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Annex I: ITUC (and IFCTU) submissions on application of ILO Conventions and ICESCR

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Annex 1 a: ICFTU Observations to the ILO Committee of Experts on the Application of Conventions and Recommendations on Convention No.182 on Worst Forms of Child Labour

Keywords: Child labour, forced labour, right to education, discrimination, social exclusion, freedom of association

Convention No.182 on Worst Forms of Child Labour, 1999 (ratified in 2002)

1. Background

1.1 The continued existence of Child Labour

Child labour continues to be a serious problem in China and according to recent reports the problem is increasing rather than decreasing. The Chinese authorities have recognized the need for the elimination of child labour and have implemented several measures designed to meliorate the problem which continues to be found throughout Chinese industry, but in particular in the private sector. In 1999 China ratified Convention No. 138 and in 2002 it ratified Convention No. 182. In terms of domestic legislation, new laws were implemented in December 2002 explicitly banning the employment of children under the age of 16 years. These new regulations impose fines for employers and put the onus on the employing companies to check the workers identification cards. Other legislation includes the relevant provisions in the Chinese Labour Law, the Law on the Protection of Women's Rights and Interests, the Law on the Protection of Minors, Regulations on the Prohibition of Child Labour, and the Notice on the Prohibition of Child Labour.

In China's second report to the United Nations Committee on the Rights of the Child of China's in September 2005, there was official recognition that there were children in need of special protection measures, including street children, children of migrants and those vulnerable to trafficking. Since 2002, the ILO's International Programme on the Elimination of Child Labour (IPEC) has been working in Yunnan Province as part of the Mekong sub regional project to combat trafficking in children and women and in 2004 launched a new project to prevent

trafficking in girls and young women for labour exploitation within China. The ILO also reported that China was also represented at the first regional capacity building training course on child labour data collection organized by the ILO, together with the inter-agency research project Understanding Children's Work (UCW), held in Bangkok in November 2004 which "reflects a growing willingness by China to learn from experience in other countries".[NOTE 1]

Despite these initiatives the existence of child labour, including the worst forms of child labour, remains high due to the lack of proper enforcement of legislation, a lack of resources targeted at the problem (both in terms of financial resources and manpower) and the failure of the government to address underlying causes of child labour, such as access to free education and equal employment opportunities for the rural poor and migrant communities.

1. Education

China has recognized in its Constitution the right to education for every citizen and introduced a nine-year compulsory education system, stipulating that the state should provide nine-year compulsory education for all primary and junior middle school students. Since 1949 the numbers of children attending school has risen and risen. According to most reports the vast majority of children (official figures give 95 -98 percent) now attend and *complete* five years of primary school. However, according to statistics from the China Education and Research Network, the number of primary schools has decreased and enrolment of both primary school and second level school has also decreased. Most crucially the law fails to guarantee the funding of compulsory education, thus forcing or allowing many schools, particularly those in the impoverished rural regions, to either go on collecting tuition fees or charge various "miscellaneous fees" on their students in the name of "voluntary donations", "fund-raising for school construction" or "after-school tutoring fees".

In January 2006, Ministry of Education released statistics saying that in 2004, school dropout rates at primary schools and junior high schools were at 0.59 percent to 2 percent and 2.49 percent to 7 percent respectively. However in 2004, Northeast Normal University interviewed junior high school students in six provinces and found that the school dropout rate was higher than 40 percent. Girls in particular have high drop out rates. One study by the British Department of International Development reported of a county in Gansu province had a graduation rate of only 25 percent of the children who enrolled in primary school. All were boys. In 2002, research by the Beijing-based Internal Migrants Legal Aid and Research Centre found that many child flower sellers, so-called "flower children" working the Beijing bars came from You county in central Hunan province. You county was found to have a school drop out rate of 40 percent among children over 10 years old. Increasing school fees were found to be the primary reason for the increase in drop outs and corresponding increase in child workers."[NOTE 2]

2. Worst Forms of Child Labour

2.1 Forced Labour - Education through labour and the justice System

The People's Republic of China has several procedures in place which deal with minors inside the criminal justice system. Some take place within the community while others allow for children to be sent to special "Work Study" schools for children aged between 12 and 17 years, or to Custody and Education schemes usually inside an adult re-education through labour camp.

Work Study Schools

Work Study Schools are designed to reform the children through work and study and to ensure they receive vocational training. The majority of inmates are children who have committed minor

public disorders. In many cases, the majority of female children are there for sexual related offences (including having consensual but underage sex). The system is administered by the Ministry of Education and the period the children spend inside is counted as part of the compulsory nine years of education. *"However, this model of work study schools has also become the basis for a form of school-run factories under the program of "diligent work and economical study" (qingong jianxue), which makes it legitimate to exploit the availability of child labour in order to make extra money to finance school operations; the curriculum of the schools consists of at least 24 class hours per week, and labour activities for not less than 12 hours a week. Some of these school-run factories have focused more on using labour for income than providing education, and have often become the sites of unsafe work conditions, sometimes resulting in fatalities. Because children are not allowed to leave the schools, make phone calls, receive visits, or return home without prior approval (which can be withheld based on arbitrary point deduction) correctional work study schools are de facto detainment facilities."* [NOTE 3]

This use of Work Study schools is in direct contravention of Convention 182 as well as the Convention of the Rights of the Child. Although the number of such schools is being reduced throughout China the exact number of children being assigned to such Work Study programs is unclear. The administrative nature of the punishment means that the children are detained without due process of law, through the decisions of administrative bureaus and local ministries of education. There appears to be no specific regulations which guide the exact procedures under which minors are sent to these schools.

In May 2005, the United Nations Committee on Economic, Social and Cultural Rights reported that; *"The Committee urges the State party, as a matter of priority, to strengthen its efforts to effectively enforce its legislation prohibiting unlawful employment of children. The Committee also urges the State party to make every effort, including adopting preventive measures, to ensure that those children who engage in labour do not work under conditions that are harmful to them. The Committee further encourages the State party to consider withdrawing the programme of "Diligent Work and Economical Study (qingong jianxue)" from its school curriculum."* [NOTE 4]

CORRECTIONAL WORK STUDY SCHOOLS (GONGDE XUEXIAO)

Custody and Education

Children between the ages of 13 and 16 can be sent to custody and re-education programs by the local public security bureaus with recourse to the criminal justice system. Generally placed in re-education through labour camps, there is little avenue for appeals except to the public security bureau itself. According to reports, although Chinese criminal law calls for separate places for minors, in practice, due to limited spaces available many minors are incarcerated with the adult population.

While undertaking re-education through labour children have little safeguards against over work and poor conditions. Education for minors is also lacking. There is a lack of due process involved in the system of custody and education - the Law on the Protection of Minors states that it is a non-criminal penalty, but it is included in the Law on the Prevention of Juvenile Delinquency and the Criminal Law. It is difficult to assess why this system is used and not the criminal juvenile justice system. There is also very little data available. *"The data available on only a few custody and education facilities indicate that at least 3,895 minors were held in four of these facilities as of May 2000, and while youth should be afforded additional protections, custody and education is in essence RTL for children. The protections guaranteed in Chinese law are neither sufficient nor implemented."* [NOTE 5] The Working Group on Arbitrary Detention in 2005 stated that although

China classifies Re-education Through Labour and custody and education as an administrative deprivation of liberty as opposed to judicial deprivation this does not mean that China does not have an obligation to ensure judicial control over the system; *“The result of removing them from the criminal system is ultimately that they are stripped of the guarantees surrounding criminal procedure.”*[NOTE 6]

In May 2005, the Committee on Economic, Social and Cultural Rights stated that *“The Committee is gravely concerned about the use of forced labour as a corrective measure, without charge, trial or review, under the “Re-education through Labour (laodong jiaoyang)” programme.”*[NOTE 7]

In March 2006 a new law came into effect - The Law on penalties for Offences against Public Order which relates to minor public order offences and updates previous legislation on the issue. One of the areas covered surrounds detention of minors. Offenders under age 18 can now be freed from detention in cases pertaining to their first offence against public order. However the new law relies on the discretion of the public security and other bureaus and it remains to be seen if it will make a difference to the numbers of children in detention and undergoing education through labour or “work study”. According to statistics released by the Ministry of Public Security in March 2005 some 44.7 percent of public order offenders caught by police authorities during the first six months of 2005 were those aged from 10 to 25. And over 70 percent of robbery crimes occurred in China during the first half year were committed by youths aged 10 to 25.[NOTE 8]

2.2 Forced Labour through school related or contracted work programmes

Because of rising costs and the lack of central investment, many schools force children to work in order to make up school budgets. The case of a fireworks workshop attached to the Fanglin village school in Wanzai County, Jiangxi Province is well known. The workshop exploded killing some 60 primary school children and three teachers and was then covered up – albeit unsuccessfully – by the local government. This is just one example of the ways schools are being forced to earn money usually by their students work or the sale of buildings, to pay for basic equipment and teaching. In many other regions, children perform tasks ranging from producing crafts and handiwork to farming. Reports since 2001 documenting the use of contracted labour in schools and “summer” work programs suggest that despite the publicity surrounding the Jiangxi explosion little has changed on the ground. [NOTE 9]

Large numbers of rural schools have contracted out classes of students to work in factories or in the fields to help pay for some of the costs of their education. Under the guise of work study programs, pupils are obliged to work to “learn a skill” but often they are put to perform regular work in labour intensive unskilled positions for longer periods of time, where they do not learn any skill and earn only pocket money. In other parts of the country children are found to be working from home after school or sometimes during school hours - assembling fireworks, beadwork or other cottage industry type production.

A report by Radio Free Asia in September 2005 reported on school children in the Xinjiang Uyghur Autonomous Region of China (XUAR) who are forced to work harvesting the yearly cotton harvest. According to officials the work is an official “work study program, but sources interviewed reported that students must meet specified targets or face fines. One teacher at the Shihenzi Higher Middle School in Shihenzi City told Radio Free Asia that school children were forced every year into “work-study” programs on behalf of the army’s Xinjiang Production and Construction Corps, known in Chinese as the *bingtuan*. The teacher reported that; “If it is the city,

then third-graders and up must take part. If it is the countryside, from first-graders upwards, all of them have to go to the cotton harvest. The schools stop teaching and take the kids to the cotton harvest.” [NOTE 10]

While a local official from the Xinjiang Education Committee in Urumqi voiced concerns about the nature of the work assigned to children but said the requirement came from Beijing and had to be enforced. The teachers and children have reported that they were pressured to meet daily quotas and face possible fines if they fail to meet them. The children live in dormitories for up to six weeks every year and generally worked from 7am until dark with half an hour for lunch. The report stated that nearly 100,000 students from junior colleges, technical, secondary, and primary schools in Xinjiang will participate in the work-study program and join the cotton-picking work in various cotton districts before mid September.

A report in the Urumqi official media also covered the program but reported that children below third grade do not participate; *“The Work-Study Office of the Education Department also requested the schools to refrain from collecting fees recklessly in name of the work-study program. Extremely heavy labor was also strictly forbidden.”* Parents and students were reportedly concerned that the extremely heavy nature of the work and the fees charged for “participation” in the scheme but the Metropolitan *Consumer News* quoted staff at the Work-Study Program Office of the Xinjiang Autonomous Region Education Department as saying work-study programs were an essential labor practicum course, *“Some schools in inner China spread the course out into weeks and months and carry it out at training facilities. However, the situation in Xinjiang is unique. Apart from the lack of training facilities, the picking-period of various cotton districts in Xinjiang is concentrated in September and October, thus the work-study program has to be carried out mainly during this time,”* the paper quoted officials as saying.

A teacher interviewed said that the children were vulnerable to accidents and the young girls to sexual assault. “Every year, there are incidents like this and someone dies in an accident. Sometimes the tractors let kids get on and then crash with cars and the kids get badly hurt or die...Also when it is harvest season there are many migrants Han Chinese workers or farmers from other Chinese cities and those people rape the female students. These kinds of cases take place often every year.” One student who had previously worked in such a program told Radio Free Asia; “According to what they said, if we could not finish our duty, we would have to pay money. If we picked more than the required amount, we could earn money. But actually, no one ever earned any money, even if he or she picked more than the required amount. The eight of us students fell behind and had to pay money. We had no money to pay”.

2.3 Trafficking and Prostitution

In addition to the increasing opportunities and availability of work for young women and girls in the labour intensive factories in the south and eastern parts of the countries, girl children face additional problems. Recent statistics from the past few censuses of China show that the gender disparity among newborns has been rising steadily. The last national census in 2000 showed about 12.77 million fewer girls than a natural sex ratio would generate. The third national census in 1981 revealed a ratio of newborn boys to girls of 108.47 to 100; in 1989 it was 111.92 to 100; and in 2000 it was 116 to 100. A recent report in August 2006 stated that the male to female ratio has risen to 1.23 in 1996-2001 and some areas the figure is almost 130 males per 100 females. According to Human Rights in China some 60 million women and girls are “missing” from the world today as a result of sex-selective abortion and female infanticide.

While many negative consequences of the one child policy cannot be included in a discussion on child labour[NOTE 11], some long lasting effects are relevant – the trend of sex selective abortions, female infanticide, the abandonment of female infants and concealment of female children. The Chinese government does acknowledge its need to deal with the growing disparity in the male to female birth rate as well as some of the indirect results such as the growth in human trafficking. According to one official interviewed, “family planning limits encourage selling off girls and after the unwanted girl is sold, parents can try again for a boy.[NOTE 12]

In June 2006 the Chinese police uncovered a total of 4,911 child kidnapping cases in the past five years rescuing some 10,000 children. [NOTE 13] The shortage of females has increased the trafficking of girls, who are sold as servants or brides or are forced into prostitution. The UN Special Rapporteur on Violence against Women said in her 1997 report that in some Chinese counties and villages, 30 to 90 percent of marriages were the result of trafficking. A UNICEF report estimated that China now has 200,000 to 500,000 child sex workers.

Article 36 of the Law on the Protection of Women’s Rights and Interests prohibits the kidnapping and abduction of women and the purchase of abducted females, but fails to provide any measure of penalties and remedies. China is a source, transit, and destination country for international human trafficking in women and children for sex exploitation and the entertainment industry. It has been widely reported that there are increasing numbers of young women and girl children being trafficked out of China to work as sex workers in Australia, Burma, Canada, Malaysia, Japan, Taiwan, the Philippines, the Middle East, Europe and the United States.[NOTE 14] The one child policy is again considered to be of considerable influence on this growth in child trafficking for prostitution.

HUMAN TRAFFICKING KEY FACTS

The lack of national statistics and analysis of data on child prostitution and trafficking remains a serious problem and limits placed on transparency – due to state secrets laws – place considerable concern over the government’s willingness to resolve the issue. One report questions the official data; for example, in May 2004 the Yunnan provincial government (on the border with Vietnam, Laos and Myanmar) Cambodia and announced that 571 children were abducted there between 2001 and 2003, but also stated that police had managed to locate 537 children and return them to their parents. Parents, however, gave a different accounting, stating that out of 182 children abducted from the capital Kunming in the last three years, only four had been found. [NOTE 15]

One Radio Free Asia report focused on the trafficking of under aged women and juveniles from Tibet into Nepal to work as prostitutes and in night clubs. According to the report Chinese police and local authorities in Tibet near the Nepal border are colluding with local Tibetan and Chinese entrepreneurs in recruiting Tibetan girls and women to work as escorts, barmaids, and prostitutes. [NOTE 16] It has been estimated that up to 10,000 commercial sex workers are employed in Lhasa alone. "Once you get into the system, it is very difficult to get out of it," one 18-year-old Tibetan woman in Nyalam said in an interview. "All the Tibetan girls who are working in nightclubs want to escape to Nepal and India, but they cannot do so. If we run away, we will be put in jail and life in jail is not easy," said the woman, who, like others interviewed for this report, spoke on condition of anonymity. "Therefore we had to sign a contract. A few have tried to escape, but they were caught and severely beaten. Two of us managed to escape," the woman said. Both are now in Nepal.

The girls are usually aged between 17 and 18 to 28 and many are tricked into the trade. One businessman interviewed said that the Tibetan girls attract fewer customers, while the Chinese girls attract more. Therefore the Tibetan girls earn less and the Chinese girls earn more and some Tibetan girls will accept meals in exchange for their services. The Chinese girls are paid a fixed amount while Tibetan girls can be paid 20 to 50 Yuan. Some will even accept clothes. The women said they were often lured into working in the clubs by promises of an escape route to India.[NOTE 17] Women and girls interviewed said they believed Chinese worked with entrepreneurs to procure young women for the local nightclub industry. "The local Chinese authorities are very permissive about this illegal human trafficking. In fact, the local Chinese authorities, police, and owners of bars and nightclubs collude with each other in recruiting these Tibetan sex workers," one person interviewed by Radio Free Asia said.

In the past many traffickers in children and girls "bought" the children from very poor parents but it now appears that because of a growing demand for the children and a growing awareness of the dangers of selling ones child for alleged employment" or a better life, more and more criminal gangs are having to kidnap the children. A report by IPEC stated that previously most trafficked women were between 20 and 50 years old. Now, traffickers are mostly targeting women and girls under 20, some as young as 12 years old.[NOTE 18]

The report found that despite strong efforts by the Chinese authorities to stem the problem in areas severely affected by trafficking in women and children, grassroots authorities have generally failed to take effective action or to establish adequate prevention mechanisms. There have even been reported cases of village leaders aiding and abetting the traffickers. The problem is compounded by insufficient punishment for the buyers of abducted or trafficked children and women. Under Chinese law the buyer can be penalised for up to three years detention if they purchase a trafficking victim but the vast majority are not prosecuted and if the child is unharmed and the buyer co-operated with the police then they are generally unpunished. In practice if children are reported missing, many police will register the case as an incident and not as an investigation of kidnapping – especially if the child is from a poor area or family.

The Department of Public Security and other agencies are also hampered by under funding and lack of specialist staff. Migrant families in the south of China have also reported that they have received very little help from the police after reporting their child abducted. Local reporters trying to cover such cases have also reported being obstructed. `Some 400 children – mainly from poor migrants – are reportedly missing, believed kidnapped (for adoption or sex work) in Dongguan alone.[NOTE 19]

As in much of Chinese legislation the problem lies primarily in the implementation of laws and not the legislation itself. An NGO report on the Convention of the Rights of the Child states that in the Second periodic report of the People's Republic of China on the Implementation of the Convention of the Rights of the Child (1996 -2000) there is fewer than two pages of information on legislation and implementation of law addressing the issue of child trafficking. The report indicates that public security personnel have processed a total of 21,000 cases of abduction of women and children, and have rescued about 5,000 children. "*It provides no data on age, gender, geographical location, nationality or ethnicity, nor does it provide any analysis of the causes of these abductions. The PRC's efforts in entering into an agreement with neighbouring countries to combat trafficking is a positive step; relevant laws have also been amended to make the trafficking and abduction of children a crime. However, the Standing Committee of the NPC became aware of the growing incidence of trafficking of children and women as early as 1984, but took another 13 years to make the amendments, and another three years to finalize implementation.*" [NOTE 20]

In order to effectively resolve the issues, and work with neighbouring countries, there must be a proper review of current policies, proper implementation of safeguards, increased transparency and remedial action. Law enforcement organs must have sufficient resources and support to combat trafficking, and more details of the data and issues must be made available both within China and to neighbouring countries who receive (and send) girls for sex exploitation.

The use of broad state secrets laws makes the true picture of sex selective abortions and trafficking difficult to assess. Statistics regarding female infanticide and abandonment of female children are classified as state secrets and while the government occasionally releases figures on the number of victims rescued and the number of people prosecuted for trafficking of female infants and children, there is no national picture available. According to the Human Rights Shadow report to CEDAW; *“The fact is that China’s leaders have failed to incorporate gender perspectives into their policies by taking into account the consequences of official decisions on both women and men. If the government conducted gender analysis in order to understand the relationships between women and men and their comparative activities, constraints and access to resources, it would become aware of the systemic inequities that China’s population policy imposes on women and girls”*.

“As a means of addressing the trafficking of girls and women, China should consider ratifying the international conventions on trafficking in persons and on slavery. In addition, it should take appropriate measures to address the root causes of trafficking, namely the one-child policy and discriminatory attitudes toward girls and women, and should strengthen existing legislation and enforcement mechanisms.”[NOTE 21]

2.4 Hazardous Work

Examples of industries employing children are the firework industry, piece work at home (anything from car seats to plastic flowers), entertainment (informal), begging – organized groups of beggars and street sellers such as flower sellers, singers, etc, brick kilns, and prostitution (trafficked and other). A People's Daily Report cites an investigation into labour conditions in Shandong province's Jinan City. According to the report, the use of juvenile labour is most prevalent in the following industries: toy production, textiles, construction, food production, and light mechanical work.[NOTE 22]

“Many children turn to work after the death of one or both parents and migrant child workers are often the children of migrant workers themselves. Children found in the worst forms of labour often have mothers working in the sex industry or parents with an alcohol or drug problem. In the worst cases we have seen children simply sold to intermediaries who in turn sell them on into the sex industry, domestic service or bonded labour.” [NOTE 23]

Fireworks Industry

The Firework Industry in China is a long established industry, employing tens of thousands of people, many from the poorest provinces. Production generally takes place in small factories or village based workshops. In some cases firework production is undertaken in several homes located in one village with a central warehouse for storage. Most factories are small and most are privately owned. Children have long been used in firework production because of their small and nimble fingers and because of the informal setting of production. It is both the nature of the work – explosives used – and the nature of production – unsafe buildings, clusters of workshops and low fire safety measures – that make firework production an extremely dangerous occupation. In addition the widespread disregard of safety standards and lack of monitoring has increased the risk of explosions and other accidents.

In a survey of 120 fireworks manufacturing workshops in seven provinces by the State Administration of Quality Supervision, Inspection and Quarantine found that almost half of all fireworks fail to meet basic quality and safety standards. According to Zhang Guanghua, director of the Chemical Safety Supervision and Management Department under the State Administration of Work Safety, "The production and standards of many small and medium-sized fireworks producers in townships and villages do not meet state requirements." The investigation found that of the 120 brands of fireworks monitored 36.7 per cent were found to have defective blasting fuses, creating a high risk of premature explosion and injury while there was a widespread use of banned inflammable or explosive chemicals in production. 19 brands were found to have defective packaging which could lead to accidents during transportation or storage. [NOTE 24]

The most recent incident involving child labour and firework production took place on 10 July 2006 when an explosion at an illegal fireworks workshop in Hunan province killed seven workers and injured three others. The average age of those who were killed and injured in the accident is more than 40 years old. The oldest was 76, while the youngest one was a 14-year-old girl, according to Gu Xiangwang, head of Yizhang County Work Safety Bureau. Gu said the bureau issued an order in late June requiring all fireworks factories in the county to halt operation for three months starting from July for safety inspection. [NOTE 25]

On 28 July 2003, a series of three or four explosions, which some residents likened to an earthquake, demolished most of the Guoxi Fireworks Factory killing 29 workers and injuring at least 100. According to interviews, there were some 169 workers in the factory at the time of the explosion, the youngest being a 15 year old girl who had been working at the factory for two years. On 19 October 2003 a 14-year-old child worker was killed and 11 other workers badly injured at an explosion in Dapingling village in Hunan province. Nine of the eleven injured were under the age of 15 and employed illegally.

