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## **ILO Committee of Experts on the Application of Conventions and Recommendations - China**

Dear Director-General,

I have the honour of sending you observations concerning compliance by The **People's Republic of China** with the following convention:

### **Convention No. 182 on Worst Forms of Child Labour, 1999, (Ratification 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, is increasing. The Chinese authorities have recognised the need for the elimination of child labour and have implemented several measures designed to address this problem which continues to be prevalent in Chinese industry, particularly 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. These new regulations fine employers and put the onus on employers 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 and recent regional initiatives.

There have been increasing signs of progress in terms of domestic and international initiatives aimed at curbing child labour and some of its root causes. Since 2002, the ILO's International Programme on the Elimination of Child Labour (IPEC) has been

working in Yunnan Province. Most recently the second-phase of the ILO ["Project to Prevent Trafficking for Labour Exploitation in China"](#), the Mekong sub regional project, was launched as a partnership between the ILO and the All-China Women's Federation (ACWF). In December 2007, a new National Plan of Action against Trafficking in Women and Children was issued which the ILO notes, signals a conceptual shift from "combating trafficking" to "anti-trafficking".

However, despite these initiatives, the existence of child labour, including the worst forms of child labour, remains high, due in part to the lack of proper enforcement of legislation and also to the lack of resources targeting this problem.

Some of the most serious issues of child labour are being addressed by the authorities with varying degrees of success and are a clear government target, for example the elimination of poverty remains central to national and local government efforts. However other areas are less clear cut. Firstly, some issues contributing to the rise in child labour remain unchallenged at the grassroots level. These include the lack of affordable and adequate schooling for all children regardless of region, race, gender or residential status. Secondly, some issues, while key to government policy on child labour, remain almost unchanged despite years of policy efforts. Corruption for example remains endemic. Thirdly, government efforts to tackle some of the more politically sensitive practices hindering the elimination of child labour remain insufficient.

## **1.2 Education: A key cause of children entering the workforce**

China has recognised in its Constitution the right to education for every citizen and introduced an education system, stipulating that the State should provide nine-year compulsory education for all primary and junior middle school students. Since 1949 the number of children attending school has risen and according to most reports the vast majority of children (official figures give 95 -98 percent) now attend and *complete* five years of primary school.

In March 2010, a welcome new ten year reform plan for the overhaul and improvement of the education system was unveiled. Goals include a greater emphasis on equity among schoolchildren and schools as well as increased resources and quality of education and the abolition of illiteracy by 2020. The government also reported plans to increase the ratio of education expenditure to gross domestic product to 4 percent by 2012.<sup>1</sup>

The ITUC hopes to see increased provision for the children of migrant workers and balanced and well thought out education provision for these children. At present different regions provide different measures to accommodate migrant children and in many cases these plans shift according to the whim of local government, resulting in the growth and subsequent closure of migrant schools and a failure to provide stable education.

While the increase in average income, especially for urban dwellers and the subsequent rise in basic services have been outstanding, serious problems relating to equality of income and equality in terms of accessing basic services including education remain.

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<sup>1</sup> In 2009, the central government approved an education fund of about 198 billion Yuan (around 21.19 billion U.S. dollars). About 28.7 million children from poor families received financial aid for their schooling. June, the Politburo, the CPC's top decision making body, released the National Outline for Medium- and Long-term Educational Reform and Development. - .

Indeed, according to statistics from the China Education and Research Network, the number of primary schools has decreased and enrolment at both primary and second level school has also decreased. Most crucially however, regulations fail to guarantee the funding of compulsory education, thus forcing or allowing many schools, particularly those in the impoverished rural regions, to either continue collecting tuition fees or charge various “miscellaneous fees” to their students in the name of “voluntary donations”, “fund-raising for school construction” or “after-school tutoring fees”.

According to a report published in May 2010, the dropout rate in some rural areas was as high as 40 percent. According to a study by the Institute of Rural Education at Northeast Normal University, which surveyed 17 junior high schools in 14 counties in six provinces, even in relatively prosperous areas, the school dropout rate could sometimes hit 40 percent. Official figures from Ministry of Education estimate that figures for this same period, are 5 percent in urban areas and 11 percent in rural areas compared to the 2004 Ministry of Education dropout rates at primary schools and junior high schools of 0.59 percent to 2 percent and 2.49 percent to 7 percent respectively.<sup>2</sup>

According to UNICEF, some 1 million children drop out of school each year because of poverty, particularly ethnic minorities and girls. One study by the British Department of International Development reported of a county in Gansu province which had a graduation rate of only 25 percent of the children who enrolled in primary school. All were boys. UNICEF figures state that an estimated two-thirds of China's un-enrolled school aged children are girls and girls are the first to drop out when economic pressures affect their families. Incidentally it is girls that are often found to be working in factories as underage workers.

Increasing school fees were found to be the primary reason for the increase in drop outs and the corresponding increase in child workers. One study by researchers at Stanford University on a poor county in Shanxi province looked at increasing the numbers of children completing basic education. It revealed the basic economics behind most drop-outs. Shilou County, among the poorest counties in Shanxi had a rural per capita net income of 1024 Yuan (US\$150), a mere quarter of the national level. Meanwhile the average tuition and fees for high school in Shilou is around 4000 Yuan per year, making education unaffordable.

