

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THE PEOPLE'S REPUBLIC OF CHINA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF THE PEOPLE'S REPUBLIC OF CHINA

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EXECUTIVE SUMMARY

The People's Republic of China has ratified four of the eight core ILO labour Conventions. In view of severe restrictions on trade union rights and the prevalence of child labour and forced labour as well as discrimination, determined measures are needed to comply with the commitments WTO members accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

China has not ratified either of the core ILO Conventions on freedom of association and collective bargaining. There are serious restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. Workers are not able to form and join trade unions of their choice and any attempts at independent organising are repressed. A new labour contract law, providing specific penalties for failing to observe labour laws and regulations concerning contracts and related issues, may make a contribution to the application of standards.

China has ratified the core ILO Conventions on Equal Remuneration and the Convention on Discrimination. Discrimination in employment is prohibited by law but does occur in practice. Legislation requires equal pay but wage differences continue to exist between men and women and amongst different groups in society.

China has ratified the core ILO Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Child labour remains a serious problem in the People's Republic of China, concerning in particular forced child labour and child labour as part of work-study programmes and in manufacturing.

China has not ratified the core Conventions on Forced Labour. Forced labour exists in such forms as prison labour, labour taking place as part of "re-education-through-labour", and the trafficking of women and children for forced labour and forced prostitution. There has recently been increased public attention to serious problems of both children and adults from poor, inland areas engaged in forced labour in conditions amounting to slavery in manufacturing enterprises in the coastal provinces, resulting in official intervention.

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Introduction

This report on the respect of internationally recognised core labour standards in The People's Republic of China is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC does not have affiliates in the People's Republic of China, apart from in the Hong Kong Special Administrative Region.

Agriculture accounts for 11.7% of GDP in China (2006). Industry accounts for 48.8% and services account for 39.9%.

Total exports accounted for US\$ 969,073 million in 2006, of which food accounted for US\$ 25,722 million, mineral fuels US\$ 17,776 million and manufactures for US\$ 916,147 million. Total imports in 2006 accounted for US\$ 791,614 million, of which food accounted for US\$ 9,997 million, fuel and energy US\$ 89,002 million and capital goods for US\$ 357,107 million. Total exports of goods and services accounted for US\$ 1,061,681 million in 2006, whereas total imports of goods and services accounted for US\$ 852,769 million. The main export products are electrical machinery and equipment, clothing and garments, yarn and textiles and petroleum and petroleum products. The main import products are electrical machinery, petroleum and petroleum products, industrial machinery and textiles. The main export destinations are the US, the EU and Hong Kong, China. The main import partners are Japan, the EU and the Republic of Korea.

China is negotiating a Free Trade Agreement with ASEAN (Association of South East Asian Nations). It is negotiating trade agreements with Australia, Pakistan, South Africa, the GCC and Peru. China has just finalised and signed a trade agreement with New Zealand and an FTA with Chile.

Corporate Social Responsibility (CSR) in China

For over a decade and in response to public reports of widespread exploitation and abuse of workers many western based companies have adopted codes of labour practices intended to apply to their China-based suppliers. A burgeoning industry of enterprises performing private workplace inspections of Chinese workplaces in connection with these codes has emerged. More recently Chinese authorities have responded to the concept of Corporate Social Responsibility (CSR) with a national concept of "CSR with Chinese characteristics" that stresses legal compliance and more traditional philanthropy.

In the end the private workplace inspections performed by the “professional social auditors” have had little impact. This can in part be attributed to unethical or incompetent behaviour by the private inspectors but also to the ability of the suppliers to thwart inspectors through various techniques such as falsified documentation and coaching workers before they are interviewed. CSR activities cannot directly address the governance deficits that are the real obstacles to the application of labour standards in the People’s Republic of China.

I. Freedom of Association and the Right to Collective Bargaining

The People’s Republic of China has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise or ILO Convention No. 98 on the Right to Organise and Collective Bargaining.

Workers are not free to form or join trade unions of their choice. Only the All China Federation of Trade Unions (ACFTU) is recognised in the law. The ACFTU therefore exercises a trade union monopoly. As Art.11 of the Trade Union Law states: “the establishment of any trade union organisation, whether local, national or industrial, shall be submitted to the trade union organisation at the next higher level for approval.” Trade union organisations at the higher level “shall exercise leadership” over those at lower level.

There is no national law on collective bargaining procedures but a plethora of regulations exist governing and promoting collective contracts. The labour law effective from 1995 adopted collective consultation as a key medium for settling disputes between employers and workers. At the same time the labour law encouraged the ACFTU to consult with employers on labour terms for workers partly as a way to pre-empt independent efforts at negotiations. Article 33 of the labour law also states that workers have the right to conclude a collective contract in a workplace in an enterprise where the trade union has not yet been set up. Several further regulations including the revised Trade Union law have provided guidance on the negotiation process and content of collective contracts.

In practice however genuine collective bargaining remains limited, as the ACFTU engages in negotiations and “represents” workers in negotiations with management and government without workers having a real say and input in these negotiations. At the same time the ACFTU remains either non-existent or ineffective in much of the private sector and workers, because of the impossibility to organise independently, are unable to establish adequate collective contracts.

