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DETERIORATING ENVIRONMENT FOR CIVIL SOCIETY

The People's Republic of China ("China") has strong labor protections in place under domestic law, but the lack of adequate enforcement of these laws and regulations against both public and private actors leads to widespread and systemic violations of the rights guaranteed under the International Covenant on Economic, Social, and Cultural Rights (ICESCR or "the Covenant").

The violations of various rights documented in this submission are exacerbated by state suppression of civil society. The environment for civil society participation in upholding the rights under ICESCR has rapidly deteriorated since China's previous review by the Committee in May 2014. This trend is illustrated by: 1) the crackdown on rights lawyers in 2015; 2) the raid on labor rights organizations in 2016; 3) restrictions on civil society organizations with the entry into force of both the Charity Law in 2016 and the Foreign NGO Management Law in 2017; 4) the detention in 2018 of about 50 individuals, including workers, student supporters, a lawyer, and local union officials in connection with grassroots efforts of workers to unionize at the Shenzhen Jasic Technology factory;¹ and 5) five labor activists detained in Guangzhou in 2019.²

There have been a number of high-profile cases of political retaliation against workers, human rights defenders, and rights lawyers in recent years,³ leading to decimation of civil society and the public interest community, including in the field of labor rights. Many brave individuals continue their work away from the spotlight, and many of those detained wish to remain anonymous, constantly aware of further retaliation against themselves and their families only for participating in China's own dream of achieving a more equitable society.⁴ This constrained environment for civil society activities has had a profound effect on individuals seeking redress of widespread rights abuses in the field of labor, and the lack of civil society avenues for labor-related aid has intensified the very types of unrest the authorities have used to justify the targeting of certain individuals.

¹ For a summary of the Jasic incident and mention of other notable and recent cases, please see "Call to end the suppression of labor activists in China," China Labour Bulletin, 26 March 2019, <https://clb.org.hk/content/call-end-suppression-labour-activists-china>.

² "Five labour activists released after 15 months in detention," China Labour Bulletin, 9 May 2020, <https://clb.org.hk/content/five-labour-activists-released-after-15-months-detention>.

³ "Case No 3184 (China), Interim Report - Report No 392," International Labour Organization, October 2020, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMP_LAINT_TEXT_ID:4059166.

⁴ For more information about workers' participation, please see "China's workers' movement will continue despite crackdown on labour activists," China Labour Bulletin, 30 April 2019, <https://clb.org.hk/content/china%E2%80%99s-workers%E2%80%99-movement-will-continue-despite-crackdown-labour-activists>.

ARTICLE 2: NON-DISCRIMINATION

Household registration system results in systematic discrimination

China's *hukou* [household registration] system has resulted in systematic discrimination against individuals whose recent ancestors originated from rural areas. The primary result is that those with rural *hukou* are denied access to basic social services in urban areas, where their labor is necessary to support the urban economy. Promised reforms of the system have not materialized to address the discriminatory effects that limit many of the rights under the ICESCR for generations of individuals. Although some aspects of discrimination against rural *hukou* holders have been abolished through China's labor laws, *de facto* discrimination and a widespread acceptance of discrimination against rural migrant workers, recent graduates, and others⁵ persists in employment. These include: 1) discrimination in the hiring process; 2) employers not signing labor contracts; 3) employers withholding labor contracts; 4) disparate economic compensation for occupational injuries and illness; 5) inability to transfer and obtain social security funds; and 6) other discriminatory effects of the system against rural *hukou* holders.

- What is the timeline for the abolition of the *hukou* system?
- What measures will be implemented to eliminate the discriminatory effects of the *hukou* system that persist in employment practices?

Persons with disabilities face barriers to employment

Persons with disabilities face significant barriers to employment. Numerous cases of employment discrimination particularly in hiring practices and qualification tests exist.⁶ In 2007, the State Council introduced the Regulations on the Employment of People with Disabilities, which mandated that all enterprises reserve at least 1.5% of their workforce positions for disabled workers, or otherwise make contributions to employment guarantee funds for persons with disabilities. However, this regulation is widely ignored, even by local government departments, and it is unclear whether employment guarantee funds are being used for the primary purpose of providing training and employment services to unemployed persons with disabilities. Reports indicate that corruption and misuse of these funds are rampant.

