

# CHINA'S WORKERS ARE CALLING FOR CHANGE WHAT ROLE SHOULD BRANDS PLAY?

In collaboration with  
China Labour Bulletin

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,





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# Executive summary

FIDH sent a fact-finding mission to mainland China and Hong Kong in November 2012 to assess working conditions in a sample of Chinese factories in Guangdong Province

Despite a relative economic slowdown between 2011 and 2012, China remains the world's largest exporter and manufacturer. Its export competitiveness is mainly based on low labour costs. The province of Guangdong, in South East China is at the center of the Chinese export-oriented economy. It is also where most labour related incidents, including strikes, have been reported.

## Labour-related developments in China

Migrants workers from Chinese inner provinces constitute the majority of labourers in factories in the coastal areas. Most of them leave children in their home town because of the discriminatory *hukou* system that denies them access to subsidized education and health care in areas other than their home towns.

China's legislative framework for labour rights has gradually been improving over the past years, for example regarding working hours (Labour Law of 1994), written employment contracts (Labour Contract Law of 2007), procedures for dispute resolution (Labour Dispute Mediation and Arbitration Law of 2008) or social insurance (Social Insurance Law of 2010).

Awareness of their rights has definitively increased among workers in the last ten years, with the support of Hong Kong based labour rights groups. Young workers, familiar with social media, are more likely to voice their demands and take action than the previous generation. Labour unrest continues to increase. The recurrence of strikes is a strong incentive for employers to negotiate with workers and repression of strikes no longer appears to be systematic.

In China, no trade union can be established outside the All China Federation of Trade Unions (ACFTU), a mass organisation used by the Communist Party as a transmission belt and a vehicle for the preservation of stability. Even though ACFTU has set the objective of unionizing all companies and implementing collective negotiation of wages, it appears to be mere window-dressing, with no genuine impact on working conditions, as workers representatives are generally being appointed rather than elected by workers themselves.

## Main findings in factories visited

A number of concerns arose from FIDH factory visits.

First, factories supplying international brands often sub-contract segments of the work, namely the "dirty" work; as a result, international brands have no control over the social performance of these sub-contractors.

Freedom of association, collective bargaining and social dialogue are totally absent, as so-called "workers' representatives" are appointed to please international customers, but are neither aware of their role nor consulted by the management on any matter.

In all factories visited, overtime largely exceeded the maximum overtime work allowed: workers usually work 60 hours and up to 80 hours a week, while Chinese labour law provides for a maximum of 40 hours a week and 36 hours overtime per month.

In spite of recent wage increases, wages remain low in view of soaring prices, explaining to a large extent why workers accept to work such long hours. The system of paying by piece rate for certain tasks is also problematic as the targets do not necessarily correspond to what most workers are able to deliver, and as calculation methods are known by management only. Failure to supply workers with copies of their labour contracts have also been reported, as well as optional health or retirement insurance in several factories, while the social security law makes it compulsory

## **Role played by international brands sourcing from China**

Businesses sourcing from China have a huge impact on working conditions in the country. The responsibility of business enterprises to respect human rights throughout their business relationships is now widely recognized through the UN Guiding Principles on Business and Human Rights, adopted in June 2011, and the OECD Guidelines for Multinational Enterprises, that both stress corporations' responsibility to act with due diligence to prevent and address any adverse human rights impact including in their supply chain.

Most international brands and retailers have adopted voluntary codes of conduct and supplier codes setting social requirements for suppliers, which compliance is checked through social audits. FIDH found that the local management temptation to engage in window-dressing to match social audit requirements remains prevalent. This is particularly striking in the area of freedom of association at factory level for example, witnessing that there is a limit to what social audits can achieve. Social audits are however necessary to verify certain aspects of respect for labour rights and to exclude the worst factories, but there are clear limits to what social auditing and CSR schemes can achieve for workers. International brands should support workers' efforts to obtain improvements of their working conditions. They therefore should make clear that respect for Chinese labour laws is a minimum and non-negotiable requirement, and refrain from blocking workers' mobilisation for the respect of their rights.

Better purchasing practices could lead to improvements for workers, including the stability of the relation with suppliers, the effective integration of social performance in purchasing decisions or coordination among international buyers to increase their leverage with suppliers. However, the current trend for shorter lead times contributes to increasing pressure on workers, who constantly have to adapt to the manufacturing processes of the new items, affecting their productivity and thus their wages. More importantly, the trend to shift sourcing to countries where labour is cheaper is also detrimental to improvements of workers' rights.

## Recommendations

### **FIDH therefore urges the Chinese Government to:**

- Strengthen the labour inspection system to make sure it has adequate resources to undertake its work and address corruption among labour inspectors;
- Make sure local governments do not adopt waivers incompatible with national laws, notably concerning overtime work and social insurance;
- Support the direct election of workers’ representatives at factory level; and
- Sever the link between social services and the *hukou* system with a view to eventually abolishing the *hukou* system.

### **FIDH exhorts the owners and management of Chinese factories to:**

- Respect legal requirements on working hours, social security, wages and occupational health and safety;
- Engage with collective bargaining and allow the free election of workers’ representatives;
- Refrain from outsourcing “dirty work”, and improve health and safety standards for the most hazardous work stations; and
- Avoid using the piece rate system.

### **FIDH urges business enterprises sourcing from China to:**

- Publicly disclose the list of their suppliers in China;
- Multinational corporations and retailers with a direct presence in China should genuinely engage in the negotiation of collective agreements with elected workers’ representatives, and refrain from blocking efforts by workers and labour groups to engage in such negotiations;
- Commit to the payment of a living wage for legal working hours and foresee in contracts the revisions of prices paid to suppliers where minimum wages increase;
- Make sure that social compliance is fully integrated into purchasing practices, and adopt the necessary tools and carry out the needed trainings in that regard;
- Incorporate social requirements into contracts with suppliers, where this has not already been done;
- Speed up cooperation efforts amongst brands at the international level to harmonize social auditing practices, and more importantly to increase their leverage to address common messages to suppliers and government authorities;
- Refrain from shifting sourcing to cheaper countries without a comprehensive prior assessment of social and environmental issues in those countries.

### **To home countries of multinational corporations:**

- Require from businesses under their jurisdiction to conduct human rights due diligence throughout their supply chain, in particular require from businesses to publicly report on the human rights impacts in their supply chain and on measures taken to mitigate adverse human rights impacts; ensure adequate sanctions are in place for failing to act with due diligence.

# Introduction

## Context and methodology

Despite a relative economic slowdown between 2011 and 2012, China remains the world's largest exporter and manufacturer. The reduction in external demand caused by the global economic crisis, as well as a loss of competitiveness for low range products linked to rising labour costs, has not impaired China's trade position: "Its export competitiveness remains primarily based on low factor costs, and over one half of exports are produced by foreign-owned firms or joint ventures".<sup>1</sup>

Nevertheless, labour unrest over poor working conditions in Chinese factories producing for global brands has received increasing coverage from mainstream media in both China and abroad. In particular, numerous suicides allegedly triggered by harsh working conditions at Foxconn, a giant electronics company supplying, among other products, iPhones to Apple, have drawn much attention to the conditions in which manufactured products are made in China. Consumers and brands are increasingly sensitive to both the working conditions and environmental impacts of the products they buy. Beyond these widely reported tragic events, worker protests have been on the rise in various industrial regions in China over the years.

The province of Guangdong, in South East China is historically at the center of the Chinese export-oriented economy. It is host to three of the first Special Economic Zones in China (Shenzhen, Zhuhai and Shantou), and in 2008 accounted for over 11% of China's GDP.<sup>2</sup> Guangdong is also the province where the most labour related incidents, including strikes, have been reported.<sup>3</sup> The relative openness of provincial authorities until a few months ago towards the workers' movement, labour groups, and their social policies more generally, has been referred to as the "Guangdong model".<sup>4</sup>

In light of the above, FIDH deployed a mission to Hong Kong and China's Guangdong Province between 7 and 16 November 2012. The mission had a double objective: (1) to assess working conditions in a sample of export oriented Chinese factories, supplying several well-known international brands and retailers; and (2) to issue recommendations to Carrefour and other multinational corporations sourcing from China in order to improve respect for labour rights in their supply chain.

This FIDH mission was carried out within the framework of FIDH's cooperation with the international retailer Carrefour (see below). The mission delegation was composed of Isabelle Brachet, FIDH Director of Operations; Jason Law, Research Fellow from China Labour Bulletin and J.D. graduate from New York University; Bill Taylor, Associate Professor, City University

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1. World Bank, "China Quarterly Update – April 2012", 12 April 2012.

2. World Bank, *Reducing Inequality for Shared Growth in China: Strategy and Policy Options for Guangdong Province*, (2011), p. 4.

3. Since 2011, the China Labour Bulletin has documented labour incidents reported in domestic press and social media. In 2012, of the 388 strikes reported in China, 111 occurred in Guangdong (28.9%).

4. The Economist, "Governing China: The Guangdong model, One Chinese province adopts a beguilingly open approach – up to a point", 26 November 2011.

of Hong Kong; and Elin Wrzoncki, Head of FIDH's Globalization Desk. The FIDH delegation was accompanied on its factory visits by Carrefour global sourcing staff from the company's Shanghai and Hong Kong offices, who had been dedicated to follow-up on social audits.

The FIDH delegation spent 4 days in Hong Kong, where it was able to meet with various non-governmental organizations active on labour rights issues in mainland China. The mission then travelled to Guangdong in China, where it visited five factories supplying Carrefour in Shenzhen, Foshan, Dongguan, and Huizhou. FIDH's criteria for selecting the factories visited sought to reflect a diversity of production sectors and trade relationships with Carrefour. These factories specialized in garment, kitchenware, sports hardware and electronic material. Carrefour represented an important customer for some of the factories (up to 20% of their sales), whilst for others, the company's purchases represented only a small percentage of the producers' sales, but there were prospects for increased orders or Carrefour was a very stable and long term client. In all of the factories visited, social audits documented persistent problems concerning overtime work. Two of the factories visited were Chinese-owned, and three were owned by Hong Kong-based companies.

During its mission the FIDH delegation met with the management personnel of the five factories and carried out interviews with 21 factory workers (11 men, 10 women). Neither the management nor Carrefour attended these latter interviews. Interviews were held inside the factory<sup>5</sup> and workers were chosen randomly by FIDH, except where the delegation was told that a workers' representatives committee existed and the delegation specifically asked to meet with those representatives.

