



CHINA

country study 2015



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INTRODUCTION

Largely considered the manufacturing capital of the world, China and its industries today are facing labour shortages in addition to a rapidly changing workforce. With an increase in garment exports, the Chinese textile industry seems to gradually be recovering from the global economic crisis. China remains the biggest supplier country for Fair Wear Foundation (FWF), with 950 factories supplying 50 members. Chinese factories account for approximately 60-70% of the total purchasing volume of all FWF members.

In terms of governance and human rights, China has not made great gains. Freedom of association remains restricted by law; no independent unions are allowed, and there is no right to collective bargaining or strike. Other labour issues in China today include low wages, excessive overtime, lack of social insurance, and problems faced by rural migrant workers. Also, resolving labour disputes in the workplace is rare. Workplace grievances are commonly dealt with workers resigning and finding employment elsewhere.

Excessive overtime is widespread in the Chinese garment industry. FWF audits in China show that garment factories regularly violate garment workers' right to reasonable hours of work. Workers rely heavily on wages earned during overtime hours and are normally paid piece rates. Not receiving the correct overtime premiums has a severe impact on workers' monthly incomes.

After the Labour Contract Law was implemented in 2008, there was a substantial increase in the number of labour dispatch agencies (similar to employment agencies), which are traditional suppliers of lower-wage workers. In order to regulate this, the Chinese government implemented a 2014 law that sought to give 'dispatched' workers equal pay for equal work.

In 2015 the work of FWF in China focused on the implementation of the Workplace Education Programme (WEP) to raise awareness on labour rights and grievance mechanisms. Both management and workers will receive training in the coming years. Efforts will focus on factory audits with the local FWF audit teams and effective complaints handling.

FWF will continue to provide updated information on China at www.fairwear.org and will update this country study on a periodic basis in the future

1. HOW TO READ THIS FAIR WEAR FOUNDATION COUNTRY STUDY

This country study should provide a clear and concise picture of the industry, its laws and conditions as well as its industrial relations within the textile/garment industry. This study contains both information about national laws and local stakeholders' views on labour issues in the Chinese garment industry. If you would like to learn more on which stakeholders are interviewed for this study, please click [here](#).

Chapter 2, *General Country Information*, describes the current situation in China's economic, social and political sectors as well as the general human rights situation, by using international indicators and comparisons drawn from other garment-producing countries.

Chapter 3, *Stakeholders*, serves as a reference point for those interested in developing their activities in China and who wish to consult a local stakeholder. This chapter briefly presents the stakeholders who are active and have impact on labour conditions or who play an active role in monitoring the situation for workers.

Chapter 4, *Garment industry*, presents an overview of the garment industry in China, including areas of production, products and prospects for the industry.

Chapter 5, *Industrial relations*, describes China's trade union situation, both generally, and specific to the garment industry. This chapter aims to inform how well the challenges regarding working conditions are being handled as part of the country's social dialogue, and possible improvements.

Chapter 6, *Implementation of the FWF Code of Labour Practices*, is intended to be used by auditors and brands as a reference resource for their monitoring activities. This chapter assesses the implementation of each labour standard. This is done by using official statistics (where available), laws and regulations, as well as different stakeholders' views on implementation. It also contains the main FWF audit findings over the last three years and examples of complaints received by FWF.

2. GENERAL COUNTRY INFORMATION

The data for chapter 2 is provided by Wage Indicator Foundation, with the exception of 2.3 & 2.4.

The People's Republic of China is the world's third-largest country by land area and the most populous country in the world. Considered an upper-middle income country, it ranks 28th of 144 countries in competitiveness, with a GDP of nearly 10.4 billion USD and per capita income of 7 589 USD in 2014. Even the recent economic recession had a scant effect on the competitive market, with only 0.31% decrease in growth in 2014.

In 2010, China overtook the European Union (EU) as the biggest textile and clothing exporter in the world. In 2013 China took 39% of the market share in clothing exports and 35% of the market share in the world's textile industries. The textile industry is the second largest in China, only after electronics, with a value of 236 billion USD. The United States, Hong Kong, Japan, Germany and South Korea are the country's main export destinations.

2.1. Economic indicators

China ranked 91 out of 187 countries on the 2013 Human Development Index (HDI) of the United Nations Development Program.¹ Compared with other FWF major garment producing countries, China was second to Turkey (ranked 69) and ranked higher than Vietnam, India, and Bangladesh. China has the highest GDP (10 380 billion USD) and ranks above India (GDP 2,049.5 billion USD), Vietnam (GDP 186 billion USD), and Bangladesh.

2.2. Social, political & governance indicators

According to the Democracy Index of the Economist Intelligence Unit, China ranks low in democracy, falling under the category of authoritarian regimes.² Among countries that produce garments for FWF members, India, Bangladesh and Vietnam all ranked higher than China.

Nevertheless, China has lowered its corruption rates and improved its government effectiveness ranking in the past five years. The country also showed improved political stability as well as a decrease in violence in 2014.

In this context, it is also important to note that China is ranked just below the median average on transparency. Transparency International's Corruption Perception Index ranked China 100 out of 175 countries in 2014. Compared other countries where FWF members have production, China was second in transparency, only after Vietnam, and it ranked higher than India and Bangladesh. China's government effectiveness score was better than those of Vietnam, India and Bangladesh. China was second to India in terms of rule of law, according to this index.

¹ A summary measure for evaluating long-term progress in three primary dimensions of human development - a long and healthy life, access to knowledge and a decent standard of living

² Regimes where political pluralism, independent judiciary, and free and fair elections are absent, and where the media are state owned.

2.3. Income and poverty

The Gini Index (GI) measures the deviation of distribution of income or consumption among individuals or households from a perfectly equal distribution. The index score ranges from 0 to 100, and a lower GI score means more income equality. In 2011 China's Gini Index was 37, well below the median, although higher than India's 33.6.³

The Poverty Headcount Ratio (PPP) is the percentage of the population living on less than \$2 USD a day. According to the World Bank, 18.6% of the Chinese population lived under the poverty line in 2011, again a much lower percentage than India's 59.2%.⁴

Table 2 – Gini Index & PPP – China, Bangladesh, India, Vietnam⁵

	Gini Index	PPP (% of population)
China	37 (2011)	18.6 (2011)
Bangladesh	32.1 (2010)	76.5 (2010)
India	33.6 (2011)	59.2 (2011)
Vietnam	35.6 (2012)	12.5 (2012)

2.4. General human rights situation

In December 2013 China abolished its Re-education through Labour system, a correctional system established in the 1950s which gave officials the power to lock up any citizen deemed subversive without legal safeguards. Despite this particular form of punishment being abolished, the human rights situation in China still raises concerns.

Freedom of speech remains limited. The so-called Great Firewall of China continues to block international social media such as Facebook, Twitter and YouTube. Sina Weibo, a Chinese microblogging site that combines functionalities from Twitter and Facebook, seems to drive the entire national dialogue in the country. However, posts and discussions are subjected to governmental scrutiny. Expressions related to politically sensitive topics are filtered, blocked or deleted.⁶

The effectiveness of Non-governmental Organisation (NGOs) is also limited. On 28 April, 2016, the Chinese government approved the Regulations on Managing Foreign NGOs in China. This law restricts the activities of foreign NGOs in the country and has been subject of much criticism. It requires foreign non-profits to obtain an operation registration or temporary permit and prove the sources of financial funding before becoming active in China. According to Reuters and Human Rights Watch, the main concern remains that this regulation grants authorities control over foreign NGOs with political, religious and human rights organisations, limiting the impact of NGOs not affiliated with the Chinese government.⁷

3 GINI index, World Bank, <http://data.worldbank.org/indicator/SI.POV.GINI>

4 Poverty headcount ratio at \$2 a day (PPP) (% of population), World Bank, <http://data.worldbank.org/indicator/SI.POV.2DAY>

5 Note: the data for Bangladesh in 2011 or 2012 is not available; the data for Vietnam in 2011 is not available

6 Li, H and Rajagopalan, M, At Sina Weibo's censorship hub, China's Little Brother cleanse online chatter, Sep 11, 2013 <http://mobile.reuters.com/article/idUKBRE98A18Z20130911?irpc=932>

7 Wee S., Martina M. and Pomfret J. Foreign governments, non-profits press China to revise draft NGO law. Jun 1, 2015. Also Wang M. China's new foreign NGO law will help silence critics. April 13, 2015. <https://www.hrw.org/news/2015/04/13/chinas-new-foreign-ngo-law-will-help-silence-critics>

3. STAKEHOLDERS

In this section a number of stakeholders active in the garment/textile industry in China are briefly presented. The focus is on stakeholders who are active in forming labour conditions or monitoring the situation for workers in the industry.