- What percentage of employers have met the 1.5% quota of employees representing persons with disabilities?
- What is the total amount of funds employers have paid annually since 2007 to the employment guarantee funds, disaggregated by year, public and private sector, industry, and province or region?
- What percentage of employment guarantee funds are used for training and employment services for persons with disabilities, disaggregated by public and private sector, industry, and province or region?

ARTICLE 6: THE RIGHT TO WORK

The low legal retirement age, particularly for women, represents an obstacle for certain individuals to the enjoyment of the right to work. The current retirement age in China has not changed since the 1978 and is set at 60 years for males, 55 years for female civil servants, and 50 years for females

⁵ "China's Discriminatory Hukou System Plagues White Collar Workers Too," Economist, 14 December 2019, <https://www.economist.com/china/2019/12/14/chinas-discriminatory-hukou-system-plagues-white-collar-workers-too>.

⁶ "Workplace discrimination," China Labour Bulletin, last updated 7 July 2020, <https://www.clb.org.hk/content/workplace-discrimination>.

working in enterprises.⁷ According to the World Bank, average life expectancy at birth has risen from 65.8 years in 1978 to 76.7 in 2018.⁸ For females, the rate has always been higher than males, at 67.3 in 1978 and 79 in 2018.⁹ Employers are not bound by China’s labor laws when employing workers over the legal retirement age. Specifically, no employment relationship exists between employers and workers beyond the latter’s retirement age, and employers do not contribute to pension schemes for post-retirement age workers. The impacts of this policy result in: a disproportionately greater number of women over the age of 50 having difficulty finding work to support themselves and their families; a limitation on women’s ability to succeed in their careers relative to their male counterparts; and an environment that limits opportunities for women holding governance roles, particularly at the highest levels.

- What is the timeline to raise the legal age of retirement in line with average life expectancy?
- What is the timeline to eliminate gender-based discrimination in retirement age laws?

ARTICLE 7: THE RIGHT TO JUST AND FAVORABLE CONDITIONS OF EMPLOYMENT

Labor laws and regulations inadequately enforced

The lack of enforcement of labor laws and regulations is the single greatest factor limiting individuals’ right to just and favorable conditions of employment. Despite strong legislation, government labor bureaus and labor inspectorates are not equipped to enforce the provisions, giving employers wide latitude to disregard the law. As a result, the primary enforcement mechanism occurs after labor violations have occurred, through labor dispute arbitration committees (LDACs). LDACs settled a record 1,068,413 cases in 2019, the highest number since the implementing legislation was enacted in 2008.¹⁰ The majority of cases regards remuneration, social insurance payments, and contract termination, which is strong evidence that these most basic legal requirements are not enforced against employers. For workers without labor contracts, the first step in the arbitration process is to establish the employment relationship, and the burden is on the worker to do so. The success rate for workers utilizing LDACs is only about 32% and a favorable decision does not necessarily lead to enforcement of the judgment.¹¹ In addition, the LDAC mechanism leaves out significant categories of workers, including groups of plaintiffs with collective claims against a common employer, and employment discrimination cases of legally protected classes: gender, ethnicity, disability, individuals with infectious diseases, and rural migrants. Therefore, the system creates perverse incentives both for employers to disregard the laws with minimal repercussions, and for workers to pursue other avenues outside the system—such as through strikes, protests, and unlawful acts against managers and employers—as a result of the legal system’s perceived ineffectiveness.¹²

- Please provide data on LDAC cases disaggregated by industry, province or region, age, ethnic group, *hukou* status, and gender.
- Please indicate whether legislation will be amended so that LDACs are authorized to adjudicate in employment discrimination cases.

⁷ 《国务院关于工人退休、退职的暂行办法》“Interim Measures on Workers’ Retirement and Resignation,” promulgated by the Second Meeting of the Standing Committee of the Fifth National People’s Congress on 24 May, 1978, available at http://www.npc.gov.cn/wxzl/wxzl/2000-12/07/content_9552.htm.

⁸ “Life expectancy at birth, total (years) - China,” World Bank, <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=CN>, last visited 15 December 2020.

⁹ “Life expectancy at birth, female (years) - China,” World Bank, <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=CN>, last visited 15 December 2020.

