A Submission Concerning the People’s Republic of China for Consideration under the Universal Periodic Review by the United Nations Human Rights Council at its 31st Session from 5 November to 16 November 2018
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Labour Action China (LAC) is an independent non-governmental organization registered in Hong Kong Special Administrative Region, the People’s Republic of China (PRC). It is established in 2005 by a small group of people who have concerned and supported victims of work-related injury and occupational diseases in the Chinese mainland.

Together with three other Hong Kong based labour organizations, LAC had submitted joint stakeholder reports on labour rights in the last cycle.
RIGHT TO THE ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK

1. The Committee on Economic, Social and Cultural Rights (the CESCR Committee) has commented that

   [p]reventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work, and is closely related to other Covenant rights, in particular the right to the highest attainable level of physical and mental health.¹

   The PRC Government has subscribed to this international human right through the ratification of, inter alia, the International Covenant on Economic, Social and Cultural Rights ii in March 2001 and the Occupational Safety and Health Convention iii in March 2002. The same right is enshrined throughout 7 different national instruments. iv

2. In the previous cycle, the PRC Government has voluntarily accepted Iceland’s recommendation to “[c]ontinue its efforts to enhance labour rights and ensure the safety of worker”. v Likewise, a similar pledge was noted in National Human Rights Action Plan (2012-2015), which stated “[e]fforts will be made to ... improve working conditions, strengthen labour safety and protect the people’s right to work”. vi

   Poor Transparency

3. The collection and dissemination of updated and reliable data is crucial to the coordination of policy implementation and support programme on occupational safety and health (OSH). vii Four labour organizations urged the PRC Government to disclose detailed official
statistics and data on work-related injuries nationally and locally in the last cycle.\textsuperscript{viii}

4. The development and management of an information network to collect and analyse data in a timely fashion was addressed in National Occupational Disease Control Program (2009-2015), as a mission to build and strengthen the capacity in OSH prevention.\textsuperscript{ix} Health administrative departments at and above county level are assigned the responsibilities to conduct regular survey and analysis.\textsuperscript{x}


- 90 percent and above of relevant workers shall receive special health checkups, and 95 percent and above of persons in charge of businesses and occupational health managerial staff shall receive the required training.\textsuperscript{xi}

They are also reiterated in National Occupational Disease Prevention and Control Plan (2016-2020).\textsuperscript{xii} Other major indicators include both reporting rate of occupational hazards by employers in key industries and inspection rate of occupational hazards are set above 80 per cent in the same national plan.\textsuperscript{xiii}

6. 29,180 cases and 31,789 cases were reported nationally in 2015 and 2016 respectively as per the occupational diseases statistics released by National Health and Family Planning Commission (NHFPC) on 28 December 2017.\textsuperscript{xiv} Pneumoconiosis accounted for 93.92 per cent (26,081 cases) of all occupational
diseases in 2015; the number of cases soared to 27,992 (95.49 per cent) in 2016.\textsuperscript{xv} Besides, 548 cases of all chronic chemical poisoning were reported in 2015 and that leaped to 812 cases in 2016\textsuperscript{xvi}

7. In general, official statistics and data have been criticized for their reliability. Neither the NHFPC nor the State Administration of Work Safety explained their methodology and sources of information in this situation. According to an unofficial estimation of a private philanthropic foundation, more than 6 million victims were suffering from pneumoconiosis whom they were mostly internal migrant workers.\textsuperscript{xvii}

8. This criticism could also be compared and contrasted with an empirical research conducted around the same time. In this research, 59 victims suffering from various occupational chemical poisoning were effortlessly tracked in the electronics industry in Pearl River Delta region whom they were selected using convenience snowball sampling.\textsuperscript{xviii} That research did not take into account of those who worked in other industries, for instance, footwear and metallurgy where chemical substances are commonly used.

9. If official data were that reliable, this research would have successfully found more than 10 per cent of chronic chemical poisoning victims in just one part of Guangdong province out of 33 provinces and autonomous regions. 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.\textsuperscript{xix}

10. Nevertheless, actual progresses on reporting and monitoring are partially implemented. This is extremely difficult for grassroots organizations to obtain real and scientific pieces of information. 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.

\textit{Inadequate Prevention and Monitoring}

11. An operable mechanism of prevention is possibly the best way to minimize the occurrence of OSH hazards. Both State parties and non-State actors, such as employers and worker organizations, share the duties and responsibilities to it.

