

ICFTU comments on the First Report submitted by the People's Republic of China on its implementation of the International Covenant on Economic, Social and Cultural Rights.

April 2005

The International Confederation of Trade Unions (ICFTU) has with great interest examined the first report of the People's Republic of China pertaining to its implementation of the International Covenant on Economic, Social and Cultural Rights and would respectfully like to submit the following comments to the Committee on Economic, Social and Cultural Rights:

1. Article 8.1 (a) "Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; "

1.1 Reservation to Article 8.1 (a)

Upon China's signature on 27 October 1997 China made the following statement, which it confirmed upon its ratification of the Covenant on 27 Mar 2001: "In accordance with the Decision made by the Standing Committee of the Ninth National People's Congress of the People's Republic of China at its Twentieth Session, the President of the People's Republic of China hereby ratifies The International Covenant on Economic, Social and Cultural Rights , which was signed by Mr. Qin Huasun on behalf of the People's Republic of China on 27 October 1997, and declares the following:

1. The application of Article 8.1 (a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China;
2. In accordance with the official notes addressed to the Secretary-General of the United Nations by the Permanent Representative of the People's Republic of China to the United Nations on 20 June 1997 and 2 December 1999 respectively, the International Covenant on Economic, Social and Cultural Rights shall be applicable to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China and shall, pursuant to the

provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China, be implemented through the respective laws of the two special administrative regions. ”

As demonstrated below, the legislation invoked in this statement by the Government is incompatible with article 8.1 (a) of the Covenant. The ICFTU therefore considers that the above statement with regard to the application of article 8.1 constitutes a de facto reservation. According to the Vienna Convention on the Law of Treaties, a party to a treaty may not invoke the provisions of its internal law as justification for its failure to abide by the treaty. Furthermore, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. The ICFTU believes that the right to form and join a trade union of one's choice is one of the fundamental principles of the Covenant and therefore the ICFTU considers it to be invalid and joins nations like Netherlands, Norway and Sweden in objecting to this reservation.

The ICFTU notes with satisfaction that the Government of China has chosen to comment upon its implementation of article 8, also with regard to the right to form and join trade unions of one's choice. Thereby, in ICFTU's view, acknowledging its obligation under the Covenant to bring domestic law into conformity with article 8.1 (a).

1.1.1 Domestic Chinese law pertaining to article 8.1.a of the Covenant

The Government of China reports that workers have the freedom to form and join unions of their own volition in paragraph 69 of its report.

The citizens of China have, according to article 35 of the Constitution, the right to freedom of speech, assembly, association, procession and demonstration.

The right for workers to participate and form trade unions are also guaranteed under article 3 of the Trade Union Act. However, according to this provision their participation has to be in accordance with the law. The law prescribes, according to article 2 of the Trade Union Act, that the All-China Federation of Trade Unions (ACFTU) upholds and represents workers interests.

In fact, there is a trade union monopoly in China. Under article 10 of the Trade Union Act the ACFTU is established as the only "unified national organisation". Under Article 11, the establishment of any trade union organisation, whether local, national or industrial, "shall be submitted to the trade union organisation at the next higher level for approval". Trade union organisations at a higher level "shall exercise leadership" over those at lower level. The law also empowers the ACFTU to exercise financial control over all its constituents.

In its report the Government of China describes how this is a centralised union created by the state. As the law only recognises one trade union, i.e. the ACFTU, it effectively excludes other unions from existing, thereby preventing workers from joining or forming other unions of their own free choosing.

The freedom to form or join unions of one's own choice is therefore not guaranteed under the Trade Union Act. The Trade Union Act only provides freedom to join the ACFTU. This however, does not constitute freedom to form or join a union of one's own choice within the meaning of article 8 of the Covenant and therefore does not meet the obligation under the said article.

1.1.2 ACFTU's status as a trade union

According to the first chapter of the Trade Union Act, as amended in 1992 and 2001, the ACFTU must "ensure the status of trade unions in the political, economic and social life of the State, define their rights and obligations and bring into play their role in the socialist modernisation drive" according to article 1. Trade unions are mass organisations in which membership is voluntary. "The All-China Federation of Trade Unions and all organisations under it represent the interests of the workers ... and safeguard their legitimate rights" according to article 2 of the Trade Union Act.

Under article 4, trade unions "shall observe and safeguard the Constitution, take it as the fundamental criterion for their activities, take economic development as the central task, uphold the socialist road, the people's democratic dictatorship, leadership by the Communist Party of China, and Marxist-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, persevere in reform and the open policy, and conduct their work independently in accordance with the Constitution of trade unions".

