

CHINA¹

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1. Introduction

Over the past three decades, while China emerged as the “World’s Factory”, a large proportion of its workers has been increasingly exposed to occupational hazards. By the end of 2001, the International Labour Organization (ILO) estimated that China’s workplace fatality rate was 11.1 persons per 100,000 workers, compared with a rate of 4.4 per 100,000 in the United States. Industrial accidents rose by 27 percent between 2000 and 2001². According to official Chinese government statistics³ covering the years 2006 to 2009, industrial accidents increased by more than 15 percent per year. From 1949-2010, China’s State Administration of Work Safety (SAWS) recorded 749,970 cases of occupational disease for the entire country. In 2009, 380,000 incidents happened in the workplace that caused death or injury. Of that total, 83,196 people lost their lives in work-related incidents, meaning that 228 workers died every day that year⁴.

In China, monitoring working conditions remains a great challenge, especially in small-scale enterprises, where few industrial accidents are reported. In Asia in general, we have found that the official statistics and reports of occupational accidents and fatalities reflect only the tip of the iceberg, but not the real situation on the ground. The situation of occupational safety and health (OSH) in China has also been found to be more serious than the official presentation.

The present report is the result of discussions and common concerns raised at the 2010 Asian Network for Rights of Occupational and Environment Victims (ANROEV). These concerns were mainly the unreliability of the existing data on OSH conditions across Asian countries, which in turn obstruct the understanding of OSH conditions in these countries. During 2010 and 2011

Asia Monitor Resource Centre (AMRC), Worker Empowerment (WE), and Labour Education and Service Network (LESN) joined forces to produce this report on the OSH conditions in China. We trust it will contribute to the discussion and understanding of OSH conditions in Asia, and toward building the platform of NGOs striving for the rights of victims of occupational injury and disease.

In this paper, we first outline the current institutional framework concerned with OSH in China, the laws and regulations, their enforcement and their effectiveness. Secondly, we analyze the available official data on OSH conditions in China and contrast it with data gathered by community-based organizations. In this way we will be able to obtain a clearer and truer picture of the actual OSH situation in China and analyze the causes for the gaps in the two sets of existing data. As such, this study relies on two types of data. On the one hand, quantitative research has been done by reviewing descriptive statistical data gathered from the following sources: *China Statistical Yearbooks* from 2003 through 2010, *China Labour Statistics Yearbooks*, and *China Labour and Social Security Yearbook*, published by the Ministry of Statistics and the Ministry of Human Resources and Social Security (MHRSS); and data collected by various community-based worker service centres⁵, which include 409 cases from Shenzhen collected in 2009, 4,401 cases from Guangzhou collected between 2003 and 2006, and 1,560 cases from Dongguan collected between 2006 and 2009.

In addition, this statistical data is contrasted with first-hand qualitative records of occupational accidents, injuries and fatalities collected by community labour service centres, and which point out the causes of the gaps in official reports. Qualitative data gathered through workers' group discussions, and individual and collective case studies are used to document the lives of the victims, and draw a picture distinct from the statistical reports, hence enabling a deeper understanding of the workers' situation and their lives on the ground.

Despite the limitations of the data⁶, which may only project some faint snapshots of current conditions and regulatory practices in China, it does identify key areas where further research and policy analysis is necessary. Our goal is to bring forward workers' voices rather than discount the official presentation. Finally, we outline NGOs' strategies in relation to OSH and sketch our conclusions.

2. OSH Institutional Framework in China

2.1. Legislative and administrative framework

Since the 1990s, the Chinese government has explicitly mandated the establishment of a socialist market economy under the rule by law, which is actually a set of rules pursuing the establishment of a “harmonious society” and increasing productivity, rather than a legal framework defending workers’ legal rights. With the start of China’s economic transformation to a socialist market economy in 1992, labour conflicts have become more and more serious; hence, the Labour Law of the People’s Republic of China was promulgated on July 5, 1994, coming into effect on January 1, 1995. The Labour Law is the basic legal code for the adjudication of labour relations. It has provided a framework for the labour contract and collective contract systems, a tripartite coordination mechanism, labour standards, a system for handling labour disputes, and a labour supervisory system, basically shaping a new law-based approach to labour relations in consonance with the socialist market economy. Since the 1995 Labour Law, several additional, important laws and regulations have come into force.

