INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN HONG KONG

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF TRADE POLICIES OF HONG KONG

Geneva, 13 and 15 December 2006

EXECUTIVE SUMMARY

On the occasion of the handover of Hong Kong to Chinese rule in 1997, the Government of China notified the ILO that four of the ILO conventions on Core Labour Standards would apply to Hong Kong. Two further conventions have since been applied to Hong Kong.

In view of the absence of union recognition, serious obstacles to collective bargaining, and persistent trade union discrimination, determined measures are needed to comply with the commitments Hong Kong accepted in Singapore, Geneva, and Doha in the WTO Ministerial Declarations over 1996-2001, and the commitments made by China on behalf of Hong Kong in the ILO Declaration on Fundamental Principles and Rights at Work adopted in June 1998.

Both of the ILO core conventions on the protection of trade union rights apply to Hong Kong. Restrictions on these rights have, however, remained in both law and practice. The Hong Kong Government has, in particular, persistently refused to follow the recommendations of the ILO Committee on Freedom of Association with regard to the above-mentioned problems.

Neither of the ILO core conventions on discrimination apply to Hong Kong, despite the fact that China itself has ratified both of them (Convention 111 as recently as January 2006). Hong Kong's legislation prohibits discrimination on the grounds of gender, disability, and family responsibility, but no legal provision has yet been made to end discrimination against the large population of migrant workers. Discrimination against women remains a problem, especially with regards to pay and the representation of women in senior positions. Discrimination with regard to age and race is also serious.

Both of the two ILO core conventions on child labour apply to Hong Kong. The law, however, is not consistent with the commitments made by China on behalf of Hong Kong in the ILO Declaration on Fundamental Principles and Rights at Work.

Both ILO core conventions on forced labour apply to Hong Kong. Although the law prohibits forced labour, there are consistent reports of women and children falling victims of trafficking for the purpose of sexual exploitation. Hong Kong is also a transit country for trafficking in persons.

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN HONG KONG

Introduction

This report on the respect of internationally recognised core labour standards in Hong Kong is one of the series the ICFTU is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which the Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth WTO Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

Hong Kong is one of the two Special Administrative Regions of the People's Republic of China (PRC). It was a British colony until its sovereignty was transferred to the PRC in 1997. In the agreement on the hand-over of Hong Kong to Chinese rule, China promised that under its "one country, two systems" formula, Hong Kong would enjoy a high degree of freedom in all matters except foreign and defence affairs.

Hong Kong has a free market economy and is highly dependent on international trade. Even before Hong Kong reverted to Chinese administration, it had extensive trade and investment ties with China. Since 1997 it has been further integrating its economy with China.

Hong Kong's GDP amounted to US $ 177.7 billion in 2005. The GDP growth rate was 7.3 percent in 2005. Due to the global economic downturn, Hong Kong suffered a recession in 2001-2002. The Severe Acute Respiratory Syndrome (SARS) outbreak in 2003 also hurt Hong Kong's economy. The average growth rate from 1989 to 2005 was 5 percent.

The labour force of 3.61 million is mainly employed in services, which accounts for 90 percent of GDP. Industry accounts for 9.9 percent of GDP. Agriculture is almost non-existent and food and raw materials must be imported. The volume of goods and services traded annually is nearly twice the volume of GDP.

The ITUC has three affiliates in Hong Kong, the Hong Kong Confederation of Trade Unions (HKCTU), the Hong Kong and Kowloon Trades Union Council (HKTUC) and the Joint Organisation of Unions – Hong Kong (JOU).

According to the government of Hong Kong, there were 712 registered trade unions in 2005, and approximately 21 percent of the salaried employees and wage earners belonged to a labour organisation.

I. Freedom of Association and the Right to Collective Bargaining

The Chinese government in Beijing notified the ILO in 1997 that both ILO Convention No. 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention and ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention would be applicable to the Hong Kong Special Administrative Region (HKSAR). Prior to 1997, these ILO conventions had been applicable to Hong Kong since 1975.

The Basic Law, promulgated by China in 1990 as the constitution of Hong Kong, provides for, among other things, freedom of association, of assembly and of demonstration; the right and freedom to form and join trade unions; and the right to strike. However, both before and after the hand-over, Hong Kong law has not adequately protected trade union rights. Trade unionists risk victimisation and dismissal for organising workers and for carrying out trade union activities. There are also serious obstacles to collective bargaining.