Among their basic duties and functions, trade unions "shall" conduct education so that workers can play their role in administration of State affairs, especially in the economic, cultural and social area, assist the government and safeguard socialist State power. While they must protect the overall interests of the entire Chinese people, emphasis is laid on "representing and safeguarding the legitimate rights and interests of workers and staff members" (i.e. blue and white-collar workers, respectively). Unions shall also coordinate labour relations through consultation on an equal footing (i.e., with employers) and the collective contracts (i.e., collective bargaining) system. They also have to mobilize workers to strive to fulfil their tasks in production and to educate them in the ideological, ethical, professional, scientific, cultural and other areas, including self-discipline and moral integrity. They also organize workers to participate in democratic decision-making and management... over their own work units according to article 5-7.

The political obligations imposed by the law on the ACFTU are incompatible with the nature and role of a free and democratic trade union. A government-created and controlled union that has to uphold

policies adopted by the government cannot at the same time credibly represent workers' interests. This also applies to the ACFTU, which is not only Constitutionally obliged to "assist the People's Government to carry out its work but also actively promotes the view of the Communist Party and the Government that any unauthorised workers' action may lead to "social unrest and chaos".

Rather than representing the interests of its member, the primary task of the ACFTU is to assist the government in ensuring social stability during the economic changes in China's industry and preventing the problems and inequalities that have emerged – termed a "socialist market economy" by the government – giving rise to widespread and organised expressions of discontent.

The Chairperson of the ACFTU, Wang Zhaoguo, is also a member of the Communist Party's Politburo and a former Governor of Fujian province, and the organisation remains firmly under the leadership of the Party whose interests always take priority. This status is confirmed in the ACFTU's Constitution which states that "[T]he Chinese trade unions are mass organizations of the Chinese working class led by the Communist Party of China..."

There is little doubt that the organisation is under considerable pressure to meet the government's target of avoiding a repeat of the large-scale collective action that took place in northeast China during the spring of 2002. Several initiatives were discussed at the 14th Congress of the ACFTU in 2003, including direct trade union elections of enterprise-level branch Chairpersons and the opening of the union to migrant workers whose formal status as farmers previously excluded them. However, welcome though these initiatives are, the fact remains that although the Trade Union Act prescribes that trade union officers at each level should be elected, this is usually ignored and most officials are appointed. All candidates must be ACFTU members, and those elected or appointed are subject to approval by the provincial-level ACFTU committees, which is problematic only insofar as alternative trade unions are disallowed by the Trade Union Act and those elected or appointed are subject to approval by the provincial-level ACFTU committees. Furthermore, Article 22 of the "Temporary Regulations on Shop-floor level Trade Union Elections" drawn up in 1992 by the ACFTU states that: "The election of shop-floor level trade union committees, standing committees, union chairpersons and vice chairpersons are guided by the ACFTU Constitution and [are held] within the parameters of management authority and as such the results of such elections shall be reported to and approved by the Party Committee and the next level up of the trade union."

In short all elected officials must also have the approval of the Party which further minimises the scope for independent genuine union representation. The majority of workers, if aware of the existence of a branch union, are not informed properly of the election result and in many cases workers are simply unaware that they have a trade union. Many workers do not even know what a trade union is and what it does.

It was reported in late 2003 that the ACFTU had some 134 million members – a sharp increase from the 90 million it claimed in 1998/99. However, it should be noted that the recruitment campaign launched in 1998 has essentially been a paper campaign. The legal procedure for registering a union office in an enterprise can be completed – usually by fax or email – without trade union officials even entering the workplace, and branches can be set up in some enterprises simply by carrying out administrative procedures. An example hereof is the Xiangyang No.7 Cotton Factory case described in detail below on page 6 of this comment, where workers wishing to form a union at the enterprise was informed that administrative procedures had already been undertaken to create a branch union of the ACFTU. Workers had not been informed or consulted of this before they themselves expressed the desire to create a union.

Where detailed reports of social unrest are available, workers frequently dismiss the official trade union as unhelpful or ineffective at best. While claiming that its key concern is the welfare and protection of the more than 40 million workers who have been dismissed in the restructuring process of the national economy, the ACFTU appears to be helpless in negotiating, let alone enforcing, any social safety provisions that may have been obtained. The question of actually defending the jobs of their members and campaigning for alternative policies simply does not arise. The ACFTU appears to have no influence over the privatisation process of state, or other collectively-owned assets. Unfortunately, there are no open signs of the organisation making even token efforts to distance itself from its constitutional acceptance of Party leadership. It remains a tool of government policy.

In view of the above it is difficult to categorise the ACFTU as a trade union, and with a trade union monopoly in place, China does not allow for workers to form or join trade unions of their own choice contrary to article 8 of the Covenant.

1.1.3 Attempts to form independent trade unions

The Government of China systematically represses all attempts of establishing independent workers' organisations and trade unions, sometimes violently. Organisers of workers' groups and protests are often arrested, and sentenced to terms of imprisonment, "reform through labour" or "re-education through labour", the latter by administrative decision. Attempts by workers to form independent trade unions are met with hostility by the ACFTU. ACFTU officials usually either deny any legitimacy to independent workers' action, by calling it illegal, or acknowledge that their dual function as upholders of Party and government and representatives of the working class renders them unable to defend workers' interests in the face of massive restructuring in the state sector and investor-friendly environments in the private sector.