In China, OSH measures have been developed under a joint effort of the World Health Organization (WHO), the International Labour Organization (ILO), and the International Commission on Occupational Health (ICOH) to protect all employees, including workers in small-scale enterprises or in the informal sectors. China signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on October 27, 1997, but still has not ratified ILO Convention 155 on Occupational Safety and Health, 1981, and ILO Convention 161 on Occupational Health Service, 1985. These two conventions are the main international occupational safety and health (OSH) conventions.

The ILO Japan-Asia Pacific Regional Seminar on Occupational Safety and Health Management Systems was held in Kuala Lumpur in May, 2001, with China participating as one of its eleven member countries. Soon after, in July 2001, China held a tripartite seminar⁷ to review the national laws and implementation practices, in conjunction with the provisions of the ILO Conventions mentioned above. The Law of the People’s Republic of China on Safety Production (hereinafter referred to as the Work Safety Law) was promulgated by the Ninth National People’s Congress on 29 June 2002, and went into effect on 1 November 2002; the Law on the Prevention and Cure of Occupational Diseases (hereinafter referred to as Occupational Disease

Control Law), was promulgated on 27 October 2001, and put into effect on 1 May 2002. Two years later, the Work-related Injury Regulations (hereinafter referred to as Work Injury Regulations) set a legal framework for work injury compensation, which was promulgated by the State Council on 27 April 2003, and put into effect on 1 January 2004.

The aforementioned OHS-related legal framework stipulates basic principles governing the prevention and control of occupational diseases, protective measures, hazards monitoring and management in workplaces, diagnosis of occupational disease, health authority inspections, and the liabilities incurred by those violating the law. Moreover, these national regulations define workers' occupational health rights, the obligations and duties of employers to protect the health of their employees, the responsibilities of the governments at various levels, and trade unions' representation in workers' health protection.

Nevertheless, OSH-related laws are only broad guidelines that the State Council decrees and passes downward through a decentralized administrative structure to the People's congresses at the provincial level and local departments which are responsible for implementing them. Lower level governmental agencies can also issue their own local regulations at the local bureaus of Human Resources and Social Security⁸ or at local People's courts. Due to the number of different authorities involved in legislating and administrating OSH matters, coordination among them becomes highly problematic, and the implementation process can be distorted. This situation may be the cause of the gap between the legal mandates and the practices on the ground, where in some occasions, no regulation applies, or even different and contradictory indications co-exist.

Above and beyond this administrative maze, the local regulations at different provincial levels can be highly influenced by the investors in the area, as local legislators tend to protect employers' interests allowing them to save on costs at the expense of worker's rights. Workers' rights are additionally vulnerable, since the role of the All-China Federation of Trade Unions⁹ (ACFTU) is a two-fold role: It acts as both an agent of the government and nominally of the workers, while additionally supporting enterprises. According to Article 7 of the Work Safety Law, "trade unions shall, in accordance with law, make arrangements for employees to participate in the democratic management of and supervision over work safety in their units and safeguard the legitimate rights and interests of the employees in work safety." The ACFTU is supposed to monitor the enforcement of the law, and ensure that workers' rights are not violated. Although in recent years, the number of trade unions under the

ACFTU has increased, their functioning is still severely limited by a top-down union structure and a weak membership base. In practice, the ACFTU only provides passive intervention if the worker requests its assistance.

Overall, although OSH-related laws and regulations are in place, due to a decentralized administrative structure and the conflicting interests of the different governmental agencies and actors involved in the implementation process, the protection afforded under the law is weakened, and workers' rights are repeatedly violated.

2.2. Enforcement in a complicated administrative structure

As mentioned above, one of the fundamental reasons for the intricate problems in the Chinese OSH system is that the implementation mandate of OSH-related laws is distributed between different government bodies. At the central level, the health and work safety administration authorities are, namely, the Ministry of Human Resources and Social Security (MHRSS), the Ministry of Health (MH), and the State Administration of Work Safety (SAWS). These actors and other related departments have overlapping roles and responsibilities, which cause problems in the implementation and enforcement of OSH-related laws.

Firstly, the Ministry of Human Resources and Social Security is charged with enforcement of the law, and will issue mandatory 'Notes for Compliance' to factories that violate the regulations. It also investigates serious cases of occupational injury and accident, monitoring the factories with high occupational risks. It is responsible for handling the issue of work injury certifications, to arrange identification of disabilities, and to provide work injury insurance to the injured workers. The ministry relies on the Department of Human Resources and Social Security at the provincial level, which supervises the municipal bureaus of Human Resources and Social Security at the city levels.