¹⁰ Figures are from the China Statistical Yearbook (2019), released by the Chinese government on an annual basis.

¹¹ China Statistical Yearbook (2019).

¹² “A decade on, China’s Labour Contract Law has failed to deliver,” China Labour Bulletin, 28 December 2017, <https://clb.org.hk/content/decade-china%E2%80%99s-labour-contract-law-has-failed-deliver>.

Minimum wage regulations unenforced

Provincial and regional governments have failed to follow China's Minimum Wage Regulations, resulting in minimum wage rates that do not allow for an adequate standard of living. China's Minimum Wage Regulations stipulate that provincial and regional governments should adjust the minimum wage at least once every two years, and that the rate should be set between 40% and 60% of the local average wage. In the mid-2010s, however, Guangdong Province switched to triennial adjustments in contravention of these regulations,¹³ and other provinces followed suit.¹⁴ The frequency of minimum wage increases across the country has continued to decline to the point of being placed on hold, particularly in 2020 in response to the economic fallout from the Sino-US trade war and the COVID-19 pandemic.¹⁵ Very few cities have ever reached the target, and the discrepancy between the average and the minimum wage has increased over the last decade.¹⁶ In addition, employers hiring certain categories of workers are not subject to minimum wage requirements, such as the practice of utilizing student interns, who have little choice but to accept factory employment that has a tenuous relationship with their courses of study, often at the behest of their schools and local governments seeking to boost local economies.¹⁷ In addition, employers dodge minimum wage regulations when in hiring rural migrant workers, an example of *de facto* discrimination in urban employment.

- Please explain what steps the government is considering to ensure the effective enforcement of the Minimum Wage Regulations, specifically the provisions that minimum wages are adjusted every two years and that minimum wages fall within 40-60% of the average wage in each province or region.
- Please provide information about the current minimum wage, average wage, and date of last minimum wage adjustments for each province or region.
- How does the government monitor that employers fully comply with minimum wage regulations, including their hiring of student interns, rural migrant workers, and those in the informal sector?

¹³ Guangdong's policy of only increasing the minimum wage once every three years has severely impacted the lives of low-paid workers there, according to a 2017 survey conducted by the Hong Kong-based group Worker Empowerment (Worker Empowerment, "Investigative Report on Workers' Wage and Living Expenses in Four Tier Cities in Guangdong Province," Worker Empowerment, 22 January 2018, <http://www.workerempowerment.org/en/research-reports/260>). In a subsequent report published in July 2019, Worker Empowerment estimated that a more realistic minimum wage based on workers' lived experiences was equal to 40% of the average wage in 2019, which is in line with the government's Minimum Wage Regulations (Worker Empowerment, "Investigative Report on Workers' Wage and Living Expenses in Four Tier Cities in Guangdong Province," Worker Empowerment, 22 January 2018, <http://www.workerempowerment.org/en/research-reports/260>).

¹⁴ "Shanghai gets token increase in minimum wage," China Labour Bulletin, 1 April 2016, <https://www.clb.org.hk/content/shanghai-gets-token-increase-minimum-wage>.

¹⁵ "Minimum wage increases stall under the impact of Covid-19 pandemic," China Labour Bulletin, 16 December 2020, <https://www.clb.org.hk/content/minimum-wage-increases-stall-under-impact-covid-19-pandemic>.

¹⁶ In many cities such as Guangzhou and Chongqing, the minimum wage is now less than 24% of the average wage, while in Beijing it is under 20%.

¹⁷ One of the most notorious employers of student labour is electronics manufacturer Foxconn, which recruited 3,000 interns from the Zhengzhou Urban Rail Transit School in September 2017 to meet orders after a shortage of workers caused delays in production of Apple's iPhone X. As extensively documented in the book *Dying for an iPhone* (2020) by Jenny Chan, Mark Selden and Pun Ngai, government-set quotas and kickbacks for teachers make these "internships" little more than coerced labour at less than minimum wage, without labour contracts and accompanying legal protections, and without employers paying into social security and other government benefits programs. This factory work has nothing to do with their elected courses, no additional learning opportunities are provided, and students are told they will not be allowed to graduate unless they participate in the "program." See "Employment and Wages," China Labour Bulletin, last updated 15 July 2019, <https://clb.org.hk/content/employment-and-wages>.