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## **2. Worst Forms of Child Labour and forced 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 labour camp. Domestic scholars have decried the fact that some 80 percent of

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<sup>2</sup> Alarming School Dropout Rate Blamed on Teaching Methods, Mitch Moxley BEIJING, June 30, 2010 (IPS)

<sup>3</sup> Meeting the Unmet Needs of China's Neediest: Junior High Financial Aid in Shilou County, REAP Project, Ongoing, [http://fsi.stanford.edu/research/meeting\\_the\\_unmet\\_needs\\_of\\_chinas\\_neediest\\_junior\\_high\\_financial\\_aid\\_in\\_shilou\\_county/](http://fsi.stanford.edu/research/meeting_the_unmet_needs_of_chinas_neediest_junior_high_financial_aid_in_shilou_county/)

juvenile offenders in China are incarcerated, a percentage far higher than in other countries.<sup>4</sup>

The National Human Rights Action Plan of China, states that the government will endeavour to realise the goals set out in the Program for the Development of Children of China (2001-2010), making every effort to guarantee children's rights to life, development and participation in various affairs. In doing so, it will seek to improve the law and policy making for the juvenile population. Correlative regulations to the Law on the Protection of Minors will be revised at provincial level, and supportive regulations to the Law on the Prevention of Juvenile Delinquency will be made by local governments. The ITUC welcomes the Action Plan, however it notes that specific action points and measures remain vague and aspirational.

### **Correctional 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 under-age 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. ”

As detailed at length in the 2006 submission to the ILO, the ITUC supports the view that *“this model of work study schools has also become the basis for a form of school-run factories under the programme of “diligent work and economical study” (qingong jianxue)”*

In response to ILO and UN comments, the PRC Government has recently indicated to the ILO that juvenile delinquents follow work-study programmes to learn skills which are *“low in labour intensity, such as flower arrangement and embroidery”*. In 2007, the Ministry of Justice issued the Platform on re-education and reform of prisoners, section 26 which provides that "Labour for juvenile delinquents shall focus primarily on study of knowledge and acquisition of skills; the duration of labour shall not exceed four hours per day or 20 hours per week.". The government also informed the ILO that Provisional Rules of the State Council on work-study programmes for middle and primary schools prohibit hard work and heavy labour for middle and primary school students in the work-study process and that the work performed by the students are all within their capabilities and primarily centre around social work and community services.

However, there is little concrete evidence provided of the new focus given in these work study schools and statistics remain minimal.

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

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Dui Hua Commentary, analysis, and translation about human rights and rule of law in China, March 17, 2010, Chinese Legal Practitioners Stress Need for Better Procedures to Protect Juvenile Suspects

education. There appears to be no specific regulations which guide the exact procedures under which minors are sent to these schools and the ITUC believes that the use of these schools is in direct contravention of Convention 182 as well as the Convention on the Rights of the Child.

## **2.2 Forced Labour through school related or contracted work-study programmes**

Because of rising costs and the lack of central investment, many schools force children to work in order to make up school budgets. Cases of explosions in the production of fireworks for example, have been well publicised. This is just one example of the ways schools are being forced to earn money usually through the 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.

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 work in labour intensive unskilled positions for longer periods of time, where they do not learn any skill and earn only pocket money.

Summer/Winter break work programmes were often organised or encouraged by the education department, as a way for poor students to be able to pay for the coming year's tuition. More recently however, schools, especially those from the poorer inland provinces, make direct contacts with factories and send students to work during the school breaks or in term time, in order to raise funds for schools. The majority of children involved are between 11 and 15. Many schools in the urban areas charge parents a wide range of different school fees; for books, equipment, extra courses, uniforms etc.

In 2007, a case came to light of 70 school children from Henan Province who were brought by their teacher to work at a grape processing plant in Ningbo, where their hands bled from working 16-hour shifts while another 200 school students worked as grape peelers over the holidays.<sup>5</sup>

### **Harvesting**

As previously noted in the 2006 submission, in the Xinjiang Uyghur Autonomous Region of China, during bumper cotton harvests, the shortage of cotton-picking labourers has led to a 2005 local government directive allowing the recruitment of primary and secondary students as temporary cotton-pickers as a form of "work-Study" programme. Participation in cotton picking was compulsory and attitudes and behaviour noted in school performance marks. In addition, reports emerged that children were fined for being too slow or failing to meet production targets.

Domestic and international criticism of the work grew after several high profile news broadcasts resulting in the local XUAR education department stating that as of the

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Report by Macro International, *Summary Report: Child Labor, Forced Labor, funded by the United States Department of Labour*. Found at <http://www.dol.gov/ilab/media/reports/external/20091209-Report-China.pdf> and accessed in August 2010.

September 2008 harvest, school children aged between 6- 15 would not have to participate in the upcoming harvests.<sup>6</sup> Instead increased funding was provided for the schools. However interviews reveal that school children were still being forced to participate in the 2008 harvest despite the new directive which was not being enforced at a local level.

The Metropolitan *Consumer News* quoted staff at the Work-Study Programme Office of the Xinjiang Uyghur Autonomous Region Education Department as saying that work-study programs were an essential labour 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.

