

**中国劳工通讯** China Labour Bulletin

**Research Reports**

**Help or Hindrance to Workers**

**China's Institutions of Public Redress**

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## Introduction

When Zhang Guangli lost four fingers of his left hand operating machinery at the No.1 Steel Plant in Anshan, his employer, Angang New Steel Co Limited, agreed to pay for his medical treatment but not to provide the work-related injury and disability compensation required by law. In May 1994, one year after the accident, Zhang sought redress through his local Labour Dispute Arbitration Committee (LDAC). Even though Zhang's injury was clearly work-related, it took six years for the labour bureau to certify it as a "[grade six disability](#)" and another seven years before the courts brokered a "mediation agreement" in which Angang New Steel undertook to pay Zhang 20,000 yuan in compensation, and a disability pension equivalent to 70 percent of his average wage at the enterprise.

Why did it take 13 years for an employee who was seriously injured at work to obtain the compensation he was entitled to under the law? The answer lies in the inability of China's overburdened and overly bureaucratic arbitration and court system to cope with the rapidly increasing number of labour disputes, as well as the undue influence that powerful corporations and individuals can exert over the system.

In 1991, China's arbitration system settled just 7,600 labour disputes; by 2006, that figure had increased more than 40-fold to 317,000, an average annual rise of 28.2 percent. And since 1 January 2008, when the *Labour Contract Law* went into effect, the number of disputes has escalated further. The *Guangzhou Daily* reported on 25 March 2008 that LDAC cases in most city districts had risen three to five-fold since 1 January, with cases in one district rising 15-fold. The head of the city's labour arbitration office told the newspaper that the number of cases filed in the first two months of 2008 equaled the total for the whole of 2001.<sup>1</sup>

The range, complexity and length of labour disputes have likewise increased dramatically, placing a huge burden on the existing three-tier system of dispute settlement. This system - involving successively, internal mediation within enterprises, local-level arbitration and final resolution by court trial - was originally established in 1987 to handle disputes within state-owned enterprises. In 1993, the system was formalized and broadened to include all enterprises in China.<sup>2</sup> However, it has patently failed to keep up with the rapid pace of economic development and expansion of the private sector. Ideally, disputes should be settled at stages one or two but increasingly workers need to file law suits to obtain redress. Critics have pointed out that the procedures for settling work-related injury and occupational illness compensation cases, in particular, are excessively complicated and time-consuming, with workers having to jump through numerous procedural hoops to prove their case. These include: confirmation of labour relationship, appraisal of work-related injury or

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<sup>1</sup> Shen Hua, "Guangzhou laodong zhongcai anjian meng zeng, Haizhuqu zeng fuda shiwu bei." (Labour arbitration cases in Guangzhou have increased dramatically: The Haizhu region witnessed a 15-fold increase.) *Radio Free Asia* 26 March, 2008.

<sup>2</sup> In July 1987, the State Council issued the *Provisional Regulations on the Settlement of Labour Disputes in State Owned Enterprises* (*Guoying qiye laodong zhengyi chuli zanxing guiding*), which reintroduced formal procedures for the settlement of labour disputes after the previous procedures were abolished in 1958. In July 1993, the State Council issued the *Procedures of the People's Republic of China on the Settlement of Labour Disputes in Enterprises* (*Zhonghua renmin gongheguo qiye laodong zhengyi chuli chengxu*), which formalized these procedures and widened their scope to include all enterprises beyond state-owned enterprises within the PRC.

disability, administrative redress, labour arbitration and adjudication by courts. Each step of the process is loaded down with trivial details and can present a daunting challenge for even the most determined complainant, such as Zhang Guangli, with some cases dragging on for nearly two decades.<sup>3</sup>

The central government's response to the crisis has been to introduce new legislation. The *Labour Dispute Mediation and Arbitration Law (Zhonghua Renmin Gongheguo Laodong Zhengyi Tiaojie Zhongcai Fa)*, approved by the National People's Congress (NPC) Standing Committee on 29 December 2007, was specifically designed to streamline and shorten the time-consuming mediation and arbitration procedures that impede the prompt resolution of labour disputes. Currently, the final arbitration award of a LDAC is not legally binding, but Article 47 of the new law states:

*Unless otherwise specified herein, the written arbitration award in any of the following employment disputes shall be final and become legally effective on the date it is rendered: (1) disputes involving recovery of labour remuneration, medical bills for a work-related injury, severance pay or damages, in an amount not exceeding the equivalent of twelve months of the local minimum wage rate; (2) disputes over working hours, rest, leave, social insurance, etc. arising from the implementation of state labour standards.*<sup>4</sup>

The new law abolishes the arbitration application fee, extends the period in which an employee can instigate proceedings from 60 days to one year of the rights infringement, and also makes it easier for the complainant to file a civil law suit if the case is rejected by the LDAC.