Lack of labor contracts leaves workers without legal protection

The authorities' failure to enforce the Labor Contract Law has resulted in many individuals being unable to prove an employment relationship as a first step toward asserting their fundamental labor rights, including payment of wages, social security, medical insurance, and other employment benefits. Those most affected by lack of labor contracts are rural *hukou* holders and those in the informal sector. In 2016, a National Bureau of Statistics survey showed that only 35.1% of rural *hukou* holders had signed contracts with their employers, down from 42.8% in 2009.¹⁸ Passed in 2008, the Labor Contract Law specifies that workers are entitled to a detailed written employment contract when they are hired and severance pay if they are laid off. The Labor Contract Law was amended in 2013 in an attempt to remedy the widespread practice of hiring on an agency basis, but employers have continued to evade their legal responsibilities.¹⁹ For example, the policy of "double wage penalty" requires employers who refuse to sign employment contracts with employees to pay double their wages for the relevant period. However, this is rarely enforced in practice, as those without legal contracts are routinely turned away by China's labor bureaus, as the signed labor contract is the first step in asserting labor rights.

- What mechanisms are available for individuals wrongfully denied a labor contract to enforce their rights to payment of wages, social security and other insurance, and other employment benefits?
- Please provide annual statistics on "double wage penalties" imposed on employers for failure to sign labor contracts, disaggregated by public and private sector, industry, and province or region.

Wage arrears are endemic across industries

The non-payment of wages is by far the greatest single cause of labor disputes in China today. China Labour Bulletin (CLB) has been publishing available data on collective worker actions in China for a decade, and although this is the most comprehensive data set publicly available, CLB's records are incomplete. About 84% of all the collective protests recorded on CLB's Strike Map in 2019-2020 were related at least in part to wage arrears.²⁰ In the construction industry, where the non-payment of wages is endemic, around 99% of all disputes were caused by wage arrears. Government officials are well aware of the chronic issue of wage arrears in the construction industry, admitting that the "deep rooted conflict" in the construction sector remains unresolved and acknowledging, moreover, that the problem is spreading to other industries.²¹ In 2017, China's Ministry of Human Resources and Social Security proposed several measures to address the ongoing issue of wage arrears and issued a 2020 deadline to "basically eradicate wage arrears."²² As of the end of 2020, CLB's Strike Map shows that not only have wage arrears not been eradicated, but also that the COVID-19

¹⁸ "A decade on, China's Labour Contract Law has failed to deliver," China Labour Bulletin, 28 December 2017, <https://clb.org.hk/content/decade-china%E2%80%99s-labour-contract-law-has-failed-deliver>.

¹⁹ "A decade on, China's Labour Contract Law has failed to deliver," China Labour Bulletin, 28 December 2017, <https://clb.org.hk/content/decade-china%E2%80%99s-labour-contract-law-has-failed-deliver>.

²⁰ "Strike Map," China Labour Bulletin, <https://maps.clb.org.hk>.

²¹ In a People's Daily report in January 2017, a Ministry of Human Resources and Social Security official noted that, "On the one hand, the legacy issues plaguing the construction and manufacturing sectors haven't been rooted out and disputes over wage arrears keep occurring at high intensities. On the other hand, new economic sectors like e-commerce are following the same path." The official blamed market uncertainties, rapid expansion and consolidation, and the growth of precarious work for aggravating the situation in the new economy. 《人民日报谈农民工讨薪:拖欠数百万 罚款却不超 2 万》 "People's Daily on rural migrant workers seeking wages: Millions in arrears, but employers' fines not more than 20,000 yuan," HuanQiu, 6 January 2017, <https://china.huanqiu.com/article/9CaKrnJZAqc>.

²² 《根治欠薪时间表:力争 2020 年农民工工资基本无拖欠》 "Timetable for eradicating wage arrears: No wage arrears for migrant worker by 2020," Sina News, 19 July 2017, <http://news.sina.com.cn/o/2017-07-19/doc-ifyiamif3518205.shtml?cre=newspagepc&mod=f&loc=2&r=9&doct=0&rfunc=100>.

pandemic has exacerbated the problem; employers are even less willing and able to pay, and workers have mitigated their losses by seeking new and often precarious employment rather than continuing to demand wages earned.

