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## **ITUC Observations to the ILO Committee of Experts on the Application of Conventions and Recommendations of Convention 167: Safety and Health in Construction in China**

Dear Director-General,

As per previous practice, I have the honour of sending you observations concerning compliance by **The People's Republic of China** with the **Convention No.167 on Safety and Health in Construction in China (Ratified in 2002)**.

### **Summary of concerns**

The ITUC wishes to draw the attention of the ILO Committee of experts to some serious concerns in the application of Convention 167 by the PRC authorities. These include:

- Safety and Health- Fundamental workers' rights are continuously violated and ignored in the construction industry due to a wide range of unsafe practices or limited safety and health protection in China. The ITUC would like to highlight the major problems and incidents within the industry.
- There is continued evidence of breaches of national laws and regulations regarding safety and health in the construction industry, including widespread bureaucracy, collusion by officials, lack of enforcement and lack of cross-departmental cooperation;
- Effective, timely and adequate remedies for workers and families affected by OSH problems are not provided. There are also issues arising from the lack of proper compensation for OSH injuries and illnesses. Compensation orders are not always enforced, treatment related regulations are ignored and there is evidence of official/semi-official corruption which is not fully addressed.

- The lack of freedom of association and collective bargaining has a negative impact on the workers' struggle to secure OSH related rights and proper compensation. The ITUC has been informed of numerous cases in which workers and their representatives have been harassed, imprisoned or have faced other repercussions following their attempts to secure OSH related compensation and rights.

## 1 Background

China has a workforce of approximately 774.80 million<sup>1</sup> and more than 20 million Chinese workers are exposed to toxic or hazardous conditions in the workplace<sup>2</sup>. According to The State Administration of Work Safety, there are more than 16 million enterprises producing toxic and hazardous materials. As many as 83% of small to medium size enterprises in China have produced varying levels of occupational hazards and more than 34% of workers are seriously exposed to toxic or hazardous conditions in the workplace.<sup>3</sup>

China recorded 722,730 cases of occupational diseases. An increase of 18,128 new occupational diseases was diagnosed at the end of 2009<sup>4</sup>. The rate of occupational disease has risen since 2005. The coal, metal alloy and metallurgy industries in China are responsible for up to 57 % of the country's new cases of occupational disease. Pneumoconiosis (black lung) remains at the top of the list of occupational illnesses in China today, with approximately 610,000 registered patients nationwide as of November 2009.<sup>5</sup> There were 18,128 new cases of occupational diseases in 2009<sup>6</sup>, 80% (14,495) of which were new cases of pneumoconiosis. However, the real figure is estimated to be up to at least one million incidences of occupational disease in China. Pneumoconiosis<sup>7</sup> accounted for approximately 90% of occupational disease. Large numbers of occupational diseases have not been counted in the official figures and are often covered up by the owners and/or local authorities. This remains a sensitive issue for the Chinese authorities due to notoriously high accident fatality rates in mining and construction. Endemic corruption compounds the problems. There are also large numbers of occupational diseases in their incubation period. These occupational diseases have not yet been diagnosed, remain unreported by employers and local authorities and are not currently certified by the medical authorities.

The Chinese government now recognises the seriousness of the occupational disease crisis in the country. In response, China has issued a set of regulations to safeguard the health of employees and control the level of work-related accidents and occupational diseases.<sup>8</sup> In early 2010, the Ministry of Health, the Ministry of Human Resources and the Social Security began working together with the Legislature to accelerate the

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<sup>1</sup> National Bureau of Statistics official report, 26 February 2009

<sup>2</sup> Wang Xianzheng, Vice Minister of State Administration for Work Safety (SAWS), 27 April 2007

<sup>3</sup> Wang Dexue, Vice Minister of State Administration for Work Safety (SAWS), 25 May 2010

<sup>4</sup> National report for Occupational disease 2009, Ministry of Health of the PRC. 28 April 2010

<sup>5</sup> China Daily, 08 February 2010

<sup>6</sup> Black lung tops occupational diseases list, China Daily, 31 October 2009

<sup>7</sup>《Labour law expert: Government responsibility needs to be stressed in the prevention of occupational diseases》, Legal Daily, 3 March 2010.

<sup>8</sup>It also made and revised 667 occupational disease regulations and enhanced supervision and risk evaluation', 2008, the ministry of Health of the PRC

enforcement of the Code of Occupational Disease Prevention and to try and establish a long-term prevention policy and enhanced supervision.<sup>9</sup>

With a relatively high occupational fatality rate nationwide, the number of occupational diseases will continue to increase over the next 10 to 15 years<sup>10</sup>. There is a lack of supervision and a need for further punitive measures to ensure enforcement. There is also extensive corruption and general under-resourcing of monitoring agencies (including OSH officials working in factories and the health and labour bureau in the provinces). Experts warn that the high number of casualties reflects serious flaws in the monitoring of occupational safety across China, and have accused local labour and health authorities of failing to protect workers<sup>11</sup>.

Industry and construction account for about 48.6% of China's GDP. China is expected to account for 14% of global nominal construction spending by 2010<sup>12</sup>. Between 1998 and 2008, investment in China's construction sector grew at a rate of 16%. According to the 11th Five-Year Plan (2006–10), China's central government will spend approximately US\$494 billion on improving the country's infrastructure. The increasing growth of development downsizing, outsourcing, the use of labour-only subcontracting and the so-called self-employed have a negative impact on the management and control of health and safety in construction

## **2. The Situation of Occupational Safety and Health in Construction in China**

The construction industry in China employs more than 55 million workers<sup>13</sup> and more than 40 million or one fifth of them are rural migrant workers (225.42 million<sup>14</sup>) of the total migrant workforce in China. For three generations rural migrant workers have contributed greatly to establishing the foundations of every city across the nation. However without a 'huku' in the cities where they work, they are treated like second-class workers behind China's urban population. They usually work in heavily polluting industries with poor working conditions and a lack of legal protection. They also account for up to 90 % of occupational diseases in China.<sup>15</sup> Thousands of them have lost their lives.