It was also found that during harvesting if a student could not or did not finish the work they needed to pay their share of the workload to the school - “For example, the students’ payment for 40 kilograms is 70 Yuan. If the student doesn’t work, they have to pay 28 Yuan [per day] to the school. “.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 State Council, China’s cabinet, has acknowledged the existence of severe defects in the Work and Study system in primary and middle schools. In 2006, prompted by an accident in which 131 children were poisoned after ingesting oil made from castor-oil seeds their school was making under contract from a local company, the central government issued a set of detailed instructions urging greater compliance with educational, health, and safety standards in Work and Study programs. “Labour that exceeds the bodily strength of children, involves toxic or dangerous material, or harms the development of the child is strictly prohibited,” the instructions said. Other unauthorised practices detailed by the document include: the imposition of revenue targets by education departments on schools and by schools on individual classes and schoolchildren; fining children who fall short of work quotas; children working overly long hours; and companies’ manipulation of the Work and Study label to employ underage workers.

Yet these new instructions have so far failed to remove the potential for abuse. In XUAR for example, reports have emerged that children are now being re-directed away from cotton harvesting to working in other types of work that press reports describe as only marginally less taxing, such as picking beetroots, tomatoes, and other vegetables in state-run farms, and collecting recycling material. In summer 2007, factories in Guangdong, Jiangxi, and Fujian provinces were found using child labour under bogus Work and Study schemes, prompting domestic experts to urge the government to close this loophole in the legal prohibition of child labour.

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<sup>6</sup> He, P. (2008, September 20). *From this autumn onwards, students of nine-year compulsory education will not pick cotton any longer.* Xinhua Web. Retrieved from [http://www.xj.xinhuanet.com/2008-09/20/content\\_14449889.htm](http://www.xj.xinhuanet.com/2008-09/20/content_14449889.htm) taken from Macro International, Summary Report: Child Labor, Forced Labor, funded by the United States Department of Labour. Found at <http://www.dol.gov/ilab/media/reports/external/20091209-Report-China.pdf> and accessed in August 2010.

## Factory ‘internships’ and work study programmes

‘Work-study’ or internship programmes are supposed to provide students with work experience, but instead are often used by employers to justify illegally low wages, or used as a money-making strategy by schools that take introduction fees, a cut of students’ wages, or levy school fees without actually teaching students anything.<sup>7</sup> Crucially children involved in ‘work-study’ are not considered to be in an ‘employment relationship’ and as such some have argued that national labour laws do not apply to them. Despite some clarification on part-time and temporary work in the Labour Contract law, there has been no new major legislation on “Work Study” schools.

While efforts have been made to curb the abuse of work study schemes, many examples of children working in conditions amounting to forced labour continue to emerge and the only effective solution is to ban the practice completely, ensuring severe penalties for transgressors, including local officials and school authorities, and an increase in inspection.

One major research study revealed hundreds of young school students working at a Microsoft contracted factory; KYE Systems Corp., in Dongguan, south China.<sup>8</sup> The factory recruits hundreds of "work study students" of 16 and 17 years of age (although interviews suggest that in 2007 and 2008 between 80 -100 children as young as 14 had been working in the factory), who work 15-hour shifts, six and seven days per week. In 2007 and 2008, dozens of the work study students were reported to be just 14 and 15 years old. A typical shift is from 7:45 a.m. to 10:55 p.m. In 2007 and 2008, before the worldwide recession, workers were at the factory 97 hours a week and worked 80 ½ of those hours. In 2009, workers reported being at the factory 83 hours a week and actually working for 68 hours. Workers receive a take home wage of 52 cent per hour after deductions for factory food.

The "work study students" are recruited from technical middle schools across the country, including from Sichuan, Hunan, Shanxi, Chongqing and Guizhou provinces and have to pay a "placement fee" of 300 to 500 RMB (\$43.84 to \$73.16) to KYE management to secure a summer position. The majority of technical students work two and a half to three months at KYE before returning to school in mid-September. However, some of the poorer students who may not graduate opt to remain working for longer periods.

These hours and conditions are blatantly illegal and contravene international, national and local labour laws for adults, let alone those protecting young workers and children.

In June 2007, reports emerged of some 300 school students, aged primarily below 16 years old working at the Fongzhen Connector Component Factory in Dongguang Shjie Township, south China. The children had been sent there by the Daying middle school in poverty stricken Yilong County, Sichuan Province for an eight month long “internship”.

