

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

# **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, 4 and 6 April 2006)**

*(This report should be read in conjunction with that on "Trade, Employment and Development in the People's Republic of China, produced by the ICFTU for the same WTO trade policy review meeting on 4 and 6 April 2006)*

## **EXECUTIVE SUMMARY**

**The People's Republic of China has ratified four of the eight, core ILO labour Conventions. In view of restrictions on the trade union rights of workers and continuing problems with discrimination, child labour and forced labour, major policy changes are required to comply with the commitments WTO Members have accepted in Singapore and at 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 the ILO core Convention on the Right to Organise and Collective Bargaining, nor the Convention on Freedom of Association and Protection of the Right to Organise. Workers are deprived the right to organize freely, to form independent trade unions, and to engage in collective bargaining. The right to strike is not recognised. The state and government use a variety of anti-union tactics to control workers, including repression of industrial action and imprisonment of those fighting for workers' rights.**

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

**China has ratified the ILO core Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Child labour, however, remains a problem in China, in particular in rural areas and in some industrial sectors, where regulations are applied lightly and where children, thus, are exposed to hazardous working conditions.**

**China has not ratified the Convention on the Abolition of Forced Labour or the Convention on Forced Labour. Forced labour exists in such forms as prison labour, legal punishment in the form of "re-education-through-labour", and forced prostitution of women.**

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

China is one of the world's largest economies, with a GDP estimated at US\$ 1.833 trillion in 2005 and growing at around 9% per year, and one of the largest trading parties. With the sum of its exports and imports making up more than two thirds of GDP, it has a fairly open economy, characterised by a liberal trade and investment regime.

In 2005, Chinese exports accounted for US\$ 752.2 billion. Its main exports are consumer products, including textiles and apparel, footwear, toys, electronics and telecommunications equipment. China's main export partners are the US (21.1%), Hong Kong (17%), Japan (12.4%), South Korea (4.7%) and Germany (4%).

Imports accounted for US\$ 631.8 billion in 2005. Most of China's imports are materials for further processing or intermediate goods that are that are assembled or finished in the country. China's main import partners are Japan (16.8%), Taiwan (11.4%), South Korea (11.1%), the US (8%) and Germany (5.4%).

China's current account balance was US\$ 129.1 billion in 2005.

### **I. Freedom of Association and the Right to Collective Bargaining**

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

#### ***Trade union rights in law***

China's Trade Union Law was adopted in 1950. It was amended in 1992 and again in October 2001. Workers are not free to form or join the trade unions of their choice. Only one "workers" organisation is recognised in law, the All China Federation of Trade Unions (ACFTU).

According to the revised version of the law, "The ACFTU and all organisations under it represent the interests of the workers and safeguard their legitimate rights." Trade unions must also "observe and safeguard the Constitution (...), take economic development as the central task, uphold the socialist road, the people's democratic dictatorship, leadership by the Communist Party of China, and Marxist-Leninism, Mao Zedong Thought and Deng Xiaoping Theory (...) and

conduct their work independently in accordance with the Constitution of trade unions.” Among their basic duties and functions, trade unions shall “coordinate labour relations through consultation”, “mobilise workers to strive to fulfil their tasks in production” and “educate them in the ideological, ethical, professional, scientific, cultural and other areas, as well as self-discipline and moral integrity.” The law also gives trade unions the role of “democratic management and supervision”.

Article 10 of the law establishes the ACFTU as the “unified national organisation”. Under Article 11, 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 a higher level “shall exercise leadership” over those at lower level. The law empowers the ACFTU to exercise financial control over all its constituents.

There is currently no law governing collective bargaining procedures, only regulations on collective contracts. However, if a collective contract is established in line with the regulations, it is legally binding. The new labour law (effective from 1995) adopted collective consultation as a key medium for settling disputes between employers and workers, with the government instructing the ACFTU to “consult” with employers on labour terms for workers as a way of pre-empting independent efforts at negotiations. Article 33 of the Labour Law states that workers have the right to conclude a collective contract “in an enterprise where the trade union has not yet been set up”. The regulations governing collective contracts reinforce this.

The 2004 government ‘white paper’ on employment encourages the ACFTU to conclude “collective contracts” in order to protect workers’ rights, and the labour law permits collective consultation and contracts to be concluded between the ACFTU (or workers’ representatives) and the management. According to official statistics, collective contracts cover almost 100 million workers, with some 80,000 sectoral and industrial contracts for 33 million workers while 61.7 million workers are parties to contracts with their individual employers.