According to ACFTU statistics for 2006 (provided in November 2007), the number of collective contracts signed across the country reached 862,000 in 2006, an increase of 14.3% over 2005. These contracts involved 112,455 million workers accounting for some 58.6% of workers in all enterprises. There is little data available on the number of sectoral collective contracts. Many collective contracts however reflect the minimum legal requirements and do not cover enough areas to be of use to workers.

There have been some recent province specific approaches that further develop collective contracts. For example, Hebei Province has implemented new “Regulations on Enterprise Collective Consultations between labour and management”. This regulation states that when there is no trade union at the enterprise, the workers’ representatives in the negotiations should be democratically elected by a majority of employees. Where there is a union, representatives should be recommended by the union and scrutinised by the workers’ congress.

The 2007 Shanghai Collective Contract Rules provides procedures and legal requirements governing collective bargaining, collective contracts and dispute settlement. It calls for collective bargaining to cover issues like wages, health and safety, social insurance and benefits, training, labour discipline, production quotas, working time and days-off. Employees involved in the negotiations are nominated by the enterprise union, or in the case of a company with no union, workers are appointed with the ‘guidance’ of an upper-level union organisation. The law details instances where regional or industry-specific union branches can negotiate collective contracts (regional and/or industrial level) bargaining with companies in certain types of industries.

A new labour contract law was passed in 2007 after much public and internal consultation. It was prepared to address the current situation whereby the majority of workers continue to work without signed contracts and those that have signed contracts generally do not receive a copy. One recent survey by the National People’s Congress found that less than 20 percent of small-and-medium-sized private companies had signed contracts with their workers. The new law therefore provides specific penalties for companies failing to observe labour laws and regulations concerning contracts and related issues, such as providing written contracts and abiding by the terms of the contracts. The law further attempts to legislate the fast growing use of contract labour. The question remains of course whether the law will be properly implemented, as implementation has often been deficient in the past. Furthermore the law does not provide support for increased worker participation in negotiating contracts or conditions of work apart from through the official trade union.

However, the new law has reportedly been the causes of massive lay-offs of long standing workers prior to its coming into force on 1 January 2008 as companies sought to rid themselves of workers now eligible for open ended work contracts. The telecommunications firm Huawei, for example, is reported to have intended to require 7,000 workers with seniority to resign before 1 January and then renegotiate a new labour contract, until such action was prevented by an intervention from the ACFTU. Since January 2008, it appears that companies are reacting to the new law in a variety of ways including use of more covert ways to reduce employee numbers, especially affecting workers who would enjoy more rights under the law; increased use of sub-contracted work; demotions of more senior workers and so forth. There are reports of low value added production chains relocating from Guangdong to Inner and West China, or out of China altogether, in order to reduce the higher costs that employers anticipate will result from the new law. One report stated that over 10,000 of the 90,000 export processing firms in Guangdong had closed due to a tougher operating environment, allegedly due partly to the new labour law, while the Federation of Hong Kong Industries predicted that as many as 14,000 Hong Kong-run factories in southern China would shut down this year.

The law has given rise to highly vocal opposition from employers and multinationals in China, including at the annual session of the National People's Congress in March 2008, and indeed it was opposed by the US and EU Chambers of Commerce in China throughout much of the stages of its preparation. A majority of 91 small firms surveyed in one study in February 2008 said the law had added at least 10% to their labour costs. Another sample of 45 Chinese firms, mainly in the manufacturing and services sectors, found that 56.1% disagreed with the new law while 70.73% wanted it to be changed. A significant proportion of respondents stated that they would respond through increased use of subcontracting and use of labour despatch companies.

Workers do not have the right to strike which was removed from the Constitution in 1982. The revised trade union law (Art 27) is not clear on strikes but says: "In case of a work stoppage or a go slow in an enterprise, the trade union shall represent staff and workers in consultation with the enterprise, institution or relevant party, and shall reflect the opinions and demands of staff and workers as well as raise solutions. The enterprise or institution shall strive for a settlement with the reasonable demands made by the staff and workers." While strikes have a tenuous legal existence, in practice the number of strikes continues to grow. In general however strikes are often repressed with police force and are not supported or endorsed in any way by the official trade union.

Health and safety work stoppages are allowed under the new Work Safety Law (2003) which states that workers who encounter a situation at work that directly endangers their personal safety have the right to refuse orders which violate health and safety rules, to stop work and to leave the workplace. Similar provisions are contained in the labour law. The trade union law is weaker, stating that in the case of unsafe conditions the union has the right to propose solutions. Many accidents occur every year in China due to a widespread disregard for basic health and safety standards. As in previous years mining remains a dangerous occupation with several reported instances where miners died while working in unsafe environments after they were forced to continue work.

There is an extensive dispute resolution system that consists of three stages: mediation, arbitration and the courts. Tripartite labour dispute arbitration committees are chaired by the local labour bureaus. A new law coming into force in May 2008 is aimed at quicker resolution of internal disputes by encouraging management to set up labour mediation committees to solve internal disputes.