The Ministry of Health relies on the Centre for Disease Control and Prevention (CDC) and the local Prevention and Treatment Centre for Occupational Diseases at various administrative levels as its key agents carrying out health inspections. The Prevention and Treatment Centre for Occupational Diseases also investigates the identification and therapy of occupation diseases.

The State Administration of Work Safety (SAWS) regulates and monitors the safety and health working environment, to prevent the workplace from

developing sources of hazards or injuries, such as fire, dust, poisoning, harmful noise, radiation, etc. One of its duties is to visit factories and mines regularly and set up health and safety files on the workers. When the local Prevention and Treatment Centre for Occupational Diseases receives a case of occupational disease or complaint from a worker, the State Administration of Work Safety carries out an inspection of the factory and reports back to the local Prevention and Treatment Centre for Occupational Diseases to issue the occupational disease certificate.

The lack of co-ordination between the ministries and bureaux leads to very low efficiency in terms of implementation and monitoring, therefore prevention of accidents and injuries seems to fail. Corruption and abuse of power by the authorities are the most common reasons for this. Although the local labour department or the local trade union under the ACFTU may try to carry out inspections, the labour department alone is not powerful enough to stop factories from violating safety standards and refusing to pay compensation to workers. Moreover, migrant workers are usually pushed back and forth between various departments when they seek intervention from the authorities to resolve their occupational injury case, as this report from a benzene-poisoned worker highlights:

“I’m seeking compensation to pay for the treatment. The boss in the factory totally refused to discuss the issue with me. I went to the Bureau of Human Resources and Social Security to complain and ask for help. All this money should be paid by the boss first, and after he can claim the money back from the Ministry of Human Resources and Social Security. The officers in the Bureau of Human Resources and Social Security said they had called the factory already. They did their job. Since I am desperate for a result on the payment of the treatment fee, I just stayed in their office and refused to leave. They then suggested that I go to the trade union to ask for help. When I arrived at the trade union office, luckily I chatted with the newly-arrived trade union chairperson, who was a woman of about 30 years old. Maybe because she’s new and young, she didn’t know too much about the power struggle in the area, she agreed to fix the compensation fee within one week. The officer behind her warned: “Hey, that Taiwan investor is a big one, not easy to fight with. Are you really sure you want to help this worker? It’s hard to fix it!” (Wu Zhigang, an occupational disease victim)

As Wu's experience shows, trade unions and the local government tend to protect and coordinate with the enterprises to ensure good relations and that nothing will disrupt the flow of revenue that comes from the tax and rent income of the investors. This kind of local protectionism and conflicts of interests proliferate through inefficient monitoring and enforcement of the law. Hence, violations and non-compliance with the laws are a frequent occurrence

2.3. Complicated procedures to obtain compensation

The formal procedures necessary to seek compensation for occupational injuries or diseases, as they are governed by the aforementioned legal and administrative structure, are cumbersome and complicated. This section highlights the difficulties encountered by workers that seek compensation and the reasons why so many of them give up in the middle of the process.

The procedure to obtain compensation is regulated by the Work Injury Insurance Law, the Law on Prevention and Control of Occupational Diseases, and the Production Safety Law. In order to seek compensation, the Work Injury Certification is used to identify and confirm that the injury was caused by a job-related issue or accident; the Identification on Work Ability is used to identify the level of disability caused by the injury. There are four major steps in the process to obtain compensation. First, the workers must have their injury identified as an occupational injury, for which they need to apply for the Work Injury Certification within one year after the accident happened in the workplace. Second, the workers must apply for the Identification on Work Ability and wait for the results of this evaluation.

To add to this painstaking and time-consuming legal procedure, there are a number of additional barriers, which include the labour contract and the occupational disease diagnosis. Yet even before the compensation can be sought, the injured worker needs to submit his or her labour contract to the authorities to prove the existence of a 'labour relationship' with the employer, i.e., proof of employment. Ironically, this is one of the greatest difficulties faced by the injured worker. This was vividly shown in the "Executive Summary of the China Labour Contract Law Implementation Survey, 2009", a report on the Pearl River Delta region (PRD) conducted by a workers' centre based in Shenzhen:

"The percentage of respondents having signed a written labour contract in the Pearl River Delta is 67.30 percent and in the Yangtze River Delta (YRD) it is 83 percent. The common contract period is one to

three years, and only 8 percent of respondents have permanent contracts. Overall, about 75 percent of respondents report having signed labour contracts with their employer in the YRD and PRD. Enterprises with 100 employees or less were found less likely to have given their employees labour contracts at all (“Executive Summary of the China Labour Contract Law Implementation Survey, 2009”, Dagongzhe Centre).