As detailed below, the ICFTU has been informed of an attempt by workers to form a union and register as an affiliate of the ACFTU, in the knowledge that it is the only union recognised under the law. However, it

became very clear that the ACFTU did not want to accept the said union into affiliation.

Xiangyang No.7 Cotton Factory in Shaanxi province

Over 6,000 workers at the former Xiangyang No.7 Cotton Factory in Shaanxi province staged demonstrations in mid-September 2004 in protest at changes to their employment contracts initiated after the factory was bought out and transformed into the Xianyang Huarun Factory. Workers, most of them women, launched a strike on 14 September over demands by the former state-owned plant's new majority shareholders (Hong Kong Company China Resources (Holdings) Co. Ltd.) that they sign short-term labour contracts reducing wages and eliminating seniority. The strike – which included several thousand workers - lasted some seven weeks and factory gate pickets were attacked by police with water cannon on at least one occasion.

At least 20 workers were detained by police in October who also issued “wanted” notices for three other workers. Some 40 more workers were also taken in for questioning by the local police. All workers have since been released without charges, in several batches starting in December 2004 and ending in early February 2005, just before the Chinese New Year.

The detentions came at the same time that the local authorities tried to prevent the workers from going ahead with their plan to elect a factory-level trade union and to register it with the ACFTU, as allowed for under the PRC Trade Union Act of 2001. When the city authorities learned of this they announced that the ACFTU itself had already taken steps to establish a union branch at the factory and that it had been approved by the relevant authorities – despite an absence of any such previous moves. No workforce elections were called to legitimize this officially imposed body, and many of the workers at the factory remained committed to electing a genuine union branch committee of their own. Workers had also contacted lawyers for advice. The Xianyang Municipal branch of the ACFTU had allegedly refused to enter into negotiations on behalf of the workers because it had not received any instructions to do so from the Xianyang Municipal Government and the Municipal Party Committee.

Factory management reportedly agreed to two of the striking workers’ main demands - to eliminate a six-month probationary period in the new contracts and to provide longer contracts. However it continued to reject demands for other forms of compensation. In the light of these concessions and the detentions of strikers, the workers agreed to end the strike. However the issue of wages was still unresolved and the workers released from detention appear to have been dismissed by management.

The ICFTU has been informed of another case, where an ACFTU trade union official was dismissed allegedly for incompetence in his post at a battery plant in Beijing after actually promoting the interest of workers.

Tian Xiaodong, an atypical ACFTU official

The official, Tian Xiaodong, like many ACFTU officials, was a general manager, but had the support of most workers, as he had reportedly initiated the creation of an ACFTU factory branch, and had been responsible for helping many workers at the plant sign written labour contracts and negotiate overtime agreements. Mr. Tian Xiaodong had according to media reports hired a lawyer to defend him and was accusing the company of breaking the law which prevents trade union officials from being dismissed unless they have committed a serious breach of duty.

It can be deduced from the above that forming an independent union is not possible under the law and attempts to do so are generally being repressed by the government. Independently creating a branch of the ACFTU is generally not approved by the ACFTU leadership, thus workers are reduced to hope that individuals within the ACFTU structure will work to defend their interests, as was the case with Mr. Tian Xiaodong. However, promoting the interests of workers should not depend on individual goodwill and has nothing in common with genuine workplace bargaining by independent parties.

Workers' in China are not able to promote their economic, social and cultural rights in full as long as they have no possibility of creating independent organisations with the sole purpose of representing the interests of workers. *1.1.4 Prosecuted for attempting to form or promote independent trade unions* The case mentioned above concerning the Xiangyang No.7 Cotton Factory is an example of workers being detained due to their legitimate attempts to elect and register a factory-level trade union. The cases below will illustrate how the Government of China consistently represses any attempts at forming independent trade unions:

Kong Youping and Nin Xianhua

In September 2004, these individuals were sentenced to 15 years and 12 years imprisonment respectively on charges of attempting to "subvert state power" after reportedly posting articles on the internet which supported the establishment of independent trade unions, freedom of association as well as the banned China Democracy Party.

Hu Mingjun and Wang Sen

Hu Mingjun and Wang Sen were leading members of the Sichuan branch of the banned China Democracy Party (CDP). On 18 December 2000, some 1,000 workers from the Dazhou Steel Factory staged a public protest demanding 12 months of unpaid wages. Hu and Wang contacted the demonstrating workers and the CDP then issued a statement in support of the workers. After calling for the establishment of independent trade unions, Hu and Wang were sentenced to 11 and 10 years imprisonment respectively. A third man, Zheng Yongliang, was believed to have been released. Hu Mingjun is due for release in May 2012 and Wang Sen in April 2011.

