

## On the Enactment of Article 23 of the Basic Law in Hong Kong A Statement of China Labour Bulletin

China Labour Bulletin  
December 11, 2002

China Labour Bulletin (CLB) is a locally registered organisation dedicated to the promotion of the independent trade union movement in China. Our objective is to set up independent trade unions of the workers' own choosing. Supporting the Chinese workers in their independent peaceful struggles to defend their rights, CLB's scope of work includes trade union education, information dissemination and direct facilitation.

### Support for the Organising of Independent Trade Unions in China

However, what are internationally held as the fundamental workers' rights - freedom of association and collective bargaining - are denied in mainland China. It is illegal to set up trade unions outside the auspice of the government-controlled All-China Federation of Trade Unions. Even appeals to that purpose are indictable offences, and labour activists have been put behind bars for "threatening national security" or "subverting the state". The arm of "justice" has stretched further over the past years. Workers organisers were sentenced on subversive charges in their struggles against unfair dismissal or when they tried to bargain for fair redundancy compensation.

One of the recent cases is **Yue Tianxiang** in Gansu Province.

Guo Xinmin and Yue Tianxiang were both laid-off drivers at the state-owned Tianshui City Transport Company. In 1998 when the company refused to negotiate a settlement regarding wage arrears and a legally-entitled living allowance, the two workers decided to take their case to the Tianshui Labour Disputes Arbitration Committee (LDAC). The LDAC's decision stipulated that the company should find new positions for the two as soon as possible, but the manager refused to abide by the decision. After realising that many fellow workers faced the same treatment they set up a journal called *China Workers Monitor* and used the inaugural issue to uncover corruption at their former company. They also wrote an open letter to President Jiang Zemin on the problems. All these were legitimate moves to defend their rights. However, Yue was arrested and sentenced to 10-year imprisonment on the charge of "subverting the state" in July 1999 (see Appendix for details).

CLB has launched an international campaign for the release of Yue, and raised humanitarian funds for Yue's families.

Another case involves a registered lawyer in Inner Mongolia.

**Xu Jian** was a registered lawyer in Baotou City, Inner Mongolia. Convinced that the workers should independently defend their rights through legal channels, Xu provided legal counselling to the workers at his office and via its hotline. Moreover, he provided assistance in filing labour dispute cases for arbitration as well as litigation. Despite the strictly legal basis of Xu's work, the court rejected the main line of his defense that his activities did not constitute a danger to the state. Instead the verdict holds that the judgement has been made "in order to protect national security and uphold the people's democratic dictatorship and the socialist system".

Xu was sentenced to 4-year imprisonment in July 2000 on the charge of "inciting to subvert the state" (see Appendix for details). His case is basically political repression done in the name of "protecting national security" which renders legal protection meaningless.

Workers' rights will be under severe threat with China's entry to the World Trade Organisation, particularly when the Chinese workers are denied the right to set up their own trade unions. CLB believes that more and more workers' organisers will be facing subversion charges as they stand up for their rights. CLB will continue to work in solidarity with the international trade union movement in securing their release as well as raising funds to support their families. The 'legality' of our work – ties with political organisations abroad, supporting the organising of independent trade unions, and providing assistance to the families of imprisoned workers organisers – will be called into question after the enactment of Article 23 in the manner laid down in the consultation document. In any case, CLB will continue with these activities and fight for the workers' right to organise independent trade unions in China in the way our work is currently undertaken.

### **Report on Labour Actions**

Another area of CLB's work is to investigate and report on cases of workers' rights violations. As an example, in mid-September this year, 30,000 sugarcane farmers reportedly besieged the local government building in Yizhou City, Guangxi Province. The offices were stormed and facilities smashed. CLB's follow-up investigation revealed that the sugarcane farmers were protesting against the low cane prices and delayed payment, and their action followed rounds of unsuccessful efforts to negotiate with the sugar refinery. CLB also found out that more than 20 farmers had been arrested with claims of beatings in police custody (see [http://www.china-labour.org.hk/iso/article.adp?article\\_id=3291](http://www.china-labour.org.hk/iso/article.adp?article_id=3291) for details). CLB immediately informed the international trade union community and the media of the protest. At the same time, CLB seeks to fight, together with trade unions abroad, for the farmers' right to organise and bargain collectively with the sugar refinery.

