

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, 12 and 14 June, 2012)

EXECUTIVE SUMMARY

The People's Republic of China has ratified four of the eight core ILO labour Conventions. In view of various restrictions on workers' rights as detailed in this report, determined measures are needed to comply with the commitments the People's Republic of China accepted at Doha in the WTO Ministerial Declaration of 2001, and in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

China has not ratified either of the core ILO Conventions on freedom of association and collective bargaining, and workers do not have the right to form trade unions. The right to collective bargaining is restricted. Dispute settlement is generally dysfunctional despite some improvements in legislation and implementation. Strikes are generally not tolerated although sometimes striking workers have been successful in achieving some gains. Such problems are reflected in the number of protests, strikes and labour disputes that have been rising over the years.

China has ratified the core ILO Conventions on equal remuneration and discrimination. Discrimination is prohibited by law, however in practice women, ethnic minorities and persons who live with HIV/AIDS and Hepatitis B suffer from various forms of discrimination in hiring, promotion and remuneration as well as in accessing education and other 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 Convention on minimum age. However child labour, although prohibited under the age of 16, is a serious problem. Children are sometimes employed under forced conditions or performing in the worst forms of child labour. Law enforcement officers often fail to apply the law effectively. Work-study programmes and apprenticeships, implemented in agreements between rural schools and city based companies, often disguise some of the worst forms of child labour and forced labour. Migrant children, some of them runaways, are particularly vulnerable to exploitation.

China has not ratified the core ILO Conventions on forced labour. Forced labour is prohibited in China. However, there are many cases of forced labour and forced child labour in particular industries. The government has made some progress in prosecuting traffickers and in protecting victims of trafficking, but it remains a problem.

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 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. Chinese law stipulates significant restrictions on freedom of association and the right to collective bargaining.

Under China's governance structure, the government of each province has power to enact legislation on labour and other issues. There are a series of provincial codes and regulations that establish different standards for working conditions, social benefits and forms of labour representation.

Freedom of Association

Workers are not free to form or join trade unions of their choice. Article 11 of the Trade Union Law of 1992 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. The All-China Federation of Trade Unions (ACFTU), which is the only centre recognised in law, thereby exercises a trade union monopoly. About 258 million workers, 20 per cent of China's population, are members of the ACFTU in 5.2 million unionised enterprises. In 2011 alone, the ACFTU registered 17 million new members. About 94 million members are migrant workers.

The law provides for a trade union board to be established in any company with more than 25 employees and in companies with more than 200 the employees can elect a chairman. The level of autonomy of most unions at enterprise level remains low, with the majority of officials appointed directly or indirectly by the Party.

Another form of labour representation is constituted by the Employee Representative Councils (ERCs) which officially function under the control of the union. While ERCs have little power to pursue employees' interests, their functions are important and include discussing the state

of collective bargaining conducted by the trade union on salaries, firing procedures, occupational diseases cases and some other areas. The councils are charged with representing workers when a company prepares internal regulations on various operational issues. Another ERC function is the review and approval of collective agreements on wages, gender issues, working hours, rest and vacation time, insurance and other social benefits.

In May 2011, the province of Shanghai issued the *Regulations on ERCs* which stipulates the obligation of all enterprises to establish systematic labour representation. Depending on the number of employees, this means that a company needs to establish an ERC or provide for regular employees' meetings. The representation of middle and high ranking employees is limited to 20 per cent.

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 Wal-Mart, Carrefour, McDonalds, Motorola, Kentucky Fried Chicken, Samsung and Nestlé despite the initial well publicised opposition of management.

Collective bargaining

According to available data, more than 100 million private sector workers are covered by collective bargaining in 1.74 million enterprises. There is still no comprehensive national law on collective bargaining procedures but rather a plethora of provisions and 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. Although many provincial regulations may establish different obligations, the national Labour Law does not provide the right to collective bargaining; it only dictates that enterprises “may” engage in consultations, leaving this as an option to the management of each enterprise. Several other 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.

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

China has been experiencing a surge in unresolved labour disputes over recent years, many of which have exploded into strikes and demonstrations. As a result of such pressure, in April 2008 government, unions and employers' organisations introduced the Rainbow Plan: a commitment to unionise virtually all companies in the country by 2012 and reach 100 per cent coverage of collective agreements in unionised companies with a special focus on multinational enterprises. In 2010, the social partners jointly issued a *Notice* on the Rainbow Plan, thus re-affirming their support to its goals. Also in 2010 the ACFTU took a *decision on gradually strengthening enterprise trade union work to give full play to the effectiveness of enterprise unions*. The exact effectiveness of the Plan cannot be assessed because in practice, many enterprise-level collective agreements are a duplication of the local minimum labour standards.

