

Refugee Review Tribunal

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RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

- 1. How difficult is it to establish a union in China or to request legal status to set up a union? (General information on unions)**
- 2. How are the authorities in Tianjin? Would they crack down on a few people meeting to plan to set up a Temporary workers union?**
- 3. Would someone claiming to have no permanent job be able to afford travel to Europe (Germany and Switzerland) or Japan for holiday?**
- 4. Would it be difficult to leave the country through Beijing airport if PSB had apparently gone to his home in Tianjin with an arrest warrant for spreading anti government propaganda material?**

RESPONSE

- 1. How difficult is it to establish a union in China or to request legal status to set up a union? (General information on unions)**

Sources indicate that there is only one legally permitted Trade Union in China – the government-run All China Federation of Trade Unions (ACFTU) – and all local unions are obliged to be affiliated with it. Workers who try to organise independent unions face a range of problems, including the rejection of their applications and, on some occasions, administrative detention for varying periods. For those actually convicted of a criminal offence for their activities, there may be a term of imprisonment or “reform through labour”.

A 2006 article by Michael Zhang for the *China Labour Bulletin* states:

The All China Federation of Trade Unions (ACFTU), the only legally permitted trade union in China, published its mission statement in early 2001, declaring that “Wherever there are workers, a trade union should be organized,” and it also released the paper “Recommendations on strengthening the establishment of trade unions in new enterprises.” In September 2005, ACFTU issued the “Blue Paper on Chinese Trade Unions safeguarding the rights and interests of all

working men and women.” In it, the organisation boasted that 459,000 union branches with a total of 55.463 million members had been set up in privately-held commercial enterprises....

... Another unique feature of the trade union in China is the fact that a trade union is organized by the party leaders. Workers can't organize a union themselves...A group of taxi drivers in Beijing received the same response when they applied to form their own union. “A trade union is an organization of the people, but it shouldn't be organized by the people. Only the Party can organize it,” according to the Beijing Municipal General Trade Union. Leading the taxi drivers was Dong Hao, the second interviewee in the *Business Watch* report. **In late 1998, Dong was chosen as the representative of the drivers of the Tianyun Taxi Company and charged with the task of applying for the set up of their trade union at the Tongzhou District Trade Union office. When the district union discovered that they planned to set a union which was going to do more than “get movie tickets and gloves for its members”, they rejected the application. Mr Dong and his colleagues then held a Workers' Congress during which he was formally elected as their workers' representative. On 2 January and 26 February 1999, Dong applied two more times at the district trade union office but to no avail** (Zhang, Michael 2006, ‘Official trade union gets the cold shoulder from private firms’, *China Labour Bulletin*, 3 February, <http://www.china-labour.org.hk/public/contents/article?revision%5fid=35726&item%5fid=35725> – Accessed 14 August 2006 – Attachment 1).

Zhang goes on to point out that the usual aims of a trade union such as protecting workers' rights are given lower priority by the ACFTU than other agendas such as penetrating the emerging private enterprises in China and making sure that the workers' interests do not threaten the enterprise's operations and output; and generally protecting the position of the ruling Communist Party. Zhang contends that it is this agenda that explains why independent unions cannot be allowed to exist:

We can see that the purpose, procedure, structure and mission of ACFTU units in private enterprises are different from what we would expect from trade unions which really represent and protect workers' interests. By recognising this reality, we can understand why the ACFTU rejects the idea of allowing workers to the right to form their own trade unions, as worker-led unions would not tolerate the restrictions placed on them by the ACFTU. Although it is still uncommon for workers to demand to form their own unions in some parts of China, workers usually raise such a demand when they fight for certain labour rights. When workers apply to local trade union branch to establish their own unit, they always have already set up their trade union structure and elected the main union members. In the Tianyun taxi-drivers' case, the drivers then realized that they needed to have their own organization to negotiate with the company after learning that the company was being sold off and their vehicles would be taken back. Before submitting their application to the Tongzhou District General Trade Union, they had held a workers' congress and elected their representatives. During the workers' congress, they even passed a motion against the company's plan to sell off the enterprise or to merge with other companies and submitted it to the company management. Therefore, although such a trade union is registered in the ACFTU system, its intrinsic confrontational nature and outwardly its active representation and protection of its members' rights are very different from the trade union responsibilities and organizational principles set out by the ACFTU (Zhang, Michael 2006, ‘Official trade union gets the cold shoulder from private firms’, *China Labour Bulletin*, 3 February, <http://www.china-labour.org.hk/public/contents/article?revision%5fid=35726&item%5fid=35725> – Accessed 14 August 2006 – Attachment 1).

