



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
YUE YUEN (HOLDINGS) LIMITED (CHINA)
FINDINGS, RECOMMENDATIONS AND STATUS**

May 16, 2014

Executive Summary

Last month, longstanding violations of workers' rights under local laws, international labor standards, and university codes of conduct at Yue Yuen (Holdings) Limited, a top supplier of collegiate licensed athletic footwear led an estimated 30,000 employees at its factories in southern China to launch a strike that drew international media attention. Yue Yuen's failure to pay legally mandated social security payments affected an estimated 45,000 workers at the company's factory complex in Guangdong Province, in the Gaobu district of the city of Dongguan.¹

Nike and adidas disclose Yue Yuen's Gaobu factory complex as a producer of university licensed footwear. This factory complex also supplies non-collegiate footwear to other buyers including Puma SE and Asics Corporation.² Yue Yuen has stated that the recent strike, which began on April 5, cost the firm more than US\$27 million by the time the majority of workers resumed work on April 25.³

Yue Yuen is the manufacturing arm of the Pou Chen Group, which is the largest producer of branded athletic shoes in the world.⁴ The company supplies many major footwear brands, including Nike, adidas, Reebok, Asics, New Balance, Puma, Converse, Merrell, Salomon, and Timberland (VF Corporation),⁵ and is a participating supplier in the Fair Labor Association.⁶ Headquartered in Taiwan, Yue Yuen owns factories in China, Indonesia, Vietnam, Bangladesh, Cambodia, the United States, and Mexico.⁷ The company employs more than 400,000 workers,⁸ and produces more than 300 million pairs of shoes per year.⁹

The WRC has monitored the recent strike at Pou Chen's Yue Yuen factories in Gaobu, and also has examined both the underlying labor rights violations that led to this work stoppage, and the response of Yue Yuen and the Chinese government to the factory workers' protests. As is described in detail below, the Chinese government has confirmed that Yue Yuen underpaid on legally required contributions to the government-run social security system. This underpayment, unless corrected, will mean that workers will have less funds to draw upon in case of disability or unemployment, or when they retire. During the strike, Yue Yuen also violated workers' rights to freedom of association in several ways, including by physically restraining workers from joining the strike and threatening to penalize workers

¹ See, *Wall Street Journal*, "Yue Yuen Strike Is Estimated to Cost \$60 Million," (April 28, 2014).

² *Bloomberg News*, "China Shoe Plant Strike Disrupts Output at Nike, Adidas Supplier," (April 16, 2014), <http://www.businessweek.com/news/2014-04-15/nike-shoemaker-yue-yuen-says-over-1-000-china-workers-on-strike>.

³ Yue Yuen Industrial (Holdings) Limited, "Inside Information: An Update on the Strike and Adjustment of Employee Benefit Payments" (April 25, 2014), http://www.yueyuen.com/announcement_file/e0551_24042014.pdf.

⁴ Pou Chen Group, Footwear Business, <http://www.pouchen.com/index.php/en/business/footwear-business>.

⁵ Ibid.

⁶ Fair Labor Association, Participating Suppliers <http://www.fairlabor.org/affiliates/participating-suppliers?page=1>.

⁷ Pou Chen Group, Overseas Locations <http://www.pouchen.com/index.php/en/about/locations>.

⁸ Austin Ramzy, "Workers Strike at Shoe Factory Over Benefits Dispute," *New York Times* (April 17, 2014), <http://sinosphere.blogs.nytimes.com/2014/04/17/workers-strike-at-shoe-factory-over-benefits-dispute/>.

⁹ Pou Chen Group, Footwear Business, <http://www.pouchen.com/index.php/en/business/footwear-business>.

who participated in it. The Chinese government also violated the workers' associational rights, most notably by detaining NGO advocates who were supporting the striking workers. One of these advocates, Lin Dong, is still being detained and faces criminal charges.

The WRC has communicated with the two university licensees whose collegiate footwear is produced at these factories, adidas and Nike. We requested that the two licensees explain their position as to whether Yue Yuen's underpayment of social security benefits had violated Chinese law and university codes of conduct, and that they indicate what actions they were taking to address the detention of NGO advocates and any Yue Yuen workers who were detained. Nike has not provided a substantive response on either point. For its part, Adidas has stressed that the Yue Yuen's practices concerning social security contributions were "in accordance with an agreement" between Yue Yuen and the local government.

The responses of these leading university licensees are highly troubling. Despite their longstanding relationships with Yue Yuen, neither Nike nor adidas had addressed the underpayment of legally required social security contributions despite the fact that this is a comparatively easy code violation to identify and correct. If, as adidas' statement suggests, licensees accepted claims from Yue Yuen that the company's practices, while clearly violating the requirements of Chinese law, were, nonetheless, acceptable, because it had received some form of exemption from the local government – of which workers were unaware – this indicates a serious flaw in these licensees' compliance methodologies. One of the key reasons to establish codes of conduct is that governments in apparel-producing countries often fail to enforce their own labor laws, either by failing to act or, as adidas states was the case here, by giving employers permission to violate the law.