The *Arbitration Law* is clearly a significant improvement on previous laws and administrative regulations. However, as with all labour legislation in China, the real test will come when the law goes into effect on 1 May, 2008. Will the new law be rigorously enforced or will vested interests conspire once again to prevent workers from obtaining fair and just redress for violations of their rights? Certainly the number of workers winning labour dispute cases is increasing all the time, (currently more than 50 percent of all cases are won by employees) and compensation awards issued by the courts are getting significantly higher. However, this is largely because the violations of labour rights in China are so numerous, blatant and egregious that in many cases it would be virtually impossible for courts not to rule in favour of the employee. Significant problems remain within the arbitration system, problems that are unlikely to be resolved by changes in legislation alone.

Over the last five years, China Labour Bulletin (CLB) has gained valuable practical experience from our direct involvement in labour dispute resolution in mainland China. Our [Labour Rights Litigation Programme](#) helps workers whose legal rights have been violated to seek redress through the mediation, arbitration and court system. A substantial proportion of the labour rights cases CLB represents concern work-

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<sup>3</sup> Mao Lei, Shi Guosheng, "Laodong zhengyi tiaojie zhongcai fa cao'an chushen, san da liangdian yinren guanzhu" (First reading and deliberation of the draft Labour Dispute Mediation and Arbitration Law: three key points draw public attention), *Renmin Ribao* (People's Daily), 28 August 2007.

<sup>4</sup> Unofficial translation prepared by Baker & McKenzie LPP, made available to the Chinalaw discussion list, <http://hermes.gwu.edu/archives/chinalaw.html> (last visited April 21, 2008)

related injury and illness. We have achieved considerable success in many of the cases we helped bring to trial. However, we have also encountered numerous problems and obstacles: powerful industrial business interests exercise an inordinate influence on institutions of public redress (*gongli jiuji jigou*) such as the LDACs and the local courts; local governments shield investors; and despite some institutional and procedural improvements, bureaucratic obstacles and official intransigence often prevent ordinary Chinese citizens from obtaining fair and just redress. Workers are often caught in a vicious circle in which they spend vast amounts of time, energy and money for little or no reward. Below, we focus on three CLB case studies, those of [Zhang Guangli](#), the [Lu Family](#) and [Deng Wenping](#), that illustrate these problems particularly well and indicate what systemic and structural changes will have to be made if the new *Arbitration Law* is to be effective in protecting workers' rights, and in particular their right to redress.<sup>5</sup>

### **Corporate influence on the institutions of public redress**

The case of Zhang Guangli, who lost four fingers in a workplace accident, clearly illustrates how a powerful corporation can effectively hold up arbitration proceedings for years, even decades on end. The Angang Group is a vast enterprise that dominates the city of Anshan in north-eastern China's Liaoning province; it is controlled by the central government and is one of the country's largest steel producers. In January 2004, the chairman of the Anshan Municipal Party Committee told *Xinhua News Agency* that Angang was Anshan's biggest brand as well as the city's most distinctive symbol. Indeed, Angang Steel enjoys higher name recognition in China than the city of Anshan itself, and its administrative rank is half a grade higher than the city's. In 2002, the total sales revenue of state-owned enterprises in Anshan was 30 billion yuan, of which Angang Steel accounted for 24.6 billion yuan. The city's total tax revenue was 6.2 billion, of which Angang accounted for 3.4 billion. A popular local saying sums up Angang's position in the city: "You can't beat it, you can't snub it and you can't leave it."<sup>6</sup>

