strengthened by the new labour law introduced in 2008 and by the more fundamental laws of demand and supply (Economist 2010). For instance, on coasts, where its exporting factories are clustered, bosses are short of workers and workers contest conditions. According to one survey, during the first quarter of 2008 alone, the labour courts in Dongguan, Shenzhen and Guangzhou accepted more than 10,000 cases, double the number over the same period the year before (Lan and Pickles 2011). A spate of strikes has thrown a wrench into the workshop of the world. The waves of taxi drivers' strikes in 2008 and of auto workers' strikes in 2009 and 2010 were directly inspired by the new law (Lan and Pickles 2011).

Although labour protests are frequent, the scale, which is often limited to one factory or in one city, does not form a cross-boundary labour mobilization. In others words, labour mobilization remains mostly atomized, cellular, localized and therefore fragmented (Lee 2007). Lee has compared labour protests in the northeast rustbelt and the southern sunbelt of China. Protests of desperation refers to the pattern of activism in Liaoning by veteran state-sector workers, whereas protests against discrimination sums up the mode of resistance in Guangdong by young migrant workers employed in private and foreign-owned firms (Lee 2007). He has found that in both regions, worker protests share the characteristics of targeting local officials, cellular activism, fragmentation of interests, and the interesting adoption of a legalistic rhetoric.

These shared dynamics of labour protest can be traced to the overall state strategy and tensions of decentralized legal authoritarianism (Lee 2007). Labour protests in these different regions do not show any tendency to form a coalition. The internal organizations and interests also remain more decentralized and cellular. The occasional inter-departmental or cross-regional labour movements cannot change the overall characteristics of the

workers' movement. Some worker demands, such as improvement of the working environment, could be met or partially met in the whole enterprise or in part. These efforts appear unable to, however, fundamentally change the status of all workers and whole industries. Atomized worker protest is the rule.

Complex national enforcement strategies

The chain of responsibility for ensuring the implementation of the laws is a crucial aspect of the Chinese regulatory state and environment. In short, it is quite a complex system (Pringle and Frost 2003). There are three main, interrelated vehicles for implementing labour law: Enforcement by government agencies, dispute resolution processes, and monitoring by the official trade union organization. In China, the burden for ensuring that labour laws are enforced is placed even more heavily on administrative agencies than it is in many other countries. Most labour law norms as with very many legal rules in China, take the form of classic "command and control" regulations." Legal instruments are promulgated by the state and an agency is charged with implementing them after setting out a range of various sanctions that that agency or another state agency can impose if the rules are violated.

The main institutions responsible for implementing labour law are the "labour administration departments above county level" which means that local labour departments have jurisdiction over most aspects of labour law within their area, with the important exception of occupational safety and health (Cooney 2006). The new labour law requires labour departments to "supervise and inspect" employer compliance with labour regulations. They do so through inspectorates established in the principle provincial / municipal departmental offices and in local branch and sub-branch offices.

Labour law confers certain powers on local governments. However, local protectionism bureaucracy appears at the same time. The ILO Committee of Experts on the Application of Conventions and Recommendations observed in 2007 that the policies and instructions set out by central government were not being implemented at the local level. The CEACR also noted that many occupational safety and health inspectors are only temporarily employed, and are thus inexperienced and lack adequate and appropriate training. The observation from the International Trade Union Confederation submitted to the ILO mentioned that political pressure from the various local governments is a

problem out of a concern for protecting the government's interests as well as that of the leading companies in the region (NORMLEX 2007).

Another obstacle is that the sanctions that labour inspectorates deploy against egregious violators are weak. Firms using low-skilled migrants as mentioned in the first point have been especially prone to violate the law as the workers have, at least until recently, been unable to use any labour market related pressures to compel the employer to act lawfully. Threats to exit the enterprise unless the law is obeyed have carried little weight because of China's huge labour surplus, although recent unskilled labour shortages in certain cities and sectors may indicate that poor working conditions have at last deterred migrant workers.

General administrative and legal lacunae

Law in China is by no means irrelevant to the country's political, economic and social systems; it has come to be the primary regulatory tool for regularizing the exercising of administrative power and for mediating the various social and economic relations (Cooney 2007). The new labour law is a major legislative achievement, yet on closer examination, however, it has serious limitations. It provides only "the skeleton of a regulatory framework, with its articles either supplemented by subordinate legal instruments produced by various State agencies (which number in the thousands) or left unelaborated" (Cooney 2006).

Cooney studied the underpayment of wages. He supposes that according to labour law "they do not define wages. They do not spell out how they can be varied. They do not provide for wage records to be kept and given to employees. They do not explain what forms of labour service generate an entitlement to wages" (2006). Another problem is that the law applies only to certain categories of workers, namely to "workers (laodongzhe) who form a labour relationship (laodong guanxi) with enterprises". "This phrase sets the boundary between those workers to whom the labour law standards apply and those whose work relations are governed by the general contract law" (Cooney 2006). However, some problems emerged. As Cooney noted: "it is not clear how it should be applied to work relationships that could be categorized as either employer-employee or as to independent contractors or dispatch workers" (Cooney 2006).

Chan has noted that the laws are not necessarily flawless. There are still no specific laws regarding three-capital enterprises (three kinds of investment enterprises) industrial safety protection and insurance (Chan 2001). Although one may always consult the laws drawn up for state enterprises, in practice, government department personnel feel that there are no laws and regulations to fall back on their work. There are important dynamics that are faced daily by the various street-level public servants working to enforce these laws. The fact that the clarifying provisions are scattered through a range of legislative instruments, the status of which is not always apparent, means they are neither readily accessible by the employers who are supposed to comply with them, nor the employees whose interests they are intended to protect (Cooney 2007).

Another lacuna of the law can be seen from labour dispute resolution. Labour disputes are treated quite differently from most other forms of legal disputes in that complainants do not have direct access to the courts. Labour arbitration is conducted by labour disputes arbitration committees (LDACs). A party who is dissatisfied with labour arbitration may file for a hearing in their local People's Court, but they cannot bring a case to a court unless the arbitration procedure is completed, or the LDAC has declined to hear the matter (Supreme People's Court Interpretation on Trial of Labour Disputes). Thus, whereas in most cases where a person seeks recovery of a debt, court proceedings can be initiated directly, this is not possible for workers seeking to recover an amount owed under a labour contract (Cooney 2007). Furthermore, LDACs do not have their own assets or administrative staff, and are usually dominated by government (i.e. labour department) representatives. The employer and the employee representatives often do not participate in proceedings and are in any case nominees from state-owned enterprises or from the state-controlled union, respectively. Thus, "the distinction between state-initiated enforcement of labour law (through the labour inspectorate) and worker-initiated enforcement (through independent dispute resolution) is blurred in practice" (Cooney 2007).

Altogether these challenges in the Chinese context make the improvement of labour protection difficult for street-level public servants. These workers whose rights and interests have been violated find there is no "applicable law" and enterprises have various avenues for suppressing workers by exploiting these lacunae or through other means. Identifying the

obstacles facing street-level bureaucracy in Chinese labour inspection is important to understanding their real-world experience and evaluating the real challenge of labour protection.

The increasing use of labour dispatch services

Dispatched worker employment is the name given to the temporary staffing industry in China. Labour hiring occurs where a firm (the user firm) has work performed by workers that it purports not to employ, but rather obtains from another firm (the labour hire firm) which “dispatches” those workers to the user firm. The new Labour Contract Law has a strong impact of dispatched worker. For instance, “all dispatch workers must be engaged under fixed term contracts of a duration of not less than two years. The labour hire company must ensure that the dispatch workers receive at least the minimum wage on a monthly basis, even when they are not placed” (Cooney 2007).

These provisions are nevertheless remarkable. However, its critics consider how the current law uses only eleven (11) terms in one chapter to adjust the legal relationship between worker, the user firm and the labour hire firm who are involved in labour dispatch, obviously it could not satisfy the requirement of reality development (Yan 2010). Furthermore, the industry rests on a triangular employment relationship between private employment agency, employees, and the corporate customer. This triangular employment makes a labour inspector’s work more complex.

2.4 Enforcing labour standards in globalized capitalism

China is at the center of the debate about capitalism and the enforcement of basic labour and human rights standards. Most scholars believe that with the influence of economic globalization, intense competition reduces international labour standards, which leads to a reverse competition (Xia 2010). The most powerful argument is the famous “prisoner’s dilemma” analysis where the ratification of high labour standards is the best choice of two countries. However, low labour standards can bring benefits to one country and the country who first gives up high labour standard and adopts low labour standards first will get the benefits. The result is that both of these two countries continue to adopt low labour standards, keeping both countries

stuck in a system of labour and employment and offering poor working conditions in perpetuity. This is the classic dilemma often applied to globalized economics.

According to Skak, due to three problems in developed countries, this reverse competition is inevitable:

Firstly, fear of a loss of competitiveness in international trade may ignite social dumping, being the means by which countries try to maintain international competitiveness and payment imbalances by reducing labour standards. As the redressing of one country's imbalance implies an upcoming imbalance for other countries, competing social devaluations could turn into a race to the bottom of social standards. Secondly, high social standards may attract people from regions with lower standards and create immigration into regions with high standards. Such immigration causes an increase of taxes to pay for the standards, and taxpayers will react to this with a request for lower standards. Finally, on international capital movements, more strict labour standards increase labour costs reduce return to capital and thus create downward stickiness of wages because capital will move towards countries with low standards. Consequently, countries with high standards will be hit by high unemployment and low production and react to this by lowering their standards (Skak 2005).

These arguments demonstrate the challenges faced by international labour standards from what scholars describe as the "economic barriers" to effective and strong labour standards enforcement.

On the contrary, Elliott and Freeman are representative of the positive competition view. In their book *Can Labour Standards Improve Under Globalization?* they argue this point from two aspects:

First, opposition by global enthusiasts and the absence of a social clause in trade agreements notwithstanding, trade pressures contribute to improved labour standards in some less developed countries (LDCs). Second, globalization has promoted international cooperation mechanisms. The ILO provides advice on how to develop these rules and assists in training workers' (and employers') organizations on how best to take advantage of them through technical assistance" (Elliott and Freeman 2003).

Freeman argues trade and labour taken together can do more than either can do separately (Elliott and Freeman 2003). Thus, labour standards can be enforced and are possible within economic globalization.

Some scholars also find evidence of positive competition from this social reality. According to Lee, there is no clear evidence that globalization has caused a lowering of labour standards in industrialized countries. The available empirical literature suggests that trade with low-income countries has, contrary to popular perceptions, in fact been only a relatively minor factor behind the rise in unemployment and wage inequality (Lee 1996).

Some Chinese scholars point out that global capital competition improves the labour standards of the host country. Liu et al. have found that in the market-seeking case, low labour standards in a developing country are clearly unlikely to be an important determinant of a multinational's choice of investment location. In the cost reduction case, however, they may be, but even in this case, multinationals are likely to be restrained in their choice of labour standards. Large companies will generally be concerned with their "social image" in home and host countries. As a result, they are likely to and do set standards in their overseas operations in reference to those in their home country. Although this need not mean that they will necessarily set standards exactly comparable to those in their home country, their concern with their image leads them to set standards above those prevailing in a host country (Liu et al. 2004). These studies each introduce complexity into this debate and challenge the basic race to the bottom thesis.

Some other scholars argue that labour standards and international competitiveness are closely linked. Beers has examined whether differences in labour standards' strictness among OECD countries affect export flows among these countries (1998). If bilateral trade flows are distinguished according to differences in skill intensities, a significant negative impact is found on export of labour-intensive and capital-intensive commodities that are produced with relatively more high-skilled labour. If labour-intensive exports are produced with relatively more low-skilled labour, no significant effect could be found. Furthermore, a positive significant effect is found on capital-intensive low-skilled exports. This means that these exports are mainly coming from countries with relatively high labour standards. Substitution of capital for low-skilled labour is said to be an important explanation (Beers 1998). Thus, it is

concluded that there is a close and a complex relationship that exists between labour standards and economics.

The race to the bottom thesis is one of the oldest justifications used for international labour standards. According to this view, labour standards prevent the exploitation of labour in order for one country to gain a trade advantage. The scholars holding this view argue low standards are a tool to achieve national protection. Others conversely argue competitiveness in international trade can lead to substandard labour conditions that constitute unfair trade practices. For example, coerced labour may be viewed, from the perspective of international competitiveness, as a means of gaining an unfair advantage in the international trade arena (Flanagan 2003). This is the race to the bottom thesis that dates as far back as the founding of the ILO in 1919.

Scholars contest this view and advocate high labour standards. Krugman has argued that high labour standards contribute to national productivity. He interprets the demand for the harmonization of standards from the point of view of the political economy. "If one country imposes a costly regulation while others do not, the world price will remain unchanged and all of the burden will fall on producers" (1997). Since producer interests are typically powerful political lobbies, this creates strong incentives for governments to seek policy harmonization in multilateral trade arrangements as a means of reducing the burden of trade liberalization on affected producers (Krugman 1997). Others still consider acceding to global labour standards will cost poor countries their comparative advantage (Elliott and Freeman 2003). Fields has analyzed international labour standards and decent work from the perspectives of the developing world. He has noted articulate statements of opposition to labour standards coming from developing countries. For example, a statement from India's Commerce and Industry Minister:

The Western world, the industrialized world, wants to take away our comparative advantage. It is a pernicious way of robbing our comparative advantage. The developing countries consider it as a maneuver by wealthy nations to force our wages up, to undermine our competitiveness (Flanagan, 2003: 69).

Such views argue that standards damage national economic development, thus compliance with international labour standards would

damage the interests of small and less-powerful countries (Xia 2010). Some see labour standards as being imposed on countries through trade and other multilateral agreements (Patel and Baboo 2007). Stephen analyzed data collected for 116 countries in order to understand the relationship between a country's political and economic power and its decisions to enforce international labour standards. The empirical results suggest that, all else equal, powerful countries are less committed to labour standards than less-powerful countries (Deloach et al. 2006). The result suggests a relationship between economic development and avoiding the enforcement of labour standards.

Others argue that violations of core labour standards exert two other effects on trade flows. First of all, they decrease wages, thereby improving competitiveness. Secondly, child or forced labour leads to an increase in the unskilled labour endowment. This latter effect improves a developing country's comparative advantage in intensive-intensive goods and fosters exports. "Both effects have the same result: low labour standards are pro-trade" (Granger and Siroen 2006).

At the WTO ministerial meeting in Seattle in 1999, more than one hundred members from the developing world opposed international labour standards, saying that they can't afford them (Hensman 2011). Hall has investigated the claim "developing countries are currently ready for more stringent labour standards" by examining the timing of labour standards adoption in highly developed countries. Each of the countries was once as poor as today's developing countries and made the trade-off between labour standards and income historically. His conclusion has showed that labour standards are highly inappropriate for developing countries at their current income levels, and at the income levels they are likely to experience for many future decades. Given prevailing labour law in Sub-Saharan Africa, for instance, current labour laws should be eliminated rather than creating new ones (Leeson 2007). Flanagan similarly noted how existing labour conditions in a country, as well as the size of the trade sector, the prevailing legal system, and the dominant religion combined to influence the ratification of ILO conventions (Flanagan 2003).

Other scholars confuse the debate further by arguing that there is not necessarily a relationship between international labour standards and

international competitiveness. Elliott and Freeman observe that globalization by itself is not a universal remedy for underdevelopment and that developing countries can improve their labour standards without endangering their comparative advantage in intensive-intensive products (2003). In general, they cite studies that find no link or positive association between the level of labour standards and economic growth and no consistent relation with labour costs. Some do find a link between relatively lower labour standards and exports of low-wage textiles and apparel, but these results are not robust and may suffer from problems of multi-collinearity and omitted variables.

Other debates on labour standards enforcement are more directly pertinent to a study of street-level labour inspection in China. One of the critical issues that emerge in the literature is whether we should set and enforce labour standards at the global level, seeking an international harmonization (Xia 2010). Some scholars support the establishment of a harmonization of labour standards and others are against the idea of harmonization. Here, international institutions play an important role in implementing harmonization. The international actions of these institutions influence directly the implementation of labour standards.