In order to remedy the violations at Yue Yuen, and prevent future violations, the WRC makes a number of recommendations to licensees. These include: (1) ensuring that Yue Yuen makes the full legally required payments into the social security system going forward, and makes workers whole for past underpayment; (2) pressing the Chinese government to free Lin Dong and any other individuals detained as a result of their participation in or support of the strike, and drop any charges related to nonviolent strike-related behavior; and (3) explaining and correcting the gaps in their auditing practices that allowed Yue Yuen to under-contribute to workers' social security accounts over a period of years.

This report discusses the underlying violations that caused this strike and events related to the strike itself, including the responses of the company and the local government. The report also details the WRC's engagement concerning this matter with Nike and adidas, in particular, our inquiries concerning how these underpayments were able to continue for such an extended period of time. Finally, we present our recommendations to university licensees for corrective action.

I. Pou Chen and Yue Yuen

Pou Chen's Yue Yuen subsidiary operates both Pou Chen's manufacturing facilities and directs the company's retail and distribution division in China, Pou Sheng International Holdings, Ltd.¹⁰ The company was founded by the Tsai family, several of whose members hold overlapping executive positions in the corporate hierarchies of both Yue Yuen and Pou Chen. Patty Tsai Pei Chun, for example, serves as both the Chief Executive Officer of the Pou Chen Group and the Managing Director of Yue Yuen.¹¹

Pou Chen has a long history of abusive treatment of workers in its overseas manufacturing plants, dating back to a report in 1997 of an incident in Vietnam in which company managers required workers to run in the heat and sun outside the factory as a disciplinary measure, causing a dozen of these employees to faint and be hospitalized. In 2011, workers at a Pou Chen factory in Sukabumi, Indonesia reported that company supervisors threw shoes at them (conduct which is particularly insulting in Indonesian culture), slapped them in the face, called them monkeys, dogs, and pigs (epithets that, again, are particularly offensive in Indonesia), and kicked, hit, and scratched them.¹²

The company also has a history of failing to pay workers legally mandated compensation. In 2011, it was also reported that Pou Chen had for many years denied legally-required overtime compensation to roughly 4,500 workers at another of its Indonesian facilities, the PT Nikomas factory in Serang.¹³ In 2010, the nongovernmental organization (NGO) China Labor Watch reported that workers in Yue Yuen's factories in China were required to perform unpaid overtime on nearly a daily basis.¹⁴

II. Findings

A. Underpayment of Legally Mandated Social Security Contributions

Yue Yuen workers have charged that the company has, for some time, failed to make legally required contributions to workers' accounts under the Chinese government's social security program. These accounts, to which both workers and employers are required to contribute, are intended to provide workers with a source of income in case of disability or unemployment, or at the time of their retirement.¹⁵

¹⁰ Pou Sheng Int'l Holdings Ltd., "About Pou Sheng," <http://www.pousheng.com/en/index.aspx>.

¹¹ Pou Chen Group, "Executives," <http://www.pouchen.com/index.php/en/about/executives>.

¹² Niniek Karmini, and Stephen Wright, "Nike Faces New Worker Abuse Claims," *The Jakarta Post* (July 13, 2011), <http://www.thejakartapost.com/news/2011/07/13/nike-faces-new-worker-abuse-claims.html>.

¹³ Sarah Mishkin, "Nike Ends Indonesia Labour Dispute," *Financial Times* (January 13, 2012), <http://blogs.ft.com/beyond-brics/2012/01/13/nike-quick-to-end-indonesia-labour-dispute/>.

¹⁴ China Labor Watch, "A Case Study: adidas and Yue Yuen" (October 2010), http://www.chinalaborwatch.org/upfile/2010_11_2/20101130143496.pdf.

¹⁵ Ruwitch, John, "China shoe factory strike shows welfare Achilles' heel," *Reuters* (April 17, 2014), <http://www.reuters.com/article/2014/04/17/us-china-labour-welfare-idUSBREA3G2AB20140417>.

If employers pay less into the system than they are legally required to contribute, then workers will have fewer funds available when they are unable to work. This issue is of particular concern to workers in South China who are employed in the apparel and footwear sector, since, in recent years, this industry has been shifting from Guangdong to lower-wage regions of China, and lower-wage countries elsewhere in Asia – thereby increasing the likelihood that these workers will need to draw on their social security accounts in the near future.