As a major state-owned enterprise with a unique social and economic position in the community, Angang has been able to place itself above the local government. Consequently, when labour disputes occur at the steel plant, the municipal LDAC can only step in if Angang agrees. When Zhang Guangli demanded that Angang and the No. 1 Steel Plant assume responsibility for his work-related injury, he was brushed off

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<sup>5</sup> When a citizen's rights are violated, the law provides for the right to seek redress. The Constitution of the PRC enumerates, for example, several rights of redress. Article 41 states: "Citizens of the PRC have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary.... Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law." To fulfil its obligation to uphold and enforce these rights, the state has developed a public redress system that includes mediation, arbitration, lawsuits, administrative adjudication and petitions. Administrative and judicial officials within the institutions of public redress not only represent state power, they also have a duty to fulfil the state's public redress obligations. When institutions of public redress obstruct or deny citizens the right to redress, they are in dereliction of their duty.

<sup>6</sup> "Anshan qianxing raobukai de san daoti" (Three inescapable issues in Anshan), *Jingji Cankao Bao* (Economic Reference News), 14 January 2004, republished in Zhongjin Zaixian, <http://news.stock888.net/040114/101,1317,434878,00.shtml>. (last visited April 21, 2008)

and threatened with dismissal. When he appealed to the local LDAC for arbitration, he was told by one of its officials, “We don’t deal with Angang matters here.” The arbitration committee refused to give him written notice that it had declined to hear his case, which under existing laws then made it impossible for him to bring a civil suit in court. When Zhang attempted to petition the authorities, officials from the Angang Complaints and Petitions Office (*xinfangchu*) detained him and on several occasions placed him under virtual house arrest. In April 2000, a group of men broke into his home and prevented him from leaving so that he could not interrupt then Premier Zhu Rongji’s inspection tour of Angang. The Anshan Labour Appraisal Committee only agreed to assess Zhang’s level of disability in November 2000, seven years after the accident, after Angang had given it the go-ahead to do so. And in January 2001, the Anshan Municipal LDAC took on the case but only after the head of the Angang Petitions Office reportedly telephoned the Anshan Labour Bureau in December 2000 to tell them that, “as far as we are concerned, you can go ahead and handle Zhang Guangli’s case.”

Even after the case was finally accepted, Zhang was still subject to threats and intimidation. On the eve of the annual NPC meeting in March 2001, he was ordered to report to the local police station. When he arrived, he was forcibly taken away by thugs in the employ of Angang Steel and held against his will at the company’s Qianshan Sanatorium. That evening Zhang was viciously beaten and left with a severed tendon on his right hand and a broken nose. He was then taken home and prevented from leaving until company officials eventually agreed to take him to hospital for treatment.

Of course, not all corporations can dominate local government institutions to the extent that Angang does, but many local governments do have a vested interest in protecting those enterprises that bring in tax revenue, employment and economic development to their region. Jing county in Hebei, for example, is a major centre of rubber and plastics manufacturing, machinery (particularly automotive parts) and steel pylon production. One of the most important companies in the county is Dena V-Pulley Co., China’s largest manufacturer of spun pulleys (a crankshaft component) for high-end cars.<sup>7</sup> In July 2007, *Yanzhao Dushi Bao* (Yanzhao City News) published an exposé of the “severed finger compensation case” of Dena V-Pulley Co. employee Lu Guorong. On 5 December 2005, Lu lost her left-hand index finger while operating machinery in a small factory owned by Dena in Hengshui city. Prior to this accident, 18 workers employed at the same factory had already lost fingers while operating machinery, but not a single one had received any compensation.

Keeping to its usual practice, the company did not give Lu any financial compensation for the finger she had lost; nor did it reassign her to a different workstation. Instead, the factory owner sacked her two days after the accident because, he claimed, without her finger she could no longer operate the machinery. As the company refused to pay her adequate compensation, Lu submitted an application for arbitration to the Jing County LDAC. In his written response to the arbitration claim, the factory owner accused Lu of having unilaterally “severed labour relations” and claimed that this amounted to a breach of contract. The owner also demanded that Lu