## **Background to FIDH – Carrefour cooperation**

Cooperation between FIDH and Carrefour is carried out through an association called Infans, and was initiated in 1998. Carrefour first approached FIDH in 1997 to find ways of improving working conditions at factory level and in particular to eradicate child labour from its supply chain. FIDH insisted on a broad and consistent human rights approach that would integrate all human rights in addressing work-related issues and be based on internationally recognized human rights standards. In 2000, Carrefour adopted its Social Charter, based on the Universal Declaration of Human Rights and eight fundamental ILO conventions. An audit methodology was developed with FIDH's assistance and initial audits were undertaken by FIDH. In 2002, the Infans mandate was revised to end FIDH's systematic involvement in social auditing. New areas for cooperation were identified to allow Infans to go beyond social auditing to address the role of local social actors, freedom of association and purchasing practices, as well as to engage in advocacy for international standards on business and human rights. FIDH nevertheless retained the ability to visit any Carrefour supplier.

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5. Securing genuinely candid worker testimony requires worker interviews to be held offsite (away from factory premises), in a place where workers feel secure and with a person whom workers are able to trust. Such persons might include labour groups who have been training workers on labour issues or providing legal assistance. Despite this, even where workers felt unable to provide wholly truthful accounts of conditions, possibly due to lack of trust or security, or fears that criticisms of their factory could affect orders from international buyers (and therefore job security), FIDH's on-site interviews nevertheless uncovered useful information for gaining a better understanding of the situation of Chinese workers today.



The cooperation agreement between Carrefour and FIDH relates to the supply chain only, and not to Carrefour as an employer (service sector).<sup>6</sup> This report therefore does not cover the situation of labour rights in the brand's supermarkets.

The most recent FIDH visits to China under the Infans framework took place in January 2008 and June 2009. Recommendations were subsequently addressed to Carrefour. Carrefour has undoubtedly made progress over the last three years in addressing some of the issues raised by FIDH, and has started implementing a number of its recommendations. However, working conditions in factories producing goods for Carrefour and other brands remain a matter of concern. FIDH seeks to move the company to take additional steps on a number of pressing issues, in particular regarding purchasing practices.

The present report aims to give an overview of the current challenges regarding labour rights in China, and to identify measures that international brands can implement to contribute to improving the situation on the ground in accordance with their responsibility to respect human rights in their supply chains.

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6. Standards relating to Carrefour employees are nevertheless addressed under the Global Framework Agreement between Carrefour and UNI Global Union.

# Labour-related developments in China

## China's labour movement

### Background overview

From 1978, the Communist Party of China (CPC) initiated a significant reform agenda, increasing the role of market mechanisms and reducing government planning of the economy. The economy was progressively opened, paving the way for private and foreign investments. Hong Kong used to be the primary source of foreign investment in China, which began with the establishment of Special Economic Regions.<sup>7</sup> In 2008, Shenzhen alone saw foreign direct investment come from 82 countries involving 148 Fortune 500 companies.<sup>8</sup> Over the years, many state-owned enterprises (SOEs) were progressively privatized throughout China, and several tens of millions of workers were laid off.<sup>9</sup> At the end of the 1990s, this process of privatization accelerated in light of China's entry into the World Trade Organization (WTO). This has affected industrial relations as SOEs formerly offered a full package of benefits for workers including employment security – the so-called “iron rice bowl” policy.<sup>10</sup>

If most human development indicators have seen global improvements in China,<sup>11</sup> the income gap between rural areas and coastal industrialized regions has increased. A recent report by the Chinese Academy of Social Sciences, a government think tank, shows that China's urban income is about 5.2 times that of the countryside.<sup>12</sup> According to the same source, the current income gap in China is about 26 percent higher than that of 1997, and 68 percent higher than that of 1985. The rising cost of education and health care has kept China's peasants in a situation of poverty, making them a huge labour reserve, and ultimately leading them to become migrant workers.

China achieved a double digit annual growth rate between 2003 and 2007, which has stabilized at around 9% since 2008 (9.3% in 2011).<sup>13</sup> Some analysts state that “without systematic and inhuman exploitation of migrant workers China would never have achieved such a fast rate of growth”.<sup>14</sup> According to China's National Bureau of Statistics, the number of rural

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7. See China Statistical Yearbook, 2012, p. 255.

8. Asia Monitor Resource Centre, *We in the zone (2): Resistance against the zone* (2012), p 122. Notably, total foreign direct investment flowing into China fell 3.7% in 2012 to US\$111.72 billion, in comparison to 2011; see “China Begins to Lose Edge as World's Factory Floor”, *The Wall Street Journal*, 16 January 2013, available at: <http://online.wsj.com/article/SB10001424127887323783704578245241751969774.html>.

9. A large majority of workers laid-off during SOE privatization were women (62,8%). On this issue, see Wang Zheng (2003): Gender, employment and women's resistance. In: Perry, Elizabeth J./ Selden, Mark: Chinese Society, 2nd Edition. Change, conflict and resistance. London/NY.

10. BBC Online Network, “China's Communist Revolution: A Glossary – Iron Rice Bowl”, (undated), available at: [http://news.bbc.co.uk/1/hi/english/static/special\\_report/1999/09/99/china\\_50/iron.htm](http://news.bbc.co.uk/1/hi/english/static/special_report/1999/09/99/china_50/iron.htm).

11. See UNDP, Human Development Index: Trends 1980 – present, available from: <http://hdrstats.undp.org/en/countries/profiles/CHN.html>

12. The Urban Blue Book: China City Development Report No 5, as cited in “Urban-rural income gap gets bigger: report”, *China Daily*, 15 August 2012, available at: [http://www.chinadaily.com.cn/business/2012-08/15/content\\_15677951.htm](http://www.chinadaily.com.cn/business/2012-08/15/content_15677951.htm).

13. World Bank, “GDP growth (annual %)", (undated), available at: <http://data.worldbank.org/indicator/NY.GDPMKTP.KD.ZG>.

14. Asia Monitor Resource Centre, *We in the zone (2)*, (n.8), p.123.

migrant workers reached 262 million at the end of 2012.<sup>15</sup> The industrialized coastal provinces employed nearly half of China's total migrant worker population in 2011.<sup>16</sup> In Shenzhen, it is estimated that the migrant worker population exceeded 10 million in 2011, while the local (officially registered) population was only three million.<sup>17</sup>

Most migrant workers leave their children in their home villages because the *hukou* (household registration) system denies them access to subsidized education and health care in areas other than their home town.<sup>18</sup> School for migrant workers' children is very expensive, and an estimated 50 million such children are left behind in villages of origin, often with grandparents. There have been initiatives, notably in Guangdong province, to reform the *hukou* system and provide some social security benefits to migrant workers. Indeed, many in China, including academics and lawyers, have called for the abandonment of the system altogether, because of its discriminatory effects and the fact that it renders workers particularly vulnerable to a wide variety of abuse. Nevertheless, the *hukou* system prevails in China, being considered by the State as necessary to maintain population control.

Whilst factories were formally more prevalent in coastal industrial regions, they are increasingly developing in China's inner provinces. There is a trend of workers preferring to work in their home provinces, close to their families, and working in coastal areas is comparatively less attractive than a few years ago. The factory managers and labour analysts interviewed by the FIDH delegation agreed that this trend, combined with the effects of the one-child policy, contributes to labour shortages<sup>19</sup> among factories in Guangdong, though whether China as a whole is truly encountering a labour shortage is a question that remains contested.<sup>20</sup> Labour shortage is said to be particularly acute among electronics manufacturers.<sup>21</sup> This creates high employee turnover rates<sup>22</sup> as workers are able to choose which factories to work in, thus, in effect, strengthening their leverage to obtain better working conditions.

In line with improvements in the legal framework protecting workers' rights, awareness of those rights has definitely increased among workers in the last ten years. Labour groups supported by Hong Kong NGOs appear to have contributed to this situation. Labour and human rights activists in Hong Kong, factory owners and certain workers interviewed by FIDH all agreed that

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15. "Rural migrant worker number rises", CNC World, 24 February 2013, available at: [http://www.cncworld.tv/news/v\\_show/31724\\_Rural\\_migrant\\_worker\\_number\\_rises.shtml](http://www.cncworld.tv/news/v_show/31724_Rural_migrant_worker_number_rises.shtml).

16. "Migrant workers wages increase by 21 percent", China Labour Bulletin, 1 May 2012, available at: <http://www.clb.org.hk/en/content/migrant-worker-wages-increase-21-percent>.

17. Asia Monitor Resource Centre, *We in the zone* (2), (n.8), p 124.

18. For a general background to the Hukou system and its evolution, see: Human Rights in China, *Institutionalized Exclusion: The tenuous legal status of internal migrants in China's major cities*, (6 November 2002). See also China Labour Bulletin Special Report, *Paying the Price of Economic Development: The Children of Migrant Workers in China*, (2009), available at: [http://www.clb.org.hk/en/files/share/File/research\\_reports/Children\\_of\\_Migrant\\_Workers.pdf](http://www.clb.org.hk/en/files/share/File/research_reports/Children_of_Migrant_Workers.pdf).

19. Some analysts attribute labour shortages to the one-child policy, which impacts on the number of young people entering the labour market. See China Labor Watch, "Labor Shortage: Opportunity or Crisis?", available at: <http://www.chinalaborwatch.org/news/new-267.html>; "China Needs to Ease One-Child Policy, State Researchers Say", *Bloomberg*, 4 July 2012, available at: <http://www.bloomberg.com/news/2012-07-04/china-needs-to-ease-one-child-policy-state-researchers-say.html>; Geoffrey Coathrall, "Manufacturing dissent in China", *Red Pepper*, December 2012, available at: <http://www.redpepper.org.uk/manufacturing-dissent-in-china/>.

20. For the debate on labour surplus/shortages in China, see: World Bank, *Reducing Inequality for Shared Growth in China*, (n.2), p. 111.

21. Such factories reportedly seek to employ young workers because they are considered to have thinner fingers and better eyesight.

