

ITUC-CSI-IGB Submission to the United Nations' Office of the High Commissioner for Human Rights Concerning the Universal Periodic Review on the People's Republic of China in October 2013

4 March 2013

1. The International Trade Union Confederation (ITUC-CSI-IGB) represents 175 million workers in 156 countries and territories.
2. Workers in China still cannot establish their own independent trade union. The official All China Federation of Trade Unions (ACFTU) and its branches are the only trade unions allowed by the Chinese government. There is no strike law in China that leaves workers and labour activists in extremely vulnerable situation and subject to retaliation by criminal prosecution and administrative punishment for organizing and participating in strikes and demonstrations.
3. The ITUC emphasizes that China still hasn't ratified four fundamental Conventions of the International Labour Organisations (ILO) - No. 87 Freedom of Association and the Protection of the Right to Organise Convention, No. 98 Right to Organise and Collective Bargaining Convention, No. 29 Forced Labour Convention and No. 105 Abolition of Forced Labour Convention. China signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1998 with reservation on Article 8 of the Covenant. Article A8.1.a of ICESCR states that “form trade unions and join the trade union of his choice”. It is hard to see the Chinese government's real commitment on the protection of workers' rights without full ratification of the above Covenants and the fundamental ILO conventions.
4. In this submission, the ITUC would like to highlight three major concerns on the lack of freedom of association, right to strike and collective bargaining that lead to numerous violations of basic labour rights in China. While there are other major concerns on occupational health and safety and treatments of labour NGOs, the ITUC, as the world's largest trade union movement, believes that the major concerns we highlight in this submission are fundamental to the persistent violations of workers' rights in China.
5. There were an increasing number of labour strikes and public actions in China between 2009 and 2012¹. ITUC is particularly concerned with the protection of the right of workers to take industrial actions to further their interests with the employers and the government, especially when the Chinese government has not provided any legal protection on the right to strike. The only provision is found in the PRC Constitution which guarantees citizens the right to freedom of speech, of the press, of assembly, of association, of procession and of demonstration (Article 35). ITUC finds that out of a greater need to contain and put down public actions, the Chinese government has systematized its crackdowns on strikes and petitions based on the domestic laws that infringe on such rights rather than seeking convergence with the international labour standards and UN covenants to further them. This encourages the employers to take revenge, penalize and dismiss the strikers for criminal

¹ According to the data provided by the China Academy of Social Science in its annual publication, *Society of China Analysis and Forecast: Blue Book of China's Society* (Social Science Academic Press), the number of “mass incidents”, referring generally to public gathering and actions caused by “people’s internal contradictions” including petitions, strikes, stoppages of work, demonstrations, procession and riots etc. The figure was on the rise from 8700 incidents to 87,000 in 2005. Official figures since 2005 have not been released. Foreign reports typically cite a figure of 80,000-100,000 “mass incidents” in China per year. The Ministry of Human Resources and Social Security claimed that there were 370 mass incidents related to social and labour protection issues involving more than 100 people by November 2012. And the ACFTU reported 120 stoppages of work from Jan to Aug 2012. Documenting only public reports and resources on workers' strikes, IHLO has recorded 203 labour strike cases that took place in 2012.

offence or violations of the company rules and code of practice. The government, the Judiciary and the official trade union, the ACFTU are not taking measures to redress the unfair labour practices of the employers and a remedial mechanism is lacking.

