

## Introduction

- 1 Despite the Government of the People's Republic of China voluntarily accepted Iceland's recommendation to "continue its efforts to enhance labour rights" in the second UPR cycle, the labour rights situation in China continues to deteriorate ever since. Arrests and imprisonments of labour rights activists are becoming more frequent, while institutional and extra-judicial suppression on labour rights organizations are increasingly infringing workers' rights to freedom of association, expression and assembly.

## Restriction on Freedom of Association

- 2 **We are concerned at the continued inability of workers and labour activists to exercise their right to freedom of association in relation to labour activities. We record with concern the fact that in the years following the last review of the PRC, the institutional crackdown on the legitimate work of non-governmental organizations (LNGOs) and groups providing support for workers has deteriorated.**
- 3 **We are alarmed that labour rights advocacy activists (LRAAs) and LNGOs continues to be subjected to torture and cruel treatment in forms of physical threats and assaults.** We recorded on a number of occasions that staff and volunteers of LNGOs, such as Mr. Chen Huihai, Mr. Peng Jiayong, and Mr. Zhu Xinhua in April 2015 (Annex 1) and Mr. Zeng Feiyang in December 2014 (Annex 2) were physically assaults while providing support services to workers in handling individual and/or collective labour disputes. Despite repeated requests from the International Labour Organization Committee of Freedom of Association (ILO-CFA) to provide detailed information on the outcome of the relevant investigations, the PRC Government has yet to respond to such requests<sup>12</sup>.
- 4 **We note the right to freedom of association of LRAAs and LNGOs continues to deteriorate in recent years.** These include the arbitrary arrests, detentions,

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<sup>1</sup> ILO-CFA Case No. 3184, Para 243 (d)

[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3302077](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302077)

<sup>2</sup> ILO-CFA Case No. 3184, Para 170 (d)

[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3523621](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3523621)

prosecutions, and imprisonments of staff and volunteers from LNGOs. On 5 December 2015, the PRC Government conducted a series of well-coordinated and premeditated arrests of eight LRAAs from four LNGOs in the province of Guangdong. Among the arrestees four were subsequently prosecuted with the crime of “gathering a crowd to disrupt public order” (Article 290 of Chinese Criminal Law) and sentenced to various prison terms (Annex 3).

**5 We stress that as advisors and organizers of an independent collective labour action, it is within the aforementioned LRAAs and their respective LNGOs to implement appropriate and peaceful measures to exercise their right to freedom of association. Thus, we consider that the PRC has no legitimate grounds on which to prosecute them of criminal charges. The arrest, detention, prosecution, and imprisonment of LRAAs is a deliberate violation of freedom of association. Our position is supported by the interim conclusion of the ILO-CFA’s subsequent investigation of the abovementioned four sentenced LRAAs<sup>3</sup>.**

**6 We regard the Trade Union Law of 1992 (TUL) is in itself a violation of freedom of association.** Under the TUL, all trade unions in China are required to adhere to the leadership of the Communist Party of China (Article 4) and assist the work of the People’s Government (Article 5). Moreover, it also stipulates the establishment of a unified “All-China Federation of Trade Unions” (ACFTU) on the national level (Article 10), which is given the statutory authority to govern and control lower level trade unions, including the establishment of grass-root trade unions (Article 9 & Article 11)<sup>4</sup>. With such strict legislative and administrative constraints imposed by the law, trade unions are impossible to be organized independently in accordance to the interests of the workers. In more than one occasion, the ILO-CFA considered many provisions of the TUL to be contrary to the principles of the ILO regarding freedom of association<sup>5</sup> and repeatedly urged the PRC to amend such provisions<sup>6</sup>. But the PRC has yet to amend the TUL accordingly.