Other studies show no reliable evidence that high labour standards reduce a country's share of FDI. Given the evidence mentioned earlier that ratification is not associated with higher labour costs, this result should not be surprising. Indeed, discussions of the potential costs of labour standards turn attention from the possibility that some labour standards may raise the productivity of investment by improving the quality of human capital. Ratification of ILO conventions is only one of many potential government influences on FDI. The government actions to reduce risks associated with expropriation and uncertain contract status and to reduce its own presence in the economy will have a much more powerful effect on FDI shares (Flanagan 2003).

At a minimum, we can conclude that the debate between competitiveness and labour standards enforcement remains unresolved and that sufficient complexity exists about the role of globalization. Although this is far from an exhaustive review, the important question one can distil from this literature is that the issue of whether labour standards and rights at work can be enforced

in an internationally competitive global economy remains yet unsolved. The role of international institutions, however, remains an important focus of study.

2.5 Labour standards enforcement and international institutions

On a fundamental level, the need for international labour standards transcends economic arguments and has been described as part of the need for international human rights standards generally (Flanagan 2003). The theory underlying the international human rights idea is that human beings are universally entitled to a certain minimum standard of treatment (Gross 2003). The human rights idea incorporates a number of basic labour rights. The first international human rights treaty—an effort to abolish slavery—was also a labour rights movement issue (Humphrey 1973). Various work-related rights are included in the Universal Declaration of Human Rights and International Bill of Human Rights (Universal Declaration of Human Rights 1948).

Flanagan has argued that the core labour standards, freedom of association and collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation, are fundamental human rights in the workplace. The ILO recognized these protections in the 1998 Declaration on Fundamental Principles and Rights at Work (ILO 1998). They are said to form an obligation of membership of the ILO and should be honoured in developing countries as they should everywhere (Flanagan 2003). On the other hand, as a practical matter, certain important labour standards—earnings levels but also minimum wages, maximum hours of work, mandated fringe benefits—must be allowed to differ across countries. These latter standards should be determined within countries and not by international mandate, in this view, because the ratification of ILO conventions depends on domestic costs of ratification, the openness of the economy to international trade, and the culture and norms of a country (Flanagan 2003). Nonetheless, there is agreement that standards can be arrived at and agreed upon to be universally protected in all countries.

International institutions play an important role in setting and helping countries enforce labour standards. What international action should be taken with regard to labour standards, how this action should be organized, and by what means should it be enforced, are all included here. Two such institutions

are the WTO and the ILO. At one level, the WTO and the ILO are similar institutions as each serves as an international negotiating forum for its member governments. On another level, these institutions are quite distinct. The central purpose of the ILO is to improve labour standards. The central purpose of WTO negotiations and agreements is to reduce trade barriers or, at its core, to increase market access and liberalize trade, actions that may confound labour standards.

On an international level, the ILO has become increasingly active in a particular way since the WTO Singapore Ministerial Declaration. Social clauses have been introduced in trade agreements. This evolution feeds debates regarding whether labour standards should be included in the framework of WTO rules and form a basic floor in the global trading regime. This debate indicates that the linkage between labour standards and trade remains active internationally.

Critics of any labour-trade linkage claim that they and linkage opponents are concerned to promote two distinct objectives—maximizing the gains from trade and reducing disadvantage, imaginably by promoting improved labour standards and higher employment, and that the best approach for achieving these goals would be to dedicate an independent institution to achieve each. They argue that at the international level, the concerns of workers are best served by promoting them through an independent agency, such as the ILO, rather than by confusing the mandate of the existing institution held by the WTO that is presently charged with fostering the growth of world output through reducing trade barriers by charging the same international organization with also protecting labour rights (Barry and Reddy 2006). Some scholars argue that the labour standards issue should be taken up in other agencies such as the ILO and The United Nations Children's Fund (UNICEF). If labour standards are included into the framework of WTO rules, the argument goes, the ILO will be sidelined, marginalized as an expert agency (Barry and Reddy 2006).

Linkage opponents have also proposed that if a problem associated with labour standards is a market-access problem the solution should be sought in the WTO, otherwise its solution should be sought in the ILO (Flanagan 2003). The WTO has had over 50 years of experience in handling market-access problems. The ILO's involvement in international labour issues has been

broadly defined through its history and from the beginning included concerns about race-to-the bottom and regulatory-chill mentality as well as concerns of a humanitarian and political nature related to labour policies and human rights protections. The ILO does not appear to have any particular expertise in addressing market access issues like the WTO. The ILO does have considerable expertise in addressing the details of national labour laws and enforcing labour standards should unfold, providing highly professional technical assistance on various labour topics.

What this implies in this debate is a reassignment away from the ILO and a focus toward the WTO. This would leave the ILO with what is in principle a more narrowly defined labour agenda separate from macroeconomic policy and trade policy. In practice, however, the breadth of the labour issues taken up by the ILO and the nature of the solutions it has attempted might seem little changed under such a reassignment. A tighter focus might even strengthen the ILO's ability to achieve its fundamental objectives of seeking to protect workers and enforce international labour standards (Flanagan 2003).

Granger and Siroen promote linking trade and labour standards. They think labour standards should be included into the framework of WTO rules. They conclude with four reasons:

The first reason is the "demand" for a trade labour linkage can be based solely on economic arguments without referring to human rights altruism and more generally any moral arguments. Second, "negative trade sanctions are not the only measures enhancing labour standards. Pressures to improve labour standards come from all variety of actors, market incentives, international aid or even domestic labour and human rights activists are other means of improving labour standards. Finally, although the ILO is the qualified institution to deal with labour issues, the WTO is not excluded whenever labour standards are a matter of concern for trade. Today, various labour standards are mentioned in bilateral and regional trade agreements which only confirm the importance of the issue as a universal value (2006).

Freeman has proposed a compromise on this debate. WTO should address egregious violations of labour standards that are intended to increase exports or attract foreign investment, but otherwise should not be involved with labour standards. The ILO's role is promote and oversee labour standards, develop, adopt and supervise the international labour standards

that are then ratified by member states that make a commitment to make the domestic legal changes in accordance with these standards to enforce them in practices (Elliott and Freeman 2003). While the academic debate on the proper role of these international bodies continues, the international ILO system continues to function even after a generation of economic globalization, with countries around the world working to implement and enforce labour standards in their domestic policy regimes. This commitment to basic labour and human rights likely means that the ILO will continue to be an important source of the technical assistance needed by national governments to improve the enforcement of labour standards in practice into the future.

2.6 Conclusion: Questions for street-level labour inspection

The literature review above provides an overview of what can be found in the research literature pertaining to several topics relevant to the current thesis. China's rapid industrialization made her actively engage with the ILO and international labour standards. Western scholars and researchers have paid more attention to the relationship of China and the ILO from a human rights point of view. Chinese industrial relations scholars have focused upon the circumstances surrounding the ratification of the ILO's core conventions and other international labour standards. Still other scholars have examined the challenge of implementing international labour standards while maintaining a globally competitive economy. Health and safety at work has been a subject of study in its own right and an important topic in Chinese labour scholarship.

Labour protection is becoming a more and more important issue for China. Since China has a relatively comprehensive, rationalized and logically ordered framework of labour administration and regulation. The challenge China faces is the problem of enforcing the law on the books. The key factor of OSH law enforcement is the street-level labour inspector. They are a typical example of the street-level bureaucrat. Lipsky had indicated that street-level bureaucrats can indeed be the real policy makers. They exercise discretion in decisions about citizens with whom they interact and their actions add up to agency behaviour (Lipsky 2010). Little attention has been paid to the concept of the discretion and influence of labour inspectors as street-level bureaucrats. Accordingly, the big issue of this research project is to explore the role of street-level bureaucrats in the Chinese system of labour inspection, exploring

the nature and latitude labour inspectors hold in China. The aim of this project is to in part create a conceptual framework that links the concept of the labour inspection service / labour inspector and the street-level bureaucrat literature, in addition to exploring this relationship through a qualitative case study in one locale in China, thus contextualizing this linkage for the Chinese legal context.

CHAPTER 3

METHODOLOGY

Conceptual framework, research methods and data analysis

3.1 Introduction: Key research questions

This chapter outlines the conceptual framework and the social research methodology of this study. This includes a statement of the research question, a presentation of the general philosophical orientation of the study, the conceptual model including concepts and their operationalization, the specific research methods, the working hypotheses, a discussion of research validity and the scope and limitations of the research as well as a plan for analysis including a calendar in which these tasks were accomplished.

The literature review provided information relating to the general background and context of the research. It focused on key issues in labour administration in China, general factors influencing street-level bureaucrats, specific Chinese factors of concern in labour policy enforcement, and debates on international labour standards and economic globalization. From this review as a jumping off point, I will now, in this section, try to focus and state the overall research question of interest to this study.

The growing commitment to improve OSH in China has been only accelerated by the increasing public attention to worker safety and health issues domestically and internationally. The ILO Country Office for China has worked in close collaboration with the Chinese government to improve OSH policy in conjunction with global standards and with workers' and employers' organizations to promote decent work for all in China.

Despite these efforts and changes, the Chinese case still reveals a glaring contradiction between theory and reality. China is frequently criticized for its labour abuses, epitomized by the sweatshop staffed by suffering migrant workers toiling for low wages. China has, however, a relatively comprehensive and rationalized and logically ordered framework of labour administration and regulation. The problem China faces is the problem of enforcing the law on the books or, as the ILO supervisory bodies advise, in practice on the ground.

A fundamental area for study in Chinese labour scholarship is, therefore, the workings of the street-level bureaucracy in labour administration and regulation. The important issue to discover and understand is what is happening on the ground where labour standards are to be enforced? What challenges or obstacles exist?

Labour inspectors are one typical example of street-level bureaucrats. They “interact directly with citizens in the course of their jobs” and “have substantial discretion in the execution of their work” (Lipsky 1980). Local governments above the level of the district or county, even though they are generalists as government administrators, are responsible for the implementation and the administration of work safety and occupational health inspection (Production Safety Laws, Article 9). At the district or county levels, inspectors usually inspect both safety and health regulations, responsibilities that would seemingly only increase their discretion as inspectors. At the municipal level, joint inspection teams are the exception (Arrigo et al. 2011).

The review of literature focused on a recurring theme that emphasized the importance of studying the logic of street-level bureaucracy in the context of the enforcement of occupational safety and health in China. This research project therefore seeks to investigate the role of street-level bureaucrats within the Chinese system of labour inspection. It focuses as a result on the question of their discretion, asking, “What is the nature and latitude of labour inspector discretion in China?” This is the basic question this project seeks to explore.

3.2 Methodological approach

The philosophy underlying my research comes from the interpretive tradition but it does not completely abandon a positivist understanding of knowledge. The interpretive tradition often implies incorrectly a subjective epistemology and the belief that reality is socially constructed where the researcher explores only the understandings between subjective expressions of reality. Conducting cross-cultural and international research does require being open to different interpretations of knowledge and experience. Valuing an interpretive approach helps to bridge the cross-cultural divide and protects against the researcher projecting their own elite values upon that which is observed in the field. This sensitive approach makes the study more valuable as it gives recognition to the lived experience of the people and institutional

practices being observed and studied. Taking this approach makes the overall project more valid from a positivist viewpoint and does not necessarily mean abandoning entirely the idea of shared knowledge.

Social science research is often classified as positivist, interpretive or critical. These three perspectives are the popular paradigms in contemporary social, organizational, and management research. Positivism sees observation and reason as the best means of understanding human behaviour. "True knowledge is based on the experience of the senses and can be obtained by observation and experiment" (Thomas 2010). Positivists assume that "the reality is objectively given and is measurable using properties which are independent of the researcher and his or her instruments. Knowledge is objective and quantifiable" (Thomas 2010).

This strict understanding of positivism has been critiqued because studying society and social life is considered to be different from studying chemicals in a laboratory. It is more complex, needing nuanced interpretation.

For example, "social research is imbued with values, personal experiences, history and politics that cannot be separated from the data that the research produces" (Hughes, 2013). In addition, there are many questions raised about the nature of each observer's social reality, and some interpretivists would even go so far as to say that there is not a single social reality that we can objectively know. The world in this constructivist view is only one subjective experience after another.

Post-positivist critics try to reconcile these approaches. Taking a post-positivist approach shares the interpretivist view that social context and representation matters, but it does not sacrifice objectivism entirely even as it sees a degree of socially constructed reality. Critical researchers similarly recognize various forms of social, cultural and political domination. They attempt to question the taken-for-granted beliefs, values and social structures in society by making social structures and the problems that they produce visible, encouraging a self-conscious criticism by the researcher if not the subjects themselves.

A post-positivist interpretivist paradigm stresses the need to put the analysis in context (Thomas 2010). "The interpretive paradigm is concerned

with understanding the world as it is from subjective experiences of individuals. They use meaning-oriented methodologies, such as narrative interviews” (Thomas 2010) so the research tools are capable of capturing these different understandings and do not serve to silence them. This can be done without sacrificing the notion of an objective reality because the study is defined as focused on the social reality of the people, institutions, systems, or social processes being studied. As one author has clearly described:

Interpretivists are concerned with understanding the social world people have produced and which they reproduce through their continuing activities. This everyday reality consists of the meanings and interpretations given by the social actors to their actions, other people’s actions, social situations, and natural and humanly created objects. In short, in order to negotiate their way around their world and make sense of it, social actors have to interpret their activities together, and it is these meanings, embedded in language, that constitute their social reality (Mason 2002).

Researchers can, however, take a more interpretive approach without abandoning traditional notions of objectivity in social research. This post-positivist definition of an interpretivist view is simply more attuned to the reality of a social experience, without sacrificing the view of objective knowledge.

Creswell (1998) argues such an approach normally translates into gathering “deep” information and perceptions through inductive qualitative methods such as interviews and observation (Thomas 2010).

This project is situated in the interpretivist post-positivist paradigm. The key to this methodology is collaboration and engagement with the subjects of study, and trying as a social researcher to be open to different interpretations of reality and knowledge. In this approach the researcher does not stand above or outside the subject, but actively engages and by so doing tries to discern the meaning of actions as they are expressed within specific social contexts.

3.3 Conceptual framework and research methods

In this section, this more contextualized conceptual model is defined for the Chinese context of labour and employment relations and labour

inspection. As described above, is a more integrative model that focuses on the factors influencing labour inspector discretion. It is followed by a series of working hypotheses that are formulated in line with the overall research objectives. First, however, I will state the specific research methods the project will use.

The main aim of this research is to explore the nature and latitude of labour inspector's discretion in China. This theme is engendered by an increasing public attention to labour protection and regular reports of horrific cases of occupational safety and health problems in China. China appears to have built up a relatively comprehensive labour regulation system but the serious problem appears to be implementation of law on the ground. The obstacles to effective enforcement include the inability of the labour inspector to do their job due to various factors that limit or otherwise shape their discretion in opposing ways. In this conceptual model, labour inspection is street-level bureaucracy work. Labour inspectors supervise, investigate and punish private companies and employers on behalf of the state through the enforcement of the law (Liu 2006). Where their discretion to accomplish this task is challenged, so to may be the law. Conversely, discretion may serve to limit the effectiveness of law enforcement as inspectors are, for example, swayed by local power relationships and in turn elect not to cite violations. Getting a grasp of the dynamics of discretion is thus a primary aim and focus.

Research methods

This study is a qualitative case study. The unit of analysis is the discretion of the labour inspector to enforce OSH-related labour standards in China. The research design is a single case research design. The study will focus on the experience of labour inspectors in one district bureau in China where research access has been granted. Given the relevance of this single case to the overall research framework, namely China and the study of OSH labour standards enforcement, the value of the single case comes from the case being embedded in this context (Yin 2002). This approach offers value to the overall research project, yet holds validity issues that accompany any case study research design, especially an embedded single case study. These limitations are addressed below in the section on validity and reliability

Stake (2005: 445) makes a distinction between an intrinsic case study and an instrumental case study. In an intrinsic case study, a single case is selected because it alone has an important value given the unique position of the case within a social setting. An instrumental case study, conversely, represents an important body of cases that are of interest to a researcher. In the instrumental approach, a single case may be selected for study if it provides insight into a particularly important issue and shares similarities with other cases of interest. This case study is an instrumental case study to the degree that any findings can be generalized to other district-level labour inspection services in China.