While reliable figures are hard to obtain, there is a growing number of labour related disputes each year with an increasing number of labour disputes ending up in courts due to the lack of effectiveness of the current arbitration process.

NPC statistics show that in the 19 years to 2005 labour dispute arbitration organisations at various levels dealt with 1.72 million cases involving 5.32 million employees from 1987 to 2005, with a growth rate of 27.3 percent annually. These figures include only the disputes that were accepted for mediation. Three main causes for the increase of labour unrest and disputes can be discerned. The first one is extensive privatisation of state owned enterprises along with official corruption resulting in the non payment of redundancy benefits and a reduction in worker

entitlements such as wages and housing and health packages. The second is the grievances of workers, often migrants, in privately owned enterprises in the southern and eastern coastal areas, whereas the third consists of the severe wage arrears faced by casual construction workers.

In 2005 some 87,000 mass social “disturbances” were officially registered. These included protests against non-payment of wages, bankruptcy and corruption, in particular during privatisation processes. In 2007, official statistics reported some 317,000 labour disputes with a further 130,000 resolved cases prior to arbitration, making a rise in total of 42.4 percent from 2005. Workers’ strikes and protests were increasingly responded to by violence, both from management and from government side.

Since the implementation of the *Labour Contract Law* on 1 January 2008, there has been a remarkable increase in the number of arbitration cases filed in Guangzhou. Most districts registered a three to five-fold increase, with Haizhu seeing a 15-fold rise. Staffing levels in the arbitration committees have failed to increase, placing a serious burden on existing staff.

The *Guangzhou Daily* on 25 March quoted Xie Yingjian, director of the Office of Labour Dispute Arbitration, at the Guangzhou Labour and Social Security Bureau, as saying the number of labour dispute cases in Guangzhou for the first two months of 2008 equaled the total number of cases in 2001. More than 60 percent of all cases involved non-payment of salaries and overtime. The report claimed Shenzhen and the province of Guangdong as a whole had experienced similar increases.

While the new dispute settlement law might lower the number of court cases, as of now court settled labour disputes are generally producing more positive results for workers despite many settlements never being enforced. The majority of the labour related disputes concern wage arrears, benefits and social insurance, while 18 percent of cases deal with termination of employment. There is also a growing number of collective cases, filed in particular by migrant workers.

There are no specific labour laws or exemptions from labour laws relating to collective contract signed in the Export Processing Zones although a number of significant labour law clauses can be circumvented by employers who obtain exemptions from local authorities on issues such as working hours or overtime, although it should be noted that such exemptions are not unique to the zones.

All attempts to establish independent trade unions are repressed, sometimes violently. Trade unions formed outside the ACFTU are either assimilated within the ACFTU, or repressed. Organisers of independent trade unions which resist ACFTU assimilation are generally arrested, detained or imprisoned. The ACFTU is part of the government and party bureaucracy, and has the task of assisting the government in ensuring social stability during economic changes in the Chinese industry and protecting workers in the privatised economy while working to organise the workers before they organise themselves independently. Relatively recent reforms within the ACFTU include a push for direct trade union elections at the enterprise level, and the opening of the union to migrant workers. This has resulted in official statistics stating that around 60 million migrant workers now belong to the ACFTU. However despite these reforms, the level of

autonomy of most unions at enterprise level remains low, with many officials appointed directly or indirectly by the Party.

Membership figures of the ACFTU released in 2007 shows a membership of 179 million workers in 2006, organised in 1,324 million organisations. Such statistics mask the fact that the recruitment drives which set annual targets for new membership remain very much based on the rise of paper unions whereby the legal procedure for registering a union office in an enterprise can be completed without trade union officials even entering the workplace.

A lot of organising by the ACFTU has been taking place in foreign invested enterprises over the last couple of years and the number of workers organised has gone up rapidly. ACFTU branches have been established in firms such as Wal Mart, Carrefour, McDonalds, Motorola, Kentucky Fried Chicken, Samsung and Nestlé despite the initial well publicised opposition of management. In the majority of disputes at the enterprise level, the ACFTU appears to be unwilling or unable to genuinely support workers and overall, their direct assistance in labour disputes remains limited. The ACFTU does not play a role in the majority of labour disputes and collective actions involving migrant workers in manufacturing zones where private businesses are located. Nonetheless the ACFTU has been leading a high profile campaign aimed at obtaining wage arrears for migrant workers, as well as more recently wage increases for migrant workers.

Wage arrears between 2005 and 2007 reached an estimated 66 billion yuan. On several occasions migrant workers that protested against such arrears, especially those working in construction, were beaten by employer related gangs. For example in May 2007 private security guards injured nine workers with iron bars when demanding back wages at a construction company in Baiyun. In June in Heyuan City private security guards armed with steel pipes and tools attacked unarmed migrant workers in a contract dispute. One was killed and seven were seriously injured. Many wage arrears claims are taken to court and many are settled in favour of the workers but in many instances the court decisions are not implemented and the workers do not receive their back pay. To help counter this, a Supreme Court circular in 2006 directed courts to ensure that lawsuits filed by migrant workers over unpaid wages should be dealt with and enforced in a timely manner.