**7 We note with concerns that the implementation of the “Law of the People’s**

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<sup>3</sup> ILO-CFA Case No. 3184, Para 163

[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3523621](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3523621)

<sup>4</sup> Trade Union Law of the People's Republic of China, <http://www.china.org.cn/english/DAT/214784.htm>

<sup>5</sup> Case No. 1652, 286th Report, paras. 708-719; Case No. 1903, 316th Report, para. 361

<sup>6</sup> Case No. 1652, 292nd Report, para. 389; Case No. 1930, 316th Report, para. 378 (a)

**Republic of China on Administration of Foreign Non-Governmental Organizations Activities within China” (FNGO Law) on 1 January 2017 imposes unnecessary restrictions on the activities of Foreign NGO.** According to Article 5, 47(3), (4), (5), of the FNGO Law, NGO that publishes or disseminates information that endangers state security or national interests, conducts or sponsor political and religious activities or activities that detrimental to state security, national interests or societal public interests shall be banned by the authority<sup>7</sup>. We consider such provisions in the FNGO Law imposes unnecessary restrictions on NGOs to conduct peaceful political, religious and rights-based activities, while inhibiting institutional freedom of NGOs to conduct activities of their own choosing which infringes the rights to freedom of association and expression.

**8 Recommendations:**

- 8.1 PRC should stop all forms of torture and mistreatments of LRAAs;**
- 8.2 Hold legally accountable any individuals responsible for torturing LRAAs;**
- 8.3 To ensure all LRAAs can provide services to workers without hindrance;**
- 8.4 Release all individuals who have been detained and imprisoned for the peaceful exercise of their right to freedom of association;**
- 8.5 Remove Article 4, 5, 9, 10 & 11 of the Trade Union Law of 1992 and take effective measure to remove all obstacles to the exercise of freedom of association in the country, in particular, the prohibition to join or form trade unions outside the ACFTU structure.**
- 8.6 Repeal the Foreign NGO Law.**

**Restriction on Freedom of Expression**

- 9 The PRC Government continues to use the crimes of “inciting subversion of state power” and “picking quarrels and provoking trouble” (Article 105 & 293 of the Chinese Criminal Law of 2017) to detain and imprison individuals such as Mr. Lu Yu-yu (Annex 4) and Mr. Liu Shaoming (Annex 5) for exercising their rights to freedom of expression. These include the arrests and prosecutions of journalist and LRAA who published news on collective labour actions, as well as political expression critical of state authorities. **We consider such prosecutions are measures to further seal off public access to dissident views and news on collective rights defending actions.**

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<sup>7</sup> <http://www.hoganlovells.com/~media/145ab006f1d14e3b9301d9d3add17073.ashx>

10 **Recommendations:**

- 10.1 **China should release individuals who have been detained and imprisoned for the peaceful exercise of their right to freedom of expression;**
- 10.2 **Interpret Article 105 of the Chinese Criminal Law to clarify and define “subversion” and “incitement” in accordance to international standards specified by Johannesburg Principles on National Security and Siracusa Principles on the Limitation and Derogation, and specify conditions under which an act of expression may constitute “subversion” or “incitement”;**
- 10.3 **Interpret Article 293 of the Chinese Criminal Law to clarify and define “disturbance”, “serious disorder” and “public space” in accordance to international standards specified by Johannesburg Principles on National Security and Siracusa Principles on the Limitation and Derogation, and specify conditions under which an act of expression may constitute “disturbance” or “serious disorder” in a “public space”;**
- 10.4 **Aforementioned conditions as stipulated in Article 105 and 293 must exclude any peaceful activity in the exercise of the right to freedom of expression, including expression critical of government authorities and reports of collective rights defending actions.**

**Restriction on Freedom to Assembly**

- 11 **We record with concern the fact that in the years following the last review of the PRC, the crime of “gathering a crowd to disrupt public order” (Article 290 of the Chinese Criminal Law of 2017) are routinely used to arrest worker representatives in cases of collective labour actions.** These include the arbitrary detention and imprisonment of workers and worker representatives who participated in collective labour actions.
- 12 **We regret that the constitutional rights to strike was revoked in the 1982 PRC Constitution Amendment.**
- 13 According to Article 290 of the Criminal Law: “In cases where crowds are assembled to disturb public order with serious consequences; where the process of work, production, business, teaching, and scientific research are disrupted; and where serious losses have been caused, the ringleaders are to be sentenced

to not less than three years but not more than seven years of fixed-term imprisonment”<sup>8</sup>. **We are concerned that the aforementioned provision is increasingly used to prohibit public protest and collective labour action by criminalizing the workers and organizers on reason of public order, including Mr. Wu Guijun (Annex 6), Mr. Meng Han (Annex 7) and Mr. Fu Tianbo (Annex 8). We consider such provision in the Criminal Law is a violation to worker’s rights to freedom of assembly and strike.**

