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Organization

Equality and non-discrimination at work in China: Training manual

Module 4

Promoting equality at work for rural migrant workers in China



ILO Country Office for China and Mongolia, Beijing
ILO DWT for East and South-East Asia and the Pacific, Bangkok



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Video:

Inequality in education of rural migrant workers' children, China

Introduction

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) prohibits discrimination and promotes equality in employment and occupation regardless of people's social origin. Discrimination on the ground of social origin occurs when an individual is denied a job or certain economic activities or only assigned particular jobs because of her or his class, socio-occupational category, caste, family background or local origin (such as the province from which a person originates). In China, discrimination on the basis of social origin includes discrimination against residents from rural areas who seek and find work in cities, or rural migrant workers.

This module introduces the concept of discrimination based on social origin. It explains its different forms and manifestations at the different stages of the employment cycle. It also points out the specific challenges related to promoting equality in employment of rural migrant workers in China. Through exercises and case studies, participants will analyse these issues and become familiar with measures and strategies, as well as the roles of various agencies to eliminate discrimination based on social origin and promote equality at work for rural migrant workers.

The module includes two units:

- Unit 4.1 Discrimination based on social origin: International concepts and principles for equality
- Unit 4.2 From discrimination to equality at work for rural migrant workers in China

Objectives:

The overall objectives of this module are to raise participants' understanding of discrimination based on social origin and the various forms of inequality faced by rural migrant workers in China and familiarize them with the international principles, strategies, practical measures and tools for taking action at the government, company and workplace levels to eliminate discrimination and promote equality in employment for rural migrant workers in China.

Section A. Learning content



Section A. Learning content

Unit 4.1 Discrimination based on social origin: International concepts and principles for equality

1. What is discrimination based on social origin?

Social origin is one of the grounds of discrimination prohibited in the **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**. It is also explicitly prohibited in the **International Covenant on Economic, Social and Cultural Rights** with respect to the human rights spelled out in the instrument, including the right to work: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” Article 2 (2). Both these international instruments have been ratified by China.

Discrimination on the basis of social origin arises when an individual’s membership in a class, socio-occupational category – such as farmers or civil servants – or a caste conditions his or her occupational opportunities or treatment. For this reason, social origin is in national legislation sometimes referred to as “social condition” or as “social status.” In 1995, the Constitutional Court of the Republic of Korea defined social status as the “status that a person occupies for a long term, and that is accompanied by social estimation.” Social status is among the 18 grounds on which discrimination is subject to review by the Korean National Human Rights Commission.



Discrimination in employment and occupation on the basis of social origin arises when an individual is denied a job or access to a certain economic activity or only assigned particular jobs because she or he belongs to a widely recognized class in society or simply a group with clearly defined social characteristics. The discrimination may be based on socio-economic status including the privileges attached to it, a socio-occupational category, a criminal conviction, a caste, and includes household registration if privileges are attached to this registration.

Social origin may be viewed mainly in terms of the restrictions it puts on social mobility, defined as the possibility for an individual to move from one class or social category to another.¹ Prejudices and institutional practices based on social origin thus limit the social mobility of certain people based on merit.²

Box 4.1 The notion of social origin or condition – Canada

The Quebec Human Rights Commission’s 1994 policy position on social condition describes it as referring to a rank, a social position or class attributed to someone principally because of his or her level of income, occupation and education, having regard to the objective and subjective components of each.

¹ ILO: “Special survey on equality in employment and occupation in respect of Convention No. 111” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 83rd Session, Geneva, 1996.

² ILO: *Equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (Geneva, 2007).

The difficulty associated with defining and operationalizing the concept has been identified both by the Quebec Commission and by those who have considered including the concept as a ground within federal or provincial human rights legislation. In a 1994 Report on human rights in British Columbia, it is described as a ground to protect poor people. As a concept it applies to: "...people living in poverty, people with certain occupations such as domestic workers, people branded as inferior because they have difficulty reading and writing, and people whose dress or patterns of speech identify them as coming 'from the wrong side of the tracks'..."

Social condition is a term that lacks a well-accepted meaning and does not lend itself to a precise definition. Rather, it must be interpreted in a broad, liberal and flexible manner and must take into account a variety of factors including social origins, level of education, occupation and income. The factors may not be exhaustive and may need to be adjusted to meet the circumstances of the particular case.

Sources: W. Black: "Report on human rights in British Columbia" (Canada, 1994), in Ontario Human Rights Commission, http://www.ohrc.on.ca/en/resources/discussion_consultation/EconomicSocialRights?page=EconomicSocialRights-SOCIAL.html (accessed 24 Sep. 2010).

A person's social origin continues to be a powerful obstacle towards equality of opportunity and treatment in employment and occupation not only in highly stratified societies, but also in those where social segmentation is less rigid. This type of discrimination is often engrained not only in people's attitudes but also in societies' institutions, known as **institutional, structural or systemic discrimination**.

Discrimination on the grounds of social origin often manifests in the horizontal and vertical segregation of the labour market. **Horizontal job segregation** occurs when certain occupations are routinely considered "predestined" for persons originating from social groups widely characterized as uneducated, poor or "impure" in a religious or sometimes even racial sense. The Dalits in India and Nepal are the most well-known example in the world of today.

Box 4.2 Caste-based discrimination: The Dalits – India

Discrimination rooted in caste or similar systems of rigid social stratification has been observed at different times in history everywhere. Currently it is found in Africa, Asia and the Middle East, but the practice is most widespread in South Asia, particularly in India and Nepal.

Although abolished by law, which prohibits the practice of "untouchability," caste remains a dominant factor in defining the economic and social status of Dalit men and women throughout the subregion. The mobilization of Dalits in the countries concerned has helped raise the visibility of their plight nationally and internationally.

Caste-based discrimination confines Dalits to occupations associated with their caste, often involving the most menial tasks such as manual scavenging and the removal of dead animals. Dalits are generally not accepted for any work involving contact with water or food for non-Dalits or entering a non-Dalit residence. They are thus excluded from a wide range of work opportunities in the area of production, processing or sale of food items, domestic work and the provision of certain services in the private and public sectors (e.g. office staff and helpers). Limited access to education, training and resources, such as land or credit, further impair their opportunities to equal access to non-caste-based occupations and decent work. The deprivation stemming from discrimination in all areas of their life leads to higher levels of poverty among Dalits compared to non-Dalits.

Source: ILO: *Equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at work (Geneva, 2007).

Other countries in Asia and the rest of the world have had a native caste system for long spells of their history. For centuries until 1896, Korea divided society into castes for, in “descending” order: scholars; warriors; lower level government servants; general servants; landless peasants and, at the bottom of the social hierarchy, “outcasts”, who were denied family registration and charged with professions such as slaughtering animals or performing executions. Japan has long been home to a similar group of people perceived as “outcasts”, that is, the Burakumin.

Box 4.3 The Burakumin – Japan

Buraku people are a Japanese social minority group, ethnically and linguistically indistinguishable from other Japanese people. They face discrimination in Japan because of an association with work once considered impure, such as butchering animals or tanning leather. In particular, they often have trouble finding marriage partners or employment.

Brief historical context

During the Tokugawa feudal period (1603-1867), what is now called “Buraku discrimination” was officially structured in a caste system that dominated society at that time. This system formalized a division of labour that associated people with their jobs, and society was stratified into four primary castes: warriors, farmers, artisans, and merchants, with a portion of the population falling outside of this basic caste structure. These outcasts held jobs that the rest of the population refused (frequently on the grounds of ritual and religious impurity) such as working in slaughterhouses, tanning leather, and performing executions. Furthermore, their social habits – their clothing, where they could walk, to whom they could speak, where they could live – were all regulated by various laws in a way that set outcasts apart from the rest of the population.

Modern forms of discrimination

The Tokugawa feudal system set the grounds for how Buraku discrimination functions in modern-day Japan, but does not fully explain the current manifestations of discrimination. Those facing discrimination are not limited to descendants of Tokugawa outcasts. The original meaning of the word Buraku is “neighbourhood” or “community,” but it has become shorthand for tokushu buraku, or “special communities,” a euphemistic designation for the neighbourhoods in which descendants of outcasts have historically lived. While these neighbourhoods were relatively stable during the Tokugawa period, after the Meiji Restoration (1868), populations became more mobile, with events such as earthquakes, wars, and economic growth leading, over the next century, to the massive relocation of people throughout Japan. As a result, people who were not descendants of outcasts moved into neighbourhoods formerly designated as outcast, and boundaries of these neighbourhoods shifted. Despite these changes, these Buraku neighbourhoods are still known, tracked formally in governmental registers and informally in daily conversations that people have about their own neighbourhoods and hometowns.

Present-day Buraku discrimination is primarily based on whether a person lives in a Buraku neighbourhood, or whether her or his parents are from such a neighbourhood. This means that it is possible for people with no connection to the Tokugawa outcaste status to be labeled as Buraku and face anti-Buraku discrimination. It is even possible for a family to unknowingly move into an historically Buraku neighbourhood and, unbeknownst to them, become Buraku. The stigmatized category of Buraku, which is based first and foremost on an individual’s family lineage and occupation, has, thus, come to also depend on one’s family address.

The largest Buraku political organization, the Buraku Liberation League (BLL), estimates that there are over 6 million Buraku people nation-wide. The BLL produces annual reports that track the hundreds of cases of discrimination that happen throughout Japan every year, cases which include harassment and refusal of marriage or employment. The political movement’s efforts have resulted in great improvements in the quality of life in Buraku neighbourhoods, the elimination of physical violence against Buraku people, and a continuing reduction in other forms of discrimination as well. However, anti-Buraku prejudice is still prevalent throughout the country, and discrimination remains a key issue.

Source: <http://www.imadr.org/sayama/buraku.html> (accessed 30 Nov. 2010).

The effect of social stratification on the horizontal segregation of the labour market, and the reduction of social mobility, can be pernicious without being quite as dramatic as in the feudal systems just mentioned. However, new contemporary forms have also been emerging. In modern labour markets, perceptions of social status may be derived from the schools from which job applicants have graduated. If these perceptions interfere with a fair assessment of the relevant qualifications a person has acquired in the course of his or her education, the question of discrimination on the basis of social origin arises. In the Republic of Korea, the National Human Rights Commission (NHRCK) provides a recent example of such discrimination.

Box 4.4 “Grading candidates based on the high schools they attended is discrimination” – Republic of Korea

20 November 2009 - The National Human Rights Commission of Korea (NHRCK) concluded that grading candidates for temporary teaching position based on the high schools they attended is discriminative.

Ms Lee (37), who failed to be hired by “A” middle school located in Gwangju, filed a complaint to the NHRCK on February claiming, “In the process of selecting candidates by examining their career papers, A middle school applied a different standard for grading candidates based on the high schools they graduated from.”

According to the investigation by the NHRCK, “A” middle school applied different standards in reflecting high school records: 100 per cent for equalized high schools located in Gwangju, and 70 per cent for non-equalized high schools located outside of Gwangju.

Regarding this, the NHRCK pointed out: “It should be questioned if it is reasonable to reflect high school records in hiring temporary teachers. Applying an unfair standard uniformly to the candidates graduated from non-equalized high schools is discrimination based on academic clique and the regions they are from.”

The NHRCK recommended that “A” middle school revise the related regulation. The principal of “A” middle school accepted the recommendation and removed the discriminative regulation.

Source: National Human Rights Commission of Korea: *Press release issued on 17 December 2009*, http://www.humanrights.go.kr/english/activities/view_01.jsp (accessed 24 Sep. 2010).

The same “school-ties” system may also give rise to **vertical job segregation** in the labour market, which occurs when – instead of access – career progression within a profession or certain levels of the corporate or civil service hierarchy is conditioned upon perceptions of social status.

Box 4.5 Vertical segregation due to discrimination on the basis of social origin – Republic of Korea

The Labour Standards Act explicitly prohibits discrimination in employment based on social status and applies to private employers. In the employment setting, anecdotal evidence is available to show discrimination in hiring based on one’s “hahk-buhl” or academic credentials. Although it is difficult to assess how widespread status discrimination is in hiring, retention, and promotion in employment without empirical data, the view persists that top positions in government and industry in Korea are occupied by graduates of the elite universities, with the college attended as the primary, if not the only, qualification for entry.

In the education setting, research reveals that despite egalitarian reforms by the Korean government, bias and institutionalized discriminatory treatment of primary school students continues to take place in Korea based on the social status of the students’ families. Specifically, research found a significant relationship between teachers’ perceptions of students’ social status and teachers’ actions in denying or providing

learning opportunities in the classroom. Such biased treatment has an impact in a society where the college to which one gains admission is a critical determinant of individual lifestyle, and preparations for the college entrance examination begin in the early years.

Examples are also available from “Anti-hakbul”, a civic group opposed to the deep-rooted school ties system in Korea. The Internet site for the group included a posting from a graduate of the Korea Advanced Institute of Science and Technology (KAIST) who candidly acknowledged benefiting from discrimination. The individual majored in engineering and was recently hired for a computer-related post. The writer hinted, however, that his employment was not fair. “The other applicant . . ., I think, is more qualified for the job than [I]. While I have little knowledge about computers and my GPA is low, he specialized in computers and had a high grade point average,” he said. “I think the company didn’t hire him because he didn’t graduate from a high-level university.”

Source: I. Lee: “Equivalence at law (and society): Social status in Korea, race in America”, in *Vanderbilt Journal of Transnational Law*, 2004. Vol. 37, p. 109 and footnote 195.

In China, discrimination based on social origin includes the discrimination that a person may experience due to the social status associated with a rural origin. This type of discrimination is directed at persons from rural areas who hold a farmer’s identification card in the **household registration system** or “**hukou**.”

In China, a person’s place of permanent residence is an important determinant of benefits and opportunities, including in employment and occupation. Rural residents have fewer entitlements than urban dwellers. The “hukou” system of household registration, which tied people to a particular place of residence and has been in force since 1958, has been gradually dismantled since the 1980s to meet the increasing demand from industries in the major cities. While movement has been made free irrespective of where migrants have their “hukou”, it is nonetheless hard for migrants from rural areas to obtain an urban “hukou”.³

Until the new Labour Contract Law came into force in 2008, rural migrant workers were not protected by the labour laws, as they were not considered workers – a situation that reinforced the discrimination. This has now changed but in practice they still face differential treatment from workers of urban origin. They may encounter difficulties in obtaining wages on time, they tend to work longer hours, are more vulnerable to workplace injuries and illnesses, do not have adequate social security coverage and may be exposed to other risks, including human trafficking. Many migrants from rural areas have a lower level of education and thus do not have equal access to skill training and promotion opportunities.

2. Discrimination based on social origin: Definitions

2.1 Discrimination in law and in practice

Discrimination may stem from the law or regulations, or it may simply occur from certain established employment practices:

- Discrimination in law, also known as “**de jure**” discrimination, occurs when groups with a certain social origin are excluded from opportunities or subject to differential treatment. Rural migrant workers in China have long been subject to this type of discrimination due

³ ILO: *Equality at work: Tackling the challenges*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at work, International Labour Conference, 96th Session, Geneva, 2007, paras. 122-125.

to the household registration or “hukou” system and this situation has only recently started to change.

- Discrimination in practice, or “**de facto**” discrimination, occurs when there are no explicit laws or regulations prohibiting people of a certain social origin from entering well-paying jobs but nevertheless these groups are faced with recruitment practices that deny them decent jobs and enable them to obtain only low status and low pay jobs.

Occasionally, discrimination may stem from other sources, such as a rule in a collective bargaining agreement concluded between an employer and a trade union with the best of intentions. In the example from the United States provided in the box below, the discrimination stems from a rule that made sense when the family-owned business was still small. However, over the years the business has developed and the composition of the labour forces has changed. As a result, the rule has become discriminatory and may hurt not only individuals of certain national origins but also the company which may be deprived of qualified personnel. In the US example, the persons discriminated against are of foreign descent, and so the applicable ground of discrimination would be “national origin”, also known as “national extraction” which together with social origin is among the seven prohibited grounds of discrimination under Convention No. 111.  See Module 3 Promoting ethnic and religious equality at work for more information on discrimination on the basis of national origin.

In China, similar issues arise with regard to ethnically identical Chinese citizens originating from rural provinces such as Henan, who seek work in the cities. To the extent that the social characteristics frequently associated with the region or place of origin – such as perceived backwardness, poor peasant manners or inclination to crime – condition job training, job opportunities or job treatment, such prejudice lead to discrimination based on social origin.

Box 4.6 Collective bargaining results in removal of discriminatory job requirement – USA

For many years, XYZ Tool Corporation has had an apprenticeship programme that trains participants in the skills needed to become journeyman machine mechanics. XYZ started as a family-owned business and has limited the programme to individuals who are sponsored by current machine mechanics. In the course of negotiating a new collective bargaining agreement with the local union, XYZ and the union note that the number of applicants to the programme has declined steadily for the last ten years and that, while there has been an increase in Filipino and Hispanic workers in the local labour force, there are none in the apprenticeship programme. XYZ and the union agree to discontinue the personal sponsorship requirement because it screens out people on the basis of national origin and it is not related to the requirements of the mechanic position.

Source: United States Equal Employment Opportunities Commission (EEOC): *Compliance manual on “National origin discrimination”*, Excerpt from Section 13, <http://www.eeoc.gov/policy/docs/national-origin.html#IIIA2> (accessed 24 Sep. 2010).

Worldwide, considerable progress has been made over the past decades to eliminate “de jure” discrimination by changing laws, regulations and rules that exclude or prefer one group over the other on the ground of their social origin. However, “de jure” discriminatory provisions on the basis of social origin still exist in a number of countries. This also holds true in China in relation to rural migrant workers, although the government is in the process of progressively outlawing it.

Discrimination in practice is still widespread and more difficult to combat. For example, even if laws and regulations prohibit the specification of social origin or migrant status of eligible candidates in job advertisements, persons of a certain social origin may still be preferred for some jobs and not for others by employers or job placement agencies in actual recruitment practices.

However, even more challenging than combating direct discrimination in practice is to address the often invisible and hidden obstacles that groups of a specific social origin may face in gaining equal access and treatment in employment and occupation. Another useful distinction to make, therefore, is the difference between direct and indirect discrimination.

2.2 Direct discrimination

Direct discrimination occurs when a prohibited ground is used for job-related differential treatment. When a person is excluded from employment opportunities just because of his or her social origin, or is treated less favourably than another worker from a different social origin, it is direct discrimination. For example, a government policy stating that people from the rural areas can only apply for certain types of jobs and are prohibited from entering other jobs, or permitting the hiring of workers from one social group at a lower salary than workers from a different social group doing the same job, are both forms of direct discrimination on the ground of social origin.

Box 4.7 Examples of direct “de jure” discrimination of rural migrant workers – China

Regulations denying workers from rural areas employment opportunities on the basis of their **household registration** or “**hukou**” amounts to direct “de jure” discrimination based on social origin. For example, clause 3 of the Measures of Zhuhai City on the Classified Management of Employing Migrant Labour (2000) divides positions into three categories :

- Types of positions from which migrant workers are barred
- Types of positions in which migrant workers may only be employed in numbers proportionate to “local” or “urban” workers
- Types of positions in which migrant labour may be employed without limitation.

While there has been a trend of loosening restrictions on the occupations that can be filled by rural migrant workers in cities across China, clauses such as the above have not yet been officially repealed in many places.

Source: Hotline of Zhuhai City Bureau of Human Resources and Social Security (Zhuhai, 2010).

2.3 Indirect discrimination

Indirect discrimination refers to rules and practices which appear neutral but in practice lead to disadvantages primarily suffered by people of one sex, race, colour or social origin, and cannot be justified by the inherent requirements of the job. Indirect discrimination may involve certain requirements (e.g. physical appearance or dress code), conditions (e.g. working hours or wages) or practices (e.g. scolding or other disrespectful or unfair treatment) that have a disproportionately negative impact on a certain group.

When direct forms of discrimination have been removed, indirect forms of discrimination usually remain common. For example, groups which are discriminated against on the ground of their social origin usually have lower educational levels and fewer job-related skills than population groups which do not face such discrimination. For this reason, indirect discrimination may occur when a job advertisement sets a higher level of education or skills than is objectively required for the job. The requirement that a worker have higher than necessary educational qualifications or have a particular appearance has the effect of excluding many rural migrant workers from gainful employment in China.

2.4 Structural discrimination

Owing to their administrative status as well as the social characteristics generally associated with a rural lifestyle, rural migrants in China suffer from institutional (structural or systemic) discrimination. In some cities, authorities deny them access to certain types of jobs (the better ones) that are kept for permanent residents, even if this practice is now officially banned (see Box 4.7). As a result, rural migrant workers usually rely on informal networks; for example, studies indicate that 95 per cent found jobs through friends or by themselves. With few exceptions they end up working in informal, low paid, menial jobs that urban workers refuse.⁴

It is important to tackle structural discrimination by means of public policy. Overcoming this type of discrimination is difficult as it requires comprehensive policy measures in virtual all economic and social sectors lying within the competence of different government agencies, from the national to the decentralized levels. This requires horizontal and vertical coordination and often makes implementation challenging.

2.5 Harassment

Harassment is an abusive form of discrimination. Harassment on the basis of social origin occurs when offensive language or behaviour is directed towards a person's perceived social status, occupational or educational background, family descent or background, past criminal convictions, or place of origin. To amount to harassment, the offensive conduct should be sufficiently severe for a reasonable person to consider it hostile or abusive.

3. Multiple forms of discrimination

A person's social origin is very often intertwined with factors such as sex, ethnicity, race and national origin. These multiple factors together reinforce the disadvantaged position of a person in the labour market, when discrimination on each of these grounds prevails.

The low status given to people of a certain social origin is often usually even lower for women as compared to men of the same group. Women from groups with a disadvantaged social origin may experience more discrimination in employment when they become pregnant and have even more limited job choices than women from the majority population groups due to biased views on what types of jobs are suitable for these women. In China rural migrant women may have even less access to education and training and chances to promotion, and often are more vulnerable to (sexual) harassment at work.

4. Discrimination based on social origin at different stages of the employment cycle

Similar to discrimination on other grounds such as sex, ethnicity and race, discrimination on the basis of social origin happens at different stages of the employment cycle and in different types of employment and occupation.

4.1 Access to education and training

Skills, knowledge, education and training are some of the most relevant factors that determine a person's opportunities and treatment on the labour market. It is therefore crucial that people enjoy equal opportunities and treatment when preparing for labour market entry or

⁴ Ibid. para. 124.

advancement.

As mentioned above, groups of certain social origins have often had limited access to formal education and vocational training from an early age onwards. Due to the education and training gap, they are not able to compete with other workers on an equal footing. Consequently, people with this social origin have higher levels of unemployment and are usually concentrated in low end and informal jobs.

Special measures in the form of transition programmes and specially targeted educational and training programmes are therefore critical to help them improve their employability and ensure equal access and treatment in the labour market. Such special educational measures should be available from a young age onwards and range from pre-school to primary and secondary levels and include vocational training and higher tertiary education.

4.2 Access to employment and occupation

Biases and prejudice against persons of particular social origins not related to the genuine requirements of a job tend to lead to serious inequalities in access to employment. Access to employment and occupation is sometimes denied in rules, policies or practices (direct discrimination) and sometimes blocked by seemingly neutral requirements that these persons are not able to meet and that are not justified in terms of objective job requirements (indirect discrimination). The case of the temporary teachers addressed by the National Human Rights Commission of Korea outlined in Box 4.4 above provides an example.

Social origin associated with the region or place of origin is sometimes derived not from written records or interviews, but from a job applicant's language accent. The question then arises whether the particular job inherently requires that the language which the applicant writes fluently is also spoken without an accent.

Box 4.8 Language accent reflecting national or social origin and job-related discrimination – USA

Note: "Violating Title VII" in the text below means "being discriminatory."

A. Accent discrimination

Because linguistic characteristics are a component of national origin, employers should carefully scrutinize employment decisions that are based on accent to ensure that they do not violate Title VII. ...

An employment decision based on foreign accent does not violate Title VII if an individual's accent materially interferes with the ability to perform job duties. This assessment depends upon the specific duties of the position in question and the extent to which the individual's accent affects his or her ability to perform job duties. Employers should distinguish between a merely discernible foreign accent and one that interferes with communication skills necessary to perform job duties. ... Generally, an employer may only base an employment decision on accent if effective oral communication in English is required to perform job duties and the individual's foreign accent materially interferes with his or her ability to communicate orally in English. Positions for which effective oral communication in English may be required include teaching, customer service, and telemarketing. Even for these positions, an employer must still determine whether the particular individual's accent interferes with the ability to perform job duties. The examples below illustrate how to apply these principles.