22. In the factories visited by FIDH, managers referred to employee turnover rates of between 8 and 10%. In the electronics sector, this turnover is reportedly much higher. After the Chinese New Year, factories usually sustain a loss of a great number of workers.








the new generation of workers is much more aware of labour rights. One worker interviewed by FIDH said:

*“The younger generation is different; they don’t want to do something they don’t like. They have gone to school, their expectations are different. My generation wanted to go to school, but there was no money. We pay for our children’s school. They will hate us forever if we don’t make it possible for them to go to school. They like gadgets, entertainment, they use the Internet” .<sup>23</sup>*

Young people often have mobile phones and communicate with other workers from the same province by texts, reading micro-blogs and spending time on the Internet. Some choose to live outside the factory rather than in dormitories, and are not willing to accept the same working conditions as their parents. They are more likely to voice their demands and take action.

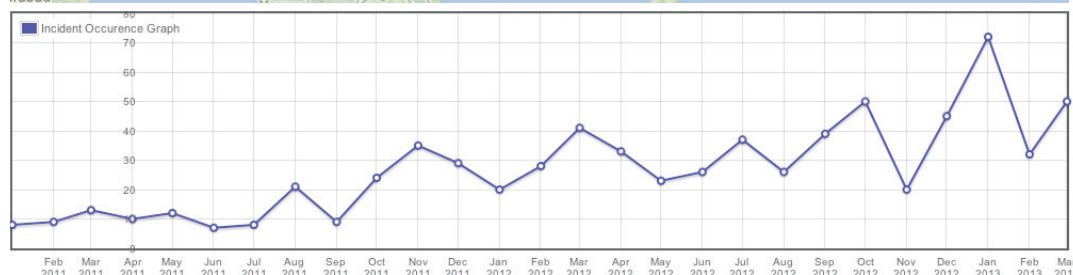
### Strikes and labour unrest

A lack of effective channels for workers to voice their demands and concerns means that labour unrest continues to rise in China. From 1993 to 2006, instances of worker and peasant unrest increased from 8,700 to more than 90,000 cases annually.<sup>24</sup> In 2011, independent researcher, Sun Liping from Tsinghua University estimated that instances of worker and peasant unrest in China had reached 180,000 for the year 2010.<sup>25</sup>

-  Wage Arrears
-  Majority Male
-  Majority Female
-  Taxi Strike
-  Bus Strike
-  Shipping Industry Strike
-  Railroad Strike



CLB map of strikes for the year 2012 available at: [www.numble.com/PHP/clbmap.html](http://www.numble.com/PHP/clbmap.html)



23. For more information, see BSR Report, *Between the Lines: Listening to Female Factory Workers in China*, (March 2013), available from: <http://www.bsr.org/en/our-insights/report-view/between-the-lines-listening-to-female-factory-workers-in-china>.

24. Suki Chung, “Reflections on the recent trends in China’s labour movement”, Labour Action China, 2012, available from: <http://www.lac.org.hk/en/node/109>.

25. See Tom Orlik, “Unrest on Rise as Economy Booms”, *The Wall Street Journal*, 26 November 2011, available at: <http://online.wsj.com/article/SB10001424053111903703604576587070600504108.html>.

Since 2005, statistics on so-called mass incidents have not been made public anymore. These broadly encompassed events involving from ten to thousands of individuals. In 2005, the government recorded 87,000 such incidents. This number reportedly rose to over 127,000 in 2008,<sup>26</sup> with most of those incidents relating to worker or peasant unrest.

In March 2012 alone, China Labour Bulletin (CLB) recorded 38 strikes across China, primarily in the manufacturing and transportation sectors.<sup>27</sup> Most strikes involved demands regarding wages, especially against wage arrears. In certain cases, worker representation was also raised. Here, workers have demanded genuine representatives at factory level, within the framework (and not independently of) the official Chinese trade union, the All China Federation of Trade Unions. Thus in May 2012, for example, a new trade union chairman was freely elected at the Ohm electronics factory in Shenzhen following a strike by several hundred workers.<sup>28</sup>

In Guangdong strikes are a strong incentive for employers to negotiate with workers. Using social media and mobile phone texts, workers can mobilise very quickly, including through migrant worker networks of those from the same town of origin. The repression of strikes in China no longer appears to be systematic. In 2010, two specific situations made international headlines. These were namely, a wave of suicides at Foxconn, a supplier of major electronic brands; and strikes in several Honda factories.

Foxconn is a Taiwanese-owned electronics company, whose major client is Apple for the production of iPhones. In 2010, 18 Foxconn employees attempted suicide, with most losing their lives. This spate generated massive public outcry and media coverage at the international level, illustrating the reputational risk for international brands sourcing from China.

Meanwhile, strikes over low wages and poor working conditions in Honda's Foshan factory in 2010 rapidly spread to other Honda plants, highlighting the ability of workers to communicate across the country. Aside from higher wages and better conditions, notable worker demands included being able to elect their own representatives at enterprise level. The ACFTU proved useless during negotiations between the company and its workers, highlighting the need for the union to make internal reforms to secure true collective bargaining and elected leadership if it is to avoid being sidelined altogether.<sup>29</sup>

Factory owners and managers are progressively realising that their employees are in a much stronger bargaining position than previously, acknowledging the negative impact of strikes on business. Local governments, under pressure from the central authorities to maintain the appearance of stability, are now just as likely to pressure employers into making concessions as they are to coerce strikers into returning to work.<sup>30</sup>

Indeed, labour incidents can no longer be resolved by recourse to repression alone, and are seen as a threat to a "harmonious society" and the Party itself. Workers overwhelmingly demand

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26. Cynthia Estlund and Seth Gurgel, "A new Deal for China's Workers? Labor Law Reform in the Wake of Rising Labor Unrest", New York University Public Law and Legal Theory Working Papers, Paper 297, (2012), p 11.

27. Jennifer Cheung, "China's workers emboldened: Strikes escalate in March", China Labour Bulletin, 8 April 2012, available at: <http://www.clb.org.hk/en/content/china%E2%80%99s-workers-emboldened-strikes-escalate-march>.

28. "Shenzhen trade union promises more direct elections", China Labour Bulletin, 28 May 2012, available at: [www.clb.org.hk/en/content/shenzhen-trade-union-promises-more-direct-elections](http://www.clb.org.hk/en/content/shenzhen-trade-union-promises-more-direct-elections). See also "A prescription for workplace democracy in China", China Labour Bulletin, 25 July 2012, available at: <http://www.clb.org.hk/en/content/prescription-workplace-democracy-china-0>.

29. Estlund and Gurgel, "A new Deal for China's Workers?", (n.27), p 22.

30. Coathrall, "Manufacturing dissent in China", (n.19).

respect for Chinese regulations, decent wages and benefits, and for payments to be made on time and in full – their grievances are firmly grounded in law.<sup>31</sup> Thus the authorities seem to have “shifted their strategy from quelling demonstrations with force to a permissive strategy of containment and management”, fearing negative implications for their political legitimacy.<sup>32</sup>

### **The ACFTU**

The All China Federation of Trade Unions (ACFTU) was founded in 1925. It was officially recognized as the representative of the working class in the Trade Union Law of 1950 and evolved through the Trade Union Law of 2001 to become a monopoly, being designated as China’s official trade union. As such, no trade union can be established outside the ACFTU.

The ACFTU encompasses 200 million affiliated, mostly in state-owned, enterprises. This includes businesses from the energy sector, public services, steel, banks and the financial sector. It is a “mass organisation” present throughout China at all levels and is used by the Party as a vehicle for the preservation of stability. It acts as a transmission belt between the Party and the people, allowing the Party to control the workforce.<sup>33</sup>

The ACFTU has a double mandate: protect workers’ interests *and* uphold the Party’s cause and stability; where these two objectives conflict, the latter takes precedence.<sup>34</sup> Whilst the 2001 law refers to “work-stoppages”, strikes are not specifically regulated under the law, though they are also not explicitly banned. Nevertheless, the ACFTU is charged with maintaining the continuity of production and avoiding work stoppages.<sup>35</sup>

Some academics consider there to be an important distinction between the ACFTU’s hierarchy outside the enterprises (constituting an arm of the Party) and its presence at enterprise level (made up of enterprise management and local businesses).<sup>36</sup>

The ACFTU set two universal objectives for 2010 to 2013: unionize all companies and implement the universal collective negotiation of wages. The national unionization campaign had started between 2008 and 2009 and targeted foreign companies. In Shenzhen, 92% of private companies are reportedly already unionized. Thus, 2% of these firms’ payroll is channelled to the ACFTU to fund its activities.<sup>37</sup>

The ACFTU hopes that by the end of 2013, 95% of all Fortune 500 companies operating in China will have engaged in collective wage negotiations. Approximately 80% of the 4,100 enterprises set up by Fortune 500 companies in China have introduced a system of collective wage negotiations.<sup>38</sup> However, this appears to be mere window-dressing, having no genuine impact on working conditions. It is reported that management generally selects union chairs,

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31. Estlund and Gurgel, “A new Deal for China’s Workers?”, (n.27), p 18.

32. Christian Göbel and Lynette H. Ong, *Social Unrest in China*, Europe China Research and Advice Network, (2012), p. 13, available at [http://www.euecran.eu/Long%20Papers/ECRAN%20Social%20Unrest%20in%20China\\_%20Christian%20Gobel%20and%20Lynette%20H.%20Ong.pdf](http://www.euecran.eu/Long%20Papers/ECRAN%20Social%20Unrest%20in%20China_%20Christian%20Gobel%20and%20Lynette%20H.%20Ong.pdf).

33. See also Bill Taylor and Qi Li, “Is the ACFTU a union and why it matters”, *Journal of Industrial Relations*, vol. 49, no.5. 701-715, (2007).

34. Estlund and Gurgel, “A new Deal for China’s Workers?”, (n.27), p 24.

35. *Ibid.*, p 37.

36. *Ibid.*, p 26.

37. *Ibid.*, p 29.