Workers and local labor rights advocates have reported that, instead of making contributions to the social security system based on the actual wages employees received,¹⁶ as the law requires, the company has calculated its contributions using only employees' base wages, which exclude overtime payments and bonuses.¹⁷ Workers indicated that this has been a longstanding practice of the company that has continued throughout their entire lengths of service.

Chinese national and local government agencies have confirmed workers' allegations that Yue Yuen has illegally underpaid the social security contributions it was required to make for these employees. On April 24, 2014, a local affiliate of the All-China Federation of Trade Unions (ACFTU) released a statement citing responses to workers' complaints concerning the underpayments from several government agencies, including the Bureaus of Social Insurance, and Human Resources. According to the ACFTU statement, the local office of Bureau of Social Insurance had stated that Yue Yuen must make retroactive payments to correct past unpaid social insurance contributions for the affected workers.¹⁸ The Bureau also stated that these retroactive payments were necessary in all cases where the company had calculated its social security contributions using employees' base wages rather than total income.¹⁹

On April 25, the national government's Ministry of Human Resources and Social Security issued a similar statement indicating that the government had confirmed that the company was underpaying in its contributions to the social security program and was ordering Yue Yuen to correct its payments immediately.²⁰

Finally, as discussed below, Yue Yuen also has acknowledged, at least implicitly, that its past contributions did not comply with the law.

¹⁶ See, *Guangdong Province Retirement Social Insurance Regulation* (广东省社会养老保险条例), Art. 10 (rev. 2012, enf'd 1998), http://210.76.65.92:9010/pub/rdweb/lfzw/zxfq/cwffg/201202/t20120216_123627.html, and *Guangdong Province Retirement Social Security Regulation Implementation Rule* (广东省社会养老保险实施细则), Article 5, enforced since 2000.

¹⁷ Ruwitch,, *supra*, n. 17.

¹⁸ China Labor Watch, "Dongguan Union Releases Response to Yue Yuen Workers' Demands" (April 24, 2014), <https://www.chinalaborwatch.org/news/new-486.html>.

¹⁹ Demetri Sevastopulo, "Chinese factory told to reimburse striking workers," *Financial Times* (April 24, 2014), <http://www.ft.com/intl/cms/s/0/90612d7a-cb6a-11e3-ba9d-00144feabdc0.html#axzz2zqJtBjCl>.

²⁰ See, e.g., *Taipei Times* "China intervenes in strike at Yue Yuen shoe factory" (April 26, 2014), <http://www.taipetimes.com/News/biz/archives/2014/04/26/2003588897>; and *Wall Street Journal*, "Yue Yuen Strike Is Estimated to Cost \$60 Million," (April 28, 2014), <http://online.wsj.com/articles/yue-yuen-strikes-estimated-to-cost-27-million-1398651064>.

Based on these statements, as well as analysis by labor law experts, and a review of the relevant laws and regulations, the WRC concluded that as a result of its underpayments of social security contributions, Yue Yuen violated Chinese law, and by extension, university codes of conduct.²¹

B. Other Allegations

Yue Yuen workers have also charged the company with other violations of their legal rights, including failure to provide them with valid employment contracts.²² Workers and workers' rights advocates also allege that workers at these factories are compelled to perform unpaid overtime, and are not provided with training on toxic and hazardous materials used in the plant.²³ The WRC has not investigated these allegations.

C. Worker Strike over Social Security Contribution Underpayment and Company Response

On April 5, Yue Yuen workers launched a strike to demand that the company address the violations discussed above, as well as an increase in their pay and the right to select their own union leaders.²⁴

An estimated 30,000 workers participated,²⁵ making this one of the largest work stoppages ever in China at a private manufacturing facility.²⁶

Yue Yuen issued several statements concerning the strike and the issue of social security contributions, including a statement that the company filed with the Hong Kong Stock Exchange, where its shares are listed. On April 14, Yue Yuen made an announcement to employees stating that the social security system was in gradual development, and required time for full implementation. In this announcement, the company said that it would adjust its method of calculating social security payments and would *aim to begin* making full contributions to the social security system by the end of 2015. Obviously, this announcement did not constitute a commitment by the company to either cease or remedy its violations of Chinese law in this area: The company did not actually *commit* to begin complying with the law as of the stated date (which was nearly two years in the future), nor did it pledge to remedy its prior under-contributions to workers' accounts.

²¹ Collegiate Licensing Company, § II(A) ("Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles...").

²² See, e.g., Ruwitch, *supra*, n. 17.; also, *Wenweipo* (April 6, 2014), <http://paper.wenweipo.com/2014/04/06/CH1404060013.htm>.

²³ Globalization Monitor, et al., "An Open letter to Adidas and Yue Yuen Dongguan, China" (April 16, 2014), <http://globalmon.org.hk/content/open-letter-adidas-and-yue-yuen-dongguan-china>.