The Government has pledged to phase out the use of these small firework workshops but their use remains much in evidence. In general the government reaction to accidents is similar to its reaction to coal mine accident - a knee jerk shutting of factories nearby, punishment of officials involved and condemnation of the incident. Issuing a temporary ban on production, as the authorities did in Jiangxi province following a fireworks tragedy in 2002, is reaction that plunges employees into further poverty and often drives production underground.

Brick Kilns and glass makers

There is a lot of anecdotal evidence suggesting that children are widely found at brick kilns and glass making factories. A report from September 2005 focused on the killing of a 15 year old boy by a pair of iron pincers thrown at him by his supervisor, following a verbal dispute in the Baocheng Glass Vessel Factory in Qi County, Puzhong City, Shanxi Province. A few hundred meters from Baocheng was another glass factory hiring more than a dozen other children. The incident was alleged to show the extent of the problem of child labour in the glass industry in Shanxi Province which has the largest volume of glass production in China. Over one fifth of the 160 glass factories in the province have used child labour while some were found to have used the torture, verbal and physical abuse of these children. Most have poor working and safety conditions. [NOTE 26]

Begging

According to Xinhua from August 2003 through the end of June 2004 police picked up 80,000 child beggars nationwide. However the number of child beggars in existence is likely to be much higher because of regular statistics. Investigations in the Xinjiang Uyghur Autonomous Region

(XUAR) have revealed that each year thousands of trafficked children belonging to Muslim families are being cared for while authorities try to track down their parents. The task is difficult, sometimes impossible, because many of the children were trafficked to inland Chinese cities at a very young age and have little memory of the homes they left behind. Many were forced to become thieves.[NOTE 27] The source of the problem stems from the poverty in the area and the discrimination faced by Uyghur families and children in education, employment and society. One source interviewed, Uyghur businesswoman and rights activist Rebiya Kadeer stated that "Chinese human-traffickers come to the Uyghur region from inner China and tell the girls that they will find them paying jobs. Then they sell these girls by transferring them from owner to owner. The human-trafficking of young Uyghur children is becoming a profession in Xinjiang. They are children of poor families. They were deceived and sold by the Chinese and forced to become thieves, heroin sellers and prostitutes." One report by the Asian Development Bank highlighted the additional problems faced by Uyghur street children as a result of racial discrimination.[NOTE 28]

Another media report which received great attention was the coverage of the life of a child beggar who had been sold into begging by her impoverished father. [NOTE 29] Xu Qian Qian was born in Henan Province with spina bifida was given away by her father, a poor farmer struggling to pay medical bills, after her mother committed suicide, in 2001 return for some money and a promise that she would be cared for. She was then taken to Gongxiao, a nearby village that has reportedly become a breeding ground for professional begging rings and child begging. Some locals said more than half of the village's 1,500 residents have begged to build houses or pay school tuition. The village regularly procured disabled children to help beg. Her new guardian gave her a razor blade and told her to cut her feet and legs to appear more destitute. Sometimes he gouged them himself; she was then left to beg all day and picked up at night. Xu Qian Qian was eventually rescued by a passer-by and her guardian arrested and sentenced to eight years imprisonment. Police found four children -- three of them disabled in his house.

According to sources, the village of Gongxiao has had professional beggars for decades but then began using disabled children as a means of producing more returns. Locals then searched neighbouring villages for children, concentrating on areas near the Xu family's house, following rumours that polluted river water there caused an inordinate number of birth defects. Locals estimate that 60 percent of Gongxiao's residents beg with the help of disabled children. One local police official states that even the village chief participated. Police started a formal investigation into the chief's family but didn't bring charges. Farmers are often tricked into renting their children for 300 to 500 Yuan a month while a professional beggar's income may be as much as 10 times that of a farmer, especially one who mainly deals in barter.

Hazardous work in other sectors:

Overwork, working conditions and occupational health and safety

Children in the workplace are especially vulnerable to occupational hazards and abuse. Not least because of their lack of awareness but also because of the illegal nature of their employment which leaves them unable to find avenues of redress should an accident occur. Many put up with extreme conditions that others would not tolerate simply because of their youth and the pressing need to earn money to send home. Many parents are unaware of the working conditions faced by their children in the factories in the south. In late 2003, a reporter from Guangzhou's Southern Metropolis Newspaper investigating child labour visited a local textile factory and found 12 year old workers working as much as sixteen hours per day, more during peak season. The children

slept on or under their worktables in the 200-square meter workshop - similar conditions were found in other nearby factories.[NOTE 30]

Increasingly there is a serious issue of a shortage of labour for the unskilled jobs in the south of China. In part this is due to the ageing population but it is also due to increasing demands for better wages and conditions. Some employers are shifting to inland provinces in China to find cheaper labour while others are resorting to the use of child labour. Child Labour has been increasingly reported in the footwear industry and in the smaller workshops producing textiles, shoes and related products. In 2000, media reports said that 84 children had been kidnapped from southern China's Guizhou province to work in coastal cities assembling Christmas lights. The youngest was 10. Many of the under age workers in the south are young girls ranging from 12 – 16 who are employed for their youth and agility in the textile, garment and shoe making factories. According to a Chinese Women News's report in 1996, 73.5 percent of the child labour it had interviewed in six provinces were girls.[NOTE 31]

For many labour intensive factories child labour is worth while. A recent investigation into child labour fund, which interviewed 45 workers (mostly children), 8 parents and teenage school dropouts, 12 teachers and headmasters from primary and junior high schools and 12 government officials, showed that the average wage of children is around 400 -600 Yuan[NOTE 32] while the official monthly wages of many migrant workers is around 500 -800. [NOTE 33] Children, being illegally employed do not need medical or social security payments and neither do they complain of long hours or underpayment. Most are too scared to complain and most feel the need to remain at work to help support their families.

Field studies show that the majority of child workers also very long hours. Most work overtime till midnight and usually only get paid at the end of the (half) year or half year. Female children interviewed in May 2006 revealed that they usually worked from 8am to 9pm (with two hours meal breaks) during the low season and worked from 8am to 2am the following day during high season.[NOTE 34]

3. Lack of Enforcement

Although China does possess national legislation banning child labour and the worst forms of it, as well as related regulations, there remains a serious gap between legislation and implementation and monitoring.

The fines for child labour employing factories remain low in practice. The 2002 Regulations state that employers who use child labour shall be fined at the rate of 5000 Yuan per month for each child labourer used; if child labour is used at work sites using toxic material, the fine shall be based on the provisions of Regulations for Labour Protection at Work Sites Using Toxic Material, or severe punishment shall be considered with fines at the rate of 5000 Yuan per month for each child labourer used. However in reality many firms found using child labour are fined around 10,000 Yuan in total. At the beginning of June 2006, a report by the Yangtze Evening Post reported that a local court in Zhenjiang, Jiangsu Province, fined four companies 10,000 Yuan (US\$1,250) to 40,000 Yuan (US\$5,000) for hiring juvenile workers.

In addition, the chances of discovery are slim given the shortage of labour inspectors and the extensive collusion between private business and local officials. In many case tip offs of upcoming inspections – either from Chinese officials or sometimes from compliance officers for brand names buying the goods – mean that children are kept well hidden during an inspection or

given the day off. The numerous anecdotal evidence of such practices and the disappearance of children out of the factory doors in the face of an inspector reveal how most cases are simply not discovered and therefore the employer cannot be punished. The practice is bolstered by double and triple book keeping (on wages, hours, overtime and employees) by many private firms.

“There is a pressing need for uniform and concrete enforcement of existing legislation banning child labour under 16 and the use of young adults in heavy or dangerous industries. This will include the need for increased punishments for employers who break national legislation. China already has adequate laws forbidding child labour but these laws must be “accompanied by adequate enforcement mechanisms and by effective action to improve the availability of relevant and affordable education and to provide poor families with alternative means of survival. Complex reporting procedures and inter-provincial red tape often prevent employers being punished for employing children from outside their own province.” [NOTE 35]

For example, during the course of the survey in You county mentioned above, the Civil Affairs Bureau stated that the child dropout problem fell under the jurisdiction of the education authorities while that of child labour falls under that of the Labour Bureau. *“The Civil Affairs Bureau, meanwhile, is tasked only with bringing child flower sellers back home in the event of their detention by authorities in the cities to which they've migrated, and to notify the village officials of their return. When asked whether the local government had considered a fundamental solution to the problem, the bureau director admitted that this social phenomenon was nearly impossible to eliminate, and that the best hope was that it could be reduced. The director at Civil Affairs was quite clear that the overriding concern for his department is to “consider at all times the overall situation, and to remain focused on economic development and the building of the party organization.” [NOTE 36]* Meanwhile the *“Labour Bureau official we spoke to admitted that many of China's urban child flower sellers were being recruited locally, yet stated that it was impossible for local authorities to punish those employing child flower sellers as the employment happens elsewhere. (As the children are not selling flowers in You County, neither the activities of the employers of the children themselves fall under local labour jurisdiction.) According to this official, in cases in which migration of the child flower sellers is involved, the local labour authorities have authority to ask that public security authorities in the cities to which the children have migrated to enforce anti-child labor laws, but they themselves cannot take the initiative to search for the children themselves.”*

In addition, adequate regulations and practice needs to be enforced to ensure that children who are rescued or otherwise discovered working have a proper follow up care and education to ensure that they do not simply get sent back to their impoverished families with no further action by the authorities. At the moment this is lacking and in one case monitored by the Hong Kong Christian Industrial Committee it was found that a sub contractor not only employed children but actively sought child labour from poor rural areas to work in a toy factory in Guangdong province. *“Once the situation was discovered the multinational company subcontracting the Chinese factory allegedly first denied the allegations, however it later accepted that there were ‘irregularities’. Following this admission they then cancelled their contract with the company concerned without any further action. This in turn led to the company laying off many of its adult staff as well as leaving the children stranded in Guangdong with no means of support or transport home.” [NOTE 37]*

4. Lack of Transparency: Reporting and State Secrets

State secrets in China cover a wide range of issues and areas of control. The scope of what is defined as a state secret covers not only issues concerning national security (such as military or political secrets) but also issues which have not been approved of by the authorities as public. The range even covers previously published material.

Statistics are one of the areas most tightly controlled under the legislation and those regarding labour-related topics are very much included in the regulations. Child Labour including the Worst Forms of Child Labour (along with other labour related areas such as protests, strikes and structural reform[NOTE 38]) is the subject of two main regulations issued jointly by the State Secrets Protection Bureau. The first was issued in 2000 by the State Secrets Bureau and the Ministry of Labour and Social Security (MOLSS), and the other by the All-China Federation of Trade Unions (ACFTU) and the State Secrets Bureau in 1996.[NOTE 39] This material was made public in October 2004.[NOTE 40]

“Undisclosed information and statistical data on the handling of child labour cases nationwide” is considered highly secret. There are no officially published national data on the extent of child labour or on the numbers of children working in the worst forms of child labour. The number of cases prosecuted is also not published. Data must be collected from unofficial newspaper reports which are often sketchy and many cases are covered up by the local authorities. According to one report, in early 2004 provincial newspapers in early 2004 reported a total of 156 cases in Anhui Province and 464 in Yunnan Province over a period of three years. Such figures are inconsistent with anecdotal local press reports. One random investigation of 620 work units in Tongchuan, a city in Jiangxi Province with a population of about 300,000, resulted in the discovery of more than 40 cases of underage employment, or approximately 80 percent of the number of officially acknowledged cases in all of Anhui, a province with a population of over 60 million.

In addition, general policymaking is also governed by state secrets legislation when it concerns matters deemed “sensitive.” And relations with the International Labour Organization are also covered by the legislation – making it difficult for the ILO itself to receive and transmit uncensored any transparent information: “plans and countermeasures for participating in meetings of the International Labour Organization and other important international meetings” are classified as “highly secret” by the Ministry of Labour and Social Security, while “work plans and countermeasures concerning participation in the International Labour Organization and bilateral and multilateral communications with trade union organizations of other nations” are ranked as “secret” by the ACFTU.

Reliable and open data are essential for governments and other agencies to tackle the worst forms of child labour effectively. China does have legislation but unless legislation is backed up by implementation on the ground it will be ineffective. China has the additional problem of a lack of civil society overseeing the problem and this, coupled with the lack of freedom of association and independent trade unions means that there is little monitoring of the problem except by the few government resources put into effect. There are increasing press reports on child labour but the data collected are not systematic and there is little serious efforts designed to survey the extent and nature of the problem and follow up on specific cases.

The state secrets laws add to the pervasive paradigm of secrecy within the central, provincial and local authorities and the fact that many authorities are used to under- or over-reporting to fulfil quotas or to ensure praise and not reprisals and make it almost impossible to fully collate relevant information and monitor progress or compliance with Convention 182.

Independent trade unions are seen as one of the more effective ways of combating abuses of labour rights within the workplace and the role of trade unions in combating worst forms of child labour is no exception. The role of ACFTU as a protector and promoter of labour rights remains limited. The ACFTU, as co-drafter of one of the relevant state secrets labour related laws - as noted earlier - works with the government to ensure that details of child labour cases, including cases of forced and hazardous child labour, and other related matters are treated as state secrets and remain hidden.

5. Conclusions

Although the Chinese government has addressed some of the issues under Convention 182 and has made legislative progress, much remains to be done. The ICFTU is particularly concerned about the lack of implementation of the laws relevant for the elimination of the worst forms of child labour. Therefore the ICFTU suggests that the Committee of Experts may consider recommending to the government to put in place measures to detect children employed in the worst forms of child labour and to implement effective measures for the rehabilitation and the social integration of these children.

Statistics concerning children employed in the worst forms of child labour and data concerning related issues such as trafficking should be made available in a transparent manner. These data should be made gender specific in order to be able to effectively address the employment of girl children in the worst forms of child labour, prostitution being one of them. Data on the worst forms of child labour and information on policies and time bound programmes for the prevention and elimination of the worst forms of child labour should not fall under any secrecy law or regulation.

As emphasized in Convention 182, underpinning all attempts to eliminate the worst forms of child labour there must be adequate rehabilitation and educational provisions and opportunities, for the most vulnerable children – children in rural areas, children from ethnic minorities and girl children - in particular. Therefore the ICFTU suggests that the Committee of Experts may consider recommending the government to introduce educational opportunities for the children of migrant workers and to improve rural education facilities to prevent children from being employed in any of the worst forms of child labour and to rehabilitate the victims of such employment.

Kindly forward this document to the Committee of Experts for examination during its forthcoming session.

NOTE 1: The end of child labour: Within reach, REPORT OF THE DIRECTOR-GENERAL, Global Report under the follow-up to the ILO Declaration, INTERNATIONAL LABOUR CONFERENCE, 95th Session 2006
Report I (B)

NOTE 2: An Investigation into the Phenomenon of Rural Children Selling Flowers in Chinese Cities, *Undertaken by the Child Flower Sellers Research Team*, published by CLB, June 2005, <http://www.china-labour.org.hk/public/contents/article?revisionpercent5fid=15886&itempercent5fid=15885#2>

NOTE 3: Human Rights in China: Implementation of the Convention on the Rights of the Child in the People's Republic of China; A parallel NGO report, July 2005.

NOTE 4: May 2005, Report of the Committee on Economic, Social and Cultural Rights on the implementation of the International Covenant on Economic, Social and Cultural Rights.

NOTE 5: Human Rights in China: Implementation of the Convention on the Rights of the Child in the People's Republic of China; A parallel NGO report, July 2005.

NOTE 6: Commission on Human Rights, Working Group on Arbitrary detention, civil and political rights, including the question of torture and detention, report of the working group on arbitrary detention, Addendum, Mission to China, E/CN.4/2005/6/ADD.4. As reported in Human Rights in China: Implementation of the Convention on the Rights of the Child in the People's Republic of China; A parallel NGO report, July 2005.

NOTE 7: May 2005, Report of the Committee on Economic, Social and Cultural Rights on the implementation of the International Covenant on Economic, Social and Cultural Rights.

NOTE 8: Xinhua, People's Daily, 28 August 2005

NOTE 9: China Labour Bulletin (CLB), Education in China: A short introduction, <http://www.china-labour.org.hk/public/contents/article?revisionpercent5fid=3299&itempercent5fid=3298>

NOTE 10: Radio free Asia, 21 September 2005

NOTE 11: Effects such as forced abortions, compulsory sterilization and the forced implantation of intrauterine devices after abortions or births.

NOTE 12: Yu Qing, a professor at the Sociology Management Institute of Guangxi University in Nanning, Human Rights In China: Implementation of the Convention on the Rights of the Child in the People's republic of China: A Parallel NGO report, July 2005

NOTE 13: The Office of the Women and Children Work Committee of the State Council as reported by Xinhua 1 June 2006.

NOTE 14: Conversely, children are also trafficked into China from neighbouring countries – predominately Malaysia, Burma, North Korea, Nepal, Russia, Vietnam and Mongolia.

NOTE 15: Human Rights In China: Implementation of the Convention on the Rights of the Child in the People's republic of China: A Parallel NGO report, July 2005

NOTE 16: Radio Free Asia, Traffickers Prey on Tibetan Girls, Women, 2004.05.13

NOTE 17: Radio Free Asia, Traffickers Prey on Tibetan Girls, Women, 2004.05.13

NOTE 18: International Labour Organization, International Programme on the Elimination, of Child Labour (IPEC) Yunnan Province, China, situation of trafficking in children and women: A rapid assessment, August, 2002

NOTE 19: Radio Free Asia, Missing, Presumed Sold: Chinese Parents' Desperate Hunt For Their Kids, 2006.05.03

NOTE 20: Human Rights in China: Implementation of the Convention on the Rights of the Child in the People's Republic of China; A parallel NGO report, July 2005.

NOTE 21: Human Rights In China: Where have all the young girls gone? China Rights Forum, December 2000

NOTE 22: As reported in China Labour Bulletin, As China's Economy Grows, So does China's Child Labour Problem 6 October 2005

NOTE 23: CSR Asia, CSR Asia Weekly, Vol 1, No. 45

NOTE 24: China Daily 7 February 2005

NOTE 25: China Labour Bulletin, Mingpao Daily iNews , 10 July 2006

NOTE 26: Business and Human Rights based on report by China labour Bulletin 20 June 2006 and wlmama.com (Chinese website) 23 Sep 2005, in Shichang Bao (Chinese newspaper) 26 May 2006.

NOTE 27: Radio Free Asia, Trafficked Uyghur Children May Not See Home Again, 3 May 2005

NOTE 28: At the Margins: Street Children in Asia and the Pacific, Andrew West, Asian Development Bank
Regional and Sustainable Development Department

NOTE 29: The Wall Street Journal, 7 December 2004

NOTE 30: China Labour Bulletin, As China's Economy Grows, So does China's Child Labour Problem, June 2005

NOTE 31: China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 32: China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 33: "Migrant workers' Research report" issued by the state council in April 2006.

NOTE 34: China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 35: CLB, Child Labour in China: Causes and solutions, http://www.china-labour.org.hk/public/contents/article?item_id=3304&revision_id=3305&print=1

NOTE 36: An Investigation into the Phenomenon of Rural Children Selling Flowers in Chinese Cities Undertaken by the Child Flower Sellers Research Team and reported in China labour Bulletin:
<http://www.clb.org.hk/public/contents/article?revisionpercent5fid=15894&itempercent5fid=15893>

NOTE 37: China Labour Bulletin, Child Labour in China: Causes and solutions, http://www.china-labour.org.hk/public/contents/article?item_id=3304&revision_id=3305&print=1

NOTE 38: In addition information on Industrial accidents and occupational illnesses, Unemployment rates and related social security matters, Wage policies, Embezzlement of social insurance funds, Labor unrest and worker protests are also covered.

NOTE 39: General Office of the Ministry of Labour and Social Security and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Labour and Social Security Work, January 27, 2000 and All-China Federation of Trade Unions (ACFTU) and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Trade Union Work, May 27, 1996. Translation taken from "Human Rights in China" (HRIC), China Rights Forum, No.3, 2004

NOTE 40: Human Rights in China and China labour Bulletin: Labour and State Secrets, China Rights Forum, No.3, 2004

Annex 1b: ICFTU Observations to the ILO Committee of Experts on the Application of Conventions and Recommendations on Convention No.138 on Minimum Age

Keywords: Child labour, forced labour, right to education, discrimination, social exclusion, freedom of association

Convention No. 138 on Minimum Age, 173 (ratified 1999)

The continued existence of Child Labour

In 1999 China ratified Convention No. 138. In terms of domestic legislation, new laws were implemented in December 2002 explicitly banning the employment of children under the age of 16 years. These new regulations impose fines for employers and put the onus on the employing companies to check the workers identification cards. Other legislation includes the relevant provisions in the Chinese Labour Law, the Law on the Protection of Women's Rights and Interests, the Law on the Protection of Minors, Regulations on the Prohibition of Child Labour, and the Notice on the Prohibition of Child Labour.

Despite these initiatives the existence of child labour, particularly in the private sector and the southern/south eastern parts of the China remains high due to the lack of proper enforcement of legislation, a lack of resources targeted at the problem (both in terms of financial resources and manpower) and the failure of the government to address underlying causes of child labour, such as access to free education and equal employment opportunities for the rural poor and migrant communities.

The recent ILO report, "The end of child labour: Within reach" [NOTE 1] stated that "*China has 350 million children, accounting for 20 per cent of the world's total. Although there is little hard statistical information on child labour trends in China, the evidence on poverty reduction and educational expansion can be taken as important proxy indicators. In the past 25 years, China has taken more people out of poverty and enrolled more children in school than any other country. There is thus strong circumstantial evidence that this has also had a dramatic impact on child labour in China.*"

While it must be stressed that the government has taken many steps towards eliminating child labour and reducing the major causes of child employment the positive nature of the report is questionable for two main reasons. Firstly, as the report itself makes clear there is little "statistical data" on child labour and thus there is only "circumstantial" evidence to deduce that child labour is being reduced through current education initiatives. Secondly as we explain below there is increasing evidence that child labour is currently on the increase in the south of China and that educational opportunities for many of China's children remain poor and in some cases continue to decline leading to continued or increased motives for child employment.

