Human Rights Council
Universal Periodic Review on People's Republic of China

Submitted by the Hong Kong Confederation of Trade Unions (HKCTU)

4th March, 2013

People's Republic of China

Introduction
Despite some moves towards greater recognition of the positive role of collective bargaining in the resolution of labour disputes ad the smoother running of industrial relations there continues to be a lack of progress towards genuine Democratic elections within the ACFTU and the state monopoly of the ACFTU remains – leaving Chinese workers with no genuine freedom of association. The work of labour rights groups and worker organisers remains severely repressed.

Detention of worker activists and labour rights supporters
The HKCTU remains concerned at the continued inability of workers and labour activists to utilise their right to freedom of expression in relation to labour activities. For example, just 12 moths after the initial review of China by the UPR process, a report by the International Federation of Journalists outlined over 80 orders relating to censorship and restrictions on reporting issued in 2010 and highlighted the continued arrest and sentencing of journalists who fail to observe internal censorship rules on the reporting of protests and strikes.

The HKCTU also seeks answers as to the legality of the continued imprisonment of workers and worker representatives including those in long term custody and those detained briefly for their role in protests and strikes. A non exhaustive list (see appendix I) from the HK office of the ITUC (IHLO) and press coverage contains 36 prisoners imprisoned for their activities relating to freedom of association. Many are long term detainees.

Failings in core human rights: Freedom of association and expression
Despite some moves towards the incorporation of key articles in international human rights law, there continue to be little or no progress towards the recognition of workers right to freedom of association and other core labour related rights. **The HKCTU seeks to raise the fact that progress on freedom of association remains inadequate. Workers remain unable to form or join a trade union of their choice.** The All China Federation of Trade Unions (ACFTU) continues to be the only "workers' organisation" recognised and allowed under the trade union law.

In February 2001, the Chinese Government ratified the ICESCR but effectively entered a reservation on a fundamental element of the Covenant on the right to establish and join workers' organisations of one's own choosing, thereby putting itself in breach of internationally recognised principles on the law of treaties. UN bodies have repeatedly "*regretted*" China's "*prohibition of the right to organise and join independent trade unions*" and "urged" China "t*o amend the Trade Union Act to allow workers to form independent trade unions outside the structure of the ACFTU*". **The HKCTU is eager to see what follow up will be made to ensure China addresses these concerns.**

In the UN's own compilation report to the UPR process * it was noted that : "*(3)1. CESCR regretted the State's prohibition of the right to organize and join independent trade unions in China. In 2008, an ILO Committee of Experts referred to the Government's indication that the legislation to regulate the exercise of the right to strike is under examination".*

The HKCTU seeks to ask if there has been any progress made towards implementing legislation explicitly protecting a worker's right to strike.

In the Report of the working group on the 2009 UPR of China, Sweden raised this prohibition regarding 8.1(a) of the IESCR and the ensuing lack of freedom to join and form unions of one's own choice. In answer the PRC representative stated that "*Chinese law does not prohibit strikes. If a strike occurs, the local government will try to mediate between the trade unions, enterprises and striking workers to find a solution to the problem. The Chinese constitution and the trade union law provide that the workers are entitled to organize and join trade unions and carry out activities entirely free*.".

---

*http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_2_E.pdf)

The HKCTU wishes to question this and believes this statement is in stark contrast to the continued reality where the ACFTU remains the sole trade union allowed to exist and where all new unions formed must "affiliate" to the ACFTU. Further clarification should be sought as to the definition of workers being "entirely free" to organise unions and carry out union activities. According to existing regulations; any such organisation, whether local, national or industrial, "shall be submitted to the trade union organisation (the ACFTU) at the next higher level for approval". Trade union organisations at a higher level "shall exercise leadership" over those at lower level.

Right to strike
The right to strike was removed from China's Constitution in 1982. As noted by the Chinese representative in the last UPR of China the current trade union law (Article 27) does not specifically outlaw strikes but nor however does it include them as forms of lawful industrial actions .

The HKCTU calls for clarity on this issue and for strikes to be expressly included in the law. Otherwise, as of now there remains ambiguity which can lead to some strikes being harshly repressed as 'illegal work stoppages: while others may be more leniently resolved. This does not allow for the coherent and confident expression of a worker's right to strike and enables the authorities to crack down on worker strikes and protests they deem too sensitive or threatening.

The HKCTU has noted numerous occasions when representatives of workers', freely chosen by the workers have been detained and imprisoned for utilising their right to freedom of association and when workers attempt to organise their own unions. (see appendix II)

Institutionalising worker action
The lack of active support for workers in many strikes and labour unrest by the ACFTU, as a key part of the ruling state apparatus is well documented. Workers in the majority of private industries have instead attempted to organize themselves and where possible deal directly with the factory management. Most remain unaware of union presence in their own factory. The ACFTU and the government are increasingly anxious to ensure that workers do not take independent action in any organized form. This is one reason why there has been some progress towards a negotiation of collective bargaining – if worker action is channeled through semi official forms then the risk of confrontation is lessened.