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. In Luoyang the local government has implemented a programme of establishing a collective wage consultation system in the city's enterprises. The Luoyang 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, the study also found that many entrepreneurs were not cooperating and preferred verbal agreements. 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 at the levels before the implementation. The Luoyang programme revealed that trade unions' effectiveness of negotiating was limited by lack of access to companies' sheets on operations and profitability, contrary to the provisions of the ACFTU's *Guiding Opinion on Trade Unions' Participation in Collective Wage Consultations* of 1998. 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 *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.

From 2010 a series of provincial governments started introducing collective bargaining legislation. For instance, Guangdong's draft *Regulations on the Democratic Management of Enterprises* stipulate that the existing union should start negotiations with management on an enterprise level if one-third or more of the employees request it. The law endeavours to directly address the causes of many strikes: managers' unwillingness to negotiate. On the other hand, workers are not allowed to take industrial action while negotiations are being considered or ongoing. In cases where no agreement is reached, either side could ask for mediation by the Ministry of Labour.

Likewise, since January 2011, Fujian province enacted the *Regulations on Enterprise Collective Bargaining and Collective Agreements* which among other things enhanced the enforceability provisions of the negotiation processes. Other pieces of provincial legislation on collective bargaining include the *Jilin interim measures on collective contracts* (2010), the *Guangdong Guide to collective wage negotiations at enterprises* (2010), the *Zhejiang Regulations on the democratic management of enterprises and Regulations on collective contracts* (2010), the *Ningxia Hui Autonomous Region Regulations on the democratic management of enterprises* (2010), the *Chongqing municipal Regulations on safeguarding the rights and interests of workers* (2011), the *Gansu provincial Regulations on collective contracts* (2011), the *Xinjiang Uighur Autonomous Region Regulations on collective wage negotiations at enterprises* (2011) and the *Shanxi provincial Measures on collective wage negotiations at enterprises* (2011). Shanghai issued *municipal Regulations on workers' congresses* in 2011.

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 mechanisms should perform three basic functions: exchanging information, consultation, and negotiation. Thousands of tripartite consultation organisations have been established; however they are used essentially 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 (NPC) 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.

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 outsource labour contracts to labour supply companies with a view to avoiding labour disputes and reducing costs. Yet if dispatched 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. 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. Further to this, after four years of enforcement, millions of migrants workers remain without a contract, employed mostly in small and medium enterprises or in businesses in the informal economy. The Zhicheng Migrant Labour Legal Aid and Research Centre published a study in 2010 which showed that only 27.5 per cent of migrant workers had signed a contract, some 13 per cent of which were blank papers that were later filled in.

Dispute resolution

Dispute resolution is governed by *the Regulations on Handling Labour Disputes in Enterprises* of 1993. The law established an extensive dispute resolution system which consists of four stages: consultation, mediation, arbitration and the courts. Later, provisions of the Labour Law of 1994 made small changes in the system.

In practice, virtually no dispute is resolved at the level of consultations. Mediation was used more frequently in the past, but less so with the privatisation of the economy. Many cases are now resolved by arbitration and many are a win or partial win for workers. However although the authorities have increased financial assistance for legal aid in general, and declared cases involving wage arrears free of cost, the expense for the worker is high and some cases are abandoned. Employers may add to the cost by delaying a decision by means of frivolous appeals. Consequently, some cases develop into spontaneous movements, strikes and sit-ins.

In order to reduce such pressure, the government enacted *the Labour Dispute Mediation and Arbitration Law* in 2008. The new law clarified procedures and strengthened the efficiency of mediation and arbitration. The amendments accelerated the resolution of internal disputes by encouraging management to set up labour mediation committees and significantly reduced arbitration costs for both employees and employers. Nonetheless, on average the lawyer's fee accounts for 38.8 per cent of the final compensation and in some cases it can exceed 175 per cent, making it inadvisable for many workers. The law seems to be effective to some extent as the number of cases settled in mediation was significantly increased in 2010, reaching almost 70 per cent of all disputes.

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 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. In 2011, the number of collective disputes and cases of collective industrial action increased. In Guangdong, the cases accepted in 2011 were three times more than in 2007.

The main reasons for the increasing number of labour dispute cases include substantial long-term wage arrears, frozen wages, overtime compensation, occupational health and safety violations, collective agreement breaches and readjustment in private companies. As in the state-owned enterprises (SOEs), such readjustment in private companies is generally not negotiated with the employees.

Many disputes concern wage arrears and often they affect migrant workers. In 2011, the number of cases of wage arrears and runaway employers increased. 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 urgently with a view to preventing the employers from fleeing the country. It also stipulates that workers must be compensated as the law prescribes, even in instalments. The courts are required to 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. In 2011, the Criminal Law was amended so as to criminalise the non-payment of wages. Since then the police have arrested and detained a number of employers.