²⁴ *Al-Jazeera America*, "China Shoe Factory Workers Refuse to Toe the Line, Walk Out On Job," (April 15, 2014), <http://america.aljazeera.com/articles/2014/4/15/massive-china-shoefactorystrikerollsonasofferfallsflat.html>.

²⁵ See, *ibid*; also, *Bloomberg News*, "China Shoe Plant Strike Disrupts Output at Nike, Adidas Supplier," (April 16, 2014), <http://www.businessweek.com/news/2014-04-15/nike-shoemaker-yue-yuen-says-over-1-000-china-workers-on-strike>.

²⁶ Luisetta Mudie, "Labor Activists Held As China's Shoe Factory Strike Continues," *Radio Free Asia*, (April 14, 2014), <http://www.rfa.org/english/news/china/strike-04232014110457.html>.

On April 17, Yue Yuen filed a statement with the Hong Kong Stock Exchange stating that, “in response to certain employees’ demand for the adjustment of the Employee Benefit Payments and to assist the Company in staff retention and staff recruitment, the Group decided to adjust the Employee Benefit Payments for the employees of the Gaobu Factory in accordance with the relevant local government policies with effect from 1 May 2014.”²⁷ This statement indicates that Yue Yuen is aware that its prior contributions into the social security fund were *not* in accordance with government policies.

On the same day, the company posted an announcement at its factory complex in Gaobu that it would pay the retroactive amount that the plant owed to the government for workers’ social security contributions if workers, themselves, agreed to pay the corresponding higher matching contribution that would have been required had the plant been contributing at the appropriate level. The company also stated that if striking workers returned to work that day, the company would not punish them, but that employees who continued to strike would be penalized.

Factory workers were dissatisfied with the lack of detail in the company’s statement concerning how the company would adjust its method of calculating future social security contributions, the proposal that workers make a sudden, large contribution to match the company’s retroactive payment, which would be very onerous for them, and the company’s failure to address their other demands. Workers were also angered by the threat that workers who continued to strike would be penalized.

On or around April 18, workers at another Yue Yuen plant, in Anfu in Jiangxi Province, also went out on strike.²⁸ On April 21, the factory management at this plant stated that it would reward employees who reported on other employees’ plans to strike or engage in other collective action.

Press reports during this period indicated that factory management had locked the doors of factories in the Gaobu factory complex to prevent workers from leaving the factory to join the strike.²⁹

On April 21, Yue Yuen posted an announcement agreeing to provide full contributions to the social security fund and housing fund starting on May 1, 2014. The company repeated that it would provide the prior contributions it owed if workers would also pay the corresponding amounts to bring their own contributions up to date. Finally, the company said that it also would provide a new 230 *yuan* (US\$37)³⁰ monthly allowance to workers starting on May 1.³¹

²⁷ Yue Yuen Industrial (Holdings) Limited, “Inside Information: Adjustment Of Employee Benefit Payments” (April 17, 2014), http://www.yueyuen.com/announcement_file/e0551_17April2014.pdf.

²⁸ *Global Times* “Wave of Strikes Shows Neglect of Labor Rights,” (April 22, 2014), <http://www.globaltimes.cn/content/855968.shtml#.U18CG1VdV7t>.

²⁹ See, e.g., Barrie, Leonie, “Officials Tell Yue Yuen to Pay Back Strikers’ Benefits,” *Just-Style* (April 25, 2014), http://www.just-style.com/news/officials-tell-yue-yuen-to-pay-back-strikers-benefits_id121492.aspx.

³⁰ All currency conversions in this document use the April 28, 2014, rate of US\$1:6.25 *yuan*.

³¹ See, Lin, Liza, “Yue Yuen Falls Most in 9 Months as Strike Cuts Shoe Output,” *Bloomberg Businessweek* (April 22, 2014), <http://www.businessweek.com/news/2014-04-21/china-shoe-factory-strike-disrupts-nike-adidas-output-sixth-day>.

The company estimated that these payments, both to the government agencies and to the workers, will cost the firm approximately US\$31 million this calendar year.³²

On April 25, Yue Yuen filed another announcement with the Hong Kong stock exchange, this time concerning the 230 *yuan* monthly allowance that it had agreed to pay employees. The statement did not offer further specifics on the company's commitments regarding forward-looking or retroactive social security or housing payments, although Chinese government statements indicate that the firm is being ordered to make workers whole.