Example 16. Employment decision where accent is not a material factor

Anna, a Pakistani librarian in an elementary school, is responsible for cataloguing, researching, and reading aloud to young children. Her performance evaluations reflect that she is an excellent cataloguer

and researcher and that she can communicate effectively with teachers and older children, but that some of the youngest children have had difficulty understanding her due to her accent. When her position is eliminated, Anna asks the local school board to transfer her to a position at a high school that involves cataloguing and researching but requires minimal student contact. The school board appropriately grants Anna's transfer request because Anna is qualified and her accent would not materially interfere with her ability to perform the librarian position at the high school.

Example 17. Employment decision where accent is a material factor

A major aspect of Bill's position as a concierge for XYZ Hotel is assisting guests with directions and travel arrangements. Numerous people have complained that they cannot understand Bill because of his heavy Ghanaian accent. Therefore, XYZ notifies Bill that he is being transferred to a clerical position that does not involve extensive spoken communication. The transfer does not violate Title VII because Bill's accent materially interferes with his ability to perform the functions of the concierge position.

Source: United States Equal Employment Opportunities Commission (EEOC): Excerpt from Section 13 in *Compliance manual on "National origin discrimination"*, <http://www.eeoc.gov/policy/docs/national-origin.html#IIIA2> (accessed 24 Sep. 2010).

4.3 Conditions of work

Workers from different social origins should enjoy equal treatment with regard to working conditions. According to the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), besides remuneration for work of equal value, conditions of work commonly include: advancement in accordance with merits, job security, hours of work, rest periods, holidays with pay, occupational safety and health, employment-related social security measures, welfare facilities and other benefits.

Remuneration

A fundamental principle of equality in remuneration is that remuneration must be based on the objective characteristics of a job (such as skills, knowledge, working conditions and responsibilities), and not on the sex or any other characteristics of the worker employed in that job.

In addition to discrimination in access to employment, workers from certain social origins may find it difficult to get paid the same salary, even when they are doing the same job, or a job of equal value as workers from other groups. They may also find that other than the basic wage or salary, they are not entitled to any additional benefits such as allowances, bonuses and special pension or health care schemes. These are important elements that should be part of the remuneration package in accordance with Article 1(a) of the Equal Remuneration Convention, 1951 (No. 100). One of the major difficulties faced by groups discriminated on the basis of their social origin has been not only lower wages than workers with other social origins but also considerable arrears in payment.

Promotion

Workers are entitled to advancement in accordance with their individual character, experience, ability and diligence. Due to bias against people of certain social origins, many of them do not enjoy equal opportunity to advance in their jobs. One important factor that improves workers' chance to promotion is training, but workers from certain social origins may hardly be provided with equal access to training, which consequently undermines their chance to promotion.

As mentioned above, such structural or systemic discrimination in regard of promotion leads to **vertical job segregation**, that is to say, persons with a certain social origin are often

concentrated in the lower levels of positions in a company or economy, while the higher levels of positions are mostly occupied by persons from other social groups.

Job security

Workers with a negatively perceived social origin frequently have lower job security, because their services are less frequently considered as work deserving of an employment contract. Thus, they often end up working in informal employment, and are subject to atypical or less stable contractual arrangements such as “casual or temporary work” all of which usually feature low job security.

Workers of certain social origins may lose their job just because they belong to a particular social group, and not for justifiable reasons related to their conduct, ability or fitness to perform the job-related functions, or the strict necessities of the operation of the undertaking concerned. For instance, during the restructuring of the state-owned enterprises in China in the 1990's, rural migrant workers were the “first ones to be fired,” in order to secure the jobs of workers of urban origin.

Safety and health at work

Workers who are discriminated against on the basis of their social origin are generally employed in jobs that are “dirty, dangerous and demeaning” and are overrepresented in hazardous jobs and work processes. They are, therefore, considered as a group of workers at “high risk” of occupational accidents and diseases. No matter what their social origin or other status, workers should be entitled to the same protection with regard to occupational health and safety at work.

5. Strategies and measures for the elimination of discrimination based on social origin

All workers, regardless of their sex, race, ethnicity, religion, colour or social origin, are entitled to the same rights as stipulated in international and national laws. The concepts, principles and measures of equality and non-discrimination at work established in Convention No. 111 are applicable to all workers.

Convention No. 111 encourages each ratifying member State to adopt and implement a **national policy** to promote equality of opportunity and treatment in employment and occupation with a view to eliminate discrimination on social origin and the other grounds specified in international and national legislation.

Main methods for application of the national policy outlined under Convention No. 111 include:

- Enacting and enforcing appropriate legislation
- Repealing discriminatory statutory provisions and administrative instructions or practices
- Ensuring non-discrimination in public employment, vocational guidance and training, as well as employment services under the government's authority
- Developing educational programmes
- Cooperation with employers' and workers' organizations as well as other appropriate bodies, such as equality or human rights commissions and organizations representing the groups that are discriminated because of their social origin.

5.1 Legal action and enforcement

Legislation

Legislation is an important guarantee for securing the acceptance and observance of the national equality policy. As the first step, legal guarantees for equality among people from different social origins should be put in place and any statutory provisions or administrative instructions that are discriminatory and inconsistent with the principle of equality should be repealed or modified.  See Checklist 1. Identifying discrimination in laws, policies and practices in Section D of Module 1 for more information.

With this ground of discrimination, prejudice and stereotyped attitudes are often deeply rooted. As a consequence, discriminatory practice may continue even after laws have changed. Effective enforcement is therefore vital. Clear provisions in law, accessible avenues for legal redress and clearly defined liabilities and sanctions make the principle of equality for all irrespective of social origin enforceable and enable victims to seek legal recourse. Legal employer liability to prevent and redress discrimination should also be set in the law.

Depending on the national conditions and practice, legislation may also be needed to establish special protection measures and temporary support measures for the disadvantaged groups. The framework for adopting active labour market measures to promote access to employment and occupation for the discriminated social groups, such as special vocational guidance or training services, may also be set in the law.

Monitoring

The enforcement of the national equality policy should be monitored regularly to measure the progress and identify challenges and solutions, so that the policy can be continuously improved and adapt to changes. In 2008, on the occasion of the fiftieth anniversary of Convention No. 111, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) highlighted the challenge of enforcing anti-discrimination legislation and policy. The CEACR called upon member States to raise awareness of the legislation, to enhance the capacity of the responsible authorities, including judges, labour inspectors and other public officials, to identify and address such cases, and also to examine whether the applicable substantive and procedural provisions, in practice, allow victims of discrimination to bring their claims successfully.

The CEACR has also consistently stressed the need to collect and publish information on the nature and outcome of discrimination cases addressed by the competent bodies, as a means of raising awareness of the legislation and of the avenues for dispute resolution, and as a basis for examining their effectiveness.⁵

Box 4.9 National Action Plan to abolish manual scavenging – India

Following efforts by the National Human Rights Commission, the Prime Minister of India announced the abolition of the degrading practice of manual scavenging which is usually carried out by Dalits and often by Dalit women. Further to a number of meetings held by the Commission with representatives of the central and state governments and other stakeholders, the Planning Commission formulated a National Action Plan for Total Eradication of Manual Scavenging by the end of 2007. The Indian Government is also trying to ensure that State Government, railways and local authorities apply and

⁵ ILO: “Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 98th Session, Geneva, 2009, p. 32.

enforce the prohibition of manual scavenging as contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

In 2007, in the observations on discrimination based on social origin in India, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) urged the Government to launch or expand public-awareness programmes for the population at large and provide education and training programmes for the authorities involved, in order to promote the changes in attitudes and social habits which are necessary to bring about the elimination of manual scavenging. A year later, the CEACR emphasized the importance of raising awareness on the prohibition and unacceptability of cast-based discrimination and the practice of untouchability, particularly in the context of employment and occupation. Awareness-raising campaigns should be targeted to a wide range of audiences, including public officials, workers' and employers' representatives, and also the public at large. In 2010, the CEACR expressed its concern regarding the weak enforcement of the legislation abolishing manual scavenging in India, and it stressed the continuous need for measures to eradicate this practice.

The comments made by the CEACR on discrimination against the Dalits in India provide useful guidance with respect to the general measures that need to be taken to address discrimination on the basis of social origin.

Source: ILO: "Individual observation with respect to India", in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 95th Session, Geneva, 2006; 96th Session, Geneva, 2007, p. 292; 97th Session, Geneva, 2008, Geneva, p. 374; 98th Session, Geneva, 2009; 99th Session, Geneva, 2010, p. 425.

Equality provisions in national law and policy need to be implemented by the competent agencies through a systemic set of measures. Key actors in the enforcement of national equality policy include government departments, judicial authorities and other social partners. Specialized independent institutions, such as **human rights, equality or equal opportunities commissions** have been emerging in regions across the globe reflecting a trend of supporting the application of national law and policy against discrimination.

Legal recourse and dispute settlement

Access to effective legal remedies is an important last resort to combat structural discrimination on the basis of social origin, if cases cannot be resolved otherwise. The courts play an important role in restoring justice through hearing and deciding individual cases. In addition to restoring justice in individual cases, legal recourse has proven to be a vital avenue for accomplishing changes in legal provision and their interpretation. The use of the judicial enforcement machinery has a substantial positive impact in reducing discriminatory employment practices and counteracting structural and institutional discrimination.

Legal recourse may be expensive and time consuming. To overcome these disadvantages, many countries have established alternative dispute settlement procedures that are often administered by specialized mediation or arbitration bodies.

Administrative supervision

In many countries, equality legislation is administered by **labour inspection services**. The labour inspection should have direct responsibility to:

1. Advise and inform employers on non-discriminatory human resources management practices and the most effective means to comply with the law
2. Enforce compliance with the requirements of the law
3. Provide feedback to legislators and policy makers on improvements needed in national labour law and regulations.

Labour inspection can play a key role in enforcement of anti-discrimination provisions because of their regular contacts with employers and workers, their access to relevant files, and because they can investigate cases without the need to wait for an individual victim to bring a case. However, the capacity of labour inspection to promote equality and enforce anti-discrimination is underutilized in many countries. To be able to take effective action, the capacity of inspectors to identify discrimination needs to be strengthened and clear mandates to enforce non-discrimination need to be set in law.  See Unit 1.4 in Module 1 for more information.

5.2 Practical measures

Educational and vocational training

Discrimination of certain social origin is often linked to the lower education level of these groups. Special support measures, such as specially targeted educational and training programmes from basic education to vocational and skills training or higher education, are therefore critical for improving the employability of people from the discriminated social origin, so as to ensure their equal access and treatment in the labour market.

Public policies for employment promotion, enterprise development and social protection

Equality and non-discrimination principles should be incorporated in active labour market policies and programmes. Considerable investments may be needed in general poverty reduction enterprise development and social protection programmes. Employment service centers also require guidance to provide job matching services without bias against any social origin.

Legal literacy and awareness raising on rights, non-discrimination and equality

Apart from training and education aimed at improving individuals' employability, legal literacy training and awareness raising on equal opportunity and treatment without distinctions based on social origin is needed for the affected workers, their employers, and other concerned parties such as representatives of relevant government departments, employers' and workers' organizations, the judiciary and the public at large, given the entrenched nature of discrimination on the grounds of social origin. This will help to reduce the vulnerability of workers from the discriminated social origin.

The ILO supervisory bodies consistently require ratifying States to report on educational programmes to promote better understanding and greater tolerance among the public, the competent authorities at all levels and in the working environment, in respect of persons belonging to certain groups, including minority groups and persons with a certain social origin.

5.3 Affirmative action

Affirmative action, also known as positive measures, comprises special, usually temporary, measures to redress the effects of past or continuing discrimination in order to establish equality of opportunity and treatment. Positive measures aim at offsetting the disadvantages arising from existing attitudes, behaviour and structures based on stereotype and stigma.

Affirmative action or special support measures are very relevant for groups who have been disadvantaged due to past or continuing discrimination on the ground of their social origin. They are often required to realize more equal labour market outcomes. Special measures aimed at overcoming existing discrimination and reaching equality in practice are encouraged under Convention No. 111 as they are deemed necessary to achieve substantive equality for these groups, not only in law but in actual practice.

Special support measures can take place at national, local or company level. Examples include special vocational training programmes, funding by the government for persons from a discriminated social origin; companies can announce job vacancies with a note to encourage applicants from a particular social origin to apply; and they can reserve training opportunities for existing employees from a particular social origin who have not had equal opportunity to training.

Affirmative action measures should be designed as temporary measures, because they are only justified by the aim of protection and assistance which they are to pursue. They should not be designed as preferential “stop-gap” measures that have no real impact but linger on justifying continued unequal treatment of the discriminated group. They need to be reviewed regularly to ensure their legitimacy has not been overtaken by progress. They should be removed and adjusted once the consequences of discrimination have been rectified and the labour market outcomes for different groups have become equal.



For more information on affirmative action, see Section 6.3 in Unit 1.2 of Module 1.

5.4 Cooperation with employers' and workers' organizations

Employers must comply with legal provisions prohibiting discrimination on the basis of social origin and are well advised to consider the business merits of a diverse workforce. **Individual employers** should abide by the law and apply non-discriminatory practices in the human resources management and other operations, to avoid discrimination against people of certain social origin.

Box 4.10 How to prevent bias based on national or social origin from influencing job-related decisions – USA

If an employer has clearly defined criteria for employment decisions, managers can be more confident that they are selecting the most qualified candidates. ... Appropriate objective criteria for employment decisions will be tied to business needs. Job-selection criteria that are not business-related sometimes improperly screen out individuals based on national or social origin.

Employers can reduce the risk of discriminatory employment decisions by establishing written objective criteria for evaluating candidates for hire or promotion and applying those criteria consistently to all candidates. Likewise, in conducting job interviews, employers can promote non-discriminatory treatment by asking the same questions of all applicants and inquiring about matters related to the position in question.

Source: United States Equal Employment Opportunities Commission (EEOC): *Compliance manual on “National origin discrimination”*, Excerpt from Section 13, <http://www.eeoc.gov/policy/docs/national-origin.html# IIIA2> (accessed 24 Sep. 2010).

Employers' organizations are in a key position to promote equality in the workplace in their member companies. They should advise their member companies on non-discriminatory human resources management practices.

Workers' organizations play a vital role in organizing and should devise strategies to have workers from different social groups become their members, as has been done by the All-China Federation of Trade Unions for rural migrant workers in China. Trade unions should also train their members about their right to equality and support individual members in resolving discrimination-related problems with their employers.

National tripartite mechanisms

The Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) adopted in 1958 to supplement the Convention No. 111 suggests that appropriate agencies composed of representatives of employers' and workers' organizations, and other interested bodies, should be established for the purpose of promoting application of the national policy for the prevention of discrimination in all fields of public and private employment.

National tripartite mechanisms should be mobilized to promote equality at work for persons facing employment discrimination due to their social origin. Employers' and workers' organizations should be consulted and engage in dialogue with the government and other relevant agencies on the adoption and implementation of a national equality policy.

Workers' and employers' organizations should include equality for workers of different sex, ethnicity, race and social origin in their **collective bargaining** agendas at different levels. Special equality and non-discrimination clauses should be put in collective agreements to secure equality in workplaces.

Unit 4.2 From discrimination to equality at work for rural migrant workers in China

1. Who are rural migrant workers in China?

In China's **household registration, or "hukou" system**, individuals are broadly categorized as a "rural" or "urban" resident. Rural migrant workers in China refer to people registered as rural resident (farmer) in the household registration system, who have moved from rural to urban areas to take up non-agricultural work.

The term "rural migrant worker" does not capture the situation that this group suffers in their social and economic lives. They are neither urban residents, nor traditional rural residents. In reality, they are a workforce enlisted in the "worker" occupation with a farmer identification card. Although they have a farmer identification card, they are not authentic farmers because they have left their lands and hometowns in the countryside and are engaged in off-farm production labour activities in cities and towns (only 1-2 per cent of off-farm migrant workers are engaged in agricultural activities). Even though they are engaged in the "worker" occupation, they are different from urban workers because their household registration or "hukou" is still in the rural area where they originate from. These rural migrant workers who work in cities are not treated the same as urban workers. To some extent, they are deemed as outsiders wandering between cities and rural areas, and are commonly referred to as the "floating population."

In a period of rapid economic expansion and transition, rural migrant workers form an asset for China's economic development. They contributed to 16 per cent of national gross domestic product (GDP) growth over the last 20 years since the liberalization of the economy.⁶ They represented 46.7 per cent of the urban workforce in 2006, rising from 33.9 per cent in 2000.⁷

Box 4.11 General features of rural migrant workers in China

- Generally young: 61.6 per cent are between 16 and 30 years
- Low level of education: 76.5 per cent has only junior high-school or below, 51 per cent has not received any vocational skills training
- Origin: 56.4 per cent from the less economically developed western and central regions
- Destination: 62.5 per cent in the eastern region, 63.3 per cent in prefectural and capital cities
- Primarily in poorly paid blue-collar jobs, mostly in the informal sector
- Women: Accounting for more than one third of the migrant workers, 34.9 per cent in 2009.

Source: National Bureau of Statistics: *2009 Monitoring and survey report on rural migrant workers* (March 2010).

According to surveys by the National Bureau of Statistics, the number of rural migrants working in cities outside their native townships rose from 78.5 million in 2000 to 145 million by the end of 2009. Another 85 million rural migrant worked inside their native townships, thus, the total number of rural migrant workers amounted to 230 million in 2009.⁸

⁶ ILO: *Equality at work: Tackling the challenges*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at work, International Labour Conference, 96th Session (Geneva, 2007) para.126.

⁷ D. Wang: "Rural-urban migration and policy responses in China: Challenges and options", ILO Asian Regional Programme on Governance of Labour Migration, Working Paper No. 15, Regional Office for Asia and the Pacific (Bangkok, ILO, 2008).

⁸ National Bureau of Statistics: *2009 Monitoring and survey report on rural migrant workers* (Beijing, 2010). Available in Chinese at http://www.stats.gov.cn/tjfx/fxbg/t20100319_402628281.htm [accessed 22 Nov. 2010].

2. China's legal framework on equality at work for rural migrant workers

The “hukou” system of household registration which has been in force in China since 1958 has been changing since the 1980's and discriminatory provisions against rural migrant workers are gradually being dismantled with a view to meet the increasing labour demand in the major cities and promote equality between the urban and rural populations in the country. The evolution of policies on rural migrant workers in China experienced six stages, from strict restriction to encouraging the free flow of rural workers as follows:

- Stage 1 (1979-1983): controlled flow
- Stage 2 (1984-1988): allowing flow
- Stage 3 (1989-1991): control over aimless flow
- Stage 4 (1992-2000): standardizing flow
- Stage 5 (2000-2003): fair flow
- Stage 6 (2003-present): promoting flow.



See Annex 1 for details about the key points and features of the policies adopted at each stage.

The applicable laws in respect of equality in employment of rural migrant workers include the constitutional articles on equality, and the laws passed by the National People's Congress (NPC) and the NPC Standing Committee. Among such laws in respect of anti-discrimination in employment, the most important ones are the Labour Law enacted in 1994, the Labour Contract Law and the Employment Promotion Law which both entered into force on 1 January 2008:

- The Labour Law states occupational safety and health standards, minimum employment ages, working time, and prohibition of employment discrimination and of child labour.
- The Labour Contract Law requires employers to conclude written contracts of employment with their employees.
- The Employment Promotion Law provides clear regulations on issues such as employment management, employment services, social security, public service, and fair employment, including anti-discrimination provisions benefiting rural migrant workers.

The new Labour Contract Law, in particular, has been a breakthrough because rural migrant workers were not effectively protected by the labour laws, as they were not considered workers – a situation that gave free rein to all sorts of direct and institutionalized discrimination in employment and occupation.



Highlights of provisions on equal employment of rural migrant workers in the Labour Law, Labour Contract Law and Employment Promotion Law

Labour Law (1994)

Article 12 of the Labour Law clearly states that the employment of workers must not be subject to discrimination based on ethnicity, race, sex and religious belief. However, because this law was formulated very early, it fails to give effective protection to rural migrant workers. And due to various reasons, it has not been effectively implemented.

Labour Contract Law (2007)

The Labour Contract Law contains detailed regulations to safeguard the rights and benefits of workers. The labour contract should include articles on social security, labour protection, labour conditions, and protection against occupational hazards. As for labour conditions hazardous to physical health and personal safety, the worker has the right to criticize, impeach, and indict the employer. If the employer fails to follow the law to pay the social security premium for the employee, the worker is entitled to terminate the labour contract. If the employer uses violence, threats, or other illegal means restricting the personal safety of the worker, or if the employing unit violates rules and gives a compulsory order to the worker to do dangerous work at the risk of his/her life, the worker can immediately terminate the labour contract without prior notification to the employer and such act shall not be deemed as a breach of contract. If the employer seriously infringes the benefits of the worker, such employer is subject to administrative punishment under the law. If such act constitutes a crime, the employer shall be subject to criminal liabilities. If the worker has suffered damage, the employer shall be responsible for compensation.

Employment Promotion Law (2007)

In terms of discrimination against rural migrant workers, the Employment Promotion Law clearly states: "Rural workers entering into urban areas for employment shall enjoy the same and equal rights as urban workers, and must not be subject to discriminatory restrictions." As for discriminatory actions, a worker can file a lawsuit with the people's court and request it to exercise national judicial right to protect his or her lawful benefits. After the job seeker and worker exercises the litigation right, the people's court shall follow the legal litigation formalities to solve the dispute incurred by unfair employment discrimination and protect his or her infringed employment right. After the implementation of the Employment Promotion Law, if any employers, employment service agencies, or other associated social entities commit employment discrimination actions, they shall not only be condemned by public opinion or regulated by the competent authority, but also be subject to legal sanctions. The significance of this article also lies in the fact that the right to employment is a fundamental right originating from the constitution, thus, it is different from other labour rights. Accordingly, when the right to employment is infringed, the job seeker has the right to directly file a lawsuit at the people's court, instead of applying to the labour arbitration authority first. This is different for other labour rights.

The Employment Promotion Law and the Labour Contract Law both have clear regulations in respect of rural workers' access to skills training, requiring people's governments at various levels to take effective measures to organize and introduce skills training for rural workers going to urban areas for employment, and encouraging various training organizations to provide skills training for rural workers so that they can have better capability for employment and starting new businesses.

Source: Q. Wang: "Positive influences of the Employment Promotion Law and the Labour Contract Law upon employment of rural migrant workers", in *Legality and Society*, Issue No. 6.

In the past few years, the Chinese government has taken important steps to reform the "hukou" system and redress the disadvantaged situation of rural migrant workers. In 2002 and 2003, further to the recommendations of the State Council, a number of regulations were adopted providing for the suppression of unreasonable fees on migrants seeking permanent or temporary jobs in urban areas, the obligation on employers to sign labour contracts, and the prohibition of wage arrears for migrant workers. In 2006, the State Council adopted further

recommendations, including the guarantee of a minimum wage to rural migrant workers, the enforcement of the labour contract system, access to employment services and job training, access to public services, and promotion of local economic development and village enterprises. Steps have also been taken to gradually establish a social security system for migrant workers and to bring them within the scope of labour legislation.

Box 4.12 State Council guiding principles on the management of rural migrant workers in 2006

In the policy document “Several Opinions of the State Council on Solving Problems Related to Rural Migrant Workers” issued in 2006, the State Council set the following guiding principles on strengthening the management of rural migrant workers: To plan the development of rural and urban areas based on the national conditions of our country. To be people-oriented. To solve the problems of interests of rural migrant workers. To gradually construct the labour market with uniform systems for both rural and urban workers. To set up the policy system and law enforcement and supervision mechanism that guarantee the legitimate interests of rural migrant workers. To establish the rural and urban public service system favouring rural migrant workers.

It also set basic rules for the management of rural migrant workers as follows:

- Treat equally without discrimination
- Strengthen service and improve management
- Plan comprehensively and guide reasonably
- Adjust measures to local conditions
- Reasonably define and improve the wage level of rural migrant workers
- Improve the condition of low income and different payment for the same work
- Gradually realize an equal employment system between rural and urban areas
- Provide equal employment opportunities and services to both rural and urban workers. All local governments and departments concerned shall get rid of all discriminatory regulations towards or unreasonable restrictions on rural migrant workers, and simplify the administrative examination and approval procedures, as well as reduce administrative charges
- No employing unit is allowed to expel rural migrant workers with the excuse of solving the employment problem for urban workers.