38. “Trade union negotiates pay increase for Carrefour employees in Shanghai”, China Labour Bulletin, 20 August 2012, available at: <http://www.clb.org.hk/en/content/trade-union-negotiates-pay-increase-carrefour-employees-shanghai>.

and the resultant collective agreements simply incorporate domestic labour standards. Indeed, as it stands, the essential components of a collective negotiation are absent from this top-down process, including the involvement of an independent trade union with negotiation skills, and representatives elected by workers with the power to self-organize.<sup>39</sup>

Following the free election of a trade union chairman at the Ohms electronics factory in May 2012, the Shenzhen ACFTU announced its intention to introduce some form of democratic election for trade union chairs at enterprise level more widely. Consequently, the ACFTU is reportedly targeting 163 enterprises in Shenzhen employing over 1,000 workers to secure direct elections in which union officials are up for re-election.<sup>40</sup> However, a quantitative approach may not be the most effective for fostering democracy at factory level. China Labour Bulletin (CLB) suggests targeting factories in which workers are, for example, already organising strikes and protests and demanding higher pay and better working conditions. The election would then be a first step paving the way for effective collective bargaining with the management.<sup>41</sup>

### **Crackdown against several labour NGOs in Shenzhen in 2012**

Many groups operate to support workers' rights in mainland China. They organize trainings, provide legal assistance, raise awareness about labour rights and provide social services for workers. These groups often operate as businesses because it is impossible for them to register as NGOs whilst maintaining their organization's independence.<sup>42</sup>

In July 2012, the Guangdong Provincial Party Committee approved the Decision on Strengthening Social Construction. This allows civil society groups to register directly with the Ministry of Civil Affairs, without prior approval from a government or party organ. This reform initially appeared to be progressive. However, in practice, groups have had to get approval from the local administration to achieve registration. In addition, upon the adoption of this regulation, numerous Shenzhen-based NGOs defending workers' rights have been subjected to sudden tax inspections, landlords terminating rental contracts, utilities being cut off, and numerous other hostile acts – so much so that many of these groups have consequently had to close down their offices.<sup>43</sup> Moreover, despite the new regulations providing for the registration of social organizations, a vast number of administrative hurdles make it practically impossible for independent groups to register. This has been described as an attempt by the Chinese authorities “to co-opt the majority [by registering and institutionalising labour groups] and coerce the minority [by closing down those groups that cannot be controlled], in order to reinforce the state control over the society”.<sup>44</sup>

This wave of repression illustrates that certain local authorities, even in Guangdong, remain opposed to independent civil society, an issue over which there is no consensus among the Chinese leadership.

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39. Chung, “Reflections on the recent trends in China’s labour movement”, (n.25).

40. CLB, “Shenzhen trade union promises more direct elections” (n.29). See also “Shenzhen Federal Union will launch union elections for 163 companies” [unofficial title translation from Chinese], *Southern Daily (Nanfang Ribao)*, 28 May 2012, available at: [http://news.nfmedia.com/nfdsb/content/2012-05/28/content\\_46499926.htm](http://news.nfmedia.com/nfdsb/content/2012-05/28/content_46499926.htm).

41. Han Dongfang, “A Chance to help build grassroots democracy in China”, *China Labour Bulletin*, 5 July 2012, available at: <http://www.clb.org.hk/en/content/chance-help-build-grassroots-democracy-china-0>.

42. To register with the Ministry of Civil Affairs, an organisation needs to get prior approval from its supervisory unit. The supervisory unit is an official body which is responsible for the organisation’s daily operations and is itself approved by the government.

43. Joint open letter from 14 Hong Kong-based labour rights groups, “Please confirm the legitimate work of NGOs and support their continued development”, 15 August 2012.

44. Chung, “Reflections on the recent trends in China’s labour movement” (n.25).

It further illustrates the fact that some local authorities will not tolerate independent groups seeking to organize workers, which may be perceived as a challenge to the ACFTU's monopoly over worker representation. Indeed, collective activity outside of and independently from the State is perceived as a threat to political stability and Communist Party control.<sup>45</sup>

## Recent legislative reforms in the field of labour

China's legislative framework for labour rights has gradually been improving. The 1990's saw the start of the adoption of a series of laws addressing worker protections. Thus, for example, China's Labour Law of 1994, stipulates that workers shall work for no more than eight hours a day and 40 hours a week on average (Art. 36, amended by the Decision of the State Council on March 25, 1995), and must have at least one day off a week (Art. 38). Overtime from one to three hours a day is permitted but must not exceed 36 hours a month (Art. 41). The law specifies that overtime work must be paid at 150% of the basic wage, 200% when work is performed on rest days and 300% when workers are asked to work on legal holidays (Art. 44). Employers are obliged to respect the minimum wage, as established at local or provincial level. The later enactment of the 2007 Labour Contract Law proved to be a further important advancement on the issue of labour rights.

Some analysts see these legislative reforms as the regime's response to rising social unrest occasioned by labour disputes, which are recognized as constituting a threat to stability and ultimately to the Communist Party's grip on power. Regardless, challenges concerning the effective implementation of laws in this field remain huge in China. Labour inspections appear to be largely ineffective due to corruption and the fact that in practice investigations are only triggered if large numbers of workers complain.

Moreover, despite a number of substantial legal advances, especially regarding labour contracts, working hours, labour disputes, and to some extent collective bargaining, serious restrictions on the right to freedom of association remain. China has not ratified ILO Conventions 87 (Freedom of Association and Protection of the Right to Organize) and 98 (Right to Organize and Collective Bargaining). It has also entered a reservation to Article 8 of the International Covenant on Economic Social and Cultural Rights (ICESCR), relating to freedom of association.

### Labour Contract Law 2007

The Labour Contract Law 2007 law makes the provision of a written employment contract compulsory for all workers, drawing no distinction between migrant and urban workers. It applies to both private enterprises and the public sector, regulating also the use of dispatch or agency workers.

The law specifies the length of a probation period, and provides for labour inspections. Crucially, it also allows workers to negotiate collective contracts with their employer and refers to the possibility of employees directly electing representatives at factory level:

**Article 51:** *“The employees of an enterprise may get together as a party to negotiate with their employer to conclude a collective contract on the matters of remuneration, working hours, breaks, vacations, work safety and hygiene, insurance, benefits, etc. The draft of*

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45. Estlund and Gurgel, “A new Deal for China's Workers?” (n.27), p 2.



*the collective contract shall be presented to the general assembly of employees or all the employees for discussion and approval. A collective contract may be concluded by the labor union on behalf of the employees of the enterprise with the employer. If the enterprise does not have a labor union yet, the contract may be concluded between the employer and the representatives chosen by the employees under the guidance of the labor union at the next highest level.”*

Whilst promising on paper, in practice, this provision is not genuinely implemented (see section on collective bargaining).

China’s Trade Union Law 2001 protects trade union officials:

**Article 51:** *“Any organization that, in violation of the provisions of this Law, retaliates against the functionaries of trade unions who perform their duties and functions according to law by transferring them to other posts without justifiable reasons shall be ordered by the labour department to rectify and reinstate the functionaries; if losses are caused therefrom, compensation shall be made to them.”*

However, unlike for ACFTU officials, no specific protection is provided for workers’ representatives directly elected at factory level. Labour activists are regularly the target of retaliatory acts because of their role in collective negotiations. Such protection could be extended from enterprise trade union officials to all democratically elected workers’ representatives engaged in collective bargaining with management. However, determining which representative is genuinely chosen by employees and consequently afforded protection, is likely to give rise to controversy with the management, which may render such protection meaningless.<sup>46</sup> China Labour Bulletin suggests that it is therefore preferable to have workers stand for election within the existing enterprise trade union, when there is one.

### **Labour Dispute Mediation and Arbitration Law 2008**

The Labour Dispute Mediation and Arbitration Law further specifies a procedure for dispute resolution that had been established under previous regulations dating back to 1993. The dispute resolution mechanism for labour disputes involves three stages: mediation, arbitration (local labour dispute arbitration) and litigation.

Mediation is not a mandatory process in dispute resolution and its role has gradually faded. Arbitration, however, is the first mandatory step of the labour dispute resolution system and is conducted by Labour Dispute Arbitration Committees (LDAC), whose rulings are legally enforceable. If either party is dissatisfied with a ruling, they can refer the case to a court of law within 15 days. Here, labour disputes are heard by civil courts, initially at district level. Appeals can be made to an intermediate court at municipal level, or the higher court at provincial level.<sup>47</sup>

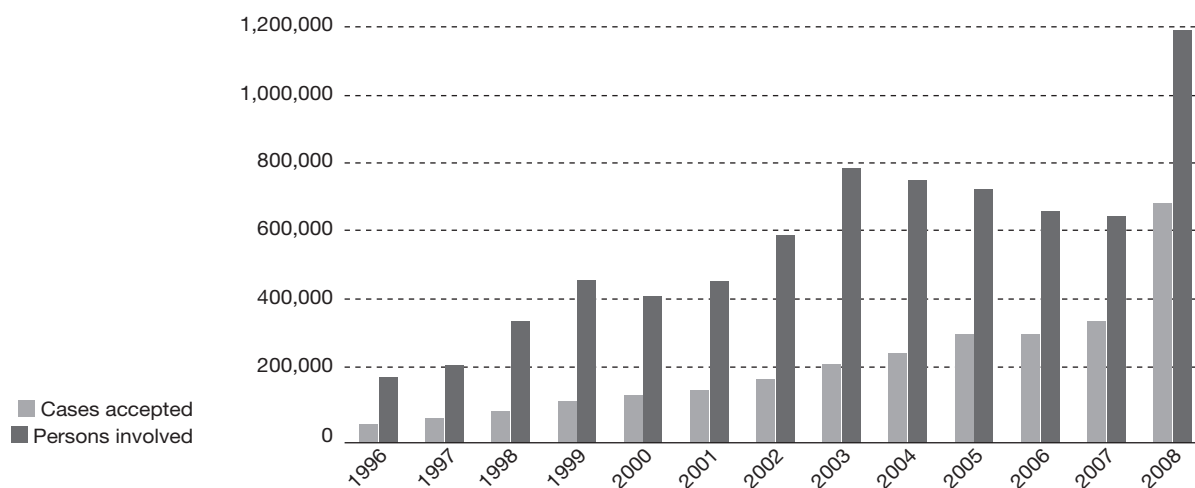
There are no annual figures on labour dispute lawsuits. The only record of such disputes is found in documents issued sporadically by court and government officials. Nevertheless, it is possible to confirm that the number of labour disputes handled by courts and arbitration committees has

46. “Protecting workers’ representatives”, China Labour Bulletin, 7 December 2012, available at: <http://www.clb.org.hk/en/node/110178>.

47. “China’s labour dispute resolution system”, China Labour Bulletin, (undated), available at: <http://www.clb.org.hk/en/view-resource-centre-content/100618>.

increased dramatically since 2000, and especially after the entry into force of the Labour Dispute Mediation and Arbitration Law in 2008.