Do you want to know which stakeholders we consulted for this country study? [Click here.](#)

GOVERNMENTAL INSTITUTIONS

Ministry of Human Resources and Social Security (MOHRSS)

The MOHRSS of the People's Republic of China is responsible for managing the employment market in China and providing assistance to labour-intensive industries and enterprises by creating more employment opportunities. Created in 2008, its main responsibilities are to set national labour standards and regulations; as well as manage the labour force, labour relations and the social security system.

Source: www.mohrss.gov.cn

Labour Supervision Bureau

The Labour Supervision Bureau is a department of MOHRSS. Its main responsibilities include formulating a supervision system, implementing labour inspection, investigating and handling major cases such as investigating and handling employers' violations against the Labour Law and Labour Contract Law, guiding the local labour inspection work and mediating labour disputes between employers and employees.

Source: <http://www.mohrss.gov.cn/ldjcj/txgbjzz/>

Mediation and Arbitration Division

Under MOHRSS, the Mediation and Arbitration Division coordinates and drafts regulation on the implementation of labour dispute mediation and an arbitration system, where a third party solves disputes between two parties. It additionally provides guidance on prevention of labour and personnel disputes and handles major dispute cases according to law.

Source: <http://www.mohrss.gov.cn/tjzcgl/txgbjzz/>

Ministry of Commerce of the People's Republic of China (MOFCOM)

MOFCOM is the department in charge of business and trade under the State Council of the People's Republic of China. Among its responsibilities are: formulating the strategies, guidelines and economic policies for international trade; drafting the laws and regulations governing domestic and foreign trade; advancing the structural readjustment of distribution industries and guiding

the reform of distribution enterprises; compiling catalogues for import and export commodities as well as drafting regulations for managing these commodities; and coordinating safeguard measures and other issues related to fair trade work such as antidumping and countervailing.

Source: <http://www.mofcom.gov.cn/mofcom/zhizi.shtml>

EMPLOYERS' ORGANISATIONS

China National Textile and Apparel Council (CNTAC)

CNTAC is a national federation of all textile-related industries, seeking to encourage the growth and modernisation of the Chinese textile and apparel industry. Its main responsibilities include: drafting guidelines to supervise the performance of the textile industry and amending industrial standards; researching trends in the domestic and foreign textile industry; creating a bridge between textile enterprises and the government; sharing information and providing consulting services for enterprises; coordinating the economic and technical relations between various sectors of the textile industry, thereby advancing industrial integration; and organising trade meetings, international conferences, seminars and exhibitions to expand the textile and apparel industry.

Source: <http://english.ctei.gov.cn>

China Chamber of Commerce Department for Import & Export of Textiles (CCCT)

A department of the Chinese Ministry of Commerce, CCCT is the largest textile and apparel trade agency in China and the world. Established in 1988, CCCT has more than 12 000 member companies in 34 provinces and municipalities across the country, engaging in the production and trade of textile fibres, yarns, fabrics, clothing, home textiles, industrial textiles, and accessories. The trade volume of CCCT member companies accounts for 70% of the total import and export volume of the Chinese textile and apparel industry as a whole. The main functions of CCCT include: advising policy-makers about protecting the legitimate rights and interests of member companies; providing consultation on trade policies, market and industrial trends, trade statistics, research and publications; organising members to participate in trade fairs and exhibitions both in China and abroad; establishing a dialogue mechanism with textile and apparel associations abroad, thereby promoting cooperation between domestic enterprises and their overseas counterparts; and assisting member companies in the settlement of trade disputes while protecting the intellectual property rights of CCCT members.

Source: www.ccct.org.cn

The Chinese Manufacturers' Association of Hong Kong (CMA)

Established in 1934, the CMA of Hong Kong is one of the biggest non-profit industrial associations with over 3 000 members. The goals of CMA are to promote the development of Hong Kong economy and trade, express its views on government policies and execute them on behalf of the industry, participate in social development, and promote international cooperation.

Source: www.cma.org.hk

TRADE UNIONS

All-China Federation of Labour (ACFTU)

Founded in 1925 to represent Chinese workers, the ACFTU is the only officially recognised and legally sanctioned trade union in China. According to article 2 of the Trade Union Law: “The All-China Federation of Trade Unions and all the trade union organisations under it represent the interests of the workers and staff members and safeguard the legitimate rights and interests of the workers and staff members according to law”. According to ACFTU, it has 31 trade union federations of provinces, autonomous regions and municipalities and they fall directly under the central government’s overview. Moreover, it has 10 national industrial unions, including the National Committee of the Chinese Financial, Commercial, Light Industry, Textile and Tobacco Workers’ Union. According to the 2013 Chinese Trade Unions Statistics Yearbook, the total number of trade unions within the ACFTU was 2.66 million in 2012, with 795 960 000 of them in the manufacturing industry.⁸

Source: www.acftu.org

International Trade Union Confederation (ITUC)

ITUC’s mission is to promote and defend workers’ rights, via cooperation between international trade unions, and global campaigning and advocacy within global institutions. The main areas of ITUC activity are trade union and human rights; economy, society and workplace; equality and non-discrimination; and international solidarity. The organisation has also worked closely with Global Union Federations, the Trade Union Advisory Committee and the International Labour Organization. ITUC has three regional organisations – Asia-Pacific (ITUC-AP), Africa (ITUC-AF) and the American Regional Organization (TUCA). ACFTU is not a member of ITUC. Before 2008, ITUC refused contact with ACFTU because it did not consider it an independent trade union. In recent years, dialogue between the two organisations has somewhat improved.

ITUC/GUF Hong Kong Liaison Office (IHLO)

The IHLO, or the Hong Kong Liaison Office, is an establishment within the international trade union movement which aims to monitor trade union rights and labour developments in China. IHLO publishes regular articles and research briefings on the situation of trade union and worker rights in China, Hong Kong and Macau SAR. IHLO provides timely advice and face to face briefings to ITUC affiliates and labour groups interested in working in China. It also provides information and analysis for the China Working Party of the ITUC committee on Human and Trade Union Rights. In addition, IHLO takes part in and initiates global union campaigns against labour rights abuses in China, and plays a key role in ensuring more effective participation of independent and democratic trade unions in Hong Kong and in the international trade union movement.

Source: <http://www.ihlo.org>

⁸ GINI index, World Bank, <http://data.worldbank.org/indicator/SI.POV.GINI>

LABOUR NGOS

It is important to note that there is a marked difference among NGOs within the People's Republic of China. NGOs in China can be broadly categorised in two groups, official and grassroots NGOs. Official NGOs are supported, financed and sometimes managed by the government and have stable funding and social resources. Examples include the All China Federations of Trade Unions (ACFTU) or the All China Women's Federation and Youth League. Grassroots NGOs are independent organisations unrelated to the government. The government may monitor or close down grassroots NGOs, expressing concern that some may be funded by foreign organisations that seek to fan social unrest. Most labour NGOs are located in southern China, Hong Kong and Beijing. Below are the main grassroots labour NGOs, most of them based in Hong Kong.

Economic Rights Institute (ERI)

A non-profit organisation registered in Hong Kong, the mission of ERI is to support stakeholders striving to promote economic development and respecting the rights of all. ERI bridges communication between front-line production workers and facility management, NGOs and business communities, and buyers and suppliers. ERI aims to promote enterprise improvements and advancement for a wider society.

Source: interview with Dimitri Kessler, founder of ERI

Inno Community Development Organization (Inno)

Founded in Hong Kong and headquartered in Guangzhou, Inno is an advocate and driver of innovative community development projects, with the aim of improving and promoting communities. According to Inno, it has provided hotline services to 13 international brands and 300 000 workers in their supply chains, including solving labour issues and complaints, and since 2007 offering psychological counselling and legal advice. In 2009 Inno also ran the campaign "Fairtrade Online", a project promoting fair trade products and concepts into the Chinese domestic market. Inno also has branches in Beijing and Shanghai.

