

China: A Hazardous Environment for Human Rights Defenders

**Submission to the UN Special Rapporteur on the implications for human
rights of the environmentally sound management and disposal of hazardous
substances and wastes, to inform his report to the
33rd Session of the Human Rights Council**

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I. Overview

In the past thirty years, despite the historically rapid development of the economy, the improvement of children's rights in China lags well behind. Whether in the context of challenges arising from natural disasters or from human error, children are one of the most vulnerable groups, victims bearing the brunt of unchecked economic development.

In this submission, we consider two 'bookend' cases emblematic of the ongoing human rights violations against children related to hazardous substances and wastes: the Sanlu baby formula scandal, and the distribution and utilization of substandard vaccines, through public and private clinics. Although the latter may not in all cases fall under the scope of this report (depending on the definition of 'hazardous substances', which may include unregulated or improperly stored vaccines but not necessarily outdated vaccines), it is an important and timely issue that demonstrates the challenges in China in particular, but also in many other countries. In short, violations are exacerbated, and their outcomes unresolved, when harmful economic incentives linked to the initial violations are compounded by lack of transparency, barriers to justice, and harassment of citizens seeking to bring violations to light.¹

Access to information, freedom of expression, access to remedy, and protection against intimidation and reprisals are all fundamental human rights and are also all essential elements of an enabling environment for the promotion, protection and realisation of other human rights.. Where defenders are unable to undertake their work to advance human rights, protect vulnerable populations, and call – openly and without fear – for accountability, the potential for human rights violations of all kinds increases exponentially.

This submission considers the impact of violations and restrictions on these rights on the realisation of children's rights, the right to life and the right to health, among others, in the context of hazardous substances and wastes in China. It highlights underlying policies on freedom of expression and association, and pervasive practices of the suppression of human rights defenders and others seeking justice, impact upon fulfilment of the rights discussed above. Finally, it makes recommendations to enhance respect and protection for human rights defenders and others exercising their rights to freedom of expression, association, assembly and public participation in the context of hazardous substances and wastes which, if implemented, would reduce the adverse human rights impacts of such substances and wastes.

¹ This material is drawn from a number of Chinese-language sources and interviews with activists. Where possible, we have indicated English-language sources in footnotes.

We appreciate the Special Rapporteur's inclusion in past communications² and public statements³ of important issues in relation to defenders, and further encourage the Special Rapporteur to consider at length how his mandate can reinforce this point, including by mainstreaming its consideration throughout his work.

II. Cases

A. Failing the most vulnerable: Substandard infant formula

In 2008, the Chinese government confronted a number of serious food safety incidents. In the most well-known of these, many infants whose mothers used powdered formula from the Sanlu Group were found to be suffering from kidney stones. It was discovered that the tainted milk powder contained hazardous chemical materials, including melamine, a type of plastic used in industrial production of consumer goods and sometimes added to foods to increase their apparent protein content. However, when consumed by mammals, melamine reacts with cyanuric acid in the body to cause kidney stones and renal failure. According to publicly-released figures, the number of infants brought by their families for urgent medical care was 39,965, of which 12,892 required hospital stays. Four infants died.

From the perspective of Chinese authorities, the scandal was handled in accordance with concerns about the broader impact on confidence in Chinese food safety standards. After the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) publicly released the results of melamine inspections at domestic dairy production facilities, it became clear the situation was even worse than expected. In 22 factories, dangerously high levels of melamine were discovered. Although a number of them closed in the interim, many reopened, presumably with better regulation in place.

The impact reverberated beyond the Chinese border. In Hong Kong there were 5 confirmed illnesses linked to the powdered formula, and in Macau one case. A number of countries banned the import of Chinese dairy products. But it also had an impact on consumer confidence within China; three years later, in 2011, CCTV survey results demonstrated that 7 in 10 Chinese were unwilling to purchase domestically-produced milk.

This was not the first time food poisoning due to corporate disregard for safety standards became a key concern for the Chinese public. In 2003 in Fuyang, Anhui province, consumption of inferior quality milk powder affected hundreds of infants and resulted in 12 deaths. Inspectors discovered that false levels of protein in the powder, bolstered by

² Urgent Appeal CHN 9/2015, dated 19 August 2015, available in the Communications Report of the Special Procedures, A/HRC/31/79.

³ UN press release 'China: UN human rights experts calls for greater transparency in the wake of tragic Tianjin explosion', dated 19 August 2015. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16332&LangID=E>

harmful chemical additives, resulted in malnutrition for infants that were fed primarily on formula; other children exhibited stunting, skin problems, and developmental disorders. In 2013, a journalist went to Fuyang to interview the child victims and discovered that the long-term effects of infant exposure had led in some cases to lifelong disability.

