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IHLO-HTUR/JK/sdr

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China: Draft Labour Contract Law

Dear Mr. President,

The ITUC has followed with much interest the current discussion on the draft labour contract law which is expected to be passed later this year.

As you will be aware, the ITUC and earlier the then-ICFTU have on numerous occasions written to your government about specific instances of abuse of freedom of association and other core labour rights, including the detention of workers arrested solely for the peaceful exercise of their legitimate trade union rights.

We have observed the many problems relating to labour relations and contracts that have become more visible in recent years through the rapid economic changes taking place. We note with concern that many workers, especially rural migrants, remain unprotected by a written contract and that many, despite having contracts, are working long hours in excess of national legislation and in conditions which break both Chinese and international occupational health and safety regulations. We also note the by-products of the rapid economic changes which include mass layoffs from state-owned industries and the discriminatory practice of female workers being laid off first – and being re-hired last. We very much hope that this new law will help ameliorate some of the issues.

We believe that the new law currently under discussion attempts to address some of the most crucial failings of current labour legislation. Much of the new law provides specific penalties and remedies for items already regulated under current laws. This should allow easier prosecution of offenders and help deter others. We note that the new law seeks to give concrete penalties for failing to provide workers with contracts and also includes in the legislation the expanding number of workers employed by labour service agents. We also observe that the draft law, although the revised version is somewhat reduced, could help bolster the extent and practice of collective consultation for ordinary workers.

At the same time we take this opportunity to condemn many of the arguments and lobbying deployed by transnational corporations and the private business enterprises in opposing the law. We are saddened but not particularly surprised at the comments which have exposed the marked difference between the alleged desire of the transnational corporations to help develop the Chinese economy and bring economic progress to its citizens on the one hand, and the obvious unease they felt at the new law which would mean higher protection for their workers on the other hand.

However the ITUC also wishes to express its concern that no mention of the right of workers to form and join independent trade unions has yet been raised in current and forthcoming Chinese legislation and legislative discussion. While we are aware that there has been some public consultation over the draft law, we remain concerned that there remains little effective tripartite consultation over such issues. This is no doubt because of the lack of freedom of association and of a balanced and effective collective bargaining system.

The Chinese government has not ratified either of the two fundamental ILO Conventions on freedom of association and on the right to organise and to bargain collectively (ILO Conventions No. 87 and No. 98). In February 2001, it ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), but announced at the same time that provisions guaranteed under Article 8,1 (a), namely the right to establish and join workers' organisations of one's own choosing, would be dealt with in accordance with Chinese law. In doing so, the government effectively entered a reservation concerning a fundamental element of the Covenant, thereby putting itself in breach of internationally recognised principles on the law of treaties. Indeed in 2005, the UN Committee on Economic, Social and Cultural Rights, "regretted" this prohibition of the right to organize and join independent trade unions" and urged that China "amend the Trade Union Act to allow workers to form independent trade unions outside the structure of the All China Federation of Trade Unions".

In addition, however, we have serious concerns over the lack of implementation of China's existing labour legislation which is developing into a comprehensive set of laws. We note that China has a developing set of labour related legislation which aims to provide protection and security for its workforce. However, much of this is not effectively implemented and a culture of impunity remains the norm for many law breaking companies, be they foreign, domestic or state owned. In this context, we believe that China's legislative and governmental authorities should establish some form of credible monitoring mechanism charged with ensuring that existing and future labour legislation is strictly respected by all employers active in the country, irrespective of the nature of their ownership or of their nationality.

We welcome the recent ratification of ILO Conventions 111 on discrimination and Convention 155 on occupational health and safety but we urge the government to make ratification of Conventions 87 and 98 a priority. While advances appear to have been made towards the revision, refinement and improvement of many other aspects in the legislation governing workers' lives and their livelihood, we believe that without determined movement towards freedom of association there can ultimately be no real progress.

In summary, while this current initiative is positive we must ultimately express our deep concern at the lack of genuine progress towards the realization of the right to freedom of association and collective bargaining.

Yours sincerely,

General Secretary

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