Source: www.theinno.org

The Chinese Working Women's Network (CWWN)

CWWN was founded in 1996 with the mission to improve the lives of Chinese working women, enhance their feminist awareness and empower them as female workers to fight for sustainable development in China. Since 2000, CWWN has been providing participatory factory training on labour rights, gender awareness, occupational health and safety, collective consultation, and communication skills for production workers. The workers' community service centre in Shenzhen offers legal advice and counselling services to female migrant workers.

Source: www.cwwn.org

Labour Action China (LAC)

LAC is a labour rights NGO based in Hong Kong. LAC believes Chinese workers should be their own agents toward gaining representation in labour interests within a legal and trade union framework. The legal defence of Chinese workers' rights would strengthen their collective voices and actions to advocate economic and social justice in China. LAC researches working conditions, and labour relations and capital mobility of Chinese workers. It also supports the protection of labour rights via campaigns and trainings.

Source: <http://www.lac.org.hk/newsite//en>

Students and Scholars Against Corporate Misbehaviour (SACOM)

Founded in 2005, SACOM is an advocacy non-profit organisation located in Hong Kong. With origins in a student-led movement devoted to improving labour conditions, SACOM's aim is to advocate for workers' rights and unite students, scholars, labour activists and consumers to monitor corporate social responsibility.

In December 2014 SACOM initiated a protest against G2000 (a Hong Kong clothing brand) and Uniqlo (a Japanese clothing brand) in front of their stores, in support of the strikes in Shenzhen Artigas Clothing & Leatherwear factory. The strike was the result of the factory's tardiness in paying employee social insurance.

Source: www.sacom.hk

Labour Education and Service Network (LESN)

An independent NGO established in Hong Kong in 2001, LESN is composed of experienced union organisers, organisers of female workers, and labour researchers. Their work involves three areas: cooperation with government and schools to provide legal training in migrant workers' hometowns, in-factory training and enrichment activities for workers, and information to migrant workers and other organisations to improve working conditions.

Source: www.lesnhk.org

Hong Kong Confederation of Trade Unions (HKCTU)

Founded in 1990, the independent trade union centre HKCTU represents 180 000 members from 90 trade unions in Hong Kong. The Confederation engages in a wide range of activities including industry and workplace organising; public campaigns; lobbying; workers' education; legal assistance for workers and legal representation in labour disputes; retraining for unemployed workers; campaigns for universal suffrage in Hong Kong; the rights of independent trade unions; and the support of labour rights in partnership with labour NGOs and campaign groups. The HKCTU updates labour news and publishes its position and analysis of issues in both mainland China and Hong Kong. It is also active in monitoring corporate social responsibility.

Source: <http://en.hkctu.org.hk>

Shenzhen Migrant Worker Centre

The Migrant Worker Centre was established in the Longgang District of Shenzhen in 2000. The centre aims to improve workers' self-confidence, self-reliance, and their ability to protect themselves and collaborate in their community. The centre's main focus is labour law and regulation consulting, and offers free lectures and literature classes.

Source: <http://blog.sina.com.cn/u/1796142844>

Beijing Yilian Legal Aid and Research Centre of Labor

Established in 2007 by lawyer Huang Leping, Yilian Labor commits to promoting labour rights in China and improving labour law. The centre also engages in awareness-raising activities regarding labour rights protection. Since the centre's establishment, the Yilian Labor team has provided free legal assistance to more than 100 000 workers through a telephone hotline.

Source: <http://english.yilianlabor.cn>

Peking University-Hong Kong Polytechnic University China Social Work Research Centre (SWRC)

A collaboration effort between Peking University and the Hong Kong Polytechnic University, the SWRC was established with the aim of promoting the integration of social work theory and practice, to make social work practice and professionalisation a reality for workers in China. The centre's research projects cover topics of migrant labour, rural social work, children, youth and families, and social work education.

Source: http://polyucrdn.eksx.com/load.php?link_id=33400

Research Centre for NGOs in South China (RCNSC)

RCNSC was jointly founded by Zhongshan (Sun Yat-sen) University Research Institute for Guangdong Development and the South China Program of the Hong Kong Institute of Asia-Pacific Studies. Headquartered at Zhongshan University, RCNSC aims to promote the development of civil society and facilitate dialogue between NGOs and public sectors in south China.

RCNSC runs different programs for NGO research: collective action, corporate citizen, capacity building in the Pearl River Delta and the development of the industry associations in Guangzhou.

Source: http://www.chinacsmap.org/index_EN.asp

4. GARMENT INDUSTRY

ORGANISATION OF THE GARMENT INDUSTRY

China is the biggest textile and clothing exporter⁹ in the world and the largest supplier country for Europe.¹⁰ The Chinese textile and garment industry is the second largest exporting industry in China, after electronics. According to 2014 statistics from Chinese customs, the total export value of textile and garments reached 298.49 billion USD, with garment exports valued at 186.31 billion USD. The growth rate of garment exports began to slow down in the fourth quarter of 2014, and dropped below zero in the first two months of 2015.¹¹

2014 witnessed a gradual economic global recovery as well as an increase of labour costs domestically. Therefore, as an industry that relies on intensive labour, the textile and garment industries suffered more than other Chinese industries. Despite the internal and external challenges, China's garment exports to the EU and the US raised 14.8% and 8%, respectively. The export volume of knitting and woven garments reached to approximately 8 billion pieces/sets (11.1% increase) to the EU and 6.23 billion pieces/sets (8% increase) to the US.¹²

THE GARMENT INDUSTRY'S MAIN EXPORTS

The main categories of garment exports in the first quarter of 2015 were woven garments, knitwear, accessories and caps, according to the Sub-Council of Textile Industry, China Council for the Promotion of International Trade (CCPIT TEX). The export value of woven garments was 1.63 million USD (3.08 billion pieces/sets in volume), followed by knitwear, with an export value of 1.49 million USD (4.4 billion pieces/sets in volume). Accessories and caps reached 279.61 thousand USD and 106.06 thousand USD in terms of export value in the first quarter of 2015¹³.

MAIN AREAS FOR GARMENT PRODUCTION

The Yangtze River Delta and the Pearl River Delta are the two main garment producing areas in China. According to China Textile Industry Development Report 2013-2014, the top five regions of China's garment production in terms of export value are Zhejiang (32.06 billion value, 11.68% growth rate), Jiangsu (24.79 billion value, 4.46% growth rate), Guangdong (33.31 billion value, 5.51% growth rate), Fujian (16.88 billion value, 19.26% growth rate), and Shandong Provinces (11.4 billion value, 7.47% growth rate).¹⁴ Almost all garments in China are manufactured in these specific regions.

9 Wage Indicator Foundation

10 China Textile Industry Development Report 2013/2014

11 Overview of National Textile and Garment Trade 2014, Feb 15, 2015,

<http://www.cottonchina.org/news/pubzmb.php?articleid=178269&newstime=2015-02-15>

12 Overview of National Textile and Garment Trade 2014, Feb 15, 2015,

<http://www.cottonchina.org/news/pubzmb.php?articleid=178269&newstime=2015-02-15>

13 Statistics for China's Textile and Garment Export Structure, CCPIT TEX, Apr 28, 2015,

<http://www.ccpittex.com/tjsj/61926.html>

14 China Textile Industry Development Report 2013/2014

PERCENTAGE EMPLOYED IN GARMENT INDUSTRY

In accordance with UNIDO's International Yearbook of Industrial Statistics, in 2013 China employed 6.7 million workers in the textile industry and 4.5 million workers in the garment industry.¹⁵ According to the China Textile Industry Development Report, the number of employees in textile, garment, shoes and cap manufacturing enterprises was 3.73 million,¹⁶ and had been decreasing every month for three consecutive months. However, the actual number in all garment factories could be higher due to incomplete statistics.

SOCIAL COMPOSITION OF THE GARMENT WORKFORCE

There is no specific data for the social composition of the garment industry workforce. According to the China Labour Statistic 2014 Yearbook, the number of employees in urban units in the manufacturing industry reached 52.58 million in 2013. The proportion of female employment in urban areas in the manufacturing industry was 39.4%.¹⁷ Only 23.1% of manufacturing workers have reached senior secondary education. There is an even distribution of age groups, 28% of the manufacturing workforce is aged 20 to 29, 28.8% is between 30 and 39 years old and 28.3% is between the ages of 40 to 49.¹⁸

According to the National Bureau of Statistic of China, at the end of 2014 the number of employed people in China reached 772.5 million. The total number of migrant workers in 2014 was 273.95 million.¹⁹ This figure concerns mostly internal migrants.

