

# ITUC Submission to the UN: Universal periodic Review – People’s Republic of China

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## 1. Overview of ITUC and scope of this report

1. The International Trade Union Confederation represents 168 million unionised workers through 311 national affiliated union centres in 155 countries and territories, including China’s Hong Kong SAR. Together with its affiliates, its regional organisations, the Global Union Federations the ITUC campaigns for the universal respect of trade union rights, as guaranteed by the ILO Conventions and the UN mechanisms. The ITUC defends trade unionists whenever their fundamental human rights are violated as a result of their trade union activities. It also takes action against other labour rights violations and other violations of human rights especially where these affect working people. This report looks primarily at labour related human rights and the scope of the ICESCR as well as core ILO conventions. It highlights the current failings of the Chinese government to uphold certain fundamental rights. Due to space considerations it does not cover areas where the ITUC believes progress has been or is being made to ameliorate certain abuses.

## II. Labour rights situation on the ground.

2. Labour rights and in particular trade union rights in China continue to be at worst abused and ignored and at best limited by both state-sanctioned restrictions and the sometimes unhampered activities of business and local officials. Despite some legislative progress in the past four years, key rights enshrined in national and local regulations continue to be ignored. Workers attempting to raise their concerns in the workplace or through protest action continue to be at risk of imprisonment. Scores of worker activists and supporters have been detained and imprisoned in the period under review. Workers are prevented by law from organising outside the All-China Federation of Trade Unions (ACFTU), which is bound by its constitution to accept the leadership of the Chinese Communist Party. The Trade Union Law bans workers from organising independently. While recent legislation and related activities have made some progress in some areas of labour rights, no progress has been made at all to promote or respect the right to freedom of association and independent trade unions.

### a. Impunity and labour law implementation: Non implementation and non enforcement

3. Extensive labour legislation exists on a national, provincial and local level. Some of this is – on paper – in accordance with or exceeding international norms. For example minimum wage levels are set, working hours are fixed with fixed overtime hours and overtime rates. The vagueness that characterized some legislation has been addressed with the new labour contract law which outlines

for the first time specific penalties for breaking certain laws as regards contracts and their contents. However, much legislation is routinely ignored by both companies and state officials. State corruption and the plentitude of local regulations giving enterprises loopholes – such as exemption from certain provisions on working hours and the calculation of overtime – allow companies to flout the law. Workers, especially rural migrant workers (hereafter migrants) are generally found to be working 12 – 16 hours a day for wages that are below the minimum wage. Minimum wage levels are only achieved with extensive overtime. Such instances have been widely documented.

4. Penalties for the non enforcement of legislation remain low and in many cases a culture of impunity continues to exist. Where workers are awarded compensation for such abuses (for example unpaid wages or for non-payment of social security and other benefits as required by law) by the local labour bureaus or the courts, such decisions, despite being legally binding are not enforced. Wage arrears between 2005 and 2007 reached around 66 billion Yuan. Many wage arrears claims taken to court are settled in favour of the workers but in many instances the court decisions are not implemented and the workers do not receive their back pay resulting in lack of domestic legal remedy. An increasing number of workers protesting such arrears, especially in construction, are beaten by employer-related gangs. While cases are being brought to criminal trials, the involvement of local officials is often overlooked or ignored.

#### **b. Harassment of Legal rights groups, labour groups and lawyers**

5. Recent years have seen an increased crackdown on lawyers defending labour rights cases and related lawsuits like those involving farmers as well as a concentrated clampdown on the civil society and in particular in labour rights groups. Groups established to support workers are the object of intensified official scrutiny, monitoring and harassment. Advice for workers involved in mass layoffs in the latter half of 2007 formed the backdrop behind the repeated destruction of the Dagongzhe Workers centre in Shenzhen and the brutal stabbing of its lead worker, Huang Qingnan. The authorities, despite initially failing to investigate the attacks, after global support for Huang (including by the ITUC and affiliates), reportedly apprehended the culprits although questions remain over the identity of the mastermind. In another case, Gao Zhisheng, was detained in 2006 on suspicion of "subversion of state power" after defending other activists as well as workers – such as those detained after protests at Stella factories in 2004 and mine accident victims.