The US Department of State report for 2006 confirms the view of the previous report:

The law provides for the freedom of association, although in practice workers were not free to organize or join unions of their own choosing. The All-China Federation of Trade

Unions (ACFTU), which was controlled by the CCP and headed by a high-level party official, was the sole legal workers' organization. The trade union law gives the ACFTU control over all union organizations and activities, including enterprise-level unions. Independent unions are illegal. The ACFTU and its constituent unions influenced and implemented government policies on behalf of workers. The CCP used the ACFTU to communicate with and control workers.

Already established in the state-owned sector, where union representatives frequently held senior management positions, the ACFTU worked throughout the year to establish its unions in the non-state-owned sector...

...Some workers acted outside the ACFTU structure to demand back wages, pension or health insurance contributions or other benefits owed by employers. The government took action against these workers, either because the union refused or was powerless to help them. In May Kong Jun and Li Xintao, employees of the bankrupt state-owned Huamei Garment Company, were convicted of disturbing social order and government institutions after they asked the Shandong provincial government to act against their employer for failure to pay workers' wages and insurance benefits (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March, Sec. 6a – Attachment 2).

The *Trade Union Law* of 1992 is of interest as it sets out very specifically the centralised structure of unions in China, stating that local unions are subject to the authority of higher union bodies, and that the ACFTU stands over all. The *Law* lays down rules for setting up local unions and appointing office-holders, for conducting negotiations and resolving disputes with management, for other actions that can be undertaken such as educating and training workers, and for overall ideology (People's Republic of China 1992, *Trade Union Law of the People's Republic of China*, 3 April, *China Labour Bulletin* website, <http://www.china-labour.org.hk/public/contents/article?revision%5fid=38704&item%5fid=7031> – Accessed 11 August 2006 – Attachment 3).

The 2006 survey of trade union rights in China by the International Confederation of Free Trade Unions (ICFTU) states that the *Trade Union Law* was revised in 2001, but the ACFTU maintains a monopoly over all unions, "local, national or industrial". The report comments that the right to strike was removed from China's Constitution in 1982 "on the grounds that the political system in place had 'eradicated problems between the proletariat and enterprise owners'". The *Trade Union Law* skirts around the issue by avoiding the term "strike", instead referring to "work-stoppages" and "go-slows". Of independent unions the report states:

No independent trade unions are allowed to exist, and all attempts at establishing independent workers' organisations are repressed, sometimes violently. Organisers of worker groups or protests are often arrested. Some are sentenced to terms of imprisonment (officially called "reform through labour" or "lao gai") after criminal trials which fall well short of international standards. Others can be assigned to terms of "re-education through labour" ("lao jiao", sometimes called "rehabilitation through labour"), an administrative process which bypasses the few safeguards of the criminal justice system. The result of such repressive measures is that examples of independent unions are rare and short-lived. Organisers of collective actions operate at great risk. The fear of detention also makes negotiations between workers' representatives and the authorities and employers extremely difficult. However, there has been a marked trend of worker organisers being prepared to take this risk, and a rise in collective action generally ('People's Republic of China: Annual survey of violations of trade union rights' 2006, ICFTU International Confederation of

Free Trade Unions website,
<http://www.icftu.org/displaydocument.asp?Index=991223931&Language=EN> – Accessed 15 August 2006 – Attachment 4).

