

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
(Geneva, 10 and 12, May, 2010)**

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. Workers do not have the right to organise in trade unions of their choice. Legal trade unions have to be affiliated to the ACFTU and accept its control. Although there have been some efforts to establish collective wage consultation systems, 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. Under extensive state secrets legislation it is a crime to publish unofficially sanctioned data, even on national strike figures or unemployment numbers, resulting in a lack of official public data on labour related issues.

China has ratified the core ILO Conventions on equal remuneration and discrimination. Discrimination is prohibited by law but in practice, while there is an absence of gender segregated data, clearly it is prevalent. Women, ethnic minorities and persons who live with HIV/AIDS and Hepatitis B frequently suffer from discrimination in remuneration and in access to employment, education and public services. Institutionalised discrimination against migrant workers from rural areas remains a serious problem, despite recent legislation.

China has ratified the core ILO Convention on the worst forms of child labour and the ILO Convention on minimum age. Child labour, although prohibited under the age of 16, is a serious problem in China. Children are sometimes employed under forced conditions or performing the worst forms of child labour. Law enforcement officers often fail to apply the law effectively. Work-study programmes, run under school auspices, frequently result in forced child labour.

China has not ratified the core ILO Conventions on forced labour. Forced labour is prohibited in China but does occur in commercial enterprises. There is forced prison labour in the form of "re-education through labour camps", including prison labour by children. Progress in prosecuting traffickers and in protecting and assisting victims of trafficking, which affects women, men and children, has been limited so far.

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

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 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

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

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.

Freedom of Association

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 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. Organisers of independent trade unions which resist ACFTU assimilation are generally arrested, detained or imprisoned. On the other hand organising trade unions with "Chinese characteristics" is strongly encouraged by ACFTU officials. "*Chinese characteristics*" comprise, according to the official press agency Xinhua, "*the principle of the leadership of the Communist Party of China over the unions*", as well as "*protecting workers' rights and interests in line with laws and in a scientific manner. Pursuit of harmonious labour relations is another requirement of building trade unions with Chinese characteristics.*"

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 66 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 the majority of officials appointed directly or indirectly by the Party.

The number of workers organised by the ACFTU in multinational enterprises over recent

years has increased rapidly. ACFTU branches have been established in firms such as Walmart, Carrefour, McDonalds, Motorola, Kentucky Fried Chicken, Samsung and Nestlé despite the initial well publicised opposition of management.

Collective bargaining

There is no comprehensive national law on collective bargaining procedures but rather a plethora of regulations which govern “collective contracts”. The Labour Law effective from 1995 adopted collective consultation as a key medium for settling disputes between employers and workers, even in enterprises with no established trade union. However, the Labour Law only dictates that enterprises “may” engage in consultations, leaving this as an option up to the management of each enterprise. Several further regulations including the revised Trade Union Law have provided guidance on the negotiation process and content of collective contracts. The *Minimum Wage Regulations*, *Regulations on Collective Contracts* and *Provisional Regulations on Wage Payments* are non-binding administrative regulations.

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 official reports, wage demands are at the core of the collective contract system, but trade unions in small and medium enterprises rarely undertake negotiations with management.

According to ACFTU statistics for 2008, a total of 1.9 million enterprises have signed 1.1 million collective contracts, covering 150 million workers. As of September 2008, 60.2 per cent of workers were covered by collective contracts. However, many collective contracts reflect the minimum legal requirements and do not cover enough areas to be of much use to workers. There is little data available on the number of sectoral collective contracts.

In July 2009, the ACFTU formulated its *Guiding Opinion Regarding Actively Launching Industrial Wage Collective Consultation Work* which stipulates that industry-wide union representatives will represent workers in collective consultations with employers' organisations at the same level with the aim of signing industry-wide collective contracts covering the issues of wage setting, labour quotas, and the minimum wage.

Over recent years, there have been several high profile experiments in collective bargaining and a number of apparently successful pilot projects including bargaining efforts in Zhejiang Province and Shenzhen. Since late 2007, in Luoyang the local government has executed a programme of establishing a collective wage consultation system in the city's enterprises. The Luoyang's pilot programme has been followed by the Henan Provincial Federation of Trade Unions, which decided to extend it throughout the province. The ACFTU's branch in Luoyang has completed a study which found that workers' wages in enterprises that implemented the Luoyang programme increased an average 10 to 20 per cent depending on the industrial sector, however that many entrepreneurs are not cooperating and prefer to stick to verbal agreements on wages with their employees. Others accompanied the implementation of the collective wage consultation system with creative accounting, such as counting in the insurance contribution, in order to keep the wages on the levels before the implementation. The Luoyang programme revealed that trade unions' effectiveness of negotiating is limited by lack of access to company's sheets on operations and profitability, contrary to the 1998 ACFTU's *Guiding Opinion on Trade Unions' Participation in Collective Wage Consultations*. Trade union leaders are reported to be dependent on their employers who often threaten and sack militant unionists for their activities. In addition to this, the law does

not prescribe penalties for Luoyang's enterprises that fail to comply with the collective wage consultation programme.