Construction workers in China face continual job insecurity, unpaid wages, a highly dangerous working environment and poor living conditions. They are exposed to a wide range of chemical, physical and biological hazards including noise, dirt, dust, chemicals, working at height, in confined spaces, heavy work and stress. They work with poor health and safety management controls and with little or no use of personal protective equipment (PPE) or protective clothing. Even when workers are working at height, they do not wear safety harnesses so that they can work faster to finish the construction project. Many construction sites only provide the lowest quality safety helmets and safety harnesses for their workers. Some workers are even required to pay

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<sup>9</sup>《National report for Occupational disease 2009》, Ministry of Health of the PRC, 28 April 2010

<sup>10</sup> Xinhua News Agency, 28 March 2008

<sup>11</sup> Chin Daily, 8 Feb 2010

<sup>12</sup> 'Importance of Infrastructure Construction in China', IHS Global Insight, 19 January 2009

<sup>13</sup> The National Committee of the Chinese Seamen and Construction Workers' Union, 13 November 2007

<sup>14</sup> National Bureau of Statistics of PRC, 2008,

<sup>15</sup> Chen Xiaohong, Vice-Minister of Health, 27 April 2007

for their own protective gear such as gloves and safety shoes. Most workers have never been offered any body or health checks and receive no information about potential health hazards to which they may be exposed in their workplace. They are also unaware of how debilitating the long-term effects of inhaling rock dust can be.

## 2.1 Serious health and safety threats

Construction workers in China lack protection. Workplace injuries very often occur in this industry as do OSH related illnesses and deaths. Serious accidents are mainly caused by falls, load collapses and explosions. Hundreds of workers were injured or killed on construction sites last year. (See Section 2.6 below on selected accidents) More than 10,000 workers are diagnosed with the deadly lung disease, silicosis, every year. According to a survey, 80% of interviewed construction workers have developed respiratory tract conditions and Tinnitus.<sup>16</sup> Yang Zhiming stated that<sup>17</sup> "In some highly-dangerous and heavily-polluting industries, working health and safety is very problematic, with a lot of migrant workers being injured while working or developing occupational diseases for which some do not receive the necessary treatment in time."

Also, there are many uncounted 'invisible' occupational diseases in China. Thousands of workers have never been offered any health checks and they were only been diagnosed when they were suffering from the final stages of pneumoconiosis, there is no available treatment for end-stage pneumoconiosis. The death rate from pneumoconiosis is three times higher than that from coal mine accidents<sup>18</sup>. Most only receive a small lump sum that will only cover their medical expenses for a few years; many receive nothing at all. Countless other victims cannot even get the official diagnosis they need to initiate a compensation claim. A survey in Guizhou of 1,218 rural migrant workers concluded that about ten percent of the high-dust-industry workers examined suffered from pneumoconiosis.<sup>19</sup> In May 2009, nearly 180 workers from Leiyang who worked for Shenzhen construction companies reported that at least 15 of their colleagues had already died from the disease before the group went back to Shenzhen in search of compensation.

As for construction materials, China not only continues to use and produce huge amounts of harmful minerals but also imports them to meet industrial needs. The last reliable figure for the number of Chinese with asbestosis dates from 1986. It indicates more than 4,000 cases of the disease, of which 600 patients have died<sup>20</sup>. The exact number of Chinese with asbestos-linked illnesses is hard to quantify. "I estimate that currently more than 100,000 people are exposed to the dangers of asbestos and some 10 percent are probably suffering from asbestosis," said Dr Liu Shijie, honorary dean at the school of public health of the Beijing Medical University. After decades of heavy reliance on asbestos, Chinese officials have not as yet found a way to stop its production, reverse the

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<sup>16</sup> [Migrant Workers in the Construction Industry: "Contract Labor in 21th Century"](#), Students and Scholars Against Corporate Misbehaviour (SACOM), 2009

<sup>17</sup> Yang Zhiming, 'a report to the Standing Committee of the National People's Congress', vice-minister of human resources and social security, 28 April 2010

<sup>18</sup> China Net, 9 December 2009

<sup>19</sup> Li Jiason, 'A survey in Guizhou of 1,218 rural migrant workers exposed to dust and suffering from pneumoconiosis', Work health and Occupational disease Vol 34 No.6, 2008

<sup>20</sup> China Continues Heavy Use of Asbestos, by Antoaneta Bezlova  
<<http://www.albionmonitor.com/9810a/copyright/asbestoschina.html>>

lingering effects of asbestos in the environment or replace asbestos use with less harmful components.

A serious health and safety problem has also been found in the building material sector, particularly in quarrying and natural stone processing<sup>21</sup>. The high-accident rate associated with this sector puts workers at serious risk. The most common injuries amongst those moving heavy slabs and stones are cuts and bruises to the hands and crushed fingers. Some provinces in China have been found to exhibit a high rate of silicosis. However, occupational injuries are routinely hidden and most workers are not been offered any body or healths checks and usually receive almost no training on health and safety in the workplace.

There are no exceptions for female workers on construction sites and in the building material process; they are also exposed to serious health and safety risks<sup>22</sup>. They receive none of the protection guaranteed under the law and no health and welfare benefits, particularly when pregnant, breast-feeding or menstruating. Female workers often suffer from skin allergies, reproductive tract infections (RTI), headaches, sight problems and various other occupational diseases. Some develop reproductive disorders and cancer<sup>23</sup>.

Long working hours and lack of effective enforcement of the high temperature provision are also serious problems on construction sites. Construction workers are often required to work in excess of 8 hours per day including weekends and holidays. Long working hours are also not prohibited under the high temperature provision. In the summer of 2010, there were at least 40 recorded deaths caused by hyperthermia in several provinces in China. Most deaths were construction workers who were working on small, private construction sites.<sup>24</sup> Some provinces in China have also issued a document urging enterprises to release emergency heat assistance and to pay a high temperature allowance to employees particularly if an employer requires workers to work outdoors in temperatures over 35°C<sup>25</sup>.

