



**COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2008)<sup>1</sup>: CHINA**

***FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING (FACB)***

<b>REPORTING</b>	<b>Fulfillment of Government's reporting obligations</b>	YES, since the start of the Annual Reviews (ARs) in 2000.	
	<b>Involvement of Employers' and Workers' organizations in the reporting process</b>	YES, involvement of the All China Federation of Trade Unions (ACFTU) and the China Enterprise Confederation (CEC) by means of consultations and communication of Government's reports.	
<b>OBSERVATIONS BY THE SOCIAL PARTNERS</b>	<b>Employers' organizations</b>	2008 AR: Observations by the CEC. 2007 AR: Observations by the CEC.	
	<b>Workers' organizations</b>	2008 AR: Observations by the ACFTU and the International Trade Union Confederation (ITUC). 2007 AR: Observations by the ACFTU and the International Confederation of Free Trade Unions (ICFTU). 2000 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU.	
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Ratification</b>	<b>Ratification status</b>	China has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C. 87) nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C. 98).
		<b>Ratification intention</b>	NIL
	<b>Recognition of the principle and right (prospect(s), means of action, basic legal provisions)</b>	<b>Constitution</b>	<b>YES</b> The 1999 Constitution of the People's Republic of China (article 35) provides that «Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration».

<sup>1</sup> Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		<p><b>Policy/Legislation and/or regulations</b></p>	<ul style="list-style-type: none"> <li>• <b>Legislation</b></li> </ul> <p><b>2008 AR:</b> According to the Government: the Labour Law Contract was adopted at the 28<sup>th</sup> Session of the Standing Committee of the 10<sup>th</sup> National People’s Congress on 29<sup>th</sup> June 2007 and will enter into force as of 1<sup>st</sup> January 2008. Section 1 of Chapter 5 specifies collective contracts (Articles 51-56).</p> <p><b>2007 AR:</b> Corporate Law (section 18); Law on Chinese-Foreign Contractual Joint Ventures (section 14); Law on Foreign-Capital Enterprises (section 13).</p> <p><b>2003 AR:</b> The Trade Union Law, 1950 (and its subsequent amendments) and the Labour Law relate to the principle and right (PR).</p> <ul style="list-style-type: none"> <li>• <b>Regulations</b></li> </ul> <p>The regulations concerning the Congress of Staff and Workers in Industrial Enterprises Owned by the Whole People (section 9) relate to the PR.</p>	
		<p><b>Basic legal provisions</b></p>	<p>(i) The 1999 Constitution (article 35); (ii) the 1992 Trade Union Law (section 3), (iii) the Labour Law (sections 33 and 35), (iv) the Interim Regulation on Private Enterprises, (v) the Regulations concerning the Registration of Social Organizations (sections 9 and 13) and (v) the Regulations on Collective Contracts (section 33).</p>	
		<p><b>Judicial decisions</b></p>	<p>NIL</p>	
<p><b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b></p>	<p><b>Exercise of the principle and right</b></p>	<p><b>At national level (enterprise, sector/industry, national)</b></p>	<p><b>For Employers</b></p>	<p><b>2000-2004 ARs:</b> Prior government authorization is necessary to establish employers’ organizations (section 9 of the Regulations concerning the Registration of Social Organizations). Freedom of association can be exercised by all categories of employers. However, employers cannot exercise the right to collective bargaining.</p>
			<p><b>For Workers</b></p>	<p><b>2008 AR:</b> According to the ACFTU: The right to freedom of association and collective bargaining is protected by national laws and regulations and workers have the full right to organize.</p> <p><b>2000-2004 ARs:</b> Government authorization is not required to establish a workers’ organization or to conclude collective agreements. Freedom of association can be exercised at enterprise, sector/industry, national and international levels by all workers in the public service, medical professionals, teachers, agricultural workers, workers engaged in domestic work, workers in export processing zones (EPZs) or enterprises/industries with EPZs status, migrant workers, workers of all ages and in the informal economy. The right to collective bargaining can be exercised only at enterprise and sector/industry levels, by agricultural workers, workers engaged in domestic work, workers in EPZs or enterprises/industries with EPZs status, migrant workers, workers of all ages and in the informal economy.</p>
			<p><b>Special attention to particular situations</b></p>	<p><b>2003-2004 ARs:</b> According to the Government: workers and employers at the enterprise level are given particular attention with regard to the right to collective bargaining.</p>

