



China: Specialist Recommendation Report on the Questionnaire on Decent Work for Domestic Workers¹

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1. Background

China's large aging population and increasing household income have dramatically increased demand for domestic services. Especially in recent years, the domestic service industry in China has grown very rapidly. The number of domestic service agencies has increased to nearly 600,000 this year, compared to only 100,000 ten years ago. Nearly 20 million domestic workers³ are employed in the domestic service sector. At present, about 40% of the domestic workers leave their jobs each year. However, the population of children under 14 years old accounts for 20% of the urban residents ,and the elder above 60 accounts for 15%, so the demand for domestic service has the potential to grow much more As a result of the financial crisis, 24 million migrant workers have returned their hometowns. It is estimated that “there are more than 40 million employed people, among whom 60% are laid-off workers at the in their 40s and 50s, and rural migrants.⁴ The sustained demand for domestic service provides many potential employment opportunities and, under appropriate guidance, could effectively promote reemployment.

However, due to the lack of professional sectoral regulation, the domestic service market is now chaotic. Domestic workers lack labour security and vocational training, which leads to a high rate of turnover and a general dearth of vocational skills; all these factors cause domestic services to be undersupplied.

Moreover, because domestic work is not regarded as formal employment, domestic workers are excluded from the labour code, and their labour rights are not well-protected. The Labour Contract Law, which was rendered effective January 1, 2008, is only applicable to labour dispatch domestic service agencies⁵. In reality, however, there exist few real labour dispatch domestic service agencies, and most domestic workers-- particularly rural migrants-- who use intermediary domestic service agencies are not protected by Labour Contract Law. At present, only Shenzhen City has promulgated relevant local regulations on domestic work (Regulation on Domestic Work Sector in Shenzhen, 2001), but the enforcement of this regulation is still a problem.

In China, women account for 90% of total domestic workers, because women have traditionally been considered more capable of doing domestic work. To some extent, this reflects institutional gender discrimination against women's employment. Domestic workers often work in individual houses, in isolated environment, so their legal rights can be more easily violated. Cases of discrimination, abuse and even physical constraints on domestic workers have been reported by the media. Domestic workers are disturbed by discrimination and frequently switch from job to job because of the lack of social security. Even if their wages increase year by year, they still do not have a sense of identity and stability.

Since very few domestic workers have joined trade unions, the majority have to express appeals of violations through other channels, such as women's organizations. Workers hope the state will pass special legislation to regulate the sector to protect their labour rights and would benefit considerably from the adoption of the international labour standards on Decent Work⁶ for domestic workers. After sufficient consultation with representative workers' organizations and employers' organization, this labour standard could effectively protect the labour rights of domestic workers and promote harmonious labour relations in this sector.

The ILO supervisory bodies have unequivocally affirmed that domestic workers are entitled to decent working conditions and to the workers' rights articulated in the ILO Declaration on Fundamental Principles and Rights at Work. These bodies have promoted full compliance with applicable international labour standards.

³ Refer to internal domestic workers in China. Cross-border migrant domestic workers are not included.

⁴ The Beijing News. (June 19, 2009) Page A05, “Employed reach 40 million this year”.

⁵ A labour-dispatch domestic service agency refers to agency that recruit domestic workers as its own employee and sign labour contract with them. Its business model is: Usually the agency signs a labour contract with domestic workers for at least two years, provides them with the orientation training, and then dispatches them to the homes of employers to perform the agreed-upon domestic services. This company signs the labour-dispatch agreement with customers, pays wages to and handles social insurance procedures for domestic workers, and engages in the following management, including accepting complaints, solving disputes between domestic workers and household employers and replacement. The agency also pays the minimum wage to a domestic worker who is standby for new assignment.

⁶ “Decent Work” is the opportunity for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity through social dialogue. Decent work is captured in four strategic objectives: fundamental principles and rights at work and international labour standards; employment and income opportunities; social protection and social security; and social dialogue and tripartism.

2. The process of negotiation and consultation on drafting the Specialist Recommendation Report

The ILO is proposing a labour standard discussion on Domestic Work for its 2010 ILC. To support informed discussion at the country level and to make this information available to ILO constituents as they complete a law and practice questionnaire issued from Geneva, the International Labour Organization (ILO) and the Center for Women's Law and Legal Service of Peking University jointly sponsored the consultation and seminar on the Questionnaire of international labour standard for decent work of domestic workers (May 15, 2009). Experts from relevant institutions were invited to the seminar, including the All-China Women's Federation, China Association of Domestic Service, United Nations Development Fund for Women, Beijing Migrant Women's Club, Xi'an Domestic Workers Trade Union, and Oxfam HK. The China Association of Domestic Service represents the voices of domestic service agencies, and conveys the needs of employers. Some of the representatives themselves are also employers of domestic workers. The All-China Women's Federation, a mass organization representing and safeguarding the rights and interests of women, has focused on the protection of the rights and interests of domestic workers for a long time. The Xi'an Domestic Workers' Union, the first union for domestic workers in China, has more than 700 members at present. The Beijing Migrant Women's Club, a non-profit NGO with over 300 domestic worker members, has trained more than 3,000 domestic workers, distributed 15,000-plus training manuals to domestic workers and employers and provides legal aids to over 30 domestic workers. The Club has undertaken the project to supply policy suggestions to protect the rights of domestic workers, sponsored by UNESCO. The Center for Women's Law and Legal Service of Peking University, an NGO engaged in protecting the rights and interests of women, has undertaken three projects about domestic workers and has a rich collection of data and interview materials. Knowing the requirements of domestic workers, the Center has been promoting legislation to protect domestic workers in recent years. China Association of Domestic Service has done considerable work to promote experience exchange, set up the domestic service standard, enhance self-discipline and praise excellent employers and domestic workers. Having participated in a number of research projects, the Association is very familiar with the needs of domestic service agencies and family employers on the legislation issues.

During the discussion and deliberation, participants analyzed characteristics of domestic workers within the context of gender perspective and proposed recommendations. Organizations representing the voices of domestic workers: Xi'an Domestic Workers Trade Union, Beijing Migrant Women's Club, and the Center for Women's Law and Legal Service of Peking University. China Association of Domestic Service represented domestic service agencies. Many other representatives who were also employers themselves talked about the views of employers. Participants reached a consensus on the necessity to improve the legislation, but disputes still existed with respect to the establishment of labour standards and the theoretical basis thereof. For example, some representatives thought the relationship between domestic workers and employers ought to be a relationship, while others disagreed with this definition, believing instead that it is a labour employment relationship and would become a special labour law relationship in the future. If it were defined as a consumption relationship, domestic workers' labour rights could not be effectively protected.