2. How are the authorities in Tianjin? Would they crack down on a few people meeting to plan to set up a Temporary workers union?

No specific information was on the treatment of unionists in Tianjin was found among the sources consulted.

Reports indicate that in general in China the length of detention for those arrested during strikes and demonstrations varies considerably. In some reports of strikes and demonstrations by workers, there is no mention of arrests at all, or the organisers were detained only for a few days and then released. Other reports state that organisers were detained for periods of weeks or months, and in one case, for over a year. One report mentions the imprisonment of a woman from Tianjin who was attempting to organise a protest march in Beijing; however this was not a union activity.

The 2006 ICFTU survey of union rights in China contains a chronological list of the outcomes of strikes and demonstrations during 2005. Some of the main points follow:

- Twenty organisers of a strike by workers from the Xianyang China Resources Textile Factory were arrested and detained in October 2004, and were released without charge in December 2004 and February 2005. The periods of detention were thus from **two to four months**.
- References to a strike by electronics workers in April 2005, and a demonstration by silk workers in June 2006, **do not mention any arrests**.
- Reports of protests at a machinery plant in July and a steel plant in October do not mention arrests, but refer to **violent confrontations with police**, one of which resulted in two deaths.
- One significant case is that of Yang Jianli, a former Tiananmen Square protester who was detained while investigating labour unrest in north-eastern China. He was kept in **solitary confinement for 15 months**, “well beyond the legally permitted maximum period for pre-trial detention (‘People’s Republic of China: Annual survey of violations of trade union rights’ 2006, ICFTU International Confederation of Free Trade Unions website, <http://www.icftu.org/displaydocument.asp?Index=991223931&Language=EN> – Accessed 15 August 2006 – Attachment 4).

A 2002 report by Human Rights Watch also contains several references to the arrest and detention of protesting workers:

- Protestors are sometimes **detained for short periods** “with release conditional on pledges to forgo further protests, interference with the right to counsel for detained and arrested workers, and threats to dock the pay of employed workers whose family members took part in rallies” (p.2).

- A workers' leader in Liaoning province who was involved in demonstrations by laid-off metal workers "was **detained incommunicado for four days** before his detention was acknowledged by police" (p.3).
- As part of the same series of protests in Liaoning in May 2000, police broke up a protest by "beating workers with truncheons and injuring as many as fifty", and detaining three worker representatives. For two of them, "it was to be the first in a **series of detentions** eventually culminating in their formal arrests on March 21, 2002" (p.18).
- In the course of a months-long series of protests in Daqing, "plainclothes police made 'snatch' detentions of anyone who appeared to play a leading or organizing role. At least sixty and reportedly as many as 300 were held at least briefly at either the Dongfeng Detention Center in Daqing or the Daqing Reeducation through Labor Center in Dong Feng New Village... On March 5, ten worker representatives were taken into custody after they entered the Daqing Oil building at the invitation of officials who had implied a willingness to negotiate... They were **released three days later on condition they would not return to Iron Man Square**... [On] March 5, plainclothes police detained a Mrs. Ma, who had earlier pleaded with the crowd in Iron Man Square to uphold public order and, not to smash any windows or public property... Mrs. Ma was still in custody as of April 1 and had managed to send out a letter saying she was refusing food. The source reported on two other detentions. Li Yan, a retired worker, was in detention as of April 1; as of this writing in mid-July, his whereabouts and condition remained unknown"[the periods of detention mentioned here amount to **one month and over three months**] (p.31).
- The whereabouts of several miners who were detained in 1999 during a protest at the closing of their mine, are **unknown** (p.36) (Human Rights Watch 2002, *Paying the Price: Worker unrest in Northeast China*, August, Vol 14, No.6 (C) – Attachment 5).