Box 4.13 State Council Circular clearance of discriminatory regulations on rural migrant workers

The Circular regarding Further Improving the Employment Environment for Migrant Peasants in Town issued by the General Office of the State Council on 27 December 2004 stressed that discriminatory regulations and unreasonable restrictions in relation to all aspects of migrant peasants’ employment in town shall be cleared and abolished. All areas and competent departments shall continue to clear and abolish all the administrative approval regulations on the employment of Nongmin Gong (migrant peasants) by enterprises, and clear the restrictions on the occupation type for Nongmin Gong. The procedures relating to the employment of Nongmin Gong in town shall be reviewed and cleared, specifically the registration item set up solely for Nongmin Gong shall be cleared and management should be conducted via one permit – the temporary residence permit. The required conditions of technical qualification and good health required for any industries and occupations shall be equal between the Nongmin Gong and urban residents.

Source: Mayer Brown JSM: *Guide to discrimination law in China*, <http://www.mayerbrown.com/publications> (accessed 30 Sep. 2010)

Box 4.14 Circular of the General Office of the State Council on Strengthening Employment Management and Service Work for Rural Migrant Workers (2003)

All local governments and departments concerned shall take effective measures to strengthen the management and service work for rural migrant workers based on the rules of “equal treatment,

reasonable guidance, improved management and good service.”

Local governments and departments concerned shall **abolish the administrative examination and approval toward enterprise employing rural migrant workers, abolish the limitations on types of work assumed by rural migrant workers**, and shall not interfere in the legitimate employment of rural migrant workers by enterprises. They shall strictly review and rectify the employment procedures of rural migrant workers, **cancel the registration items** designated for them, and gradually implement the

management method by temporary residence permit. The technical qualification and health requirements of all professions and work types, especially for special industries, shall be unbiased towards rural migrant workers.

To transact the employment procedures, **no other fees than the certificate production cost defined by the rules of the State Council shall be charged. It is strictly forbidden to set up charging items beyond the authority, or increase the charging standard.** Commodity price and financial departments of all levels shall make strict inspections and supervisions to prevent any arbitrary collection of fees from rural migrant workers.

Meanwhile, the Notice also requires to:

1) solve the problem of wage arrears or reduction deduction for rural migrant workers; 2) improve the living and working conditions for rural migrant workers; 3) provide more training opportunities for them; 4) solve the schooling problems for children of rural migrant workers through various channels; and 5) strengthen the management of migration.

The 11th Five-Year Development Plan for 2006–2010 includes migration as an essential component of the national development strategy and, following the request of the Ministry of Labour and Social Security, the State Council approved the creation of the Joint Committee on Migrant Workers in 2006, with the secretariat established at the Ministry. In 2008, the Department of Migrant Workers was set up in the Ministry of Human Resources and Social Security (MOHRSS, the merger of the former Ministry of Labour and Social Security) and the Ministry of Personnel.

The amended Compulsory Education Law, which came into force in 2006, provides for nine years of compulsory schooling for children in both cities and rural areas, and grants the right to education of children of migrant workers no matter where they live.

The ratification of ILO Convention No. 111 in January 2006 is a further commitment to the elimination of employment discrimination based on social origin.

3. Main causes of inequality at work for rural migrant workers

Discrimination in employment and occupation against rural migrant workers refers to the differential employment opportunity and treatment that these workers experience due to their rural identification card in the household registration system. Under Convention No. 111, such discrimination includes any distinction, exclusion or preference related to access to the labour market, occupation, vocational training and education, social security, dismissal, and other aspects of employment, including conditions of work (see also Recommendation No. 111).

Discrimination against rural migrant workers is the extension of the deep-rooted discrimination against farmers in China. In addition to prejudice and stereotyped attitudes against people from the rural areas, the traditional set-up of China's labour market since the late 1950's institutionalized inequality in migrant workers' employment until recently. From the perspective of access to the labour market, migrant and local workers belonged to **two totally segregated labour markets** under the central command system. Under this labour market structure, some

local governments had formulated policies that protected the urban workforce and created market access barriers to restrict migrant workers from entering into some industries and job categories. The labour market segregation caused differential treatment of migrant workers in terms of remuneration, social insurance and other job-related benefits. Public employment services were not targeted at rural migrant workers either.

While it is true that the low level of education and lack of skills training caused by unequal access to educational opportunities in rural areas among migrants has limited their access to employment opportunities and better jobs, it has been widely recognized that in addition to these human capital factors, discriminatory labour market regulations and practices contributed to such inequality.

Due to the efforts made by the Chinese Government to integrate the rural and urban labour markets, these barriers and unequal treatments are gradually being removed. Efforts are also being made to reform the household registration or “hukou” system and extend social security coverage to all rural migrant workers. The success of these efforts, however, is also dependent on improvements in migrant workers’ access to legal protection.

Box 4.15 Major barriers to migrant workers’ access to legal protection

“Besides the unfair restrictions caused by the “hukou” system and the overall poor enforcement of law in China, there are several special obstacles that block migrant workers’ access to legal protection:

- Migrant workers are less educated compared to urban workers, so their overall rights-consciousness is relatively lower
- The deeply rooted social discrimination against migrant workers exacerbates the unfair treatment in the workplace
- Many employers refuse to sign employment contracts with migrant workers or force migrant workers to waive their basic labour rights. For example, employers may force migrant workers to sign an illegal *sheng si zhuang* [liability waiver] to give up work injury compensation. ...
- Migrant workers usually cannot afford the money and time to stop working, get legal counsel, and go through the complicated Chinese labour dispute resolution process
- The trade unions play a very limited role in helping migrant workers ...
- Employers have nothing to lose when supervision and punishment for frequent violations are lacking. Many local government officials view migrant workers as troublemakers, and they choose to tolerate the abusive conduct of enterprises to avoid loss of capital investment and local revenue, which are important indexes for their promotions.”

Source: L. Na: “Is there new hope in labour rights protection for Chinese migrant workers” in *Asian-Pacific Law & Policy Journal* (2009), Vol. 10, No. 2, p. 493.

4. The current situation of equality at work for rural migrant workers in China

The discrimination faced by rural migrant worker in China due to the low social status ascribed to them as “peasants” can be further compounded by other factors. If they are women, or come from an ethnic and/or religious minority group they are often subject to multiple forms of discrimination in the cities at all stages of the employment cycle.

4.1 Inequality in access to employment opportunities

As indicated above, rural migrant workers do not yet have equal access to the urban labour market. They still face restrictions on the type of jobs they are allowed to do in cities. In general, they can not get formal jobs in the formal sector such as government offices or state-owned enterprises. In some cities, authorities continue to deny them access to certain types of jobs – usually the ones with better pay and working conditions – that are reserved for permanent residents, even if this practice has been officially outlawed at the national level.

As mentioned, public employment services are as a rule not available for rural migrant workers. The State Council's Report on Migrant Workers states that only between 20-30 per cent of migrant workers receive employment services in sending areas, but less than 10 per cent receive these services from government agencies.⁹ Rural migrant workers usually rely on informal networks and end up working in informal, low-paid, menial jobs that urban workers often refuse. Normally only dirty, dangerous and demeaning jobs, or jobs that require great physical efforts which urban people do not want to take up are available to migrant workers, such as waste disposal and construction work.

Box 4.16 Inequality in access to employment of rural migrant workers in China

According to a study conducted by the Institute of Population and Labour Economics of the Chinese Academy of Social Sciences (CASS) in 2005, migrant workers were concentrated in low paid industries (94.77 per cent in low paid industries and 5.23 per cent in high paid industries, compared to 76.84 per cent and 23.16 per cent of urban workers). Although human resources factors such as educational level contributed to the difference, discrimination due to the rural origin of migrant workers has had an impact, although there is no data to indicate the level of impact.

Similarly in entry into occupations, the same study shows migrant workers concentrated in “blue-collar” jobs (92.33 per cent in blue-collar jobs and 7.70 per cent in “white-collar” jobs, compared to 67.83 per cent and 32.17 per cent of urban workers in these respective categories). Again, in addition to human resources factors, discrimination including discrimination in opportunity to education contributed to the difference.

Sources: Institute of Population and Labour Economics, Chinese Academy of Social Sciences: *China Urban Labour Survey 2005*.

In recent years, while direct restrictions on rural migrant workers' entry to the urban labour market have been gradually lifted in many places, higher standards on qualifications have become another barrier to migrant workers' employment in cities. For instance, higher requirements on educational level that are not related to the inherent requirements of different jobs have blocked many rural migrant workers from getting jobs in cities.

Research has also found that discrimination against migrant workers is more profound in monopoly state-owned enterprises, public institutions and government departments. This is not in keeping with the principle of Convention No. 111, which requires the public sector to take the lead and set a role model on non-discrimination in employment.

⁹ Task force of the State Council's Research Office: *Survey report on rural migrant workers in China*, China Yanshi Press (Beijing, 2006).

4.2 Lower labour contract signing rate

Historically, the labour contract signing rate is low among rural migrant workers. A study on rural migrant workers conducted by the National Bureau of Statistics (NBS) in 2006 reported that nearly 46 per cent of migrant workers did not sign any form of labour contract or agreement with the employing unit.¹⁰ Among those who signed a contract, 12.1 per cent were not clear about its content. A monitoring survey conducted by NBS in 2009 shows that nearly 60 per cent of migrant workers did not sign a labour contract with the employing unit.¹¹ The China Urban

Labour Survey (CULS) conducted in 2005 showed that 37 per cent of rural migrant workers had signed a contract with the employing units, compared to 55 per cent of urban workers.¹²

Another study conducted in nine cities in the Pearl River Delta region in 2006 also reported that only 43 per cent of migrant workers had signed a labour contract, 94 per cent of the contracts were prepared by the employing unit unilaterally and only 53 per cent migrant workers received a copy of the contract. In addition, 41 per cent of migrant workers were paid less than the local minimum wages. Illegal practices such as charging deposits and retention of identity documents were common.¹³

4.3 Unequal remuneration

Unequal remuneration

One important aspect of discrimination relates to the difference in remuneration between urban and rural migrant workers. Rural migrant workers do not even receive equal pay for equal work compared to their urban counterparts – let alone equal pay for work of equal value. They often do not get benefits, such as allowances, bonuses, paid leave, additional commercial insurance, etc., other than the basic wage. While it is not abnormal that the pay gap widens in times of strong economic growth (often because the skills driving the growth are not quickly enough acquired by a sufficiently large number of workers), some factors that are not related to normal market phenomena are widening the pay gap in China between the sexes and among workers from different social origins, sectors and enterprises of different types of ownership.

Box 4.17 Unequal remuneration of rural migrant workers in China

The NBS survey in 2006 shows that half of the migrant workers could not get overtime payment, 57 per cent of them could not get on-the-job injury compensation, nearly 80 per cent are not entitled to paid leave, over 90 per cent do not have access to a housing allowance and the Housing Fund, and 80 per cent of female migrant workers are not entitled to paid maternity leave.

Source: National Bureau of Statistics: *Life quality survey of rural migrant workers in cities* (2006).

¹⁰ National Bureau of Statistics: *Life quality survey of rural migrant workers in cities*, Oct. 2006, available in Chinese at: <http://www.stats.gov.cn/was40/reldetail.jsp?docid=402358407> (accessed 24 Nov. 2010).

¹¹ National Bureau of Statistics: *2009 Monitoring and survey report on rural migrant workers* (Beijing, 2010). Available in Chinese at http://www.stats.gov.cn/tjfx/fxbg/t20100319_402628281.htm [22 Nov. 2010].

¹² Institute of Population and Labour Economics, Chinese Academy of Social Sciences: China Urban Labour Survey 2005, in M. Wang, F. Cai: *Local vs. migrant workers: Employment opportunities and wage differentials in urban China*, CESifo Economic Studies Conference on Understanding the Chinese Economy, 2005.

¹³ Y. Zhang: "Politics of local governance – a systemic perspective: Using the implementation of policies on the protection of rural migrant workers as an example" in *Zhongshan University Journal*, Issue No. 1 (2009).

A large part of the remuneration gap between rural migrant workers and local urban workers cannot be explained by factors related to productivity, suggesting that there is severe discrimination against rural workers in urban labour markets. For example, data from the 2005 survey on urban labour indicate that the average hourly pay for migrant workers is substantially lower than for their local urban counterparts in all job categories. Forty-three per cent of the wage difference between them can be attributed to discrimination caused largely by the “hukou” system and a set of other related welfare and benefit systems. Sixty-three per cent of the wage difference between migrant workers and urban resident workers is caused by different occupational distributions.¹⁴

The NBS study in 2006 shows that the average monthly income of rural migrant workers is 42.8 per cent of that of urban workers. A male migrant worker earns 291 Yuan more per month than a female migrant worker on average.¹⁵ And according to a sample survey conducted in Hunan, Sichuan and Henan provinces, rural migrant workers’ actual working hours are 50 per cent more than the hours worked by urban workers, but the average monthly income of migrants is only 60 per cent of that of urban workers, and the actual income per working hour of rural migrant workers is only one quarter of that of urban workers.¹⁶

Wage arrears

Rural migrant workers often encounter difficulties in getting their salary paid on time. According to data released by the MOHRSS on 22 Oct. 2007, from 2004 to the end of July 2007, the accumulated amount of wages of rural migrant workers in arrears nationwide reached 43.22 billion Yuan. In the first three quarters of 2004, 290 million Yuan in wage arrears were cleared in the campaign launched by governments at various levels in Zhejiang Province, concerning 270,000 workers, of which more than 70 per cent were rural migrant workers.¹⁷

Many provincial governments have adopted a wage reserve system and are focusing their efforts on preventing new wage arrears of rural migrant workers. The Labour Contract Law that entered into force in January 2008 has made defaulting on wage payment illegal, thus putting higher pressure on employers to ensure timely payment of wages to rural migrant workers.

4.4 Inequality in social security benefits

The latest survey shows that the different social security systems based on workers’ household registration status in urban or rural areas account for the largest part of the overall income difference between urban and rural workers.¹⁸

Lower coverage

The highly mobile rural migrant workers are inadequately covered in the social security system. The CULS report of 2005 shows that the participation rates of migrant workers in pension

¹⁴ F. Cai and D. Wang: *Impacts of domestic migration on economic growth and urban development in China*, Paper presented at the Conference “Migration and development within and across borders: Concepts, methods and policy considerations in international and internal migration”, International Organization for Migration (IOM), New York, 17-19 Nov. 2005.

¹⁵ National Bureau of Statistics: *Life quality survey of rural migrant workers in cities*, Oct. 2006.

¹⁶ Task force of the State Council’s Research Office: *Survey report on rural migrant workers in China*, China Yanshi Press (Beijing, 2006).

¹⁷ General Team of Zhejiang Provincial Labour Inspectorate: *Study on the systemic issues in wages in arrears of rural migrant workers in Zhejiang Province*, <http://mos.gov.cn/Template/article/display0.jsp?mid=20041216009171> (accessed 30 Nov. 2010).

¹⁸ G. Xie: “Rural migrant workers and urban labour market,” in *Sociology study*, Issue No. 5.

insurance and health insurance amounted to 8.8 per cent and 7.5 per cent respectively in five large cities, compared to 76.9 per cent and 63.9 per cent of urban workers. The gap is slightly narrower in small cities.

Medical insurance

Since September 2007, 86 per cent of China's rural population is covered by the new rural cooperative medical insurance scheme. However, for the majority of rural migrant workers, they either have not joined this system, or can not enjoy the benefits after joining, because when they leave the rural areas, they can no longer claim back medical expenses incurred in the cities where they work and live. Most of the rural migrant workers who are not covered by the urban medical insurance system have to cover medical expenses out-of-pocket.

Some reports show that migrant workers' utilization rate of hospital services is much lower than that of urban residents. Among them, 11 per cent do not take any measures when sick; 65 per cent opt for self-treatment to control costs; and 24 per cent go to see a doctor, among whom 48 per cent use the medical services of grass-roots public health institutions or private clinics (mostly operating without a license). Higher quality medical institutions are only visited when the illness or accident is very serious.¹⁹

In late 2009, the government adopted new regulations to make migrant workers' pensions and medical insurance portable. It is expected that this will result in significant improvements in terms of higher participation rates and lower drop-out rates in social insurance schemes among rural migrant workers.

Health care

The rural migrant population is vulnerable in the area of health care. In addition to vocational hazards that are discussed below, these workers face a series of health risks due to their poor living conditions. Normally, migrant workers live in places where ventilation and hygienic conditions are poor and diseases might break out. Some reports show that among the 10,000 tuberculosis patients in Guangzhou in 2003, migrant workers accounted for nearly half.²⁰ Planned immunizations and child and maternity health care and other public health services are hardly accessible to rural migrant workers. Even in Shanghai where better services are provided to rural migrant workers, the immunization rate of migrant children in 2004 was only 65 per cent, while that of local children was up to 99 per cent.²¹

Moreover, migrant workers have little knowledge of sexual and reproductive health and have little access to such services. Migrant women account for two-thirds of mortality cases at delivery in urban areas.²²

4.5 Higher risks of industrial injuries and occupational diseases

Occupational safety and health is a major issue facing Chinese workers in general and rural migrant workers in particular. Rural migrant workers are the dominant workforce in dangerous jobs, amounting to an estimated 90 per cent of workers in China's construction industry, 80 per

¹⁹ Z. Luo: "What does the health of migrant workers depend on?" in *People's Daily* (4 August 2005).

²⁰ Ibid.

²¹ Task force of the State Council's Research Office: *Survey report on rural migrant workers in China*, China Yanshi Press (Beijing, 2006).

²² UN Country Team China: *Advancing social development in China: Contribution to the 11th Five-Year Plan*, Occasional Paper Vol. 1 (Beijing, 2005).

cent of workers in coal mining, 60 per cent of workers in the textile industry, and 50 per cent of employees in tertiary industry.²³ Not surprisingly, this results in a disproportionate amount of job-related injuries, diseases and deaths among rural migrants. Among the deaths in accidents related to mining, construction and petrochemical plants, migrant workers account for 80 per cent of the total.²⁴ Among patients with workplace-related diseases, migrant workers account for about 90 per cent of the total.²⁵

Presently, employment injury insurance is the only protection system without institutional and policy obstacles against rural migrant workers, yet migrant workers do not make extensive use of it. According to a rapid survey conducted by the Ministry of Agriculture in 2005, rural migrant workers' participation rate in employment injury insurance systems is only 22 per cent.²⁶ These workers face great safety risks at work. Some workers who suffer employment injuries and fail to get timely treatment and economic compensation have to return home partially disabled, becoming farmers at high risk of poverty.

In addition, migrant workers are subject to differential treatment in compensation standards for industrial injuries and occupational diseases. In accordance with the "Explanations on A Few Legal Issues in Respect of Applicable Laws in Industrial Injury Claim Cases" issued by the Supreme People's Court at the end of 2003, compensation standards for urban and rural labourers are based on the average disposable income of urban residents and the average incomes of rural residents. This is direct discrimination as it suggests that the lives of urban and rural residents have a different value. A few cities adopted the same compensation standards for rural migrant workers on the basis of the average urban wage, but only those migrant workers with a temporary residence permit are eligible, and only a small portion of migrant workers has successfully obtained temporary residence permits.

4.6 Inequality in children's education

According to the *Life quality survey of rural migrant workers in cities* in 2006 by the NBS, 17.2 per cent of rural migrant workers sent their children to urban local schools. Of those who went to school, 71.9 per cent went to public schools, 22 per cent went to private schools, 5 per cent to migrant schools, and 1.1 per cent dropped out of school.

The migrant schools charge less, but do not enjoy governmental allowances and they are sometimes banned for failing to meet the relevant standards. However, public schools may charge high sponsorship fees or temporary tuition surcharges (applicable to students without local "hukou"), although the government has constantly banned such fees or surcharges.

Even when migrant children are lucky enough to go to public schools, they may suffer discrimination from the teachers and their peers. In some instances, they cannot participate in various activities held by schools or local governmental bodies, or join in the selections of

²³ Y. Wei: *For rural-urban migrant workers, What should China's government do?*, 7th Berlin Roundtables on Transnationality on Migration into Cities, 24-28 October 2007, Berlin, Germany, 3, http://www.irmgard-coninx-stiftung.de/fileadmin/user_upload/pdf/urbanplanet/Wei.pdf (accessed 25 Sep. 2010).

²⁴ Z. Zheng and P. Lian: *Health vulnerability among temporary migrants in urban China*, France Tours International Population Conference: 8 (2005).

²⁵ "Occupational diseases are plaguing migrant labourers" in *China Daily* (17 Feb. 2006), http://english.gov.cn/2006-02/17/content_202437.htm (accessed 30 Nov. 2010).

²⁶ "Only 22% of rural migrant workers are covered by work injury insurance, three obstacles remain for raising the participation rate" in *Legal Daily*, Beijing, 15 Aug. 2009, http://www.legaldaily.com.cn/0801/2009-08/15/content_1138656.htm (accessed 30 Nov. 2010).

Outstanding Students, or even some sports events, among others. Some other obstacles also hinder the mobile population from enrolling in higher education. For instance, migrants cannot attend the National College Entry Examinations anywhere outside the location where they have their permanent household registration. These inequalities in access to education affect the qualifications of the future generation of migrant workers and will result in their unequal opportunity in the labour market.

Box 4.18 Snapshots of education for rural migrant workers' children

Beijing: as of July 2006, 62 per cent of the 228,000 children of migrant workers went to public schools, 38 per cent went to migrant schools.

Wuhan: about 140,000 children of rural migrant workers received compulsory education, 80,000 in public schools (57 per cent), and 60,000 in private run schools (43 per cent).

Suzhou: as of February 2004, there were 153,765 children of migrant workers in school, among which 100,069 (65 per cent) were in public schools, and 53,606 (35 per cent) were in schools for children of rural migrant workers.

Zhejiang Province: in 2004, there were 215 schools for children of rural migrant workers, attended by 120,000 or 21 per cent of the children of migrant workers.

Source: X. Fan: "Equality in the education of children of rural migrant workers and the institutional guarantee", in *Middle and Primary School Education* (2007), Issue No. 7.

4.7 Gender issues among rural migrant workers

Migration for work brings many benefits to women migrant workers and their families. In many instances, it has transformed women into family breadwinners and crucial economic agents who play a major role in poverty alleviation and the development of their communities of origin.

Rural-urban migration in China is taking place on an unprecedented scale. Although men still constitute the majority of migrants, the sex ratio is almost equal among younger migrants. According to the Second National Agricultural Census in 2007, women accounted for 36 per cent of the total of 132 million migrant workers in 2006.²⁷

Migration experiences differ for men and women, but migration and labour market policies often do not take this into account. Women who become pregnant face high risks of dismissal. There are relatively more job opportunities for male migrant workers that offer legal channels of migration, such as work in construction. In contrast, most job opportunities for women migrant workers tend to be in unregulated sectors that do not always recruit through legal channels.

In China, direct and indirect discrimination based on sex is prohibited by law. In practice, however, women continue to encounter discrimination in one or more forms during their working lives. In the world of work, women are typically concentrated in 'the five C' occupations: caring, cashiering, catering, cleaning and clerical. These jobs are mostly in small, non-unionized firms, where women have less bargaining power and less possibility to improve their economic situation compared to male workers.

²⁷ National Bureau of Statistics: *Bulletin on main data from the 2nd National Agricultural Census* (No. 5), 7 Feb. 2008, available in Chinese at: http://www.gov.cn/gzdt/2008-02/27/content_902847.htm (accessed 24 Nov. 2010).

The lack of legal protection of workers in these sectors usually leaves women migrant workers vulnerable to substantial abuses. Lacking formal channels to migrate, women find themselves in dangerous situations. They are at a greater risk than men to human trafficking and other dangers during the migration process. They are more likely to face multiple forms of discrimination.

Discrimination against women usually intersects with other forms of discrimination. Women migrant workers face multiple forms of discrimination:

- as women vs. men
- as rural migrants vs. urban citizens
- as dependent vs. autonomous migrants
- as irregular vs. regular documented migrants.