This Report has taken into consideration the opinions and views of different stakeholders, and thus reflects the consensus among relevant parties. At the same time, this Report also notes some issues that are still in debate and need further discussion. Analysis and additional information in this Report serve as a reference and resource for relevant government departments to utilize when filling in the Questionnaire.

3. Key Recommendations

- (1) Improve legislation and legal framework, extending labour laws, or issue special regulations to cover domestic workers.
- (2) Eliminate employment discrimination. In terms of vocational safety and health, domestic workers should enjoy the same treatment as that of labourers in other sectors. Labour dispatch domestic service agencies should be encouraged in order to facilitate the development of the industry. Risks may be mitigated through a relatively lower standard of social insurances and commercial insurance and reduce the turnover of domestic workers. Domestic workers should be granted free vocational training, as do migrant workers in other sectors, so as to continuously improve their skills and meet the increasing demand.

- (3) Measures should be taken to protect domestic workers from personal injury and sexual harassment, and to solve the problem of wage arrears and overtime work.
- (4) The requirements of service should be clearly elaborated in the contract to prevent employers from arbitrarily increasing workloads.
- (5) The labour inspection system should be improved, and the monitoring of domestic service agencies should be further regulated. Labour authorities should accept the complaints of domestic workers and conduct sample inspections.

4. Key challenges in developing this Report

Within the existing situation of the domestic industry, the greatest difficulty is the absence of complete and accurate national data, as well as the lack of statistics on the budget, expenditures and use of the national training fees. Only partial survey data could be used, including the findings of the surveys conducted by women's organization in Beijing, Shanghai, Hefei and other cities.

The most significant difficulty when designing the labour standard is that the Labour Law cannot be applied completely. The nature of the domestic industry requires that a special labour standard be established, which is a ground-breaking area of work.

When attempting to eliminate discrimination, the decisions-makers faced a dilemma: domestic workers should enjoy equal treatment to that of workers in other industries, but in such a way that the growth of the sector may still be sustained. Such restrictions add more burdens to employers and result in reduced employment, reducing the number of low-quality migrant workers entering into the domestic industry and harming employment promotion. Thus, a balance must be reached. A feasibility study should be conducted on the sharing of responsibility and the establishment of a lower standard.

There are few experts who are paying attention to the domestic industry, and translations of overseas research achievements are also not very numerous. Many fields still remain unresolved, particularly in the study on government functions. We need to pay special attention to the "degree" of government support and intervention in regulating and developing the domestic industry, especially with regard to how to ensure the rights of domestic workers to decent work.

QUESTIONNAIRE⁷

At its 301st Session (March 2008), the Governing Body decided to put on the agenda of the 99th Session (2010) of the International Labour Conference an item on decent work for domestic workers for a double discussion leading to the possible adoption of a Convention supplemented by a Recommendation.

The purpose of this questionnaire is to request the views of member States on the scope and content of the proposed instruments, after consultation with the most representative organizations of employers and workers. Replies received should enable the Office to prepare a report for the Conference.

I. Form of the International Instrument or Instruments

1. Should the International Labour Conference adopt an instrument or instruments concerning decent work for domestic workers?

Comments:

Yes. The member state needs to take such International Labour Standards and Recommendations as the criteria and guidance documents for domestic legislation. This instrument will promote both the protection of domestic workers and the healthy development of the domestic service sector.

2. If so, should the instrument or instruments take the form of:

- (a) a Convention
- (b) a Recommendation
- (c) a Convention supplemented by a Recommendation
- (d) a Convention comprising binding and non-binding provisions?

Comments:

A Convention supplemented by a Recommendation should be formed.

The Chinese Government has already commenced formulating the Guiding Opinions on Regulating and Developing the Domestic Service Industry, which will cover the decent work of domestic workers. Therefore, we are looking forward to the adoption of a Convention so that the legislation for the domestic service industry may follow the international labour standard. In addition, if the Recommendation is also passed, China's legislation for the domestic service industry will receive more guidance.

II. Preamble

3. Should the preamble of the instrument or instruments recall that International Labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided?

Comments:

Yes.

Because of the hidden nature of the work, domestic workers are particularly vulnerable to a number of rights violations - including violations of their fundamental rights at work. Although the ILO has always affirmed that domestic workers are entitled to fundamental rights at work, a number of ILO conventions include flexible provisions in which certain workers are not covered, and some countries

⁷ The Comments for each question only reflect the situation of Chinese internal domestic workers.

have applied these exclusions to domestic workers. It is important to note that domestic workers can be excluded from several key conventions on social insurance, occupational safety and health, etc. - which underscores the particular vulnerability of domestic workers.

4. Should the preamble of the instrument or instruments refer to the special conditions in which domestic service is carried out that make it desirable to supplement the general standards by standards specific to domestic workers, to enable them to enjoy their rights fully?

Comments:

Yes.

Based on our consultation, investigation and research, we think the preamble of the Convention/Recommendation should cover the special conditions for domestic service, which may be stated as follows: taking into account that the domestic workers are different from workers in other industries in terms of the working environment, holidays and leaves, social insurance and dispute resolution, etc., this Convention/Recommendation represents the special labour standard that supplements the ordinary labour standard. (Pleases refer to Annex 1 for the more details.)

5. Should other considerations be included in the preamble? Please specify.

Comments:

(1) Hidden risks may leave domestic workers facing physical and verbal abuse, sexual assault, restriction of personal freedom, and even forced labour. The absolute majority of the victims are women.

(2) Other international legal instruments are designed to protect the rights of children, women and migrants, such as the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

(3) Domestic workers can not obtain the complete respect from employers and the public, because domestic work is undervalued. Traditional concepts fuel the belief that most women have the inherent ability to do this job, and therefore do not need to learn skills.

III. Definitions

6. For the purposes of the instrument or instruments,

(a) Should the term “household work” mean work performed in and for a household and include household service, child care and other personal care?