In 2007 a crackdown on NGOs and legal personnel assisting workers and others in court cases continued and intensified. Many lawyers and labour rights groups that provide legal aid and training came under intensified scrutiny, investigation, monitoring and harassment. In one notorious example, a workers' centre in Shenzhen was repeatedly targeted by thugs in 2007 and its lead representative brutally stabbed.

In 2007, as in previous years, many workers that had led workers' protests during the year were imprisoned. This was the case for Zhou Yuanwu who led workers' protests at the Jingzhou Brewery in 2006 and was sentenced to 30 months of imprisonment for "obstructing public officers in performance of their duties". Li Guohong, a workers' representative at the Zhongyuan Oil Field (ZOF) in Henan Province, was sentenced to 18 months of re-education through labour in 2007, after he inquired about some ZOF workers that were imprisoned. Other

labour activists were detained in 2007 and many that were imprisoned in previous years remained in detention.

Several notable protests took place in 2007. In April 500 workers at the Huaxing Light Manufacturing in Shenzhen protested against inadequate severance pay for laid-off employees.. In June there was a strike and factory blockade at the Yongxing Toy Company in Dongguan after more than 2,000 workers reportedly demanded ten weeks back wages. It was reported that some 800 striking miners at the Tanjiashan Coal Mine in Hubei Province fought hired security guards in August 2007 after they attempted to break a six day strike - at least one worker and one security guard died. The miners went on strike after they discovered that 360 million yuan allocated by the central government for the workers' redundancy payments as part of the mine's privatisation plan had allegedly been appropriated by mine's board of directors.

More than 3,000 bus drivers in the northeastern city of Jinzhou went on strike on 19 July 2007, demanding higher wages and protesting at the municipal bus company's privatisation plans.

Several hundred workers at the Yantian International Container Terminals (YICT), a major southern Chinese port went on strike in April 2007. The strike was ended after management reportedly agreed to raise wages by 3 percent. The South China Morning Post reported the workers also won the right to organise a union. However it also quoted an unnamed worker at the Yantian port as questioning whether the union would protect workers: "The general trade union of Shenzhen and the management will set up the union, not the workers themselves. We don't even have the right to elect the union head."

The Olympic Games, organised in China this year, have also shed some light on working conditions in companies producing for the Games. A report published by the Play Fair 2008 Alliance looked at four of the factories licensed to produce Olympic products and found that all four had serious violations of Chinese labour laws, including child labour at one of the companies, Ledit Stationary.

Conclusions

Workers do not have the right to organise in trade unions of their choice. The right to collective bargaining is restricted as is the right to strike, both in law and in practice. The lack of proper representation is reflected in the number of protests and labour disputes that have been rising over the years.

II. Discrimination and Equal Remuneration

The People's Republic of China ratified ILO Convention No. 100 on Equal Remuneration in 1990 and ratified ILO Convention No. 111 on Discrimination (Employment and Occupation) in 2006.

Gender Discrimination

Gender equality has been an official government policy objective since 1949. The Constitution states that “women enjoy equal rights with men in all spheres of life.” The Law on the Protection of Women's Rights and Interests was designed to assist in curbing gender-based discrimination. However, women continue to experience discrimination, sexual harassment, unfair dismissals, demotion and wage discrepancies.

In the recent economic reforms in the state sector, women have been the biggest losers as they were generally the first workers to be laid off or dismissed. Indeed, throughout the past decade women have suffered disproportionately from lay offs and it is estimated that in some areas up to 70 to 80 percent of the laid off workers are women, especially in the northeast of China. In many instances the women workers are not technically laid off but are asked to take prolonged “rest” from work or are forced into early retirement. Regulations governing the reforms of State Owned Enterprises allow for women to be forced to “retire” at 40 or to take enforced two-year maternity leave without pay. As well as depriving women of their equal right to employment, such discriminatory practices mean that women have far lower pensions, fewer opportunities to save, and lose their access to child care, medical care and other allowances. The official retirement age continues to set two ages for men and women - 60 years for men and 55 for women.

In terms of re-employment, women workers find it harder than men to find new jobs. Some figures show that about 75 percent of laid-off women are still unemployed after one year, compared with 50 percent of men still unemployed after one year.

Many employers prefer to hire men to avoid the expense of maternity leave and childcare. For many women, becoming pregnant entails the end of their working life at a particular factory. Laws regarding non-termination of work contracts for pregnant and nursing mothers are often not enforced and women are dismissed.

In contrast to the high rates of redundancy for women in the state sector, in the private sector many of the migrants employed at the lower end of the wage scale in small and medium enterprises in the south and eastern parts of China are young women between the ages of 16 and 25. Some statistics show that the migrant labour male-to-female ratio nationwide is 2:1 while in the Pearl River delta the ratio is reversed. Typically, young female migrants earn less than their male counterparts. Effective job segregation means women generally find employment in the unskilled, labour-intensive, and lower-paid textile and manufacturing industries.

For professionals and white-collar workers, there is a distinct preference towards male graduates while young non-married women are preferred for assembly line posts, thus increasing gender segregation of work.