Box 4.19 Domestic workers in China

There are about 20 million domestic workers in China. As average income increases in cities, the demand for domestic help continues to increase. Forty per cent of urban Chinese families have a demand for domestic help, indicating an additional 15 million potential job opportunities.

- Approximately 90 per cent of domestic workers in China are women.
- There is a growing number of migrant workers entering the domestic service sector. In cities like Beijing, Shenzhen and Guangzhou, rural migrants account for over 90 per cent of the total number of domestic workers.
- The rate of labour contract coverage is low among domestic workers. More than 50 per cent of domestic workers in Guangzhou and Chengdu, and 27 per cent of domestic workers in Beijing did not sign a contract with either the domestic service agencies or the household.
- The survey shows that more than 60 per cent of domestic workers in Beijing and Chengdu have not joined any insurance scheme. Those who have are mostly laid-off workers rather than rural migrants.
- 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 fulfill the definition of an “employing unit.” Without legal employment status, domestic workers cannot be guaranteed their wages, working hours, labour protection or social security.*

According to the “Interpretations of the Supreme People’s Court concerning Several Issues regarding the Application of Law to the Trial of Labor Dispute Cases II” (issued by Supreme People’s Court, promulgated on 14 August 2004, effective on 1 October 2006), disputes between households and hired domestic workers are not labour disputes. Under both Article 2 of the Labour Law and Article 2 of the Labour Contract Law, households are not considered as enterprises, individually owned economic organizations, or private non-enterprise entities that can enter into an employment relationship. These legal interpretations result in indirect discrimination on the grounds of sex and social origin.**

Sources:

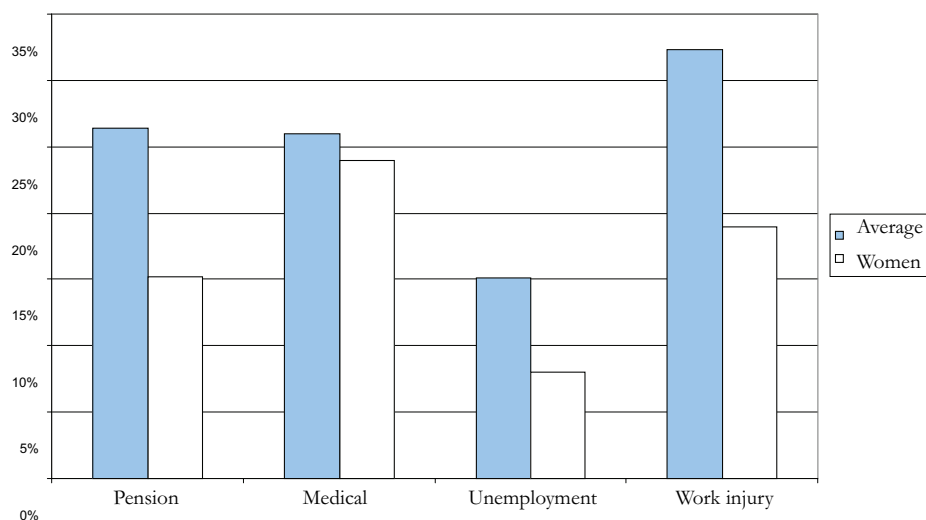
* ILO Office for China and Mongolia, *Fact sheet: Domestic workers in China, Situational analysis of domestic work in China*, Project to promote equality and decent work for women through prevention of trafficking, protection for domestic workers, and gender equality promotion (Beijing, 2009).

**L. Na: “Is there new hope in labour rights protection for Chinese migrant workers” in *Asian-Pacific Law & Policy Journal*, 2009, Vol. 10, No. 2, p. 493.

In addition to inequality with respect to remuneration compared to urban workers and male migrant workers, women migrant workers face disadvantages in social insurance. According to a 2006 investigative report issued by the National Coordination Group for Safeguarding the Rights of Women and Children, the proportion of women rural migrant workers participating in

pension, unemployment and industrial injury insurance is only half of the participating rate of the total group of rural migrant workers.²⁸

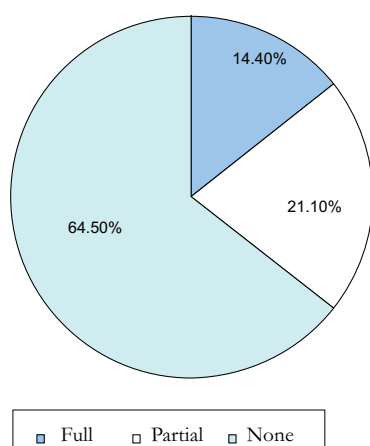
Figure 1. Insurance coverage of all migrant workers and of women migrants



Source: National Coordination Group for Safeguarding the Rights of Women and Children

The report also shows that only 6.7 per cent of female migrant workers have maternity insurance. A full 64.5 per cent of women migrant workers who gave birth received no payment during maternity leave, while only 14.4 per cent received full pay and 21.1 per cent received partial pay. The survey shows that only 36.4 per cent of employers provided more than 90 days of maternity leave, and less than 13 per cent of migrant women workers who gave birth had the medical expenses for maternity reimbursed.²⁹

Figure 2. Compensation for female migrants during maternity leave



Source: National Coordination Group for Safeguarding the Rights of Women and Children

²⁸ National Coordination Group for Safeguarding the Rights of Women and Children: “Investigative report” (2006) in UNDP China: *China human development report 2007/2008: Basic public services for 1.3 billion people* (Beijing, 2008).

²⁹ Ibid.

5. Action to promote equality at work for rural migrant workers in China

Convention No. 111 requires each ratifying State to declare and pursue a national policy to promote equality of opportunity and treatment with a view to eliminating discrimination in employment and occupation on the basis of social origin.

Elimination of discrimination against rural migrant workers requires a national policy that takes into account the broad range of issues that are hampering migrant workers' equal opportunity and treatment in the labour market. The policy involves the elimination of discriminatory provisions in existing laws and policies and the adoption of new ones to promote equality. Specific education and skills development programmes specially designed for migrant workers may be needed as well as active labour market measures to promote employment opportunities for rural migrant workers.

To implement the national policy, government at various levels has a lead role to play, while employers' and workers' organizations and other social partners should also play their role.

5.1 Legal action and enforcement

Discrimination against rural migrant workers originates from exclusion of farmers from social and economic life in urban areas. Due to the segregated rural and urban social structures in Chinese society, there is a big gap in providing equal employment opportunities and treatment to urban and rural residents. Proactive measures are necessary to bridge this gap. The government should take targeted measures favourable to disadvantaged groups that are vulnerable to discrimination. Such measures range from providing specially targeted training, to better coverage of social security protection, through improved laws, regulations, and governmental policies.

Eliminating structural discrimination

One of the major drivers for employment discrimination against rural migrant workers lies in governmental policies and regulations, which have caused systemic discrimination against migrant workers. To solve this issue, discriminatory policies and regulations should first be abolished, and proactive measures should be taken by governments at various levels. Improved policies and regulations for rural migrant workers are part of proactive action and are fundamental for the elimination of discrimination against rural migrant workers.

In China, discrimination against rural migrant workers is institutionalized. As the government transforms itself into the anti-discrimination leader and takes further action to address this issue, the institutional discrimination against rural migrant workers will be greatly alleviated. Then, it is expected that presently existing problems will be solved in practice at a faster pace.

Discrimination against rural migrant workers refers to the differentiated treatment based on household registration. To solve this issue, the most fundamental measure is to reform the household registration, or "hukou" system. However, this does not mean simple legal articles to expand the registered household residence scope and terminate the urban and rural labour market segmentation, but involves restructuring the public resource distribution system and reforming political and social institutions to enable citizens to exercise equal rights.

There have been many improvements in the national legal framework with regard to the equal rights of rural migrant workers in recent years, as detailed earlier in this Module. New local policies have also been adopted in various parts of China to promote equality in employment of

rural migrant workers, such as on minimum wage, timely payment of wages, better coverage of pension, unemployment and health insurance, and access to free public employment services. However, to make these policies effective, highly efficient implementation, monitoring and promotional systems are needed. There are also regional disparities in policies on migrant workers, hence there is a need for more consistency between regions to realize equal treatment of the highly mobile group of migrant workers.

Legal assistance

During the past few years, authorities in many local jurisdictions and administrations and legal assistance institutions have seriously implemented relevant policies and achieved great progress in terms of providing legal assistance to rural migrant workers. These actions include:

1. establishing legal assistance working stations, contact points, and consulting stations for rural migrant workers, and opening dedicated legal assistance hotlines for them
2. waiving checks on the level of economic hardship for applications for legal assistance on wages in arrears and work injury claims
3. enhancing legal awareness among rural migrant workers and helping them to safeguard their legal rights through legitimate channels.

In September 2004, nine ministries including the Ministry of Justice, the Ministry of Finance, and the Ministry of Labour jointly enacted the “Directive on Implementing the Regulations on Legal Assistance and Practically Solving the Difficulties that the Public Have When Lodging Lawsuits”. This Directive was aimed at coordinating the legal assistance work of different departments.

In November 2004, the Ministry of Justice and the Ministry of Construction jointly released the “Notification on Providing Legal Services and Assistance for Wage Payments in Arrears of Rural Migrant Workers in the Construction Industry”, requiring that local legal service and assistance institutions actively provide legal service and assistance to migrant workers to solve wage payments in arrears.

In September 2005, the Ministry of Justice, the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security jointly enacted regulations in respect of criminal and civil law legal assistance, and established a harmonized mechanism among different judicial bodies.

Some local governments have expanded the scope of legal assistance, to cover cases regarding work injury compensation and traffic accidents with a high incidence among rural migrant workers, providing a better policy and legal environment for their rights protection.

Box 4.20 “Little Bird” becomes a big help for migrants far and wide

On 6 June 1999, the Little Bird Mutual-Assistance Hotline for Migrant Workers was founded by Wei Wei, who himself was a migrant worker from Henan Province. Little Bird is a non-profit organization providing free service for the workers who have come to Beijing in search of jobs. These services include providing job opportunities, resolving labour disputes and offering legal counseling to migrant workers.

On 24 August 2004, the Beijing Dongcheng District Judicial Bureau authorized the establishment of the Beijing Little Bird People’s Mediating Committee. This was the first mediating organization in Beijing to safeguard the rights and interests of migrant workers.

In April and October 2006, Little Bird opened two branch offices and hotlines in Shenzhen and Shenyang. To date, Little Bird has established an intercity networking system covering North, Central and South China and has been able to render better service to the migrant workers.

In the decade following the establishment of the Little Bird Hotline in 1999, the three offices of Little Bird in Beijing, Shenzhen and Shenyang answered 131,096 calls on the hotline, provided job opportunities for 15,732 migrant workers, offered legal counseling services to 94,550 migrant workers, resolved 3,903 cases concerning rights protection with 38,620 people involved (60 per cent of them male), helped them get back their detained wages totaling 100.3 million Yuan and offered help to 148,902 migrant workers (60 per cent of them male).

Meanwhile, Little Bird has provided training for rural migrant workers. For instance, in Beijing, Shenzhen and Shenyang, it organized training on integration into urban life and legal rights safeguarding skills to help migrants to mutually help each other and increase their self-protection capabilities.

Source: Little Bird: <http://www.xiaoxiaoniao.org.cn> (accessed 30 Nov. 2010).

Labour dispute resolution

In 2007, the National People's Congress passed the Law on Labour Dispute Mediation and Arbitration in an attempt to make it easier for workers to claim their legitimate rights in individual disputes with their employer. The type of disputes specifically covered by the law, such as the establishment of the employment relationship, wages, employment injury benefits and other forms of damage compensation, suggests that the law intends to accommodate the plight of migrant workers (see the Box below).

Box 4.21 Rural migrant workers' rights and labour dispute resolution

... "[T]he cost of time and money in labour dispute resolution has been one of the major barriers for migrant workers to access legal protection. Many migrant workers do not know that there is a time limitation for applying for arbitration. ... Further, many migrant workers find it difficult to understand the complicated mediation, arbitration, and trial procedures. ... They cannot afford to hire legal counsel, and the legal aids are far from enough to satisfy migrant workers' demand. ...

The Law on Labour Dispute Mediation and Arbitration will help many migrant workers. Article 53 provides that labour arbitration shall be free. ... Article 27 extends the old six-month time limitation to one year for application for labour dispute arbitration. ... More importantly, when a dispute arises from the delayed payment of labour remuneration during the period of existence of a labour relationship, an employee's application for arbitration shall not be subject to the time limitation. This gives a great relief to migrant workers facing frequent wage arrears.

Further, Article 16 stipulates that where a mediation agreement is reached on a matter of delayed payment, medical expenses for a work injury, economic indemnity, or compensation, and the employer fails to execute it within the period of time prescribed in the agreement, the employee may apply to the people's court for a payment order based on the mediation agreement. ... Upon a finding in favour of the employee, the people's court issues a payment order according to law. ... Under Article 44, for such cases, an arbitral tribunal may render an award of prior execution and transfer the case to the people's court. ... An award of prior execution requires an application to the tribunal by one of the parties, clear rights and obligations between the parties, and a serious effect on the applicant without prior execution. ...

The Law on Labour Dispute Mediation and Arbitration greatly simplifies the labour dispute resolution procedure. However, workers with a labour dispute still cannot directly sue in the court. ... Most migrant workers' cases are related to wage default or work injury compensation. Now, workers can get a mediation agreement with the help of a trade union, and then apply for a payment order in court if the employer fails to fulfill the agreement in time. Alternatively, they could apply for a free arbitration and get prior execution in court if the need for remedy is urgent. ...

Following the enactment of the Law on Labour Dispute Mediation and Arbitration, arbitration will probably become the most popular way for labour dispute resolution. Article 43 restricts the arbitration award to be rendered within forty-five days from the receipt of application and sixty days for complicated cases, which will significantly expedite the process. ... The law for the first time makes the arbitration commission's rulings in routine cases legally binding and gives a great procedure advantage to aggrieved workers. ... Article 47 provides that an arbitral award shall be final when the labour dispute is over recovery of labour remunerations, medical expenses for a work injury, working hours, breaks and vacations, social insurance, economic indemnity, or compensation in an amount not exceeding the twelve month local monthly minimum wage level. ... An employee who disagrees with an arbitral award may directly bring an action in court; ... however, an employer has to apply for revocation of the arbitral award to the intermediate court where the labour dispute arbitration commission is located.”

Source: L. Na: “Is there new hope in labour rights protection for Chinese migrant workers?” in *Asian-Pacific Law & Policy Journal*, 2009, Vol. 10:2, pp. 507 – 509.

5.2 Practical measures

Settling wage arrears for rural migrant workers

Since Premier Wen Jiabao helped Xiong Deming, a female migrant worker in Chongqing, to demand wage in arrears in 2003, China has witnessed a campaign to settle payments in arrears. The campaign launched jointly by eight government ministries at the end of 2003 had evident effects. As of the end of 2004, Chinese enterprises had paid a total of 33.1 billion Yuan of wages in arrears to rural workers, accounting for 98.4 per cent of the total amount reported.

A long-lasting mechanism needs to be set up to tackle delayed wage payment of migrant workers, and collaboration among various departments is essential. For instance, the labour and social security authorities should enhance supervision and inspection of employers in terms of the signing of contracts and wage payments, prepare smooth grievance and complaint channels, and seriously fight against illegal acts of defaulting on wage payments to rural migrant workers. The public financial settlement system must speed up payments to construction projects to ensure sufficient cash supply to pay wages to rural migrant workers. The construction authorities must disclose those construction enterprises with defaulting projects and wage payments at the time of the annual qualification inspection, and administer appropriate punishment.³⁰ The Regulations on Labour Security Inspection enacted on 1 December 2004 provide that any employer failing to pay workers wages in a timely manner shall pay extra compensation. The labour inspectorate is enhancing supervision on this issue.

Some effective measures have been piloted at the local level. For instance, construction projects are required to pay a deposit at a certain percentage of the total budget into a guarantee fund for migrant workers' salary monitored by the local government. Migrant workers can get their salary paid from the guarantee fund when payment in arrears happens and the labour department will take action with the responsible employer for timely settlement of the payment. Another effective measure is to link the payment of salary to the grading of companies' credibility level. Companies failing to pay migrant workers' salary in a timely manner will be degraded in the system and exposed to the public.

³⁰ “Eight ministries jointly demanded payments in arrears and the projects with payments in arrears will be subject to restriction when applying for investment”, in *New Beijing News* (8 Jan. 2004).

Opening up employment services for rural migrant workers

The **Employment Service Convention, 1948 (No. 88)** reflects the ideal that public employment services should ensure the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources (Article 1). Employment service institutions are a key element of an active labour market policy, that is, a labour market policy geared towards promoting people's employability. Employment service agencies play an important role in managing the supply and demand in the labour market. Their "gatekeeper" role means that they could become either the creator of discrimination in labour markets, or the promoter to push forward employment equality and transparency of labour markets.

Convention No. 88 provides that the employment service shall be so organized as to ensure effective recruitment and placement (Article 6), and it requires the development of targeted programmes for specific occupations and industries, including adequate measures to cater for the needs of particular categories of applicants for employment, such as disabled persons (Article 7).

Similarly, the overall aim of Article 5 of the **Private Employment Agencies Convention, 1997 (No. 181)** is to diminish and prevent all forms of discrimination. This is of particular importance to vulnerable groups, such as temporary workers, disadvantaged minorities and migrant workers (including women workers), who often face difficulties in exercising their rights, either when they are employed by private "dispatch" or temporary work or staffing agencies or placed in employment.³¹

The Convention No. 181 states: "In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability." Private employment agencies may provide special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities (Article 5.2).

Most rural migrant workers seek their first jobs in urban areas through relatives or other informal channels rather than public employment services. Such "chain flow" has restricted employment chances and causes rural migrant workers to concentrate in certain industries. Thus, the Chinese government has been planning to develop and standardize employment services and improve the efficiency and the effectiveness of services while fighting against illegal institutions.

The labour and social security authorities have launched the Spring Breeze Initiative to call upon urban public employment institutions to provide assistance for migrant workers. At present, more than 20,000 such institutions have been established, through which off-farm rural workers can receive complete and reliable information. In Nanjing for example, to promote a safe and registered population flow, the Municipal Labour Bureau plans to provide an allowance to job-hunting companies which match migrant workers with employers.³²

³¹ ILO: "General survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B), International Labour Conference, 99th Session, Geneva, 2010.

³² M. Tuñón: *Labour flow in China: Features and measures* (Beijing, ILO, 2006).

Box 4.22 Good practice – The Spring Breeze Campaign in Fujian province to improve the employment environment for rural migrant workers

The **purpose** of the Spring Breeze Campaign is to improve the employment environment of rural migrant workers, provide them with quality employment service and help enterprises to recruit the workers needed.

Concrete measures

1. The labour and social security authorities across the province shall enhance internal and external organization and harmonization, make full play of the functions of labour protection stations at the street, community, and township levels, join hands to launch the Spring Breeze Initiative with governmental organs, social bodies, public organizations, employers, and the media.
2. Open public employment agencies across the province; guide vocational agency institutions, training organizations, labour distribution companies with legal personality to provide job information, vocational introductions, employment guidance, vocational training, social security, and safeguard legal rights and other employment security services for employers and workers seeking jobs in the province or elsewhere, particularly those rural workers hoping to find jobs in urban areas.
3. Enhance mountainous, off-shore and inter-provincial labour synergy; make full play of advantages of labour sending and receiving areas; mutually complement and sincerely cooperate with each other to seek joint development; provide quality services for orderly employment transfer of rural surplus workers and safeguarding legal rights; jointly protect legal benefits of rural workers moving into cities.
4. Improve monitoring of companies' labour demand and supervision of the flow of rural labour. For major receiving areas, corporate employment demands, wage rates, working time, working conditions are vital information. For the sending areas, the key point is to understand the situation on returning back to and leaving the hometown before and after the Spring Festival. The provincial labour and social security office will choose some destinations with huge employment demands and sound labour supplies as major connection points, improve inspection and guidance, and promulgate related information through provincial labour market information networks to areas outside the province.

Source: Fujian Provincial Labour and Social Security Office: *The Spring Breeze Initiative in Fujian province* (14 Feb. 2006), <http://www.fjlss.gov.cn/ShowInfo.asp?InfoId=4744> (accessed 30 Nov. 2010).

Delivering dedicated training

Dedicated training can help improve the skill levels of workers from the rural area. When the demand in the 'receiving' area is matched with the training in the 'sending' area, the training will be more effective in improving the employment opportunities of rural migrant workers. Training dedicated to the needs of rural migrant workers is a powerful tool to improve their overall qualifications, so as to improve their access to better jobs and chances to advance to higher positions.

Among the training targeting rural migrant workers, the National Plan to Train Off-farm Rural Workers is large in scale. It is jointly launched by several ministries, vocational and technological schools, and private training institutions. This project aimed to provide 60 million rural workers potentially moving out of their hometowns with short-term vocational and on-the-job training and guidance during the 2003-2010 period. Meanwhile, the Sunshine Project jointly initiated by six ministries aims to strengthen skills training for 10 million rural workers from impoverished labour sending provinces. Through these training institutions and employment agencies, 88 per cent of the 2.5 million rural workers who have taken part in such trainings have found non-agricultural jobs.³³

³³ Ibid.

Box 4.23 Good Practice – The Sunshine Project

The Sunshine Project was sponsored by the government, primarily covering pre-vocational training pilot projects for rural workers moving into non-agricultural sectors. Such workers mostly come from major crop production areas, major labour sending areas, impoverished regions, and the 'revolutionary base' areas. The Project was organized and executed in accordance with the principle of being "promoted by the government, sponsored by the schools, supervised by the authority, benefited by the farmers". It aimed to improve the qualifications and labour skills of rural workers, facilitate the transfer of the rural population into non-agricultural sectors and urban areas, achieve stable employment and increase farmers' income, push forward harmonized urban and rural social and economic development, and comprehensively speed up the building of an affluent society.

In 2004 and 2005, the critical task was to launch short-term vocational skills training, explore mechanisms to provide training, and lay a sound foundation for the complete implementation of large-scale training. The total number of trained rural workers reached 5 million persons, 2.5 million persons for each year. From 2006 to 2010, the Project launched large-scale vocational skills training across the nation, established a complete training mechanism for rural labour transfer, and enhanced the development of rural labour sources. The target number of rural workers to be trained was 30 million persons, 6 million persons each year. After 2010, in accordance with the demands of urban and rural harmonized economic and social development, the rural labour training will be integrated into the national education system. By doing so, the training scale will be expanded, and the training level increased. The overall qualifications of rural workers will keep up with the development pace of China.

Source: Baidu Wikipedia, <http://baike.baidu.com/view/179261.htm> (accessed 30 Nov. 2010).

Increasing social security coverage

Although the Central Government has constantly enacted relevant policies aimed at solving the social security coverage issues of rural migrant workers, such a task must eventually be fulfilled by the local governments. In Shenzhen, Guangdong Province, rural and urban employees pay the same amount of social security premium and enjoy the same treatments. In Zhejiang Province, the threshold will be moderately lowered in accordance with the situations of rural migrant workers under the established urban social security system. Shanghai adopted an independent social security system for rural migrant workers.³⁴

Box 4.24 China removes barriers to medical insurance transfer for migrants

On 31 December 2009, China's Ministry of Human Resources and Social Security, the Ministry of Health, and the Ministry of Finance jointly issued a circular on the transfer of medical insurance among the country's migrant population.

The circular, which is called "Provisional Measures on the Transfer and Renewal of Medical Insurance of Migrant Workers", states that from 1 July, 2010, people who are covered by the basic medical insurance or the new rural cooperative medical insurance system can transfer their medical insurance information to their new work place. The circular stresses that no household registration limit or other barriers shall be made regarding the transfer of the medical insurance.

The circular states that when the insured person needs to transfer his or her medical insurance to a new region, the insurance service operator at the original work place shall issue a certificate showing the person's insurance payment status to the operator of the new region.

Source: China Corporate Social Responsibility (2010), <http://www.chinacsr.com/en/2010/01/21/7019-china-removes-barriers-to-medical-insurance-transfer-for-migrants/> (accessed 30 Nov. 2010).

³⁴ W. Liu: "Analysis of social security system for rural migrant workers in some localities", in Task force of the State Council's Research Office: *Survey report on rural migrant workers in China*, China Yanshi Press (Beijing, 2006).