12. The primary duties and responsibilities for prevention and control of occupational diseases are on the employers.\textsuperscript{xx} They are obliged to provide information and training,\textsuperscript{xxi} personal protective equipment (PPE),\textsuperscript{xxii} etc. In reality, a significant number of enterprises did not follow and fulfil their statutory obligations.

13. The above mentioned research revealed that less than 10 per cent of the respondents had heard of OSH policy.\textsuperscript{xxiii} Over 95 per cent of them claimed that they did not receive any OSH training.\textsuperscript{xxiv} More than one third of the respondents stated that they were not
offered any necessary PPE at all.\textsuperscript{xxv}

14. As the CESCR Committee rightly states, States parties have a general obligation to ensure the accountability by establishing a functioning system of labour inspectorates, monitoring all aspects of leading to the fulfilment of this rights, providing advice to employers and workers; and raising any abuses with competent authorities.\textsuperscript{xxvi} Furthermore, they have specific legal obligations to take measures to ensure the compliance by third parties.\textsuperscript{xxvii}

15. In 2017, Liaoning Provincial Administration of Work Safety conducted an evaluation with the participation of 3,279 enterprises. Records of 586 enterprises were perused and 272 enterprises were selected for onsite inspection.\textsuperscript{xxviii} This evaluation depicted 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 employment contracts according to the Labour Contract Law; 93.3 per cent did not display any OSH warnings; but the most worrying is that 53.3 per cent failed to inform their workers the result of occupational hazards examination.\textsuperscript{xxix} Liaoning is a major industrial hub in the northeast. Not only its evaluation was alarming, but also has it showed the slow progress and partial implementation to prevent the violation from the third parties.
16. Besides work safety administrative departments, trade unions have been delegated to monitor and supervise the fulfilment of employers’ duties of care. But these unions are not truly worker driven and independent from any interferences in order to representing genuine interests of workers on the shop floor by formulating, implementing, reviewing, and monitoring laws and policies. Respecting trade union rights are unavoidable. 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”.

**Hindrance to the Right to a Remedy**

17. The right to a remedy is often encompassed the RIGHT TO SOCIAL SECURITY, but not limited to it. The CESCR Committee did emphasize and outline the remedial mechanism:

> Workers affected by a preventable occupational accident or disease should have the right to a remedy, including access to appropriate grievance mechanisms, such as courts, to resolve disputes. In particular, State parties should ensure that workers suffering from an accident or disease and, where relevant, the dependants of those workers, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, as well as access to rehabilitation services.

18. In the second Concluding Observations, the CESCR Committee has also urged the PRC Government that it has the undeniable obligation “to ensure ... access to medical and accident
insurance, as well as to adequate compensation for injuries and work-related diseases”.

19. Work-related injury insurance is a constituent of the Social Insurance. Its actual operation is governed by Regulation on Work-Related Injury Insurance. A worker shall be ascertained to suffer from work-related injury if they are contracted with any occupational diseases listed in the Occupational Diseases Classification and Directory. Apart from the work-related injury benefits, victims of occupational diseases shall have the right to compensation from employers according to relevant civil laws. Their expenditures on obtaining official diagnosis and rehabilitation, as well as their social security for the loss of ability to work, shall be governed by the work-related injury insurance.

20. The first step of entering legal redress is to obtain an official diagnosis where it could only be applied by the victims. It is the applicant’s burden to submit the following documents: (a) work history and exposure history of occupational hazards, including the length, the names of chemical substances, and so on; (b) records of occupational health examination; (c) test results of occupational hazards on the shop floor; (d) the personal dose monitoring records if the victim is suspected of radiation-induced diseases; and (e) any other relevant information.

21. 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 equally lack the incentive to provide all relevant documents to the victims whereby they would use these documents to prove their diseases occupational.

22. The entire process could be smoothly completed in 9 months. Both parties could trigger the appeal. The second appeal is final. When there are disputes in the verification on employment relations, types or length of job, and/or job duties, arbitration would become an extra procedure before reaching the first non-conclusive diagnostic result. If this were the case, it might take 4 or 5 years, from first diagnosis to receipt of compensation.

23. NHFPC revised the directory in 2016 and that has broadened the coverage to 132 kinds of occupational disease from the sum of 115. This directory is exhaustive although it has 4 open terms for exceptional circumstances related to respiratory, skin, and radiation-induced diseases, as well as chemical poisoning.

