

Rights to a Safe and Healthy Work Environment

1. Although China has legislations regarding occupational diseases,ⁱ there is no sign of a fall in the number of newly reported cases.ⁱⁱ Both employers and government are failing to comply with their statutory responsibilities and hence these rhetorical preventative measures have become either unenforceable or sham.ⁱⁱⁱ Businesses with political connection tend to have higher fatalities because endemic corruption is prone to prevail, thus reducing the effectiveness of these preventive measures.^{iv}
2. Employers are required to subscribe to the mandatory work-related injury insurance for all of their workers.^v In reality, the subscription rate remains low and only 23% of the working population is covered.^{vi} The procedure for claiming work-related injury insurance has long been criticised as worker-unfriendly, sometimes bureaucratic and complex. Lacking employment contracts, and missing records of health check and health and safety inspection data often become obstacles to put forward compensation claims; the onus of proof rests on the injured workers and the standard of proof required is high. Full cooperation of their employers is absolutely essential: from reporting an accident, applying for various certificates to prove the injury, to compensating for the damages. In practice, employers' non-cooperation and non-compliance with the law leads to failed compensation claims that work to the employers' advantage.
3. It is left to the mercy of the courts when an employer fails to subscribe to the work-related injury insurance or the injured worker is employed in the informal sector. Court proceedings are costly and rulings are often not enforced against the employers. A compensation claim can take up to a decade to process, during which time the injured workers have often exhausted their source of income or support.
4. The long incubation period of occupational diseases creates another problem in a system that need to identify one solvent employer. Compensation that is tied to a static assessment of health conditions ignores long term progression of some diseases. Diagnosis criteria are inflexible and fail to accommodate variation among patients, or new materials used in production.
5. Labour capacity appraisal^{vii} is the official mechanism to assess against the degree of impairment in work functions and the ability to self-care after suffering from a work-related injury. The result primarily serves as the ground for claiming work-related injury insurance. However, impairment in labour capacity does not automatically render one the status of disability unless one has also passed the classification of disabilities.^{viii} The exclusive list of disabilities is discriminatory per se where occupational diseases are not recognised. A disabled person's card is a proof of disability, but can also be the passport to other social benefits.
6. Minimum subsistence allowance^{ix} appears to be the last safety net. This is a residual and minimal measure available to workers diagnosing with an occupational disease, as well as other persons in need, for instance, expectant mothers. Nevertheless, this is not a universal scheme. The quota is arbitrarily allocated according to geographical regions, rather than taking the least minimal account of disability or the actual medical needs of the applicants. Life-sustaining medical treatments for occupational diseases are unaffordable without medical insurance. Surely, it is to be hoped that the allowance should be "covering everyone in need" in 2015 as per the National Human Rights Action Plan (2012-2015).^x
7. China does not have a comprehensive national policy framework for the rehabilitation of workers with work-related injuries and occupational diseases.^{xi} Long term care plan in the community is absent, which restricts the full reintegration and hence the ability to live independently with due respect and dignity.
8. Recommendations:
 - To disclose promptly detailed work injury data, at both national and local levels
 - To strengthen labour inspection and enforcement of health and safety legislations
 - To simplify work-related injury compensation system by removing unnecessary administrative hurdles, and increase its transparency and accountability
 - To reform occupational diseases compensation system by taking into account long term effect, and giving more discretion to the medical professional in diagnosis;
 - To integrate or extend the classification of disability to include those who have been assessed using the labour capacity appraisal scheme.

- To reform the minimum subsistence allowance by giving a higher priority to all those who have a genuine need, especially those workers not covered by work-related injury insurance.
- To develop a national framework for rehabilitation for workers with occupational diseases.

The Discriminatory *Hukou* System and the Rights to Social Benefits for Migrants Workers

9. Records showed 32 million rural-to-urban migrant workers and their family members were working and residing in urban areas in 2011.^{xii} They constituted 36.6% of the urban population.^{xiii} Migrant workers are not entitled to the same benefits for the reason that their *hukou* are tied to their place of origin. They are treated like second-class citizens, subject to different forms of exploitation and discrimination on a daily basis.

