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"The Invisible Victims": The Lack of Recognition of Industrial Victims as Persons with Disabilities

Labour Action China's Submission on the Implementation of the United Nations "Convention on the Rights of Persons with Disabilities" in China

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I. Introduction

According to China's National Sample survey of persons with disabilities in 2006, there are about 83 million people with disabilities in China, amounting to about 6.34%of the total population [1]. Of those, only about 18 million, or 1.37% of the total population, have a disability card[2], entitling the holders to various state disability benefits. However, World Health Organisation estimates that about 15% of persons are persons with disabilities[3]. Who and where are the missing 14%?

A sizeable group in the missing 14% belongs to occupational victims, officially growing at a rate of 700,000 per year[4]. They are stuck in the limbo between two distinct disability certification systems in China, one managed by the China Disabled Persons' Federation (CDPF), and one managed jointly by the Social Insurance Department and Health Department. The later certification system, called *Labour Capacity Appraisal*[5], is mainly used to assess compensation payout, but does not necessarily entitle the person assessed to a disability card issued by the CDPF. In other words, workers who are recognised by the state to have impaired labour capacity are, paradoxically, not being recognised as persons with disabilities.

In 2010, a group of over one hundred occupational disease patients wrote an open letter to the CDPF, demanding recognition as persons with disabilities[6]. Similar demand was raised again in 2012 during the consultation for the revision of the *Law on the Protection of Persons with Disabilities* (LPPD)[7].

The disparate systems reflect a lack of coordination and overall framework in formulating disability policy in China. The LPPD, the main law protecting persons with disability, restricts its purview to the 1.37% who are able to get a disability card issued by the CDPF.

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[1] Chinese Government Net: China releases main data for its second national sample survey on persons with disabilities (中國政府網：中国发布第二次全国残疾人抽样调查主要数据公报) http://www.gov.cn/jrzg/2007-05/28/content_628517.htm

[2] As of May 2011, from Basic Population Database on Persons with Disabilities (残疾人人口基础信息数据库) http://www.cdpf.org.cn/special/renkouku/content/2011-05/13/content_30333309.htm

[3] World Health Organisation, "World Report on Disability", 2011

[4] Number of disabled Chinese soars as population ages, industrial injuries increase http://english.peopledaily.com.cn/200612/01/eng20061201_327388.html

[5] 勞動能力鑑定

[6] Calling for the inclusion of occupational disease patients into the scope of Disability Card (要求将职业病人纳入办理「残疾证」) http://www.ngocn.net/?action-blogdetail-uid-42792-id-20682

[7] Calling for CDPF: Proposal on Issuing Disability Card to Occupational Disease Patients (呼吁残联：给予职业病人享受办理残疾证的建议书) http://comment.jmnews.com.cn/comment/list.aspx?data_id=6687818

Its revision in the wake of China's ratification of the CRPD still failed to bring together the pre-existing multifarious disability assessment systems in the country, with work injury assessment being only one of many. Others disability rating systems include traffic accident injury assessment scheme[8] and military personnel injury assessment scheme[9].

Industrial victims who are excluded from the CDPF are essentially left to fend for themselves. Often they would receive no support in health care or rehabilitation, be unable to find a job, and have their quality and even length of life drastically curtailed. Apparently by excluding them from the definition of persons with disabilities, the state has also absolved itself of its responsibility to take care of their special needs as such.

This report aims to expose the plight of industrial victims in China and how they were left disappointed by the state's professed dedication to the disabled. We will also examine the multiple systems of disability rating in China and discuss the controversy and loophole it leads to. Although this is by no means a comprehensive evaluation of the situation of persons with disabilities in China, we do hope that our limited but concrete observation could help provoke China into reevaluating its current policy direction of valuing performance over fairness, and to end differential treatment for arbitrarily delineated groups of persons with disabilities

[8] Disability rating standard for persons injured in traffic accidents (道路交通事故受伤人员伤残评定)

[9] Conditions for disability rating for revolution soldiers with disabilities (革命伤残军人评定伤残等级的条件)

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

- Article 1, CPRD

II. Multiple Systems of Disability Assessment

II.I. CDPF Classification

Commentators often use the LPPD as the starting point of discussing China's legal framework for the protection of persons with disabilities. The LPPD gives hegemony to the CDPF as the sole representative of "the common interests of persons with disabilities"[10]. It was also charged with the responsibility to "protect their [persons with disabilities] lawful rights and interests, unite persons with disabilities and enhance education among them and provide service for them."

