



“One Year of My Blood”

Exploitation of Migrant Construction Workers in Beijing

- I. Summary..... 1**
 - Methodology 6
 - A note on Terminology7

- II. Background.....8**

- III. Exploitation of Migrant Construction Workers in Beijing 16**
 - Faulty or Non-Existent Labor Contracts18
 - Unpaid Wages 22
 - Substandard Wages 29
 - Inadequate food and housing..... 31
 - Unsafe working conditions34
 - Lack of insurance coverage.....37
 - Denial of basic services linked to China’s household registration, or *Hukou*, system 39

- IV. Chinese Labor Law.....41**
 - Government mechanisms addressing labor disputes..... 41

- V. Denial of Independent Trade Unions and Collective Bargaining 47**

- VI. Workers’ Rights and Government Obligations under International Law 49**
 - China’s International Legal Obligations 49
 - China’s Membership in the International Labor Organization (ILO) 51

- VII. Recommendations..... 54**
 - To the Government of the People’s Republic of China54
 - To the International Olympic Committee57

- Acknowledgements 58**

I. Summary

That money is one year of my blood, how can you not give it to me?

—Beijing-based migrant construction worker ¹

Beijing, the capital of the People's Republic of China, is undergoing an unprecedented transformation. The Chinese government is spending around US\$40 billion² to remake the city into a modern symbol of China's rising international stature and growing economic strength. This investment is transforming Beijing from a traditionally low-rise city of narrow alleys and *hutong* courtyard homes dating from imperial times to a city of broad avenues lined with newly built skyscrapers and countless building sites. As many have commented, the 2008 Olympics are to be Beijing's coming-out party.

The engine behind the creation of the new Beijing is the estimated one to two million construction workers who toil on the city's building sites. The efforts of that largely invisible army are too often rewarded by wage exploitation resulting from unfair or non-existent contracts and the denial of basic public social services. Workers routinely endure dangerous work environments and lack any safety net, including medical and accident insurance. A dysfunctional government system of redress for workers' grievances puts those who protest such injustices under threat of sometimes deadly physical violence.

Chinese government authorities are well aware of the abuses migrant construction workers face and have begun to make the necessary policy adjustments in certain areas. A detailed survey conducted by the Chinese Academy of Social Sciences (CASS) issued in June 2007 and a report issued by the Chinese government's own State Council in April 2006 pinpoint many of the problems and show how extensive the abuses are. But our research shows that a lack of rigorous implementation of

¹ Human Rights Watch interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

² "Beijing Ponders Construction Workers Future Post-Olympics," Agence France Press (Beijing), September 19, 2006.

existing policies have created critical policy gaps which leave migrant workers vulnerable to suffer a range of serious human rights abuses.

This report addresses the abusive conditions endured by Beijing's migrant construction workers, detailing their exploitation by employers and the failure of the Chinese government to effectively address these violations. It draws on interviews with migrant workers, analysis of Chinese government studies not available in English academic research, studies by other international organizations, and published accounts in Chinese domestic and international media.

Chinese labor law provisions apply to both migrant and non-migrant workers. Yet despite vocal government assurances that it recognizes the problems faced by migrant construction workers and repeated official promises of long-term systemic solutions, employers of migrant construction workers still flout legal requirements that those workers be paid each month in-full. Instead, migrant construction workers must routinely wait until the end of the year to receive a pay packet that is almost invariably smaller than originally agreed. In some instances, they do not get paid at all.

Migrant workers in China, and construction workers in particular, are also vulnerable to high rates of injury and death in working environments in which the majority of employers fail to pay legally-required medical and accident insurance.

While China's Labor Law stipulates that there is medical and accident insurance for all workers, China's official household registration system, or *hukou*, specifically excludes workers who are not originally from Beijing from public social welfare benefits including medical care. China's government has yet to clarify which of those laws take precedence in determining the allocation of public social welfare benefits, including medical care, compounding the risks and potential financially ruinous expenses of on-the-job accidents for migrant construction workers.

Finally, on-site housing provided by employers to migrant construction workers is of poor quality, overcrowded and often lacks washing facilities. Workers say the quantity of food which employers provide in exchange for daily wage deductions of

seven to 10 Yuan (US\$0.93 to US\$1.33) is inadequate for their needs and often inedible.

A series of often insurmountable obstacles prevent many workers from seeking redress for these violations through legal channels. Migrant construction workers who are victims of wage exploitation and other abuses are entitled to redress, a process that begins with mediation, moves to arbitration if mediation is unsuccessful, and then concludes with lawsuits against employers should arbitration fail. In practice, however, most workers are stymied in their efforts to pursue such redress due to their lack of legal residency status in Beijing, lack of contractual proof of their claims, or both. Workers seeking government assistance to obtain their unpaid wages complain of sluggish bureaucracy, high legal costs, and long waits.

Migrant construction workers in Beijing, where the ratio of available jobs is usually outstripped by the number of job-seekers constantly flowing in from the countryside, are faced with the choice of moving to new construction sites where conditions will likely be similar, or continuing to work for an exploitative employer in the hopes that wages will eventually be paid. The alternative—to quit their jobs unpaid and return to the poverty of the countryside—is unthinkable for the majority of such workers as their families rely on them to return with desperately-needed cash to pay otherwise unaffordable costs such as medical expenses and their children’s tuition fees.

China’s labor laws forbid workers to form and join independent unions or conduct collective bargaining outside the state-affiliated All-China Free Trade Union (ACFTU). The vast majority of migrant construction workers are not members of the ACFTU due to the ACFTU’s traditional focus on recruiting non-migrant workers to fill its ranks. Research indicates that the ACFTU has failed to adequately address the problems of migrant construction workers. In face of such constraints, migrant construction workers often respond with protests or strike actions which put them at risk of harassment and arrest by police or violent retribution by hoodlums hired by the workers’ employers. In July 2007 a migrant construction worker was murdered by a group of dozens of hoodlums hired as strike breakers at a building site in Guangdong province where striking workers had gone unpaid for four months.

The Chinese government has publicly recognized the plight of migrant construction workers who are cheated or face delayed payment of their wages. Senior policymakers have made annual high-profile appeals for employers to end such abuses. The central government has also produced recommendations for long-term resolution of the problem based on the findings of several research reports by institutions including the State Council, China's cabinet. But the failure to enforce key provisions of China's Labor Law designed to protect workers from wage and other forms of exploitation by their employers renders those recommendations and rhetoric meaningless.

The Chinese government should back up its recognition of the rampant wage exploitation and other abuses of migrant construction workers through the following measures:

- Enforcing existing rules, including the existing Labor Law of the People's Republic of China and new Labor Contract Law of the People's Republic of China which went into effect on January 1, 2008, to ensure victims are fairly compensated and abusers are punished.
- Blacklisting firms guilty of wage exploitation and other abuses from tendering for state-financed construction projects.
- Targeting executives of companies found guilty of embezzling migrant construction workers' wages with meaningful legal penalties designed to provide a deterrent effect for the industry.
- Imposing minimum, enforceable standards for workers safety, housing and food and institute a system of random spot checks to ensure that those standards are met.
- Dropping an official prohibition against the formation of independent trade unions and ratify international instruments protecting workers' rights, including those of migrants.

While this report does not focus on Olympics building sites per se—access to such sites is strictly controlled, making on-site research by Human Rights Watch impossible—it is clear that Olympics sites are plagued by the same problems addressed here.

In January 2006, the Beijing city government announced that it had fined 12 unidentified companies contracted to build Olympics-related projects for withholding wages to their workers.³ While we have no specific information about those Olympic venues, the consistency of abuses across other sites in Beijing, regardless of the location, type and size of project, should raise concerns about Olympic sites.

The International Olympic Committee (IOC), whose selection of Beijing in 2001 to host the 2008 Olympic Games has helped to spur the construction boom, should ensure that migrant construction workers employed on Olympics-related projects are treated in accordance with Chinese law and thus paid in a fair and timely manner. The IOC should:

- Ensure that workers on Olympic venue projects are protected by their employer's implementation of legally-stipulated workplace safety standards and receive adequate housing and food from their employer.
- Seek independent certification that all workers employed to construct venues for the 2008 Olympic Games in Beijing have not been the victims of wage exploitation, inadequate safety standards and other abuses. This certification is particularly urgent after the Chinese government in January 2008 admitted that six workers had been killed in workplace accidents at Olympic venues over the past three years⁴ just days after the Beijing Organizing Committee for the Olympic Games had denied media reports of at least 10 any such fatalities in the same period.⁵

If the IOC fails to act, spectators at the 2008 Olympic Games in Beijing should be made aware that the venues in which they are watching the Games may have been built by workers who were mistreated, never paid or paid late for their labors, or faced dangerous and unsanitary conditions, with tragic consequences for some.

³ "Beijing Government Official: Migrant Workers on Olympic Projects Suffer Delayed Wage Payments," (北京官员：奥运农明宫工资被拖欠) BBC.Com, January 10, 2007, http://news.bbc.co.uk/go/pr/fr/-/chinese/simp/hi/newsid_6240000/6249481.stm (accessed January 10, 2007).

⁴ Mei Fong, "China cites worker deaths," *Asian Wall Street Journal* (Beijing), January 29, 2008.

⁵ "Beijing denies 10 deaths at Bird's Nest," Reuters, January 21, 2008.

Spectators should also know that the IOC never made a serious effort to ensure more humane treatment for such workers.

Methodology

Human Rights Watch conducted research for this report in Beijing between January and March 2007, and in follow-up interviews through early March 2008. We spoke with a wide variety of sources, including construction workers on nine building sites in central Beijing. These workers detailed their experiences ranging from their motivations and experiences in coming from the countryside to work in the capital to their working and living conditions in the city. As noted below, the report also draws on Chinese government reports, academic research, studies by international labor organizations, and news stories in domestic and international media.

The Chinese government strictly limits civil society and nongovernmental organizations on a variety of subjects including labor rights. Human Rights Watch's research in Beijing required a high level of sensitivity to the security of both researchers and interviewees. The majority of interviews took place in the late evenings, when security at building sites tends to be looser and researchers could enter and leave at will without being noted by security guards. Interviews were conducted under the condition of strict anonymity, as interviewees may be susceptible to reprisals from their employers or government agencies. For this reason we have also chosen not to name the nine sites.

The direct interviews that Human Rights Watch was able to conduct for this report, while limited, are fully consistent with other research findings—including a nationwide survey by the Chinese Academy of Social Sciences—showing that the problems described here are systemic, likely affecting hundreds of thousands of workers in Beijing alone each year.

A note on Terminology

International law defines the term “migrant worker” as a person who does “remunerated activity in a State of which he or she is not a national.”⁶ However, the United Nations Educational, Scientific and Cultural Organization (UNESCO) notes that “this may be a too narrow definition when considering that, according to some states' policies, a person can be considered as a migrant even when s/he is born in the country.”⁷

This is the case in China, and both the Chinese government and the International Labor Organization refer to individuals in China who migrate internally from the rural countryside to find work in China’s cities as “migrant workers,” and thus Human Rights Watch has likewise adhered to that terminology to describe the workers who are the focus of this report.

⁶ United Nations Educational, Scientific and Cultural Organization, “Migration>Glossary>Migrant,” portal.unesco.org/shs/en/ev.php-URL_ID=3020&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed September 28, 2007).

⁷ Ibid.

II. Background

The International Labor Organization (ILO) estimates that China has 150 million migrant workers⁸ out of a total national working population of 764 million people at the end of 2006.⁹ More than 40 million of these migrant workers are employed in construction, an industry in which some 90 percent of the workforce is composed of migrants.¹⁰ The continuing migration wave is powered by grinding poverty in rural farm communities left-out of the economic boom that has raised urban living standards and by a constant demand for workers to service the insatiable demand for labor on construction sites in the cities.¹¹ The massive inflows of migrant workers from the countryside competing for relatively better-paying construction jobs in China's cities ensure a constant supply of fresh laborers on urban building sites.

China's government began to address the challenges of the influx of internal migrant workers coming to the cities in search of work following the launch of former Chinese Communist Party Chairman Deng Xiaoping's "reform and opening" of the Chinese economy which began in 1979.¹² Early legislation which outlined the need for labor contracts and the need for insurance, fair wages and working hours for migrant workers included the Temporary Regulation on National Enterprises Temporary Worker Management (全民所有制企业临时工管理暂行规定) in 1989 and the State Council National Regulations on Industrial Employment and Contracts for Migrant Workers (国务院<全民所有制企业招用农民合同制工人的规定) which went into effect in 1991.