At the time this statement is written, CLB is investigating the fire that ripped through the Wanbao Coal Mine in Jilin Province in early December. Twenty-seven miners were killed and the other three were feared dead. To preempt collective action for compensation, the mining company held the victims' families in isolation. At the same time, other miners went on strike demanding their back pay.

It remains to be seen as to whether the dissemination of information of such kind will be censored with the enactment of Article 23. What is clear is that in China reporting on workers' protests from unofficial sources is also subject to government clampdown. In 1998, **Zhang Shanguang** released to the media abroad a news report on a demonstration staged by farmers and laid-off workers in his home province of Hunan. For this, he got a 10-year prison term on the charge of "passing intelligence to organisations outside China (see Appendix for details).

Free information flow is at the core of trade union education programmes, and is also instrumental for the organisation of collective actions in defending the workers' rights. CLB will keep reporting on the workers' protest actions, and exercise the right to information, which should be enjoyed by the workers in China as well.

### **Information on the Internet**

For our work on the dissemination of information, CLB makes extensive use of the internet, targeting the workers in China and the international trade union movement and media. Cyber crackdown in China has been a major area of concern over the past year.

In 2001, eight people were held on subversion charges for publishing or distributing information online (see SCMP, 3/10/2002). In July 2002, **Li Dawei** from Gansu Province was sentenced to 11 years on the charge of "subverting the state" for downloading and printing "reactionary" articles from overseas websites (see <http://web.cicus.org/hkpost/internet.html>). In its recent report, '*State Control of the Internet in China*', released on November 26, 2002, Amnesty International has

compiled records of 33 prisoners of conscience who have been detained for using the Internet to circulate or download information, including the heavy sentence of Li Dawei (see <http://web.amnesty.org/ai.nsf/recent/ASA170562002!Open>). On November 7, 2002, a 22-year-old college student in Beijing, **Liu Di**, was arrested just one day before the 16<sup>th</sup> party congress commenced. She was arrested for posting online articles critical of the government. Officials claimed that Liu was being investigated for "participating in an illegal organisation." (see <http://www.cpj.org/news/2002/China10dec02na.html> and [http://www.rsf.org/article.php3?id\\_article=4488](http://www.rsf.org/article.php3?id_article=4488))

### **Political Labeling**

The message is clear – “subversion”, “national security” and “state secrets” are arbitrarily and politically determined. Opinions and actions that are otherwise legitimate can be branded as “subversive” on political grounds even though they are nothing more than exercising fundamental civil rights, opposing unfair policies or fighting for basic livelihood. In the final analysis, arbitrary political labeling is determined by the public security and national security authorities.

CLB understands that ‘One Country Two Systems’ refers to the economic as well as political and legal systems. Enacting Article 23 will transplant the practice of political labeling in Hong Kong, and drag the city into a system of ‘rule of the people’. By then, CLB’s work will be stripped of the kind of legal protection we have been enjoying so far.

### **Political Regression**

In China, people have been struggling hard for democracy and human rights. Instead of joining their struggle, the Hong Kong government is trying to push through the enactment of Article 23 without comprehensive and thorough public consultation, and stripping Hong Kong citizens of legally protected civil rights. This kind of political regression cannot be justified on any grounds. In the words of Lu Ping, former director of the Hong Kong and Macau Affairs Office in Hong Kong, the Hong Kong government will go down history as a ‘criminal’.

If the Hong Kong government really goes ahead with the enactment, CLB, as responsible citizen here in Hong Kong and mainland China, will stand by our convictions and defend the rights that we and all others should be enjoying. CLB is set to keep on with our work for the development of the independent trade union movement in China.

CLB holds that the Hong Kong government should move with caution, and should not push through the enactment of Article 23 without comprehensive and thorough public consultation.

Han Dongfang  
Director, China Labour Bulletin

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### Appendix

The following three labour activists are just a fraction of those who are incarcerated for exercising their constitutional rights in defending the rights and interests of the workers.

*(In chronological order; compiled on October 23, 2002)*

#### **Yue Tianxiang**

Labour activist Yue Tianxiang, from the city of Tianshui in Gansu Province, was sentenced to 10-year imprisonment by the Tianshui People's Intermediate Court on the charge of "subverting state power" on July 5, 1999.