In May 2004, amendments to the Provisions on Collective Contracts that call for more detail in collective contracts came into force. The regulations outline the procedures involved in the consultation and the theoretical equality of both parties. However, despite greater opportunities for collective bargaining and the obvious need for protection for many workers – including migrants – there has been little progress towards any form of genuine collective bargaining. Instead the ACFTU continues to ‘represent’ the workers to management and government structures. In the private sector, where branches of the ACFTU are largely inexistent, workers denied the ability to organise independently face almost insurmountable obstacles to collective bargaining and representation.

The right to strike was removed from China's Constitution in 1982 on the grounds that the political system in place had “eradicated problems between the proletariat and enterprise owners”. Despite expectations that the revised Trade Union Law would include the right to strike, the revised law skirts around the issue by stating that: “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” (Article 27). This article does not employ the term

“strike”(bagong), but instead refers to instances of “work-stoppage” (tinggong) and “go-slows” (daigong).

In the last decade, the government has sought to create a dispute resolution system that involves three stages: mediation, arbitration and litigation in courts. China's 1994 Labour Law assigns trade unions the roles of chairing enterprise-based “labour dispute mediation committees” and of participating as a member in tripartite “Labour dispute arbitration committees” (LDAC), the latter being chaired by the local labour bureau.

Despite the Chinese authorities’ efforts to keep workers quiet, labour disputes, individually and collectively, are on the rise. From 1995 to 2004, labour lawsuits in Shanghai increased sevenfold to more than 18,000 cases, according to government data. And a separate study by two Hong Kong university-based legal scholars shows that the number of labour disputes nationwide shot up more than fivefold, from 33,000 cases involving 123,000 people in 1993 to 184,000 cases involving 608,000 people in 2002. The number of industrial disputes of all kinds has grown from about 10,000 in 1992 to some 300,000 a year.

In 2005, the China National Textile and Apparel Council released its own CSR standard – the CSC 9000T (CSC9000T (China Social Compliance 9000 for Textile & Apparel Industry). This standard is a “Social Responsibility Management System based on China's laws and regulations, international conventions and standards, and China's particular situations”. These guidelines have reportedly been developed in collaboration with the relevant organs of the ACFTU. They echo China’s domestic legislation on issues such as working hours and wages, and thus fail to set any new standards for operation. The CSC9000T is already being picked up by overseas investors as their code of preference.

### ***Trade union rights in practice***

#### *Trade Union Monopoly*

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

The ACFTU has a monopoly over union organisation - one that it and the government strictly enforce. Hence, the ACFTU has the position of being asked to assist the government in the primary task of ensuring social stability during the economic changes in Chinese industry, while on the other hand being urged to represent the demands of workers to ensure that obvious problems and inequalities emerging in the new ‘socialist market economy’ do not lead to an independent

labour movement. As a result, it actively calls on employers to follow the labour law while at the same time urging workers to better equip themselves with knowledge of the law. It generally argues that to pursue what it regards as a “foreign” type of trade unionism would threaten the government's policy of putting “development first”. It quietly promotes the view that instability on the shop floor would threaten “social stability” and produce “chaos”, usually with a reference to the Cultural Revolution, the collapse of social order in the former Soviet Union and what it sees as negative developments in Indonesia, in reference to the multiplicity of trade union organisations in that country after the fall of the Suharto regime. Increasingly the authorities are referring to the need to ensure political aspirations for democracy and worker led initiatives are kept in check in order avoid a “colour revolution” similar to the events in Ukraine.

There is little doubt that the organisation is under huge pressure to meet the government's target of avoiding a repeat of the large-scale collective action that took place in northeast China during the spring of 2002. Several new policies were discussed at the 14th ACFTU Congress in 2003, including direct trade union elections of enterprise-level branch Chairpersons and the opening of the union to migrant workers whose formal status as farmers previously excluded them. In 2005, the ACFTU announced that it is expecting some 6.5 million migrant workers to join in 2006. In January 2005, the State Council sent out a circular calling on local governments to enforce the Trade Union Law and support trade unions in playing their role. The circular stressed the role of the ACFTU in policy making and in the restructuring of SOEs. It is believed that the circular is part of a general push to make ACFTU work more relevant to current industrial relations, workers and employers alike. However, there have been no open signs of the organisation making even token efforts to distance itself from its constitutional acceptance of Party leadership. It remains a tool of government policy.