⁸ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf.

⁹ Statistical Communiqué of the People's Republic of China on the 2006 National Economic and Social Development, National Bureau of Statistics, February 28, 2007.

¹⁰ "All China Federation of Trade Unions Survey Shows Migrant Construction Workers Face Six Large Difficulties," *China Industrial Daily News* (Beijing), November 5, 2004.

¹¹ Mei Fong, "An Invisible Army Builds Beijing," *Asian Wall Street Journal* (Beijing), December 27, 2006.

¹² "Banner of Victory," *People's Daily* (Beijing), September 16, 1999.

The movement of migrant workers to the cities has also been accelerated by the closure of thousands of loss-making collective firms and state-owned companies that began in the 1980s and accompanied Deng's economic reforms. The number of workers in privately-owned companies rose to nearly 100 million from 1983-1999, while the number of workers in collective enterprises and state-owned firms shrank by 70 million in the same period.¹³ China's transition from a planned socialist economy to a market economy created a total of 150 million "surplus" laborers in rural areas in need of new employment opportunities.¹⁴

The population of migrant workers in China's cities totaled around 150 million in 2007,¹⁵ constituting a little over 50 percent of China's end-2006 registered urban working population of 283.1 million.¹⁶ Migrant workers' efforts have contributed 16 percent of China's total gross domestic product growth over the past 20 years,¹⁷ and have supplied the muscle to carry out the projects funded by the government's massive investment in fixed assets including roads, bridges, buildings, and mass transit systems which in the past two decades have transformed cities including Beijing, Shanghai, and Guangzhou into models of modern infrastructure.

Cities provide China's migrant workers what they cannot find in their rural villages—reliable, non-seasonal employment which pays relatively high wages. Although China has recorded average annual economic growth of almost 10 percent since 1990¹⁸ and the government expects gross domestic product to rise 11 percent in 2007.¹⁹ The expansion has occurred mainly in the eastern coastal regions, leaving much of the countryside in western and central China mired in poverty. The lure of

¹³ China Labour Bulletin, "Conflicts of Interest and the Ineffectiveness of China's Labour Laws- English Executive Summary," October 2007, www.china-labour.org.hk/public/contents/category?cid=5712, (accessed October 29, 2007).

¹⁴ "All China Free Trade Union Bulletin, Issue 4," June 4, 2006, <http://www.acftu.org.cn/0604/htm> (accessed October 1, 2007).

¹⁵ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf.

¹⁶ Statistical Communiqué of the People's Republic of China on the 2006 National Economic and Social Development, National Bureau of Statistics, February 28, 2007.

¹⁷ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf.

¹⁸ "Cooling Fires of China's Fast Growing Economy," *Xinhua News Agency*, October 12, 2007.

¹⁹ *Ibid.*

China's cities for migrant workers is reflected in national income statistics. In 2006 the annual per capita disposable income for urban residents was 11,759 Yuan (US\$1,568) compared to an annual per capital net income for rural households of 3,587 Yuan (US\$478) in the same period.²⁰

Official statistics indicate that wage increases for migrant workers in cities have not kept pace with those of their urban counterparts. A government survey revealed that while the average annual wage income of China's urban residents from 1980 to 2004 had risen from 762 Yuan to 16,024 Yuan (US\$101.60 to US\$2,136.53), migrant workers' wage income had experienced "no corresponding increase" in the same time period.²¹ The average monthly wage of migrant workers totaled 1,200 Yuan (US\$167.13) in 2007, official data issued in January 2008 indicates.²²

Migrant workers combine relative youth—71 percent are between the ages of 15 and 29—and a lack of secondary, let alone higher, education which usually relegates them to manual labor.²³ Many migrants work in the booming construction industry: Beijing's estimated 10,000 building sites²⁴ employ about one million migrants, an estimated 25 percent of the city's total migrant worker population.²⁵

The vast majority of migrant construction workers come to Beijing and other urban centers by their own initiative, relying only on informal networks of friends to help secure employment.²⁶ The informal nature of migrant construction workers' job search and hiring process, outside of a regulated government system of relocation and employment, heightens their vulnerability to exploitation by unscrupulous employers.

²⁰ Statistical Communiqué of the People's Republic of China on the 2006 National Economic and Social Development, National Bureau of Statistics, February 28, 2007.

²¹ Ibid., p. 204.

²² "Half of China's migrant workers unhappy with social status," *Xinhua News Agency*, January 13, 2008

²³ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf.

²⁴ Mei Fong, "An Invisible Army Builds Beijing," *Asian Wall Street Journal* (Beijing), December 27, 2006.

²⁵ "Beijing Ponders Construction Workers Future Post-Olympics," *Agence France Press*, September 19, 2006.

²⁶ China's State Council, "China Migrant Worker Investigation and Research Report," (中华人民共和国国务院的“中国农民工调研报告”) 2006, p. 365.

China's government has highlighted the problems faced by migrant construction workers, particularly employers' routine failure to pay owed wages, since a highly publicized encounter in 2003 between a farmer named Xiong Deming and Premier Wen Jiabao in which Xiong begged for Wen's personal intervention in recovering back wages owed to her migrant construction worker husband.²⁷ Since then, senior policymakers have made a ritual of annual and semi-annual warnings to employers to ensure that their migrant workers are paid in full and on time before they go back to their homes to celebrate the annual Lunar New Year holiday.

Government attention to the problems faced by migrant construction workers reflects growing official concern that failure to address the problems of China's millions of migrant workers could pose a potentially serious threat to social stability and public order.²⁸ This concern is particularly acute in Beijing, where official data indicates that in central Chaoyang district alone the migrant worker population is more than double that of registered urban residents in the area.²⁹ Eighteen percent of all petitioners—impoverished rural residents who come to Beijing seeking legal redress from the central government for grievances unaddressed by local governments—consist of migrant workers seeking resolution of contract disputes.³⁰

China's state media has issued regular reports that depict the concern and resolve of senior government officials to solve the unpaid and late wage problem. A sampling of such news items includes headlines such as "Easing the plight of migrant workers," "State Council vows rural laborers to be paid on time," "Vice Premier asks for mechanism guaranteeing migrant workers get paid on time," or "Government move to tackle problem of delayed construction workers payment."

Despite those statements of official concern, Human Rights Watch research, along with that of government and international organizations, indicates that the government is failing to adequately address the problems faced by migrant

²⁷ "Wen Jiabao Touches Villagers Hearts," *Straits Times* (Chongqing), October 29, 2003.

²⁸ "Labor Disputes Threaten Stability," *China Daily* (Beijing), January 30, 2007.

²⁹ China's State Council, "China Migrant Worker Investigation and Research Report," (中华人民共和国国务院的 "中国农民工调研报告) 2006, p. 365.

³⁰ *Ibid.*

construction workers. That failure is rooted in inadequate implementation of official laws to protect migrant workers as well as the prohibition on independent union formation (the ban on workers organizing is discussed below in section V). The government is equally suspicious of and strictly limits the numbers and operations of non-governmental organizations which advocate for migrant workers rights.

The inability of many migrant construction workers to access legally-mandated insurance and social welfare benefits is linked to China's household registration system. This system was created through a series of laws and regulations in the early 1950s designed to prevent a flood of impoverished rural dwellers from moving en masse to urban areas. The first of these was the 1952 Decision Regarding the Worker Employment Problems, which placed controls on movements of migrants to the cities.³¹ In 1958, the Chinese government implemented the Household Registration Rules of the People's Republic of China, or *hukou* system, which imposed stringent controls on rural residents including the need for documentation from an urban-based employer in order to legally relocate to cities and a requirement that rural dwellers register with urban police authorities during any temporary visits to the city of longer than three days.³²

The holders of urban household registration permits have long been entitled to social welfare benefits and employment opportunities in the cities that are denied to rural dwellers.³³ Chinese urban residents with permits have traditionally been entitled to state-sponsored retirement pensions, quotas of free or subsidized food, guaranteed employment rights, education, and medical care.³⁴ Migrant workers who retain their original rural household registration have by definition been ineligible for such benefits.

³¹ "Decision Regarding the Worker Employment Problem," (《关于劳动就业问题的决定》规定), 1952.

³² Household Registration Rules of the People's Republic of China, (中华人民共和国户口登记条例), implemented January 1, 1958.

³³ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf, pp. 34-35.

³⁴ Chen Wen, "In Search of Equality," *Beijing Review*, November 2005.

In the 1980s, municipal governments began to ease the strict controls, including introducing temporary household registration certificates for migrants, in response to the rising demand for industrial labor.³⁵ In 2003, China's central government formalized those local initiatives with the State Council Directive Permitting Rural Migrant Workers to Seek Jobs in Cities (国与原办公厅关于做好农民进城务就业管理和服务工作的通知). The directive outlined the use of temporary household registration certificates to facilitate the employment of rural migrants in cities, ended the need for migrants to register with urban police and stipulated that migrants were entitled to legal work contracts, insurance, and protection from wage exploitation.³⁶

Beijing's municipal government in 2005 followed up the State Council's directive with rules aimed to eliminate the more onerous aspects of the household registration system, including cancellation of controls on employment and housing, but maintaining the need for rural migrants to acquire temporary residence certificates.³⁷

The *hukou* system continues to cause problems for migrant workers. In 2005, the United Nations' Committee on Economic, Social and Cultural rights noted its "deep concern" at "the de facto discrimination against internal migrants in the fields of employment, social security, health services, housing and education that indirectly result from inter alia, the restrictive national household registration system (*hukou*) which continues to be in place despite official announcements regarding reforms."³⁸ The Committee called on China to dismantle the system as it had indicated it would.³⁹

Temporary residence permits allow the government to monitor migrants in the cities while continuing to deny them many of the key benefits of permanent urban

³⁵ Ibid.

³⁶ State Council Directive Permitting Rural Migrant Workers to Seek Jobs in Cities (国与原办公厅关于做好农民进城务就业管理和服务工作的通知, implemented January 5, 2003.

³⁷ Beijing Municipal Government Regulations for Management of Migrant Workers and Business People (北京市外来务工经商人员管理条例), March 2005.

³⁸ Concluding Observations of the Committee on Economic, Social and Cultural Rights: People's Republic of China E/C.12/1/Add.10713 May 2005, para. 15.

³⁹ Ibid., para. 46.

household registration, particularly medical care. The central government has launched a basic health-insurance network for urban residents, but migrant workers do not qualify as they are not permanent residents.⁴⁰ The central government announced in November 2007 that it was preparing to issue a directive which would ensure that migrant workers in China's cities would get "the same free services available to [permanent residents in] areas such as infectious disease prevention and treatment, children's vaccination and maternity care."⁴¹ While such an initiative is to be applauded, the government has not provided any details on the plan nor specified if or how it would be funded and monitored to ensure that migrant construction workers are granted access to such services at local hospitals.

Temporary household registration allows migrant workers the opportunity to apply for the rights to find work and housing on a strictly temporary basis, without the security of permanent household registration. However, even the limited advantages of the temporary household registration system have been of marginal utility to many migrant workers who are either unaware that they can apply for such status or fear that official contact with the urban government bureaucracy may facilitate their ejection from the city.

There are no indications that the Chinese government intends to completely dismantle the discriminatory urban household registration system anytime in the near future. In November 2007, the central government announced in very ambiguous terms, without providing any details, that it plans to "Gradually commit to giving migrant workers in stable employment the opportunity for permanent residency status."⁴² In January 2008, Ma Liqiang, the deputy secretary general of the National Development and Reform Commission, an official policy-formation organ of the Chinese government, indicated that the restrictions of the *hukou* system would be eliminated by 2020, without giving a specific timetable.⁴³ Therefore, the

⁴⁰ "Tragedy of a pregnant woman to help poor," *Shanghai Daily* (Shanghai), December 12, 2007.

⁴¹ "New rules designed to help 140m migrants," *China Daily* (Beijing), November 21, 2007, <http://english.peopledaily.com.cn/90001/90776/6306363/html> (accessed December 11, 2007).

⁴² *Ibid.*

⁴³ "Hukou should be scrapped," *China Daily* (Beijing), January 23, 2008.

institutionalized discrimination against rural migrants embodied by the Household Registration System continues.

Of today's estimated 150 million rural migrant workers laboring in China's cities, only 40 percent obtain either a permanent or a temporary permit; the others, called "floating population," do not. As a result of their social status, rural migrants suffer from institutionalized discrimination. In some cities, authorities deny them access to certain types of jobs [the better ones] that are kept for permanent residents. Most rural migrants, and almost all rural migrants without household residence permits, have no labor contract.⁴⁴

The lack of effective organizations to monitor and resolve migrant workers' labor grievances unaddressed by the government fuels public protests by workers without any other means to seek redress. "Unpaid wages remains one of the major causes of industrial protests [in China], with the majority...being work stoppages and demonstrations by workers who have exhausted the few avenues available to them—labor bureaus, arbitration and petitions."⁴⁵

⁴⁴ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf, pp. 34-35.