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 opportunities 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.*" The situation has probably little changed since then. In March 2012,

a member of the Standing Committee of the National People's Congress claimed that local governments are some of the worst payers. The China Labour Bulletin reported that *“many local governments embarked on large-scale vanity projects but then refused to pay the contractor. This was the main reason behind the pathetically low number of criminal court rulings, he said, namely the fact that local prosecutors and courts don't want to prosecute their local governments.”*

Chinese local governments also 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 defenders of labour rights. Many crimes against rights activists are not thoroughly investigated and the offenders remain in impunity. Workers may also be attacked by paid thugs. A contractor in Chongqing City hired 19 men to physically and verbally abuse workers who dared ask for their wages.

In the majority of disputes at the enterprise level, the ACFTU has not played a role. When disputes emerge, there is no systematic mechanism to respond. Nonetheless since 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 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 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. The outdated Trade Union Law of 1992 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. However the number of coal accidents and the number of deaths occurred in such accidents has been steadily decreasing since 2006, and government statistics for 2011 report a 21.2 per cent decrease in coal mine accidents and a 35 per cent reduction of deaths. 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 March 2011, a member of the Chinese NPC proposed legislation that would provide the right to strike. However the legislation would enable the right to strike purely for economic reasons and at the same time would make illegal any industrial action that “disturbs public peace”. The law would prescribe that in order for a strike to be legal, it should be called by ACFTU.

In recent years the number of unauthorised strikes, both spontaneous and planned, has increased. In some cases, this has been in response to working conditions so poor that some exploited workers decide to end their lives. This was particularly so in the case of Foxconn, producer of many Apple and Microsoft products. After facing nine suicides in three months in 2010, Foxconn had to install a protective net and have workers sign papers to discourage them from jumping from balconies. Yet from 2010 up to mid-2011, 14 Foxconn workers committed suicide. Similar situations have arisen in other factories manufacturing goods for transnational production chains that provide substandard working and housing conditions to workers and impose strict rules of communication, unrealistic production goals and excessive overtime. Such are the conditions in a number of factories producing for Apple, Dell, Hewlett-Packard, I.B.M., Lenovo, Microsoft, Motorola, Nokia, Sony, Toshiba and other companies.

The authorities sometimes use violence to deter workers from striking. In the summer of 2011, taxi drivers staged protests regarding rising fuel prices and demanded fares hikes to compensate for the loss of income. They were met by police forces and many were injured. Bus drivers met a similar fate when they protested for a wage increase in January 2012. In June 2011 around 4000 workers of the Simone Handbag factory were surrounded and beaten by police while receiving threats of dismissal by managers. Likewise, when 2,000 workers of the Guanxing Precision Machinery Product Factory went on strike in October 2011 over wages payments and working conditions they were beaten and some days later many were detained by police.

In another example of police brutality, in May 2011 protesting workers at an electronics factory co-owned by an SOE and Philips Electronics were surrounded, beaten and injured while they tried to march in Nanjing City. The factory was declared bankrupt and management refused to compensate workers appropriately. In the beginning of 2012, around 10,000 employees of the Chengdu Steel and Vanadium Company (CSVC) went on strike for a pay increase. When half of them endeavoured to march towards the central rail station Chengdu police dispersed them with pepper sprays and force.

Other strikes in the past two years have concerned discriminatory payments between Chinese and skilled foreign workers, disputes that emerged in restructuration processes, lay-offs, unfair dismissals, bankruptcies with unpaid wages, lack of written contracts, non-implementation of collective agreements, lack of social insurance and other benefits, working time, overtime - including for children, compensation issues, vacation and rest time and pensions. Other problems have included gender pay gaps, lack of maternity protection, discrimination against women in hiring, promoting and training, discrimination against applicants of certain ethnic background, labour dispatching and other forms of precariousness, dismissals for political reasons, and refusal of extra pay for working on holidays.

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 (however it should be noted that such exemptions are not unique to the zones).

Furthermore local governments have the power to enact further regulations for EPZs, which can result in improvements in workers' rights as well. For instance, 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 in the quick resumption of production when they decide to take action. However, it regulates that in case of a strike being called, 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.

According to reports, there is increasing unrest among the labour force in EPZs as workers, usually migrants, realise that their employers could afford to provide them higher wages. The EPZs are also reported to be facing lack of labour supply, as many workers prefer industries with better working conditions.

Summary

China has not ratified either of the core ILO Conventions on freedom of association and collective bargaining, and workers do not have the right to form trade unions. The right to collective bargaining is restricted. Dispute settlement is generally dysfunctional despite some improvements in legislation and implementation. Strikes are generally not tolerated although sometimes striking workers have been successful in achieving some gains. Such problems are reflected in the number of protests, strikes 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 2008 Employment Promotion Law prohibits discrimination based, among other grounds, on gender, origin 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 in the form of unequal remuneration, sexual harassment, unfair dismissals, demotion and wage discrepancies.