Although the CDPF is sometimes referred to as a NGO, this labeling is somewhat misleading. In practice it operates like a cross between a governmental department and an exclusive club. The CDPF administers the issuance of the Disability Card,[11] a register of persons with disabilities within China. Only with the card can one be recognised as a person with disabilities, be protected by the LPPD, and access various state disability benefits. Stories abound where a person with manifested disability was refused entitlements such as discounted train fare for failing to produce a disability card. As mentioned in the introduction, less than one out of ten persons with disabilities have a Disability Card. Thus in effect disability entitlements become privileges for the few who are lucky enough to pass the CDPF's screening. The "NGO" that is CDPF has the ultimate say on whether someone is considered to be a person with disabilities in the Chinese legal framework.

On the surface, the CDPF's conditions do not seem that stringent. To apply for a disability card one simply have to fill in a form, went for a medical assessment in a hospital, and after a two-tiered vetting by the CDPF, the card will be

[10] Article 8, LPPD
[11] 中华人民共和国残疾人证

issued. However, applicants often run into both procedural and substantive hurdles. A common complaint is the restriction of the household registration system; one can only apply for a Disability Card at his or her place of household registration. That poses a great inconvenience on the 2.5 billion migrant workers working far away from their home town. However the more serious problem is with the CDPF's classification of disability.

CDPF bases its classification on the *Disability Standard for the Second National Sample Survey on Disability (Survey Standard)*, issued in 2006[12]. The Survey Standard is broadly based on the LPPD, which defines person with disabilities as *"one who has abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal".* The term "a person with disabilities" includes *"one with visual, or hearing, or speech, or physical, or intellectual, or psychiatric disability, multiple disabilities and/or other disabilities"*[13]*.*

That this definition is overly medically oriented and incompatible with current international understanding of disability has already been much discussed elsewhere[14]. That aside, the definition is still capable of being broadly interpreted, especially the term "physical disability" and "other disabilities". However, the Survey Standard has narrowed down this definition, taking away the category of "other disabilities" and limiting "physical disabilities" to "loss of limbs, paralysis or deformity of the limb or torso, resulting in loss of motor function and restriction in movement". Although the Survey Standard purports to follow the principles as laid down in the International Classification of Functioning, Disability and Health (ICF), in reality its definition only covers health conditions, and a limited subset at that. Thus patients who suffer from long term diseases such as leukemia or silicosis are excluded from the CDPF classification.

II.II. Labour Capacity Appraisal

The CDPF classification is not the only state-sanctioned disability classification scheme in China. Workers who have suffered from work injury and occupational disease also have to go through a procedure called *"Labour Capacity Appraisal"* in order to determine the amount of compensation they can obtain from the state's work injury insurance system.

[12] 第二次全国残疾人抽样调查残疾标准

[13] Article 2, LPPD

[14] See for example, IDA proposals for the list of issues on China, as submitted to the CRPD Committee, 7th Session

The procedure for Labour Capacity Appraisal is laid down in the *Social Insurance Law* and *Work Injury Insurance Regulations*, without any reference to the LPPD. The assessment criteria is laid down in *Appraisal Standard for Work Injury or Occupational Diseases Induced Disability (GB/T16180—2006)*[15] *(Work Injury Standard)*. Again it makes reference to the ICF, but is much lengthier and more detailed than the Survey Standard. It has ten different levels of grading, compare to four in the Survey Standard. Under each grade it lists a range of medical conditions, ranging from "liver transplant", "stage III pneumoconiosis" to "platelets count less than or equal to 2×10^{10}/L". Again it is rooted in the medical model, with any considerations for social participation hidden under the long lists of pre-graded conditions.