Other examples of province specific approaches with a view to developing collective contracts are the Hebei Province's *Regulations on Enterprise Collective Consultations between labour and management* and the 2007 Shanghai *Collective Contract Rules*. The latter provides procedures and legal requirements governing collective contracts, dispute settlement and collective bargaining covering issues of wages, health and safety, social insurance and benefits, training, labour discipline, production quotas, working time and days-off.

China ratified the ILO Convention on Tripartite Consultation in 1990 but the Convention has only started to be implemented recently. The Convention envisages that tripartite mechanism should perform three basic functions: exchanging information, consultation, and negotiation. As of September 2008, over 12,000 tripartite consultation organisations have been established, however, in China they are used only for exchange of information.

Labour Contract Law

The Labour Contract Law entered into force on January 1st, 2008 after public and internal consultation. The Labour Contract Law "*mandated contracts for all employees without exception, stabilized employment through the use of non-fixed-term contracts for workers who were on their third contract and for those who had worked at a single enterprise more than ten years, strengthened penalties for non-compliance with existing labour regulations, and opened more space for collective bargaining and consultation by the ACFTU.*" A survey by the National People's Congress found that less than 20 per cent of small-and-medium-sized private companies had signed contracts with their workers before the law's entry into force. The law 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. However, the Labour Contract Law does not provide support for increased worker participation in negotiating contracts or conditions of work apart from through the official trade union and does not contain any sanctions for enterprises that refuse to implement a collective wage consultation system.

The law was preceded by a public comment period where employers, including the US and EU Chambers of Commerce in China, expressed their fierce opposition and labour defended the new law. The employers massively laid-off long standing workers prior to the law's ratification. The telecommunications firm Huawei, for example, intended to require 7,000 workers with seniority to resign before January 1st 2008 and then renegotiate a new labour contract, until such action was prevented by an intervention from the ACFTU.

Since entry into force of the law in January 2008, companies have reacted in a variety of ways including use of more covert ways to reduce employee numbers such as increased use of sub-contracted work; demotions of more senior workers and so forth. Some have sought to argue that a number of export processing firms have closed due to a tougher operating environment due to the Labour Contract Law (when in reality, it is mostly due to the global financial crisis). In response to the crisis, the Guangdong government issued an *Opinion* stipulating that law enforcers should exercise caution in prosecuting white-collar criminals and ordering them not to arrest factory owners and managers accused of crimes such as corruption. By contrast, with regard to workers the *Opinion* stressed that "*prosecutors should crackdown on any crimes that harm the legitimate interests of enterprises or jeopardize production.*"

Many multinational corporations, such as Coca-Cola and Swire Beverages, outsource labour contracts to labour supply companies with a view to avoiding labour disputes and reducing costs.

Yet if despatched workers work full time in the premises of an enterprise, as frequently is the case, the companies act in violation of the Article 66 of the Labour Contract Law, which stipulates that supply workers should only fill temporary or supporting positions.

According to an independent survey of foreign-owned businesses, the total cost increase directly related to the Labour Contract Law was between two to three per cent. However, local governments are under severe pressure from local businesses to relax enforcement of the Labour Contract Law. Up to this moment, the enforcement has not been strict: in Huangpi, for example, in over a thousand small enterprises, especially kilns and mines, employing over 100,000 workers only some 5,000 workers were in companies that had signed labour contracts.

Dispute resolution and the right to strike

The right to strike 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.”* The Trade Union Law also stipulates, *“when a work-stoppage or go slow occurs in an enterprise or institution, the trade union shall assist the enterprise or institution in its work so as to enable the normal production process to be resumed as quickly as possible”*. 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.

The only allowed action comes in the form of “health and safety work stoppages” which are foreseen in the Work Safety Law of 2003. 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, notwithstanding, the Trade Union Law stipulates that in the case of unsafe conditions the union has the right to propose solutions but it does not extend to allow industrial action. 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. Government statistics for 2009 show that the number of coal mine accidents decreased by 338, and the deaths decreased from 3,215 in 2008 to 2,631 in 2009. Most of the accidents and deaths occur in small and private mines, which run with minimum safety regulations and obsolete equipment. However, many large state-owned mines outsource their operations to the private sector with direct consequences for the safety of workers.