#### **c. Related issues – poor reporting and state secrets**

6. It is almost impossible to obtain full and accurate data on labour and human rights related cases and issues. On a range of issues there are no official records and those that do exist are contradictory and misleading, for example the complicated categorization of laid off workers or unemployment rates, due to vested interests in over- or under-reporting by state firms and local government officials, the under-registration of formal unemployment, and the exclusion of migrant workers resident in cities. Secondly most central statistics are 'secret' – and the scope of what is defined as a state secret covers not only covers issues concerning national security, such as military or political secrets, but also includes industrial relations. The laws allow for an almost indefinite and extremely elastic expansion of the definition. Material can be retroactively classified as a state secret if the authorities determine that the consequences of disclosure have harmed or could harm the "security and interests of the state."

7. 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 and the Ministry of Labour and Social security (MOLSS) in 2000 and with the ACFTU (1996). The regulations state: "Undisclosed unemployment rates, social insurance fund revenue and expenditure forecasts" of MOLSS and "composite information and statistical figures held by the ACFTU concerning the unemployment and livelihood hardships of workers" are "secret". Statistics on 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 “highly secret.” Labour unrest and protests by workers are covered by both regulations: the MOLSS regulation says that “composite nationwide information regarding workers’ collective petitioning, strikes, and other major incidents” are “highly secret”. The ACFTU regulation classes “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 Labour Organization and other important international meetings” are “highly secret” by the MOLSS regulation and “work plans and countermeasures concerning participation in the ILO and bilateral and multilateral communications with trade union organizations of other nations” are ranked as “secret” by the ACFTU.

8. Overall policymaking on potentially sensitive issues such as national policies on social security, welfare and labour in general are also protected as a state secret. We understand that revisions may be underway to some aspects of the state secrets law as a result of new legislation on information dissemination and we hope that the laws are significantly reduced in scope – it is difficult to assess how the PRC government can have genuine dialogue with major bodies such as the ILO if its work plans and “countermeasures” regarding such participation are a matter of state secrets.

### **III. Key trade union and labour rights issues in China**

#### **a. Right to Freedom of association: trade union monopoly and lack of independence**

9. Contrary to UN and ILO standards, workers are not free to form or join trade unions of their choice. Only the All China Federation of Trade Unions (ACFTU) is recognised in the law. The ACFTU therefore exercises a trade union monopoly and trade union organisations at the higher level “shall exercise leadership” over those at lower level. This trade union monopoly is exacerbated by the fact that the ACFTU must also by law; “observe and safeguard the Constitution (...), take economic development as the central task, uphold the socialist road, the people’s democratic dictatorship, leadership by the Communist Party of China, and Marxist-Leninism, Mao Zedong Thought and Deng Xiaoping Theory...”. While some recent ACFTU activity and reforms are leading to work that may more closely resemble the activities of a genuine trade union, there is no evidence of any weakening between the Communist Party and the official trade union. For example, the recent establishment of union branches at Wal-Mart retail outlets went hand in hand with the similar establishment of party branches. One can only conclude then that the authorities seek to enhance formal unionization as an alternative method of control and monitoring of workers. The unrelenting suppression of unofficial unions reinforces this view. There are many regulations governing and promoting collective contracts but in practice genuine collective bargaining remains limited, as the ACFTU engages in negotiations and “represents” workers in negotiations with management and government. While details have emerged of a few new collective contracts which show evidence of some positive changes in terms and conditions, the vast majority of collective contracts reflect only the minimum legal requirements. The new labour contract law addresses the issue of widespread lack of work contracts, but the question remains as to whether the law will be properly implemented. Furthermore the law does not provide solid support for increased worker participation in negotiating contracts or conditions apart from through the official trade union. The

new law was also the cause of lay-offs of long standing workers prior to its coming into force. Companies are now using more covert ways to circumvent labour laws, such as the increased use of sub-contracted work or part time workers, not covered in the law. It remains to be seen as to how the authorities will address these issues.