In 2005, the ACFTU highlighted that it will continue to focus on issues relating to migrant workers and increasing the percentage of migrant members of the ACFTU. The ACFTU continues to publicize the need for unions in private companies and has, in particular, been singling out the American multinational, Wal-Mart. They have officially reported that they are not going to take on lawsuits to push for unions but rather continue to “urge” companies to do so.

The Chairperson of the ACFTU, Wang Zhaoguo is a member of the Communist Party's Politburo and a former Governor of the Fujian province. There has been no indication that Wang, appointed in 2003, has departed from the ACFTU's traditional role of maintaining political and economic stability in favour of representing its members. The organisation remains firmly under the leadership of the Party whose interests always take priority.

#### *Worker disputes and the role of the ACFTU*

Where detailed reports of social unrest are available, workers generally dismiss the official trade union as unhelpful or ineffective at best. At a local level, ACFTU officials usually either deny any knowledge of independent workers' action, or hint that their dual function as upholders of Party and government interests, and representatives of the working class renders them unable to defend workers' interests in the face of massive restructuring in the state sector and investor-friendly environments in the private sector. While claiming that its key concern is the welfare and protection of the more than 21 million workers who have been dismissed in this restructuring process, the ACFTU appears to be helpless in negotiating, let alone enforcing, any social safety provisions that may have been obtained. The privatisation of state or other collectively owned assets frequently

goes hand in hand with the corruption of local and regional government officials, over which the ACFTU appears to have no influence. It should be noted however that, while major labour unrest is generally not reported, there are increasing accounts of smaller collective actions, thanks chiefly to the initiatives of workers, and the courage of individual journalists and editors in reporting them.

Collective disputes are defined as involving three or more people. The overwhelming majority are small-scale incidents - an average of 38 people in 2003 - that are mostly settled via mediation at enterprise-level, arbitration or the courts, with the latter channel becoming increasingly popular with workers in large cities, as seen above. Workers feel they will get a fairer hearing in court than at arbitration committees, despite the lengthy processing time and low success rates. On average, half of the judgements and arbitrations or more are found in workers' favour although serious problems remain over the timely enforcement of court decisions in favour of workers.

While it remains difficult, if not impossible to estimate the total number of worker protests in China due to media censorship and continuing secrecy regarding statistics, it is clear that the trend of increasing protests has continued throughout 2005. According to figures from the Ministry of Public Security there was a sharp rise in officially registered public disturbances in 2005 – large scale incidents of “mass gatherings to disturb social order” rose by 13 percent. In one report “mass protests” or “mass incidents”, including riots, demonstrations, and collective petitions, had risen from 58,000 in 2003 to 74,000 in 2004. Many mass disputes were about land seizures in rural areas and about half are labour related. Low and missing back wages were the main causes of mass labour disputes. In addition to regular collective protests against non-payment of wages, fake and genuine bankruptcies and corruption involved in the privatisation of state-owned industrial assets, there has also been a rise in individual protests. Some media reports have concentrated on workers who have jumped or threatened to jump off buildings to claim unpaid wages.

While the Labour Law, Trade Union Law and Occupational Safety and Health Law make mention of “work-stoppages”, workers who put these vaguely defined provisions to the test are likely to face a range of problems. They are usually picked up by the police and warned about public order offences, traffic violations, breaking the law on parades and demonstrations or much more serious political charges. Strike organisers and independent labour activists also face the threat of re-education-through-labour, a form of administrative detention. Though in principle limited to 3 years, in practice, these periods of forced labour can be extended at the authorities' will, as has been proven in many cases. The Trial Implementation Methods For Re-education Through Labour state that, “Those who have a job but who for a long time refuse to labour or destroy labour discipline, and who ceaselessly and unreasonably make trouble, who disturb the order of production or work, or the order of teaching or research and the order of life, who hinder public affairs and who do not listen to advice and instructions to stop”, are eligible for re-education-through-labour. This punishment is administrative and imposed without recourse to the criminal justice system. Thus, the ILO considers it to be in violation of ILO Convention 29 on forced labour. However, the government gave indications in 2004 that it was seriously contemplating ratification of Convention 29 and is reportedly aware of the legal and practical implications which this might have for the present re-education-through-labour system.

#### *ACFTU elections and Collective consultation*

Although the trade union law clearly states that trade union officers at each level should be elected, this principle is usually ignored and most officials are simply appointed. Many provinces are now developing regulations on union elections. Elected candidates are subject to approval by the provincial-level ACFTU committees. The majority of workers, if aware of the existence of a branch union, have little idea if their chairperson has been elected or not. In many cases workers are simply unaware that they have a trade union.