15 Wage Indicator Foundation

16 China Textile Industry Development Report 2011/2012

17 China Labour Statistic Yearbook 2014

18 China Population & Employment Statistics Yearbook 2014

19 Statistical Communiqué of People's Republic of China on the 2014 National Economic and Social Development.

http://www.stats.gov.cn/english/PressRelease/201502/t20150228_687439.html

5. INDUSTRIAL RELATIONS

ORGANISATION OF EMPLOYERS AND TRADE UNIONS IN THE GARMENT SECTOR

China has been criticised by foreign governments and international human rights organisations for not ratifying ILO Conventions regarding freedom of association and the right to collective bargaining. ITUC's 2015 Global Rights Index²⁰ gave China a rating of 5 – no guarantee of rights – ranking China as one of “the worst countries in the world to work in.”²¹

Although the Trade Union law grants workers the right to organise and join trade unions, it only recognises the All-China Federation of Trade Unions (ACFTU). Furthermore, the law stipulates, “the establishment of a primary trade union, local all-level federation of trade unions or local specific industry trade union must report to the trade union organization at the next highest level for approval”. Additionally, “[m]easures for the use of trade union funds shall be formulated by the All-China Federation of Trade Unions”.²² The right to strike was removed from the Constitution in 1982. The revised Trade Union Law does not use the term “strike” but “work stoppages” and “go-slows” instead. In practice, “go-slows” must be approved by the police, which seldom occurs. Instead, they are often stifled or dispersed by local authorities.

ITUC's Annual Survey on Trade Union Violations in 2013 highlighted the fact that China needs a labour law reform to gain a national law on collective bargaining. In 2010 legislation was passed enabling the local government and trade unions to establish a collective wage mechanism. There were 25 provincial and municipal governments that implemented legislation on collective wage negotiation as of 2013.

In October 2013 the Guangdong provincial government, one of the main districts of garment production, published the first draft of collective bargaining and collective contract, gathering public opinions and comments. This may be a new development for China's apparel industry, as this regulation is meant to lay out the legal provisions for employees and employers in order to regulate conduct of collective negotiations. It also aims to improve the system of collective contracts, to protect the legal rights of both employers and employees, and to promote harmonious and stable labour relations. However, six chambers of commerce and employer associations in Hong Kong jointly sent the Guangdong government a letter expressing concerns regarding the implementation of the draft.²³

In September 2014 the Guangdong government revised and published the second draft for public comments. According to comments from labour NGOs, several terms beneficial to employees were deleted in the second draft. In the measures from this second draft it becomes more difficult to start negotiations. The draft measures limit the issues to be negotiated and extend the deadline for negotiations. As of January 1, 2015, the second draft, later called

²⁰ ITUC rates 141 countries on a scale of 1 to 5+ based on the degree of respect for workers' rights. The higher the rate, the worse the country for workers.

²¹ http://www.ituc-csi.org/IMG/pdf/survey_global_rights_index_2015_en.pdf

²² Trade Union Law Article 11 and 42

²³ Letter to Guangdong Provincial People's Congress Standing Committee. October 31, 2013.

https://www.chamber.org.hk/FileUpload/201401091414512969/GD_collective_Negotiation_201310.pdf. See also No more delay: The urgent task of implementing collective bargaining in Guangdong. 20 May, 2014. China Labor Bulletin.

“Guangdong Province, Enterprise Collective Contracts Regulations”, took effect. According to stakeholder interviews, however, it remains questionable whether this new regulation will realise collective bargaining between the employers and employees. For a detailed analysis on the new Guangdong Province, or on the Enterprise Collective Contracts Regulations, please refer to [stakeholder interviews](#).

UNION DENSITY IN COUNTRY

According to the Chinese Trade Union Statistic 2013 Yearbook, the total number of national trade unions in 2012 was 2.66 million, 795 963 of them trade unions in the manufacturing sector. The number of staff and workers who were members of trade unions in 2012 was 293.71 million. Out of those, 96.22 million worked in the manufacturing sector. Women trade union members made up 37.5% of the total number of unionised workers, while peasant workers accounted for 37.5% of the total staff in 2012.²⁴

COLLECTIVE BARGAINING AGREEMENT COVERAGE IN COUNTRY

The Chinese trade union law uses the term “collective consultation/negotiation” instead of “collective bargaining” to define the official process of employment relations. According to Wage Indicator Foundation 30% of employees is covered by collective agreements. Nevertheless, the agreements remain at the minimum legal requirements, creating little impact on advancing terms and conditions of employment for workers. There is no specific data available for collective bargaining agreement coverage in the garment sector.

LOCAL GRIEVANCE MECHANISMS FOR WORKERS

The dispute resolution system in China consists of four stages: consultation, mediation, arbitration and, finally, courts. A consultation hotline operated by the local social security bureau – 12333 – is available for workers.

Labour disputes are classified into individual and collective disputes. The Labour Dispute Arbitration Committees (LDACs) decide whether a case is acceptable depending on criteria such as an established employment relationship. Employees must apply for arbitration within one year of the dispute arising, according to Labour Dispute Mediation and Arbitration Law.

If the dispute cannot be resolved in the first stage, the parties can move on to mediation or, fifteen days after requesting mediation, the more formal arbitration. If the dispute is not solved by then, LDACs conduct open hearings and can issue rulings that are legally enforceable. In most cases, the ruling of the committee is final. If the employees are not satisfied with the ruling, they can appeal in civil courts within 15 days. If the employers want to appeal the ruling, they can move to invalidate the decision of LDACs on technical and procedural grounds.²⁵

²⁴ Research Dept. of All China Federation of Trade Unions, Chinese trade union statistics yearbook – 2013

²⁵ China’s Labour Dispute Resolution System, China Labour Bulletin,

<http://www.clb.org.hk/en/view-resource-centre-content/100618>. See also Labour Dispute Mediation and Arbitration Law.

The China Labour Bulletin points out that, in practice, the authorities emphasise a mediation solution at all stages of labour dispute rather than the more formal arbitration and litigation processes. If workers would insist on a formal ruling however, they might get a better outcome.²⁶

The grievance mechanisms at the manufacturing level are rather limited and therefore lack effectiveness. Those internal mechanisms rarely ensure the anonymity of the complainants or protect the workers from retaliation by the factories. A lack of grievance structures to resolve complaints or labour disputes at the factory level is common.

STATE ROLE IN INDUSTRIAL RELATIONS

Trade unions in China do not play an important role in the grievance system. The local labour bureau handles complaints and labour disputes. If the disputes cannot be solved, they will be moved onto arbitration or litigation. The Labour Dispute Arbitration Committees are the conciliation machinery for both individual and collective labour disputes.

MECHANISMS FOR SOCIAL DIALOGUE (NATIONAL/SECTORIAL)

Since China has not ratified Convention 87 and 89 on Freedom of Association and Collective Bargaining, and there are no independent trade unions, social dialogue is institutionalised in China via the ratification of ILO Conventions and concerns ILO-related matters only.

China's tripartite consultation system is comprised of three parties: government representatives from the Ministry of Labour and Social Security, employee representatives from the All-China Federation of Trade Unions and employer representatives from the China Enterprise Confederation (CEC/CEDA). As a response to the impact of the global economic crisis, these three parties issued the Guiding Opinions on Stabilising Labour Relations in the Current Economic Situation, with recommendations to help enterprises survive, help workers keep their jobs and maintains social stability by using tripartism. However, because only representatives from the ACFTU are allowed, workers are not independently represented in the tripartite system.

²⁶ China's Labour Dispute Resolution System, China Labour Bulletin,
<http://www.clb.org.hk/en/view-resource-centre-content/100618>.

6. IMPLEMENTATION OF THE FWF CODE OF LABOUR PRACTICES

In this chapter the implementation of every part of the FWF Code of Labour Practices is examined by looking at official statistics on compliance (where available), existing laws and regulations, and different stakeholders' opinions as well as and their analysis on the effectiveness of implementation. Each section begins with a quote from the FWF Code of Labour Practices. All quotes in italics are from relevant laws.