10. Workers do not have the right to strike. Strikes have a tenuous legal existence whilst in practice the number of strikes continues to grow. Strikes are often repressed with force and are not generally supported or endorsed by the official trade union. No independent trade unions are allowed to exist, and all attempts at establishing independent workers' organisations are repressed, sometimes violently. Organisers of independent trade unions which resist ACFTU assimilation are generally arrested, detained or imprisoned. Organisers of major worker protests are often detained. Some are sentenced to terms of imprisonment after criminal trials which can fall well short of international standards. Others can be assigned to terms of "re-education through labour" (RTL), an administrative process which bypasses the safeguards of the criminal justice system.

11. Where detailed reports of social unrest are available, workers generally dismiss the official trade union as unhelpful or ineffective. Despite migrant workers being admitted into the ACFTU in 2003, it is almost non-existent in the majority of disputes and collective actions in the major manufacturing zones where the majority of private business is located. One 2004 survey in the Pearl River Delta revealed that of some 582 migrants interviewed who suffered from severe work injuries, only 1.9% reported that they had received attention from the ACFTU – a figure lower than the 4.5 percent who reported attention from the government. Despite reforms pushing direct election of union officials, the level of autonomy of most unions at enterprise level remains low, with many officials appointed directly or indirectly by higher level ACFTU branches, the Communist Party or company management. A 2005 survey revealed that in 98 percent of Shenyang's enterprises and 100% of its grassroots trade unions, the post of union chair was held by someone who was also a deputy secretary in the municipal party committee or who held a deputy position in the administration. The survey also noted that union chairs "rarely concern themselves with union work." While some notable advances are being made in several cities or regions, the majority of workers have little idea if the chair has been elected or not and are often simply unaware that they have an enterprise trade union.

#### **b. Right to freedom of expression, liberty and detention of labour activists**

12. It is difficult, if not impossible, to establish the total number of worker protests in China due to media censorship and secrecy regarding statistics. It is clear though that labour related protests are increasing. In addition to regular collective protests against non-payment of wages, fake and genuine bankruptcies and corruption involved in the privatisation of SOEs there has also been a rise in individual protests. In 2006, the Ministry of Public Security announced that more than 87,000 "mass social disturbances" had occurred in 2005, up 50 per cent from 2003. These figures were widely quoted in the foreign media and since then similar national figures have not been widely reported. About half of these mass disputes are labour-related - low and missing back wages being the main causes. With the increasing number of protests, local government and company management have increasingly turned to violent repression of worker strikes and protests with large scale deployment of armed and riot police. Companies have hired men to beat and threaten striking or protesting workers, at times with the connivance of local officials. For example in August 2007, some 800 miners at the Tanjiashan Coal Mine in Hubei Province went on strike after some 360 million Yuan allocated by the central government for redundancy payments had allegedly been appropriated by the mines directors. After six days the miners were then surrounded by police and in the ensuing clash, at least one worker and one guard was killed. Also in August, local riot police detained eight leaders involved in a protest outside the offices of the Qingyang Municipal Transport Company in Gansu Province. The workers had been protesting after the previously State owned

company was privatized and sold; leaving workers laid off without social security or unemployment benefits. The eight were reportedly beaten and placed under house arrest.

13. Privatisation continues to be a major cause of labour unrest and is plagued by massive corruption. Many workers have been affected by the embezzlement and misappropriation of factory assets and funds set aside for redundancy and other benefits during state-owned enterprises' (SOE) restructuring. For example in October 2008, eight workers at the Qingxin Mine in Hunan Province were detained after leading a protest over the alleged misappropriation of around 2.6 million Yuan after the company was privatized into a share-holding company where each employee held shares. Two were then released but several others were later placed under house arrest. The mine owners had reportedly paid the county government 2 million Yuan to provide police to ensure the strikers could not petition the provincial government offices.

