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16 January 2023

ITUC/LEX/HTUR/zmg/pda/mw

**Written submission on the upcoming consideration of the 4rd report for Hong Kong, China, at the CESCR’s 73th session (13 Feb 2023 - 03 Mar 2023)**

**To the Office of the CESCR**

The International Trade Union Confederation (ITUC) welcomes the opportunity to make a written contribution on the human rights situation in Hong Kong, China, to inform the works of the CESCR’s 73rd session taking place between 13 February and 3 March 2023.

We are providing the attached submission with the hope of supporting the development of your Concluding Observations in connection with the consideration of the Hong Kong’s 4rd periodic report.

Yours sincerely,

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Owen Tudor

Deputy General Secretary

**Written submission on the upcoming consideration of the 2nd report for Hong Kong, China, at the CESCR’s 73th session (13 Feb 2023 - 03 Mar 2023)**

**ITUC**

**Submitting organisation:**

The International Trade Union Confederation (ITUC) represents 200 million workers in 163 countries and territories and has 332 national affiliates. The ITUC’s primary mission is the promotion and defense of workers’ rights and interests through international cooperation between trade unions, global campaigning, and advocacy within the major global institutions. Its main areas of activity include the following: human and labour rights; economic and social policy; equality and non-discrimination; and international solidarity. The ITUC enjoys General Consultation Status with the UN ECOSOC.

**Summary:**

The International Trade Union Confederation makes the following observations with respect to the Government of Hong Kong's obligations under ICESCR.

The ITUC and the international trade union movement are deeply concerned with recent developments in Hong Kong SAR after the enactment of the PRC National Security Law in Hong Kong (NSL) adopted by the PRC National People’s Congress in July 2020. The lack of legal clarity of the offences under the NSL, the overly broad interpretation and implementation of the law and its implementation rules have unduly restricted a wide range of rights under the ICCPR including article 22on freedom of association (CCPR/C/CHN-HKG/CO/4[[1]](#footnote-2)). In less than 3 years, 213 activists have been arrested under NSL, 125 of been charged and 72% of the charged are denied bail including 3 trade union leaders on alleged charges of conspiracy to commit subversion and inciting subversion[[2]](#footnote-3).

The ITUC affiliate, the Hong Kong Confederation of Trade Unions (HKCTU) was effectively forced to invoke the procedure of disbandment in reaction to persistent stigmatization by state media of threatening national security, vilification and attacks on its activities and the use of security forces and the judiciary to intimidate and harass it members for exercising trade union rights and civil liberties.

The HKCTU’s decision of disbandment is not an isolated incident but a part of the process of the dismantling of the civil society in Hong Kong since the National Security Law in Hong Kong was enacted in July 2020. In a similar way the authorities attacked outspoken and pro-democracy civil society organizations, trade unions and media organisations leading to the dissolution of more than 100 of them, such as the Hong Kong Alliance in Support of the Patriotic Democratic Movements in China (the Hong Kong Alliance) and relocation of domestic and international human rights organisations~~.~~

At the same time, trade union leaders are facing unprecedented attacks, intimidation and harassment. Lee Cheuk Yan, the General Secretary of the HKCTU and the Chair of the Hong Kong Alliance is currently in jail, being sentenced for organizing and participating in several protests. He faces separate national security prosecution under the National Security Law that could lead to life in prison. Several other trade unions leaders are being prosecuted under the National Security Law, including chair of the Hong Kong Confederation of Trade Unions (HKCTU), chair of the Hospital Authority Employees Alliance (HAEA) and chair of the Nurse Trade Union, who have also been forced to resign from their posts.

The authorities use oppressive laws, such as the National Security Law, Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation (Cap. 599G), Crimes Ordinance, Trade Union Ordinance, to harass trade unions and their leaders, despite the fact that each of these laws have been criticized for their incompliance with the international human rights and labour standards. Simultaneously, the state-owned media organize the ongoing smear campaign against trade unions and their leaders systematically accusing both national and international trade unions of criminal collusion and threatening national security.