Freedom of Association and the Right to Strike, Demonstration and Collective Bargaining People's Republic of China

1. There is no law on protection of workers' strike in China. Although in general the central government recognizes the need to have dialogue in resolving labor disputes, in actual circumstances, the local governments and individual ministries are developing local laws, provisions and “emergency plans” to put down labour strikes and public actions as quickly as possible². Measures of the government to control strikes have stepped up. Besides sending in anti-riot police to disperse the strikers and putting them under administrative detention, plainclothes police and un-identified security guards with guns are used to identify the leaders and intimidate the strikers. In some cases, workers are negotiating their demands with the employers or they are forced to get back to work under the presence of the police³. Despite a regulation in 2008 to restrain the public security from using excessive force to settle public disputes except for the purpose of maintaining order⁴, the discretionary power of the local government in handling strikes and public actions is subject to any legal or judicial restraint. Remedial mechanism to redress the police's abusive use of power in handling industrial actions is lacking.
2. The Criminal Law (Article 290) and the Law on Public Security Administration and Punishment (Article 33) are commonly used to impose criminal detention, lay criminal charges and imprison the identified labour leaders for instigation, illegal assembly, disruption of social order and normal production. The provisions in Article 296 of PRC Criminal Law apparently infringe workers' right to organize strikes and demonstration requesting them to seek the prior approval of the public security⁵. This also contradicts Article 35 of the PRC Constitution.
3. In some extreme cases, petitioning workers and labour activists were sent to re-education through labour (RTL) or put under arbitrary detention without a legal procedure. Known as the “black jails”, they are guarded by individuals employed by public security or other government agencies. The practice is illegal according to Chinese laws.
4. According to ITUC's research, the substitute teachers and taxi drivers were among those who

² By now almost all the provincial and municipal governments have developed “emergency plan to prevent and settle mass incidents” (预防和处置群体性事件应急预案), followed by administration below them. These plans categorise mass incidents by issue, the number of participants and level of actions they take to lay down the corresponding action plans taken by various related government bodies including the labour bureau and the local trade union federation.

³ Similarly, in the strike in Ricoh Elemex (Shenzhen) Co. Ltd (2010.10) and Shenzhen Hailiang Storage Products Co., Ltd (2011.12), the employers were threatening the workers to get back to work by withdrawing the check-off machines, termination of employment while police forces with guns were present at the workplace to force workers to resume their duties.

⁴ Rules of Public Order Cases Handled by Public Security Organs, Ministry of Public Security, 2008 (公安机关处置群体性治安事件规定).

⁵ Any successful application for holding workplace strikes and labour demonstrations via the public security is almost unheard of in China. Article 296 of the PRC Criminal Law says: “Where an assembly, a procession or a demonstration is held with no application made in accordance with the provisions of laws or no permission granted for the application or where it is held not in accordance with the time for start and stop, venue and routes permitted by the competent authorities, and the order of dismissal is disobeyed and public order seriously disrupted, the persons who are in charge and the persons who are directly responsible for the assembly, procession or demonstration shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.”

suffered from serious crackdowns for trying to organize strikes, petitions or form their own association to fight for their labour rights in the past few years. Below are some highlighted examples which are only the tip of the iceberg.