Zhang Shanguang

Zhang Shanguang, a teacher from Hunan and a veteran independent labour activist and prisoner was sentenced to ten years in 1998 under charges of "threatening the security of the State" after attempting to set up an independent trade union. There have been repeated reports of the ill treatment and torture of Zhang increasing after he attempted to improve conditions at the Hunan Provincial Prison N°1 where he is detained. He suffers from tuberculosis and heart disease, but is reportedly forced to work in shackles.

Li Bifeng, Zhao Changqing, and He Chaohui.

Other labour activists who remained in detention in 2004 include Li Bifeng, Zhao Changqing, and He Chaohui. All had tried to protect workers' interests, by protesting, organising or representing workers. Please find additional information on the prisoners list appended as appendix III.

2. Article 8.1 (b)

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;"

2.1 National Federations

See the above comments under section 1.

2.2 International organisations

The ACFTU is not affiliated to any international trade union organisation. It does nevertheless actively pursue international activities, which, similarly to its activities at the national level, are designed to further the interests of the Government and of the ruling party. According to the ACFTU, "the work in the international union arena falls directly under the guidance of the government's overall foreign policy. Under this guidance, we need to consolidate our independence, broaden our contacts and bring in to full play the advantages and special aspects of foreign exchanges through trade union and people-to-people exchanges."

A guiding strategy behind the ACFTU's increasing political influence in the international labour movement has been the so-called "United Front". Within China, the United Front is used as a tool to address social antagonisms. The role of the ACFTU in this is to "unite workers and peasants to struggle for the liberation of the working class." Originally viewed as one of the three "magic weapons" used in seizing power, the United Front aims to "unite with all forces that can be united with in order to fight a common battle against the enemy..." In the current fifth era of the tong zhan, the New Era Patriotic United Front has been opened up to include employers in Hong Kong, Macao and Taiwan, as long as they are patriotic, support the unification of the motherland and are willing to have economic cooperation with the mainland.

In the context of the international labour movement, the United Front becomes a tool that facilitates declarations of solidarity and expressions of non-interference with unions and workers' struggles in other countries. The United Front does not assume to change the views of trade unions outside China, but insists on an acceptance of the institutional status quo within China. In practical terms, this translates into exchanges of views between ACFTU and foreign trade union delegations, though the ACFTU side generally refuses to engage in any meaningful discussion about the respect in China of international standards on trade union rights, including, in particular, the situation of detained Chinese labour activists. In most cases known to the ICFTU, the ACFTU dismisses its foreign visitors' requests that it intervene on behalf of these prisoners, on the grounds that "no-one is convicted in China for exercising trade union rights" and that "the individuals in question have in actual fact been sentenced for illegal activities". A recent development in the ACFTU's international work has been the issuing of the so-called "Beijing Consensus" following a two-day International Forum on Economic Globalization and Trade Unions held in October 2004 . Participants at the conference included senior delegates from the World Federation of Trade Unions, the Organisation of African Trade Union Unity, the International Confederation of Arab Trade Unions and the General Confederation of Trade Unions (which covers most countries belonging to the Commonwealth of Independent States).. Following the conference, ACFTU Chairperson Wang Zhaoguo stated that "[A]ll trade unions and international trade union organizations should respect every country's model for the operation of their trade unions and the national development policy based on their national reality."

3. Article 8.1 (c)

"(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;"

3.1 Function freely – no interference

See the above comments under section 1 concerning the political functions imposed upon the ACFTU.

4. Article 8.1 (d)

"(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. "

4.1 Legislation on the right to strike

According to paragraph 80 of the Government of China's report the current laws of China do not touch upon problems of this type, with the explicit exception of police personnel and workers in national institutions. The ICFTU will return to the exceptions under its comments on article 8.2 of the Covenant. However, according to article 27 of the Trade Union Act,

in case of work stoppages or slow-down strikes the trade union shall negotiate on behalf of the workers and propose solutions. The enterprise shall try to meet reasonable demands of the workers and the trade union is to assist the employer in restoring normal production as soon as possible. Article 27 does not employ the term "strike"(bagong), but instead refers to instances of "work-stoppage" (tinggong) and "go-slows" (daigong). According to the Government's report China's trade unions do not agree with strikes.

The ICFTU would like to reiterate the fact that the right to strike was formerly protected under the Constitution of China. However, in 1982 China removed this right on the grounds that the political system in place had "eradicated problems between the proletariat and enterprise owners". However, there are increasing calls within China for legislation of the right to strike and a development zone of Dalian in northeast China has reportedly implemented pilot regulations on strikes.