On 6 April this year, information was leaked onto social media sites that revealed that in September 2015 Shanghai police uncovered that 170,000 packages of counterfeit infant formula had been distributed around the country to an unknown number of retail outlets. In January 2016, six suspects were formally arrested on charges of fraud for their involvement in illegal business operations. But credible information about the case has been concealed by public authorities, on the ground that it would cause 'mass panic' among consumers; and indeed, the media revelations did cause an uproar among victims, affected communities, and advocates for rights and transparency. To date, the Department of Health Inspection claims that the contents of the fake infant formula in fact meets the national food safety standards; the vast majority of the Chinese public are understandably sceptical of this claim.

B. Public health and public confidence at risk: vaccine scandals

This year, ordinary Chinese citizens have again had to contend with 'mass panic' related to confidence in vaccines. In 2007 in Shanxi nearly a hundred children sustained life-threatening injuries from vaccines. For years, the case was concealed and suppressed by local media and government officials; not until 2010 did it become public. This case was a serious violation of the safety and security of the local population; the local government administration is widely suspected of being involved with the production of substandard vaccines by a local company.

In November and December 2013, many (by some estimates, 17) infants in southern China died after receiving vaccines for hepatitis B, which is required by the government. After the incident, three of the largest vaccine producers in China ended up in the crosshairs of public opinion. The companies all claimed that the vaccines complied with industry standards, and the local health administration attributed the deaths to 'unknown disease'.

In March 2016, police arrested a man in Shandong province suspected of illegally running a vaccine distribution centre who, since 2010, is estimated to have made upwards of 570 million RMB by selling improperly-stored vaccines. The provincial government announced that the individual purchased the vaccines from 107 individuals in 20 provinces, cities, and autonomous regions, and resold them to 193 individuals in 24 provinces, cities, and autonomous regions. It is worth noting that some jurisdictions, for example Shanghai, did have in place stricter regulation and more effective inspections (both in policy and practice) that prevented the sale of these tainted vaccines to their populations.

On 21 March, the provincial government released information indicating that the sales involved twelve different kinds of vaccines, two kinds of protein additives, and one kind of organic therapeutic product. The impact has been so grave that the WHO representative in China, Bernhard Schwartländer, released an editorial calling for urgent measures to restore public confidence in vaccines and to protect infant and child health⁴.

III. Responses

Using the above examples of ongoing violations linked to children's exposure to hazardous substances in China, we would like to note in more detail the following, in response to issues of interest to the Special Rapporteur:

A. Mechanisms for identifying and monitoring childhood exposure to hazardous substances

Despite the serious and continuing cases arising from the negative impacts of hazardous substances on children's health and lives, the Chinese government has no comprehensive or effective mechanisms to prevent or respond to these violations. Many ministries have responsibilities when it comes to preventing childhood exposure to hazardous substances, which should lead to full coverage of the issue; in practice, in the contemporary Chinese political context, it merely leads to ministries 'passing the buck' amongst one another without regard for final accountability to victims and affected communities.

On 9 April, upwards of 90 public interest lawyers working in 22 provinces in China addressed an open letter to the National People's Congress, State Council, Supreme People's Procuratorate, the Health and Family Planning Committee, and the Chinese National Consumers League. The letter highlighted concerns with the current mechanisms for identification of victims of consumer product hazardous substances.

In China, litigation is a lengthy process, leading many victims to seek administrative solutions according to regulations on 'negative reactions to vaccines' or medical malpractice. In neither administrative process are there sufficient safeguards to guarantee the independence, objectivity, and impartiality of the administrative review process.

The letter concluded by offering the following recommendations for steps the government could take to resolve the case:

- Amend the regulations on unexpected vaccine reaction and medical malpractice to allow affected parties to request action by oversight bodies; to eliminate collusion by

⁴ <http://www.wpro.who.int/china/mediacentre/releases/2016/20160328/en/> Accessed 14 April 2016.

allowing non-local oversight bodies to investigate; and to prevent coercion of administrative bodies by private medical clinics and hospitals

- Given that neither the regulations on unexpected vaccine reaction and medical malpractice can be amended in the short term, public hospitals and medical services will continue to play a central role in prevention. In this regard, the Health Planning Committee should invite the World Health Organisation to send an expert team to review the outcomes of the investigations of vaccine-related disputes throughout the country, to monitor, and to make final decisions where the outcome is disputed.

B. Challenges in access to remedy for victims and their families

In some cases, after the facts have come to light, there have been sanctions imposed on responsible government officials. For example, following the infant formula cases in Fuyang in 2003 and at the Sanlu Group in 2008, several officials faced *de jure* sanctioned. The general manager of Sanlu, Tian Wenhua, was initially sentenced to life in prison (her sentence has subsequently been reduced multiple times). However, the punishments of officials internal Party sanctions and very mild – suspensions or reassignments and many of those were eventually reinstated or even promoted. For the cases linked to infant formula and vaccines this year, not a single government official has taken responsibility, although the state-controlled news agency Xinhua has said that 357 officials will be ‘fired or demoted’, with some possibly facing criminal charges for negligence⁵.