**14 Recommendations:**

- 14.1 China should release individuals who have been detained and imprisoned for the peaceful exercise of their right to freedom of assembly and strike;**
- 14.2 Abolish Article 290 of the Chinese Criminal Law;**
- 14.3 Reinstate the constitutional right to freedom of strike.**

**Right to the Enjoyment of Just and Favourable Conditions of Work**

15 The Committee on Economic, Social and Cultural Rights (the CESCR Committee) has highlighted that preventing occupational accidents is fundamental to just and favourable conditions of work and is closely related to the right to the highest attainable level of physical and mental health<sup>9</sup>.

16 In the second UPR cycle, the PRC Government has voluntarily accepted Iceland’s recommendation to ensure work safety<sup>10</sup>. A similar promise was pledged in National Human Rights Action Plan (2012-2015)<sup>11</sup>.

*Poor Transparency*

17 The collection and dissemination of updated and reliable data is crucial to the coordination of policy implementation and support programme on occupational

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<sup>8</sup> Criminal Law of the People’s Republic of China, [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384075.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm)

<sup>9</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/GC.23 (27 April 2016) 25.

<sup>10</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China)*, 25<sup>th</sup> sess, UN Doc A/HRC/25/5 (4 December 2013) 186.177.

<sup>11</sup> State Council, *National Human Rights Plan of China (2012-2015)* (11 June 2012) <[http://www.china.org.cn/government/whitepaper/node\\_7156850.htm](http://www.china.org.cn/government/whitepaper/node_7156850.htm)>.

safety and health (OSH)<sup>12</sup>. Four Hong Kong based LNGOs urged the PRC Government to disclose detailed data on work-related injuries nationally and locally in the last cycle<sup>13</sup>.

- 18 Health administrative departments are assigned the responsibilities to conduct regular survey and analysis<sup>14</sup> as a mission to build and strengthen the capacity noted in National Occupational Disease Control Program (2009-2015)<sup>15</sup>. Key performance indicators are specifically mentioned in National Human Rights Action Plan (2016-2020)<sup>16</sup> and National Occupational Disease Prevention and Control Plan (2016-2020)<sup>17</sup>.
- 19 29,180 cases and 31,789 occupational diseases cases were reported nationally in 2015 and 2016 respectively<sup>18</sup>. Pneumoconiosis accounted for 93.92 per cent in 2015 and soared to 95.49 per cent in 2016<sup>19</sup>. Besides, there were 548 cases of all kinds of chronic chemical poisoning reported in 2015 and jumped to 812 cases in 2016<sup>20</sup>. Official statistics and data have been criticized for their reliability. According to an unofficial estimation, more than 6 million victims were suffering from pneumoconiosis<sup>21</sup>.
- 20 If the official data were that reliable, a research conducted by Labour Action China (LAC) have successfully found more than 10 per cent of the chronic chemical poisoning victims in the electronics industry in just one region of Guangdong

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<sup>12</sup> *General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, above n 1, 28.

<sup>13</sup> The Chinese Working Women Network, Globalization Monitor, Labour Action China, Labour Education and Service Network, *A Joint NGO Submission Concerning China for Consideration under the Universal Periodic Review by the United Nations Human Rights Council at its 17<sup>th</sup> Session from 21 October to 1 November 2013*, 8

<sup>14</sup> *Law on Prevention and Control of Occupational Diseases* art 12

<sup>15</sup> State Council, *National Occupational Disease Control Program (2009-2015)* (24 May 2009) <[http://www.gov.cn/zwgk/2009-08/21/content\\_1398577.htm](http://www.gov.cn/zwgk/2009-08/21/content_1398577.htm)>.