On 1 January 2010, the government started to implement a regulation, allowing migrant workers to transfer their old age pension insurance accounts when they change jobs. The new regulation will help solve the issue of portability of pensions, which is a major cause of the low participation and high drop-out rates of rural migrant workers in the pension scheme.

Box 4.25 Good practice – New social insurance models for migrant workers in Shanghai and Zhoushan, Zhejiang Province

Shanghai Model – Comprehensive insurance for migrant workers. Since 2002, Shanghai has provided comprehensive insurance for migrant workers (referring to those workers from other provinces, autonomous regions, and municipalities directly under the Central Government, who comply with local employment conditions, work or operate businesses in Shanghai, and have no Shanghai permanent household registration, with the exception of specialized talents introduced by the Shanghai Personnel Bureau and workers conducting husbandry services and agricultural work). The model has the following features:

First, one type of insurance service covers three kinds of treatments. Migrant workers only need to apply for one type of insurance service, or comprehensive insurance. The three treatments that migrant workers are entitled to are industrial injury compensation, hospitalization treatment, and pension compensation.

Second, the rates are fixed and the premium threshold completely unified. Employers must provide migrant employees with comprehensive insurance treatment and pay the premium for three months at once.

Third, the claim for medical treatment expenses could be paid at one time. This helps to solve the long-lasting issue plaguing rural migrant workers who constantly move from place to place. One-time payment is a particular advantage to migrant workers in industrial injury cases as the injured workers can go back to their hometowns with the whole compensation payment. Migrant workers do not have individual pension accounts, but do have pension compensation. When migrant workers reach age 60 for men and 50 for women, they can receive pension compensation through designated institutions in their hometown.

Source: H. Shi and R. Zhang: *Practices and reflections on social security of rural migrant workers working in urban areas -Take Shanghai and Guangdong models as examples*, Theoretical explorations (1) (2007).

Zhoushan Model – voluntary participation in the urban unemployment scheme for rural migrant workers. Making rural migrant workers eligible for unemployment benefits is one of the reform steps taken by Zhoushan City in promoting the integration of urban-rural employment and elimination of rural-urban discrimination. This is also an experiment in the city's reform of its unemployment policy.

The Unemployment Insurance Regulation issued by the State Council sets the tone for China's unemployment policy. Although it covers rural migrant workers, due to high mobility, low income and land ownership of the group, the policy allows low contribution and low benefit levels for rural migrant workers. Only employers are required to pay unemployment contributions for rural employees, and one-off compensation is paid to rural migrants if unemployed. In Zhoushan, for instance, employers pay 2 per cent of rural workers' salary as a contribution to unemployment insurance, and no contribution is paid by the rural workers themselves. If they become unemployed, rural workers are entitled to one-off compensation at the rate of 196 yuan per month, which is only 40 per cent of the monthly stipend under the unemployment insurance scheme for urban workers.

In recent years, there has been an increase in the number of rural migrant workers and in the salary earned by migrant workers. The current unemployment insurance policy toward migrant workers discriminates against them. In 2007, Zhoushan municipal government issued the Directive on Promoting a Full-Scale Integration of Urban and Rural Employment, which states that rural workers should enjoy the same unemployment protection standards on a voluntary basis. To take into consideration individual

preferences, rural workers have the flexibility of deciding whether to pay the individual contribution. For those who started paying individual contributions from September 2007, the previous contributions by employers were to be regarded as individual contributions paid. This policy greatly encouraged individual contributions by rural migrant workers.

Source: “Eliminating urban and rural discrimination, rural migrant workers can claim unemployment insurance fund”, in *Zhoushan Human Resources Network*, 24 July 2008, available at: <http://www.zsjob.com.cn/infoAction.do?method=detailContent&newsid=229> (accessed 30 Sep. 2010).

There are some common features in local initiatives to improve migrant workers’ social insurance: lowering the level of contribution by migrant workers to increase coverage, making transfer and continuation possible to accommodate the high mobility of migrant workers, applying the same premium and benefits levels as urban workers on a voluntary basis, etc. These measures all help as there is not yet nationally uniform insurance plan for migrant workers.

Improving occupational safety and health

Since many migrant workers work in hazardous jobs, occupational safety and health is an important aspect of their rights in employment. For example, the State Administration of Work Safety estimated in 2006 that migrant workers accounted for 56 per cent of the workforce in the coal mining, metal, dangerous chemicals and fireworks industries. More than 150 regulations and codes on occupational safety have been issued in China, which are not necessarily well enforced. Government should monitor the employers to ensure that they follow the requirement to provide a safe working environment including provision of safety equipment. When migrant workers suffer from employment injury or occupational diseases, the employer should be held responsible regardless of whether a labour contract has been signed.

Strengthening the capacity of labour inspection services to reach out to workplaces for advice and enforcement

In July 2008, a Labour Inspection Bureau was established within the Ministry of Human Resources and Social Security to strengthen labour inspection in the country. This should enable the authorities to promote compliance with laws governing working conditions such as limitations on hours of work.

Box 4.26 Rural migrant workers and hours of work

Long working hours but almost no overtime payment

Most migrant workers have to work long hours, but they rarely get overtime pay. The 2004 State Council Research Report showed that working eleven hours per day and twenty-six days per month are the norm of migrant workers’ life. ... Over 46 per cent of migrant workers work seven days a week and an additional 36 per cent work six days a week,... while 76 per cent of them never enjoy overtime payment even when working on holidays.

...

The Labour Contract Law provides that “employers shall strictly implement the work quota standards and may not compel or in a disguised manner compel workers to work overtime. If an employer arranges for a worker to work overtime, it shall pay him overtime pay.”... Article 85 provides that if the employer arranges overtime without paying overtime pay, the labour administration authority shall order it to pay within a certain time limit.... If the employer fails to comply within the time period, “the employer shall be ordered to pay” damages to the worker at a rate “of not less than 50 per cent and not more than 100 per cent of the payable amount.”... The shift of legislative focus from limiting working hours in the Labour Law to quota-disguised overtime and enforcing overtime payment in the Labour Contract Law is a boon for migrant workers, given the reality of “strong capital, weak labour.”

Source: L. Na: “Is there new hope in labour rights protection for Chinese migrant workers?” in *Asian-Pacific Law & Policy Journal*, 2009, Vol. 10, No. 2, pp. 490 & 502-503.

Mainstreaming gender into migration policies and programmes³⁵

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experience of women as well as men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is gender equality.

**Key gender equality rights at work include:**

- Equality of opportunity and treatment between men and women in employment
- Equal remuneration of men and women for work of equal value
- Maternity protection
- Better balance and sharing of paid and unpaid work between men and women workers with and without family responsibilities.

Policies related to rural migrant workers should aim to eradicate discrimination and inequality against women migrant workers, so that they can enjoy decent working conditions and respect for their fundamental human and workers' rights.

Greater protection for these rights will maximize benefits to all - the women migrant workers themselves, their families and communities, and the sending and receiving areas. For this reason, a gender perspective should be brought into the mainstream of all policies, programmes and activities related to rural migrant workers.

**Checklist for gender mainstreaming in migration policies and programmes**

- Sex-disaggregated data collection and analysis, and application of such data in policies and programmes
- Recognition of the similarities and differences in the migration experiences of different categories of women and men
- Addressing the differential and often discriminatory impacts of legislation, policies and programmes and practices on different groups of women and men, for example:
 - eliminating 'protective' measures for women which restrict their entry into safe and productive work
 - eliminating discrimination on the basis of pregnancy and family status as it puts the responsibility of human reproduction exclusively on women
 - ensuring the reproductive rights of men and women migrant workers of child bearing age and maternity protection for women migrant workers
- Voice and representation of women migrants so that their views and perspectives are taken into account in policy making and decision making mechanisms

³⁵ ILO: *International labour standards on migrant workers' rights, Guide for policymakers and practitioners in Asia and the Pacific* (Bangkok, 2008).

- Extension of labour protection to all economic sectors and occupations, including those dominated by women migrant workers such as domestic work
- Promotion of equality of opportunity and treatment for women migrant workers by designing special measures to combat harmful gender stereotypes and eliminate discrimination.

5.3 Role of social partners



The State has a major responsibility in ensuring equality at the workplace, but non-state sectors and institutions, such as workers' and employers' organizations or collective bargaining, have an equally critical role to play.

ILO: *Equality at work: Tackling the challenges* (Geneva, 2007), p. 53.

Workers' organizations

Workers' organizations can play the following roles to assist rural migrant workers:

- Actively organize migrant workers, including women, and assist them in forming their own organizations to ensure that they have effective voice and representation
- Inform members and ensure that all workers, including migrant workers, understand their rights and important national and local policies and regulations that apply to them
- Network with workers' organizations in sending and receiving areas to ensure that migrant workers are informed of their rights and are provided with assistance throughout the migration process
- Work with other social partners and migrant workers' associations to ensure better representation and participation in economic, social and political life
- Integrate the specific concerns of male and female migrant workers in collective bargaining processes and social dialogue
- Maintain good working relationships, cooperate and exchange information with government, employers' organizations and NGOs to advocate for informed, transparent and rights-based migration policies.

Box 4.27 Good Practice – ACFTU organizes rural migrant workers in China

In October, 2004, the All-China Federation of Trade Unions (ACFTU) issued the Notification on Organizing Workers from All Types of Enterprises, Public Institutions, and Governmental Organs to Join Trade Unions, requiring "Workers working in all types of enterprises, public institutions, and governmental organs and having established labour relations with employers shall be organized to join in trade unions, regardless of their registered household residences, employment means, employment time." Since then, the population of rural migrant workers in Chinese trade unions has constantly been on the rise. In 2005, 21 million rural migrant workers joined trade unions. As of June 2008, the total membership of rural migrant workers had reached almost 67 million, with a trade union participation rate of 51 per cent.

At the 15th National Congress of ACFTU held in October 2008, 47 migrant workers were elected to attend. It is the first time migrant workers have attended the meeting. They represented more than 66 million people who come from rural areas and have jobs in cities.

The ACFTU has been playing an active role in reaching out to rural migrant workers. It has taken a series of favourable measures for rural migrant workers, providing them with free legal consultancy services, promoting their equal payments with other employees, requiring construction companies to settle wage payments in arrears and to follow the monthly settlement practice. As of the end of July 2007, trade unions at all levels had positively helped the government solve the issue of wage payments in arrears for such workers. The total amount of settled wage payments in arrears nationwide had reached up to 43.32 billion Yuan. In 2007, the ACFTU legal assistance service division provided employees with 75,000 consultations and drafting of legal documents, handled 46,000 legal assistance cases, among which 29,000 cases were settled and to a great extent benefited rural migrant workers.³⁶

Box 4.28 Good Practice – Trade union offering legal aid to migrant workers in Kunming

Zhong Xianyong was a rural migrant worker, who came from Zhaotong, Yunnan and worked in a Kunming company. His right hand was crushed and broken by a machine where he worked. His boss wanted to provide 10,000 Yuan to privately settle this accident since he had no labour contract. Although Zhong knew this was unjust, he did not know how to safeguard his own rights. As he had no other choice, he was even tempted to take extreme action to "fight to the death."

Fortunately, the Centre for Safeguarding Migrant Workers' Rights under the Kunming Municipal Federation of Trade Unions learned about this incident and immediately assigned a volunteer lawyer to provide legal assistance for Zhong and help him to legally and lawfully take the right actions.

"Without spending a penny myself, the trade union's lawyer successfully helped me get 8,000 yuan pre-paid compensation. I never would have dreamed this," Zhong said excitedly.

Within two years after the Centre was established by the trade union, it had solved 12,000 cases of wage arrears for rural migrant workers, and claimed wage payments up to 78 million Yuan for more than 20,000 rural migrant workers, provided legal assistance services 748 times, and helped 810 rural migrant workers with industrial injuries get a total compensation payment of up to 3.26 million Yuan. As the legal assistance system operated by the trade unions is further improved, more and more rural migrant workers like Zhong can get professional and effective legal assistance provided by trade unions when fighting for their legal rights.

Source: "Protecting rural migrant workers, the trade union opens its arms wider and wider", in *China Youth Daily*, (16 Oct. 2008).

Employers' organizations

Employers' organizations are helpful in:

- Raising awareness on migrant workers' issues among employers, particularly those that hire large numbers of migrants, and secure their involvement in promoting migrants' rights and welfare
- Raising awareness of hiring practices and working conditions among employers to promote the principle of equal treatment between local and migrant workers
- Adopting and promoting employers' legal obligations, codes of conduct and practice, including the signing of labour contracts, and payment of social insurance premiums
- Cooperating with governments, trade unions, and NGOs to advocate for informed, transparent and rights-based migration policies, including the prevention and protection against abusive migration practices such as trafficking in persons, forced labour and child labour

³⁶ "Helping rural migrant workers to safeguard their lawful rights", in *China Network* (16 Oct., 2008), http://www.china.com.cn/news/txt/2008-10/16/content_16623248.htm (accessed 30 Nov. 2010).

- Integrating the specific concerns of male and female migrant workers in collective bargaining processes and social dialogue
- Improving career entry and progression for migrant workers, for example, through the provision of vocational training and educational opportunities.

Non governmental and civil society organizations

Non-governmental Organizations (NGOs) and civil society organizations (CSOs) primarily provide rural migrant workers with legal assistance, training, consultancy, and other types of assistance, such as entertainment exchanges and other services. Meanwhile, there are some NGOs dedicated to serving women migrant workers and children of migrant workers. In general, China's NGOs serving rural migrant workers are still in a preliminary state for they are small in scale³⁷ in terms of number, funding, number of staff, resource mobilization capability, and the target population served.

The role of NGOs mainly includes:

- Advocating the observance of migrant workers' rights by actively participating in the process of dialogue with government, employers' and workers' organizations
- Forming partnerships with existing trade unions or workers' associations, and maintaining good relationships with employers and the government
- Advocating the social integration of migrant workers, respect for cultural diversity and prevention of discrimination
- Promoting public education and awareness-raising campaigns regarding the contributions migrant workers make to the cities in which they work
- Strengthening the capacity of migrant workers in legal literacy, vocational skills development, and organizing skills and opportunities
- Creating and reinforcing support networks for migrant workers
- Creating incentives for enterprise creation and development, such as small business development by men and women migrant workers in sending and receiving areas.

Box 4.29 Shenzhen Institute of Contemporary Observation (ICO) serves migrant workers

The Institute of Contemporary Observation (ICO), founded on 18 March 2001, is a civil society organization dedicated to labour development and corporate social responsibility. It drives China's sustainable development through various means, such as research, labour rights advocacy, social responsibility consultation, education and training, legal aid, community service, etc.

ICO has developed various vocational skills training and self-protection awareness raising projects targeting migrant workers. In March 2004, in collaboration with UC Berkley, ICO built a community school for children of migrant workers.

ICO endeavours to safeguard labour rights of migrant workers with a focus on those working in the Pearl River Delta region and plants located in China's coastal areas. During the past four years, ICO has carried out training projects for managerial staff and workers in 15 enterprises, established internal workers' complaint mechanisms in 500 plants, conducted CSR inspection in over 150 suppliers of multinational corporations (MNCs), provided free legal assistance to over 10,000 migrant workers, supplied free or low-cost cultural education and vocational skills training for over 1,500 ordinary community workers. ICO's work has benefited more than 200,000 people directly and indirectly.

Source: ICO Institute of Contemporary Observation: <http://www.ico-china.org/> (accessed 30 Nov. 2010).

³⁷ "Rural Migrant workers working in cities: current status, trend, our mission" in *Minutes on Forum on Rural Migrant Workers Working in Cities*, Beijing (Oct. 2006).

Section B. Session guide



Section B. Session guide

Training map for Module 4

Unit. 4.1 Discrimination based on social origin: International concepts and principles for equality		1 hour
Learning objectives	- Define the concept of ‘social origin’ and describe common forms of discrimination on the ground of social origin - Identify principles, policies and practical measures to address discrimination on the ground of social origin as laid down in international standards	
Training aids	Section A. Unit 4.1. Discrimination based on social origin: International concepts and principles for equality Section C. Exercise 1. Rules of the game: Role-play	
Unit 4.2. From discrimination to equality at work for rural migrant workers in China		4-4.5 hours
Learning objectives	- Recognize the common forms of discrimination against rural migrant workers in China - Describe the Chinese legal and policy framework prohibiting discrimination against rural migrant workers and consider practical measures to promote equal opportunity and treatment at work for these workers	
Training aids	Section A. Unit 4.2. From discrimination to equality at work for rural migrant workers in China Section C. Exercise 2. Myths about migrant workers: Debate Section C. Exercise 3. Different forms of discrimination against migrant workers: Case studies Section C. Exercise 4. Rural migrants, the labour dispatch system and equality: Case study Section C. Exercise 5. New trade union strategies to protect the equal rights of migrant workers: Case study Section C. Exercise 6. Action planning for rural migrant workers’ equality	
Total Module 4		5 – 5.5 hours

Session plan for Unit 4.1 Discrimination based on social origin: International concepts and principles for equality

Overview

This unit outlines the basic concepts related to discrimination on the basis of social origin. It describes past and contemporary forms of this type of discrimination in different countries and illustrates how this type of discrimination manifests at different stages of the employment cycle. The unit introduces the international principles, strategies and measures for the elimination of discrimination based on social origin and concludes with highlights of action to promote equality for all workers irrespective of their social origin.



Learning objectives

By the end of unit 4.1 participants should be able to:

- Define the concept of 'social origin' and describe common forms of discrimination on the grounds of social origin
- Identify principles, policies and practical measures to address discrimination on the ground of social origin as laid down in international standards.



Step-by-step session plan

Step 1. Introduction of learning objectives		1 min. 
Aim	To clarify the objectives of the Unit	
Step 2. Exercise 1. Rules of the game: Role-play		30 min.
Aim	To experience power and powerlessness, and discuss discrimination on the basis of social origin	
Training aids	Section C. Exercise 1. Rules of the game: Role-play	
Step 3. Presentation and discussion: Discrimination based on social origin: International concepts and principles for equality		20 min. 
Aim	To define the concept of 'social origin' and to describe principles, policies and practical measures to address common forms of discrimination on the grounds of social origin as laid down in international standards	
Training aids	Section A. Unit 4.1 - 1 What is discrimination based on social origin? Section A. Unit 4.1 - 2 Discrimination based on social origin: Definitions Section A. Unit 4.1 - 3 Multiple forms of discrimination Section A. Unit 4.1 - 4 Discrimination based on social origin at different stages of the employment cycle Section A. Unit 4.1 - 5 Strategies and measures for the elimination of discrimination based on social origin	
Tips	Make the presentation as interactive and lively as possible. Refer to practical examples of discrimination on the grounds of social origin to help participants to understand this concept and its many manifestations. Involve participants by asking them to share examples from their own experience. Briefly introduce the different elements of a national policy to promote equality in employment, as	

	required by Convention No. 111 and the roles of different stakeholders in eliminating discrimination on the ground of social origin.	
Step 4. Round-up: Key learning points		10 min.
	• Social origin is one of the seven prohibited grounds of discrimination under Convention No. 111. Discrimination based on social origin arises when an individual's membership in a class, socio-occupational category or caste determines his or her occupational future and prospects in work and in life. • Discrimination on the grounds of social origin takes many forms in different countries depending on the local socio-economic systems. Discrimination against rural migrant workers in China is a form of discrimination based on social origin. • Discrimination on the grounds of social origin is often engrained not only in people's attitudes but also in societies' institutions. This is known as institutional(ized), structural or systemic discrimination. Gradual but substantial progress has been made in many countries to outlaw this type of discrimination, but it continues to be an obstacle to achieving equality of opportunity and treatment at work. • Countries with a history of structural discrimination against people of a certain social origin should adopt comprehensive national policy measures to promote equality at work for people from different social groups. Action should be taken to adopt and enforce laws, implement practical measures in a wide range of fields ranging from education to training to employment promotion and provision of adequate labour and social protection, to educating and mobilizing labour market institutions and actors, including the social partners as well as society at large to promote equality in the labour market.	
Total Unit 4.1		1 hour

Session plan for Unit 4.2 From discrimination to equality at work for rural migrant workers in China

Overview

This unit gives an overview of the legal and policy changes in China related to regulating employment and occupation for rural migrant workers within the country's cities. It analyses the main causes of inequality and describes common forms of discrimination of rural migrant workers at different stages of the employment cycle. It gives an overview of the legal, institutional and promotional measures taken by government, and finally highlights the roles of other actors in bringing about equality at work for rural migrant workers.



Learning objectives

By the end of unit 4.2 participants should be able to:

- Recognize the common forms of discrimination against rural migrant workers in China
- Describe the current Chinese legal and policy framework prohibiting discrimination against rural migrant workers and consider practical measures to promote equal opportunity and treatment at work for these workers.



Step-by-step session plan

Step 1. Introduction of learning objectives		1 min. 
Aim	To clarify the objectives of the Unit	
Step 2. Exercise 2. Myths about rural migrant workers: Debate		20 min.
Aim	To differentiate between facts and opinions on rural migrant workers and introduce their right to equality at work.	
Training aids	Section C. Exercise 2. Myths about rural migrant workers: Debate	
Step 3. Presentation and discussion: From discrimination to equality at work for rural migrant workers in China - 1		20 min. 
Aim	To identify the institutionalized forms of discrimination that rural migrant workers face in the Chinese labour market, and to describe the current national policy framework to prohibit discrimination and promote equal opportunity and treatment for rural migrants in urban labour markets.	
Training aids	Section A. Unit 4.2 - 1 Who are rural migrant workers in China? Section A. Unit 4.2 - 2 China's legal framework on equality at work for rural migrant workers Section A. Unit 4.2 - 3 Main causes of inequality at work for rural migrant workers Section A. Unit 4.2 - 4 The current situation of equality at work for rural migrant workers in China	
Tips	Make the presentation as interactive as possible. Give a brief overview of the gradual evolution of the national legal and policy framework from controlling migration to promoting equal opportunity and treatment for rural migrant workers in urban labour markets. Highlight the relevant provisions from the Labour Contract Law and the Employment Promotion Law. Invite participants to share	

	examples of discrimination faced by Chinese rural migrants at the different stages of the employment cycle and discuss the main causes for persisting inequalities, referring to discrimination against rural migrant workers in access to employment and occupation, equal remuneration, job security, exposure to occupational safety and health hazards and social security. Emphasize points not mentioned by the participants.	
Step 4. Exercise 3. Different forms of discrimination against migrant workers: Case studies		40-50 min.
Aim	To analyse different forms of direct and indirect discrimination against migrant workers emanating from labour market policies and practices.	
Training aids	Section C. Exercise 3. Different forms of discrimination against migrant workers: Case studies	
Step 5. Exercise 4. Rural migrants, the labour dispatch system and equality: Case study		40 min.
Aim	To discuss the labour dispatch system and analyse discriminatory effects of seemingly neutral labour practices on rural migrant workers	
Training aids	Section C. Exercise 4. Rural migrants, the labour dispatch system and equality: Case study	
Step 6. Presentation: From discrimination to equality at work for rural migrant workers in China – 2		20 min.
Aim	To consider the various measures undertaken by the Chinese government and other actors to promote equality at work for rural migrant workers	
Training aids	Section A. Unit 4.2 – 5 Action to promote equality at work for rural migrant workers in China	
Tips	Make the presentation as participatory as possible. Invite participants to share good practice examples and experiences from the work done by their organizations to promote equality for rural migrant workers. Summarize the discussion with a short presentation highlighting the main measures in the employment, labour and social protection fields and the roles of the different actors in bringing about equality for rural migrants in urban labour markets in China.	
Step 7. Exercise 5. New trade union strategies to protect the equal rights of migrant workers: Case study		40 min.
Aim	To discuss new trade union strategies to promote equality in employment for rural migrant workers in the context of economic globalization	
Training aids	Section C. Exercise 5. New trade union strategies to protect the equal rights of migrant workers: Case study	
Step 8. Exercise 6. Action planning for rural migrant workers' equality		20-40 min.
Aim	To help participants put what they have learned during the course into practice and plan concrete steps for action.	
Training aids	Section C. Exercise 6. Action planning for rural migrant workers' equality	
Step 9. Round-up: Key learning points		10 min.
	Discrimination against rural migrant workers in China is a form of discrimination based on social origin prohibited under Convention No. 111. This type of discrimination stems from the Chinese household registration or “hukou” system, which classifies people as “rural” or “urban” residents with different rights and entitlements. It used to be an institutionalized, direct form of discrimination that was enshrined in the laws and regulations in the country. These laws are now gradually changing towards greater equality between people	

	with rural and urban residence status. • In recent years China has made important achievements in repealing discriminatory regulations and providing rural migrant workers with access to employment in cities. Since the beginning of the economic reform and liberalization, a policy shift has taken place from restricting migration to promoting equal opportunity and treatment for rural migrant workers in urban labour markets. Important milestones in the employment field include the new Labour Contract Law and the Employment Promotion Law. • Even after removal of many discriminatory laws and regulations, rural migrant workers continue to face discrimination in many aspects of employment in practice. Their concentration in precarious work and “atypical”, informal employment and their recruitment through “labour dispatch” or private employment agencies make them very vulnerable to labour rights violations. • Further promotional measures are needed to achieve equality at work for rural migrant workers, including the effective implementation of laws and policies to eliminate institutionalized discrimination. • A gender perspective should be included in public policies to eliminate the multiple forms of discrimination faced by rural migrant women workers. • In addition to government, employers, workers and their organizations, NGOs and associations of migrant workers have a role to play in promoting equality at work for rural migrant workers.
	Total Unit 4.2 4-4.5 hours

Section C. Exercises



Section C. Exercises

Unit 4.1 Discrimination based on social origin: International concepts and principles for equality

Exercise 1. Rules of the game: Role-play³⁸

Instructions for trainers



Aim – To experience power and powerlessness, and discuss discrimination on the basis of social origin.