- 4.1 **Zuo Xiaohuan**, a human rights defender and a former teacher in Sichuan province, was arrested on 28 May 2010 by Santai County Public Security Bureau in Sichuan on charges of “inciting subversion of state power”. According to reports, Zuo might be arrested because he had helped civilian teachers to stage demonstrations for their employment rights, given interviews to overseas media, and published articles containing criticism of government policies. Without being formally charged, Zuo was released on 11 November 2011 after being detained for 1.5 years and he has been put under residential surveillance since then⁶.
- 4.2 **Li Wuyi**, who convened a number of private meetings, since July 2010, for the civilian teachers (*minban jiaoshi*) in Longhui County, Shaoyang, Hunan Province, who were laid off because of violating the birth-control policies in 1980s and helped them establish a “rights defense” group. Between 15 August and 27 August 2010, Li arranged three batches of the laid-off teachers to go to Beijing where they were blocked and sent back by the public security officers from Hunan. On 25 September 2010, Li was administratively detained by the public security in Longhui County for 15 days for “disturbing social order.” Despite the joint petition by fellow teachers to call for Li's release, Li was sent for Re-education through Labour (RTL) for one year. After his release on 24 September 2011, Li wrote letters to President Hu Jintao and Premier Wen Jiabao (22 December) and filed an administrative appeal at the Shaoyang City Court (7 February 2012), the county and municipal Politics and Law Commission against the RTL Committee. His case was refused and none of his complaints were heard.
- 4.3 On 31 May 2010, workers of CR Snow Beer in Wuhan city staged a strike to continue demanding the management for a compensation package according to law for the state-owned enterprises since the company began corporate-re-structuring and privatisation in 2004. Two workers, Mao Lihong (on 1 June) and Li Xinghua (on 6 June) were taken away by un-identified persons to a black jail and detained for 24 days. This was the second time Mao was put into the black jail since 10 June 2009 when he was detained and tortured in a black jail for 15 days. Mao, Li and two other victims submitted a testimony, in the name of the Victims' Group of Black Jail Detention in Wuhan City⁷ to the Provincial Procuratorate of Hubei (3 March 2011) and the Legislative Committee of the Provincial People's Congress of Hubei Province (7 March 2011) for an investigation on the illegal and inhuman practices of the local government using the black jails to punish petitioners.
- 4.4 Seven taxi drivers in Xingning City in Hubei Province were accused of instigating other drivers to participate in a strike planned on 15 December 2010 and to form an association of the taxi drivers. They were against the local government policy on regulating the taxi market. Five of them, **Qian Xifeng, Zheng Dong, Zheng Huiying, Ruan Xiju, Liu Yuanxiang** were charged with “organizing illegal procession and assembly disrupting traffic to serve their private interests” under Article 296 of the PRC Criminal Law⁸. On 4 July 2011, Qian Xifeng was sentenced to a total of 3 years' imprisonment for illegal assembly and disrupting

⁶ Zuo previously served one year in prison for his participation in the June 4th 1989 Tiananmen protests and was sentenced to two years of re-education through labour (RTL) in 2006 for “inciting subversion of state power” for being a member of the outlawed Union of Chinese Nationalists (*Zhongguo Fanlan Lianmeng*).

⁷ “武汉市” 黑监狱” 受害者控告团致湖北省人民检察院《检举控告书》.

⁸ **Zheng Dong, Liu Yuanxiang, Chen Huiyue, Ruan Xiju, Qian Xifeng and Zhou Bing** were accused of instigating other taxi drivers to occupy an open area, which was a construction site of a company, resulting in the disruption and stoppage of the production of the involved company incurring economic loss. They were charged with “assembling to disrupt public order” under Article 290 of the Criminal Law.

public order; the others were sentenced from 1 to 1.5 years' imprisonment. Zhou Bing the ex-taxi driver spreading the news on the internet was sentenced to one-year-imprisonment on probation of two years after seven months' detention because he had posted an article on the internet reporting about the planned strike of the driver folks.

5. Retaliatory measures were also applied by enterprises to punish workers who participated in strikes. For example, over 200 workers in Sihe Wood factory in Shanghai were fired for being absent from duty by the company after they staged a strike against cutting fringe benefits on 4 January 2012⁹.
6. China does not have a national legislation on collective bargaining (generally referred to as collective wage negotiation in China). By now 25 provinces/cities have issued their own regulations on collective negotiation. Strict prohibitions are laid down to ban industrial actions taken by workers. Some of these laws explicitly allow the employer to sack workers taking industrial actions during the negotiation of a collective contract. Or in some cases, unilateral request for arbitration is permitted to put an end to a dispute when collective negotiation is underway¹⁰. These provisions tend to undermine the right of workers to use strike to further their interests. Moreover, as the official trade union is automatically the only agent in collective negotiation with the employers and there is no law and mechanism to legitimize strikes, these restrictions turn out to make workers legally more vulnerable.