Collective bargaining remains severely handicapped by the non-existence of independent organisations on either side. Almost all contracts are drawn up by employers and simply reflect minimum legal requirements or the continuation of past practice. The subordinate position of the ACFTU to the government and the Party means that it will often work with the employer in drawing up collective agreements which simply mirror – at least on paper – the labour law. Very often workers are offered no formal contract at all, especially migrants in export processing zones (EPZs). If they do sign a contract, they are rarely given a copy. ACFTU officials have been quoted as opposing wage increases in order to avoid triggering demands for similar deals.

Tripartite consultative bodies are rapidly being established throughout China as a means to ensure industrial peace and a way of tackling disputes that are not resolved through the formal disputes settling procedures. However, the presupposition of tripartite consultation – the independent representation of the interests of the three parties – is absent in China and the subordination of trade unions and whatever employers' organisations exist to the Party is clearly in gross violation of what the ILO regards as the most fundamental precondition for real social dialogue. Against the background of such profound limitations, an ILO mission examining tripartite consultation in China, while pessimistic about the future development of genuine bargaining within the current political arrangements in China, nevertheless reported that “in all our interviews with trade union and employer representatives at municipal and national levels we found a clear commitment to developing the capacity of their respective organisations as independent representatives, able to articulate the interests, aspirations and grievances of their members within the system of social dialogue.”

#### *Accidents and deaths at work*

The numerous examples of workers being forced to continue working in unsafe conditions reveal that workers in practice have little confidence to use their new found rights to “work-stoppages” foreseen under the Labour Law, the Trade Union Law and the Occupational Safety and Health Law. Many incidents continue to be monitored where workers are refused the right to stop work when they believe they are faced with an impending accident or dangerous situation.

Workplaces continue to be the source of alarming annual accident statistics – 2005 has seen some of the nation’s worst mining disasters in years. In the first half of 2005 mine accidents killing more than 30 people were twice those over the same period in 2004 - from January to July 2005 there were six such disasters killing 485 workers compared to three similar cases in 2004 killing 106 workers. Official statistics from 2006 state that 5,986 coal miners died in 3,341 accidents in 2005 – a small decrease in the total number of miners dead compared with 2004 but a significant increase in the number of serious accidents.

There is a lack of consistent and regular monitoring of standards throughout China because of a lack of financial and personnel resources. In addition official collusion at the local level and

widespread corruption are exacerbating the problem, as many localities turn a blind eye to problems or in some cases are part of the management or ownership of the enterprise in question.

#### *Arrests and detention of workers*

Dozens of independent labour activists and leaders jailed in previous years remain in prison in China. The following is a partial list. They include activists, notably members of the Workers' Autonomous Federations (WAF), arrested in the wake of the Tiananmen Square massacre of June 4 1989, and the protests that followed. Most of those imprisoned at this time were sentenced to harsh prison terms for crimes such as "counter-revolution" or "hooliganism", neither of which exist in present Chinese criminal law (although they have to a large extent been replaced by charges such as "threatening the security of the State" and "disturbing public order"). Shao Liangshen (Liangchen) was sentenced to death in September 1989 and is now believed to have passed away. Hu Shigen, who helped establish the Free Labour Union of China (FLUC) Preparatory Committee and who was jointly indicted in 1993 with fifteen others, including Liu Jingsheng, on "counter-revolutionary" charges, received a 20-year sentence. He is reported to be suffering from chronic migraines, intestinal illness, malnutrition and a spine problem which could lead to paralysis if not treated. Several leaders and activists detained at the same time as Hu Shigen are believed to remain in detention; Liu Zhihua and Liu Jian, of whom little is known and Kang Yuchun, sentenced to 17 years, seriously ill with heart problems. Zhu Fangming a worker at the Hengyang City (Hunan Province) Flour Factory and vice-chairman of the Hengyang City Workers Autonomous allegedly led workers to the municipal Public Security Bureau after 4 June 1989 to demand justice and was sentenced in December 1989 by the Hengyang City Intermediate People's Court to life imprisonment on a charge of "hooliganism". Xiao Yunliang and Yao Fuxin were sentenced in May 2003 to four and seven years imprisonment respectively for their part in the mass protests in Liaoyang in March 2002. Since their imprisonment, the health of both men has been deteriorating rapidly. Xiao Yunliang was, however, released in 2006. Lu Wenbin, a special correspondent for the Textile Daily newspaper, arrested on 22 December 2001 for documenting a strike and interviewing workers at the Huainan Textile Factory in Dafeng. Liao Shihua, sentenced in December 1999 to six years' imprisonment after organising a protest by workers of the Changsha Automobile Electrical Equipment Factory. Hu Mingjun and Wang Sen, leading members of the Sichuan branch of the banned China Democracy Party (CDP), issued a statement in support of workers protesting over due to 12 months of unpaid wages. After calling for the establishment of independent trade unions, Hu and Wang were sentenced to 11 and 10 years imprisonment respectively. Zhang Shanguang, a teacher from Hunan and a veteran independent labour activist and prisoner was sentenced to ten years in 1998 under charges of "threatening the security of the State" after attempting to set up an independent trade union. There have been repeated reports of the ill treatment and torture of Zhang Gao Hongming and his friends Xu Yonghai and Zha Jianguo established the China Free Workers Union. Shortly after then, Gao was detained and charged with "incitement to subvert state power" and sentenced to eight years' imprisonment. Zha was detained on 29 June 1999 and sentenced to 9 years' imprisonment under charges of "incitement to subvert state power".