⁴⁵ International Confederation of Free Trade Unions, Letter from ICFTU general-secretary (unnamed) to Juan Somavia, director-general, International Labor Organization, August 31, 2006, www.ihlo.org/is/000806.html (accessed September 18, 2007).

III. Exploitation of Migrant Construction Workers in Beijing

On the construction site, the biggest worry is that we will do our work, but then not get paid.

—Beijing-based migrant construction worker ⁴⁶

Migrant construction workers in Beijing are routinely paid late or underpaid and receive far fewer of the benefits and social welfare protection enjoyed by their non-migrant counterparts. Despite provisions under Chinese law that migrant workers receive a legal minimum wage, monthly wage payments, medical and accident insurance, and paid overtime, migrant construction workers face the prospect of not receiving many if any of these benefits due to unscrupulous employers and a flawed government oversight and protection system.

The migrant construction workers interviewed for this report were all male and had relatively low education levels. Those workers entered into verbal or written employment contracts that stipulated daily wages of 40 to 60 Yuan (US\$5.30 to US\$8) per day. The majority of the workers said their employers refused to pay legally-stipulated overtime wages (to be paid for work in excess of more than eight hours a day and 44 hours a week)⁴⁷ and cheated them of the agreed wages. Migrant workers' efforts to seek official assistance in obtaining their wages were met by frustrating delays or were aborted outright in the face of an understaffed and unsympathetic bureaucracy.

Once hired, the lives of migrant construction workers, like those of most migrant workers in Beijing, become closely tied to their employer. Employers generally house construction workers in dormitory-style dwellings on the construction site or nearby and provide meals for the workers at food canteens in exchange for a daily wage deduction of seven to 10 Yuan (US\$0.93 to US\$1.33). The majority of the workers we interviewed complained that the quantity and quality of the food provided by their

⁴⁶ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁴⁷ Labor Law of the People's Republic of China, adopted on July 5, 1994 and effective as of January 1, 2005, art.19.

employers was inadequate to sustain them for their daily long hours of hard physical labor.

Human Rights Watch interviewed migrant construction workers on nine different building sites in Beijing and witnessed spartan, unhealthy living conditions in unheated buildings during the depths of winter in which up to 20 men sometimes had to share 10 beds. Some workers reported having limited access to communal bathrooms and showers located outside their rooms. The majority of workers Human Rights Watch interviewed were denied employer-provided medical insurance stipulated by Chinese law and often had to tap their meager savings for self-treatment of injuries and illnesses at pharmacies or small clinics.

Knowledge of their legal rights for redress of wage exploitation and other abuses appeared to be very limited amongst migrant workers. Migrant construction workers who seek redress through mediation, arbitration or lawsuits against their employers often give up due to obstacles stemming from their lack of household registration permits or a bureaucracy overburdened by and largely insensitive to the migrant construction workers' problems. Although the population we interviewed cannot be taken as representative, we were unable to find any cases in which migrant construction workers had successfully pursued redress for exploitation and abuse of their rights.

A nationwide survey of migrant construction workers released in July 2007 by the Chinese Academy of Social Sciences (CASS), the country's top social policy think tank, found that only 31 percent of migrant workers receive their salaries monthly in accordance with Chinese law and that more than half work without contracts.⁴⁸ Other studies echo the CASS report's findings and indicate that migrant workers are routinely cheated of their wages and work long-hours in "disgusting" conditions without being paid overtime or the protection of accident and medical insurance.⁴⁹

⁴⁸ "Construction Workers Alienated," *China Daily* (Beijing), July 9, 2007.

⁴⁹ China's State Council, "China Migrant Worker Investigation and Research Report," (中华人民共和国国务院的"中国农民工调研报告) 2006, p. 365.

The CASS data was derived from a survey sample of more than 30,000 migrant workers from 2,150 companies in 40 Chinese cities.⁵⁰

China is a party to the International Covenant on Economic, Social and Cultural Rights and as such has undertaken to recognize and take steps to safeguard each individual's right to work.⁵¹ The right to work and the right to just and favorable conditions, including fair and equal remuneration, are rights guaranteed to all without discrimination, including based on national or social origin.⁵² The Committee on Economic, Social and Cultural rights which oversees state party's implementation of the Covenant has called on the Chinese government to ensure that it provides all its workers, including migrants, the protection of the Covenant's article 7, which enshrines the right of just and favorable conditions of work.

Faulty or Non-Existent Labor Contracts

The exploitation and abuse of migrant construction workers in Beijing usually begins at the time they are hired. Employers often refuse to provide workers with a copy of their contract that should, according to applicable legal standards, be signed by both parties and outline the workers' rights, obligations, working hours, and payment details.

A migrant construction worker interviewed by Human Rights Watch said that his employer repeatedly and without reason rebuffed his and his coworkers' efforts to obtain copies of their employment contracts.

Most of us signed contracts with the company, but didn't get a copy, [our employer] didn't give us a copy or after we signed [our employer] said that he had to take [the contract] away to be sealed and signed...[but) never gave them to us.⁵³

⁵⁰ "Chinese employees' legal rights need more protection," *Xinhua News Agency*, July 2, 2007.

⁵¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966; G.A. Res. 2200A (XXI), entered into force January 3, 1977, and ratified by China on March 27, 2001; article 6 guarantees the right to work.

⁵² *Ibid.*, art. 7 and art. 2.

⁵³ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

The July 2007 survey of migrant construction workers by CASS found that 53 percent of surveyed workers did not have labor contracts, 41 percent of those who had contracts did not have copies of the document and only 17 percent of those with contracts actually understood the rights and obligations embodied in the contract.⁵⁴

Those statistics conform to the experiences of migrant construction workers interviewed by Human Rights Watch. Most of the workers we spoke with said that they had started to work on the basis of verbal agreements with building site supervisors or signed contracts that were then confiscated for “safekeeping” by their employers. While there were a few workers who had received copies of contracts from their employers, the contracts were not legally standard and thus deprived workers of the capacity to pursue legal redress for contract violations.

The failure of employers to provide legally standard and signed contracts for their workers violates both article 16 of the Labor Law of the People’s Republic of China and article 10 of the Labor Contract Law of the People’s Republic of China.⁵⁵ The fact that migrant construction workers often do not have legal employment contracts is symptomatic of their lack of knowledge of their legal rights and employers’ willingness to exploit that ignorance for their own financial gain.⁵⁶ The contracts that employers do provide some migrant construction workers are often flawed by specifying only “migrants’ [work] obligations, but not their rights.”⁵⁷

The absence of legally compliant contracts helps to facilitate wage exploitation and other abuses by employers, and make legal redress for such violations extremely problematic. “With an oversupply of labor, most [migrant construction] workers give up their legal right [to a legally-binding contract] to gain a job [and] because of this intense competition, many employers take advantage of their construction workers and withhold payment through nonexistent or faulty contracts.”⁵⁸

⁵⁴ “Construction Workers Alienated,” *China Daily* (Beijing), July 9, 2007.

⁵⁵ Labor Law of the People’s Republic of China, promulgated on July 5, 1994 and effective as of January 1, 2005, art. 16; Labor Contract Law of the People’s Republic of China, promulgated on June 29, 2007 and effective as of January 1, 2008, art. 10.

⁵⁶ “Easing the Plight of Migrant Workers,” *Shanghai Daily* (Shanghai), June 17, 2005.

⁵⁷ Anthony Kuhn, “Migrants – A High Price to Pay for a Job,” *Far Eastern Economic Review*, January 22, 2004.

⁵⁸ “Easing the Plight of Migrant Workers,” *Shanghai Daily* (Shanghai), June 17, 2005.

The possession of what workers assume are signed, legally-standard employment contracts do not guarantee that government offices with the responsibility and mandate to address labor disputes will take action. On the contrary, Human Rights Watch received reports in which workers who were clearly victims of exploitation were turned away by government authorities on overly bureaucratic and tendentious grounds that suggested an unwillingness of the authorities to actually help victims of exploitation.

A migrant construction worker from Shaanxi province, for example, said that he and more than 40 of his colleagues seeking government assistance to secure unpaid wages were turned away from Beijing's Daxing District Labor Supervision Unit office (大兴区劳动监察大队) on January 10, 2007 because the contract had been stamped with the personal seal of the company's hiring manager, rather than an official company seal.⁵⁹ In China, the use of stone or wood seals or stamps etched with Chinese characters rather than personal signatures remain the dominant means to ratify contracts and other important documents and in certain cases is the only legally acceptable method to do so.

The Daxing District Labor Supervision Unit office ruled that the use of an employer's personal seal rendered the document a contract between individuals rather than between a corporate employer and workers and was thus not within the unit's terms of reference to pursue for redress.⁶⁰ The unit officer told the workers to go back to their employer and try to retrieve a copy of a work contract with a company seal in order for any official legal action to proceed against the employer.⁶¹

We did our work and [the person who sealed the contract] is a representative of the company. We signed contracts without a company seal...but the company [representative] never bothered to tell us [that a binding contract needed a company seal].⁶²

⁵⁹ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

Employers who refuse to provide migrant construction workers copies of signed employment contracts deny those workers an opportunity to understand their contractual rights and obligations and therefore to pursue legal redress if abuses occur. While the Labor Law of the People's Republic of China does not stipulate that employers must ensure that workers are provided a personal copy of a legally-standard labor contract, on January 1, 2008, article 17 of the Labor Contract Law went into effect, stipulating that "The employer and the employee shall each keep one copy of the employment agreement."⁶³

The lack of a contract stymied one migrant construction worker's efforts to seek government assistance in getting legally stipulated accident-insurance coverage denied by his employer. The worker sought insurance coverage for medical expenses of 550 Yuan (US\$74.32) for treatment of his left hand which was injured in a workplace accident. The worker was unable to apply for help from the Beijing municipal district government agency tasked to help resolve migrant worker disputes with their employers due to the agency's requirement that all applicants for such assistance submit copies of their labor contract. "I didn't have a written labor contract [because] in Beijing [the lack of written labor contracts] is a common phenomenon."⁶⁴

The new Labor Contract Law's stipulation that workers must receive their own personal copy of a legally-standard labor contract aims to end such abuses by employers. However, it remains to be seen whether the Chinese government will vigorously enforce the new law and eradicate the widespread problem of employers withholding labor contracts from migrant construction workers. Moreover, in the event that employers do not comply with the law, as is the case with many other applicable laws, they should be fined or otherwise penalized: Chinese authorities should not allow employers to benefit from their failure or refusal to comply. To date, the authorities have in effect been rewarding employers who deny their workers signed legally-standard contracts by allowing the employers' violations to undermine the victims' capacity to seek a remedy. This perverse situation means migrant

⁶³ Labor Contract Law, art. 17.

⁶⁴ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

workers are doubly victimized, first by their employers and then by the state who in effect endorses the actions of the employer.

Article 17 of the Labor Law and article 3 of the Labor Contract law both require labor contracts to be based on “equality” and “voluntariness.” Article 17 of the Labor Law states that work contracts must be formulated “through consultation [with workers]” while article 3 of the Labor Contract Law specifies contracts be designed according to the principles of “negotiated consensus and good faith.”⁶⁵ Therefore the key to upholding the legal labor contract rights of migrant construction workers hinges on the willingness and capacity of the Chinese government to enforce existing and pending related laws and punish employers who flout them.

Unpaid Wages

The most acute problem faced by migrant construction workers in Beijing is the routine failure of their employers to pay them fully and promptly, as article 50 of the Labor Law requires: “Wages shall be paid monthly to laborers themselves in form of currency [and] not deducted or delayed without justification.”⁶⁶ Because a majority of migrant construction workers either do not have contracts, sign contracts that do not specify employer obligations or are denied copies of their contracts, migrant construction workers are routinely forced to rely on their employers’ verbal promises regarding wages and wage payment timetables which very often are disregarded later by their employers.⁶⁷

One migrant worker told Human Rights Watch how he and dozens of coworkers had a claim for more than 1.5 million Yuan (US\$200,000) in unpaid wages, but that the employer tried to force them to accept an agreement instead which provided each worker 700 Yuan in “travel expense money” and a signed “guarantee” to repay the outstanding amount of wages at an unspecified later date.⁶⁸

⁶⁵ Labor Contract Law, art. 3.