Little to none empirical research has been made on Chinese street-level bureaucracy related to OSH labour inspection. Labour protection is a huge and complex issue in such a large country with 1.3 billion people. The level of economic development, the population, and policy all influence what effect labour inspection may have. With these confounding external factors, studies that are readily and reliably generalizable are difficult. Research approaches that embrace complexity by using open-ended interview strategies can, in this environment, develop helpful case studies on work safety administration.

The primary data source for my research is a small sample of semi-structured interviews (12) with front-line labour inspectors implementing Chinese safety and health law. This allows for carefully prepared questions that ensure that all the areas of interest are covered, and nothing is left out. Furthermore, it is open and allows the interviewer to deviate and probe further on issues of interest that arise. This allows for more detailed information to be obtained as interviewee's responses can be expanded and explained, adding context, validity and particularities based on their own lived experience.

“Semi-structured interviews involve a pre-existing set of questions, but allow the interviewer the flexibility to deviate and probe further if the need arises” (Phakisi 2008). Using a qualitative approach implies, to some extent, the use of a semi- or unstructured interview schedule, as opposed to a structured interview questionnaire that can often just resemble a survey. Semi- or unstructured interviews are more flexible and can be compared to conversations in style. Semi-structured interviews enable the researcher to explore issues as they arise, whilst providing an initial framework for areas for discussion. They also facilitate an immediate response to a question, allow

both parties to explore the meaning of the questions and answers and resolve any ambiguities and can provide a friendly emphasis to data collection. In addition, they encourage the participant to tell their story in their own words.

Semi-structured interviews are the most appropriate method for data collection for my research project. One reason is the depth of information that can be provided during an interview. The first sub-questions thus focused on the implementation and application of relevant OSH law in China. It is very difficult to explore such an issue in this broad context. In the literature review chapter, I have explained that policy comes alive in the daily practice of street-level bureaucrats. The reality is far more complex than legislators imagine. Thus, this strategy allows me the opportunity to try to capture the range of discretionary powers where street-level bureaucrats are policy makers. The public servant's work experience is my main interest.

As the interviewer, I guided each interview using primarily open-ended questions that encouraged the participant to discuss their experience. A list of questions was developed in advance to explore the issue of discretion of the inspectors and any influence on the implementation and application of relative work safety laws. Furthermore, the questions (See Appendix) attempted to find out the obstacles and problems in legal implementation. Relevant data were also obtained in examining key documents and joining a team of labour inspectors on-the-job for a very brief time to help me understand their work.

As inspectors from different departments often face different problems, the semi-structured interview is open to allow them to tell their own story and allowed for a degree of rapport to develop with each inspector, thus facilitating a deep degree of providing information of relevance to this research project.

Field notes were taken throughout the research process. Field notes were additional opportunities to collect data during the semi-structured interviews. I took notes during each of the inspector interviews and then expanded on them after personal reflection. This provided an opportunity to record and comment on my thoughts about the setting, the respondents and activities. Such data contributes to further steps in subsequent field work and issues relevant during the analysis phase (Sooful, et al. 2009). Fretz and Emerson (1995) indicate that a researcher can identify significant characteristics gleaned from her first impressions and personal reactions. Field notes helped

in this process. With participation in the local social world, she becomes more sensitive to the concerns and the perspectives of those people living and working within those local settings (Emerson and Emerson 1995).

Document collection also provided another source of data. In addition to semi-structured interviews and field notes, information was gathered through documentary evidence. I read the news, visited official websites, and reviewed publically available internal government documents related to the processes and procedures of OSH labour inspection. This information helped to create a better understanding of the work safety administration. Sufficient information was gathered through these sources that facilitated a degree of description, background and function, although limitations in data collection did exist, such as only being able to interview a limited number of labour inspectors (12).

Sample selection rationale

The case that was selected is one typical district bureau of work safety in the Beijing region. The selection of this case was mainly based on two issues. The first is the important position of the Beijing region overall. Beijing is indeed a major political, economic, educational and cultural center of China and is thus intrinsically an important location. Multinational corporations, private enterprises, and state owned enterprises are all active components and objects of inspection in the Beijing area. What is more, a group of labour inspectors directly engaged in OSH inspection there agreed to be interviewed.

The second reason for this particular case study selection was a matter of access and convenience. Research access was obtained through my family relations (my father had worked in a related governmental institution for many years). He arranged my introduction to officials working in the administration of work safety and through this personal relationship I was in response offered an opportunity to access the labour inspectors in one local office very easily. Likewise, my own history gave me a unique insight into the context of the area and the locality as I was familiar with the history, culture and policy of the area and this informed and shaped my questions during the interviews.

Random sampling is generally considered desirable, as all members of the population will have the same chance of being selected, so results are less likely to be biased and can be more easily generalized to the larger

population of individuals of interest (Phakisi 2008). Conversely, theoretical sampling means selecting groups or categories to study on the basis of issues relevant to your research, your theoretical position and most importantly the explanation or account which you are developing (Silverman 2005).

Random sampling is not always feasible in social science, so an accessible group may be used – what researchers call “convenience sampling” (Phakisi 2008). Convenience sampling is seldom feasible to get access to the theoretically ideal sample, so researchers “often need to select a convenience sample or face the possibility that they will be unable to do the study” (Phakisi 2008). Convenience sampling and theoretical sampling ideas and strategies thus form the basis of my study and are used in this study in order to justify my selection of this work safety administration case in China.

A problem, however, is that such samples are often biased, as the group may have features that are not representative of the target population, like being more motivated or enthusiastic. Convenience sampling makes no claim that the sample is representative of the population, and thus has limitations in terms of generalization of the results from the sample to the population it represents (Phakisi 2008). These specific limitations will now be discussed.

Validity and reliability

Kirk and Miller (1986) have stated “social science is in every sense of the word fully as ‘scientific’ as physics and has fully as much need for reliability and validity as any other science” (Niekerk 2009). Validity is said to be more important than reliability, yet a harder concern to evaluate (Niekerk 2009).

Validity is the extent to which it gives the correct answer (Niekerk 2009) and is another word for truth (Silverman 2005). Kirk and Miller (1986) indicate field research is a kind of validity check (Niekerk 2009). I conducted my research within an administration of work safety, and I interview public servants working there, thus, promoting a degree of validity in my research.

Construct validity is the establishment of correct operation measures for the concepts being studied. Multiple sources of evidence were used in order to ensure construct validity. Evidence came from a collection of semi-structured narrative interviews with labour inspectors, field notes written from

visiting the inspection bureau, and the use of document-based evidence such as publically available legislative records and an important inspection manual.

Internal validity is the ability to identify and rule out any spurious relations between concepts within your study. To ensure internal validity, I considered rival explanations for phenomena across the experience of labour inspectors and asked labour inspectors to explain their claims in detail when something was not clear. I wrote basic logic models in my field notes based on some particular phenomena of interest and followed-up with respondents by email and telephone to determine if I understood what had been described in a clear way. As a result, my data and description of the evidence did happen in depth.

External validity is generalizability. Given that this is a single case study research design with instrumental value with a small number of interviews, I argue for any degree of generalizability of my research findings with great caution. This study is limited in its generalizability claims as is typical with many qualitative case study research designs. Nevertheless, I strive to try to elaborate key social processes that *might* on their own be generalizable.

Reliability is a demonstration that your research procedures can be repeated again in a similar context. I used basic case study protocols related to data collection and management for semi-structured narrative interviews so as to allow this study to be repeated again in similar settings if needed. This included following an interview questionnaire tool (see Appendix), the systematic chronological management of field notes, organized document management, and basic coding of various themes, issues, ideas, concerns and obstacles discovered upon examination of all of my document evidence.

Conceptual framework

The general research question asks, “What is the nature and latitude of a Chinese labour inspector’s discretion in the administration of work safety?” Sub-questions follow this. What are the factors that will influence labour inspector’s discretion? What difficulties, challenges and problems do street level public servants meet when enforcing the law of work safety and health?

The table below presents the conceptual framework of this research. In this model, the factors influencing labour inspector discretion have been operationalized in five specific areas: material resources, human resource

management, workforce characteristics, administrative and legal lacunae, and other factors not considered. These basic variables have been adapted from Lipsky's original study of street-level bureaucracy and developed for the Chinese context of enforcing labour standards under the ILO labour system.

TABLE 1. Conceptual framework

Independent variables	Dependent variable
Material resources >	Discretion of Street-Level Labour Inspectors
Human resource management >	
Workforce characteristics >	
Administrative and legal lacunae >	
Other factors >	

The dependent variable is defined as the discretion of street-level labour inspectors. This study assumes there is a complex relationship between the enforcement of labour standards and discretion on the part of street-level labour inspectors doing their job. This means that discretion may work to both enforce labour standards or conversely weaken labour standards. However, if we define discretion to mean anything that limits an inspector from doing his or her job to enforce labour standards, or allows the inspector to decide not to enforce labour standards, then this dependent variable is reasonable.

3.4 Operationalization and specific indices

The model above provides a sensitizing framework for analyzing labour inspectors and labour standards enforcement in China. Each of these issues can be further specified as particular indices to help guide this study. It is important to note, however, that this research design is not exclusively a

variable-centered approach. The research model remains open in order to conform to the basic principles of a qualitative case study research design.

Material resources

The availability of material resources is one key factor that influences the labour inspector in enforcing labour standards. Material resources include the tools needed to perform the job, for instance, computers, printers, audio recorders, etc. Another indicator under this issue is the out-of-pocket expenses that labour inspectors have. It means how much money will be allocated to each labour inspector. Travel expenses are also important resources so an inspector can visit the factories they must inspect without assuming any personal financial costs. Material resources also include staffing levels like a labour inspection services average ratio of workers to labour inspector. This ratio in particular is identified as being important under international standards and the ILO actually maintains national level statistics to monitor respect for certain ratios.

Human resource management

Human resource management policies of the labour inspection service itself can influence labour inspector discretion. Human resource management is the management of an administration work safety workforce, or human resources. It is responsibility for the attraction, selection, training, assessment, and rewarding of employees. In this issue, three indicators are often included. The first indicator is professional training. Training means to maintain and improve professional competence, to keep abreast of new technology and practice, or to comply with professional regulatory organizations such as trainings related to inspection procedures, accident investigation and case analysis. A second indicator is performance measurement, which is a process for collecting and reporting information regarding the performance of each labour inspector. The last indicator is the discipline and reward in an administration of work safety. The inspectors who are aware of their responsibilities and the consequences of not following them are more apt to perform at a higher standard.

Workforce characteristics

China's 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. Each of these poses serious challenges to OSH inspectorates (Arrigo et al. 2011). This component includes non-voluntary clients. The clients of street-level bureaucracies are non-voluntary in a legal and structural sense. Another indicator is the use of migrant workers. They go to the urban cities in the eastern coastal areas from the western and central inlands of China. They are needed for economic growth but do not enjoy the rights of urban residents and are not sufficiently protected either in or outside of work. Dispatch worker use is another indicator here as this kind of worker is in more precarious state than regular employees not "dispatched" from other firms (Cooney 2006).

Administrative and legal lacunae

The administrative and legal lacunae are factors that were explored. The term lacuna refers to something that is missing or a gap or an unfilled space. The current laws and administrations of work safety have limitations. These limitations can be seen from the following indicators. The first is undefined regulations. 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 (Arrigo et al. 2011). The second indicator is the unclear coverage. Here the lacuna of law is confusion of the objectives of an inspection. A final indicator here would be the weak enforcement powers. Sanctions that labour departments can deploy against egregious violators are actually quite weak.

Other factors

There were some factors that were not defined before this study began and needed to be explored in the process of research. These factors were added to allow for flexibility in my research model given that it is a case study. Other factors included the type of industry being inspected and important issues that were raised by the labour inspectors themselves. Staff quality was a factor I expected might be in this category, such as labour inspector educational background, work experience, etc. and the affect on discretion. The political relationship with the government was another factor considered

in this category. Local government considerations, financial and otherwise, were also considered as possibly determining how OHS laws were to be implemented, monitored, and enforced by the front-line labour inspectors.

3.5 Working hypothesis

Hypotheses can be considered intelligent hunches, guesses, or predictions that help researchers seek a solution or answer a research question. "Hypotheses are vehicles for testing the validity of the theoretical framework assumptions and provide a bridge between theory (a set of interrelated concepts, definitions, and propositions) and the real world" (LoBiondo-Wood and Haber 2010).

From prior studies, it was evident that the inadequate resources are one of the serious issues facing OSH inspection. According to a survey, China suffers from a severe shortage of trained labour inspectors. State Administration of Work Safety (SAWS) has approximately one officer for every 35,000 workers (Tunon 2006). This study accordingly focused on whether this ratio has a direct impact on labour inspector power of discretion. At the same time, few research studies have focused on the tools and out of pocket expenses inspectors make performing the job. Thus it was hypothesized:

H1

Labour inspector discretion is affected because inspectors do not have adequate resources to do their job.

The number of rural migrants seeking employment in the country's urban centers has risen from two million in the mid-1980s to as many as 150 million today (Tunon 2006). Migratory workers play a crucial role for economic development. However, they suffer as second-class citizens and endure work through informal employment without rights, social protection and access to social services. Such a huge population, their precarious state of employment and the frequently occurring work safety accident of migrant workers make labour inspectors' job more complex. Therefore, it was hypothesized that:

H2

Labour inspector discretion is affected because the Chinese workforce is too migratory or precarious to assist inspectors in enforcing the law.

We have witnessed improvement in Chinese labour law on the books. However, street-level bureaucracy often feels there are no laws or regulations to fall back on in their work. In addition, the fact that the clarifying provisions are scattered through a range of legislative instruments, the status of which is not always apparent means that they are neither readily accessible by the employers who are supposed to comply with them, nor the employees whose interests they are intended to protect. Accordingly, it was hypothesized that:

H3

Labour inspector discretion is affected because of undeveloped or undefined law with weak sanctions.

A street-level bureaucracy's performance measurements are often limited or non-existent because goals are ambiguous. What is the existing measurement of the administration of work safety, what is the reward and sanction system, and what is the influence of these human resource practices on inspector discretion this research is trying to address? Therefore, it was hypothesized that:

H4

Labour inspector discretion is affected because labour inspectors are too focused on narrow performance evaluation metrics.

There are numerous factors that affect directly or indirectly labour inspector discretion. As noted above, China suffers from a severe shortage of trained labour inspectors. The result is that without a well-trained inspectorate to enforce the law, penalize non-compliance and promote the importance of safe working environments, employers will continue to violate the law (Tunon

2006). Furthermore, municipal authorities may maintain arbitrary, discriminatory and protectionist labour policies leading to an absence of rigor and a failure of their implementation (Tunon 2006). This lead to the following hypothesis that:

H5

Labour inspector discretion is affected because of other factors not considered previously.

These five working hypothesis were used as general guides for directing my questions in the semi-structured interviews. They each were also open enough to allow for me to capture the real-world experience of the street-level OSH labour inspector in China as they understood and shared their views.

3.6 Observation and data collection plan

Over the past twenty years, “the world has been awestruck by China’s breakneck pace of industrial development” (Chen 2010). However, China is usually criticized for unsafe working conditions and occupational diseases. To strengthen the uniform leadership and management of work safety nationwide and to promote the steady improvement of good working conditions, the government has made wide efforts. One significant effort was ratification of Convention No. 155 in 2007 and in response implementation of the National Work Safety Programme (2006 - 2010) including the National Programme for Occupational Diseases Prevention and Control (2009 - 2015) (Arrigo et al. 2011). The State Administration of Work Safety (SAWS) is responsible for overall supervision, administration, direction and coordination of work safety and since 2008 is also responsible for workplace health inspection across the country. It exercises the supervision and inspection of this administration by other relevant national authorities and local (provincial, municipal and district/county) governments (Arrigo et al. 2011). The governments above the level of district/county are responsible for the implementation and administration of workplace safety and occupational health inspection. Labour inspectors supervise and inspect safety regulations at the workplace level.

