

Situational Analysis of Domestic Work in China

1. Rationale and ILO Agenda on Decent Work for Domestic Workers

The term domestic work applies to a wide range of work in the home. It is a female-dominated occupation that is undervalued because it is largely viewed as an extension of women's unpaid household and family care duties. This work is carried out by some of the most vulnerable yet least protected workers worldwide. In the absence of applicable labour legislation and inspection, domestic workers are often subject to discrimination, non-wage payment, abuse, and in the extreme, forced labour and child labour.

The ILO *Agenda on Decent Work for Domestic Workers* builds on the existing ILO knowledge base on domestic work. It aims to share good practices and strengthen working alliances between and among the ILO constituents (governments, workers' and employers' organizations), domestic worker organizations, women's networks, and other concerned partners. Technical cooperation is available to facilitate innovative pilot projects, to support international labour standards, and to promote policies and practices that address the specific needs of domestic workers.

2. Overview of Domestic Work in China

2.1 Scope

Domestic workers are employed in private homes either by an individual or by an agency to carry out tasks such as cleaning, cooking, laundry, childcare, maternity care, nursing care or care for the elderly,. Some work on a part-time basis, often for multiple employers. Many work full-time as live-in nannies. By Chinese definition, a domestic worker is a "person managing household affairs as required for the household they serve, including taking care of children, the elderly, and sick persons."¹

This analysis focuses on China's internal situation. Chinese domestic workers are allowed to work overseas, but there is limited information available about the scale, trends, and working conditions. Since Chinese law stipulates that families are not allowed to hire foreigners, domestic workers from foreign countries cannot legally work in China.

The scale of the domestic service sector in China is significant. According to recent statistics, there are about 20 million domestic workers and 600,000 domestic service agencies in China.² As average income increases and the population ages, the demand for domestic help will continue to increase. Even during this economic downturn, the demand for domestic help has not diminished, confirming the important role households believe these individuals play.

¹ China National Occupational Standards of Domestic Workers, MOLSS, 2000.

² Source: China Association of Domestic Service, Roundtable Meeting on Domestic Work (May 15 2009)

Table 1: Number of Domestic Workers in Primary Destination Cities

| City | Number of Domestic Workers | Number of registered Domestic service agencies |
|-----------------------|----------------------------|--|
| Beijing ³ | 367,000 | 2,955 |
| Tianjin ⁴ | 50,000 | 500 |
| Shanghai ⁵ | 300,000 | 1,000 |
| Shenzhen ⁶ | 400,000 | 400 |
| Changsha ⁷ | 82,000 | 200 |
| Xiamen ⁸ | 45,000 | 400 |

2.2 Profile

Domestic workers are mainly comprised of rural migrants and laid-off workers. In cities like Xi'an, Tianjin and Chengdu, laid-off workers account for nearly half of the total number of domestic workers, while in cities like Beijing, Shenzhen and Guangzhou, rural migrants account for over 90%.

Gansu, Henan, Sichuan, Anhui, Hunan, Shandong are major sending provinces of migrant domestic workers, and Beijing, Shanghai, Shenzhen, Guangzhou and other economically-developed cities are the main receiving cities. There are a growing number of migrant workers entering the domestic service sector.

| | |
|---------------------------|---|
| Age | Range from 16 to 48 Majority: 30 – 40 years old |
| Sex | Female: 90% |
| Marital status | 60% married |
| Education | Middle school (Rural migrants) High school (Urban laid off) |
| Top Destination provinces | Beijing, Shanghai, Shenzhen, Guangzhou |
| Top Sending provinces | Gansu, Henan, Sichuan, Anhui, Hunan, Shandong |

While the market indicates a preference for mature women as domestic workers, there are a significant number of younger and more vulnerable migrants working in the sector.

³ Beijing Domestic Service Association (2007)

⁴ Tianjin Women's Federation (2004), *Survey on Domestic Work in Tianjin*

⁵ Xinmin Evening (December 18, 2006), *Nearly 300,000 Domestic Workers in Shanghai with Increased Income and Status*

⁶ Shenzhen Labour Bureau (2008)

⁷ Changsha Women's Federation (2003), *Survey on Domestic Work in Changsha*

⁸ The Taiwan Strait (December 1, 2008), *Thirty years of Reform and Opening-up – Domestic Work Sector*

2.3 Recruitment

More than half of migrant domestic workers choose to find work through recruitment agencies. Formal recruitment agencies are more popular among domestic workers than those working in other sectors because domestic service recruitment agencies provide some training and access to a pool of jobs. Relatives and friends are the second most popular channel for finding jobs.

2.4 Business models

According to Article 4 of the *Regulation of the Management of China Association of Domestic Services*⁹, “entities of domestic service business should be enterprises, single proprietorship, partnership enterprises, limited liability companies and share-holding companies that have been legally registered, or entities authorized by competent government departments.”

The latter government-led entities are mainly service agencies run by labor bureaus, women’s federations and community committees. They mainly provide intermediary services to domestic workers. Their services include providing job information and skills training. The non-government domestic service agencies usually follow one of two business models – the labour dispatch system (or staff management system) or the intermediary service system.