<sup>16</sup> State Council, *National Human Rights Action Plan (2016-2020)* (29 September 2016) <[http://english.gov.cn/archive/publications/2016/09/29/content\\_281475454482622.htm](http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm)>.

<sup>17</sup> State Council, 《國家職業病防治規劃 ( 2016-2020 年 ) 》 [National Occupational Disease Prevention and Control Plan (2016-2020)] (26 December 2016) <[http://www.gov.cn/zhengce/content/2017-01/04/content\\_5156356.htm](http://www.gov.cn/zhengce/content/2017-01/04/content_5156356.htm)>.

<sup>18</sup> 國家衛生和計劃生育委員會疾病預防控制局 [National Health and Family Planning Commission Disease Prevention and Control Bureau] 《2015-2016 年全國職業病報告情況》 [National Occupational Disease Report 2015-2016] (28 December 2017) <<http://www.nhfpc.gov.cn/jkj/s5899t/201712/c46227a95f054f5fa75a40e4db05bb37.shtml>>.

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> <中國青年網> [Youth.cn] 《為了 600 萬塵肺病農民》 [For 6 Million Internal Migrant Workers with Pneumoconiosis] (22 August 2017) <[https://gy.youth.cn/gywz/201708/t20170822\\_10564604\\_1.htm](https://gy.youth.cn/gywz/201708/t20170822_10564604_1.htm)>.

province<sup>22</sup>. A senior doctor of Guangdong Prevention and Treatment Centre for Occupational Diseases had once estimated the actual figures could be up to 40 times higher than the national statistics<sup>23</sup>.

- 21 Nevertheless, actual progresses on reporting and monitoring are **partially implemented** by the PRC Government, which is still in a rudimentary stage. Having said that reliable and valid data on the fullest possible range is essential to formulate the national policy and to undertake periodic reviews its effectiveness.

### *Inadequate Prevention and Monitoring*

- 22 Both State parties and non-State actors, such as employers and worker organizations, share the duties and responsibilities to prevent the occurrence of industrial hazards. The primary duties and responsibilities are on the employers<sup>24</sup>. They are obliged to provide, for example, OSH information and training<sup>25</sup>, and personal protective equipment (PPE)<sup>26</sup>.
- 23 The above mentioned research revealed that less than 10 per cent of the respondents had heard of OSH policy in their workplace<sup>27</sup>. Over 95 per cent of them claimed that they did not receive any OSH training<sup>28</sup>. More than one third of the respondents stated that they were not offered any necessary PPE at all<sup>29</sup>.
- 24 States have a general obligation to ensure the accountability<sup>30</sup> and specific legal obligations to take measures to ensure the compliance by third parties<sup>31</sup>.
- 25 Liaoning provincial administration of work safety conducted an evaluation with

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<sup>22</sup> Jason Chan, Pikki Fung and Pauline Overeem, *The Poisonous Pearl: Occupational Chemical Poisoning in the Electronics Industry in the Pearl River Delta, People's Republic of China* (Good Electronics, 2016) 23.

<sup>23</sup> Original text is written as “實際病例數，在年均六七百例基礎上，還要再乘 40 倍”。<廣州日報> [Guangzhou Daily] 《職業病四成塵肺三成中毒 新發病年增 3 成》 [40% Pneumoconiosis, 30% Poisoning, New Occupational Diseases Cases Annual Growth by 30%] (26 November 2014).

<sup>24</sup> *Law on Prevention and Control of Occupational Diseases* arts 3-7, 14-15, 20-26, 28-39 and 41. See also *Law on Work Safety* arts 4-6, 18-49

<sup>25</sup> *Law on Prevention and Control of Occupational Diseases* arts 24, 26, 28, 29 and 34.

<sup>26</sup> *Law on Prevention and Control of Occupational Diseases* arts 15, 22 and 25.