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<sup>7</sup> HRW China: End Child Labour in State Schools , ‘Work and Study’ Programs Put Hundreds of Thousands of Children at Risk  
December 3, 2007

<sup>8</sup> National labor Committee, <http://www.nlcnet.org/reports?id=0034> KYE Recruits up to 1,000 Teenaged "Work Study" Students to work 15-hour shifts making computer mice for Microsoft and other companies

They were working an average of 14 hours a day for 500 Yuan a month. They were also reportedly denied phone calls home. Acting on claims of child labour, county level inspectors visited the factory and found that the factory had bussed out the students after a tip-off from the local township labour bureau. The trip had allegedly been organised by the school in order to raise funds for poorer students to earn enough money to cover school fees.<sup>9</sup>

Media reports quoted Yuan Guangyao, a Longzheng deputy manager, defending his company. "This internship is a form of cooperation between our company and the school... "I've been to that county myself and I found the local people were very poor, so this initiative of having students work here is a win-win strategy for both of us." Labour officials from Yilong County in Sichuan Province, where the students came from, said they had no say over the working conditions agreed between their school and the Dongguan factory. In a typical example of the problems of implementation, protectionism and bureaucracy, officials at the Guangdong provincial labour bureau gave a similar excuse stating only that labour arrangements made by a school should be regulated by the Education Ministry. The Education Ministry, meanwhile, did not answer queries from the international media.<sup>10</sup>

Overseas human rights organisations also alleged that government-sponsored labour programs forced Uighur girls and young women to work in factories in eastern China on false pretences and without regular wages. During the year, the international media reported that over 300 children, many of them from Xinjiang, were working in a shoe factory in eastern China as a part of a government labour transfer program.<sup>11</sup> The group included many Uighur girls, whose families were reportedly coerced and in some cases threatened by government officials to participate in the programme using fake or swapped identification cards provided by the government.

While work placements for school children are common throughout the world, the aim is to teach children a skill and give them an experience of the workplace. It is not to squeeze out unpaid or low paid labour from them, nor should it be an opportunity for the school to gain funding or for the children to be exposed to excessive working hours and unsafe workplaces. It is most certainly not to allow children to remain working in factories against their will.

### **3.0 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, young

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<sup>9</sup> Child labour and "work experience" in China – the blurred lines of illegality, IHLO, <http://www.ihlo.org/LRC/W/020807.html>, ITUC/GUF/HKCTU/HKTUC Hong Kong Liaison Office (IHLO) 2 August 2007

<sup>10</sup> International Herald Tribune, 18 June 2007 as quoted in Child labour and "work experience" in China – the blurred lines of illegality, IHLO, <http://www.ihlo.org/LRC/W/020807.html>, ITUC/GUF/HKCTU/HKTUC Hong Kong Liaison Office (IHLO) 2 August 2007

<sup>11</sup> United States Department of State, Trafficking in Persons Report 2009 - China, 16 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a4214c6c.html> [accessed 17 August 2010]

girls face additional problems. The shortage of females in the population has increased the trafficking of girls, who are sold as servants or brides or are forced into prostitution.

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 details of either penalties or remedies. China is a source, transit, and destination country for international human trafficking in women and children for sex exploitation and the entertainment industry. The ITUC continues to highlight the fact that there are increasing numbers of young women and female 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. The one child policy is considered to be of considerable influence on this growth in child trafficking for prostitution.

### **Trafficking and kidnapping for factory work**

There are continuing and possibly increasing confirmed reports of involuntary servitude of children, migrant workers, and abductees in China. In April 2008, a Chinese newspaper uncovered an extensive child forced labour network in Guangdong province that reportedly took thousands of children as young as seven years old from poor rural areas of Sichuan province, populated largely by the Yi minority, to work in factories in south eastern China. According to the report, the children were sold to factory owners and forced to work 10 hours a day, seven days a week, for as little as 30 cent per hour. In October 2008, a Chinese blogger publicly exposed several cases of child labour in Wuhan factories in central China stating that the factories had evaded detection by receiving advance warning of pending labour inspections. This practice is commonplace and reveals the almost endemic nature of official corruption at local level. While the authorities have increased resources in their anti-corruption efforts, the problem does not appear to be on the decrease. In addition, the growth and sophistication of national and international criminal networks including the apparent ease with which national networks have abducted the children of migrant workers coupled with the lack of resources so far focused on these children have made the problem harder to solve.<sup>12</sup>

### **Human trafficking - prostitution**

A *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 to recruit Tibetan girls and women to work as escorts, barmaids, and prostitutes.<sup>13</sup> It was 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

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<sup>12</sup> United States Department of State, Trafficking in Persons Report 2009 - China, 16 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a4214c6c.html> [accessed 17 August 2010]

<sup>13</sup> Radio Free Asia, Traffickers Prey on Tibetan Girls, Women, 2004.05.13

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.

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 one's 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.<sup>14</sup>

### **Prosecution for traffickers –Lack of sanctions**

The IPEC 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 women and children. Under Chinese law the buyer can be penalised by 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.

While the Chinese government is co-operating with regional and international bodies on addressing trafficking, domestic laws do not provide adequate sanctions for trafficking related crimes and such crimes are poorly defined in national law. For example the existing definition of trafficking does not prohibit non-physical forms of coercion, fraud, debt bondage, involuntary servitude, forced labour, or offenses committed against male victims, although some aspects of these crimes are addressed in other articles of China's criminal law. While Article 244 of China's Criminal Code bans forced labour by employers, the prescribed penalties of up to three years' imprisonment or a fine under this law are not sufficiently stringent. Additionally, Chinese law does not recognise forms of coercion other than abduction as constituting a means of trafficking. For example, during the initial reporting of the Shanxi slave scandal, the charges brought against those involved were primarily based on the issues of poor working conditions and no pay, as opposed to charges of slavery, trafficking and forced labour.