In the submission, we raise the following concerns:

* Forced dissolution and de-registration of trade unions
* Prosecutions of trade unionists for legitimate trade union activities
* Increased interference and harassments to trade union activities
* State media’s campaigns against trade unions
* Application of the NSL at the workplace

Background

The last (third) review of Hong Kong, China’s compliance with the ICESCR took place in 2014. In relation to the current (fourth) periodic report and the adoption of the list of issues at the 68th session (9-21 March 2021), the CESCR has requested the Government of Hong Kong, China, to provide the following information regarding trade union rights (Article 8 CESCR):

Trade union rights (art. 8)

1. Please provide information on any steps taken to address the criticism that domestic laws, including the Trade Union Ordinance, the Public Order Ordinance and the national security law, hamper the exercise of the rights guaranteed in article 8 of the Covenant. Please indicate how effective the Employment (Amendment) (No. 2) Ordinance 2018 has been in ensuring the reinstatement of workers dismissed on unreasonable or unlawful grounds, including relevant statistical data in this regard. Please indicate what measures have been taken, if any, to combat discrimination and intimidation against workers engaged in trade union activities and what investigations have been carried out into such cases and their outcomes.
2. Please provide information on any legislation or policies adopted to strengthen the collective bargaining framework in terms of its scope, protection and enforcement. Please also provide information on the number of collective agreements concluded, the sectors to which they apply and the number of workers covered, and on any efforts made to increase the coverage of collective agreements. Please indicate what steps have been taken, if any, to consider allowing public servants not engaged in the administration of the State to exercise the right to collective bargaining.

We deplore the drastic decline of respect for trade union rights in Hong Kong in a changed context of the prevalence of the NSL over rights protected under the ICCPR, ICESCR and ILO Convention No.87 on freedom of association, and its broad application to criminalise critical trade unions and civil society organisations. Trade union rights are seriously under attack. We are providing the following comments with the hope of supporting the development of your Concluding Observations in connection with the consideration of the Hong Kong, China’s fourth periodic report.

De-registration and forced dissolution of trade unions

The anti-union campaign by the Chinese and Hong Kong SAR authorities, deregistration of trade unions by the authorities, application of the National Security Law and prosecutions against trade unionists, interference and harassments to trade union activities and restrictions on public access to information has pushed trade unions to dissolve their structures. Trade unions were not able to freely organize their activities and they feared for safety of their members. As a result, the following trade union organizations, including the HKCTU, have started their dissolution:

* On 3 October 2021 the emergency general meeting of the HKCTU adopted its decision to dissolve the organization given impossibility to organize trade union activities and administration and fear for personal security of its leaders and members.[[3]](#footnote-4) The chief executive of HKCTU was forced to relocate to the UK before the union disbandment for fear of his personal security. HKCTU Education Foundation Limited, a charity non-profit making company under the HKCTU to provide vocational, labour law, occupational safety and health trainings to workers decided to suspend new training courses after HKCTU’s self-disbandment. Chinese state media has been accusing the foundation of receiving foreign funds and donations from the international trade union solidarity organisations. On 12 May 2022, the foundation decided to dissolve itself due to un-mitigated political risks and concerns about the safety of its members[[4]](#footnote-5).
* ON 13 April 2022, the Hong Kong Journalists Association (HKJA) convened an extraordinary general meeting to consider disbanding as some members are worried about the future of the organization and the safety of its members. HKJA, and its chair have been subject to open threats and smearing campaigns by the authorities and Chinese state media[[5]](#footnote-6). The police has alleged collusion and seditious publications crimes to prosecute 15 news media executives and journalists leading to the closing of the Next Media Group and Apple Daily under it on 24 June 2021, the non-profit news outlets, Stand News on 29 November 2021 and Citizen News on 4 January 2022.[[6]](#footnote-7)