The vast majority of Chinese factories and enterprises do not employ children, most do not employ children in the worst forms of child labour and yet the recent focus on competitive production combined with a poorly regulated labour market and rampant corruption has meant that some employers have sought child labour as the solution to reducing production overheads. The extent of child labour remains difficult to assess due to a lack of official reporting on cases and the lack of transparency in statistics. In part this is because most child labour takes place in small private factories which are harder to monitor and regulate than larger state owned enterprises. In part however the lack of reporting (and indeed the continued existence of child

labour) is because of a lack of monitoring in general and a lack of resources in regulating, implementing and monitoring Chinese domestic legislation on child labour and related laws.

According to some reports child workers can make up some 20 percent of the workforce in certain industries. Child labour is found predominantly in smaller factories such as local and township level factories but child labour has also been found in SOEs and most other types of enterprises. Geographically child labour is found in coastal and richer southern provinces with higher proportion of private industry and migrants, such as the Special Export Zones (SEZs). In these factories the punishments for being found using child labour may not always outweigh the risks, especially if one operates with local authority support or connections. There are also numerous ways employers can avoid penalties, for example, by placing the responsibility on the children. One of the main ways that children find jobs are by using fake or borrowed ID cards – fake ID cards can be bought at many street corners. Employers would then blame the children for using fake ID cards and claiming they were adults even when appearances clearly suggest the worker is a juvenile. Regulations were implemented in December 2002 which put the onus of checking ID cards onto the employers, in an attempt to ensure employers cannot shirk their responsibility if found employing child labour. However, despite the welcomed intention the new law has not appeared to stem the problem for those unscrupulous employers who still see profit in employing children.

Examples of industries employing children are the firework industry, piece work at home (anything from car seats to plastic flowers), entertainment (informal), begging – organized groups of beggars and street sellers such as flower sellers, singers, etc, brick kilns, and prostitution (trafficked and other). A People's Daily Report cites an investigation into labour conditions in Shandong province's Jinan City. According to the report, the use of juvenile labour is most prevalent in the following industries: toy production, textiles, construction, food production, and light mechanical work.[NOTE 2]

Poverty is the main cause of child labour. Recent reforms have removed much of the social safety net and the increasing gap between rich and poor has seen a rise in the numbers of the population under the (very low) Chinese poverty line. [NOTE 3] Along with the rising Gini Coefficient there has been dramatically reduced educational opportunities for the vast majority of China's population (especially in the rural areas, and especially female students and minorities). Inflation, rising living costs, unemployment and the reduction in social services, medical benefits and other subsidies corresponding with the demise of the State Owned Industries (SOEs) and their "Work Unit" (Danwei) system which guaranteed minimum accommodation and other benefits, mean that for many unlucky Chinese, the economic reforms are creating poverty, not wealth and at the same time social security is underdeveloped and corrupt.

The disparity between regions and cities is pronounced, as it is the coastal areas of the country that have emerged as urban economic powerhouses, while the interior regions are still mainly used as farmland and are the source for many job-seeking migrants. Hence, the ratio of urban to rural incomes increased from 2.2 in 1990 to 3.1 in 2002, meaning that rural incomes are but a third of those in the cities. This is an extremely high difference by international standards. Yet if measured by comparison with the richest parts of the country, the difference jumps to tenfold. The consequences of the rural poverty that these differences reveal are not hard to identify: in 35 poor and rural areas recently surveyed for a World Bank project, four out of ten children aged 7 to 15 had received no schooling whatsoever.

Education

China has recognized in its Constitution the right to education for every citizen and introduced a nine-year compulsory education system, stipulating that the state should provide nine-year compulsory education for all primary and junior middle school students. Since 1949 the numbers of children attending school has risen and risen. According to most reports the vast majority of children (official figures give 95 -98 percent) now attend and *complete* five years of primary school. However, according to statistics from the China Education and Research Network, the number of primary schools has decreased and enrolment of both primary school and second level school has also decreased.

Most crucially, the law fails to guarantee the funding of compulsory education, thus forcing or allowing many schools, particularly those in the impoverished rural regions, to either go on collecting the tuition fees or charge various “miscellaneous fees” on their students in the name of “voluntary donations”, “fund-raising for school construction” or “after-school tutoring fees”.

The privatization of education and health care means that family illness/crisis can contribute to or cause extreme poverty resulting in a child being sent to work. The shift of responsibility towards local authorities maintaining standards has also seen a rise in the unequal standard of education and opportunities for children – poorer, rural and Western areas along with minority areas have higher drop-out rates and lower standards of education – complete with lower opportunities for tertiary education and employment. This reduces the motives for keeping children in education and the rising costs encourage poor families to remove children. The Compulsory Education law of 1995 states that local governments must be responsible in part for education funding and there has been a corresponding 10 fold increase in school fees between 1991 and 1997.[NOTE 4] Schools now charge fees for tuition, schoolbooks, school uniforms and meals are also paid by the parents. In 2001, the education budget was reportedly only 3.19 percent of the CGP. Although this is the highest rate since 1949, it is still much less than the average education budget in the world - around 5 percent of GDP.

In January 2006, the Ministry of Education released statistics saying that in 2004, school dropout rates at primary schools and junior high schools were at 0.59 percent to 2 percent and 2.49 percent to 7 percent respectively. However in 2004, Northeast Normal University interviewed junior high school students in six provinces and found that the school dropout rate was higher than 40 percent. Girls in particular have high drop out rates. One study by the British Department International Development (DiFiD) reported that a county in Gansu province had a graduation rate of only 25 percent of the children who enrolled in primary school. All were boys. The second year of junior high school is the one when most drop outs occur. Most parents and teachers can assess by that age (13-14), if the children could make their way to high school and if at that time, they realize the children cannot get admitted to high school, they would rather to save the money from sending them to the final year of junior high school. [NOTE 5] In order for junior high schools to achieve a higher rate of high school enrolment rate and hence be considered a good school, some try to expel or persuade low performing children to leave before finishing the end of the last year of junior high and taking the entrance exam. In some reported cases, teachers were monetarily rewarded by persuading “hopeless” students to “voluntarily” leave the school.

In 2002, research by the Beijing-based Internal Migrants Legal Aid and Research Centre found that many child flower sellers, so-called “flower children” working the Beijing bars came from You county in central Hunan province. You county was found to have a school drop out rate of 40 percent among children over 10 years old. Increasing school fees were found to be the primary reason for the increase in drop outs and corresponding increase in child workers.” [NOTE 6]

Education for Migrant worker children

At the same time, while children in the rural areas might not have access to education, their counterparts who traveled with the parents to cities face the same fate, if not worse. The administrative system of *hukou*, or household registration, limits the possibility for rural children to receive education in the cities, even though city schools are better funded. According to the *hukou* system, local governments only allocate their resources, such as education, to the permanent residents. In other words, migrant workers' children, who travel with their parents to a city, where they have no rights to register as permanent residents, even if they were born in that city, are not entitled to schooling provided by the local governments.

Many migrant workers are forced to separate from their children. Without free or cheap children daycare services, while most of the migrant workers are shut in the factories, construction sites and restaurants working long hours up to 15 or more a day, they cannot possibly be able to attend their children themselves. Sending their toddlers to nursery centers, where urban residents send their children to, is out of question. Migrant workers (estimated by official figures to number at least 13 million), receive the lowest possible wages, usually equivalent to minimum living allowance of the city, if the employer pays them lawfully and do not receive any subsidies for childcare that their urban counterparts may do. It is estimated that some 20 million rural children stay in the cities with their parents and 9.3% of these children officially do not go to school at their mandatory schooling age, which means that at least two million migrant children between the ages of 6 to 14 who should receive compulsory education are not receiving any education at all.[NOTE 7]

In 1998, the State Education Committee and the Ministry of Public Security finally addressed the issue by releasing "Temporary Methods for Migrant Children and Teenagers' Education" which allow migrants' children to register at local schools by paying temporary enrolment taxes. However as most migrant workers are paid at best the minimum wage such a method is proving to be unrealistic as the school 'taxes' can amount to several thousand Yuan per year. Some schools also charge for "sponsorship" or their children's application for admission will be turned down. This is why since the mid-1990s, migrants have started to organize and run their own schools which are designed to be affordable and accessible but there is no guarantee of the quality of teaching and payment for teachers. In some areas, we can find the whole school is in fact only one class, with children aged from 7 to 14 sharing a single room, learning the same knowledge, regardless of their age and mental development. The issue of poor learning environment is compounded by the fact that generally these schools are not legitimate educational institutes and cannot issue certificates or direct graduates to higher level of education. Only a few cities have granted legal status to migrant schools.

Seeing that the regulations are not working, several local governments launched some specific and partial temporary enrolment tax exemption measures, as an attempt to include some migrants' children in the state-run schools. However, tax exemption cannot be given unless one manages to go through a complicated application process, such as providing the parents' labour contracts, temporary residential permits, original *hukou* records, etc. Only migrant workers who are formal workers with stable jobs and able to obtain all sorts of documents required, are entitled to this benefit. Once again, the vast majority and the most disadvantaged migrants, who are employed in the informal sectors and have not applied for all necessary documents, are excluded from this new measure. In some cases, even if part of the tax is exempted, migrant workers still find it unaffordable.

"Only a few cities have granted legal status to migrant schools. Xiamen in particular has been praised by official Chinese media for its handling of migrant schools and its attempts to help such schools register and improve standards. The city government has reportedly set aside three million Rmb to raise the standards of migrant schools by training teachers and improving school facilities and safety standards of the premises. Huang Yang of the Xiamen Education Bureau's development and planning department stated that; "Our city government leadership has recognized that a large number of our migrant workers will eventually settle down here. Their children's education will affect the quality of our future resident's". However this acceptance of the need to educate migrant children is not one commonly shared and migrants in general face discrimination and in some cases hatred by the local population."[NOTE 8]

In 2003, China was visited for the first time by the United Nations Special Rapporteur on the Right to Education, Katarina Tomasevski. Her report condemned China's record on education, asserting that the central authorities have failed to provide education for children of migrant workers, and complaining of arbitrary school fees that many families cannot afford and a budget which does not provide adequate funding for education. With only two percent of gross domestic product spent on education, compared with the minimum six percent recommended by UN, China covers only 53 percent of school funding, a much lower coverage when compared with countries with compulsory education policy. She even commented that "even Uganda, a poor country, was doing better than China in guaranteeing the right to education." Her comments were not quoted by China's official media, instead, her visit was described as "Ms Tomasevski appreciated China's effort in improving its education and has raised some suggestions". However, a local internet user posted the original Washington Post report on an internet discussion forum, where s/he hinted that Chinese media failed to report the truth.[NOTE 9]

Education, with its urgent but not necessarily politically sensitive nature, has been a hot topic for National People's Congress (NPC) delegates in their annual meetings in the last couple of years. After increasing exposure, on 5 March 2006, at the opening session of the 2006 NPC meeting, Premier Wen Jiabao pledged that his government would eliminate tuition fees for rural students receiving a nine-year compulsory education before the end of 2007. The new policy would benefit some 160 million school children in the vast rural regions, who make up nearly 80 percent of the country's primary and junior middle school students. [NOTE 10] The government plans to achieve it by increasing financial input for education in the coming five years and gradually raise the proportion of annual education expenditures to four percent of the gross domestic product GDP, according to an official document released on 6 March 2006. [NOTE 11]

However, even this pledge does not solve the problem of those 20 million migrant workers' children who want to study in the cities. If they want to study free, being separated from their parents and returning to study at their hometowns is the only choice, and yet for many this is not a feasible choice.

As of now, what directly addresses the specific issues facing these children is a draft amendment of the Compulsory Education Law, which is currently being reviewed by China's lawmakers. A special provision has been mooted which will add that children of migrant workers are entitled to receive education at the places where their parents and legal guardians work and dwell and requests local governments to ensure that children of migrant workers enjoy equal conditions in obtaining compulsory education. In fact, the whole set of education problems discussed here is not merely an education issue, but also a *hukou* system issue; a result of the rising income gap between sedentary citizens and migrant workers; the lack of teacher training for rural areas; the lack of facilities in the cities to accommodate migrant children; and a social support network for

disadvantaged groups. Without practical recommendations and a full review of these related issues and policies, even the most perfect compulsory education law cannot make a big difference to these children in practice.

Labour shortages and the rising trend of child labour in south China

Increasingly there is a serious issue of a shortage of labour for the unskilled jobs in the south of China. In part this is due to the ageing population but it is also due to increasing demands for better wages and conditions. Some employers are shifting to inland provinces in China to find cheaper labour while others are resorting to the use of child labour. Child Labour has been increasingly reported in the footwear industry and in the smaller workshops producing textiles, shoes and related products. In 2000, media reports said that that 84 children had been kidnapped from southern China's Guizhou province to work in coastal cities assembling Christmas lights. The youngest was 10. Many of the under age workers in the south are young girls ranging from 12 – 16 who are employed for their youth and agility in the textile, garment and shoe making factories. According to a Chinese Women News's report in 1996, 73.5 percent of the bour it had interviewed in six provinces were girls.[NOTE 12]

Some schools act as middlemen for factories to get students working for them at summertime. Due to the labour shortage in Guangdong Province, factories in Dongguan, a massive industrial city, offer summer jobs to young students (age from 11-15) from Hunan and Guangxi.[NOTE 13]

One Chinese media report uncovered a primary school headmaster in Guangdong Province who was found employing students from his school in his private toy factory. According to the report, thirty-five juveniles between the ages of eight and sixteen were found working. When informed of the illegality of his actions, the headmaster allegedly appeared surprised, and claimed to be offering the students an opportunity to earn money. [NOTE 14] There appears to be increasing evidence that children are working with the connivance and often support of the schools in order to help defray school fees and earn commissions for the schools by offering such "holiday" work or apprenticeships".

China Central Television recently exposed children as young as 13 being sent to work in factories (mainly producing toys) in Dongguan, Guangdong under summer job schemes organised by the schools. In return for working some 10 hours a day they received 450-600 Yuan a month. The apprenticeships appeared to be technically legal because the parents signed waivers saying they would not ask for compensation if their children were injured in the workplace. According to the CCTV report, the teachers brokering the apprenticeships were paid commission. Together with about a dozen other classmates, one boy was fired by the factory management for taking an unauthorised break. The group returned home and decided to seek help from local labour authorities which in turn led to the report. Most student however chose to complete their two month apprenticeship". Fearing they would lose their jobs, a few even lied about their ages to CCTV reporters. One 13 year old claimed to be 19. Teachers and factory bosses interviewed for the programme claimed that they were merely helping the children financially by arranging the apprenticeships.[NOTE 15]

Case Study: Primary school students working ten hours daily during summer holiday

When reporters arrived at Houjie, Dongguan city, we encountered a group of workers who looked like students. To our surprise, as soon as we tried to talk to them, they immediately ran away. Through much difficulty, we found this group of skinny kids on the upper level of a workshop in a toy factory. They appeared to range in age from 11 or 12 to no older than 15. The one question they were most unwilling to answer was their age.

Reporter: "Hi, where are you from? How old are you?"

Child worker: "I am from Guangxi, I am 15."

Reporter: "Which grade are you in?"

Child worker: "I am in the fifth grade."

It's hard to believe that a child who is less than 1.4-meters tall and in the fifth grade is 15 years old. Like this girl, other children also had to think for a long time before answering the question. Some of them even gave various numbers:

Child worker: "I am 19."

Reporter: "What sign were you born under?"

Child worker: "Probably the year of horse."

Reporter: "Then when were you born?"

Child worker: "1985"

From the first day they worked in the factory, they were required that whenever someone asks their ages, they must say 16. There are 50-60 children working in this factory. Like the adults, they work more than 10 hours a day. We also noticed that the factory has a regulation forbidding employees to leave their post for more than 10 minutes at a time.

Translation by China Digital Times of a China Central TV report about children working at a toy factory in Dongguan, Guangdong Province during summer vacation. China Digital Times, 12 February 2006

Many of the under age workers in the south are young girls ranging from 12 – 16 who are employed for their youth and agility in the textile, garment and shoe making factories. According to a Chinese Women News's report in 1996, 73.5% of the child labour it had interviewed in six provinces were girls.[NOTE 16] Field studies show that the majority of child workers work very long hours. Most work overtime till midnight and usually only get paid at the end of the year or half year. Female children interviewed in May 2006 revealed that they usually worked from 8am to 9pm (with two hours meal breaks) during the low season and worked from 8am to 2am the following day during high season.[NOTE 17]

For many labour intensive factories child labour is worth while. A recent investigation into child labour, which interviewed 45 workers (mostly children), 8 parents and teenage school dropouts, 12 teachers and headmasters from primary and junior high schools and 12 government officials, showed that the average wage of children is around 400 -600 Yuan [NOTE 18] while the official monthly wages of many migrant workers is around 500 -800.[NOTE 19] Children, being illegally employed do not need medical or social security payments and neither do they complain of long hours or underpayment. Most are too scared to complain and most feel the need to remain at work to help support their families.

Case Study: The reporting in May 2005 of the deaths of five young girls in Hebei province once again brought the issue of school aged employment to the fore. According to sources, Wang Wei, the proprietor of the Lihua Textile Factory in Xixuying Village near Shijiazhuang City, Hebei Province, illegally employed a number of child labourers. Due to substandard conditions in the factory dormitory, five girls were found unconscious from inhaling charcoal fumes at the end of last year. Sources say that without checking if the girls were actually dead, Wang put them into coffins for cremation, with the result that two of the girls who were apparently still alive died of asphyxiation. The five girls ranging in age from 14 to 17 years old, who came from impoverished peasant families in a nearby village? Some of these girls had already been working for Wang for two years. On 23 December 2004 the girls were sleeping in a shared dormitory room when they were overcome by charcoal fumes. Upon discovering them unconscious, Wang did not call for medical assistance, but took them to a crematorium to quickly dispose of their remains. An employee of the crematorium noticed that the bodies of the girls were still warm and their limbs soft, and that no medical certificate accompanied their bodies, so he refused to accept the bodies. Wang and other factory managers then called in a barefoot doctor to certify that the girls were dead, after which they were placed into coffins for cremation.

Sources say that girls' families insisted on viewing their daughters' corpses, but were refused. The factory also insisted that the families make no further inquiries into the girls' deaths as a condition of paying each family 15,000 Yuan in compensation. However, the families still insisted on viewing the corpses, and four days later the factory finally acceded to their request. Upon viewing the corpses, the families discovered that at least two of the girls, 14-year-old Wang Yajuan and 17-year-old Wang Shimian, appeared to have been alive when they were placed in the coffins. Their faces were caked with vomit and tears, their noses had bled and their necks were swollen. Wang Shimian was found to have kicked through the cardboard lining of her coffin, and her body was twisted in apparent struggle. "You see the damage on the corner of the box, the bruises on the side of her head, and the vomit in her hair?" said Jia Haimin, the mother of 14-year-old Wang Yajuan, pointing to pictures of her daughter lying in a cardboard casket stained with vomit and appearing to show evidence of a struggle. "My child was still alive when they put her in there."

The families insisted on a formal medical examination of the corpses. In the meantime, the families of 70 other child labourers held a vigil for the dead girls on December 29. But around 11:00 that night, sources say, more than 100 local public security police broke up the ceremony. The family members of the dead girls were taken to a welfare facility, where they were detained for a day and a night without food. They were denied further access to their daughters' corpses, and one family member, Liu Lianyang, was so badly abused by police that he had to be taken to the hospital for treatment.

In spite of the local government's suppressive efforts, news of the tragedy gradually leaked out. Sources say the local government pressured the parents to accept a total of only 70,000 yuan in compensation as a condition for allowing them to take the girls' bodies. "Sure, there are still lingering doubts about how they died," one parent said. "But what choices do their parents have? Farmers have very low status in Chinese society. Farmers' daughters are the lowest of the low."

According to HRIC's sources, Luancheng County officials have closed their eyes to the existence of some other 100 local factories employing child labour. "Rural families are not like city people — not all children can afford to go to school. So they work to help alleviate the family's burdens," said Sun Jiangfen, the mother of 14-year-old, Jia Wanyun, who died. "In this village, every family has a child working in a factory. Some just 13." Jia was promised about \$100 a year in wages, but she hadn't been paid because she was still considered an apprentice.

Sources: Human Rights in China 2 March 2005, LA Times 13 May 2005

Lack of Enforcement

Although China does possess national legislation banning child labour and related regulations, there remains a serious gap between legislation, its implementation, monitoring and enforcement.

The fines for child labour employing factories remain low in practice. The 2002 Regulations state that employers who use child labour shall be fined at the rate of 5000 Yuan per month for each child labourer used; if child labour is used at work sites using toxic material, the fine shall be based on the provisions of Regulations for Labour Protection at Work Sites Using Toxic Material, or severe punishment shall be considered with fines at the rate of 5000 Yuan per month for each child labourer used. However in reality many firms found using child labour are fined around 10,000 Yuan in total. At the beginning of June 2006, a report by the Yangtze Evening Post reported that a local court in Zhenjiang, Jiangsu Province, fined four companies 10,000 Yuan (US\$1,250) to 40,000 Yuan (US\$5,000) for hiring juvenile workers.

In addition, the chances of discovery are slim given the shortage of labour inspectors and the extensive collusion between private business and local officials. In many cases tip offs of upcoming inspections – either from Chinese officials or sometimes from compliance officers from brand names buying the goods – mean that children are kept well hidden during an inspection or given the day off. The numerous anecdotal evidence of such practices and the disappearance of children out of the factory doors in the face of an inspector reveal how most cases are simply not discovered and therefore the employer cannot be punished and the practice ended as proof is hard to find. The practice is bolstered by double and triple book keeping (on wages, hours, overtime and employees) by many private firms. Complex reporting procedures and inter-provincial red tape often prevent employers being punished for employing children from outside their own province.

In addition, adequate regulations and practice needs to be enforced to ensure that children who are rescued or otherwise discovered working have a proper follow up care and education to ensure that they do not simply get sent back to their impoverished families with no further action by the authorities. At the moment this is lacking and in one case monitored by the Hong Kong Christian Industrial Committee it was found that a sub contractor not only employed children but actively sought child labour from poor rural areas to work in a toy factory in Guangdong province. *“Once the situation was discovered the multinational company subcontracting the Chinese factory allegedly first denied the allegations, however it later accepted that there were ‘irregularities’.* Following this admission they then cancelled their contract with the company concerned without any further action. This in turn led to the company laying off many of its adult staff as well as leaving the children stranded in Guangdong with no means of support or transport home.” [NOTE 20]

Reporting and State Secrets

State secrets in China cover a wide range of issues and areas of control. The scope of what is defined as a state secret covers not only issues concerning national security (such as military or political secrets) but also issues which have not been approved of by the authorities as public.

