

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, 1 and 3 December 2010

### EXECUTIVE SUMMARY

As a founding member of the World Trade Organisation, Hong Kong committed to respect core labour standards in the Singapore and Doha Ministerial Declarations. Furthermore, China has indicated that six of the eight core International Labour Organisation conventions apply to Hong Kong.

Hong Kong allows workers to join unions, but provides little legal protection for those who seek to do so. The government refuses to bargain collectively with its own employees or to create a legal framework for collective bargaining in the private sector. In practice, employers have wide latitude to dismiss striking workers.

Hong Kong is not subject to the ILO core conventions on equal remuneration and discrimination. While discrimination against women is illegal, they remain concentrated in poorly paid occupations. Hong Kong law prescribes a lower minimum wage for foreign domestic workers and deportation if their employment is terminated. The law does not address discrimination based on age or sexual orientation.

Hong Kong allows the employment of children as young as 13 in nonindustrial establishments. Women are trafficked into and through Hong Kong for the purpose of sexual exploitation.

# **INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN HONG KONG**

## **Introduction**

This report on internationally-recognised core labour standards in Hong Kong is part of a series the ITUC produces in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) in Singapore. Ministers stated: “We renew our commitment to the observance of internationally recognised core labour standards.” This commitment was reaffirmed at the 2001 Doha WTO Ministerial Conference and in the Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Organisation’s (ILO) 174 member countries in 1998, reaffirmed in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

Hong Kong is a Special Administrative Region of the People’s Republic of China. It was a British colony until its sovereignty was transferred to China in 1997. In the transfer agreement, China promised that Hong Kong would enjoy significant freedom in all matters except foreign and defence affairs. Hong Kong is a founding member of the WTO, but is not an independent member of the ILO.

According to the government of Hong Kong, about 21 percent of salaried employees and wage earners belong to labour organisations. The ITUC has two local affiliates: the Hong Kong Confederation of Trade Unions (HKCTU) and the Hong Kong and Kowloon Trades Union Council (HKTUC).

### **I. Freedom of Association and the Right to Collective Bargaining**

In 1997, the Chinese government confirmed that ILO Convention 87 on Freedom of Association and Protection of the Right to Organise and Convention 98 on the Right to Organise and Collective Bargaining would continue to apply to Hong Kong.

The Basic Law, promulgated by China in 1990 as the constitution of Hong Kong, provides for freedom of association, assembly and demonstration, the right to form and join trade unions, and the right to strike. However, Hong Kong’s laws do not adequately protect these rights. In practice, workers are often dismissed for union activity and collective bargaining rarely occurs.

### *Freedom of Association*

Hong Kong law allows seven or more workers to form a union, but provides insufficient protection for those who seek to do so. Employers often dismiss workers for union involvement. These workers have no right to reinstatement even if they successfully prosecute their employer. The maximum fine for anti-union discrimination is HK\$100,000 (US\$12,900) and the maximum compensation payable to a dismissed worker is HK\$150,000 (US\$19,350).

In February 2009, for example, a Nestlé plant sacked the head of its union and another worker for sharing a HK\$5,000 (US\$645) supermarket voucher given as an annual bonus. Management argued that sharing an individual bonus “interfered with staff competitiveness.”

Hong Kong maintains several unnecessary and inappropriate restrictions on union activity. Unions may not use funds for political purposes. Unions must obtain permission from the Chief Executive of Hong Kong to contribute funds to foreign labour organisations. People from outside the union’s sector or occupation cannot be appointed or elected as union officers.

The ILO Committee on Freedom of Association has repeatedly noted that Hong Kong’s laws against anti-union discrimination are inadequate and urged it to relax restrictions on union administration.

### *Collective Bargaining*

Although about 21 percent of Hong Kong’s workers are unionised, less than 1 percent are covered by collective agreements and these agreements are not legally binding. The government refuses to bargain collectively with public employees or to provide a legal basis for collective bargaining in the private sector. As a result, trade unions serve mainly as advisors and advocates for workers.

The ILO Committee of Experts on the Application of Conventions and Recommendations has repeatedly recommended that the government adopt legislative provisions to promote the voluntary negotiation of collective agreements between employers’ and workers’ organisations. While the government has stated that it supports such negotiations, it has not followed the ILO’s recommendations or created a legal framework for collective bargaining. Where labour conflicts and wage disputes are concerned, the tripartite structure set up by the government plays an insignificant role in preventing and resolving the issue. Where standards are marginally violated, the government answers with voluntarism. The Labour Department’s claim that it is a matter of negotiation between employers and employees in the absence of a legal framework of bargaining usually means unilateral decision by the employers. For

example after the government announced the recommended first statutory minimum wage level at HK\$28 per hour, the fast food chain group Café de Coral reacted by cutting the paid meal breaks. The group rescinded the practice after vehement protests from the HKCTU and public condemnation by the international food workers' union, the IUF.

The government's refusal to bargain collectively with its own employees has been strongly criticised by the ILO Committee of Experts, which has recommended that this restriction of collective bargaining be narrowed to public employees essential for state administration and security.