14. In August 2005, at the same time as discussing the ratification of ILO Convention 111, the NPC Standing Committee also passed a revised Security Administration Punishment Law outlining administrative penalties for public order offences. This regulation included detention for new offences of "instigating" and "masterminding" illegal public demonstrations, thus bringing further restrictions for disputes and workers involved. The current clampdown on labour rights NGOs and media censorship runs in parallel to the campaign for social inclusion in a "harmonious society". Workers are increasingly being informed that such "illegal" action harms social harmony and is regarded as a criminal act – despite this other avenues for worker-management negotiation and trade union intervention remain small.

15. Dozens of independent labour activists remain imprisoned for their labour related activities. They include members of the Workers' Autonomous Federations, arrested in the wake of the Tiananmen Square massacre of 4 June 1989, and subsequent protests. Recent cases include the April 2007 sentencing of Zhou Yuanwu, who led protests at the Jingzhou Brewery, to 30 months in prison for "obstructing public officers in performance of their duties". In November 2007, Li Guohong was sentenced to 18 months RTL for his involvement in a lawsuit brought against the Zhongyuan oil Field by laid-off workers. In April 2005, Chen Wei was convicted of "gathering a crowd to disrupt social order" and sentenced to four years after reportedly leading a protest of workers laid-off from a state-owned cement factory after it failed to pay compensation and retirement benefits. In September 2004, Kong Youping and Nin Xianhua were sentenced to 15 years and 12 years imprisonment respectively on charges of attempting to "subvert state power" after posting articles on the internet supporting the establishment of independent trade unions, freedom of association and the China Democracy Party.

### **c. Right to Safe and healthy working conditions (Article 8, ICESCR)**

16. The health and safety record remains abysmal with numerous large scale coal mining, gas and chemical accidents. Official statistics report that some 5 – 6,000 miners die each year but unofficial reports put the figure as high as 20,000. Some 5- 600,000 cases of pneumoconiosis are reported with 10,000 new cases each year. Hundreds of thousands in manufacturing receive work injuries ranging from disability to limb cutting and injury. Compensation is difficult to obtain and the procedures for claiming cumbersome and lengthy. Current legislation states that workers who encounter a situation that directly endangers their personal safety have the right to refuse orders which violate health and safety rules, and the right to leave the workplace. However numerous instances are reported each year of workers being forced to work in unsafe conditions – often with fatal results. In August 2007, a major accident at the Huayuan mine claimed 172 miners' lives. It was initially claimed that accident was a "natural disaster" (thus reducing legal compensation levels for victims); however evidence soon emerged suggesting otherwise. One day prior to the disaster, local authorities issued a "flood warning" and ordered a local evacuation – the following morning, miners asked management if they could cease work, but were told to work or lose their jobs.

Fearing loss of employment, most workers returned to the pits and about a fourth of them never saw their families again. In another incident in Shanxi Province, 105 miners were killed in a mine blast after the manager failed to report the initial explosion and instead sent more miners down the shaft to rescue the initial set of trapped miners. 15 of the 37 miners forced down died.

#### **d. Use of Child labour**

17. Child labour is prohibited by law and restrictions are in force for those aged between 16 and 18. Only under special circumstances can children be employed, such as in sports, arts or through occupational training and educational labour, but only if their personal health and safety is not affected. In practice however, there is substantial employment by children under the age of sixteen and child labour is a growing problem in the private sector, especially textiles and the export sector in general. Children are also employed in piece work (home based), fireworks, construction, entertainment, (organised) begging, street selling, kilns and prostitution. In June 2008, Playfair 2008, a group formed by the ITUC, the ITGLWF and the Clean Clothes Campaign issued a report looking at four licensed Olympic merchandise factories which found that one factory was using child labour. After initial denials, subsequent investigations showed the validity of Playfair's original research. While Playfair called for the Beijing Organising Committee of the Olympics not to cut and run, they instead decided to end the factory's contract.