Statistics are one of the areas most tightly controlled under the legislation and those regarding labour-related topics are very much included in the regulations. Child Labour (along with other labour related areas such as protests, strikes and structural reform[NOTE 21]) is the subject of two main regulations issued jointly by the State Secrets Protection Bureau. The first was issued in 2000 by the State Secrets Bureau and the Ministry of Ministry of Labour and Social Security

(MOLSS), and the other by the All-China Federation of Trade Unions (ACFTU) and the State Secrets Bureau in 1996.[NOTE 22] This material was made public in October 2004.[NOTE 23]

There are three main areas of state secrets; “top secret” (*juemi*), “highly secret” (*jimi*), “secret” (*mimi*). Finally there is “internal” (*neibu*) which, although it is not strictly a state secret, constitutes internal material which should not be disclosed without approval” of the relevant organ. The two regulations dealing with labour related-state secrets include highly secret, secret and internal classification.

“Undisclosed information and statistical data on the handling of child labour cases nationwide” is considered highly secret. There is no officially published national data on the extent of child labour and the number of cases prosecuted is also not published. Data must be collected from unofficial newspaper reports which are often sketchy and many cases are covered up by the local authorities.

In addition, general policymaking is also governed by state secrets legislation when it concerns matters deemed “sensitive.” And relations with the International Labour Organization are also covered by the legislation – making it difficult for the ILO itself to receive and transmit uncensored and transparent information: “plans and countermeasures for participating in meetings of the International Labour Organization and other important international meetings” are classified as “highly secret” by the Ministry of Labour and Social Security, while “work plans and countermeasures concerning participation in the International Labour Organization and bilateral and multilateral communications with trade union organizations of other nations” are ranked as “secret” by the ACFTU.

Reliable and open data are essential for governments and other agencies to tackle child labour effectively. China does have legislation but unless legislation is backed up by implementation on the ground it will be ineffective. China has the additional problem of a lack of civil society overseeing the problem and this, coupled with the lack of freedom of association and independent trade unions means that there is little monitoring of the problem except by the few government resources put into effect. There are increasing press reports on child labour but the data collected is not systematic and there is little serious effort designed to survey the extent and nature of the problem and follow up on specific cases.

The current lack of ACFTU representation in the private sector also means that in most child labour employing factories the ACFTU is not established. The ACFTU, as co-drafter of one of the relevant state secrets labour related laws - as noted earlier - works with the government to ensure that details of child labour cases and other related matters are treated as state secrets and remain hidden.

Conclusions

Although the Chinese government has addressed some of the issues under Convention 138 and has made legislative progress, much remains to be done. The ICFTU is particularly concerned about the lack of implementation of the relevant laws. Therefore the ICFTU suggests that the Committee of Experts may consider recommending to the government to put in place more effective measures to detect child labour and to implement effective measures to prevent employment of children.

Statistics concerning child labour should be made available in a transparent manner. These data should be made gender specific in order to be able to effectively address the employment of girl children. Data on child labour and information on policies and programmes for the prevention and elimination of child labour should not fall under any secrecy law or regulation.

Crucial to all attempts to put an end to child labour are adequate educational provisions and opportunities for all children, including the most vulnerable children – children in rural areas, children from ethnic minorities and girl children. Therefore the ICFTU suggests that the Committee of Experts may consider recommending the government to introduce educational opportunities for the children of migrant workers and to improve rural education facilities to prevent children from being led into employment.

Kindly forward this document to the Committee of Experts for examination during its forthcoming session.

NOTE 1: REPORT OF THE DIRECTOR-GENERAL, Global Report under the follow-up to the ILO Declaration, INTERNATIONAL LABOUR CONFERENCE, 95th Session 2006 , Report I (B)

NOTE 2: As reported in China Labour Bulletin, As China's Economy Grows, So does China's Child Labour Problem 6 October 2005

NOTE 3: A recent report in the China Daily quoted the State Council Leading Group Office of Poverty Alleviation and Development as saying that the official poverty line of 680 Yuan (85 U.S. dollars) per capita net income a year is too low and has failed to reflect the average standard of living. According to official figures China has 23.65 million people living below the poverty line but experts estimate the number should be around 120 million to 130 million, using the internationally-accepted one U.S. dollar per day guideline. China Daily, 23 August 2006

NOTE 4: CLB, Education in China: A short introduction, <http://www.china-labour.org.hk/public/contents/article?revision%5fid=3299&item%5fid=3298>

NOTE 5: China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的

实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 6: An Investigation into the Phenomenon of Rural Children Selling Flowers in Chinese Cities, *Undertaken by the Child Flower Sellers Research Team* , published by CLB, June 2005, <http://www.china-labour.org.hk/public/contents/article?revision%5fid=15886&item%5fid=15885#2>

NOTE 7: <http://www.ep-china.net/content/academia/e/20040215154144.htm>

NOTE 8: China Labour Bulletin (CLB), Education in China: A short introduction, <http://www.china-labour.org.hk/public/contents/article?revision%5fid=3299&item%5fid=3298>

NOTE 9: <http://bbs.jxgdw.com/archive/index.php/t-18037.html>

NOTE 10: http://english.gov.cn/2006-03/08/content_222570.htm

NOTE 11: http://english.gov.cn/2006-03/06/content_219838.htm

NOTE 12: China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的

实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 13: China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的

实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 14: *Southern Metropolis News, August 11, 2004 "Primary School headmaster hires own students as child labor" the education department considers suspending headmaster*

NOTE 15: *CSR Asia, CSR Asia Weekly, Vol 1, Week 45*

NOTE 16: *China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的*

实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 17: *China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的*

实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 18: *China Labour Bulletin, Survey Report on Child Labour in China, Chinese version, 关于中国童工现象的*

实地考察报告, May 2006, http://big5.china-labour.org.hk/fs/view/Childlabour_simplified_chinese.pdf

NOTE 19: *"Migrant workers' Research report" issued by the state council in April 2006.*

NOTE 20: *China Labour Bulletin, Child Labour in China: Causes and solutions,*
[http://www.china-](http://www.china-labour.org.hk/public/contents/article?item_id=3304&revision_id=3305&print=1)

[labour.org.hk/public/contents/article?item_id=3304&revision_id=3305&print=1](http://www.china-labour.org.hk/public/contents/article?item_id=3304&revision_id=3305&print=1)

NOTE 21: *In addition information on Industrial accidents and occupational illnesses, unemployment rates and related social security matters, wage policies, embezzlement of social insurance funds, labour unrest and worker protests are also covered.*

NOTE 22: *General Office of the Ministry of Labour and Social Security and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Labour and Social Security Work, January 27, 2000 and All-China Federation of Trade Unions (ACFTU) and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Trade Union Work, May 27, 1996. Translation taken from "Human Rights in China" (HRIC), China Rights Forum, No.3, 2004*

NOTE 23: *Human Rights in China and China labour Bulletin: Labour and State Secrets, China Rights Forum, No.3, 2004*

Annex 1c: ICFTU Observations to the ILO Committee of Experts on the Application of Conventions and Recommendations on Convention No.122 on Employment Policy

Keywords: Discrimination, right to information, engagement of civil society, freedom of association, state secrets, exclusion, economic and social rights

ICFTU Comments to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (31 August 2005)

With a view to informing the Committee of Experts on China's implementation and adherence to Convention 122, the ICFTU is submitting this summary report of its major concerns regarding employment and related issues inside the PRC.

Article 1

With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

2. The said policy shall aim at ensuring that--

(a) there is work for all who are available for and seeking work;

(b) such work is as productive as possible;

(c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

1. Articles 1 and 2: Employment for all available and seeing work

1.1 Background and statistics

The ICFTU recalls that in its 2005 Report, the Committee of Experts quoted a Government report according to which "*China "recorded almost 8 million registered unemployed in the urban areas, of which 3.5 million were workers laid off from state enterprises. The total number of unemployed was estimated at 24 million, and the yearly new arrivals in the urban labour markets at 10 million. A continued annual level of economic growth of 7 per cent should allow for the creation of approximately 10 million new jobs per year, but the supply of labour is expected to continue to exceed the demand for years to come."*

While the progress that China has made towards creating employment opportunities has already been noted in the report of the CEACR in 2005, it should be pointed out that it is extremely difficult to calculate and assess the true extent of unemployment and employment in China. This is partly due to a lack of resources and inadequate information collation systems. However it is also due to continuing secrecy and a lack of transparency regarding many forms of statistics and potentially sensitive issues including those relating to employment.

For example, estimates of new job seekers range from 10 million to 15 million every year, as quoted by the official news agency Xinhua, while some unofficial sources have placed the

number of people entering the job market as high as twenty-five million. This is in comparison with the creation of some 8 to 10 million new jobs. (*Xinhua on 2 February 2004*).

In 2004 the unemployment rate was reported to have dropped 0.1 percentage point over 2003 making it 4.2 percent registered unemployment in urban areas, but several gaping holes in reporting and complexities in registering as unemployed make this number grossly inaccurate. Firstly, it measures only registered urban unemployment, secondly it does not record laid off SOE workers (registered and unrecorded *xiagang*) or those who have been laid off but are paid some form of minimal living allowance. Thirdly it does not calculate the approximately 150 million rural workers who only hold temporary or seasonal jobs in cities nor those forced to take early retirement, young people “waiting for work”, people on long-term “holidays” or “maternity leave”. Finally it does not consider rural unemployment or under employment nor the number of out-of-work migrants from the rural areas. According to the figures quoted in the CEACR report there is a total of 24 million unemployed which contrasts sharply with the estimates of some others which put the number far higher. In 2001 a Beijing research group (Development Research Center) reported a more accurate assessment of urban unemployment, said to be around eight to nine percent, contrasting with official figures then giving 3.6 percent. Other recent estimates put the figure at 10 -12 percent. In some post-industrial areas, unemployment is around 20 percent and rising and while many coastal regions have been able to create new jobs for both local and migrant labour other regions have a very serious unemployment problem. Some forecasts have estimated that the total number of people unemployed or “not fully employed” will be just under 140 million or nearly 20 percent of the working-age population by the year 2006, while other figures point to 30 percent unemployment and underemployment in rural areas.

As can be seen there is a plethora of statistics from which to choose and it is impossible to assess which is most genuine. There are in fact no fully accurate figures on unemployment, reemployment or employment and neither are there precise figures on unemployment for women or ethnic minorities, and therefore it is difficult to accurately gauge unemployment for various sectors of the population and hence the efforts of the Chinese government to remedy unemployment.

While ILO programs to help improve employment reporting and statistical measurements have had a positive impact, basic improvement in the reporting of employment related statistics cannot be achieved as long as they continue to be considered as internal information, an issue examined in more detail in the following section.

1.2 State secrets

State secrets in China cover a wide range of issues and areas of control. The scope of what is defined as a state secret covers not only issues concerning national security (such as military or political secrets) but also issues which have not been approved of by the authorities as public. The range even covers previously published material. These laws allow for an almost indefinite and extremely elastic expansion of the definition. In addition, material can be retroactively classified as a state secret if the authorities determine that the consequences of its disclosure have harmed or have the potential to harm the “security and interests of the state.” Chinese citizens have no power to challenge the classification of a state secret and once charged with a state secrets offence, their trial is generally held *in-camera* and certain restrictions limit the right of the defendant to adequately defend him/herself. The penalty for divulging state secrets is also an elastic one and can command the death penalty in especially serious cases.

Statistics are one of the areas most tightly controlled under the legislation and those regarding labour-related topics are very much included in the regulations. Employment (along with other labour related areas such as protests, strikes and structural reform) is the subject of two main regulations issued jointly by the State Secrets Protection Bureau. The first was issued in 2000 by the State Secrets Bureau and the Ministry of Labor and Social Security (MOLSS), and the other by the All-China Federation of Trade Unions (ACFTU) and the State Secrets Bureau in 1996. This material was made public in October 2004 by Human Rights in China (HRIC). There are three main areas of state secrets; “top secret” (*juemi*), “highly secret” (*jimi*), “secret” (*mimi*). Finally there is “internal” (*neibu*) which, although it is not strictly a state secret, constitutes internal material which should not be disclosed without approval of the relevant organ. The two regulations dealing with labour related-state secrets include highly secret, secret and internal classification.

The regulations state:

“Undisclosed unemployment rates, social insurance fund revenue and expenditure forecasts” of the Ministry of Labour and Social Security and *“composite information and statistical figures held by the ACFTU concerning the unemployment and livelihood hardships of workers”* are “secret”. Statistics about the total number of “laid-off workers” (*xiagang*) in State-Owned Enterprises (SOEs) and the *“distribution plans concerning basic living guarantees and re-employment funds”* for these workers are categorized as “internal”. Information on wages for those employed including *“investigative materials and statistical data which reflect the macroscopic situation of wage distribution in enterprises nationwide”* are “secret” whereas information such as *“revised wage policies and plans concerning enterprises at the national level”* is regarded as “highly secret.”

In addition, any objective assessment of the provision of benefits, pensions and other allowances for SOE workers or former workers is hampered by the fact that official corruption regarding such payments is also considered secret - *“information concerning major cases of embezzlement and the illegal use of social insurance funds, and informants in such cases”* is in fact “highly secret.”

Labour unrest and protests by workers are covered by both the regulations and are “highly secret”. For example in the MOLSS regulation; *“Composite nationwide information regarding workers’ collective petitioning, strikes, and other major incidents”* is classified as “highly secret” while the ACFTU-issued regulation also considers *“composite information and statistics held by trade unions on workers’ collective petitioning, strikes, demonstrations, marches and other major incidents”* as “highly secret”.

Furthermore, *“plans and countermeasures for participating in meetings of the International Labor Organization and other important international meetings”* are classified as “highly secret” by the MOLSS regulation and *“work plans and countermeasures concerning participation in the International Labor Organization and bilateral and multilateral communications with trade union organizations of other nations”* are ranked as “secret” by the ACFTU.

More broadly, general policymaking on potentially sensitive issues such as national policies on social security, welfare and labour in general is also protected as a state secret - *“statistical materials on labour protections”* and *“undisclosed implementation of major policy measures and revised plans concerning labor and social security matters”* are “internal”.

These regulations add to the pervasive paradigm of secrecy within the central, provincial and local authorities and the fact that many authorities are used to under- or over-reporting to fulfill quotas or to ensure praise and not reprisals and make it almost impossible to fully collate relevant information and monitor progress or compliance with Convention 122.

The ICFTU would suggest that in order for ILO programs to have maximum effect and sufficient feedback, the Committee of Experts urge the Chinese government to reduce its reliance on draconian and expansive state secrets laws. Instead the ICFTU suggests encouraging the free flow of information to help bolster employment policies at the same time as providing the ILO and other bodies to which China has reporting duties, with the ability to obtain clear, accurate and transparent statistics.

1.3 SOE reform, unemployment and redundancy

One of the main causes of unemployment comes from the restructuring of the former state owned enterprises (SOE). The government is pushing ahead with increased restructuring since WTO membership – even before this, however, the number of jobs lost through restructuring has been phenomenal. The Ministry of Labour also reported that between 1997-2000 SOE jobs decreased by forty three million while private sector and non-state sector jobs only increased by 16.5 million. Along with this has been the dismantling of job security, long term contracts and welfare for workers.

Although planned restructuring is playing a major role in the dismantling and restructuring of SOEs, a large proportion of SOEs are failing because of internal corruption and mismanagement. In many cases bankrupt SOEs are not able to fulfill their obligations to their workers or ex-workers. Many SOEs will lay off workers (*xiagang*) who are not classified as unemployed as they are still contracted to the company (this classification stays for three years when they are re-classified as “unemployed”). The SOE is then responsible for their living allowances and other benefits while they are not working. An obvious contradiction underlying this system is that the companies lay off workers to reduce unit costs in the face of increased market competition and are often unwilling or unable to pay the layoff allowance that workers are entitled to - despite the fact that local governments are supposed to make up any shortfall in living allowances and benefits. In many cases monitored by labour groups it is clear that the non-payment of such allowances to *xiagang* employees is a major cause of industrial unrest and such unrest can often escalate into protests involving several tens of thousands of workers. In many of these instances, the reasons behind the failure to pay allowances, pensions, medical expenses and sometimes even wages is due to management corruption.

When workers do attempt to recover missing benefits and call for investigations into corruption or mismanagement they can be dismissed or detained by the authorities. Official silence over corruption is bolstered by the fact that information relating to “*majorcases of embezzlement and the illegal use of social insurancefunds, and informants in such cases*” is “highly secret.”

In order to attract foreign investment and much needed injections of cash SOEs are shedding workers at a remarkable rate – one which the private sector creation of new jobs has yet to catch up with. In addition, many newly transformed SOEs take advantage of the new emphasis on “market” economics and the lack of job security asked for by the government and rehire cheap labour after laying off older workers originally employed on relatively good terms. Many workers laid off from SOEs find themselves out of a job while watching new private investors transform the SOEs into a profitable business and employ cheaper migrant workers on short terms contracts on much lower wages. The ICFTU is of course aware of the fact that similar trends in

restructuring also exist in many other countries, both industrialized and developing. The problem is however amplified in China owing to the sheer size of the country and the massive scope of restructuring; it is also compounded by the various restrictions of workers' rights prevailing in China.

While the changes taking place in the state owned enterprises will be painful to many adversely affected, the ICFTU would hope that the government can ensure that all xiagang and formerly unemployed workers receive the payments and allowances to which they entitled. It also hopes that corruption and mismanagement of SOEs and former SOEs is neither unnoticed nor unpunished and that workers taking management to task for failure to provide benefits or calling for investigation into alleged corruption are given adequate opportunity to have their concerns dealt with and their grievances redressed. It would also like to see the government take seriously its responsibilities to the millions of laid-off workers and their families and ensure that living allowances and social security schemes can reach them and provide a sustainable living.

Foreign Investment and employment

In addition, there has been growing concern over the lack of oversight and employment regulation in the private sector, which includes the majority of foreign direct investment (FDI). This includes poor working conditions, long hours and low wages. Many claim that FDI is given preferential treatment at the expense of Chinese workers. However, much FDI actually consists in taking over existing responsibilities, buying existing assets and SOEs, as opposed to the creation of wholly new enterprises and jobs.

The enforcement of legislation governing wages, working hours, contracts and OSH requirements is often ignored by many employers but the situation is especially bad in the private sector and often particularly in the Special Economic Zones. In many instances, especially in the south, wages are higher than elsewhere in the country, but there are also claims that local authorities have been offering incentives which reduce heavily the necessary benefits, overtime payments and other related requirements usually called for by domestic laws, thus encouraging sweatshops, low wages and the continuance of unskilled labour as one of the "attractions" of investment in China. While FDI has created many jobs, much of the FDI attracted is cost-minimized and encourages the creation of labour-intensive low-paid jobs. Indeed the majority of investors favour China in particular not just because of its market potential but also for its extremely low wages and government incentives as opposed to rule of law, transparency and educated workforce favoured in some other developing countries. It cannot be denied that China has an abundant supply of cheap labour but it is yet to be seen if government policies are encouraging the development of this workforce (both in terms of wages, benefits, skills, training and education level) as opposed to its continuance in its bid to attract FDI. While China claims it wants to attract investment which encourages the growth of a skilled workforce and its tertiary sector, the actual reality of its policies on the ground reveals a very different development.

Employment training and education

The lack of training for workers is another major obstacle to improving the opportunities of decent work for the majority of workers in China. Chinese legislation states that workplaces must provide training to employees, but many use funds set aside for training on managers, leaving little or none for ordinary workers.

In particular migrant workers remain one of the most under educated and untrained sectors of the labour force – a recent survey (August 2005) by the Ministry of Labor and Social Security showed that average levels of education and training were also low: 83 percent had only reached junior middle school level and 72 percent had received no employment training at all. In the construction industry, 76 percent of all workers are migrant (some 32 million), but few have received employment training. Problems are now coming to the surface as the south of China faces a shortage of skilled and trained workers as wages increase and low-skilled jobs move inland in search of ever cheaper labour and ever more uneducated workers

The role of foreign investment will continue to grow in China and the ICFTU suggests that the ILO call on the Chinese authorities to ensure that FDI encourages positive domestic growth and improved labour conditions by following international guidelines such as the ILO Tripartite Declaration. The ICFTU also hopes the ILO will strongly support training and education opportunities for “ordinary” workers in China and in particular efforts to raise the status and employment opportunities for migrant workers.

2.3 Social security/pensions and medical care

As mentioned, the “*undisclosed implementation*” of “*plans and measures*” and “*statistical materials*” concerning social security and living allowances for laid off workers, are considered internal and this ensures that the real status of reforms to the social security system remains unclear – it also makes it almost impossible to gauge how many workers are receiving newly instituted benefits.

While there has been some improvement in the coverage of both urban and rural schemes for unemployment insurance and related provisions, efforts to improve the social security systems have generally been poorly implemented and piecemeal. In many areas the authorities still rely on SOEs for provision of benefits to laid off workers – despite many SOEs failing in their responsibilities - and in some urban areas there have been some recent advances but such schemes still only cover a small number of workers and their families.

Despite low wages and restrictions on the choice of work, previous forms of employment in China (through one’s work unit or “danwei”) gave many workers full coverage in the most needed areas of education, medical coverage, pension, maternity and living allowances in case of layoffs or disability. The concept of state provision for medical and other social security benefits is now being replaced with a “pay as you earn” system which puts the onus onto the worker and not the state [except for those already laid off from SOEs who are still covered by SOE provisions -generally being phased out]. This has meant that many workers fall outside coverage – they do not belong to a pay as you earn system, nor do they receive benefits from an SOE. This includes most rural residents, most migrants (although this is beginning to change) and many in the private informal sector or those on short term contracts.

In the past 10 years or so there has been extensive progress towards establishing a comprehensive social security system to replace insurance coverage by the state sector. There are both “pay as you earn” schemes with individual accounts and pooled resources. Social security schemes now cover the five main areas of pensions (endowment insurance, unemployment insurance, medical insurance, and industrial injury insurance and maternity). A major aim of these reforms was to increase the number of workers covered (and not just those in SOEs), however despite claims of extensive coverage and success in reality they are failing to produce the results that were hoped for. The reluctance on the part of the government to classify workers as “unemployed” - and

therefore to register them as unemployed is partly believed to be because of inadequate social security resources. However the main cause of the relative failure of these reforms resides partly in corruption and mismanagement and partly in a lack of resources entering these funds and the lack of national coverage [as opposed to piecemeal and localized initiatives]. Indeed mismanagement and even embezzlement of labour insurance funds by company managers have constituted widespread abuses. Ample evidence exists of such cases, as well as of repression of collective workers' protests against such practices, as evidenced by successive issues of the ICFTU's Annual Survey of Violations of Trade Union Rights (available at www.icftu.org/survey/).