<sup>27</sup> Chan, Fung and Overeem, above n 16, 32

<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*, 33

<sup>30</sup> *General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, above n i, 54

<sup>31</sup> *General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, above n i, 59.

the participation of 3,279 enterprises in 2017; 586 enterprises were examined for records and 272 were selected for onsite inspection<sup>32</sup>. 68.8 per cent of enterprises did not report industrial accidents in time or inaccurate; only 43.8 per cent provided OSH training; 83.3 per cent did not have complete records of occupational health examination; 40 per cent did not note OSH hazards on the contract as per the Labour Contract Law; 93.3 per cent did not display any OSH warnings; and 53.3 per cent failed to inform workers the result of occupational hazards examination<sup>33</sup>. Liaoning is a major industrial hub in the northeast. Not only its evaluation was alarming, but also It also depicts the **slow progress and partial implementation to prevent the violation from the third parties**.

- 26 Besides work safety administrative departments<sup>34</sup>, trade unions<sup>35</sup> have delegated and empowered to monitor and supervise employers' fulfilment of their duties of care. But these trade unions ought to be worker driven and independent from any interferences in order to representing interests of workers by formulating, implementing, reviewing, and monitoring laws and policies<sup>36</sup>. As **Trade Union Rights** are not properly implemented in China, the CESCR Committee has already reiterated that "the Trade Union Act be amended to allow workers to form independent trade unions, both within and outside the structure of the All China Federation of Trade Unions"<sup>37</sup>.

#### *Hindrance to the Right to a Remedy*

- 27 The right to a remedy often encompasses the **RIGHT TO SOCIAL SECURITY**<sup>38</sup>. Work-related injury insurance is a constituent of Social Insurance. Its actual operation is governed by Regulation on Work-Related Injury Insurance<sup>39</sup>. Apart

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<sup>32</sup> < 遼寧省安全生產監督管理局 > [Liaoning Provincial Administration of Work Safety] 《遼寧省安全生產監督管理局關於 2017 年度職業病危害防治評估工作督查情況的通報》 [The Evaluation on Monitoring the Prevention and Control of Occupational Diseases in 2017] 遼安監安健〔2017〕22 號 (23 November 2017) <[http://www.lnsafety.gov.cn/zyws/gwgg/201711/t20171123\\_3118390.html](http://www.lnsafety.gov.cn/zyws/gwgg/201711/t20171123_3118390.html)>.

<sup>33</sup> Ibid

<sup>34</sup> *Law on Prevention and Control of Occupational Diseases* arts 3, 7, 9-12, 16-17, 27, 35, 37, 42, 62-75, 77, 79-80, 82-83. See also *Law on Work Safety* arts 9, 60-71, 75, 81-83, 87-88, 107 and 110.

<sup>35</sup> *Law on Prevention and Control of Occupational Diseases* arts 3-4, 40. See also *Law on Work Safety* art 7.

<sup>36</sup> *General Comment No 23 (2016) on the Right to Just and Favourable Conditions of Work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, above n i, 57.

<sup>37</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, UN Doc E/C.12/CHN/CO/2 (13 June 2014) 23.

<sup>38</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 19: The Right to Social Security*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 2.

<sup>39</sup> 《工傷保險條例條例》 [Regulation on Work-Related Injury Insurance] State Council, Order No 375 (1



from the enjoyment of work-related injury insurance, victims of occupational diseases shall have the right to compensation from employers according to relevant civil laws<sup>40</sup>.

- 28 The first step of entering the legal redress is to obtain an official diagnosis where it could only be applied by the victims<sup>41</sup>. It is the applicant's burden to submit all relevant documents and information<sup>42</sup>. This is an arduous task for many already sick victims because those documents are normally kept by the management. Considering if the management would fail to inform their workers about potential OSH hazards, they might lack the incentive to provide all relevant documents to the victims whereby they would use these documents to prove their diseases occupational.
- 29 In fact, the entire process could be smoothly completed in 9 months<sup>43</sup>. Both parties could trigger the appeal. The second appeal is final<sup>44</sup>. When there are disputes, arbitration would become an extra procedure before reaching the first result. If this is the case, it might take 4 or 5 years, from first diagnosis to receipt of compensation<sup>45</sup>.
- 30 National Health and Family Planning Commission (NHFPC) revised the directory in 2016 and that has broadened the coverage to 132 kinds of occupational disease from 115. But this directory is exhaustive although it has 4 open terms for exceptional circumstances.
- 31 LAC have recently learnt that a deceased chemical poisoning victim lost the final appeal to a provincial appraisal committee. The victim started to work for an electronics factory in 2005 and diagnosed with multiple myeloma and plasma cell leukaemia in 2015. The committee argued that his multiple myeloma was not an occupational tumour because it is not listed in the directory, whereas his plasma cell leukaemia was secondary although leukaemia is recognized as a form of occupational tumour. Therefore, his final appeal was rejected. When the primary disease is not listed, victims could not obtain the official diagnosis. That

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January 2004).