Site access and observation plan

This project examined one district-level office of the State Administration of Work Safety (SAWS) in the Beijing area. The officials participating in my study were from different departments in this administration of work safety, which included the minister of the local district of work safety administration, officials from the general office, the department of supervision and administration, the department of comprehensive coordination, and other labour inspectors from the front line of safety law enforcement and inspection department. My priority was to interview the front-line labour inspectors.

The major responsibilities of this administration of work safety is to implement the national and municipal work safety policies, laws and regulations, organize the drafting of relevant local laws and regulations, develop safety policy and planning, guide coordination of municipal work safety, analyze and forecast the work safety situation in the district, publish municipal work safety information, and coordinate significant problems of work safety. It is also responsible for undertaking the responsibility of municipal government work safety integrated supervision, guide coordination, supervise and inspect municipal government departments and prefecture-level and above safety work. They also have a role in major accident investigation and supervision and inspection of the workplace occupational health of mining firms and safety permit management.

I focused on three important departments in this district-level administration, the Department of Comprehensive Coordination (综合协调科), the Department of Organizational Personnel (人事科), and the Department of Safety Law Enforcement and Inspection (安全执法监察队).

The Department of Comprehensive Coordination

The major responsibilities here are analyzing and reporting the work safety situation in the city periodically and providing advice and suggestions on the implementation of work safety. This department also proposes advice for work safety development, organizes work safety inspection and special inspections, and releases work safety reports. This department has been chosen because this department provides rich information about the general OSH situation and background about labour inspection within this district. Thus, it helps me to answer the research questions regarding labour inspection and give context.

The Department of Organization Personnel

The major responsibilities of this department are staffing, personnel deployment, the labour and wages system, the positional titles management, the cadre training, the political records examination, the management of cadre files and retired cadres within the administration. This department essentially performs the human resource management functions. It also recommends, discusses, elects and honours the exemplar employees of all kind. As one issue of concern is human resources management, this department is relevant.

The Department of Safety Law Enforcement and Inspection

This department is responsible for administering comprehensively the work of safe production within this local district, exercising administrative enforcement of law against acts violating laws, rules and regulations on safe production, etc. This department of safety law enforcement and inspection is responsible for all street-level labour inspectors and they were the main respondents for this study.

The interviews were divided into two sections. The first part focused on general information about the labour inspector in their district. This included their major responsibilities, coverage rates of the inspector, the requirements and duties and challenges of being a labour inspector, training, performance measurement and the equipment of a labour inspector and related questions.

The second part of the interview focused on the real experience and latitude of the labour inspector. Questions here were more open-ended and related to the procedures of inspection, the sanctions for violations of laws, difficulties, challenges and problems, and special protections to migrant workers, etc.

Before each of the interviews, the presentation of the consent letter to the participants took place. This letter clarified that the study was connected to my personal research work as a M.Sc. student at my university. This is helpful because I did not want the participants to perceive the interview as being any kind of evaluation of their work. It was necessary to build trust between the participant and myself. I also told them that the consent form is a procedural

matter that is more of an obligatory and legal bureaucratic requirement than a symbol of any personal power and authority.

The duration of the interviews was between 30 to 60 minutes. I followed my questionnaire tool and wrote notes during the entire interview and later open coded my notes as indicated in the research methods section above.

The interviews were conducted in Chinese only. The data was analyzed carefully through iterative and a repeated reading of them. As a result, it was possible for me to gain an increasingly profound understanding of the links and contradictions within different interviews, of each interviewee's point of view and perspective, of the complex factors emerging from the interviews and of the numerous relationships between the concepts relevant to my study.

Furthermore, according to the nature of the semi-structured interview, some preliminary analysis was conducted after each interview. The purpose of such analysis is to identify themes and topics not listed in the set of questions but brought up in conversation by the respondents themselves. As a result, if new items or concepts were found, I add new questions in order to explore these topics with later participants. Moreover, the participants did not answer the questions in sequence. If an idea was of interest to the respondent, I skipped around and explored it with them. After that, I returned to question in the list, and asked them. The process remained in a state of refinement.

Confidentially and privacy concerns

Each inspector asked to participate in an interview is an official public servant and a professional in their field of employment. Their participation was voluntary and they were allowed to end the interview at any time they wish. The participants were informed that they could refuse to answer any questions.

Following best practices in research methods, I protected the identity of each participant by making their contribution protected as confidential. Files of each interview were and will be in my possession at all times and will never be shared in any form. When the documents were analyzed answers from individual respondents are anonymized here using writing strategies that hide the identity of the contributor. Furthermore, an added layer of precaution exist

because I do not name the specific administrative region office. These are basic steps taken in qualitative case study research and not actions that I am taking because these professional individuals are in any vulnerable position.

3.7 Data analysis plan

Data analysis is a pervasive activity throughout the life of a research project (Silverman 2005). Merriam states that data analysis is the “process of making sense and meaning from the data that constitute the finding of the study” (Niekerk 2009). Data analysis begins with the categorization and organization of data in search of patterns, critical themes and meanings that emerge from the data (Thomas 2010). This process sometimes refers to coding the data.

After all interviews were documented and re-read, I examine all of the evidence for unique issues and common themes. Coded notes were marked with key concepts as discussed in the working hypothesis section. These key ideas form the basis for coding within the qualitative software QDA Miner. In order to analyze the data within QDA Miner, I imported them into QDA Miner. As some initial key themes or concepts have been created, they become the primary data to be analyzed to explain the discretion of street-level inspectors.

Field notes from my interviews were an important source of information, but a case study privileges a diversity of evidence and information. My coding extended to other field notes as well as any documentary evidence I collected over the course of my research. Since I participated with the work of a labour inspection team on-site, notes from this experience were also important. The data analysis happened in an iterative process and happened between and after each interview was finished. Field notes were processed after each interview. They were marked with a number. For example, the first day, after the first interview, I marked a “1” on the top right of the page and included the date and location, and who I interviewed according to a number I assigned them. I wrote up notes regarding my impressions of each respondent and how each interview went and added them to my field notes, including any reflections or thoughts that were fresh in my mind shortly after each interview.

Documentary evidence collected like material produced, administrative manuals, etc. were dated and coded according to content and relevance.

My focus in data analysis was to identify any common themes, shared experiences, notable problems and unique issues. The goal of the analysis was to review the evidence, be sensitive to context and background information that might help explain the phenomena and answer my research questions about discretion. I classified my findings to help me reflect on the most important areas in terms of clarity that helped answer my hypotheses and then reported on the most interesting and valuable aspects discovered.

Chapter 4

Data Analysis:

On-the-job with a front-line labour inspection team

4.1 Background of the entities being inspected

According to my plan outlined in the previous chapter, I returned to China and began my fieldwork and document collection in early 2013. On April 4th, 2013, I was given an opportunity to follow a small group of labour inspectors to complete their field labour inspection work. In the afternoon of April the 3rd, one of the labour inspectors telephoned and told me some information about this scheduled field inspection work. The object of the inspection the next day was Beijing X Plaza (a fictitious name) and I would join the labour inspection team on their inspection of this site. The management was informed before the inspection. The start time was ten o'clock in the morning and the duration of the visit was to be about one hour or so (Author Fieldnotes, April 4 2013).

After hanging up the phone, I began to browse the internet for the website of the establishment and search for some relevant information. The object of the labour inspection visit related largely to the dangers posed by the issue of large assembly occupancies. Furthermore, the International Labour Day and its associated celebrations were drawing near, meaning various performances were scheduled to increase as a result. For these reasons, this worksite was identified as one of the key inspection objects (Author Fieldnotes, April 4 2013). In keeping with my research obligations to anonymize case study data, I refrain from a more complete description of the site beyond this description.

In the possession of the general information above, I also researched an important document for the labour inspectors, the Work Safety Enforcement and Inspection Guide. I learned this official procedures manual was used by all of the SAWS labour inspectors in their day-to-day work. It outlined key rules to follow and decision-making labour inspectors were to follow. Chapter Seven of this manual presented the details of inspection work for the safety regulation of large assemblies and occupancy regulations. The book defined the term "assembly occupancy" as a place where there is a high concentration of people, and likely to cause numerous casualties if a hazardous event was to occur, such as hotels and restaurants, production and processing workshop

of labour-intensive enterprises, etc. (Work Safety Enforcement and Inspection Guide 2006). The inspection contents and methods of this Chapter Seven included eight sections, outlined below in Table 4.1. The inspection contents above were designed to address hazards that were likely to cause hazard events or other unsafe factors from occurring in a setting similar to the target worksite. In addition to trying to find information about the establishment online and reading the Enforcement and Inspection Guide, I acquainted myself with the regulations outlined in this section of this Inspection Guide the night before I was scheduled to join the local SAWS labour inspection team.

Table 4.1. Excerpted from Chapter Seven of the Inspection Manual (SAWS Work Safety Enforcement and Inspection Guide 2006: 99)	
Inspection projects and contents for assembly occupancies	
Inspection project	Contents
Work Safety Management	Staffing, management system code, contingency plans, work safety education and training, special operations personnel management system, secure protocol
Evacuation Security	Evacuation passageway, safety exit, emergency lighting, evacuation plans.
Safety signs	Emergency exit signs, evacuation signs, indication signs, prohibitory signage, sign setting requirements.
Fire protection	Fire control room, fire-fighting equipment, emergency broadcast, alarm equipment.
Power Distribution Room	Electrician, management system, operating tools and labour protection appliance, other facilities, prohibitions.
Electrical Wiring Safety	Operating procedures, line laying, device detects
Equipment Safety	Gas and stove, other equipment and facilities.
Warehouse	Item stacked, firefighting, electrical wiring, prohibitions.
Special Equipment Safety	Registration, device detection, technical information, daily inspection.

4.2 On the job with a front-line labour inspection team

The next day, I met the labour inspection team and joined them as they started their field inspection work. I met the group of the front line labour inspectors at 10 o'clock in the morning at the front gate of the facility. This group consisted of three people: A male I will call Mr. Z who was in his early thirties and who was the team leader and who had telephoned me the day before. There was also a female labour inspector, about 27 or 28 years old as well as another male who was more than thirty years old. Both of them were front line labour inspectors employed by the State Administration of Work Safety who each had field inspection work being part of their daily routine work duties. Each inspector was wearing a similar dark blue official-looking uniform with the exclusive logo of the State Administration of Work Safety. They looked like police officers. One had a camera and carried documents. After introductions to each other among us, the labour inspection team began work (Author Fieldnotes, April 4 2013).

As mentioned to me the night before on the telephone, the management of the facility was expecting us. This was not an unannounced SAWS labour inspection visit. Labour inspectors under international labour standards are to be empowered to make unannounced labour inspections if needed, so this was the first notable observation from my participation in the labour inspection.

The security department manager was the first to receive us in the main hall of the Beijing X Plaza. This was the first employee we encountered, and he was expecting us. We all then moved to be seated in the coffee shop in the corner of this receiving hall. We had a brief self-introduction, after that Mr. Z, the inspection team leader, described the purpose and the main contents of what would happen during the course of this safety inspection.

The first part of the inspection focused on the issue of the work safety management system. The team leader Mr. Z first asked if the establishment had a safety management department and asked if they had full-time or part-time safety management personnel. The management official answered these questions and described in detail the Beijing X Plaza safety management system. He said that the security department was responsible for work safety and health and described the personnel (Author Fieldnotes, April 4 2013).

After our introductory meeting in the cafe, the manager was required to show the labour inspection team all of the management system codes and contingency plans. Since all these files were saved in the Records Office, the manager designated one of his staff members to pick them up so that he could stay with the labour inspection team. Meanwhile, our team leader Mr. Z started to raise specific questions regarding the work safety education and training program, the special operations personnel management system, and the security protocols. Among the questions Mr. Z asked were as follows:

“Have you conducted regularly OSH training for all employees and have they passed the assessment of training?”

“Have you conducted OSH training on all new employees before beginning work and have they passed the assessment of training?”

“Has the content of the training been recorded?”

“As for the special operations personnel operating the management system, do they hold relevant certificates?”

“To protect the safety of every employee, have you ever signed a secure protocol when your corporation and other work units take production activities in the same work area where it might may endanger others?”

(Author Fieldnotes, April 4, 2013)

The safety manager replied that each employee had been trained and that they should have passed the assessment before beginning work. He also mentioned that all training content, personnel, dates, and locations have been recorded. He also said that all of the special operations personnel, for example, the electrician, had been recruited legally and formally. Furthermore, all secure protocols were saved and could be viewed by the labour inspection team at any time (Author Fieldnotes, April 4 2013).

When waiting for the management system code and contingency plans, Mr. Z suggested that one labour inspector continue to wait and check the documents when they arrived, at the same time he and the other labour inspector in the team went to another location of interest: The Central Control

Room for the entire facility. I followed the team leader Mr. Z and the other inspector into the Central Control Room (Author Fieldnotes, April 4, 2013).

On the way to our next location, Mr. Z explained to me the importance of the Central Control Room in this type of facility. For this kind of a large-scale enterprise with both employees and customers frequently in the same space, the Central Control Room was usually equipped with multiple electronic displays and control panels to safeguard all employees and the public within the enterprise. Especially in the case of fire or other emergencies, the Central Control Room could play a significant role (Author Fieldnotes, April 4 2013).

The Central Control Room was located in the basement of the facility. There were two employees on duty in the room and both were awaiting us in front of the control panels as they received us upon our arrival. The labour inspectors noted fire extinguishing equipment and fire protection placed near the Central Control Room door. Each of us was required to complete a visitor registration before we entered the room (Author Fieldnotes, April 4, 2013).

When I entered, I found that there was a large wall-sized display area visible from all locations within the space (see Photo 1). The Central Control Room was itself under continuous video surveillance and recording, for the reasons of, I was told, both safety precautions and personnel accountability purposes (Author Fieldnotes, April 4, 2013).



Photo 1

We visited the Central Control Room of the facility and the head of our labour inspection team informed me of the importance of this room for this type of facility which has mixed use of employees and the general public.

To ensure all the workplaces, machinery, equipment and processes under their control are safe, the inspection subject focused a significant amount of time on the Central Control Room which included a mix of issues. Someone was required to be on duty all 24 hours of each day (Work Safety Enforcement and Inspection Guide 2006: 102). The Central Control Room was required to be equipped with emergency kits and other equipment. There should be a duty record which was to include alarm condition and equipment operation. There should be bilingual emergency broadcast or recording tape that could facilitate emergency evacuation. The employees were required to grasp the corresponding emergency treatment, and know how to use the equipment in the Central Control Room. The employees should make sure all the equipment is operating properly (Work Safety Enforcement and Inspection Guide 2006: 102). The two labour inspectors then checked if all the electronic

displays and control panels worked properly, and they also viewed the duty records that were available in the room.

After that, the two labour inspectors then turned their focus to the fire fighting equipment and checked the equipment (see Photo 2). They asked employees from the Central Control Room to allocate and purchase specific fire control facilities and devices, instructed them to set up fire control safety marks in accordance with relevant state regulations, and organize regular inspection and maintenance in-house to ensure their perfect condition and effective maintenance of the fire control facilities and devices. They were also informed that the quality of the fire control products must conform to the state standards or industrial standards (Author Fieldnotes, April 4 2013). It was not clear to me if the inspectors had found specific defects in the management of the facility related to these items, but what was happening was a significant amount of education of the local management employees versus anything that resembled a strong-arm enforcement strategy with threat of being cited.



Photo 2

The two other labour inspectors on the team turned their focus on checking if the fire equipment was functioning and if the proper documentary records were in order before giving some instruction to the managerial staff on the various fire safety requirements.