According to a notice from the Ministry of Health in 2007, the construction departments around the country have also introduced a high-temperature shutdown provision. However, in some areas which experience high temperatures, these guidelines are not generally implemented, and the provisions are non-mandatory with no legal enforcement. In order to lower costs, some enterprises only offer more fluids to their employees but never pay them a high temperature allowance.

## **2.2 Serious violations hidden by the subcontracting practice**

Subcontracting is a long established practice in the construction industry in China which offers the Construction companies more and more opportunities to exploit the labour market. Subcontracting further reduces costs and allows employers to avoid responsibilities and fixed costs such as health and safety, social insurance and training.

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<sup>21</sup> 'Improving Working Conditions at Chinese Natural Stone Companies', SwedWatch, SOMO and IHLO, 2008

<sup>22</sup> Anquan.com.cn

<sup>23</sup> [www.wiego.org/.../Pun\\_Ngai\\_Membershipbased\\_organisation.doc](http://www.wiego.org/.../Pun_Ngai_Membershipbased_organisation.doc)

<sup>24</sup> Huaxi Metropolitan Daily , 4 August 2010, <<http://www.newssc.org>>

<sup>25</sup> Chinese News, 4 August 2010

The construction company usually divides the construction project into different projects and contracts them out to sub-contractors. The subcontractor may then choose to contract out his portion of the project to another sub-contractor. Such subcontracting was restricted under the previous Construction Law in China, *'The subcontractors are prohibited from re-subcontracting the sub-contracted projects<sup>26</sup> and shall be supervised by the relevant administrative departments<sup>27</sup>*. However, in actual fact, there are no effective regulations or supervision in place to protect workers' rights from subcontracting in China. 'The practice of sub-contracting in China is seriously out of control. The problem in Construction is extremely critical' stated Guojun, the Head of Democratic Management Department of the All China Federation of Trade Unions (ACFTU).<sup>28</sup>

Informal contractual practices in the construction sector in China make it much more difficult for workers to exercise their rights when they are subjected to wage arrears and violations of their health and safety rights. Construction workers are very often employed by up to the 6<sup>th</sup> or 7<sup>th</sup> tier subcontractor<sup>29</sup>. The main contractors are no longer employers and the subcontractors who are the real employers are excluded from the schemes. The labour agencies, contractors or subcontractors who recruit and control the workforce sign none of the employment contracts. Workers are often hired on a short-term basis and/or project based employment contract.

The workers often only obtain their wage after a building has been completed and inspected and non-payment of wages is widespread in the Chinese construction sector<sup>30</sup>. The worst case of wage arrears on construction sites included workers who waited for three years to be paid. Consequently, construction workers are obliged to borrow "living allowances" from their contractors<sup>31</sup>. This situation makes it more difficult for workers to file complaints against their contractors, because they are in debts to them.

### **2.3 No employment contracts or social insurance**

The employment contract and social insurance particularly, injury insurance are extremely important to workers who work in dangerous operations like the Construction industry and it is guaranteed by both Chinese Labour Contract Law and Construction law<sup>32</sup>. However, the existing subcontracting practices have changed the nature of construction employment. Construction workers are very often employed by

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<sup>26</sup> Construction Law of the PRC, 1998

<sup>27</sup> Construction Law of the PRC, 1998

<sup>28</sup> Guojun, Head of Democratic Management Department of the All China Federation of Trade Unions (ACFTU), 18 May 2010

<sup>29</sup> [Migrant Workers in the Construction Industry: "Contract Labor in 21th Century"](#), Students and Scholars Against Corporate Misbehaviour (SACOM), 2009

<sup>30</sup> National According to reports by the Xinhua and JinYang news agencies, as of 2007 more than 124,000 completed construction projects in China owed 175.6 billion yuan (\$24.8 billion US) in unpaid wages to migrant workers. State-owned construction companies accounted for more than \$9.2 billion of the total, according to figures from the Ministry of Construction. A total of 13.07 million migrant workers in China had been affected by wage arrears by the end of 2008 according the National Bureau of Statistics of China, 2009

<sup>31</sup> [Migrant Workers in the Construction Industry: "Contract Labor in 21th Century"](#), Students and Scholars Against Corporate Misbehaviour (SACOM), 2009

<sup>32</sup> Labour Contract Law of PRC 2008 Article 48 of the Construction Law of PRC 1998

subcontractors and the main contractors are no longer their employers and the subcontractors who are the real employers of labour fail to create employment contracts with workers and pay the social insurance cost especially the injury insurance which are the full responsibility of the employers. More than 95% of migrant workers are hired by a contractor<sup>33</sup>. Some of the construction companies purchase group social insurance or use a certain amount of the value of the project to purchase “business insurance”, which violates the labour law of the People’s Republic of China. When the workers are involved in industrial accidents, the construction company only shares the responsibility for the cost of hospitalisation. It will not share other medical expenses after workers are discharged from hospital.

More than two hundred drilling and mining construction workers are based in Shenzhen. They are mainly from the Hunan province. At least one hundred of them have contracted silicosis since last September but were refused a silicosis diagnosis. Most of them could not receive any occupational disease compensation. The authorities claimed that none of the workers had signed a contract with their employers or subcontractors, and also refused to recognise the working license for the drilling and mining process.<sup>34</sup> It is just one more example of how China’s construction workers are routinely abused and taken for granted today. Many workers have died before they receive compensation, during the diagnosis period and the ensuing long legal process.