<sup>40</sup> *Law on Prevention and Control of Occupational Diseases* art 58

<sup>41</sup> 《職業病診斷與鑒定管理辦法》[Administrative Measures for Diagnosis and Identification of Occupational Diseases] Ministry of Health, Order No 91 (10 April 2013) art 19.

<sup>42</sup> *Administrative Measures for Diagnosis and Identification of Occupational Diseases* art 21

<sup>43</sup> Chan, Fung and Overeem, above n 16, 21.

<sup>44</sup> *Administrative Measures for Diagnosis and Identification of Occupational Diseases* art 36.

<sup>45</sup> Chan, Fung and Overeem, above n 16, 21.

means their right to a remedy has reached a cul-de-sac.

- 32 The other institutional problem is the assessment mechanism is not reviewable by the judiciary because the pool of experts registered to the appraisal committees does not have an independent legal personality, it is barely assigned to conduct the business on behalf of the provincial HFPC.
- 33 Obtaining the certificate of official diagnosis is the first step. There are two more steps before claiming the work-related injury benefits. The second stage is for the local human resources and social security bureau to verify and confirm that the disease is an occupational disease. Normally, this step is simply procedural and dispute-free.
- 34 The last stage is to assess labour capacity (i.e. the level of disability resulting from occupational disease) where it is the determinant of the work-related injury benefits and tortious claims. The assessment is normally conducted, like taking a snapshot, in the end of one year's treatment period. The problem is some occupational diseases could not fit into this way of examination.
- 35 LAC have learnt a victim of occupational leukaemia was critically sick to the point that a bone marrow transplant was the only lifesaving option. So his wife had to borrow more than 400,000 yuan (approximately equivalent to US\$65,000). His level of disability is rated low since the assessment conducted in remission and hence that has affected his work-related injury benefits. It is important to note that the expenditures on bone marrow transplant could not be recovered!
- 36 Despite the availability of access to have a legal redress, the scope of occupational diseases is very narrow. It could not guarantee the procedural fairness, especially when *onus probandi* is bore by the victims instead of the perpetrators. Even though a victim could successfully pass those three stages, it would consume a significant amount of time which most victims could not afford.
- 37 **Recommendations:**
  - 37.1 **To disclose detailed official statistics and data on work-related injuries and occupational diseases promptly;**
  - 37.2 **To strengthen labour inspection and enforcement of OSH legislations;**
  - 37.3 **To allow independent and worker driven trade unions in monitoring OSH prevention;**

- 37.4 To invert the burden of proof to the perpetrators when victims apply for official diagnosis;
- 37.5 To simplify work-related injury compensation system by removing unnecessary hurdles, and increase its transparency and accountability;
- 37.6 To reform the disability assessment systems more adaptable to various circumstances.

### Labour Rights Under the Regime of Cybersecurity

- 38 The **RIGHT TO FREEDOM OF OPINION AND EXPRESSION** is a right enshrined in the International Covenant on Civil and Political Rights<sup>46</sup>. Private intermediaries are imposed an excessive liability to protect the security<sup>47</sup> by screening all online activities<sup>48</sup>. This could leave the authorities a broad discretion to determine what is constituted to cybersecurity.
- 39 In reality, the intermediaries could refuse to publish and subsequently delete all posts and comments<sup>49</sup>, restrict or even shutdown any accounts<sup>50</sup>. They must keep all records<sup>51</sup> and deal with any report promptly by third parties<sup>52</sup>.
- 40 Encryption and anonymity are absolutely essential to protect and advance the freedom of expression<sup>53</sup>. However, the intermediaries can refuse the provision of services to anyone without a real identity<sup>54</sup>.
- 41 Workers do not have independent and reliable channels to reflect their concerns. They might choose to stay anonymous and connect through instant messaging or social media networks when they expose any infringement of labour rights. Under the new laws, their messages could be screened out and considered as, for instance, false information to disrupt the economic and social order, or infringes upon the reputation. They might face the retaliation by employers or even

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<sup>46</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 19.