In fact, there is a relationship between the size of the enterprise and the rate of occupational accidents. The findings of one workers’ centre show more than 50 percent of all accidents happen in factories with fewer than 250 workers.

Table 1. Relationship between factory size and occurrence of occupational accidents.

Factory size (# of employees)	Occurrence of accidents (%)
Less than 50	17.7
50-249	40.4
250-499	12.8
500-999	9.2
More than 1,000	12.1

Source: Data from a workers’ services centre in Guangzhou, monitoring 20 hospitals and on 4,401 cases of occupational injury between 2003 and 2006.

In the case of workers with occupational diseases, it is more difficult to obtain compensation, since in addition to submitting the employment contract to prove an established labour relationship with the employer, occupation disease victims also need to obtain an occupational disease diagnosis before they can obtain a work injury certification. The diagnostic process may take at least nine months, and it can be prolonged to several years. Many victims of occupational disease have been trapped for years just in the process of obtaining the certification, before entering into the legal proceedings to seek compensation. Due to this lengthy process, some workers die before they can obtain the work injury certification.

After obtaining the certificate, the injured worker will receive a notice from the Ministry of Human Resources and Social Security (MHRSS) which will enable them to receive part of their compensation. The level of disability

is divided into ten levels and compensation will depend on the level of the disability. The payment of compensation then is divided into three major parts. The Ministry of Human Resources and Social Security provides one third of the compensation to the worker immediately after the certification is achieved. However, for the worker to achieve the other two thirds of the compensation, which is provided equally by the MHRSS and the employer, he or she has to be dismissed or resign. It is not until this moment that a worker is able to obtain the entire compensation payment.

Moreover, the calculation of the compensation is done using the average wage of the last twelve months before the accident happened. Thereafter, depending on the disability level, the average wage will be provided for a fixed period (calculated in months). Hence, workers have to provide evidence or proof of the average wage of his previous position in the twelve months before the work injury occurred. The worker's difficulties do not end there. If the worker has not kept the pay sheets (pay slips) for the past 12 months – and many have not – he or she must get copies from the MHRSS or employer who may have understated payment in order to lessen the company's social insurance payments. The Social Insurance Law requires that the employer and the worker share the payment of the social insurance, with specific proportions of the actual wages¹⁰ paid by each to the Social Insurance Fund on a monthly basis.

In practice, most employers use the minimum wage to pay their portion to the Social Insurance Fund, and this then will affect the calculation of the compensation: When the worker has no proof of the real wages he/she has been receiving, the compensation is calculated using the average wages recorded with the MHRSS (records coming from the Social Insurance Fund). This is likely to be much lower than the worker's real wage, and compensation lower than the amount worker should receive. To demand fair compensation, workers have to enter into litigation and follow all the lengthy legal procedures.

Nevertheless, the data show that seven out of ten workers are not willing to seek



A furniture worker injured twice in the factory, with his four fingers lost and bone fracture in his leg.

compensation using these legal procedures. A lack of legal knowledge and the costly, time-consuming process are the major factors that deter workers from seeking compensation. Usually, workers use informal methods to bargain with their employers, which lead to a much lower settlement, often 40 percent lower than the legally required compensation level. Moreover, in most cases, workers that do informally bargain with the employer are immediately asked to resign or are dismissed:

“As you can imagine, most of our income comes from the overtime pay. Once you get hurt, the factory only pays us a basic salary of Rmb1,200 a month as stipulated in the regulations, but it is not enough to support oneself in the urban area. What’s more, the legal procedures usually take more than half a year, and it is too difficult for me to understand those procedures, even appeal at the courts. I really can’t wait to get the compensation through the proper legal procedures. I am better off going back to my home village. Living in the city is too expensive for me.” (Li Changfu, a worker injured on the job)