In 2008, according to one report, the official figures showed that 2,566 potential trafficking cases were investigated. However few cases of traffickers arrested and

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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

sanctioned were reported due to lack of media and official transparency and domestic laws on state secrets (see later for more details).<sup>15</sup>

### **Lack of transparency and harassment of parents and civil society**

According to US State Department reports, in 2008 the Chinese government did not provide the United Nations with data on prosecutions, convictions, or sentences of traffickers. Consequently, China was not among the 155 countries covered by the UN's Global Report on Human Trafficking released in February 2009.<sup>16</sup>

Reported incidents in 2008 involving forced and child labour reflect continuing legal and administrative weaknesses in China's anti-trafficking enforcement. The US State Department Trafficking report gives a lengthy overview of recent cases.<sup>17</sup> One particularly noteworthy report stated that around 1,000 children have gone missing in the Dongguan area (home to many migrant workers and factories in south China) and none have returned. Around 100 parents staged a demonstration in April against what they see as police inaction and incompetence. In response officials from the Public Security Bureau pledged to set up a nationwide DNA database connecting all 236 labs in the country by the end of May 2009.<sup>18</sup>

Crucially even when authorities increase anti-trafficking efforts, the lack of transparency in reporting and investigation combined with the extensive use of 'success' stories in the media has led many to question the statistics released by the police. For example in May 2009, police claimed to have rescued over 400 kidnapped women and children during a nationwide crackdown in April and May. However parents state that these figures are fictitious. The Police stated that some 196 children and 214 women were rescued and 72 human-trafficking rings all over the country were broken up. Parents interviewed in one city state that some 100 are missing from there alone and police had prevented parents from staging a public protest to draw attention to the problem.

Parents and supporters of parents of missing children, including those who have established support groups are regularly harassed and intimidated in attempts to stop them from publicising the case and/or the failure to investigate. One parents group stated that the 400 alleged to have been rescued in April and May, were in fact, old statistics which have been re-reported. In this group there are several hundred children and none have been found. The group went on to claim that some parents who tried to report their children missing met with refusal by police to even open a case file, while local media

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<sup>15</sup> United States Department of State, *Trafficking in Persons Report 2009 - China*, 16 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a4214c6c.html> [accessed 17 August 2010]

<sup>16</sup> United States Department of State, *Trafficking in Persons Report 2009 - China*, 16 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a4214c6c.html> [accessed 17 August 2010]

<sup>17</sup> In November 2008, police in Fujian province reportedly discovered a trafficking case involving 18 Vietnamese women who had been trafficked to Yunnan, Guangxi and other provinces in China for marriage. Also in Fujian, in December, police arrested 10 members of a criminal gang accused of having trafficked 10 female sex workers to men in isolated villages for approximately USD 800 to USD 1,200 each. In Guizhou Province, official media reported that 29 defendants were convicted for trafficking more than 80 female victims for forced marriage, and the main defendant was sentenced to death. According to official media, police in Xinjiang Uighur Autonomous Region rescued 746 children from trafficking gangs which had kidnapped and forced them into pick-pocketing. The Xinjiang Public Security Bureau reported that 177 suspects were arrested. United States Department of State, *Trafficking in Persons Report 2009 - China*, 16 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a4214c6c.html> [accessed 17 August 2010]

<sup>18</sup> Missing Children Spark Outcry, 2009-05-04, <http://www.rfa.org/english/news/china/missing-05042009111344.html> accessed on 22 August.

had failed to publicise information. In Guangdong, police had started following parents of missing children, predominately migrant workers in order to ensure they did not initiate public demonstrations. One woman interviewed from Dongguan said that her small son was snatched from the arms of his sister but local police had refused to support the family's plans to air a paid commercial appealing for information, saying that the case would have a "bad effect on society".<sup>19</sup>

While the Department of Public Security and other agencies are hampered by underfunding and lack of specialist staff, those affected, including migrant families in the south, have reported that they have received very little help from the police and local reporters trying to cover such cases have also reported being obstructed. The suppressing of personal stories combined with harassment of civil society groups can only hinder any genuine progress in the eradication of the problem of child trafficking. Authorities should ensure both open reporting of the issue and the rights of parents to share and obtain information.

### **Official corruption and collusion**

The government of the PRC and relevant authorities are aware of the problems concerning child labour, trafficking and forced labour; hundreds of examples can be provided.

The insidious problem of official corruption and collusion with criminal gangs or illegal employers continues despite the efforts aimed at curbing corruption. For example, in April 2008, after a local newspaper in the south claimed that around 1,000 children and juveniles had been trafficked from poor parts of Sichuan province to work in the Pearl River Delta, the authorities launched an investigation which reportedly found "no evidence". In a very well publicised press conference, authorities stated that they had investigated over 3,600 companies, employing 450,000 people but that they had not found any evidence of large scale use of child labour. Despite this however, the newspaper later revealed that at least 167 children had been discovered and would be sent back to Sichuan. The rescue of these children however, did not lead to criminal or administrative sanctions on any of the employers as far as can be uncovered and this despite several reports of rape of the children by factory personnel. Reports from factories being investigated by NGOs, foreign brands or other buyers all reveal a systematic practice of local officials tipping off factory management prior to any form of inspection, enabling the factories to easily hide child labourers and other abuses.