Comments:

“Household work” should refer to the services performed in or for a family, including household service, child care, cleaning, cooking, home care, family education and other personal care, as well as pets keeping and raising and plant maintenance, etc.⁸

(b) Should the term “domestic worker” mean any person who undertakes domestic service, whether on a full-time or part-time basis, for remuneration?

Comments:

Yes.

The term “domestic worker” should mean any person who undertakes domestic service for remuneration, regardless of whether he or she works full-time or part-time. According to the National Professional Standard for Domestic Service Workers promulgated in 2000 by the Ministry of Labour and Social Security of the People’s Republic of China, the occupational title of domestic workers

⁸ The definition comes from discussion with multiple stakeholders, with reference from *Beijing General Requirements on Domestic Service*.

should be “domestic service worker” and the definition of the occupation should be “the person managing household affairs as required for the household they serve, including taking care of children, old people, the sick, etc.”

In addition, the Convention should also pay more attention to minors who engage in unpaid domestic services. For example, minors who take care of children for their extended relatives may not be paid monetarily, but they may be provided with opportunities such as better accommodation, dining and learning. But they are also vulnerable to infringement of their rights and interests due to the absence of supervision.

- (c) Should the term “standby” mean periods during which a domestic worker is not free to dispose of time as the worker pleases?

Comments:

The term “standby” should mean the period during which a domestic worker is not free to dispose of time as the worker pleases, including two specific situations: (1) on-call period in the employer’s home (eg. night care for children, sick, pregnant etc); (2) waiting period between the two assignments from the labour dispatch domestic service agency.

- (d) Should the term “employer” include intermediaries?

Comments:

The term “employer” should include labour dispatch domestic service agencies, but the term is not to include agencies or individuals who only provide intermediary services.

- (e) Should any other terms be defined by the instrument or instruments? If yes, please provide particulars.

Comments:

The legal relationship between domestic workers and employers should mean the employment or legal relationship established between a domestic workers and his/her employer in accordance with the Labour Law or Civil Law.

In China people think that this relationship is synonymous with a “consumption” relationship, because some of the government authorities and scholars regard it as such. However, this neglects that, in consumption services, one party must be a business operator; for example, a legal representative of a business entity or a privately- or individually-owned business owner who offers supply of commodities and services to customers. Because usually consumers are in a more vulnerable position than operators, they therefore obtain the special protection of the Consumer Rights and Interests Protection Law. If the legal relationship between domestic workers and employers is defined as a “consumer” relationship, domestic workers will become operators from labourer/employee in terms of their identities, and will not get special protection of labourers that is provided by Labour Law, and that of employees in private employment that is provided by Civil Law, otherwise, their rights will be partially lost.

IV. Scope

7. Should the instrument or instruments apply to all domestic workers?

Comments:

Yes. This Convention/Recommendation should be applicable to all the domestic workers.

8. Should the instrument or instruments provide for the possible exclusion of limited categories of domestic workers and, if so, under what circumstances? Please specify.

Comments:

No.

This Convention/Recommendation should be applicable to all the domestic workers, and should not exclude any of them, because it will violate the principles of universality and non-discrimination for human rights, and we have not found any group to which this Convention/Recommendation should not be applicable.

V. Content of a Convention

A. Fundamental principles and rights

9. Should the Convention provide a recommendation that each Member take measures to ensure the enjoyment by domestic workers of the fundamental principles and rights at work, namely:
- freedom of association and the effective recognition of the right to collective bargaining;

Comments:

Yes. The Convention should state the freedom of association and effective right for collective bargaining. Under the umbrella of the ACFTU, domestic workers are able to form and participate in unions. For example, the first Domestic Worker's Union was formed in Xi'an city, in China, and has since received support from government and union members. Its practices have brought attention to the fact that domestic workers scattered in the households of employers need trade unions more than workers working in the factories.

- (b) the elimination of all forms of forced and compulsory labour;

Comments:

Yes. The Convention should prescribe that all forms of forced and compulsory labour should be eliminated. In cases in which the domestic worker's personal freedom is restricted, it is proven that the worker most often finds it very difficult to ask for help, because employers typically seize and shield all means of communication, as well as refusing any visits from outsiders. The Convention should not only prescribe the rights of domestic workers to personal freedom, but also include strict sanction measures for violations thereof.

- (c) the effective abolition of child labour; and

Comments:

Yes. The Convention should include effective abolition of child labour. At present there is insufficient research and data on child labour in domestic service in China; however, the media recently released reports on several cases.

- (d) the elimination of discrimination with respect to employment and occupation?

Comments:

Yes. The Convention should include elimination of discrimination with respect to employment and occupation, because discrimination against domestic workers is more serious than that against workers in other industries. (See more details in Annex 2)

- (1) Eliminate discrimination against domestic workers.

Since domestic workers are often considered "nursery maids" or "servants" within traditional culture, they have not been given due respect, despite their higher income. In accordance with the Declaration of Philadelphia's affirmation that all human beings, regardless of the race, creed or sex, have the right to pursue both their material welfare and spiritual development in the precondition of freedom and dignity, economic security and equal opportunity, moreover, because discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights, the Convention/Recommendation addresses the issue of discrimination against domestic workers.

We should recall the Discrimination (Employment and Occupation) Convention constituted in 1958, which requires each Member referred to in the Convention to declare and pursue a national policy designed to promote the Convention's provisions, through the approach that is appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view of eliminating any discrimination in respect thereof. The

Convention/Recommendation emphasizes its creed to prohibit discrimination of domestic workers in employment policy, administration, working conditions and social security, and each member State should take measures to ensure these basic principles and the rights of domestic workers.

(2) Discrimination against migrant workers should be eliminated.

Because the Preamble to the Constitution of International Labour Organization (ILO) has vested in the ILO the task of “protecting the interests of workers when employed in countries other than their own”; considering as well that the Declaration of Philadelphia restates that one of the fundamental principles on which the ILO is based is that “labour is not commodity”, “any poverty constitutes a danger to the prosperity”, and also taking in account the fact that the ILO recognizes that the solemn obligation of the ILO is to help implement the plan for realizing full employment and the non-discrimination principle, especially by means of provision of facilities for the transfer of labour, including migration for employment and settlement; this Convention/Recommendation should draw attention to the issue of discrimination against migrant domestic workers.

