

# **On China's Two Most Important Labour Rights Issues: Resolving the Pneumoconiosis Epidemic and Establishing a Collective Bargaining System**

**Prepared by China Labour Bulletin**

China Labour Bulletin (CLB) – member organization of the International Federation for Human Rights (FIDH) - is a Hong-Kong based labour rights organization committed to promoting the solidarity of Chinese workers and defending Chinese workers' rights and dignity. As the occasion of the People's Republic of China's second Universal Periodic Review in October 2013, CLB hereby submits the following report urging PRC authorities to take appropriate measures to get rid of pneumoconiosis (see definition below) in the country and to protect and promote Chinese workers' collective negotiation rights.

## **1. Issue of Pneumoconiosis Patients' Survival Rights**

In the People's Republic of China (PRC), pneumoconiosis – a lung disease caused by inhalation of dust, often in mines - is the most prevalent occupational disease, accounting for 90% of all cases.

According to statistics released by the PRC's Ministry of Health, 23,812 new cases of pneumoconiosis were reported nationwide in 2010; since 1950, there would have been 676,541 cases, 149,110 of which involving deaths. However, evidence indicates that the actual numbers are far greater than the official ones. The non-governmental organization *Da Ai Qing Chen* (known in English as “Love Save Pneumoconiosis”) estimates that around 6 million rural migrant workers (“Mingong”) with pneumoconiosis need aid throughout the country. It has to be noted that since 2011, the Chinese government has never updated official statistics on pneumoconiosis.

Since the 2000s, the situation of pneumoconiosis in China has worsened, and cluster cases of pneumoconiosis have broken out, since many young men from the same village go work in mines together. There are even ‘pneumoconiosis villages’, ‘pneumoconiosis townships’, and ‘pneumoconiosis counties’ in some regions. For instance, as reported by *Xiaoxiang Morning Herald* on July 30, 2013, there are more than 2,000 patients with pneumoconiosis in Wugang, Hunan. Meanwhile, new cases of pneumoconiosis have increased sharply and spread from the mining industry with the highest risk of pneumoconiosis to other fields such as the building or road construction sectors, the jewel polishing industry, and porcelain manufacturing.

Most of the people living with pneumoconiosis are rural migrant workers, who are unable to get occupational disease compensation. With no ability to work, they have

no source of income for their family. Moreover, they are often heavily indebted due to the high cost of medical treatment. In short, most families with pneumoconiosis patients are living a 'hopeless' life.

However, in recent years, a small number of pneumoconiosis patients have received attention and medical aid from non-governmental organizations and the government. Nevertheless, such aid is utterly inadequate considering the scope of the pneumoconiosis epidemic. For example, the non-governmental organization *Da Ai Qing Chen* raised over 8 million *yuan* within two years and helped more than 700 pneumoconiosis patients. This accomplishment represents their mission to “save and help as much as possible”. However, while noting the commendable work of the people involved in raising this money, it’s worth noting that it is completely insufficient to cover all the debts and living expenses of the sick workers, and thus it shows the limitations of non-governmental aid as a long-term solution to this crisis.

Local governments sometimes give one-off compensation to pneumoconiosis patients. Even though these can ease the conditions and difficulties of a small number of patients, such aid is still in the initial stage and limited by local governments’ fiscal capacity. In poor areas where there are many pneumoconiosis patients, the local government has rather scarce financial resources to aid the patients.

In China, pneumoconiosis is defined as an occupational disease by law, and pneumoconiosis patients are entitled to occupational disease compensation. But the reality is only a handful pneumoconiosis patients who are rural migrant workers actually receive such compensation. Patients who attempt to apply for such compensation are faced with three major obstacles that are difficult to overcome.

**Firstly, it’s difficult to identify employment relationship.** As stipulated by law, having or once having an employment relationship is a prerequisite for occupational disease compensation to pneumoconiosis patients. However, pneumoconiosis has an incubation period of 5 to 20 years. Many workers in China are still not provided with labour contracts. Also, many patients are fired by their employer when their symptoms are beginning and their physical strength declines. Several years later, they would no longer have the evidence in hand to prove their previous employment relationship. What’s worse, many years after the patient has ended labour relations, the previous employer would be nowhere to be found due to relocation, bankruptcy, or asset transfer. Therefore, the patient is unable to find the employer to prove the employment relationship that once existed. In such case when it’s difficult to identify employment relationship, it is nearly impossible to commence the application procedure for occupational disease compensation.