In 2008, the Labour Dispute Mediation and Arbitration Law entered into force. The new law abolished arbitration fees for both employees and employers and accelerated the resolution of internal disputes by encouraging management to set up labour mediation committees to solve internal disputes. The extensive dispute resolution system consists of three stages: mediation, arbitration and the courts. Tripartite labour dispute arbitration committees are chaired by the local labour bureaus.

According to the Chinese Ministry of Human Resources, the number of labour dispute cases accepted by labour dispute arbitration committees more than doubled from 314,000 in 2005 to 690,000 in 2008. Civil courts accepted 280,000 labour dispute cases in 2008, almost 93 per cent more than in the previous year. In the first half of 2009, the accepted cases rose another 30 per cent and in the most industrialised areas, Guangdong, Jiangsu and Zhejiang labour disputes increased

respectively by 41 per cent, 50 per cent and 159 per cent.

There are signs that authorities, at least in Shenzhen, become more tolerant to events of work stoppages and other similar industrial action. The Shenzhen Municipal People's Congress published the *Draft Regulation on the Growth and Development of Harmonious Labour Relations in the Shenzhen Special Economic Zone* in June 2008. The Regulation does not legalise strikes but it no longer obliges trade unions to assist the quick resumption of production when they decide to take action. However, it regulates that in case of a strike, employers and workers are obliged to take no more action for 30 days in order to provide time for the dispute to be resolved by mediation or arbitration.

The number of strikes both spontaneous and planned, but always without the official recognition of the union is increasing; figures suggest that each day around 1,000 workers are involved in industrial action in Guangdong Province alone. The long-standing oppression of workers' rights has resulted to an unprecedented radicalisation of incidents that jeopardises the Chinese "harmonious society". For example, in July 2009, a senior enterprise manager was beaten to death in Tonghua and in August in Lingang steel mill, a vice-director was held captive for 90 hours. Local governments and employers often turn to violent repression of protests with large-scale deployment of armed riot police as well as ordinary public security forces. In some instances, companies hired security forces to beat and threaten workers protesting or taking other forms of industrial action, often with deadly results.

In the majority of disputes at the enterprise level, the ACFTU appears to be unwilling or unable to genuinely support workers and overall, direct assistance to them 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 since at least 2008 the ACFTU has been leading a high profile campaign aimed at obtaining wages in arrears for migrant workers, as well as more recently wage increases for migrant workers.

The main reasons for the increasing number of labour dispute cases include substantial long-term wages arrears, frozen wages, collective agreement breaches, unresolved issues and readjustment in private companies on the pretext of the global economic crisis including wage and social benefits decreases and suspended overtime payments. As in the state-owned enterprises (SOE), such readjustment in private companies is generally not negotiated with the employees. Furthermore many foreign small scale entrepreneurs typically sell off their assets quickly, including machinery, shut down the factories and depart from China leaving workers' wages in arrears. In response to this practice the Supreme People's Court issued a *Guiding Opinion* in 2009 which stipulates that the issue of wages in arrears should be dealt with urgency with a view to preventing the employers from fleeing the country and workers from protesting. It also dictates that the courts should discourage lay-offs and in case they are inevitable that the workers be compensated as the law prescribes, even in instalments. Most importantly, the courts should put the survival of the enterprises first, by allowing the use of sealed assets for business purposes and by prohibiting the sell-off of assets necessary for the operation of the enterprise, such as machinery and factory equipment.

Labour disputes are also on the rise due to the restructuring of SOEs. Although in 2009 there were not many lay-offs in such companies restructuring opens up windows of opportunity for corrupt officials who, according to an article in the magazine of the official Xinhua News Agency, "*declared bankruptcy without proper authorisation, and sold off assets directly linked to enterprise survival, disregarded the fate of the employees, and national interests, and in some cases, sold off national assets at below market price.*"

Scholars suggest that the government's traditional "*control, governance and organisation*" approach has failed to address labour disputes which are on the rise. When such disputes emerge, officials make ad hoc interventions, leaving no space for a systematic and institutionalised mechanism to effectively cope with the disputes. Because there is no effective system of collective bargaining, workers have no option but to make their protests public and seek redress through government intervention. Once this happens, the authorities' system of official "*control, governance and organisation*" goes into effect. But it is clear that rather than helping to resolve disputes, it actually creates the conditions for other disputes to emerge and escalate into social conflict. Judging from articles published in the official state political magazines, many Chinese officials have begun thinking of the establishment of collective bargaining as a possible remedy to labour disputes.