We should also recall The Migration for Employment Convention (Revision), 1949, which requires that each member for which this Convention is in force should apply to immigrants lawfully within its territory treatment no less favorable than that which it applies to its own nationals with respect to the matters listed in the Convention, insofar as such matters are regulated by law or regulations, or are subject to the control of administrative authorities. However, The Discrimination (Employment and Occupation) Convention constituted in 1958 did not include the mandatory distinction of the definition of “discrimination” based on nationality, therefore, it is necessary to formulate a new standard that includes social security in this Convention/Recommendation, so as to promote the equality of opportunity and treatment of migrant workers.

10. Should the Convention stipulate a minimum age for admission to domestic service? Please specify.

Comments:

Yes. The Convention should stipulate a minimum age for admission to domestic service, consistent with that prescribed by the Minimum Age Convention (No.138 Convention 1973), and such age should not be lower than the age for completing compulsory education, and should be not under the age of 15 (In China, it is 16 for now, and is not linked to the age for completing the period of compulsory education) in any circumstance. For domestic workers who are allowed to undertake the type of domestic service which, implicit in its nature or working environment, may be harmful to the health, safety or morality of the worker, the minimum age should not be less than 18 years.

According to the Regulations on Forbidding Use of Child Labour of the People’s Republic of China, an employer should be imposed a fine of RMB 5,000 each month for the use of each child worker (minors aged below 16) by the labour and social security authority.

11. Should the Convention provide the requirement that the minimum age of employment for migrant domestic workers be 18?

Comments:

No. For Chinese internal domestic workers, the minimum age of employment is 16 years old. Special protection should be considered for 16-18 year olds.

B. Working and Living Conditions and Social Security

12. Should the Convention provide that each Member should take measures to ensure that domestic workers, like all wage earners, have:
(a) fair terms of employment as well as decent working conditions and, where applicable, living conditions;

Comments:

Yes. Members should take measures to ensure that domestic workers, like all wage earners, have fair terms of employment and decent working conditions. However, in reality decent living conditions cannot be completely guaranteed due to the different living situations of employers.

(b) a safe and secure workplace; and

Comments:

Yes.

The Convention should include a provision for a safe and secure workplace. Although some domestic workers have to live in the same bedroom with the sick who are the opposite sex of these domestic workers or the elder, and some domestic workers agree to take care of people with infectious diseases or person with mental illness, the employers should ensure the domestic workers' safety

(c) social security, including maternity protection?

Comments:

Yes. The Convention should stipulate provision of social insurance, including the minimum standard for maternity protection.

13. Should the Convention provide that employers should inform domestic workers of their terms and conditions of employment, in particular:
- (a) the name and address of the employer;

Comments:

Yes. The employer should provide their true name and address.

(b) the type of work to be performed;

Comments:

Yes. The Convention should require information on the work types to be performed by the domestic workers, and employers should not arbitrarily add other elements to the stated workload, including types, quantity and intensity. Even if domestic workers agree to sacrifice it, employers should guarantee the essential rest time for domestic workers and pay overtime wages when they apply.

(c) the rate of remuneration, method of calculation and pay interval;

Comments:

Yes. The Convention should require communication of the rate of remuneration, (e.g. basic wage + overtime wages + bonus + welfare), method of calculation and payment intervals.

In addition, Chinese labour law stipulates that the form of payment of wages should be the legal currency, and in-kinds payments are forbidden. Article 50 of the Labour Law provides that wages should be paid in the legal tender to labourers on a monthly basis. Wages payable to labourers should not be deducted or paid in arrears. Wages should be paid in the legal tender, according to Article 5 of the Interim Provisions on Payment of Wages issued by the former Ministry of Labour in the [1994] 489 file. Wages should not be paid in-kind or in marketable securities as a replacement for currency. In addition, some employers may ask domestic workers to compensate some faults in the domestic service, and deduct certain amount of money from the wages.

(d) the normal hours of work;

Comments:

Yes. The Convention should require communication of normal working hours.

In the consultations, multiple stakeholders think the Convention should allow the member state to extend working hours through negotiation with relevant employers' organizations and workers' organizations according to the characteristics of the domestic service, or provide the minimum time for continuous leave should be no less than 6 hours, and the accumulated rest hours should be no less than 8 hours per day in any case.

(e) the duration of the contract;

Comments:

Yes. Employers should inform domestic workers of the duration of the contract. The duration should be also written in the contract.

(f) the provision of food and accommodation, if any;

Comments:

Yes.

Employers should provide safe and decent food and accommodation. Terms of conditions could be negotiated by the employer and the domestic worker. Many domestic workers in China are not willing to live in the homes of employers, but a few, especially those who migrate from rural areas for the first time and who are in poor financial situation, need the food and accommodation provided by their employers.

(g) the period of probation, if applicable; and

Comments:

Yes. The Convention should state that the existence and period of probation should be agreed by the employer and the domestic worker. Only one probationary period may be applied for the same employer, and the probationary period should be no more than one month. The wages for the probationary period should be no less than 80% of the wages as agreed in the employment contract, and should not be less than the local minimum wage standard.

(h) the terms of repatriation, if applicable?

Comments:

Yes. The Convention should include conditions for repatriation. The employer should have the burden of proof to inform the domestic workers in advance of releasing him or her from employment.

14. Should the Convention provide that each Member should take measures to ensure that domestic workers are protected against all forms of abuse and harassment, including physical, verbal, sexual and mental abuse and harassment?

Comments:

Yes.

Domestic workers usually work in private and isolated environments. Many of them are less educated and lack awareness and capacity for self-protection, so they are more likely to suffer from sexual harassment than workers in other industries, and it is more difficult for them to obtain evidence if harassment occurs. Therefore, the Convention/Recommendation should prescribe the definition of sexual harassment, sexual harassment prohibition and measures for punishment, and also prescribe that the employment agencies should perform their duty of investigation, and should refuse to introduce any domestic workers to any employer who is discovered to have a record of sexual harassment after investigation. (Please refer to Annex 1 for the details.)

Measures taken in other countries include:

- a) explicit prohibitions under national legislation, including of unlawful confinement;
- b) the establishment of accessible complaint mechanisms for domestic workers to report such abuse, including confidential, fully staffed, toll-free, 24-hour hotlines to receive reports of abuses against women and girl domestic workers with interpreters in relevant languages available;
- c) mechanisms such as local registration to ensure greater visibility of domestic workers and allow for better access to them;
- d) prompt investigation and prosecution of perpetrators of physical violence, sexual violence, and other abuses against domestic workers, including unlawful confinement;
- e) protocols to train police officers on how to respond to domestic workers' complaints appropriately, including how to investigate and collect evidence and provide referrals for assistance;
- f) establishment of removal and recovery programs that can provide temporary accommodation, immediate physical and psychological health care, legal assistance, and

access to schooling or vocational training. Such programs should prioritize child domestic workers for removal and recovery assistance.