Union recognition and collective bargaining

There is no institutional framework for the recognition of unions and collective bargaining. Hence employers continue to generally refuse to recognise unions as well as refuse to implement agreements that have been negotiated. This limits the effect of trade unions in the country, and means that they are often forced to serve mainly as pressure groups and advisers of workers. While just above one fifth of the workforce are members of a trade union, collective agreements cover less than one percent of workers and are not legally binding. The Government's refusal to provide legal protection for collective bargaining is a clear obstacle to true trade union representation in Hong Kong.

The ILO Committee of Experts on the Application of Conventions and Recommendations has on several occasions requested the Government to give serious consideration to the adoption of legislative provisions which would promote voluntary negotiations between employers' and workers' organisations with a view to regulating the terms and conditions of employment by means of collective agreements. Although the Government has reiterated its commitment to promote such negotiations, it has so far taken none of the steps recommended by the Committee of Experts, nor has it set up machinery to regulate negotiations.

There has been no consensus within the Legislative Council, Hong Kong's legislative branch, on the introduction of compulsory collective bargaining. In fact, the Council has voted down motions calling for the enactment of legislation on collective bargaining on three occasions; in December 1998, in April 1999 and in December 2002. Members of the ILO's Committee on Freedom of Association assert that the Government has shown no willingness to introduce such legislation.

Nevertheless, a few collective agreements have been concluded in certain sectors, and according to ILO reporting in 2005, they are quite common in sectors such as printing, construction, public and air transport, as well as in ship maintenance and the goods loading and unloading industries.

The Government's policies have focused on promoting tripartite dialogue through tripartite committees. At the industry level, the tripartite committees have sought to foster an environment conducive to a certain type of collective bargaining and have assisted the Government in producing sample employment contracts and reference guides. Yet according to the ILO Committee of Experts on the Application of Conventions and Recommendations, tripartite committees do not constitute negotiating bodies in the meaning of Article 4 of Convention No. 98 since these committees include government representatives in addition to employers' and workers' organisations. The Committee stressed that effective communication and tripartite dialogue could not function as a substitute for bipartite negotiations, although they may be a useful tool for ensuring a positive industrial relations climate.

According to the HKCTU, the tripartite committees that the Government has established in some sectors have been ineffective and sometimes harmful, because they have done damage to employment conditions of individual workers. In 2001, a senior representative of the Hong Kong Container Truck Drivers' Trade Union represented his union on one such committee. His employer was on the same committee and sacked the official after the meeting as punishment for his membership in the union, reports the ILO. Despite the clear case of anti-union discrimination as the motivation for the dismissal, the worker lost his case in the country's Labour Tribunal.

With regard to the right of employees in the public sector to engage in collective bargaining, the ILO Committee of Experts on the Application of Conventions and Recommendations has repeatedly urged the Government not to exclude workers in this sector as a whole from collective bargaining. As restrictions are possible where workers are directly concerned with the administration and security of the State, the Government of Hong Kong has been requested to establish appropriate criteria for restrictions of collective bargaining in this sector.

Nevertheless, in its report to the ILO in 2003, the Government again declared that there had been no need for collective bargaining in the public sector, on the grounds that well-established and effective machinery for consultation concerning the conditions and terms of employment of civil servants was in place.

However, civil service reforms since 2002, involving transfers, reductions in wages and benefits, retrenchment and contracting-out to the private sector have demonstrated very clearly that the government has been free to act unilaterally without consulting the affected civil servants. Labour relations within the public sector have thus been much strained. This saw civil service unions launching the largest-ever protest against pay cut legislation in July 2002. Upon a complaint lodged by the HKCTU, the ILO Committee on Freedom of Association ruled in June 2004 that the Government's unilateral reduction of civil service pay was not in line with the ILO Convention Nr 98. Regrettably, no remedial actions have been taken by the Government, according to HKCTU reporting in April 2005.

In its 2005 Report to the CEACR, the Government gave account of having established a three-tier staff consultation mechanism within the civil service on various issues of concern to public sector employees, including terms and conditions of employment. However, there was no indication of measures taken with a view to extending the right to collective bargaining to civil servants, as requested by the ILO Committee.