Its greater complexity compare with the Survey Standard might reflect its closer linkage to disputes and litigation, and the need for exact determination. While people seldom go to court for failing to obtain a disability card, legal battles on work injury compensation are being waged on a daily basis. Such battles are never easy for the injured and sick workers. In a case documented by LAC, Liu Dabing, a silicosis gemstone worker, spent three years just to get his Labour Capacity Appraisal, and another four till he finally received compensation. The procedural hurdle in obtaining a Labour Capacity Appraisal can be formidable. To get there an occupational disease patient would first need to obtain an occupational disease diagnosis and work injury certificate, and to apply for these workers would need to provide proof of labour relationship, apply within a short period of leaving the workplace, produce workplace inspection data which is often withheld by the employer, and so forth. Appeal mechanisms exist at each stage which are often exploited by the employers to delay the process. Many workers give up half way because of the high cost and lengthy procedure; some may not even be able to start the process for lack of evidence. Without going into a detail critique of the work injury compensation system, suffice to say obtaining a Labour Capacity Appraisal can be much more complicated and vigorous than obtaining a Disability Card.

II.III. Occupational Disease Patients Demand Recognition

Thus when Liu and his colleagues discovered that they were left high and dry by the CDPF system, they were stunned. From the workers' perspective, Labour Capacity Appraisal, as a government certified proof of reduced labour capacity, should be more than enough proof that they are persons with disabilities. However the CDPF does not accept such argument. "Disability rating standard and work injury assessment standard

[15] 职工工伤与职业病致残等级

are two different standards", CDPF official proclaimed on a government website[16]. With the limited scope of the Survey Standard, silicosis patients like Liu would never obtain a Disability Card.

Liu and his friends find such narrow definition of disabilities unjust and go against common sense. *"All occupational disease patients suffer from varying degree of bodily harm, and should rightfully enjoy special care for persons with disabilities as provided by the state. For example patients with severe pneumoconiosis find even breathing laborious; shouldn't these people receive special care when going out or when travelling by public transport?"*[17], wrote this group of over a hundred occupational disease patients in an open letter to the State Council and CDPF, dated 19th May 2012.

The group pitched their arguments on the triple grounds of humanity, legality and international norm. Firstly, they stressed that in terms of health conditions and the ability to live a normal life, occupational disease patients are not better off than normal [recognised] persons with disabilities, citing examples like difficulty in breathing and the impossibility of finding a job. Secondly they argued that the Work Injury Standard is a piece of delegated legislation in accordance with the requirements of LPPD, and thus patients certified under the Work Injury Standard should be afforded the protection in LPPD. Thirdly they appealed to international standards, arguing that occupational disease patients should be included under the definitions of persons with disabilities in accordance with international norms.

The patients' letter reflects the major problem with China's implementation of the CRPD: over 90% of persons with disabilities are not even being recognised as such and thus fall out of any state protection and obligations for the disabled. The problem lies both in the bigger Chinese legal framework and in the finer details of disability definition. The aged old rhetoric of assigning a mass organisation as the sole representative of all members of a particular description, in practice often devolves into situation only members of the mass organisation are being represented and acknowledged in law. As in the case here legal definition in LPPD becomes secondary to CDPF's own definition. Coupled with a lack of avenue to challenge the legality of a piece of document with general application[18], the mass organisation effectively has the final say on who is or is not protected by certain laws.

