

How to engage on worker representation in China

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Monina Wong – ITUC – Worker representation in China, what is the situation and structure

There is a widening gap between domestic law and the international standard.

1. Setting the stage: Increased administrative control by government over industrial relations.

The priority of the Chinese government is stability of employment and social relations. This is done through union providing more services to workers (transport, child care etc.) and increased monitoring by the ACFTU. The worker representatives in the ACFTU are not always elected and there is no right to strike.

Anticipate less pro-active labor policies from government in the future. Eg might not see year-by-year minimum wage increase as we have the last 10 years. The numbers of migrant workers are growing. In this context we see a growing number of labour disputes.

Anticipate to more administrative control of labour issues by the government to set standards, and not through collective bargaining (CB). In general, the environment for CB is less friendly now than it was a few years ago, the wording of *collective bargaining* and/or *social dialogue* can't even be mentioned anymore. Also, unions themselves appear to be less vocal about their pilot initiatives to negotiate higher wages through CB, e.g. don't see much talk of these pilots in union reports.

The human rights performance in China is deteriorating. You can still defend your rights based on the law, but we see union staff penalized if they make pro-active use of the law, even lower level union officials.

We see an increased role of the state in industrial relations through Ministry of Labour, with labour unrests struck down on very quickly. The Ministry is working (e.g. through unions) to make sure that ministry officials will know when workers are trying to exercise their rights, in order to be there instantly to "resolve" it. Websites and organizations monitoring labour disputes have to a large extent

been closed down by government, so we do not have a good picture of labour disputes and workers exercising their rights in China.

2. Criminalization of labour activists and their supporters.

China has not ratified ILO conventions 87. Unions play a dual role; to represent workers and to represent Chinese style socialism. In practice, there is no right to strike (legally). In this context, it is easy for companies to take FoA as a “non-issue” in China.

There is a very narrow scope of worker representation on non-rights based issues. But it is important not to get stuck because China has not ratified convention 87, China is still a member of ILO. ITUC is now working through the ILO system.

ITUC filed a Freedom of Association complaint to the ILO advisory committee in February 2016 - can be found online on ILO workpage. The complaint is on the arrest of 8 activists from 4 labour organisations in Guangzhou. A report was issued in 2018.

The committee examined 3 questions:

- Obstacles for workers and right defenders to exercise their rights, in particular the prohibition to join or form unions outside the ACFTU structure.
- Government effort to crack down on labour activists.
- Impossibility to participate in strike/demonstration without violating Chinese laws. Becomes criminal liability issue.

Interim conclusion from advisory committee: “The right to join and form unions/freedom of association cannot be said to exist unless fully established by law.”

Government often uses criminal law to penalize, thus no longer a trade union issue. Brands and suppliers might falsely “rest” in that.

While there is a protection in law to protect union activists against discriminatory dismissal, there is no provision in the law to protect workers against discrimination in dismissal. When court does not see this as a trade union issue and case is judged based on criminal law, this legal protection does not apply.

There is also an issue with civil society activists whom, because of their support of trade union activist, are met with criminal charges. These are also right holders, but approaching this requires a different understanding from the brands than what we have today.

When domestic law conflicts with international standards, what should we do?
See OECD guidelines; responsibility of companies to obey law, when conflict companies should seek to honor the guidelines to the fullest extent possible.

Chinese law does not forbid workers to join ACFTU and to be democratically elected for this. Revised labor law forbids management or relatives of management to run for union elections. Companies could play an important role in trying to prevent management intervention in union elections. It would be helpful to review policy, and even understanding, on exercising FoA by engaging with suppliers.

Questions:

1) What can brands do to work with suppliers to make sure workers exercise FoA without breaking criminal law?

- Engaging, or even registering official ACFTU unions, or engaging in CB activity is not illegal.
- Room for pro-activity in making sure management does not interfere and that workers voices are represented in these structures.

2) For brands who rely on 3rd party audits, is the information credible and how to make use of audit information in due diligence?

- Engage with supplier to know what kind of industrial relations exist. Understanding the space, not stepping across the red line. Important to get the bigger team on board to engage your suppliers. To get 3rd party information you could also engage with international unions with experience in China.

3) Should factories be part of the ACFTU, or should brands rather push for local union?

- Does joining the ACFTU really help workers exercise their rights (to FoA)? Not necessarily. We have to explore rooms where workers can legitimately exercise the right to organize, while making sure you act in accordance with national law.

Key take aways from group session

Group 1:

- Information from workers are crucial, but do not get that from audits. How can we move from audits to intelligent worker conversation?

Intelligent auditor conversation – identify auditors and orgs that share the approach. Outside factory interviews – ask about hobbies, family eg.

- Map out all your factories; amount of workers, existing audit reports eg.
- Focus on early disputes – you will have disputes, make sure they don't develop.
- Find out what works – eg improvement teams.

Group 2:

- Need to get management onboard. First but big step.
- Knowledge about local law and regulations.
- Make workers understand
- Initial conversation with suppliers important, tell them the benefits, help them, ++
- Present business case

Group 4:

Barriers: cultural context (hierarchy), Brand leverage, relationship

Enabler: Law – knowledge of the law. ILO has an office in Beijing, can find information online. Worker retention – business case, Technology

Take aways – what should companies do:

- Map the space – factory, national/regional level
- Building trust/facilitate a safe space
- Start at grass roots level – start with easy issues, build up slowly, increase space gradually.

Group 3:

To get started

- Dig deeper than the existence of worker committee.
 - o What is the format of the committee?
 - o Number of members?
 - o How were they elected/appointed?
 - o How often do they meet?
 - o Can copy of minutes be shared?
 - o Is the committee gender balanced?

- When re-elected?

Knowing where to start

- survey, pick suppliers to pilot. Could be general survey with FoA questions and single them out for further follow up.

Feedback to workers

- Share benefits
- Post minutes on the wall

Practical Integration

- Company buy-in of purpose/statement
- Consistent communication (across business) – important of common internal understanding and confidence in sharing the companys vision with suppliers
- Review communication channels, eg 80% of china smart phone users use we chat.

Enabling environment

- Lay the groundwork – show workers value of opinions through worker empowerment training, they must be reassured that their opinion is valued.
- Digital training to build awareness, especially in teams without local staff
- Workers need to trust in the process.
- Social media – eg we chat group (brand/factory led), ask for followers.
- Lucky envelope for participants
- Important to first train managers, middle managers and then workers. Train all on how to communicate.

What do you want from MSIs?

- Share contact info from the meeting