#### **Conclusions**

*Workers are deprived the right to organize freely, to form independent trade unions, and to engage in collective bargaining. The right to strike is not recognised. The state and government use a variety of anti-union tactics to control workers, including crack downs on industrial actions and imprisonment of those fighting for worker's rights.*

## **II Discrimination and Equal Remuneration**

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

### *Gender equality*

Gender equality has been an official government policy objective since 1949. The constitution states that "women enjoy equal rights with men in all spheres of life." The Law on the Protection of Women's Rights and Interests provides for equality in ownership of property, inheritance rights, and access to education. Nevertheless, many activists and observers are concerned that progress made by women over the past 50 years is eroding. They assert that the government appears to have made the pursuit of gender equality a secondary priority as it focuses on economic reform and political stability.

The Law on the Protection of Women's Rights and Interests was designed to assist in curbing gender-based discrimination. However, women continue to find discrimination, sexual harassment, unfair dismissals, demotion, and wage discrepancies. Efforts have been made by social organizations as well as by the government to educate women about their legal rights, and there is anecdotal evidence that increasingly women are using laws to protect their rights.

Generally, women encounter serious obstacles to the enforcement of laws. According to legal experts, it is difficult to litigate a sex discrimination suit in China as the vague legal definition makes it difficult to quantify damages. As a result, only a few cases are brought to court. Some observers, moreover, note that the agencies tasked with protecting women's rights tend to focus on maternity-related benefits and wrongful termination during maternity leave, rather than on gender discrimination, violence against women, and sexual harassment.

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

Many employers prefer to hire men to avoid the expense of maternity leave and childcare, and some lower the effective retirement age for female workers to 40 years of age (the official retirement age for men is 60 years and for women 55 years). Lower retirement ages also mean reduced pensions, which generally are based on the number of years worked. Job advertisements sometimes specify height and age requirements for women.

In terms of re-employment, women workers find it harder than men to find new jobs. Some figures show that about 75 percent of laid-off women were still unemployed after one year, compared with 50 percent of men still unemployed after one year. Most employers discriminate against older women in favour of young women or men. Enterprises are keen to look for men or young women who are freer to undertake overtime, cost less and are less likely to be needing child care, maternity benefits or flexible working arrangements.

Despite the many protections outlined in regulations, some of the most basic ones are disregarded by many enterprises, especially in the private sector. For many women, becoming pregnant, for example, 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.

These practical problems are compounded by a growing move away from the post-1949 emphasis on sexual equality towards a more traditional and imbalanced view of women as being better suited to certain types of jobs and to being second-class workers after men. Work such as cleaning, repetitive factory work requiring “nimble” fingers, service industries, primary school teaching etc. is seen as women’s work. This is having an effect on the retraining and reemployment of those lucky few who are re-employed. Many will leave a factory post at a state owned enterprise and when entering a retraining scheme will find that the ones open to them often consist of mainly “female” occupations such as retraining as a hairdresser or a maid.

Discriminatory hiring practices, unequal educational opportunities and cultural influences force many women to take the lowest paid jobs in the private sector. Indeed, despite national laws to the contrary, discriminatory hiring practices appear to be increasing and enterprises discriminate on both sex and age – leaving older women the least favoured. 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. Recruitment advertising still continues to emphasize this division of work and recruiters state their preferences for males or females depending on the type of work, often asking explicitly for unmarried women.