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[16] http://www.muping.gov.cn/dh/index.asp?user=%B2%D0%A1%A1%C1%AA

[17] Full text of the workers' letter can be found in the appendix

[18] Which is described as "abstract administrative litigation (抽象行政訴訟)" in China

This is not to say that the legal definition is perfect. It is not. Yet a mere focus on taking apart the high level legal provisions risks misreading the actual situation on the ground. Here we do not wish to argue the supposed illegality of refusing Liu and his friends Disability Card under Chinese laws. The brute fact is that all 550,000 certified (and about 5 million uncertified)[19] pneumoconiosis patients in China are not being recognised as persons with disabilities, are not being protected by any state disability protection scheme, and are completely missing in the government report to the CRPD. The same goes for say, the tens of thousands of leukemia patients, and more groups of disadvantaged people that we have not pinpointed. Our documented case of occupational diseases patients is probably only the tip of the iceberg.

[19] Rough estimation. In 2010 Ministry of Health reports that there were 527,431 living pneumoconiosis patients in China, and 23,812 new cases. Experts estimate that the real figure, covering those unable to get an occupational disease diagniosis, is probably ten times larger. These statistics are usually released annually in May, but uncharacteristically, the data for 2011 has been withheld till now.
http://www.moh.gov.cn/publicfiles/business/htmlfiles/mohwsjdj/s5854/201105/51676.htm

[States Parties shall] Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons.

- Article 25(b), CRPD

States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

- Article 26(3), CRPD

III. Into the Void: Situation of Industrial Victims – Using Pneumoconiosis as an Example

III.I. Pneumoconiosis Villages

Since 2007 LAC has been running centres in the rural area in Sichuan and Chongqing, managed by returnee migrants who have contracted occupational diseases. The centres are located in region with high incidence of pneumoconiosis, as migrant workers from the same village or region often end up working in the same industry with similar occupational hazard. These pneumoconiosis patients have fallen into an institutional black hole, unwelcomed by the CDPF, unable to obtain a proper job, discriminated by their fellow villagers, and received neither rehabilitation nor medical support.

In fact "pneumoconiosis villages" are becoming commonplace in China, especially among mining or labour exporting regions. According to official data, number of pneumoconiosis patients is growing at about 30,000 per year[20]. A brief online search can reveal cases such as:

Gulang County, Gansu province (2010): 314 miners were found to have pneumoconiosis. Seven died within two years. They were working at the same gold mine between 1980s and 2009[21].

Pingshan County, Sichuan province (2012): 27 out of 70 returnee migrants were diagnosed with pneumoconiosis. 4 died. They have been working in Quartz processing industry since 2005[22].

[20] Ministry of Health reports on the situation of prevention and treatment of occupational disease in 2010 and the focus in 2011 卫生部通报 2010 年职业病防治工作情况和 2011 年重点工作
http://www.moh.gov.cn/publicfiles/business/htmlfiles/mohwsjdj/s5854/201105/51676.htm

[21] Silicosis troubled Gulang County,《新华视点》矽肺病困扰古浪县
http://www.hb.xinhuanet.com/video/2010-02/04/content_18962406.htm

[22] Pneumoconiosis village found in Pingshan, 宜宾屏山县惊现"尘肺村"
http://www.zybsos.org/Item/Show.asp?m=1&d=2490

Muchuan County, Leshan City, Sichuan province (2011): 71 returnee migrants were found to have pneumoconiosis. 13 died. They have been working in mineral mines since early 90s[23].

Daozi Xiang, Leiyang City and Sangzhi county, Hunan Province (2010): over 300 construction workers from Hunan province working in Shenzhen were diagnosed with pneumoconiosis. Double Happiness village in Leiyang was dubbed "widow village", for among its 30 families, 11 has male family members who had passed away, and there were 10 more pneumoconiosis patients in the village[24].

These are but a small sample of the many "pneumoconiosis villages" dotted across China. These are communities devastated by a single disease, and which have received no sympathy from the state's disability protection net. Hence the high mortality rate; with proper care and rehabilitation pneumoconiosis patients can often live up to the age of 70s or even above, but in these villages, patients often died within a few years of being diagnosed with the disease, at age as young as 20s. With a whole generation of workforce handicapped, such villages find it difficult to support its own livelihood, not to mention medical treatment for the patients. Without extra support and specialised care from the state, such pneumoconiosis patients are essentially, left to die.