Hong Kong Special Economic Region

Workers' rights in Hong Kong Special Administrative Region (HKSAR) are protected mainly by law under the Employment Ordinance while the trade union right to bargain collectively is not. Despite the recommendations of the ILO Committee of Freedom of Association made to the HKSAR government since 1997, the latter is reluctant to introduce legislation on collective bargaining giving the working population no effective means to improve their labour standards. As a result, workers in Hong Kong are increasingly suffering from low income growth which lags behind the GDP growth¹¹, long working hours without regulation¹², as well as casualisation of employment relation falling outside the protection of the Employment Ordinance¹³. Although the HKSAR government legislated the Minimum Wage Bill in Hong Kong in 2010 protecting an estimated of 327,200 lowest-paid employees in the territory, yet 301,000 migrant domestic workers are excluded¹⁴. Up to now the government has not committed to legislate a bill to regulate working

⁹ Similarly, in the strike in Foshan Nanhai Huada Mold and Plastics Co Ltd (2011.9), Hualu Automatic Control Co. (Saginomiya) Air Conditioner Factory (in 2011.12), the employers dismissed the leading strikers accusing after they were taken away by the public security for criminal detention.

¹⁰ For example the Ordinance of Collective Wage Negotiation of Wuxi City, Urumqi City, Shenzhen Municipality put a ban on industrial actions while permitting unilateral request for arbitration, and intervention of the labour authority or the court to resolve a dispute during the negotiation and effective period of a collective agreement. These provisions tend to undermine the right of workers to take industrial action for the purpose of furtherance of their interests.

¹¹ The real income growth rate in Hong Kong, growing at 20% on average between 1997 and 2011, is lagging behind the GDP growth of 49% in the same period.

¹² According to the HKSAR Department of Statistics' report on working hours in 2011, the number of people working for more than 60 hours a week increased by half from 440,000 to 620,000 between 1997 and 2012. They constitute 16% of the population, including workers in the low-paid sectors such as food and catering, security guards, elderly home care and the service sectors.

¹³ Workers employed discontinuously after every four weeks to work less than 18 hours a week are not entitled to full protection of the Employment Ordinance. More and more workers are employed persistently under apprentice contract, short term contract or without contract. In 2012, an additional 7.4% of the workers ie 206,000 are forced to enter into contract with their employer in the name of 'self-employed' persons, receiving below-the-median salary and not entitled to the legal protection of the mandatory pension scheme and severance compensation.

¹⁴ The government estimated that there were 327 200 employees paid below HKD30/hour by May 2011, the eve before the Minimum Wage Bill was passed setting the wage level at HKD28/hour. The estimated coverage was 11.7% of all employees (2012 Report of the Minimum Wage Commission, HKSAR).

hours.

Trade unions and their members fall prey to employers' discrimination as a result of the lack of legislation on trade union recognition for the purpose of collective bargaining and protection against anti-trade union discrimination. It took eight years for the 18 pilots of Cathay Pacific Airway, who persisted in the litigation against their unfair dismissal for participation in the industrial action in 2001, to win the case in 2009, and another three years to settle the amount of compensation with the employer in court in 2012¹⁵.

In the Concluding Observations of the Committee on the Elimination of Racial Discrimination on the HKSAR made in 2008, the committee reiterated its concern about the discrimination against domestic migrant workers in Hong Kong pointing in particular at the HKSAR government's refusal to review and repeal the policy "two-week leave" and the "live-in" requirement. Discriminatory policies of the HKSAR government against the domestic migrant workers are extended to exclude the latter from the protection of the Minimum Wage Bill, first introduced in Hong Kong in May 2010. Moreover the HKSAR government stood firm in the judicial review, brought up by two domestic migrant workers in 2010, to defend the discriminatory provision in the Immigration Ordinance (section 2(4)(a)(vi)¹⁶). The provision denies the domestic migrant workers the right to permanent residence even after fulfilling the condition of seven years' continuous employment in Hong Kong. The Court of First Instance ruled in September 2011 that the above exclusion in the Immigration Ordinance is inconsistent with the Basic Law and constitutes discrimination. Nonetheless, the government is determined to maintain the provision by appealing to the Court of Final Appeal in February 2013 and preparing to invite the National People's Congress for an interpretation of the Basic Law in its favour.