<sup>47</sup> *Cybersecurity Law* art 21.

<sup>48</sup> *Cybersecurity Law* art 12.

<sup>49</sup> < 國家互聯網資訊辦公室 > [Cyberspace Administration of China] 《互聯網跟帖評論服務管理規定》 [Provisions on the Administration of Internet Comments Posting Services] (25 August 2017) <[http://www.cac.gov.cn/2017-08/25/c\\_1121541842.htm](http://www.cac.gov.cn/2017-08/25/c_1121541842.htm)> art 8.

<sup>50</sup> *Provisions on the Administration of Internet Comments Posting Services* art 8.

<sup>51</sup> *Provisions on the Administration of Internet Comments Posting Services* art 8.

<sup>52</sup> *Provisions on the Administration of Internet Comments Posting Services* art 10.

<sup>53</sup> *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, above n 46, 6.

<sup>54</sup> *Cybersecurity Law* art 24.

prosecution.

### **Right to the Enjoyment of Decent Living for Themselves and Their Families**

- 42 The Committee on Economic, Social and Cultural Rights (the CESCR Committee) has recognize the right of everyone to the enjoyment of just and favourable conditions of work. The committee also recognize workers to have a decent living for themselves and their families.
- 43 The PRC Government promised to improve its minimum wage mechanism in National Human Rights Action Plan (2012-2015). The PRC Government promised to make effort to improve the wage-setting mechanism, the normal wage increase mechanism and payment guarantee mechanism, and the minimum wage adjustment mechanism. It also addressed that the collective wage negotiation mechanism shall be continuously implemented for enterprises.
- 44 The PRC government did not improve its minimum wage mechanism according to the plan. Minimum wage was not adjusted in the last 3 years in Guangdong from 2015 to 2017, and the standard was below RMB 2,000<sup>55</sup> even in the province's most advanced city Guangzhou. Compare to other province or city like Shenzhen, Shanghai, Beijing, Tianjin and Zhejiang, which are more than RMB 2,000, Guangdong has the lowest minimum wage. On the other hand, the Guangzhou Government announced that they will review the minimum wage level every three years, instead of every second year, which violated the regulation as stipulated in the national law<sup>56</sup>. As a result, the extension in review period would make the mechanism fail to reflect the change of commodity price.
- 45 Workers Empowerment (known as "WE") has conducted a research<sup>57</sup> on Workers' Wages and Living Expenses in 4 Regions in Guangdong Province. The research shows that 60% of the workers were earning a basic salary of less than RMB 2,000. Only 21.1% of the workers earn RMB 2,001-3,000 as basic salary. Although it is not lower than minimum wages legal standard, it is not enough for workers to feed their families.<sup>58</sup>

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<sup>55</sup> "Investigative Report on Workers' wage and Living Expenses in Four Tier Cities in Guangdong Province" by WE , <http://www.workerempowerment.org/en/research-reports/260>

<sup>56</sup> Article 10 of "Minimum Wage Regulations", [http://www.gov.cn/banshi/2005-08/05/content\\_20677.htm](http://www.gov.cn/banshi/2005-08/05/content_20677.htm)

<sup>57</sup> "Investigative Report on Workers' wage and Living Expenses in Four Tier Cities in Guangdong Province" by WE , <http://www.workerempowerment.org/en/research-reports/260>

<sup>58</sup> "Investigative Report on Workers' wage and Living Expenses in Four Tier Cities in Guangdong

46 **Recommendations:**

- 46.1 To establish minimum wage levels that are able to support living expenses of worker's family;
- 46.2 To establish minimum wage levels that are not lower than 40% of average local average wage;
- 46.3 Minimum wage levels are to be reviewed once a year. The adjustment of minimum wages should reflect the inflation rate and GDP growth;
- 46.4 PRC and local governments should disclose the calculation of the minimum wage levels and enhance transparency of decision making of minimum wage levels. Governments should conduct public hearings during reviews of minimum wage levels.