## **2.4 Poor and insecure living conditions**

Construction workers usually live in temporary accommodation near the construction sites with poor sanitary and washing facilities and potentially dangerous food and water. The living quarters on the construction sites are usually crowded, noisy, hot and unhygienic. Construction companies offer a living allowance as the workers usually only receive their wages after the project is completed or at the year end. The allowance is approximately 300-500 Yuan, about 10-20% of the monthly income. If the worker needs more money, they may be obliged to borrow from the contractor. At least 53 workers at a construction site in Tongzhou district were hospitalised after drinking contaminated well water on site. In total, more than 80 workers were affected.<sup>35</sup>

On many construction sites, there are less female workers than male workers and the female workers do not have separate sanitary and washing facilities. Some men and women are obliged to live in the same room without privacy. The toilets and bathrooms on construction sites are crude and the people standing outside the bathrooms can see inside. Consequently, sexual harassment is frequent.

Construction workers are exposed to a wide range of life-threatening conditions, including HIV/AIDS. A lack of HIV awareness makes workers vulnerable to the risk of contracting this disease.

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<sup>33</sup> [Migrant Workers in the Construction Industry: “Contract Labor in 21th Century”](#), Students and Scholars Against Corporate Misbehaviour (SACOM), 2009

<sup>34</sup> Xinhua Net, 12 December 2009

<sup>35</sup> [The Beijing News](#), 10 July 2009

## 2.5 Lack of job-related safety training

According to article 33, workers shall be adequately and suitably informed of potential safety and health hazards to which they may be exposed at their workplace; (b) instructed and trained in the measures available for the prevention and control of, and protection against, those hazards.

In China, Construction worker are entitled by national law to receive safety training on the safe operation and protection measures. In fact, more than 95% of migrant workers work on the construction sites without job training. 30% of migrants are working on construction sites for the first time<sup>36</sup>. Normally, the majority of workers receive no training on health and safety in the workplace. There are many records of accidents caused due to the lack of safety training<sup>37</sup>. In March 2010, 9 untrained temporary workers were killed and one was seriously injured after they fell through a safety net in a building in Shenzhen. None of the 11 workers were wearing safety harnesses when the accident happened<sup>38</sup>.

In 2009, China provided skills training to more than 12 million migrant construction workers.<sup>39</sup> More than eight million migrant workers have received training at one-thousand construction skills agencies in recent years. More than 90 percent gained a skills certificate. Meanwhile, more than 15,000 vocational training schools have offered classes to over four million workers. However, the training is aimed at helping workers re-enter the labour market during the financial crisis, and the ITUC does not have information whether the training includes training in safety matters.

## 2.6 A selection of work injury cases from the construction industry in China

Here is a selection of injury cases which took place over the past few years chosen from amongst the hundreds of work related injuries and deaths. - The accident rate is increasing. The types of accidents include buildings collapsing, being crushed by falling building materials and scaffolding, being maimed by faulty machinery or falling to their death from heights.

- In August 2010, eleven people, including two women, died after an elevator at a hospital construction site in Meihekou city, Jilin province fell. The building has 12 floors but it is not known from what level the elevator fell.<sup>40</sup>
- In July 2010, Nanjing, construction workers dismantling an abandoned plastics factory accidentally damaged a gas line and triggered such a massive explosion that

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<sup>36</sup> [Migrant Workers in the Construction Industry: "Contract Labor in 21th Century"](#), Students and Scholars Against Corporate Misbehaviour (SACOM), 2009

<sup>37</sup> [China Daily Hong Kong Edition](#) | [Page 2](#) | [inbrief](#) 11 September 2009

<sup>38</sup> Eunice Kang, Contractor punished for nine deaths, Shenzhen Daily | Important News 16 march 2010

<sup>39</sup> 'China trains 12 mln construction workers', CCTV.com, 29 June 2009

<sup>40</sup> [China Daily](#) 05, [Nation](#) 18 August 2010

locals mistook it for an earthquake. The blast destroyed nearby buildings and left 13 dead and 300 injured.<sup>41</sup>

- In July 2010, two workers died after a fall in Tianjin - Xinhua reported that two workers plunged to their deaths and two were injured when a crane platform gave way and smashed into a half-finished building at a construction site in the downtown area. Witnesses said the four people were on the platform at the time of the accident. The remains of the platform became lodged into the fourth floor of the multi-storey apartment block. <sup>42</sup>

- In July 2010, Shaanxi, a cave collapsed burying 10 people, including a family of four and six construction workers <sup>43</sup>, who had been hired to build a new house for the family.

- 78-year-old construction worker crushed to death during an excavation<sup>44</sup>

- In June 2010, State media reported that a landslide in the early hours killed at least 16 people and injured seven others in southwest China. <sup>45</sup>

- In March 2010, 9 untrained temporary workers were killed and one was seriously injured after they fell through a safety net on the 23rd floor of the Fengjing Court building in Shenzhen. None of the 11 workers were wearing safety harnesses when the accident happened<sup>46</sup>.

- In March 2010, the Beijing Times reported that three workers died at a Huairou district construction site after they were buried by mud. The workers were digging when the sides of the hole they were in collapsed. The three were taken to hospital but none could be saved.<sup>47</sup>

- In February 2010, two construction workers were killed and another seven injured after a crane toppled over at a construction site in Guangming New Zone. The crane collapsed on a 10-meter-high bridge at the Guangzhou-Shenzhen-Hong Kong Express Rail Link site. Its jib broke off and fell from the bridge along with another construction vehicle. One construction worker was killed at the scene and another died following emergency treatment.<sup>48</sup>

- In January 2010, 3 workers died, 7 were injured and an unknown number of others were buried under the rubble of a concrete roof, when scaffolding and a concrete roof collapsed at a construction site in east China's Anhui Province <sup>49</sup>

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<sup>41</sup> 'In China, workplace deaths a small cost: Productivity tops safety laws', [Michelle Phillips](#), [The Washington Times](#), 09 August 2010