The ILO CEACR Committee in its report in 2006 notes that there is significant under-representation of women in supervisory positions. Under the Programme for the Development of Chinese Women (2001–10), targets have been set to raise the proportion of women in the principal bodies of government at all levels and to increase the number of women holding offices or posts of major importance as well as the percentage of women in management positions.

A 2001 survey by the All-China Women's Federation, a Chinese organisation that has a close relationship with the government, found that compared with 10 years earlier, Chinese women's social status had declined in many ways. The percentage of women in politics had fallen and women's employment opportunities remained limited.

Chinese law provides for equal pay for equal work. A 1999 government survey, however, found that urban women were paid only 70 percent of what men received for the same work, while women in rural areas received only 60 percent of male peasants' incomes. Average incomes of female executives and senior professionals were only 58 percent and 68 percent of their male colleagues' salaries. Most women employed in industry worked in lower-skilled and lower paid jobs and in sectors such as textiles were particularly vulnerable to restructuring of state-owned enterprises and layoffs. Women accounted for 60 percent of those below the poverty line in the country. The ILO report on Discrimination (2007) estimates the gender wage gap at 20%.

The ILO CEACR Direct Request of 2006 notes that the “statistical information provided by the Government showing the yearly average wages for men and women by industry and occupation for 2003 shows that in every sector of the economy, women earn on average less than men – a pattern which is also observed in the majority of occupational categories”. It further notes that “according to a national survey prepared by the All-China Women’s Federation (ACWF), the average income of urban women is roughly 30 per cent lower than their male counterparts, which represents a 7 per cent increase in the pay gap between men and women over the period of a decade”.

The same report notes that there is “segregation of women in education and training programmes which tend to lead to lower paying and less career-oriented employment opportunities”. According to 2005 statistics women accounted for 47.1% of undergraduate and college students, 43.4% of postgraduate students, and 32.6% of doctoral students. Women with advanced degrees reported discrimination in the hiring process. According to State Council figures, although 99 percent of girls attend elementary school and 95 percent enter lower middle school only 75 percent go on to higher middle school. Women are estimated to make up 70 percent of China's 85 million illiterates. Improving equal access to education is one of the goals laid out in the Ten-Year Programme for the Development of Chinese Women.

In the same ILO CEACR report the Committee notes that the Government’s indicative wage system, which serves as a reference to help enterprises set wage levels, is published according to job categories and that gender is not taken into consideration.

In August 2005 the Chinese authorities released a White Paper on Gender Equality and Women's Development in China. The paper reaffirmed the importance of achieving pay equity. On 28 August 2005 the National People’s Congress passed an amendment to the 1992 law on the Protection of the Interests and Rights of Women. The new provisions (effective as of December 2005) concerned sexual harassment and domestic violence and explicitly dealt with gender equality issues. In April 2007, a successful sexual harassment case in Shaanxi Province was the first to use this revised law.

Internal Migrant Workers

Extensive discrimination affects the internal migrants who make up an increasing share of the labour force in urban areas. An estimated 120 – 150 million people originally from rural backgrounds are employed in China's cities or in other booming coastal areas far from their hometowns and villages. It is estimated that another 7 to 10 million new migrants head towards the cities every year, and that 60 percent of them take up jobs outside their home province.

These workers from the countryside are discriminated against in several ways. First, there are extensive restrictions on freedom of movement brought about by the “hukou” system, a form of household registration whereby each family member is registered according to his or her family residence. Once classified it is hard to change status. The majority of rural residents, despite living in urban areas, therefore keep their rural status, which is passed onto their children. As an integral part of the hukou system, rural migrants are disqualified from freely seeking and obtaining better-paid opportunities in the cities unless they can obtain temporary residency and work permits.

Today it is estimated that there are probably over 100 million people living in areas different from their registered status. This poses grave problems, as residing illegally in an urban area makes one illegible to receive education, access to medical care, housing and other public services. Even legally employed rural migrants living in cities face difficulties in terms of obtaining the same access to health, medical and education opportunities as that of urban residents. While recent reforms have loosened the hukou system for the well educated and rich, the reforms have not addressed the core problem facing most rural migrants which is the link between their hukou status and public services. One serious issue is the lack of affordable and accessible provision of educational opportunities for the children of migrants which in turn continues to impact on the growing number of child labourers.

Migrants' first jobs in the cities are most often obtained through labour recruiters who travel to villages and rural towns looking for groups of people to work on projects. In many cases, the potential migrants have no idea what type of work they will undertake and if they will be paid what they are promised. In practice, promises often fail to materialise, leading many migrants to work illegally in the cities with no contracts or benefits. This makes them very vulnerable to arbitrary dismissal, illegal working conditions and wage arrears or simply non-payment of wages.

The urban-rural wage gap is high, standing at 3.27:1 in 2006. The majority of rural migrants are employed in low paid, labour intensive industries earning far less than urban residents. In 2005, a report by the Guangdong Federation of Trade showed that more than three quarters of rural migrant workers in Guangdong earned less than 1,000 yuan per month, compared with the 1,997 yuan average monthly salary. For most migrants, the minimum wage set in particular areas is in practice the maximum and recent inflation has seriously cut away the value of recent wage increases.