While Chinese law provides for equal pay for equal work, discrimination in remuneration exists; women in cities are paid 67 per cent of a male's wage for work of equal value and rural women almost 50 per cent. Women account for 60 per cent of those below the poverty line in the country. 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 tend to focus on unfair dismissals related to maternity leave and benefits and not other forms of gender discrimination, violence and sexual harassment.

Some employers discriminate against women in hiring and promotion because of the probability of pregnancy. The law forbids overtime and travelling for women with babies at home or pregnant women. Even women with advanced degrees report discrimination in the hiring process, citing employers' concerns with regard to the costs of maternity leave and other special benefits. For many women, becoming pregnant means 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.

Job advertisements have 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 limited.

Women are underrepresented in 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. Effective job segregation means women generally find employment in the unskilled, labour-intensive and lower-paid 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.

Women also suffer from higher unemployment rates. The financial crisis has reportedly hit women harder than men. In reforming 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 northeast 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. In terms of re-employment, women workers are reported to find it harder than men to find new jobs.

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.

Although the law clearly forbids sexual harassment, including at the workplace, the law's application in practice is under question. Many labour offices tasked with receiving and processing complaints are not used to dealing with such cases and many complaints have yet to be investigated. 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. However most such victims remain silent out of fear of stigma in the workplace, losing their jobs and reaction of family members.

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.

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. Before the crisis, it was estimated that 7 to 10 million new migrants headed towards the cities every year. In 2008 their number was estimated to be 150 million. The crisis caused many of them to return to their provinces but many have since returned to the cities to be re-employed. The crisis also pushed some industries to move further inland seeking lower wages. The improvements in infrastructure also played a role in some industries' decisions. In 2011, the total number of migrants in cities exceeded 220 million of whom 160 million were workers.

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. Therefore, the majority of rural residents, despite living in urban areas, keep their rural status, which is later passed on to their children. Under 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 2008 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 prescribes that workers who 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.

About 72 per cent of migrant workers do not have a written contract and are vulnerable to various sorts of exploitation. Employed mostly in small and medium enterprises and in informal economic activity, migrant workers usually work for excessively long hours, sometimes locked in, with little pay and in sub-standard conditions. In one incident in April 2011 in Jiugong township, Nanxiaojie, near Beijing, 18 migrant workers burned to death while locked in a garment factory that operated informally. A survey by the ACFTU found that young migrants in cities earn half the incomes of local urban workers. Most male migrants are concentrated in manufacturing and construction and many female migrants are domestic servants. Such exploitation has before led to mass incidents, like in June 2011, when rumours of the alleged beating to death of a pregnant migrant street vendor led to three days of rioting in south China. Many cases of wages in arrears affect migrant workers; in Chaozhou, hundreds of migrant workers demanding unpaid wages set cars and government buildings on fire.

The problem of wages in arrears is most severe in the construction industry, which accounts for over 70 per cent of the total amount owed, and where the vast majority of those employed are migrant workers. Part of the problem in the sector derives from poor employment practices, such as illegal recruitment and lack of formal contracts as well as lack of clear accountability in legislation.

Millions of migrants living in urban areas are not registered or authorised. This poses grave problems, as unauthorised residents are ineligible 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. Migrant workers laid off during the crisis found it particularly difficult to stay in the cities because, in addition to the lack of proper social protection, they had no other safety net to fall back on.

While recent reforms have loosened the hukou system for the well-educated and better-off, the reforms have not addressed a problem faced by most rural migrants: the link between their hukou status and public services. Migrants lack affordable and accessible education for their children, which in turn causes the number of child labourers to grow. The ILO's 2007 Global Report on Discrimination noted that migrant workers cannot obtain an urban dweller's hukou to give them better access to housing, healthcare and education. It noted that some progress had 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. In March 2012, the Health Minister announced that China will launch a health scheme to cover migrant workers' medical insurance.

Migrants' first jobs in the cities are often obtained through labour recruiters who travel to villages and rural towns looking for groups of people to work on projects. Frequently, the potential migrants do not know the type of work they are to undertake and whether they will be paid the promised wage. In practice, promises often fail to materialise, leading many migrants to work unauthorised in the cities with no contracts or benefits.

The urban-rural wage gap is high but shrinking: official statistics found that the ratio stood at 3.36:1 in 2009, 3.23:1 in 2010 and 3.13:1 in 2011. In 2011, rural residents' per capita income rose by 17.9 per cent to 6,977 yuan, while the per capita income of local urban populations rose by 14.1 per cent to 21,810 yuan. For most migrants, the minimum wage is the maximum amount they receive. Recently, several provinces increased their minimum wage rate.

Ethnic Minorities

The Law on Regional Ethnic Autonomy seeks to promote training and access to employment of men and women of local ethnic minorities in the organs of self-government in autonomous areas. 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 were not preferred for 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, a riot by Uyghur university students was triggered in Urumqi 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. In the following months groups of Han took retaliatory action against Uyghur people resulting in more deaths, while according to local groups a thousand got incarcerated and several thousand disappeared. In February 2012, tensions built up in Kargilik County where a group of Uyghurs stabbed citizens of Han origin when police intervened. The incident caused 20 deaths.