10. Migrant workers are ineligible to apply for social housing or subsidised apartments. Hence, living either in bedsits in suburban villages, garages or basements or in factory dormitories is commonplace and substandard living conditions are the norm. Consequently, over 40% of migrant workers spent 16% of their income on accommodation when their employers failed to provide subsidised accommodation.^{xiv}

11. 15 million children of migrant workers live with their parents in urban areas.^{xv} They are not entitled to compulsory education. In many cities, migrant workers can send their children to public schools as long as they can afford an extra sum for tuition fee. As a result private schools have been found to meet the need for education for these rural children. But local education authorities have used different pretexts to shut down these private schools without rendering support to the affected students.^{xvi} Apart from schooling, they have to battle the inequality of examination system. Restrictive enrolment practices in public examinations means that rural children cannot sit for the exams in urban areas.^{xvii}

12. Having a local urban *hukou* seems to give one a better access to most decent jobs in urban areas. Migrant workers are usually engaged in those jobs with minimum wages and adverse working conditions. According to the National Bureau of Statistics, the average monthly income of a migrant worker is 2,049 yuan, just 30% of the average wage of their urban counterparts.^{xviii} Moreover, migrant workers often encounter illegal deduction or late payment, and this has stirred up a significant number of disputes at the end of every year. Obviously, lacking efficient protection to safeguard migrant workers' right of work is the main reason behind these disputes.

13. Although migrant workers are eligible to certain social insurance schemes in most urban areas, discriminatory treatments can hardly be disguised. Medical insurance, for example, offers fewer protections to migrant workers. On the other hand, the subscription rate of migrant workers to social insurance schemes remains low for various reasons.^{xix} It remains hard to see how the discrimination against migrant workers in old-age and medical insurance schemes can be eliminated in 2015 as per the National Human Rights Action Plan.^{xx}

14. Recommendations

- To eliminate all forms of discrimination and inequality in social policies caused by the *hukou* system promptly.
- To reform social security systems to allow migrant workers to enjoy the same benefits as their urban counterparts.
- To reform social housing to allow those migrant workers in need to apply.
- To reform the education and examination systems to eliminate discrimination against rural children.
- To establish a living wage system to protect migrant workers from being exploited.
- To establish a public fund for all workers with unpaid wages.

Freedom of Association^{xxi}

15. Although the right to freedom of association is enshrined in the Chinese Constitution,^{xxii} it is merely a rhetorical guarantee. China does not have national legislation to regulate civil society organisations (CSOs). Instead, the State Council has adopted regulations on this matter,^{xxiii} by which CSOs have to register and be administered under a dual supervisory mechanism. A CSO must first seek a public or Communist Party body in the same area of work as the supervisory unit, where this CSO would then be subject to the mandatory supervision of its administration, finance and contacts with other organisations. The Ministry of Civil Affairs is responsible for its registration. Freedom of

association is undermined when independent CSOs submit to mandatory supervision by a public or Communist Party body.

16. It was surreal for almost all labour CSOs to transcend these criteria while remaining independent. As such, they chose to register and operate with a commercial licence. In 2012, the Guangdong Provincial Government announced a new policy intending to relax the restrictions on registration of independent CSOs where the role of supervisory unit becomes less significant in the areas of service provisions, administration and capacity building.^{xxiv} Several CSOs were told the guidelines had not been made ready when they tried to register under the new policy, and hence no independent CSOs could successfully register. Meanwhile, a number of CSOs encountered different levels of suppression from the local authorities, for instance, frequent inquisitions by various departments and eviction.

17. Recommendations:

- To genuinely relax the registration system of independent civil society organisations
- To allow the operation of and guarantee the independence and autonomy of CSOs without any unlawful interference and suppression.