By this point, reportedly, a significant majority of the strikers had returned to work, in part, apparently, as a result of pressure exerted on them by local police.³³ In the words of one worker, "we have no choice but to go back to work.... what can you do if a man with shield, baton and helmet is standing next to you?"³⁴

D. Violations of Freedom of Association

Employer Violations of Workers' Associational Rights

Yue Yuen repeatedly violated workers' right to free association during the strike. As workers' freedom of association is extremely restricted under Chinese law, the WRC analysis of workers' associational rights is based on International Labor Organization (ILO) Conventions 87 and 98 and on university codes of conduct. While China has not ratified Conventions 87 and 98, it is bound by all core conventions as a member of the ILO.³⁵ Most university codes of conduct require that licensees respect workers' freedom of association; the Collegiate Licensing Company (CLC) code, for example, states that licensees "shall recognize and respect the right of employees to freedom of association and collective bargaining."³⁶

The following acts by Yue Yuen factory managers constitute violations of ILO core conventions as interpreted by the ILO Committee on Freedom of Association, the body of the ILO charged with interpreting these conventions.

- On April 17, Yue Yuen management stated that it would punish workers who continued to strike. Punishing workers who participate in a legitimate strike constitutes a violation of workers' associational rights.³⁷

³² Yue Yuen Industrial (Holdings) Limited, "Inside Information: An Update On The Strike And Adjustment Of Employee Benefit Payments" (April 25, 2014), http://www.yueyuen.com/annoucement_file/e0551_24042014.pdf.

³³ See, e.g., "Wave of strikes shows neglect of labor rights," Global Times (April 22, 2014), <http://www.globaltimes.cn/content/855968.shtml#U18CG1VdV7t>.

³⁴ China Labor Bulletin, "Pressure from the local authorities forces many Yue Yuen strikers back to work" (April 25, 2014), <http://www.clb.org.hk/en/content/pressure-local-authorities-forces-many-yue-yuen-strikers-back-work>.

³⁵ See, ILO Declaration on Fundamental Principles and Rights at Work, <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

³⁶ See, Collegiate Licensing Company, §II(B)(9).

³⁷ See, e.g., International Labor Organization, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* ¶¶ 660-663 (ILO: 5th (rev.) ed., 2006) ("ILO Committee on Freedom of Association Digest").

- On April 21, the factory management at the Anfu plant stated that it would reward employees who reported on other employees' plans to strike or engage in other collective action. The company's offer to reward workers who disclosed other workers' plans to engage in collective action implies that the company intended to retaliate against these workers and/or interfere with their planned collective action. While there are legitimate reasons that a company may attempt to learn more about planned collective action, the WRC is not aware of any evidence that Yue Yuen made any claim that the intent in this case was non-discriminatory. The ILO Committee on Freedom of Association has found that such requests for information are an obstacle to "the development of harmonious industrial relations" because they create an "atmosphere of mistrust" and expose workers to retaliation.³⁸
- During the strike, Yue Yuen management physically prevented workers from joining the strike. Physically preventing workers from participating in collective action constitutes a violation of associational rights.³⁹

Detention and Prosecution of Workers and Advocates

During the strike in Gaobu, two labor advocates were detained by Chinese state security personnel, apparently because of their contacts with the Yue Yuen employees. On April 22, 2014, Zhang Zhiru and Lin Dong of the Shenzhen Chunfeng Labor Justice Service Department, an NGO that has supported the Yue Yuen workers, were detained and taken to an unknown location after they having reported to the state security police for questioning.⁴⁰

According to media reports, Zhang Ziru was released on April 24. He told reporters that government security agents ordered him not to have any further contact with the Yue Yuen workers. He also reported that, while detained, the security agents attempted to convince him to release a public statement that he was "safe and on a trip for fun with friends."⁴¹

Media reports indicate that Lin Dong not only is still detained, but also is facing charges for "creating a public disturbance," specifically by spreading information about the strike via an online instant messaging service.⁴² The charge, which carries a potential sentence of up to

³⁸ ILO Committee on Freedom of Association Digest ¶¶ 176.

³⁹ See, e.g., ILO Committee on Freedom of Association Digest ¶¶ 520-525.

⁴⁰ See, Mudie, Luisetta, "Labor Activists Held As China's Shoe Factory Strike Continues," *Radio Free Asia* (April 14, 2014), <http://www.rfa.org/english/news/china/strike-04232014110457.html>, and "Chinese activist goes missing after helping to organise shoe factory strike," *The Guardian* (April 23, 2014), <http://www.theguardian.com/world/2014/apr/23/chinese-activist-missing-shoe-factory-strike-zhang-zhiru-yue-yuen>.

⁴¹ See, "China intervenes in strike at Yue Yuen shoe factory," *Taipei Times* (April 26, 2014), <http://www.taipetimes.com/News/biz/archives/2014/04/26/2003588897>, and Ruwitch, John, and Donny Kwok, "Yue Yuen counts cost of China shoe strike, says most workers returned," *Reuters* (April 26, 2014).