<sup>42</sup> [South China Morning Post](#), EDT4 | 04 August 2010

<sup>43</sup> 'Shannxi Cave collapse kills 6, injures 4', [China Daily Hong Kong Edition](#), P04 | [Nation. Weekend](#) | [briefly](#) 24 July 2010

<sup>44</sup> Xinhua net, 4 July 2010, <<http://news.163.com/10/0703/08/6ALGLRUS000146BC.html>>

<sup>45</sup> Landslide kills 16 construction workers in southwest China, CHENGDU, CHINA (BNO NEWS), 15 June 2010

<sup>46</sup> Eunice Kang, Contractor punished for nine deaths, Shenzhen Daily 16 March 2010

<sup>47</sup> Construction site mudslide kills three, China Daily | Metro 26 March 2010

<sup>48</sup> 2 dead, 7 hurt as crane topples Rescuers at the scene of the accident Saturday, Cheng Jiang, [Shenzhen Daily](#) 03 22 February 2010

<sup>49</sup> Seven believed buried in east China construction site collapse, Xinhua, 11 January 2010  
[http://news.xinhuanet.com/english/2010-01/12/content\\_12797884.htm](http://news.xinhuanet.com/english/2010-01/12/content_12797884.htm)

- In January 2010, the collapse of an unfinished bridge, leading to the new airport in Kunming, the capital of Yunnan province, left seven workers dead and 34 others injured.<sup>50</sup>
- In December 2009, 3 workers were killed and 5 others seriously injured after a tower crane fell from a building under construction in south China's Guangdong Province when the 30-tonne tower crane fell from the 50th floor of Taishang Building in Dongguan City in Guangdong Province<sup>51</sup>
- In December 2009, one worker died and another was injured while they were painting beneath the Jiamin Elevated Road about 20 meters above the ground on a building site in Minhang District, Shanghai<sup>52</sup>
- Five people died and four were injured after a building collapsed during its demolition in Luoyang, Central China's Henan province<sup>53</sup>
- In October 2009, 3 construction workers were killed and seven others injured when a small truck carrying 15 workers overturned in Dongshan Village, Shenzhen<sup>54</sup> The truck is responsible for the construction of the offshore sports facilities for the 26th Summer Universiade to be held in Shenzhen in 2011.
- In October 2009, Three construction workers died and two were injured after a building collapse in Daxing district, Beijing <sup>55</sup> The district government said the four-storey building in Yinghai town collapsed as workers installed boards in the structure.
- In September 2009, 7 workers were killed when a huge slurry pool at a construction site in Zhejiang province collapsed. The pool on the site of a residential complex being built in Luqiao district of Taizhou, contained slurry for construction buried 10 workers. The pool was approximately 50 meters in diameter and more than 10 m deep.<sup>56</sup>
- In September 2009, a dormitory collapsed at a construction site in Shishi Middle School in Chengdu in Sichuan Province. Ten workers were injured when the building came down.<sup>57</sup>
- In September 2009, 8 migrant workers were injured after a scaffold collapsed at a Shanghai-Beijing express railway construction site in Minhang District.<sup>58</sup>
- In August 2009, a crane collapsed killing four workers at a site in Jiading District. Shanghai <sup>59</sup>
- In August 2009, 4 workers were injured and two others were missing after a railway bridge under construction collapsed in Southwest China's Guizhou Province<sup>60</sup>

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<sup>50</sup> Kunming officials butt of jokes over fallen bridge, [Ng Tze-wei in, South China Morning Post](#) | 7 January 2010

<sup>51</sup> '3 killed by crane fall', [Shanghai Daily](#) A3 | [Metro/National](#) | 06 December 2009

<sup>52</sup> Site closed after worker falls to his death, [Shanghai Daily](#) A05 | [Metro](#) | 21 December 2009

<sup>53</sup> Henan 5 killed during demolition', [China Daily Hong Kong Edition](#) P05 | [ChinaScene](#) | 2009-11-11

<sup>54</sup> 'Truck crash kills 3 construction workers', [Shenzhen Daily](#) 03 | 12 October 2009

<sup>55</sup> 'Three die in building collapse', China Daily 30 October 2009

<sup>56</sup> [China Daily Hong Kong Edition](#) | [Page 2](#) | [inbrief](#) 11 September 2009

<sup>57</sup> 'Ten injured in dormitory collapse', Xinhua, 11 September 2009

<sup>58</sup> [Shanghai Daily](#) A5 | [Metro](#) | 18 September 2009

<sup>59</sup> '4 dead in crane collapse in Shanghai', Xinhua News Agency, 20 August 2009

<sup>60</sup> 'Four injured, two missing in bridge collapse', Xinhua, 1 September 2009

- In August 2009, a two-story factory in Shijiazhuang Hebei province collapsed. Seventeen people died and at least three were injured in the tragedy. The building collapsed following torrential rain in North China's Hebei province.<sup>61</sup>
- In July 2009, at least 53 workers at a construction site in Tongzhou district were hospitalised after drinking contaminated well water on site. In total, more than 80 workers were affected<sup>62</sup>

### **3. Legislation, enforcement and implementation**

*Construction workers are often blamed for their poor knowledge and lack of awareness in following safety guidance and rules when accidents and work-injuries occur. However, in fact, many accidents and work-injuries have been caused by the authorities and the enterprises' misbehaviour, especially poor safety management and in particular the existing legal and administrative procedures and their implementation. Research has found that it is not that workers lack awareness of their legal rights but they consider the law useless as there is no enforcement of labour law. It's not only legislation that is required but implementation.' said Professor Dongxin, Director of the Research Centre for Chinese workers and labour from the Peking University of China.<sup>63</sup>*

#### **3. 1 Lack of prevention, illegal operation and poor preventive and protective measures**

*The grass-root network of safety supervision, labour inspection, has no integrity. It lacks enforcement resources, cooperation with the health department and professional on-site inspection guidance, "Some legal officers and inspector can only rely on the listening to and watching pre-prepared materials' This is a situation that must be improved."*

This was said by Gu Changshen, a member of the Chinese People's Political Consultative Conference (CPPCC) <sup>64</sup>.