On the other hand, Chinese local governments impede workers from conveying their demands to dispute resolution in a variety of ways. In the summer of 2009 the authorities of Dongguan, a highly industrialised area, placed a limit on the number of cases per year a "citizen agent" could handle. Citizen agents are often former migrant workers who have some experience in filing labour dispute cases, usually starting with cases that affected them personally, and take on such cases in the name of workers who pay them some money for their services. Dongguan authorities decided that the agents will not be able to represent more than three workers and not more than three cases per year. Local law firms and trade unions in Dongguan have approved of the government's decision because they consider themselves the only legitimate agencies to handle such cases.

Apart from these regulations the local governments often crack down on NGOs and legal personnel assisting workers in court cases: labour rights groups that provide legal aid and training often come under intensified scrutiny, investigation, monitoring and harassment. Sometimes, paid attackers target agents and rights' defendants. In one notorious example, thugs repeatedly targeted a workers' centre in Shenzhen in November 2007 and its leading representative, Huang Qingnan, was brutally stabbed. Although Qingnan's assailants were sentenced to between one and five years in jail, the court rejected his lawsuit claim for physical and psychological compensation and awarded him compensation for medical expenses and loss of earnings instead. However, many crimes against agents and rights' defendants are not thoroughly investigated and the offenders remain in impunity.

Export Processing Zones

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.

Conclusions

Workers do not have the right to organise in trade unions of their choice. Legal trade unions have to be affiliated to the ACFTU and accept its control. Although there have been some efforts to establish collective wage consultation systems, 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 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 stipulates equal remuneration for work of equal value. The Law on the Protection of Women's Rights and Interests was designed to assist in curbing gender-based discrimination and with an amendment in 2005 sexual harassment was declared a crime. The recent Employment Promotion Law prohibits discrimination based, among other grounds, on gender and age. It stipulates that "*other than for types of work or posts that are not suitable for women as prescribed by the State, no employer shall refuse to employ women or raise recruitment standards for women on the grounds of gender. When an employer recruits female employees, the labour contract shall not stipulate any requirement such as one restricting female employees from marrying or bearing children*". However, women continue to experience discrimination, unequal remuneration, sexual harassment, unfair dismissals, demotion and wage discrepancies.

The financial crisis has reportedly hit women harder than men, as statistics from Huangzhou province show; female unemployment increased by 40 to 60 per cent during 2008 and 2009, while men's unemployment increased by 35 per cent. In reforming the SOEs, women have been 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 per cent of the laid off workers are women, especially in the northeast of China. In many instances 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 SOEs allow for women to be forced to "retire" at 40 or to take enforced two-year maternity leave without pay. Lower retirement ages for women mean reduced pensions, which are based on the number of years worked. 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 per cent of laid-off women are still unemployed after one year, compared with 50 per cent of men still unemployed after one year.

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. Moreover, even women with advanced degrees reported discrimination in the hiring process, citing the employers' concerns with regard to the costs of maternity leave and other special benefits. Job advertisements often specified height and age requirements for women, which is now declared illegal by the Employment Promotion Law which imposes more detailed requirements for recruitment advertisements placed by employers. "*The employer must not stipulate any discriminatory requirements, which often include: males only, people who are registered residents of a specific city only, etc.*" Information on the application and effectiveness of this law is very limited.

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.

Chinese law provides for equal pay for equal work. However, discrimination in remuneration exists; women earn 65 per cent of men's compensation and in rural areas this percentage is reported to be even lower. Women accounted for 60 per cent of those below the poverty line in the country. According to older statistics average incomes of female executives and senior professionals were only 58 per cent and 68 per cent, respectively, of their male colleagues' salaries. Furthermore, it is difficult for women to litigate a sex discrimination suit because of the vague legal provisions. Agencies tasked with protecting women's rights tended to focus on maternity leave related lay-offs and benefits and discarded cases of gender discrimination, violence and sexual harassment. Women are also underrepresented in certain highly skilled and highly paid positions. For every 5 male senior officials and managers only one woman occupies a position of the same level. However, in terms of professional and technical work, women occupy slightly more positions than men.

While illiteracy rates are officially lower than 2 per cent, 2008 official government statistics show that women comprised more than 70 per cent of all illiterate persons.

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.

Although the law clearly forbids sexual harassment, including at the workplace, the law's application is under question. Many labour offices tasked with receiving and proceeding complaints are not used to dealing with such cases and many complaints go uninvestigated. In one much-reported case, a 28 year-old office worker was dismissed in 2008 after complaining about sexual harassment by her boss. The vice-chair of the union and member of the union's women's committee proposed the victim's dismissal due to alleged absenteeism. The victim undertook a successful lawsuit. Some months before that, another court was the first to decide in favour of a sexual harassment victim using the 2005 amendment of the Law on the Protection of Women's Rights and Interests.