- What are official statistics on worker strikes, protests, and collective actions in China, disaggregated by type of action, date, industry, province or region, city, employer, and type of dispute resolution including government intervention, trade union intervention, and public security intervention?

Informal sector lacks protection of labor laws

Workers in the informal sector routinely face violations of China’s labor laws. The All-China Federation of Trade Unions (ACFTU) has included various informal workers in its list of Eight Major Groups, including transport workers, couriers, food delivery workers, and other platform-based and gig economy workers. These informal workers are now said to be the ACFTU’s priority. For example, ACFTU claims that, since 2018, 6.5 million new members have been recruited from the Eight Major Groups.²³ So far, however, the union has done little to help its new members other than provide skills training, legal assistance, and some medical benefits. Nothing has been done to challenge the power imbalance in the food delivery industry, for example, as the app companies’ algorithms dictate the increasingly harsh working conditions of the drivers.²⁴

- Please detail the measures that the government plans to implement to ensure that companies operating in the informal sector comply with labor laws and regulations, including workplace health and safety, wage and hours, and insurance.
- In the last 3 years, the ACFTU has focused its efforts on organizing the Eight Major Groups; to what extent has that campaign succeeded in improving the pay and working conditions for individuals working in the informal sector?

Barriers to compensation for occupational illness and injury

Workers face systemic barriers in receiving compensation for occupational illness and injury, including as a result of *hukou* status, lack of signed labor contracts, and informal and precarious employment. In addition, lack of adequate enforcement of workplace safety regulations is a root cause of occupational illness and injury. Workers who face potentially unsafe conditions are in the best position to assess risks and raise alerts to employers. However, workers’ voices are not adequately represented in enterprise unions, and the local unions are failing their supervisory duties to prevent accidents and illness before they arise. In the event of an occupational injury, China has detailed provisions on the procedures that should be followed in the 2004 Work-Related Injury Insurance Regulations and the 2011 Social Insurance Law, among others. These provisions should ensure all injured workers are adequately compensated, but a key obstacle is that verification and assessment of work-related injuries is a very complicated and time-consuming process, especially if workers do not have a labor contract that can specify their employer at the time of the accident.²⁵

²³ 《全国工会新发展八大群体会员 654.7 万人》 “ACFTU’s Eight Major Groups develop with over 6.547 million new members,” Hbzgh.org, 28 August 2020, <http://www.hbzgh.org.cn/xw/qlyw/61657.htm>.

²⁴ “Food delivery workers need a trade union to push for real change,” China Labour Bulletin, 22 September, 2020, <https://clb.org.hk/content/food-delivery-workers-need-trade-union-push-real-change>.

²⁵ The Beijing-based nongovernmental organization, Ren Jian New Workers (北京行在人间文化发展中心), published a report in 2015 which showed that, of the 73 work-related injury cases involving construction workers that were taken up by the group between 2010 and 2014, 89.1% of workers had not signed any contract and did not have work-related injury insurance, and in 60.2% of cases, it was ultimately difficult to verify any employment relationship. Of these workers, 89% had compensation claims rejected, and “there were even some cases of large state-owned enterprises saying that they had no money, leaving the courts unable to take any action.” Faced with this situation, injured workers generally chose to scale back their demands and seek a private settlement. Even the injured workers who opted for litigation and were lucky

The 2011 Social Security Law created a system of advance payments from the work-related injury insurance fund designed to protect workers from delinquent employers who do not provide insurance and refused to pay compensation after an accident. But in the nearly ten years since its enactment, this system is still encountering severe problems in practice. There have been very few successful instances of workers applying for advance payments and the rare success stories were all the result of forceful intervention by the courts. As for occupational illness, China has issued a number of regulations to protect workers at risk, including the ability for medical examiners to establish proof of employment instead of relying on often non-existent labor contracts,²⁶ and mandating employer-sponsored health checks throughout the course of employment.²⁷ However, lack of awareness and weak enforcement of these provisions, lack of health and safety training for workers, and statutes of limitations create barriers to preventing, identifying, and seeking recourse for occupational illness.