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

47 Records showed 35 million rural-to-urban migrant workers and their family members were working and residing in urban areas in 2014<sup>59</sup>. 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.

48 Migrant rural workers are ineligible to apply for social housing or subsidized 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 46% of rural migrant workers spent 15.4% of their income on accommodation when their employers failed to provide subsidized accommodation.<sup>60</sup>

49 15 million children of rural migrant workers live with their parents in urban areas<sup>61</sup>, but they are not entitled to free compulsory education. As a result, private schools

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Province" by WE , <http://www.workerempowerment.org/en/research-reports/260>

<sup>59</sup> [http://www.stats.gov.cn/tjsj/zxfb/201504/t20150429\\_797821.html](http://www.stats.gov.cn/tjsj/zxfb/201504/t20150429_797821.html), 2014 年全国农民工监测调查报告

<sup>60</sup> 2015 年全国农民工监测调查报告

[http://www.stats.gov.cn/tjsj/zxfb/201604/t20160428\\_1349713.html](http://www.stats.gov.cn/tjsj/zxfb/201604/t20160428_1349713.html)

<sup>61</sup>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> >

have been found to meet the need for education for these rural children. However, local education authorities have used different pretexts to shut down these private schools without rendering support to the affected students. 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.

- 50 According to the National Bureau of Statistics, the average monthly income of a rural migrant worker is RMB 3275 in 2016<sup>62</sup>, far lower than the average wage of their urban counterparts, which is around RMB 6504-7706.<sup>63</sup> Moreover, rural migrant workers often encounter illegal deduction or late payment, and this has stirred up a significant number of disputes. Obviously, lacking efficient protection to safeguard migrant workers' right of work is the main reason behind these disputes.
- 51 Although rural 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. It remains hard to see how the discrimination against rural migrant workers in old-age and medical insurance schemes can be eliminated as per the National Human Rights Action Plan.<sup>64</sup>
- 52 The Beijing Municipal Government conducted mass coercive evictions of low-income families in November 2017. As a result, many rural migrant workers were evicted, as well as many private schools for the children of the rural migrant workers were subjected to forced eviction. Moreover, the evictions were carried out in legally dubious manners. In an attempt to evict the residents, the Beijing Municipal Government terminated the water and electricity provision, and damaged the doors and windows, while imposing unreasonable denial to the residents' request of taking back their personal belongings, which violated Article 61 and 23 of the Administrative Coercion Law.

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<sup>62</sup> [http://www.stats.gov.cn/tjsj/zxfb/201704/t20170428\\_1489334.html](http://www.stats.gov.cn/tjsj/zxfb/201704/t20170428_1489334.html)

<sup>63</sup> [http://www.xinhuanet.com/fortune/2017-05/28/c\\_1121051751.htm](http://www.xinhuanet.com/fortune/2017-05/28/c_1121051751.htm) 2016 年度职工月均工资 7706 元

<sup>64</sup> National Human Rights Action Plan of China (2016-2020), [http://english.gov.cn/archive/publications/2016/09/29/content\\_281475454482622.htm](http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm)

**53 Recommendations:**

- 53.1 To eliminate all forms of discrimination and inequality in social policies caused by the *hukou* system;**
- 53.2 To reform social security systems to allow migrant workers to enjoy the same benefits as their urban counterparts;**
- 53.3 To reform social housing to allow those migrant workers in need to apply;**
- 53.4 To reform the education and examination systems to eliminate discrimination against rural children;**
- 53.5 To establish a living wage system to protect migrant workers from being exploited;**
- 53.6 To establish a public fund for all workers with unpaid wages.**
- 53.7 Stop all coercive evictions, and compensate the affected people;**
- 53.8 Hold legally accountable any individuals responsible for the illegal evictions of the urban poor.**

(5413 words)