#### Number of cases accepted by labour dispute arbitration committees 1996-2008



1996-2007 figures obtained from the China Statistical Yearbook (various years)  
2008 from the Ministry of Human Resources and Social Security

Source: [www.clb.org.hk/en/files/share/File/statistics/disputes/number\\_of\\_disputes\\_1996-2008.pdf](http://www.clb.org.hk/en/files/share/File/statistics/disputes/number_of_disputes_1996-2008.pdf)

#### Social Insurance Law 2010

China's Social Insurance Law entered into force in July 2011. It provides for retirement insurance, medical insurance, work-related injury insurance, unemployment insurance and maternity insurance. Prior to this law, provisions for social insurance were scattered over different regulations. The law therefore consolidates existing rules and regulations under a standardized framework at national level. It specifies that social insurance benefits remain with workers if they move to different locations. However, the implementation of this law remains very limited in practice due, amongst other things, to incompatible systems and software, as well as differing policies at local level.<sup>48</sup> In addition, there are regularly scandals over government misuse of social insurance funds, including embezzlement. As a result, many migrant workers are not inclined to demand participation in pension, unemployment and health insurance plans.

Participation in social insurance schemes is particularly low amongst migrant workers, with the exception of work-related injury insurance. In 2011, only 46 million migrant workers reportedly had health insurance, 41 million had joined the basic pension scheme and less than 24 million had unemployment insurance.<sup>49</sup> By contrast, 68 million migrant workers had work-related injury insurance. Indeed, injuries occurring in the absence of such insurance can expose employers to heavy fines, incentivising them to take up work-related injury insurance. Notably, uninsured workers who suffer a work-related injury can apply to a local government fund for an advance payment if their employer refuses to pay compensation. In practice however, the vast majority of municipal governments are reportedly refusing to set up an advance payment system.<sup>50</sup>

48. "China's social security system" China Labour Bulletin, (undated), available at: <http://www.clb.org.hk/en/view-resource-centre-content/110107>.

49. *Ibid.*

50. Beijing Yilian Legal Aid and Research Centre, as quoted by the in "Local governments refuse financial aid for uninsured workers", China Labour Bulletin, 4 July 2012, available at: <http://www.clb.org.hk/en/content/local-governments-refuse-financial-aid-uninsured-workers>.

# Main findings of the FIDH mission

## Concerns in factories visited

The information below was collected during factory visits carried out in Guangdong by the FIDH delegation, and converges with more general information on working conditions in China provided by labour rights groups based in Hong Kong.

### Outsourcing “dirty” work

Factories supplying international brands often sub-contract segments of the work, with international brands having no control over the social performance of these sub-contractors. In one of the factories visited, polishing had been subcontracted because it is considered to be a hazardous job involving toxic dust that impairs worker health in the long term. According to the factory’s management, local authorities had encouraged the company to outsource this part of the production process, considering it to be too “dirty”. Polishing can also provoke an occupational disease referred to as hand-arm vibration syndrome (HAVS) and caused by the use of vibrating hand-held tools. Ultimately this disease can make it impossible for a worker to continue working.

*Workers in the  
polishing department.*

At another manufacturer visited, only the assembly factory with whom international buyers had a direct contract was audited. However, the company owned 15 subsidiaries (some on the same industrial site) selling 100% of their products to the assembly plant – in these subsidiaries no social audits or external monitoring were undertaken whatsoever. The FIDH delegation asked to visit the other parts of the production process, but were not permitted to do so by factory management, allegedly because these were independent factories.

The global supply chain has become extremely complex. Traceability can be difficult and complicated where products involve numerous sub-suppliers, scattered in different provinces in China and abroad. The sub-contracting of certain industrial processes is also common. This practice seriously limits what the social audits and supply chain policies of international brands can achieve in improving working conditions and environmental impacts over a whole supply chain. However, a brand’s overview of where products are actually produced could be significantly enhanced.



### **Absence of freedom of association, collective bargaining and social dialogue**

As outlined above, China's Labour Contract Law foresees the possibility of workers electing representatives at factory level.

In most factories visited by FIDH, so-called “workers’ representatives” were in place. However, this provision was clearly window-dressing, probably because freedom of association at factory level is systematically included in the social audits demanded by international brands. Even where members of management sought to claim that these representatives had been elected by workers through genuine elections, the delegation’s interviews clearly indicated that such persons had in fact generally been appointed by factory management to please international customers. One manager met by FIDH even admitted that she had herself selected the representatives, giving preference to “humble personalities”. Very often, the “workers’ representatives” interviewed did not know what their role was or how and when they had been selected. Despite reports of recent meetings between representatives and management by management personnel, “representatives” could not recall the dates or content of such meetings and had no idea what collective action means. Other workers interviewed knew nothing of the existence of workers’ representatives, or pretended to know of their existence but indicated that they would go to see their supervisor in situations that would ordinarily engage the function of such representatives. In some instances, workers’ representatives in the same factory did not know each other, had never met to discuss common issues, and had often never actually met with management (despite management claims to the contrary). They considered the issue of wages not to enter into their function as workers’ representatives.

In sum, the situation in the factories visited in practice was that workers’ representatives did not understand their role, have no power to bargain or negotiate with the employer and do not raise wage issues. In theory, workers’ representatives may in certain cases at least act as conduits through which information is passed from management to workers other than through direct supervisors. However, for the moment, this too does not appear to be the case.

*Suggestion box for workers in one of the factories visited.*



Social audit results from the factories visited reported that three of these companies had a trade union established at the factory. However, only at one factory did a worker say that there was an ACFTU representative (whom the FIDH delegation was unable to meet), and the worker was unsure about this individual’s role. It was reported that when one or several ACFTU representatives are present in a factory (most often in SOEs, though increasingly some foreign private companies), they are generally selected by the trade union.

There were suggestion boxes in the factories visited by FIDH. However, workers do not seem to use them – a fact acknowledged by both management and workers. Instead, workers’ representatives were reportedly sometimes required to conduct surveys on various matters, such as canteen food, and to improve management control and worker compliance. FIDH was unable to confirm that surveys were actually undertaken by the workers’ representatives.

Notwithstanding the existence (or not) of workers' representatives, social dialogue appeared to be extremely poor in all of the factories visited. Whilst collective bargaining is clearly a very sensitive issue, workers are not consulted on general working or living conditions either. For example, one factory visited was to be relocated pursuant to an agreement with the local authorities in order to clear the land for urban development projects. No worker had been informed of this. Another example relates to the storing of worker tableware, where for matters of hygiene, a corrective action plan devised after a social audit had requested the installation of new shelves. The factory's management was unsure about how to implement this request, but had never thought to ask worker preferences, in spite of the fact that a worker's committee was supposedly in place.



*Shelves for the storing of worker tableware in the canteen of one of the factories visited.*

The absence of social dialogue at factory level – and more generally – may explain why workers tend to resort to strikes to raise their demands, there being no other means at their disposal to voice their concerns.

### **Minimum wage, living wage and overtime work**

The minimum wage is fixed by local authorities and consequently varies by municipality and province. In 2011, 24 provinces raised the minimum wage, with an average increase of 22%.<sup>51</sup> Shenzhen has the highest minimum wage in China at 1,500 RMBs (the cost of living being much higher in Shenzhen than in other areas of Guangdong). Other cities in the same province have much lower minimum wages (950 RMB in Huizhou and 1100 RMB in Dongguan). The five factories visited by FIDH respected the minimum wage in force in their area, and sometimes offered higher wages because otherwise workers refused to work for them. This was mostly arranged by providing the basic wage as a standard with incentives and top ups for various work related attributes or activities.

Several factory managers referred to bonuses being paid to workers based on the quality and quantity of their production, their daily performance and their time keeping. In one factory visited “outstanding employees” would get a 100 RMB bonus every month, though workers were unable to say what the criteria for getting this bonus was, other than that those arriving at work late would not receive it. One worker in charge of quality control, said that when there were complaints from a customer, she had deductions made from her wages.

All workers interviewed by FIDH were asked what they would consider to be a decent wage. Most replies ranged between 2,400 and 3,000 RMB, with the exception of a supervisor who replied 5,000 RMB (he was supervising the work of 370 persons in a workshop). The Asia Floor Wage Campaign has assessed the living wage for China to be RMB 2332.8 in 2012.<sup>52</sup>

51. “Beijing raises minimum wage, Shenzhen to follow next month”, China Labour Bulletin, 3 January 2012, available at: <http://www.clb.org.hk/en/content/beijing-raises-minimum-wage-shenzhen-follow-next-month>.

52. This figure is a reference point denoting what a person should earn at minimum to support a 3 person family, including herself, if she works 8 hours/day and no more than 36 hours/month. For more information on the Asia Floor Wage Campaign, see: <http://www.asiafloorwage.org/>.

In all factories visited, overtime largely exceeded the maximum overtime work allowed under the Labour Contract Law: workers worked at least 60 hours a week (10 hours a day, 6 days a week), and up to 80 hours a week. Some social audit reports even indicated a higher number of hours during certain periods. Some factories claimed that they had obtained a waiver regarding legal overtime limits from the local government (with the result that workers were performing 85 or 90 hours overtime per month), in clear violation of the law. National law has primacy over local laws and regulations, except if the latter are more protective. Thus a local regulation cannot provide workers with worse terms and conditions than those specified in national law. As the 1994 Labour Law had specified 36 hours to be the maximum overtime permitted in a month, a local authority cannot grant an employer more than this (though it may restrict it further). It is surprising therefore that auditing firms are claiming legal compliance for overtime in cases where national law is blatantly being flouted.

Whereas all workers interviewed were knowledgeable about the minimum wage and the rates to be paid for overtime, none knew the legal limit on working hours. Social audit results highlight that there is often no reliable record of working hours, thus preventing the quick verification of overtime. In four out of five factories, factory management claimed that they could not comply with legal requirements regarding overtime under Chinese law as workers would leave their factory because of insufficient wages. In one of the factories visited, the management claimed that they were complying with the legal requirements and were limiting overtime to 36 hours a month, although workers were complaining about this. However, not a single factory had implemented a three shift system for factory units where machines were operating 24 hours a day (injection moulding, for example). These factories maintained a two-shift system thereby making it impossible to comply with the law on overtime.