## **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 – organised groups of beggars and street sellers such as flower sellers, singers, etc, brick kilns, and prostitution (trafficked and other). One domestic report cites an investigation into labour conditions in Shandong province's Jinan City that found that the use of

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<sup>19</sup> China Vows Action on Trafficking, 2009-05-21, <http://www.rfa.org/english/news/china/chinatrafficking-05212009114049.html>

juvenile labour is most prevalent in the following industries: toy production, textiles, construction, food production, and light mechanical work.<sup>20</sup>

Cases of bonded labour and major cases of the sale and resale of children for bonded labour have risen dramatically over the past four years since the 2007 Shanxi Slave scandal. It is not clear as to how much this is due to the increase in investigative reporting, increasing civil society action or indeed evidence of an increasing problem of forced labour. One unforeseen respite however is the economic crisis, which has resulted in a reduction in the use and abuse of children in industrial areas, partly due to a reduction in demand. Conversely, however, lower profit margins could also increase the need to lower labour costs to the detriment of children.

### **Fireworks Industry**

The fireworks industry employs 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 privately owned. However, there is an increasing trend towards larger factories as successive pushes against poor safety practices in workshops have led to the growth of larger brands and a subsequent decrease in small family run workshops.

Children have long been used in firework production because of their “small and nimble fingers” and because of the informal setting of production. Authorities are working harder to improve the safety of the firework industry and to address the issue of child labour in the industry.

The most recent incident involving child labour and firework production took place on October 12, 2007, when 12 school-age children under the age of 16 lost their lives and nine other children were injured when an explosion occurred in an illegal fireworks workshop where they were working in Xiushan County, Chongqing. The students were all under the age of 16 (the youngest was only 8 years old and the oldest, 15). The work these children did was wrapping gunpowder and tin into tiny balls; a job so dangerous that a single stray act could cause an explosion. Children were paid 0.01 Yuan for each ball and usually earned 10 Yuan per day.<sup>21</sup>

At present, increasing rural wealth has decreased the number of children (and their parents) willing to work part time in the fireworks workshops. However, labour shortages in the sector and the need to keep costs down, means that local residents are solicited as workers and frequently juveniles are also persuaded to join. Forced labour is not so much of a problem as hazardous work for the children of local residents. The government has pledged to phase out the use of these small firework workshops and their use does seem to be decreasing but enough examples show the problem is far from resolved. Often the government reacts to an explosion by a sudden focus on the region/factory in question, shutting down workshops etc and shifting resources soon afterwards with little follow up.

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<sup>20</sup> As reported in China Labour Bulletin, As China's Economy Grows, So does China's Child Labour Problem 6 October 2005

<sup>21</sup> Report by Macro International, *Summary Report: Child Labor, Forced Labor, funded by the United States Department of Labour*. Found at <http://www.dol.gov/ilab/media/reports/external/20091209-Report-China.pdf> and accessed in August 2010. footnote 100

Issuing temporary bans on production, as the authorities did in Jiangxi province following a fireworks tragedy in 2002, can be a reaction that plunges employees into further poverty and often drives production underground.

### **Brick Kilns and glass makers**

There is evidence to suggest that children are still found working at brick kilns and glass making factories.

In terms of brick making, the biggest recent case revealed the systematic trafficking and forced labour of children and mentally disabled people for work in brick kilns all over Shanxi Province. The scale of the case and the incidents that have followed, reveal the almost total lack of supervision and monitoring of such enterprises.

The case was first revealed in a web campaign of fathers looking for their missing children, who they believed had been sold into the brick making trade. The fathers said their children were sold to kilns in Shanxi Province for 500 Yuan (US\$65) each. The fathers had on their own initiative rescued more than 40 children in two months. They said that some children had been isolated from the outside world for seven years, and some were beaten and maimed when they tried to escape. The backs of some were burnt by supervisors with burning bricks. Witnesses to the fathers' rescue mission, reported that some local labour officials helped sell these children and that when the fathers went to Shanxi to rescue their children; local law enforcement officers did not help them. On the contrary, some officials even sold a rescued child to another kiln.

A massive official investigation was initiated when the reports continued to appear and publicity increased. Final reports state that investigations resulted in the rescue of around 1,340 people, of which 367 were mentally handicapped. 277,000 work units with 12.67 million workers were inspected and it was found that at least 67,000, or 24.2 percent of the kilns, mines and workshops inspected nationwide were operating without licenses according to officials. Workers were forced to work from 5am until 1am the following day without pay. Reports also said that a mine owner had beaten a child to death with a shovel and had killed another labourer with a hammer because he was working too slowly. The original brickworks investigated were owned by the son of the local Communist Party secretary.