The government's position is that collective bargaining is not needed in the public sector because it already "consults" public employees. But in recent years, the government has cut public sector pay, reduced benefits and contracted out public services without consulting affected employees. The ILO has judged the unilateral pay cut to be a violation of Convention 98.

### *The Right to Strike*

Employer demands for concessions from workers during the economic crisis increased the number of strikes in Hong Kong in 2009. While strikes are legal, there is very little legal protection for striking workers.

The Public Order Ordinance authorises the use of force to break up pickets and demonstrations. Most workers must sign individual employment contracts that explicitly prevent them from walking off the job. Workers dismissed for participating in strikes may sue their employers for compensation, but have no right to be reinstated even if they win their case.

For example, approximately 100 Nepali security guards were sacked in January 2009, after striking against Group 4 Securicor over pay and conditions. In June 2009, Link Management laid off about 60 security guards who went on strike to oppose salary cuts and changes to work hours. Link hired a subcontractor to provide replacement guards.

### *Summary*

*Hong Kong law allows workers to join unions, but provides little protection for those who do. The government refuses to bargain collectively with its own employees or to create a legal framework for collective bargaining in the private sector. In practice, employers have wide latitude to dismiss striking workers.*

## II. Discrimination and Equal Remuneration

ILO Convention 100 on Equal Remuneration and ILO Convention 111 on Discrimination (Employment and Occupation) do not apply to Hong Kong, even though China has itself ratified both conventions.

Hong Kong law prohibits discrimination based on gender, disability and family responsibility. However, discrimination persists on these grounds as well as regarding age and sexual orientation. As the U.S. Department of State noted in its 2009 Country Report, “women faced discrimination in employment, salary, welfare, inheritance, and promotion. Women reportedly formed the majority of the working poor and those who fall outside the protection of labour laws.”

For example, only 30 percent of managers and 38 percent of professionals are female. Meanwhile, 73 percent of clerks and 64 percent of unskilled workers are female. Women are also the predominant group taking up part-time jobs, which generally do not provide comparable benefits to full-time jobs. These large discrepancies in employment persist even though men and women have attained similar educational qualifications, with women comprising 48 percent of post-secondary degree holders.

The concentration of women in poorly paid occupations largely explains a persistent income gap between the sexes. However, women sometimes earn less than men even within the same industry and occupation.

For many years, Hong Kong was one of the only developed economies without a minimum wage that could have protected many vulnerable groups susceptible to wage discrimination. But following a campaign by the HKCTU, the Legislative Council passed the Minimum Wage Bill in July 2010 and a government-appointed committee selected an hourly rate of HK\$28 (US\$3.60) in November 2010.

While the new minimum wage is a significant step forward, it is still insufficient to cover basic living costs in Hong Kong. By failing to consult trade unions about the wage rate, the government has violated ILO Convention 26 on Minimum Wage-Fixing Machinery.

Contrary to the HKCTU’s recommendations, this minimum wage will not apply to foreign domestic workers, many of whom come from the Philippines, Indonesia and Thailand. These workers are instead subject to a monthly minimum of HK\$3,580 (US\$462). Given a standard 48-hour workweek, that monthly amount falls more than one-third below the proposed hourly minimum for other workers.

In reality, many domestic workers are engaged for more than 48 hours per week. As the government explained in excluding foreign domestic workers from the Minimum Wage Bill, “the distinctive working pattern - round-the-clock presence, provision of service-on-demand, and the multifarious domestic duties expected of live-in domestic workers - makes it impossible to ascertain the actual hours worked so as to determine the wages to be paid.”

Foreign domestic workers are subject to deportation from Hong Kong within two weeks of their employment being terminated. The United Nations Committee on the Elimination of Racial Discrimination has repeatedly recommended that this rule be modified or repealed.

The threat of termination (and hence deportation) gives overwhelming power to employers and prevents foreign domestic workers from asserting their legal rights. According to the Asian Migrant Centre, 15 percent are paid less than the legislated monthly minimum, more than 25 percent suffer from verbal, physical or sexual abuse, and more than 25 percent are denied the mandatory one day of rest per week.

Hong Kong has a total of 342,198 people from ethnic minorities, the majority of whom were born outside Hong Kong, according to the 2006 by-census of the Census & Statistics Department. They constituted 5.0% of the whole population. 76% of them originated from South East Asian and South Asian countries. Despite in general achieving a higher level of educational attainment 75.4% of workers from ethnic minorities were engaged in low-income occupations. This explains the huge difference between the median monthly income of workers from ethnic minorities, \$3,500 in 2006, compared to that of the working population as a whole which stood at \$10,000.