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<sup>7</sup> Wang Wenhui, “San da chanye tuochu zhanxin Jingzhou” (The three industries shaping the new Jingzhou.) CPC website <http://theory.people.com.cn/GB/49154/49155/6354539.html> (last visited April 21, 2008)

compensate the factory for the “loss” it had incurred. In violation of arbitration regulations, the Jing County LDAC weighed the factory owner’s demands for compensation against her claim for compensation. The committee ruled that once the money Lu Guorong supposedly owed the factory for having breached her contract was deducted from the money the factory owed her for her lost finger, the factory only had to pay her a compensation of 7,112 yuan. According to Lu, after her lawyer’s fee and the arbitration fee she had to pay were deducted from this compensation, she was left with virtually nothing.<sup>8</sup>

While it is often impossible to prove that officials in institutions of public redress were unduly influenced by local business interests, the fact that a factory could sack 19 employees after they suffered debilitating work-related injuries and only had to pay token compensation to one of them indicates at the very least that either the system is not working or that the officials operating within it are not doing their job.

### **Bureaucratic obfuscation and indifference**

In June 2000, a migrant worker named Lu Hongfu (then aged 28) got a job at Qingxing Powder Machinery Co. Ltd, a Sino-Japanese joint venture in Jiangsu’s Yixing city, doing odd jobs in a chemical micro-powders workshop and working as an assistant painter. A year into the job, Lu began to suffer from dizzy spells, vomiting, bleeding gums and other symptoms. A hospital diagnosed him with acute myeloid leukaemia. Lu repeatedly appealed to his local LDAC and court for occupational illness compensation and related medical expenses, but both agencies refused to hear his case. Lu Hongfu died on 4 May 2003 after running up medical bills of 250,000 yuan. His elderly and impoverished father, Lu Guoqiang, then took up his dead son’s cause and continued to appeal to the local LDAC and the courts for compensation from Qingxing Co. In June 2007, five years and four months after Lu first applied for compensation, the Yixing Municipal Petitions Bureau finally brokered a “mediation agreement” according to which Qingxing agreed to pay out just 93,000 yuan in installments on the condition that Lu Guoqiang instigated no further proceedings regarding his son’s case. By then the case had gone through the tortuous process of numerous arbitration hearings, court trails, appeals and retrials.

Under normal circumstances, the entire application process for occupational illness compensation - from the time it is first diagnosed, to the confirmation of the diagnosis, the appraisal of the degree of labour incapacity and the submission of an application for compensation - should take three to six months. But in Lu Hongfu’s case, there was no occupational illness diagnosis and appraisal authority (*zhiyebing zhenduan jianding jigou*) in his neighbourhood or even the province. Lu could not appraise his degree of labour incapacity himself and was in urgent need of medical treatment.<sup>9</sup> But rather than commission an appraisal, the institutions of public redress in Yixing

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<sup>8</sup> Wang Xiaobo, “‘Chishou’ de jiqi: Jing xian duanzhi gongren weiquan kunjing diaocha” (“Hand-eating” machinery: an investigation into a worker’s uphill battle to defend her rights after losing a finger in Jing county), *Yanzhao Dushi Bao* (Yanzhao City News), 17 July 2007.

<sup>9</sup> According to Jiangsu People’s Procuratorate’s (2005) Min-Shi-Kang-Su-Shu No. 148, Lu Hongfu went to the Yixing Municipal Public Health Bureau and its public health and epidemic prevention station, the Wuxi Municipal Public Health Bureau, the Wuxi Centre for Disease Control and Prevention and the Jiangsu Centre for Disease Control and Prevention to request an occupational illness appraisal but drew a blank at all of those facilities.

initially simply refused to hear Lu's case. The court said: "The health administration departments of Jiangsu province have not yet approved medical institutions to diagnose occupational illnesses in the province, and it has therefore so far been impossible to appraise whether Lu Hongfu suffers from occupational leukaemia."<sup>10</sup>