An effective social safety net that covers all workers is essential to managing industrial restructuring of the state owned sector in China and to ensure that workers in privately owned companies received adequate coverage in the event of retirement, illness, maternity, injury and unemployment. At present this system is far from adequate with millions of workers – predominantly rural and migrant workers falling through the net. The ICFTU hopes that the ILO will further encourage the Chinese government to invest more money and legislative weight towards creating a national unified system that covers workers of all class and geographical areas (including the rural poor and migrants) as soon as possible. It also hopes that information relating to the creation of such funds is made available to the ILO and similar bodies and in particular that “*information concerning major cases of embezzlement and the illegal use of social insurance funds, and informants in such cases*” is also made available and adequate safeguards preventing future misuse are established.

Employment Centres

SOEs are required to establish re-employment centres to assist their *xiagang* workers. These are now being phased out and only a very small minority of workers made redundant by SOE's find help in re-employment centers set up by their company, where they can receive up to half their former salary and some training for new employment. Previously it was claimed by the government that some 95 percent of all laid off SOE workers had registered at re-employment centres and all but 6 percent of those registered were receiving basic living expenses from their former employer. These figures appear to be in contrast to the increasing number of protests by laid off workers who claim not to be receiving any benefits or allowances from their former employees (see below). While new labour centres are being developed these only cater to small groups of urban workers.

The ICFTU emphasises that access to the services of public employment offices by all workers including migrants is a key part of a successful labour market policy

1.4 Wages and employment

The quest for a living wage while employed

There have been undeniable and very welcomed increases in the standard of living for many in China, yet there is still a considerable number of people who, despite working way in excess of the maximum number of working hours (in many cases much more than even the maximum amount of overtime allowed under Chinese law) do not receive a living wage and cannot afford to keep a family above the poverty line on such wages. In the cases of migrant workers employed in the private sector in unskilled jobs, most cannot afford to keep their families in the cities and leave them at home to survive on the farm or in an extended family network. Many wages for

those employed at the lower end of the social scale do not pay enough to provide food, rent and other basic necessities for a family. In the countryside the estimated number of those living below the international poverty line is at least 100 million. Only a few people can afford the new symbols of status such as expensive cars and foreign holidays. Most can still barely afford daily necessities, let alone savings, education for their children and medical costs in the event of an illness.

According to some figures, overall inequality in disposable income (the Gini index) increased from 28.8 to 41.6 in the period from 1981 to 1999 giving China an income disparity worse than that of both India and Indonesia, at 34.3 and 32.5 respectively and this difference is growing – some estimates now put the figure at closer to .5.

While China is developing its economy on the backs of its massive and cheap workforce, the ICFTU believes that sacrificing workers' rights to achieve economic competitiveness is not an effective or sustainable strategy. Already we are seeing companies move to countries with even lower wages such as Cambodia and Vietnam. A priority must be to shift to a more balanced and qualitative growth structure which provides sustainable economic growth and employment for the majority of China's workers. This is based on ensuring that priorities for growth are adapted to meet the needs of workers and they are not ignored in order in favour of foreign investment or a growing middle class. The ICFTU hopes that the ILO will further encourage a more even spread of resources and opportunities and that the growing imbalance between rich and poor, inland and coastal and east and west in China is halted.

1.5 “Full and productive employment” and the non-payment of wages

It has been estimated that in August 2004, over 360 billion Yuan (about \$US 45 billion) in unpaid wages remained owed to migrant workers. In the state sector the problem is especially serious for workers in failing, near bankrupt and bankrupt SOEs – including those in the process of restructuring when previous promises and wages are not honoured by the new management. In some areas – especially regions where heavy industry was formerly concentrated - missing wages from SOEs is rife. For example in the northeast of China, protests over wage arrears are a regular occurrence (see below). The provincial authorities are complicit in the problem by ensuring that there is a culture of impunity for enterprises withholding wages and other benefits (often because of the intertwining of SOE management and local officials).

In the private sector those affected 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. Migrants are often recruited by an individual contractor who arranges for a group of migrants to work on a project. There is then a legal ambiguity about who has actually employed the workers and who is liable for their wages – especially when, as is all too common, the sub contractor disappears and the project company refuses to pay wages directly as it claims it has already paid the contractor the amount.

The ICFTU welcomes the launching by the government of a major campaign at the start of 2004 to seek repayment of missing wages for migrant workers and to assist workers in struggles to seek payment. However, although the government has been very active in pursuing cases of missing wages and has recovered a large amount of wages the successes the government has consistently

reported cannot provide the full picture. According to officials the campaign has met with every success – in 2004 employers across the country had paid out approximately 14.8 billion Yuan (about 1.79 billion US dollars) in overdue wages to migrant farmer workers, over 90 percent of the 16 billion Yuan (1.93 billion US dollars) owed in 2003, while employers paid 22.89 billion Yuan (2.76 billion US dollars) in overdue payments to migrant workers and construction teams in the two months leading up to Chinese New Year in January 2004 - or about 72.3 percent of the total accumulated. By August 2004, official sources were claiming that unpaid wages in 2003 for migrant workers had been essentially recovered.

However, the number of migrant workers and the wages repaid only apply to migrant workers with contracts, while a large proportion of migrants in fact work without written contracts. Indeed some estimate that up to 90 percent of migrants work without contracts, in violation of China's Labour Law. In addition there are too few penalties for not paying wages and many companies can simply shrug off any limited fines imposed.

1.6 Occupational Health and Safety

While Convention 122 does not specifically address the issue of occupational health and safety it does call for active policies designed to promote “productive” employment. Productive employment surely does not mean employment with such high levels of human wastage as in China. Many thousands of Chinese workers die needlessly every year because their workplaces ignore and flout health and safety legislation or because they operate illegally. For example, 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 have doubled 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.

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. A case in point is the recent Daxing mine disaster in Xingning city, in the southern province of Guangdong where local officials were shareholders in the illegally operating mine. The mine had been operating illegally when it flooded on 7 August 2005 killing some 123 miners. It was later found that several shareholders were also local officials and that the owner was also a policeman – along with several others who had reportedly bought their “police” positions – who unsuccessfully spent over 300 million Yuan in covering up the disaster after he forced the miners to carry on working at night after the pit was closed down on safety grounds.

2. “Fullest possible opportunity”

The ICFTU warmly welcomes the very recent ratification (on 28 August 2005) by the Standing Committee of the National People's Congress of ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation. It looks forward to reading in due course about the effect given by the Chinese Government's to this key-ILO instrument. In the meantime, however, it considers it essential to indicate how current patterns of discrimination in treatment and opportunity in employment for large segments of the country's workforce are incompatible with the principle of “fullest possible opportunity” specified in art (1) (c) of the Employment Policy Convention, especially since many of these patterns have in recent years been increasing in scope and not decreasing, as explained below.

2.1 Sexual Discrimination

Redundancy and reemployment

There have been great advances for women in China since 1949 but recently some of these advances have been steadily eroded. In the recent economic reforms in the state sector women have been the biggest losers and are 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 some 70 to 80 percent of 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 (*Regulations Concerning the Arrangement of Surplus Workers of the State Owned Enterprises*) governing SOE reform 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. In some cases, SOE management believes that, because many couples work for the same SOE (especially in the industrial cities where the entire local labour market is dominated by an SOE), it is best practice to lay the women off first so that they can care for the family, while their husbands continue to earn a wage. In addition local authorities perceive that rising unemployment among men poses much more of a threat to social stability than a town of unemployed women who work in the home, who are not registered as unemployed and are therefore also not included in the in official statistics on unemployment for that region.

In terms of re-employment, women workers also 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 the 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.

Another cause of the discriminatory firing and hiring policies is because of the restrictions in Chinese law on the types of work not acceptable for women and other clauses in the legislation governing women’s employment. Older women are seen to be more expensive because of the legislation outlining various benefits and compulsory rest periods for women, so most enterprises prefer hiring very young female workers. Labour laws and laws such as the “Law on Protection of the Rights and Interests of Women” provide restrictions for the type and duration of work women can undertake during menstruation, pregnancy, and breastfeeding. Certain types of work are forbidden to women during these periods and some work is restricted at all times, including for example work at high altitudes or extreme temperatures. They also put the retirement age for women at 50 compared to 55 for men. Leaving aside the huge sectors of the economy where women are simply denied their statutory rights and benefits, there has been increasing debate on the negative effects of such protectionist legislation that emphasizes women’s physical and biological differences with men. These laws, initially designed to protect women, are now helping to perpetuate the differences in employment and opportunities.

Despite the many protections outlined in regulations, some of the most basic ones are disregarded by most enterprises, especially in the private sector. For example, for many women, becoming pregnant entails the end of their working life at a particular factory. Laws regarding non-termination of work contracts for pregnant and nursing mothers are often not enforced and

women are dismissed. In terms of social security, while there has been some real progress towards the creation of provincial or even national welfare systems which would provide benefits such as maternity pay and child care, at the moment, until the system is more comprehensive, industries or enterprises with a high proportion of female workers often see their choice as being to either deny such benefits to their female employees or to dismiss them in favour of men or women who do not ask for these benefits.

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 reemployed. Many will leave a factory post at an SOE 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.

Lower pay for those in employment

Discriminatory hiring practices, unequal educational opportunities and cultural influences help ensure that many women are forced 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 by 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. For example, despite a growing labour shortage in Guangdong province (as companies travel inland in an ongoing race to the bottom), employers are still asking for young woman workers. According to a Labour Bureau official in Dongguan for example, in 2004, of those Dongguan enterprises that were facing shortages last year, 75 percent were looking for women, and 60 percent were trying to find women aged 18 to 25.

The ICFTU recommends that legislation be adopted that expressly prohibits gender discrimination at work, both direct and indirect and that these laws and existing regulations are adequately enforced and encouraged. It further recommends that the ILO encourage the Chinese authorities to seriously consider and counteract the negative effects on women of current economic reforms and to ensure that women are given equal education and training opportunities (especially in rural areas where inequalities are extreme). 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. Also desirable is the promotion of women’s right to freedom of association at work, their increased involvement in worker organisations and government bodies and their right to strike. In addition the ICFTU also recommends the publication of gender specific employment related statistics.

2.2 National extraction and social origin

2.2.1 Ethnic Minorities

In the Xinjiang Uighur Autonomous Region (XUAR), it has been alleged that in 1949 around 90percent of Xinjiang's population were now ethnic Uighurs [a central Asian Turkic speaking

group] compared to less than half in 2004. The rising numbers of Han immigrants [China's largest and most dominant ethnic group] to the XUAR has given rise to claims of cultural assimilation and economic marginalization. The development projects in progress (and the 'go West' campaign in general) are mainly infrastructure projects which benefit the urban Chinese sector of the population and are designed to bring in revenue to the central authorities. A byproduct of this is to provide employment for thousands of Han Chinese who are given substantial incentives to move to XUAR. This had led to locals arguing that the reforms have brought little opportunities for ethnic Uighurs who instead are becoming marginalized and pushed out by more affluent Han businesses and rising costs. Local unemployment in XUAR remains extremely high and is rising although there are no specific figures published by the government for unemployment in XUAR. Problems of education for Uighurs in their own language and the lack of adequate schooling for Uighur children also contribute to the imbalance in employment opportunities and there is little in the way of major poverty alleviation or minority development programs.

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.

Economic tensions are also rising in other regions between ethnic minorities; for example some Hui minority people in rural inland areas such as Henan province have been caught up in violent disturbances with the local Han population - many complaining of not being given any real economic opportunities. In the south west of China drug addiction, prostitution and trafficking among the border areas of Yunnan province reveal similar stories of unemployment among the 25 local ethnic minorities in Yunnan.

The ICFTU considers there is a very strong need for employment policies which actively try to redress the imbalance between racial groups in China. It further believes that a careful evaluation of large development projects in the west of China is urgently required. It recommends that such projects should not be discriminatory in either design or implementation and that ethnic minorities concerned have full and equal access to the economic and social benefits such projects are meant to bring. Energy exploitation initiatives in ethnic minority areas should similarly benefit the local population and local industry. The ICFTU furthermore suggests that statistics and other relevant information on the particular employment/unemployment patterns among different ethnic groups in China should be produced and published and that the secret classification of "composite information" on unemployed workers held by the ACFTU be declassified and such material made available as such material could greatly enhance efforts to redress severe imbalances on either ethnic or racial grounds in employment policies and access to the labour market.

2.2.2 Migrants

There are some 150 million rural workers seeking or with employment in the cities and this number is growing. The number of new migrants seeking work is increasing by almost 6 to 10 million every year, depending on which figures are quoted. These new rural workers generally do not have the training, the education or the residency permits needed to compete for the better, registered jobs in urban areas.

Workers from the countryside are discriminated against in several main areas. A first element resides in the extensive restrictions on freedom of movement brought about by the “Hukou” system. The Hukou system is a form of household registration whereby each family member is registered according to his/her family residence. Rural residency can only be changed with great difficulty. The majority of rural residents, despite living in urban areas, have to keep their rural status which is also passed onto their children. It is now estimated that there are some 100 plus million people who are living in areas different from their registered status. To reside illegally in an urban area for example usually means being illegible to receive benefits such as education, access to medical care, housing and other state services.

Owing to the “Hukou” system, rural workers only hold rural residency status which disqualifies them from freely seeking and obtaining the better paid opportunities in the cities unless they can obtain temporary residency and work permits. Employment opportunities are initially often – but not always – obtained through a labour recruiter who travels to villages and rural towns seeking groups of potential migrants to work on projects in the cities. In many cases the potential migrants have no real way of knowing what type of work they will undertake and if they will be paid what they are promised - often promises fail to materialize. Many leaving the countryside often resort to working illegally without permits or residency, which means that they are employed without written contracts and without any benefits such as medical care. They are more vulnerable to arbitrary dismissal, illegal working conditions and non-payment of wages.

Cultural discrimination against migrants, a lack of educational opportunities in the countryside and the ease with which they are often exploited makes them eligible merely for low paying positions in labour intensive industries. Although this situation is being remedied with increasing wages and demands by migrants in the south, too many of them are still employed at the lowest rates of pay.

2.2.3 HIV, Hepatitis B and other discriminatory practices

Many other discriminatory employment practices remain the norm creating unequal opportunities for employment for other sectors of the population including those suffering from chronic or acute illnesses such as HIV or Hepatitis B. The ICFTU welcomes the recent newly drafted pilot regulations and revised medical examination rules for civil servants encouraging non discrimination of Hepatitis B sufferers applying for government posts, but notes that chronic or acute sufferers (those who may exhibit symptoms) are still denied employment with many government offices and private firms – indeed cases of factory workers testing positive for Hepatitis B being sacked have also been reported. Other discriminatory practices, including asking for female applicants with “regular features” for office workers, applicants over a certain height and with no physical deformities for civil service posts and similar unfair practices continue to be commonplace in both government recruitment and private recruitment. The ICFTU strongly recommends the phasing out of such practices.

3. Article 3: Consultation and Co-operation

According to the Statement adopted by the ILO-sponsored China Employment Forum in 2004, one of the main aims of future work on employment is *“Strengthening tripartite social dialogue as an important mechanism for preventing and resolving conflicts, contributing to employment promotion and fostering social stability, as well as for enhancing enterprise performance”* . Convention 122 also calls for dialogue and the participation of those affected by policies. However there seems to be no real movement towards including workers in the drafting of new

laws and the shaping of government practice. Indeed the exclusion of workers from the decision making extends to the prohibition of independent worker-organized and led trade unions and the prohibition of effective freedom of association. While workers are classed as the “masters of the state”, in reality lower paid workers and farmers in search of a job are increasingly marginalized in a society where the gap between the haves and the have-nots is increasing.

Despite some progress in removing tax and other burdens from the rural population, local corruption and lack of opportunities (including education) ensure that the rural poor remain the fodder for China’s factories. Ordinary workers in SOEs and private enterprises are being ignored by the local and central bodies when they attempt to demand respect for their rights. Many individual workers end up becoming “petitioners” who travel to the capital in the vague hope of influencing an official to hear their case.

The China Employment Forum also stated that “Equal employment opportunities for all, respect for workers’ rights and full employment are of primary importance in achieving social justice, economic development and world peace.” However despite this rhetoric China has still not ratified the fundamental conventions of the ILO in respect to worker’s rights. There is no effective freedom of association, the right to strike is not clearly guaranteed and only one, government-sanctioned, trade union is allowed to operate – the All-China Federation of Trade Unions (ACFTU).

Restrictions on worker rights and the role of the ACFTU are partly driven by the government’s fear of losing control of its decentralised organs but also because of fear that such rights may lead to an erosion of its low wage advantage for investors. For example, at the same time as ratifying Convention 111, the NPC Standing Committee also passed a revised Security Administration Punishment Law outlining administrative penalties for public order offences. This regulation includes detention for the new offences of “instigating” and “masterminding” illegal public demonstrations, thus bringing a further sanction down on potential labour disputes and the workers involved in them.

Cases of arrested workers who have attempted to have a say in the reform of their enterprise or local policies are all too common. The lack of participation in the shape of economic reforms by workers and the lack of legal channels for their grievances help give rise to the growing number of labour disputes and labour unrest throughout China – from the industrial SOE heartlands to the special economic zones of the Pearl River Delta – the story is the same.

The number of violent protests and large scale disturbances by the dispossessed and those affected by large scale corruption is increasing year on year, not decreasing. Figures for labour disputes vary according to sources and definition of a dispute – in 1999 it was reported that some 198,000 disputes occurred while in 2000 there were 327,152 officially reported cases, Out of this number, 24.2 percent took place in SOEs, 20 percent in so-called collectively-owned enterprises, 15.5 percent in foreign-invested enterprises and 14 percent in private Chinese-owned companies. In 2000 there were some 8,247 collective actions. Cases involving alleged corruption or economic reforms leading to the non-provision of owed pension payments, social security payments or wages make the majority of disputes.

The right to freely choose employment and to enjoy employment should extend to ensuring that workers are able to express their dissatisfaction with working conditions and to hold legal actions against abuses or mismanagement. Currently although strikes are not expressly forbidden in Chinese law, the right to strike was removed from the Chinese constitution in 1982 and there are

many cases monitored where strike leaders have been detained for their involvement in industrial action. In addition, the use of administrative punishment - “re-education through labour” continues to be used against labour activists and others protesting state policy or practice. A worker can be assigned to up to three years re-education through labour (without recourse to the criminal justice system and on the recommendation of their employer) simply for being classified as one of those who *“have a job but for a long time refuse to labour or destroy labour discipline, who ceaselessly and unreasonably make trouble, and who disturb the order of production or work”*. While a law is currently being drafted to replace “re-education through labour”, the ICFTU remains concerned that the new law will mirror the current system and will continue to support a parallel penal system giving defendants no right to legal defence or safeguards.

Collective bargaining

The recent 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 and the management. However despite greater opportunities for collective bargaining and the obvious need for worker protection for many workers – including migrants – there has been little progress towards any form of genuine collective bargaining. Instead the ACFU continues to “represent” the workers to management and government structures without seeing the need to discuss, inform, listen to or be guided by the workers who still have little say in policy. 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 ICFTU very much hopes that genuine collective bargaining will in the future be encouraged by the Chinese authorities as a means of dialogue and representation. It also hopes that workers, including those in ethnic minority regions will be able to participate more in the shaping of China’s economic future and will be treated as the central underpinning to any economic success the Chinese government envisages. The ICFTU further expresses the hope that freedom of association will stop being seen as an obstacle to economic reform but instead will be viewed as a crucial element in any long term successful economy. Freedom of association has a fundamental role to play in the shaping of local and national policies, the smooth implementation and monitoring of labour laws and regulations, increased productivity (as evidenced by many other countries) and as an essential voice for the workers in all matter pertaining to employment.

4. Conclusion and recommendations

There are very serious omissions in Chinese government statistics and other information on employment issues relating to Convention 122. ILO programs to improve labour standards, strengthen the unemployment benefits’ system and strengthen policies relating to employment can never be fully realized until China signs all core ILO conventions and withdraws its reservation to the International Covenant on Economic, Social and Cultural Rights on the right to form independent trade unions. Until then Chinese workers – despite marked improvements in many areas – will never be able to freely choose their employment and will not be in a position to help raise standards themselves contrary to the aims of Convention 122. The ICFTU is concerned at the regional imbalances and social problems caused by persistent poverty for the rural and urban poor. It recommends that adequate labour market regulations be enforced to protect workers from the negative effects of economic reform and against the excesses of the “market” system. This will by necessity include the need for independent trade unions and the removal of

the extensive state secrets legislation regarding employment, social security and economic reform policies.

NOTES:

General Office of the Ministry of Labour and Social Security and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Labour and Social Security Work, January 27, 2000 and All-China Federation of Trade Unions (ACFTU) and the State Secrets Bureau, Regulations on the Specific Scope of State Secrets and other Secret Matters in Trade Union Work, May 27, 1996. Translation taken from “Human Rights in China” (HRIC), China Rights Forum, No.3, 2004

Certain other issues, such as child labour, are also included in the regulations but are not covered here.

Incentives for SEZs are now being eased off and new incentives to encourage investment in poorer regions are being pushed as a way to help stem the crippling geographical imbalance of fortunes between the coastal south and east and the north and west.

For example, Chinese authorities argue that by the end of 2000 there were a total of 38.76 million retired workers and insurance programs covered 104.48 million workers and 31.7 million retirees with all those having participated in the endowment insurance scheme receiving payments on time and in full.

General Medical Check-up Standards for Civil Service Applicants, August 2004

See the “Common Understanding” at <http://www.ilo.org/public/english/chinaforum/download/common.pdf> : “ *Social dialogue by encouraging the social partners to participate in various ways in policy formulation and the decision-making process facilitates employment promotion, poverty reduction and democratic development.*”

Annex 1d: ICFTU comments on the First Report submitted by the People's Republic of China on its implementation of the International Covenant on Economic, Social and Cultural Rights, 1966.

Keywords: Freedom of association, freedom of expression, arbitrary detention, torture,

ICFTU comments on the First Report submitted by the People's Republic of China on its implementation of the International Covenant on Economic, Social and Cultural Rights, 1966.

The International Confederation of Trade Unions (ICFTU) has with great interest examined the first report of the People's Republic of China pertaining to its implementation of the International Covenant on Economic, Social and Cultural Rights and would respectfully like to submit the following comments to the Committee on Economic, Social and Cultural Rights:

1. Article 8.1 (a)

“Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; “

1.1 Reservation to Article 8.1 (a)

Upon China's signature on 27 October 1997 China made the following statement, which it confirmed upon its ratification of the Covenant on 27 Mar 2001:

“In accordance with the Decision made by the Standing Committee of the Ninth National People's Congress of the People's Republic of China at its Twentieth Session, the President of the People's Republic of China hereby ratifies The International Covenant on Economic, Social and Cultural Rights , which was signed by Mr. Qin Huasun on behalf of the People's Republic of China on 27 October 1997, and declares the following:

1. The application of Article 8.1 (a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China;
2. In accordance with the official notes addressed to the Secretary-General of the United Nations by the Permanent Representative of the People's Republic of China to the United Nations on 20 June 1997 and 2 December 1999 respectively, the International Covenant on Economic, Social and Cultural Rights shall be applicable to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China and shall, pursuant to the provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao

Special Administrative Region of the People's Republic of China, be implemented through the respective laws of the two special administrative regions. “

As demonstrated below, the legislation invoked in this statement by the Government is incompatible with article 8.1 (a) of the Covenant. The ICFTU therefore considers that the above statement with regard to the application of article 8.1 constitutes a de facto reservation. According to the Vienna Convention on the Law of Treaties, a party to a treaty may not invoke the provisions of its internal law as justification for its failure to abide by the treaty. Furthermore, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. The ICFTU believes that the right to form and join a trade union of one's choice is one of the fundamental principles of the Covenant and therefore the ICFTU considers it to be invalid and joins nations like Netherlands, Norway and Sweden in objecting to this reservation.