15. Should the Convention provide that each Member should ensure that domestic workers enjoy minimum wage coverage where such coverage exists?

Comments:

Yes. The Convention should state that each Member should ensure that domestic workers enjoy minimum wage coverage where such coverage exists.

The minimum wage for domestic workers who live in employers' homes should refer to the basic cash wage after the dining and accommodation expenses as well as relevant insurances are deducted. According to the survey, many domestic workers say they suffer great mental and behavioral constraints from living in employers' homes for a long period, so they are not very willing to live in employers' homes. Usually, employers ask domestic workers to live in their homes so that domestic workers can provide more on-call service (take care of children, the elder, etc.) more conveniently. Therefore, employers benefit more.

The law of the Philippines on domestic workers specifies the minimum wage standard for domestic workers. Article 144 of the law stipulates that the minimum wage should be the basic cash wage paid by employers to domestic workers after accommodation, foods and medical services are deducted. Article 148 specifies that employers should provide domestic workers with appropriate and sanitary dwelling place, as well as appropriate foods and medical care.

16. Should the Convention provide that all domestic workers should be paid for their work at no greater than monthly intervals?

Comments:

Yes, all domestic workers should be paid for their work at no greater than monthly intervals. Withholding wages could be a means used by employers to prevent domestic workers from leaving, even when domestic workers' rights are violated.

It should also state that domestic workers subject to a weekly, daily or hourly wage system should be paid a wage by week, day or hour. For domestic workers who complete one-time temporary work or certain specific work, employers should also agree in the contract to pay wages after completion of the task.

Wages should be paid at the date agreed by the employers and the domestic workers. In case of any festivals or holidays or rest days, payment should be made in advance at the latest working day.

At the time when the parties terminate the contract in accordance with law, the employer should pay off the wages of the domestic workers at one lump sum at the time of termination.

The Member may also provide the standard for compensation when the employers delay in payment or skimp the wages of the domestic workers. Employers should also be liable for providing evidence for his/her act of paying wages in time and in full amount.

17. Should the Convention allow partial payment of wages in kind? If so, please specify any circumstances and limits, in particular whether a domestic workers can refuse such in kind payments.

Comments:

No. The Convention should not allow any partial payment of wages in-kind, and a domestic worker has the right to refuse such substance payments.

Food and accommodation should be not calculated as part of wages.

18. Should the Convention provide that each Member should ensure that domestic workers are not required by national law or regulation to reside in the home of the employer?

Comments:

Yes. Domestic workers have the right to choose their own living places. They can choose to live in the employer's home or live in their own houses. Each Member should ensure domestic workers are not required by national law or regulation to reside in the employer's home.

19. Should the Convention provide that, when accommodation and food are provided by the employer, the accommodation should be safe and decent, and should respect the worker's privacy, and the meals should be of good quality and sufficient quantity?

Comments:

Yes. Accommodation provided by the employer must be safe and should respect the essential privacy needs of domestic workers.

20. Should the Convention provide that each Member should ensure that domestic workers have normal hours of work, overtime compensation, periods of daily and weekly rest, and annual leave as determined by national laws and regulations, and which are not less favorable than those applicable to other wage earners?

Comments:

Yes. The Convention should state that each Member should ensure that domestic workers have normal working hours, overtime compensation, daily and weekly rest time, and annual leave as determined by national laws and regulations.

In the consultations, multiple stakeholders think that such provisions may be less favorable than those applicable to other wage earners. Since the normal labour workload intensity of domestic workers is generally lower than that of the workers in a production line, for example, and it is difficult to apply the normal working hour of no more than 8 hours per day, since they will be much busier during holidays and festivals, and it is impossible to always grant mandatory recess. Therefore, the industrial association suggests the rest time be no less than 8 hours each day, and 4 days each month. In addition, special provisions should be made for services of special profession such as confinement-caring women (women taking care of babies and mums) and services during special periods (Please refer to Annex 1 for more details).

The Convention should also stipulate special regulations on adolescent domestic workers to guarantee their essential rest time.

21. Should the Convention provide that each Member should ensure that domestic workers are not bound to remain in the household during the period of daily or weekly rest?

Comments:

Yes. The Convention should state that each Member should ensure that domestic workers are not bound to remain in the household during the period of daily or weekly rest, and the domestic workers should not be restricted from their freedom of association and social intercourse. Married persons should also be provided opportunities for reunion with their spouses and children.

22. Should the Convention provide that periods of standby should be regarded as hours of work to the extent determined by national laws and regulations, collective agreements or any other means consistent with national practice?

Comments:

Yes.

Article 58 of the Labour Contract Law of the People's Republic of China stipulates: "During periods when there is no work for the employees to be placed, labour dispatch entities should pay such workers remunerations on a monthly basis at the minimum wage rate as prescribed by the people's government of the place where the labour dispatch entities are located."

According to conventional practices, employers should pay remunerations to domestic workers for the period during which the worker is delayed because of employer's reasons.

When taking care of an elder, children and sick patients, domestic workers maintain on-call status and

thus can't really have a rest. These standby periods should be defined as working hours. Provision should be made on standby hours for minor workers. It must ensure that minor workers should not work at night to ensure they receive enough sleeping and rest time.

23. Should the Convention provide that each Member should take measures to ensure that domestic workers enjoy at least 24 consecutive hours of rest in every seven-day period?

Comments:

Yes.

The Convention should also stipulate special regulations on adolescent domestic workers.

24. Should the Convention provide that each Member should take measures to ensure equality of treatment between domestic workers and other wage earners in respect of occupational safety and health? Should the Convention provide that such measures may be applied progressively? Please elaborate.

Comments:

Yes. The Convention should state that each Member should take measures to ensure equality of treatment between domestic workers and other wage earners in respect of occupational safety and health.