In many sectors and factories, notably in the garment sector or packaging department, workers are paid on a piece rate basis. This is supposed to act as an incentive to increase productivity. The problem is that the targets for piece rates do not necessarily correspond to what most workers are able to deliver. Moreover, in some instances, overtime work is not paid at all if workers do not reach the target. In these cases, workers are simply paid the minimum wage despite the fact that they may have worked numerous overtime hours, thus violating the provisions of the

*Women packaging kitchenware. This task is often paid on a piece-rate basis.*



Labour Law relating to overtime. When there are several workers on one production line, workers on the same line are paid identically even if they did not produce at the same pace. It is claimed that for “good performers” (workers with a high production output), piece rates are supposedly more advantageous than hourly rates. However, this assertion is impossible to verify because nobody other than the management knows the rate paid for a piece (it depends on the piece, as well as the stage of production, the piece rate decreasing once workers are more familiar with the production process), and because it is often difficult to know exactly how many pieces each worker has contributed to.

Piece rates are also problematic when it comes to managing the risks of hazardous jobs or work stations. Indeed, such rates can make it difficult for workers engaged in repetitive manual tasks to change job from time to time to prevent occupational disease. This is because experienced workers in specific positions would lose income by working in another job in the production line.

The workers met by FIDH all expressed a willingness to do substantial overtime work in order to earn more money. Most of them were migrant workers who came from other provinces (Hunan, Henan, Guangxi, Sichuan). Those workers who were parents often had two children, who had been left with grandparents. In certain cases, during the school summer holidays, both the children and the grand-parents would come to live with the worker. Otherwise, the worker would see his child or children once a year, on the Chinese New Year holiday. These workers appear to have sacrificed family and personal life to work far away from home and make money, often to cover the cost of raising children and/or support older parents in the country side. Their objective was to make as much money as possible in order to make the sacrifice worthwhile, and possibly return home in the future. For the younger generation this is often no longer the case, as their personal strategy is to stay in urban areas. The fact that the only way to secure a “decent” wage is to do excessive overtime highlights the insufficiency of the minimum wage in spite of recent increases.

Some of the workers interviewed had brought their children to the city where they were working, often if husband and wife were working in the same area. They said that the *hukou* system had been relaxed so that they were able to enrol their children in the public school after a few years of residence in the area, and if they fulfilled a number of restrictive conditions.

### **Labour contracts**

All workers interviewed confirmed that they had signed a labour contract. They said that they had received a copy of their contract, but FIDH was unable to verify this assertion. It was reported by labour NGOs met in Hong Kong that failures to supply workers with copies of their labour contracts continue, in violation of the Labour Contract Law (Art. 16). In some of the factories visited, FIDH was able to confirm that workers sign one-year labour contracts, which are renewed annually. What was not clear, however, was whether these workers were able to keep a copy of their previous contract upon signing a new one. This should be the case, as it allows the worker to demonstrate how long they have been working at that factory – potentially indispensable where disputes arise concerning issues like social insurance or occupational disease.

Under the Labour Contract Law a worker should be given a “permanent” contract after either 10 years service or the completion of 2 successive contracts (Art. 14). Compliance with that provision among the factories visited was far from systematic.

### **Social insurance**

In the factories visited, all workers confirmed they had injury-related insurance. However, in several factories, other social insurance benefits like health or retirement insurance were optional. This is in violation of Article 73 of the Labour Contract Law. One woman worker interviewed by FIDH said: “I’m happy to now have social insurance with retirement benefit because my son will not have to support me when I get old”. By contrast, another worker said that “it is very important for me to have health insurance, as it is much cheaper for me to get

medical treatment when I need it, and it is all-inclusive. In this factory, the retirement scheme is voluntary. I don't want it because my children will help me when I get old, and I doubt that it will ever be useful" – by this, the worker meant that she is not sure that she will be able to receive her retirement allowance in her province of origin.

### **Food and accommodation**

The workers interviewed generally said that they receive an allowance from their employer when they do not live in the factory dormitory (out of the five factories visited, four had dormitories). Fifty per cent of the cost of food is deducted from a workers' wage to cover lunch and the evening canteen (equivalent to 4 or 5 RMB a day, according to the workers interviewed). One worker complained that a food allowance was still deducted from her salary for the evening dinner despite the fact that she was spending the night in her own place, outside the factory. Factory managers met by FIDH referred to the quality of food being an issue regularly raised by workers. However, FIDH was not able to assess the quality of the food in the factories visited.



FIDH visited two dormitories that were extremely similar: 8 to 10 bunk beds, with workers bringing a very thin sleeping mat themselves. In one dormitory there were no cupboards to put belongings, although workers only go home once a year. There was one bathroom per room, and the rooms were not fully occupied (4 workers per room). The dormitories offer extremely basic accommodation conditions. Dormitories seem to be used by workers less and less, as they often prefer having outside accommodation. This leaves more room for those staying in the dormitory.

Housing allowance for those workers who do not stay in the dormitories was between

*Dormitory room in one of the factories visited.*

30 and 100 RMB per month. If workers share accommodation with other persons outside the factory, it may cost them around 150 RMB per person, depending on the area.

### **Agency workers and interns**

The factories visited by FIDH did not seem to use agency/dispatch workers nor interns. However, the use of agency workers in Chinese factories has been widely documented, especially in the electronics sector and by SOEs. The use of agency or dispatch workers rose after the entry into force of the Labour Contract Law in 2008 due to the desire to evade its protective provisions regarding workers by outsourcing labour. This is very much the case among SOEs, where laid-off workers were recruited by agencies in the 1990s. Many of these agencies are public institutions, dependent on the Ministry of Labour. They initially aimed to provide reemployment for laid-off SOE workers. The ACFTU and academics have been pushing for the stronger regulation of labour agencies. A December 2012 Amendment to the Labour Contract Law which will enter into force on 1 July 2013 seeks to address the issues raised by the use of contracted agency labour. The amendment makes clear that



hiring via labour contracting agents should be arranged only for temporary, supplementary and backup jobs.<sup>53</sup>

“According to the new draft, temporary (临时性) positions cannot exceed six months, auxiliary (辅助性) positions should specifically facilitate or assist the primary business, and substitute (替代性) positions can only be filled when regular employees take a leave of absence for study, vacation, etc. for a fixed period of time.”<sup>54</sup>

The use of interns from so-called vocational schools has also been documented in electronic factories like Foxconn. This practice is supported by local authorities,<sup>55</sup> who commit to supplying factories with a certain number of young workers. Students in their third year of vocational school are placed for three months to one year in such factories, as a condition of obtaining their school certificate. Sometimes they are not paid directly: the wage is paid to the school, which then gives the largest part of it to the “intern”. These interns have no systematic access to social benefits or insurance. It is impossible to assess the proportion of the workforce that interns represent because of an absence of statistical or other official data.<sup>56</sup>

### Health and safety

Health and safety are very important issues but were not the focus of the FIDH mission. This section is therefore limited in scope, and further research is needed in order to develop a more detailed assessment of the situation at factory level.

In the factories visited, management personnel were aware of hazards and eager to show measures taken in compliance with corporate social responsibility, including various safety measures, features and practices. Extractors for toxic fumes and machine guards on presses were notable examples. There was, however, considerable variation within factories between different parts of their production process, and huge differences between plants.

In factories using dangerous substances in their production process, workers are generally not informed about the nature of substances or their impact on health. As a consequence, workers often find it very difficult if not impossible to demonstrate the cause of occupational disease. This is complicated further where they are also not in possession of a copy of their labour contract, preventing them from demonstrating that they even worked at a given factory. Due to the long incubation

*Worker in Metal Department.*



53. For more information, see Pinset Masons, “Chinese agency workers will be entitled to equal employment rights from July”, Out-Law.com, 8 January 2013, available at: <http://www.out-law.com/en/articles/2013/january/chinese-agency-workers-will-be-entitled-to-equal-employment-rights-from-july/>.

54. “Revisions to China’s Labour Contract Law focus on abuse of employment agency system”, China Labour Bulletin, 28 June 2012, available at: <http://www.clb.org.hk/en/content/revisions-china%E2%80%99s-labour-contract-law-focus-abuse-employment-agency-system>.

55. SACOM, *New iPhone, Old abuses: Have working conditions at Foxconn in China improved?* 20 September 2012, available at: <http://www.waronwant.org/attachments/SACOM%20-%20%20New%20iPhone,%20Old%20Abuses%20-%2020-09-12.pdf>.

56. For more information, see “The Mass Production of Labour: The exploitation of students in China’s vocational school system”, China Labour Bulletin, 12 January 2012, available at: <http://www.clb.org.hk/en/content/mass-production-labour-exploitation-students-china%E2%80%99s-vocational-school-system>.

period for some occupational diseases, factories themselves can close down before symptoms present, and affected workers are no longer able to turn to their former employer for compensation. China's new Social Insurance Law provides that in such cases the local government will pay compensation, though in practice this does not generally happen.

Workers are supposed to undergo a medical check-up before they start a new job, but this often does not happen. Workers do not appear to be sufficiently trained on how to deal with toxic substances at work, nor on work health and safety.

## **Role played by international brands sourcing from China**

Some businesses have lobbied against more stringent labour regulations in China. For example, Hong Kong companies and investors, alongside the US and EU chambers of commerce reportedly lobbied the Chinese government to delay the adoption of the 2007 Labour Contract Law, or to water it down.<sup>57</sup> In another instance, the Hong Kong Chamber of Commerce opposed the adoption of a democratic management law in Guangdong because of the section on collective bargaining. As a result, although 37 local governments have now adopted such laws, Shenzhen and Guangdong have not done so.

However, most international brands and retailers have adopted voluntary codes of conduct and supplier codes setting forth social (and environmental) requirements for suppliers. Codes usually refer to international labour standards and compliance is checked through social audits conducted by international customers themselves or more frequently through international auditing firms. The methodologies and frequency of audits differ, as do responses to audit results on the part of brands. Nevertheless, efforts are underway to harmonize the practices of international buyers and strengthen their cooperation.<sup>58</sup>

The responsibility of corporations to respect human rights throughout their business relationships, including within their supply chains, is now widely recognized. The UN Guiding Principles on Business and Human Rights adopted in June 2011 and the OECD Guidelines for Multinational Enterprises both make clear that companies should perform due diligence as appropriate to identify, prevent and mitigate negative human rights impacts, in accordance with internationally recognized human rights and labour standards.<sup>59</sup>

### **Social audits**

Social audits have become routine for most export-oriented Chinese factories. Some factories undergo social audits as often as one to two times a month and thus now often have a dedicated staff in charge of social issues. One factory manager interviewed by FIDH seemed to consider that the way products are produced is none of the international brands' business: if the product is good, then the client should be happy, whatever the working conditions. However, the majority of managers interviewed understood the fact that international brands have requirements

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57. IHLO, "Hong Kong labour groups and unions demand Hong Kong companies to respect China's new labour contract law" (statement), 5 February 2008; Jeremy Brecher, Tim Costello, Brendan Smith, Foreign "Labor Rights in China", *Policy in Focus*, 19 December 2006, available at: [http://www.fpif.org/articles/labor\\_rights\\_in\\_china](http://www.fpif.org/articles/labor_rights_in_china); Global Labor Strategies Blog, "U.S. Corporations Opposing New Rights for Chinese Workers", Labor and Worklife Program of Harvard Law School, (undated), available at: [http://www.law.harvard.edu/programs/lwp/GLS\\_ChinaArticle.html](http://www.law.harvard.edu/programs/lwp/GLS_ChinaArticle.html).