As well as being employed as domestic workers, a large proportion of ethnic minorities, especially males are employed in the construction sector. According to the HKCTU-affiliated Nepalese Construction Workers' Union, 9,000 Nepalese residing in Hong Kong (some 50%) are working in the construction industry. According to a survey conducted by their union in 2009, a Nepalese construction worker was paid HK\$400 for 60 hours of work, HK\$100 less than their Hong Kong Chinese counterparts. Besides less pay and longer work hours, the Nepalese workers are faced with difficulties in gaining access to services provided by the Labour Department such as job referrals, professional training and complaints handling services. Language discrimination is a major issue as speaking and writing Chinese remains a barrier in job referrals, as only 50% of the courses provided by the Construction Industry Council are bilingual, and as it inhibits Nepalese-speaking workers from approaching and communicating with the staff of the department for assistance.

The Hong Kong government passed the Race Discrimination Ordinance in July 2008 and enacted the Ordinance in July 2009. The Ordinance however has been criticised for its limited definition of ‘race’, not covering resident status, length of residency in Hong Kong, nationality, citizenship, religion or language. Broad exceptions are made for discrimination based on immigration status, and discrimination in favour of expatriates possessing skills not available in Hong Kong and to people that are indigenous to Hong Kong or have a familial history of residing in Hong Kong. New arrivals including those from the mainland are not protected.

Asylum seekers are not allowed to take up employment, social services or education. Unlike China, Hong Kong is not party to the 1951 UN Convention relating to the Status of Refugees.

Hong Kong law does not prohibit discrimination based on age or sexual orientation. For example, airlines can and do require flight attendants to retire at the age of 45.

### *Summary*

*While discrimination against women is illegal, they remain concentrated in poorly paid occupations. The law prescribes a lower minimum wage for foreign domestic workers and deportation if their employment is terminated. Because these workers lack legal recourse, they often suffer even worse treatment than legally allowed. The law does not address discrimination based on age or sexual orientation.*

## **III. Child Labour**

China has indicated that Hong Kong is subject to ILO Convention 182 on the Worst Forms of Child Labour and Convention 138 on the Minimum Age, with a minimum employment age of 15 years.

Hong Kong provides free, compulsory education for all children between the ages of 6 and 15. Children under 15 may not work in industrial establishments. But the law allows children as young as 13 to be employed in other establishments, classified as “light work.”

However, nongovernmental organisations report instances of children under 15 working in hazardous jobs. In the first half of 2009, the highest fine levied for employing children of 13 and 14 without parental consent and school-attendance certificates was only HK\$4,000 (US\$516). The ILO considers that Hong Kong has not fully applied Convention 138.

A few children are engaged in the worst forms of child labour, such as sexual exploitation. The recent rise of “compensated dating” among

girls as young as 13 through online escort services has garnered significant public and media attention in Hong Kong.

### *Summary*

*The legal employment of children as young as 13 clearly falls short of the ILO's Minimum Age Convention.*

## **IV. Forced Labour**

China has indicated that ILO Convention 29 on Forced Labour and Convention 105 on the Abolition of Forced Labour apply to Hong Kong.

While forced labour is prohibited by law, women from mainland China, the Philippines, Indonesia and Thailand are trafficked to and through Hong Kong. Most are recruited to work in restaurants, bars and hotels, but then forced into prostitution through debt bondage or physical coercion. Criminal organisations in Hong Kong often hold passports and other travel documents until debts are paid.

Hong Kong endeavours to prevent these crimes, but does not have a consolidated anti-trafficking law. Voluntary migrants who are forced into prostitution upon arrival are not considered to be victims of trafficking.

Foreign domestic workers are increasingly becoming victimised by being over-charged for an agency or recruitment fee which is commonplace, often amounting to the equivalent of up to seven months' wages in the case of the Indonesian domestic workers. The indebtedness of the migrant domestic workers to the agencies reduces them to a condition tantamount to forced labour until their debts are cleared. The government has not sought to rectify such abusive practices.

### *Summary*

*Women are trafficked into and through Hong Kong for the purpose of sexual exploitation.*

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## Recommendations

***Hong Kong's government should:***

1. Enact and enforce a right to reinstatement for workers dismissed for union activity or strikes.
2. Establish a legal framework for collective bargaining, along the lines recommended by the ILO.
3. Bargain collectively with public employees.
4. Allow unions to democratically select officers from any background, and to contribute funds for political purposes and to foreign unions.
5. Increase the new minimum wage to at least HK\$33 (US\$4.25) and apply it to all employees, including foreign domestic workers.
6. Reform the regulation of foreign domestic workers to prevent employers from being able to unilaterally trigger deportation.
7. Legislate against discrimination based on age and sexual orientation.
8. Prevent employment before the age of 15 and levy more substantial fines for the illegal employment of children.
9. Enact comprehensive anti-trafficking legislation and redouble enforcement efforts against human trafficking.
10. Report regularly to the WTO and ILO on actions to meet Hong Kong's international obligations with respect to core labour standards.

***China's government should:***

11. Extend ILO Convention 100 on Equal Remuneration and ILO Convention 111 on Discrimination (Employment and Occupation) to Hong Kong.

***The WTO should:***

12. Draw the attention of Hong Kong authorities to the commitments they made at Singapore and Doha to respect core labour standards and request that the ILO provide a report to the WTO General Council at its next trade policy review.

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