⁴² See, Sevastopulo, Demetri, "China charges labour activist after Yue Yuen shoe factory strike," *Financial Times* (April 29, 2014), <http://www.ft.com/intl/cms/s/0/8242a8d2-cf92-11e3-9b2b-00144feabdc0.html#axzz30y7WQhqp>.

five years in prison,⁴³ is one that Chinese authorities recently have begun using aggressively to punish online social activism.⁴⁴

This is the second time Zhang and Lin have been detained due to their support for the Yue Yuen workers. On April 13, they were detained overnight after attempting to travel to Gaobu to speak with the workers.⁴⁵ According to local media reports, “dozens” of protesting Yue Yuen workers also have been detained by the police,⁴⁶ but the WRC has been unable to obtain any specific information as to these alleged detentions.

Such arrest and detention is a severe violation of workers’ associational rights. According to the ILO Committee on Freedom of Association, “The authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association.” The Committee has also stated that, “no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.”⁴⁷

These arrests reflect a disturbing trend, in which the Chinese government appears to be reacting more severely to punish workers’ attempts to exercise associational rights. Several other incidents of detention and prosecution of Chinese workers and workers’ rights advocates have recently attracted international attention, both in apparel and other sectors. On April 15, 2014, in Guangzhou, twelve hospital security guards who were protesting their working conditions were convicted of “gathering a crowd to disturb public order.” Nine of these employees received prison terms of at least nine months. One of the workers’ lawyers stated that these sentences were “sending a signal to society” that protest would result in criminal sanctions.⁴⁸ In another similar case, furniture factory employee Wu Guijun is

⁴³ See, Criminal Law, Article 293, http://www.china.com.cn/policy/txt/2012-01/14/content_24405327_18.htm (Chinese only).

⁴⁴ Chinese authorities began employing this charge to punish online activism in September 2013, a step that Human Rights Watch, (HRW) reported would “make it easier for authorities to jail people for peacefully exercising their right to expression on the Internet.” See, HRW, “China: Draconian Legal Interpretation Threatens Online Freedom” (September 13, 2013) (“The new interpretation is worded so vaguely, and the standards for ‘serious circumstances’ so low, that anyone can be jailed for exposing official wrongdoing, or indeed saying anything the government doesn’t like.”), <http://www.hrw.org/news/2013/09/13/china-draconian-legal-interpretation-threatens-online-freedom>.

⁴⁵ See, “Chinese activist goes missing after helping to organise shoe factory strike,” *The Guardian* (April 23, 2014), <http://www.theguardian.com/world/2014/apr/23/chinese-activist-missing-shoe-factory-strike-zhang-zhiru-yue-yuen>, and Lau, Mimi, “Yue Yuen shoe factory workers' strike at Dongguan plants continues,” *South China Morning Post* (April 17, 2014), <http://www.scmp.com/news/china/article/1483287/yue-yuen-shoe-factory-workers-strike-dongguan-plants-continues>.

⁴⁶ See, Lau, Mimi, “Yue Yuen shoe factory workers' strike at Dongguan plants continues,” *South China Morning Post* (April 17, 2014), <http://www.scmp.com/news/china/article/1483287/yue-yuen-shoe-factory-workers-strike-dongguan-plants-continues>, and, Mudie, Luisette, “Chinese Police Detain ‘Dozens’ in Shoe Factory Dispute,” *Radio Free Asia* (April 18, 2014), <http://www.rfa.org/english/news/strike-04182014133703.html>.

⁴⁷ ILO Committee on Freedom of Association Digest, ¶¶671-672.

⁴⁸ See, Ruwitch, John, “China convicts hospital workers after high-profile labour protest,” *Reuters* (April 15, 2014), <http://uk.reuters.com/article/2014/04/15/uk-china-labour-idUKBREA3E0DB20140415>.

currently imprisoned and on trial for the same charge, after participating in a May 2013 protest.⁴⁹ “Disrupting public order” carries a maximum prison term of five years.⁵⁰

Similarly, the WRC has been monitoring the case of workers arrested after a strike at Long Chuan Simona Footwear Co. Ltd., a Nike supplier factory owned by the Stella Group and located in Heyuan, Guangdong. At this factory, as at Yue Yuen, workers launched a strike in response to alleged underpayments of social security contributions. Shortly after the strike at Long Chuan Simona began on March 1, the local government announced that police would be “investigating” the strike. Soon after this, an unknown number of workers were arrested. Nike initially informed the WRC that these workers were scheduled to be released on March 17; however, as of March 23, Nike reported that they were still imprisoned.⁵¹ Nike has not provided any further information as to these workers’ status.

Additional Violations of Workers’ Rights by the Chinese Government

In addition to the detention of individuals involved in the strike, the Chinese government has taken a number of other actions that violate workers’ associational rights.