			<p><b>Information/ Data collection and dissemination</b></p>	<p><b>2008 AR:</b> The Government indicated that the number of collective contracts at the end of 2006 had reached 521.1 thousand covering in total 9.06 million workers. According to the ACFTU: the national base trade unions increased by 149 thousand in 2006 with 19.648 million new members, leading to a total number of nearly 170 millions members with a membership rate of 73.6%.</p> <p><b>2002 AR:</b> According to the Government: By the end of 2000, 67,195 foreign-funded enterprises and 432,704 private enterprises had set up trade unions with respective total memberships of 5,921,202 and 7,889,900; the number of collective contracts signed exceeded 240,000, covering more than 60 million workers.</p> <p><b>2001 AR:</b> According to the Government: By the end of 1999, there were 52,160 foreign-owned enterprises, 117,469 private enterprises with trade unions and 220,000 collective agreements covering 57 million workers and staff members.</p> <p><b>2000 AR:</b> According to the Government: There are statistics concerning the membership of employers' (436,000 members) and workers' organizations (130 million members). The number of collective contracts had reached 150,000 by the end of 1998, involving more than 50 million staff and workers.</p>
		<p><b>At international level</b></p>	<p>NIL</p>	
<p><b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b></p>	<p><b>Monitoring, enforcement and sanctions mechanisms</b></p>			<p><b>2005 AR:</b> According to the Government: In cases where the PR has not been respected, the Government will ask the parties concerned to make «correction by coordination».</p> <p><b>2003-2004 ARs:</b> According to the Government: Specific measures have been implemented to respect and promote this PR, such as: (i) a inspection/monitoring system, (ii) civil/administrative sanctions, (iii) a special institutional machinery, (iv) capacity building of responsible government officials, (v) training of other government officials, (vi) capacity building for employers' and workers' organizations, and others have been envisaged, such as: (i) legal reform on labour law and other relevant legislation and (ii) penal sanctions. In cases where the PR has not been respected, the Government will ask the parties concerned to make «correction by coordination».</p> <p><b>2000 AR:</b> According to the Government: (i) Labour inspection, (ii) people's supervision and (iii) the Government's engagement in international cooperation.</p>
	<p><b>Involvement of the social partners</b></p>			<p><b>2003-2004 ARs:</b> According to the Government: Tripartite discussions of issues have been implemented to realize the PR.</p>