With the labour dispatch model, domestic service agencies recruit domestic workers as their staff and train them before dispatching them to serve in households. Payments from the household go to the agency and the agency pays wages to the workers, even when they are between assignments. The agency is also responsible for paying social security insurance.

Under the intermediary model, domestic service agencies act as intermediaries between the household and the domestic workers. The household and the domestic worker sign a contract on their own and the agency collects a placement fee. The agency does not take on any other responsibilities.

In reality, the labour dispatch domestic service agencies are rare in China due to the high operating risks. For example, if the domestic worker is injured or an accident occurs in the household, the agency would have certain responsibilities, including paying compensation.

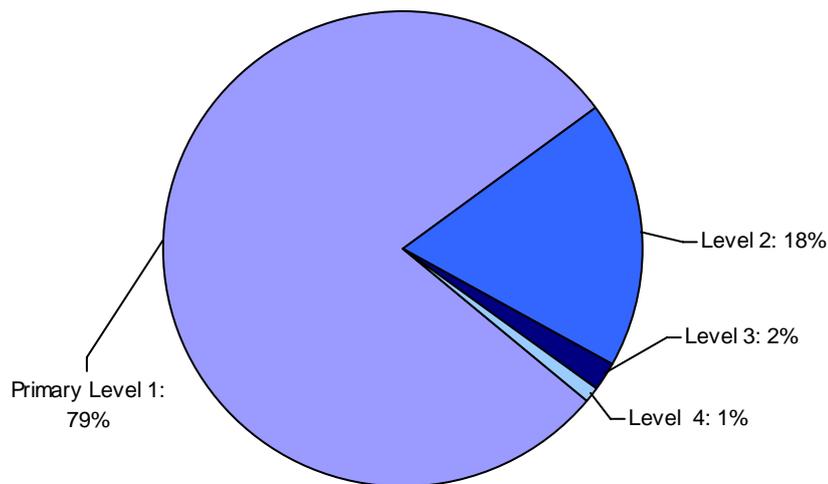
2.5 Training

Training for domestic workers is available from private and public training institutes, labour bureaus, women’s federations, unions and domestic service agencies, at varying costs. Labour bureaus offer a standard skills test toward qualification certification.

Training courses range from basic knowledge about domestic work, to professional skills and work ethics. The China National Occupational Standards of Domestic Workers define skills requirements for three levels. The primary level is supposed to be a pre-requisite for domestic employment.

⁹ This regulation was adopted by the Association, as a sectoral guideline, and lacks official designation as law

Chart One: Training Certification 2001-2008



In reality, few domestic workers participate in the labour bureau's accreditation (in total, 434,097 from 2001 to 2008, see chart, above)¹⁰. Studies show that only a small percentage of domestic workers received formal skills training before entering the sector. One survey¹¹ points out that 25% of domestic workers in Beijing, 47% in Guangzhou, and 37% in Chengdu received some pre-employment training of varying description. For those trained domestic workers, 35% of them paid the training costs themselves, an additional burden for low-income rural migrants. Even with this training, domestic service agencies in receiving cities complain that they need to retrain domestic workers before employment because their previous training does not meet the households' needs and requirements. Reports in the media have linked accidents in the home to poorly trained domestic workers.

In 2009, the financial and economic crisis led to job loss for 40 million people, 60% of whom are rural migrants and urban laid-off workers between the ages of 40 and 50.¹² Government departments are prioritizing employment promotion in the domestic work sector.

Recently, a Joint Project on Domestic Work was launched by the Ministry of Commerce (MOFCOM), Ministry of Finance (MOF), and the All-China Federation of Trade Unions (ACFTU). This project focuses on promoting employment in the domestic service sector by providing rural migrants and laid-off workers with free vocational skills training. Their target is to train 200,000 domestic workers in 2009.

¹⁰ Source: MOHRSS

¹¹ Peking University Women's Law Studies & Legal Aid Center, (2008) *Survey on the Protection of Domestic Workers' Labour Rights and Interests*

¹² Ministry of Commerce, ACFTU, Ministry of Finance, Joint Project on Domestic Worker, 2009

3. Conditions

3.1 Terms of Employment

- **Variability and informality.** Domestic work covers a wide range of tasks within the household, which are agreed to between the worker and the household according to variable terms and conditions.
- **Living conditions.** Most domestic workers providing care services do so on a live in basis. Living conditions vary according to the employer's housing situation. It is common for a live-in domestic worker not to have a private bedroom. Frequently, the worker lives in the same bedroom with children, or the sick or elderly person (male or female) receiving care.
- **Wages.** Recent research by domestic service associations reveals that domestic workers in receiving cities earn more than migrants in other sectors, and often higher than the minimum wage., This may reflect the extra hours typically worked in the domestic sector, as well the additional risk borne by the worker (for example, exclusion from insurance schemes).