The Government's policy of encouraging outsourcing of public services to the private sector and early retirement schemes in the civil service has further undermined bargaining rights. The employees of the Pacific Century CyberWorks Ltd. (PCCW), for example, have been deprived of representation by the PCCW Staff Association in 2003 via the contracting-out of the network service department to a subsidiary company. Some 3,000 employees were rehired after having been laid off in November 2002. However, since they were employed by a subcontractor, they had lost their employee status and incurred wage cuts of between 15 to 20 percent.

Strikes as a means of enforcing workers' rights rarely occur in Hong Kong. In 2005, for example, only two formal strikes were reported. Although the Basic Law provides for the right to strike, in practice this right is limited by clauses in employment contracts stipulating that absence from work is a breach of contract which may lead to dismissals.

Various other obstacles have also restricted the free exercise of trade union rights. The Employment and Labour Relations Ordinance (ELRO), for example, bans the use of union funds for political purposes. And the approval of the Chief Executive, the head of Government in Hong Kong, is required before unions can contribute funds to any trade union outside the HKSAR. Prior consent of the public authority is also required

in cases of mergers between trade unions. Moreover, the ELRO restricts the appointment of persons from outside the enterprise or sector to union executive committees. Since 1998, on several occasions the ILO Committee on Freedom of Association has urged the Government to relax these conditions on eligibility of trade union officials and the restrictions on the use of union funds.

Freedom of Association

In 2002, a Government proposal to implement Article 23 of the Basic Law threatened to violate Article 3 of ILO Convention No. 87 on the right to organise activities and non-interference by public authorities. It was a direct attack on the independent trade union movement in Hong Kong. The legislation contained in Article 23 sought to introduce into the HKSAR national security legislation the banning of any act of treason, secession, subversion and sedition against the central government. It included extended power for the Secretary for Security to proscribe groups in Hong Kong which he 'believed' to be committing or seeking to commit these offences. Under the 2002 proposal, the central Chinese government would have had the right to ban any Hong Kong organisation affiliated to a mainland organisation which it deemed to be a threat to national security. All in all, it would, in various ways, jeopardise freedom of association as recognised in international conventions.

Due to massive protests in July 2003, organised in part by the HKCTU, several substantive changes to the text of Article 23 were made. These would, however, still put the simple existence of trade unions in jeopardy, given that independent trade unions are banned and classified as threats to security in the mainland. According to the HKCTU there remain many serious concerns in the draft legislation. The Government has apparently postponed enactment of the Bill. No new timetable has so far been announced.

Restrictions contrary to Convention No. 87 have been documented on several occasions. The *Annual Survey of Violation of Trade Union Rights 2006*, published by the ICFTU (now the ITUC), for example, reports that more than 200 ambulance workers and civil servant union members felt the right to freedom and speech violated. They marched through central Hong Kong to the Central Government Offices, protesting against disciplinary proceedings against Wat Kei On, a spokesperson for the ambulance worker's union, following his speech on WTO issues.

Anti-union discrimination

Anti-union discrimination is widespread due to deficiencies in the legal regime of protection against such acts. There is only provision in the law for employers to be fined and workers compensated, but not for reinstatement. The latter is subject to mutual consent between the

employer and the employee. The maximum fine for violation of the provisions against anti-union discrimination is HK $ 100,000 (US $ 12,800), and the maximum amount of compensation is HK $ 150,000 (US $ 19,230).

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has pointed out that "the reintegration and reinstatement in his post of a worker who has been dismissed or discriminated against for anti-union reasons constitute the most appropriate means of redressing acts of anti-union discrimination" and that the existing legislation is therefore inadequate under the terms of Article 1 of Convention No. 98. Acting on a complaint of the HKCTU in 1997, the ILO Committee on Freedom of Association made recommendations to the authorities to bring labour law in Hong Kong into line with ILO conventions.

Since 2001, the Government of Hong Kong has consistently reported that an amendment Bill that would empower the Labour Tribunal to make an order of reinstatement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent was under way. To date, however, the Government has not reported progress in this respect, nor has it indicated a specific date for the completion of the Bill. The HKCTU has moreover claimed that the Government had not made legal provisions for civil remedies for other acts of anti-union discrimination, such as transfer, relocation, demotion or denial of promotion, and restrictions of all kinds on remuneration and benefits, despite repeated calls of the ILO since 1998.