Time – 30 minutes



Seating arrangements – Make space in the room so that participants can move freely in the room during step 1 and be seated in plenary for step 2.



Training materials and preparation – Prepare labels or batches in two different colours (e.g. green and yellow) for all participants. Write the rules of the game for each colour group on a flipchart.



Steps

Step 1. Role-play - 20 minutes

- Give each participant randomly either a green or yellow label and ask them to wear the label at all times during the game. Tell participants that in this game they will have to behave according to the rules established for the colour of their label.
- Hang the flipchart listing the rules of the game on a wall in a place where participants can see it when moving around the training room, and announce the rules of the game:

People with green labels:

- may not sit on chairs and may not drink anything
- may not be together in one place with more than one other person
- may not refuse to obey a “yellow”, nor argue
- may not talk to a “yellow” unless spoken to.

People with yellow labels:

- may sit on chairs and drink anything
- may join others freely
- may give orders to a “green”
- may talk to anyone in the room freely.

³⁸ Adapted from ILO: *The labour dimension of corporate social responsibility: From principle to practice, Module 4 Promoting equality and diversity in the workplace* (Turin, International Training Centre, 2007).

- Start the role-play and instruct participants to move around and interact with each other in accordance with the rules of the game. During the exercise monitor the behaviour of the “greens” and the “yellows” and take note of differences (e.g. domineering – submissive, loud – silent, arrogant – insecure).
- After 10-15 minutes stop the game and ask participants to return to their seats.

Step 2. Discussion - 15 minutes

- Ask participants how they felt about the game and what they learned. Ask for example:
 - How did it feel to be a “yellow” or a “green”?
 - What was the best/worst thing about being a “green” or a “yellow”?
 - What do you think of these rules?
- Briefly share your own observations on the behaviour of “greens” and “yellows” during the exercise with the group.
- Share the aims of the exercise with the participants. Explain that in many societies people from a certain social origin, that is, a social group, caste or class may find themselves treated differently in life, at school, in training, at work and in other social and economic activities. In this exercise, participants experience how it feels to be part of a superior class (“yellow”) or an inferior class (“green”). Ask participants to further comment on the exercise. Ask them also whether there are any divisions like this in Chinese society. Encourage participants to share their views and facilitate the discussion.
- Round up the discussion as follows:
 - In many societies, people are “labeled” according to their social origin, that is the social group, caste or class they belong to. People are generally treated differently depending on their social origin. People from the “inferior” social group face many types of prejudice and discrimination in life and at work. They are often excluded from equal opportunity and treatment, sometimes due to bias and prejudice of the majority population, sometimes due to laws or other rules set in the society.
 - Convention No. 111 prohibits discrimination on the ground of social origin and requires ratifying States to take active measures to promote equal opportunity and treatment in employment and occupation for all workers, regardless of their social origin.
 - In China, the most visible form of differential treatment of persons on the ground of their social origin is the household registration system classifying people either as “rural people” or as “urban people”. While the registration system itself is not discriminatory, the linking of different types of rights and privileges to the registration status leads to discrimination on the ground of social origin.
 - In recent decades, in particular the last five years, achievements have been made in China in repealing labour market regulations limiting rural migrant workers’ access to urban employment. However, in practice rural migrant workers still face many challenges in the labour market.
 - To tackle discrimination and promote equality, it is important to be aware of the effects of discrimination on the basis of social origin and take active measures to remove discriminatory laws, rules and practices and promote equal opportunity and treatment for all people.

Unit 4.2 From discrimination to equality at work for rural migrant workers in China

Exercise 2. Myths about rural migrant workers: Debate³⁹

Instructions for trainers



Aim – To differentiate between facts and opinions on rural migrant workers and introduce their right to equality at work.



Time – 20 minutes



Seating arrangements – Any type of seating arrangement that allows the trainer to walk among the participants for better interaction.



Steps

- Share the aims of the exercise with the participants and distribute the **handout**. Explain that this exercise helps with reflecting on the different ideas that urban residents and employers often have about rural migrant workers. Tell participants that you will read out a few statements and ask them to give their views on them.
- Read out the first statement in plenary and ask for comments. After a few comments, provide the explanation as given in the **Responses**. Do the same for the other 4 statements.
- Round up the discussion as follows:
 - Everybody has a right to their own views and opinions. However, there is a difference between opinions and facts. Many opinions on migrant workers are not based on facts and evidence.
 - Prejudices about rural migrant workers are common among residents in the city where they work, and this blocks the access of these workers to equal employment opportunities and equal treatment at work.
 - It is important to look for facts and develop an objective and fair image of rural migrant workers based on evidence, as a first step to understanding and promoting their equal rights at work.

³⁹ Adapted from: ILO: *In search of decent work – Migrant workers' rights: A manual for trade unionists*, ILO Geneva, 2008.

Exercise 2. Myths about rural migrant workers: Debate



Handout

What do you think about the following statements? And why?

1. Rural migrant workers are a burden to cities
2. Rural migrant workers steal jobs from urban residents
3. Rural migrant workers commit more crimes and are a source of danger in the urban community
4. Rural migrant workers drive down wages
5. Migrant workers are only good for low-end blue-collar jobs

Exercise 2. Myths about rural migrant workers: Debate**Responses****1. “Rural migrant workers are a burden to cities”**

- “Migrant workers are an asset to every country where they bring their labour. Let us give them the dignity they deserve as human beings and the respect they deserve as workers” says Juan Somavia, the ILO Director-General.⁴⁰ Over the last 20 years since the reform and opening up, rural migrant workers contributed 16 per cent of the GDP growth in China.⁴¹ According to the estimates of the provincial government in Sichuan, one of the major sending provinces of migrant workers, between 1979 and 2007, rural migrant workers contributed 22.9 per cent of the province’s GDP.⁴² In Beijing, the city statistics bureau estimated that in 2003, rural migrant workers contributed 83 per cent of the 27.9 billion Yuan increase in the construction industry, 29 per cent of the 103 billion Yuan increase in manufacturing and 49 per cent of the 24.8 billion Yuan increase in wholesale and retail.⁴³ Data from other provinces shows the same evidence.
- Migrant workers account for 57.6 per cent of the labour force in the industry sector and 37 per cent in the service sector. In the sub-sectors, they account for 52.6 per cent in commercial and catering businesses, 68.2 per cent in processing and manufacturing enterprises and 79.8 per cent in construction. In other words, without migrant workers, more than half of the restaurants and nearly 70 per cent of the factories will have to close down, and 80 per cent of the new buildings will never be built.⁴⁴
- In addition, migrant workers living and consuming in cities also contribute to local economic development and create employment. A study in Guangdong province shows that migrant workers in the province spend 47 per cent of their income on living expenses, an average of 2,570 Yuan per annum, compared to 2,825 Yuan of rural residents of the province. The average annual consumption of migrant workers in Guangdong is 51 billion Yuan.⁴⁵

2. “Rural migrant workers steal jobs from urban residents”

- The idea that rural migrant workers are taking the jobs of the local, urban workers is based on the perception that there is a fixed number of jobs in any given labour market and that, therefore, if more people come there will be fewer job opportunities. In fact, each person creates jobs for others. Empirical evidence suggests that migrant workers often act as a complement to local workers and do not compete with them for work. The generally low-skilled rural migrants are usually offered jobs avoided by urban workers,

⁴⁰ ILO web site, <http://www.ilo.org/public/english/protection/migrant/> [24 Nov. 2010].

⁴¹ ILO: *Equality at work: Tackling the challenges*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at work, International Labour Conference, 96th Session (Geneva, 2007) para.126.

⁴² “Provincial Statistical Bureau, Sichuan: Rural migrant workers in Sichuan contributed 22.9 per cent of GDP growth” in *Sichuan Institutional Net*, <http://news.scjg.com.cn/PrintArticle.asp?id=48519> [24 Nov. 2010].

⁴³ “Rural migrant workers have become an indispensable force in the economic development of Beijing” in *Beijing Statistical Information Net*, March 2009 http://www.bjstats.gov.cn/rdht/bxgz/200606/t20060609_43926.htm [24 Nov. 2010].

⁴⁴ H. Wang: “How much have rural migrant workers contributed to China?”, in *People’s Forum*, Issue No. 15, August 2007, available in Chinese at <http://www.rmlt.com.cn/News/200708/20070801424117820.html> [24 Nov. 2010].

⁴⁵ C. Fang (ed.): *Integrated urban rural employment: Exploration and experiments in Guangdong* (Beijing, China Labour and Social Security Press, 2006).

the “dirty, difficult, dangerous and demeaning” jobs, or jobs in sectors that are traditionally affected by strong seasonal fluctuation such as construction and tourism.

- Migrant workers can add to the employment and income of urban workers by releasing them to do higher-paid jobs. The clearest example of this is employing migrant workers to look after children and the household duties so that parents, typically mothers, can engage in paid employment. The presence of migrant workers has also helped to maintain industries that would otherwise have disappeared. Some small enterprises cannot afford the cost of automation and prefer to recruit low-skilled workers. Those jobs filled by migrant workers help these businesses to survive and therefore maintain jobs for supervisors, managers and subcontractors.

3. “Migrant workers commit more crimes and are a source of danger in the urban community”

- It is necessary to distinguish migrant workers from gangsters and criminals. There is no evidence that migrant workers commit more crimes than locals. On the contrary, China’s crime rate has maintained a moderate increase rate up to 2000, although the number of migrant workers soared from less than 100,000 in the early 1980’s to 100 million in 2000. That is to say, the dramatic increase of migrant workers did not result in a dramatic increase of crimes in cities.
- However, it is true that the crime rate among migrant workers has been increasing in recent years, similar to the increase in the crime rate among the overall population. In this regard, factors such as discriminatory policies, unequal treatment, lack of social protection, poor working and living conditions and prejudice among urban residents against migrant workers are all to be blamed. The lack of effective protection of rural migrant workers’ lawful rights is the direct cause of the situation.⁴⁶

4. “Migrant workers drive down wages”

- The theory is that migrant workers will accept lower wages and that this brings down the wages of all workers. Empirical studies on international migration have concluded that the overall immigration impact on the wages of national workers is very small. It is generally estimated that a one per cent increase in the proportion of migrant workers in the labour force lowers wages by only 0.1 per cent.⁴⁷
- The current low cost of rural migrant workers is partly the result of unequal treatment for these workers, for instance, less pay for the same work or work of equal value and not paying for their social insurance.

5. “Migrant workers are only good for low-end blue-collar jobs”

It is true that migrant workers generally have little education and vocational skills. However, through employment in cities, many migrant workers have acquired skills and accumulated more work experience. Governments at the various levels are also improving vocational training for migrant workers. With the improvement in qualifications, migrant workers should have the opportunity to rise to management positions, based on their performance and merit rather than being subjected to prejudice and bias which hinders their access to better jobs.

⁴⁶ J. Huang: “Ten misunderstandings about rural migrant workers in cities”, in *New Weekly*, Issue No. 294, available in Chinese at <http://www.newweekly.com.cn/index/newsview.php?id=444> [24 Nov. 2010].

⁴⁷ R. Munz et. al: *The costs and benefits of European immigration* (Hamburg Institute of International Economics, Hamburg, 2006), <http://hwwi.org> [20 Aug. 2009].

Exercise 3. Different forms of discrimination against migrant workers: Case studies

Instructions for trainers



Aim – To analyse different forms of direct and indirect discrimination against migrant workers emanating from labour market policies and practices



Time – 40-50 minutes



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of 3-6 persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps

- Share the aims of the exercise with participants and distribute the **handout**. Divide participants into small groups of 3-6 persons. Give every group one of the three case studies A, B and C to discuss. Tell each group to select a spokesperson who will present the case study and answers in plenary for a maximum of 3 minutes.
- Reconvene in plenary when the groups are ready (10-15 minutes). Ask each group to give a brief presentation and discuss each case in plenary, starting with case A, then B and lastly C.
- After each presentation, ask other participants to ask questions or comment and have the groups reply. Add points not mentioned by the groups or correct misunderstandings using the **Case responses**, as needed.
- Round-up the discussion as follows:
 - Discrimination against migrant workers may take multiple forms. It may stem from laws, regulations or rules, known as “de jure” discrimination or from actual practices, known as “de facto” discrimination. The cases discussed in this exercise highlight discrimination emanating from court judicial practices, local policies and standard employment contracts. The different forms of discrimination discussed include discrimination in terms of payment of injury compensation, access to employment and occupation, and the right to join and participate in a trade union.
 - Discrimination against rural migrant workers in China is institutional or structural discrimination, because it is entrenched in society’s institutions and public policies. The government needs to continue examining its policies to avoid old and new forms of structural discrimination against rural migrant workers.
 - The cases also illustrate the difference between direct and indirect discrimination. While direct discrimination (in laws, policies or practices) against migrant workers is easy to identify, recognizing the often hidden forms of indirect discrimination is more difficult. Indirect discrimination manifests often in subtle ways as it is often embedded in societal norms and traditions which may be seen as “natural.” However,

the results of indirect discrimination in the labour market often emerge clearly from statistical analysis.

- Indirect discrimination refers to the adverse effects of seemingly neutral policies, requirements or practices on certain groups of people, while these policies, requirements or practices cannot be justified by the inherent requirements of a certain job or occupation.
- When reviewing whether a certain labour market situation or outcome may amount to indirect discrimination, it is necessary to collect information and statistics on the composition of the groups of workers which do and do not experience the negative effects. For example, if a policy or practice has disproportionate negative effects on certain groups, such as migrant workers or women, but not on other groups, such as urban workers or men, there may be a case of indirect discrimination on a ground prohibited in international and national legislation such as social origin or sex.

Exercise 3. Different forms of discrimination against migrant workers: Case studies



Handout for participants

CASES

A. Mr Li's industrial injury

Mr Li was hired by a decoration material shop in Dalian and paid 100 Yuan for every day worked. Before long, Li was seriously injured by falling decoration materials when lifting cargo from a truck. His injury was officially recognized as a Level 8 disability. Because Mr Li had worked in Dalian for quite a long time, Mr Li's relatives lodged a lawsuit claiming that the employer should pay Mr Li damages for disability in accordance with the Dalian urban resident standards. They demanded that the compensation for lost income and working time should be calculated on the basis of Mr Li's actual wage of 100 Yuan per day.

During the court hearing, Mr Li's relatives failed to provide evidence that he had worked in Dalian for a long time. Furthermore, the court did not support their claim for compensation at the rate of urban residents. The court rejected the relatives' claims for compensation for lost income and working time on the grounds that Li's monthly income had been more than 1,600 Yuan and Li had not paid individual income tax. Instead, the level of compensation was determined based on the annual average salary levels of rural migrant workers in Dalian.

In 2006, the average disposable income for every urban resident and for every rural resident in Dalian amounted to respectively 13,350 Yuan and 6,984 Yuan, that is, a difference of 6,366 Yuan. The court ordered the decoration material shop to pay Mr Li a compensation equivalent to six years' average salary of a rural migrant worker in Dalian. Thus the damages paid to Mr Li were eventually 38,169 Yuan less than what would have been payable to a similarly injured worker with an urban household registration status.

- Do you think the Court's decision in Mr Li's case involved discrimination? What type of discrimination?
- What makes it difficult for rural migrant workers to claim work injury compensation?
- What should be done to prevent similar situations from emerging in the future? What kinds of actions can be taken by different stakeholders?

Source: "Compensation for rural migrant is set on a rural standard", in *Sina News Centre* (19 Nov. 2007), <http://news.sina.com.cn> (accessed 20 Aug. 2010).

B. New policy on migrant workers and business people

Beijing municipal government made some adjustments to the policies concerning migrant workers at the end of 2000. Firstly, the government abolished the restrictions on industries and occupations that migrant workers and non-local business people are allowed to work in. Secondly, the government adopted a new policy that set new educational requirements for the access of migrant workers to certain industries. The new regulation means that migrant workers can enter certain industries only if they have the required educational qualifications.

- Assess the policy changes from the non-discrimination point of view. What is the impact of the first policy change?
- Is the second policy discriminatory or not? If yes, why and what type of discrimination is it?

C. Discrimination against migrant domestic workers in Cyprus

The Equality Authority in Cyprus received a complaint from a migrant domestic worker claiming that migrant domestic workers are discriminated against in the country. The complaint referred to a clause in the standard contract used for the employment of migrant domestic workers stating that domestic workers do not have a right to participate in political or trade union activities.

The Equality Authority investigated the case and found that the standard contract used for the employment of migrant domestic workers indeed prevented the employee from participating in political or trade union activities. The standard contract had been prepared without negotiations with trade unions. The Equality Authority also found out that the monthly salary provided in the contract was about one-fifth of the salary level set for Cypriot domestic helpers and less than half of the lowest salary fixed for six different professions.

- What forms of discrimination can you identify in the case? How should the Equality Authority assess the case?
- Who should take action to promote equal treatment for migrant domestic workers? What action can different stakeholders take?
- Briefly discuss the similarities and differences in the labour protection of domestic workers in China and Cyprus. What are priorities for action in China?

Source: Equality Authority of Cyprus: *Decision of 4 November 2005, File No. A.K.I. 2/2005*, <http://infoportal.fra.europa.eu> (accessed 20 Aug. 2010).

Exercise 3. Different forms of discrimination against migrant workers: Case studies**Sample answers****A. Mr Li's industrial injury**

This case is a good example of institutional discrimination against migrant workers. The Court's practice to apply a different standard for the calculation of industrial injury compensation for local urban workers and rural migrant workers is an example of direct discrimination. Differential treatment of rural migrants is unlawful under the Employment Promotion Law, and these types of judgements should be repealed. Industrial injury compensation should be calculated based on a standard that treats all workers equally.

The different compensation standards for workers from rural and urban areas have been under debate in recent years in China. The legitimacy of attaching a "different value" to the lives of workers merely based on their rural or urban household registration status has been constantly questioned. One presumably objective factor that is often referred to in work injury compensation is the different level of living expenses between urban and rural areas. The question, therefore, is whether the various components of the costs should be taken into account when the level of compensation is decided: costs for treatment and rehabilitation in cities, availability of quality health care, follow-up treatment and rehabilitation in the home village, transportation between the home village and the city (multiple trips may be required), etc.

Seeking compensation for industrial injuries is very challenging for rural migrant workers in China. One major technical obstacle is that migrant workers often do not have employment contracts, which they can show in the Court to prove the existence and length of their employment relationship with the employer. The situation has improved since January 2008 when the Labour Contract Law came into force as this Law makes the signing of labour contracts obligatory. Other problems relate to migrant workers' lack of awareness of their labour rights and relevant regulations. All these factors lead to difficulties in claims or lawsuits.

The problems faced by migrant workers in claiming work injury compensation have very negative effects as they actually provide incentives to employers to employ more migrant workers in high risk and hazardous occupations. Instead, employers should ensure proper injury compensation, ensure safety standards at work and educate workers on safe work. In the long run this saves not only lives but also costs, because the costs of safety improvements and education are less than the costs of accidents which involve direct losses due to the accident plus the compensation to the injured employee.

In summary, discriminatory practices in the calculation of injury compensation should be repealed. Strictly enforcing the signing of labour contracts and raising rights awareness among migrant workers are among the key measures that should be taken to prevent similar situations from emerging in the future. Government agencies, trade unions and employers' organizations should also take active measures to support enterprises in improving their occupational safety and health management.

B. Beijing's new policies for migrant workers and business people

This case is a good example of direct and indirect discriminatory effects of policies. The first policy change in Beijing municipality was positive in the sense that it removed outright direct discrimination against migrant workers in access to employment or starting their own business.

However, the second new policy seems to involve more subtle forms of discrimination against migrant workers as it may involve direct and/or indirect discrimination against migrant workers. First, to determine whether the policy involves direct discrimination, it is important to consider whether the same educational requirements are set for urban and rural migrant workers entering these industries and occupations. If the educational requirements set for rural migrant workers are higher than those set for urban workers, the policy involves direct discrimination against migrant workers.

In addition, even if the same educational requirements would apply to both urban and migrant workers, the policy can still have indirect discriminatory effects. The key question to review is whether the educational requirement is necessary for adequate job performance, in other words, is an inherent requirement of the job. If the educational requirement is set unreasonably high in light of the job content, this will disproportionately disadvantage rural migrants who in general have lower education levels than urban workers.

For example, if the educational requirement for entering specific sectors or positions is raised from junior high school to senior high school for all urban and rural workers, while the jobs in question can be effectively performed by people with a junior high school education, the actual effect of the policy is that many migrant workers will be excluded. Rural migrants will be disproportionately affected by this seemingly neutral policy, due to their lower average education level.

Key for assessing whether this may be a case of indirect discrimination against rural migrant workers is to, first, review the relation between the educational levels required and the contents of the jobs in question and, second, to look at education statistics, comparing the educational levels of workers with urban and rural residence status.

C. Discrimination against migrant domestic workers in Cyprus

This case highlights that the right to freedom of association, including joining and participating in a trade union, is a fundamental right of all workers. Denial of this right to some workers can amount to discrimination. In addition, it discusses disparity between the pay and benefits received by migrant domestic workers from other countries in comparison with local domestic workers. The Equality Authority in Cyprus found the standard contract used for the employment of migrant domestic workers to be discriminatory on the grounds of ethnic or national origin.

The European Commission directives 2000/43/EC and 2000/78/EC that are applicable in Cyprus prohibit any discrimination on the ground of racial or ethnic origin in working conditions or terms of employment including the participation in trade unions. The Equality Authority noted that the standard contract used for the employment of migrant domestic workers in Cyprus was inconsistent with the principles set in these standards and requested the Ministry of Labour and the Migration Department to revise the standard contract. The Ministry of Labour and the Migration Department complied with the request made by the Equality Authority and removed the prohibition against political and trade union activity from the labour contract of migrant domestic workers.

The Equality Authority also noted that the monthly salary provided in the standard contract was about one-fifth of that of Cypriot domestic helpers and less than half of the lowest salary fixed for six different professions. It further used statistical data to assess the wage situation and concluded that disparity in the pay and benefits received by migrants in comparison with their Cypriot counterparts amounted to indirect discrimination. The Equality Authority's request for measures to improve the salary status of these workers has led the new Interior Minister to propose a salary increase, which, however, has not been implemented yet. The establishment of the principle that disparity in pay between migrants and Cypriots amounts to discrimination can have far-reaching implications, as this phenomenon is acute and widespread in Cyprus.

In Cyprus the situation was solved mainly through cooperation between different government agencies. Other stakeholders that can play an important role in solving similar problems in the labour market include trade unions and migrant workers' rights groups. It is worth noting that in many countries, including China, wage setting for different occupations is mostly done through collective bargaining and wage negotiations. Noting the importance of wage setting through collective bargaining, it is clear that giving domestic workers access to trade union representation may help in raising their wage levels to a more equitable level.

In China domestic workers are currently outside the scope of application of labour legislation. This means that the provisions on wages, working hours, social security and other aspects of labour protection, such as the right to join a trade union do not apply to them. Considering that most of the domestic workers in China are migrant women, their exclusion from labour protection constitutes a form of indirect discrimination on multiple grounds, that is, sex and rural migrant status or social origin. New national guidelines for the protection of domestic workers are currently under discussion in China.