3.2 Violations and Abuses

- **Lack of access to social security coverage (or social insurance)**

A survey done by the Beijing Legal Aid Center (2008) showed that more than 60% of domestic workers in Beijing and Chengdu do not participate in any insurance scheme. Laid-off workers are more likely to have insurance coverage than are rural migrants. The main reasons for the low participation rate among domestic workers are: (1) most domestic work falls outside the protection of formal employment plans and workers are excluded from social security, health, or maternity plans; (2) social insurance policy coverage varies from city to city. Many social insurance schemes are not open to non-local residents (people without local *hukou*). An added complication is that insurance plans require consecutive fifteen-year payment but can not be transferred to other cities. This is a great obstacle for migrant domestic workers, most of whom are highly mobile.

- **Low labour contract adherence**

The rate of labour contract coverage is low among domestic workers. According to the Beijing University Legal Aid Center more than 50% of domestic workers in Guangzhou and Chengdu, and 27% of domestic workers in Beijing did not sign a contract with either the domestic service agency or the household. It should be noted that the signing rate is higher among domestic workers who use recruitment agencies than those who use informal channels. Reasons for not signing a contract include: (1) low awareness of the importance of a contract; (2) ignorance on the part of the household. Some employers think that without a written contract, they can avoid responsibilities if accidents occur.

- **Long working hours without overtime compensation**

Many domestic workers endure long working hours and new assignments from employers without any negotiation in advance. For example, about 35% of domestic workers in Guangzhou and Beijing work about 10 hours per day; 28% of domestic workers in Chengdu and Guangzhou have no weekends.¹³ Typically, the household does not provide compensation for overtime.

- **Sexual harassment or physical abuse**

Due to the isolated working environment, sexual harassment and/or physical abuse among domestic workers is usually invisible to the public. One 2005 survey with a sample of 206 domestic workers found that 6% had experienced sexual harassment. However, most victims choose to be silent or quit.

¹³ Legal Aid Center Survey 2008

4. Migrants and Vulnerable Groups

• Migration

Rural-urban migration in China is taking place on an unprecedented scale. According to surveys by the National Bureau of Statistics, the number of rural migrant workers rose from 83 million in 1997 to 132 million in 2006. Though men still constitute the majority of migrants, the sex ratio is almost equal among younger migrants. According to the Ministry of Education, 83% of migrant workers have only a primary or middle school education. Since the domestic service sector has low entrance requirements, migrants with a lower education or skills consider domestic work as an easier choice. However, many of these migrants are unaware of the risks inherent in domestic service. Ill-informed and unprepared migration puts them at risk of being exploited or trafficked.

• Forced Labour and Trafficking

Domestic work can degenerate into forced labour when debt bondage or trafficking is involved, or when the worker is physically restrained from leaving the employer's home, or has his or her identity papers withheld. Women, particularly those with lower social and economic status, are at a higher risk for trafficking and forced labour than men because they have less power to voice complaints or access assistance.

• Child Labour

According to Chinese law, children between 16 and 18 may legally work, but while Chinese labour law provides special workplace protection to keep them out of hazardous work, the labour law is not applied in the case of domestic work. Domestic work has the potential to negatively affect the development of children because of the long hours, lack of standards, and possible inappropriateness of some tasks for children, all of which may be compounded by their physical and intellectual immaturity. Children working in a private household are at risk because of the invisibility of their work, and they are less likely to seek help than adults.

5. National Infrastructure

At the national level, several government agencies, unions, employment associations, and NGOs are closely involved in addressing domestic service issues. However, there is limited coordination and information sharing between them, and there is no joint effort at this time to push for an improved legal framework to better protect domestic workers' rights.

5.1 Government Stakeholders

Several government agencies share responsibility for overseeing, regulating, and enforcing aspects of domestic work. At the national level, government agencies primarily work on policy-making and standard setting. However, due to the lack of legal framework, and clarity on roles and responsibilities, no government agency is taking the lead in coordinating administration and monitoring in the domestic service sector.

5.1.1 Ministry of Human Resources and Social Security (MOHRSS) has responsibility for issuing policies, laws and regulations related to labour relations, employment, and vocational training (under the Labour Law, the Labour Contract Law, the Employment Promotion Law, and the Labour Dispute Arbitration Law). MOHRSS provides training certification for domestic workers. Labour Bureaus are the only authority that can issue Approval Certificates to job recruitment agencies, including domestic service recruitment agencies. In reality, many domestic service recruitment agencies operate without Approval Certificates.

5.1.2 Ministry of Commerce (MOFCOM) oversees and regulates all commodity-related issues in China. Traditionally people regard domestic service as 'consumption' and this view is reflected in local regulations on the domestic service sector. MOFCOM is in charge of monitoring domestic service associations at different administrative levels. In recent years, MOFCOM has been interested in establishing a nationwide domestic service network and is planning to promote standards on domestic services and a system for occupational training,

pricing, and dispute resolution in the domestic service sector. MOFCOM is also the primary entity in charge of cross-border employment issues.