6.1. Employment is freely chosen



"There shall be no use of forced, including bonded or prison, labour".
(ILO Conventions 29 and 105)

LAWS AND REGULATIONS

Although China has not ratified ILO convention 29 (Forced Labour) and 105 (Abolition of Forced Labour), national legislations protect free employment. In legal terms, the Labour Law and Labour Contract Law of the People's Republic of China correspond with the FWF Code of Labour Practices regarding the prohibition of forced or bonded labour.

Article 3 of the PRC Labour Law stipulates that employees have the right to be employed on an equal basis, choose their occupation, take rest and have holidays and leave. Article 9 of the PRC Labour Contract Law forbids the employer from retaining any worker's official documents or collecting personal property when hiring. Article 31 regulates that employers may not oblige employees to work overtime, while Article 37 guarantees employees have the freedom to terminate the employment relationship with 30 days' notice.

STAKEHOLDERS' OPINIONS AND ANALYSIS ON IMPLEMENTATION

Although prison labour is the exception rather than the rule in Chinese garment factories, there have been reports of clothing made by prisoners, including production for western brands, despite the recent closing of the Re-education through Labour System work programme. In these cases, international clients may not be aware of the end manufacturer, due to unauthorised subcontracting used by agents or vendors in a non-transparent supply chain.

Forced overtime is common in garment factories, especially during peak seasons. Workers in general cannot refuse overtime work when the production schedule is tight. In addition, resignation before the country's most-celebrated holiday, the Chinese New Year and Spring Festival, would prove difficult for employees to approve, even if workers had given 30-day notice.

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

To clarify, FWF auditors in China seldom find cases of proved forced labour, especially in the formal economic sector. However, it is not uncommon that factories withhold wages or refuse to accept a worker's resignation, which is a form of forced labour. Even though a worker may give timely notice, management often is unwilling to accept the resignation and does not always pay severance payments according to local law. Particularly before the Chinese New Year, factory managers commonly withhold the last month payment or bonuses to ensure workers return to work. In rare cases, another form of forced labour that FWF auditors see is forced overtime.

WORKER COMPLAINTS, RELATED TO 'EMPLOYMENT IS FREELY CHOSEN'

FWF's complaints procedure is intended to serve as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

FWF has received several complaints relating to forced overtime or difficulties in attempted resignations over the past years. A recent complaint on forced overtime can be accessed [here](#).

Complaints relating to difficulties to resign can be found [here](#) and [here](#).

6.2. There is no discrimination in employment



"In recruitment, wage policy, admittance to training programs, employee promotion policy, policies of employment termination, retirement, and any other aspect of the employment relationship shall be based on the principle of equal opportunities, regardless of race, colour, sex, religion, political affiliation, union membership, nationality, social origin, deficiencies, or handicaps".
(ILO Conventions 100 and 111)

OFFICIAL STATISTICS ON COMPLIANCE

Created to emphasise the importance of the skills and capabilities of people rather than simply a country's economic growth, the United Nations has developed the Human Development Index (HDI). The HDI measures health, standard of living, and learning opportunities. The UN also created the Gender Development Index (GDI), to showcase the differences between male and female development using the same three components from the HDI: health, standards of living, and learning opportunities. Out of 187 countries, China ranked 90 in the HDI and 94 in the GDI of the 2015 United Nations Development Programme.²⁷ It is ranked higher than both Bangladesh (142) and India (130).

The 2014 Global Gender Gap Report gave China a score of 0.68 out of 1, with 1 being most equal, and a rank of 87 out of 142 countries. Among FWF priority countries, Bangladesh had the highest rank at 68, followed by Vietnam at 76 and India at 114.

LAWS AND REGULATIONS

Compared to the west, China has different terms and requirements for its laws regarding labour in the garment industry, but such laws do exist, often with stipulations attached to them. For example, China has ratified ILO Convention 100 (equal remuneration) but not ILO convention 111 (discrimination in employment). However, national legislation prohibiting discrimination at the workplace can be found in Article 12 of the Labour Law of the PRC: "Labourers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief". Article 13 and 14 guarantee equality for women, the disabled, minorities and demobilised army men. An additional stipulation states that gender should not be used as a pretext to exclude women from employment, "except for the types of work or posts that are not suitable for females as stipulated by the State".

Article 31 of the Employment Promotion Law stipulates that rural workers working in the city should have equivalent employment rights to those of urban labourers, and rural workers should not be discriminated against. However, in practice the "Hu Kou" or "Hu Ji" system, a form of household registration required by law, classifies rural and urban residents and causes discrimination against internal migrant workers. The system is meant to control the movement of people between urban and rural areas, but causes a disparity between the benefits, public services, job opportunities that migrant workers and local employees receive. For example, in some areas social security insurance is categorised into rural insurance, small city insurance,

²⁷ <http://hdr.undp.org/en/countries/profiles/CHN>

big city insurance and comprehensive social insurance. The contributions required vary according to “Hu Kou” classification, and consequently the benefits the residents receive are different.

According to Article 46 of the same law, there is equal pay for equal work. “Wages shall be paid according to the principles of “to each according to his work” and “equal pay for equal work”. There are also health stipulations. Article 19 of the Regulations of Employment Service and Administration prohibits discrimination against workers carrying the hepatitis B virus. And gender equality is also embedded in regulation: the Regulation on the Protection of the Rights of Women protects the equal employment, payment, promotion and other rights of female workers.

STAKEHOLDERS’ OPINION AND ANALYSIS ON IMPLEMENTATION

Due to labour shortages in the recent years, age and gender discrimination have become less predominant in the Chinese garment sector. Although not many noncompliance issues are found regarding discrimination in social compliance audits, discrimination in the Chinese garment industry does exist. Garment factories prefer to hire female workers, as they are perceived as being more obedient and easier to manage. Additionally, a distinct gender disparity can still be seen in the technical and non-technical or skilled positions, with a wage disparity to match. Male workers are more often found in cutting and ironing positions, while female workers usually perform sewing and assisting jobs.

Maternity leave is rare in garment factories. Most pregnant workers leave their position and, if they are migrants, go back to their hometown. There are worker reports of factories forcing pregnant women to leave. However, these cannot be confirmed due to the difficulties to collect evidence on this issue during social audits. Most factories do not allow pregnant workers to work overtime. As a result, pregnant workers are only able to earn the minimum wage and do not enjoy maternity benefits, which makes it difficult for them to support themselves and their growing families.

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

Discrimination in employment and promotion based on gender, age or regional background is less predominantly found in audits in China since labour shortages have become an issue.

Discrimination against women often takes the form of discrimination against pregnant and married workers, because most factories avoid providing maternity benefits.

The current institutional settings, including the household registration system, discriminate against migrant workers. The registration system poses a number of barriers to migrant worker access to basic social services.

WORKER COMPLAINTS, RELATED TO ‘NO DISCRIMINATION IN EMPLOYMENT’

FWF’s complaints procedure serves as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

No worker complaints were received regarding discrimination in employment.

6.3. No exploitation of child labour



'There shall be no use of child labour. The age for admission to employment shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years.' (ILO Convention 138) *'There shall be no forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour. [...] Children [under the age of 18] shall not perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals'* (ILO Convention 182).

LAWS AND REGULATIONS

China has ratified both ILO Convention 138 (minimum working age) and 182 (worst forms of child labour).

Chinese law is more stringent than the ILO Convention regarding age limits for work. Both the Chinese Labour Law and the Regulation on the Prohibition of Child Labour forbid any employing units employing teenagers under 16 years old. Article 4 of the Regulation mandates employing units to verify ID and maintain the record of applicants during recruitment. Article 6 and 8 specify penalties for using child labour.

For youth workers aged 16 to 18, it is legal to work, under some special protection. Employing units hiring juvenile workers must register with the local Labour Administration Authorities and the young workers must undergo regular physical checks (Article 6 and 9 of Regulations for the Special Protection for Juvenile Employees). Juvenile workers are also prohibited from any over strenuous, poisonous, harmful or dangerous operations.²⁸ In Jiangsu and Liaoning provinces, local regulations prohibit juvenile employees from working overtime.