States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment

-Article 27(1), CRPD

III.II Institutionalised Unfairness: Quota system

Sometimes pneumoconiosis patients and other persons with disabilities not on the CDPF's register may be able to obtain some state benefits from the more general safety net

[23] 71 returnees migrant in Leshan contracted silicosis, (12+1) died, 乐山 71 名返乡民工患矽肺，已死亡(12+1)人 http://www.zybsos.org/?thread-1447-1.html

[24] Pneumoconiosis becomes a "dead relay", 40 million construction workers hope to shake it off 尘肺病成"死亡接力棒" 4000 万建筑工人盼摆脱 http://www.medste.gd.cn/Html/pubmed/Class1345/Class1351/Class1381/Class1405/262612201002241444400.html

for the poor, for example Minimum Subsistence Allowance (MSA). However, as we have observed, the allocation of such welfare benefits in the rural region leaves much to be desired.

The distribution of MSA, oddly enough, is not based on some objective definition of poverty, but based on a pre-determined quota for each village. Say if a village has five quota, village officials then have the power to determine which five people are the worst off and award them the MSA. Putting aside the possible risk of bias and bribery, the quota system does not give proper consideration to the actual situations the applicants are in, and pits villagers against each other in fighting for the MSA. It may be a financially sound way of allocating charitable donations, but is hardly befitting a system that is supposed to safeguard the citizens' rights to an adequate standard of living. Pneumoconiosis patients living in area of concentrated outbreak often found themselves left out simply because there are too many people in similar situation as they are in the same village.

Not to mention that the MSA cannot ever adequately compensated persons with disabilities for the extra obstacles they encounter. MSA in rural regions hovers in the range of less than ¥100 (US$ 15.7) per person per month, while medication alone can run up to about ¥2000 per month for a pneumoconiosis patient, even when his condition is relatively stable. Right of pneumoconiosis to an adequate standard of living, as stipulated in Article 28 of the CRPD, is simply not protected

States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

-Article 28(1), CRPD

III.III. Health and Rehabilitation

In theory, all industrial victims should be covered by the state work injury insurance and receive free medical care for their certified injury or disease. In practice, most workers are not covered by the scheme, and would have to sue

their employer for compensation. Even if they are covered, getting work injury certificate itself can be difficult especially for informal workers. Thus many industrial victims would have to fall back on the state basic health care, especially for those who cannot get the status of a “person with disability”.

While the poor health conditions we observed among the pneumoconiosis patients may simply be a reflection of the general problem with healthcare, the lack of targeted effort even in area with high incidence of the same disease is disappointing. Sichuan, as one of the province with the highest number of occupational disease patients, has only one hospital specialising in occupational diseases. When a pneumoconiosis patient get an infection, he or she would often had to be rushed to the provincial capital, miles and hours away, for treatment. Village doctors lack knowledge about pneumoconiosis and often handle it as they would handle tuberculosis. There is no conception of community rehabilitation; patients are told to use medication and surgery to treat their illness.

Pneumoconiosis is not in itself deadly with proper treatment and care, as had been demonstrated in other countries which have a long history of the disease. Yet the negligence of the state in providing pneumoconiosis patients with specialised, affordable and convenient health care and rehabilitation is directly causing the untimely death of many of them, in violation of Article 25 and 26 of the CRPD.

III.IV. Work and Employment

The CDPF has various schemes to promote employment of the disabled, such as tax breaks. However such schemes only apply to those on the CDPF’s register, and by definition exclude pneumoconiosis patients. Nor has the government attempt to provide any vocational training for them, even when “pneumoconiosis villages” have become such a widespread phenomenon. Government tends to view pneumoconiosis patients as a mere burden, rather than an invaluable member of the society who have the capacity to contribute to it, if only they are provided with the right opportunities. The direct result is that most pneumoconiosis patients are forced to depend on their family or saving; some desperate ones are even forced to go back to their original hazardous job, knowing that it may well kill them. Again, safeguard to the right to work is non-existent for pneumoconiosis patients, in contravention of Article 27.