Internal Migrant Workers

Extensive discrimination affects internal migrants who make up an increasing share of the labour force in urban areas. An estimated 130 million people originally from rural backgrounds are employed in China's cities or in other booming coastal areas far from their hometowns and villages, comprising 35 per cent of the urban workforce. Until the 2008 crisis, their number was estimated to be 150 million. In the last quarter of 2008, almost half of them reportedly returned to their homes for some months, however, some 56 million managed to return to the cities to be re-employed. Of these 56 million, 45 million found work in the cities and 11 million remained unemployed in the cities. Another 14 million found work in their home towns while 12 million of those who stayed at home are yet to find a job. Before the crisis, it was estimated that 7 to 10 million new migrants headed towards the cities every year, and that 60 per cent of them had been taking up jobs outside their home province.

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. On the other hand, the Employment Promotion Law expressly stipulates that migrant workers in the cities enjoy equivalent employment rights to those of urban labourers, and that no discriminatory restrictions are to be set. The law also prescribed that workers that have been in the city for more than 6 months are entitled to unemployment benefits and services from the local government. In practice however most migrants receive little or no local government support.

Many of the millions of migrants living in urban areas are illegal. 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 do not enjoy the same access rights to health, medication and education opportunities as urban residents. For example the UNDP China Human Development Report of 2007/08 showed that 74.8 per cent of migrants are not covered by any insurance.

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 ILO's 2007 Global Report on Discrimination noted that migrant workers 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.

The financial crisis caused a sharp drop in foreign demand, and many export-oriented enterprises and labour-intensive industries massively laid off workers. Migrant workers who had been laid off found it particularly difficult to stay in the cities, because, in addition to the lack of social protection, they had no other safety net to fall on. The crisis provoked a tide of returning migrants putting more pressure on the rural economy. Before the Spring of 2009, an estimated 70 million migrant workers returned home, roughly the 50 per cent of the migrant worker workforce. A reported 4 million of migrants, 5.8 per cent, who went back to the countryside in 2009 were owed wages in arrears, in many cases by entrepreneurs who shut down their operations and fled.

The urban-rural wage gap is high, officially standing at 3.36:1 in 2009. The average wealth gap has now reached 11,100 yuan, 1360 more than it was in 2007. The majority of rural migrants are employed in low paid, labour intensive industries, such as mining, earning far less than urban residents. In 2009, a People's Daily survey showed that rural migrant workers earned 1,417 yuan per month, a wage rise of 5.7 per cent comparatively to the year before. The wages of locals are one third more to double this amount, depending on the sector and the city of employment. 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 figures the total wage in arrears across China from 2005 to July 2007 was 66 billion yuan million. The problem is most severe in the construction industry, which accounts for over 70 per cent of the total amount owed. The vast majority of those employed in the

construction industry are migrant workers. 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.

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 Uyghur 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 migrant workers were brought in to work, particularly on road construction and oil and gas pipelines.

In July 2009 in Urumqi, a riot by Uyghur university students was triggered by the killing of Uyghur migrant workers by Han co-workers in Guangdong Province. In the ensuing conflict more than 200 persons died and 1,700 were injured. Authorities reported that the majority of the victims were Han. In the following months groups of Han took retaliatory action against Uyghur people resulting in more deaths, while many disappearances of Uyghurs were reported by the Human Rights Watch. On November 9 2009, eight Uyghurs and one Han were executed without due process for crimes committed during the July riots.

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 per cent, 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 prohibits discrimination against persons with disabilities. Nonetheless, unemployment of disabled persons is a problem. Although the Employment Promotion Law expanded the legal protection of disabled persons, it seems that the implementation of the law is lax. In respect to the employment situation, out of 83 million persons with disabilities only 21.7 million are employed and another 10 million receive social protection benefits. Official data demonstrate that almost 25 per cent of disabled persons live in extreme poverty and that children with disabilities have far higher illiteracy rates when compared to the national average. Moreover, universities can legally exclude persons with disabilities otherwise qualified to follow their programmes. The government operated 3,731 vocational education and training schools in 2008, providing training and job-placement services for 774,000 disabled persons.

Persons living with HIV/AIDS and Hepatitis B

Despite provisions in the Employment Promotion Law, discrimination against persons with HIV/AIDS and hepatitis B remains a problem. China is estimated to have 93 million hepatitis B carriers and discrimination against this group in access to opportunities of employment and education has been significant. In May 2007, the Ministry of Labour and the Ministry of Health enacted a regulation prohibiting tests for hepatitis B during recruitment and prescribing that companies pay 1,000 yuan for demanding the tests. The application of this law is lax; according to

a survey published in China Daily in February 2009 stating that 84 per cent of companies require such a test from their candidates.