The ICFTU notes with satisfaction that the Government of China has chosen to comment upon its implementation of article 8, also with regard to the right to form and join trade unions of one's choice. Thereby, in ICFTU's view, acknowledging its obligation under the Covenant to bring domestic law into conformity with article 8.1 (a).

1.1.1 Domestic Chinese law pertaining to article 8.1.a of the Covenant

The Government of China reports that workers have the freedom to form and join unions of their own volition in paragraph 69 of its report.

The citizens of China have, according to article 35 of the Constitution, the right to freedom of speech, assembly, association, procession and demonstration.

The right for workers to participate and form trade unions are also guaranteed under article 3 of the Trade Union Act. However, according to this provision their participation has to be in accordance with the law. The law prescribes, according to article 2 of the Trade Union Act, that the All-China Federation of Trade Unions (ACFTU) upholds and represents workers interests.

In fact, there is a trade union monopoly in China. Under article 10 of the Trade Union Act the ACFTU is established as the only "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 also empowers the ACFTU to exercise financial control over all its constituents.

In its report the Government of China describes how this is a centralised union created by the state. As the law only recognises one trade union, i.e. the ACFTU, it effectively excludes other unions from existing, thereby preventing workers from joining or forming other unions of their own free choosing.

The freedom to form or join unions of one's own choice is therefore not guaranteed under the Trade Union Act. The Trade Union Act only provides freedom to join the ACFTU. This however, does not constitute freedom to form or join a union of one's own choice within the meaning of article 8 of the Covenant and therefore does not meet the obligation under the said article.

1.1.2 ACFTU's status as a trade union

According to the first chapter of the Trade Union Act, as amended in 1992 and 2001, the ACFTU must “ensure the status of trade unions in the political, economic and social life of the State, define their rights and obligations and bring into play their role in the socialist modernisation drive” according to article 1. Trade unions are mass organisations in which membership is voluntary. “The All-China Federation of Trade Unions and all organisations under it represent the interests of the workers ... and safeguard their legitimate rights” according to article 2 of the Trade Union Act.

Under article 4, trade unions “shall observe and safeguard the Constitution, take it as the fundamental criterion for their activities, 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, persevere in reform and the open policy, and conduct their work independently in accordance with the Constitution of trade unions”.

Among their basic duties and functions, trade unions “shall” conduct education so that workers can play their role in administration of State affairs, especially in the economic, cultural and social area, assist the government and safeguard socialist State power. While they must protect the overall interests of the entire Chinese people, emphasis is laid on “representing and safeguarding the legitimate rights and interests of workers and staff members” (i.e. blue and white-collar workers, respectively). Unions shall also coordinate labor relations through consultation on an equal footing (i.e., with employers) and the collective contracts (i.e., collective bargaining) system. They also have to mobilize workers to strive to fulfill their tasks in production and to educate them in the ideological, ethical, professional, scientific, cultural and other areas, including self-discipline and moral integrity. They also organize workers to participate in democratic decision-making and management... over their own work units according to article 5-7.

The political obligations imposed by the law on the ACFTU are incompatible with the nature and role of a free and democratic trade union. A government-created and controlled union that has to uphold policies adopted by the government cannot at the same time credibly represent workers’ interests. This also applies to the ACFTU, which is not only Constitutionally obliged to “assist the People’s Government to carry out its work but also actively promotes the view of the Communist Party and the Government that any unauthorised workers' action may lead to "social unrest and chaos".

Rather than representing the interests of its member, the primary task of the ACFTU is to assist the government in ensuring social stability during the economic changes in China’s industry and preventing the problems and inequalities that have emerged – termed a “socialist market economy” by the government – giving rise to widespread and organised expressions of discontent.

The Chairperson of the ACFTU, Wang Zhaoguo, is also a member of the Communist Party’s Politburo and a former Governor of Fujian province, and the organisation remains firmly under the leadership of the Party whose interests always take priority. This status is confirmed in the ACFTU’s Constitution which states that “[T]he Chinese trade unions are mass organizations of the Chinese working class led by the Communist Party of China...”

There is little doubt that the organisation is under considerable 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 initiatives were discussed at the 14th Congress of the ACFTU 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. However, welcome though these initiatives are, the fact remains that although the Trade Union Act prescribes that trade union officers at each level should be elected, this is usually ignored and most officials are appointed. All candidates must be ACFTU members, and those elected or appointed are subject to approval by the provincial-level ACFTU committees, which is problematic only insofar as alternative trade unions are disallowed by the Trade Union Act and those elected or appointed are subject to approval by the provincial-level ACFTU committees. Furthermore, Article 22 of the “Temporary Regulations on Shop-floor level Trade Union Elections” drawn up in 1992 by the ACFTU states that:

“The election of shop-floor level trade union committees, standing committees, union chairpersons and vice chairpersons are guided by the ACFTU Constitution and [are held] within the parameters of management authority and as such the results of such elections shall be reported to and approved by the Party Committee and the next level up of the trade union.”

In short all elected officials must also have the approval of the Party which further minimises the scope for independent genuine union representation. The majority of workers, if aware of the existence of a branch union, are not informed properly of the election result and in many cases workers are simply unaware that they have a trade union. Many workers do not even know what a trade union is and what it does.

It was reported in late 2003 that the ACFTU had some 134 million members – a sharp increase from the 90 million it claimed in 1998/99. However, it should be noted that the recruitment campaign launched in 1998 has essentially been a paper campaign. The legal procedure for registering a union office in an enterprise can be completed – usually by fax or email – without trade union officials even entering the workplace, and branches can be set up in some enterprises simply by carrying out administrative procedures. An example hereof is the Xiangyang No.7 Cotton Factory case described in detail below on page 6 of this comment, where workers wishing to form a union at the enterprise was informed that administrative procedures had already been undertaken to create a branch union of the ACFTU. Workers had not been informed or consulted of this before they themselves expressed the desire to create a union.

Where detailed reports of social unrest are available, workers frequently dismiss the official trade union as unhelpful or ineffective at best. While claiming that its key concern is the welfare and protection of the more than 40 million workers who have been dismissed in the restructuring process of the national economy, the ACFTU appears to be helpless in negotiating, let alone enforcing, any social safety provisions that may have been obtained. The question of actually defending the jobs of their members and campaigning for alternative policies simply does not arise. The ACFTU appears to have no influence over the privatisation process of state, or other collectively-owned assets. Unfortunately, there are 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 view of the above it is difficult to categorise the ACFTU as a trade union, and with a trade union monopoly in place, China does not allow for workers to form or join trade unions of their own choice contrary to article 8 of the Covenant.

1.1.3 Attempts to form independent trade unions

The Government of China systematically represses all attempts of establishing independent workers’ organisations and trade unions, sometimes violently. Organisers of workers’ groups and protests are often arrested, and sentenced to terms of imprisonment, “reform through labour” or

“re-education through labour”, the latter by administrative decision. Attempts by workers to form independent trade unions are met with hostility by the ACFTU. ACFTU officials usually either deny any legitimacy to independent workers' action, by calling it illegal, or acknowledge that their dual function as upholders of Party and government 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.

As detailed below, the ICFTU has been informed of an attempt by workers to form a union and register it as an affiliate of the ACFTU, in the knowledge that it is the only union recognised under the law. However, it became very clear that the ACFTU did not want to accept the said union into affiliation.

Xiangyang No.7 Cotton Factory in Shaanxi province

Over 6,000 workers at the former Xiangyang No.7 Cotton Factory in Shaanxi province staged demonstrations in mid-September 2004 in protest at changes to their employment contracts initiated after the factory was bought out and transformed into the Xianyang Huarun Factory. Workers, most of them women, launched a strike on 14 September over demands by the former state-owned plant's new majority shareholders (Hong Kong Company China Resources (Holdings) Co. Ltd.) that they sign short-term labor contracts reducing wages and eliminating seniority. The strike – which included several thousand workers - lasted some seven weeks and factory gate pickets were attacked by police with water cannon on at least one occasion.

At least 20 workers were detained by police in October who also issued “wanted” notices for three other workers. Some 40 more workers were also taken in for questioning by the local police. All workers have since been released without charges, in several batches starting in December 2004 and ending in early February 2005, just before the Chinese New Year.

The detentions came at the same time that the local authorities tried to prevent the workers from going ahead with their plan to elect a factory-level trade union and to register it with the ACFTU, as allowed for under the PRC Trade Union Act of 2001. When the city authorities learned of this they announced that the ACFTU itself had already taken steps to establish a union branch at the factory and that it had been approved by the relevant authorities – despite an absence of any such previous moves. No workforce elections were called to legitimize this officially imposed body, and many of the workers at the factory remained committed to electing a genuine union branch committee of their own. Workers had also contacted lawyers for advice. The Xianyang Municipal branch of the ACFTU had allegedly refused to enter into negotiations on behalf of the workers because it had not received any instructions to do so from the Xianyang Municipal Government and the Municipal Party Committee.

Factory management reportedly agreed to two of the striking workers' main demands - to eliminate a six-month probationary period in the new contracts and to provide longer contracts. However it continued to reject demands for other forms of compensation. In the light of these concessions and the detentions of strikers, the workers agreed to end the strike. However the issue of wages was still unresolved and the workers released from detention appear to have been dismissed by management.

The ICFTU has been informed of another case, where an ACFTU trade union official was dismissed allegedly for incompetence in his post at a battery plant in Beijing after actually promoting the interest of workers.

Tian Xiaodong, an atypical ACFTU official

The official, Tian Xiaodong, like many ACFTU officials, was a general manager, but had the support of most workers, as he had reportedly initiated the creation of an ACFTU factory branch, and had been responsible for helping many workers at the plant sign written labour contracts and negotiate overtime agreements. Mr. Tian Xiaodong had according to media reports hired a lawyer to defend him and was accusing the company of breaking the law which prevents trade union officials from being dismissed unless they have committed a serious breach of duty.

It can be deduced from the above that forming an independent union is not possible under the law and attempts to do so are generally being repressed by the government. Independently creating a branch of the ACFTU is generally not approved by the ACFTU leadership, thus workers are reduced to hope that individuals within the ACFTU structure will work to defend their interests, as was the case with Mr. Tian Xiaodong. However, promoting the interests of workers should not depend on individual goodwill and has nothing in common with genuine workplace bargaining by independent parties.

Workers' in China are not able to promote their economic, social and cultural rights in full as long as they have no possibility of creating independent organisations with the sole purpose of representing the interests of workers.

1.1.4 Prosecuted for attempting to form or promote independent trade unions

The case mentioned above concerning the Xiangyang No.7 Cotton Factory is an example of workers being detained due to their legitimate attempts to elect and register a factory-level trade union. The cases below will illustrate how the Government of China consistently represses any attempts at forming independent trade unions:

Kong Youping and Nin Xianhua

In September 2004, these individuals were sentenced to 15 years and 12 years imprisonment respectively on charges of attempting to "subvert state power" after reportedly posting articles on the internet which supported the establishment of independent trade unions, freedom of association as well as the banned China Democracy Party.

Hu Mingjun and Wang Sen

Hu Mingjun and Wang Sen were leading members of the Sichuan branch of the banned China Democracy Party (CDP). On 18 December 2000, some 1,000 workers from the Dazhou Steel Factory staged a public protest demanding 12 months of unpaid wages. Hu and Wang contacted the demonstrating workers and the CDP then issued a statement in support of the workers. After calling for the establishment of independent trade unions, Hu and Wang were sentenced to 11 and 10 years imprisonment respectively. A third man, Zheng Yongliang, was believed to have been released. Hu Mingjun is due for release in May 2012 and Wang Sen in April 2011.

Zhang Shanguang

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 increasing after he attempted to improve conditions at the Hunan

Provincial Prison N°1 where he is detained. He suffers from tuberculosis and heart disease, but is reportedly forced to work in shackles.

Li Bifeng, Zhao Changqing, and He Chaohui.

Other labour activists who remained in detention in 2004 include Li Bifeng, Zhao Changqing, and He Chaohui. All had tried to protect workers' interests, by protesting, organising or representing workers. Please find additional information on the prisoners list appended as appendix III.

2. Article 8.1 (b)

“(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;”

2.1 National Federations

See the above comments under section 1.

2.2 International organisations

The ACFTU is not affiliated to any international trade union organisation. It does nevertheless actively pursue international activities, which, similarly to its activities at the national level, are designed to further the interests of the Government and of the ruling party. According to the ACFTU, “the work in the international union arena falls directly under the guidance of the government's overall foreign policy. Under this guidance, we need to consolidate our independence, broaden our contacts and bring in to full play the advantages and special aspects of foreign exchanges through trade union and people-to-people exchanges.”

A guiding strategy behind the ACFTU's increasing political influence in the international labour movement has been the so-called "United Front". Within China, the United Front is used as a tool to address social antagonisms. The role of the ACFTU in this is to “unite workers and peasants to struggle for the liberation of the working class.” Originally viewed as one of the three “magic weapons” used in seizing power, the United Front aims to “unite with all forces that can be united with in order to fight a common battle against the enemy...” In the current fifth era of the tong zhan, the New Era Patriotic United Front has been opened up to include employers in Hong Kong, Macao and Taiwan, as long as they are patriotic, support the unification of the motherland and are willing to have economic cooperation with the mainland.

In the context of the international labour movement, the United Front becomes a tool that facilitates declarations of solidarity and expressions of non-interference with unions and workers' struggles in other countries. The United Front does not assume to change the views of trade unions outside China, but insists on an acceptance of the institutional status quo within China. In practical terms, this translates into exchanges of views between ACFTU and foreign trade union delegations, though the ACFTU side generally refuses to engage in any meaningful discussion about the respect in China of international standards on trade union rights, including, in particular, the situation of detained Chinese labour activists. In most cases known to the ICFTU, the ACFTU dismisses its foreign visitors' requests that it intervene on behalf of these prisoners, on the grounds that “no-one is convicted in China for exercising trade union rights” and that “the individuals in question have in actual fact been sentenced for illegal activities”.

A recent development in the ACFTU's international work has been the issuing of the so-called

“Beijing Consensus” following a two-day International Forum on Economic Globalization and Trade Unions held in October 2004 . Participants at the conference included senior delegates from the World Federation of Trade Unions, the Organisation of African Trade Union Unity, the International Confederation of Arab Trade Unions and the General Confederation of Trade Unions (which covers most countries belonging to the Commonwealth of Independent States).. Following the conference, ACFTU Chairperson Wang Zhaoguo stated that “[A]ll trade unions and international trade union organizations should respect every country’s model for the operation of their trade unions and the national development policy based on their national reality.”

3. Article 8.1 (c)

“(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;”

3.1 Function freely – no interference

See the above comments under section 1 concerning the political functions imposed upon the ACFTU.

4. Article 8.1 (d)

“(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. “

4.1 Legislation on the right to strike

According to paragraph 80 of the Government of China’s report the current laws of China do not touch upon problems of this type, with the explicit exception of police personnel and workers in national institutions. The ICFTU will return to the exceptions under its comments on article 8.2 of the Covenant.

However, according to article 27 of the Trade Union Act, in case of work stoppages or slow-down strikes the trade union shall negotiate on behalf of the workers and propose solutions. The enterprise shall try to meet reasonable demands of the workers and the trade union is to assist the employer in restoring normal production as soon as possible. Article 27 does not employ the term "strike"(bagong), but instead refers to instances of "work-stoppage" (tinggong) and "go-slows" (daigong). According to the Government’s report China’s trade unions do not agree with strikes.

The ICFTU would like to reiterate the fact that the right to strike was formerly protected under the Constitution of China. However, in 1982 China removed this right on the grounds that the political system in place had "eradicated problems between the proletariat and enterprise owners". However, there are increasing calls within China for legislation of the right to strike and a development zone of Dalian in northeast China has reportedly implemented pilot regulations on strikes.

However, when workers put the vaguely-worded provisions on inter alia work stoppages in the law to the test, they invariably find themselves informed that strikes do not have legal status and are inappropriate. Under section 4.2 below the ICFTU will give examples of workers being prosecuted for organising strikes and promoting workers’ rights.

It can be concluded from the above that instead of protecting the right to strike China has instead removed the protection and, as will be illustrated below, strikes are currently de facto illegal. The protection of the right to strike under the law is therefore insufficient, and the Government of China is clearly in breach of article 8.1 (d) of the Covenant.

4. 2. Practical implementation of the right to strike

In practice, many examples show that strikers and especially strike leaders, far from enjoying legal protection, are instead often arrested and charged with offences that vary from traffic violations to holding illegal demonstrations, and even, where extensive organisation can be demonstrated, subverting state power, which is one of the most heavily-repressed incrimination under the country's penal code..

Strike organisers and independent labour activists also face the threat of re-education through labour (RTL), a form of administrative detention, in principle not exceeding three years and imposed by public security authorities without trial. 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, "[T]hose 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 liable to be punished by periods of RTL. RTL is an administrative punishment which is imposed without recourse to the criminal justice system and which the International Labour Organisation (ILO) considers to be in violation of the Convention on Forced Labour, 1930 (No 29).

4.2.1 Background information

A number of important worker protests have taken place over the last years. However, most protests were relatively small scale and no protests spread beyond the enterprise or town where they originally took place. Some observers of labour relations in China have highlighted a possibly increased use of collective strike action recently. Due to the potential threat to stability and to the economy, larger labour protests were taken very seriously by the government and met with a wide range of measures - from concessions, to threats, police intervention and prosecution of organisers.

Privatization continues to be a major cause of labour unrest and according to media reports and even the government's own admission, plagued by massive corruption. Many workers were affected by the embezzlement and misappropriation of factory assets and funds set aside for redundancy payments and other benefits during restructuring of state-owned enterprises (SOE). Many of the larger protests in 2004 can be traced back to the issue of corruption, the non payment of earmarked funds for workers and the widespread flouting of local or national regulations on pensions, health care and redundancy.

4.2.2 Strikes repressed in 2004

The Government repressed several strikes in 2004 and detained many workers, organising or participating in strikes.

Sinopec strike

Throughout January 2004 some 1,000 workers at the Maoming branch of the national China Petroleum and Chemical Corporation [Sinopec] branch in Guangdong province protested over illegally low pension benefits. The protest began in December 2003 when the retired workers asked that Sinopec end its own pension scheme and instead adopt provincial standards which are the correct legal policies to follow. Several of the retired protestors were harassed by local Public Security Bureau (PSB) officers. Zheng Jinghai, a 64-year-old and two other retirees reported visits from local police and having received warnings not to participate in the protests. Another protester reported that his telephone had been monitored since 9 January.

Taxi driver strike in Dazhou City, Sichuan Province

Striking taxi drivers were held in police detention in January 2004. The dispute began in November 2003 when some 1,000 taxi-owners and drivers in Dazhou City, Sichuan Province began a week long strike. Throughout November and December, drivers and owners staged various protests outside municipal offices resulting in the detention of scores of protesters. The workers action was in response to a local government decision to cancel all existing taxi -driver permits (Taxi Operation Certificates – TOCs) and re-sell them at a higher price through an auction, without offering any form of compensation and the order that drivers switch to a new (and more expensive) brand of car. Most of the taxi-drivers in Dazhou were retrenched workers from previously state-owned enterprises or migrants resettled in Dazhou from areas affected by the highly controversial Three Gorges Dam Project.

Despite promises of a suspension of the new policy the local government went ahead with its plans and in response drivers sent representatives to Beijing to complain to the central authorities. On 6 January 2004, police forced nearly some 100 driver representatives back to Dazhou where they were taken to the local Police training Institute. Eighty-six were then released, while the remaining 11 were detained for “education” purposes. Some 100 riot police formed a barricade against the families and dozens of protesting drivers who had gathered outside the centre. On 9 January one of the detainees tried to jump from the top floor of the building in a suicide attempt, causing other detainees to also try to jump off the building. During the struggle, two of the detainees managed to escape. By 11 January several others had been released while the remaining four detainees were charged with “violating social order” and were held in criminal detention for 10 to 15 days. A further detainee - Liu Ziqing [detained on 3 January] – was also being held on similar charges. All five were later released. However, Xiong Zhangqi, a driver-owner is believed to have been charged with “violating social order” and may face criminal prosecution. No further information has been available since that time.

Strike at Tieshu textile Factory in Suizhou, Hubei Province

Mass protests began on 8 February 2004 at the Tieshu textile Factory in Suizhou, Hubei Province when up to 2000 workers staged a demonstration which was dispersed by armed police - a violent confrontation ensued causing the hospitalization of several workers and police. Some 20 workers were detained for participating in the protest leading to the formal arrest of six on charges of “disturbing public order”. Three other Tieshu workers were also assigned terms of up to 21 months “re-education through labour” (RTL). Previous demonstrations had been held throughout 2003, after repeated refusals by factory management to hold genuine negotiations over redundancy terms in the light of the factory’s sale to a private investor. [See ICFTU Annual Survey, 2003] The first mass protest had taken place in January 2003 when retired workers mounted a collective picket at the factory gates and succeeded in bringing production to a halt. The picketing was repeated sporadically during the year despite police harassment. The workers

were - and are - demanding payment of previously agreed pensions, redundancy payments, missing wages and share options worth some 200 million Yuan as well as an official government inquiry into alleged management corruption and fraudulent or "false" bankruptcy which resulted in the sale of the company. Some 300 workers also filed and lost a joint complaint to the Suizhou People's Court asking that missing pensions and other benefits be paid by the Tieshu Group.

Protesters beaten at China Anhui Gujing Distillery Company Ltd

On 28 February 2004 workers at the China Anhui Gujing Distillery Company Ltd began protests and on 2 March 2004, more than 1,000 workers from the Distillery, mainly ex-farmers, staged a public protest, blocking the local Railway. The protests were against recent company restructuring which had raised fears of widespread layoffs and broken pledges by management. During the protest several thousand armed police and local police violently dispersed the crowd resulting in one worker being comatose for several days. Several other workers were detained for questioning and then released.