3. Causes of the gap between official statistics and community reports

Below we analyse the existing, official OSH statistics and contrast them with reports produced by community-based organizations - with the intention of highlighting the causes of the gaps between the two sets of data it should firstly be emphasized that the statistics of occupational diseases and work injuries are largely under-reported due to the large number of undiagnosed cases among migrant workers. In particular, official statistics are missing the figures on those migrant workers who return to their home village after they are dismissed by their employers due to their illness, and those who give up on the tedious process of seeking compensation. In fact, the Centre for Disease Control and Prevention (CDC), the Ministry of Health, and the Ministry of Human Resources and Social Security admitted that these figures are based only on the number of diagnosed cases and those with work injury certifications. Moreover, the data available in the China Labour Statistics yearbooks only presents the number of workers that were beneficiaries of the social insurance scheme, hence, those that applied under the Social Insurance Law and who were qualified to officially seek compensation and succeeded in getting it from the Ministry of Human Resources and Social Security (See Table 2 below).

Table 2. Compensation insurance and industrial injury insurance cases, 2005-2009

Year	Work injury insurance contributors at yearend	Change over previous year	Beneficiaries of work insurance	Change over previous year	People Identified as disabled	Change over previous year
2005	84,777,999	--	650,536	--	511418	--
2006	102,684,600	17.40%	778,201	16.40%	605,636	15.60%
2007	121,733,619	15.60%	959,996	18.90%	756,623	20.00%
2008	137,872,324	11.70%	1,180,000	18.60%	1,011,440	25.20%

Sources: *China Labour Statistical Yearbook, 2007-2009* and *China Labour and Social Security Yearbook, 2007-2009*.

In contrast, reports by community-based organizations depict a different OSH landscape. During 2009, one of our China-based partners, a migrant workers' centre in Shenzhen, visited and monitored the victims of 409 cases of work-related injuries. Even with the support and legal consultation services provided by the centre, only half of the workers (232 workers) were willing to apply for the Work Injury Certification. From 2007 to 2009, another migrant workers' centre in Shenzhen handled 2,131 injury-related cases, of which more than half had no injury insurance provided by the employer. As for the distribution of injuries by industry, data from the 409 work-injured cases show that 21 percent of cases were in the hardware industry, 14 percent occurred in the furniture manufacturing industry, 10 percent in the construction industry, 6 percent in the plastics products industry, 5 percent in services industry, 3 percent in the printing industry, and 33 percent in other industries¹¹. A third report based on 1,560 cases from Dongguan indicates that 89 percent of those with occupational injuries were male and 11 percent female¹².

Analyzed in terms of the causes of occupational disease, it has been found that since 2001, the year when official statistics began listing the item of occupational disease, the main cause of occupational disease has been silicosis. In 2009, more than 91.89 percent of new cases were of silicosis: 14,495 people were said to be suffering from this occupational disease, and 748 died of it. Following pneumoconiosis, occupational poisoning is the second major cause of occupational disease and death: There were 2,184 affected victims and 21 deaths. Occupational poisoning is mainly due to three substances: lead (56.59 percent), benzene (10.88 percent), and arsenic (8.63 percent). Benzene poisoning was the cause of 22 cases of leukaemia that same year¹³. However, in 2009, an

NGO in Dongguan followed up more than 50 workers suffering from leukaemia due to benzene poisoning:

“In 2010, there were more than 20,000 industrial and mining enterprises with occupational hazards problems in Dongguan (a city in Guangdong Province). They employed more than 5.5 million workers, but only 6,000 enterprises reported occupational hazards to the relevant government offices. The State Administration of Work Safety only monitored 280 enterprises out of these 6,000. Moreover, only 58,000 workers out of 5.5 million workers have regular occupational health checks, less than 2 percent of the total number of workers who are required to have these checks” (Dongguan Daily, 2 Aug, 2011).

“Until this year (2010), there were only two hospitals in Dongguan with the qualifications to carry out occupational health examinations. Recently, the Health Department of Guangdong Province has issued the good news that five more hospitals have been given occupational health examination qualifications to start conducting occupational health examinations in the coming year (2011). In total, there are seven hospitals with occupational health examination qualifications, which can provide services to the 5.5 million workers in the area.” (Dongguan Daily, 2 Aug, 2011)

Due to the ineffective and inconsistent monitoring of the health and safety regulations and conditions, many enterprises simply ignore these regulations. Moreover, access to reliable information, as has been seen, is scarce. Local media coverage of occupational accidents is patchy. Although the media often reports the occurrence of serious accidents, information regarding more sensitive and serious accidents is blocked by the government, whether in the media or on the Internet. This results from the political pressure of creating a “harmonious society” and the government’s censorship of all “inharmonious” reality and discussion.