62 trade union organizations have taken the decision about dissolution including:

* Hong Kong Professional Teachers’ Union (HKPTU), the largest independent trade union of 95 000 members with 48 years history,
* Medicine Inspires, a professional organization of medical professional and doctors formed in 2015 to advocate policies, human rights and represent the medical profession in functional constituency elections,
* Union of New Civil Servants (UNCS)
* Hong Kong Pharmaceutical and Medical Device Union,
* Hong Kong Educators Alliance,
* Frontline Doctors’ Union,
* Hong Kong Pharmaceutical and Medical De­vice Union,
* Financial Technology Professional Services Personnel Union,
* Hong Kong Teaching and Re­search Support Staff Union and Next Media Trade Union (NMTU).

Furthermore, since 2021 the Registrar has invoked Section 10 of the Trade Union Ordinance (which allows cancelling of a trade union registration if ‘the trade union is being used, or has at any time since registration been used, for any unlawful purpose or for any purpose inconsistent with its objects or rules” as basis for deregistration proceedings of 11trade unions including the following:

* the Hong Kong White Collar (Administration and Clerical) Connect Union (HKWCCU) in December 2021;[[7]](#footnote-8)
* the Hong Kong Financial Industry Employees General Union (HKFU) in December 2021; and
* the Hong Kong Journalists Association (HKJA) in January 2022.

Another legal base used for trade union deregistration was Article 34 of the TUO which prohibits the use of trade union funding for “political” purpose. Provisions of the TUO were interpreted very broadly. The authorities were opening deregistration procedures while simultaneously demanding excessive amount of information from trade union organizations. The labour authorities argued that these actions were part of the government's new duties under the National Security Law.[[8]](#footnote-9)

We demand immediate measures to revise the restrictive provisions under the TUO not compatible with trade union rights and the ICESCR and guarantee unhindered activity of the independent trade unions.

Increased interference and harassments to trade union activities

The authorities used several legal instruments to impose excessive information surveillance and investigation on trade unions and related civil society organizations. Following the forced decision of self-disbandment made by the HKCTU, four of the former executives including- ex-general secretary of the HKCTU Lee Cheuk Yan, in prison, were served notice by police on 17 February 2022 to provide detailed information on the administration of the defunct union under section 15 of [Cap. 151](https://www.elegislation.gov.hk/hk/cap151?xpid=ID_1438402725317_002) [Societies Ordinance](https://www.elegislation.gov.hk/hk/cap151?xpid=ID_1438402725317_002).[[9]](#footnote-10) The executives were asked to provide details of the union’ activities, finances, affiliation information, as well as the names and contacts of its members, office-bearers and the union’s webpage administrator. The four leaders were liable to summary conviction of a fine of USD 3,185 under Article 16(2) of the Societies Ordinance if they failed to provide information or provide false information.

Later, on 31 March 2022, the 3 executives and Lee were taken by national security police for alleged failure to provide information.[[10]](#footnote-11) The national security police also searched the homes of the four leaders, the HKCTU’s office in Yau Ma Tei which was shared with the affiliated unions before its self-disbandment, as well as the union training centre and the union’s rented storage unit to take away their personal computers and data as well as union materials. The three executives were charged and released the next day after surrendering their travelling documents. They were summoned to court on 1 November and fined of HKD8,000 each.