When the cases implicated large companies, the local governments, whose public revenues consist in large part of taxes from these companies, are often proactive in covering up information. In the 2013 scandal, it was discovered that three of the country’s largest vaccine producers were involved in a scandal involving hepatitis B vaccinations, including a company listed on the Shanghai stock exchange. Despite – or, in practical terms, because of – this fact, not only were none of the companies sanctioned, but government officials actually defended them to the public.

The letter referenced above also highlighted gaps or weaknesses in the current mechanisms for redress for child victims and their families. There is a dearth of avenues for collective litigation (e.g., class-action lawsuits). Although the law allows for a victim representative in the case of multiple victims of one violation, or multiple violations of a similar nature, the courts only recognise the application of their decision with regard to the specific individual (even when clearly identified as a representative a group of x number of individuals). This differs significantly, the letter notes, from practices in developed countries.

The lawyers recommended that the State:

⁵ <http://www.wsj.com/articles/china-to-punish-hundreds-in-vaccine-scandal-1460598215>

- Amend the Civil Procedures Code and other laws related to collective lawsuits to allow for cases brought by an unspecified number of individuals, and to improve the legal framework for public interest litigation. In the event that this cannot be done in the short term, the Supreme People's Procuratorate or the National Consumers League could engage in litigation to hold downstream (unofficial) vendors and clinics or 'inoculation units' accountable.
- Learn from the experiences of Germany, Japan, the U.S., Taiwan⁶, and over a dozen other countries, where victims of faulty vaccines struggled to gain compensation, and establish a compulsory insurance system or relief fund so that citizens can obtain vaccines with more surety and with less worry.

C. The impact of limits on freedom of expression, association, and assembly

The means by which the public gets information about these issues are significantly limited. In nearly all the cases noted above, it was investigative media who exposed the violations after which they became public knowledge and the focus of large parts of Chinese society. In retaliation for their work, many of the media outlets and journalists responsible for the reports cited above were sanctioned by the Propaganda department and in some cases were harassed by State Security or Public Security officials in order to prevent further in-depth reporting. According to the website *China Digital Times*, leaked censorship instructions following the exposé of the most recent vaccine scandal included directives to 'not reprint or hype' the article⁷. The families of victims and human rights activists who sought to use 'Open Government Information' legislation to support their cases were either refused outright, or never received a response.

There are limited avenues for victims to receive support, either through legal aid or through civil society organisations. Human rights defenders and lawyers, regardless of their area of focus, are the targets of a sustained and severe government offensive. In 2008, a Beijing-based NGO called Gongmeng organised about 100 lawyers to provide legal aid to the families of victims of the Sanlu case. The father of one of the victims, Zhao Lianhai, established a network called 'Melamine Milk Powder Victims Public Interest Group – Stone Baby's House', referencing the kidney stones that plagued affected infants. Zhao used a public website to survey families, and in 2008 published information on the extent of poisoning from substandard dairy products. The network announced to the Chinese government that, due to the suffering caused by the powder formula, the parents of affected children would pursue litigation.

⁶ Per UN standard practice, use of 'Taiwan' in this translation refers to 'Taiwan, Province of China'.

⁷ <http://chinadigitaltimes.net/2016/03/minitrue-3/> Accessed 14 April 2016. The same website reported earlier in the month that website editors had been directed to 'kindly find and delete' the documentary on the Tianjin blasts in August 2015, produced by Japanese company NKH.

However, on 17 July 2009, the Beijing Civil Affairs Bureau published a decision that banned the Gongmeng lawyers group; on 10 November 2010, Zhao Lianhai was convicted of ‘picking quarrels and provoking troubles’ by the Beijing Daxing district court and sentenced to two and a half years in prison.

After this year’s vaccine incident, despite the open letter by lawyers cited above and parallel efforts to provide parents of affected children with a guide to civil and administrative appeals, not a single case has yet been accepted by China’s courts. The families of victims have borne the brunt of pressure from officials, warning them not to contact public interest lawyers.

IV. Conclusion and Recommendations

In summary, there is a critical need for the international community to encourage China to overcome the many challenges it faces in ensuring that children can be protected from exposure to hazardous substances and that, if exposure does occur, there are clear and accessible means by which families can seek remedy.

In this regard, we would like to make the additional recommendations that would improve on the situation in China, and which we believe would further have bearing on other country contexts:

- That the work of civil society and human rights defenders be given the recognition, space, and protection they need to carry out their critical work and to be partners with the Chinese government in preventing, monitoring, and assisting to resolve these cases.
- That the Chinese government strengthen its own ability to root out corruption and preferential treatment for business enterprises, in particular when there is reasonable grounds (not to mention, in many cases, hard evidence) that those same enterprises are violating domestic and/or international law.
- That the Chinese government respect the independence of the media, and facilitate their ability to fully investigate these kinds of cases, including by improving access to information, with an eye to improving overall public awareness of risks and remediation linked to hazardous substances and wastes. In the Chinese context, this would include full and fair implementation of the Open Government Information Act.