Therefore, we can only have snapshots of this reality derived from local community cases. In turn, this report can only estimate the existing gap in the information on OSH in China. By using the existing data, we try to map out and extrapolate the actual OSH situation, and call for further improvement in the future.

4. Looking into cases of occupational diseases and work injuries

4.1. An individual case of a benzene poisoned worker

Worker Ng, who worked in a leather factory in Dongguang, contracted leukaemia from benzene poisoning in 2010. After he was diagnosed with acute leukaemia in the hospital and was identified as a potential case of occupational disease, he approached his employer to demand that he take care of the medical expenses. But the employer refused. Like many other patients with occupational diseases, Ng had to overcome many difficulties in the long and tedious process to claim his rights.

Generally, the first problem is that the employer always refuses to pay for medical and living expenses during the period needed to confirm a diagnosis of occupational disease. Even if the employee is identified as a victim of an occupational disease, it is very difficult for him or her to claim back the medical and living expenses from the company. During the application and diagnosis period,, Ng's employer refused to provide evidence of the use of toxic chemicals in the factory, which slowed down the entire process. After the Workplace Injury Identification was finally approved, the employer did not comply with the law and did not pay Ng's salary and other expenses incurred during the treatment period. Ng was even forced to sign an agreement with the employer to reduce the cost of living payments that the company was legally required to pay.

Ng and his family made an attempt to file a complaint about these problems with different government departments such as the Health Inspection Bureau, the Labour Bureau, and the Petition Bureau, but none of the bureaux offered any practical assistance and even discouraged their actions, which is a common response many workers receive when fighting for their rights. It is apparent that there are great problems in the enforcement of the Work Injury Insurance Law at many levels of government, and patients with occupational diseases are not only unfairly treated under the existing system, but are also trapped in its tedious procedures.

4.2. A collective case of GP cadmium-poisoned workers

In 2004, an outbreak of cadmium poisoning occurred in four subsidiary factories of Gold Peak (GP) Batteries in mainland China as well as in Hong Kong. From that year until 2010, a total of 500 workers were diagnosed with

excessive cadmium levels in the blood, and 22 workers were confirmed to have been cadmium poisoned. Gold Peak Industrial Ltd. is an Asian transnational corporation (TNC) based in Hong Kong and Singapore. GP's customers include EverReady, Siemens, Panasonic, Nikon, Canon, Rayovac and Toshiba.

Cadmium is a chemical used to produce batteries. Workers affected with cadmium will face health problems for years even if they do not show symptoms of illness at the time of coming into contact with this chemical. Gold Peak (GP) which had been producing batteries since the mid-1980s, provided totally ineffective masks to their staff, which resulted in workers inhaling the fine cadmium powder. The company even ordered pregnant women to process cadmium alongside non-pregnant women. As a result, the children of these women were also found to have high-levels of cadmium in their bodies due to their mothers' daily contact with the substance. In 2004, greatly suspicion of the official medical tests arranged by the management of the factory, some of these Gold Peak (GP) workers went to the Guangdong Provincial Hospital for the Prevention and Treatment of Occupational Diseases to have new medical tests done. The results of these tests were alarming and showed that the levels of cadmium in their body were much higher than the levels shown in the tests that had been done at the request of the factory management. The 500 workers were outraged and staged a three-day strike in June 2004, demanding the Gold Peak (GP) management recognize the accuracy of the second set of test results performed by the provincial hospital and asked for financial coverage for proper medical treatment.

According to an interview with five Gold Peak (GP) employees who had been shown to have cadmium poisoning, they went through a long battle with the company, fighting for their rights and compensation. Gold Peak (GP) at one point forced them to resign and sign unfair compensation agreements. The affected workers were under great pressure from the company and the local authorities, which included close surveillance of their actions and even violent assaults. In response, workers at the factories went on strikes, staged protests, met with government officials, and filed a lawsuit to exert pressure on the company. With support from labour groups in Hong Kong, a number of demonstrations were held at the offices of Gold Peak (GP) in Hong Kong Worker representatives also visited trade unions in Europe seeking assistance.

After six years of struggle, in September 2010, 152 former workers from the Huizhou factory of Gold Peak (GP), all with excessive cadmium levels in their systems, won their lawsuit against Gold Peak (GP). The court found in favour of the workers' claim for RMB 6.03 million cash compensation. The

workers were also granted nutrition fees and wages based on average monthly salary of the urban residents.