**Secondly, the application procedure for occupational disease compensation has become overly complicated.** On paper, the application procedure is not complicated. A pneumoconiosis patient only needs to go through four steps including occupational disease diagnosis, occupational disease identification, labour ability assessment, and compensation check for occupational disease. But in reality, since it’s difficult to identify an employment relationship, and since the employer often sets up obstacles to

shirk responsibility, such an easy administrative procedure often evolves into a labour dispute procedure, which involves over 20 bureaucratic hurdles: such as administrative review, labour dispute arbitration, labour dispute litigation, and administrative litigation. The completion of the procedure takes at least four years and a half on average, which is a rather difficult mission to complete for people dying of pneumoconiosis.

**Thirdly, the employer often refuses to take responsibility.** Even if the above-mentioned obstacles do not exist or such obstacles have been eliminated, the employer may still refuse to pay compensation. The court system offers no solution to such action. So besides continuously requesting the court to enforce the decision, the patient has no other options but to waive the claim, or to be forced to reduce the amount in order to receive nominal compensation from the employer.

CLB therefore makes the following recommendations to the PRC authorities:

**1) Simplify the review procedure of pneumoconiosis patients' occupational disease compensation.** Pneumoconiosis has a simple and clear cause, resulting from the worker's close contact with excessive dust at work. The cause of the disease is directly related to the worker's occupation and work environment. In other words, once diagnosed, pneumoconiosis should be treated as an occupational disease without any doubt. Therefore, the employment relationship between the patient and the specific employer should not be regarded as a prerequisite for occupational disease compensation. Once a patient is diagnosed with pneumoconiosis, he or she should enter the disability review procedure directly and receive occupational disease compensation or government bailout based on the degree of his labour disability.

**2) Establish a national "pneumoconiosis compensation fund".** The Central Government should establish a "pneumoconiosis compensation fund", which comes from the government's financial allocation and the fees collected by the government from all enterprises whose workers are exposed to dust. Such fees can be classified into different rates in accordance with dust concentration at a reasonable payment base. In addition, social charities can also help raise a part of funds. The subjects of this fund are mainly those pneumoconiosis patients who are unable to receive occupational disease compensation based on the current application procedure. Meanwhile, the range of subjects can also be extended to the pneumoconiosis patients who have current disputes with the previous employer over employment relationship, waiting for the disputes to be solved.

**3) Build a national medical treatment system for pneumoconiosis patients.** The Central Government should conduct a national census among pneumoconiosis patients to collect data as the basis for cost evaluation and resource allocation of national treatment. At the same time, the government should popularize the knowledge of pneumoconiosis prevention among people. After the census, the "pneumoconiosis compensation fund" should be used to offer prompt medical treatment to pneumoconiosis patients who are unable to receive occupational disease compensation, and provide basic life allowances for their families. The fund should be

allocated in line with the locations of patients on a proportional basis; non-governmental organizations should also be given the right to access the fund.

**4) Curb new cases with mandatory measures.** The Central Government should conduct a nationwide investigation of various factories and mines exposed to dust with the focus on micro, small and medium-sized enterprises with excessively dusty work environment. This investigation can serve to identify dust concentration level of various enterprises, so as to determine the base of fees collected for the bailout fund. Meanwhile, relevant government authorities should supervise these enterprises, making sure that they will improve the working conditions and take steps to reduce or eliminate dust. For those enterprises that fail to take corrective actions, the government should impose sanctions, or even shut down the enterprises and prosecute the owners and management for their criminal responsibility.

**5) Set up a collective bargaining mechanism.** The All-China Federation of Trade Unions (ACFTU) should encourage and support workers to establish trade unions in enterprises with high exposure to dust, or help workers set up occupational safety and health monitoring committees/groups in the enterprises, and establish occupational safety and health monitoring joint committees in their regions. The committee members should consist of representatives elected by the workers themselves. In the meantime, local trade unions should encourage and guide basic-level trade unions to have collective negotiation with employers about occupational safety and health matters and sign collective contracts accordingly.

## **2. On Realizing Workers' Right to Collective Bargaining**

Although the Chinese economy has shifted from a planned economy to a market economy over the past 20-30 years, unfortunately, the Chinese government has not yet established an adjustment mechanism to adapt to the employment relationship in a market economy. Labour conflicts have become increasingly tense, and workers' strikes, demonstrations and petitions to the government are dramatically on the rise. In the *Blue Book of China's Society (2013)* published on December 18, 2012, Chinese Academy of Social Sciences mentioned that according to ACFTU's statistics, between January to August in 2012, more than 120 strikes related to wage disputes with over 100 people involved broke out, more than 270 strikes with over 30 people involved were seen in 19 provinces. If the claims of those workers on strike were extended from wage increase and wage recovery to other areas such as claims for severance allowances, supplementary payment of the employer for social insurance, improvement of welfare, resistance to the employer's revision of rules and regulations, reduction of overtime and so on, then it can be inferred that the numbers of strikes would be far greater than the statistics given by ACFTU.