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

In recent years, child labour has not been a common issue in the Chinese garment industry because of the negative image that child labour has. The younger generation is less eager to join garment factories to perform such labour intensive jobs. In addition, factories employing children run the risk of being discovered by the Labour Bureau or foreign clients. Also, factories would have more difficulties to manage and regulate children labourers than they would adult workers. However, children can still sometimes be found working in small factories or mills in less developed areas.

Work-study programmes and apprenticeships, through agreements between schools and companies, often disguise some of the worst forms of child and forced labour. Some schools require a one-year internship with a company to obtain a diploma. These students work excessive overtime and are paid less than the minimum wage, but they cannot have a legally binding contract or labour law protection. Health and safety issues are also a concern for these students. Juvenile worker protection is often neglected by employers. Excessive overtime and chemical safety are the most common risks for young workers.

²⁸ Article 38 of Law of the People's Republic of China on the Protection of Minors

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF audits have not revealed cases of child labour in the formal garment companies in China. FWF auditors occasionally find juvenile workers aged 16 to 18, 16 being the minimum working age in a country where school attendance is compulsory until the age of 15.

In the limited cases when FWF auditors do find juvenile workers, they are usually not employed according to the legal provisions for protection, and they are not protected against excessive overtime and hazardous work.

Audits conducted between 2008 and 2015 show that 4% of factories have no effective age verification system in place. This finding includes factories that do not keep copies of worker ID cards, as well as a lack of recorded information regarding age or time of hiring. Additionally, these factories do not have a policy for screening workers during the interview process, do not ask the workers' age or check the authenticity of workers' ID cards.

WORKER COMPLAINTS, RELATED TO “NO EXPLOITATION OF CHILD LABOUR”

FWF's complaints procedure serves as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

Despite this service being made available, no worker complaints were received regarding child labour.



6.4. Freedom of association and the right to collective bargaining

“The right of all workers to form and join trade unions and bargain collectively shall be recognized” (ILO Conventions 87 and 98). “Workers’ representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to carry out their representation functions” (ILO Convention 135 and Recommendation 143) .

OFFICIAL STATISTICS ON COMPLIANCE

According to the Chinese Trade Union Statistic 2013 Yearbook, in 2012 the total number of trade unions in China was 2.66 million, with 795 963 in the manufacturing sector. The number of trade union staff and worker members was 293.71 million, and of those, 96.22 million were in the manufacturing sector.

LAWS AND REGULATIONS

China has yet to ratify ILO Conventions 87 and 98, which seek to add the rights of freedom of association and the right to organise and engage in collective bargaining.

However, Chinese national law has its own standard, a written provision regarding freedom of association. Article 7 of Labour Law stipulates that labourers shall have the right to participate in and organise trade unions in accordance within the law.

Article 3 of the Trade Union Law repeats this provision, stating that all workers have the right to organise or join trade unions according to law, and organisations should not obstruct or restrict them. China Trade Union Law also asserts that there is no minimum number of workers needed before a factory can become a union member.

Although provisions seem to be given within the articles of the law, in practice these laws do not protect the right to freedom of association. Article 11 of Trade Union Law regulates the establishment of trade unions, ensuring they need approval from the trade union organisation at the next higher level. This is the All-China Federation of Trade Unions, the unified national organisation.

Article 20 of the Trade Union Law stipulates that trade unions should represent employees equally. The trade union at the next higher level should support and assist the trade union in signing a collective contract. However, there is no comprehensive national law on collective bargaining procedures but rather a plethora of regulations, paraphrased as “collective contracts”.

Articles 41, 51, 52 and 53 of Trade Union Law protect union members and leaders from unequal payment, humiliation, slander, injuries inflicted, interference in duties or hindrance of their union activities.

The right to strike was removed from the Constitution in 1982. The revision of the Trade Union Law has removed the term “strike” and replaced it with both “work stoppages” and “go-slows” instead. In practice, the new “stoppages” and “go-slows” must be authorised by the local police.

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

Although it is still early to say whether Guangdong Province's new regulation on collective contract will facilitate communication between employer and employee, stakeholders shared some concerns, as seen here below.

The role of trade union/ACFTU

As the only legally recognised union in China, ACFTU acts more towards maintaining harmony and social stability, rather than as a representative of workers' rights and interests. To ACFTU leaders, harmony and stability means no strikes or protests.

The Guangdong Province Regulation on Collective Contracts has a vital and guiding role for trade union negotiations between employers and employees. Article 6 states that "the local federations of trade unions shall organise, direct, and coordinate enterprise trade union to conduct collective negotiations and establish and implement collective contract." Article 13 allows the local federation of trade unions to elect negotiation representatives in enterprises that do not have a trade union. Articles 33 and 35 allow interference from the state and local trade unions in regards to disputes and strikes.

The awareness and capacity of workers

In some factories where there are intense labour disputes, workers are aware of the need to elect worker representatives for collective bargaining. However, most production workers are not very aware of the importance and benefits of collective bargaining, how to conduct negotiations and what their rights are. Moreover, becoming a worker representative requires a good understanding of labour law and contract law, as well as soft skills that many factory workers have not been able to acquire.

The willingness of employers to negotiate collectively

Most employers do not show an interest in collective bargaining, often avoiding negotiations with employees. It is also common for factory management to interfere in the election of a trade union leader or worker representatives, often fixing elections so that the trade union leader is also one of the factory managers.

Terms of controversy

In the Chinese case, strikes are not allowed during collective negotiations. In fact, article 24 states: "During the period of collective negotiations the employees must not engage in block, obstruct or seal off access to the enterprise, obstruct employees, materials from entering or exiting the enterprise, destroy the enterprise's equipment and tools, or damage the enterprise's regular production procedures and public order".

Worker representatives can be fired if they are deemed to be violating an employer's rules and regulations. Although the regulation protects some rights of negotiation representatives (position, wage and benefits), it also grants employers the right to punish them. Article 16 states, "During the period when negotiations representatives are performing their duties, the enterprise shall not terminate the labour contracts of the negotiations representatives, except

in situations covered under Article 36 and Article 39 of the Labour Contract Law". Article 39 of Labour Contract Law states that "...an employer may terminate an employment contract if the employee materially breaches the employer's rules and regulations, or commits serious dereliction of duty or practices graft, causing substantial damage to the employer". In short, the employer can fire worker representatives on the basis of alleged rule-breaking.

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF auditors have found that each unionised factory was affiliated with the All-China Federation of Trade Unions (ACFTU). In most cases auditors found union registration a formality that does not lead to social dialogue structures in most cases. The union is responsible for, for example, organising factory outings and is not often involved in dialogue between workers and management. Additionally, the chairman of the union is frequently appointed by management or part of the management. Auditors require factories to set up worker representation that is part of, and elected by, the workforce. Moreover, workers often do not know the union chairman. Only in a few rare cases, are worker representatives democratically chosen. Because of this, FWF's audit team usually recommends training in order to increase the effectiveness of worker representation and dialogue.

WORKER COMPLAINTS, RELATED TO 'FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING'

FWF's complaints procedure serves as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

Despite this service being made available, no worker complaints were received regarding freedom of association and collective bargaining.

6.5. Payment of a living wage



“Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income” (ILO Conventions 26 and 131, the Universal Declaration of Human Rights, art 23(3) and art 25(1)). “Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law be permitted. Deductions shall never constitute an amount that will lead the employee to receive less than the minimum wage. Employees shall be adequately and clearly informed about the specifications of their wages including wage rates and pay period”.

LAWS AND REGULATIONS

The Chinese government recognises the Universal Declaration of Human Rights, and ratified ILO Convention 26 on minimum wage fixing in 1928. However, it has not ratified the more recent ILO Convention 131 on minimum wage fixing, which dates from 1970. The most important law regarding wages is the Labour Law of the PRC, which includes a minimum wage system.

Chinese legislation does not define a living wage, but guarantees employees, regardless of their status as apprentice, probation or dispatched workers, a minimum wage per month. The minimum wage varies in different areas, determined by governments of provinces, autonomous regions or municipalities directly under the Central Government. The determination and readjustment of the standards on minimum wage considers three main factors:

- “The first is the lowest living expenses of labourers themselves and the average number of family members they support;
- The second is the average wage level of society as a whole; the situation of employment; and the different levels of economic development between regions;
- And the third and final is labour productivity...” (Labour Law, Article 48).