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

In August 2005 the Chinese authorities released a White paper on Gender Equality and Women's Development in China. On 28 August the National People’s Congress passed an amendment to the 1992 law on the Protection of the Interests and Rights of Women. The new provisions (effective as of December 2005) concern sexual harassment and domestic violence and explicitly deal with gender equality issues.

### *Ethnic equality*

Government policy provides members of recognized ethnic minorities with preferential treatment in birth planning, university admission, access to loans, and employment. Nevertheless, in practice the majority Han culture often discriminates against minorities, especially in relation to employment, where Han migrants receive favourable treatment. Racial discrimination is the source of deep resentment in some areas, such as Xinjiang, Inner Mongolia, and Tibetan areas. It is reported that in 2005, ethnic Uighurs in Xinjiang did not have equal access to newly created construction jobs; Han workers were brought in to work, particularly on road construction and oil and gas pipelines. As part of its emphasis on building a “harmonious society”, the government downplayed racism against minorities and tension among different ethnic groups. But even in the Yanbian Korean Autonomous Prefecture of Jilin Province, which the government recognized as the most “harmonious” ethnic area, there is a perceived ceiling in career advancement for ethnic Koreans. Moreover, 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 has been put at some 70 to 80 percent, while the disparity in Chinese language skills required for well-paid jobs perpetuates the already skewed system of preferential recruitment against ethnic Tibetans.

#### *Rural migrants*

A widespread form of discrimination in China occurs concerning the internal migrants who make up an increasing share of the labour force in the urban areas. Thus, an estimated 120 million people originally from rural backgrounds have found employment in China's cities or in other booming coastal areas far from their hometowns and villages. All in all, it is estimated that another 7 to 10 million new migrants head towards the cities every year, and that 60 percent of them take up jobs outside their home province.

These workers from the countryside are discriminated against in several ways. First of all, through the extensive restrictions on freedom of movement brought about by the *hukou* system. This system is a form of household registration whereby each family member is registered according to his or her family residence. And rural residency is very hard to change. The majority of rural residents, despite living in urban areas, therefore have to keep their rural status, which is also passed onto their children. Today it is estimated that there are up to 100 million people living in areas different from their registered status. This poses grave problems, as residing illegally in an urban area makes one illegible to receive education, access to medical care, housing and other public services. And due to the *hukou* system, rural migrants are disqualified from freely seeking and obtaining the better-paid opportunities in the cities, unless they can obtain temporary residency and work permits.

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 most cases, the potential migrants have no idea about what type of work they will undertake and if they will be paid what they are promised. Promises often fail to materialise. In the end, many of the people leaving the countryside often resort to illegal work, without permits or residency, and with no contracts or benefits. This makes them very vulnerable to arbitrary dismissal, illegal working conditions, wage arrears or simply non-payment of wages.

A government campaign was launched in 2004 and carried over through 2005 to recover the payment of missing wages for migrant workers and to assist workers in struggles to seek payment. For the campaign launch, Prime Minister Wen Jiabao specifically referred to the 140 million rural migrant workers. In the private sector those affected by wage arrears are mainly migrant workers. According to official sources, China has an estimated 94 million migrant workers who are owed a total of over 100 billion Yuan in back wages. The problem is most severe in the construction industry, which accounts for over 70 percent of the total amount owed. In the construction industry part of the problem comes from poor employment practices (such as the employment of workers illegally and with no contracts) and a lack of clear accountability in legislation. To counter this problem, on 1 January 2005 a Supreme People's Court interpretation (Interpretation of the Supreme People's Court on Handling Construction Project Contract Disputes) came into force nationally which stated that any illegal sub contracts issued by construction contractors or others are null and void and that that migrant workers have the right to directly sue the original contract holder if their wages are not paid on time. The practical outcomes of this positive measure, however, have yet to be felt.

According to a report in September 2005 the Ministry of Labour and Social Services (MOLSS) has issued a migrant rights handbook, which states that migrants do not need to obtain a work registration card in their place of origin before they seek jobs in urban areas. Previously this requirement had severely limited opportunities for legal employment in urban areas, increased dependency on sub contractors and labour recruiters and allowed local authorities the discretion to charge migrants additional fees. In December 2004 a new directive was passed calling upon local authorities to increase formal employment opportunities for migrant workers. At the same time, however, local officials in Shenyang, the capital of Liaoning province revoked reforms (adopted in 2003) that allowed migrants to live and work in Shenyang without first obtaining a permit. In Shenzhen local authorities tightened registration governing migrants by suspending the processing of applications for local residence permits to dependent children and parents of current Shenzhen migrant residents. The number of private schools for migrant children is to be restricted and migrants will have to pay additional fees to enrol their children in ordinary schools. Wealthy or educated migrants will, however, be exempted from these restrictions.