24. LAC have recently learnt that a deceased victim of chemical poisoning lost the final appeal to a provincial appraisal committee. The victim started to work for an electronics factory in August 2005 and diagnosed with multiple myeloma and plasma cell leukaemia in July 2015. The committee argued that his multiple myeloma was not an occupational tumour due to the fact that it is not listed in the
occupational diseases directory, whereas his plasma cell leukaemia was secondary although it is recognized as an occupational tumour. His final appeal was, therefore, rejected. When the primary disease is not listed in the directory, the right to a remedy has reached a cul-de-sac.

25. Another systemic problem is that the assessment mechanism is not reviewable by the judiciary because the pools of experts registered to appraisal committees do not have an independent legal personality, it is barely assigned to conduct the business on behalf of local and provincial health administrative departments.

26. Obtaining official diagnosis is just the first and crucial step. There are two more steps before claiming the work-related injury benefits. The second stage is to verify and confirm the disease occupational by local human resources and social security bureaux. Normally, this step is simply procedural and dispute-free.

27. The last stage is assessing the loss of labour capacity to the disease where it is the determinant of the work-related injury benefits and tortious claims. It is normally conducted in the end of one year’s treatment period, which is applicable to all work-related injuries and occupational diseases. The problem is some occupational diseases could not fit into this way of examination.

28. LAC have learnt an occupational leukaemia victim was in
critically condition that a bone marrow transplant was the only lifesaving option. So his wife had to borrow more than 400,000 yuan (equivalent to US$65,000). Unfortunately, his disability was rated low since the assessment conducted in remission period after the transplant and hence that has affected his enjoyment of work-related injury benefits. It is important to note that the expenditures on bone marrow transplant was not recoverable!

29. Despite the availability of access to have a legal redress, the scope of occupational diseases is very narrow. Moreover, 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.

LABOUR RIGHTS UNDER THE REGIME OF CYBERSECURITY

30. The **RIGHT TO FREEDOM OF OPINION AND EXPRESSION** is a justiciable right enshrined in the International Covenant on Civil and Political Rights. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated, it is customary to extend the same right to the cyberspace.

31. Together with the National Security Law, the Cybersecurity Law and the subsequently announced National
Cyberspace Security Strategy\(^1\) have revealed the intent of the PRC Government in claiming its sovereignty over the cyberspace.

32. Private intermediaries are imposed an excessive liability to screen online activity\(^{li}\) that:

   - endangers national security, honour and interest, incites to subvert the state power or overthrow the socialist system, incites to split the country or undermine national unity, advocates terrorism or extremism, propagates ethnic hatred or discrimination, spreads violent or pornographic information, fabricates or disseminates false information to disrupt the economic and social order, or infringes upon the reputation, privacy, intellectual property rights or other lawful rights and interests of any other person.\(^{lii}\)

This extensive scope could leave the authorities a broad discretion to determine what is constituted to cybersecurity.

33. The intermediaries could refuse to publish and subsequently delete all posts and comments,\(^{liii}\) restrict or even shutdown any accounts.\(^{liv}\) They must keep all records\(^{lv}\) and deal with any report promptly by third parties where Cyberspace Administration would monitor these reports.\(^{lvi}\)

34. Encryption and anonymity are absolutely essential to protect and advance the freedom of expression.\(^{lvii}\) However, the intermediaries could refuse the provision of services to anyone without a real identity.\(^{lviii}\)

35. Most labour issues, such as, OSH prevention and wages, are
closely related to all workers. Workers do not have any independent and reliable channels to reflect their concerns. As such, they might choose to stay anonymous and connect through instant messaging or social media networks to expose these violations.

36. 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 then face retaliation by employers or even prosecution. Recently, some workers have been criminally charged for “picking quarrels and provoking troubles”. On 16 March 2018, an environmentalist was administratively detained for “disseminating rumours causing the disruption of public order” because she posted an “unverified” picture and related it to the pollution of a quarry. On the other hand, the quarry was ordered to suspend business for rectification. Using online tools has become more risky when it could stir public outcry or it is about collective labour disputes.

37. **Recommendations:**

a) To disclose detailed official statistics and data on work-related injuries and occupational diseases promptly;

b) To strengthen labour inspection and enforcement of OSH legislations;

c) To allow independent and worker driven trade unions in monitoring OSH prevention;

d) To invert the burden of proof to the perpetrators when
victims apply for official diagnosis;

e) To simplify work-related injury compensation system by removing unnecessary hurdles, and increase its transparency and accountability;

f) To reform the disability assessment systems more adaptable to various circumstances.


Ibid.