- What public disclosure is required for workplace accidents, and what are the statistics on rates of accidents, disaggregated according to type, province or region, and industry?
- Please provide statistics on the numbers of occupational injury and illness cases filed and amounts awarded, disaggregated according to province or region, industry, *hukou* status, age, gender, and ethnic minority status.
- Please clarify whether workers in the informal sector, including in the gig economy, are included in occupational injury statistics.

ARTICLE 8: THE RIGHT TO FORM AND JOIN INDEPENDENT TRADE UNIONS

In light of China's reservation regarding Article 8(1)(a) of the ICESCR²⁸ that restricts its application to the provisions of domestic legislation and, as a result, curtails the ability for workers to organize independently from the All-China Federation of Trade Unions (ACFTU), it is vital that the ACFTU fulfill its intended role of representing workers' interests. Organized under the Chinese Communist Party Propaganda Department, the ACFTU is China's only legally-permitted trade union under domestic law. The ACFTU has over 300 million members and about one million staff. Despite these vast resources, the ACFTU has done little to improve the working conditions and pay for China's workers. The ACFTU has been called to reform into an institution that can truly represent workers facing labor rights violations.²⁹ Various labor laws give the ACFTU authority to monitor workplaces for legal compliance, organize workers at the enterprise level into ACFTU-affiliated unions, and provide legal aid for workers who need legal representation in their labor disputes. However, according to CLB's research and investigations into the role and function of the ACFTU, local union officials are often unaware of labor violations, strikes, and accidents that have occurred within their respective

enough to stay the course and win still often went away disappointed: 21.9% struggled to get the court rulings implemented.

²⁶ "Amendments to China's occupational health law get cautious welcome," China Labour Bulletin, 3 January 2012, <https://clb.org.hk/content/amendments-chinas-occupational-health-law-get-cautious-welcome>.

²⁷ "China issues new regulations to protect workers at risk of occupational disease," China Labour Bulletin, 24 April 2015, <https://clb.org.hk/content/china-issues-new-regulations-protect-workers-risk-occupational-disease>.

²⁸ Upon its ratification, China stated: "The application of Article 8(1)(a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China." People's Republic of China, "Statement made upon ratification of the International Covenant on Economic, Social and Political Rights," March 27, 2001, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en#EndDec (last visited 15 December 2020).

²⁹ In November 2015, Xi Jinping informed the ACFTU that it had become overly bureaucratic and must find ways to ensure that workers would share in the benefits of his signature policy, the "China Dream." In October 2018, he stressed, "Whenever workers' legitimate rights and interests are infringed, trade unions have to stand up and speak out on their behalf."

jurisdictions, and they are reluctant to provide assistance to workers, instead passing them to the labor bureau or other departments.³⁰ In addition, workers seeking to organize enterprise branches of the ACFTU in their own workplaces—in accordance with domestic law and the ACFTU’s own targets of increasing membership—may face barriers and retaliation, as was the case with the Shenzhen Jasic Technology incident in 2018. In the spring of 2018, Jasic workers duly registered their enterprise union with the local ACFTU branch, but were prevented from conducting lawful elections of worker representatives. This led to protests and subsequent detentions, arrests, and disappearances that earned international media attention.³¹ In addition, two local ACFTU officials and a lawyer who aided the workers in establishing their enterprise union were arrested for performing their duties.³²

Ordinary workers routinely face forms of retaliation for asserting rights under the ICESCR, particularly Article 7. Many of these retaliatory actions occur within workplaces by employers acting with impunity as a result of lack of state enforcement of basic labor rights, such as payment of wages in full and on time. When workers’ peaceful and private efforts to obtain their rights within the existing structures fail, the rising trend is to seek public attention on their routine labor rights cases.³³ In these situations of strikes, threats of suicide, and unlawful actions against managers and employers, the authorities often quickly aid in encouraging employers meet the workers’ demands. However, this response does not advance resolution of the root causes of labor violations, but rather is meant to maintain an immediate sense of “social stability.” In other cases, workers seeking their rights may be detained and face vague criminal charges such as “picking quarrels and provoking trouble.” According to available data from CLB’s Strike Map, since 2015, 4% of workers’ collective actions have resulted in arrests, and police have intervened in 21% of total cases.³⁴

- What specific measures has the ACFTU adopted to promote its mission of grassroots organizing and to ensure democratic elections of worker representatives?
- How many workplace negotiations between workers and management has the ACFTU facilitated, and how many workers benefitted from ACFTU representation in their cases, disaggregated according to region, industry, type of employer, *hukou* status, age, gender, and ethnic minority status of workers.
- Please explain what measures the government has taken to ensure that legislation is properly enforced against employers and to create a safe and enabling environment for civil society to operate and assist individuals in effectively redressing violation of workers’ rights.