18. Another form of employment is work-study programs set up to ostensibly allow schools in poor areas to establish income generating schemes in agriculture and manufacturing, employing children to earn their school fees as well as learn skills. Numerous cases have resulted in abuse and children are found working long working hours with little pay, under harsh conditions. The programs are inadequately regulated as they fall under the responsibility of the Ministry of Education and not the MOLSS, with few public rules on working hours, job descriptions or age limitations. So called "internships" are also used to employ children in factories. One example uncovered in June 2007 in Dongguan found some 300 Sichuanese students, most under 16, working 14 hour days on an 8 month internship. Another example in Shenzhen in 2006 revealed one company recruited 14 and 15 year old children as apprentices, working for low pay and long hours. Interviews showed that they were not free to leave the factory until their school fees were earned.

19. Lack of proper enforcement of regulations, insufficient resources and corruption continue to block efforts at improvement. Fines for child labour remain low in practice. The shortage of inspectors and collusion between private business and local officials reduce the odds of being discovered. There are no officially published national data on the extent of child labour, the number of children working in the worst forms of child labour and the number of cases - information on child labour being subject to state secrets legislation. In addition to poverty as a prime cause of child labour, education is severely underfunded and often prohibitively expensive. Poor education provision in rural and ethnic minority areas are increasing the high number of school dropouts and in turn contributing to the rise in child labour. The children of migrant workers are often denied adequate schooling despite national laws governing access to free education.

#### **e. Use of forced labour**

20. Chinese law prohibits forced and compulsory labour, including by children. However, forced labour is a serious problem, including in penal institutions, with regard to prisoners sentenced by the criminal justice system to reform through labour and those undergoing the administrative punishment of re-education through labour (RTL) which bypasses the criminal justice system altogether. Detainees are required to work, often for very long hours with little or no remuneration. Sometimes prisoners are contracted out to non-prison private enterprises. There is no effective mechanism to prevent the export of goods made under such conditions and no public data. Unpaid labour, locally called hashu, is still reported in some regions, most notably the XUAR. The ITUC's concerns over the use of RTL as well as forced child labour in "custody and education"

programs, whereby children between 13 and 16 years can be sent to custody and re-education programs by local public security bureaux without recourse to the criminal justice system have long been echoed by the ILO.

21. There are frequent reports of slavery in brick kilns. In March 2008, police rescued 33 mentally disabled men who had been forced to work as slaves at a building site in Heilongjiang Province. In one of the worst recent cases, after parents of disappeared children published an internet appeal in 2007, government authorities launched an investigation in brick kilns in Shanxi province which resulted in the freeing of around 1,340 workers from forced and often unpaid labour. These included workers with mental disabilities and children, many of whom were internally trafficked. Instances of child disappearances continue to emerge and are regarded as inadequately investigated as they generally involve children of low paid or migrant families. In April 2008, again after media attention called for government reaction, authorities uncovered a child trafficking ring that forced children from poor inland areas to work in the Pearl River Delta. Over 100 children aged between 13 and 15 (some as young as nine) were rescued from factories where they had worked up to 300 hours a month for pay of around \$0.50 an hour.

22. Trafficking of women and children is prohibited but remains a serious problem. While 2,375 cases were officially reported in 2007, estimates indicate that the true number is far higher. Trafficking takes place for forced prostitution and labour, including of children. Trafficked children end up in forced prostitution, drug networks or theft as well as begging, scavenging, newspaper selling and shoe shining. So-called training programs in 2007 offered to Uyghur girls from XUAR whereby they were pressured by local officials to accept work in coastal and southern cities, turned out to be in abysmal working conditions and with wages unpaid. As noted by the ILO, penalties for offences relating to forced labour are insufficient.