The success of the collective action of the Gold Peak (GP) workers proved that solidarity among workers and support groups is essential. In the case of Gold Peak (GP), the active involvement of NGOs in the process, lobbying work, media strategies, and pressure from foreign organizations all were positive factors that facilitated the success of the workers' movement.

4.3. An individual case of an injured worker

Chen, a 45 year old male worker in the furniture manufacturing industry, suffered an injury on March 2011. In the previous ten years, Chen had worked in eight different factories, seven of which produced furniture. In January 2011, Chen resigned from his position. After the Chinese New Year, Kanan, a furniture making factory recruited workers for their craft production line. This specific production process required very experienced and skilful use of sharp carving tools used to make the carved patterns on the wooden furniture. Chen started working at Kanan factory on February 24, 2011, and signed an employment contract with Kanan which gave him a monthly salary of Rmb2,200-2,300 a month, two holidays per month, and a daily work schedule of 8 am to 9 pm. The manager made an oral agreement with Chen that work injury insurance would be provided at a later date.

Chen was sent to the production line with no training whatsoever, and the division manager just asked him to observe and learn how the other workers used the machines and the tools. As Chen had not worked in such a skilled carvers division before, the production process was new to him. Six days after entering the factory, on 3 March 2011, when Chen was carving the patterns on a wardrobe, he severely injured the palm of his left hand. The other workers at the workplace tried to stop the bleeding and immediately sent Chen to the hospital. At the time, Kanan paid a deposit (part of the treatment fees) to the hospital and agreed to pay injury compensation without mentioning any specific amount.

As Kanan had not yet provided Chen with work injury insurance, it was actually obliged to pay the treatment fees and other compensation payments in full. For this reason, Kanan's management was not willing to report the injury to the Bureau of Labour and Social Security. However, when Chen's condition stabilized, he applied for the Work Injury Certification and for the identification of the level of disability, which was set at level 10.

However, throughout this process, Kanan was not cooperative. In July 2011, Kanan started to put pressure on Chen to resign, but he refused and reported Kanan's behaviour to the Bureau of Labour and Social Security. The bureau initiated consultations and discussion with both Kanan and Chen individually, but failed to resolve the issue. Thereafter, Chen prepared the necessary material and applied for the Bureau of Labour and Social Security's arbitration committee. At the end of July, the same day that Chen handed in the arbitration request to the bureau, Kanan informed the bureau of its willingness to discuss the issue again. Hence, Kanan's management and Chen met up and Kanan offered Chen Rmb15,000 in compensation. Chen initially refused. However, due to the anxieties over the length of the process and his housing and living expenses, Chen finally settled for Rmb20,000 in compensation. This, however, was only 59 percent of what he was legally entitled to. Had he decided to refuse this offer, he would have had to wait more than two months for the results of further arbitration to be concluded, in addition to having to deal with uncertainty of the outcome of this process.

Chen reached the Rmb20,000 compensation settlement after having bargained with Kanan management. The words from Kanan's division manager during the bargaining process are still fresh in Chen's memory: *"You want to employ a lawyer? Haha... They (Kanan) also have a legal consultant. How long do you think you can play with them? Considering the time, the amount (Rmb 20,000) for us (workers) is almost decent!"*

5. NGOs' strategy

Our aim is to encourage workers to defend their right to healthy and safe working conditions by themselves. To pursue this aim, NGOs employ the following strategies:

- 1) Provide hospital visits, legal consultation services, legal and paralegal assistance, and organization of workers' support groups in the community;
- 2) Assist workers in organizing solidarity action, such as media appeals and petitions to the authorities, as well as support during the litigation procedure;
- 3) Organize public events and action and alliance building with civil society organizations to create a pro-labour support network;
- 4) Advocate for legislative changes in the OSH system in China, by collecting and analyzing a large number of cases and by building an advocacy platform that represents workers, mainland China and Hong Kong labour NGOs, Chinese academics and legal experts.

NGOs' strategies have the common goal of empowering workers to self-organize and pursue their rights autonomously. However, some basic challenges remain for NGOs, including improving their access to workers and empowering them, especially migrant workers. For workers who usually have long shifts of nearly 10 to 12 hours a day, it is difficult for them to access OSH information, get legal training or set up contacts with the support network to start the empowerment process, let alone engage in self-organization.