Exercise 4. Rural migrants, the labour dispatch system and equality: Case study

Instructions for trainers



Aim – To discuss the labour dispatch system and analyse discriminatory effects of seemingly neutral labour practices on migrant workers.



Time – 40 minutes



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of 3-6 persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps

- Divide participants into small groups of 3-6 persons. Distribute the **handouts** and ask the groups to read and discuss the case. Advise each group to select a spokesperson who will present the case study and answers in plenary for a maximum of 5 minutes.
- Reconvene in plenary when the groups are ready (10-15 minutes). Ask each group to give a brief presentation and discuss the case in plenary.
- After each presentation, ask other participants to ask questions or comment and have the groups reply. Add points not mentioned by the groups or correct misunderstandings using the **Case responses**, as needed.
- Round-up the discussion as follows:
 - In the past years violations of rural migrant workers' labour rights, such as the right to timely payment of wages or decent working hours, have been very common in the Chinese labour market. While such violations clearly breach labour law, they only constitute discrimination if a comparable group of workers, such as local urban citizens, is not or is significantly less affected.
 - To analyse whether a labour practice constitutes discrimination, it is necessary to collect factual information on the composition of the group(s) negatively affected to assess whether any group has been disproportionately disadvantaged compared to other groups.
 - The labour dispatch system is a practice that has become more and more common in the labour market in China and abroad. It refers to workers recruited by "labour dispatch" agencies, also known as "temporary work" or "temporary staffing" agencies. In international labour standards the term used for these companies is private employment agencies. The workers recruited in such a way are referred to as "dispatched or temporary" workers.
 - While legal frameworks to protect dispatched workers have been put in place both at the international and the national level, dispatched workers are still often treated in less favourable terms in companies.

- It is fairly common for enterprises to seek to cut costs by sourcing services that were previously provided by regular workers (directly recruited workers in a long-term relationship) from a dispatch or temporary staffing agency. Sometimes arrangements are made to transfer previous company staff to the dispatch agency and to rehire them to the company as dispatched workers. If such recruitment practices affect mostly employees with a rural migrant background, the decision has a disproportionate negative impact on migrant workers and thus constitutes indirect discrimination on the grounds of social origin, including rural migrant status within China.

Exercise 4. Rural migrants, the labour dispatch system and equality: Case study**Handout****A letter to the Farmers' Daily**

I am an ordinary rural migrant worker. I have encountered some problems that rural migrant workers like me always face. Hopefully, my claim to the newspaper might call the attention of the entire society to our hardship and puzzles in our lives. Meanwhile, I do expect that the news agency may help us solve these issues.

On 1 September, 1999, I was hired as an electrician by the Beijing Water Conservancy Hospital. Till now, I have been working there for seven years. However, during the past seven years, I have never enjoyed leave on Sundays and Saturdays and legal national holidays during the May Day, National Day and Spring Festival. I could not get double wages for working on Sundays and Saturdays, or the three-time wages for working on national holidays. The hospital demanded me to work for 24 hours, without [compensating me for any overtime]. If I go home for ten days (leave of absence), the hospital will deduct 10 days from my wage. I am not entitled to annual leave, not to mention a labour contract.

In September 2005, the hospital fired Liu Yongde, a rural migrant worker responsible for [the maintenance of pressure vessels]. Liu lodged a lawsuit through the labour mediation authority against the hospital. And the hospital eventually compensated Liu with 20,000 Yuan.

Due to such lesson, since 1 January, 2006, the hospital provided the three types of basic social insurance for all the employed rural migrant workers. However, it only paid us the minimum wage rates and refused to sign labour contracts with us. In February 2006, I once talked with all the hospital leaders to sign labour contracts with us. My colleagues come from different cities. Among them, Li Chunlong (medical waste cleaner) is a resident from Mentougou District on the suburb of Beijing, with 11 years of working experience in the hospital. Wang Shuguo is from Hebei, with 9 years of working experience. Song Weicai is from Hebei, with 7 years of working experience. The hospital leaders felt that they could not postpone any more. Then they made a property management company manage us. However, it took two years of probationary period to formally get employed by this company. This means that our working years in the hospital are all in vain. And this company made no promise to let rural migrant workers enjoy Sundays and Saturdays, legal holidays, or their legal rights and compensation for extended working hours.

On the afternoon of 3 March, 2006, Hou Xianrong, the director responsible for personnel affairs met with us, but did not allow us to ask any questions or give any explanations. Then, Huang Can (working in the registration room) asked why we had no extra payments for additional work on Sundays and Saturdays. Hou interrupted and sternly criticized Huang without letting her finish, indicating that he would talk about her issues alone with her afterwards. We also mentioned that we had been working around the clock, without Sunday and Saturday holidays, not to mention legal holidays and festivals, no holiday overtime payments and compensation. Hou more sternly shouted, "No way".

To prevent us from resorting to the authorities, the hospital will soon make the property management company take over our employment. What shall we do?

Questions for discussion:

- Make a list of the violations of Chinese labour legislation that you can identify in the case.
- Are the labour law violations you identified discrimination? Discrimination on what grounds? What information would you need to collect to analyse whether the case involves discrimination?
- Why would a hospital transfer its long-time employed rural migrant workers to a dispatch company?
- If the writer and his colleagues are transferred to the property management company, what kinds of rights do they have with regard to the property management company (the labour dispatch agency) and the hospital (the user company)?

Source: "A letter to Farmers' Daily from rural migrant workers in Beijing Water Conservancy Hospital" in *Farmers' Daily*, 20 March, 2006.

Exercise 4. Rural migrants, the labour dispatch system and equality: Case study



Case responses

A letter to the Farmers' Daily

The case involves multiple violations of Chinese labour law, including failure to sign a labour contract, violation of working time and annual leave provisions, failure to pay overtime compensation, etc. These are all violations of the Labour Law, the Labour Contract Law and other relevant regulations, and the victims have the right to ask the competent authorities to deal with these matters according to the law, or seek relief from labour dispute settlement authorities, such as arbitration or the people's court (Labour Law Art.77, Labour Contract Law Art. 77, Law on the Mediation and Arbitration of Disputes Art. 2).

To determine whether the above violations also constitute discrimination, it is important to analyse who the adversely affected workers are in terms of their social origin or rural migrant status in China, their sex, ethnicity, or any other ground covered in the non-discrimination legislation. If it is found out that a large majority of workers who were denied labour contracts and labour protection in accordance with the law are migrant workers, and a majority of workers who do have proper labour contracts and labour protection in accordance with the law are local urban residents, then the case involves discrimination on the grounds of migrant status. Discrimination against migrant workers is prohibited under the Employment Promotion Law, and the writer and his colleagues could take the case to the people's court under Article 62 of the Employment Promotion Law.

Hiring employees through labour dispatch companies has become a more and more frequent recruitment practice in the past few decades. Sometimes, the practice meets a genuine need of the employer, such as when the job for which the person is hired is temporary in nature (e.g. to cope with a temporary increase in the workload or to replace a regular worker who is ill or on maternity leave). Sometimes, however, the choice to recruit a worker through a dispatch or temporary work agency is not inspired by legitimate business needs, but by a desire to obfuscate the employment relationship. When the operation of dispatch companies is not properly regulated in the country, many employers take advantage of dispatch companies to avoid their own legal obligations with regard to issues such as signing a labour contract, overtime work, legal holidays, dismissal and minimum wage.

The increase in atypical employment and the supply of workers through labour dispatch companies have made it necessary to establish a legal framework to govern the triangular relationship between a worker, his or her legal employer (the dispatch agency) and the third party (the user company). The ILO Private Employment Agencies Convention, 1997 (No.181) provides an institutional framework for both the regulation of temporary work agencies and the protection of the workers hired by these enterprises and further supplied to the user enterprises.⁴⁸

In China, the supply of workers through labour dispatch or temporary staffing agencies is governed by the Labour Contract Law. The law regulates both the establishment of a labour dispatch agency and the rights and responsibilities of the three parties involved, that is, the worker, the dispatch agency and the user company. An employing unit is not allowed to establish

⁴⁸ A. Bronstein: *International and comparative labour law* (Geneva, ILO, 2009), pp. 12-16, 39-42.

a labour dispatch unit within the company to dispatch workers to the company or its subsidiaries (Art. 67). With reference to this it seems the Beijing Water Conservancy Hospital's plans in the current case are not in compliance with the Labour Contract Law.

The labour dispatch unit is the workers' legal employer, and it should fulfill its related responsibilities in accordance with the law. It should also sign an employment contract of a minimum of two years with the worker (Art. 58). The user company should fulfill the following responsibilities:

1. Abide by the work standards set out by the State and provide corresponding working conditions and protection
2. Inform the dispatched workers of the work requirements and remuneration
3. Pay overtime work and performance bonus, and provide welfare benefits related with job positions
4. Provide necessary training required by the job positions for the dispatched workers
5. Apply the normal wage adjustment mechanism to the dispatched workers who are employed continually (Art. 62).

Furthermore, the dispatched workers enjoy the same rights of equal pay for equal work as the workers in the employing unit (Art 63).

While dispatched workers in China are provided basic labour protection under the Labour Contract Law, the status of a dispatched worker in a company is in many ways less stable and less protected than that of a regular worker. For this reason transferring to a dispatch agency can be seen as having negative impacts on the workers. Consequently, from a discrimination point of view, the question arises as to who the negatively impacted workers are. If the staff information shows that the majority of workers transferred to a dispatch agency are rural migrants, the transfer decision may be considered discrimination on the ground of migrant status.

As indicated by this case study, hospitals and other employers will not take such measures towards the technical occupations (doctors, nurses), but are more likely to transfer the supplementary/support occupations (carers, cleaners, security guards, etc.) to dispatch companies. The issue here is that most of the people working on the supplementary/support posts are migrant workers. Therefore, information should be collected on the composition of the group of dispatched workers. If migrant workers comprise the majority of dispatched workers and are subject to inferior treatment, there may be a case of indirect discrimination against migrant workers.

Exercise 5. New trade union strategies to protect the equal rights of migrant workers: Case study

Instructions for trainers



Aim – To discuss new trade union strategies to promote equality in employment for rural migrant workers in the context of economic globalization.



Time – 40 minutes



Seating arrangements – Small group seating around tables enabling participants to work in groups of 3-6 persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps

- Share the aims of the exercise with the participants and distribute the **handout**. Divide participants into small groups of 3-6 persons and ask the groups to read and discuss the case. Tell each group to select a spokesperson who will present the case study and answers in plenary for a maximum of 5 minutes.
- Reconvene in plenary when the groups are ready (10-15 minutes). Ask each group to give a brief presentation and discuss the case in plenary.
- After each presentation, ask other participants to ask questions or comment and have the groups reply. Add points not mentioned by the groups or correct misunderstandings using the **Case responses**, as needed.
- Round-up the discussion as follows:
 - Migrant workers are often concentrated in menial low-end jobs with poor job security. Especially emergence of new forms of “atypical” employment – such as temporary work, dispatch work, part-time work and work as independent contractors – makes it challenging for trade unions to organize and represent migrant workers.
 - In China, the ACFTU started organizing migrant workers in 2003 and has since then provided that protecting migrant workers’ rights should be a key task of trade unions in their future development.⁴⁹
 - When organizing and representing migrant workers it is important to note that the needs and interests of migrant workers are often different from those of the traditional trade union members. Due to the precariousness of their employment status, rural migrant workers are more vulnerable in the labour market than urban workers, and they need strong representation to protect their right to equal treatment and decent employment and working conditions.

⁴⁹ “Chinese trade unions to strengthen protection of migrant workers’ rights” in *People’s Daily*, 12 Sep. 2003, http://english.peopledaily.com.cn/200309/12/print20030912_124163.html (accessed 30 Sep. 2010).

- The trade unions are identifying new ways to reach out to these new members, and to formulate effective strategies to protect the rights and interests of their membership in the changing market situation and the globalizing labour market.

**Exercise 5. New trade union strategies to protect the equal rights of migrant workers:
Case study****Handout****CASE**

Lianhua is a Chinese supermarket chain with more than 2,000 outlets in China. It buys its meat supplies from a wide range of small, local meat-processing companies. These small companies, in order to stay competitive in terms of price and delivery speed, are employing more and more workers through temporary work or staffing agencies. The majority of workers recruited by these agencies are (temporary) migrant workers, some of whom come from as far away as Xinjiang. In recent years, ACFTU has been reaching out to these workers, who earn significantly less than the permanent workers who are predominantly Han Chinese, despite the demanding working conditions to which the migrant workers are exposed.

1. Imagine that you are a trade union leader wanting to improve the salaries and working conditions of the agency workers in the meat industry. What issues would you raise and with which parties would you raise them?
2. Then imagine that you are the owner of one of the small meat-processing companies. How you would react to the arguments presented by the trade union?
3. Picture the whole meat supply chain from the local meat-processing companies up to Lianhua company. Brainstorm to come up with new and innovative approaches that trade unions or other stakeholders could take to improve wages and labour conditions in the whole supply chain. Make a list of these measures.
4. Do you think the workers in the small meat-processing companies are discriminated?

Exercise 5. New trade union strategies to protect the equal rights of migrant workers:
Case study**Responses**

This case study is an adaptation of a real-life case involving the British trade union UNITE and the British transnational supermarket chain TESCO Lotus. UNITE is a trade union with two million members covering a wide range of industrial sectors, including “food, drink and tobacco”. In recent years UNITE has reached out to the unorganized, among them migrant workers working in meat factories.

The retail sector in the UK is dominated by large retailers such as TESCO that are able to control the market prices for meat and other products. Under pressure to keep prices down and delivery periods short the meat factories increasingly rely on the employment of workers who are recruited by private employment agencies, also known as labour dispatch, temporary work or staffing agencies. The overwhelming majority of these temporary staffing agency workers are migrant workers, working at lower pay than the (mostly British) permanent workers. This has raised claims of racial discrimination.

When formulating a trade union strategy to raise wages of migrant workers working in the meat industry it is important to pay attention to the characteristics of the supply chain in this industry. The legal employers of the migrant workers are the labour dispatch agencies at the bottom of the supply chain. The traditional trade union approach would have been to organize the workers and bargain collectively at the workplace level factory by factory. Due to the pressure from retailers to keep prices low, this approach would most likely not be very efficient.

Noticing that the traditional bottom-up collective bargaining strategy may not be efficient in the meat industry, UNITE decided to try a new top-down approach. It decided not to target the suppliers (the meat factories and labour dispatch agencies), but the top of the supply chain, the transnational supermarket chains (TESCO and its competitors). It built its strategy on the assumption that large transnational companies such as TESCO would not wish to tarnish their brand images with allegations of racial discrimination in their supply chains.

In order to be able to exert influence on TESCO, UNITE bought a sufficient number of shares in the company to table a resolution at the shareholders’ meeting and to request board oversight of discriminatory practices in the supply chain. To ensure approval of its resolution in the shareholders’ meeting, UNITE contacted powerful shareholders such as the local pension funds in advance to secure their endorsement. In addition, it successfully lobbied with the Equality and Human Rights Commission to launch a formal inquiry into discrimination in the TESCO supply chain. Furthermore, UNITE contacted other more agreeable retailers such as Marks & Spencer (one of TESCO’s main competitors) to conclude “supply chain-wide” agreements on improving labour conditions. Having TESCO’s competitors on its side and backed by powerful shareholders and the Equality and Human Rights Commission, UNITE “forced” TESCO to undertake an internal review of labour conditions in its supply chain and to help the labour suppliers to raise wages for the migrant workers.

The case illustrates that an employer may become involved with allegations of discriminatory practices in a variety of ways, for example:

- as a defendant in an individual lawsuit alleging discriminatory employment practices

- as a negotiating partner in a collective bargaining process in which the trade union aims to address certain discriminatory practices
- as responsible for actions further down the supply chain ensuring that labour dispatch agencies eliminate discriminatory practices
- as an executive board member instructed by the shareholders' meeting to negotiate supply chain-wide agreements to eliminate discriminatory practices.

The case also illustrates that the changes in the market situation and business patterns require trade unions to find new innovative ways to secure decent labour conditions for their members. Emergence of different types of “atypical” employment relations such as the labour dispatch system makes this especially challenging. Considering that rural migrant workers are often in the majority among workers in “atypical” employment in China, failure to secure decent labour conditions for these workers may lead to indirect discriminatory effects on migrant workers.

Exercise 6. Action planning for rural migrant workers' equality

Instructions for trainers



Aim – To help participants put what they have learned during the course into practice and plan concrete steps for action.



Time – 20-40 minutes



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of 3-6 persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps

- Divide the participants in groups by province, by organization or other useful categorization. Instruct each group to work on an action plan for promotion of equal opportunity and treatment for migrant workers for their province or organization. The action plans should include the following elements:
 - Review of the local situation of discrimination against migrant workers in law and in practice
 - Identify the needs for improvement (legislation, partnerships, etc.) and clearly define objectives
 - Who will do what: Roles of stakeholders and specific suggestions for measures that each of them should take
 - Resources.
- Guide the groups by encouraging the groups to formulate objectives and measures that are SMART:
 - S – Specific
 - M – Measurable
 - A – Achievable
 - R – Relevant
 - T – Timely and time-bound.
- After the groups have finished their work, ask each group to present their action plan to other groups. Alternatively, do a gallery exercise: Ask all groups to hang their flipcharts on the wall, ask some of them to stay with their group work outcome to answer questions and invite the others to walk around, look at and discuss the group work outcomes in informal small groups.
- Conclude the activity by highlighting some good examples of action measures in the prepared action plans. Give each participant a copy of their own action plan and keep one copy for follow-up purposes.

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Annexes

Annex 1. Evolution of policies on rural migrant workers in China

China's reform and liberalization has attracted a large number of farmers to go to cities for employment since the 1980s. However, the State failed to adjust related laws and regulations in a timely manner. In the first instance, the guiding principle for policies in respect of rural migrant workers was to restrict their free flow, and a series of policies which discriminated against rural migrant workers was enacted. As the population of such workers gradually expanded, related policies shifted from restricting free flow to accepting and encouraging free flow. In general, there are six stages.

Stage 1 (1979-1983): Controlled flow

Before the reform and opening-up, the flow of rural labourers was subject to strict restriction. No fundamental changes to such restrictions were seen during the initial phase of reform and liberalization. The national conference on employment in 1980, along with documents issued afterwards, on the one hand broke the bondage on the free flow of urban employees but on the other hand enhanced the restriction over the flow of rural labourers into urban areas. In 1981, the Central Government proposed that cities shall adopt multiple employment means combining contractual, temporary and permanent types of employment and that the management over the flow of rural labourers shall be enhanced.

Table 1. Key points in rural labour flow management policies from 1979 to 1983

Issuing time	Issued by	File name	Key points
1980	Central Committee of the China Communist Party /State Council	Proposal on furthering implementing urban labour employment	Employ rural redundant labourers by developing cooperative enterprises and enterprises jointly operated by urban and rural investors and other means. Gradually build small towns and cities. Control blind flow of rural population into middle- and large-sized cities. Control the increase of the population in cities living on grains produced in rural area. Dismiss any rural labourer who have not been permitted to work in cities. Rigidly control labourers from rural areas subject to approvals from provincial (municipal and autonomous region) governments.
1981	Central Committee of the China Communist Party/State Council	Decisions on revitalizing the economy, creating new ways of solving urban employment issues	Develop cooperative enterprises conducting multiple businesses to employ and properly treat rural redundant labourers and keep them from going to cities. Strictly follow relevant policies to restrict rural labourers moving into cities. Rigidly fulfill approval procedures for such labourers. Public security, food, labour and other authorities shall clarify their responsibility and conduct synergy, and keep from issuing conflicting policies. Strictly manage such labourers and dismiss any labourers who migrate without permission.
December 1981	State Council	Notification on rigidly restricting rural labourers from entering into urban area and transforming rural population into non-rural population	Strictly control rural labourers; carefully manage rural labourers employed by enterprises and institutions; reinforce the household registration system and food management.

Source: Song, H. Song, H. Huang and G. Liu: Analysis on policies and issues regarding free flow of rural migrant workers", in *Management World* (5), 2002.

Stage 2 (1984-1988): Allowing flow

Since 1984, the State has allowed farmers to raise funds and make a living on their own and also enter into urban areas to conduct businesses. This small green light was a sign that the policies restricting the free flow of rural labourers were changing. It showed that the 30-year-old employment management system hindering the free flow of rural and urban labourers was loosening. Thereafter, the government further enacted policies and measures allowing and encouraging regional exchanges of rural labourers, labour migration from impoverished areas, and labour exchanges between rural and urban areas. The flow of rural labourers subsequently entered into a fast growing period.

Table 2. Key points in rural labour flow management policies from 1984 to 1988

Issuing time	Issued by	File name	Key points
1 January 1984	Central Committee of the China Communist Party	Notification on rural work in 1984	Allow farmers to migrate in order to work or start their own businesses provided that they can feed themselves and get collective household registration.
13 October 1984	State Council	Notification on the issue that rural residents transform into urban residents	Allowing farmers to migrate in order to work or to start their own businesses plays an important role in the development of towns and the revitalization of the urban and rural economy and shall be encouraged positively. All farmers and their relatives who are applying to go to towns for employment and starting private and service businesses and have fixed permanent residences and operational capability, or have long-term employment relations in township public institutions, shall be entitled to get permanent household registrations by the local public security authorities and go through relevant procedures, get the Certificates on preparing food independently and count as non-agricultural population. The food authority shall actively conduct food and oil supply and may issue the supply certificates for food and oil at increased prices. Local governments shall facilitate the building, buying, and renting of houses for rural migrants. To maintain the stability of farmers starting private and service businesses and working on credit, township people's governments and village people's committees must not discriminate against their relatives remaining in the rural areas. As for those with township household registrations, the related authorities shall approve the transfer procedures on contracting land in advance and shall not reject such requests. When these labourers return back to their hometowns, they shall be allowed to move their household registrations back to their hometowns and shall not be rejected.
1 January 1985	Central Committee of the China Communist Party/State Council	Ten policies on further revitalizing the rural economy	Expand economic exchanges between rural and urban areas. Allow farmers to start businesses in urban areas, promote the service industry and provide employment to labourers. Local governments shall provide favourable conditions regarding land use and service facilities.
July 1986	State Council	Tentative regulation on employment of labourers in State-Owned Enterprises	Enterprises shall publicly issue recruitment announcements when recruiting labourers. Qualified urban and township workers and eligible personnel from rural areas can apply for such jobs.

Issuing time	Issued by	File name	Key points
5 July 1988	Ministry of Labour/Poverty region development leadership team under the State Council	Notification on enforcing labour resources development in poverty regions	Organizing labour export will serve as a key strategy to develop labour resources in poverty-stricken regions. The principle of "combining eastern and western resources, using urban and rural labourers, conducting long-term cooperation, focusing on key points" will be used to organize labourers to move across regions. Labour departments in large- and middle-sized cities and economically developed coastal regions shall orderly attract labourers from poverty-stricken regions. State-Owned Enterprises (SOEs) shall employ some labourers from poverty-stricken regions and be encouraged to support middle- and large-sized companies to establish direct relations with poverty-stricken regions, jointly build up labour bases, and develop long-term labour synergy. Make full use of SOEs and collective labour organizations. Stress the function of non-government labour organizations and capable talents. Explore labour market and create favourable conditions for labour flow through economic means, joint operation, agencies and other means.

Source: H. Song, H. Huang and G. Liu: Analysis on policies and issues regarding free flow of rural migrant workers", in *Management World* (5), 2002.

Stage 3 (1989-1991): Control over aimless flow

During this period, the government made some minor adjustments to policies governing free flow of rural labourers adopted in the previous period and enhanced management over the free flow of rural labourers, many of whom would migrate without first securing employment ("blind flow of labour"). The negative effects of the massive cross-regional flow of rural labourers incurred by stimulating migration through the preferential policies adopted in the previous period had led to some evident problems related to transportation, social security, labour market management and other areas. Furthermore, because the management and adjustment of the economic environment, as well as orders, had decreased employment opportunities in urban and rural enterprises, the opportunity for allowing the free flow of rural labourers was getting smaller and smaller.