State media’s campaigns against trade unions

Since July 2021, Chinese state media began to lodge smearing campaigns targeting pro-democracy trade unions. On 30 and 31 July 2021 Chinese state-owned Xinhua News and the People’s Daily in Beijing aired an item about the Hong Kong Professional Teachers’ Union (HKPTU) in which the trade union was called a political organization, condemned for its long-term participation in the local democratic movement, accused of “inciting” teachers and students to join the anti-extradition protests and general strikes in 2019 and called ‘a tumor to be removed’. The union’s insistence on education autonomy and opposition to the revision of the syllabus of liberal studies were labelled as antigovernment. The HKPTU has been a target of similar media attacks throughout August 2021. Later materials by the same media included calls on members to quit the HKPTU and on the authorities to criminally investigate the organization.The same media aired materials on the Hong Kong Confederation of Trade Unions (HKCTU) and its international affiliations and contacts, including with the ITUC as evidence of collusion with foreign forces. In August, the HKCTU was accused of reception of foreign funding, instigating unlawful labour strikes, supporting creation of “radical” anti-government trade unions. On 3 September 2021, the HKCTU and its leaders were attacked by Xinhua News and the People’s Daily for affiliating with the ITUC and participating in the activities of the ITUC. On 1 and 2 April 2022, the Chinese state media continued to accuse the dissolved HKCTU of various crimes of collusion. The media also were accusing the ex-staff of the HKCTU and its affiliated organizations for “still being active”.[[11]](#footnote-12)

Hong Kong Journalists’ Association was called a seedbed of fake journalists that impeded the police’s operations in the protests in 2019. The union’s activities to promote press freedom in schools were called infiltrations to intoxicate students with wrong ideologies. The Secretary for Security on 15 September 2021 further urged the union to disclose its membership and income sources.

A number of trade unions formed during the anti-extradition bill protests in 2019 were named and their activities were labelled as political and of antigovernment character

The anti-union campaign by the state media seriously hampers trade unions’ ability to organize their activities and to liaise with their partners without fear of arrest and prosecution.

Prosecution of trade union leaders

Lee Cheuk Yan**,** General Secretary of Hong Kong Confederation of Trade Unions (HKCTU) was prosecuted for 10 criminal offences in 5 instances of public protests. He received an 18-month suspended sentence of 14 days’ imprisonment on 10 March 2021 for staging the May Day protest in front of the Government Office in 2020 in breach of the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap 599G). He was sentenced to 20 months’ imprisonment for participation in the protests on 18 August 2019, 31 August 2019, 1 October 2019 and 4 June 2020 in breach of the Public Order Ordinance (POO). He had served the sentences in October 2022 but he remains under remand for alleged crime of inciting subversion under the NSL in a fresh prosecution against him as chair of the Hong Kong Alliance in August 2021 of which the HKCTU was a member organisation.

Two other trade unionists charged of conspiracy to commit subversion under the NSL for taking part in the primary election of pro-democracy candidates in the 2020 election of the Legislative Council have remained remanded under the stringent bail conditions stipulated in article 42 of the NSL :

* The high court judge rejected the request for bail of the former chair of the defunct HKCTU on 20 December 2021 on the reason that her trade union background and connections with international trade unions were allegedly the evidence that “she has an international influence as a result of her trade union work, therefore, it would be very easy for her to connect with her colleagues aboard to further the hostility against the authorities ([HCCP 193/2021](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143817&QS=%2B&TP=JU), 28 April 2022).[[12]](#footnote-13) She has already remained for more than a year in prison since her arrest on 28 February 2021.

- The former chair of the Hong Kong Employees of Hospital Authorities (HAEA) who was charged on the same offence was released on 28 July 2021 on conditional bail that imposed a curfew, weekly reporting to the police, harsh restrictions on freedom of speech, acts and contacts with anyone with a “link” to a foreign government, as well as prohibition to take part in all kinds of election, including trade union elections. She was however re-arrested on 7 March 2022 for allegedly violating bail terms, probably in relation to the online posts she made criticizing the hospital authority’s handling of the Covid 19 outbreak and expressing solidarity with the frontline healthcare workers in 2022.[[13]](#footnote-14) The magistrate court revoked her bail on 8 March 2022 and her bail request with the high court was refused on 20 April 2022.