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 among Tibetan youth in some areas 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. A recent amendment to the Law on the Protection of Disabled Persons added further details about stable financial support, better medical care and rehabilitation, favourable jobs and tax policies.

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. The latest 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 compared to the national average. Moreover, universities can legally exclude persons with disabilities otherwise qualified to follow their programmes.

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. However China has adopted a *Regulation on the Prevention and Treatment of HIV/AIDS* and various policies to protect the working rights of HIV/AIDS affected workers. 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.

According to a 2007 survey, 65 per cent of employers discriminate against people with HIV. Another survey of HIV/AIDS affected workers found that 90 per cent of interviewees had lost their jobs at least once as a result of their HIV status.

In 2007 China launched a workplace education programme on HIV/AIDS. Many companies have adopted workplace programmes against discrimination and for education.

Summary

Discrimination is prohibited by law, however in practice women, ethnic minorities and persons who live with HIV/AIDS and Hepatitis B suffer from various forms of discrimination in hiring, promotion and remuneration as well as in accessing education and other public services. 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 employment restrictions are in force for workers aged between 16 and 18, legally named "juveniles". 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. The law provides for fines and revocation of licenses of companies that fail to apply the law. Criminal law provisions apply to cases of child trafficking, employing minors in strenuous or hazardous work, excessive forced child labour and offering a child for prostitution or pornography. However 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. The CEACR has emphasised that some penalties are not dissuasive enough.

There is substantial employment of children under the age of 16 in China. Child labour occurs in construction, brick kilns, forced begging, street vending, cotton farming, food production, mechanical work, or in electronics, toys, textiles, shoes and other factories producing for export. 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.

Education

Education in China is compulsory but not free of cost. Some schools provide free services but the goal of achieving free education in the entire country has not yet been reached. The ITUC has submitted information to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) showing that the average school fees have increased and that enrolment in primary and secondary schools has decreased, affecting mainly girls. There are about a million children who drop out of school yearly, most of them girls and minority children. Reportedly, the number of girls working in factories has increased.

As explained in Part II of this report, the hukou system still deprives migrants' children of their right to education. In 2005 the government issued a circular allowing urban schools to provide services to rural children who live in the cities. In reality, different provinces regulate this matter in different ways. A 2010 report stated that migrant workers organise their own schools but that their quality is not high because of financial and technical constraints.

Work-study programmes and apprenticeships

Work-study programmes are intended to teach children new skills while generating some income to support the school. However, reports show that some schools organise classes of children to work in workshops or factories, among others firework makers, grape-processors and jewellers. Sometimes children are accompanied by teachers when transported. In inland provinces children are taken as seasonal workers to harvest cotton. Some children are reported to be performing hazardous work and working long hours in unsafe environments. Furthermore, as pupils are forced into unskilled work for long periods of the year, their skills development is questionable. Employers benefit from low wages and some corrupt school officials might make a profit too.

In 2006, China had adopted the "*Regulations on the Management of Safety in Middle Schools, Primary Schools and Kindergartens*" (MEO23) that prohibited the organising of students

for engagement in hazardous work including firework making and other industries which use chemicals. *The “Provisional Rules of the State Council on work-study programmes for middle and primary schools” prohibited heavy labour for primary and middle level students. However, according to the CEACR, the Chinese government also “observes an absence of information on measures taken to protect children engaged by their schools in external enterprises, or measures taken to address mandatory participation in these types of work.”*

The Xinjiang Uyghur autonomous region is probably the largest recruiter of children through its work-study programmes and apprenticeships. Many Uyghur girls have been coerced into labour in eastern China’s factories without receiving regular wages. In May 2009, reports alleged that the XUAR government provided fake identification to the children to facilitate their registration in other provinces and that their families were threatened if they reacted.

A child working in another province is usually considered an apprentice. Apprenticeships are used to employ children from rural areas and migrants’ children in factories, workshops and small enterprises. Working conditions in these enterprises are often sub-standard and entail hazardous tasks and long hours. The apprenticeship can be extended for several months and apprentices only receive board and lodging and in the best cases, some pocket money. 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 China to bring its law in line with Convention No. 138 and set the age of 14 as the minimum age limit for apprenticeships.

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. The children had been recruited in agreements between their schools and private companies. Interviews among the student workers showed that the workers were not free to leave the factory until enough payments were received for their school fees.

On the basis of information from the ITUC, the CEACR noted in 2011 *“that schools from the poorer inland provinces make direct contacts with the factories to send the students who work (during breaks as well as during term time) to raise funds, and that the majority of the children involved are between the ages of 11 and 15. The ITUC indicates that, following the 2006 government directive on safety standards, some children in the Xinjiang Uyghur autonomous region were directed to marginally less taxing types of work, such as harvesting of beetroots, tomatoes and other vegetables on state farms and the collection of recycling.”*

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.