⁶⁶ Labor Law, art. 50.

⁶⁷ Anthony Kuhn, “Migrants—A High Price to Pay for a Job,” *Far Eastern Economic Review*, January 22, 2004.

⁶⁸ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

Another migrant construction worker reported his experience having worked on a building site in central Beijing from April 18, 2006 through to the completion of the project on November 20, 2006. There was an oral agreement that the entirety of his wages would be paid at completion. When the project was completed, however, the worker and his co-workers were left in limbo when their employer deflected their demands to be paid with a range of excuses. “[The company representative] said ‘the money hasn’t arrived yet’ [or] ‘the boss isn’t here’ [or] ‘the boss is busy’ and so on, with such excuses for the delay until today, [payment is] delayed more than two months.”⁶⁹ Efforts to get government help to enforce their right to be paid were frustrated by the workers’ lack of copies of legally-standard labor contracts and household registration permits needed to make a formal application for assistance from a government agency tasked to broker resolutions in worker-employer disputes. When Human Rights Watch spoke to the worker in March 2007, he and his coworkers had still not been paid for their seven months of labor.

This interview data echoes findings of China’s State Council which found that migrant construction workers were particularly vulnerable to being cheated of their wages or having their wages subject to illegal deductions by unscrupulous employers.⁷⁰

More than half of the Beijing migrant construction workers interviewed by Human Rights Watch reported that their employers had refused to pay wages when they fell due each month, and instead workers experienced extended delays before receiving their wages. When the wages were finally paid, several found that their long-awaited pay packet was substantially less than what they were entitled. In most cases, the employers gave no explanation for the reductions. In one case, the construction company representative explained that the reduction was a result of the company’s poor financial performance.⁷¹ Migrant construction workers often come to accept such abuse and exploitation as an unavoidable risk in coming to the capital to work.

⁶⁹ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁷⁰ China’s State Council, “China Migrant Worker Investigation and Research Report,” (中华人民共和国国务院的“中国农民工调研报告”) 2006, p. 182.

⁷¹ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

This year the company says [the wage] is 50 Yuan (US\$6.67) per day, but there's no signed contract and nothing in black-and-white or a piece of paper to give me [to document that offer], basically every year at year-end when I get paid my [agreed daily wages] are five to 10 Yuan (US\$0.67 to US\$1.33) lower [than originally agreed].⁷²

Another of the workers interviewed by Human Rights Watch reported that he and around 160 other workers hired to construct a multi-story building in Beijing between October 24, 2006, and February 1, 2007, discovered on the eventual payday that their employer paid them only a fraction of their expected wages.⁷³ The average daily wage that the workers were paid by their employer was less than 50 percent of Beijing's official minimum wage calculated on the basis of 6.8 Yuan (US\$0.91) per hour for manual laborers who work an eight hour day.⁷⁴

[We] workers ended up with less than 20 Yuan (US\$2.67) per day, and on top of that we'd be deducted eight Yuan (US\$1.07) per day for living costs; how are workers supposed to survive [on such low wages]?⁷⁵

Company representatives refused to consider the workers demands for payment of what they claimed was a 400,000 Yuan (US\$53,333) shortfall in their owed wages and instead offered to rehire the workers at an unspecified later date for future building projects at an unspecified higher rate of pay.⁷⁶

Workers who receive wages late and at considerably reduced amounts face huge pressure just to survive in Beijing. Instead of sending money home to support their families in the countryside, some are forced to rely on savings they have brought

⁷² Ibid.

⁷³ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁷⁴ Income Distribution Reform for Social Justice, Equality," *Invest Beijing*, August 2006; <http://www.bjinvest.gov.cn> (accessed September 18, 2007).

⁷⁵ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁷⁶ Ibid.

with them from their rural villages. Many have no money even to supplement the inadequate food provided by their employers in exchange for daily wage deductions.

The UN Committee on Economic, Social and Cultural Rights has brought the seriousness of the situation to the attention of the Chinese government, noting that workers not only suffer from wages insufficient to provide a decent standard of living for them and their families but that “the situation is aggravated by the persistent problem of wage arrears especially in the construction sector.”⁷⁷

Employers also routinely flout laws requiring that workers be paid overtime for working longer than the statutory eight hour day and 44 hour work week.⁷⁸ Employers can only deviate from those legally stipulated working hours and week with “approval of the labor administrative department.”⁷⁹ China’s Labor Law requires that employers pay 150 percent of normal wages “if the extension of working hours is arranged,” to pay no less than 200 percent of normal wages if extended hours occur on “days of rest and no deferred rest can be taken” and to pay no less than 300 percent of normal wages if extended wages occur on statutory holidays.⁸⁰

A study by the Chinese Academy of Social Sciences estimated that China’s migrant construction workers work an average of 10 hours a day and 27 days a month.⁸¹ Research by the Chinese government indicates migrant workers, “especially in the construction industry,” work an average of 50.5 hours per week.⁸² Many of those workers are denied overtime wages by their employers and 76 percent of migrant workers reported not receiving overtime for working public holidays.⁸³

⁷⁷ Ibid.

⁷⁸ Labor Law, art. 36.

⁷⁹ Ibid., art. 39.

⁸⁰ Ibid., art. 44.

⁸¹ “Construction Workers ‘Alienated,’” *China Daily* (Beijing), July 9, 2007.

⁸² China’ State Council, “China Migrant Worker Investigation and Research Report,” (中华人民共和国国务院的“中国农民工调研报告”) 2006, p. 182.

⁸³ Ibid., pp. 182-203.

Migrant construction workers interviewed by Human Rights Watch indicated that long working days of up to 17 hours a day or longer on split shifts without overtime wages is common on construction sites in Beijing. Combined with the impact of employers' refusal to pay wages each month, these conditions mean migrant construction workers have little or no time or money to spend on any recreational activities outside work. Several workers interviewed by Human Rights Watch said that the restrictions imposed on them by their long hours, no overtime pay and delayed wages meant that they literally never left the construction site where they lived and worked. "Since I first arrived at the work site, every day I've worked, I don't have any money and I've never left [the work site] for relaxation."⁸⁴

Workers complained that all their time is devoted to work with little or no time for relaxation or leisure outside the building site and said that their working conditions made them feel like "cattle," "slaves," and "coolies."⁸⁵ That regimen of excessive work with no meaningful rest breaks is a violation of article 3 of the Constitution of the People's Republic of China which stipulates that "Working people...have the right to rest." Employers' failure to provide one full day off each week also violates article 38 of the Labor Law of the People's Republic of China.⁸⁶

One migrant worker told Human Rights Watch that he routinely works between 10-16 hours per day for as many as 360 days per year for a daily fixed daily wage of 60 Yuan (US\$8) without overtime wage payments.⁸⁷ Beijing's minimum wage regulations requires that "manual workers" be paid 6.8 Yuan (US\$0.93) per hour for the first eight hours of a regular work day⁸⁸ while article 44 of China's Labor Law stipulates workers received the 150 percent of the hourly minimum wage, or 10.20 Yuan (US\$1.36) for any work after the eight hour mark.⁸⁹ This would entitle the worker

⁸⁴ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁸⁵ Human Rights Watch Interviews with various Beijing-based migrant construction workers (names withheld), Beijing, January- March 2007.

⁸⁶ Labor Law, art. 38.

⁸⁷ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January- March 2007.

⁸⁸ "Income Distribution Reform for Social Justice, Equality," *Invest Beijing*, August 2006, <http://www.bjinvest.gov.cn> (accessed September 18, 2007).

⁸⁹ Labor Law, art.44.

to a daily minimum of 74.80 Yuan (US\$9.97) for a 10 hour work day and 136 Yuan (US\$18.13) for a 16 hour work day.

Unpaid overtime hours are often imposed in defiance of workers right to adequate sleep. One worker said that he and his coworkers had recently completed a work shift of three successive days, around-the-clock with minimal rest breaks.⁹⁰

Every day [the work schedule] was different, there was no unified, fixed work [schedule], regardless if it was daytime or late at night, anytime was a work time, [and] sometimes in the middle of the night when we were sleeping, we would have to get up [and work].⁹¹

The Chinese government, Chinese government-affiliated research institutes and an international union organization have reached similar conclusions. A survey by the government-affiliated Chinese Academy of Social Sciences indicated that only 31 percent of the country's migrant construction workers get their wages paid monthly.⁹² The majority of construction companies violates the stipulation of monthly wage payments and instead illegally pays "living costs" to their workers while withholding wages until the end of each year.⁹³ Beijing municipal government statistics indicate that 41,904 migrant workers were not paid on time in 2006.⁹⁴

Many enterprises continue to withhold wages [to migrant workers] for periods of several months while many...continue to impose fines and deductions on workers which reduce—in some cases drastically—their monthly take home wage.⁹⁵

⁹⁰ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁹¹ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁹² "Construction Workers 'Alienated,'" *China Daily* (Beijing), July 9, 2007.

⁹³ "ACFTU Survey Shows Migrant Workers Face Six Large Problems," *China Industry Daily News* (Beijing), November 15, 2004.

⁹⁴ "Migrant Workers – We Need Them Just Like They Need Us," *China Daily* (Beijing) March 10, 2007.

⁹⁵ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf, pp. 34-35.

The most common pay deduction imposed by employers on migrant construction workers is for food and shelter. The wages of the majority of migrant construction workers interviewed by Human Rights Watch were subject to deductions of 8 Yuan (US\$1.08) per day.⁹⁶ One worker told Human Rights Watch that on top of a monthly “living expenses” deduction of 8 Yuan (US\$1.08) per day, he and his co-workers also faced wage deductions in the form of arbitrary “fines” imposed by the company for infractions ranging from sloppy work to “wastage” of working materials. “If the supervisor imposed a fine, all of the workers involved had to take personal [financial] responsibility.”⁹⁷

The Beijing Labor and Security Bureau reported that there was a 63 percent reduction to 1,965 in the number of cases of migrant workers who had had their wage payments delayed in 2006.⁹⁸ As already noted, the nationwide survey of migrant workers conducted by the Chinese Academy of Social Sciences which found that only 31 percent of migrant workers are paid on time, and strongly suggests that such cases represent only a fraction of the actual total. Even the number of workers who formally file complaints is in excess of the government figures. The Beijing-based Legal Aid Station for Migrant Workers, an independent organization formed in September 2005, registered 1882 cases from September 8, 2005 to May 23, 2006; over the same period it initiated proceedings for payment in 882 of them involving 1,782 workers and wages of 5.63 million Yuan (US\$750,000).⁹⁹ The government-sponsored Beijing Legal Aid Service working station registered “about 1,000” cases of workers seeking redress for grievances including unpaid wages. One of legal aid lawyers estimated that there are “thousands of migrant workers out there who need [legal] help.”¹⁰⁰

⁹⁶ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁹⁷ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

⁹⁸ “Number of Cases Involving Delays in Migrant Workers Wages Down in 2006,” Xinhua’s China Economic Information Service, February 21, 2007.

⁹⁹ Li Qun, “Who Infringe their Rights? Protecting the Rights of China’s Migrant Workers: Cases and Analyses,” (谁动了他们的权利? 中国农民工维权案例情析), (Beijing: Law Press, 2006), p. 3.

¹⁰⁰ “Free Legal Aid Assists Migrant Workers,” *China Daily* (Beijing), February 6, 2007.

The Beijing municipal government announced in November 2007 that it had issued 530,364 identification cards to migrant workers since April 2007 to ensure electronic payment by their employers directly into workers' bank accounts.¹⁰¹ However, there has been no independent evaluation of the effectiveness of this payment system and none of the migrant construction workers interviewed by Human Rights Watch were aware of this system.

The continuing failure of officials to effectively address the problems migrant construction workers face may in part reflect the close links between various levels of government and the state-owned construction firms who dominate China's building sector. State-owned construction firms are viewed by the government as tools of official urban development policy and officials tasked to assist migrant workers may be reluctant to take action which officials perceive might adversely affect the operations of state-owned companies.

Substandard Wages

China's Minimum Wage Regulation (最低工资规定), which went into effect in January 2004, tasks local governments with setting appropriate minimum wage levels for their areas and ensuring their enforcement. The law directs local authorities to set monthly and hourly minimum wage standards at 40 to 60 percent of the average monthly wage in that area.¹⁰² But workers' rights activists say these standards are inadequate relative to actual living costs.¹⁰³

Corruption, lack of enforcement and monitoring, local authorities' drive for investment and the complicated nature of calculating wages and using piece rates for many workers means that the majority of

¹⁰¹ "China issues ID cards to ensure migrants get paid," *Straits Times* (Singapore), November 29, 2007.