The dispute had arisen because the distillery had been built on land originally farmed by local residents. After their land was repossessed, the residents had no option but to start working at the winery, since there was no other available employment in the area. The Distillery was now undergoing restructuring and the workers believed that the company was going to renege on promises made when it took possession of their land including the allocation of worker shares in the restructured company. It was reported that the lowest rank of managerial staff was to be allocated 200,000 Yuan in shares while the trade union chairperson and other senior management would receive shares worth several million. However, ordinary workers, the previous owners of the land, were only to be given 20,000 Yuan in shares.

Jilin branch of Sinopec

In another labour case involving Sinopec, over 500 retrenched workers from the Jilin branch of Sinopec held continued protests in April 2004 over unfairly low levels of retrenchment payments. The demonstrations were held to commemorate the second anniversary of the initial mass protests on 22 April 2002, when several workers were detained and one, Zhou Zhenhua, was later formally arrested and reportedly assigned to 're-education through labour'. Zhou Zhenhua later committed suicide - on 10 March 2004, in the light of continued government inaction and growing poverty brought on by the loss of benefits, a group of workers (exact number is not known) attempted suicide - Zhou Zhenhua was found dead, but the rest survived.

The workers had begun their protests after an announcement by Jilin Sinopec in 2000 that, in the course of the national restructuring of the oil industry, the corporation was soon to be shut down and that workers must choose either retrenchment compensation (with a one-off payment) or buy corporation shares. Some 16,000 workers chose to take redundancy early as they could not afford shares - however they discovered that the corporation, now restructured to form two companies, was making a profit and there was no sign of it shutting down. In addition workers found that previous labour insurance premiums which Sinopec had deducted from wages prior to restructuring were now declared invalid and workers were not eligible for benefits or refunds. According to workers, the company had not provided any receipts for the deductions and refused to enter into any discussions over refunding the payments. Despite the end to the street demonstrations in 2002, workers continued to travel to Beijing throughout 2003 and early 2004 to petition the central authorities - worker representatives were forcibly returned to Jilin on several occasions.

Xiangyang No.7 Cotton Factory in Shaanxi province

See under 1.1.3

SOE, Zhongheng Textile Factory workers

On October 26 2004, two women who helped organise a labour rights protest in Yangcheng city, Jiangsu Province were formally arrested on charges of “disturbing social order”. Ding Xiulan (45 yrs) and Liu Meifeng, both workers at the former SOE, Zhongheng Textile Factory, were accused of organizing a strike and a protest to gain adequate compensation and redundancy terms. The protest, reportedly attended by hundreds of workers on 2 October, followed a four-week strike in September after the factory refused to negotiate with workers. Workers also reportedly blocked the factory for 17 days in early October. According to workers, after an initial demonstration on 2 October 2004 where scores of workers were detained, the workers began to protest outside government offices. The government then promised to resolve the issue, however despite these assurances, the authorities instead formally arrested Ding Xiulan and Liu Meifeng at a public meeting, held by the local government on 20 October to which workers had been invited to discuss the issue. The two women are now presumed released but no confirmation has been given.

Xing Xiong Factory shoe workers

In November 2004, five workers from the Xing Xiong Factory were sentenced to prison terms of up to three years for their involvement in the April protests. Two of the five convicted workers were reportedly below the legal minimum working age at the time they were hired by the company. Five other workers from the Xing Ang Shoe Factory, including another under-age worker, were sentenced earlier in October to sentences of up to three and a half years imprisonment. Dozens of other workers were summarily dismissed for their involvement.

All ten workers were convicted on criminal charges of “intentional destruction of property” after their participation in mass protests on 21 and 23 April 2004 at the Xing Ang and the Xing Xiong factories of the Taiwanese owned Stella Shoe Company which sold shoes and other goods to a wide range of western brand name companies. According to reports some 1,000 workers at the Xing Ang factory and up to 5,000 workers at the Xing Xiong factory staged the protests over low wages, excessive overtime and working hours that exceeded limits set in China’s Labour Law and poor meals provided by the factory. Some machinery and other items of company property were damaged in the course of the protest action.

The workers defence lawyer claimed that the prosecution failed to provide any actual evidence linking the workers to specific acts of damage to property, or to any other form of criminal behaviour and there was no evidence that the five workers had “instigated” or “led” the mass protest as was suggested.

All ten workers had their sentences reduced on appeal in December 2004- the seven workers originally sentenced to three or three and a half years had their sentences reduced to nine months suspended while the three juvenile workers have been released with their two year suspended sentences remaining. Despite this turnaround the criminal convictions remain and it is not known if the workers have since been able to find new employment. In a letter sent to the Court shortly before it announced initial sentences for the first five workers, senior management from Stella International as well as several of its main foreign buyers reportedly called for leniency and later issued a public statement guarantying minimum wages for the (then) five sentenced for the duration of their prison terms.

In addition to several detained workers mentioned earlier the plight of many workers detained during labour protests remains unclear. While it is assumed most are usually released after a few days or weeks in administrative detention, no formal notification is forthcoming.

4.2.2 Long Term Detainees

Dozens of independent labour activists and leaders jailed in previous years remained in prison in 2005. The following is a partial list, please find appended a full list of detainees known to the ICFTU as of April 2005, as Annex III.

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. WAF were independent workers' organisations established between April and June 1989 in various provinces of China, in the context of that year's nationwide democracy movement, also known as the "Beijing Spring". Their leaders and members were violently repressed after June 4, in the wake of the Tienmen Square massacre. 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 also sentenced to death in September 1989. His sentence has since been reduced and he is due for release in November 2007. 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. In 2004, the ICFTU and other organisations called for his release on medical grounds. 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. In November 2004, Liu Jingsheng, sentenced to 15 years, was released. Peng Shi was due for release in 2004 but here has been no confirmation.

In addition to concerns over Hu Shigen, fears have been heightened over the deteriorating health of Yao Fuxin and Xiao Yunliang. 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. Prison authorities are currently providing them with little or no medication or other medical care. By year's end, the ACFTU had failed to provide any response whatsoever to repeated calls by the international union movement that it intervene on their behalf.

Wang Wanxing and Wang Miaogen, both involved in the Workers' Autonomous Federations (WAF), have been incarcerated in psychiatric hospitals for over ten years. There have been numerous reports of ill treatment of Wang Wanxing - including his move to a "secure ward" where he was being held with violent patients, and his wife's subsequent appeal. The move was apparently part of the pressure put on her to sign papers releasing him from hospital, but subjecting him to 24 hour surveillance among other conditions. Wang Miaogen is presumed released but there has been no confirmation. Another labour activist, Pen Yuzhang, a member of the Changsha Workers' Autonomous Federation in 1989, has also been held in a psychiatric institution. Government reports about his release have not been independently confirmed.

Yao Guisheng mental ill Cases have been reported of detained labour activists' becoming

mentally ill after being severely mistreated in jail or labour camp. One such case is that of Yao Guisheng, a member of the Changsha WAF, responsible for helping WAF leaders to escape arrest in the immediate aftermath of the country-wide repression which followed the Tiananmen Square events. He was sentenced to 15 years' detention in October 1989 on charges of "robbery and assault" (trumped up after an argument with a taxi driver), later changed to "looting". According to former prisoners, he was periodically placed in solitary confinement for refusing to "admit his guilt", was regularly beaten and forced to wear shackles. He became mentally ill as a result. His case was later taken up by the Special Rapporteur on Torture of the UN Commission on Human Rights. In 1994, the government told the Special Rapporteur that Yao had never been ill treated. Yao was due for release in 2004 but there have been no reports of his actual release.

4.2.3 Other cases before 2004

In Annex I and II to these comments the ICFTU will provide a copy of previous issues of the ICFTU's Annual Survey of Trade Union Rights Violation concerning violations in 2002 and 2003. Recent cases include Lu Wenbin, a special correspondent for the Textile Daily newspaper, arrested on December 22, 2001 for documenting a strike and interviewing workers at the Huainan Textile Factory in Dafeng and Liao Shihua, sentenced in December 1999 to six years' imprisonment after organising a protest by workers of the Changsha Automobile Electrical Equipment Factory.

5. Article 8.2

"2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State."

5.1 Exemptions

In the report the Government of China states that police personnel and workers in national institutions are prohibited from striking.

The ICFTU would like to emphasise that, under the relevant jurisprudence of the ILO Committee on Freedom of Association, the right to strike also encompasses civil servants who do not exercise authority in the name of the state nor perform essential services in the strict sense of the term.

"The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population ."

A general ban on strikes for all workers in national institutions is therefore unnecessary and incompatible with international standards. In the view of the ICFTU, China should therefore adopt legislation in accordance with ILO standards, an organisation of which China is a founding member.

6. Other cases of detained trade union rights' activists and their relatives

Li Wangyang, a veteran independent trade union activist, sentenced to ten years' forced labour on September 20, 2001. As of April 5 2005, Li Wangyang remained incarcerated in Hunan No. 1

Prison.

Cai Guangye, a doctor employed in a military hospital, who was arrested in December 2001 for supporting protesting workers at a chemicals company in Jilin and sentenced to three years' re-education through labour in July 2003. Cai was believed to be due for release in December 2004 but there has been no confirmation of his release and his whereabouts remain unknown.

7. Releases in 2004

Workers released

In 2004 the government reportedly released Di Tianguai after one year of detention without trial for trying to organise a national federation of retired workers. It was reported that the authorities considered his detention to be in lieu of a one year sentence. Baotou city legal adviser Xu Jian was also released after serving four years for helping to distribute leaflets on workers' rights. In April 2004, the authorities released Chen Gang, a worker sentenced to life imprisonment for his role in organizing a strike at the Xiangtan Electrical Factory in Hunan, in support of the pro-democracy protests in 1989. In November 2004, Liu Jingsheng, one of the co-organizers of the FLUC Preparatory Committee in 1989, who was sentenced to 15 years imprisonment with Hu Shigen, was also released.

Guo Yunqiao, leader of the Yueyang City WAF, in Hunan province, sentenced to 13 years for leading a workers' protest in 1989, was reportedly released in 2000. Li Jiaqing, a leader of the independent labour movement in Zhengzhou, Henan province, arrested in August 2000 and charged with disrupting social order on February 13 2001 was reportedly released on bail in 2001. Xu Wangpin was released in 2001. Liang Qiang, detained following the 1989 pro-democracy protests, was sentenced in January 1990 to 15 years' imprisonment for "inciting students and workers to rebel". It is believed Liang may have been released but there has been no confirmation.

The sister of Li Wangyang, a veteran independent trade union activist mentioned above, Li Wangling was sentenced to three years' re-education through labour on June 7 2001 for helping him to publicise his demands. However, she was released on April 21, 2004.

8. Conclusion

In view of the above it can be concluded that China does not respect core workers' rights and is in breach of article 8 of the Covenant on several counts. Firstly, China does not allow workers to form and join trade unions of their own choice neither in law nor in fact. Secondly the only legally recognised trade union is under an obligation to promote the government's and the ruling party's policies; thirdly, the right to strike is not fully recognised in law and is repressed in fact. According to the Committee on Freedom of Association of the ILO, the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests. Promoting and defending peoples' economical, social and cultural interests are the very purpose of the present Covenant and by disrespecting workers' right to promote their economic and social rights, China is in clear and unequivocal breach of the Covenant. In the above comment the ICFTU has concentrated on the government of China's implementation of article 8, however, the case material described above and contained in Annex I and II will also illustrate China's implementation – or lack thereof - of other provisions of the Covenant.

(ICFTU, Brussels, 22 April 2005)

Original annexs removed

Annex I: China, People's Republic of: Annual Survey of Violations of Trade Union Rights (2004)

Annex II: China, People's Republic of: Annual Survey of Violations of Trade Union Rights (2003)

Annex III: List of prisoners - April 2005

Annex 2: International Obligations

I. International obligations.

The People's Republic of China has ratified four of the eight core ILO labour Conventions. In view of severe restrictions on trade union rights and the prevalence of child labour and forced labour as well as discrimination, determined measures are needed to comply with the ILO Declaration on Fundamental Principles and Rights at Work, the ICCPR and the ICESCR.

China has not ratified either of the core ILO Conventions on freedom of association and collective bargaining. There are serious restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. Workers are not able to form and join trade unions of their choice and any attempts at independent organising are repressed.

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

China has ratified the core ILO Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Child labour remains a serious problem in the People's Republic of China.

China has not ratified the core Conventions on Forced Labour. Forced labour exists in such forms as prison labour, labour taking place as part of "re-education-through labour", and the trafficking of women and children for forced labour and forced prostitution.

In February 2001, it ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), but announced at the same time that provisions guaranteed under Article 8,1 (a) of the Covenant, namely the right to establish and join workers' organisations of one's own choosing, would be dealt with in accordance with Chinese law. In doing so, the government effectively entered a reservation concerning a fundamental element of the Covenant, thereby putting itself in breach of internationally recognised principles on the law of treaties.

In 1998 it signed the International Covenant on Civil and political Rights.

In January 2007 the Chinese authorities ratified the ILO Convention 155 on Occupational Safety and Health Convention,

Annex 3 : UN and ILO related comments and observations : Web links for space considerations)

a. ILO CEACR Comments (selected)

A full list of

[Individual Observations of the Committee of Experts on the Application of Conventions and Recommendations, Direct requests of the Committee of Experts on the Application of Conventions and Recommendations, General observations of the Conference Committee on the Application of Conventions and Recommendations¹ Individual Observations of the Conference Committee on the Application of Conventions and Recommendations; Submissions to the competent authorities⁹ Freedom of Association cases, Representations under article 24 of the ILO Constitution](http://www.ilo.org/ilolex/english/newcountryframeE.htm) are available here :
<http://www.ilo.org/ilolex/english/newcountryframeE.htm>

B: Concluding Observations of the Committee on Economic, Social and Cultural Rights - Hong Kong. 2005

United Nations Economic and Social Council, Thirty-fourth session 25 April – 13 May 2005, Consideration of reports submitted by state parties under articles 16 and 17 of the covenant - Concluding Observations of the Committee on Economic, Social and Cultural Rights People's Republic of China (including Hong Kong and Macao) [E/C.12/1/Add.107]. Full text can be found here: <http://www.icftu.org/displaydocument.asp?Index=991221564&Language=EN>

C: Other observations of relevance

Report of the Working Group on Arbitrary Detention - Mission to China:

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/102/74/PDF/G0510274.pdf?OpenElement>

The right to education: Report submitted by the Special Rapporteur, Katarina Tomaševski, Mission to China:

<http://daccessdds.un.org/doc/UNDOC/GEN/G03/170/38/PDF/G0317038.pdf?OpenElement>

Annex 4: List of long term labour detainees in the PRC (updated August 2008)

Imprisoned Labour Rights Activists in China

This list includes those who have been detained and sentenced for their alleged involvement in labour unrest or labour organizing. It is not exhaustive. It does not include those who may have been detained for a short period following a strike or labour unrest and then released without charge or trial; neither does it include those activists who are now released or presumed released nor those whose whereabouts are unknown.

Prisoner Details

Chen Wei [音譯：陳偉]

Chen reportedly led a protest of workers laid-off from a state-owned cement factory after it failed to pay compensation and retirement benefits. Chen was convicted of "gathering a crowd to disrupt social order" by the Changjiang Li Minority Autonomous County People's Court and sentenced to four years' imprisonment on 8 April 2005. His appeal was later rejected by the Hainan Intermediate People's Court on June 29, 2005. He was due for release in May 2008 but there has been no confirmation.

Chen Yuping 陳玉平

Chen Yuping, a retrenched oil worker from CNPC Jilin Petroleum, was an elected workers' representative, who had been attempted to organize a "retrenched workers' union" since 2004. Together with other workers, Chen applied to set up a union under Songyuan city ACFTU and CNPC Jilin Petroleum's ACFTU branches but they were told their applications were "not approved". On 10 April 2008, Chen was detained and sentenced on 6 May 2008 to 1.5 year of re-education through labour, for "disturbing social order".

He Chaohui 何朝輝

He Chaohui, 45, a former railway worker at the Chenzhou Railway Bureau, and vice-chairperson of the Hunan Workers Autonomous Federation during the May 1989 pro-democracy movement, was sentenced to four years' imprisonment in 1990 for organising a strike by railway workers in May 1989. In 1997 and 1998, He reportedly took part in several more strikes and demonstrations and gave information on the protests to overseas human rights groups. He was also said to have been active at that time in forming a group to lobby for China's signing and ratification of the International Covenant on Economic, Social and Cultural Rights. In April 1998, the police detained He after finding a US\$300 cheque sent to him by an American university professor. This was seen as confirmation that he had provided overseas groups with information about the recent workers' protests in Hunan. He was later released due to a lack of evidence, but was then rearrested May 1999 on the charge of "endangering state security and illegally providing information to foreign organizations." After a three-hour trial the following month, He was sentenced on 24 August 1999 to 10 years' imprisonment.

Hu Mingjun 胡明军 [sometimes 胡明君]



Hu Mingjun and **Wang Sen 王森**, both leaders of the Sichuan provincial branch of the banned China Democratic Party (CDP), were detained by police in 2001 after they communicated with striking workers at the Dazhou Steel Mill. On 18 December 2000, about 1000 workers at the factory had organised a public demonstration demanding payment of overdue wages, and Hu and Wang subsequently made contact with the demonstrating workers. Wang, a resident of Dazhou, was arrested on 30 April 2001 and Hu, a resident of Chengdu, was arrested on 30 May. The two men were initially charged with “incitement to subvert state power” but the charges were subsequently increased to actual “subversion”. On May 2002, at the Dazhou Intermediate People’s Court, Hu was sentenced to 11 years’ imprisonment and Wang received a 10-year sentence. An article appeared in the Epoch times in 2006 under the pen name of Hu Mingjun but it is not clear if this is the same person. There has been no evidence of Hu’s release. According to Wang Sen’s wife, Hu is still detained in Chuanzhong Prison.

Huang Xiangwei 黃象偉

Huang Xiangwei was charged in April 2003 with “subverting state power” for establishing a labour research organization. The organization was believed to be called the “Labour and employment research association”. Members included Huang Xiangwei, Li Jianfeng, Lin Shun'an, Lin Shuncheng, Lin Shunhan, Zhan Gongzhen, Zheng Xiaohua, and Lin Chan. They applied for a registration in 2000, but it was denied. In January 2001, they were accused of forming an illegal trade union and of downloading materials from the Internet and compiling them into a book entitled “Labour Unions.” Some of the defendants were also accused of stockpiling firearms and training members to shoot out the windows of the office of the court's chief judge. But no evidence to substantiate the latter charges was made public. They were tried on 30 October 2003 by the Sanming Intermediate People’s Court. Huang Xiangwei was sentenced to six years in prison. He was due for release in April 2008 but no confirmation of his release has been reported. See also Li Jianfeng and Lin Shunan below.

Huang Zhuyu (female)

Huang Zhuyu, a worker at a guesthouse in Sichuan was detained along with two other workers on 20 September 2006. Public security officials detained Huang Zhuyu, Wang Jun (f) and Xu Haiyan on September 20, 2006, after they joined 40 laid-off workers attempting to petition the Suining Municipal Party committee about unemployment benefits. The manager of their workplace, a guesthouse, sold the facility at a low price to a single bidder. The former manager then became deputy secretary general of the Suining municipal government. Public security officials beat two other female petitioners, Zhang Xiaohua and Liu Xiaohong, who were hospitalized. No other information about their place of detention or any charges against them is available. See also **Wang Jun and Xu Haiyan below.**

Jiang Cunde 蔣存德

Jiang Cunde, was a worker at the Dong Xin Tool Repair Works in Shanghai when, in 1985 and 1986, according to the authorities, he began to advocate "imitating the model of Poland's Solidarity Trade Union to overthrow the present political powers." He reportedly also planned to establish a "China Human Rights Committee." In May 1987, Jiang and two others were convicted on charges of planning to hijack an airplane, and he was sentenced to life in prison for counterrevolution. In January 1993, Jiang was released from Tilanqiao Prison in Shanghai on medical parole. In 1999 he was rearrested for having allegedly "joined a reactionary organization, written reactionary articles and sent them to news agencies, and used the occasion of the US

bombing of China's embassy in Belgrade in 1999 to stir up trouble." Jiang was returned to Tilanqiao Prison in June 1999 to continue serving his life sentence. In August 2004, his sentence was commuted to 20 years' imprisonment, and he is currently due for release in August 2024. [NB: Although Jiang was originally convicted of an internationally recognized criminal offence (hijacking an airplane), he has been included on lists of non-violent detained worker activists because the grounds officially given for his re-imprisonment in 1999 related solely to his exercise of the right to freedom of association and expression, and because of his earlier espousal of independent trade unionism in China.]

Kong Youping 孔佑平

A former official trade union official in Liaoning Province, Kong Youping was sentenced to 15 years' imprisonment on 16 September 2004 by the Shenyang Intermediate People's Court. Kong's colleague and co-defendant at the September 2004 trial, **Ning Xianhua 宁先华**, was sentenced to 12 years' imprisonment. Kong, 54 years old, originally worked as the union chairman at a state-owned enterprise in Liaoning, but his support for protests by laid-off workers and his sharp criticism of government corruption and suppression led to his dismissal from both the factory and the union. In the late 1990s, a group of political (*unconfirmed photo of Kong Youping*) dissidents, including Kong Youping, were working to establish a branch of the China Democracy Party (CDP) in Liaoning Province, and in 1999 Kong was detained and imprisoned for a year on charges of "incitement to subvert state power". Prior to his recent arrest and trial, Kong was reportedly involved in planning the establishment of an independent union and had posted articles on the Internet criticizing official corruption and calling for a reassessment of the violent suppression of the 1989 Democracy Movement by the army. The specific charges laid against Kong Youping and Ning Xianhua at their trial are currently unknown.



Li Jianfeng 李建峰

Li was a judge at Fujian Ningde Municipal Intermediate People's Court, Fujian Province and former member of the Ningde city intermediate people's court. On 30 October 2003 he was sentenced to 16 years in prison by the Sanming Municipal Intermediate People's Court (prison term runs from April 3, 2002 to April 2, 2018). Also sentenced in that case were Lin Shunan, Huang Xiangwei, Lin Shunhan, Zhan Gongzhen, Zheng Xiaohua, Lin Chan, and Lin Shuncheng. Authorities accused these eight men, including Li Jianfeng, of planning to set up an illegal organization in late 2000 and having applied to register the name "Labour and Employment Research Association" with the city, permission for which was denied. In late 2001, they downloaded articles from the internet and edited a book, "Labour Alliance/Labour Union". In July of the same year, they established an organization under the same name, with Li Jianfeng responsible for the overall work. The indictment of Li Jianfeng also accused him of privately concealing an air pistol and a rifle, buying a small box of 40 air pistol pellets in Jiangxi, buying raw materials for explosives in Fujian, and testing out the bullets and explosives. In order to test the nerve of the Labor Alliance members, Li Jiansheng assigned Lin Shunan and others to use the air pistols to turn the Head Judges office into many shards of glass. (Lin's family denied that he kept or used any weapons)

Although Li Jianfeng was a judge, for a long time he had provided legal assistance to disadvantaged members of society whose civil rights were violated and had also directed people

to use administrative review and litigation against the Ningde Public Security Bureau to revoke mistaken administrative decisions. Li Jiangfeng also advised Lin Shunan, an internet café owner who was believed to have been closed down after refusing to give police protection money. Police allegedly came to Lin's café, downloaded pornography onto Lin's computers and tried to take away Lin's computers). The Public Security Bureau therefore sought retaliation. Li Jianfeng was arrested on March 31, 2004. Reports have emerged of the torture and ill-treatment of Li while in detention. He is due for release on 2 April 2018. All eight people involved in the case attempted a mass suicide by hanging themselves or hunger strike, at the detention center when they received poor treatments). See also cases of **Huang Xiangwei and Lin Shunan**.