The Chinese construction industry and its safety management practice do not meet with international standards, national laws and regulations due to the lack of prevention, illegal operation, poor preventive and protective measures, no provision of personal protection equipment, lack of effective and regular safety inspections and audits and safety training. The Pneumoconiosis prevention regulation was produced in 1987 which states that employer, trade unions and the health and labour bureau should act to prevent pneumoconiosis in the workplace if the employer is in breach of the law. In fact, responsibility for planning and coordination of health and safety are often unclear and contradictive due to poor compliance with health and safety law, informal contractual conditions and regulation of the industrial code of practice and safety guidance.

Contractors' negligence with regard to safety management has a serious negative impact. Safety costs are very often avoided due to the subcontracting practice in China. This makes it much more difficult for workers to exercise their rights. Particularly for workers

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<sup>61</sup> 'Building's collapse claims 17', [China Daily](#) 02 | [MAIN SECTION](#) 05 August 2009

<sup>62</sup> *The Beijing News*, 10 July 2010

<sup>63</sup> Professor Dongxin, 'Deep-seated causes of the Work safety accidents in China', Director of Research Centre for Chinese worker and labour of Peking University of China, People's Forum No.9 2010

<sup>64</sup> the Workers Daily, 20 March 2010

in small size construction companies who fail to obey laws and regulations, safety measures and guidance and its industrial code of practice even though they may be aware of the potential hazards and unsafe conditions. To reduce costs they refuse to improve the safety practices, technology and equipment. Reckless on-site supervision also remains common. Many construction sites operate without professional inspectors and inspection activities on construction sites are often carried out by the supervisor who may not have himself ever received safety inspection training.

The official figures on construction safety are regarded as less than reliable, in particular the accident reporting system. Missing reports cover ups, and delayed reports are common occurrences. The supervision and monitoring by the OSH Administrative is weak. In many areas, the administrative department simply issues a guideline or notice rather than getting directly involved in safety prevention, supervision and monitoring.

### **3.2 Lack of enforcement, loopholes in laws and contradictions of policies**

*“There is a lack of enforcement and absence of monitoring which also exposes deficiencies in our system of occupational disease prevention.”<sup>65</sup>*

Law and regulations regarding occupational diseases have been produced and are under revision in China. However, there remain many unclear definitions and loopholes in the laws and regulations. They are in contradiction with government policies and its administrative procedures. There are many contradictions between the laws and the policies. Local regulations and administrative malpractice often lead to unfair rulings in work injury cases. In many areas, there is a lack of law enforcement and local government officials, arbitrators and judges abuse their power and judge cases unfairly.

Most of the victims of work injuries and occupational diseases cannot access the legal process, despite their right to claim compensation and obtain medical treatment. This includes administrative reviews, labour dispute arbitration, civil and administrative lawsuits. There are up to 22 steps in the current compensation processes which occupational disease sufferers have to face under the existing law. In reality, this process could take up to 4.5 years if the worker does not have the proper documentation or the employer and the local authorities refuse to cooperate. Many victims not only have to bear the torture of the sickness, but also face tremendous difficulties caused by the prolonged legal proceedings, discrimination and the financial burden. They must first prove that they were an employee of the construction company and must then navigate through the numerous loopholes in the current laws and regulations on occupational disease and deal with collusion between enterprises, local governments and the hospitals for disease control and prevention. Some victims have already passed away before obtaining any work injury compensation.

In July 2009, Zhang haichao, a pneumoconiosis victim, who worked for a building material company was refused the occupational diagnosis. He subsequently underwent an operation to open up his chest in order to prove that he was suffering from the fatal lung disease, pneumoconiosis. This breaking news received lots of attention from the media

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<sup>65</sup> Gu Changshen, a member of the Chinese People's Political Consultative Conference (CPPCC), in the Worker Daily, 20 March 2010

and the public and finally government departments became aware of the issue and acted. The authorities introduced a set of policies, administrative measures and announcements on occupational disease services and better management of the contracting of construction projects. In August 2009, The Ministry of Health (MOH) publicised a new diagnostic criteria for pneumoconiosis to better protect workers against this major occupational hazard in China. ACFTU also took the initiative in investigations of the silicosis cases. The Work-Related Injury Insurance Regulations are also currently being revised in response to concerns.

Also, the Ministry of Health, the Ministry of State Administration for Work Safety (SAWS) and the Ministry of Human Resources and Social Security are in the process of establishing occupational disease prevention. It is the first time that the Chinese authorities have established a cross-ministry monitoring system in response to the critical occupational disease crisis in China<sup>66</sup>. This is a very welcome development, but something must also be done for the thousands of victims and their families, who has already contracted an occupational disease and live with it without a proper diagnosis or compensation. There is also a need to compensate the families of those victims who have died of occupational diseases.

The construction law which was first issued in 1998 legalized the subcontracting system in China. There are no regulations on the subcontracting system. It has left huge legal loopholes which could be exploited by private construction companies and contractors. Subcontracting has a negative impact in particular on planning and the coordination of health and safety on Construction sites. At the end of 2005, the Ministry of Housing and Urban-rural Construction called for an end to labour contracting (Baogongtou) within three years. However, 'the subcontracting situation remains the same (four years later)'<sup>67</sup>. In actual fact, the situation deteriorated and is now out of control. This testifies to the weakness of the policies and their enforcement.