Five executives of the General Union of Hong Kong Speech Therapists (GUHKST) were arrested by national security police on 22 July 2021 and later charged of conspiracy to print, publish, distribute, display and/or copy seditious publications under Section 10(1)(c), 159A and 159C of the Criminal Offences Ordinance which had not been used for criminal prosecutions since the 1960s. The three picture story books for children published by the union in 2020 which are based on the pro-democratic protests, the advocates and the labour strike of the healthcare workers in 2019 and 2020 were alleged of inciting hatred against the government and the judiciary, promoting violence and provoking non-compliance with the laws. The procedure under the NSL however was applied to freeze the bank account and assets of the union and the stringent bail conditions under article 42 of the NSL was applied to deny bail to the union executives. The GIHKST was forced to disband itself without its executives and de-registered by the Trade Union Registry in October 2021. On 7 September 2022, the 5 executives were sentenced to 19-month imprisonment.

Impact of national security laws on labour regulation

We also observe the negative impact of national security laws on labour regulation. According to reports, the Department of Labour (DoL) is proceeding to add a catch-all offence, “acts endangering national security” under schedule 1 of the [TUO](https://www.elegislation.gov.hk/hk/cap332?xpid=ID_1438403018519_004), and under schedule 2 of the Social Workers Registration Ordinance (SWRO).[[14]](#footnote-15) The addition would entail, under section 17(3) of the TUO, trade union de-registration or punishment of the convicted person, namely a 5-year ban from taking office in a trade union.[[15]](#footnote-16) A registered social worker, under the amended SWRO to be gazetted in May 2022, will be disentitled to be or continue to be a registered social worker.[[16]](#footnote-17) The Hong Kong Social Workers’ General Union fears that the broad scope of the proposed new offence allows for arbitrary interpretation to threaten social workers from assuming their legitimate role of defending social justice, human rights protected under the SWRO. Their normal work to assist clients, criticize government policies, as well as international exchange and receiving foreign fundings etc. could fall foul under the amended schedule.[[17]](#footnote-18)

Protection against acts of anti-union discrimination

The Employment (Amendment) (No.2) Ordinance 2018 was passed by the Legislative Council on 17 May 2018 and gazetted on 25 May 2018 to authorize the court or the Labour Tribunal to order compulsory reinstatement or reengagement of an employee in the event of unlawful termination if it is considered appropriate and practicable. A penalty of three months of the victim’s average salary not exceeding the ceiling of HKD72,500 (approx. USD9,300) is stipulated for failure on the employer’s part to observe the reinstatement or reengagement order.

However, successful prosecutions of unlawful dismissals for reason of anti-union discrimination has been rare. Only a handful of successful cases of reinstatement for unlawful dismissal for reason of anti-union discrimination have been reported since the enactment of in 1974. It is extremely difficult to prove employer’s covert intent in criminal proceedings. The amended ordinance allows discretion and the penalty is not dissuasive enough to ensure employers’ compliance with the reinstatement order. On the contrary, it is customary practice for employers to dismiss members and non-members of the trade union for exercising their rights by giving one month notice or payment in lieu of notice under section 6 and 7 of the EO.

Promotion of collective bargaining

The rate of collective bargaining remains less than 1 percent. The government has no intention to bring the domestic laws in line with Convention No.98 and legislate protection of the right to collective bargaining in Hong Kong. In a handful of companies where employees are recognized, there is no legal framework to regulate the scope, protection and enforcement of the agreement collectively bargained with the trade unions.

In July and November 2020, Cathay Pacific unilaterally ended the union recognition agreement and the Good Faith Bargaining Agreement that had underpinned many years of constructive engagement with the Hong Kong Aircrew Officers’ Association and with the Flight Attendants Union, the latter, to which 75% of the company’s cabin crew belong, calling these agreements “outdated and outmoded” and “no longer relevant to the modern world.” On 21 October, the company laid off 6000 pilots and cabin crew and imposed a new Condition of Service (CoS20) to employees to sign before 4 November without prior consultation with the FAU that cut their pay and conditions by between 30 and 40 per cent. That new contract also contains clauses to ensure that any new agreement reached with the union would not apply to the whole workforce.