Violations of Trade Union Rights

The pilots of Cathay Pacific Airways are still fighting for their rights. Fifty-two pilots were sacked in 2001 after they took industrial action in a dispute over pay and working hours. One pilot was subsequently reinstated. Among the 51 that were not re-instated, there were eight trade union committee members and four union negotiators. A deal was brokered in 2005 that enabled 19 pilots to apply for new jobs at the bottom of the seniority list with vastly reduced pay; only 12 were offered jobs. A further 19 continued legal actions with one being successful in the UK and the remainder still awaiting court proceedings in HK. The others opted for 10 months' salary as settlement.

Owing to the inadequacy of the protection of the labour law against discrimination, there are cases of unfair dismissal and other acts of anti-union discrimination. The Employment Ordinance provision for criminal sanction against employers is especially weak without any successful prosecution until last year. Even the case of pilots mentioned above was not brought to court due to lack of evidence. Only in 2006 were there two cases of successful prosecution under the Employment Ordinance, namely

regarding British Airways and the Wai Hong Cleaning Services Company Ltd.. Furthermore, there is no job protection under the civil remedy provisions of the law. Therefore, must be changes both in the criminal sanction and civil remedy provisions before there can be adequate protection for workers in Hong Kong as provided for under these ILO core labour standards.

Summary

Freedom of association and the right to organise is recognised in law in Hong Kong. However, it is common for employers to engage in anti-union practices and to harass workers for their trade union involvement because there is no legal framework for trade union recognition, nor are workers sufficiently protected against anti-union discrimination. Collective bargaining is, in practice, almost nonexistent. Public sector workers are excluded from the right to collective bargaining in Hong Kong.

II. Discrimination and Equal Remuneration

Neither ILO Convention No. 100, the Equal Remuneration Convention, nor ILO Convention No. 111, the Discrimination (Employment and Occupation) Convention apply to Hong Kong, even though the People's Republic of China ratified Convention 100 in 1990 and Convention 111 in January 2006.

Hong Kong law confirms that all residents are equal. Discrimination on the basis of gender, disability and family responsibility is prohibited, and an Equal Opportunities Commission (EOC) exists to combat discrimination. However, discrimination on grounds of gender, race, age and sexual orientation persist.

Women face discrimination in employment, salaries, welfare, inheritance and promotion, reports the U.S. Department of State. Indeed, a survey released in 2004 found that nearly 80 percent of all women workers felt victims of discrimination.

Contrary to the trend in previous years, the percentage of women employed in professional fields, including sciences and engineering, law, teaching, accounting, social science, health and medicine declined slightly during the year 2005. As of June 2006, 33 percent of professionals employed in these fields were women, compared to 35.2 percent in June 2004.

Among the judicial officers and judges, approximately 21 percent were women. In the Legislative Council of Hong Kong, women held 11 out of the 60 seats, amounting to less than 20 percent. Approximately three-

quarters of private companies had women in senior management positions, and women occupied more than a quarter of senior management posts, reports the U.S. State Department.

Women's economic and work activities, however, remain highly concentrated in low-wage, low-productivity elementary occupations. This gender segregation partly explains the persistent income gap between women and men. Furthermore, the principle of equal pay for equal value of work has not been implemented in Hong Kong. According to the HKCTU, women consistently earn less than men for work in the same industry and occupation group. For example, a female operative in the manufacturing sector earned 30 percent less than her male counterpart in December 2004. Other industrial sectors registered a similar pattern, although the wage discrepancy declined with higher pay and skill level.

Discrimination on grounds of race or national origin, particularly against the very large number of foreign domestic workers in Hong Kong, is a serious problem. According to the Asia Monitor Resource Centre, many of the 350,000 people from ethnic minorities in Hong Kong report lower wages, poorer working conditions and discriminatory attitudes from their managers or colleagues in the workplace, or even outright rejections of employment based on their ethnic background.

Women from the Philippines, Indonesia and Thailand represent the majority of non-mainland China migrant workers. They are mainly employed as domestic workers. Subject to deportation in case of job loss under the "two week rule" (to the effect that a foreign domestic helper permitted to live and work in Hong Kong will not, normally, be permitted to remain in Hong Kong to take up a new employment if their last employment has been terminated, but will be required to return to their place of origin on or before the expiry of two weeks after the date of termination), many of them are unprotected from exploitation on the part of their employers. Underpayment and abuse are widespread and severe despite the fact that working conditions are supposedly regulated by a standardised employment contract that stipulates fair conditions and a minimum salary. According to research conducted by the Asian Migrant Centre, 15 percent of foreign domestic workers are paid below the official minimum wage, more than a quarter suffer from verbal and physical abuse including sexual abuse, and the same number are denied the mandated one rest day per week or statutory holidays.