### *Disabilities*

Chinese law protects the rights of persons with disabilities and prohibits discrimination. However, conditions for such persons lag far behind legal dictates, failing to provide persons with disabilities with access to programmes designed to assist them. In particular, the employment situation is not good for the country's disabled people: though 16.2 million of the country's 60 million persons with disabilities found jobs in 2004, the China Disabled Person's Federation estimated that another 12 million employable persons with disabilities remained unemployed.

### **Conclusions**

*Discrimination is prohibited by law but does occur in practice. Legislation requires equal pay but wage differences continue to exist between men and women and among different ethnic groups.*

## **III Child Labour**

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

Chinese law prohibits the employment of children under the age of 16. The government has, nevertheless, not adopted a comprehensive policy to combat child labour. The labour law specifies administrative reviews, fines, and revocation of business licenses of those businesses that illegally hire minors. The law also stipulates that parents or guardians should provide for children's subsistence. Workers between the ages of 16 and 18 are referred to as "juvenile workers" and are prohibited from engaging in certain forms of physical work, including working in mines.

Regulations are in place prohibiting the use of child labour provides that businesses illegally hiring minors or in whose service a child dies will be punished via administrative review, fines, or revocation of their business license. Regulations further provide that underage children found working should be returned to their parents or other custodians in their original place of residence.

In 2005, the Chinese government continued to maintain that the country did not have a widespread child labour problem and that the majority of children who worked did so to supplement family income, particularly in impoverished rural areas. Although 9 years of education is compulsory, the high cost of basic education causes some children to drop out of school to seek work, whereas other children work while in school. A clear case of exploitation of children was exposed at the Lihua Textile Factory in Shijiazhuang, Hebei Province, where five teenage girls died of asphyxiation in the factory dormitories, according to a lawsuit filed in March 2005. Reports alleged that the employer, fearful of being punished for hiring child workers, placed two of the girls in coffins while still alive. Official media deny the claims. There are also continuing concerns of exploitation over the widespread "work study" programme for school students..

State-run media reported on provincial bureau investigations into child labour cases, as well as punishment of factory owners who employed children. However, there was little follow-up on whether children involved in such cases continued to work outside the home and little support for returned children. Current practice regarding the provision of education for the children of migrant workers mean that the children of many poor rural migrants working in the cities are effectively denied proper education, thereby exacerbating the problem of increasing child labour.

### **Conclusions**

*Child labour remains a problem in China, in particular in rural areas and in some industrial parts of the country, where regulations are applied lightly and where children, thus, are exposed to hazardous working conditions.*

### **IV Forced Labour**

The Peoples Republic of China has not ratified Convention No. 105, the Abolition of Forced Labour nor Convention No. 29, the Forced Labour Convention.

Chinese law prohibits forced and compulsory labour, including by children. The government denies that there is a problem. However, forced labour is a serious problem – not least in penal institutions. Detainees in re-education-through-labour facilities are required to work, often with little or no remuneration. In some cases prisoners work in facilities directly connected with penal

institutions; in other cases they are contracted to non-prison enterprises. In 2004 reports came out from Sichuan Province of several thousand prisoners undergoing reform through labour who were forced to work in local mines for unpaid shifts of up to 13 hours a day. Numerous reports exist of prison inmates being forced to work extremely long hours in poor conditions in re-education and reform-through-labour camps. Many Falungong followers report forced labour practices during re-education programmes.

In September 2005, there were several reports of the ill treatment of children undertaking “Work Study” programmes in the Xinjiang Uighur Autonomous Region of China (XUAR). “Work Study” is a programme where school children and often university students have to undertake some form of organised labour for the benefit of the state or local authorities. Often criticised, the programme has been revealed sometimes to use children as a source of free labour. Thus, reports exist of rural children being sent to the southern towns of Shenzhen and Guangzhou to undertake work in factories. Related instances involve cases of school children making fireworks or other similar products while at school in order to bring in much needed money for school materials.