5.1.3 State Administration for Industry and Commerce (SAIC) takes responsibility for issuing licenses for newly registered companies and individual businesses at lower administrative levels, and this includes licensing of domestic service recruitment agencies. The scope of SAIC's activity also extends to monitoring market activity, accepting complaints from enterprises and consumers, and protecting their legal rights.

5.2 Workers' Organizations

5.2.1 The All-China Federation of Trade Unions (ACFTU). ACFTU has prioritized efforts in promoting employment of laid-off workers in the domestic service sector. Trade unions at lower levels help protect domestic workers' rights by extending membership to domestic workers and by mediating disputes.

5.2.2 The Xi'an Domestic Worker's Union is the first and only sectoral union in domestic service. Originally an informal, peer-to-peer support program with an external sponsor, the union has grown rapidly since its establishment. Now it has received authorization and support under the umbrella of the local ACFTU. Its practices have proven that domestic workers can take a role in protecting their rights through unionization.

5.3 Employment Associations

The China Domestic Service Association, under the administration of MOFCOM, is the only national-level association for domestic service agencies in the country. The association acts as a bridge between government and domestic service agencies, regulating domestic services, sharing information, monitoring and putting forward recommendations. However, as an association, it can only issue sectoral guidance.

5.4 NGOs

5.4.1 The All-China Women's Federation (ACWF) has been involved in the domestic service sector for many years, mainly through its efforts to promote women's employment. ACWF runs 465 domestic service agencies in 16 provinces and cities, and cooperates with labour bureaus at different levels to provide vocational training and issue certificates to trained domestic workers. ACWF has also created an online Internet platform to share supply and demand information for domestic service agencies and domestic workers, and organizes national conferences to facilitate communication among their domestic service agencies. ACWF aims to improve the quality of service offered by their affiliated agencies, and create a brand image for these services.

5.4.2 The China Consumers' Association is a not-for-profit organization. Approved by the State Council in 1984, this mass association is aimed at monitoring commodities, services and protecting the rights of consumers. Its nationwide "12315" Consumer Complaint Hotline has strong support among the general public. The Association listens to consumers' complaints related to workers sourced through regulated domestic service agencies.

5.4.3 Beijing University Legal Aid Center is one of the first NGOs in China to protect women's rights by providing legal assistance and advocacy among the government and the public. The Center has extensive practical and research experience on the issue of domestic work in China.

6. Legislative and Regulatory issues

6.1 National Laws

In China, there are no legal provisions governing the working conditions of domestic workers. Domestic work is regarded as informal employment, and private individuals/families do not fulfil the definition of an “employing unit” in the Labour Law (Art. 2) and the Labour Contract Law (Art. 2). In this case, civil contracts and relevant provisions of civil law apply. Without legal employment status, domestic workers cannot be guaranteed their wages, welfare, working hours and labour protection.

6.2 Key Legal References

- Private individuals/families do not fulfil the definition of an “employing unit” in Labour Law (Art. 2) and Labour Contract Law (Art. 2).
- Article 4 of the “Proposals on the Implementation of the Labour Law” explicitly states that the Labour Law does not apply to domestic workers.
- Article 7(4) of the “Interpretation of the Supreme People’s Court on Several Issues about the Application of Laws for the Trial of Labour Dispute Cases (II)” by the Supreme People’s Court confirmed that disputes between domestic workers and the private users do not fall under the category of labour dispute.
- “Interpretation of the Supreme People’s Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury” by the Supreme People’s Court states that the employer should be liable for compensation in the case of personal injury to employee in the course of employment activities. It is so far the only legal document that can be applied to domestic worker’ personal injury cases.
- Regulations on the Management of Employment of Foreigners in China (1996) Article 34 Privately-owned economic organizations and individuals are forbidden to employ foreigners.
- Child labour: The Labour law (Jan. 1995) by NPC. Article 15 “The employer shall be banned from recruiting juveniles under the age of 16.”Provisions on the Prohibition of Using Child Labour (Dec. 2002) by the State Council.
- Illegal recruitment: The Employment Promotion Law (Jan 2008) by NPC regulates legal operations of employment agencies.
- Women’s rights: Law of the People’s Republic of China on the Protection of Women’s Rights and Interests (amended 2005) protects women’s rights from physical violence, trafficking, sexual harassment, etc.

7 International Instruments and International Organisations

7.1 International Instruments

China has ratified the following ILO core conventions, which are relevant to the protection of domestic worker and migrant worker rights:

- C100 Equal Remuneration Convention, 1951
- C111 Discrimination (Employment and Occupation) Convention, 1958
- C138 Minimum Age Convention, 1973
- C182 Worst Forms of Child Labour Convention, 1999

The ILO constituency takes the position that unless a Convention or Recommendation expressly excludes domestic workers, these workers are included in the international instrument’s scope.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), has a number of relevant provisions for domestic work. In particular, Article 11 relates to equal opportunity in employment, right to social security, and right to protection of health and safety.