Despite repeated reports issued by the Committee on the Elimination of Racial Discrimination (CERD), the U.N. body that monitors the government's compliance with the convention on racial discrimination, stating that the Hong Kong government needs to modify or repeal the two-week rule, the government continues to categorically deny its discriminatory nature. In its report submitted to CERD earlier this year, the government stated that it considered the rule "a natural and normal

aspect of immigration control" and "intrinsically appropriate, reasonable and proportionate."

Foreign domestic workers have also suffered from discriminatory employment policies. In October 2003, the Government of Hong Kong imposed a levy on employers of foreign domestic helpers of HK $ 400 per month for a two-year contract. At the same time, a reduction of the legal minimum salary of domestic workers was imposed, cutting HK $ 400 off their monthly salary. This policy represents indirect discrimination, as the reduction of the minimum wage is a badly disguised way to pay the employers' levy and puts the workers at a disadvantage. The foreign domestic workers began to organise to defend their rights in 2004 and lobbied the government to reinstate the minimum wage of HK $ 3,670 per month. However, they were only granted a HK $ 50 increase in their minimum monthly wage - no more than a token gesture. A judicial review against the levy and the reduction of minimum wage failed in the First Instance Court and the Appeal Court in the High Court, leading a group of foreign domestic workers to be applying currently for legal aid to file a further appeal to the Court of Final Appeal.

The 380,000 immigrants from mainland China recorded by the Hong Kong Census and Statistics Department in 2004 have also suffered from discrimination. Only about 34 percent of the new immigrants have been employed and their average income has been 40 percent lower than that of local people, reports the Asia Monitor and Resource Centre.

As asylum seekers are not allowed to take up voluntary or paid employment, social services and education, they rely on NGOs for food and many are forced to sleep rough. Unlike China, Hong Kong is not party to the 195l UN Convention relating to the Status of Refugees.

Since 1997, the Government has tried to promote equal opportunities for persons of different racial and ethnic backgrounds through public education and publicity campaigns. In 2003, the Government of Hong Kong announced the introduction of a Race Discrimination Bill in the legislative session 2005-06, which would include race, colour, descent and national or ethnic origin as prohibited grounds of discrimination. To date, however, the Bill has not been enacted into law. Draft versions have been criticised for excluding workers from the mainland from the protected group, as well as excluding racial discrimination based on language or religion. Moreover, the exemption period of three years for small businesses has been considered unjustified. Human rights groups have called on the government to make major amendments when the bill is submitted to the Legislative Council, scheduled on 13 December 2006.

There is evidence that severe age discrimination in recruitment exists. One blatant example is provided by the airlines Cathay Pacific,

Dragon Air and British Airways, all of which force their flight attendants to retire at the age of 45. In the past, it was 45 for women and 55 for men, while now both men and women are forced to retire at the age of 45. Nevertheless, the government has so far refused to introduce legislative measures to tackle the issue, reports the HKCTU.

The Hong Kong Government has been unwilling to ban discrimination on the basis of sexual orientation but has instead relied on public education and administrative means to deal with discriminatory attitudes and behaviour in this and the above-mentioned area.

Summary

Discrimination against women and ethnic minorities is a severe problem in Hong Kong. Although gender equality is provided for under the law, women are less represented in senior positions and earn less for the same type of work than their male counterparts. Migrant workers have also experienced lower pay and considerable abuse and exploitation by their employers. Although under examination for years, no legal provision to end work-related discrimination of ethnic minorities has been enacted to date. Discrimination on the grounds of age and sexual orientation is also widespread.

III. Child Labour

China notified the ILO in 1999 that ILO Convention No. 138, the Minimum Age Convention would apply to Hong Kong with a minimum age specification of 15 years. ILO Convention No. 182, the Worst Forms of Child Labour Convention was ratified by China and also applied to Hong Kong in 2002.