The minimum wage does not include overtime wages, subsidies and premiums or welfare benefits. Extra payments should be paid in situations such as extended working hours, or work on rest days or statutory holidays, according to article 44 of the Labour Law.

Salaries must be paid in full on time and in every 30 days. If the payday is a non-working day, the salary must be paid the day in advance (Labour Law, Article 50). A paystub should be provided for worker’s acknowledgement (Article 6 of Provisional Regulations on Payment of Wage).

The payment for resigned or terminated employees as well as the payment during downtime varies according to local regulations.

STAKEHOLDERS' OPINIONS AND ANALYSIS ON IMPLEMENTATION

There is no uniform definition of living wages in China, and no official statistics for living wage. Asia Floor Wage uses needed calories, household size, and the proportion of income spent on food to calculate the living wage. However, complications arise as eating habits and consumer product prices vary between provinces, cities, counties, towns and villages in China. The cost of living can even differ between rural and urban areas within the same city.

It is common practice for garment factories to set the basic wage for workers at the local minimum wage. Although the minimum wage in most cities was raised in early 2015, this increase is not sufficient to compensate for the inflation rate and the salary for a standard working week. Therefore, even the new raise in wages may not be enough to support a decent living. As a result, most workers have to work extended hours to earn more money.

Piece rate workers usually get paid 100% of the piece rate for overtime compensation. The average hourly rate falls below the minimum hourly rate for piece rate workers, by dividing the total piece rate wage by the total hours worked. Delay or withholding payment is not a common practice.

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

In nearly all audits, FWF concluded that workers are paid below the estimates of living wage benchmarks collected by local stakeholders. Wages are very often below the Asia Floor Wage estimate. Working excessive overtime has a great impact on workers' monthly wages and is often considered a requirement to meet minimum needs. Given the widely applied piece rate system, workers are generally not paid for leave/statutory holidays, according to local law.

Moreover, auditors often find that workers are not aware of how their wage is calculated.

Factory management in China is generally not transparent with regards to wage and working hour records. Given the commercial auditing industry, management often falsifies documents to meet the different standards. FWF's audit methodology is geared towards openness and cooperation; FWF auditors often spend considerable time convincing the management to be open about the working hour situation.

WORKER COMPLAINTS, RELATED TO 'PAYMENT OF A LIVING WAGE'

FWF's complaints procedure serves as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

Among the complaints received by FWF that show that overtime often is not paid correctly are:

[Complaint 2014 March China Outdoor Sports](#)

And:

[Complaint 2012 November China Filippa K](#)

6.6. No excessive working hours



“Hours of work shall comply with applicable laws and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7-day period. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate”.
(ILO Convention 1)

LAWS AND REGULATIONS

There is no collective bargaining agreement with the trade union on working hours, as the Chinese government has not ratified ILO convention 1 (hours of work). Regardless of the lack of collective bargaining on working hours, there is a national labour standard of an eight-hour work day and 40-hour work week, with not more than 3 hours of overtime per day, and not more than 36 overtime hours per month. Workers are entitled to at least one rest day per week. There are exceptions for certain enterprises, and workers may adopt an irregular work system, as long as the average number of working hours per week and average hours per month stays within the legal working hour standard.

For the purpose of this regulation, the garment industry is categorised as “other industries that are applicable for comprehensive working hours”. Because there are no definitions set for this third type of industry, garment factories use this to their advantage, extending working hours and delaying overtime payment until the end of one calculation cycle, which often takes up to one full year. This means that garment factories can allocate a comprehensive 2 000 regular working hours in addition to 432 overtime hours in one year. It also means that the factory can decide to withhold overtime pay for a year.

According to Chinese Labour Law, overtime premiums should be at least 150% of the wage when extended working hours are assigned to employees; at least 200% of the wage when employees are assigned to work on rest days and no deferred rest can be taken; and at least 300% of the wage when employees are assigned to work on statutory holidays.

Employees should have at least 11 national public holidays per year. Also, employees who have served for one to ten years are entitled to five days of paid annual leave; employees who have been employed for 10 to 20 years are entitled to ten days; and if they have been employed, their annual leave entitlement rises to 15 days. Statutory holidays and rest days are not to be regarded as annual leave (article 3 of Annual Leave Regulations).

STAKEHOLDERS’ OPINION AND ANALYSIS ON IMPLEMENTATION

Excessive overtime remains an important issue within Chinese garment factories, with the average daily working hours reaching 12 to 15 hours per day during peak seasons. In addition, there is no guarantee of at least one day off per week. In most cases, workers cannot refuse to do overtime, especially since their wages are often insufficient to support decent living conditions.

The source of excessive overtime is due to three main factors: the volume of orders, which often exceeds factory capacity; frequent labour shortages, partially due to a high turnover rate of young workers; and urgent last-minute orders from clients that must be rushed to be finished on time.

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

Excessive overtime is widespread in the Chinese textile industry and is almost always found in FWF audits. Especially in peak season or in cases of tight delivery deadlines, workers can work many as 77 hours. Auditors find employees working as many as 13 to 25 consecutive days without a day off.

Chinese factory management is often not transparent with regards to wage and working hour records. This makes it difficult for auditors to verify the exact working hour situation.

WORKER COMPLAINTS, RELATED TO 'REASONABLE HOUR OF WORK'

FWF's complaints procedure serves as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

FWF has received many workers complaints relating to excessive overtime:

[Complaint 2015 March China Acne Studios Jack Wolfskin Kjus Odlo Schoeffel Vaude](#)

[Complaint 2014 June July China Mammut Jack Wolfskin Haglofs](#)

[Complaint 2014 June China Acne Studios](#)

and

[Complaint 2013 October China Mammut](#)

6.7. Safe and healthy working conditions



“A safe and hygienic working environment shall be provided, and best occupational health and safety practice shall be promoted, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Appropriate attention shall be paid to occupational hazards specific to this branch of the industry and assure that a safe and hygienic work environment is provided for. Effective regulations shall be implemented to prevent accidents and minimize health risks as much as possible” (following ILO Convention 155). “Physical abuse, threats of physical abuse, unusual punishments or discipline, sexual and other harassment, and intimidation by the employer are strictly prohibited”.

LAWS AND REGULATIONS

China has not ratified ILO Convention 155 on occupational safety and health. However, China has laws and regulations on building safety, fire safety, electric safety, chemical safety, machinery safety, food safety and environmental protection in the workplace.

Building Safety:

According to article 13 of the Fire Control Law of the People’s Republic of China, “the projects completed with fire control design in accordance with the requirements of the state Technical Standards on Fire Control for Engineering Construction shall go through acceptance check”. Article 61 of the Construction Law, regulates construction projects completed and accepted through examination should meet the stipulated quality standards on construction projects.

Fire Safety:

There are different codes regulating fire safety, including codes on the availability and usage of fire extinguishers, hydrants, fire alarm, emergency lights, emergency exits, evacuation doors and fire drills, etc. Every half year fire drills should be arranged. Evacuation doors should open towards the outside. Evacuation staircases, passages and doors should be at least 1.1 meter wide.

Electric Safety:

The General Guide for Safety of Electric Usage and Warning Signs in the Guidelines for Safety Signs and Usage (GB 2894-2008) requires that no flammable, explosive or corrosive materials are stored near electric installations. The electric circuits must be inspected regularly and electric shock warning signs should clearly mark areas where electric shock could happen.

Chemical Safety:

According to the Regulations for Safety Administration of Hazardous Chemical, Regulations for Chemical Usage Safety in Workplace and General Rules for Preparation of Chemical Safety Data sheet (GB 16483-2000) hazardous chemicals should be placed in proper areas with secondary containers. Safety information, trainings, personal protective equipment and occupational health checks should be provided to employees handling the chemicals.

Machinery Safety:

According to the Code of Design of Manufacturing Equipment Safety and Hygiene, Production Safety Law, the Safety Monitoring Regulations of Special Equipment and Health Standard for Design of Industrial Enterprises, workers should be protected from the dangerous part of machines. Special equipment should be registered before equipment safety monitoring authorities and should be operated by licensed operators. Regular inspections should be done for these special machines.

Food Safety:

The Food Safety Law requires that a licensed catering service and the food producer or operator should receive an annual health examination and must obtain a health certificate before working.