Inadequate enforcement of the law

The responsibility for dealing with child labour resides with labour bureaux at all levels of local government. Such 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 or extraordinary, resulting from media or public reports. However, lack of proper enforcement of regulations, lack of sufficient resources, mistakes, negligence and corruption continue to impede efforts to reduce child labour.

In cases of child trafficking and forced child labour, the authorities do not prosecute those buying children if the child is not harmed and the offender cooperates with the police. The same applies for children trafficked for industrial labour; managers and enterprises that use forced child labour and trafficked children are not punished after children are rescued.

Recently the government has hired more inspectors and made child labour a priority for law enforcement. To this end, the ACFTU acquired a more active role in inspections in 2006. On April 1, 2009 the government established a reward system to encourage reporting of child labour cases. The volume of the problem is unknown because China refuses to publish data on child labour prevalence or tried lawsuits and investigations.

Migrant children

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 mostly aged between 13 and 15, and some as young as nine, from factories in Dongguan. 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.

Gangs prefer to target these children for abduction because their parents work long hours and they lack supervision. Sometimes police have been negligent in investigating reports of exploitation of non-local children. Particularly affected by child labour, especially forced child labour, 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.*" In 2011, police rescued nearly 9,000 children after uncovering more than 3,000 human trafficking gangs. Some reports made mention of another 20,000 children living in captivity, apparently some with the purpose of forced labour.

Re-education through labour

China's corrective system requires practitioners of forced labour to attend re-education camps. The CEACR has noted that children may also be sent to such programmes "*without charge, trial or review*", sometimes sharing the same space with convicted adult criminals. The absence of legally defined procedures, charges and trials obscures the reasons of the sentencing for re-

education. The government has responded to the CEACR that “by the end of 2008, there were 74 special schools for the purpose of education and rectification, with 9,631 students nationwide.” The government said that the programmes place focus on the acquisition of skills and that the “Regulations on the administration of juvenile delinquent rehabilitation institutions” make exceptions from heavy labour for children below 16. However, there is little evidence of the Regulations' application in practice.

Summary

Child labour, although prohibited under the age of 16, is a serious problem in China. Children are sometimes employed under forced conditions or performing in the worst forms of child labour. Law enforcement officers often fail to apply the law effectively. Work-study programmes and apprenticeships, implemented in agreements between rural schools and city based companies, often disguise some of the worst forms of child labour and forced labour. Migrant children, some of them runaways, are particularly vulnerable to exploitation.

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 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 February 2011, the government raised the prescribed penalty for forced labour to 3 to 10 years' imprisonment and a fine. However, the laws are vague in terms of definitions; for instance, there are no explicit references to debt bondage and other non-physical means of coercion. Moreover, trafficking in children for prostitution and forced labour is governed under the same legal provisions as kidnapping and trafficking in children for adoption.

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 some cases workers face restriction to their movement by means of threats, violence and being locked up.

Migrant workers and their children are the most vulnerable to forced labour due to poor access to public services (especially law enforcement and education), ignorance of rights and procedures and police negligence. An underlying problem is lack of income due to poor labour protection that has trapped them into poverty.

Forced labour is concentrated in mines, brick kilns, manufacturing (especially small and medium enterprises) and informal economic activities. Most commonly, children are forced into agricultural work, beggary, flower selling, street vending, scavenging and prostitution. In 2010, the police rescued 109 workers from forced labour.

The use of mentally disabled persons is a particular problem. In December 2010 in Xinjiang, Uyghur an employer was found forcing 11 mentally disabled persons to work in a construction factory. Some years ago, several hundred children and mentally ill people were rescued from scores of brick kilns in Shanxi province. Similar incidents have been reported in Huangpi in Anhui

Province and in 2011 in Henan where 30 mentally disabled persons in brick kilns were rescued by police. The problem is reported to be worse in rural China where law enforcement is less effective.

Prison labour

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. Generally, when placed in re-education through labour camps, there is little avenue for appeal except to the public security bureau itself. Detainees in re-education labour camps and rehabilitation centres are often required to work long hours with little or no remuneration.

On March 1, 2012 the government enacted new regulations on the corrective system which forbid the use of forced labour. The detainees will have to perform 'proper work' in order to pay for the expenses of the prison. China had enacted similar regulation to prevent forced labour in drug rehabilitation centres in June 2011.

There is no efficient control over prison labour products to bar them from being exported and in recent investigations the Chinese authorities have 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. Sometimes the prisoners are contracted out to non-prison enterprises.

Trafficking in human beings

The law prohibits trafficking and the amended Criminal Law of 1997 includes provisions that particularly prohibit trafficking in children and women. 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.