According to official sources, China has an estimated 94 million migrant workers who are owed a total of over 100 billion Yuan in back wages. The problem is most severe in the construction industry, which accounts for over 70 percent of the total amount owed. In the construction industry part of the problem comes from poor employment practices (such as illegal

recruitment and lack of formal contracts) and a lack of clear accountability in legislation. To counter this problem, on 1 January 2005 a Supreme People's Court interpretation (Interpretation of the Supreme People's Court on Handling Construction Project Contract Disputes) came into force nationally which stated that any illegal sub contracts issued by construction contractors or others are null and void and that that migrant workers have the right to directly sue the original contract holder if their wages are not paid on time.

The ILO's 2007 Global Discrimination Report noted that while migrant workers represent 40% of the urban workforce, 90 million migrant workers from rural areas cannot obtain an urban hukou to give them better access to housing, healthcare and education. It said that some progress has been made in redressing these inequalities by ensuring a minimum wage for migrant workers, the enforcement of a labour contract and access to employment services and job training.

A new law on Employment Promotion was issued and became effective on 1 January 2008 along with supporting regulations on employment services and employment management. The law is aimed at ending discrimination against migrant workers and people living with Hepatitis B as well as at regulating employment recruitment agencies. For the first time the law states that migrant workers should have the same rights to employment as urban workers, and workers that have been in the city for more than 6 months will be entitled to unemployment benefits and services from the local government.

Ethnic Minorities

Government policy provides members of recognised ethnic minorities with preferential treatment in birth planning, university admission, access to loans, and employment. Nevertheless, in practice minorities are often discriminated against in terms of access to equal education opportunities and employment. Discrimination is the source of deep resentment in some areas, such as in the Xinjiang Uighur Autonomous Region (XUAR), the Inner Mongolia Autonomous Region and the Tibetan Autonomous region and neighbouring areas. It is widely reported that despite extensive large scale development projects in the XUAR, many ethnic Uyghurs failed to benefit from newly created construction jobs and instead Han migrants workers were brought in to work, particularly on road construction and oil and gas pipelines.

In the Tibetan Autonomous Region (TAR) and surrounding Tibetan autonomous prefectures and counties, there are frequent claims of discriminatory employment practices and economic opportunities which favour the Han Chinese and disadvantage Tibetan nationals. Unemployment in some areas among Tibetan youth has been put at around 70 to 80 percent, while the disparity in Chinese language skills required for well-paid jobs perpetuates the already skewed system of preferential recruitment against ethnic Tibetans.

Persons with Disabilities

Chinese law protects the rights of persons with disabilities and prohibits discrimination. However, conditions for such persons lag far behind legal dictates, failing to provide persons with disabilities with access to programmes designed to assist them. In particular, the employment situation is severely lacking for the country's disabled people: though 16.2 million

of the country's 60 million persons with disabilities found jobs in 2004, the China Disabled Person's Federation estimated that another 12 million employable persons with disabilities remained unemployed.

Conclusions

Discrimination is prohibited by law but does occur extensively in practice. Both women and ethnic minorities suffer from discrimination in wages and access to employment. In particular the institutionalised discrimination against migrant workers from rural areas remains a serious problem, despite some recent measures.

III. Child Labour

The People's Republic of China ratified ILO Convention No. 138, the Minimum Age Convention in 1999 and ILO Convention No. 182, the Worst Forms of Child Labour Convention in 2002.

Child labour is prohibited by law and restrictions are in force for those aged between 16 and 18. Only under special circumstances can children be employed, such as in sports, arts or through occupational training and educational labour, but only if their personal health and safety is not affected.

In practice however, there is substantial employment by children under the age of sixteen. Education is supposed to be free and compulsory for nine years, however inadequate resources are provided for education, which has resulted in a range of fees being demanded from parents as well as the employment of school children to pay for tuition and materials.

One particular form of employment are the work-study programmes which are regulated by the Ministry of Education. Such programmes allow schools in poor areas to set up income-generating schemes in agriculture and manufacturing, employing children to earn money for their school fees as well as learn skills. Although some schemes are limited to seasonal agricultural work, improving school facilities or making small handicrafts, many of these programmes have resulted in abuses such that children are effectively employed in agriculture, construction and factories working long working hours under harsh conditions. These work-study programmes are inadequately regulated as they fall under the responsibility of the Ministry of Education and not the Ministry of Labour and Social Security, with few public rules on working hours, job descriptions or age limitations.

According to Human Rights Watch (HRW) more than 400,000 middle and junior high schools are running such schemes. One example cited by HRW is the case in June 2007 of 500 children from a middle school in Sichuan working 14 hour shifts in a factory during summer. They slept in overcrowded dormitories, got insufficient food, suffered work-induced health problems and were fined for production mistakes. Reports of children being forced to assist in

the annual harvesting of cotton with excessive hours and minimal payment in the Xinjiang Uighur Autonomous Region (XUAR) and in Gansu Province continue to emerge.