A more recent report describes another unofficial strike. A state-owned textile company was restructured, and the workers discovered that they were markedly worse off under their new contracts. The official union had not attempted to "help the employees obtain better benefits" but had secretly signed the contracts between the workers and the company which approved the new conditions. Three to four thousand workers went on strike for four days. **In this case, there were no obvious leaders and no arrests. Government officials were called in and persuaded the workers to go back to work, saying that there would be a meeting to decide on compensation** (Xiao, Ding 2006, 'Thousands of workers strike, protesting Yunnan Textile's restructuring', *China Labour Bulletin*, 16 March, <http://www.china-labour.org.hk/public/contents/news?revision%5fid=37372&item%5fid=37367> – Accessed 14 August 2006 – Attachment 6).

Little information was found among the sources consulted on Tianjin. A 2005 Human Rights Watch report on abuses against Chinese petitioners mentions that "in August 2004, Ye Guozhu joined with Tianjin-based activist Zheng Mingfang, lawyer Ni Yulan, and others to apply for permission to hold a 10,000-person march". The march itself was to take place in Tiananmen Square in Beijing, but one of the organisers was from Tianjin. They were both arrested and sentenced:

In December 2004, a Beijing court sentenced Ye Guozhu to four years in prison...In July, Zheng Mingfang was also arrested and sentenced to two years' imprisonment in Tianjin on charges of conducting "illegal business." (p.68) (Human Rights Watch 2005, "*We Could Disappear At Any Time*": *Retaliation and Abuses Against Chinese Petitioners*, Volume 17, No. 11(C), December, pp.68 – Attachment 7).

3. Would someone claiming to have no permanent job since 1998 be able to afford travel to Europe (Germany and Switzerland in 2004) or Japan (2005) for holiday. (Has a wife and child.)

A definitive answer cannot be given to this question, since the exact cost of airfares to these countries can only be obtained from airline offices in China. However, from the information available it appears that if a person had no other source of income apart from low-paid part-time employment in China, they would find it difficult to pay for airfares to Europe or Japan. As well, this does not take into account the additional cost of accommodation and food while staying in Europe or Japan.

The reports quoted below indicate that a very rough estimate for the income of a person in unskilled employment in Tianjin might be around 5000-6000 yuan per year. The figure quoted by one airline for a round trip from China to Germany was 7,700 yuan, at today's prices, although it may have been less two years ago, and there may have been cheaper packages available. The figure quoted by another airline for a round trip from China to Japan was around 11,941 yuan, but again, the consultant stressed that cheaper fares (perhaps about half of this figure) were very likely available when tickets were bought in China.

A 2004 report by Kwan states that the average yearly wage of workers migrating from the country to urban areas and taking unskilled jobs such as construction, manufacturing and transport is 5279 yuan (Kwan, Chi Hung 2004, 'How to Solve the Three Agriculture-related Problems – Labor Mobility Holds the Key', *China in Transition*, 25 August, <http://www.rieti.go.jp/en/china/04082501.html> – Accessed 14 September 2006 – Attachment 8).

A 2005 article states that the average per capita income in Tianjin was 6,189 yuan ('Guangzhou has highest per capita income in China' 2005, Chinanews.cn website, 6 October, <http://www.chinanews.cn/news/2005/2005-10-26/13073.html> – Accessed 14 September 2006 – Attachment 9).

A 2006 report by the US government for companies doing business in China states that the poorest people in China may earn as little as USD 300 [about 2,386 yuan]. The average per capita income in China is approximately USD 1,538 [about 12,235 yuan]. However, there is a growing middle class, and the number earning over USD8,000 [about 63,644 yuan] is estimated at over 200 million (US & Foreign Commercial Service and US Department of State 2006, *Doing Business In China: A Country Commercial Guide for U.S. Companies*, [http://commercecan.ic.gc.ca/scdt/bizmap/interface2.nsf/vReport/CCG_5165/\\$file/X_3265405.DOC](http://commercecan.ic.gc.ca/scdt/bizmap/interface2.nsf/vReport/CCG_5165/$file/X_3265405.DOC) – Accessed 14 September 2006 – Attachment 10).