The manager then told us that the plaza had formulated a fire control safety system and operation rules on fire control safety. They had exercised a fire prevention safety responsibility system, appointed a person-in-charge for fire control safety of the unit and various departments and posts under the

unit. Furthermore, they conducted fire control communication and education on the employees in light of the characteristics of the unit and organized fire prevention inspection and removed hidden dangers over time. These actions were highly commended by the inspection team leader, Mr. Z. He concluded that both the Central Control Room and the related fire-fighting equipment were both fairly complete and adequate (Author Fieldnotes, April 4, 2013).

Leaving the Central Control Room, the manager then led our group to the next place to be inspected, the Power Distribution Room. The Power Distribution Room was in another building, away from the main building.

When our SAWS inspection team and accompanying management safety director walked to the Power Distribution Room, the employee on duty there was waiting and ready and expecting to receive us. Similar to the Central Control Room, each member of our group was required to complete a visitor registration before we entered (Author Fieldnotes, April 4, 2013).

The Power Distribution Room is a space dedicated to the electrical equipment. The Power Distribution Room of the facility has a Main Electrical Room and Subsidiary Electrical Rooms. The electrician on duty is responsible for the daily maintenance of the two rooms of the Power Distribution Room(s). As a result, the inspection focused on two issues in this particular location, the equipment / facilities inspection, and the operating tools / personal protection equipment of the electricians working there (Author Fieldnotes, April 4, 2013).

According to the Work Safety Enforcement and Inspection Guide that I had reviewed before the visit, the equipment / facilities inspection included an inspection of an electrical equipment planar map – a flat-screen map of power distribution across the facility, duty records, the installation of the emergency lighting system, and a special fire extinguisher (Work Safety Enforcement and Inspection Guide 2006). After twenty minutes of checking inside the Power Distribution Room, our team leader Mr. Z believed that all equipment and facilities conformed to either the legal and regulatory standards or industry standards. He also found that the evacuation passageway and safety exit were unblocked and that evacuation marks had been set up on fire control safety conforming to the state regulations (Fieldnotes, X Plaza, April 4 2013).

As for the protection of the electrician's work safety, the state stipulates that all electricians must hold relevant certificates and make duty records (Work Safety Enforcement and Inspection Guide 2006). They are required to wear protective equipment. This protective equipment must conform to the state standards or the industry standard, and must be checked regularly.

The employee on duty told us that there were eleven electricians in total employed by the facility. Each of them held electrician licenses. Each of these licenses were kept on file by the company, not on the person of the individual electrician, in violation of the regulation. They also reported they maintained a good record on working shifts. Mr. Z agreed with those measures, but he also pointed out that according to the law, electricians must have the electrician license on their person at all work times. This was one violation of the law that was identified during our visit. Mr. Z asked the manager for a correction, but he did not record this violation since he did not consider that it was serious enough to warrant a legal citation (Author Fieldnotes, April 4, 2013).

Next, we checked the protective equipment of the electrician that included the electrician's insulated boots, gloves and safety helmets. Mr. Z said the quality of this equipment conformed to either the state legal standards or the industry standards (Author Fieldnotes, April 4, 2013). The reference to both the government legal standards and industry standards during the inspection had happened more than once. I noted this observation for later reflection.

Finally, Mr. Z checked the fire control facilities and devices. The employee on duty said that the company organized regular inspection and maintenance to ensure effective condition of fire control facilities and devices. Mr. Z was very satisfied with the inspection of the Power Distribution Room.

We left the Power Distribution Room and returned to the main building. The last inspection location on this visit was a large gathering facility where large public crowds would gather. Two of the people responsible for this area met us at the front gate. This area was not open to the public because there were professional actors and actresses rehearsing inside. Mr. Z described the purpose of this visit to the people at the gate and the aims and objectives of the inspection to the persons in charge. After that, they gave us permission and we were allowed to enter the area (Author Fieldnotes, April 4, 2013).

This part of the facility was one typical example of a large assembly and occupancy location defined in the Enforcement and Inspection Guide. Here, the crucial check objectives were the evacuation areas and the safety signs. More specifically, the check objectives included inspecting the evacuation passageway, safety exit, emergency lighting, emergency exit signs, the evacuation signs, indication signs, and signs prohibiting entrance (Work Safety Enforcement and Inspection Guide 2006).

Mr. Z first checked the evacuation passageway and evacuation signage. The evacuation passageway was unblocked and led to an emergency door. After that, we went to the safety door and emergency exit sign. According to the state standards, a safety door width should be not less than 1.4 meters (Work Safety Enforcement and Inspection Guide 2006). It should be open to the evacuation direction. The safety door should be unblocked, it was forbidden to install a curtain or any other obstructions near the safety door. During the business hours, safety doors cannot be locked or blocked. After checking the safety door of this theatre, we found that it conformed to the said standards. All signs were clearly visible and observably so (Author Fieldnotes, April 4, 2013).

The next inspection check objective was the emergency lighting system in the facility. The state regulations stipulate that evacuation passageways should install emergency lighting in order to ensure the use of emergency lighting, and it should usually be operating properly (Work Safety Enforcement and Inspection Guide 2006). Mr. Z checked the running of the emergency lighting device system. Everything was said to be operating in proper order.

The field inspection work by the team was coming to an overall quick conclusion. The safety manager and the SAWS team returned to the front of the facility and were seated in the coffee shop once again where we had started our day. People who were in charge of the large assembly occupancy area and the Central Control Room came to the cafe and were seated with us altogether as a group. The management offered us some tea and everyone drank some tea. The tea was very good quality and a very expensive tea. All the management system codes and contingency plans were on the table. One of the other labour inspectors who spent their time reviewing these documents while we moved around the facility had finished checking all the documents

and was describing the results and the findings (Author Fieldnotes, April 4 2013).

The facility "Management System Assembly" was the main management system of the establishment. It included two parts. The first part was the public management system and the second part was the post responsibilities and work procedures. The first part consisted of an employee handbook, the personnel management system, the work attendance checking system, the rewards and disciplinary system, the salary and welfare management system, and the production safety management system. The labour inspection focused on the production safety management system. This section included the supervision and administration of production safety, emergency rescue, investigation and handling of production safety accidents, and firefighting management. The individual labour inspector responsible for evaluating these documents considered that this management system assembly was very complete and detailed. It included and described various key positions, and it was comprehensive and reasonable. She suggested that the fire fighting management section should be separate and bound in a volume. As in regards to the assembly occupancy issue, fire prevention was the key issue that related to each employee's safety, it was also the important inspection objective that had been identified previously at the district level of the labour inspectorate (Author Fieldnotes, April 4 2013).

4.3 Wrapping up the inspection

All of the inspection processes had finished, and Mr. Z summarized the results of the whole inspection. He believed facility's "Management System Assembly" plan was excellent, giving his evaluation of the documents that he had not been able to review since he was busy going around the facility. The company just needed to separate the fire fighting management section from this assembly and bind it in a volume. He believed that the Central Control Room was perfect. All equipment was operating properly so that it was easy to make a judgment on accidents and then fixed in time. Mr. Z said that all equipment and facilities conformed to the state standards or to the industry standards. The quality of personal protective equipment of the electricians that included insulated boots, gloves and safety helmets, all conformed to either the state standards or industry standards. However, he indicated that all electricians must have an electrician license on the person at all work times.

The evacuation passageway of the main assembly area was found unblocked and safety signs were clearly visible (Author Fieldnotes, April 4, 2013).

According to Article 59 of the Production Safety Law of the PRC, “The supervision and inspection personnel of production safety shall make written records of the time and place of the inspection, what the inspection is about, the problems discovered and how they are dealt with, and affix their signatures of the inspectors and person-in-charge of the inspected entity.” The “written records” noted here mean the “on-site inspection record” (Production Safety Law of the PRC, Article 59). The report template is indicated in Photo 3. It included the name of the unit being inspected, address, juridical person, position, inspection place, inspection time, inspection result, name of SAWS labour inspector, etc. One of the labour inspectors finished this record. He detailed the inspection process and the problems they had found.

A complete on-site inspection record should also include the illegal acts and potential safety hazards checks, a deadline for rectification measures of illegal acts, and the results of compulsory measures for illegal acts (Work Safety Enforcement and Inspection Guide 2006). The employer did not receive any violations or were any potential safety hazards identified, and the labour inspector did not complete this section. The on-site inspection record was signed by the labour inspector and the person in charge of the unit being inspected. This was our labour inspection team leader Mr. Z and the facility safety manager, respectively (Author Fieldnotes, April 4, 2013).

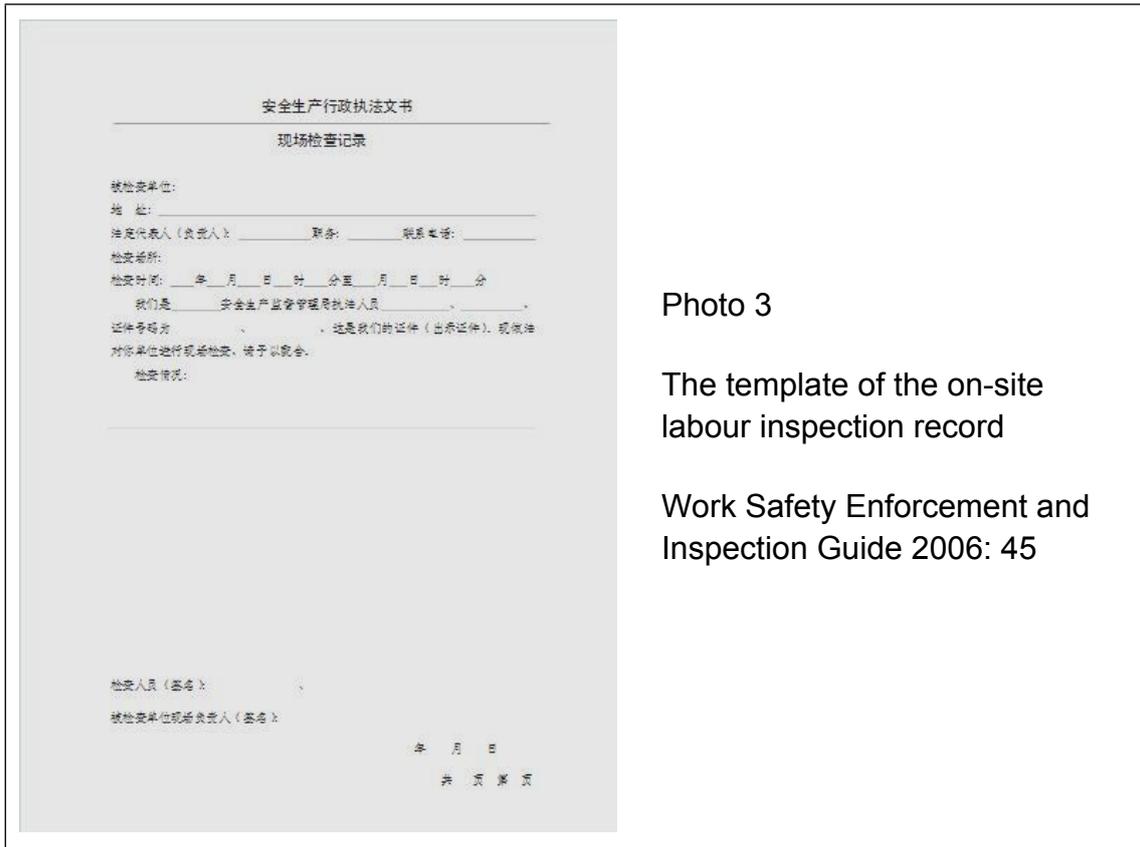


Photo 3

The template of the on-site labour inspection record

Work Safety Enforcement and Inspection Guide 2006: 45

Mr. Z gave the safety manager a “Notice of Production Safety” which was promulgated by the Administration of Work Safety local office. This notice referred to conformity to a “Star Grade” establishment on a safety production management requirement and the “Production Safety Law of the PRC”. It stipulated safety production standards and work safety standards for these types of facilities at the district level. This included the guarantee of production safety and business operation entities, and the rights and obligations of the employees. This requirement had been enacted for the purpose of strengthening the supervision and administration of production safety, preventing and reducing safety accidents, defending the worker safety (Author Fieldnotes, April 4, 2013). The manager signed this at the end of this notice.

At eleven o’clock, we finished the day's field inspection. The complete inspection took a little over one hour. We shook hands before saying goodbye.

4.4 Reflections from my first-hand experience

Although the simple act of accompanying a single team of Beijing-area occupational safety and health inspectors to one work-site on their daily routine is in many ways very limited, there are notable issues that this experience raises and helps to clarify for me. This visit helped contextualize my interviews with the other labour inspectors. I conclude with a series of my personal reflections on this brief experience in an attempt to draw some contextual lessons before moving on to the next chapter where I will discuss the results of my interviews with each labour inspector from this local SAWS inspection office.

My first observation relates to the hard law - soft law debate in labour standards enforcement. Typically, labour inspection is considered one of the main instruments of hard law standards enforcement. In the past, I always assumed the labour inspection process was tediously long and insipid, that labour inspectors were extremely strict with the entities being inspected and applied the law in an onerous way at the enterprise level. This is the most common understanding of labour inspection in a command control framework.

Although my experience with this labour inspection team was very short, this experience changed my point of view. Although the SAWS inspectors were wearing the same uniforms as the police force, each inspector's demeanour was very friendly and patient with the employer, almost deferential, which was intended to humanize the inspection system and the inspectors as the government advocates charged with enforcing the law. In conclusion, I tend to have a different view than the hard law opinion of labour inspection. Labour inspection may or may not be a hard law command and control type legal mechanism. The social relations were very deferential to the employer, besides notifying the management about when the inspection was to occur. This deference was an important observation for me.

This deference carried over into how the SAWS inspectors cited either government laws or industry standards in the course of their inspection. The labour inspectors often indicated that compliance with either the state legal standards or the private industry standards were adequate. This indicates to me that there is a significant range of labour standards that street-level labour inspectors can cite in the course of an inspection. Indeed, in order to make an intelligent determination, the inspector must have knowledge of both the legal and industry standards. This gives the labour inspector more latitude to justify

intervening in the workplace as the industry standards offer them another body of standards to cite at the workplace level. However, the diversity of standards available for the inspectors could ultimately reduce their authority as agents of law enforcement, since it is adequate that employers can conform to either the legal standards or industry standards. If either of these standards is adequate to apply, leaving less room for the labour inspector to independently determine policy at the street-level since employers can argue that they are in compliance with either one or the other set of standards.

What also might be happening is that the inspectors are using the range of standards to give them discretion to not rock the boat and enforce the legal standards, possibly permitting inspector deference even further. Thus this would mean discretion is being affected in a way to allow legal standards not to be enforced in a hard law way, as evidenced by the way the inspection team handled the electricians not having individual licences on their person, actions that were illegal but were not cited by the SAWS inspection team.

I was very surprised that the establishment we visited had such a thick production safety management assembly document concerning production safety and occupational safety and health. The OSH section of the assembly area was not separate from other parts but this section and is relatively detailed. It seems that the facility has established a complete system of documentation and responsibility for production safety. As for the electrician, who is a special operation staff member, they are provided with personal protective equipment that meets national standards or industrial standards.

There was no illegal act that was ultimately cited by the labour inspectors, as a result, this team did not have any administrative penalty levied against them under the safety law. This decision itself could be interpreted as a demonstration of labour inspector discretion at the worksite level.

According to the Work Safety Enforcement and Inspection Guide, occupational health inspection was one part of the inspection work (Work Safety and Inspection Guide 2006). However, after being on-the-job with these front-line labour inspectors, I found that work safety and work health are treated as two very separate issues. The daily work of these labour inspectors involves a considerable focus on work safety inspection rather than on work health inspection. This phenomenon could be seen from both their “Work

Safety Enforcement and Inspection Guide” or the on-site inspection that I observed. The Health Bureau at the district level is the public entity responsible for occupational health inspection, and joint teams are rare.