Conclusions

Discrimination is prohibited by law however in practice it is prevalent. Women, ethnic minorities, migrant workers and persons who live with HIV/AIDS and Hepatitis B suffer from discrimination either in remuneration, or in access to employment, education and public services. In particular the institutionalised discrimination against migrant workers from rural areas remains a serious problem, despite recent legislation.

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, legally named "juveniles". The law foresees fines and revocation of licenses of companies that fail to apply the law. However, child labour is widespread.

Only under special circumstances can children legally 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. On April 1, 2009 the government established a reward system to encourage reporting of child labour cases. Nonetheless, China does not publish any data on child labour or on tried lawsuits and other investigations. The penalties prescribed by the law are not stringent; measures against offenders are limited to fines and forced return of the children to their parents. Criminal law provisions apply only to cases of child trafficking, employing minors in strenuous or hazardous work, excessive forced child labour and offering a child for prostitution or pornography; furthermore, the CEACR has reported that in some cases the penalties foreseen by the criminal code for certain labour crimes are not dissuasive enough.

Competence for dealing with child labour resides with labour bureaux at all levels of local government. Labour bureaux can act alone or in conjunction with public security, officers of industry and commerce bureaux and trade unions. The inspection can be regular, irregular and extraordinary based on media or public reports. However, lack of proper enforcement of regulations, lack of sufficient resources, and corruption continue to block efforts at improving the situation. The problem persists, even in cases where the law has officially been applied, because of officers' mistakes, negligence and extensive corruption. For example, despite the massive media coverage surrounding the discovery of hundreds of slaves found working in Shanxi brick kilns in 2007 many of those freed have not been returned home. The case resulted in a few high profile prosecutions but most local officials and others involved in the case remain in their positions.

There is substantial employment of children under the age of sixteen in China. Studies have revealed that child labour is a result of the poor conditions of the rural education system. 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. Despite government initiatives to subsidise school fees for poor families, parents send their children to work because their children's education is costly. Work-study programmes, which are regulated by the Ministry of Education, 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 child labour is forced and used in dangerous and labour-intensive industries such as agriculture, construction and factories working long hours under harsh conditions. The 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 work-study schemes. One example, cited by HRW in June 2007, is the case 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.

The Xinjiang provincial government is probably the largest “employer” of children through its “work-study” programmes. Many Uighur girls and women have been coerced into becoming labourers in eastern China’s factories under false pretences and without regular wages. For registration reasons the government provides fake identification for these workers, and their families may be threatened if they react to their children’s coercion.

Child labour occurs in construction, brick kilns, forced begging, street vending, cotton farming, food production, mechanical work, or in electronics, toys, textiles and other factories producing for export. There have been 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. Often child labour cases are revealed due to tragic accidents and children may also be subject to violence or sexual abuse. Many of the victims are migrant children whose families lack the resources and legal knowledge to pursue their cases.

Many emerging cases of children’s disappearance are regarded as inadequately investigated as they generally involve children of low paid or migrant families. In April 2008 a major scandal involving forced child labour was uncovered after media brought it to authorities’ attention. The authorities broke 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, and 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.

Particularly affected by child labour, especially forced child labour and its worst forms, are the runaway children of migrants. In some cases migrants leave their children in the villages in the care of grandparents or other relatives but sometimes they are unable or unwilling to take care of them. The China Labour Bulletin reports that “*these children often end up on the streets, eventually drifting into petty crime or being exploited by ruthless adults.*”

Apprenticeships are also used to employ children in factories. These can be extended apprenticeships whereby children are employed for several months working long hours. Children particularly from rural areas and migrants’ children may be sent as apprentices to craftsmen and small enterprises. The law does not prohibit the employment of underage apprentices and this enables certain employers to conceal their use of child labour. The CEACR has asked that China bring its law in line with Convention No. 138 and set the age of 14 as the minimum age limit for apprentices to work. It is reported that apprentices only receive board and lodging and in the best

cases, some pocket money. One example uncovered in June 2007 concerned 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 apprenticeships. Another example was Yonghong Electronics in Shenzhen where a 2006 report indicated that the company recruited 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 showed that the workers were not free to leave the factory. They were sent by their schools and told to work until enough payments were received for their school fees. They were not allowed to return before payments were made and were kept beyond school holidays.

Conclusions

Child labour, although prohibited under the age of 16, is a serious problem in China. Children are sometimes employed under forced conditions or performing the worst form of child labour. Law enforcement officers often fail to apply the law effectively. Work-study programmes, run under school auspices, frequently result in child labour and forced child labour.