However, when workers put the vaguely-worded provisions on inter alia work stoppages in the law to the test, they invariably find themselves informed that strikes do not have legal status and are inappropriate. Under section 4.2 below the ICFTU will give examples of workers being prosecuted for organising strikes and promoting workers' rights. It can be concluded from the above that instead of protecting the right to strike China has instead removed the protection and, as will be illustrated below, strikes are currently de facto illegal. The protection of the right to strike under the law is therefore insufficient, and the Government of China is clearly in breach of article 8.1 (d) of the Covenant.

4. 2. Practical implementation of the right to strike

In practice, many examples show that strikers and especially strike leaders, far from enjoying legal protection, are instead often arrested and charged with offences that vary from traffic violations to holding illegal demonstrations, and even, where extensive organisation can be demonstrated, subverting state power, which is one of the most heavily-repressed incrimination under the country's penal code..

Strike organisers and independent labour activists also face the threat of re-education through labour (RTL), a form of administrative detention, in principle not exceeding three years and imposed by public security authorities without trial. In practice, these periods of forced labour can be extended at the authorities' will, as has been proven in many cases. The Trial Implementation Methods For Re-education Through Labour state that, "[T]hose who have a job but who for a long time refuse to labour or destroy labour discipline, and who ceaselessly and unreasonably make trouble, who disturb the order of production or work, or the order of teaching or research and the order of life, who hinder public affairs and who do not listen to advice and instructions to stop," are liable to be punished by periods of RTL. RTL is an administrative punishment which is imposed without recourse to the criminal justice system and which the International Labour Organisation (ILO) considers to be in violation of the Convention on Forced Labour, 1930 (No 29).

4.2.1 Background information

A number of important worker protests have taken place over the last years. However, most protests were relatively small scale and no protests spread beyond the enterprise or town where they originally took place. Some observers of labour relations in China have highlighted a possibly increased use of collective strike action recently. Due to the potential threat to stability and to the economy, larger labour protests were taken very seriously by the government and met with a wide range of measures - from concessions, to threats, police intervention and prosecution of organisers.

Privatization continues to be a major cause of labour unrest and according to media reports and even the government's own admission, plagued by massive corruption. Many workers were affected by the embezzlement and misappropriation of factory assets and funds set aside for redundancy payments and other benefits during restructuring of state-owned enterprises (SOE). Many of the larger protests in 2004 can be traced back to the issue of corruption, the non payment of earmarked funds for workers and the widespread flouting of local or national regulations on pensions, health care and redundancy.

4.2.2 Strikes repressed in 2004

The Government repressed several strikes in 2004 and detained many workers, organising or participating in strikes.

Sinopec strike

Throughout January 2004 some 1,000 workers at the Maoming branch of the national China Petroleum and Chemical Corporation [Sinopec] branch in Guangdong province protested over illegally low pension benefits. The protest began in December 2003 when the retired workers asked that Sinopec end its own pension scheme and instead adopt provincial standards which are the correct legal policies to follow. Several of the retired protestors were harassed by local Public Security Bureau (PSB) officers. Zheng Jinghai, a 64-year-old and two other retirees reported visits from local police and having received warnings not to participate in the protests. Another protester reported that his telephone had been monitored since 9 January.

Taxi driver strike in Dazhou City, Sichuan Province

Striking taxi drivers were held in police detention in January 2004. The dispute began in November 2003 when some 1,000 taxi-owners and drivers in Dazhou City, Sichuan Province began a week long strike. Throughout November and December, drivers and owners staged various protests outside municipal offices resulting in the detention of scores of protesters. The workers action was in response to a local government decision to cancel all existing taxi -driver permits (Taxi Operation Certificates - TOCs) and re-sell them at a higher price through an auction, without offering any form of compensation and the order that drivers

switch to a new (and more expensive) brand of car. Most of the taxi-drivers in Dazhou were retrenched workers from previously state-owned enterprises or migrants resettled in Dazhou from areas affected by the highly controversial Three Gorges Dam Project.

Despite promises of a suspension of the new policy the local government went ahead with its plans and in response drivers sent representatives to Beijing to complain to the central authorities. On 6 January 2004, police forced nearly some 100 driver representatives back to Dazhou where they were taken to the local Police training Institute. Eighty-six were then released, while the remaining 11 were detained for "education" purposes. Some 100 riot police formed a barricade against the families and dozens of protesting drivers who had gathered outside the centre. On 9 January one of the detainees tried to jump from the top floor of the building in a suicide attempt, causing other detainees to also try to jump off the building. During the struggle, two of the detainees managed to escape. By 11 January several others had been released while the remaining four detainees were charged with "violating social order" and were held in criminal detention for 10 to 15 days. A further detainee - Liu Ziqing [detained on 3 January] - was also being held on similar charges. All five were later released. However, Xiong Zhangqi, a driver-owner is believed to have been charged with "violating social order" and may face criminal prosecution. No further information has been available since that time.