7.2 Role of International Organisations

The International Labour Organisation

(ILO) promotes the Agenda on Decent Work for Domestic Workers: Rights, Productive Jobs, Social Protection and Representation in Domestic Services (2006-2015), which addresses the needs and concerns of domestic workers as some of the most vulnerable and least protected workers worldwide. ILO support consists of technical advice, research meetings, and project-based efforts against the exploitation of child and adult migrant workers. ILO supervisory bodies are increasingly requesting Member Governments to address the situation. It is preparing to have the issue of domestic work considered for inclusion on the 2010 agenda of the International Labour Conference.

United Nations Development Fund for Women

In China, UNIFEM works with the ACWF and other partners to protect the rights of female migrants in domestic work. In the coming years, they plan to create a counselling and legal support network for female migrant workers in domestic and informal work, review legislation, and promote a code of conduct for recruitment of domestic workers.

8. Key Challenges

- **Discrimination in domestic service.**

Domestic work is undervalued. People associate domestic service with the concept of “second-class” servants in ancient China. As a result, domestic workers are often treated without respect. Furthermore, domestic work is often considered an unskilled job, and women have been traditionally considered capable of doing the work. This female-dominated occupation reflects the traditional gender view toward women. Migrant workers make up a large proportion of domestic workers, and frequently cite that they are looked down upon by employers. Discrimination and lack of respect result in a high turnover rate of about 40% each year.

- **Exclusion from the labour code.** While migrant workers in other forms of employment are entitled to participate in social insurance, health insurance and work injury insurance, the domestic sector is exempt, unless the workers are contracted by a labour dispatch domestic service agency. In cities such as Beijing and Shanghai, local commercial insurance schemes are being piloted to cover certain conditions of domestic service, but this practice is neither mandatory nor regulated. Since the labour code does not apply to domestic work, provisions for protection of children, aged 16-18 years also do not apply. Provisions preventing long hours, non-payment or deferral of wages, and not respecting days off are also not applicable.

- **Labour relations vs. employment relations**

In China, “labour relations” applies to registered entities and is governed by labour laws, while “employment relations” applies in the informal sector, and draws from civil law. Domestic work resides in the informal sector, yet issues of workers’ rights and protection apply. This exclusion has been a matter of serious discussion among researchers, lawyers and various stakeholders.

- **Low awareness of rights protection among domestic workers.**

Many domestic workers have low awareness and understanding of their legal rights, due to their limited life skills education. Few domestic workers understand the importance of signing a contract. A survey showed that when disputes arose, 40% of domestic workers interviewed chose to remain silent.¹⁴

¹⁴ Beijing Migrant Women’s Club Survey on Domestic Workers, 2007

- **Lack of sufficient data on domestic workers**

Most current available research is focused on domestic workers who use formal recruitment channels. There is a lack of data on those who work through informal channels, particularly related to their demographic profiles, working conditions, and vulnerabilities to forced labour and other abuses. There have been several severe cases reported in the media on the abuse of domestic workers that fall into the forced labour category. Most of these victims were from rural areas and migrated through informal channels. This group faces a particularly high risk of abuse and should receive more attention from the government, research institutions and the public.

9. Emerging Practices in China

- **Local regulations on domestic service.**

One of the first official regulations on domestic service in China was issued by Shenzhen People's Congress in 2001. This regulation addresses the responsibilities of three parties – domestic service agencies, employers, and domestic workers. However, the regulation fails to fully clarify the responsibilities of each government authority (i.e. labour bureau, commerce bureau, civil affairs, education etc.). Zhengzhou city recently passed its own regulations on domestic service, and within there is a clearer delineation of responsibilities: the labour bureau is responsible for monitoring employment and social security issues; and, SAIC is responsible for registering domestic service agencies and monitoring their business activities. Other departments are encouraged to fulfil their own responsibilities and jointly monitor the sector. Domestic service agencies are encouraged to buy accident insurance for domestic workers, and to require that written contracts detailing working conditions and personal safety issues are signed. Passed by the People's Congress, these regulations are the first formal attempts to protect domestic workers. Without a strong legal framework, however, they suffer from weak implementation.

- **Model Contracts**

Some regions have developed model contracts on an experimental basis. While the implementation of model contracts varies by region, these are steps toward creating a sector that holds employers accountable and protects the rights of domestic workers. See Annex 1 (attached) for details on three different types of model contracts

- **Domestic Worker's Union.**

Laid-off workers in Xi'an engaging in domestic work started a peer network which was formalized into a sectoral union. (See details in Annex 2). The model merits further analysis, and raises the question as to whether this model can also work for migrant domestic workers.

10. Recommendations

ILO believes that domestic work needs to be moved from invisible work with unrecognized value into decent work. This can be accomplished through the adoption of an integrated framework convention that confirms domestic workers are covered under existing international labour standards. The convention would also offer guidance on achieving a meaningful regulatory regime for the sector.

10.1 Key Recommendations for China

- Continue discussion toward **improving the legal framework** with the ultimate goal to protect domestic worker's rights. In China, specialists are discussing whether the Labour Law should be applied, or a specialised regulatory framework should be developed to cover domestic workers. There are two important considerations: (a) how appropriate are the standards of the Labour Law in protecting domestic workers? (For example, they should not discourage compliance by employers, and application should not negatively impact employment opportunities); and, (b) how difficult is it for employers and domestic workers to understand and apply the existing law correctly?