¹⁰² *Ibid.*

¹⁰³ "China Falls Short On Minimum Wage," *China.org.cn*, May 14, 2006, <http://www.china.org.cn/english/2006/May/168260.htm> (accessed October 29, 2007).

workers—especially migrants—fail to get the minimum wage unless they work excessive hours of overtime.¹⁰⁴

Beijing's monthly minimum wage rose to its current level of 640 Yuan (US\$85.3) in 2006¹⁰⁵ while the minimum hourly wage for “manual laborers” in the city including migrant construction workers was increased to its present level of 6.8 Yuan (US\$0.91) from 6 Yuan (US\$0.80) in 2006.¹⁰⁶ Migrant construction workers paid that wage based on an official work day of eight hours per day¹⁰⁷ for 20 days per month would earn a gross monthly income of 1,088 Yuan (US\$147), a full 42 percent above Beijing's official monthly minimum wage.

Several migrant construction workers interviewed by Human Rights Watch, however, reported that they were hired by employers who offered a daily wage of no more than 40 Yuan (US\$5.33), 26 percent lower than the legal daily minimum wage of 54.40 Yuan (US\$7.35). One migrant construction worker who was paid 43 Yuan (US\$5.81) per day told Human Rights Watch that those wages condemned him and his fellow workers to a life of monotonous physical labor and personal privation in order to earn money to support their families.

Basically, nobody ever leaves the work site, because what money do we have to spend? Except for buying laundry detergent, shoes, and gloves, there's no reason to leave [the work site].¹⁰⁸

Those interviewees reported that they often worked far longer than the legally-stipulated eight hour day and their wages were delayed and/or considerably lower

¹⁰⁴ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf, pp. 34-35.

¹⁰⁵ “Sanitation workers in NW China city resume work after wage increase promise,” Xinhuanet, October 19, 2006, http://news3.xinhuanet.com/english/2006-10/19/content_5224169.htm (accessed December 25, 2007).

¹⁰⁶ “Income Distribution Reform for Social Justice, Equality,” *Invest Beijing*, August 2006, <http://www.bjinvest.gov.cn> (accessed September 18, 2007).

¹⁰⁷ Article 19 of the Labor Law of the People's Republic of China, adopted on July 5, 1994 and effective as of January 1, 2005.

¹⁰⁸ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

than what was originally agreed.¹⁰⁹ Another worker said that employers arbitrarily pay a significantly lower amount than agreed in a single, end-year lump sum payment. “The boss says...I will pay you 50 Yuan per day, and at the end of the year [wage payment]... you get 40 Yuan [per day].¹¹⁰

The UN Committee on Economic, Social and Cultural Rights has called on China “to establish a wage enforcement mechanism that periodically adjusts minimum wages to the cost of living, facilitate the redress of wage claims, and take sanctions against employers who owe wages and overtime pay and impose fines and penalties on their workers.”¹¹¹

Inadequate food and housing

*Think about it, every day we work so hard, if we don't eat well, how can we do that?*¹¹²

The long working hours of migrant construction workers in Beijing necessitates that they be housed and fed either on-site or very near their workplace. As already noted the majority of workers are not paid monthly and come to the city with minimal disposable income, resulting in situations in which employers provide housing and food for their workers in return for daily wage deductions of seven to 10 Yuan (US\$0.93 to US\$1.33).

Those interviewed by Human Rights Watch unanimously described their living conditions as grossly inadequate. One migrant worker told Human Rights Watch that company management on his building site showed no concern for migrants' problems: “[Company management] had no fundamental interest in their workers

¹⁰⁹ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹¹⁰ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹¹¹ United Nations Committee on Economic, Social and Cultural Rights, Report on the Thirty-fourth and thirty-fifth sessions, E/2006/22E/2005/5, March 1, 2008, p. 32.

¹¹² Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

health...our relationship was almost the same as that of masters and slaves that you see in movies or in television.”¹¹³

Migrant construction workers in Beijing reported that employer-provided housing is severely overcrowded, often unheated during the winter months in Beijing when temperatures frequently fall below zero degrees Celsius and without air-conditioning in the summer heat. “Our room was unheated...there were 10 beds for the use of more than 20 workers [and] in the winter in each bed there were basically two people as a means to stay warm.”¹¹⁴ On another construction site, the workers dormitory had no electricity between 6 a.m. and 6 p.m. and lacked potable drinking water and proper shower facilities.¹¹⁵ According to one state media account, many migrant construction workers are “left shivering in their makeshift tents on construction sites” during the cold winter months.¹¹⁶

In November 2007, the central government announced that it would issue a document directing local governments to “build dorms for migrant workers to improve their living conditions”¹¹⁷ However, the government has not yet issued details of that directive nor specified if or how the construction of dormitories for migrant construction workers would be funded and enforced on Beijing’s thousands of building sites.

Many of the migrant construction workers interviewed by Human Rights Watch said that the toilets and washing facilities on-site available to many migrant construction workers were severely inadequate and in some cases dangerously unhygienic. Toilet facilities often lack running water and without proper washing facilities many

¹¹³ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹¹⁴ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹¹⁵ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹¹⁶ “Migrant workers left out in cold,” *China.org.cn*, November 12, 2007, <http://www.china.org.cn/english.China/232200.htm> (accessed December 24, 2007).

¹¹⁷ “New rules designed to help 140m migrants,” *China Daily* (Beijing), November 21, 2007, <http://english.peopledaily.com.cn/90001/90776/6306363/html> (accessed December 11, 2007).

workers in the winter months are forced to pay three to five Yuan to go to heated public bathhouses to bathe.¹¹⁸

The workers toilet was also dirty... with no running water so except for showers in the summer, very few workers used the showers because it stunk. There were no shower stalls, so you had to use whatever water faucet you could find [to take a shower].¹¹⁹

Migrant construction workers also receive inadequate quality and quantity of food from their employers. Two workers compared their food to what is fed to pigs in the rural countryside. Workers said that the employers' food was so poor that they had to buy additional food outside the worksite, an expense which added to their existing financial strain. One worker said that he had to spend up to 500 Yuan (US\$66.66) per month to supplement his diet.¹²⁰

Migrant workers said that kitchens on Beijing construction sites use the cheapest ingredients and have a monotonous selection of items, forcing workers to tap their limited savings to supplement their daily diet.

Spring, summer, winter and autumn mostly we get Chinese cabbage [cooked] with no vegetable oil....everything is just boiled in water. Only if you add salt you can eat it and sometimes even when you're really hungry you just can't eat it [so] you just eat a little.¹²¹

On one work site, the meals of migrant workers included meat only twice a week and were frequently contaminated with insects and other vermin.¹²²

¹¹⁸ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹¹⁹ *Ibid.*

¹²⁰ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹²¹ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹²² Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

Unsafe working conditions

Construction workers in Beijing are routinely exposed to hazardous working conditions that expose them to illness and injury. A Chinese government study indicates that “the vast majority” of the estimated 700,000 annual industrial accidents in China befall migrant workers.¹²³ China’s official State Administration of Work Safety announced in January 2008 a total of 101,480 industrial workplace fatalities in 2007, a 27 percent decline from the figure in 2006.¹²⁴

Workers in the construction industry, which is dominated by migrant workers, are particularly vulnerable to injury or death on the job. There is scant publicly-accessible government data on the specifics of China’s construction industry accident injury and death tolls. China’s National Bureau of Statistics groups annual data on construction industry accidents under a single general category of industrial, mining and commercial accidents. The Web site of the Beijing Municipal Statistics Bureau does not provide data on construction industry accidents. However, official statistics indicate that Beijing recorded higher levels of accidents and deaths in its construction sector in the first six months of 2006 than 32 other Chinese cities surveyed in the same period.¹²⁵ Accidents in Beijing’s construction industry rose 29.63 percent to a total of 35 from January to June 2006, while worker fatalities in those accidents rose 53.57 percent year-on-year to a total of 43 deaths in the same period.¹²⁶

Data from non-official sources is even more disturbing. The Legal Aid Station for Migrant Workers recorded 384 cases of migrant workers seeking redress for industrial accidents from September 8, 2005, to May 23, 2006.¹²⁷ Article 42 of the Constitution of the People’s Republic of China tasks the Chinese government to

¹²³ China’s State Council, “China Migrant Worker Investigation and Research Report,” (中华人民共和国国务院的“中国农民工调研报告) 2006, p. 182.

¹²⁴ “China punishes 183 people responsible five fatal accidents claiming 189 lives,” *Xinhua News Agency*, January 22, 2008.

¹²⁵ “Nationwide Construction Industry Accidents,” *China Engineering Construction Net* (Beijing), August 28, 2006, http://www.cein.gov.cn/news/show.asp?rec_no=14828 (accessed August 28, 2006).

¹²⁶ *Ibid.*

¹²⁷ Li Qun, “Who Infringe their Rights? Protecting the Rights of China’s Migrant Workers: Cases and Analyses,” (谁动了他们的权利? 中国农民工维权案例情析), (Beijing: Law Press, 2006), p. 3.

strengthen “...labor protection and improve working conditions” of all of China’s workers.

Article 3 of the Labor Law of the People’s Republic of China stipulates that laborers shall have the right to “...obtain protection of occupational safety and health.”¹²⁸ Article 52 of the Labor Law obligates employers to “...establish and perfect the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate laborers on occupational safety and health, prevent accidents in the process of work and reduce occupational hazards.”¹²⁹ Articles 54 and 55 require employers to provide adequate safety training for workers who do “specialized operations” and to provide regular health examinations to those whose work involves “occupational hazards.”¹³⁰

The Labor Contract Law, which went into effect on January 1, 2008, makes employers liable for administrative punishment or criminal liability in cases in which “poor working conditions or a severely polluted environment...[causes] serious damage to the physical and mental health of the employee.”¹³¹ The Law of the People’s Republic of China on Work Safety sets out employers’ obligations to reduce the risk of industrial accidents and the specific penalties for failure to do so. Article 53 of the law outlines the responsibility of local governments to execute “strict inspections” of work places to ensure compliance and to identify possible “hidden dangers” that might cause accidents.¹³² The rights of workers to occupational safety at work are also enshrined in the International Covenant on Economic, Social and Cultural Rights and ILO Conventions ratified by the Chinese government.¹³³

¹²⁸ Labor Law, art. 3.

¹²⁹ Labor Law, art. 52.

¹³⁰ *Ibid.*, arts. 54 and 55.

¹³¹ Labor Contract Law, art. 88.4.

¹³² The Law of the People’s Republic of China on Work Safety, promulgated on June 29, 2002 and implemented on November 1, 2002, art. 53.

¹³³ ILO Convention No. 155 concerning Occupational Safety and Health, adopted June 22, 1981, 1331 U.N.T.S. 279, entered into force August 11, 1983; ILO Convention 167 concerning Safety and Health in Construction, adopted June 20, 1988, 1331 U.N.T.S. 279, entered into force January 11, 1991.

While these protections are important, they are not being enforced as they should be and the Chinese government continues to be condemned for poor conditions of work including “hazardous working conditions.”¹³⁴ The UN Committee that reached that conclusion noted “with concern that the problem is especially acute for migrant workers” and that it was “alarmed by the high incidence of serious occupational accidents.”¹³⁵ This is consistent with the government’s own research which indicates that employers regularly neglect the safety of migrant workers in the construction industry. An official study on working conditions of migrant workers indicated that only 24 to 39 percent of constructions workers have access to workplace safety equipment.¹³⁶

Some companies in order to cut costs, use migrant workers for the bulk of positions where there are toxins or danger without needed safety training, safety procedures or safety equipment...[so] their work-related illness or injury proportions is high [compared to non-migrants].¹³⁷

Human Rights Watch interviews indicate that some construction companies are failing to fulfill their legal obligations to protect their workers from industrial accidents. Interviewees reported lapses in worker safety protection including a lack of safety equipment and ineffective systems to assist workers who have been hurt on the job. A migrant construction worker on a building site in central Beijing said his workplace was unsafe due to his employer’s failure to provide workers with essential protective equipment and assist injured workers when accidents occur.¹³⁸ “[The work site] is full of hidden health dangers [and when] worker injuries occur, they aren’t appropriately handled [by company representatives].”¹³⁹

¹³⁴ United Nations Committee on Economic, Social and Cultural Rights, Report on the Thirty-fourth and thirty-fifth sessions, E/2006/22E/2005/5, March 1, 2008, p. 27.

¹³⁵ *Ibid.*, p. 28.