First, observers reported that the Yue Yuen workers’ peaceful protests have been met with an aggressive police response. Video footage of the workers’ strike that was posted by China Labor Watch on April 15, 2014, shows police with shields and batons rushing at a large group of protesters, but does not indicate whether any serious injuries were sustained.⁵² The use of force against workers engaging in peaceful protest constitutes a violation of workers’ associational rights. The ILO Committee on Freedom of Association has held that, “in cases of strike movements, the authorities should resort to the use of force only in grave situations where law and order is seriously threatened.”⁵³

Second, as noted above, workers report that the police pressured them on and around April 25 to end their participation in the strike and return to work. Media reports also indicate that, during the strike, police with riot gear and dogs were repeatedly stationed outside the Yue Yuen factory complex, and that police told workers during the strike not to gather around the plants.⁵⁴ The ILO Committee on Freedom of Association has held that, “The use of police for strike-breaking purposes is an infringement of trade union rights.”⁵⁵

⁴⁹ See, Ruwitch, John, “Huang’s tale: from Walmart cashier to labor leader in China,” *Reuters* (April 7, 2014), <http://www.reuters.com/article/2014/04/07/us-china-labour-walmart-insight-idUSBREA361NZ20140407>.

⁵⁰ Ibid.

⁵¹ Emails from Nike to WRC dated March 13, 2014, and March 26, 2014.

⁵² Video footage posted by China Labor Watch is available at <https://www.youtube.com/watch?v=6Ca-hoozEGE&feature=youtu.be>.

⁵³ ILO Committee on Freedom of Association Digest, ¶¶644.

⁵⁴ See, “Adidas Responds to Striking China Factory by Moving Orders,” *Washington Post* (April 24, 2014), <http://washpost.bloomberg.com/Story?docId=1376-N4IORF6TTDTV01-7DH6R7NCRN191PSS8UUKB15AK7>, and “China Shoe Factory Workers Refuse to Toe the Line, Walk Out On Job,” *Al-Jazeera America* (April 15, 2014), <http://america.aljazeera.com/articles/2014/4/15/massive-china-shoefactorystrikerollsonasofferfallsflat.html>.

⁵⁵ ILO Committee on Freedom of Association Digest, ¶¶643.

III. Response from Licensees

On April 7 and April 17, respectively, the WRC initiated contact with Nike and adidas, the two university licensees sourcing collegiate footwear from Yue Yuen. In a series of emails during the month of April, the WRC requested that the licensees explain their position as to whether the underpayment of social security benefits had constituted a violation of Chinese law and university codes of conduct, and that the licensees explain what action they were taking to address the detention of Yue Yuen workers and NGO advocates working on the case.

Adidas representative William Anderson replied to the WRC via email on April 28 that, “it is our understanding that the social security contributions which Y[ue] Y[uen] had been providing, together with corresponding deductions from the workers, were in accordance with an agreement which they had reached with the Dongguan authorities and the local social insurance bureau.”

Nike has failed to provide any substantive response to the WRC, despite repeated requests for information. On April 11, Nike representative Amy Curry-Staschke promised the WRC that, “we will have additional information to share with you early next week.” On April 17, Curry-Staschke reported that, “we are reviewing the situation internally and will get back to you shortly with a response to your questions.” On April 25, she added that, “this is a complex situation and we are continuing to gather information. We will follow up with the WRC when we're able to better assess what has actually occurred and determine the appropriate next steps.” To this date, the WRC still has yet to receive any substantive response from Nike concerning the workers’ rights violations at Yue Yuen.

Nike’s public statements have been similarly inconclusive, with its CEO, Mark Parker, stating on May 1, after the strike had ended, that Nike had not yet “taken a position” on whether Yue Yuen had violated the company’s workplace standards.⁵⁶

The response of these leading university licensees is highly troubling. Both Nike and adidas have sourced from Yue Yuen for more than a decade,⁵⁷ yet while the underpayment of social security contributions continued throughout this period, neither firm addressed this violation through its internal compliance systems.

There are two possible reasons for this failure to ensure compliance. First, it is possible that Nike’s and adidas’ audits simply missed this violation of Chinese law – despite the fact that such underpayments are among the easiest forms of violations to detect. An auditor can simply compare the rate of contributions to the social security fund on payroll documents with the legally required rate.

⁵⁶ Richard Valdamanis, “Nike CEO Says Could Shift China Production over Labor Strife,” *Reuters* (May 1, 2014), <http://www.reuters.com/article/2014/05/01/us-nike-labor-china-idUSBREA400SR20140501>.

⁵⁷ See, e.g., Manning, Jeffrey, “Huge subcontractors find they must dance the tune Nike calls,” *The Oregonian* (November 19, 1997).

Second, these licensees may have accepted Yue Yuen's assurances that while its contributions appeared to violate the text of the law, they were acceptable because Yue Yuen had reached a private agreement with the local government that permitted it to pay less than the law required. Given adidas' statements that the underpayments "were in accordance with an agreement which [Yue Yuen] had reached" with the relevant government agencies, and the fact that neither it nor Nike has acknowledged that Yue Yuen's underpayments violated its code of conduct, this seems like the more likely possibility.