#### **IV. Key economic, social and cultural rights: Development and exclusion**

23. By most economic indicators, China's development over the last couple of decades has been an outstanding success and has delivered higher incomes for many and a substantial reduction of those living in absolute poverty. However, contrary to the notion of states "achieving progressively the full realization of the rights" recognized in the ICESCR, substantial numbers of people, especially in rural and ethnic minority regions remain under the poverty line (both national and international figures) and inequality has been rising. China's export success has been led by industries paying unnaturally low wages. Minimum wage levels are set far below those needed for "decent work". Insecure and informal work is increasing. The restructuring of SOEs and the founding of new private corporations has led to massive numbers of laid-off workers with relatively few new formal employment opportunities. Privatisation has been associated with widespread corruption by government officials - many SOEs have been declared bankrupt, sacked their employees, and sold off assets only to re-emerge in private hands, employing workers on inferior contracts with reduced holiday allowances, welfare entitlements and total wages. China's social system has deteriorated and previously existing state provisions of social security are now being replaced with a 'pay as you earn' system, which transfers the onus from the state to the individual worker. Many people fall outside its coverage and many companies fail to pay into existing pension schemes. The SARs crisis in 2003 led to a long delayed but insufficient financial boost to the rural health system which has failed to provide rural workers with even the most cursory of health care.

#### **V. vulnerable groups: Institutionalized and widespread Discrimination**

24. Discrimination, prohibited by law, occurs extensively in practice. Both women and ethnic minorities suffer from discrimination in wages and access to employment. In particular the institutionalised discrimination against migrant workers from rural areas remains a serious problem. Chinese law protects the rights of persons with disabilities and prohibits discrimination. However, conditions, in particular employment opportunities, lag far behind legal dictates with insufficient

access to assistance. People with certain infectious diseases are also denied equal employment opportunities. In 2007, a new law was passed legislating against discrimination towards migrants, women and HBV+ people. The law importantly stated that migrant workers should have same rights to employment as their urban counterparts and those resident in a city for over six months will be entitled to local government unemployment benefits and services. The ultimate success or significance of the legislation will be dependant on proper implementation. Concerns remain that the new law is vague; studies of some draft provincial regulations implementing the new legislation (such as Guangdong) in July 2008 suggest that key areas such as sexual orientation and disability among others are not clearly prohibited.

**a. women.**

25. Women continue to experience discrimination, unfair dismissal and wage discrepancies. Women have suffered disproportionately from lay offs and it is believed that in some areas up to 70 to 80% of laid off ex-SOE workers are women. Regulations governing the reform of SOEs allow for women to be forced to “retire” at 40 or take enforced two-year maternity leave without pay. As well as depriving women of equal rights to employment, such discriminatory practices mean that women have lower pensions, fewer opportunities to save, and lose their access to child care, medical care and other allowances. The official retirement age continues to set two ages - 60 for men and 55 for women. In terms of re-employment - figures show that about 75% of laid-off women are still unemployed after one year, compared with 50% of men. Many employers prefer to hire men to avoid paying maternity leave and childcare. Laws regarding non-termination of work contracts for pregnant and nursing mothers are often not enforced and women are dismissed. Many of the migrants employed at the lower end of the wage scale in small and medium enterprises in the south and eastern parts of China are women aged between 16 and 25. Typically, young female migrants earn less than their male counterparts. Effective job segregation means women generally find employment in the unskilled, labour-intensive, and lower-paid textile and manufacturing industries. For professionals and white-collar workers, there is a distinct preference towards male graduates while young non-married women are preferred for assembly line posts, thus increasing gender segregation of work.

26. An ILO CEACR 2006 report noted a significant underrepresentation of women in supervisory positions while an ILO report on Discrimination (2007) notes a 20% gender wage gap. According to State Council figures, although 99% of girls attend elementary school and 95 percent enter lower middle school only 75% go on to higher middle school. Women make up 70 % of China's 85 million illiterates.