58. See, for example, the Global Social Compliance Programme, at: [www.gscpn.com](http://www.gscpn.com).

59. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, March 2011 (A/HRC/17/31); *OECD Guidelines for Multinational Enterprises*, May 2011.

with regard to working conditions, and that these requirements needed to be complied with, whether they liked it or not. However, these individuals did not seem to be genuinely convinced of the importance of the issue, not only in ethical terms, but even in terms of reputational risks for the brands and themselves. As such, the temptation to engage in window-dressing to match social audit requirements remains prevalent. Surprisingly, however, despite their years of experience in responding to social audits, FIDH found that factory management personnel were not usually very sophisticated about hiding poor working conditions.

Regardless, social audits play an important role in securing decent working conditions because they contribute to exerting pressure on factory owners to improve such conditions. Some of the audits consulted by FIDH had clearly identified excessive overtime and other issues of concern. However, the effectiveness of such monitoring is conditional upon the regular and adequate follow-up of audit results and implementation of corrective action plans by international brands. Moreover, in order to be heard by factory management, attention on social issues should come from buying teams rather than a single social compliance officer acting alone; such issues must be integrated into commercial conversations.

There are also clear limits to what social audits can achieve. Freedom of association at factory level, the right of workers to freely elect their representatives, and the right to bargain collectively present themselves as a red line when it comes to such audits. This can be explained by two factors: (1) social audits and CSR represent a top-down approach, whereas freedom of association and the right to collective bargaining make workers the main actors of change – they are by definition bottom-up processes; (2) social audits are not adequate tools for assessing whether those rights are being respected because workers are frightened to raise concerns when interviewed on-site, and managers seem to engage in increasingly elaborate window-dressing on this point. Some managers referred to, and even shared with the FIDH delegation, guidelines on the election of workers' representatives at factory level that had actually just been compiled for auditors. Some workers were visibly asked to pretend to have been elected by workers. It is therefore important that social auditors are not fooled by the existence of so-called “workers' representatives”. Indeed, it may even be that social audits, by encouraging fake employee representatives to be appointed by management, further inhibit any space for spontaneous worker organization.

FIDH was able to identify a number of mistakes and weaknesses in the social audit reports for the factories visited. Mistakes ranged from references to the existence of ACFTU representatives (mentioned in the audit, but appeared not to be true) to the fact that workers knew that there were workers' representatives (while this was not actually the case). The audits also accepted local government waivers that are in blatant contradiction of Chinese law regarding the limits on overtime work, or concerning the obligation to contract social insurance for workers. The acceptance of such waivers by auditing firms allows companies to obtain acceptable social audit scores, when they should not. The audits also did not address the issue of successive short-term labour contracts.

In spite of the errors and misjudgements made by auditors and the inherent limitations of social audits, they nevertheless remain useful in spotlighting certain issues of concern and are a good basis on which to start discussions on corrective actions with suppliers. However, in order to be truly useful, sourcing teams must take ownership of audit content, pay attention to general working conditions in the factories they visit and discuss social issues with suppliers

on a regular basis, including corrective actions. It should be made clear that social requirements are as important as quality and delay. If suppliers see low audit scores as entailing no consequence, the incentive to upgrade working conditions remains negligible.

### **Certification schemes**

One factory visited held an SA 8000 certificate, a standard developed by Social Accountability International (SAI), which refers to international labour standards. In order to obtain this certification, a company must comply with local laws. Moreover, in no case should regular working hours exceed 48 hours a week, or overtime 12 hours a week, which is considerably higher than local regulation standards. The company's social audit results highlighted that the factory systematically exceeded the maximum overtime allowed under Chinese law, as well as the 60 hour a week limit required for SA 8000 certification; this was confirmed during interviews carried out by FIDH. Moreover, acknowledging restrictions on freedom of association in certain countries, the SAI standard requires the factory to have at least elected workers' representatives. It was obvious from interviews with both management and workers that workers' representatives committees had been set up by the factory management itself.

Another factory had obtained an ICTI (International Council of Toy Industry) certificate based on the ICTI Code of Business Practice, which appears to apply weaker standards though requires that factories comply with standards set by national law. This factory, like the others visited by the delegation, significantly exceeded the maximum overtime authorized under Chinese law, as workers worked 10 hours a day, 6 days a week on a regular basis.

This information raises questions about the ability and/or independence of certifying bodies, as well as the regularity of the monitoring process, once such certification has been obtained.

### **Training programmes**

Some brands have been supporting training at factory level in their supply chains over several years in cooperation with NGOs. These training events concern labour laws and occupational health and safety issues. This has helped to open factory doors to NGOs, though such initiatives have faced strong reluctance from factory owners and cannot touch on issues relating to worker empowerment (right to organise, right to collective bargaining). The general feeling among NGOs met by FIDH in Hong Kong was that such trainings should now focus on workers' representation systems and worker/management dialogue, as well as aiming to empower workers and strengthen their negotiating skills. However, most groups are reluctant to provide trainings inside factories, preferring to inform and build the capacity of workers outside of the workplace.

Some brands have set up hotlines for workers in their supply chains.<sup>60</sup> Here, calls are directed either to the international brands' internal teams or to NGOs or CSR consultancies. Groups managing such hotlines say that they receive a significant number of calls from workers, and that problems are then reported to the brand. Where such schemes are well thought out and worker identities adequately protected, they may be a good way of getting genuine information

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60. Examples include the hotlines set up by the Institute for Contemporary Observation for workers in the supply chain of several brands including Burberry and Nike. Adidas group has been working with China Labour Support Network (CLSN) and a group called Handshake. Chinese Working Women Network (CWWN) used to run a workers hotline for HP suppliers. The International Council of Toy Industries' has set up a worker helpline said to be available to factory workers in 2,400 toy factories participating in the ICTI CARE Process (ICP).

on working conditions from workers themselves. However, it is difficult to assess how brands are actually responding to the problems reported concerning their suppliers. International brands should consider extending this kind of system. Hotlines should preferably reach an independent local group that workers can trust. Addressing workers' calls to an independent labour support group that is able to inform and advise workers on their rights might also be more effective to secure rights protection.

## **Purchasing practices**

### ***Number and stability of suppliers***

All of the factories visited were producing goods for several customers (over 10). That none had dedicated too large a part of their production output to one buyer was clearly a strategy designed to ensure that they were not economically dependent on a single client. Having a large number of customers also allowed them to even production levels during the year to cope with seasonal production demands. This seems to reflect a general trend in China where international customers often represent a very low percentage of a factory's turnover. It is also policy for some international brands not to have a too large a share of their production needs met by one supplier, to avoid dependency and maintain bargaining power.

The leverage of individual brands is thus often low. The coordination of a common approach and discourse among different brands towards their suppliers is therefore all the more important. However, despite current efforts to harmonize social auditing practices at the global level, FIDH did not find cooperation amongst international customers to be effective in practice on the ground. Indeed, retailers and brands remain cautious about divulging to competitors the names of their suppliers.

### ***Lead times, organisation of production***

Consumption and sourcing patterns have evolved rapidly over the years. Some products are seasonal, like in the textile sector where there are at least four seasons for the European and US markets. Other products need to be on the shelves immediately after the sales, or are particularly demanded before Christmas. Brands and retailers seek to reduce to a minimum the number of days in inventory because of the costs this represents and the risk of being left with significant quantities of unsold products. This clearly impacts on production cycles and requires factories to adapt to diverse levels of production depending on the time of year and actual sales.

Although factories in different sectors of production face different challenges, in all fields, FIDH representatives believe that the trend is for shorter lead times: the later you start production, the better it is because the buyer can get a better understanding of the market and thus of the quantities needed. In the garment sector, this trend is illustrated by the fact that there are now 8 to 10 collections in one year in the fashion industry. This contributes to increasing pressure on workers, who constantly need to adapt to the manufacturing processes for new items, affecting their productivity and thus potentially their wage, where piece rates are paid. Short lead times may also trigger subcontracting when factories are unable to cope with orders, particularly where orders are placed shortly before the Chinese New Year.

Another issue raised by factory owners (especially, though not only, in the garment industry), is the time needed to approve products. For example, a single item of underwear can require dozens of approvals at each stage (different textile colours, textile quality, sizing, fitting, etc).

Technical solutions can be developed to reduce the burden of approval processes (e.g. the use of spectro-photometres to assess colour instead of sending samples). Large brands can save time by having local sourcing teams. However, the buyer's organization and internal processes are the most important factors in managing this aspect of production. Dialogue between buyer and supplier on the basis of a long term relationship seems crucial to the smooth organisation of production.

### ***Terms of payment***

Terms of payment by international customers can generate cash flow difficulties, especially where raw materials are bought in Europe by a supplier who needs to pay for them immediately. For example, some international brands pay their suppliers only 90 days after freight on board (FOB – the moment when products are shipped). Others pay 30 days after FOB. In the garment industry, some brands pay immediately for the raw material needed to produce items, or may even buy such materials themselves, which avoids cash flow problems for the supplier. These buying practices can impact on when workers are paid, and can result in late payment of wages – a major cause of labour-related incidents.

### ***Recourse to importers and other intermediaries***

International brands can source in China through their sourcing office, but can also do so through direct importers. Here, social audits are not necessarily carried out at factory level, and it is not clear how social compliance is integrated into purchasing decisions by such importers. FIDH considers it crucial that all suppliers in China are subjected to social audits, whatever the purchasing channel, and that the results of such audits be integrated into criteria for deciding from which factory to source.