6. Conclusion

The real statistics on occupational hazards and accidents in China remain unknown, but they are believed to be highly underestimated and underreported due to poor enforcement and poor monitoring of OSH-related laws; the cumbersome, lengthy process of verification of the injury and degree of disability; and a lack of an accountable and transparent mechanism to compile statistics. Worse still, many hidden problems have been exported to other Asian countries.

In the process of global industrial relocation, enterprises seek locations with the lowest costs, and with lax and imperfect laws and regulations to reduce productivity risks (as avoiding raising production costs). In 2011, the relocation of enterprises settled in China has followed two paths: towards China's hinterland or towards Southeast Asian countries. With the new industrial set-ups following the old models, these have created the same labour and OSH problems in other countries. In fact, the OSH problems in these new locations appear as serious as in the previous location in China, and workers also face low wages and casualization of labour.

Hence, we emphasize the importance of further investigating OSH conditions in China and elsewhere, not only because the data itself is unreliable, but also because it will provide the basis to further advocate for improvements of OSH conditions across the region.

The most critical and difficult challenge for most workers and labour NGOs in Asian countries is to find ways to contribute to the improvement of OSH conditions in a more open and sustainable way under authoritarian regimes. Indeed, if we have the strong conviction that OSH is a basic human right, NGOs should mobilise resources to demand these rights and seek space for workers to enjoy their rights in an autonomous and collective way. Of course, the sustainable strategy is to empower workers to demand their rights

themselves. Workers must realise that they are the key actors, they must make themselves visible, and they should speak out, learn, and be actively involved in monitoring their working conditions at their workplace.

Endnotes

1. The report was originally presented at the annual meeting of Asian Network for the Rights of Occupational and Environmental Victims (ANROEV) in India in November 2011.
2. Garrett D. Brown and Dara O'Rourke. "The Race to China and Implications for Global Labour Standards". *International Journal of Occupational and Environmental Health*, 2003; 9, p.229-300.
3. *China Labor Statistical Yearbook, 2007-2010, and China Labor and Social Security Yearbook, 2007-2010*.
4. *China Labor Statistical Yearbook, 2010*.
5. Data was collected by five community-based workers service centres through hospital visits and case studies. The five service centres are grassroots labour NGOs based in the Pearl River Delta, three in Shenzhen and two in Dongguan, which conduct regular visits to hospitals and provide free legal consultation and legal aid services to injured workers. For reasons of confidentiality and the security of our sources, the names of the community-based organizations will remain anonymous throughout the report.
6. The data are mainly from the local reports produced by different workers' services centres. Figures are derived from a limited sample of workers, highly related to the industries present in the areas near the centres' locations. However, this data provides the most reliable up-to-date information on the reality of OHS conditions.
7. "The ILO consistently works with its tripartite constituents as represented by the Ministry of Human Resources and Social Security (MOHRSS), the All-China Federation of Trade Unions (ACFTU), and China Enterprise Confederation (CEC). The aim of such cooperation is to overcome the challenges in Chinese employment by working together." *The ILO in China*: <http://ilo-mirror.library.cornell.edu/public/english/region/asro/beijing/inchina.htm>
8. Even the name of regional offices of the government's Department of Labour and Social Security is not unified at province and city level. After 2008, some offices of the Department of Labour and Social Security changed the name to Department of Human Resources and Social Security.
9. The All-China Federation of Trade Unions is the sole national trade union federation of the People's Republic of China. It is the largest trade union in the world with 134 million members in 1,713,000 primary trade union organizations. The ACFTU is divided into 31 regional federations and 10 national industrial unions. ACFTU has a monopoly on trade unionizing in China and the creation of competing unions is illegal. As a tool of the government, ACFTU has been seen as not acting in the best interests of its members (workers), bowing to government pressure for industrial growth and not defending workers' rights. The International Confederation of Free Trade Unions (ICFTU), noting that the ACFTU is not an independent trade union organization, concludes that it cannot be regarded as an authentic voice of Chinese workers.
10. Commonly, the actual wages paid to a worker comprise three parts: around 40 percent is the basic salary (paid at the minimum wage), around 55 percent is overtime pay and less than 5 percent is subsidies.
11. These figures are based on 409 cases collected in the hospital visiting program in Shenzhen during 2009.
12. These figures are based on 1,560 cases collected by two workers service centers in 2006-2009.
13. *2009 Report on Occupational Disease Prevention and Control*, Ministry of Health, PRC.