A question that comes to my mind was whether some of the on-site inspection processes were planned, formalistic or even done in vain. At the beginning, Mr. Z raised a couple of questions about training issues. The manager mentioned that all training content, personnel, dates, and locations have been recorded. This issue was terminated by such a question-and-answer format. However, how does one really make sure that employees master work safety knowledge? This was not clear to me. I considered that a better and simple way was to ask a random employee about this knowledge, but this did not happen in the labour inspection. The team was being escorted around the facility by the safety director and the department managers who were responsible for each area. There was no confidential dialog with workers.

Another interesting point raised by this experience is that there was some overlap between worker health and safety issues and basic public safety. The nature of the work location meant there was overlap between what constituted worker safety and the public safety. This may or may not be wise, but the safety and health inspection team did not appear to necessarily distinguish between these two dimensions themselves. I left wondering if a specialized focus on only one of these areas was needed to do a more effective job at it.

In conclusion, this experience, however brief or even possibly artificial given the effect of my presence on the labour inspection itself, was valuable to help me to understand the general process of SAWS labour inspection and the review of the safety production management system within this local safety and health district. Such information helps give me a more in-depth understanding of occupational safety and health and helps me contextualize the rest of my findings. In concluding this chapter, however, I can summarize that I observed that there were key factors that appeared to influence the discretion of labour inspectors on-the-job. These included the divergence of standards through which enforcement was to occur allowing the inspectors the discretion to find the employer to be in conformity with a range of different safety standards, the separation of occupational safety and occupational health labour inspection, a general deference and conviviality between the

inspection team and the worksite management, and general labour inspector discretion regarding when to cite employers when violations were observed.

Chapter 5

Data analysis:

In-depth interviews with labour inspectors

This chapter describes the analysis of the other sources of collected data, documents and their analysis and in-depth interviews with labour inspectors. This chapter also includes a discussion of my research findings in relation to my five working research hypothesis as posited in an earlier chapter. The qualitative data analysis employed here is descriptive and entails a focus on answering my research questions and testing hypotheses with the available evidence. I will attempt to accomplish this task in this chapter.

5.1 Debating discretion in front-line inspection work

The overarching research question guiding this project is: What is the nature and latitude of a Chinese labour inspector's discretion in the administration of work safety? There are two sub-questions. First, what are the factors that will influence a labour inspector's discretion? Second, what difficulties, challenges and problems do street level public servants meet when enforcing the law of work safety and health? Answers to these questions are formulated on the basis of 12 in-depth-interviews with front-line labour inspectors in one local SAWS office located in the Beijing area and a systematic study of documents acquired from SAWS and the inspectors.

The idea that street-level bureaucrats are policy makers has been well established in the academic literature. There is still considerable debate over whether discretion is, however, positive or negative. Applying this question to labour inspection connects to broader debates about the proper role for the labour inspection service. These debates range from seeing inspection as a more a consultative service versus a hard law command and control function.

Understanding whether labour inspector discretion is negative or positive for labour standards enforcement is not an easy task. I observed and heard about both labour inspector discretion and lack of discretion shaping the work of the local SAWS officials. What is needed, therefore, is a close look at the

issue of how discretion plays out across a range of issues. Walking through my hypothesis one-by-one in light of the evidence collected helps in this task.

One further complicating aspect of studying discretion is the problem of reaching the goals and objectives set out in policy. Lipsky did describe various conflicts that can occur within a bureaucratic system. One of these conflicts is that sometimes managers and street-level bureaucrats do not agree on either the organization's goals or the objectives (Wright 2003). Having substantial discretion, street-level bureaucrats could also be shirking policy (Zinck 2009), as street-level workers "perceive their interests as separate from managers' interests, and they will seek to secure these interests" (Lipsky 1980). In these views, discretion is considered negative to realizing policy implementation.

Another negative view of discretion from the academic literature is unjust treatment to clients. Since the major responsibility of street-level bureaucrats is to provide governmental services to clients, their acts will have a direct impact on the client's life. However, limited resources will lead to the question of quality of services (Wright 2003). "Street-level bureaucrats are not elected officials, and the democratic legitimacy of them taking independent, own decisions is therefore questionable" argue Tummers and Bekkers (2012). As a result, these authors underlie how distributing fair treatment to clients might not be guaranteed when a front-line public service worker holds discretion.

On the other side of this general debate about discretion, the literature more directly focused on labour inspection, while not expressly responding to Lipsky and the literature on street-level labour inspection, nonetheless argues that labour discretion inspection is, in contrast, a positive force. These writers emphasize that more discretion by inspectors could have positive effects.

Piore and Schrank compared the labour inspection system between Europe and Latin America. They stated, "the advantage of the Franco-Latin model is the flexibility of the regulatory structure and the ability to adjust its impact to the peculiarities of particular enterprises and the broader socio-economic environment" (2008). This flexibility stems from the discretion of the front-line inspectors. This view is also supported by Pires when he discusses the positive relationship between labour inspection and social and economic development (Piore and Schrank 2008: 8).

Furthermore, Tummers and Bekkers conversely conclude two potential positive effects of discretion, the first is enhanced client meaningfulness for clients and the second one is more willingness to implement the policy (Tummers and Bekkers 2012). In the case of labour inspection, in light of my walk-around with the SAWS labour inspection team reported in the previous chapter, one important caveat to this debate, however, must be raising the question, "Who is the client?" If the client is the employer, this might lead one to one view of the value of discretion. If the client is the worker, this might lead one to another view of the value of discretion.

There are still other scholars that remain neutral in the debate about whether front-line discretion is negative or positive. They state that discretion has both positive and negative aspects, which means "evaluation of the behaviour of street-level bureaucrats needs to be done on a case-by-case basis" and Evans and Harris noted that "increasing the number of rules and regulations that are placed on street level bureaucrats does not mean that there will be greater control over their actions and decisions" (Zinck 2009).

Accordingly, it seems that street-level bureaucracy discretion might have both positive and negative effects, and that any effects need to be considered on a case-by-case basis. Taking this more focused and nuanced debate on front-line worker discretion as my jumping-off point, I now turn to review each of my working hypotheses and identify the nuances of discretion in my case.

5.2 Collected evidence in light of my working hypotheses

SAWS labour inspectors work at the basic, local level office of what is a comprehensive, nationwide public administration bureaucracy. Each day, tasks are designated by their supervisors and labour inspectors must consult these tasks and later report his or her inspection results. These tasks imply a strong subordinate characteristic to the work. To avoid any unjust treatment or corruption, and to achieve the organizational goal, labour inspectors are restricted by various rules and regulations and policies. Despite these forms of control, however, we cannot come to the conclusion that there is no inspector discretion. This point of view is based on the theory that front-line discretion is inevitable (Tummers and Bekkers 2012). On site inspection work requires labour inspectors to make decisions in a short period of time without superior

guidance. It is impossible for front-line inspector to enforce all the rules across divergent settings and hence discretion exists (Tummers and Bekkers 2012).

The Chinese SAWS context is a case in point on this issue. I will now restate each of my working hypotheses and explore the question further in light of the interview and documentary evidence.

Bureaucratic decision-making in general takes place under conditions of limited time and information. Decision makers typically are constrained by the costs of obtaining information relative to their resources. Street-level labour inspectors are no different. My first hypothesis focused on this phenomenon and explores whether inadequate resources influenced inspector discretion.

The second hypothesis related to the Chinese workforce, especially migratory workers who bear tough jobs and shabby accommodations and always are the victims of accidents. I asked how these relations affected their work as labour inspectors and how they responded to these dynamics.

The third working hypothesis tried to establish the relationship between labour inspector discretion and any legal lacunae. Until recently, China did not enact a real occupational safety and health law and national policy and labour inspectors subsequently felt there were no laws and policy to fall back upon.

My fourth hypothesis focused on performance measurements of human resource management of the labour inspectors themselves. Literature has suggested that the job performance of street-level bureaucracy is extremely difficult to measure (Lipsky 2010). The indicators under this hypothesis were training, performance measurement, their discipline and any reward system. According to the nature of my semi-structured interviews, there were bound to be some other factors affecting discretion that I explored during the process of interviewing. My last hypothesis was designed to focus on these factors.

Interview notes, field notes, and documentary evidence are my source of data here. Nearly all interviews were conducted in an open and friendly atmosphere. Labour inspectors gave me their cellphone numbers, and as a result I could contact each subject directly when having questions or for any follow-up questions. I conducted a total of 12 interviews with labour inspectors for this study. The average length of the interviews was between 30 and 45 minutes with three follow-up telephone interviews that averaged 30 minutes

each. The following is my analysis of these interviews and the documentary evidence as it relates to each hypothesis.

H1: Labour inspector discretion is affected because inspectors do not have adequate resources to do their job.

The first challenge of front-line inspection as discussed in the literature review was limited resources. The indicators under this working hypothesis as I designed and described in the methodology chapter were tools needed to perform the job, out-of pocket expenses that labour inspectors have and the average ratio of workers to labour inspector.

All respondents responded that they were provided with cameras or audio recorders or other specific monitoring equipment when necessary to perform their job functions. While in the office, each labour inspector had a desktop computer. Printers, fax machines and scanners were in the common room. Furthermore, to ensure their own safety, labour inspectors were also equipped with special individual protection tools, for instance, protective clothing, safety helmets, etc., and these tools were regularly updated. This is consistent with what I have found in my experience on-the-job with a labour inspection team. Most of the labour inspectors interviewed reported to me that they found the material resources to be adequate to perform the job.

All respondents reported that they assumed no out-of-pocket expenses. They pointed out that although they assumed no travel expenses, each one was equipped with a bicycle or an electric bicycle. Thus the out-of-pocket expenses claim did not have any impact on labour inspector discretion. The SAWS district is located in the Beijing area. It is modest in size and public transportation is convenient, people are able to get to their destination easily. Sometime bicycle or electric bicycles are the best choice during the traffic jams (Labour Inspector Interview No. 1, Labour Inspector Interview No. 7, February 16, 2013).

Although the interviews with individual labour inspectors found that the material resources were reported as adequate to do the job, the documentary evidence provides a more complex picture. The literature provides evidence that the lack of resources is extremely severe in China. According to the district bureau of statistics, up to the end of 2011, the number of employed

persons was between 500,000 and 600,000 (Statistics 2011). In stark contrast, the one respondent from the personnel department told me that there were only 18 front-line labour inspectors in this district level administration of work safety (Labour Inspector Interview No. 8, February 16, 2013). This manpower to client ratio, as indicated in the literature on front-line work, is one of the particularly salient examples of organizational resource scarcity (Lipsky 2010).

In this district the inspector to worker ratio was therefore one inspector to little more than every 30,000 workers. Common sense would indicate that there must be a sufficient number of people working to provide services with a relatively low degree of stress, consistent with expectations of provision. If the manpower / client ratio is extremely low, in our case, the labour inspector has to make decisions in a very short span of time. The inadequacy of resources contributed to what Lipsky called the “improvisational” ways in which the law enforcement can be carried out (Lipsky 2010).

Although there were direct material resources available to each individual labour inspector in adequate supply and quality, systemically there were signs of resource scarcity through the staffing levels of the SAWS office. During the face-to-face interviews, more than one inspector complained about the burden of overtime work (Labour Inspector Interview No. 1, Labour Inspector Interview No. 8, 16 February 2013). One of the labour inspectors told me his work schedule on that day:

Before arriving at 10 o'clock, we had just finished a daily meeting. After the on-site inspection work, we would go back to the administration to sum up the morning's work. In the afternoon, we also had several on-site inspection works (Labour Inspector Interview No. 10, April 4 2013).

As a result, such a huge enterprise like the inspection I observed had to be condensed into only one hour as outlined and discussed in the previous chapter. The labour inspectors had to use their discretionary power and make their decisions quickly within a short time window.

Clearly, the issue of resource scarcity of Chinese labour inspection thus appears to be a problem, but this issue is not material resource scarcity related to the tools and equipment needed to do the job on a routine basis.

Instead, this scarcity comes through short staffing of the public servants. This is similar to findings elsewhere in the literature on street-level bureaucracy. The average number of labour inspectors per workers in this district remains on the high end internationally. In fact, according to obligations under ILO standards, specifically ILO Convention No. 81 on Labour Inspection, the most industrialized countries must maintain an inspector-to-worker ratio of one inspector to every 10,000 workers. It would appear that this lack of staffing in SAWS is an important factor limiting the discretion of the front-line inspector. Given China's status as an industrialized country according to some of the latest international statistics cited in the opening chapters, in effect SAWS would need to triple the number of front-line labour inspectors in this office to be in compliance with the basic international convention on labour inspection.

H2: Labour inspector discretion is affected because China's workforce is too migratory or precarious to assist inspectors in enforcing the law.

The second major theme that emerged from the data surrounds the use of migrant workers and dispatched workers and their impact on the discretion of labour inspectors. The district I visited had a resident population of over 90 million with a migrant population between 20 and 25 million (Statistics 2011). When the inspectors were asked about any considerations which they made and took into account when facing worksites with a high percentage of rural migrant workers and dispatched workers, all respondents considered that there were no special laws or regulations giving special attention to these kinds of workers (Labour Inspector Interview No. 1, Labour Inspector Interview No. 7, February 16, 2013).

Being on the lowest rung of the social ladder, migrant workers can usually only find poorly paid and arduous jobs in coal mines, on construction sites, or in factories. Most victims of work-related accidents are migrant workers (Xin 2013). Coal mining, construction and manufacturing are among the highest risk jobs (Fitzgerald et al. 2013). In view of these situations above, although there are no special treatments or special inspection contents for rural migrant workers or dispatched worker, the Enforcement and Inspection Guide has one special section for strategies related to high-risk industry inspections. These industries are hazardous chemicals enterprises, coal mines, firework factories, and construction enterprises where the migrant population is often larger than the other industries. For instance, in the case of construction enterprises,

there are specific inspection processes at key points. The inspection contents include two parts: Safety management inspections and field inspections (Work Safety and Inspection Guide 2006). The former means the inspection of enterprise's regulations and rules, safety documents, such as the holding of a safety production license. The latter means the inspection of some key areas, such as lift shafts and other dangerous areas. For other high-risk industries, there were more detailed programmed labour inspection standards. As a result of these focused efforts where precarious workers worked, these efforts were cited as mitigating any problems faced by a precarious workforce.

Labour inspector discretion was however affected in an indirect way by the influence of migrant and dispatched workers. As one respondent said: "High risk industry where migrant workers cover such a large population will have more detailed inspection contents" (Labour Inspector Interview No. 7, February 16, 2013). The more dangerous the industry is, the more detailed inspection contents there would be. The district government encouraged law enforcement personnel to correctly apply the current laws, administrative regulations, and department rules, in order to narrow discretionary powers and address the issues raised by migrant and dispatched workers. As a result of these specially targeted inspection programs, discretion was thus cited as being narrowed as more specific enforcement programs controlled their action. In the industries where these targeted enforcement programs did not exist and similar workforce demographics were found, however, the challenging nature of a precarious clientele was reported. Thus there was a difference in and outside of these industries where special enforcement programs were found, but most of the respondents focused on the affects of the special programs.

H3: Labour inspector discretion is limited because of undeveloped or undefined law with weak sanctions.

The problem with the legal lacunae is mentioned in several studies and literature sources related to front-line public service work (Liu 2006; Zhang, Zhang et al. 2010). Most of the respondents interviewed for this study confirmed this phenomenon.

Cásale and Sivananthiran (2010) state that:

The goal of labour law is to ensure that no employer will be allowed to impose and no worker will be obliged to accept conditions of work which fall below what is considered a decent threshold in a given society, at a given time. Thus, labour law is not just a means to regulate the exchange between labour and capital, in the way that civil and commercial law do with respect to civil and commercial exchanges; rather, it is a means to put into practice the ILO's Decent Work Agenda (Casale and Sivananthiran 2010).

The influence of the current labour laws on labour inspector discretion could be reflected in two extremes: Too detailed legal provisions that serve to limit labour inspector discretion, and on the other hand, labour inspectors cannot use this discretion power because there is no law they could fall back upon.