- Strengthen law enforcement through a coordinated mechanism addressing aspects of: regulating recruitment agencies, inspection, promoting contract signage, labour protection and training systems.
- Eliminate employment discrimination. Work toward ensuring domestic workers have access to **social security, health and maternity insurance** Especially recognise the **elevated risks** taken by migrants who enter into domestic work, and provide special attention to the needs of migrant women.
- Measures should be taken to protect domestic workers from personal injury, sexual harassment, and to solve the problem of arrears of wages and overtime work.

Annex 1. National laws and regulations

- **Proposals on the Implementation of the Labor Law** [laobufa (1995) No.309] issued by MOLSS explicitly states that the Labor Law does not apply to domestic workers.
Article 4. ...the Labor Law does not apply to in-military persons and housemaid.
- **Interpretation of the Supreme People's Court on Several Issues about the Application of Laws for the Trial of Labour Dispute Cases (II)** [Fashi (2006) No.6] by the Supreme People's Court confirmed that disputes between domestic workers and the private users are not Labour Dispute.
Article 7 The following disputes are not labour disputes:
 - (1) ..
 - ...
 - (4) *a dispute between a family or individual and a housekeeping service provider*
- **Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury** [fashi(2003) No.20] by the Supreme People's Court states that the employer should be liable for compensation in the case of personal injury to employee in the course of employment activities. It is so far the only legal document that can be applied to domestic worker' personal injury cases.
Article 11 Where an employee suffers from a personal injury when carrying out an employment activity, the employer shall bear the compensation liabilities. If a third person out of the employment relationship causes a personal injury to the employee, the obligee to compensation may claim against either the third person or the employer for bearing the compensation liabilities. The employer may, after bearing the compensation liabilities, claim compensation from the third person.

Where an employee suffers from a personal injury due to an accident on safety production when carrying out an employment activity, and the contract letting party or the subcontract letting party knows or ought to know that the employer undertaking the contract or subcontract has no corresponding qualifications or safety production conditions, the said employee shall bear joint compensation liabilities with the employer.
- **Circular on Several Issues Concerning the Administration of Non-full-time Employment** [laoshebufa (2003)No.12] by MOLSS says,
Where an employee who provide non-full-time services for other units, families or individuals through legal labour dispatch organization, the labour dispatch organization should sign labour contract with the non-full-time employee.
- **Labour Contract Law** does not cover domestic workers
Article 2
This Law applies to all enterprises, private economic organizations, non-enterprises units run by civilian (refers to employing units thereafter) within P.R. China's territories which establish labor relations, enter into, implement, modify, dissolve or terminate labor contracts. This Law is also applicable to the state organs, public institutions, social groups and laborers who have established labor relations with them, when entering into, implementing, modifying and dissolving or terminating labor contracts.
- **The Employment Promotion Law** (Jan 2008) by NPC regulates legal operations of employment agencies
Article 63. Where the people's governments at all levels or relevant departments or public employment services, in violation of the provisions of this Law, establish any employment agency for commercial purpose or engage in job intermediary activities for commercial purpose or charge the labourers any fee, the superior administrative organs shall order them to make a correction within a time limit, refund to the labourers the fee illegally charged, and give sanctions to the leading persons directly in charge and other persons directly responsible.

Article 64. Where any agency illegally engages in job intermediary activities without license or registration in violation of the provisions of this Law, the labour administrative departments or other administrative departments shall shut it down in accordance with law, or confiscate the illegal gains if existing and fine it not less than 10, 000 yuan but not more than 50, 000 yuan.

Article 65. Where an employment agency provides any false employment information, or provides employment intermediary services to any employing unit without any legal license or certificate, or forges, alters or transfers the job intermediary license in violation of the provisions of this Law, the labour administrative departments or other administrative departments shall order it to make a correction; confiscate the illegal gains if existing and fine it not less than 10, 000 yuan but not more than 50, 000 yuan; or revoke the employment agency license if the circumstance is severe.

Article 66. Where an employment agency detains the resident identity cards or other certificates of the labourers in violation of the provisions of this Law, the labour administrative departments shall order it to return them to the labourers and shall punish it in accordance with relevant laws.

Where a job intermediary agency charges the labourers any deposit in violation of the provisions of this Law, the labour administrative departments shall order it to refund to the labourers and shall fine it at a rate of not less than 500 yuan but not more than 2, 000 yuan per person.

- **Law of the People's Republic of China on the Protection of Women's Rights and Interests** (amended 2005) protects women's rights from physical violence, trafficking, sexual harassment, etc.

Article 2. It is prohibited to discriminate against, ill-treat, abandon or cruelly kill the women.

Article 37 Women's personal freedom shall be inviolable. Unlawful detention or deprivation or restriction of women's freedom of the person by other illegal means shall be prohibited; and unlawful body search of women shall be prohibited.