The Convention should provide that such measures must be applied immediately rather than progressively (because ILO's research has shown that the rate of incidents among domestic workers is higher than that of workers in other sectors). In reality, domestic workers suffer from occupational problems such as strain injury, insomnia, neurasthenia due to frequent interruption of sleep, and even anxiety and dumps, as well as weakened immune system and frequent flu, etc. Some employers have no safety measures, and domestic workers may suffer from serious physical injury due to the lack of safety ropes in working aloft (Please see Annex 3 for two cases in Beijing and Shanghai).

25. Should the Convention provide that each Member should take measures to ensure the application of social security schemes, including maternity protection, to domestic workers? Should the Convention provide that certain measures may be applied progressively? Please elaborate.

Comments:

The Convention should state that each Member should take measures to ensure the application of social security schemes, including maternity protection, to domestic workers. But the Member should be allowed to lower the standard according to the characteristics of the domestic service after consultation with the relevant employers' organizations and workers' organizations, so that it not overburden the employers and would therefore reduce the employment opportunities. (Please refer to Annex 4 for maternity protection). In some cities of China, the standard for social security insurance for domestic workers is lower than that for urban residents.

The Convention should provide that such measures should be taken immediately.

C. Employment Agencies

26. Should the Convention provide that each Member should take measures to ensure that domestic workers recruited or placed by employment agencies, particularly migrant domestic workers, are effectively protected against abusive practices?

Comments:

Yes.

In China, the exploitation of employment agencies mainly refers to the unreasonably high rate of service fees and commission from domestic workers. In interviews, many domestic workers complained that domestic service agencies are charging service fees but do not provide corresponding services. The Law of the People's Republic of China on Employment Contracts prohibits the labour

dispatch agencies to charge fees from the dispatched persons. However, some domestic service agencies still collect deposits from domestic workers and charge management fees to employers which usually account for 15~25% of the total payment by employers. Some maternity care agencies charge a management fee of up to 30% of the total payment by employers. Li Duolan (a maternity care provider) said, "My agency charges the client 3500 yuan for my service and will deduct 1,000 yuan as the management fee, and will deduct another 200 yuan if I fail to complete full work attendance." Domestic service agencies operate under the view that, as long as the domestic worker agrees with the rate of wages, the agency is benefiting from its own capability if it charges the client more money. However, the maternity care provider thinks that the price shouldn't be changed so arbitrarily after negotiation, because higher payment means increased workload. Furthermore, since domestic service agencies charge service fees, they should provide real services: buying work injury insurance for domestic workers; providing follow-up monitoring services, and solving disputes, as well as paying minimum living allowances for domestic workers during the transition periods.

China has developed a set of registration criteria for employment agencies to ensure their legality. The Employment Promotion Law prescribes that the administrative license should be handled to establish employment agencies. Licensed employment agencies should handle the registration with industry & commerce administration authorities. If an employment agency engages in employment agency activities without license and registration, the labour administration authority or other authority concerned should close down said agency according to the law, confiscate illegal gains, if any, and impose a fine of RMB 10,000 to 50,000. According to the Law on Employment Contracts, a labour dispatch company should be established in line with relevant provisions of the Company Law with the registered capital of at least RMB 500,000.

China Association of Consumers has launched a nation-wide complaint hotline ("12315") and labour bureau's hotline ("12333"). Domestic workers are more prone to trust NGOs and media sometimes. China has not fully regularized or supervised the pricing standard of employment agencies. The Price Law only prohibits operators from seeking huge profits and dumping at the price lower than the cost in order to restrict competition. To date, there has been no guiding price for the fee standard of domestic service agencies. This can be easily implemented as a responsibility of the China Association of Domestic Service.

For example, measures taken by other countries include:

- a) establish criteria for the registration and qualifications of employment agencies;
- b) support accreditation programs for employment agencies with rigorous criteria and monitoring by independent auditors to improve their quality and accountability;
- c) inspect employment agencies regularly, including through unannounced inspections, to ensure compliance with relevant laws and regulations, and institute significant penalties for violations;
- d) provide accessible complaints mechanisms for domestic workers to notify authorities of abusive practices;
- e) ensure that no deduction is made from the remuneration and no IDs are withheld from a domestic worker with respect to costs incurred by the employer in using an employment agency to recruit or place the employee.

D. Migrant Domestic workers

27. Should the Convention provide that national laws and regulations should require that migrant domestic workers receive a written contract containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders?

Comment:

28. Should the Convention provide that migrant domestic workers should be entitled to repatriation at no cost on expiry or termination of the employment contract?

Comments:

Yes. Employers should pay for the round-trip travel expenses.

29. Should the Convention provide that each Member should prohibit employers from keeping in their possession domestic workers' travel and identity documents?

Comments:

Yes. Because employers often keep domestic workers' travel and identity documents, the practice could easily lead to exploitation, trafficking and forced labour.

30. Should the Convention provide that Members should cooperate with each other to ensure that migrant domestic workers enjoy benefits comparable with those of nationals?

Comments:

Yes. The Convention should state that Members should cooperate with each other to ensure that migrant domestic workers are encouraged to use formal and regulated migration channels and ensure that they enjoy benefits comparable with those of local citizens.

Members should also take steps to avoid discrimination against domestic workers from certain countries.

E. Implementation and enforcement measures

31. Should the Convention provide that each Member should ensure that domestic workers have easy access to fair and effective dispute settlement procedures? Please specify.

Comments:

Yes.

According to consultations with domestic workers, employers and administrative authorities, we have learned that, at present, labour inspectors are not allowed to enter an individual's household for two reasons: first, labour inspectors are not authorized to enter the household to conduct supervision according to the Labour Law; second, citizen's privacy should be protected. Two possible options in labour inspection could be considered, including: reporting mechanism, and sample inspection.

In addition, it is also a convenient and highly effective way to require domestic service agencies to undertake more follow-up monitoring services, acceptance of complaints, coordination with dispute management.

Domestic workers also need assistances from women organizations, trade unions and other legal aid institutions for dispute settlement.

The domestic service industry is not covered by the labour law at present (except domestic workers who sign labour contracts with labour dispatch domestic service agencies), so the Law of the People's Republic of China on Labour Dispute Mediation and Arbitration is not applicable to the disputes in the domestic service industry. At present, the legal framework for solving domestic service disputes is mainly the civil law.

Special mechanisms and procedures should be established for minor domestic workers to ensure the access of convenient help and protection of their privacy.