IV. Conclusions and Recommendations

Luo Youguo has three brothers and they all worked at the same gemstone factory in Guangdong since early 90s. Only after a few years their youngest brother succumbed to severe coughing and died before reaching the age of thirty. Their eldest brother also felt unwell and went back to their hometown. The two other brothers stay on to fight a court battle against their employer, but one died earlier this year, before receiving his compensation. None of the brothers have ever been recognised as persons with disabilities by the CDPF, nor received any state assistance despite the collapse of the entire family.

Beyond the superficial glamour of the many legislation and assistance schemes, what are really happening on the ground are stories like Luo's. Most persons with disabilities are left to fend for themselves, having been excluded from the privileged circle of the CDPF. Here we have highlighted the situation of occupational disease patients, a major group of persons with disabilities excluded from the CDPF's register. But there are others.

With regard to the particular problem of the pneumoconiosis patients, the Chinese government should:

- Recognise pneumoconiosis patients as persons with disabilities and issue them with Disability Card
- Implement adequate and accessible health and rehabilitation program in region with outbreak of pneumoconiosis
- Devise vocational training or livelihood projects that are suitable for pneumoconiosis patients
- Protect the pneumoconiosis patients' right to an adequate standard of living, with considerations for their special needs. Replace the quota system of the MSA with a need-based system.

More generally, the government should:

- Reform and consolidate the various disability assessment standards currently in place, in particular the Survey Standards and the Work Injury Standard. Ensure that all who can qualify under the Work Injury Standard can receive a Disability Card.
- Maintain flexibility in the issuing of Disability Card, by reintroducing the category of "other disabilities" and relaxing the definition of "physical disability" to include

damage to internal organs.

- Better still, reorient its definition of disabilities from a medical model to a right-based model, and assess disability based on capability rather than just using a pre-approved list of conditions.

In the long run, the government should:

- Relax the monopoly of CDPF as the sole representative of persons with disabilities, and encourage formation of autonomous organisation representing the varied interests in the community.
- Reconsider the need for a Disability Card.

Currently the Chinese government tries to fulfill its obligations under the CRPD via an underhand way of mislabeling, thereby enable it to focus its resources on the lucky few that are artificially “defined” to be persons with disabilities. The same attitude can be found in the design of the MSA quota system. We hope to see such attitude changed, that fairness can be placed before consideration of efficiency, performance or political impact, that all persons with disabilities can be treated with decency, not only those holding a card. By ratifying the CRPD China is signing onto the right discourse, but a system that protects only the privileged few will not vindicate right, it will only debase it.

V. Organizational Profile

Labour Action China (LAC) is a labour rights non-governmental organization based in Hong Kong. Formed in 2005, LAC focuses on China and Asian labour issues. We support democratic and independent labour movement and encourage active participation of workers in labour rights issues. Since 2005, LAC has been working with mainland Chinese workers, industrially injured workers, academics and the civil society in China, as well as trade unions and labour organizations in Hong Kong, Asia and the international community.

Vision

LAC seeks to promote the principle of labour rights, decent jobs, democratic participation, equality and dignity for all Chinese workers. We aim to support labour activism and build worker solidarity within China and with other countries.

Mission

The mission of LAC is to provide platform to support labour activism and grassroots labour organizations formed by workers in China. Through our work in research, campaign and education, LAC seeks to develop our strategic role in strengthening worker representation and labour rights consciousness in China.

What we do

LAC conducts research, training, advocacy, campaigns, publication and labour networking on labour issues in China. We work with labour groups, NGOs, academics, researchers and professionals to provide information and consultation on labour relations and capital mobility in China. We also support the development of civil society and labour organizations for the promotion of labour rights protection in China and Asia.