Only in April 2003, when Lu Hongfu's leukaemia had already entered a critical stage, did the Yixing Municipal Court commission the newly established Jiangsu Centre for Disease Control and Prevention to appraise whether Lu was suffering from an occupational illness. The centre, basing its conclusion on incomplete documentation provided by Qingxing Co., stated: "At present we can neither confirm nor rule out that this is a case of occupational leukaemia." Although the centre's conclusion was equivocal, the fact that an appraisal took place meant the preliminary procedure (occupational illness diagnosis and appraisal) necessary for arbitration and a trial had been fulfilled. This being the case, the judicial process of settling the substantive question of Lu's civil claim - compensation for his occupational illness - ought to have been initiated. However, on 26 May 2003 the Yixing Municipal Court issued a civil ruling (2002) Yi-Min-Yi-Chu-Zi No. 4105, which failed to make any mention of the preliminary procedure that had already been fulfilled in this case and dismissed the lawsuit on the pretext that, "Lu Hongfu has applied for occupational illness compensation but several [required] administrative procedures have not been completed, including an occupational illness diagnosis, an official certification of a work-related injury or disability (*gongshang rending*) and an assessment of the degree of disability." The court concluded: "[Lu Hongfu] may not directly institute legal proceedings in this court. The court dismisses this lawsuit." While the court was correct in saying Lu did not have an official certification of a work-related disability and an assessment of the degree of disability, it failed to acknowledge that these two documents were dependent on first obtaining an occupational illness diagnosis.

The failure of the Jiangsu Centre for Disease Control and Prevention to confirm that Lu Hongfu's leukaemia was an occupational illness not only stymied the whole legal process from the outset, it was in fact in contravention of the *Law of the People's Republic of China on Prevention and Control of Occupational Diseases*. The law states: "If there is no evidence negating an inevitable connection between occupational illness risk factors and the patient's clinical manifestations, and if other pathogenic factors have been ruled out, the disease must be diagnosed as an occupational illness." (Article 42.) In other words, the onus was on the medical appraiser to find clear evidence that it was *not* an occupational illness.

Moreover, there was a *prima facie* case Lu Hongfu's leukaemia was "benzene-related" and as such qualified under government health regulations as an occupational illness. In the Qingxing Co. grinding workshop where Lu was employed, workers had long-term exposure to toxic substances such as pesticides and herbicides. There were numerous cases of workers fainting, vomiting and being rushed to hospital. A public health report showed that front-line operators in this workshop showed mild benzene poisoning and some of the workers showed early symptoms of blood disease such as leukaemia. And it was not just Qingxing Co. that had problems in Yixing city. By the time Lu contracted acute myeloid leukaemia, occupational illness rates in Yixing were already very high. According to figures from the Yixing Municipal Public

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<sup>10</sup> Yixing Municipal Court civil ruling (2002) Yi-Min-Yi-Zi No. 4105 issued 5 December 2002.

Health Bureau, workers in more than ten industries were exposed to high levels of occupational hazards, employees in more than 3,000 manufacturing and processing enterprises risked contracting diseases of the blood or liver, malignant tumours or neurological disorders, and cases of acute occupational poisoning were frequent.<sup>11</sup>

After Lu's death, his father filed an appeal with the nearby Wuxi Municipal Intermediate Court. On 21 July 2003 the court issued a civil ruling (2003) Xi-Min-Zai-Zhong-Zi No. 412, which mentioned the Jiangsu Centre for Disease Control and Prevention's appraisal but failed to acknowledge that it fulfilled a legal requirement. Instead, the court found that the "preliminary procedure" of an occupational illness diagnosis and appraisal had still not been completed. The ruling read: "Whether or not this appraisal confirms that Lu Hongfu was suffering from an occupational illness must be established by the relevant administrative departments. It is not something that can be confirmed directly by the Court. Therefore, Lu Hongfu's parents must first complete the relevant preliminary procedure and may not appeal this case directly to the Court."

If, from the outset, Lu's medical condition had been properly appraised, and the arbitration officials and trial judges had been willing to show a modicum of judicial activism in this case, there was a chance at least that Lu Hongfu could have obtained treatment and a possible cure.<sup>12</sup> But in their search for justice, the Lu Family repeatedly ran up against brick walls. Officials in the institutions of public redress, who were supposed to assist those whose rights have been violated, were cold and indifferent to the plight of a dying man and his family. In a letter faxed to CLB in August 2006, Lu's father, Lu Guoqiang wrote: "Five years have passed and I'm tired of appealing to courts whose doors remain always shut. Having personally experienced the suffering, hardship and helplessness that are hidden behind the slogan 'in a country ruled by law there are laws to abide by', my spirit and my family have been driven to breaking point."