32. Should the Convention provide that each Member should ensure that arrangements are in place to ensure compliance with national laws and regulations applicable to domestic workers, such as labour inspection services, with due regard to privacy? Please elaborate.

Comments:

Yes.

In China, problems with the enforcement of laws exist. In order to push better enforcement, the law and regulation should clearly specify who is responsible to supervise law enforcement, what is the

entity's concrete responsibilities, what methods and concrete steps are involved in performing the supervisory functions, and how to compensate any damage caused by its malpractice. In China, labour inspectors should be allowed to selectively examine the accommodation and foods provided by employers for domestic workers, whether the wages are paid in full on time, and whether there is any personal injury; and they may require employers, if complained about, to receive the inquiry from the labour supervision organ. As long as labour inspectors are trained to respect personal privacy, this practice will not undermine the privacy of domestic workers and employers.

For example, measures taken in other countries include:

- a) requirements that employers register the name and age of each domestic worker working in their homes with the local labour agency or another appropriate local authority;
- b) requirements that the names of all child domestic workers are shared with education authorities to help ensure school attendance for child domestic workers;
- c) requirements that labour inspectors or other designated inspectors monitor private households, including through unannounced visits and private interviews with domestic workers regarding their working conditions;
- d) requirements that prospective employers submit to a home visit by appropriate authorities before employing a domestic worker, to assess working conditions and accommodations (if applicable) to be provided to the domestic worker;
- e) establishment of accessible complaint mechanisms, including 24-hour hotlines, for domestic workers to report abuses;
- f) protection of domestic workers' ability to move freely outside of the employer's home, form workers' associations, and keep mobile phones.

33. Should the Convention provide that its provisions should be applied by laws, regulations, collective agreements or other measures consistent with national practice, by extending existing measures to cover domestic workers, adapting them, where appropriate, and developing specific measures for domestic workers?

Comments:

Yes.

34. Should the Convention provide that, in implementing its provisions, each Member should consult the employers' and workers' organizations concerned?

Comments:

Yes.

China has ratified ILO C144 Tripartite Consultation Convention. Member should consult the employers' and workers' organizations concerned when implementing the provisions of this convention.

VI. Content of a Recommendation

A. Fundamental Principles and Rights

35. Should the Recommendation provide that the competent authority should take or support measures to promote capacity building for representative organizations of employers and domestic workers, including collective bargaining?

Comments:

Yes. The Recommendation should state that the competent authority should take or support measures to promote capacity building for representative organizations of employers and domestic workers, including collective bargaining.

36. Should the Recommendation provide that, when regulating working and living conditions, Members should give special attention to the needs of young domestic workers, including in respect of working time and restrictions on undertaking certain types of domestic service? If yes, please specify.

Comments:

Yes, the Recommendation should state that, when regulating working and living conditions, Members should give special attention to the needs of adolescent domestic workers, especially adolescent female domestic workers, including respect for working time and restrictions on undertaking certain types of domestic service; including the time arranged by employers for social networking activities and dating, and prevention of cool water during menstruation. Give special attention to issues concerning sexual harassment and violations.

Chapter 7 of the Labour Law of China sets forth the special protection of female staff and minor workers, meaning labourers who are aged above 16 but below 18. Employers should provide regular health examination for minor workers. It is forbidden to assign minor workers to work in mines or underground, in the poisonous or hazardous environment, or do work involving the fourth-class physical labour strength specified by the state or other work as forbidden, including handling weights and contacting hazardous chemicals. The Provisions on the Special Protection for Minor Workers issued by the former Ministry of Labour in 1994 provides some concrete special labour protection measures, considering the characteristics that minor workers are at the stage of growth and development, and their needs to receive the compulsory education. The Provisions specify the registration system for the special protection of minor workers, and regular health examination for minor workers, and forbids minor workers to do work involving such forced postures as bending the head, stooping down, lifting up or crouching for an extended period. In addition, the Provisions stipulate that employers provide relevant vocational safety & hygiene education and training for minor workers before they start work, and employers should uniformly handle the physical examination and registration for minor workers and cover relevant expenses.

The above Provisions should be applicable to minor domestic workers.

B. Working and living conditions and social security

37. Should the Recommendation provide that the terms of employment should be provided in writing?

Comments:

Yes. The Recommendation should state that the treatment and terms of employment should be submitted in writing.

Treatments and terms of employment should be provided in a written contract. In addition, the written contract should be made in the language understandable to domestic workers, including those with poor education. If domestic workers are unable to write or read, necessary support should also be provided to help domestic workers fully understand these contents (for example, domestic service companies participate in the contract signing).

38. Should the Recommendation provide that additional particulars should be included in the terms of employment, such as:

- (a) the starting date of the employment
- (b) a detailed list of duties
- (c) annual leave
- (d) daily and weekly rest
- (e) sick leave and any other personal leave
- (f) the rate of pay for overtime work
- (g) any other cash payments to which the domestic workers is entitled
- (h) any in-kind allowance and its cash value
- (i) details of any accommodation provided
- (j) any authorized deductions
- (k) the period of notice required for termination?

Comments:

Yes, include all. Due to the unequal access to information between the employer and the domestic worker, the Recommendation should state that additional particulars should be included in the terms of employment, particularly about assignment of duties.

It is very important to clarify “any authorized deductions”, since the Labour Law of the P. R. China restricts that the wages deducted by the employer should not be more than 20%, and the balance should not be less than the local minimum wage standard. However, domestic workers are often denied large portions of their pay. Employers should be encouraged to maintain occupational liability insurance to allocate the liability for the personal injury risk and property damages caused to family members of the employer due to the negligence of the domestic workers. Beijing Huaxia Zhongqiang Domestic Service Company provides occupational liabilities insurance for domestic workers, who pay 70 Yuan each per year for coverage of 130,000 Yuan, or pays 130 Yuan for coverage of 200,000 Yuan; or pay 200 Yuan for coverage of 400,000 Yuan. This insurance is equivalent to third-party insurance. If any domestic work results in personal injury or property losses of employer due to negligence, the insurance company will pay for such damages.

39. Should the Recommendation provide for a model contract, for example prepared by each Member in consultation with organizations of employers and workers concerned?