Right to strike

The right to peaceful picketing by an individual employee or a registered trade union is restricted only to the furtherance of a labour dispute (section 46 of the Trade Union Ordinances or TUO), and at an appropriate time outside the working hours or within the working hours with the consent of the employers (Section 21B (3) of the EO). There is little protection for employees and trade unions to exercise these rights meaningfully at the workplace and during the working hours due to the absence of collective bargaining legislations and reinstatement protections.

On 3 February 2020, 9000 healthcare workers and members of the Hospital Authority Employees Alliance (HAEA) staged a 5-day strike in public hospitals to demand adequate personal protection equipment to health care workers and a dialogue with the Chief Executive to restriction cross border travelling to Hong Kong. The [Chief Executive](https://www.ejinsight.com/eji/article/id/2368105/20200203-hk-to-close-more-border-crossings-as-hospital-workers-strike) accused the strike as extremist actions and refused to dialogue. The [Hospital Authority](https://hongkongfp.com/2020/02/27/coronavirus-hong-kongs-hospital-authority-targets-medics-went-strike-urge-border-closure/) (HA) emailed all staff on 26 February denounced the strike and the mass absence a breach of the law and threatened with disciplinary action. The striking staff were asked to give written account of their absence and their salary was deducted.

**Conclusions**

The wide-spread anti-trade union discrimination, combined with application of oppressive laws contravene the trade union rights contained in the ICESCR. International action is therefore needed to urge the government of HKSAR to take effective measures to respect, protect and fulfill its obligations under international human rights law.

Therefore, we request that the Committee expresses concern over the fast-deteriorating human and labour rights situation in Hong Kong in relation to the rights protected by Article 8 ICESCR and, in the Concluding Observations on the Hong Kong’s 4th report, requests that the government of the Hong Kong SAR:

* adopts immediate measures to permit the registration and unhindered activity of the independent trade unions;
* immediately stops the prosecutions and intimidations against the trade unions, labour organisations as well as their leaders;
* releases all those arrested, detained or sentenced for attempting to exercise their legitimate trade union and civic rights;
* revises the provisions and the application of the National Security Law, the Public Order Ordinance, Trade Union Ordinance, Crimes Ordinance, Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation (Cap. 599G) in order to make these acts compatible with the ICESCR and ensure that implementation of these acts is also in conformity with the ICESCR as well as other relevant international human and labour rights standards and to ensure that rights of workers under the ICESCR are fully protected.

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16. “…we proposed to add “an offence endangering national security”. The offences shall include, but are not limited to, the offences of “secession”, “subversion”, “terrorist activities” and “collusion with a foreign country or with external elements to endanger national security” stipulated in the NSL, and the offences of “treason” and “sedition” in the Crimes Ordinance (Cap. 200). It is not feasible to list all such offences specifically in Schedule 2 because some of them may not be, on the face of their elements, offences endangering national security, but could be regarded as such in a particular case under certain circumstances.” Briefing paper of Secretary of Labour, Lo Chi Kwong with the Panel on Welfare Services of the Legislative Council on 16 May 2022 ([LC Paper No. CB(2)298/2022(05)](https://www.legco.gov.hk/yr2022/english/panels/ws/papers/ws20220516cb2-298-5-e.pdf), <https://www.legco.gov.hk/yr2022/english/panels/ws/papers/ws20220516cb2-298-5-e.pdf> [↑](#footnote-ref-17)
17. 7 Sep 2022, [HK01](file:///C:\Users\gorska\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\I0LBS7UK\政府擬修例禁犯國安法者任社工　社總指所涉範圍闊：但無得擔心原文網址:%20政府擬修例禁犯國安法者任社工　社總指所涉範圍闊：但無得擔心%20|%20香港01%20https:\www.hk01.com\sns\article\673437) [↑](#footnote-ref-18)