Hong Kong provides free, compulsory education for all children between the ages of 6 and 15. Regulation 4(1) (b) of the Employment of Children Regulations prohibits employment of children under the age of 15 in industrial undertakings, in accordance with the minimum age specification made by the Government at the time of ratification of Convention No. 138.

However, the ILO Committee of Experts on the Application of Conventions and Recommendations has noted that the minimum age for admission to employment or work provided for in regulation 4(1) (a) and (3) and in regulation 5 of the Employment of Children Regulation is only 13 years – less than the minimum age defined in ILO Conventions and declared by the HKSAR. The Government of Hong Kong has considered the work carried out by children aged between 13 and 15 years under the Employment and Children Regulation as light work, according to its 2004 report. Conversely, however, the Committee of Experts is of the view that

work consisting of up to eight hours a day, on any day, as allowed by Regulation 5(2) (b) does not constitute light work and recommended that the Government take measures to ensure the full application of Convention No. 138.

The Government of Hong Kong reported that out of 310,146 inspections carried out by the Labour Department in the reporting period 2002-2004, only three enterprises were convicted for the employment of under-aged children and consequently fined between HK $ 2,000 and HK $ 28,000.

Nevertheless, and in sharp contrast to these findings, a study conducted by the Society for Community Organisation in 2004 estimated the number of child workers across Hong Kong at 1,865. Between June and August 2004, the Society interviewed 87 children below the age of 15 who performed mostly dirty and sometimes hazardous jobs in their spare time, such as cleaning, dumping garbage or collecting newspaper, cardboards, aluminium cans and other recycled material. The study found that the children worked an average 6.7 hours a week, with some working as long as 23.5 hours, earning HK $ 156 per month on average. More than 60 percent of the children gave all their earnings to their parents whose wages had failed to meet basic family needs.

A few cases of children involved in the worst forms of child labour, such as sexual exploitation, have been reported. And although Hong Kong law prohibits the trafficking of children for labour or sexual exploitation, the ILO Committee of Experts on the Application of Conventions and Recommendations observed that it remains an issue of concern.

Summary

Child labour seems to have gone largely unrecognised in Hong Kong, although it is a serious concern. Under certain conditions, Hong Kong law allows for the employment of children as young as 13 and thus clearly violates the ILO's Minimum Age Convention.

IV. Forced Labour

China notified the ILO in 1997 that ILO Convention No. 29, The Forced Labour Convention, and ILO Convention No. 105, The Abolition of Forced Labour Convention, would apply to Hong Kong.

While forced labour is prohibited by law in Hong Kong, there is no law prohibiting trafficking in persons. Various laws and ordinances, however, allow law enforcement authorities to take action against traffickers.

Persons from China and Southeast Asia are trafficked to Hong Kong mainly for the purpose of sexual exploitation. According to the *Trafficking in Persons Report 2006*, there are credible reports that women were recruited in their home countries to work in Hong Kong as entertainers, waitresses, or musicians, but were subsequently forced into prostitution through the coercive use of debts imposed on them. Organised criminal groups in Hong Kong are largely responsible for these practices. Hong Kong is also a transit country for persons trafficked from China to third countries.

The Government has accepted that Hong Kong is vulnerable to human smuggling activities and has taken efforts to combat trafficking through law enforcement means. However, it has denied that persons have been trafficked to Hong Kong under coercion or false inducement. The Government has indicated that they have come at their own accord because of the comparative economic prosperity of Hong Kong in the region. According to the Government's report to the ILO Committee of Experts on the Application of Conventions and Recommendations, only three cases of trafficking in women for the purpose of prostitution, involving seven women above the age of 16, were reported in 2002. The Government has moreover stated that there is no evidence of trafficking for the purpose of forced domestic work in Hong Kong.

Summary

Forced labour, mainly in the form of sexual exploitation, remains a problem. Hong Kong is a destination country for persons trafficked from China and Southeast Asia and a transit country for trafficking of persons to third countries. The Government has taken efforts to enforce the law. However, there is no provision that prohibits trafficking in persons.

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Conclusions and Recommendations

1. The Government of China must apply ILO Conventions No. 100, the Equal Remuneration Convention, and No. 111, the Discrimination (Employment and Occupation) Convention, to Hong Kong. The Hong Kong authorities should review their labour legislation in order to conform to those two Conventions and to the six ILO core Conventions already in application.