Internships are also used to employ children in factories. These can be extended internships where children are employed for several months making long working hours. One example uncovered in June 2007 is the Longzhen Connector Component Factory in Dongguan where some 300 students, most of them under 16 from Sichuan Province were working 14 hours a day on an 8 month internship. Another example is Yonghong Electronics in Shenzhen where a 2006 report indicated that the company recruits 14 and 15 year old children as apprentices to work for low pay and long hours in the electronics factory, beyond the summer period. Interviews among the student workers also showed that the workers were not free to leave the factory. They were sent by their schools and told to work until enough payments are received for the school fees. They were not allowed to return before payments were made and were kept beyond school holidays.

Child labour is a growing problem in industries in the private sector, especially textiles and the export sector in general. Other industries employing children include fireworks, toys, construction, food production, light mechanical work and piece work at home. Children are also employed in entertainment, (organised) begging, street selling, brick kilns and prostitution. An incident involving child labour and firework production took place on 10 July 2006 when an explosion at an illegal fireworks workshop killed seven workers and injured three others, including a 14-year-old girl.

Lack of proper enforcement of regulations, lack of sufficient resources, and corruption continue to block efforts at improving the situation. Fines for child labour remain low in practice. In addition the shortage of inspectors and the collusion between private business and local officials reduce the odds of being discovered. This is further aggravated by practices of double bookkeeping. In recent months, it has been reported that child labour has been further increasing as companies seek to evade labour laws that make it harder to hire regular workers on a seasonal basis.

There are no officially published national data on the extent of child labour or on the number of children working in the worst forms of child labour. The number of cases prosecuted is not published either. Information on child labour is subject to regulations issued by the State Secrets Protection Bureau.

Trafficking of children and forced labour of children is a problem in China (see section below on "Forced Labour").

The ILO CEACR Committee in its 2006 report (Observation) noted the "concern at the situation of children under 18 years performing forced labour not only in the framework of re-educational and reformative measures, but also in regular work programmes at school. Although the national legislation appears to prohibit the forced labour of children under 18 years, it remains an issue of concern in practice".

The ILO CEACR Committee also referred to the situation of migrant workers' children who do not obtain compulsory education and the need to ensure that migrant workers' children

receive compulsory education through the provision of adequate funds as well as the adoption of an amendment to the Compulsory Education Law providing for equal conditions for migrant workers' children in obtaining compulsory education.

Conclusions

Child labour, although prohibited under the age of 16, is a serious problem in China. It includes the worst forms of child labour as well as forced child labour. In particular the work-study programmes frequently result in a serious degree of child labour.

III. Forced Labour

The People's Republic of China has not ratified ILO Convention No. 29, the Forced Labour Convention or ILO Convention No. 105, the Abolition of Forced Labour Convention.

Chinese law prohibits forced and compulsory labour, including by children. However, forced labour is a serious problem, including in penal institutions, with regard to prisoners sentenced by the criminal justice system to reform through labour and those undergoing the administrative punishment of re-education through labour which bypasses the criminal justice system altogether. Detainees in re-education through labour facilities are required to work, often for very long hours with little or no remuneration. Sometimes the prisoners are contracted out to non-prison enterprises. There is no effective mechanism to prevent the export of goods made under such conditions.

In the 2006 report by the ILO CEACR concerning the Worst Forms of Child Labour Convention, the ILO stated that it "was gravely concerned about the use of forced labour as a corrective measure, without charge, trial, or review, under the "Re-education through labour" (laodong jiaoyang) programme."

The ILO report further referred to forced child labour in re-education through labour camps providing "custody and education". In its evidence to the CEACR, the ITUC had pointed out that children between 13 and 16 years can be sent to custody and re-education programmes by the local public security bureaux without recourse to the criminal justice system. Generally placed in re-education through labour camps, there is little avenue for appeals except to the public security bureau itself. There is a lack of due process involved in the system of custody and education. The Law on the protection of minors states that this is not a criminal penalty, but it is included in the Law on prevention of juvenile delinquency and the criminal Law. Children working in re-education through labour camps have little safeguard against overwork and poor conditions. The CEACR states that "It is difficult to assess why this system is used and not the criminal juvenile justice system."

There are frequent reports of slavery in brick kilns, particularly in Shanxi and Henan provinces. In March 2008, Chinese media reported that police had rescued 33 mentally disabled

men who had been forced to work as slaves at a building site in Hulan, a city in the north-eastern province of Heilongjiang.

In one of the worst recent cases, after parents of disappeared children published an appeal on the internet in 2007 government authorities launched an extensive investigation in brick kilns in Shanxi province which resulted in the freeing of around 1,340 workers from forced and often unpaid labour. These included workers with mental disabilities and children, many of whom were kidnapped and internally trafficked.

In response to the events in Shanxi, in June 2007 ACFTU President Wang Zhaoguo together with the Ministry of Labour and Social Security called on grass roots trade unions to “immediately carry out a thorough examination to stop the violation of migrant workers’ rights”, targeting industries that typically employ migrants including manufacturing, construction, mining and restaurants.