Yue Tianxiang was a driver at the state-owned Tianshui City Transport Company. In 1995, together with other workers, he was laid off despite being owed three months' back pay. When the company refused to negotiate a settlement regarding wage arrears and a legally entitled living allowance, Yue and his fellow worker, Guo Xinmin, decided to take the case to the Tianshui Labour Disputes Arbitration Committee (LDAC). The LDAC's decision stipulated that the company should find new positions for the two as soon as possible, but the manager refused to abide by the decision.

After realising that many fellow workers faced the same treatment, Yue and Guo (who got a two-year prison term in the same case, and has been released) set up a journal called *China Workers Monitor* and used the inaugural issue to uncover corruption at their former company.

Yue and Guo also wrote an open letter to President Jiang Zemin asking for official intervention from Beijing. After receiving no answer, they sent the same letter to international news agencies hoping to bring more pressure to bear on the authorities in Tianshui. Within a week of releasing the letter, the two had been picked up by the police on January 11, 1999, and charged with subversion.

Yue is currently held at Gansu Provincial No.2 Prison in Tianshui.

#### **Xu Jian**

On July 18, 2000, labour rights lawyer Xu Jian in Inner Mongolia was sentenced to four years' imprisonment for "incitement to subvert state power". Xu Jian's "crime" refers to his attempts at independent workers' organising which, to the Chinese government, is a plot to overthrow the socialist system and state power. Xu Jian is currently held in Area Two of Chifeng Prison, Inner Mongolia.

Xu Jian is a registered legal practitioner in Baotou City of Inner Mongolia. Sympathetic to workers' problems, Xu Jian provided legal counselling to the workers, and assisted in filing labour dispute cases for arbitration, as well as litigation. Many of his clients were workers from the state-owned Neimenggu No.2 Machinery Main and Baotou Steel Company, who had not been paid for almost six months,

Xu believed that the ultimate defence of workers' rights lay in the collective strength of the workers themselves. Instead of simply providing legal assistance, Xu constantly reminded the workers of their right to elect shop-level union officials, and the jurisdiction of the workers'

congress in state enterprises, which supposedly has a say in making major decisions regarding the enterprise's operation.

To reach more workers, Xu Jian also took up activities such as giving out information leaflets. Xu Jian distributed several leaflets on the legal rights of workers facing factory closure and layoffs, and China's Labour Law. One of the leaflets, entitled "Workers Can Say No" listed some of the rights laid down in the Labour Law, including the stipulations on remuneration, working hours and overtime pay.

Xu was arrested on December 31, 1999 and charged with "incitement to subvert state power". Despite the strictly legal basis of Xu's work, the court rejected his defence. The arrest and sentencing of Xu Jian is plainly a violation of China's own laws and regulations, and a violation of the basic workers' right to organise.

Xu Jian contracted hepatitis soon after he was incarcerated. His condition has deteriorated to a critical level. Xu has reportedly developed hypertension by May 2002 while his hepatitis was stabilised. But his request for medical treatment continues to be rejected.

### **Zhang Shanguang**

On 27 December 1998, independent trade union activist in Hunan, Zhang Shanguang, was sentenced to ten years' imprisonment in Hunan's No.1 Prison in Yuanjiang city. He was accused of endangering national security after talking with the foreign media about widespread labour and peasant unrest in his home county of Shupu.

Previously, in March 1998, Zhang attempted to set up the Shupu County Association for the Rights of Laid-off Workers to protect the interests of unemployed workers and farmers. The right is granted by the Constitution, which clearly states that all Chinese citizens enjoy the freedom of association, and yet the application was rejected.

Formerly a secondary school teacher, Zhang was jailed for seven years in 1989 for putting up a poster castigating the government for the massacre in Beijing. During his imprisonment, he contracted tuberculosis and as a result of being denied adequate treatment, his illness was still not under control when he was re-arrested on July 21, 1998. Zhang's wife, Hou Xuezhong, said that the prison authorities had only taken Zhang for medical treatment when Zhang's tuberculosis became severe, but the medical fees and food costs during Zhang's detention were passed onto her. Zhang is dangerously ill with tuberculosis and heart disease, and reportedly being ill treated and beaten by prison guards.

Prisoners of Hunan's No.1 Prison are constantly forced to work long hours, being beaten, underfed, and denied medical treatment. Zhang, therefore, organised a petition in March 2001 to end torture and long working hours at the jail. He was repeatedly kicked and punched by prison guards after the first petition was found and confiscated. Other prisoners who signed the petition were also beaten.