Right to Education and the Abuse of Student Interns as Bound Labour de facto

18. Over 30 million students are currently enrolled in middle and higher vocational schools.^{xxv} Most students have arranged a one year's mandatory internship under the policy. However, these job placements are often full of exploitation. Cases reported that many students were sent to factories only a few days after they were enrolled in a vocational school.^{xxvi} They were not allowed to resign. They regularly worked the same hours and tasks as other formal workers, including over-time and night shifts. Under age students were also sent to work.^{xxvii} Obviously, this practice is merely an excuse to recruit cheap labour, which goes against the mandate of vocational education.

19. It appears to be satisfactory that China has a few pieces of domestic legislations to safeguard the rights of a child in employment.^{xxviii} However, student interns are not entitled to labour right protections – including minimum wages and social securities – by government regulation. Given the alarming number of cases and complaints, the proposed regulation, however, is worryingly aiding the abuse of student workers. A very recent draft of internship regulation by the Ministry of Education is loosening up restrictions on duration of internship, internship allowances and working hours.^{xxix}

20. Recommendations:

- To establish a comprehensive, national policy framework to protect the rights of student interns
- To Prohibit forced placement of students to internships and protect the right to equal pay and work safety to student interns de facto workers
- To fight against corruption in schools which financially profit from sending interns to work.

Endnotes:

- ⁱ 《中华人民共和国职业病防治法 (2011修正)》 [Law of the People's Republic of China on the Prevention and Control of Occupational Diseases (2011 Amendment)] (People's Republic of China) National People's Congress Standing Committee, Order No 52, 31 December 2011 and 《工伤保险条例 (2010修订)》 [Regulation on Work-Related Injury Insurance (2010 Revision)] (People's Republic of China) State Council, Order No 375, 20 December 2010.
- ⁱⁱ For instance, 23,812 new cases of pneumoconiosis were reported in 2010, which is a 64.28% increase from 2009. See, 王丹, 张敏 [Wang Dan and Zhang Min], 《中国2010年报告尘肺病发病情况分析》 [Statistics on Notification of Pneumoconiosis in China in 2010] (2012) 30(11) 《中华劳动卫生职业病杂志》 *Chinese Journal of Industrial Hygiene and Occupational Diseases* 801, 801.
- ⁱⁱⁱ 《国家职业病防治规划 (2009-2015年)》 [National Occupational Diseases Prevention Policy (2012-2015)] (People's Republic of China) State Council (2009) 43.
- ^{iv} Christina Larson, 'In China, Politically Connected Firms Have Higher Worker Death Rates', *Businessweek* (online), 28 January 2013 <<http://www.businessweek.com/articles/2013-01-28/in-china-corrupt-officials-and-worker-deaths>>.
- ^v 《工伤保险条例》 [Regulation on Work-Related Injury Insurance], above n 1, art 2.
- ^{vi} National Bureau of Statistics of China, *China Statistical Yearbook 2012* (China Statistics Press, 2012) 4-1 and 《2011年度人力资源和社会保障事业发展统计公报》 [The Bulletin of Annual Human Resources and Social Security Development in 2011] (4 June 2012) Ministry of Human Resources and Social Security of the People's Republic of China <<http://www.mohrss.gov.cn/page.do?pa=402880202405002801240882b84702d7&guid=e578e8be726c4689a32b91e8f7882a45&og=8a81f3f133d01e170133d36b52df04c8>>.
- ^{vii} 劳动能力鉴定 [Labour capacity appraisal]. See, 《工伤保险条例》 [Regulation on Work-Related Injury Insurance], above n 5, arts 21-8.
- ^{viii} 《中华人民共和国残疾人保障法》 [Law of the People's Republic of China on the Protection of Persons with Disabilities] (People's Republic of China) National People's Congress Standing Committee, Order 3, 1 July 2008, art 2.
- ^{ix} 27,858 persons with disabilities recorded of enjoying the Minimum Subsistence Allowance and the average subsidy was ¥109.19 in December 2012. See, Ministry of Civil Affairs of the People's Republic of China, 《2012年12月份全国县以上农村低保情况》 [The Situation of Minimum Subsistence Allowance on the County Level in December 2012] (2013) <<http://files2.mca.gov.cn/cws/201301/2013012818080188.htm>>.
- ^x 《国家人权行动计划 (2012-2015年)》 National Human Rights Action Plan of China (2012-2015) (11 June 2012) Information Office of the State Council of the People's Republic of China.
- ^{xi} In Guangdong province, only 6,000 out of 150,000 victims of work-related injury enjoyed rehabilitation. Employers were taking a passive response to rehabilitation because they worried the labour disputes might be prolonged and would have to give sick pay during the rehabilitative period. See, 汤凯锋, 胡念飞, 王雪乔, 黄晓璞 [Tang Kaifeng, Hunian Fei, Wang Xue Qiao and Huang Xiaopu] 《被冷落的工伤康复政策》 'A Neglected Rehabilitation Policy for Work-related Injury', 《南方日报》 'Nanfang Daily' (online), 23 January 2013 <http://epaper.nfdaily.cn/html/2013-01/23/content_7161578.htm>.
- ^{xii} National Bureau of Statistics of China, 《2011年我国农民工调查监测报告》 [Survey of Migrant Workers in 2011] (27 April 2012) <http://www.stats.gov.cn:82/tjfx/fxbg/t20120427_402801903.htm>.
- ^{xiii} Zheng Lifei, 'China's Urban Population Exceeds Countryside for First Time', *Bloomberg* (online), 17 January 2012 <<http://www.bloomberg.com/news/2012-01-17/china-urban-population-exceeds-rural.html>>.
- ^{xiv} National Bureau of Statistics of China, above n 12.
- ^{xv} 熊易寒[Xiong Yihan], 《教育吸纳对农民工子女融入城市作用甚微》 [Education has Little Help for Rural Children to Integrate in the City] 《瞭望东方周刊》 'Oriental Outlook' (April 2010) cited in *Sina* (online) <<http://news.sina.com.cn/pl/2010-06-29/113220571613.shtml>>.
- ^{xvi} In June 2012, Tong Xin Experimental School (a primary school for rural children) and other 50 schools were suspended by the local education authorities in Beijing. 14,000 students were affected. Although government officials allowed a small amount of affected students to enrol in a local public school, the majority were forced to return to the rural areas. See, 同心实验学校 [Tong Xin Experimental School], 《同心实验学校致社会各界公开信》 [An Open Letter from Tong Xin Experimental School] (online) (4 July 2012) <<http://www.tongxinedu.org/Item/Show.asp?m=1&d=272>>.
- ^{xvii} In 2012, a daughter of a migrant worker demanded to enrol in the advanced level examination in Shanghai after her completion of nine years' education. The girl went to appeal to higher authority with her father to fight for her examination rights in urban area. The case was disclosed by the media and became a controversial debate. However, her father was detained by the police and the case was quickly rejected. See, 《上海警方证实微博“约辩”少女占海特之父被拘》 [Shanghai Police Arrested the Father of the Girl Who Asking for Debate on Opening Examination for Rural Children], 《中国新闻网》 'China News Service' (online), 10 December 2012 <<http://www.chinanews.com/fz/2012/12-10/4397110.shtml>>.
- ^{xviii} 《农民工月均工资破2000仅为城镇职工平均工资30%》 [The Average Monthly Wage of Migrant Workers is 2000 Yuan, only 30% of Average Wage for Urban Workers], 《国际金融报》 'International Finance News' (online), 2 March 2012 <<http://finance.people.com.cn/GB/70846/17271906.html>>.
- ^{xix} In 2011, the subscription rates of retirement insurance, work-related injury insurance, medical insurance, unemployment insurance and maternity insurance for migrant workers were 13.9%, 23.6%, 16.7%, 8% and 5.6% respectively. See, National Bureau of Statistics of China, above n 12.
- ^{xx} 《国家人权行动计划 (2012-2015年)》 National Human Rights Action Plan of China (2012-2015), above n 10.
- ^{xxi} Please refer to Attachments A and B for more details.