Website: http://www.lac.org.hk/en

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Appendix: Open Letter by a group of occupational disease patients to the People's Congress

Proposal on Issuing Disability Card to Occupational Disease Patients

State Council, China Disabled Persons' Federation (CDPF),

We are migrant workers who have gone to Guangdong for work in the 90s. During our work we have unfortunately contracted occupational diseases, and lost varying degree of labour capacity despite treatment. According to legal assessment, most of us has disability rating of grade six or above, with the most serious one rated at grade two. Occupational diseases have caused us great harm both physically and mentally, giving us great difficulty in finding employment or sometime even making it impossible to do so, and causing significant inconvenience in our daily lives.

As a result, we asked the local CDPF to issue us Disability Card according to the law. Yet we were turned down by the local CDPF, with the reason that we do not belong to the physical category of disability, and do not satisfy the condition for a Disability Card. We found this difficult to accept or understand.

As we all know, occupational disease is an inevitable byproduct of economic development and industrialisation. It can even be said that occupational diseases are the sacrifice and contribution the ailing workers give for the prosperity and development of the wider society. A civilised society should not be apathetic to or reject occupational disease patients, should not let them shed both blood and tears.

From another perspective, all occupational disease patients suffer from varying degree of bodily harm, and should rightfully enjoy special care for persons with disabilities as provided by the state. Although from outward appearances, occupational disease patients do not have obvious bodily defect as opposed to a normal person with disability, but in term of health condition, bodily function and the ability to live a normal life, situation of an occupational disease patient are often on par with, if not worse than, a normal person with disability. For example patients with severe pneumoconiosis find even breathing laborious; shouldn't these people receive special care when going out or when travelling by public transport?

In fact, there is legal basis for occupational disease patients to enjoy disability treatment. Article 2 of the *Law on the Protection of Persons with Disabilities (LPPD)* stated that, **"A person with disabilities refers to one who has abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal. The term "a person with disabilities" includes one with visual, or hearing, or speech, or physical, or intellectual, or psychiatric disability, multiple disability and/or other disabilities. The criteria for classification of disabilities shall be established by the State Council."**

The standard for rating the disability of occupational disease patients, the *Appraisal Standard for Work Injury or Occupational Diseases Induced Disability* (GB/T16180—2006), is derived from the State Council's *Work Injury Regulations.* The Standard is a piece of delegated legislation in accordance with the aforementioned provision of the LPPD. Hence, occupational disease patients who have been through proper legal procedure and receive a disability grading should undoubtedly be covered under the LPPD.

International treaties protecting persons with disabilities have also delineated "persons with disabilities" in a way similar to or even broader than that of the LPPD. For example, article 1 of the United Nations 1975 *Declaration on the Rights of Disabled Persons* stated that, **"Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."** Article 8, section C, chapter 1 of the United Nations *World Programme of Action Concerning Disabled Persons* adopted in 1982 states that, **"Disabled people do not form a homogeneous group. For example, the mentally ill and the mentally retarded, the visually, hearing and speech impaired and those with restricted mobility or with so-called "medical disabilities" all encounter different barriers, of different kinds, which have to be overcome in different ways."** Other conventions include *Vocational Rehabilitation and Employment (Disabled Persons) Convention* (section 1, article 1), *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (item 17, Introduction), among others. As can be seen from the provisions of these international treaties, it is in line with basic human values for occupational disease patients to enjoy the legal rights accord to persons with disabilities. Therefore, we think that the CDPF's refusal to issue Disability Card to occupational disease patients is both in humane and illegal. It is a disguised form of depriving occupational disease patients of their legal rights and should be rectified.

We strongly recommend:

As the designated organisation to protect persons with disabilities in China, CDPF should, in the interest of protecting the legal rights of occupational disease patients, immediately modified its management system concerning the Disability Card, and include occupational disease patients into its scope. Or,

Taking it further, the State Council, or state ministries entrusted by the State Council, or CDPF should revamp the Disability Card system, developing a new, scientific management system that is more in line with modern development, in order to make it more convenient for persons with disabilities who satisfy the requirements of LPPD to enjoy their legal rights.

Yours faithfully,
Occupational disease patients (signatures)