As stipulated in the *Labour Law of the People's Republic of China (1994)*, workers may conclude a collective contract with the enterprise on matters relating to labour

remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare. Since early 1990s, the ACFTU has been implementing a 'collective consultation' mechanism. During the past 20 years of implementation, this mechanism has yet to meet the government's expectation of 'independent negotiation between workers and the employer'. There are four main reasons for this. Firstly, the basic-level trade union organizations established in various enterprises under ACFTU are mostly 'empty shell organizations'. In other words, such organizations are either merely nominal without any practical actions, or controlled by the employer with designated committee members. Secondly, the collective negotiation process lacks workers' participation. Workers often do not know the process even exists, nor do they understand the content of a collective contract. Thirdly, collective negotiation is a merely formality. During the process, both parties seldom bargain with each other, and the content of the collective contract is mostly copied and pasted from labour law provisions. Fourthly, collective negotiation is implemented and assigned as a mission by unions at the higher level to those at the lower level, so fraudulent and false reporting on the signing rate of collective contracts are commonplace. Because of the above reasons, the existing collective negotiation does not conform to the market economic system either in nature or in form. In fact, a great number of strikes, go-slows, demonstrations, and petitions carried out by workers take place in factories in which there are signed collective contracts.

On the other hand, under the pressure of workers' collective action, collective bargaining is often conducted to resolve labour disputes. This kind of bargaining usually takes place after workers go on strike, as the employer wants to settle the strike by negotiating with worker representatives due to pressure or local government mediation. Since such negotiation involves workers' substantive participation, as well as the process of labour confrontation and concessions, it can be regarded as a model of collective negotiation in the true sense. Facts have proved that such collective negotiation does help solve labour disputes, but it should be noted that since such negotiation is triggered by a strike, it leads to high cost for both parties involved. After workers return to work, some worker representatives are retaliated against by the employer or held under administrative detention by the police. Moreover, such negotiation is intended to settle labour disputes, so it can hardly develop into a continuous and on-going collective negotiation mechanism.

CLB believes that, since labour intensive manufacturing is still the predominant industry where skilled labour highly concentrates in China, collective negotiation should be treated as the major adjustment mechanism to adapt to the employment relationship. China once took full advantage of abundant labour in more than twenty years' construction of market economy. China has achieved economic success and unprecedentedly great national strength. At present, China's demographic dividend is disappearing, and the absolute surplus of labour is reversing. Thus, the Chinese government should guide the labour market out of the current model and follow the requirement of 'decent work' proposed by the International Labour Organization (ILO) to set up a collective bargaining mechanism.

CLB therefore makes the following recommendations to the PRC authorities:

**1) The legislature should revise the *Trade Union Law*.** According to Article 14(2) of the *Trade Union Law*, “A basic-level trade union organization, which has acquired the qualifications of a legal person as prescribed in the General Principles of the *Civil Law*, shall, in accordance with law, be granted the status of a legal person as a public organization.” However, no provision in the *Trade Union Law* stipulates what kind of legal liability a trade union organization should bear if it fails to perform its duties as a legal person. Thus, since the *Trade Union Law* grants a trade union organization the duties to represent and defend workers’ rights, when the trade union organization fails to perform such duties, it should bear the legal liability as the legal person, such as making compensation to the workers, making apologies and so on.

**2) The legislature should revise the *Labour Contract Law*.** First, the law should acknowledge the validity of collective agreements or similar agreements reached by the employer and workers in situations in which there is no trade union organization to represent or guide the workers. Second, the law should stipulate that when workers demand for collective bargaining, their trade union should represent them to in presenting bargaining requests to the employer. Third, the law should stipulate that in the negotiating team of workers, there should be worker representatives on behalf on different worker groups at a certain ratio.

**3) A *Collective Bargaining Law* should be established.** To this day, China has not established any national law regarding collective bargaining. The legislature should set forth stipulations regarding the process of collective negotiation and the duties of both parties involved in the negotiation. In addition, a mechanism for protecting worker representatives should be established so as to prevent violations against the personal rights and labour rights of these representatives.

**4) The provision in the *Trade Union Law* regarding directly-elected union should be implemented.** Since ACFTU is a social organization under the leadership of the Chinese Communist Party, the ruling party and the Central Government should supervise the ACFTU and make sure it will strictly enforce the provision of Article 9 as stipulated in the *Trade Union Law*, namely “Trade union committees at various levels shall be democratically elected at members’ assemblies or members’ congresses.” Moreover, the ACFTU should request that the committee members of the grassroots-level trade unions should be directly elected by union members.

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