2. The Hong Kong Government should fully implement the recommendations repeatedly made by the ILO Committee on Freedom of Association with regard to the provision for reinstatement of workers who have been dismissed or discriminated against for anti-union reasons. Given that the Government of Hong Kong has been reporting since 2002 that an amendment Bill that would empower the Labour Tribunal to make an order of reinstatement without the need to secure the employer's consent was under way, the Government should ensure that these provisions are adopted as soon as possible.

3. The right to collective bargaining is not recognised in Hong Kong. Less than one percent of employees are covered by a collective agreement, and even these are not legally binding. If employers are unwilling to negotiate a collective agreement, or not willing to abide by the terms of an existing agreement, workers have no legal ability to exercise this right enshrined in ILO Convention No. 98. The situation in the public sector is still more pronounced, where collective bargaining simply does not occur, and terms and conditions of employment are unilaterally determined by the authorities. The government must bring the law into conformity with the provisions of ILO Convention No. 98.

4. Noting that the tripartite committees that the Government has established do not constitute negotiating bodies in the meaning of Article 4 of Convention No. 98, legislation should be adopted in order to encourage bipartite collective bargaining. It should focus on four points: an institutional framework for collective bargaining; an objective procedure to determine union representativeness; a legal framework for the application of negotiated collective agreements; and the introduction of collective bargaining in the public sector. The Government should fully implement the recommendations made by the ILO Committee on Freedom of Association in this respect.

5. The Hong Kong authorities must refrain from implementing the legislation on Article 23 of the Basic Law. Despite the changes which have been made to the draft text, it would still have direct ramifications for independent trade unions in Hong Kong. The

potential proscription of trade union groups on the grounds of security considerations which it would facilitate, coupled with the increased possibility of sentencing for offences relating to subversion and sedition, stand to affect the membership of trade union and labour groups in Hong Kong and reverse any recent progress towards freedom of association.

6. Trade unionists in Hong Kong are insufficiently protected from acts of anti-union discrimination, to the extent that workers are not always able to exercise their freedom to join and form trade unions, and to conduct union activities. The authorities must increase the protection of workers exercising this right.

7. Determined measures are needed to end gender discrimination. China should apply the ILO core conventions on discrimination to Hong Kong. Women are still severely underrepresented in senior positions. Furthermore, the disparity in wages between men and women has continued and is most pronounced among low skilled and low paid workers. The authorities should take measures to ensure that women are fairly represented in positions of responsibility and that women earn the same as men doing similar work. The government should implement the principle of equal pay for equal value of work.

8. Discrimination against racial minorities is endemic. There are about 350,000 foreign migrant workers in Hong Kong, with the majority of them employed as domestic workers. As their residence permit is conditional on their employment, these workers are victims of significant levels of exploitation and abuse on the part of their employers. Moreover, they have suffered from discriminatory employment policies. Effective measures are also needed to address the problem of work-related discrimination of the 380,000 new immigrants from mainland China.

9. The Government should ensure that the Race Discrimination Bill, which it has announced to introduce in the legislative session 2005-06, will be enacted into law without delay. It should make sure that the Bill prohibits discrimination based on language and religion, as well as discrimination against immigrants from mainland China. The Government should also strengthen the protection of employees and prospective employees against age discrimination.

10. Legislation on child labour is not in conformity with the relevant ILO Conventions. The Employment of Children Regulation allows the employment of children as young as 13 years of up to eight hours a day, on any day, under certain conditions. The Government must ensure the application of the minimum age declared under the ILO to all types of employment and work.

11. The authorities must take further steps to address the problem of trafficking in persons. Hong Kong is a transit and destination country for persons trafficked for the purpose of forced prostitution, and local residents are involved in these practices. While Hong Kong law prohibits forced labour, it does not outlaw human trafficking. To end these practices, however, the respective legislative provisions must be enacted.

12. In line with the commitments accepted by Hong Kong at the Singapore WTO Ministerial Conference and China's obligations as a member of both the WTO and the ILO, regular reports should therefore be provided to the WTO and the ILO on legislative changes and implementation programmes with regard to all the core labour standards.

13. The WTO should draw to the attention of the authorities of Hong Kong the commitments they undertook to observe core labour standards at the Singapore and Doha WTO Ministerial Conferences. The WTO should request the ILO to intensify its work in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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