If this is adidas' and Nike's thinking, it reflects a serious flaw in their compliance methodology. The existence of a private agreement with local government, which was apparently not known to Yue Yuen's employees and reduced contributions into social security funds that workers rely on in case of disability, unemployment or retirement, is not a legitimate reason for failing to comply with the letter of the law.

As major apparel firms like Nike and adidas are well aware, it is not unusual for government authorities, particularly at the local level, to allow factory owners to violate national labor and employment laws, whether by simply failing to enforce such statutes or by informing a firm that it will be informally exempted from compliance.

Such exemptions and failures of enforcement, which lack any basis in the text of the law, itself, do not satisfy the requirements of university codes of conduct that licensees comply with relevant laws and regulations.⁵⁸ Indeed, one of the key reasons why universities, and apparel brands, themselves, have chosen to adopt codes of conduct for licensees is the recognition that governments in major apparel-producing countries often fail to enforce their labor laws. Both Nike and adidas have adopted internal codes that echo university codes in requiring that suppliers comply with all relevant laws. Nike's Code of Conduct requires that suppliers provide "all legally mandated benefits." Adidas' Workplace Standards state that, "business partners must comply fully with all legal requirements relevant to the conduct of their businesses." Its Code of Conduct emphasizes that, "compliance with the law and the legal system is the most important principle for the adidas Group."

In this case, it took a strike of 30,000 workers to expose a violation that should have been easy for brand audits to identify and correct.

IV. Inaccuracies in adidas' Disclosure Data

It is worth noting that adidas only recently began including the locations of its collegiate shoe production in the factory disclosure data provided to the WRC. The WRC contacted adidas on October 26, 2012, to express concern that shoe factories did not appear to be included in adidas' collegiate disclosure data, despite the firm's production of shoes bearing the logos of at least five WRC affiliates. While adidas pledged on October 31, 2012, to provide this

⁵⁸ Collegiate Licensing Company, § II(A) ("Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles...").

factory information to the WRC within one week, adidas did not provide the WRC with the names of its suppliers of these goods until December 11, 2012, and did not provide information on these factories (including country, address, and contact information) until January 2014 when – more than a year later – adidas first included these footwear factories in its disclosure data.

This failure to provide full disclosure of supplier factories constitutes a significant obstacle to the WRC's verification of licensees' compliance with university codes of conduct.

V. Recommendations

Licensees should take the following actions to remedy the violations of Chinese law at Yue Yuen, prevent further violations of international standards of freedom of association at Yue Yuen, and address the flaws in their compliance methodology that allowed the violations of Chinese law regarding social security payments to persist over a period of years.

In order to remedy the violations of Chinese law, licensees should press Yue Yuen to take the following actions:

- Immediately adjust its contributions to social insurance so that workers' accounts are credited based on the total income they have earned;
- Provide retroactive payments to ensure that all legally required payments for all workers have been provided to the relevant government agencies. These payments should not be made conditional on workers' providing any retroactive payment, except insofar as this is required by the Chinese government;
- Provide worker with clear documentation, both for the retroactive payment and for all future payments, of the amounts contributed to their social security accounts and the calculations upon which they are based; and
- Provide workers with all contractually or legally mandated payments, including any such payments for food and housing.

Given the nature of the violations and the freedom of association context in China, it will be difficult if not impossible to remedy the impact of Yue Yuen management's violations of workers' freedom of association during the strike. However, in order to prevent further violations of workers' freedom of association, licensees should take the following actions:

- Press for Lin Dong and any Yue Yuen workers still in custody as a result of their participation in the strike to be released, and for all charges against Lin and these workers based on the exercise of associational rights to be dropped, both by communicating directly to the relevant government bodies and urging Pou Chen to do so;

- Press Yue Yuen to allow all striking employees to return to work without penalty and refrain from any retaliation or discrimination against strikers; and
- Press Yue Yuen to provide training to its managers and supervisors regarding international norms of freedom of association.

University licensees must correct the gaps in their auditing practices that allowed Yue Yuen to under-contribute to workers' social security accounts for years. Both Nike and adidas should provide a detailed explanation of whether the noncompliance concerning social security contributions was detected by their auditors, and, if so, why it was not corrected or remedied. In addition, both licensees should adjust their internal guidance and auditing practices to make it clear that private agreements with local government authorities do not constitute a substitute for actual compliance with national laws.

Finally, adidas should review and correct the flaws in its disclosure procedure which resulted in the repeated delays in including footwear factories in the lists of facilities producing collegiate licensed goods that are provided to the WRC, even after this failure to disclose was identified by the WRC.