**b. Ethnic minorities**

27. Government policy officially provides members of recognised ethnic minorities with preferential treatment in birth planning, university admission, employment etc. Nevertheless, in practice minorities are often discriminated against in terms of access to equal education opportunities and employment. Discrimination is the source of deep resentment in some areas, such as in the Xinjiang Uighur Autonomous Region (XUAR), the Inner Mongolia Autonomous Region and the Tibetan Autonomous Region (TAR) and neighbouring areas. It is widely reported that despite extensive large scale development projects in the XUAR, many ethnic Uyghurs failed to benefit from newly created construction jobs and instead Han migrant workers were brought in to work. In the TAR and surrounding areas, there are frequent claims of discriminatory employment practices opportunities which disadvantage Tibetan workers. Unemployment in some areas among Tibetan youth has been put at around 70 to 80%, while the disparity in Chinese language skills required for well-paid jobs perpetuates the already skewed system of preferential recruitment against ethnic Tibetans. Adequate statistics on these issues are not disseminated by the authorities.

**c. Rural migrants**

28. Extensive discrimination affects the internal migrants who make up an increasing share of the labour force in urban areas. There are extensive restrictions on freedom of movement brought about by the “hukou” system. As an integral part of the hukou system, rural migrants are disqualified from freely seeking and obtaining better-paid opportunities in the cities unless they can obtain temporary residency and work permits, as such many are prey to unscrupulous agents or contractors. Legally employed migrants living in cities face difficulties in obtaining equal access to health, medical and education services. While reforms have loosened the hukou system for the well educated and rich, they have not addressed the core problem facing most rural migrants. The ILO’s 2007 Global Discrimination Report noted that while migrant workers represent 40% of the urban workforce, 90 million migrant workers cannot obtain an urban hukou to give them better access to housing, healthcare and education. In addition, the majority of rural migrants are employed in low-paid, labour intensive industries earning far less than urban residents. In 2005, a report showed that over 75% of migrant workers in Guangdong earned less than 1,000 Yuan per month, compared with the local 1,997 Yuan average. For most migrants, the minimum wage set is, in practice, the maximum and recent inflation has seriously cut away the value of recent wage increases. While some progress has been made to ensure migrants obtain fairer access to services, the root cause of discrimination - the Hukou – has not been properly rectified.

#### **VI. Hong Kong SAR : the state of labour rights**

29. Although the Basic Law contains provisions guaranteeing freedom of association, the right to organise, and the right to strike, no laws have been implemented to secure the effective application of these fundamental rights. An ordinance introduced in 1997 specifically repealed laws brought in immediately prior to Hong Kong's reunification with China, which had been designed to implement the ILO core conventions, thus withdrawing the right to collective bargaining. The right to strike is permitted by law but there is no legal entitlement to reinstatement, even if a worker is found to have been unfairly dismissed for participating in a strike. The HKSAR Government has persistently refused to implement the recommendations of the ILO Committee of Freedom of Association on introducing legislation for the objective recognition of trade unions for the purpose of collective bargaining. Foreign domestic workers are subject to discriminatory and unfair immigration rules, despite repeated calls for reform from the UN and other bodies. Although a new law on racial discrimination was finally passed in 2008, the new law is both weak and inherently discriminatory in nature.