	<p><b>Promotional activities</b></p>	<p><b>2008 AR:</b> The Government and the CEC indicated that they had, together with the ACFTU, adopted the Opinion on Developing Industry-wide and Area-wide Collective Negotiation on 17<sup>th</sup> August 2006. These specify the importance, scope, content, procedure, for dispute resolution and organization of the industry-wide and area-wide collective contracts.</p> <p>The Government added that it had improved the collective bargaining and collective contract system by: (i) further enhancing the coverage of collective contracts and promoting the area-wide and industry-wide collective negotiation; (ii) emphasizing on the signing of specific collective contracts dealing with wages, working hours quota etc. and (iii) developing training activities and advertisements.</p> <p>The CEC also stated that it would organize training activities on collective bargaining for employers, and draw a stand of collective bargaining. It also added that the CEC was a member of the national collective contract committee.</p> <p><b>2007 AR:</b> The Government indicated that it had implemented the following measures in relation to the PR:</p> <ol style="list-style-type: none"> <li>(1) Extension of the collective consultation and collective contract system to comprehensively promote the Five Year Plan of Implementation Program on Administration by Law issued by the State Council on March 22, 2004;</li> <li>(2) Under the Circular on the Publicity Syllabus of further Enforcing the Work on Employment and Reemployment issued on December 3<sup>rd</sup> 2005, the Government should build up the collective consultation system, harmonize the benefits of the enterprises and the workers to increase the stability of the employment of the workers in instances where the enterprises reduces the staff;</li> <li>(3) Under the Main Point of the Labour and Social Security Work in 2006, the Government focuses on extending or signing once again collective contracts, extend the coverage of the collective contract, make great efforts to promote the regional collective consultation with middle and small non-stated-owned enterprises, advances the collective consultation on the labour standards on wages distribution, working time, labour quota and so on; and</li> <li>(4) Under the Circular on Further Resolving the Problem of the Wages in arrears for the Migrant Workers from the rural areas, which was issued on 2 September 2005, the Government would guide and promote the enterprises, especially those recruiting more migrant workers from the rural areas to develop the collective consultation on wages, guarantee systematically the legal rights of increasing wages of the migrant workers. And the Government would develop actively the region and industry collective consultation on wages, set up and improve the normal mechanism of increasing and adjusting the wages, and ensure that migrant workers share the outcomes of the reforming and developing of the enterprises.</li> </ol> <ul style="list-style-type: none"> <li>-The CEC stated that it is carrying out a pilot programme on collective contracts and collective consultations on wages in the developing district of Dalian City, Liaoning Province.</li> <li>-The ACFTU held a national meeting on promoting and organizing trade unions in the foreign enterprises on 30 March 2006; passed the Provisional Regulation on Enforcing the Work of Trade Unions in the enterprises on 6 July 2006; involved in the supervision of the implementation process of the Labour Law in 2005.</li> <li>-The ACFTU held a training course on the International Labour Standards (ILS) and Collective Bargaining with ILO and another training course for collective bargaining trainers.</li> </ul> <p><b>2003-2005 ARs:</b> According to the Government: Specific measures have been implemented to promote and realize the PR in the country: (i) training of other government officials; (ii) capacity building for employers' and workers' organizations; (iii) awareness-raising/advocacy.</p> <p><b>2002 AR:</b> The Government thanked the ILO for assisting the ACFTU with training to wage negotiators and the CEC (Chinese Entrepreneurs' Association, Chinese Enterprises' Federation) by undertaking a national survey on the role of employers' associations in tripartism.</p> <p><b>2000 AR:</b> According to the Government: The ILO and CEC jointly organized a seminar on skills for conducting collective bargaining, a training course on industrial relations, seminars on labour legislation and practice in China, and a training course on collective bargaining; other projects have been jointly organized by the ILO and the ACFTU, including a seminar on collective bargaining and collective contracts, two tours respectively to Asian and European countries to study the issue of industrial relations, a trainers' course on collective bargaining and collective contracts, a training course on training material for collective bargaining, and a trainers' course on wage negotiation.</p> <ul style="list-style-type: none"> <li>-The ACFTU made many efforts to promote the establishment of trade unions, focusing its attention on the organization of trade unions in foreign-capital enterprises and private enterprises.</li> </ul>
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	<b>Special initiatives/ Progress</b>	<p><b>2008 AR:</b> According to the ITUC: The Draft labour contract law was first discussed at the 19th meeting of the NPC and published online in March 2006. The draft is significant for several reasons. Firstly because of the unprecedented level of public debate and consultation—according to reports the draft received some 200,000 online comments. Secondly the draft law addresses some of the crucial failings of the current labour law and provides specific penalties and remedies for failing to observe labour laws and regulations. It seeks to clarify the nature of a labour relationship between workers and employers – including those many instances where workers have no formal contract. It includes penalties for companies, which fail to provide proper written contracts, penalties for breaking contract terms. Significantly, it also attempts to legislate on the fast growing use of contract labour. The law also appears to bolster the role of trade unions in discussions on redundancies and other major changes. The first draft has been very publicly criticized by European and American business associations and the second draft was published in December 2006. Certain aspects relating to the role of the trade union have been reduced, as have some of the penalties for companies. However the law remains a significant step forward in the protection of labour rights. As with most legislation in China the most crucial issue is the implementation of the law. A final version was expected to be issued in the spring of 2007.</p> <p><b>2005 AR:</b> According to the Government: The adoption of the Regulations on Collective Contracts in May 2004 can be considered as a major change regarding this PR.</p>	
<b>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>According to the social partners</b>	<b>Employers' organizations</b>	<b>2008 AR:</b> According to the CEC: collective contracts do not apply to most private and small enterprises.