IV. Forced Labour

The People's Republic of China has not ratified ILO Convention No. 29, the Forced Labour Convention, nor ILO Convention No. 105, the Abolition of Forced Labour Convention.

Chinese law prohibits forced and compulsory labour, including by children. However, the ILO's CEACR has deemed the punishment for forced labour offenses not stringent enough: penalties range from an administrative fine to a maximum of three years' imprisonment.

In practice, forced labour is a serious problem. Many employers withhold employees' payments until the contract's expiration, in order to avoid early departures of their workers. Workers not having the choice of leaving their work are vulnerable to forced labour and other abuses of their rights.

In May 2007 several hundred children and mentally ill people were rescued from scores of brick kilns in Shanxi province, resulting in one of the biggest scandals in recent years. Despite the alleged strengthening of monitoring and oversight in February 2008, in Huangpi a brick kiln owner was found guilty of forcing 20 mentally retarded people into work. The incident was revealed by media after the kiln caught journalists' attention when a worker was killed by his co-workers. The "employer" paid the slaves the equivalent of a week's pay for the labour of a whole year. In May 2009 another brick kiln, in Anhui Province, was found guilty for forcing 32 retarded persons into work.

Forced labour systematically occurs in China's 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 efficient control over prison labour products to bar them from being exported and in recent investigations the Chinese authorities controlled all information provided. Such labour camp based enterprises are a key economic player in some regions, such as Xinjiang where many such penal institutions are based. In 2006 the ITUC 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. Children working in re-education

through labour camps have little safeguard against overwork and poor conditions. Generally, when placed in re-education through labour camps, there is little avenue for appeals except to the public security bureau itself. Moreover, forced labour is also used in detoxification and rehabilitation centres for drug addicts.

Trafficking in human beings is prohibited by law but remains a serious problem. The scope of the definition of trafficking does not cover debt bondage, forms of coercion other than abduction or offences against males. The fight against trafficking is largely perceived as anti-prostitution measures. The Trafficking Report of the US Department of Labor states that “*there were numerous confirmed reports of involuntary servitude of children, migrant workers, and abductees in China.*”

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 Xinjiang, whereby they were offered work in coastal and southern cities, 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.

China is both a source and destination country for trafficked persons, however most of the trafficking takes place within the country’s borders for the purposed of forced prostitution, forced marriage and forced labour, including of child labour. Women and children are trafficked to China from many neighbouring and far away countries. Reports show that Tibetan women are trafficked to Indonesia for prostitution, Vietnamese and North Korean women are forced into sexual servitude, marriage, pornography and labour.

The government has not made much progress in punishing trafficking crimes, neither in protecting and assisting victims of trafficking. In 2008 the Ministry of Public Security reported the investigation of 2,566 trafficking cases; however, little is known about the penalties imposed and the course of these investigations. Often, victims of trafficking crimes are prosecuted for violating the immigration law and other crimes that they committed while and as a result of being trafficked. China has an inadequate number of shelters and does not run any assistance programmes for victims. Additionally it is reported that the government impedes the work of several NGOs, dedicated to protecting and assisting victims of trafficking. Some foreign governments have reported the unwillingness of the Chinese authorities to cooperate on fighting against transnational organised crime, including trafficking. On the other hand, the Chinese Ministry of Public Security held training sessions on cross-border trafficking with counterparts in Vietnam and Burma and courses on anti-trafficking measures for 2,000 police officers. However, corruption of local government officials and law enforcers who collaborate or tolerate traffickers further complicates the problem. The Chinese government deports back to the North Korean authorities trafficking victims from North Korea, who are then punished as runaways or traitors.

Conclusions

Forced labour is prohibited in China but does occur in commercial enterprises. There is forced prison labour in the form of “re-education through labour camps”, including prison labour by children. Progress in prosecuting traffickers and in protecting and assisting victims of trafficking, which affects women, men and children, has been limited so far.