Human trafficking is a problem. Deceptive recruiters hire applicants for work abroad charging them exorbitant amounts of money. The workers are then transported to the country of work where employers often confiscate their passports and other documents, withhold their pay and coerce them into becoming debt peons who work under bad conditions for long hours.

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 purpose of forced prostitution and forced labour, including forced child labour. Women and children are trafficked to China from many neighbouring and far away countries for prostitution, sexual servitude, marriage, pornography and labour. Reports showing that girls and women fall victims to trafficking to various Asian, Western and Middle-East countries for prostitution have increased.

There are reports of rural children, particularly Uyghur, 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. As explained in Part III of this report, several 'training programmes' schemes have been used to transfer many Uyghur children, especially girls, to coastal provinces where they were forced into work in small factories. Furthermore, police officers have been found complicit with girls' traffickers in Tibet.

Local authorities often fail to take effective action to enforce the law regarding cases of trafficking and forced labour. Reporting and investigations are not transparent and reports show that some state officers are complicit with crime gangs, recruiters and trafficking networks. The police do not apply consistent procedures for victim identification and victims have been charged for crimes they committed as a result of being trafficked. In a case in July 2010 in Dongguan, two women arrested for prostitution were publicly paraded, although the police later apologised for the incident. Often, foreign victims are prosecuted for violating the immigration law.

The government has made some progress in punishing trafficking crimes and in protecting victims and preventing trafficking. In 2010 the Supreme People's Court reported the prosecution of 4,422 suspects which led to 3,138 convictions, 2,216 for sentences of longer than 5 years. China does not provide disaggregated data, so it is unknown how many of these cases concerned forced labour, prostitution or other crimes. The authorities also reported 10,385 rescues of children, but this number includes children destined for fraudulent adoptions and kidnapped children.

The government operates hotlines to report trafficking and a trade union hotline for labour trafficking. It recently provided anti-trafficking training material to new police officers and trafficking training to 40 immigration and consular authorities and implemented a series of awareness raising campaigns on television, radio, internet and the press.

The All-China Women's Federation (ACWF) has established 'Women's homes' for female victims of trafficking. The country's five shelters for trafficking offer only short term assistance to victims. Female victims have access to services offered by another 1,400 shelters which are not dedicated only to trafficking victims. Male victims, usually of forced labour, do not receive any care other than medical.

In March 2010, the second phase of the ILO-IPEC project "*Preventing trafficking in girls and young women for labour exploitation within China*" (CP-TING Project) was launched. The CEACR reported that "*Phase II includes concrete actions to strengthen the implementation of provincial Plans of Action against trafficking, equip vulnerable youth with life skills before they migrate for work, set up trafficking prevention mechanisms and safe migration services and support referral services for vulnerable women and children.*"

The government cooperated with the authorities of France and Russia in two trafficking cases and increased cooperation with many neighbouring countries as well as UK, South Africa and the Democratic Republic of Congo. However, the Chinese government continued to repatriate North Korean trafficking victims who are then punished as runaways or traitors.

Summary

Forced labour is prohibited in China. However, there are many cases of forced labour and forced child labour in particular industries. The government has made some progress in prosecuting traffickers and in protecting victims of trafficking, but it remains a problem.

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. It 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 ensure genuine representation of workers in dispute resolution procedures.
4. The right to strike needs to be recognised and workers enabled to exercise it freely. The police should refrain from using force against strikers and protesters. The Chinese must thoroughly investigate and effectively prosecute and punish individuals who use violence against protesting workers and those who hire them.
5. 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.
6. Women's representation in skilled positions should be increased through more effective government equality programmes. Advertising of positions only for men or women should be punished and complaints of discrimination against women in hiring and promoting should be investigated effectively.
7. The government should take measures to reduce and eliminate the gender pay gap.
8. Law enforcers should investigate cases of sexual harassment effectively and take measures against offenders in a timely fashion.
9. China needs to amend the "hukou" housing registration system effectively in order to allow rural migrants to register and enjoy local governments' social benefits and to 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.
10. China has to end discrimination against Chinese citizens of Uyghur, Tibetan or other origin with regard to employment opportunities, access to public services, education opportunities and access to decision making.
11. The state authorities need to take additional measures in order to provide equal opportunities of employment and education to disabled persons and children.
12. 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.