Li Wangyang 李旺阳



Li was first arrested in June 1989 and sentenced to 13 years imprisonment the following year on charges of “counter-revolutionary propaganda and incitement” for founding the Shaoyang Workers' Autonomous Federation and leading workers' strikes during the 1989 pro-democracy movement. He was released in June 2000, but in February 2001, he staged a 22-day hunger strike in an attempt to obtain medical compensation for injuries to his back, heart and lungs that he had sustained while in prison, and which reportedly left him

(*Li Wangyang*) unable to walk unaided. For staging the hunger-strike protest, Li was again arrested by the police. On 5 September 2001, he was tried in secret by the People's Intermediate Court of Shaoyang on the charge of “incitement to subvert state power” and sentenced to a further 10 years' imprisonment.

Li Xintao 李信涛

Li Xintao, male, aged 53 and Kong Jun, female, aged 43, two labour rights activists from Shandong Province, were tried on May 11 2005 by the Mouping District Court in Yantai City, Shandong. They were found guilty of “disrupting government institutions” and “disturbing social order”. Kong and Li were sentenced to two and five years' imprisonment respectively. (Li was reportedly detained in November 2004; the date of Kong's detention is not known.) They had organised public protests against the bankruptcy of their factory, the Huamei Garment Company, and had sent official complaints to Shandong provincial officials. According to Li and Kong, managers at the company, which declared bankruptcy in August 2002, had failed to pay the workers' wages or social insurance benefits from March 2001 onwards. Both worker activists expressed the wish to appeal against their sentences but were reportedly unable to find lawyers willing to represent them. Kong is presumed released in 2006

Li Guohong 李國宏

Li was a Zhongyuan Petroleum employee before he was laid off in 2001. Since then, he started to fight for other Zhongyuan Petroleum workers' rights. On 31 October 2007, he was detained in Puyang City of Henan province, when he was there to help another branch of Zongyuan Petroleum workers, discussing a possible complaint to higher level authorities in Beijing. He was first sentenced to 15-days of administrative detention but on 18 November 2007, instead of being released, Li was sentenced to 1.5 year of re-education through labour. In the prison, he was forced to work long hours in making auto-wheels, which worsened his poor eyesight. In May 2008, he

started a hunger strike in protest at his sentence and treatment but was eventually persuaded to stop the hunger strike by his family for the sake of his health.

Lin Shunan 林順安

Lin Shunan was a local internet café owner who sought legal advice from Li Jianfeng over the (believed) closing of his café by police after he (and his colleague Lin Sunhan) refused to pay them protection money (or let police take away their computers). He was charged in April 2003 with “subverting state power” for establishing a labour research organization. The organization was believed to be called the “Labour and employment research association”. Members included Lin Shun'an, Huang Xiangwei, Li Jianfeng, Lin Shuncheng, Lin Shunhan, Zhan Gongzhen, Zheng Xiaohua, and Lin Chan. They applied for a registration in 2000, but it was denied. In January 2001, they were accused of forming an illegal trade union and of downloading materials from the Internet and compiling them into a book entitled “Labour Association/Labour Union.” Some of the defendants were also accused of stockpiling firearms and training members to shoot out the windows of the office of the court's chief judge. But no evidence to substantiate the latter charges was made public. They were tried on 30 October 2003 by the Sanming Intermediate People’s Court. Lin Shun’an was sentenced to eight years in prison. He is due for release in April 2010. See also **Li Jianfeng and Huang Xiangwei**.

Liu Jian 刘健

Liu Jian, now in his early forties, and **Liu Zhihua 刘智华**, age unknown, were both workers at the Xiangtan Electrical Machinery Plant, Hunan Province, prior to June 1989 and participated in a demonstration by over 1,000 workers from the factory just after June 4 that year to protest the government’s violent suppression of the pro-democracy movement. After one of their fellow workers had his arm broken by the factory’s security guards, the demonstrators then allegedly ransacked the home of the security section chief. Arrested shortly afterwards, the two workers were tried and sentenced to life imprisonment in either August or October 1989 on charges of “hooliganism” and “intentional injury.” The government has not publicly produced any evidence linking either Liu Jian or Liu Zhihua to specific acts of violence or other genuine crime. Two other workers from the same factory, (**Chen Gang 陈刚** and **Peng Shi 彭实**, also received life sentences for their involvement in the same protest action, but the sentences were later reduced and both men were reportedly released in 2004.) Liu Jian is apparently the only one of the four detained Xiangtan Electrical Machinery Plant workers who has still not had his life prison term reduced to a fixed-term sentence. He is currently being held at the Hunan Provincial No.6 Prison (Longxi Prison.)

Liu Zhihua 刘智华

Formerly a worker at the Xiangtan Electrical Machinery Plant, Liu Zhihua was sentenced to life imprisonment in October 1989 for taking part in a mass protest against the government’s June 4 crackdown that year on the pro-democracy movement. (For further details of this incident and of the specific charges brought against Liu, see the case of **Liu Jian 刘健**) In September 1993, his sentence was reduced to 15 years' imprisonment with five years' subsequent deprivation of political rights, but in 1997 his sentence was extended by five years after he allegedly committed "injury with intent" in prison. His effective combined sentence then became 16 years' imprisonment (sentence to run from January 1997 to January 2013). In June 2001, Lui Zhihua’s sentence was again reduced by two years, and he is now due to be released on 16 January 2011. He is currently being held at the Hunan Provincial No.6 Prison (Longxi Prison).

Luo Mingzhong 羅明忠

Luo Mingzhong, born in 1953, was a retired worker from the Tianyuan Chemical Factory, in Yibin, Sichuan Province. He led other factory workers to fight for compensation after the factory was privatized. On 22 March 2004, Luo was administratively detained for 10 days for blocking highways and obstructing traffic in the course of the protests. In July 2005, Luo, together with fellow retired workers Zhan Xianfu, Zhou Shaofen, Luo Huiquan, led workers to block the factory's main gate in protest against the insufficient compensation they were being offered for the loss of their jobs. The Yibin City Public Security Bureau then arrested the four workers' leaders for allegedly "assembling to disturb social order". In April 2006, the Cuiping District Court in Yibin City convicted them on the same charges. Luo Mingzhong and Luo Huiquan were each sentenced to two years' imprisonment, while Zhan and Zhou were sentenced to one and a half years' imprisonment, suspended for one and a half years. On the day of trial, the local trade union guarded the court room and refused admittance to workers. Their appeals failed and they are believed to be due for release in July 2007. However in recent US report stated that Luo Mingzhong and Luo Huiquan had still not been released by the end of 2007.

Luo Huiquan 駱惠全

Luo, born in 1957, sentenced to two years' imprisonment. See case of Luo Mingzhong (above).

Ni Xiafei and Miao Jinhong ¹

Ni Xiafei and **Miao Jinhong** led a group of migrant workers in Zhejiang Province in blocking a railway line and attacking a police station to protest unpaid wages. Both men were detained in October 2000 and were subsequently tried and each sentenced to 8 years' imprisonment (charges unknown.)

Ning Xianhua 宁先华

Ning Xianhua was sentenced to 12 years imprisonment on 16 September 2004 by the Shenyang Intermediate People's Court. Ning's colleague and co-defendant at the trial, **Kong Youping** was sentenced to 15 years imprisonment.

The specific charges laid against Kong Youping and Ning Xianhua at their trial are currently unknown.



She Wanbao 佘萬寶

She, a 49-year-old Sichuan native, was reportedly a labour organiser and a member of the China Democratic Party (CDP). He was previously convicted of counter-revolutionary propaganda and incitement by the Guangyuan Intermediate People's Court in Sichuan Province and was sentenced on 3 November 1989 to four years' imprisonment. He was released in July 1993, but

¹ Chinese characters not known

was rearrested around five years later in connection with his CDP activities. On 25 October 1999, the Sichuan Higher People's Court upheld a conviction on "subversion" charges passed down by the Guangyuan Intermediate People's Court. He was sentenced to 12 years' imprisonment, and has been held at the Chuanzhong Prison since 5 April 2000. On 9 September 2005, She's sentence was reduced by six months. He will be due for release on 6 January 2011.

Wang Guilin 王桂林

Wang Guilin and Yu Changwu were villagers' representatives from Fujin City, Heilongjiang Province. Villagers in Fujin claim that city officials had taken about 100,000 hectares of their land, which led to loss of livelihood for the villagers and farm workers. They participated in Yang Chunlin's "We Want Human Rights, not the Olympics" open letter action. Throughout the second half of 2007, Wang and Yu were often questioned, detained, and monitored. On January 28, 2008, Wang Guilin was assigned one and a half years of Re-education through Labour (RTL) for "disturbing social order". Another village representative, Yu Changwu, was also assigned a two year RTL sentence on January 17 2008. According to Yu's lawyer, their "crimes" included "violating state safety, disturbing social order, being interviewed by foreign media (especially Falungong media), releasing articles about China's land system on foreign websites, and saying 'we want our land, not the Olympics'" when speaking to reporters. [See also case of **Yang Cunlin**]

Wang Jun [音譯：王俊]

Wang was an 18-year-old temporary worker in Xian's Xincheng Factory in 1989. He participated in a "serious political disturbance" on 22 April 1989, throwing rocks, breaking street lamps and windows, setting fire to several vehicles. He was sentenced to death. The Supreme People's Court recommended a verdict of death with two-year reprieve. After four sentence-reductions, he is due for release on 11 December 2009.

Wang Jun (female) [音譯：王君]

Wang Jun, a worker at a guesthouse in Sichuan was detained along with two other workers on 20 September 2006. Public security officials detained Huang Zhuyu (f), Wang Jun and Xu Haiyan on September 20, 2006, after they joined 40 laid-off workers attempting to petition the Suining Municipal Party committee about unemployment benefits. The manager of their workplace, a guesthouse, sold the facility at a low price to a single bidder. The former manager then became deputy secretary general of the Suining municipal government. Public security officials beat two other female petitioners, Zhang Xiaohua and Liu Xiaohong, who were hospitalized. No other information about their place of detention or any charges against them is available. See also **Xu Haiyan and Huang Zhuyu**.

Wang Miaogen 王妙根

Wang, a manual worker in Shanghai at the time of the May 1989 pro-democracy movement, was a leading member of the Shanghai Workers Autonomous Federation which was formed that month. Detained shortly after the June 4, 1989 government crackdown, Wang then spent two and a half years in police detention undergoing "re-education through labour" on account of his involvement in the banned workers' group. In April 1993, after he committed an act of self-mutilation in front of a Shanghai police station in public protest against having recently been severely beaten up by the police, he was subsequently detained and then forcibly committed to the Shanghai Ankang Mental Hospital, a facility run by the Public Security Bureau to detain and

treat mentally ill people. Wang has been held incommunicado at the Shanghai Ankang now for more than 12 years.

Wang Sen 王森

Wang Sen and **Hu Mingjun**, both leaders of the Sichuan provincial branch of the banned China Democratic Party (CDP), were detained by police in 2001 after they communicated with striking workers at the Dazhou Steel Mill. On 18 December 2000, about 1000 workers at the factory had organised a public demonstration demanding payment of overdue wages, and Hu and Wang subsequently made contact with the demonstrating workers. Wang, a resident of Dazhou, was arrested on 30 April 2001 and Hu, a resident of Chengdu, was arrested on 30 May. The two men were initially charged with “incitement to subvert state power” but the charges were subsequently increased to actual “subversion”. On May 2002, at the Dazhou Intermediate People’s Court, Hu was sentenced to 11 years’ imprisonment and Wang received a 10-year sentence.

According to one activist, Wang was a lawyer in Dazhou who was active in supporting farmers and workers in their struggle for lower taxes labour rights. After his arrest, Wang suffered from diabetes and his eyesight deteriorates. His wife has applied for medical parole several times which have been denied. She has also been required to pay for his medical treatment by the prison authorities and is struggling to pay the necessary fees. She also complained that the prison had failed to let the family visit Wang in accordance with the normal visit procedure and Wang’s letters could never reach his family. In May 2008, Wang reported that he was beaten by the prison guards in at least five occasions.

Xu Haiyan (f), Wang Jun (f) and Huang Zhuyu

On September 20 2006, more than 40 laid-off workers, including Xu, from Suining’s Suizhou Guesthouse went to the office of the Suining Municipal Party committee to deliver a petition. After the Suizhou Guesthouse went bankrupt and its assets were sold undervalued to the benefit of a single bidder. Several audits had reportedly found evidence of corruption by the general manager of the guesthouse, Xie Zhicheng, who had gone on to become the deputy secretary general of the Suining Municipal Government.

When no officials came out to accept the petition, the workers continued to wait outside the office building. Then the deputy director of the Suining Municipal Public Security Bureau (PSB), Wang Yanwen, and the director of the city’s Letters and Petitions Office, Li Nianguang, arrived with several dozen uniformed and plain-clothes police officers and attempted to forcibly remove the petitioning workers. Police officers reportedly pushed two female workers, **Zhang Xiaohua** and **Liu Xiaohong**, to the ground, and Zhang was badly beaten, suffering serious head injuries and nausea as a result. Sources say both women were subsequently taken to the local hospital, where Zhang was diagnosed with a cerebral concussion. The Party Committee head reportedly instructed the hospital not to treat the women, but they were admitted nevertheless.

Sources say that police forcibly detained two other female petitioners, **Wang Jun** and **Xu Haiyan**, as they were returning home after the petitioning attempt. In addition, a male worker, **Huang Zhuyu**, was detained by local police after he returned home that evening. No further information about their place of detention or any charges against them is available.

Yang Chunlin 楊春林

Yang is an ex-SOE worker from Jiamusi City, Heilongjiang Province. Yang was detained on July 6, 2007 and formally arrested on suspicion of "subversion of state power" on 3 August 2007. Yang's arrest was apparently ordered by the Ministry of Public Security in Beijing. Yang is believed to have been arrested for collecting signatures to endorse an open letter entitled "We Want Human Rights, not the Olympics" in villages where he had been helping farmers dealing with land disputes in the first half of 2007. The letter has reportedly been signed by more than 10,000 people, mostly Heilongjiang farmers who have lost their land. Many farmers fighting forced eviction in Heilongjiang signed the petition because they sympathized with victims of land loss in cities where corrupt officials used the Olympics as a pretense to grab land/housing while providing inadequate compensation. His trial began in February 2008. Yang was sentenced to five years in prison on 24 March 2008. He maintained his innocence throughout the trial. During and after the hearing at which he was sentenced, Yang was reportedly beaten with an electric rod on at least two occasions.

Yao Fuxin 姚福信

After the Ferro-Alloy Factory in Liaoyang, Liaoning Province, was declared bankrupt in early 2002, the local workers elected Yao Fuxin as one of their spokespeople to conduct negotiations with the local government. In March 2002, Yao and his fellow worker **Xiao Yunliang 萧云良** then helped to organise a series of massive protest demonstrations in Liaoyang. Yao was secretly detained 17 March 2002, and charged together with Xiao Yunliang, with the crime of "illegal assembly and demonstration". Subsequently, on account of his alleged involvement in the banned China Democracy Party (CDP) – he has consistently denied such involvement – the charge of "subversion" was brought against him. (In November 2002, during a press conference in Beijing, Deputy-Chairman Zhang Junjiu of the All-China Federation of Trade Unions (ACFTU) stated that Yao had been "detained because he broke Chinese law by carrying out car-bombings and not because he organised a worker's campaign". This ludicrous allegation was later denied even by the chairman of the Liaoyang ACFTU branch, a Mr. Su, who confirmed by telephone to China Labour Bulletin: "That is sheer rumour. There is no way that Yao Fuxin was involved in such activities.") Tried at the Liaoyang Intermediate People's Court on 15 January 2003, Yao and Xiao were sentenced to seven and four years in prison respectively and will be due for release in March 2009. Xiao has been released on 23 February 2006 and his health deteriorated throughout the prison term. Like his fellow prisoner Xiao Yunliang, Yao has been plagued by serious health problems throughout his imprisonment.



Yu Changwu 于長武

Yu Changwu was assigned two years Re-Education through Labour on 17 January 2008. See case of Wang Guilin (above).

Yue Tianxiang 岳天祥

In 1995, Yue Tianxiang, a driver at the state-owned Tianshui City Transport Company, Gansu Province, was laid off from his job despite being owed three months' back pay. When the company refused to negotiate a settlement regarding their wage arrears and to provide them with a legally entitled living allowance, Yue and another laid-off driver, **Guo Xinmin 郭新民**, decided

to take their case to the Tianshui Labour Disputes Arbitration Committee. The Committee ruled that the company should find new positions for the two workers as soon as possible, but the company manager refused to implement this decision. When Yue and Guo learned that many of their fellow drivers in Tianshui faced the same kind of treatment, they set up a journal called China Labour Monitor and used it to publish articles on various labour rights-related issues, including reports of corruption at their former company. They also wrote an open letter to President Jiang Zemin asking for the central government to take action on these issues. In late 1998, after receiving no response from the authorities, they distributed their letter to the international news media. A few weeks later, in January 1999, they were detained by the Tianshui police and were eventually charged with “subversion of state power”. On 5 July 1999, Yue Tianxiang was tried and sentenced to 10 years’ imprisonment. (His fellow activist Guo Xinmin was also sentenced at the same time, but he was freed from prison around one year later.) According to recent sources, Yue reportedly received a one year sentence reduction on 23 March 2005 and is now due for release on 8 January 2008 (as opposed to January 2009.)

Zha Jianguo 查建国 (sometimes known as Cha Jianguo)

In January 1998, Gao Hongming and **Zha Jianguo 查建国** (sometimes translated as Cha), wrote to the head of the state-controlled All-China Federation of Trade Unions (ACFTU), Wei Jianxing, and applied for permission to form an autonomous labour group called the China Free Workers Union. In a statement faxed to the National People’s Congress at that time, Gao said: “China’s trade unions at all levels have become bureaucracies, and their officials reduced to bureaucrats. This has resulted in the workers becoming alienated [from the official union].” In early 1999, after also playing a leading role in the formation of the now-banned China Democratic Party (CDP), both Gao Hongming and Zha Jianguo were arrested and charged with “incitement to subvert state power.” On August 2, Gao was sentenced to eight years’ imprisonment and Zha to nine years. On September 17, 1999 the Beijing High People’s Court rejected the appeals of both men. Guo was released in 2007.



Zhao Changqing 赵常青

Zhao, now 38 years old, was first arrested in June 1989 and detained for four months at Qincheng Prison, Beijing, for having organised a Students’ Autonomous Committee at the Shaanxi Normal University during the pro-democracy movement in May that year. He was arrested again in 1998 while teaching at a school affiliated with the Shaanxi Hanzhong Nuclear Industry Factory 813, after attempting to stand for election as a factory representative to the National People’s Congress and publicly criticising the All-China Federation of Trade Unions (ACFTU) for failing to defend workers interests. In an open letter to his fellow factory workers, dated 11 January 1998, Zhao wrote: “You should treasure your democratic rights. Even if I cannot run as a formal candidate, if you believe I am capable of representing you and of struggling for your interests, then I ask you to write in my name on the ballot. If elected, I will be worthy of your trust and will demonstrate my loyalty to you through my actions.” Before the workers’ ballots could be cast on January 14, Zhao was secretly detained by the police on suspicion of “endangering state security.” In July that year, he was tried at the Hanzhong City Intermediate People’s Court on charges of “subversion” and sentenced to three years’ imprisonment. After his release, in early November 2002 Zhao drafted and circulated an open letter to the National People’s Congress demanding, among other things, an official reassessment of the 1989 pro-democracy movement and the release of all

political prisoners. In due course, 192 other political dissidents signed the letter, thereby attracting widespread international attention to what was the most significant political action by Chinese dissidents in recent years. In December 2002, Zhao Changqing was arrested by police for the third time and was later sentenced to 5 years' imprisonment for "incitement to subvert state power". He was due for release in late 2007 but a recent US report says that he was not released by the end of 2007.

Zhou Yuanwu 周遠武

Zhou was a workers' representative who led protests at the Jingchu Brewery in Jingzhou in 2006. When the Jingchu Brewery was declared bankrupt in 2002, workers found that the company had not paid pension payments or medical insurance for them. Neither were they compensated according to the law. Zhou led several protests in defense of the factory workers' rights and petitioned to the municipal and the provincial governments. The Boxun news agency reported that on 18 August 2006 the Jingzhou police tried to forcibly bring Zhou to court without a subpoena. When he refused, Zhou was beaten up and arrested on the grounds of assaulting a police officer. His case was heard by the Jingzhou District court on 6 April 2007, but Zhou was deprived of his legal representative, Chen Xiongyan, after Chen was detained for allegedly violating court discipline. He was sentenced to 2.5 years imprisonment by the Jingzhou District People's Court on May 15, 2007 for "disrupting official business." He is due for release on 17 February 2009. Zhou has reportedly been in poor spirits throughout his confinement.

Zhu Fangming 朱芳鸣

Zhu was a 28-year-old worker at the Hengyang City (Hunan Province) Flour Factory and vice-chairman of the Hengyang City Workers Autonomous Federation. He organised demonstrations and took part in sit-in in front of the municipal government offices. After the events of June 4, he allegedly led workers to the municipal Public Security Bureau to demand justice. He was sentenced in December 1989 by the Hengyang City Intermediate People's Court to life imprisonment on a charge of "hooliganism". In 1993, ICFTU received a reply from the Chinese government, indicating that Zhu was "released, acquitted of criminal responsibility". Yet, due to the too-short-be-true prison term and lack of independent source to prove the release, Zhu is believed to be still held in Hengyang Prison (Hunan Provincial No.2 Prison). In October 2005, the Chinese government maintained that Zhu "was never punished" for his activities in 1989 and it stated that he is once again working at Hengyang's Xihu Flour Factory. This information is at total variance, however, with the original reporting of the case in the Hunan Daily.