Local authorities stated that they would punish dozens of officials but in fact only six low level figures in the communist party were prosecuted. Most punishments involved only warnings or demotions. Some commentators rightly stated that what should have been a criminal matter of dereliction of duty was instead treated as an internal party disciplinary matter. The brick kiln owners themselves were punished more severely with one receiving the death penalty for manslaughter, while around 40 -50 others received criminal punishments. In contradiction to the numerous reports of direct collusion between officials and the brick kiln owners, the official report stated that there was no evidence of any corruption among officials. In 2008, it was revealed that lawyers for families in at least one city were told not to seek civil compensation through litigation from the brick kiln owner.<sup>22</sup>

The failure of the government, both in terms of their failure to prevent the abuse and to properly bring to justice the perpetrators and reform the system which allowed the abuse to happen, does not bode well for the eradication of the problem.

Indeed, there have been several similar cases. For example, in May 2010, 34 migrant workers were rescued in Hebei province after being tricked into working there. They were not paid and were forced to work between 14 to 18 hours a day with threats of beatings, electric shocks and confinement. In 2009, it was reported that the previous year around 20 mentally disabled people or juvenile beggars were released from a kiln in Hubei Province after being kept there and beaten for trying to escape the long hours of work.<sup>23</sup>

### **Begging**

While around 3,000 child and women abduction cases are recorded and investigated by Chinese authorities annually, some estimate that 10,000 to 20,000 Chinese women and children fall into the hands of kidnappers each year. Some of them are forced into begging. Some areas such as Hangzhou are offering cash rewards for information leading to the arrest of beggar gangs that employ children and handicapped people working in pairs.<sup>24</sup>

In 2009, some 20 children who had been abducted and forced into pickpocket gangs in southern China were rescued and returned home to the XUAR. The media reported that the kidnappers, who have been detained by police, confessed that they promised jobs but instead trained the children on how to steal and forced them to earn by begging. Those who failed to earn the amounts expected were subjected to cigarette burns or whippings. The children were 17 boys and three girls, aged eight to 16.<sup>25</sup>

### **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.

Despite the economic downturn, there is a serious issue of a shortage of workers to fill the unskilled jobs in the south of China. In part, this is due to the aging 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

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<sup>23</sup> China Daily, May 31, 2010 , Forced labour exposed at China kiln - (AFP) – Jan 26, 2010  
Xinhua, 26 October 2009

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Xinhua News Agency June 18, 2009)

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.

Reports have continued to uncover large scale and dispersed use of child labour. A survey of 37 privately-owned factories by a labour rights NGO in Shenzhen discovered child workers in 54 per cent of the randomly selected 37 factories. 200 child workers were found in one factory alone.<sup>26</sup> A similar month-long investigation in Henan Province at the same time uncovered some 381 child labourers.<sup>27</sup>

In June 2007, a report by Playfair, an international coalition including the ITUC, investigated working conditions at four randomly selected officially licensed Olympic producing companies in China. The report revealed appalling disregard in all four factories for workers' health and for local labour laws and regulations in the following areas: working hours, pay scales, the hiring of minors and children and health and safety conditions.

One company, Ledit Stationery, was employing child workers at the time of the research. At another company, researchers were told about underage workers. Ledit had hired more than 20 children under the age of 16, contravening Article 15 of the Labour Law. The children were primary and junior secondary school students from rural migrant families and were interested in working during the short winter break. Some of them were brought to the factory by their mothers to earn money to pay their school fees. While these children represented just 5% of the 400-strong workforce, some were quite young and all were required to work the same lengthy overtime as the adults. The youngest worker was found to be only 12 years old. The usual work schedule of these children was to work on the packing line from 7:30 or 8:00 am in the morning until approximately 10:30pm. On one occasion, the schedule was changed. A pre-announced audit by outside inspectors was to be conducted; hence all the children were assigned to jobs out of sight in the warehouse.

After strong denials of any wrongdoing, subsequent investigations into Ledit's production showed the validity of Playfair's original research. An investigation undertaken after the report came out by the local Dongguan Labour Bureau revealed that Ledit Stationery Co. hired eight students under the age of 16 from January 19 to February 10 during their school holidays, paying them 32 Yuan for a 12-hour day and employing them for six days a week. Six of the students were middle-school students and two were primary school students. The students told investigators that they were not involved in producing Olympic souvenirs but in packing notebooks. Ledit manager, Michael Lee, reportedly told the international media that a sub-contractor called Leter Stationery had hired a number of children in the school holidays last winter. They were each paid a daily rate of 20 Yuan and worked on non Olympic related products. He stated that he was unaware they had hired children and would not use the sub contractor again. A Dongguan official interviewed by the BBC said the children had gone to work at Leter Stationery because

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<sup>26</sup> Asia Monitor Resource Centre (AMRC) (<http://www.amrc.org.hk>), Child Labour in China's Informalized Urban Industrial Sector

<sup>27</sup> Footnote 8, (Summary Report: Child Labour, Forced Labour, and Forced Child Labour in China, July, 2009)

their parents had no time to look after them during the holidays. He said they were only involved in "light work" such as wrapping up products.<sup>28</sup>

As a result of these findings the Ledit contract with the Olympics was suspended, in spite of calls from Playfair for the authorities to work with Ledit and others involved to improve working conditions and underlying problems.

Snapshot research such as the Playfair report and the Shenzhen NGO report show that child workers are common in Shenzhen, if not in other manufacturing hubs. While the issue is receiving more legislative attention, in practice, the situation changes little and crucially inspections continue to be of little value due to the common practice of informing factory owners in advance.