Recommendations

1. The Chinese government should ratify ILO Conventions No. 87, on Freedom of Association and Protection of the Right to Organise, and No. 98, on the Right to Organise and Collective Bargaining. The government should allow the formation of independent unions.
2. Chinese law should provide for the right to collectively bargain and the government should design policies to actively promote collective bargaining as the primary step for labour disputes settlement and labour relations management. The Labour Contract Law should provide support for increased worker participation in negotiating contracts apart from through the official trade union and should contain sanctions on enterprises that refuse to implement a collective wage consultation system.
3. The government should lift limitations and impediments on independent labour rights groups, law firms, human rights organisations and workers' individual efforts to pursue their cases through the courts of justice. Those currently imprisoned for the peaceful exercise of these activities should be released.
4. The right to strike needs to be recognised and workers enabled to exercise it freely.
5. The Chinese authorities must thoroughly investigate and effectively prosecute and punish those who commit violence and other crimes against protesting workers.
6. Women's representation in skilled positions should be increased through more effective government equality programmes and wage equality must be promoted.
7. Law enforcers should investigate cases of sexual harassment effectively and take measures against offenders in a timely fashion.
8. China needs to amend its housing registration system, "hukou", in order to allow rural migrants to register and enjoy the local governments' social benefits and look for better employment opportunities. The government needs to apply the Employment Promotion Law's provisions on the issue with a view to improving the livelihoods of migrant workers who live in cities.
9. China has to end discrimination in employment against Chinese citizens of Uyghur, Tibetan or other origin in employment opportunities, access to public services, education opportunities and access to decision making.
10. State authorities have to take additional measures in order to provide equal opportunities of employment and education to disabled persons and children.
11. The government should take measures against companies which ask for HIV/AIDS and Hepatitis B tests before hiring, and which discriminate in any way against such persons.
12. The state should start gathering statistical data on child labour and publicise lawsuits and prosecutions against offenders.
13. The law prohibiting child labour should become stricter and provide dissuasive penalties for offenders. It should establish the age of 14 as the minimum age limit for apprentices to work.
14. The government needs to increase expenditure on education in order to make it free and

accessible to all, especially poor families. It should urgently stop the practice of work-study programmes, which has been abused in some cases amounting to child slavery.

15. The government should ratify ILO Conventions No. 29, on Forced Labour, and No. 105, the Abolition of Forced Labour Convention.

16. The law prohibiting forced labour should become stricter and enact dissuasive penalties for offenders. Wage withholding and other measures resulting in debt bondage should be explicitly outlawed and punished.

17. China should abolish the administrative punishment of “re-education through labour”. Penal work undertaken through “reform through labour” for prisoners and drug addicts, including the “custody and re-education” for children detainees, should also be ended.

18. The Chinese law on trafficking in human beings needs to be amended in order to cover debt bondage, non-violent forms of coercion and offenses against males in the definition of trafficking. China should become more efficient in prosecuting and punishing traffickers, as well as assisting and protecting the victims of trafficking through public shelters, legal and psychological assistance. It should closely cooperate with foreign governments on issues of trafficking and facilitate NGOs in protecting victims. It should stop deporting migrants, refugees and victims of trafficking to North Korea.

19. The Chinese government should reinforce labour bureaux, inspectorates and other authorities with financial and human resources, including training, in order to achieve better, quicker and more efficient law enforcement. Labour inspectors should be enabled to recognise cases of violations of the laws regarding child labour, safety and health regulations, forced labour, and equality and thoroughly investigate them. Courts of justice should be efficient and quick in prosecuting and punishing offenders.

20. In line with the conclusions of the Singapore and Doha WTO Ministerial Conferences and China’s obligations as a member of the ILO, the government of China should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.

21. The WTO should draw to the attention of the authorities of China to the commitments they undertook to observe core labour standards at the Doha Ministerial Conference. 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.

References

- Amnesty International Report 2009 - *China*
- BBC News, various articles from 2008 to 2010
- China Development Gateway (CnDG), “*ACFTU Down Path of Building Trade Unions with Chinese Characteristics*”, October 19, 2008
- China Internet Information Center, various articles from 2008 to 2010
- China Labour Bulletin, various articles from 2008 to 2010
- China Labour Bulletin research report, “*Protecting Workers’ Rights or Serving the Party: The way forward for China’s trade unions*”, March 2009
- China Labour Bulletin research report, “*Small Hands , A Survey Report on Child Labour in China*”, September 2007
- Freedom House, *Freedom in the World 2009 - China*, 16 July 2009
- Human Rights Watch, “*Where Darkness Knows No Limits Incarceration, Ill-Treatment and Forced Labor as Drug Rehabilitation in China*”, January 2010
- ITUC, *Annual Survey on Violations of Trade Union Rights*, 2008 to 2010 (forthcoming)
- ITUC Hong Kong Liaison Office (IHLO), various articles from 2008 to 2010
- ITUC, *Internationally recognised core labour standards in the People’s Republic of China*, 2008
- ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Direct requests and individual observations*, 2008-2009
- ILO Programme for the Promotion of the Declaration, “*Discrimination at Work in Asia*” fact-sheet, 2007
- ILO, *Ratification of Core Labour Standards*
- Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2009 - China*, 16 July 2009
- United States Department of State, *Country reports on Human Rights practices*, 2010
- United States Department of State, *Trafficking in Persons Report 2009 - China*, 16 June 2009
- Xinhua, various articles from 2008 to 2010