¹³⁶ China’s State Council, “China Migrant Worker Investigation and Research Report,” (中华人民共和国国务院的“中国农民工调研报告”), 2006, p. 369.

¹³⁷ *Ibid.*, pp. 204-205.

¹³⁸ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹³⁹ *Ibid.*

The long working hours, lack of days off, and inadequate rest breaks endured by migrant workers make accidental construction site injuries more likely due to inattention and distraction caused by fatigue. A 24-year-old migrant construction worker said that fact that he was “too tired” while on the job lead to a workplace accident on August 7, 2006 in which a load of copper pipe fell on his left foot, requiring the amputation of one of his toes.¹⁴⁰ Another migrant worker who suffered a serious injury to his hand, for which he blamed faulty equipment he was using, said the accident highlighted the absence of health and safety protections for workers on the site.¹⁴¹ “On the work site relevant... machinery and equipment weren’t provided... and there also weren’t any safety protection products put in place or replaced [after being used].”¹⁴²

Lack of insurance coverage

*I’ve been a migrant worker for more than ten years, and not one of my employers has ever provided us with insurance.*¹⁴³

Migrant workers are also systematically excluded from insurance schemes. Since 1953, the Labor Insurance Regulation of the People’s Republic of China (中华人民共和国劳动保险条例) has extended insurance for illness and industrial accidents to urban residents who possess valid household registration permits.

Article 45 of the Chinese Constitution enshrines the right of all Chinese citizens to “...material assistance from the state and society when they are old, ill or disabled.” The rights of all laborers to “social insurance and welfare” is stipulated in article 3 of the Labor Law while articles 70 and 73 of that same law stipulate the creation of “social insurance funds” for illness, work related injury, and disability caused by

¹⁴⁰ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁴¹ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁴² Ibid.

¹⁴³ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

work-related injury or occupational disease.”¹⁴⁴ Article 17 of the Labor Contract Law also requires all labor contracts to include details of “social insurance” for workers.¹⁴⁵

Despite legal guarantees of medical and accident insurance, an estimated 700,000 construction workers in Beijing, the vast majority of whom are migrants, have no accident insurance.¹⁴⁶ The survey research published in 2007 by the Chinese Academy of Social Sciences indicates that only 31 percent of China’s migrant construction workers had medical insurance and 37 percent had accident insurance.¹⁴⁷ A 2006 report by the State Council concluded that “A large proportion of migrant workers [in Beijing] when sick, victims of industrial accidents or unemployed are unable to receive assistance.”¹⁴⁸ One article attributed the failure to provide insurance coverage for migrant workers to employers’ unwillingness to pay: “Most companies don’t participate in insurance programs because they think costs are too high [and] add 30 to 35 percent to labor costs.”¹⁴⁹

The majority of migrant construction workers interviewed by Human Rights Watch had no employer- or government-supplied medical or accident insurance whatsoever. The lack of legally-stipulated medical insurance coverage often forces workers to tap their meager savings to pay for treatment and medicines at roadside clinics and pharmacies.

For medical problems that aren’t very serious, I just buy whatever medicine I need to take care of it, but for more serious medical problems I have to think of another way to deal with it, [such as]

¹⁴⁴ Labor Law, arts. 3, 70, 73.

¹⁴⁵ Labor Contract Law, art. 17.

¹⁴⁶ “700,000 Construction Workers in Beijing are Without Insurance,” Agence France Presse, December 13, 2006.

¹⁴⁷ “Construction Workers ‘Alienated,’” *China Daily* (Beijing), July 9, 2007.

¹⁴⁸ China’s State Council, “China Migrant Worker Investigation and Research Report,” (中华人民共和国国务院的“中国农民工调研报告”) 2006, p. 369.

¹⁴⁹ “ACFTU Survey Shows Migrant Workers Face Six Large Problems,” *China Industry Daily News* (Beijing), November 15, 2004.

borrowing money [to see a doctor] and then repaying the money once I've been paid.¹⁵⁰

In November 2007, the central government indicated that it might retreat from its legal obligations to ensure that employers and government provide medical insurance for workers. The government announced that it was preparing to issue a document to “encourage migrant workers to obtain insurance cover for work and basic medical coverage.”¹⁵¹ The announcement provided no details of the plan, and suggests that the government may try to shift the onus onto workers to purchase their own private insurance coverage plans. Such a move would only heighten the vulnerability of a low-income group already barely able to support itself on meager wages which are often arbitrarily reduced, delayed or denied outright by unscrupulous employers.

Denial of basic services linked to China’s household registration, or *Hukou*, system

Migrant construction workers in Beijing, who lack temporary household registration permits, have also been barred from seeking legal redress against employers guilty of wage exploitation.

A group of 300 migrant construction workers whose employer refused to pay them their cumulative wages for work from April 2006 through November 11, 2006, for example, were stymied in their efforts to start legal proceedings against their employer by Beijing’s Fengtai district rural migrant legal assistance work station (丰台区的北京市农名工法路援助工作站). The work station required that each affected employee provide three copies of their household registration certificate and the workers lacked the necessary documentation.¹⁵² “The unluckiest thing was that a lot of the workers don’t have household registration certificates...nowadays there are a

¹⁵⁰ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁵¹ “New rules designed to help 140m migrants,” *China Daily* (Beijing), November 21, 2007, <http://english.peopledaily.com.cn/90001/90776/6306363/html> (accessed December 11, 2007).

¹⁵² Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

lot of workers in Beijing who don't have household registration certificates," one worker told Human Rights Watch.¹⁵³

Another migrant worker employed on a central Beijing construction site who sought government accident insurance to cover a 550 Yuan medical bill related to an industrial accident was also stymied by official requirements. Beijing's Fengtai District Social Welfare Center Industrial Accident Insurance Section (丰台区社保中心工伤保险科) representatives informed the worker that filing such a claim would require submission of copies of a temporary household registration certificate as well as his employment contract, neither of which the worker possessed.¹⁵⁴

I thought to myself 'Once again, the doors to legal protection are being slammed in my face.'¹⁵⁵

The ILO advocates reform of the household registration system in order to eliminate aspects of the law that are problematic and discriminatory against migrant workers seeking legally stipulated services. "Reforming the *hukou* system requires a number of institutional measures, including reform of the labor protection system, reorganizing public resource distribution systems, building and expanding the capacity to offer public and social services [education, health care, and housing] to rural migrants residing in urban areas."¹⁵⁶

¹⁵³ Ibid.

¹⁵⁴ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁵⁵ Ibid.

¹⁵⁶ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf, pp. 34-35.

IV. Chinese Labor Law

Government mechanisms addressing labor disputes

Bureaucrats bounce us around like balls... [and] it fills my heart with rage.

—Beijing-based migrant construction worker ¹⁵⁷

Despite explicit prohibitions against the exploitation of workers in key Chinese legal documents, including the Constitution, the Labor Law and at least 16 other central and municipal government laws, regulations and directives,¹⁵⁸ research by the Chinese government and international labor organizations indicate such violations remain rampant.

The government's framework for labor dispute resolution consists of a three-stage process which begins with mediation, advances to arbitration if mediation fails, and concludes with litigation before a court of law. But each stage of this process poses serious challenges to migrant construction workers seeking legal redress for their claims.

¹⁵⁷ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁵⁸ Labor Insurance Regulation of the People's Republic of China (中华人民共和国劳动保险条例), 1953; Labor Ministry Reply to South Hunan Labor Ministry Enquiry on Labor Insurance Benefits for Migrant Workers Injured on the Job (《国家劳动总局保险福利司关于应公致残的亦工亦农民人员的保险待遇和退休工人享受特许贡献待遇问题给湖南劳动局的复函》), 1982; Measures to Regulate the National Construction Industry's Employment Contract and Use of Rural Migrant Workers (国营建筑企业招用农民合同制工人和使用农村建筑暂行办法 1984; Rules For Strengthening Rural-Urban Enterprises Worker Protection Efforts (关于加强乡镇企业劳动保护工作的规定, 1987; Directive About Problems With Hiring Contracts and Rigorous Implementation of Worker Protection Rules (关于雇工合同 应当严格执行劳动保护法规问题的通知), 1988; Temporary Regulation on National Enterprises Temporary Worker Management (全民所有制企业临时工管理暂行规定), 1989; State Council National Regulations on Industrial Employment and Contracts for Migrant Workers (国务的《全民所有制企业招用农民合同制工人的规定》, 1991; Directive To Strengthen Foreign-Invested and Private Enterprises Labor Management and Feasible Guarantees for Workers Legal Rights (关于加强外商投资企业 和司营企业劳动管理切实保证职工合法权益的通知), 1994; Implementing the PRC Labor Law's Labor Contract Signing Provision (《实施《中华人民共和国劳动法》中有关劳动合同问题的确签》), 1995; Directive About Completely Cleaning Up and Rectifying Migrant Workers Fees (关于全面清理整顿外出或外来务工人员收费通知), 2001; Law of the People's Republic of China on Work Safety, 2002; State Council Directive Permitting Rural Migrant Worker To Seek Jobs in Cities ((国与原办公厅关于做好农民进城务就业管理和服务工作的通知), January 2003; Directive About Feasible Solutions for Construction Sector Unpaid Wages Problem (关于切实解决建设领域欠工程款问题的通知), November 2003; Industrial Accident Insurance Regulations (工伤保险条例), 2004; Minimum Wage Regulation (最低工资规定), 2004; Directive About Migrant Worker Participation in Work Injury Insurance Problems (关于农民工参加工伤保险有关问题的通知), 2004; Beijing Municipal Government Regulations for Management of Migrant Workers and Business People, 2005.

The first stage of the labor dispute resolution process, mediation, hinges on article 80 of China's Labor Law which stipulates that any dispute between workers and employers must be resolved through a tripartite labor dispute mediation committee formed inside the workplace and consisting of representatives of the workers, the employer and the trade union. However, China's only legal trade union body, the state-sponsored All China Federation of Trade Unions (ACFTU), has traditionally not prioritized union representation for migrant workers, leaving an estimate 70 percent of migrant construction workers without union protection.¹⁵⁹

Migrant workers who can successfully tap union assistance for mediation assistance can also initiate arbitration proceedings if mediation fails. However, arbitration requires workers pay a fee of 420 Yuan¹⁶⁰ (US\$57.53), a prohibitively expensive sum for most migrant workers. Workers who pursue the dispute resolution process to the litigation phase are faced with even more onerous legal fees that are beyond the resources of the vast majority of migrant construction workers, as well as lengthy waits for court judgments.

Advocates for the rights of migrant construction workers say that the laws designed to protect laborers of all kinds from wage exploitation and other abuses do not adequately stipulate how workers can extract unpaid wages from unscrupulous employers even when mediation, arbitration or a successful lawsuit decides in their favor. "We've ignored the protection of laborers rights, especially laborers rights [and] we have no clear system that says [who] must bear responsibility when their wages aren't paid and how those responsible are to be punished."¹⁶¹

The Regulations of the People's Republic of China on Settlement of Labor Disputes in Enterprises provide clear directives on redress mechanisms for work-related grievances.¹⁶² Article 4 of that law stresses the need for "mediation and prompt

¹⁵⁹ All-China Federation of Trade Union Bulletin, June 4, 2006, <http://www.acftu.org.cn/o6o4.htm> (accessed October 17, 2007).

¹⁶⁰ 新疆人大代表呼吁取消劳动仲裁前置的法律程序, *Xinhuanet.com*, January 20, 2006, http://news.xinhuanet.com/legal/2006-01/20/content_4076746.htm (accessed December 25, 2007).

¹⁶¹ Anthony Kuhn, "Migrants – A High Price to Pay for a Job," *Far Eastern Economic Review*, January 22, 2004.

¹⁶² Regulations of the People's Republic of China on Settlement of Labor Disputes in Enterprises, 1993.

handling” of such disputes and the equality of employers and employees before the law.¹⁶³

But migrant workers interviewed by Human Rights Watch consistently expressed cynicism about the capacity of China’s laws and leadership to solve wage exploitation and other rights violations that they experience on construction sites in Beijing. “Premier Wen Jiabao says that migrant workers wage payments shouldn’t be delayed. Is that just an empty slogan?”¹⁶⁴ One of the main causes of the ongoing problems in addressing rights violations of migrant construction workers in Beijing is inadequate implementation of existing laws.¹⁶⁵ Strained government resources and lack of budgetary funding to support migrant worker legal assistance measures means that laws designed to protect workers are often ignored.