		<p><b>Workers' organizations</b></p>	<p><b>2008 AR:</b> According to the ITUC: (i) some 3,000 workers from a Hong Kong-owned furniture factory in Shenzhen staged a protest on 3 April 2006 against long working hours and poor working conditions; the demonstration was dispersed by hundreds of riot police and three senior executives from a Shenzhen sporting goods factory were detained by police for allegedly «inciting workers to block roads»; (ii) sub-contracted migrant workers at the Huaen Building construction site in Beijing stopped work after not receiving overdue wages. On 19 July 2006, several of the workers were assaulted by hired men at the site and two were hospitalised; (iii) on 22 July 2006, workers from the Merton Company Ltd protested against low wages and poor living conditions. In the evening, factory security and police sent in riot control vehicles and personnel to control the riot but the following day the conflict intensified. Scores of workers were injured, or detained but later believed to be released; (iv) on 26 August 2006, migrant workers in a company in Nanjing protested against massive unpaid wages. The workers were detained for obstructing traffic and two workers were put in administrative detention for organising the protest; (v) on 31 July and 1 August 2006, some 300 unemployed teachers from 20 different towns and townships in Suizhou, Hubei Province gathered in front of the government offices to submit a petition, demanding help from the Government to obtain livelihood assistance and benefits such as pensions and medical insurance. The teachers tried using the courts to get a decision on their status, but their legal representative dropped the case after receiving threats. Several teachers were forcibly taken to a «study camp» in mid July 2006 and were only released after 48 days; (vi) in September 2006, in the run up to National Day celebrations, a group of workers in Suining City, Sichuan province, were beaten after petitioning the local authorities for compensation on their labour dispute with their previous employer. The workers had been formally employed at the Suining Suizhou Guesthouse and had been laid off after the state-owned guesthouse went bankrupt and its assets were sold at a low price. The workers claimed corruption and were claiming unpaid unemployment benefits. The group of 40 workers was forcibly removed from the local Party Committee offices and two female workers were hospitalized as a result. Two other women were detained while others went into hiding for fear of further arrests. It is not known if all have since been released; (vii) on 7 December 2006, some 400 workers from the Shenzhen Safari Park in South China went on strike over inadequate compensation, unfair layoffs and unpaid wages during the privatization of the former state owned zoo. After the strike began, some 70 police officers entered the park and stopped workers from arranging protest signs; and (viii) laid off protestors from the Industrial and Commercial Bank of China were detained by public security officials in Beijing during a protest march on 15 December 2006. Some 50 protestors were detained in the afternoon and later released and send back to their hometowns.</p> <p><b>2000-2005 and 2008 ARs:</b> According to the ICFTU: (i) there is no freedom of association in China; (ii) only one trade union is recognized, the All China Federation of Trade Unions (ACFTU) and all unions must be under its leadership; (iii) ACFTU actively promotes the view of the Party and Government that any unauthorised workers' action may lead to «social unrest and chaos»; (iv) China's first ever unified national Labour Code is often ignored by enterprise managers and enforcement by the authorities is minimal; (v) the Trade Union Act does not mention the right to strike; (vi) strikers and organizers can be detained or sent to forced labour camps; (vii) in February 2001, China ratified the International Covenant on Economic, Social and Cultural Rights, but announced at the same time that provisions guaranteed under Art. 8(1) (a) of the Covenant, namely the right to establish and join workers' organisations of one's own choosing, would be dealt in accordance with Chinese law; (viii) there are no laws governing collective bargaining, but only regulations on collective contracts; (ix) however, progress is being made in terms of dispute resolution in China.</p>
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	<b>According to the Government</b>	<p><b>2003-2005 ARs:</b> According to the Government: the main difficulties encountered in China in realizing the PR are the lack of capacity of responsible government institutions and the lack of capacity of employers' and workers' organizations.</p> <p><b>2000, 2002 ARs:</b> In response to the ICFTU's comments, the Government raised the following observations: (i) China has always been committed to the protection of workers' fundamental interests and rights and has fulfilled its reporting obligations as regard the Follow-up to the Declaration; (ii) given that the follow-up should not constitute a complaint-based procedure nor a double scrutiny practice, the Government would not make any observations on the substance of the communication from the workers' organization.</p>
<b>TECHNICAL COOPERATION</b>	<b>Request</b>	<p><b>2008 AR:</b> According to the Government: ILO technical cooperation is requested for assistance on the legal reform, training and awareness raising activities. The CEC indicated that the capacity of employers' bargaining techniques should be enhanced and training activities should be organized.</p> <p><b>2007 AR:</b> According to the Government: Needs for ILO technical cooperation to facilitate the realization of the PR in the country exist in particular for legal reform and training.</p> <p><b>2005 AR:</b> According to the Government: Needs for ILO technical cooperation to facilitate the realization of this PR in the country exist in particular in the following areas, in order of priority: (1) strengthening capacity of employers' and workers' organizations; and (2) sharing of experiences across countries/regions.</p>
	<b>Offer</b>	ILO

<p><b>EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS</b></p>	<p><b>2008 AR:</b> The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries, such as China (as well as the Gulf States and new member States, in particular in the South Pacific), had made important efforts during this process. However, according to them, more needed to be done. The IDEAs noted with concern that China (and another State) has not yet expressed its intention to ratify C.87 and C.98. Nonetheless, they also welcomed the efforts made by China (Adoption of a Labour Law Contract with provisions on collective bargaining) in implementing the principle and right and called upon the Government to provide further information on its new legislation and its implications. The IDEAs drew the attention to the practice in some countries, including China, where only one official trade union was allowed in practice and where some unions are subject to government's interference or influence. In this regard, they recalled the following: «the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right» (Cf. Paragraphs 12, 30, 34 and 36 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p><b>2007 AR:</b> The ILO Declaration Expert-Advisers (IDEAs) listed China among the four countries in which 52 per cent of the total labour force of ILO member States live and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. (Paragraph 32 of the 2007 AR Introduction). Furthermore, the IDEAs noted with concern that several countries had not yet expressed their intention to ratify and urged China to do so. (Cf. Paragraph 33 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p><b>2005 AR:</b> The ILO Expert-Advisers (IDEAs) commended China for its continuing dialogue with the Office and hoped that the positive measures taken would be expanded upon (Cf. Paragraph 12 of the 2005 Annual Review Introduction – ILO: GB.3292/4).</p> <p><b>2003 AR:</b> The IDEAs commended China for requesting the ILO's technical cooperation, through the Annual Review process (Cf. Paragraph 4 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>
<p><b>GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS</b></p>	<p>NIL</p>