13. The state should start publishing statistical data on child labour and provide numbers and details of lawsuits and prosecutions against offenders.
14. The law prohibiting child labour should become stricter and provide dissuasive penalties for offenders. The judicial authorities should not show tolerance to illegal employers of children and should boost the number of convictions for forced child labour.
15. The law should establish the age of 14 as the minimum age for apprentices to work.
16. 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.
17. The government should ratify ILO Conventions No. 29, on Forced Labour, and No. 105, the Abolition of Forced Labour Convention.
18. The law prohibiting forced labour should be made stricter and entail dissuasive penalties for offenders. Wage withholding and other measures resulting in debt bondage should be explicitly outlawed and punished.
19. 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.
20. The government should take special measures to protect migrant workers and their children from discrimination, child labour, including in its worst forms, and forced labour. The government's efforts on increasing the number of migrants with a contract must become more effective.
21. The Chinese law on trafficking in human beings needs to be amended in order to cover debt bondage, non-violent forms of coercion and offences against males within the definition of trafficking. China should become more effective at prosecuting and punishing traffickers, as well as assisting and protecting the victims of trafficking through public shelters, and 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. Reports of police complicity should be thoroughly investigated.
22. 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.
23. The WTO should draw the attention of the Chinese authorities to the commitments they undertook to observe core labour standards at the Doha Ministerial Conference. It should request that the ILO 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 2011 - *China*

China Daily,

“20% of Chinese join trade unions”, January 7, 2012: http://www.chinadaily.com.cn/china/2012-01/07/content_14400312.htm

“Official: China has fewer coal mine accidents”, June 29, 2011: http://www.chinadaily.com.cn/china/2011-06/29/content_12797295.htm

“China’s coal mine deaths fall ‘but still remain high’”, February 28, 2011: http://www.china.org.cn/china/2011-02/26/content_22008017.htm

“China outlaws forced labour for people in detention”, March 2, 2012: <http://www.asianewsnet.net/home/news.php?id=28294>

China Development Gateway (CnDG), “ACFTU Down Path of Building Trade Unions with Chinese Characteristics”, October 19, 2008

ChinaHush, “Prostitutes paraded through streets causes debate, responsible police suspended”, July 29, 2010: <http://www.chinahush.com/2010/07/29/prostitutes-paraded-through-streets-causes-debate-responsible-police-suspended/>

China Labor News Translations, “Should China create a law on strike”, July 20, 2011: <http://www.clntranslations.org/article/62/strike+law>

China Labour Bulletin,

“Research reports on the workers' movement”, October 12, 2011: <http://www.clb.org.hk/en/node/101137>

“China's labour dispute resolution system”, 2009: <http://www.clb.org.hk/en/view-resource-centre-content/100618>

“Shanghai to increase minimum wage by around 13 percent”, February 28, 2012 <http://www.clb.org.hk/en/node/101254>

“Wage arrears: The problem that never seems to go away”, March 15, 2012: <http://www.clb.org.hk/en/node/110018>

“Migrant workers in China”, 2011: <http://www.clb.org.hk/en/view-resource-centre-content/100259>

“Why should workers have to pay their own legal fees even when they win their lawsuit? January 18, 2012: <http://www.clb.org.hk/en/node/101230>

“Protecting Workers’ Rights or Serving the Party: The way forward for China’s trade unions”, March 2009: <http://www.clb.org.hk/en/node/100425>

China Post, “Women still face employment bias: survey”, October 24, 2011:

<http://www.chinapost.com.tw/china/national-news/2011/10/24/320756/Women-still.htm>

China Worker, “New slave scandal unearthed in China”, September 8, 2011:

<http://chinaworker.info/en/content/news/1567/>

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*, 20010 to 2012 (forthcoming)

ITUC, *Internationally recognised core labour standards in the People's Republic of China*, 2010

ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR),
Direct requests and individual observations, 20010-2011

ILO, *Global Report on Equality at Work 2011*, available at:

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_154779.pdf

ILO, Ratification of Core Labour Standards

Linda Liang, King&Wood Mallesons, "*Latest Development and Characteristics of Chinese Trade Unions*", August, 2011, available at:

<http://www.chinalawinsight.com/2011/08/articles/corporate/labor-employment/latest-development-and-characteristics-of-chinese-trade-unions/>

New York Times, *Liberate China's Workers*, April 6, 2011:

<http://www.nytimes.com/2011/04/07/opinion/07iht-eddongfang07.html>

The National, "*Criminal gangs are stealing thousands of Chinese boys for Dh11,000 a son*", March 20, 2012: <http://www.clb.org.hk/en/node/110022>

UNESCO Education for All, Global Monitoring Report *Reaching the marginalized*, 2010, available at: <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/reports/2010-marginalization/>

United States Department of State, Country reports on Human Rights practices, 2010, available at:

<http://www.state.gov/j/drl/rls/hrrpt/2010/>

United States Department of State, *Trafficking in Persons Report 2011 – China*, available at:

<http://www.state.gov/j/tip/rls/tiprpt/>

Want China Times, *Chinese contractor hires thugs to avoid paying wages to workers*, May 4, 2011:

<http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20110504000002&cid=1303>

Xinhua News,

China's 'floating population' exceeds 221 mln, March 1, 2011:

http://www.china.org.cn/china/2011-03/01/content_22025827.htm

Income gap between China's urban, rural residents narrows in 2011, January 20, 2012:

http://news.xinhuanet.com/english/china/2012-01/20/c_131371091.htm