As a result workers often find it impossible to claim compensation, in particular for long-term medical treatment due to by law. The long-term medical treatment and family allowance are very important to Occupational disease victims. However, there is no national regulation to support the continuous medical treatment compensation standard. Also, it remains unclear who exactly is liable to pay the compensation as this is a complicated issue under the Law of the Prevention of Occupational Disease Diagnosis. According to Article 28 of the Regulation on Work Injury, "Within one year of the release of the work ability assessment result, the injured worker, the immediate family, the employment unit or the authorised assessment body may demand re-assessment of work ability if deteriorating conditions are proven." The worker may be liable to upgrade their work injury and the insurance due if they provide proof of deterioration of their silicosis and a further reduced ability to work. The employer and the local social security bureau should adjust the insurance and compensation payment accordingly. However at present it is not clear who should pay for upgraded work injury insurance in case of termination of the employment relation. The worker has to take the case to court again for

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<sup>66</sup> Xinhua News, 08 March 2010

<sup>67</sup> According to a Beijing legal aid centre, which have been handle up to thousands of violation case for migrant workers , Nanfang Daily, 21 May 2009

arbitration. This means at present that the law only provides occupational disease and injured workers with lump-sum compensation.

The shortfalls of the law and regulations are compounded by a lack of effective administrative measure. For example the existing administrative measures regarding high temperature was promulgated in 1960 and it has been "temporary" for 50 years and is still not part of the legislative process.<sup>68</sup> Most of the 'provision measures' are not suitable for the current working conditions. Legislation needs to be passed in these areas. However, the definitions for high-temperature, high temperature variations, high subsidies and other specific details have not developed in line with changes in the workplace.

### **3.2 Unclear responsibility, lack of monitoring and transparency**

*"The biggest problem of supervision of occupational diseases is unclear responsibility for monitoring. Also the law does not clearly define which department should be responsible for the supervision and who is in charge the legal enforcement"*<sup>69</sup> according to Wang Xianzhen, former vice Minister of State Administration for Work Safety.

According to article 8 of the convention, Whenever two or more employers undertake activities simultaneously at one construction site they shall be responsible for co-ordinating the prescribed safety and health measures and, in so far as is compatible with national laws and regulations, for ensuring compliance with such measures. However, there is collusion between the government and business, disorganised management and unclear delineations of responsibility and power.

The Prevention of Occupational Disease Law has clear provisions on the responsibilities of the enterprises. These include the enterprises responsibilities to install prevention measures (Chapter 2 and 3), to ensure workers' participation in safety and health management (Chapter 3), to insure workers and report in case of diagnosed cases (Chapter 4) as well as penalties for violations (Chapter 5). The Civil Law Principles also contain provisions on criminalisation of the owners of enterprises where "serious incidents" of safety issues involving casualties of 3 and above occur. However in most of the identified cases, the companies that are in obvious violations of all these provisions are seldom penalized. These companies are free to close down and relocate their production sites, which in practice undermines the Occupational Disease Law.

According to Gu Changshen, *'The local network of safety supervision, labour inspection has no integrity , lacks enforcement and cooperation with the health department and lacks professional on-site inspection guidance. Some legal officers and inspector can only rely on listening to and, watching pre-prepared materials.'* This situation must be improved'.<sup>70</sup>

Apparently, local authorities have a lack of safety awareness, do not effectively enforce the safety laws and regulations, do not understand their responsibilities nor do they engage in monitoring. There is also a need for a standardised and regulated construction market. Outsourcing, temporary projects and illegal subcontracting and operation remain

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<sup>68</sup> Xinhua New 6 July 2010

<sup>69</sup> Workers Daily, 20 March 2010

<sup>70</sup> Workers Daily, 20 March 2010

common. There is a lack of protection for workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the existing policies. Many construction sites operate without an inspector.

In order to reduce the accident rate, in China, employers who cause serious harm to the health of their employees may be convicted or bear criminal liability. Also, the one-time compensation award including the funeral expenses and monthly pension payments for work-related deaths will be increased to approximately 618,000 Yuan from 1 January 2011.<sup>71</sup> However, it is easy for employers to exploit loopholes and evade their obligations. Some employers collude with or pay off government officials and medical practitioners responsible for disease diagnosis and assessment. Enterprises also simply change the company name, location or legal representative as a means of evading compensation payments.

Meanwhile, China's Law on the Prevention and Treatment of Occupational Diseases technically gives Occupational disease victims the right to a civil hearing even without going through prior arbitration. However, many work-injured workers found it difficult to claim through a civil hearing due to the bureaucratic, unsympathetic the unwillingness of government officials, arbitrators and judges to assume responsibility, and enforce the law.

### **3.3 Union representation in workers' struggle to secure OSH related rights and proper compensation**

The imbalance of power in favour of employers and the absence of effective trade union representation mean that the workers can only take on individual legal actions to claim their rights. However, the loopholes in the implementation of law are identified. Workers are often ignored in the occupation health and safety system and also the authorities include the provincial Bureau of Work Safety, the Labour Bureau and the ACFTU. In the past few years, there have been large numbers of workers taking *collective actions* to fight for their legitimate rights in terms of occupational health and safety, and taking action to pressure the local and national governmental institutions such as the labour bureau, the hospitals and the people's court to change their behaviour. There are details of some successful legal struggles, though individualised, they are working to challenge the loopholes of the occupational health system in China despite the official restrictions and the absence of support from the ACFTU.

The Construction sector employs one fifth of the migrant workers in China (40 million). With complicated subcontracting practice, little statistical coverage of employment contracts, high turnover rate and serious health and safety violations, it is difficult for trade unions to adopt methods to adjust to specific needs like organising construction workers by targeting construction projects. However, the ACFTU's continuing campaign for 100 percent unionisation, has led to come initiative, including newly created unions which are not industry specific<sup>72</sup>. It still remains to be seen if such unions are sustainable.