Information on airline prices was obtained by telephone calls to consultants from Lufthansa, Japan Airlines, and travel agents. All consultants stressed that exact information could not be given in Australia about how much tickets purchased in China might cost, and all stressed

that prices vary widely according to the time of year and any ticket deals that might be available at the time of purchase.

The Lufthansa consultant stated that at present rates, a return ticket from Beijing to Frankfurt would cost 7700 yuan, and a return ticket from Beijing to Zurich would also cost 7700 yuan. A return ticket from Frankfurt to Zurich would cost 130 euro (about 1312 yuan). The consultant thought that prices could have been lower two years before, but could not say by how much. He stated that the rates would also be different if the tickets were purchased in China.

A Japan Airlines consultant stated that the present price for a return ticket from Beijing to Tokyo is about \$2000 [11,941 yuan], but stated that this was the full price, and it would probably be different if the ticket were purchased in China. Another travel consultant speculated that if the ticket were purchased in China, the fare could be as little as \$1000 [5,968 yuan].

Another travel agent stated that there are Chinese airlines that operate flights to Europe, such as Air China, China Air and China Southern. These have not been consulted about fares.

4. Would it be difficult to leave the country through Beijing airport if PSB had apparently gone to his home in Tianjin with an arrest warrant for spreading anti government propaganda material?

Sources indicate that if a person was of interest to the Chinese authorities because of anti-government activities, they would have difficulty obtaining a passport and leaving the country through Beijing airport. It could still be possible to obtain a false passport through payment of a large bribe.

The 2005 US Department of State report on China states:

The government permitted legal emigration and foreign travel for most citizens. Most citizens could obtain passports, although those whom the government deemed threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports (see Tibet Addendum). There were reports that some academics faced travel restrictions around the year's sensitive anniversaries, particularly the June 4 anniversary of the Tiananmen Square massacre. There were instances in which the authorities refused to issue passports or visas on apparent political grounds. Cheng Yizhong, the editor of Guangdong Province's Southern Metropolitan Daily newspaper, was banned by authorities from traveling abroad during the year to accept a UNESCO press freedom award. Members of underground churches, Falun Gong members and other politically sensitive individuals sometimes were refused passports and other necessary travel documents (US Department of State 2006, *Country Reports on Human Rights Practices 2005: China*, 8 March – Attachment 11).

A 2003 DFAT report discusses passport and exit procedures in China. It states:

The Ministry of Public Security issued a policy statement in December 2001 indicating that passport and exit procedures across the country would be simplified gradually. In major cities and regions such as Shanghai and Guangzhou / Pearl River delta, obtaining an ordinary passport is now a straightforward procedure. Applicants submit a form along with copies of their identification documents (ID cards or household registration papers / *hukou*) through their local post office, and are digitally photographed. Since February 2002, private individuals no longer

need to provide an overseas invitation. After a fixed period (2-3 days), applicants return, pay a fee of RMB200 and collect their passport. Provided the applicant does not fall into any of the categories of persons ineligible to leave China (see article 8 of the law on the control of entry and exit of citizens, available at www.chinalaw114.com/englishlaw/shownews.asp?id=866), the passport would likely be issued. Authorities expect to extend this procedure to all large and medium sized cities by 2005.

Elsewhere applicants must also include a letter of approval from their work unit, and provide both their ID card and household registration papers / *hukou* to the Entry and Exit Bureau of the Ministry of Public Security. Passport issue can take up to fifteen working days. Applications for official (service and public affairs) passports must include supporting documentation from the applicant's work unit, and a letter of invitation from overseas (DIMIA Country Information Service 2003, *CIR No. 12/03- Passport and exit procedures*, (sourced from DFAT advice of 15 January 2003), 24 January – Attachment 12).