As one observer noted:

Across the country one can see [that] in the construction...industry, non-payment of owed wages to migrant workers is a more serious problem. China’s government has highly prioritized the problem of unpaid migrant workers owed wages and has adopted...strong measures to solve this problem [but] unpaid wages to migrant workers still hasn’t been fundamentally solved ...[and remains] a common phenomenon.¹⁶⁶

In response to the dysfunctional official dispute resolution process, a patchwork of ad hoc mechanisms to address migrant construction workers’ grievances against employers has evolved at the municipal government level and through a handful of non-government organizations that offer free dispute resolution services to migrant construction workers. However, municipal government agencies are inadequately

¹⁶³ *Ibid.*, art. 47.

¹⁶⁴ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁶⁵ China Labour Bulletin, “Conflicts of Interest and the Ineffectiveness of China’s Labour Laws: English Executive Summary,” October 2007, www.china-labour.org.hk/public/contents/category?cid=5712 (accessed October 29, 2007).

¹⁶⁶ China’s State Council’s “China Migrant Worker Investigation and Research Report,” (中华人民共和国国务院的“中国农民工调研报告”), 2006, p. 203.

staffed to cope with the high volume of migrant construction workers seeking legal redress and workers ultimately face a vicious circle: the agencies condition the enforcement of their rights on the production of documents such as legally-standard contracts which migrant construction workers typically lack, and which help give rise to the violations in the first place.

Labor protection officers

According to official statistics, there is only one labor protection officer for every 1,600 work places and for 17,000 workers.¹⁶⁷ “Even with ...the campaign to collect unpaid wages for migrants and the possible criminalization of such behavior, there is still not enough monitoring of firms to deter the widespread use of this technique as a means of reducing overheads.”¹⁶⁸

The lack of numbers and resources allocated to support the operations of the labor inspectorate was noted by the UN committee who called on sufficient resources to be made available so that there could be both “regular and independent inspections of safety and health conditions in all sectors” and sanctions against employers who fail to observe safety regulations. The Committee encouraged China to ratify ILO Convention No. 81 concerning Labor Inspection in Industry and Commerce.

Labor protection officers currently have a mandate that strictly limits their utility in effectively addressing migrant construction worker grievances. Labor protection officers are empowered to inspect work sites and impose fines for labor law violations, but do not have the power to ensure that fines are paid and that employers actually obey labor laws after the officers leave the work site.

The efforts of such labor protection officers are also diminished by loopholes in China’s labor laws that provide little or no deterrent effect for employers who cheat their workers of owed wages or deny them legally-stipulated medical insurance coverage as a means to boost profits. A study in 2006 by China’s State Council noted

¹⁶⁷ China’s State Council, “China Migrant Worker Investigation and Research Report,” (中华人民共和国国务院的“中国农民工调研报告), 2006, p. 202.

¹⁶⁸ International Confederation of Free Trade Unions, Letter from ICFTU general-secretary (unnamed) to Juan Somavia, director-general, International Labor Organization, August 31, 2006, www.ihlo.org/is/000806.html (accessed September 18, 2007).

that under current laws, employers proven to deny their workers legally-required labor contracts merely have to provide a contract, with no additional fine or administrative penalty.¹⁶⁹ The report also noted that current legal penalties against employers who withhold wages, typically fines of 50 to 100 percent of the owed wages, were failing to provide an effective deterrent against abuses in China's construction industry.¹⁷⁰

Current laws and regulations also do not provide relevant government officials the power to effectively enforce legal judgments against employers found guilty of cheating their migrant worker employees. Government officials can rule in favor of workers' grievances and instruct their employers to pay owed wages and/or compensation, but do not have the specific legal powers to compel compliance with such judgments. "Labor and social security bureaus don't have power to enforce the law. They can talk to the [employer], but lack power to order it to pay."¹⁷¹

Migrant construction workers in Beijing interviewed by Human Rights Watch expressed frustration at the inability of relevant government departments to force construction companies to pay legally-owed wages.

Nobody did anything [to get our money] except us workers.
Government workers were useless... [they] should have applied
pressure to our employer.¹⁷²

Migrant construction workers who successfully navigate government bureaucracy and can provide the needed documentation including urban household registration permits which many migrant workers lack¹⁷³ are often daunted by the lengthy waits

¹⁶⁹ China's State Council, "China Migrant Worker Investigation and Research Report," (中华人民共和国国务院的“中国农民工调研报告”, 2006, p. 206.

¹⁷⁰ Ibid.

¹⁷¹ Josephine Ma, "Exploited Workers Face Uphill Battle To Get Back Pay," *South China Morning Post* (Beijing), February 13, 2007.

¹⁷² Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁷³ International Labor Organization, *Equality at Work: Tackling the Challenges. Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf, pp. 34-35.

that government labor protection agencies require to render judgments in legal disputes. One worker said he and more than 80 of his coworkers, unpaid for work done between November 2006 and April 2007 and almost penniless, were informed by both the Ministry of Construction and the Beijing municipal government that any investigation to recover more than 1.5 million Yuan (US\$200,000) in unpaid wages would require a minimum of 60 working days.¹⁷⁴ “A wait of 60 days is a matter of life and death [for us] don’t they realize how many people could die because of a wait of 60 days?”¹⁷⁵ As already noted, most such workers have no safety net.

Those difficulties can help enable employers guilty of wage exploitation to evade legal responsibility for cheating their workers. “Employers may threaten workers that it will take a long time if they file a lawsuit and they should take, say, 60 percent of the wages and leave.”¹⁷⁶

Some workers eventually opt for illegal strikes in order to pressure their employers to pay owed wages. Over the past two years, there have been several documented instances of workers being violently assaulted by plainclothes thugs suspected to be working on behalf of the workers’ employers. In July 2007, in response to a strike by 300 migrant construction workers at the Fuyuan Hydropower plant in Heyuan city in Guangdong, thugs allegedly hired by the company to break the strike injured hundreds and beat one of the migrant workers to death.¹⁷⁷ Six migrants were injured in a similar attack in Xian, Shaanxi province, in August 2005.¹⁷⁸

¹⁷⁴ Human Rights Watch Interview with a Beijing-based migrant construction worker (name withheld), Beijing, January-March 2007.

¹⁷⁵ Ibid.

¹⁷⁶ Josephine Ma, “Exploited Workers Face Uphill Battle To Get Back Pay,” *South China Morning Post* (Beijing), February 13, 2007.

¹⁷⁷ “Strike Breaking Thugs Kill Migrant Worker,” *Shanghai Daily* (Shanghai), July 3, 2007.

¹⁷⁸ “Migrants in China Beaten Over Unpaid Wages Claim,” Associated Press, August 4, 2005.

V. Denial of Independent Trade Unions and Collective Bargaining

Chinese law does not recognize the right of workers to organize and form trade unions outside the state-affiliated All-China Federation of Trade Unions (ACFTU),¹⁷⁹ and this in turn exacerbates the exploitation of migrant construction workers in Beijing. The Trade Union Law of the People's Republic of China explicitly links the role of the AFCTU to government policies directed at "the development of China's socialist modernization."¹⁸⁰ The ACFTU's chairman, Wang Zhaoguo, is also vice-chairman of the Standing Committee of China's parliament, the National People's Congress.¹⁸¹

[Chinese] workers have the right to join and organize unions, but must be part of the sole nationwide labor union, the All China Federation of Trade Unions (ACFTU) which must support the Communist Party. China's labor laws do not clearly specify that workers have to represent workers in the collective bargaining process, and under China's constitution workers do not have the legal right to strike.¹⁸²

The Trade Union Law's prohibition of any labor union activity outside the AFCTU has been criticized by international labor organizations as an unfair limitation on workers' right to organize. The International Labor Organization describes the ACFTU's role as sole trade union in China as "a system of trade union monopoly [which] limits the right of workers to form and join organizations of their own choice."¹⁸³

¹⁷⁹ Trade Union Law of the People's Republic of China, adopted April 3, 2007, art. 2.

¹⁸⁰ *Ibid.*, art. 1.

¹⁸¹ "China Assembly Head Chairs Meeting to Hear Reports on Handling of Bills," *Xinhua News Agency*, October 28, 2007.

¹⁸² China Labour Bulletin, "Conflicts of Interest and the Ineffectiveness of China's Labour Laws: English Executive Summary," October 2007, www.china-labour.org.hk/public/contents/category?cid=5712 (accessed October 29, 2007).

¹⁸³ "Remarks by Juan Somavia at a press conference on the occasion of the signing of the Memorandum of Understanding for cooperation between China and the ILO," International Labor Organization, May 17, 2001, <http://www.ilo.org/public/english/bureau/dgo/messages/2001/beijing.htm> (accessed October 17, 2007).

Workers' rights to freedom of association and collective bargaining, including the right to organize unions for the protection of their interests, are guaranteed by international human rights law, and are specifically protected under article 8 of the International Covenant on Economic, Social and Cultural Rights to which China is a party.¹⁸⁴

Article 6 of China's Trade Union Law appoints the ACFTU to "represent and safeguard the rights and interests of employees...through equal negotiation and collective contract system."¹⁸⁵ However, the former International Confederation of Free Trade Unions (ICFTU) describes the ACFTU's close links to the Chinese government and the policies of the Chinese Communist Party as contrary to the independent nature of free trade unions.¹⁸⁶ The former ICFTU has described the Trade Union Law's specification of ACFTU responsibilities¹⁸⁷ as a serious handicap to the organization's ability to adequately work for the interests of workers and effectively renders the ACFTU "not a genuine trade union."¹⁸⁸

The utility of the ACFTU in the development and protection of legally-stipulated rights for migrant construction workers is particularly questionable in light of official data which indicates that only 30 percent of such laborers have union membership.¹⁸⁹ While the ACFTU announced in 2006 that it had set a goal of unionizing 70 percent of all of China's migrant workers by 2008,¹⁹⁰ even accomplishing that ambitious goal will still leave a full 30 percent of all migrant workers, a minimum of 30 million people, without union protection.

¹⁸⁴ See further China's reservation at signing that the right was to be read as consistent with the Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China. The Committee on Economic, Social and Cultural Rights has noted its regret at the Chinese prohibition of enjoyment of the right to organize and join independent trade unions; *Ibid.*, para. 26.

¹⁸⁵ Trade Union Law, art. 6.

¹⁸⁶ International Confederation of Free Trade Unions, Letter from ICFTU general-secretary (unnamed) to Juan Somavia, director-general, International Labor Organization, August 31, 2006, www.ihlo.org/is/000806.html (accessed September 18, 2007).

¹⁸⁷ Trade Union Law, art. 4 and art. 27.

¹⁸⁸ International Confederation of Free Trade Unions, Letter from ICFTU general-secretary (unnamed) to Juan Somavia, director-general, International Labor Organization, August 31, 2006, www.ihlo.org/is/000806.html (accessed September 18, 2007).

¹⁸⁹ "Chinese Migrant Building Workers Join Trade Unions," *Xinhua News Agency*, May 26, 2005.

¹⁹⁰ Bulletin, All-China Federation of Trade Unions, June 4, 2006, <http://www.acftu.org.cn/0604.htm> (accessed October 17, 2007).

VI. Workers' Rights and Government Obligations under International Law

China's International Legal Obligations

Over the past half century, a comprehensive body of international law to protect workers' rights has been developed. States party to international agreements, treaties, and instruments to protect workers' rights are obligated to implement and enforce these standards.

In 2001, China became a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in doing so agreed to guarantee not only the right to work (article 6)¹⁹¹ but the right to “just and favorable conditions of work.”¹⁹²

Article 7 of the ICESCR calls for states to ensure:

- Remuneration which provides all workers, as a minimum, with:
 - Fair wages and equal remuneration for work of equal value without distinction of any kind...
 - A decent living for themselves and their families...
- Safe and healthy working conditions;
- Rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8 protects the rights related to freedom of association and trade union membership including:

- The right to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests (article 8.1a).
- The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in

¹⁹¹ See general Comment No. 18: The Right to Work, UN Committee on Economic, Social and Cultural Rights, E/C.12/GC/18 February 6, 2006.

¹⁹² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966; G.A. Res. 2200A (XXI), entered into force January 3, 1977, and ratified by China on March 27, 2001.

- the interests of national security or public order or for the protection of the rights and freedoms of others (article 8.1c).
- The right to strike (article 8.1d).

When the Chinese government ratified the ICESCR it made a statement that article 8.1a, which refers to the right of free formation of trade unions, “shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China.”¹⁹³ The government’s attempt to, in effect, suspend the application of article 8.1a because China’s Trade Union Law forbids any union activity outside the state-affiliated All-China Free Trade Union (ACFTU), is deemed a reservation under international law.¹⁹⁴ Under international law reservations incompatible with the object and purpose of the treaty are invalid¹⁹⁵ and it is arguable that China’s reservation to article 8 would fall into this category.