Instances of child disappearances continue to emerge and are regarded as inadequately investigated as they generally involve children of low paid or migrant families. As recently as April 2008 another major scandal involving forced child labour was uncovered after media attention brought it to the attention of the authorities. The authorities stated that they had broken up a child labour ring that forced children from poor, inland areas to work in the Pearl River Delta and rescued more than 100 children aged between 13 and 15 (some as young as nine) from factories in the city of Dongguan, one of the largest manufacturing centres in the south. The children were found to have been working up to 300 hours a month for pay of around \$0.50 an hour. Officials reported that they were investigating reports that hundreds of other rural children had been forced into work in abysmal conditions for minimal pay. Chinese state media reported that some 1,000 school-age workers from the south-western Liangshan region were employed in manufacturing zones near Hong Kong, and the authorities in Liangshan said they had detained several people for recruiting children and illegally ferrying them to factories.

Forced or unpaid labour, locally called *hasha*, is still reported to be used in some regions, most notably the XUAR.

Trafficking of women and children is prohibited but remains a serious problem in China. While 2,375 cases were reported officially in 2007, reports indicate that the true number is in the tens of thousands. The country is a source and destination country for trafficking of people. Trafficking takes place for forced prostitution and forced labour, including of children. Trafficking in border areas has increased especially involving women and girls from North Korea, Vietnam and Mongolia, but also from Burma, Laos, Russia and Ukraine. Young women have been trafficked for sexual exploitation, forced marriage and indentured servitude. Chinese citizens were trafficked primarily to Malaysia, Thailand, the UK, and the US as well as Australia, the EU, Canada, Japan, Burma, Singapore, South Africa and Taiwan.

There are reports of Uyghur children being trafficked each year to other parts of China. They end up in forced prostitution, drug networks or theft as well as begging, scavenging, newspaper selling and shoe shining. So called training programmes offered to girls belonging to the Uyghur minority in the XUAR, whereby they were offered work in coastal and southern

cites, turned out to be in abysmal working conditions and with wages unpaid. Reports stated that heavy pressure was put upon the families of the girls by local officials to gain their approval.

The ILO CEACR Committee in its report from 2006 considered that the penalties provided for in section 244 of the Criminal Law for the offence of forced labour were not sufficiently dissuasive to the extent that the penalty applied may merely consist of a fine. It requested the Government to take the necessary measures to ensure the application of the penalty of imprisonment for an offence as serious as one involving forced labour.

In late 2007, Chinese state media announced a national plan to stop human trafficking, aimed at protecting women and children from forced labour and prostitution and including stepped-up enforcement and coordination among 28 government ministries.

Conclusions

Forced labour is prohibited in China but does occur, both by commercial enterprises, often using “middle-men” who take part of the salary, and by government authorities. There is forced prison labour in the form of reform and re-education through labour camps, forced labour by children, and trafficking by women and children for forced labour and sexual exploitation.

Final Conclusions and Recommendations

1. The government needs to ratify ILO Conventions No. 87 and No. 98, and ensure an effective implementation and enforcement of these core Conventions.
2. Workers need to be guaranteed the right to freely organise in independent unions of their own choosing. They should have the right to bargain collectively as well as the right to strike. Independent unions that genuinely defend the rights of workers and engage in collective bargaining will reduce the growing social unrest and form the foundation for the Chinese economy to enjoy more equitable and sustainable growth than that currently taking place.
3. The Government needs to address the direct and indirect causes of wage differentials between men and women and take effective measures to reduce the persistent wage gap.
4. There is a need to carry out more in-depth gender analysis given that existing research and data collection do not reveal the full differences between men and women on the labour market.
5. The government needs to address further the problems facing migrant workers, in particular concerning the protection of their rights, wage payments and wage arrears, access to health and education, and exploitative working conditions.
6. Work-study programmes in China need to be subject to clear rules that prevent abuses of child labour. Such new rules should be enforced effectively so as to avoid any further abuses and exploitation of children.
7. There is a need to ensure that children under 18 years of age are not forced to work, whether within the framework of re-educational or reformative measures or at school or in any other situation.
8. There is a need for statistics and information on the nature, extent and trends of the worst forms of child labour, the measures taken by the government to eliminate the worst forms of child labour and information on the number of children covered by these measures, the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied. There is a need for the repeal or limiting of Chinese state secrets laws relating to labour, including forced labour, protests and such like.
9. Effective measures are needed to end the trafficking of women and children for forced prostitution and forced labour, including more inspections and stricter penalties.

10. The government must end its use of prison labour for commercial production and reform or re-education through labour. The government should take effective measures to bring legislation in line with ILO Convention No. 105 on the abolition of forced labour which will necessitate the abolition of re-education through labour.
11. There is an overall need for increased labour inspection and enforcement of the legislation, as many of China's laws are relatively well developed but insufficiently adhered to. The level of penalties and fines imposed should be increased, especially in the areas of child labour and forced labour.
12. The WTO should draw the attention of the authorities of the People's Republic of China to the commitment they have undertaken by becoming a member of the WTO to observe core labour standards as stipulated in the Singapore and Doha Ministerial Declarations. The WTO should request the ILO to intensify its work with the government of China in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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