- ^{xxii} 《中华人民共和国宪法》[Constitution of the People's Republic of China] art 35.
- ^{xxiii} 《社会团体登记管理条例》[Regulations for Registration and Management of Social Organisations] (People's Republic of China) State Council, Order 250, 25 September 1998 and 《民办非企业单位登记管理暂行条例》[Provisional Regulations for the Registration Administration of People-Run non-Enterprise Units] (People's Republic of China) State Council, Order 251, 25 October 1998.
- ^{xxiv} 《广东社会组织注册门槛从7月1日起进一步降低》[Threshold Further Reduced in Registration of Civil Society Organisations in Guangdong from 1 July 2012], 《南方都市报》'Nanfang Metro' (online), 9 June 2012 <http://news.nfmedia.com/nfdsb/content/2012-06/09/content_47758252.htm>.
- ^{xxv} 教育部职业技术教育中心研究所 [Center of Technical and Vocational Training, Ministry of Education], 《中国特色职业教育发展之路—中国职业教育发展报告 (2002-2012)》[*The Road of Developing Vocational Education with Chinese Characteristics – Development Report of Vocational Education in China (2002-2012)*] (October 2012).
- ^{xxvi} A vocational school in the municipality of Guiyang sent student interns to work in electronic factories for over 20 months in 3 years. Some were put into internship just few weeks even days after enrolment. They worked 11-13 hours a day, their wages were confiscated by the school as "tuition fee" and received only a few hundred yuan as "pocket money" from the school. The students were threatened by the school that their graduation certificates would not be issued if they resign. 69 students stood up and brought their case to various government agencies. They estimated that the school made over 20,000 yuan per student from their taken-away wages. The case did not receive proper investigation. Eventually, local education authorities said that each student was only entitled to a 56 yuan refund of over-charged school fees. See, 王烨捷 [Wang Yejie], 《入学第6天就被派出打工》[Sent to Work on the Sixth Day After Admitting to a Vocational School], 《中国青年报》'China Youth Daily' (Beijing) 25 September 2011, 1 and 王烨捷 [Wang Yejie], 《要求贵阳国防学校停止招生》[Demanding the Guiyang National Defence School Stop Enrolment], 《中国青年报》'China Youth Daily' (Beijing) 17 October 2011, 1.
- ^{xxvii} In 2012, several cases of student intern abuses were reported in Foxconn. The company found some of the interns working in its Yantai factory aged from 14 to 16 years old. These under age interns were mainly sent to Foxconn by schools. Reports also discovered that student interns were told that they had to produce the accessories in order to receive academic credits, and they were forced to work overtime in the company's Jiangsu factory. See Don Reisinger, "Foxconn Admits to Child Labor Law Breach with Underage Intern Hires", *CNET* (Online) (16 October 2012) <http://news.cnet.com/8301-1001_3-57533056-92/foxconn-admits-to-child-labor-law-breach-with-underage-intern-hires>.
- ^{xxviii} 《中华人民共和国未成年人保护法 (2006修订)》[Law of the People's Republic of China on the Protection of Minors (2006 Revision)] (People's Republic of China) National People's Congress Standing Committee, Order No 60, 29 December 2006, arts 38 and 47, 《中华人民共和国劳动法》[Labor Law of the People's Republic of China] (People's Republic of China) National People's Congress Standing Committee, Order No 28, 5 July 1994, arts 5, 15, 58, 64-9, 《中华人民共和国职业教育法》[Vocational Education Law of the People's Republic of China] (People's Republic of China) National People's Congress Standing Committee, Order No 69, 15 May 1996 and 《禁止使用童工规定》[Provisions on the Prohibition of Using Child Labor] (People's Republic of China) State Council, Order No 364, 1 October 2002.
- ^{xxix} The draft encourages schools to extend internship beyond the one-year's regulation; allows schools putting year 1 students to internship; allows over-time during internship; loosens requirement on intern allowances; waives punishment to those violate the regulations and students' rights. See, 《职业学校学生顶岗实习管理规定 (试行) (征求意见稿)》[Administrative Provisions on the Practice of the Students of Vocational Schools by Taking Posts (for Trial Implementation) (Draft for Comments)] (People's Republic of China) Ministry of Education <<http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/s6197/201211/144557.html>>.