ARTICLE 9: THE RIGHT TO SOCIAL SECURITY

Access to social security is not universal because local, regional, and national economies are consistently prioritized at the expense of individuals’ right to social security and the sustainability of the social security system. Employers are able to violate China’s social insurance laws not only

³⁰ “Holding China’s trade unions to account: An in-depth investigation into the All-China Federation of Trade Union’s reform initiative,” China Labour Bulletin, January 2019, <https://clb.org.hk/sites/default/files/Trade%20Union%20Report%20Final.pdf>.

³¹ For a summary of the Jasic incident and mention of other notable and recent cases, please see “Call to end the suppression of labor activists in China,” China Labour Bulletin, 26 March 2019, <https://clb.org.hk/content/call-end-suppression-labour-activists-china>.

³² “Jasic crackdown extends to trade union officials and lawyers,” China Labour Bulletin, 4 December 2018, <https://clb.org.hk/content/jasic-crackdown-extends-trade-union-officials-and-lawyers>.

³³ For more information on recent trends, please see “The state of labour relations in China, 2019,” China Labour Bulletin, 13 January 2020, <https://clb.org.hk/content/state-labour-relations-china-2019>.

³⁴ “Strike Map,” China Labour Bulletin, <https://maps.clb.org.hk/>. Out of 10,539 incidents recorded from 1 January 2015 to 16 December 2020, arrests were made in 420 cases, and police intervened in 2,219 cases. In other words, arrests were made in 20% of cases with police intervention.

because of lack of enforcement, but also because of negotiations with local governments for lower contribution rates. China's social insurance law guarantees all workers classified as employees a social welfare safety net that includes pension, medical and work-related injury insurance, unemployment insurance, and maternity insurance for female employees. The system is based on employer and employee contributions paid into funds administered by local governments. The bulk of the contributions are intended to come from the employer, generally paying about 20% of their total wage bill into the pension fund and up to 12% into the medical insurance fund. Employees contribute about 8% of their individual wages to the pension fund and 2% to the medical insurance fund. Contributions to the unemployment, work-related injury, and maternity insurance funds are made solely by the employer but at much lower rates determined by the local authorities. However, the system's flaws are that it relies almost completely on private capital, and many employers are unwilling to pay contributions to the insurance funds. In addition, local governments are reluctant to enforce the law upon employers as it may reduce investments in their regions. If employers pay anything at all, it may be at a lower rate negotiated with local government officials, sometimes basing the contribution rate on the employees' basic salary rather than their actual wage after overtime and bonuses. This effectively reduces contributions by as much as half. In addition, the system is based on employees living, working, and retiring in the same place. For the hundreds of millions of rural migrant workers, this is not the case. Due to bureaucracy and technical difficulties, it can be virtually impossible for migrant workers to transfer their pension to the place where their *hukou* is registered, and they may only hope for a lump sum upon leaving their employment. Even though rural migrant workers are supposed to be covered by the social insurance law, the actual rate of coverage has always been very low. The most recent official figures, published by the Ministry of Human Resources and Social Security in 2017, revealed that about 22% of migrant workers had a basic pension or medical insurance, 27% had work-related injury insurance, and 17% had unemployment insurance. Finally, according to government data, the social security system is overburdened and set to be depleted in 2035.³⁵

- Please provide statistics on the numbers of migrant workers who have been enrolled in urban pensions, urban medical insurance, and urban unemployment insurance since 2017.
- What alternatives to the current social security system based on employer contributions have the authorities considered to ensure the right to social security?

³⁵ China's declining workforce and rapidly aging population has heightened concerns over the future sustainability of the basic urban pension fund, with one prominent report predicting that total expenditure will begin to exceed contributions in 2028 and that reserves will decline exponentially after that, leading to the complete depletion of the fund by 2035. "China's social security system," China Labour Bulletin, last updated 15 October 2019, <https://clb.org.hk/content/china%E2%80%99s-social-security-system>.