There is currently no national law specifically governing collective bargaining procedures but increasing collective contract are being regulated and relevant local legislation proposed and unlike the situation in Hong Kong, in the PRC mainland a collective contract established in line with the regulations is legally binding. Article 33 of the Labour Law states that workers have the right to conclude a collective contract "in an enterprise where the trade union has not yet been set up". In one labour NGO report from July 2012, it was found that over half of the 24 strikes and worker protests monitored in June 2012 resulted in some form of collective bargaining or formal negotiations between management and workers. However despite this welcome trend, t**he HKCTU notes that it was also reported that police were dispatched in ten cases with several workers detained in various provinces for disrupting social order during their strikes, protests or road blockages.**

Restrictions on trade union elections
Although the Trade Union Law states that trade union officers at each level should be elected, most officials are still appointed. Once elected, candidates must be approved by the provincial-level ACFTU. While experiments in worker led elections and the election of self chosen representatives for the factory trade union have been going on for the past decade or so it is only recently that there has been a wider push from the ACFTU to respond to the demands from workers through more genuine election process. Many provinces are now legislating on this issue in response in an attempt to forestall repeated strike waves of worker activism around the worker ownership of the ACFTU. Many strikes have included calls for representative factory unions and direct elections of union officials on the shop floor including the strikes in the auto industry in 2009-2010. In 2010 and 2011, "direct elections" were held in the Honda factory where a 17-day-long strike took place while in May 2012, another "direct election" was held in the Ohms Electronics Shenzhen Co. after a March strike over working conditions, pay and elections. The company agreed to allow workers to select a worker instead of a manager appointed by the owners. It has also been reported that the Shenzhen federation of trade unions is planning the organisation of these elections in 163 enterprises in 2012.

However although the term "direct election" (zhixuan in Chinese) is widely used it does not, in this case mean the democratic election of officials by all workers. In both the case of Honda and Ohms Electronics, the rank and file workers in different departments voted in the election of departmental branch committees and trade union members' representatives. Then the election of the enterprise trade union officials was held, but only the trade union representatives, just over 70 of them, were able to nominate candidates and vote. Similarly in the elections of the union chair and vice chair, only the trade union officials could nominate candidates and only the trade union members' representatives had the right to vote. The trade Union law states that union officials at various levels can be elected by the union's

members' congresses *or* the union members' representatives' congress. However most of the so called 'direct-elections actually use the latter – and least democratic – method for elections.

The HKCTU, while acknowledging some progress, seeks to know when genuine elections of trade union officials by rank and file union members will take place in a meaningful manner and substantial scale.

Labour dispute mediation regulations
*In November 2011, the Ministry of Human Resources and Social Security passed a regulation th*at requires enterprises set up *labour dispute mediation committees in the workplace. The Regulation on Enterprise Labour Disputes Negotiation and Mediation is targeted at improving the resolution of labour disputes, ensuring disputes remain contained within the workplace and reducing the number of cases appearing in the legal system and wild cat strikes and protests. However the compulsory establishment of a labour dispute mediation mechanism at the workplace without the democratic election of worker representatives and the reform of enterprise trade unions into representative worker unions suggest these committees may become another tool for company and state control. Committee members representing workers can be trade union officers or workers nominated and agreed by workers, not necessarily democratically elected. In addition, the committee is also meant to promote workers' understanding about the labour laws, regulations and government policies (Article 16). The committee therefore carries also the purpose of persuading workers to accept reconciliation rather than using the "illegal means" and strikes to protect their rights.*

The HKCTU believes that the system fails to allow workers to properly exercise their right to collective bargaining and freedom of association and instead is being seen as a another tool in state control of worker protests. (see appendix III)

Government efforts at limiting worker led civil society and labour rights groups
In Guangdong Province, new policies on Social Administration Reform are being implemented in order to neutralise civil society opposition to government policies and discontent among workers and to ensure a pro-active policy on frustrating and nullifying the potential for organised worker opposition and activism. Many labour groups have been forced to close while, unlike social work and community based service groups, labour groups have generally been unable to properly register with the Ministry of Civil Affairs in Guangdong and Shenzhen.

The HKCTU records with concern the fact that in the years following the last review of the PRC there has been a crackdown on the legitimate work of labour rights NGOs and groups providing support for workers. This has been increasingly severe in the past year. The HKCTU notes that despite progress in some areas of civil society opening, labour rights NGOs remain tightly controlled.