In relation to the questions “Would a person who had come to the adverse attention of the PRC government experience difficulty in obtaining a legal passport? If so, how easy would it be to obtain from illegal means (ie payment of bribes) and have one issued in their own name?”, the same DFAT report states:

Yes. Checks with the Public Security Bureau in the applicant's place of registered residence would reveal any adverse records held by Public Security organs on the applicant. An applicant “whose exit, in the judgement of the relevant department of the State Council, would be harmful to state security or cause a major loss to national interests” would likely be denied a passport. Illegally obtaining a passport in the applicant's own name through bribery would be possible, but highly risky and expensive. It would be easier to obtain a passport using someone else's identity (DIMA Country Information Service 2003, *CIR No. 12/03- Passport and exit procedures*, (sourced from DFAT advice of 15 January 2003), 24 January – Attachment 12).

An October 2005 response from the Immigration and Refugee Board of Canada provided this information about security and exit control procedures at Beijing airport:

According to an official at the Embassy of the People's Republic of China in Ottawa, Chinese citizens travelling overseas must present a valid passport and visa for the country of destination to an immigration official, before being allowed to exit China (11 Oct. 2005). Without elaborating, the official noted that this procedure is standard at all international airports in the country.

A representative of the Canadian Embassy in Beijing provided the following observations on exit controls at Chinese airports in 4 October 2005 correspondence to the Research Directorate. Separate inspection barriers at airports are designated for Chinese citizens, foreign travellers, diplomatic staff, and airline personnel. The Frontier Defense Inspection Bureau (FDIB) is in charge of the inspection barriers, and FDIB officers examine the passports and immigration departure cards of Chinese travellers. The officers also verify the identity of the person through a “computerised record system.” Chinese travellers do not need to present their resident identity card during the inspection. According to information contained on the Website of Air China, there is a Frontier Defense Inspection station at each of the 115 Chinese ports currently open for international departures and arrivals (n.d.)...

...The Law of the People's Republic of China on the Control of Exit and Entry of Citizens stipulates that the following categories of persons will not be granted permission to leave the country:

Defendants in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's court;

Persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases;

Convicted persons serving their sentences;

Persons undergoing rehabilitation through labour; and

Persons whose exit from the country will, in the opinion of the competent department of the State Council, be harmful to state security or cause a major loss to national interests (PRC 22 Nov. 1985, Art. 8)....

...In early July 2005, inspection staff at Hangzhou airport in Zhejiang Province uncovered two fake passports on an overseas Chinese traveller, who reportedly admitted he was paid to help stow away two residents from Fujian Province (BBC Monitoring 30 Aug. 2005). (Immigration and Refugee Board of Canada 2005, *CHN100513.E China: Exit controls for citizens travelling overseas, including documents and police checks, and whether a person wanted by authorities could leave China using a passport in his or her name; exit procedures at Beijing airport (2003 – 2005)*, 25 October – Attachment 13).

An earlier DFAT advice from February 1998 addressed the question of whether a dissident wanted by Chinese authorities could leave PRC using a Chinese passport issued by the PSB in his/her own name. DFAT commented that:

A.3 We are unaware of any wanted dissidents leaving China over the last two years. Nevertheless, given the prevalence of corruption in China, to which the authorities readily admit, we consider it plausible that individuals could leave China on passports they have obtained through corrupt officials although, given the usual stringency of border checking in China, it is improbable dissidents on wanted lists would be able to exit on passports issued in their own names. We would also note that many dissidents have left China legally over the last three to four years, although many have served all, or part, of a prison or reform through labour term.

A.4...We do not have precise figures, but would estimate that the number of ordinary passports issued annually in China is now in the millions. The chance of improper issue and use would, therefore, be correspondingly high (DIMA Country Information Service 1998, *Country Information Report No.64/98 Passport and Exit Permit Issuing Procedures*, (sourced from DFAT advice 12 February 1998), 17 February – Attachment 14).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com.au/>

Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. Zhang, Michael 2006, 'Official trade union gets the cold shoulder from private firms', *China Labour Bulletin*, 3 February, <http://www.china-labour.org.hk/public/contents/article?revision%5fid=35726&item%5fid=35725> – Accessed 14 August 2006
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