#### **VII. Macau SAR: Inadequate Labour laws and protection of labour rights**

30. Freedom of association is guaranteed in law but does not extend to public servants or migrant workers. Collective bargaining is not guaranteed. Many workers have no formal employment contracts. Only civil servants have a systematic pension system - more than 75 percent of those aged 65 or above are not entitled to any pension fund. The use of temporary contracts has been increasing, thereby reducing the number of workers covered by pensions, sick leave, paid holidays and other benefits, as well as effectively reducing wages. While the right to strike is protected by law, there is no legal protection against retribution by employers for involvement in strike action. Striking workers may therefore be dismissed during or after industrial action, regardless of the outcome. Protestors at a May Day rally in 2007 complained of excessive police action after the accidental shooting of a motorcyclist by police. Several Hong Kong workers working in Macau, who openly supported a major strike by Hong Kong metal workers in August 2007, were later denied the right to re-enter Macau. Macau has a believed black list of local workers who have supported strikes and denied entry to foreign “trouble-makers”, including Hong Kong’s legislator Leung Kwok-hung as well as the legislator and General Secretary of the Hong Kong Confederation of Trade Unions, Lee Cheuk Yan. The number of migrant workers reached 86,510 in January 2008. They are denied the most basic forms of protection. Although migrant workers usually have employment contracts, they have no right to collective bargaining and no effective legal recourse in the case of unfair dismissal. While they are entitled to compensation as a result of

dismissal before the termination of their contracts, it is common practice for migrant workers to be issued with short-term contracts under which the non-renewal of the contract amounts to dismissal. The use of illegal (and hence unprotected) labour is also growing. A new labour law has just been passed in August 2008 but has been widely criticized by local labour groups for failing to impose criminal sanctions against employers who do not pay wages. The new law also fails to legislate on maximum working hours and minimum wages.

31. Macau is a transit and destination for women trafficked for the purpose of commercial sexual exploitation and there is evidence that some are deceived or coerced into sexual servitude, often through the use of debt bondage. Macau SAR has been placed on the Tier 2 Watch List for failing to show evidence of increasing efforts to address trafficking since 2004.

### **VIII. Recommendations**

32. As a matter of priority the government needs to ratify ILO Conventions No. 87 and No. 98, withdraw its objection to article 8 of the ICESCR and ensure effective implementation and enforcement of these core conventions.

33. Workers need to be guaranteed the right to freely organise in independent unions of their own choosing. They should have the right to bargain collectively as well as the right to strike. The intertwining of the official trade union with the authorities and the Communist party needs to be ended. Independent unions that genuinely defend the rights of workers will reduce the growing social unrest and form the foundation for the economy to enjoy more equitable and sustainable growth than that currently taking place. The harassment, detention and prosecution of labour activists and labour groups should be halted.

34. The Government needs to address the direct and indirect causes of wage differentials between men and women and take effective measures to reduce the persistent wage gap. The lack of adequate employment opportunities for ethnic minority workers and the alleged failure of major state infrastructure schemes to benefit local workers needs to be rectified. There is a need to carry out and publish more in-depth gender and ethnic analyses of the labour market.

35. The government needs to further address problems facing migrant workers, in particular the protection of their rights, wage payments and arrears, access to health and education, and exploitative working conditions. In particular it should take serious steps towards eliminating the Hukou system.

36. Work-study programs in China need to be subject to clear rules that prevent abuse. Such rules should be enforced effectively. There is a need to ensure that children under 18 years of age are not forced to work, whether within the framework of re-educational or reformative measures or at school or in any other situation. Education provision for all children, particularly rural, ethnic and migrant children must be strengthened. There is a need for statistics and information on the nature, extent and trends of the worst forms of child labour, measures taken by the government and sanctions applied.

37. There is a need for the repeal or extensive limiting of state secrets laws relating to labour, including forced labour, protests and such like and an end to the use of state-secret related criminal charges being brought against workers and others for publishing protests or similar actions.

38. The government should take effective measures to bring legislation in line with ILO Convention No. 105 on the abolition of forced labour which will necessitate the abolition of reeducation through labour. The government must end its use of prison labour for commercial production and reform or re-education through labour. Effective measures are needed to end the trafficking of women and children for forced prostitution and forced labour, including more inspections and stricter penalties.

39. There is an overall need for increased labour inspection and enforcement of the legislation, as many laws are relatively well developed but insufficiently adhered to. The level of penalties and fines imposed should be increased, especially in the areas of child labour and forced labour.