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<sup>71</sup> [State Council of PRC, 26 July](#) 2010

<sup>72</sup> For example, Luyuan Labour Market is the biggest employment market in Shenyang City of Liaoning Province, with two to five thousand visit per day. In April 2005, Shenyang City's Federation of Trade Unions set up a union at the labour market, allowing migrant workers looking for work to join. Funding has been a problem since its establishment. After the approval of the ACFTU chairperson, the local trade union (city-level) provides 100,000 yuan annual funding. See Joint Research Group of the ACFTU, Liaoning Provincial

Meanwhile, in order to address the large safety problems, a few unions like the Chinese Seamen and Construction Workers' Union has taken vigorous action to launch awareness campaigns and in particular to reach all industrial workers with their safety production awareness campaign.<sup>73</sup>

The People's Daily in early June 2010 questioned why the goal of full unionisation in all private companies had still not been realised and whether existing unions are fulfilling their roles effectively. It also stated that ACFTU branches should intervene if company unions are not doing their jobs. In one instance, the chairman of a trade union of a stated-owned container manufacturer in Jiangmen City, Guangdong Province of China was also the director of the General Manager's office. In 2007, he acted on behalf of the employer in a work-jury lawsuit case against workers who had suffered a work-related injury. This factory reported 2 to 3 cases of work-related accidents a day and an average of 500 work injuries a year. In 2006, 7 workers died in work-related accidents. Injuries caused by being crushed, falls and other assorted injuries are widespread in the workplace particularly in the stamping department. Accidents have been happening every day in this factory for many years and the workers receive no support from the company union or any higher level union.

Trade union leaders' representing the employer against workers is not unusual in China. The lack of freedom of association and collective bargaining has a negative impact on the workers' struggle to secure their rights and of proper representation. Worker's rights and interests have generally been ignored by the trade unions. The ACFTU needs not only to be active in organising unions in high-dust industries, far more importantly it also needs to be active in assisting workers establish health and safety monitoring committees at enterprise and regional levels. Trade unions need to be responsible for the supervision of OSH management through extensive inspections and monitoring of OSH controls. However, unfortunately the ACFTU is rarely seen engaging in OSH issues, let alone supporting workers claims for compensation.

#### **4. Conclusions**

The ITUC welcomes the fact that the Chinese government has addressed and developed policies and made legislative progress under the existing law. In particular, the important advance of a revision of the Law on the Prevention and Treatment of Occupational Diseases and the Work-Related Injury Insurance Regulations<sup>74</sup>. However, as the ILO has also noted, the challenges remain the lack of implementation of the laws regarding Occupational Safety and Health in China, the lack of enforcement of compensation and treatment related regulations and evidence of corruption.

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Union, Shenyang City Trade Union. 2006. 'Research Report on the Migrant Workers' Union of Luyuan Labour Market, Shenyang City'. 2006. In *Chinese Workers' Movement*. Issue 6. pp. 21-23, 34. Gao, W. and Fei, Y.Y. 17 March 2006. 'Annual Funding of 100,000 yuan Gives the Luyuan Trade Union 'Blood''. *Liaoning Evening News*. Accessed from Northeast News website, on 15 August 2008. <http://liaoning.nen.com.cn/77971867083735040/20060317/1872719.shtml>.

<sup>73</sup> Chinese Seamen and Construction Workers' Union, 13 November 2007

<sup>74</sup> China Legal Daily, 3 March 2010

The ITUC therefore suggests that the Committee of Experts consider recommending to the government that they put into place effective measures to bring an end to health and safety problems in China. Prevention strategies are the priority of the national plan. The ILO must encourage the Chinese government to ratify and implement the provisions of the following conventions in order to address the problems with occupational health and safety:

Convention 62 and recommendations 53 and 55;  
Convention No 121;  
Conventions C139 and recommendations 147;  
Conventions 161 and recommendation 171;  
Conventions 162 and recommendation 172;

National laws and regulations must also be enforced judiciously and fairly. Measures and action plans shall be taken to ensure that this involves a tripartite approach, with co-operation between employers and workers, in accordance with arrangements to be defined with lawful and effective and practical measures. Appropriate inspection services will be provided to supervise the application of the measures to be taken in pursuance of the Convention and adequate resources will be provided for this purpose.

The right to full freedom of association and the right to bargain collectively for trade unions should be recognised, and the participation of workers in prevention and supervision of safety management and consultation on safety policy at company level should be encouraged. Safety, health and environmental standards should go further than the existing legislative minimum – particularly with regard to the establishment of joint management-union health and safety committees and workers' participation in the prevention of injuries and ill-health. There is a need for tripartite cooperation and social dialogue, to promote social dialogue regarding health and safety management on-site to ensure the day-to-day application of prevention measures in the construction sector. These include industry development boards and industry training boards as well as national committees on health and safety in construction.

The Government should include health and safety targets and indicators of success in the national plans and implement more robust reporting systems. The infrastructure for occupational health practice should comprise all the organisational arrangements needed to implement a national policy on occupational health services, as requested by ILO Convention No.161, so as to ensure its implementation on national and company levels. A sound and comprehensive work injury insurance scheme should be established, as requested by the ILO Convention No 121 Employment Injury Benefits and on the basis of the three-tier model of 'prevention-compensation-rehabilitation' devised by the ILO with the guidance of the WHO.

It should be implemented within the national legislation, together with provision of protection for work injury and occupational disease victims and their dependent families through the provision of medical treatment, financial compensation and guaranteed income.

The Construction and related high risk industries require information and training on hazards and prevention for everyone on site, establishing clear responsibilities, in particular in relation to contractors, and a preventative safety and health culture. A widespread public education process is also needed to spread information about the OSH legislation and associated rights, duties and legal benefits. Information on how to obtain access to redress in the event of non compliance should also be made available. Those civil society organisations such as workers rights groups, defending the legitimate rights and interests of workers in relation to OSH should be allowed to participate fully in the promotion and protection of worker's access to the Occupational health and safety provisions. Many bodies other than occupational health services, such as enforcement agencies, research institutions, educational and training institutions, non-governmental organisations and tripartite bodies having stakeholders' interest in occupational health and safety can usefully contribute to occupational health practice.

Kindly forward this document and the appended photos to the Committee of Experts for examination during its forthcoming session.

Thank you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. B...', written in a cursive style.

General Secretary