Table 3. Key points in rural labour flow management policies from 1989 to 1991

Issuing time	Issued by	File name	Key points
March 1989	Office of the State Council	Notification on rigidly restricting the free flow of rural migrant workers	Local people's governments adopt effective measures to rigidly control the free flow of rural migrant workers
10 April 1989	Ministry of Public Affairs/Ministry of Public Security	Notification on further controlling "blind flow" of rural migrant workers	Local people's governments adopt effective measures to rigidly control free flow of rural migrant workers
27 April 1990	State Council	Notification on promoting labour employment	Rural redundant labourers shall be guided to remain in their hometowns and develop forestry, animal husbandry, and fishing industries, support township enterprises in the right directions and commit to various service industries. Rural development shall be promoted so as to effectively absorb and transfer rural redundant labourers locally and prevent the blind flow of such labourers into urban areas. Legal, administrative, and economic means and publicity education shall be adopted to effectively and strictly manage these

Issuing time	Issued by	File name	Key points
			labourers. Identify the planning of employment of rural labourers in stated period. Labour authority shall strictly follow the related policy to approve and establish tentative employment permits and an employment registration system in a unified manner and dismiss redundant labourers according to state rules. The migrant labourers who are not authorized to migrate shall be dismissed and required to return back to rural areas as soon as possible. Strictly control the rapidly increasing number of rural residents who become urban residents and make this an important part of the national social and economic development plan. Adopt planned benchmark management and carefully grant approvals under the relevant State policies on the transformation of rural laborers. In localities where the restrictions on rural residents becoming urban residents have been relaxed, government bodies must quickly reverse such situation.
February 1991	Office of the State Council	Notification on hindering blind flow of rural migrant workers	Local people's governments at all levels shall strictly follow or temporarily halt procedures on the employment of migrant workers in other places. As for those who have returned to their hometowns to spend festivals without renewed employment contracts, related governmental bodies shall persuade them not to blindly move into Guangdong to hunt for jobs. Rural migrant workers who returned to original work positions shall not blindly bring other rural people to Guangdong. Related local people's governments at all levels shall take substantial measures and persuade rural migrant workers not to go to the south and shall keep Guangdong provincial people's government informed in a timely manner.
1991	Ministry of Civil Affairs	Notification on taking further measures to persuade disaster victims to keep from migrating and return to their hometowns	Local people's governments, in areas affected by natural disasters, shall comprehensively utilize administrative, economic, and legal means to prevent victims of such disaster from migrating and persuade them to return home so that the negative impact is minimized. As for migrant disaster victims, local governments (of the areas to which they migrate) must not allocate to them disaster relief goods. Responsible authorities improperly issuing certificates and tolerating flow of migrant victims must be legally accountable. Migrant disaster victims shall be distinguished from long-time unauthorized migrants. The latter must be resolutely detained and sent away. But migrant disaster victims shall be treated in proper ways to avoid intensifying conflicts.

Source: H. Song, H. Huang and G. Liu: "Analysis on policies and issues regarding free flow of rural migrant workers", in *Management World* (5), 2002.

Stage 4 (1992-2000): Standardizing flow

Since 1992, policies governing the flow of rural labourers gradually changed from controlling aimless flow to encouraging and guiding free flow. Orderly flow under macro-control was implemented. An employment system with cross-regional flow of rural labourers based on employment certificates and cards came into effect. The household registration system of small cities and towns was reformed.

Particularly, after 1998, due to the increase of unemployed individuals in urban areas, implementing a re-employment campaign became the top priority of governmental bodies at various levels. Although the State still emphasized the necessity of reasonably introducing rural labourers into urban areas according to the actual needs in cities and the developed areas, some provinces and cities adopted various regulations and policies restricting the flow of rural laborers to cities and the employment of rural migrant labourers.

Table 4. Key points in rural labour flow management policies from 1992 to 2000

Issuing time	Issued by	File name	Key points
3 November 1993	Ministry of Labour	Notification on issuing re-employment projects and phase-I project of urban and rural harmonization employment plan and orderly cross-regional flow of rural migrant workers	Major targets: Achieve orderly flow and employment in major labour import and export regions of migrant workers, that is: the export of laborers is organized, the import of labourers is managed, supporting services are provided for migrant laborers and emergency response measures are in place. Main contents: Establish basic systems regarding employment management, supervision, rights protection, management services of migrant workers. Develop various organizations and services. Enhance information network and monitoring. Strengthen regional cooperation and inter-departmental synergy.
November 1993	Central Committee of the China Communist Party	Decision on establishing socialistic market economy	Encourage and guide rural redundant labourers to gradually move into non-agricultural sections and regions in an orderly manner.
December 1993	Ministry of Labour	Overall framework on establishing socialist market economy system and labour employment system	The mode of developing and promoting labour market is to create a modern labour market with fair competition, orderly operation, powerful management, and completed services. To achieve fair competition, one needs to break down employment policies for job distribution and abolish identity boundaries of rural and urban labourers. Labourers shall be able to choose jobs out of their own interest and flow from place to place freely. Enterprises shall be able to employ laborers independently. Formal labour relations shall be established based on fair competition and two-way selection. In the long run, to establish a labour market with fair competition, one needs to break down the barriers for the free flow of laborers between the rural and urban areas and among various regions. Establish a rural employment service network, reasonably adjust rural and urban labour flow, and gradually achieve an orderly flow of migrant workers. Abolish unified placement of labourers during the 9 th Five-Year Development Plan period, to nullify laborer's identity boundary, expand the scope of fair competition, and strive to form a modern labour market system by the end of the 20 th century.
August 1994	Ministry of Labour	Implementation plan on promoting labour market development and improving employment service system	The employment service system shall be established as soon as possible. Specific plan is to: In 1994, establish labour market information centers in the south (Guangdong), the east (Shanghai), and the north (Beijing); promote inter-province labour collaboration; develop township labour service network; improve mobile service system. In 1995, establish effective management system, means of

Issuing time	Issued by	File name	Key points
			service and management in major areas (Guangdong, Fujian, Shandong, Zhejiang, Jiangsu, Beijing, Tianjin, Shanghai, Sichuan, Anhui, Hubei, Hunan, Guangxi, Guizhou, Jiangxi, Henan, Hebei, Gansu), to achieve organized export and import of rural labourers (60% of migrant labourers hold certificates).
17 November 1994	Ministry of Labour	Tentative regulation on cross-province flow and employment of rural migrant workers	Standardize the mobile employment card management system for the first time. Before migration, rural labourers must bring ID cards and other necessary certificates to get registered at local employment service agencies at the place of origin and receive the employment registration card for migrant labourers. After arriving in the new workplace, they must take the employment registration card to the local labour authority to get the employment certificate for migrant laborers. The employment registration card and employment certificate together are called mobile employment certificate, which serves as effective certificate for mobile employment.
1995	Office of the Central Party Committee/ Office of the State Council	Proposal on enhancing mobile population management	Promote local transfer of redundant rural laborers; organize orderly flow of rural migrant laborers; adopt unified employment certificate and temporary resident permit system for mobile population; consolidate labour market.
June 1997	State Council	Pilot plan on reform of household registration system in small cities and towns	Adopt, in a timely manner, a household registration system reform. Allow the rural population who meet certain conditions and are employed to settle down as permanent residents in small towns and cities. Promote orderly migration of redundant rural labourers into small towns and cities. Persons approved to settle down in small cities and towns as permanent residents shall be subject to same treatment as other local residents. Local governmental bodies and other parties shall treat them equally in terms of children's education, employment, food and oil supply, and social security. These newly settled people must not be levied with urban expansion fees or other similar expenses by any government bodies.
October 1997	Office of the State Council	Proposal on conducting further measures regarding orderly flow of rural migrant workers	Speed up the building of the labour market. Establish complete and healthy labour market rules. Clarify code of practice for labourers, employers and agencies and market management bodies. Labour authorities must follow the principle of openness, competition, orderliness and unification in the formulation of the labour market development plan, and cooperate with other related bodies to enhance the management and guidance of intermediate agencies, improve market supervision by means such as law enforcement, administrative measures and media monitoring, resolutely fight against market fraud, illegal employment introduction and exorbitant seeking actions, to safeguard the normal order of labour market.
9 June 1998	Central Committee of the China Communist Party/State	Notification on practically ensuring basic living and re-employment of unemployed staff of	Committees of the China Communist Party and governmental bodies at all levels must guarantee the basic living of laid-off workers from the state-owned enterprises and ensure their re-employment as a top priority. Adopt an accountability system for the Party and government leaders and make it part

Issuing time	Issued by	File name	Key points
	Council	SOEs	of the performance evaluation system. Keep encouraging and guiding redundant rural labourers to settle down locally and reasonably control the number of migrant workers.
September 1998	Office of the State Council	Notification on promoting local settlement of migrant workers from disaster-stricken areas and orderly flow of such workers	Settle down migrant labourers locally and guide orderly flow; launch organized and planned labour migration; formulate the labour migration plan; persuade labourers to return home and enhance labour market management; give the recruitment of labourers from disaster-stricken areas priority; timely monitor and report on the situation of migrant laborers.
October 1998	Central Committee of the China Communist Party	Decision on major issues of rural and country work	Adapt to objective needs of urban and developed areas and guide the reasonable and orderly flow of rural labourers.
January 2000	General Office of Ministry of Labour	Proposal on promoting flow and employment of redundant rural labourers	Establish a monitoring and reporting system on the employment of migrant laborers; promote industrialization of labour migration; develop and promote cross-regional labour collaboration; conduct special supervision on employment of migrant laborers and protect legal rights of migrant labourers.

Source: H. Song, H. Huang and G. Liu: "Analysis on policies and issues regarding free flow of rural migrant workers", in *Management World* (5), 2002.

Stage 5 (2000-2003): Fair flow

Since the second half of 2000, the State had made some positive changes to policies regarding free flow of rural labourers. These changes had two evident features. First, the definition of unified employment of rural and urban labourers was renewed. This means the various unreasonable restrictions on rural labourers' migration to urban areas for employment are to be abolished. The rural and urban labour markets are gradually integrated. Second, supplementary reform on various aspects was positively promoted. The free flow of rural labourers involves many aspects such as employment, social security, household registration, education, housing, and development of small cities and towns. It is almost impossible to rely on the reform of one single aspect.

Table 5. Key points in rural labour flow management policies from 2000 to 2003

Issuing time	Issued by	File name	Key points
July 2000	Ministry of Labour and Social Security/ National Development Reform Commission/ Ministry of Agriculture/Ministry of Science/Ministry of Water Conservancy/ Development and Research Centre of the State Council	Notification on further developing rural labour employment pilot projects	Reform the segregated urban and rural household registration system and abolish unreasonable restrictions on the employment of rural migrant workers in urban areas
June 2000	Central Committee	Proposal on	All farmers who have a legal fixed residence, a stable job or

Issuing time	Issued by	File name	Key points
	of the China Communist Party /State Council	promoting healthy development of small towns and cities	income in county-level cities, townships in which local people's governments are located, and small cities below county level, can apply for urban residency if they wish, and enjoy the same treatment as urban residents in terms of children's education, recruitment of the army, and employment. As for those who get registered as urban residents in small towns and cities, local government bodies must not levy urban expansion fees or any other similar expenses. Social security system suitable for small-sized cities and towns shall be positively explored.
March 2001	National People's Congress	The Tenth Five-year National Plan on Economic and Social Development of the People's Republic of China	Break down the rural-urban segregation system. Gradually establish new urban-rural relations under market economy. Reform urban household registration system. Set up orderly flow mechanism of urban and rural population. Abolish unreasonable restrictions on the flow of rural migrant workers into urban areas. Guide orderly flow of redundant rural labourers in urban and rural areas. Get rid of regional barriers, fight against local protectionism and eliminate various regulations hindering the formation of unified market. Maintain the reform direction of rural urban integration and promote gradual integration of urban and rural labour markets.
March 2001	State Council	Proposal on promoting household registration system reform in small towns and cities	In downtown areas of county-level cities, townships in which county people's governments are located, and other types of townships, "people with legal and fixed residence, with a stable job and income, along with dependants living with them, can apply to become local permanent residents if they wish." "People who are approved to be registered as local urban residents, in accordance with their wishes, can retain the right to continue to operate their contracted land in the rural area, and shall also be allowed to transfer the land according to law." Related governmental bodies must practically protect people newly registered in small towns and cities "to enjoy the same rights as the original local residents in terms of children's education, recruitment of the army, employment and other aspects, and must not be discriminated against in any policies." "They must not be subject to any urban expansion fees or similar expenses under the pretext of household registration system reform".
May 2001	National Planning Commission	Notification on major specialized programmes of urbanization under the 10 th five-year national development plan	Promote harmonized development of urban and rural areas by unified measures and urbanization, during which the fundamental importance of agriculture must not be reduced. Intentions of farmers must be respected. On one hand, orderly transfer from rural to urban areas of migrant workers shall be promoted; on the other hand, the high population density in urban areas must be prevented. The orderly flow of labourers and factors of production shall be formed to achieve joint development of the urban and rural economy and society. Break down monopoly and regional protectionism. Except for certain large-sized cities, employment systems that treat rural and urban residents differently must be reformed. Abolish restrictive employment policies targeting farmers

Issuing time	Issued by	File name	Key points
			and migrant population. Actively provide various social services dedicated to the migrant population in urban areas. Pay high attention to the provision of services in employment, business creation and living conditions of the registered migrant population. Central cities shall establish a labour market information network and provide services on job applications and also for employers. In terms of housing, children's education, and medical care, services should be universally available to migrant workers. Enhance media publicity to advocate the strategic importance of urbanization, promote the acceptance of new citizens and promote the integration of rural migrant workers in urban societies.

Source: H. Song, H. Huang and G. Liu: "Analysis on policies and issues regarding free flow of rural migrant workers", in *Management World* (5), 2002.

Stage 6 (2003—now): Promoting flow

Since 2003, the government has been taking a positive attitude towards the free flow of rural migrant workers, who are now defined as "an important part of the industrial workforce". The policies are shifting to promote free labour flow and a series of favourable policies towards migrant workers have been enacted.

Table 6. Key points in rural labour flow management policies enacted since 2003

Issuing time	Issued by	File name	Key points
January 2003	State Council	Notification on promoting employment management of rural migrant workers in urban areas	The State Council has proposed to reasonably treat, guide and manage rural migrant labourers and provide better services for them and it has enacted policies in six aspects. These are: abolishing discriminatory policies and unreasonable charges on rural migrant workers; solving the issue of wage payment in arrears and protecting benefits of rural migrant workers; solving the issue of compulsory education of children of migrant labourers; providing vocational training for migrant labourers; supplying follow-up services for migrant workers working in cities.
June 2003	State Council	Management and assistance rules on displaced people and beggars in urban areas	The Rules provide that people who migrate to cities and have no means of living there are provided with assistance, rather than detained and deployed as in the past. Legal benefits of the mobile population and migrant labourers in urban areas are stressed. This is helpful for the social protection of rural migrant workers in practice.
September 2003	Six ministries including Ministry of Agriculture	2003-2010 National plan on training of rural migrant workers	The programme will improve the qualification and employability of rural migrant workers, and further promote migration of rural labourers to non-agricultural industries and towns and cities.
2004	Central Committee of the Communist Party/State Council	Proposal on policies promoting farmers' income	For the first time, the idea that rural migrant workers have become an important part of the industrial workforce is mentioned. This means rural migrant workers have been officially recognized as industrial workers. Specific contents of the document include: further clean up and abolition of discriminatory rules and unreasonable charges on rural migrant workers; simplification of procedures on cross-regional employment and job-hunting in urban areas of rural migrant workers; prevention of disguised

Issuing time	Issued by	File name	Key points
			forms of levy on migrant labourers and employers. Municipal governments shall cover migrant workers' vocational training, children's education, social security, and other services along with administrative charges, from regular fiscal budget. Promote reform of household registration system both in medium-sized and large-sized cities. Loosen conditions on employment and residency of rural migrant workers in cities. Enhance vocational training for rural migrant workers.
2004	Office of the State Council	Notification on improving employment environment of rural migrant workers in urban areas	Clean up and abolish discriminatory rules and unreasonable restrictions on rural migrant workers; launch organized labour migration; complete vocational introduction services for rural migrant labourers; provide consulting services; enhance training of migrant workers on employment in cities; further solve the issue of wage payment in arrears; enhance labour contract management and labour security supervision and law enforcement; handle labour dispute cases of rural migrant workers in a timely manner; support trade unions to fight for the rights and interests of rural migrant labourers; provide industrial injury insurance for migrant workers; maintain order in the labour market; explore the establishment of an integrated rural and urban labour market.
2004	Nine ministries and National Development Reform Commission	Notification on further cleaning up and abolishing discriminatory regulations and unreasonable charges on cross-regional employment of farmers in urban areas	1. Completely clean up discriminatory rules against cross-regional employment and job-hunting in urban areas of rural labourers. 2. Further clean up administrative charges over cross-regional employment and job-hunting in urban areas of rural labourers. 3. Rigidly standardize various intermediate service charges. 4. Promote cross-regional employment of farmers and training for employment in cities.
27 March 2006	State Council	Proposals on solving issues related to rural migrant workers	The document states that "the issues related to rural migrant workers are closely related to China's economic and social development and solving such issues is a strategic task in the building of socialism with Chinese characteristics." Contents include: (1) promptly resolving the issue of wages of rural migrant workers being low and in arrears; (2) standardizing management of rural labourers according to law; (3) promoting employment services and vocational training for rural migrant workers; (4) positively solving the social security issues of rural labourers; (5) effectively providing related public services for rural migrant workers; (6) enhancing and safeguarding mechanisms to protect the rights and interests of rural migrant labourers; (7) promoting local transfer of rural labourers.

Source: H. Song, H. Huang and G. Liu: "Analysis on policies and issues regarding free flow of rural migrant workers", in *Management World* (5), 2002.

Annex 2. NGOs for rural migrant workers

China has over 100 million rural migrant workers. If the 150 million rural redundant labourers migrate out of their hometowns, the figure would double. Faced with such big numbers, some people have concluded that the government alone might not be able to solve this social challenge. Thus, non-governmental resources and power have been requested and a large number of dynamic NGOs and other groups have been established to provide support for rural migrant workers, covering the safeguarding of rights, training, consultancy and assistance services and entertainment activities. A brief overview of these services is given below.⁵⁰

1. Most NGOs serving rural migrant workers provide **education and training** on vocational skills, legal and health knowledge, job-hunting skills, and urban life common sense by means of workshops, consultancies and booklets. Each of these NGOs has its own publication according to its service orientation. For instance, the "Home of Female Migrant Labourers" publishes the Home of Female Migrant Labourers publication. The "Hope Land Culture Development Centre" is a publication of the Twin Sisters, and "Fanyu Secretary Service Station of Rural migrant Workers" publishes a Health and Occupational Safety Newsletter and so on. From the perspective of promoting assimilation in cities, Canyushi Community Participation Action and the Henan Community Education Service Centre have drafted detailed urban life guidance. To improve awareness of self-protection among rural migrant workers who work in waste collecting, Shenzhen Contemporary Social Observation Study Institute has drafted a self-examination manual for "Waste Collectors" for all workers in this occupation.

2. **Safeguarding rights** refers to fighting for legal benefits of rural migrant workers in their employment relations (such as wage payment in arrears, industrial injury claim, sexual harassment, and physical damage) through consultations, legal lawsuits, news coverage and other means. The Fanyu Secretary Service Station of Rural Migrant Workers and Beijing Little Bird Mutual-assistance Hotline for Migrant Workers are typical examples in this type of service. Other NGOs have launched other initiatives. For example, the Home of Rural Migrant Workers has issued an "Anti-vocational fraud contact card" and the Home of Female Migrant Labourers has set up a panel to fight for the rights of migrant women workers.

3. **Assistance services for rural migrant workers in hardship** primarily refers to material assistance, such as providing funds and medicines after the occurrence of traffic accidents or diseases. Because most NGOs do not have many resources, few such dedicated NGOs exist. However, some organizations do cover such expenses. For instance, the Beijing Culture Development Centre for Rural Migrant Workers has established a "Same-heart Mutual-benefit and Donation Auction Alliance". This alliance collects donated redundant articles from members of the public, and operates a "Same-heart Mutual-benefit Shop" and sells these articles at low prices in the communities of rural migrant workers in order to lower their living expenses. The income earned is used to sponsor cultural, educational and other events for rural migrant workers to improve their living situation. Similarly, the Beijing Same-Heart Hope Land Culture Development Centre has established a Loving Heart Supermarket. The Co-operator Culture Communication Centre has organized a national disaster management volunteer network to provide material, financial, and technologic support to those in need. This network particularly stresses the care of people in disadvantaged situations and learning self-help skills. The Fanyu Secretary Service Station of Rural Migrant Workers has established the Pearl River Delta Health and Security Support Network, which has a project to provide emergence assistance in case of

⁵⁰ School of Agriculture and Rural Development, Renmin University: "Rural Migrant workers working in cities: Current status, trend, our mission" in *Minutes on Forum on Rural Migrant Workers Working in Cities* (Beijing, Oct. 2006).

industrial injuries of migrant workers. This project provides living assistance to those rural migrant workers with industrial injuries who might encounter some difficulties when fighting for their rights.

4. **Entertainment activities** refer to regular cultural and entertainment events, such as evening parties, music concerts, gatherings, exhibitions and other activities that meet the recreational and social demands of rural migrant workers. The most typical organization is the Youth Art Performing Troupe of Rural Migrant Workers organized by Beijing Culture Development Centre for Rural Migrant Workers. This troupe is initiated by rural migrant workers with the aim of calling for and safeguarding, legal rights with their singing voices. On 10 September, 2004, its first album "All Migrant Workers are from One House" was released. Meanwhile, the Co-operator Culture Communication Centre also has had such similar artistic events.

5. Some of the rural migrant worker NGOs have projects dedicated to female migrant workers or the children of migrant workers. For instance, the Home of Female Migrant Workers mentioned earlier is China's first non-profit organization serving female rural migrants working in urban areas. The Sichuan Jintang County Service Centre of Female Migrant Workers also serves women, who return home, work outside their hometown, or are going to work elsewhere. Both female elites with excellent capability to start businesses and ordinary migrant female workers belong to their clientele. This Centre has held a series of events including: setting up a legal assistance centre for female migrants; conducting training for directors of village women committees; helping women who return home to seek further development by complying with preferential policies enacted by county governments. China Fuping School provides a mutual support network and organizes husbandry service staff to support the network. It provides rural women with urban living skills; and ensures that urban public resources become available to women in the communities. The Fuping School has also set up some small-sized grants to encourage women in domestic work to organize self-governing teams in their communities. The Beijing Same-Heart Hope Land Culture Development Centre provides participatory training on gender awareness, women's health care, and household relation management and organizes other community, women or children's events in line with the demands of female migrant workers.

In terms of **services for children** of rural migrant workers, the special theme research team of Plan International has launched a study on the influence of rural migrant workers' employment on abandoned children in China's middle and western rural areas. It has also sponsored the tuition and some living expenses for some of these children. Cooperating with some local professional skills schools, it provides vocational training opportunities to older children, particularly girls who drop out of school due to family poverty. Jintang County Female Migrant Worker Service Centre established an "Abandoned Children Care Centre" in one of the major labour export counties with the capacity to support 150 children. To solve the extensive gap between rural and urban cultural lives and concerned household education issues, the Sichuan Respectable Citizen Social Development Research Institute and the Sichuan Provincial Academy of Social Science cooperate to provide training in household education. To solve the issue of providing education to migrant children, some NGOs have started to build their own schools. For instance, the Beijing Culture Development Centre of the Home of Rural Migrant Workers has established the Same-heart Experimental School and the Dandelion Middle School, which is the first of its kind founded by Chinese migrants returned from abroad and the only middle school dedicated to children of single rural migrant labourers.

Generally speaking, the development of Chinese NGOs for rural migrant workers is still at an early stage and relatively small scale in terms of number of organizations, events, employed personnel, funds and resource mobilization, and the number of people served.

Equality and non-discrimination at work in China: Training manual

The principles of equality and non-discrimination are embedded in universal notions of decency, dignity and respect, and are fundamental for promoting social justice and economic development both within and across countries. This Training manual on equality and non-discrimination at work in China introduces the internationally recognized concepts and approaches to eliminate discrimination and promote equality of opportunity and treatment in workplaces. The manual is part of a Training package on equality and non-discrimination at work in China, developed and issued by the ILO to support the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in the country. The training package contains:

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