According to the Work Safety Enforcement and Inspection Guide, the preparation before inspection comprises six steps: Understand the entities being inspected, identification and training of the labour inspector, consult all related laws and regulations, prepare an inspection syllabus and inspection sheet, prepare the equipment and materials, and divide the labour inspectors. The second part of the whole inspection process is on-site inspection work. The last part is the handling of the inspection result where labour inspector discretion plays a crucial role (Work Safety Enforcement and Inspection Guide 2006, Chapter 3). It means that labour inspectors have the power to decide whether to give a lighter or mitigated punishment or a heavier punishment. It is the discretion of the inspector within the scope of administrative penalty.

In fact, each of the labour inspector's acts was cited as restricted by strict legal standards. This restraint could be reflected from the whole process of inspection work and two types of administrative penalty procedures: Summary procedure and ordinary procedure. Summary procedure applies to where "If the facts about a violation of law are well-attested and there are legal basis and if, the citizen involved is to be fined not more than 50 yuan or the legal person or other organization involved is to be fined not more than 1,000 yuan or a disciplinary warning is to be given", such administrative penalty may be decided on the spot by a labour inspector (Law of the People's Republic of China on Administrative Penalty, Article 33). Except the summary procedure above, where the administrative punishment may be given on the spot, the administrative organ, finding that administrative punishment shall according to law be inflicted on a citizen, legal person or other organization for their acts,

must conduct an overall, objective, fair and just investigation, collect relevant evidence, or may conduct, when necessary, an inspection according to law or regulations. No less than two inspectors shall be present on the scene when the administrative organ conducts an investigation or an inspection. The administrative organ before making a decision on the administrative punishment such as ordering to stop production and business, withdrawing the permit or license, or large sum of fine, shall advise the party of the right to a hearing (Law of the People's Republic of China on Administrative Penalty, Article 36 and Article 37). These laws dealing with rights to appeal the citation were cited as impacting the work of the front-line labour inspectors.

Furthermore, in order to avoid what it calls unjust punishment, the Beijing Administration of Work Safety has issued "Work Safety Administrative Penalty Discretion Standards" (Work Safety and Inspection Guide 2006). This regulation has summarized the foundation of punishment and has refined the amount of fines which means for which kind of illegal acts shall be imposed for the maximum amount of the fines or the minimum amount of the fines. These regulations further restrict the discretion of the labour inspectors actions.

For instance, according to the Production Safety Law, "The production and business operation entities shall offer education and training programs to the employees thereof regarding production safety so as to ensure that the employees have the necessary knowledge of production safety, know the relevant regulations and rules for safe production and the rules for safe operation, and master the skills for safe operation for their own positions." It also states "Where any production and business operation entities employs any new technique, new technology, new material or new equipment, it must know and have good understanding of the safety and technical feature thereof, take effective measures for safety production and give special education and training programs to the employees concerned about production safety" (Production Safety Law of the People's Republic of China, Article 4). The penalty is that "the production and business operation entity shall be ordered to make amends within a prescribed time period. If it fails to make amends in the prescribed time period, it shall be ordered to suspend production or business for rectifications, and may be fined not more than 20,000 yuan or about \$3,000 (Work Safety Administrative Penalty Discretion Standards, 10).

These detailed regulations detailing when to levy fines and the amount of these fines were cited by several inspectors who indicated to me that they had limited discretion or even no discretion in power on this point. Each project has a stringent inspection method and content, and at the same time, each has a detailed administrative penalty the regulation has to obey. Considering this evidence in light of the low inspector to worker ratio cited above, these regulations effectively served to limit the labour inspectors from making major citations or production closures without appeal in order to send a message to hazardous firms as a basic action that might mitigate their low staffing levels.

Ironically, the local district government is trying to establish a complete legislation system and is in the process of regularizing the enforcement of the administrative law on production safety in order to encourage law enforcement personnel to correctly apply production safety laws, administrative regulations and to narrow their discretionary powers. All front line inspectors interviewed for this project, however, felt that despite this body of laws and rules and the local reform effort, sometimes there were no laws to fall back on in their work. One respondent took an example of an "exit passageway" (Labour Inspector Interview No. 7, February 16, 2013). The law obligates that exit passageways should be kept clear, and should not be piling up debris. However, there are no penalties. Does this mean that if there are any enterprises in violation of this law, there is no punitive measure? Another labour inspector interviewed felt that the law prescribed in detail the correct behaviours required of each enterprise, but there were few provisions for effective penalties the inspectors could use related to when the employer's behaviour was deemed hazardous.

One of the reasons of this phenomenon is the lacunae of the current work safety laws regime. The most important law concerning occupational safety and health is the Safety Production Law (Pringle and Frost 2003). All of the respondents interviewed stated that this law was the essential one when they were performing their labour inspection work. Enacted in 2002, the Safety Production Law stipulates "Fourteen (14) basic systems and/or measures concerning occupational safety and health. These basic systems are limited to the prevention of production accidents at the enterprise level (Pringle and Frost 2003)." The important stipulations state that:

A production unit must meet all the relevant laws, regulations, and industry-specific laws (such as the Coal Safety Law) otherwise it may not

undertake production activities. An enterprise must appoint an individual who is responsible for all aspects of safety. An enterprise must implement a system of education, training, and assessment of the safety knowledge of the OHS directors (that is, personnel with overall responsibility), OHS managers, and workers. Enterprises must implement a system of three simultaneous OHS measures at all stages of all projects; that is, OHS measures should be evident at the planning stage, during construction (of the plant), and when production is under way. Production units must register exceptionally dangerous hazards with the local safety inspectorate. Enterprises must implement a safety management system specifically addressing workplaces where explosives, working at height, and other dangers are involved (Pringle and Frost 2003).

However, it was noted that the present law mainly focuses on production safety. "Safety production" is defined as "to prevent and reduce risk factors in the production process and to defend the safety of production." Meanwhile, according to a major OSH glossary "Occupational safety and health is an area concerned with protecting the safety, health and welfare of people engaged in work or employment" (OSH Glossary 2008). The goals of occupational safety and health programs are "fostering a safe and healthy work environment" and "safety production" and OSH are two interrelated concepts of different areas. The former is "production-oriented" pursuing production safety; the latter is "people-oriented" focused on employee safety.

In addition, according to the Work Safety Enforcement and Inspection Guide, occupational health is also one of the inspection objectives. However, the Production Safety Law doesn't have any articles concerning occupational health. That is because occupational safety and occupational health are two distinct terms. Occupational health was, until recently, under the responsibility of the Ministry of Health. "By decision of the State Council, SAWS established an OH Department in 2008. Under the *Interim Rules on the Administration of OH in Workplaces* issued in 2009, SAWS duties in OH inspection were determined and now cover a wide range" (Arrigo et al. 2011).

The Code of Occupational Disease Prevention of PRC applies to the occupational disease prevention activities within the territory of PRC, yet the Safety Production Law is limited to the prevention of production accidents. The Law of the Peoples Republic of China on Safety in Mines is formulated for the purpose of ensuring safety in production in mines, preventing accidents

and protecting personal safety of workers and staff at mines and promoting the development of mining industry, and the Fire Control Law of the People's Republic of China is formulated in the purpose of preventing fire and reducing fire damage, safeguarding citizen's personal security, public property and civil assets, upholding public security and ensuring the smooth construction of the socialist modernization.

Each law focuses on one aspect of occupational safety and health. As a result, the important issue of legal coherency cannot always be guaranteed. As one labour inspector mentioned, both the local fire brigade department and the administration of work safety are responsible for the fire control and each of them has their own standards. However, he usually found that sometimes these standards are not at all mutually compatible or these standards focus on different aspects (Labour Inspector Interview No. 4, February 16, 2013). The entities being inspected may meet the requirements of the Fire Brigade Department but at the same time, they may be against the standards made by the Work Safety Administration. Sometimes the labour inspector is at his wits' end when facing such problems of multiple standards in their enforcement efforts. In this context, the lacuna of the law is neither too lax nor too stringent a framework of norms, but rather a multiple complex of norms said to regulate the same activity. Inspector discretion is affected by divergent standardization and this complex of regulatory norms that speak differently to the same issue. This is only made more complex when introducing industry standards to the mix as was the case with the SAWS inspection team I joined on a site visit.

The legal lacunae of work safety law was also found in the insufficient penalty measures described in the interviews and the documentary evidence. The Enforcement and Inspection Guide stipulates numerous standards on safety production. Take the example of "exit passageway" once again. The manual has one section named the Special Content of Safety Production Inspection. This section, as the on-the-ground guide for labour inspectors, attempts to synthesize the multiple legal frameworks that apply into a single cohesive inspection guidance document. It therefore comprises the hazardous chemicals inspection, Coal Mines inspection, fireworks production inspection, construction unit inspection, assembly occupancies inspection, etc. Each special inspection stipulates, "exit passageways should be kept clear, and should not be piling up debris" (Work Safety Enforcement and Inspection Guide 2006). However, there is no administrative penalty. Labour inspectors

have no punishment measures where the entities violate this standard regarding the exit passageway. Thus there is a multitude of standards and even when they do say the same thing, again, the penalties are lacking.

H4: Labour inspector discretion is limited because labour inspectors are too focused on narrow performance evaluation metrics.

This fourth hypothesis refers to professional training, performance measurement, human resource management, and the discipline and reward system issues. The Department of Legal Publicity inside the local work safety administration is responsible for the training of labour inspectors. Training includes the interpretation of the work guidelines and the latest laws, policies, regulations, field investigation, etc. (Author Fieldnotes, February 16, 2013).

According to a survey of one city in China, fewer than 30% of the labour inspectors when hired had any inspection related work experience (Liu 2006). This district administration is in the same tight place. One respondent from the local human resources department gave me a brief demographic description of the current front-line labour inspectors. The average age was 30 years old, each of them has a bachelor degree or above. The average length of working experience was one or two years. Their track record included village officials, a demobilized soldier, and a former police officer. Some level of professional experience may be required before they are hired. For instance, the candidate with a bachelor degree of safety and environmental engineering will be given a top priority, but this requirement is not fixed and it might not meet the office's practical needs at a particular time of hiring, so there is freedom to hire outside of these rules (Labour Inspector Interview No. 2, February 16, 2013).

Labour inspectors have face-to-face encounters with different clients and have to deal with a large number of complex cases, and thus make decisions in a short span of time. This knowledge and skill cannot be obtained through training, even when part of this ability is attributable to the nature of their job.

Lipsky defined this phenomenon as a lack of personal resources (2010). He believed that street-level bureaucrats might lack the personal resources they need in conducting their work. They may be untrained or inexperienced, lacking tacit on-the-job knowledge that comes with a longer tenure. New labour inspectors are normally untrained in interaction with their clients.

Inadequate personal resources directly influenced the labour inspector's discretion. He may be confused about how to identify the nature of the facts, the seriousness of the circumstances and confused about how to take the necessary measures to improve the situation with their enforcement power.

For example, according to Article 44 of Measures on Administrative Penalties Against Illegal Acts Concerning Work Safety, “the production and business operation entities reject or obstruct the supervision and inspection personnel shall be imposed upon a fine of not less than 10,000 yuan but not more than 30,000 yuan or a warning” (Measures on Administrative Penalties against Illegal Acts Concerning Work Safety, Article 44). However, how to define “obstruct” is a question for front-line labour inspectors to define on their own accord on the ground. Also, it is easy to define when “the circumstances are serious” but “relatively minor circumstances” are harder to define in the current labour laws. However, there is no standard to identify the seriousness of the circumstances so this in turn affects labour inspector discretion.

Finally, according to Article 51 on Measures on Administrative Penalties Against Illegal Acts Concerning Work Safety, it says

In case of failure by the party to execute the decision on administrative punishment within the prescribed time limit, the administrative organ making the decision on the punishment may take the following measures: In case of failure to pay the fine in time, an additional fine shall be imposed amounting to three per cent of the original fine on a daily rate basis; in accordance with law, the sealed up or seized property can be put to auction to pay, or appropriation of the frozen bank deposit can be made for payment of, the fine; or apply to the people's court for enforcement” (Measures on Administrative Penalties against Illegal Acts Concerning Work Safety, Article 51).

The labour inspector clearly has the authority to choose the measures. The inadequate interpersonal resources, as defined by Lipsky and suggested by a number of labour inspectors interviewed for this study, are a more striking weakness since the laws do permit a degree of strong action.

Another indicator under this hypothesis is performance measurement. Goal ambiguity, intrinsic to street-level bureaucracies, affects performance

measurement. At the same time, there are too many variables to take into account to make evaluation realistic (Lipsky 2010). The respondent from the human resources department gave me an unequivocal answer; the front-line inspectors considered that there was no definite performance measurement system. Each day, they had some fixed inspection tasks; these tasks may be assigned by a superior or a tip-off they receive from the public. There was no minimum monthly amount of fines or the number of illegal units that needed to be visited. The violation identification and the amount of fines were strictly to be in accordance with relevant laws and regulations, which themselves had a degree of uncertainty and latitude (Author Fieldnotes, February 16, 2013).

The same situation applies to the discipline and reward system of the labour inspectors. One interview respondent answered that there is hardly any reward or discipline measures available in this Work Safety Administration as the performance of front line labour inspectors was very difficult to measure (Labour Inspection Interview No. 2, February 16, 2013). These responses are consistent with the general literature on evaluating front-line service work.

According to the Civil Servant Law in 2006, the law essentially regulating the employment of labour inspectors,

The levels of leading posts are classified into chiefs at the state level, deputies at the state level, chiefs at the provincial and ministerial level, deputies at the provincial and ministerial level, chiefs at the department and bureau level, deputies at the department and bureau level, chiefs at the county and section level, deputies at the county and section level, chiefs at the township and sub-division level and deputies at the township and sub-division level (Civil Servant Law of the People's Republic of China, Article 16).

The non-leading posts in comprehensive administration shall be inspectors, deputy inspectors, researchers, deputy researchers, division directors, deputy division director, division personnel and clerks. Front-line labour inspector is at this very basic level: Division personnel and clerks (Interim Regulation on the Appointment, Dismissal, Promotion, and Demotion of Civil Servants, Article 19). Candidates to be promoted from this post to a higher post of deputy division director generally must have worked at the division personnel and clerks post for at least three years (Author Fieldnotes, February 16, 2013).

Besides these basic requirements, promotion includes a democratic recommendation of the party committee at the same level or by the higher-level organization or personnel department. This includes interviews with a number of leading officials in his or her own department, examinations, etc. (Author Fieldnotes, February 16, 2013). Complicating this is that civil servants are not necessarily required to be members of the Party. In fact, most of the rank and file civil servants do not hold a party membership (Author Fieldnotes, 16 February 2013). However, one labour inspector that I interviewed stated that a party membership was also an important factor of promotion (Labour Inspector Interview No. 5, February 16, 2013). This means that there is a degree of real political involvement in the promotion of labour inspectors beyond the standard workplace politics often faced in a bureaucratic setting.

It can be concluded, then, that three years of service, a recommendation from the party, interviews, and exams comprise the requirements of promotion, and a party membership is an important factor. It is thus very difficult to link the promotion to work performance given this setup. As one respondent said “Each inspector’s work capacity is almost the same. One labour inspector may have the support of the relevant leader if they have coordination ability and organizational capacity.” The so-called capacity here means, to some extent, to solve the problems with one’s interpersonal relationships on their own accord. As noted above, however, the issue of “coherency” cannot always be guaranteed. As one labour inspector interviewed mentioned:

The entities being inspected meet the requirements of the Fire Brigade Department but at the same time they may be against the standards made by the our Work Safety Administration. However, if I know someone working in the Fire Brigade Department, I could contact him directly, he could bring pressure to bear upon the entities or we could make a joint team. The problem will be solved and that is my exclusive ability (Labour Inspector Interview No. 5, February 16, 2013).

Here the relevant leaders focus on this problem-solving ability buttressed by an inspector’s interpersonal relations and connections.