Strike at Tieshu textile Factory in Suizhou, Hubei Province

Mass protests began on 8 February 2004 at the Tieshu textile Factory in Suizhou, Hubei Province when up to 2000 workers staged a demonstration which was dispersed by armed police - a violent confrontation ensued causing the hospitalization of several workers and police. Some 20 workers were detained for participating in the protest leading to the formal arrest of six on charges of "disturbing public order". Three other Tieshu workers were also assigned terms of up to 21 months "re-education through labour" (RTL). Previous demonstrations had been held throughout 2003, after repeated refusals by factory management to hold genuine negotiations over redundancy terms in the light of the factory's sale to a private investor. [See ICFTU Annual Survey, 2003] The first mass protest had taken place in January 2003 when retired workers mounted a collective picket at the factory gates and succeeded in bringing production to a halt. The picketing was repeated sporadically during the year despite police harassment. The workers were - and are - demanding payment of previously agreed pensions, redundancy payments, missing wages and share options worth some 200 million Yuan as well as an official government inquiry into alleged management corruption and fraudulent or "false" bankruptcy which resulted in the sale of the company. Some 300 workers also filed and lost a joint complaint to the Suizhou People's Court asking that missing pensions and other benefits be paid by the Tieshu Group.

Protesters beaten at China Anhui Gujing Distillery Company Ltd

On 28 February 2004 workers at the China Anhui Gujing Distillery Company Ltd began protests and on 2 March 2004, more than 1,000 workers from the Distillery, mainly ex-farmers, staged a public protest, blocking the local Railway. The protests were against recent company restructuring which had raised fears of widespread layoffs and broken pledges by management. During the protest several thousand armed police and local police violently dispersed the crowd resulting in one worker being comatose for several days. Several other workers were detained for questioning and then released.

The dispute had arisen because the distillery had been built on land originally farmed by local residents. After their land was repossessed, the residents had no option but to start working at the winery, since there was no other available employment in the area. The Distillery was now undergoing restructuring and the workers believed that the company was going to renege on promises made when it took possession of their land including the allocation of worker shares in the restructured company. It was reported that the lowest rank of managerial staff was to be allocated 200,000 Yuan in shares while the trade union chairperson and other senior management would receive shares worth several million. However, ordinary workers, the previous owners of the land, were only to be given 20,000 Yuan in shares.

Jilin branch of Sinopec

In another labour case involving Sinopec, over 500 retrenched workers from the Jilin branch of Sinopec held continued protests in April 2004 over unfairly low levels of retrenchment payments. The demonstrations were held to commemorate the second anniversary of the initial mass protests on 22 April 2002, when several workers were detained and one, Zhou Zhenhua, was later formally arrested and reportedly assigned to 're-education through labour'. Zhou Zhenhua later committed suicide - on 10 March 2004, in the light of continued government inaction and growing poverty brought on by the loss of benefits, a group of workers (exact number is not known) attempted suicide - Zhou Zhenhua was found dead, but the rest survived. The workers had begun their protests after an announcement by Jilin Sinopec in 2000 that, in the course of the national restructuring of the oil industry, the corporation was soon to be shut down and that workers must choose either retrenchment compensation (with a one-off payment) or buy corporation shares. Some 16,000 workers chose to take redundancy early as they could not afford shares - however they discovered that the corporation, now restructured to form two companies, was making a profit and there was no sign of it shutting down. In addition workers found that previous labour insurance premiums which Sinopec had deducted from wages prior to restructuring were now declared invalid and workers were not eligible for benefits or refunds. According to workers, the company had not provided any receipts for the deductions and refused to enter into any discussions over refunding the payments. Despite the end to the street demonstrations in 2002, workers continued to travel to Beijing throughout 2003 and early 2004 to petition the central authorities - worker representatives were forcibly returned to Jilin on several occasions.

Xiangyang No.7 Cotton Factory in Shaanxi province

[See under 1.1.3](#)

SOE, Zhongheng Textile Factory workers

On October 26 2004, two women who helped organise a labour rights protest in Yangcheng city, Jiangsu Province were formally arrested on charges of "disturbing social order". Ding Xiulan (45 yrs) and Liu Meifeng, both workers at the former SOE, Zhongheng Textile Factory, were accused of organizing a strike and a protest to gain adequate compensation and redundancy terms. The protest, reportedly attended by hundreds of workers on 2 October, followed a four-week strike in September after the factory refused to negotiate with workers. Workers also reportedly blocked the factory for 17 days in early October. According to workers, after an initial demonstration on 2 October 2004 where scores of workers were detained, the workers began to protest outside government offices. The government then promised to resolve the issue, however despite these assurances, the authorities instead formally arrested Ding Xiulan and Liu Meifeng at a public meeting, held by the local government on 20 October to which workers had been invited to discuss the issue. The two women are now presumed released but no confirmation has been given.