The authorities have used a range of tactics including pressure on landlords, spurious fines for tax issues, fire safety non compliance, covert and overt surveillance. The list of organisations affected include the Shenzhen based organisation Little Grass Workers' Home which was forced by the landlord to move, received a penalty of RMB50,000 for alleged non compliance with fire safety and was investigated for suspected tax evasion. Finally in July 2012 it decided to close. According to reports, the local authorities maneuvered the harassment, and as follow up offered the groups a deal – promising them assistance to relocate to another district in return for their agreeing to list and share with the government the workers and volunteers' contact and name lists in all the activities organised in the future. Organisations that had rejected similar deals such as Little Grass Workers' Home and the Shenzhen Dagongzhe Centre, were reportedly further retaliated. The Dagongzhe Centre, which has previously been a target of government and business repression, closed its centre in June 2012 after a two-month fight with the landlord and government. The Centre then moved to a new centre in a nearby district but one week later the new centre was raided by the Ministry of Industry and Commerce and threatened with closure. In the summer of 2012, several schools for the children of migrant workers were forced to close down as part of a government push to bring them into the official school system and reduce the activity of independent groups. However adequate places for these children have not been found

Hong Kong Special Administrative Region
Introduction
Although 23.5 per cent of the workforce in Hong Kong is unionized in 2011, there are still no regulations on collective bargaining. Freedom of association and the right to strike are recognized by law, but there is not enough protection in reality.

Meanwhile, wage and working time are not satisfied in Hong Kong. The minimum wage rate is too low for decent living for workers and their families. The long working hours is also a serious problem.

The right to form trade unions and the right to strike
The Employment and Labour Relations Ordinance includes provisions to protect workers against dismissal for trade union activities but does not offer any remedies for individuals who have been subjected to other

forms of anti-union discrimination. The law only ensures that, were a worker dismissed for participating in a strike, s/he would have the right to sue the employer for compensation but not reinstatement.

Since 1999, the government has stated that the Employment Ordinance, Chapter 57, will be amended to introduce mandatory reinstatement and order for re-engagement in the Labour Tribunal in cases of unreasonable and unlawful dismissal. However amendment has been deferred for over 13 years. Meanwhile, the penalty for anti-union discrimination at the moment is only a maximum fine of $ 100,000 (US $ 12,800), and the maximum amount of compensation is set at HK $ 150,000 (US $ 19,230).

While litigation against anti-union discrimination of employers is theoretically possible, in practice it is difficult and successful cases are rare. There have been only four prosecutions for the past fifteen years. Instead, Instances of dismissal or harassment for union activity are reported every year.

For example, in December 2012, a group of security guards employed by Hang Seng Bank was going to organize a union, but the company dismissed one of the worker leaders in order to threat others. The trade union is going to file a complaint of anti-union discrimination but it is expected that no prosecution will be made. The bank can easily refute that they dismissed the worker leader because of his poor working performance.

The right to collective bargain

The HKSAR government has persistently refused to implement the recommendations of the ILO on introducing legislation for the objective recognition of trade unions for the purpose of collective bargaining.

Collective bargaining is neither promoted nor encouraged by the authorities, and employers generally refuse to recognise unions. It is believed that less than 1% of workers are covered by collective agreements, and the collective agreements that do exist are not legally binding. Without legal protection to guarantee these rights, workers are also subject to arbitrary and unilateral actions of employers and are denied job and income security.

In 2012, several cases were reported regarding the rejection of collective bargaining by the employers. In July, Watson transportation workers were unsatisfied with the lack of manpower. They called for a strike and hoped to negotiate with the management. However there was no response from the management. In November, Cathy Pacific Airways Flight Attendant Union negotiated the pay raise with the company. While both parties were still negotiating, the employer announced the pay rise unilaterally.

Meanwhile, civil servants unions could only participate in joint consultation committees (JCC) in order to raise their concerns. There is no formal collective bargaining procedure for civil servants. The government's justification, that all civil servants are engaged in the administration of State and hence their exemption from the right to collective bargaining, is misleading. Many civil servants are not responsible for formulating policies, or performing law enforcement and regulatory functions.

Minimum wage and standard working hours

Although the minimum wage has been implemented since 2011, the hourly minimum wage rate, which is $28 (around US $3.6), is not sufficient for the living of the workers and their family. According to the survey of the Hong Kong Council of Social Service, the number of low income households with employed member[1] has increased from around 185,000 in 2011 to 200,000 in 2012. The HKCTU and other labour organization have urged the government to raise the hourly rate to at least $35 (US $4.5) and review the rate annually, especially the existing inflation rate is around 4 per cent.

Over 45 per cent of total employees work more than 48 hours per week. 13 per cent of workers even work more than 60 hours per week. A survey of the University of Hong Kong found that long working hours have adverse effect on workers' health and social life. [2]Disappointedly, the government has no intension to regulate the working time.

References

China Labour Bulletin, various reports
IHLO, various reports
ITUC, Annual Survey of trade Union rights, WTO report on obligations
Selected Chinese newspapers

[1] the household's income which is lower than 50 per cent of the median household income, while at least one member of the household is employed.

[2] http://hkupop.hku.hk/english/report/bokss12/index.html