Accordingly, a performance measurement, discipline and reward system would thus not affect labour inspector discretion in a direct way since none of

these systems existed effectively. Furthermore, the existing promotion system is unrelated with either performance measurement or the discipline and reward system. The result of the absence of a performance measurement system may, however, influence the discretion of labour inspectors in other ways. For example, not having standard systems for evaluating performance could allow de facto unwritten norms to develop in lieu of an overt process which in turn could influence labour inspector decision-making. Evidence on this point from interviews and documentary evidence was not clear, however, yet the informalities of the formal promotion system described above was cited as being an important factor considered in how inspectors do their work.

H5: Labour inspector discretion is limited because of other factors not considered previously.

A semi-structured interview combines a pre-determined set of open questions with the opportunity for the interviewer to explore particular themes or responses further. This was especially the case for the last part of my interview that did not limit respondents to answering a set of pre-determined questions. The results showed some other key factors cited as affecting either directly or indirectly a labour inspector's discretion and decision-making power. I have identified three factors from the interviews to highlight in this category.

First, the labour inspectors interviewed for this study considered the lack of administrative enforcement power to be a serious problem. The weak enforcement power framework overall within which they must work makes their jobs a very difficult task. As one inspector said:

I could not communicate directly with the enterprise legal person or the responsible person able to change the situation. Worse still, the responsible person would produce various excuses to avoid meeting with the labour inspectors. What can I do then? Nothing else (Labour Inspector Interview No. 5, February 16, 2013).

This evasion and the lack of administrative enforcement power to really get at the issue of concern and confront the decision-makers was cited by labour inspectors as having a negative influence on the rectification and reform of the enterprise and application of real safety and health protections.

Unlike police or customs agents, the labour inspector does not have the same administrative enforcement recognition or power. There are four exclusive rights provided by law to the labour inspector. The first of these is inspection powers, which means a labour inspector may make inspections at the production level and business operation entities, gather relevant materials, and inquire relevant entities and persons. Second is the administrative enforcement power, which means that a labour inspector shall order the problems to be eliminated without delay, if it finds any potential hazard in its inspections. If safety cannot be guaranteed before a serious potential accident is eliminated or in the process of elimination, it shall order the employees at work to leave the dangerous areas, and order that the business operation or production or use be suspended or terminated. Third is administrative penalties power, which means a labour inspector shall make decisions of administrative penalties according to the laws and regulations. Fourth is the power to seal up or detain, which means a labour inspector may seal up or detain the facilities, equipment and apparatuses that are believed as not meeting the national or industrial standards for guaranteeing safety (Measures on Administrative Penalties against Illegal Acts of Work Safety 2010).

Compared with police or other administrative organs, these powers are extremely weak. The Administrative Coercion Law of the PRC has stipulated five types of administrative coercive measures. They are restricting the personal freedom of a citizen, seizing premises, facilities or properties, impounding properties, freezing deposits or remittances and other administrative coercive measures (Administrative Coercion Law of the People's Republic of China, Article 9). As a result, a person who refuses to accept a summons without justifiable reasons or evades a summons may compulsorily be summoned. This article may solve directly the problem that one respondent described during the interview where the responsible person evades and makes various excuses to avoid being inspected (Labour Inspector Interview No. 9, February 16, 2013).

The Production Safety Law states that the departments responsible for the supervision and administration of production safety altogether, in their supervision and administration activities, cooperate with each other by way of joint inspections. However, no article stipulates the punishment measures if the entities violate the current law. Labour inspectors could not process their work if they cannot meet the responsible person. In addition, the power of seal

up or detain also has limitations. Labour inspectors shall seal up or detain the facilities, equipment and apparatuses, rather than the whole production operation place, as would be the power with other public agent inspectors.

A second indicator described in the interviews under this general open hypothesis is current politics. One respondent believed that their inspection work was influenced by politics (Labour Inspector Interview No. 5, February 16, 2013). For instance, during the National People's Congress and Chinese People's Political Consultative Conference, the entities close to the representatives would have more detailed inspections. June is the month of safety production, and during this time the labour inspection work will be more detailed and strict (Author Fieldnotes, February 16, 2013 and April 4, 2013).

On the other hand, if the entities being inspected indeed have difficulties, such as some family reasons and they have a good attitude or the violation is not serious, the labour inspectors shall give a lighter or mitigated punishment (Labour Inspector Interview No. 5, Labour Inspection Interview No. 6, February 16, 2013). However, whoever has repeatedly committed illegal acts or has a bad attitude shall be given a heavier punishment within legal limits.

Overall, a review of the evidence from the interviews and documents show that the discretion of front-line labour inspectors is a very complex relationship that cannot be reduced down to being either a negative or a positive factor in labour standards enforcement. I will attempt to pull together and summarize this evidence further and draw a few conclusions for front line labour inspection work in the Chinese context in the concluding chapter.

Chapter 6:

Summary and conclusion

This final chapter presents the research thesis objectives and attempts to summarize the results, returning to the overall research question on the nature of labour inspector discretion posited in earlier chapters based on the evidence collected. I also place an emphasis on the overall contributions that this research work has attempted to make. At the end I attempt to draw out some key prospective points for developing future research on the topic of studying the discretion of front line labour inspectors enforcing worker rights.

6.1 Review of the research objectives

Nowadays, more than 80 percent of the Fortune 500 companies have entered the Chinese market. “China has become one of the world’s largest FDI recipients. More and more labour-intensive products, labeled ‘Made in China’ have appeared on the international market, making China likely to become a de facto world factory in the foreseeable future” (Yang 2006).

However, China is often questioned by the ability to protect the interests of the Chinese working class. To improve this situation, China has ratified 25 international labour conventions of which 22 remain in force (ILO 2012). The problem China faces is the problem of enforcing the law in practice.

A fundamental area for study in Chinese labour relations scholarship is the workings of the street-level bureaucracy in labour administration and labour inspection. Labour inspectors are one typical example of street-level bureaucracy and are critical in the world of regulating labour and employment relations to achieve decent work and protect the human rights of workers.

Lipsky has stated that street-level bureaucracies are the policy makers (Lipsky 2010). My research aims in this thesis has been to synthesize this literature with labour standards enforcement and to explore the nature and latitude of a Chinese labour inspector’s discretion in the administration of work safety. Some of my sub-questions included examining the factors which will influence labour inspector’s discretion and the difficulties, challenges and problems street level public servants in this Chinese context meet when

enforcing the law of work safety and health in attempt to conform national policy to basic international standards on occupational safety and health.

6.2 Review of the research work

The main data collection method is the semi-structured interviews, a very flexible technique for small-scale research that can provide reliable, comparable and qualitative data (Drever 1995). Fieldnotes and documentary evidence were also chosen as part of my data collection methods. Based on Lipsky's theory of street-level bureaucracy, I posited five focused working hypotheses which helped me focus to answer the research question on the nature of the discretion of the Chinese front line labour inspection service.

This project examined one district-level governmental institution in the Beijing area, an undisclosed local SAWS office. This work safety administration was chosen because of its important situation in Beijing and because of my personal relationship where site access could be guaranteed. Data collection occurred between February and April of 2013. I went to the district level work safety administration in Beijing and made the face-to-face interviews. These interviews are my first data sources and I also collected 20 additional pages of field notes that include my views about the interviews. They provide me rich information of what was happening during my research periods. Across all my field notes, this work is detailed as my experiences, values, and personal insights that resulted from my whole research process. I also followed a small group of labour inspectors to complete their field labour inspection work on the site of one workplace. This experience provided me direct perception and feelings of the inspectors' daily work that enriched my insights. All the data were analyzed in light of my five working hypothesis.

6.3 Summary of working hypothesis in light of the findings

The first hypothesis is that labour inspector discretion is affected because inspectors do not have adequate resources to do their job. The inadequate resource of Chinese labour inspection appears to be a problem, but this issue is not material resource scarcity related to the first indicators under this hypothesis such as tools and equipment needed to perform the job. Rather this scarcity comes through short staffing levels of the public servants. This

kind of inadequate resources influences labour inspector discretion being as how front-line labour inspectors have to make decisions in a short time.

My second hypothesis was that labour inspector discretion is affected because the Chinese workforce is too migratory or precarious to assist inspectors enforcing the law. Although the Guide has one section for high-risk industry inspections, there appeared no significant relationship between work force and labour inspector discretion that I observed during this study. It has a more indirect influence and targeted inspection programs mitigate this factor.

The third hypothesis is labour inspector discretion is affected because of undeveloped or undefined laws with weak sanctions. Two aspects of the legal framework worked together to influence labour inspector discretion. On the one hand, too detailed legal provisions served to limit the labour inspector's discretion. On the other hand, labour inspectors often had limitations on their discretionary power because there was no solid law to fall back on. What was observed was a mix of either too vague, restrictive, or complex legal frames.

Another important observation on this point is that labour inspector discretion was affected by conflicting or divergent standard regimes both across legal standards but also through citing private industry standards.

The fourth hypothesis is that labour inspector discretion was affected because labour inspectors are too focused on narrow performance evaluation metrics. This hypothesis refers to the human resources issue. The content of human resources is diverse, based on Lipsky's theory, three indicators were chosen. A labour inspector may be undertrained or inexperienced. Lipsky defined this phenomenon as a lack of personal resources (Lipsky 2010) that will influence directly labour inspector discretion. My research work finds this point of view evident. As for performance measurement and the discipline and reward system of the labour inspectors, evidence showed there was no direct relationship between these two indicators and labour inspector discretion. What was indicated was a bureaucratic civil servant system that prioritized personal relations versus any performance metrics related to effectiveness.

The last hypothesis was a more general one. Labour inspector discretion is affected because of other factors not considered previously. The themes that were raised in the interviews included the failures of the administrative

enforcement power framework itself and the current politics. The respondents' own particular skill level was also cited. The first two of these limited a labour inspector's discretion overall and challenged their enforcement. The last one had a direct influence on discretion as an inspector's experience or training made good judgments possible quickly rather than restricting their discretion.

6.4 The nature of the discretion of labour inspectors in China

Little attention has been paid to the discretion and influence of labour inspectors as street-level bureaucrats, especially in the Chinese scholastic circles related to the labour sciences. My study contributes to the literature by exploring the nature and latitude of a Chinese labour inspector's discretion in the administration of work safety and works to provide a framework for the integration of the study of street-level officials with labour inspection services.

What is the nature and latitude of a Chinese labour inspector's discretion? This was my basic research question in this research project. The evidence I collected for this project shows that the discretion of labour inspectors is a more complex issue that the literature would like to indicate the issue to be. It seems that SAWS has enacted numerous regulations and rules that do define the latitude and scope of labour inspector's discretionary power to reduce the negative effect of discretion on standards enforcement. However, the labour inspectors I spoke with did have a certain degree of discretion behind these hard laws and regulations. Despite the negative effects view of discretion, it is clear that discretion cannot be eliminated in labour inspection work given the complex variety of social settings a labour inspector interfaces with everyday.

On a basic level, staffing ratios clearly limit inspector discretion. As the government might adjust their budgets to hire adequate inspectors, this would seem to contribute to positive discretion and in turn effective law enforcement. On this point the basic metrics used by the international community in their evaluation of labour inspection adequacy would appear to be valuable metrics. Likewise, targeted inspection programs for hazardous industries may help counteract weaknesses from a migratory or transient workforce.

A qualitative understanding of the mix of detailed labour standards and where labour standards should not be silent is needed to effectively leverage

labour inspection to make it work for implementing safety and health in practice on the ground. Because of the centralisation and control of trade unions in China, labour inspection effectiveness is a very important issue for labour standards enforcement. The complex overlapping variety of standards appears to limit inspector discretion through confusion. Basic lack of strong enforcement penalties on some issues also restricted discretion in a negative way for labour standards enforcement. Given the variety of overlapping norms available to inspectors, it might appear that discretion would be larger due to the variety of ways inspectors could act. More so, however, this complexity was described as just creating confusion and inspectors needed to find ways around these conflicting standards by communicating on an individual level.

On the human resources management issue, evidence showed that training was not always applicable to all situations but that the tacit on-the-job experience is more valuable in some cases. As a result, one could infer that labour inspector job tenure/length of experience could be considered a factor that contributes to positive discretion. At the same time, there does not appear to be any clear line of connection between a performance evaluation system and effective discretion from this study. Furthermore, it is not clear what a good performance evaluation system could be for labour inspectors given the unique nature of their work and the social context. What did appear to be happening was that the basic evaluation system for promotion was acting as the de facto performance evaluation system. This system affected discretion by placing higher importance on managing interpersonal situations on an individual level through social connections and at times party membership.

Current politics influenced labour inspection work, encouraging the work to be more detailed and strict based on politically expedient external needs. However, the weak legal power framework of labour inspection overall in comparison to other forms of state power limited labour inspector discretion in an unfavourable way for implementing national safety and health standards.

As with all qualitative research, the main limitation of my thesis is the problem of generalization. Convenience sampling was presented and used in this study as an ideal way to closely analyse the labour inspector's view in one local office of the SAWS administration in the Beijing area. Beijing may not be able to represent the whole country, including regions of the country with large-scale industrial factories that are producing products traded around the

world. The disparity of regional development is a fundamental characteristic of China's national situation. Nevertheless, a qualitative study does allow for the exploration of issues in an in-depth way not possible using other methods.

One important contribution this thesis has made is the development of a framework for studying the influences of labour inspector discretion. One of the issues that arose in this study was how to define the relationship between labour inspector discretion and effective labour standards enforcement of the kind that is of concern to the international community. This critical relationship remains to be researched. What was observed in this qualitative study is how labour inspector discretion may be affected by factors to either restrict effective enforcement or promote enforcement. If this study were expanded and elaborated, a more detailed consideration of different factors would need to be made to determine which factors promote discretion and contribute to effective enforcement as well as restrict effective enforcement. Likewise, a more detailed consideration of factors would also be needed to determine which factors limit discretion in ways that likewise both contribute and detract from the effective enforcement of labour standards on safety and health.

What we are left with on the question of the nature of labour inspector discretion in the Chinese context is that discretion is influenced by factors that cause discretion to be limited and expanded, but that both of these results appear to either serve to support effective protection or conversely reduce worker protection. Thus the nature of discretion in the effective protection of workers by labour inspectors is a complex question that is issue-dependent.

Appendix A

SAWS Inspector Interview Guide / Questionnaire

- 1) Please introduce yourself (age, work experience, responsibilities, etc.).
- 2) How many SAWS labour inspectors are there in this administration?
- 3) How many labour inspectors are in your team?
- 4) What are the recruitment criteria of SAWS labour inspectors?
- 5) Is the object of inspection typically notified before each inspection?
- 6) Describe your work process to me in detail.
- 7) What tools do you need to accomplish your job? How are you provided with these tools and are they sufficient? For example, cameras, voice recorders, transportation costs, etc.
- 8) Do you think these tools are enough to perform the job? If not, what are the necessary tools that you need?
- 9) Do you pay any out-of-pocket expenses?
- 10) How long you work everyday? Do you often work overtime? How does this affect your work?
- 11) How many inspection objects do you inspect every day?
- 12) Do you take any special treatments with migratory or dispatched workers?
What are they?
- 13) As for high-risk industries, are there any special inspection contents?
- 14) What are the contents of your professional training? Is it adequate?

- 15) After training, is there any assessment or exam? What is it&
- 16) What are the performance measurements in your job?
- 17) Is there an amount of fines that you have to achieve every month?
- 18) What are the requirements to be promoted in your job?
- 19) Do you have any merit bonuses or similar allowances?
- 20) What is the most important factor in promotion? How is it done?
- 21) Are there any problems in the law that you have found when working?
- 22) What will you do if the entities refuse to be inspected? What do you do?
- 23) What are your suggestions of reforming the current safety laws?
- 24) Is there any industry or sector that you will give priority to when performing work? Why? How?
- 25) Is there any collaboration with other government institutions? For example, the administration of occupational health or administration in other district? How does this happen?
- 26) Describe one of your memorable inspection experiences. Can you describe explain how you made your decisions?
- 27) Is there any other information you would like me know about your job?

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