Xing Xiong Factory shoe workers

In November 2004, five workers from the Xing Xiong Factory were sentenced to prison terms of up to three years for their involvement in the April protests. Two of the five convicted workers were reportedly below the legal minimum working age at the time they were hired by the company. Five other workers from the Xing Ang Shoe Factory, including another under-age worker, were sentenced earlier in October to sentences of up to three and a half years imprisonment. Dozens of other workers were summarily dismissed for their involvement.

All ten workers were convicted on criminal charges of "intentional destruction of property" after their participation in mass protests on 21 and 23 April 2004 at the Xing Ang and the Xing Xiong factories of the Taiwanese owned Stella Shoe Company which sold shoes and other goods to a wide range of western brand name companies. According to reports some 1,000 workers at the Xing Ang factory and up to 5,000 workers at the Xing Xiong factory staged the protests over low wages, excessive overtime and working hours that exceeded limits set in China's Labour Law and poor meals provided by the factory. Some machinery and other items of company property were damaged in the course of the protest action.

The workers defence lawyer claimed that the prosecution failed to provide any actual evidence linking the workers to specific acts of damage to property, or to any other form of criminal behaviour and there was no evidence that the five workers had "instigated" or "led" the mass protest as was suggested. All ten workers had their sentences reduced on

appeal in December 2004- the seven workers originally sentenced to three or three and a half years had their sentences reduced to nine months suspended while the three juvenile workers have been released with their two year suspended sentences remaining. Despite this turnaround the criminal convictions remain and it is not known if the workers have since been able to find new employment. In a letter sent to the Court shortly before it announced initial sentences for the first five workers, senior management from Stella International as well as several of its main foreign buyers reportedly called for leniency and later issued a public statement guarantying minimum wages for the (then) five sentenced for the duration of their prison terms.

In addition to several detained workers mentioned earlier the plight of many workers detained during labour protests remains unclear. While it is assumed most are usually released after a few days or weeks in administrative detention, no formal notification is forthcoming.

4.2.2 Long Term Detainees

Dozens of independent labour activists and leaders jailed in previous years remained in prison in 2005. The following is a partial list, please find appended a full list of detainees known to the ICFTU as of April 2005, as Annex III.

They include activists, notably members of the Workers' Autonomous Federations (WAF), arrested in the wake of the Tiananmen Square massacre of June 4 1989, and the protests that followed. WAF were independent workers' organisations established between April and June 1989 in various provinces of China, in the context of that year's nationwide democracy movement, also known as the "Beijing Spring". Their leaders and members were violently repressed after June 4, in the wake of the Tienmen Square massacre. Most of those imprisoned at this time were sentenced to harsh prison terms for crimes such as "counter-revolution" or "hooliganism", neither of which exist in present Chinese criminal law, although they have to a large extent been replaced by charges such as "threatening the security of the State" and "disturbing public order". Shao Liangshen (Liangchen) was also sentenced to death in September 1989. His sentence has since been reduced and he is due for release in November 2007. Hu Shigen, who helped establish the Free Labour Union of China (FLUC) Preparatory Committee and who was jointly indicted in 1993 with fifteen others, including Liu Jingsheng, on "counter-revolutionary" charges, received a 20 year sentence. He is reported to be suffering from chronic migraines, intestinal illness, malnutrition and a spine problem which could lead to paralysis if not treated. In 2004, the ICFTU and other organisations called for his release on medical grounds. Several leaders and activists detained at the same time as Hu Shigen are believed to remain in detention; Liu Zhihua and Liu Jian, of whom little is known and Kang Yuchun, sentenced to 17 years, seriously ill with heart problems. In November 2004, Liu Jingsheng, sentenced to 15 years, was released. Peng Shi was due for release in 2004 but here has been no confirmation.

In addition to concerns over Hu Shigen, fears have been heightened over the deteriorating health of Yao Fuxin and Xiao Yunliang. Xiao Yunliang and Yao Fuxin were sentenced in May 2003 to four and seven years imprisonment respectively for their part in the mass protests in Liaoyang in March 2002. Since their imprisonment, the health of both men has been deteriorating rapidly. Prison authorities are currently providing them with little or no medication or other medical care. By year's end, the ACFTU had failed to provide any response whatsoever to repeated calls by the international union movement that it intervene on their behalf.

Wang Wanxing and Wang Miaogen, both involved in the Workers' Autonomous Federations (WAF), have been incarcerated in psychiatric hospitals for over ten years. There have been numerous reports of ill treatment of Wang Wanxing - including his move to a "secure ward" where he was being held with violent patients, and his wife's subsequent appeal. The move was apparently part of the pressure put on her to sign papers releasing him from hospital, but subjecting him to 24 hour surveillance among other conditions. Wang Miaogen is presumed released but there has been no confirmation. Another labour activist, Pen Yuzhang, a member of the Changsha Workers' Autonomous Federation in 1989, has also been held in a psychiatric institution. Government reports about his release have not been independently confirmed.