### ***Readiness to re-negotiate prices after a wage increase***

As wages have been on the rise in China over the past few years, the prices of Chinese products are inevitably increasing. International brands should be ready to renegotiate prices agreed with source factories when those factories are implementing salary increases, in the same manner as they do for increases in the price of raw material. Such burdens cannot rest with the Chinese supplier alone, but should be shared equitably with the international buyer. Practices in this regard seem to vary widely from brand to brand.

# Conclusion and recommendations

In several of the factories visited, the number of workers employed had decreased over the past year, sometimes significantly. In at least three of the five factories visited by FIDH the management said that they had faced a reduction in orders from customers. This situation is the result of a consumption phase down occasioned by the economic crisis in Europe. It is also due in part to increases in the price of raw materials and labour costs, China now being less competitive for labour intensive industries. For example, at the beginning of 2012 the Federation of Hong Kong Industries estimated that more than 2,000 Hong Kong-owned factories in Guangdong may close in 2012 as export orders fall and wages rise.<sup>61</sup> In striving for productivity gains, Chinese factories are trying to reduce their workforce by increasing automation.

In a globalized economy, rising labour costs in China will entail a number of consequences. International buyers are tending to progressively shift part of their sourcing from China to South East Asia, including Cambodia, Vietnam and now Burma.<sup>62</sup> This is particularly true for labour intensive industries such as textiles.<sup>63</sup> It has even been reported that some Chinese factory-owners are moving their own production to countries offering cheaper labour.

This shift is worrying where social and environmental issues are not taken into account, as it then represents a race-to-the-bottom. If lowest price is the only criteria for deciding from which country to source a product, Chinese factories will be put at a disadvantage because of improvements in working conditions in China, which necessarily entail higher production costs.

Corporations sourcing from China can and already do have a huge impact on working conditions in the country. Social audits are necessary to verify certain aspects of respect for labour rights and to exclude the worst factories. They have undoubtedly contributed to an improvement in working conditions in the export-oriented factories under scrutiny, in particular as regards child labour or the payment of the minimum wage. However, there are clear limits to what social auditing and CSR schemes can achieve for workers.

Ultimately, the task of improving labour rights lies with workers themselves. International brands should therefore support such efforts, make clear that respect for Chinese labour laws is a minimum and non-negotiable requirement, and refrain from blocking worker attempts to have their rights respected.

Importantly multinational corporations with a direct presence in China should not undermine workers' rights in their own activities. On the contrary, they should strictly abide by the highest protection standards. True collective bargaining with elected workers' representatives is

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61. "Guangdong factories may close as exports falter", *China Daily*, 17 July 2012, available at [http://www.chinadaily.com.cn/business/2012-07/17/content\\_15590446.htm](http://www.chinadaily.com.cn/business/2012-07/17/content_15590446.htm).

62. "China Begins to Lose Edge as World's Factory Floor", *The Wall Street Journal*, 16 January 2013, available at <http://online.wsj.com/article/SB10001424127887323783704578245241751969774.html>.

63. "Higher costs forcing firms to relocate", *China Daily USA*, 21 October, 2012, available at: [http://usa.chinadaily.com.cn/business/2012-10/21/content\\_15834957.htm](http://usa.chinadaily.com.cn/business/2012-10/21/content_15834957.htm).

the best way of guaranteeing sustained respect for workers' rights. FIDH has thus encouraged Carrefour to engage with collective bargaining as permitted under Chinese law in its supermarkets in China. Other international retailers<sup>64</sup> and brands with direct presence in China, should also consider urgently such development.

## Recommendations

### To the Chinese government:

#### On labour-related issues

- Strengthen the labour inspection system to make sure it has adequate resources to undertake its work and address corruption among labour inspectors;
- Make sure local governments do not adopt waivers incompatible with national laws, notably concerning overtime work and social insurance;
- Better implement provisions protecting agency workers, including amendments to the Labour Contract Law adopted in December 2012, and regulate and restrict vocational school internships;
- Encourage self-nomination by workers as candidates for union elections at factory level;
- Support the direct election of workers' representatives at factory level;
- Extend the protection afforded to ACFTU officials against retaliation by employers to all elected workers' representatives at factory level;
- Ensure that benefits under the Social Insurance Law can actually be transferred between regions, and ensure greater compliance by employers;
- Ratify ILO Conventions 87 and 98, as well the International Covenant on Civil and Political Rights; and withdraw China's reservation to Article 8 of the ICESCR; ratify the Optional Protocol to the ICESCR;
- Fully cooperate with UN mechanisms and extend standing invitations to all Special Procedures.

#### Generally

- Sever the link between social services and the *hukou* system with a view to eventually abolishing the *hukou* system;
- Lift restrictions on NGOs/independent labour groups, which are a necessary ingredient of social peace and a harmonious and rights-based society; and
- Further professionalise and move towards securing an independent judiciary.

### To the ACFTU:

- Support genuine direct elections at factory level, targeting as a priority those factories in which workers are already organising strikes and protests;
- Promote awareness among workers of the significance of and procedures for direct union election, including taking the lead in setting up preparatory committees for union election; and
- Work with international trade unions to learn and develop China's own collective bargaining system.

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64. The collective bargaining agreement reached between Walmart and ACFTU in 2008 has been much debated. For an insight, see : CLB, Workers accrue little benefit from Walmart's much publicized collective labour contract, 20 May, 2009 and Anita Chan, Wal-mart workers in China, September 29, 2008.



## **To the owners and management of Chinese factories:**

- Respect legal requirements on working hours, social security, wages and occupational health and safety;
- Refrain from outsourcing “dirty work”, and improve health and safety standards for the most hazardous work stations;
- Inform workers about hazardous substances used in the course of their work and provide protective gear, in conformity with Chinese law;
- Refrain from setting up distinct corporate structures to avoid scrutiny from international brands;
- Genuinely engage with collective bargaining and allow the free election of workers’ representatives to enable workers to engage in collective negotiations;
- Refrain from selecting workers to participate in workers’ committees purely for the sake of social auditing;
- Provide long term contracts to workers after two consecutive short term contracts or 10 years working at the factory, as required under the Chinese Labour Contract Law;
- Pay a living wage to workers; and
- Avoid using the piece rate system, or at minimum, ensure that targets correspond to what a large majority of workers are capable of producing.

## **To business enterprises sourcing from China:**

### **On consistency between brand policies**

- Multinational corporations and retailers with a direct presence in China should genuinely engage in the negotiation of collective agreements with elected workers’ representatives, and refrain from blocking efforts by workers and labour groups to engage in such negotiations;
- Commit to the payment of living wage for legal working hours and foresee in the contract with suppliers the revision of prices paid to suppliers where minimum wages increase.

### **On transparency**

- Publicly disclose the list of their suppliers in China;

### **On purchasing practices**

- Make sure that social compliance is fully integrated into purchasing practices, and adopt the necessary tools and carry out the needed trainings in that regard;
- Build the capacity of sourcing teams working with China by training them on the basic provisions of Chinese labour law as well as the evolution of labour issues in order to strengthen their understanding of the issues at stake and the evolving trends, and adequately analyze social audits;
- Make efforts to extend lead-time and shorten sign-off procedures, particularly in the garment sector, in order to allow suppliers to better organize production and workers’ hours;
- Shorten schedules for payment to suppliers to avoid cash flow issues which may cause arrears in the payment of wages to workers;
- Refrain from shifting sourcing to cheaper countries without a comprehensive prior assessment of social and environmental issues in those countries;
- Establish a constant dialogue with suppliers to foster a longer and more stable relationship that will allow for the more effective organisation of production and respect for legal working hours;

### **On the scope of social audits and other social compliance monitoring mechanisms**

- Make sure that any factory supplying the corporate group is covered by an equivalent control system on social and environmental compliance, including importers, agents, suppliers working with different business units and other relevant parties;
- Make requirements regarding human rights at work clear to suppliers and specify that these standards are as important as quality requirements;
- Incorporate social requirements into contracts with suppliers, where this has not already been done;
- Pay special attention to hazardous activities within workshops and make a point of detecting activities that are being outsourced;
- Extend controls to sub-contractors and/or supplying factories of first tier suppliers and make this clear in contracts;
- In view of the inherent limitations of social audits, establish a hotline to assist workers in case of difficulty at factory level. Such hotlines should be established in partnership with independent labour groups in Hong Kong or mainland China;

### **On social audits in particular**

- Require auditing firms not to take into account waivers by local governments that contradict national legislation (in particular concerning overtime and social insurance coverage);
- Speed up cooperation efforts amongst brands at the international level to harmonize social auditing practices, and more importantly to increase their leverage to address common messages to suppliers and government authorities; and
- Sensitize suppliers to the risks they face with non-compliance, establish time bound corrective action plans and monitor them closely.

### **To auditing firms:**

- Carefully assess workers' representation at factory level. Do not upgrade factories where workers' committees are set up in view of current situation in Chinese factories in this regard;
- Do not take into account so-called waivers from local governments endorsing lower protections than those offered under national law, as such waivers constitute a violation of Chinese law;
- Check whether workers possess copies of their labour contracts and whether they are able to keep their previous contracts when asked to sign a new one;
- Randomly check through the online social security system whether workers are adequately covered by social security.

### **To home states of business enterprises sourcing in China:**

- Require from businesses under their jurisdiction to conduct human rights due diligence throughout their supply chain, in particular require from businesses to publicly report on the human rights impacts in their supply chain and on measures taken to mitigate adverse human rights impacts; ensure adequate sanctions are in place for failing to act with due diligence
- Require disclosure of manufacturing sites of products made in China.

### Establishing the facts

#### Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### Supporting civil society

#### Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

#### Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### Informing and reporting

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FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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**human rights organisations**  
on **5** continents

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A non-governmental organization founded in Hong Kong in 1994, **China Labour Bulletin** has grown from a small monitoring and research group into a proactive outreach organization that seeks to defend and promote the rights of workers in China. CLB has extensive links and wide-ranging co-operative programs with labour groups, law firms and academics throughout China, as well as with the international labour movement.

Through these programs, CLB supports the development of democratically-run trade unions, encourage respect for and enforcement of the country's labour laws, as well as the full participation of workers in the creation of civil society. CLB seeks the official recognition in China of international standards and conventions providing for workers' freedom of association and the right to free collective bargaining.

[www.clb.org.hk](http://www.clb.org.hk)

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Design: Bruce Pleiser

Photographs: FIDH

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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

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