### **A "Modern-day Magistrate Bao"**

In December 2000, Deng Wenping, a migrant worker from Sichuan employed for three years as a gem cutter at the Kong Kong-owned Perfect Gem & Pearl Manufacturing Co. in Huizhou, was admitted to the Guangdong Occupational Disease Hospital. He was subsequently diagnosed by the Guangdong Province Occupational Illness Diagnosis and Appraisal Committee as having stage II silicosis, a chronic and incurable lung disease. Perfect Gem employed around 150 workers at the time. The factory did not have effective ventilation or dust-extraction equipment, and management did not issue workers with reliable safety gear, inform them of the dangers of breathing in silica dust, or arrange for medical check-ups as required by law. Management even sealed up the workshop windows, ensuring that employees worked for protracted periods in an extremely hazardous dust-filled environment - many workers eventually contracted silicosis. For more information, see CLB's 2005

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<sup>11</sup> Cao Fengjun, "Jiannan de zhiyebing suqiu zhi lu" (The hard road of occupational illness compensation claims), *Fazhi Shehui* (Rule of Law Society), Vol. 10, 2004, pp. 24-27.

<sup>12</sup> Before Lu Hongfu succumbed to his disease, an oncologist at First Affiliated Hospital of Suzhou University proposed a "sibling allogeneic bone marrow transplantation" or an "autologous peripheral hematopoietic stem cell transplantation". The first treatment would have cost 300,000 yuan; the second 200,000 yuan. Qingxing Co. refused to pay for either treatment.



research report [Deadly Dust](#).

In April 2001, under the auspices of the Boluo County Labour Bureau, Deng Wenping signed a mediation agreement with Perfect Gem and was forced to accept a lump-sum compensation, pension and hardship award of 100,000 yuan, of which 10,000 yuan was illegally deducted by the factory manager as a “commission.” Deng returned to his hometown in Sichuan for medical treatment, but soon afterwards found that his health was deteriorating rapidly and he was unable to afford the mounting medical bills. In October 2002, he was diagnosed with stage II-plus silicosis, and by April 2004 he was diagnosed with stage III silicosis, the terminal phase of the illness. Medical examinations in June 2003, March 2004 and March 2005 confirmed that Deng’s condition was rapidly deteriorating, and he was readmitted to the Guangdong Occupational Disease Hospital. By early 2005, Deng’s medical expenses had reached 170,000 yuan. He and his wife, who had been sacked from Perfect Gem three days after Deng was diagnosed with silicosis, were forced to sell their house in Sichuan but were still left with substantial debts, including hospital bills of more than 700 yuan a day. Deng appealed twice to the Boluo County LDAC for arbitration and filed a civil suit in the Huizhou Municipal Intermediate Court. Both the arbitration committee and the court found against him on the grounds that he had “exceeded the [60-day] time limit for seeking arbitration” and that the “original agreement [with the factory] was lawful and remains in force.”

On 8 June 2005, Huang Liman, chairperson of the Guangdong Provincial People’s Congress Standing Committee, learned of Deng’s case while conducting an inspection of the Huizhou Municipal Intermediate Court. According to a local newspaper, Huang declared: “Of the three hot issues of concern to the masses, ‘social justice, judicial fairness and disadvantaged groups,’ judicial fairness is the most important, because it is the basis for social justice.”<sup>13</sup> The newspaper added that: “Under the supervision of the Chairperson of the Standing Committee of the People’s Congress of Guangdong Province, the Huizhou Municipal Intermediate Court reconsidered Deng Wenping’s case” and on 19 June ruled for a retrial. With Huang Liman looking over their shoulders, “the judges finally found a legal basis to resolve Deng Wenping’s appeal and understood that the court’s initial rejection of his compensation claim had no basis in law.” The newspaper depicted Huang as an eagle-eyed “modern-day Magistrate Bao” – an incorruptible Song dynasty magistrate, much loved by the common people because of his determination to see that the law was enforced and justice was done. On 13 July 2005, the Huizhou Municipal Intermediate Court issued a civil mediation letter (2005) Min-Zi-Zai-Zi No. 28, which awarded Deng a lump-sum compensation of 230,000 yuan. Six months later in January 2006, Deng finally succumbed to his illness and died in his home town.