Yao Guisheng - mental ill Cases have been reported of detained labour activists' becoming mentally ill after being severely mistreated in jail or labour camp. One such case is that of Yao Guisheng, a member of the Changsha WAF, responsible for helping WAF leaders to escape arrest in the immediate aftermath of the country-wide repression which followed the Tiananmen Square events. He was sentenced to 15 years' detention in October 1989 on charges of "robbery and assault" (trumped up after an argument with a taxi driver), later changed to "looting". According to former prisoners, he was periodically placed in solitary confinement for refusing to "admit his guilt", was regularly beaten and forced to wear shackles. He became mentally ill as a result. His case was later taken up by the Special Rapporteur on Torture of the UN Commission on Human Rights. In 1994, the government told the Special Rapporteur that Yao had never been ill treated. Yao was due for release in 2004 but there have been no reports of his actual release.

4.2.3 Other cases before 2004

In Annex I and II to these comments the ICFTU will provide a copy of previous issues of the ICFTU's Annual Survey of Trade Union Rights Violation concerning violations in 2002 and 2003. Recent cases include Lu Wenbin, a special correspondent for the Textile Daily newspaper, arrested on December 22, 2001 for documenting a strike and interviewing workers at the Huainan Textile Factory in Dafeng and Liao Shihua, sentenced in December 1999 to six years' imprisonment after organising a protest by workers of the Changsha Automobile Electrical Equipment Factory.

5. Article 8.2

"2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State."

5.1 Exemptions

In the report the Government of China states that police personnel and workers in national institutions are prohibited from striking.

The ICFTU would like to emphasise that, under the relevant jurisprudence of the ILO Committee on Freedom of Association, the right to strike also encompasses civil servants who do not exercise authority in the name of the state nor perform essential services in the strict sense of the term.

"The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population ."

A general ban on strikes for all workers in national institutions is therefore unnecessary and incompatible with international standards. In the view of the ICFTU, China should therefore adopt legislation in accordance with ILO standards, an organisation of which China is a founding member.

6. Other cases of detained trade union rights' activists and their relatives

Li Wangyang, a veteran independent trade union activist, sentenced to ten years' forced labour on September 20, 2001. As of April 5 2005, Li Wangyang remained incarcerated in Hunan No. 1 Prison.

Cai Guangye, a doctor employed in a military hospital, who was arrested in December 2001 for supporting protesting workers at a chemicals company in Jilin and sentenced to three years' re-education through labour in July 2003. Cai was believed to be due for release in December 2004 but there has been no confirmation of his release and his whereabouts remain unknown.

7. Releases in 2004

Workers released

In 2004 the government reportedly released Di Tianguai after one year of detention without trial for trying to organise a national federation of retired workers. It was reported that the authorities considered his detention to be in lieu of a one year sentence. Baotou city legal adviser Xu Jian was also released after serving four years for helping to distribute leaflets on workers' rights. In April 2004, the authorities released Chen Gang, a worker sentenced to life imprisonment for his role in organizing a strike at the Xiangtan Electrical Factory in Hunan, in support of the pro-democracy protests in 1989. In November 2004, Liu Jingsheng, one of the

co-organizers of the FLUC Preparatory Committee in 1989, who was sentenced to 15 years imprisonment with Hu Shigen, was also released.

Guo Yunqiao, leader of the Yueyang City WAF, in Hunan province, sentenced to 13 years for leading a workers' protest in 1989, was reportedly released in 2000. Li Jiaqing, a leader of the independent labour movement in Zhengzhou, Henan province, arrested in August 2000 and charged with disrupting social order on February 13 2001 was reportedly released on bail in 2001. Xu Wangpin was released in 2001. Liang Qiang, detained following the 1989 pro-democracy protests, was sentenced in January 1990 to 15 years' imprisonment for "inciting students and workers to rebel". It is believed Liang may have been released but there has been no confirmation.

The sister of Li Wangyang, a veteran independent trade union activist mentioned above, Li Wangling was sentenced to three years' re-education through labour on June 7 2001 for helping him to publicise his demands. However, she was released on April 21, 2004.

8. Conclusion

In view of the above it can be concluded that China does not respect core workers' rights and is in breach of article 8 of the Covenant on several counts. Firstly, China does not allow workers to form and join trade unions of their own choice neither in law nor in fact. Secondly the only legally recognised trade union is under an obligation to promote the government's and the ruling party's policies; thirdly, the right to strike is not fully recognised in law and is repressed in fact. According to the Committee on Freedom of Association of the ILO, the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests. Promoting and defending peoples' economical, social and cultural interests are the very purpose of the present Covenant and by disrespecting workers' right to promote their economic and social rights, China is in clear and unequivocal breach of the Covenant. In the above comment the ICFTU has concentrated on the government of China's implementation of article 8, however, the case material described above and contained in Annex I and II will also illustrate China's implementation – or lack thereof - of other provisions of the Covenant.

(ICFTU, Brussels, 22 April 2005)