In 2005, the UN Committee on Economic, Social and Cultural Rights which reviews states compliance with their obligations under the ICESCR issued its concluding observations on China, and set out several serious concerns about the protection of worker’s rights including the particular plight of internal migrants and construction workers. It noted the de facto discrimination against migrant workers as a result of the *hukou* system, which it called to be dismantled; the insufficient implementation of labor protections, with resulting “poor conditions of work, including excessive working hours, lack of sufficient rest breaks and hazardous working conditions” and how this “is especially acute for migrant workers.”¹⁹⁶ It also noted with regret the prohibition on the right to organize and join independent trade unions.¹⁹⁷

¹⁹³ United Nations Treaty Collection, www.unhcr.ch/html/menu3/b/a_ceschr.htm (accessed October 27, 2007).

¹⁹⁴ See General comment No. 24 of the UN Human Rights Committee: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994) para. 3.

¹⁹⁵ Article 19 (3) of the Vienna Convention on the Law of Treaties, 1969.

¹⁹⁶ *Ibid.*, para. 24.

¹⁹⁷ *Ibid.*, para. 26.

China has signed, but has yet to ratify the International Covenant on Civil and Political Rights (ICCPR).¹⁹⁸ Among other things, the ICCPR echoes the ICESCR's stipulation that workers have the right "to form and join trade unions."¹⁹⁹

China's Membership in the International Labor Organization (ILO)

China is a member of the ILO and has ratified four of the eight ILO core conventions, namely Conventions No. 100²⁰⁰ and No. 111²⁰¹ related to non-discrimination in employment and occupation and No. 138²⁰² and No. 182²⁰³ relating to child labor.

The Chinese government has not ratified core ILO conventions No. 87 on Freedom of Association and Protection of the Right to Organize nor No. 98 on the Right to Organize and Collective Bargaining.²⁰⁴ The Chinese government also has not ratified core ILO conventions No. 29 and No. 105 regarding forced labor.²⁰⁵

However, the ILO emphasized in its 1998 Declaration of Fundamental Principles and Rights at Work that all member states must implement and respect fundamental workers' rights within the ILO framework²⁰⁶ the Declaration specifies that all

¹⁹⁸ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, signed by China on October 5, 1998.

¹⁹⁹ *Ibid.*, art. 22.1.

²⁰⁰ C100 Equal Remuneration Convention, 1952, ratified November 2, 1990, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?China> (accessed October 28, 2007).

²⁰¹ C11 Discrimination (Employment and Occupation) Convention, 1958, Ratified on January 12, 2006, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?China> (accessed October 28, 2007).

²⁰² C138 Minimum Age Convention, 1973, ratified April 28, 1999, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?China> (accessed October 28, 2007).

²⁰³ C182 Worst Forms of Child Labour Convention, 1999, ratified August 8, 2002; <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?China> (accessed October 28, 2007).

²⁰⁴ ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 68 U.N.T.S. 17, entered into force July 4, 1950. ILO Convention No. 98 concerning the Right To Organize and Collective Bargaining Convention, 96 U.N.T.S. 257, entered into force July 18, 1951.

²⁰⁵ ILO Convention No. 29 concerning Forced or Compulsory Labour, 39 U.N.T.S. 55, entered into force May 1, 1932; ILO Convention No. 105 concerning Abolition of Forced Labour Convention, 320 U.N.T.S. 291, entered into force January 17, 1959.

²⁰⁶ International Labor Organization, Declaration of Fundamental Principles and Rights at Work, http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT (accessed October 28, 2007).

members have an obligation to allow the right to collective bargaining and freedom of association.

[A]ll members, *even if they have not ratified the Conventions in question*, have an obligation arising from the very fact of membership in the Organization, to respect, to promote, and to realize, in good faith and in accordance with the [ILO] Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: freedom of association and the effective recognition of the right to collective bargaining...²⁰⁷

The Declaration's stipulation that "freedom of association and effective recognition of the right to collective bargaining" is interpreted by the ILO to mean "all workers and all employers have the right to form and join groups for the promotion and defense of their occupational interests."²⁰⁸ The ILO also requires that workers' organizations be permitted to formulate their own regulations, operate freely and elect their representatives in full freedom and that the organizations be truly independent and free of external interference: "Workers and employers can set up, join and run their own organizations without interference from the State or one another."²⁰⁹ These rights are articulated in article 3 of ILO Convention No. 87. The ILO also requires that the right to freedom of association and collective bargaining be incorporated into the member states' legal frameworks:

"To realize the principle of freedom of association and the right to collective bargaining in practice requires, among other things, a legal basis which guarantees that these rights are enforced; an enabling institutional framework, which can be

²⁰⁷ Ibid.

²⁰⁸ International Labor Organization, "Freedom of Association and Effective Recognition of the Right to Collective Bargaining," www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=ISSUESFREEDOM (accessed October 28, 2007).

²⁰⁹ Ibid.

tripartite, between the employers and the employers' and workers' organizations, or combinations of both..."²¹⁰

In addition, the ILO Committee on Freedom of Association stated in 1975 that ILO members, due to their membership, are "bound to respect a certain number of general rules which have been established for the common good...Among these principles, freedom of association has become a customary rule above the Conventions."²¹¹

Workers' fundamental right to strike has also been recognized by the ILO. In 1994, the ILO's Committee of Experts on the Application of Conventions and Recommendations stated that the "right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87."²¹² Article 53 of the Chinese Constitution is a de facto ban on labor strikes by obligating all Chinese citizens to "observe labor discipline and public order."

²¹⁰ International Labour Organization, "Freedom of Association and Effective Recognition of the Right to Collective Bargaining," www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=ISSUESFREEDOM (accessed October 28, 2007).

²¹¹ ILO Committee on Freedom of Association, "Fact-Finding and Conciliation Commission Report: Chile," 1975, para. 10.

²¹² International Labour Conference, 1994, "Freedom of association and collective bargaining: The right to strike, Report of the Committee of Experts on the Application of Conventions and Recommendations," 81st Session, Geneva, 1994, Report III (Part 4B), para. 151.

VII. Recommendations

To the Government of the People's Republic of China

- Aggressively investigate and prosecute employers who withhold wages, deny workers legal contracts, do not provide adequate food and housing and fail to deliver workers' medical and accident insurance in violation of China's labor law. End the de facto impunity enjoyed by companies who abuse workers' rights by imposing meaningful and consequential penalties for such abuses.

Violations of worker rights are made possible by the government's failure to adequately hold responsible those construction companies guilty of such transgressions. The government should bar firms guilty of wage exploitation and other abuses from tendering for state-financed construction projects. The government should ensure that government investigators and labor protection bureaus are allocated sufficient personal and budgets to effectively prosecute abuses of China's Labor Law. Construction firms found to violate the law should be subject to substantial penalties in order to create a deterrent effect, including prosecution of senior executives found guilty of embezzling migrant construction workers' wages. The Chinese government should disclose details of these prosecutions and any resulting convictions through domestic media in a bid to increase transparency about problems affecting migrant workers to maximize the deterrent effect of such legal action. The Chinese government should also implement the Committee's recommendation to ratify the ILO Convention No. 81 concerning Labour Inspection in Industry and Commerce.

- Establish minimum standards for company-provided dormitories and food for migrant construction workers to ensure that workers who live on worksites are guaranteed adequate shelter and sufficient quality and variety of food necessary for long hours of hard physical labor.

There are currently no such standards for employers to refer to, which results in intolerable conditions for many migrant construction workers. The lack of standards also makes it harder for labor protection officers to regulate the miserable living

conditions and food quality for migrant construction workers. The government should deploy adequate resources for random inspection of company-provided dormitories and canteens to ensure that employers are complying with legal standards. It should impose penalties on those who fail to comply in amounts sufficient to deter future violations.

- Take immediate action to inform and educate migrant construction workers arriving in China's cities of their rights under Chinese law.

A large percentage of migrant workers have relatively low levels of education and are unaware of their rights under Chinese law. The government should ensure that migrant workers on every construction site are provided with information on China's Labor Law and explained their rights both verbally and in writing. The government should also ensure that workers are aware of and capable of accessing official mechanisms to seek redress for grievances.

- Respect the right of freedom of association as set out in article 8 of the International Covenant on Economic, Social and Cultural Rights, and ratify the International Labour Organization's Conventions No. 87 and No. 98 on freedom of association and collective bargaining. Amend Chinese labor law to incorporate the protections of all these conventions' into domestic law.

Chinese law strictly limits all union activity and collective bargaining to activities by the state-affiliated All-China Federation of Trade Unions (ACFTU). Any and all labor organizing outside the ACFTU is forbidden. Chinese law does not guarantee workers' right to strike. Those deprivations of workers' rights severely handicap the capacity of workers to seek legal redress for violations by their employers. Chinese labor law should be amended to comply with international standards and explicitly provide for the formation of independent unions free from employer and government interference and allow workers the right to strike. Free formation of unions should be legalized and those unions should empower workers to effectively and efficiently represent workers, draw up their rules, elect their representatives, and operate in full freedom. All workers should have the right to join independent trade unions of their

choice and be allowed to participate fully and have active representation and voting rights.

- Establish an independent commission to investigate and publicly report on the situation of migrant workers in the country, particularly those in the urban construction industry.

The government of the People's Republic of China should directly confront and seek to address the abuse of migrant construction workers in the country. The first such step should be an independent inquiry into these abuses by an independent commission.

The commission should investigate the failure of the Chinese government at the central, regional, and local level to enforce the protective provisions of the current legal framework. The commission should be given unfettered access to government records on labor disputes and should be empowered to hold public hearings and collect testimonies from migrant workers and their advocates as well as from regional and international nongovernmental organizations with expertise on migrant workers issues and rights.

- Establish a provident fund to support migrant construction workers who are unemployed while seeking legal redress for wage exploitation by their employers and other abuses.

The bureaucratic process of legal redress for violations of the rights of migrant construction workers' is extremely slow and relatively costly. Those factors effectively deter many migrant construction workers from seeking legal redress, allowing unscrupulous employers to avoid answering for such abuses and thus encouraging future such violations due to the lack of serious deterrence.

- Establish mobile medical inspection teams to make random checks of migrant construction workers' health to ensure that they are getting adequate treatment for workplace-related sickness and injury.

Mobile medical inspection teams should be given legal authority to enter construction sites at will and should have the power to refer employers who fail to adequately protect the safety and health of their workers to police for legal investigation and, where appropriate, prosecution.

- Eliminate the discriminatory aspects of the urban household registration permit system which denies migrant construction workers the same basic social welfare benefits, including medical care, enjoyed by urban residents with permanent urban household registration permits.

The government should either automatically extend permanent household registration status and its associated benefits to all migrant workers in the cities or ensure that temporary urban household registration permits allow migrant workers to access the same social welfare benefits as city residents with permanent household registration permits.

To the International Olympic Committee

International organizations which have helped to spur the construction boom in Beijing and other major Chinese cities also have a role to play in ensuring that migrant construction workers employed on Olympics-related projects are paid in a fair and timely manner and not subject to substandard food, housing, and safety standards.

- Seek independent verification that all workers employed to construct venues for the 2008 Olympic Games in Beijing have not been the victims of wage exploitation and other abuses.
- Raise formally with the Chinese government the importance of the establishment of an independent commission to investigate and report on labor-related abuses of migrant construction workers.
- Urge China's Ministry of Labor to fully implement and enforce its labor laws and to hold violators fully accountable under its laws.
- Request immediate and full disclosure of labor disputes, workplace injuries, and deaths on construction sites for venues of the 2008 Olympic Games in Beijing.

Acknowledgements

This report was edited by Sophie Richardson, Asia advocacy director at Human Rights Watch, and reviewed by Joseph Saunders, deputy program director, and Aisling Reidy, senior legal counsel.

Dominique Chambless and Andrea Cottom, associates in the Asia Division, provided administrative and technical assistance. Production assistance was provided by Grace Choi, Veronica Matushaj, Anna Lopriore, Rafael Jimenez, Fitzroy Hepkins, and Jose Martinez.

Human Rights Watch wishes to thank several donors for their support including David A. Jones, Jr., Mary and Michael E. Gellert, James H. Ottaway, Jr., Anita and David Keller, and The Silicon Valley Community Foundation, as well as a very generous anonymous donor.

Above all, thanks go to the many migrant construction workers who made this report possible by agreeing to meet and share their experiences with us at length, often at considerable personal risk.