Harassment and Abuse:

According to article 11 of the Special Provisions on Labour Protection for Female Employees, employers should prevent and stop sexual harassment towards women in the workplace.

STAKEHOLDERS' OPINION AND ANALYSIS ON IMPLEMENTATION

Although there was a building collapse in a shoe factory in Wenzhou early this year, building safety is not a major concern in China. However, most garment factories present some minor fire safety issues. In general, fire safety and building safety conditions are worse in small mills and in less developed areas.

Noise, dust and chemicals are higher on the list of concerns of occupational health and safety in the garment industry. Oftentimes, the factories have no proper ventilation in the area where the dust of cotton or yarn is produced. In some shoe factories the chemicals are toxic to workers' health. However, few workers wear personal protective equipment. In the summer, working in hot temperatures is another concern relating to workers' health.

Employees are often not aware of ergonomic hazards and consider the lack of protective gear normal. The prominent work injuries in garment factories are often related to long working hours.

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

FWF audits in China show relatively high health and safety standards compared to neighbouring countries. However, the results of the audits conducted between 2008 and 2015 show that 28% of factories have critical fire safety issues such as blocked evacuation routes and aisles. Warehouses that store combustible materials do not have adequate fire prevention means, such as explosive-proof lights and sufficient fire extinguishers.

To keep the workshops warm in winter, some factories lock some of their exits, often leaving the production buildings with only one safety staircase and exit.

Workers are not used to wearing personal protective equipment while working, especially when operating the cutting machines. Also, workers' awareness about chemical safety is weak. FWF auditors have discovered workers handling chemicals when they do not know the

chemical contents or potential health hazards. Workers do not have regular physical examinations to keep track of their health. The ventilation system in the workshops often does not function well, and harmful fumes fill the air.

The conditions of the dormitories are often not hygienic. Factories dispose of waste water directly into the municipal water pipeline, and some of the hazardous substances are disposed of without permission from the local government.

WORKER COMPLAINTS, RELATED TO 'SAFE AND HEALTHY WORKING CONDITIONS'

FWF's complaints procedure serves as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

Despite this service being made available, no worker complaints relating to safe and healthy working conditions were received.

6.8. Legally-binding employment relationship



“Working relationships shall be legally binding, and all obligations to employees under labour or social security laws and regulations shall be respected”.

LAWS AND REGULATIONS

Employment Contracts:

Labour Contract Law stipulates that an employer’s relationship with an employee is established on the employee’s first day of employment. A written employment contract should be concluded within one month after the employment date. The employer and the employee should each hold one copy of the employment contract (article 7 and 10 of Labour Contract Law).

When an employee is hired, he or she should be informed about the content of the work, the working conditions and place of work, occupational hazards, production safety conditions and labour compensation. The employer has the right to learn from the employee basic information which directly relates to the employment contract (article 8 of Labour Contract Law). Other matters might be included, such as probation period, training, confidentiality, supplementary insurance and benefits, etc. (article 17 of Labour Contract Law).

An employee could terminate the employment relationship by giving a 30-day written notice to the employer. During the probation period, the employee only needs to give three days’ notice (article 37 of Labour Contract Law). If employers terminate the contract in circumstances specified in article 46 of the Labour Contract Law, they need to pay severance to employees, according to article 47.

Social Insurances & Housing Fund:

Employees are entitled to five types of social insurance: retirement, work injury, medical, unemployment, and maternity. Both employer and employee contribute to social insurance (articles 72 and 73 of the Labour Law). The detailed regulations regarding the five insurances are mentioned in the Social Insurance Law. An individual participating in basic pension insurance can only collect basic pension on a monthly basis if the cumulative premium payment period is at least 15 years at the time the individual reaches the statutory retirement age.

Details of work-related injury insurance and its application are stipulated in the regulation on Work-Related Injury Insurances (articles 14 and 15). These articles specify which circumstances constitute industrial injury.

Employers, employees and their relatives can apply for an assessment of occupational diseases within the local labour administrative department (article 17). When employers dispute the case of their employees, they have the responsibility to provide evidence.

Collective Contracts:

As mentioned before, there is no comprehensive Chinese law on the collective bargaining procedure. Article 51 and 55 regulate that an employer and must provide his or her employees with a collective contract that is not lower than the minimum rates and standards prescribed by the local People's Government. The contract between an employer and employee should follow the rates and standards of the collective contract.

Labour Dispatch

Chapter 5, section 2 of the Labour Contract Law regulates the placement of dispatched workers for temporary, auxiliary or substitute jobs (article 66). A contract between a staffing firm and a dispatched employee should be a fixed-term employment contract for at least two years. Dispatched workers have the right to receive the same pay as employees of the accepting unit for the same work.

In March of 2014, China implemented Interim Provisions on Labour Dispatch. The proportion of labour dispatched workers in an enterprise should not exceed 10% of its total number of employees (article 4). Article 28 gives the employer a two-year grace period to reduce the proportion of labour dispatched workers to less than 10% of their total workforce before the Interim Provisions become effective. Article 18 of Interim Provisions protects the dispatched workers, providing that they get proper social insurances in each region they have worked.

STAKEHOLDERS' OPINIONS AND ANALYSIS ON IMPLEMENTATION

In some small textile mills and less developed areas, labour contracts are not drawn, or employees are not provided with a copy of the contract. If contracts are provided, a detailed job description, legal rights and occupational hazards are generally not established in the text.

Social security is still a major issue in China. Migrant workers constitute a majority of the garment workforce, but regulations such as social insurance transfers between different areas, have not been sufficiently developed. Different cities in one province even have different standards of contribution. There are still workers who are not clear about the benefits of paying social insurance. Other workers do not have confidence in government policies and regulations, and doubt if they can get the benefits of social insurance.

Due to the rising labour costs in China, some factory managers relocated factories to Southeast Asia, particularly in countries such as Myanmar and Cambodia. However, these managers did not pay workers legal compensation when the factory closes. As a result, problems of unpaid social insurance payments and housing funds began to emerge. Workers in several shoe-producing factories went on strike to protest unpaid social insurance payment and housing funds. The 2014 Yuyuan strike was one of the largest strikes in Chinese history.

Under the new progressive retirement plan, workers have to make contributions to social security insurance for a longer time and receive the pension from the government later than the current legal age of 50 for females and 60 for males.

FWF MAIN AUDIT FINDINGS OVER THE LAST THREE YEARS

In nearly every FWF audit, auditors find factory workers not enrolled in the social security system. The factory management is often unwilling to provide social security benefits to workers, and takes advantage of the fact that the workers' personal share is high compared to their monthly income.

Another FWF finding includes workers who have not signed a labour contract with their factory. In 10% of the audits between 2008 and 2015, workers had not received a copy of the contract or appointment letter.

Moreover, the audit team concluded that the content of the labour contract often does not include all terms that are legally required by law, such as specifications on salary, work position, benefits and working hours.

WORKER COMPLAINTS, RELATED TO "LEGALLY BINDING EMPLOYMENT RELATIONSHIP"

FWF's complaints procedure serves as a safety net. When a complaint is filed, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. All the complaints are published on the FWF website.

Many complaints that FWF receive from China relate to legally-binding employment relationships. Four examples can be found here:

[Complaints 2015 September China Albiro Hagloffs](#)

[Complaints 2014 March China Jack Wolfskin Vaude Schoeffel Hagloffs](#)

[Complaints 2014 May China Suit Supply](#)

and

[Complaints 2013 January China Kjus](#)

SOURCES USED IN THIS COUNTRY STUDY

This material has been researched by Joyce Zhou. The study is prepared after collecting information about national laws and local stakeholders' views on labour issues in the garment industry in China. In addition to these findings, FWF has gathered information from internationally recognised sources on the economic, social, and political and human rights situation in the country.

The following stakeholders representing public authorities, employers, trade unions and NGOs were consulted in writing this country study:

I. EMPLOYERS

China National Textile And Apparel Council (CNTAC), <http://www.cntac.org.cn>

II. TRADE UNIONS

International Trade Union Confederation (ITUC), <http://www.ituc-csi.org/?lang=en>

China Institute of Industrial Relations, <http://www.ciiir.edu.cn>

III. LABOUR RELATED NGOS

Economic Rights Institute (ERI)

Labour Action China (LAC), <http://www.lac.org.hk>

Inno Community Development Organization (Inno), <http://www.theinno.org>