## **5. 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 factories using child labour 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 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.

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 by Chinese officials or sometimes by compliance officers for brand names buying the goods, mean that children are kept well hidden during an inspection or given the day off. There is much 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. Additional barriers include the bureaucratic obstacle to punishing employers of child labour from different provinces.

Bureaucracy and administrative rivalries also hinder investigations and proper repatriation of children. For example, during the course of one study into child flower sellers coming to cities from rural areas, 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 have migrated, and to notify the village officials of their return. When asked whether the local government had considered a fundamental*

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<sup>28</sup> <http://www.ihlo.org/LRC/W/020807.html>, Child labour and "work experience" in China – the blurred lines of illegality, ITUC/GUF/HKCTU/HKTUC Hong Kong Liaison Office (IHLO), 2 August 2007

*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." <sup>29</sup>*

*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 labour laws, but they themselves cannot take the initiative to search for the children themselves."*

According to the application of International Labour Standards 2009 (I) Report, the government reported to the ILO Committee of Experts that a *labour supervisory framework, consisting of three-tiered organisations at the provincial, municipal and county levels, has been established. By the end of 2007, this labour supervisory framework consisted of 3,271 organs of labour security and inspection and employed 22,000 full-time labour inspectors. In addition, 28,000 inspectors from the regular system of security inspection were designated as part-time or concurrent labour inspectors in the labour supervisory framework. Furthermore, the Government indicates that, in 2008, the Ministry of Human Resources and Social Security established a specialized Labour Inspection Bureau to provide leadership over labour inspection across China.*

Based on these calculations, a network of 50,000 inspectors would be created, while this represents a significant start towards proper enforcement, it would mean that each inspector on average would need to visit 329 enterprises a day and to work 365 days a year (based on figures issued by Xinhua of around 6.239 million companies in June 2008).<sup>30</sup>

## **6. Lack of Transparency: Reporting and State Secrets**

Statistics are one of the areas most tightly controlled under the legislation and those regarding labour-related topics are very much covered by the regulations. Child Labour, including the Worst Forms of Child Labour.

New revisions were made in 2010 which will come into effect on October 1, 2010. While the laws have been tightened up somewhat and new technology related causes have been added, many definitions are still overly vague and 'catch-all' clauses remain.

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<sup>29</sup> 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>

<sup>30</sup> Number of new private enterprises in China drops (Xinhua) 2009-03-26 11:14. Rather bizarrely, IN December Xinhua states that China had over 4.959 million business entities in 2008. Dec. 25 (Xinhua) – quoting the National Bureau of Statistics.

“Undisclosed information and statistical data on the handling of child labour cases nationwide” is considered secret and 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.

The lack of national statistics and analysis of data on child labour, child prostitution and trafficking remains a serious problem and the limits placed on transparency due to state secrets laws cause considerable concern with regard to the authorities’ willingness to resolve the issue. In many cases official statistics are at variance with the claims of families and civil society groups. In addition, general policy making is also governed by state secrets legislation when it concerns matters deemed “sensitive.” Relations with the International Labour Organisation are also covered by the legislation, making it difficult for the ILO itself to receive and transmit uncensored and transparent information.

Reliable and transparent data are essential for governments and other agencies to effectively tackle the worst forms of child labour. China does have legislation but unless legislation is backed up by implementation on the ground, it will remain ineffective. China has the additional problem of a lack of civil society overseeing the problem and this 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 collection is not systematic.

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 make quotas or to ensure praise, not reprisals, make it almost impossible to fully collate the 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 the worst forms of child labour is no exception. The role of ACFTU as a protector and promoter of labour rights remains limited.

## **7. Conclusions**

Although the Chinese government has addressed some of the issues under Convention 182 and has made legislative progress since the previous ITUC report in 2006, much remains to be done. The ITUC remains particularly concerned about the lack of implementation of the laws in relation to the elimination of the worst forms of child labour. Therefore, the ITUC recommends the implementation of adequate measures to detect children employed in the worst forms of child labour, to implement effective measures for the rehabilitation and the social integration of these children and to ensure proper monitoring of employers and sufficient sanctions against employers of child labour.

Issues such as official corruption, collusion of local officials, poor and corrupt practices at the local level by labour-related officials must continue to be a key target for government policies.

As the ILO has also noted, 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. This data should also be made gender specific in order to be able to effectively address the employment of female 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 emphasised in Convention 182, adequate rehabilitation and educational provisions and opportunities for the most vulnerable children; children in rural areas, children from ethnic minorities, female children and crucially the children of migrant workers in particular, must form the basis of all endeavours to eliminate the worst forms of child labour.

The work of civil society groups and the families of missing children, children who have been trafficked or forced into child labour of any sort should be respected, supported and encouraged. Parents, their lawyers and others should not be harassed or intimidated by local or national authorities. Respect for freedom of speech and association is a key part of a genuine solution to the problem of child labour.

The ITUC wishes to remind the Chinese government that despite progress in other areas, broader efforts to improve the successful fight against the worst forms of child labour and trafficking are required.

Thank you for bringing the contents of this communication to the attention of the Committee of Experts for examination during its forthcoming session.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. B.', written in a cursive style.

General Secretary