

THE FEDERATION. Of HONG KONG
AND KOWLOON LABOUR UNIONS

Comments on "The Report of the Hong Kong Special Administrative Region of the People's Republic of China in the light of the International Covenant on Economic, Social and Cultural Rights - submitted to the Legislative Council"

Prologue: Protection of Labour Rights

Our Federation is very concerned about the implementation of Articles 6, 7, 8 and 9 in Hong Kong, in the light of the International Covenant on Economic, Social and Cultural Rights. Among these 4 articles, however, we are more concerned with Article 7, related to the right to enjoy just and favourable conditions of work. Since the 1997 financial crisis in Asia, the impact on the lower stratum of the working class has been enormous. One consequence is that the gap between the rich and poor widens; the protection on working conditions becomes insufficient, and the working class is easily exploited. So our Federation would like to comment on this Article first to reflect our emphasis.

Article 7 : Right to enjoy just and favourable conditions of work

1. We have pointed out earlier that the financial crisis has resulted in the widening of the gap between the rich and poor, rendering the working class being easily exploited. Workers crave for just and favourable conditions of work: such as the protection of right to seek jobs, reasonable wage remuneration, safe working environment as well as protection of individual's or union rights.
2. We believe that under the current plight of the poor, in view of the widening gap between the rich and poor, the government should follow the case of the domestic servants by setting a minimum wage to protect the low income group. We disagree with the government stressing on the one hand that setting a minimum wage is not good for the economy (refer paragraph 87e), but then contradicting itself in paragraph 88 that to set a minimum wage level can protect the easily exploitable class. Since the financial crisis, employees in the private sector have been suffering from cut of wages, and particularly hit is the low income group.

This trend will continue as according to a government study, manpower projection up to 2005 reveals a grave mis-match of job and job-seeker: there will be over-supply of F.5 graduates (around 150,000) but there is a shortage of post-secondary graduates to the order of 120,000. **We PROPOSE government selectively apply a minimum wage regulation on some sectors.**

3. In the report, there is no mention of the protection on part-time and hourly-rated workers (refer report's paragraph 112) such that employers can shake off responsibility to pay statutory benefits by engaging employees to work less than 18 hours per week. Under the existing Employment Ordinance, employees will come under its protection only if they work more than 18 hours per week and over 4 weeks (the so called "4-1-18" rule). Our Federation has approached the Commissioner for Labour to delete this "4-1-18" requirement from the Ordinance. **We PROPOSE government apply the same condition as per the Employees' Compensation Ordinance whereby an employee, once recruited to start employment, is protected by the Employees' Compensation Ordinance without the requirement of the "continuous employment rule of 4-1-18".**

Article 6: Choice of occupation and labour rights

1. The government claims in paragraph 42 that the Basic Law article 147 confers the government the power to make labour laws. We consider it right for government to make law to benefit the workers with paid rest day. In Hong Kong, there are very many piece-and daily-rated workers in the service industry who do not enjoy protection on rest days. Take for example, a majority of restaurant employees do not have rest day protection as management only arranges annual leave and entitled statutory holidays in place of workers' rest days. **We PROPOSE government clearly spell out in the Employment Ordinance that rest days should have pay.**
2. In the aspect of unreasonable dismissal, the government points out in the report (paragraphs 54 and 55) that when the court adjudicates that the employee has been unreasonably dismissed and there is no agreement on re-engagement, then the employer has to pay the claimant worker terminal payment; and the employer will be required to pay compensation up to a ceiling of \$150,000 if the claimant worker has been found by the court as having been unreasonably and unlawfully dismissed. **We PROPOSE the government, apart from divulging the content of the law, list out the number of cases whereby the employers have been**

adjudicated to pay either compensation or terminal payments.

3. The employment of illegal workers definitely erodes the local workers' employment opportunity. In the report (paragraph 62) only the number of employers arrested for the offence has been shown, but there is a lack of successful prosecution cases and the extent of fine, in order to reflect how far can the government deter this malpractice. **We PROPOSE that the government reveal not only the number of successful prosecution cases and mount more promotion on those cases, but also increase the fine to protect local jobs.**
4. The last point about this Article is on discrimination: the government attempts to eliminate any discrimination but the report (paragraph 76) says that so far there is no law against age discrimination. Indeed unions and some concerned groups have urged government to make laws to guard against age discrimination. To their disappointment, there is only a code of practice on eliminating age discrimination in employment. **We PROPOSE government make law on this subject as soon as possible.**

Article 8: Right to trade union membership

1. We disagree to the view of the report (paragrph 123c) saying that collective bargaining will erode the competitiveness of the economy. On the contrary, we believe that the mechanism of collective bargaining can facilitate both parties to compromise on issues in a systematic and orderly manner., thereby reducing wild cat strikes resulting in economic losses. At the moment, collective bargaining prevails in many advanced countries. The economic growth of such countries can well demonstrate that their economies have not been adversely affected, and on the contrary, it can be seen that collective bargaining can moderate or eliminate employer-employee conflict, thus facilitating economic growth. **We PROPOSE that government push forward the setting up of collective bargaining as soon as possible.**
2. The report points out that the Employment Ordinance clearly spells out the right of workers to become union members, and to enjoy the right to organize unions. It is an offence for employers to deter their employees from exercising such rights (refer paragraph 128). Employers cannot dismiss, penalize or discriminate any employee for the use of such right. Employers, if indicted, can be fined up to a maximum of \$100,000. **We PROPOSE that the report carry the following information:**

- a) **the number of cases of complaint against employer**
- b) **the number of successful case of prosecution against employer, and**
- c) **the fine level of employers after their indictment**

3. Paragraphs 131 and 132 touch on some administrative arrangement including the cooling off period in relation to strike. We cannot comprehend the procrastination of government to fully implement the Basic Law in conferring workers the right to strike. Employers gain the upper hand or dictate all termination, promotion and benefits decisions. Workers only strike as a last resort. There is however no law to protect workers on strike from summary dismissal. **We PROPOSE that government legislate to protect workers' right to strike.**

Article 9: Right to social security

1. The report does not touch on demand of the union and the public to amend the law on sickleave allowance (refer paragraph 162) by dropping the requirement of consecutive 4 days of sickness in order to qualify for allowances. Our Federation has written to the Commissioner for Labour to suggest that even one day sickleave can qualify for sickness allowance. Indeed the existing 4-day rule only forces the employee with only one day sickleave to continue to work despite of poor health, leading to an adverse consequence affecting not only the employee but also the employer. **So we PROPOSE the change of law to protect even one day sickleave.**
2. Lastly, we suggest that the report (refer paragraph 194) should not omit the reality that many employees have been forced by their employer to change into the self-employed status so that the employer can shake off the responsibility of contributing to the mandatory provident fund.