Chinese law prohibits trafficking in women and children. Trafficking in persons and the abduction of women for trafficking, however, remain serious problems. The country is both a source and destination country for trafficking in persons. Most trafficking is internal for the purpose of providing lower middle-income farmers with brides or sons. Some cases involve trafficking of women and girls into forced prostitution in urban areas, and some reports suggest that certain victims, especially children, are sold into forced labour.

Ministry of Public Security (MPS) statistics show that during the first 10 months of 2005, there were 1,949 cases of trafficking involving women and children. Over this same period, there were 3,574 women and children rescued compared with 8,949 women and children rescued in 2004. Citizens are trafficked from the country for sexual exploitation and indentured servitude in domestic service, sweatshops, restaurants, and other services. In 2005, there were reports that citizens were trafficked to Australia, Belgium, Burma, Canada, Hungary, Italy, Japan (illegal immigrants held in debt bondage), Malaysia, the Netherlands, Singapore, Sri Lanka, Taiwan, the United Kingdom, and the United States.

Children were also trafficked for labour purposes. Children trafficked to work usually were sent from poorer interior areas to relatively more prosperous areas. Traffickers reportedly often entice parents to relinquish their children with promises of large remittances their children will be able to send to them.

During 2004 police arrested 5,043 suspected traffickers and referred 3,144 for prosecution. In October 2004, 36 members of a child trafficking ring in Yunnan Province were given sentences, which ranged from two years to death. In Guangdong Province, 68 prosecutions were undertaken against traffickers from 2002 to June 2004 and officials rescued more than 100 children.

Despite government efforts to eliminate trafficking in women and children, the problem persists. There are reports of local officials' complicity in both alien smuggling and in prostitution, which sometimes involves trafficked women. In some cases, village leaders seek to prevent police from rescuing women who had been sold as brides to villagers.

## **Conclusions**

*Forced labour exists in such forms as prison labour, legal punishment in the form of re-education-through-labour, and forced prostitution of women.*

## **Final Conclusions and Recommendations**

1. The denial of freedom of association is a violation of one of the basic notions of democracy. China might be an integrated part of the world economy and of international political relations but it is still far from becoming part of the world of democratic nation states. As China becomes further integrated into global trade, investment and institutions, increasing pressure must be put on the country to respect basic human, social and political rights.
2. The Chinese government should realise that the only way it can avoid a self-imposed deadlock in which it is continuously fuelling social unrest, is by giving genuine priority to its people and its workers by enabling them to utilise their rights. And it should understand that living up the Core Labour Standards would not impair its economic growth, but would form the foundation for the Chinese economy to develop qualitatively, to become more sustainable, for its population to gain its rightful share of the country's growth, and for bringing more Chinese out of poverty, than has already happened during the country's industrialisation.
3. The Chinese government, thus, should allow its people to form and join trade unions of their own choosing, give them a real chance of bargaining collectively, and empower them with the right to strike. Specifically, the government should ratify Convention No. 87 and No. 98 and bring national legislation in line with these conventions. Accordingly, the government must release those imprisoned due to their trade union activism and stop repression of workers that stand up for their rights.
4. The government should, moreover, let the All China Federation of Trade Unions work independently from the Chinese Communist Party, and cease using it as a government tool for social control.
5. Wage inequalities and inequalities in access to employment still exist between men and women and between different ethnic groups, and are actually increasing in some parts of the society. The Government should focus on reduction of inequalities in employment in general as well as in certain occupations in particular. Legislation should be adopted that expressly prohibits gender discrimination at work, both direct and indirect, and these laws and existing regulations should be adequately enforced and encouraged. In addition to enforcing existing labour laws, women should be given the means to ask for redress against discrimination and unfair treatment in employment and retraining.
6. The Government should, enact employment policies that actively try to redress the imbalance between racial groups in China, as well as extend all legal rights to all its citizens so that rural migrants do not end up constituting an inferior class within the country.
7. The government must end its use of prison labour for commercial production and reform or re-education through labour. Thus, with regard to compulsory prison labour, the government should take effective measures to bring the legislation in line with Convention No. 105.

8. There is a need for the effective elimination of forced prostitution and trafficking of women and children. A stronger enforcement of the law is needed as well as effective cooperation with the countries these women and children come from.
9. There is an overall need for increased labour inspection and enforcement of the legislation, as many of China's laws are relatively well developed but only very rarely adhered to.
10. The WTO should draw to the attention of the authorities of the People's Republic of China the commitments they have undertaken by becoming a member of the WTO, to observe the core labour standards that are part of the Singapore and Doha Ministerial Declarations. The WTO should request the ILO to intensify its work with the Government of China in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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