Macau Special Administrative Region

The Macau SAR government has ratified ILO Convention No.87 on freedom of association and No.98 on the right to collective bargaining. Yet the government is yet to enact a trade union law to implement these conventions despite the repeated calls from the ITUC, the local labour groups and the ILO¹⁷. Without any legal protection, workers are afraid to form/join the trade union and to stage industrial actions to improve their labour rights¹⁸.

The Macau SAR government has been increasing the import of migrant workers on a rate of increasing 1-2000 migrant workers per month since the beginning of 2013 and about 25 percent of them are without approvals. Non-resident workers do not enjoy equal treatment and they are not fully protected under the labour law, continually subject to the six-month re-entry ban under the Law on Hiring Non-Resident Workers¹⁹. Equal and non-discriminatory treatment to especially the women domestic workers, about 10.9 percent of the female working population in 2012 according to ILO, is lacking. In particular, the non-resident domestic workers are discriminated, not covered by statutory minimum wage legislation, social security and maternity benefits protection, subject

¹⁵ The more than decade-long legal dispute centered on 18 pilots who were among 49 fired by Cathay on a single day in 2001. The group in November 2009 won a total award of HK\$58.7 million, including damages for defamatory statements made about them during the dispute. That was subsequently cut after the company won the appeal. Finally in Sep 2012, the Final Court of Appeal maintained the original amount of compensation from Cathay Pacific.

¹⁶ Section 2(4)(a)(vi) of the Immigration Ordinance provides that a person shall not be treated as ordinarily resident in Hong Kong during any period in which he remains in Hong Kong while employed as a domestic helper who is from outside Hong Kong.

¹⁷ The Chief Executive of Macau SAR Fernando Chui Sai On confesses that the issue is not among the Government's top priorities.

¹⁸ The ITUC reports that the Macau SAR Government is believed to keep a blacklist of local workers who have supported local strikes and regularly denies entry to "trouble-makers" (ITUC Trade Union Rights Survey 2012).

¹⁹ Although the government is proposing to revise the Law on Hiring Non-resident Workers pending legislative approval in 2013, there is limited relaxation for non-resident workers laid off without a just reason or when the contract ends as they are allowed a maximum six-month stay in Macau while taking only "the same job".

also to the abuses of the labor agencies and harassment of the police²⁰. Despite the call of the migrant labour organizations, the government states that it has no intention yet to ratify the ILO Convention No.189 on Domestic Workers.

Recommendations:

1. The ITUC urges the Chinese government to ratify the ILO Conventions No. 29, 87, 98 and 105 and the ICCPR as soon as possible in order to enact domestic laws in line with these international human rights and labour rights instruments.
2. The ITUC also urges the Chinese government to stop local law enforcement officers from abusing the provisions on demonstrations in the PRC Criminal Law and the administrative punishment of Re-education through Labour (RTL) to crack down on workers and labour activists who initiate or take part in strikes and petitions.
3. The Chinese government should require local governments to review and remove the provisions in the regulations on collective bargaining that would prevent workers from exercising their right to organize strike when negotiation between workers and employers fail.
4. The ITUC further urges the Chinese government to ratify the ILO Convention No. 189 on Domestic Workers, and to enable the application and implementation of the Convention in Hong Kong SAR and Macau SAR.
5. The Hong Kong SAR government should follow the recommendations of the ILO and legislate on collective bargaining in Hong Kong; the Macau SAR government should legislate for trade union protection and collective bargaining in Macau without further delay.

²⁰ The agencies will charge an Indonesian migrant worker eight to 12 months of salary as commission and hold their passports until their employment contract is terminated.