Article 39 Abduction of and trafficking in, or kidnapping of women shall be prohibited; buying of women who are abducted and trafficked in, or kidnapped shall be prohibited; and baffling the rescue of women who are abducted and trafficked in, or kidnapped shall be prohibited.

Article 40 Sexual harassment against women is banned. The victims shall be entitled to complain to the entity or the relevant organs.

- **Regulations on the Management of Employment of Foreigners in China** (1996) by former MOLSS
Article 34 Privately-owned economic organizations and individuals are forbidden to employ foreigners.

Annex 2. Good Practice of Xi'an Domestic Worker's Union

On September 23, 2004, China's first domestic workers' union was officially established in Xi'an city, by members who were mainly laid-off workers from state-owned enterprises. Xi'an Domestic Workers' Union (in short the Union) is affiliated under the Xi'an Municipal ACFTU. Its president and board members are all elected from the female domestic membership. To date, the number of union members has reached more than 700, the majority of whom are former laid-off workers over 40 years of age. Female workers account for 98% of the total membership.

Background

In 2002, the Women's Development and Rights and Interests Research Center of the Northwestern Polytechnical University, Xi'an Municipal ACFTU, Xi'an Women's Federation Re-employment Service Center, and Xizhen Domestic Service Company jointly launched the Project to Build a Support Network for Marginalized Labourers. Its objectives were to train marginalized women workers, establish a grass-roots network among women who have been marginalized in employment, promote women workers' rights to form an association, seek social resources, and improve employability, vocational skills, and negotiation skills.

The Center first targeted domestic workers. They found that more than 90% of women domestic workers were laid-off, and a large proportion were divorced and single-parents. Most of them were frustrated with the double predicament of divorce and unemployment, and often felt inferior to other people. It was most important to rebuild their self-confidence and inspire them. Therefore, the project decided to set up a peer-to-peer support group.

Step 1 - Peer-to-peer support group

Under the project, women domestic workers learned about policies and laws relevant to their situations, and also had the opportunity to share with others difficulties in their personal lives. They organized outings and entertainment activities. Being laid-off led to isolation, now the women regained a sense of 'home' again. They supported each other, and learned to solve problems using their own initiative. Members came to believe that they would need to rely on themselves, and they would need to be aware of law and policy and their rights within this framework in order to advocate with government.

Step 2 - Capacity building

Some of the members became quite active in the peer support group. The project arranged for them to receive training from labour experts, particularly relating to rights protection measures. These new leaders facilitated dialogue within the group about organising to improve their situation. There was agreement, and the project held capacity building training relating to organizing and unionizing. Members decided to start with something simple, like organising a tea party in a worker's home to discuss topics of common interest. With gradual development and growth, this peer support group evolved into the first domestic workers' union.

Step 3 - Engaging government

Xi'an Municipal ACFTU, Xi'an Women's Federation and other government agencies participated in the project from the beginning, and provided political support and other resources. The engagement with government guaranteed the legitimacy of the Xi'an Domestic Workers' Union and ability to acquire necessary resources.

Main Achievements

In protecting disparate domestic workers' legal rights, the project supported access to information and training, as well as conditions for the workers to coordinate, communicate and organise.



Emotional support and information exchange are important. A platform for exchange was created so that domestic workers could obtain emotional support and assistance from each other. This helps domestic workers to build self-confidence and optimism.

Workers became empowered. Being organized, the membership was able to participate in policy dialogue. Through surveys on employers' needs, consultation with domestic workers and focus group discussions, Xi'an Domestic Workers' Union drafted local *Regulations on Domestic Work and the Responsibilities of Domestic Workers*. These regulations are intended to achieve a win-win situation for domestic workers and for employers.

The approach of coordination of resources is sustainable. Xi'an Domestic Workers Trade Union won the support of the Xi'an Municipal ACFTU, and thereby arranged for free medical examinations for its female members. The Union also works closely with the Women's Federation, the community, and other institutions to mobilise resources to assist poor domestic workers.

Annex 3: List of references/ Collection of Resources

I. China

| Title and Year | Type | Organization | Language | Main Author | Remarks |
|---|--|--|----------|--|---|
| 1. Survey on the Protection of Domestic Workers' Labour Rights and Interests , 2008 关于家政工劳动权益保护的调研报告, 2008 | Quantitative, Survey on status, Recommendation, necessity of legislation | UNIFEM / UNTGG Beijing LegalAid Center ¹⁵ | C/E | Wang Zhuqing ¹⁶ 王竹青 | |
| 2. Academic draft - Regulations on the Protection of the Labor Rights and Interests of Domestic Workers, 2007 《家政工劳动权益保护条例》学术建议稿, 2007 | Specialist Recommendation | UNIFEM / UNTGG Beijing LegalAid Cente * | C/E | Wang Zhuqing Liu Minghui 王竹青 刘明辉 | |
| 3. A Study of Legal Issues Concerning China's Household Service Sector, 2006 中国家政服务法律法律问题研究, 2006 | Analysis on domestic work sector | UNESCO Beijing LegalAid Cente* | C/E | Wang Zhuqing 王竹青 | |
| 4. Project Report on Policy Suggestion on the Protection of Beijing Domestic Workers' Rights, 2005 北京家政工权利保障政策建议项目报告, 2005 | Analysis, policy recommendation | UNESCO / Oxfam HK Beijing Migrant Women Workers' Club | C/E | Liu Minghui ¹⁷ 刘明辉 | |
| 5. Characteristics and Trends of Non-Beijing Domestic Workers in Beijing 北京外来保姆的特征与发展趋势, 2007 | Quantitative, Survey and summary | Social Development School of Central University of Finance and Economics | C | Hou Jiawei, Fan Huanhuan 侯佳伟 樊欢欢 | Sample: Beijing 1% Migrant Population Survey 2006 |