Why did it take the intervention of a chairperson of a provincial people’s congress standing committee for an occupational illness compensation case that had dragged on for more than four years to be resolved in less than a month? And what would have happened if another case had caught Huang’s “eagle eye” instead? The official

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<sup>13</sup> Tian Shuangyue, Gao Jing, Xue Min, “Sheng renda zhuren qinzi duban tao peichang chuan ji mingong huo pei 23 wan” (Chairwoman of the Standing Committee of the Provincial People’s Congress personally supervises and manages negotiations to obtain 230,000 in compensation for a Sichuanese migrant worker), *Nanfang Dushi Bao* (Southern Metropolis Daily), 21 January 2005.

Chinese media often extols the virtues of modern-day Magistrate Baos,<sup>14</sup> while ignoring the fact that if the system were working properly, there would be no need for the intervention of incorruptible officials and arbiters of justice. The myth of Magistrate Bao perpetuates the commonly held idea that while local officials may be corrupt and venal, ordinary people can always rely on higher authorities to intercede on their behalf. It is patently clear however from the abject failure of China's complaints and petitions (*xinfang*) system to resolve the problems of aggrieved citizens, that this faith is misplaced.<sup>15</sup> In a country of more than 1.3 billion people, ordinary citizens obviously cannot always rely on the chance intervention of a high official to right the wrongs committed by others. It is the responsibility of the institutions of public redress to ensure that those whose rights have been violated do indeed obtain redress. China claims to be a country "ruled by law" (*fazhi*). But the fact that blatant rights violations such as those in the case of Deng Wenping could only be resolved through the intervention of a modern-day Magistrate Bao clearly illustrates that in reality it is still a country where "rule by man" (*renzhi*) prevails over the rule of law.

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<sup>14</sup> On 10 April 2007, *Xinhua* ran a story about Peng Kaihe, a migrant worker from Chongqing, who had been left paraplegic as a result of a work-related accident while working for a company in Nan'an, Fujian province. After the accident, Peng was sacked, his medical condition deteriorated and he was forced to beg to survive. In January 2007, after two years of litigation, the Quanzhou Municipal Intermediate Court in Fujian issued a final judgement ordering Peng's employer to pay him a lump-sum compensation of 690,000 yuan. But when the time came to enforce the judgement, the employer changed the company's name and legal representative. Two weeks later, on 25 April, *China News Net* published a follow-up article, which claimed the chairman of the Nan'an Municipal Party Committee had sent out a memo to various government departments and agencies instructing them to work together to enforce the court's judgement. The secretary of the Nan'an Municipal Politics and Law Committee personally coordinated efforts to enforce the court's award. By the time the news report was published, Peng Kaihe had already been paid a first compensation instalment of 100,000 yuan. Xiang Kailai, Ge Rujiang, "Mingong yingong fushang zao yiqi, zhengfu qineng bishangguan?" (How could the government stand by when a migrant worker is fired following a work-related injury?). Xinhua Net, [http://news.xinhuanet.com/focus/2007-04/10/content\\_5956603.htm](http://news.xinhuanet.com/focus/2007-04/10/content_5956603.htm) (last visited April 21, 2008)

Yuan Pingzhen, Su Yizheng, "Chongqing ji nongmingong Peng Kaihe weiquan zhixing an huo tupo: Peng Kaihe shoudao fayuan shoubi 10 wan yuan zhixingkuai" (Breakthrough in the labour rights case of Peng Kaihe, a migrant worker from Chongqing who has just received the first 100,000 yuan of a court-awarded compensation), *China News Net*, republished online by Sohu News, <http://news.sohu.com/20070425/n249694957.shtml> (last visited April 21, 2008)

<sup>15</sup> Since the establishment of the PRC in 1949, the *xinfang* system has been just about the only method by which ordinary Chinese citizens could seek redress for their grievances. Put very simply, aggrieved parties send petition letters or visit the *xinfang* office of a higher level of administration in order to seek compensation, an apology or to correct mistakes made by a lower level of the administration. However, the *xinfang* system is now widely regarded as over-burdened, unresponsive, overly complex and ineffective. Although millions of ordinary citizens still seek redress through the *xinfang* system each year (18.6 million in 2004 alone), a recent survey showed that only three in 10,000 petitions result in some form of resolution.

