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Migrants and cities: Research report on recruitment, employment, and working conditions of domestic workers in China

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Inclusive Labour Markets, Labour Relations
and Working Conditions Branch

Migrants and cities:

***Research report on recruitment, employment, and
working conditions of domestic workers in China***

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支持中欧人员往来和移民领域对话项目



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Executive summary

This research was conducted under the EU–China Dialogue on Migration and Mobility Support Project, a collaboration of the International Labour Organization (ILO) and the International Organization for Migration (IOM), funded by the Partnership Instrument (PI) of the European Union (EU). The study aims to provide primary data and evidence-based recommendations for policy-makers to better protect the rights and interests of domestic workers, and to narrow the gaps with regard to compliance with the provisions in the ILO Domestic Workers Convention, 2011 (No. 189) and other relevant international labour standards, so as to improve the social status, working conditions, and living conditions of domestic workers in China.

The main findings of the study are as follows:

I. There is a relatively large gap between current Chinese legislation regarding domestic workers and the provisions contained within Convention No. 189

The Domestic Workers Convention, 2011 (No. 189) established international labour standards for domestic workers and requires ratifying countries to enact legislation to ensure that domestic workers have equal access to labour and social security rights. However, at present, only those domestic workers who have signed labour contracts with employee system-based domestic service companies in China (i.e., domestic workers who are directly employed by and receive their wages from a domestic service company) can be protected under the Labour Law 1994 as “workers”. Domestic workers employed by employee system-based domestic service companies account for no more than 10 per cent of domestic workers in China; the existing labour and social security standards do not apply to more than 90 per cent of domestic workers. This means the vast majority of domestic workers are covered by civil law, and they do not have legal labour rights that meet the standards set in Convention No. 189.

The existing laws exclude the majority of domestic workers from labour and social security protections. Current labour legislation does not intentionally exhibit employment discrimination on the basis of sex, but with females accounting for over 96 per cent of domestic workers, labour laws excluding domestic workers effectively put women at a disadvantage. This meets the definition of gender discrimination found in Article 1 of Convention on the Elimination of All Forms of Discrimination against Women, 1979.

This disregard for domestic workers’ right of labour security and indirect gender discrimination not only increase the vulnerability and marginalization of domestic workers, but also intensify conflicts within the domestic service market. Because of the mandatory and universal nature of current legislation, indirect institutional discrimination against women and direct discrimination against domestic workers ultimately deny the labour security rights of nearly 20 million domestic workers in China. Therefore, legislators must break their mindset that the employing party under a labour contract must be a unit or entity (i.e., a business or state enterprise), and that labour law does not apply to private households. Legislators should abide by the universality of human rights and non-discrimination principles enshrined in international instruments. Efforts should be made through a tripartite consultation mechanism and social dialogue to establish the legal status of domestic workers

as “workers/labourers”, and to entitle all domestic workers to labour and social security rights.

Currently there is only one ministerial regulation on domestic workers, the Interim Measures for the Administration of Domestic Service Sector issued by the Ministry of Commerce on 18 December 2012, which is at the lowest level of legislation. It is little known and inefficiently implemented. In this regulation, employers of domestic workers are defined as “consumers” and therefore shall be given special protection, which deviates from the standpoint of protecting domestic workers’ rights.

II. The need for government to formulate specific labour protection standards for domestic workers

Chinese labour law has higher labour standards in terms of working hours and other conditions than those found in International Conventions, but these standards largely do not apply to the domestic service sector. As a result of the existing high labour protection standards employee system-based domestic service companies face too much risk and too heavy a burden when it comes to service management. The sustainable development prospects for this industry are gloomy. In order to obtain financial subsidies for social security insurance, some companies operate as "one company with two systems". That is, the company registers two business licenses: one is a business license for an employee system-based domestic service company; the other license is to act as an intermediary system-based domestic service company (i.e., a firm that places domestic workers in a home for a fee, but then has no further relationship with the worker). Some employee system-based companies have switched to the intermediary system completely. All of the above affects the formalization of the domestic service sector.

The domestic service sector has its unique features. The vulnerability of domestic workers requires special protection of personal safety and human dignity. Differences in labour intensity and environment, randomness of employers' instruction, and ambiguity concerning the boundary of work and rest require unique rest- and standby-wage standards. The conflict between the "right to know" (for both employers and domestic workers), the "right to inspect" (for labour inspection authorities), and the "right to privacy" (for both employers and domestic workers) – as well as gaps in the financial capacity of employers – requires more balanced consideration. In particular, the employers’ “right to privacy” conflicts with the “right to inspect” of the labour inspection authorities. Provisions in Convention No. 189 that treat these issues are not included in the Labour Law 1994. "Labour inspection", "right to privacy", "standby", and other labour standards required in Convention No. 189 are not mentioned in the Interim Measures for the Administration of Domestic Service Sector 2012. It is necessary to develop specific labour standards for the domestic service sector based on its unique characteristics.

The following considerations should be taken into account when setting labour security standards for domestic workers:

- the degree of optionality and inclusiveness of social insurance;
- supplementation of commercial insurance;
- the partially mandatory feature of commercial insurance;

- priorities of human rights protection;
- the moderate flexibility of working hours;
- the feasibility of dismissal protection; and
- demonstration of targeted support.

Institutional discrimination should be eliminated and core labour standards on equal employment put forward by the ILO should be promoted so as to create favourable conditions for signing Convention No. 189.

III. Good practices for promoting the urban integration of and decent work for domestic workers

Relevant government departments at all levels have introduced numerous regulations and policies related to domestic service, and have enacted a number of domestic service standards in order to resolve problems of domestic service being in short supply or not attuned to the needs of the employers. Employment opportunities have also been promoted with the aim of relieving the burdens that come with the ageing of the population. Local governments are piloting projects to enable domestic workers to enjoy the same labour rights as workers in other occupations through fiscal support to employee system-based domestic service companies.

The income of domestic workers has increased significantly over the past decade. The situation of unpaid wages has become less widespread, and domestic workers' living conditions have improved. With regard to employers' and domestic service enterprises' treatment of domestic workers, there are also positive developments. Civil society organizations are playing an increasing role in helping domestic workers better protect their rights and integrate into city life.

Although the low entry threshold into the domestic service sector allows many elderly rural women with lower educational levels to migrate to cities for work and escape poverty, skills development plays an important role to help domestic workers better meet market demand and improve their income and employment conditions. Vocational training policies and skills appraisal subsidies should be expanded further to promote the professionalization of the occupation. Domestic service practitioners should be encouraged to participate in vocational skills appraisal. Guidance on wage levels appropriate to different occupational skill levels within the domestic service market should be released to motivate domestic service practitioners to increase their income by improving their skill level.

In addition, community organizations and professional social workers should be given full play to help domestic workers protect their rights and fully integrate into urban society. Community-based "Domestic Workers' Homes" should be established to function as a social gathering place and communication platform for domestic workers that would help them create an equal and harmonious living and working environment. Development of these communal links, together with the improvement in laws and policies, would contribute to building an advanced domestic service culture for the whole of society.



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