¹⁵ Beijing Legal Aid Center = Peking University Women's Law Studies & Legal Aid Center

¹⁶ Ms. Wang Zhuqing, Associate Professor of Dept. of Law of the University of Science and Technology Beijing, Member of Beijing Legal Aid Center

¹⁷ Ms. Liu Minghui, Professor of the Dept. of Law at China Women's College, Member of Beijing Legal Aid Center

Decent Work for Domestic Workers

| Title and Year | Type | Organization | Language | Main Author | Remarks |
|---|---|---|----------|---|---|
| 6. White Paper on Domestic Work Sector in China, 2003 中国家政服务业现状白皮书, 2003 | Quantitative, Qualitative | MOLSS, Training and Employment Department | C | | Sample: 9 cities (Tianjin, Shanghai, Chongqing, Shenyang, Nanjing, Xiamen, Nanchang, Qingdao, Wuhan) |
| 7. Survey on Domestic Workers 2007 来自《打工妹之家》的调查报告, 2007 | Quantitative | Beijing Migrant Women Workers' Club | C | | Sample: 190 DWs and 51 Employers |
| 8. Survey on Domestic Workers 2005 北京家政从业人员基本状况调查报告 2005 | Quantitative | Beijing Migrant Women Workers' Club Aisia Monitor Resource Center HK | C | | Sample: 206 DWs, mainly from 6 DW agencies and few others are from communities. Full-time workers and hourly workers are both included. |
| 9. Sexual Harassment in Domestic Workers 2005 家政服务员性骚扰问题的职业特点 2005 | Quantitative, Qualitative | Beijing Migrant Women Workers' Club | C | Han Huimin 韩会敏 | Sample: 206 DWs, questionnaire and interview |
| 10. Insights into Domestic Workers 2008 透视家政工 2008 | Book, cases on rights violations among domestic workers | | C | Xie Lihua Han Huimin Liu Minghui Et. | |
| 11. Gender and Rights Research Report on Chinese Female Migrant Domestic Workers 2007 中国外来家政女工的性别与权益研究报告, 2007 | Qualitative | Mei-Ling Ellerman ¹⁸ Beijing Migrant Women Workers' Club | C/E | | |

¹⁸ Mei-Ling was a visiting scholar of CASS Gender and Law Research Center.

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| Title and Year | Type | Organization | Language | Main Author | Remarks |
|--|--------------------|--|----------|--------------------------|--|
| 12. Regulation on Domestic Work Sector in Shenzhen, 2001 深圳经济特区家庭服务业条例 2001 | Law and regulation | | C | | |
| 13. National Occupational Standards on Domestic Workers 2000 家政服务员国家职业标准 2000 | Sectoral Guideline | MOLSS | C | | General guideline on professional qualification of domestic workers |
| 14. Promoting Professionalization of Domestic Service by Setting Standards, 2009 设立标准使家政服务走上职业化道路, 2009 | Paper 论文 | China Womens' University 中华女子学院 | C | Liu Minghui 刘明辉 教授 | Published on China Women's Daily (June 4, 2009) 《中国妇女报》 2009-6-4 |
| 15. Thoughts on Promotion of Legislation to Protect Domestic Workers, 2008 推动立法保护家政工的新思路, 2008 | Paper 论文 | China Womens' University Beijing Legal Aid Center 中华女子学院 北大中心 | C | Liu Minghui 刘明辉 教授 | Published on China Women Watch Annual Report 2008 中国妇女观察 2008 年度报告 |
| 16. Regulation on Domestic Service in Zhengzhou, 2009 郑州市家庭服务业管理办法, 2009 | Law and regulation | | C | | The regulation went into effect July 1, 2009 |

II. International

| Title and Year | Organization | Language |
|--|--|----------|
| 17. ILO Law and Practice Report on Decent Work for Domestic Workers, 2009 家政工体面劳动法律与实践报告, 2009 | ILO 国际劳工组织 | C/E |
| 18. Discussion Paper, Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking | Anti-Slavery International in cooperation with ILO | E |
| 19. An Analysis of the Situation of Filipino Domestic Workers 菲律宾家政工状况分析报告 | ILO 国际劳工组织 | E |

We acknowledge the support of the