## Conclusion

In the three cases examined above, it is clear that whether or not the complainants obtained justice depended much less on the actual institutional procedures for public redress than on the ability and willingness of the officials concerned to carry out their duties. There was nothing particularly complicated about any of these cases that would have precluded a fair settlement being made during the time limit prescribed by law. And yet the LDAC officials, judges and local government officials involved were simply not willing or able to ensure that the plaintiffs obtained redress.

This unfortunately is the case in many under-resourced and over-burdened institutions of public redress across the country. As the legal scholar He Weifang has pointed out, these institutions “were originally meant to seek justice [but] have become institutions that dispense injustice. Institutions that were meant to resolve disputes have become institutions that create them and institutions that were meant to allay popular resentment have become institutions that stir it up.”<sup>16</sup>

Moreover, despite the dramatic increase in the number of labour dispute cases, staff levels at LDACs, especially in the Pearl River delta, have remained static. The *Guangzhou Daily* reported on 25 March 2008 that the Haizhu District LDAC only had three staff members, working six days a week, holding evening sessions three times a week. According to labour law expert Duan Haiyu, Shenzhen’s labour arbitration department has been finding it increasingly difficult to complete cases within the specified time frame: “All the current cases cannot be adjudicated within the legally stipulated deadline. Adjudication ought to take place within 60 days of the case being brought in, but after extending this by another 30 days, there are still many cases awaiting adjudication,” he told *Radio Free Asia*.

Another labour expert in the same report pointed out that even though migrants make up the majority of the working population in cities in Guangdong, staff levels at municipal labour departments are still based on the numbers of the permanent urban population: “In the first place, the labour supervision unit is already relatively small within the labour department. Furthermore, its set-up is based on the resident census, which makes it even smaller.”<sup>17</sup> In a city like Shenzhen where migrants make up over 70 percent of the working population, this policy makes no sense at all.

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<sup>16</sup> Cited in Liu Shuang, “2004 sifa gaige qianzhan: rang sifa jiguan buzai zhizao minyuan” (Looking ahead to judicial reform in 2004: judicial organs must no longer be allowed to cause popular discontent), *Falü yu Shenghuo* (Law and Life), vol. 1 (2004), pp. 2-4.

<sup>17</sup> Liu Kaiming of the Shenzhen Contemporary Social Survey and Research Centre, quoted in Shen Hua, “Guangzhou laodong zhongcai anjian meng zeng, Haizhuqu zeng fuda shiwu bei.” (Labour arbitration cases in Guangzhou have increased dramatically: The Haizhu region witnessed a 15-fold increase.) *Radio Free Asia* 26 March, 2008.

If the new *Arbitration Law* is to be effective, the government needs to establish an institutional framework that will sustain and support this important new legislation. To this end, CLB recommends that the government:

1. Invest sufficient financial and human resources so that the institutions of public redress can effectively cope with the rapidly rising number of labour disputes across the country.
2. Grant non-governmental organizations (NGOs) committed to public welfare and labour dispute resolution the freedom to operate and develop. Such organizations should be allowed to accept donations from, and establish cooperative links with, likeminded overseas organizations in order to more effectively help those suffering from work-related injuries and other rights violations.
3. Allow the news media to freely report labour dispute cases, so that cases in which workers have been denied fair and timely access to public redress can be promptly and accurately brought to public attention.
4. Establish a widespread and accessible legal aid system that will enable workers to obtain prompt legal advice and representation free of charge.
5. Establish an independent supervisory system composed of trade unions and NGOs to monitor arbitration committee and court adjudication procedures in labour dispute cases
6. Give trade unions more autonomy and encourage them to conclude labour agreements through collective bargaining and thereby reduce the root causes of disputes, defend the rights and interests of workers at the fundamental level, and establish an institutional framework for harmonious labour relations.

If China really is to become a civil society ruled by law rather than one ruled by individuals, its institutions of public redress must be allowed to operate effectively and impartially without interference from local vested interests such as major corporations and their allies in government. Workers with genuine grievances must have their cases heard in a timely and fair manner. This is particularly crucial in work-related injury and illness cases where, as we have seen, medical bills can accumulate rapidly, leaving victims and their families in dire distress.

China's new *Arbitration Law* has the potential to help workers obtain redress for violations of their rights, but long-term systemic reform, and greatly increased investment, in the public redress system will be needed before its full potential can be realized.