Comments:

The Recommendation should provide for a model contract. This may be prepared by each Member in consultation with organizations of employers and workers concerned, because there are many unreasonable terms in existing contracts; one example is the provision that “An employee will be returned to his/her original domicile at his/her own cost if he/she is unable to undertake domestic service work due to illness.” The model contract may be an advocacy for reasonable terms

1. The contract should expressly define the rights and obligations of the parties concerned, including, without limitation, the elements below:

- (1) Basic information and contact information of the parties concerned; ID card numbers are required to prevent frauds;
- (2) Concrete contents and location of service;
- (3) Duration;
- (4) Working hours, rests and holidays;
- (5) Wages and subsidies;
- (6) Insurance and welfare;
- (7) Change, revocation and termination of the contract as well as liability for breach; and
- (8) Settlement of contract disputes.

2. For examples of model contracts , please see Annex 5 (1. between the employer and the domestic worker; 2. among domestic service agency, the employer and the domestic worker; 3. between the labour dispatch domestic service agency and the domestic worker).

40. Should the Recommendation provide that any work-related medical testing should respect domestic workers' right to privacy and should be free from discrimination, including on the basis of pregnancy and HIV status?

Comments:

The Recommendation should prescribe that any medical testing related to work should respect domestic workers' right to privacy and remain free from discrimination. During the discussion, the representatives of various institutions point out that, while domestic workers' right to privacy should be respected, the more important work is to improve relevant policies and laws as soon as possible; for example, to expand the coverage of maternity insurance to domestic workers. Otherwise, even if domestic workers' privacy against the issue of pregnancy is protected, it will be very difficult for them to enjoy corresponding welfare (such as wages and childbearing expenses in hospitals). To date, there has been no compulsory HIV examination. In addition, the representatives have posed another question – whether employers and service objects should also issue corresponding certificates of health to domestic workers or domestic service companies.

41. Should the Recommendation provide that domestic workers should be given at the time of each

payment an easily understandable written account of the payments due and the amounts paid?

Comments:

The Recommendation should state that employers should give domestic workers at the time of each payment an easily understandable written account of the payments due and the amounts paid, which is very important both to respect the domestic workers' right to know and preserve evidence. As an additional benefit, this may also urge the employer to pay the wages in time and in full amount, so as to facilitate for labour supervision.

42. Should the Recommendation provide that national laws and regulations concerning the protection of wages, including in the case of the employer's insolvency or death, apply to domestic workers?

Comments:

The Recommendation should state that national laws and regulations concerning the protection of wages, including in the case of the employer's insolvency or death, apply to domestic workers, so as to ensure the repayment of the wages of domestic workers as a priority.

In China, if employers of domestic workers are individuals, no law guarantees the priority of domestic workers' wages, because there is no law concerning the insolvency of natural persons. If an individual employer were to die and leave no inheritance, a domestic worker would be unable to recover the wages in arrears. If the employer of a domestic worker is a company, including a labour dispatch-type domestic service company, the wages of labourers in arrears are prioritized when the bankrupt's estates are used to repay all the debts without mortgage guarantee.

Article 113 of the Bankruptcy Law of the People's Republic of China specifies that: Bankrupt estates should be liquidated in line with the following sequence after paying the bankruptcy expenses and public welfare debts in priority:

- (1) Salaries, medical expenses, injury & disability subsidy expenses and pension expenses owed by the bankrupt to staff; basic pension insurance premiums and basic medical insurance premiums payable to the personal accounts of staff; and compensations payable to staff as specified by laws and administrative regulations;
- (2) Social insurance premiums other than those mentioned in the previous provision and tax in arrears payable by the bankrupt;
- (3) Common credit of bankruptcy.

Where the bankrupt's estates are insufficient to satisfy the liquidation claims in the same sequence, such claims should be liquidated pro rata.

The salaries of the chairmen, supervisors and senior executives of a bankrupt enterprise should be calculated in line with the average staff salary of the enterprise.

43. Should the Recommendation provide that, consistent with national conditions, the accommodation when provided by the employer should:

- (a) comprise a separate, private room equipped with a lock and key provided to the domestic worker, that is suitably furnished and adequately ventilated;

Comments:

The Recommendation should state that, consistent with national conditions, the accommodation provided by the employer should:

(a) comprise a separate, private room equipped with a lock and key provided to the domestic workers, which is suitably furnished and adequately ventilated.

In reality, the accommodation provided by different families for domestic workers varies greatly. Wealthier employers can provide separate bedrooms for domestic workers. According to the survey, domestic workers working in villa communities have the aforesaid accommodation. The problem is that real estate developers often discriminate against domestic workers by locating the bedroom in the basement and next to the garage, which can lead to noisier or less comfortable conditions.

Most of the employers with relatively poor economic backgrounds are unable to provide separate bedrooms for domestic workers, due to the small housing area. Usually domestic workers live in the same bedroom as those service objects who can not take care of themselves, including those of the opposite sex. Some domestic workers live in sitting rooms.

It is recommended to provide the standard accommodation step by step. This may also depend on the attitude of the domestic worker.

Domestic service agencies may verify the accommodation in advance, while labour inspectors may conduct the spot examination. The legislation should focus on the prevention of and sanction against rights violation cases.

- (b) include access to suitable sanitary facilities, shared or private; and

Comments:

Yes.

- (c) be adequately lit, and as appropriate heated and air conditioned in keeping with prevailing conditions within the household?

Comments:

Yes. Equipment and conditions similar to other rooms in the house should be provided to the domestic worker, and these it should not harm the health of domestic workers. In some cases, the humidity in a basement might cause rheumatism, and such risks should be avoided.

44. Should the Recommendation provide that no deduction should be made from the remuneration of a domestic worker with respect to accommodation provided by the employer?

Comments:

No.

The following wording is recommended:

An employer may deduct the accommodation expense from the remuneration of a domestic worker, but such deduction should fulfill the following conditions: 1) The standard at which the accommodation expense is deducted is reasonable, and agreed upon by the domestic worker; and 2) The remuneration of the domestic worker should at least reach the local minimum wage standards.

45. Should the Recommendation provide that the hours of work and overtime should be accurately calculated and recorded by the employer and this information communicated to the domestic workers?

Comments:

Yes. The Recommendation should state that the hours of work and overtime should be accurately calculated and recorded by the employer and this information should be communicated to the domestic worker. This helps restrict overtime and calculate overtime pay.

The employer should take the burden of proof when disputes occur.

46. Should the Recommendation provide that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day?

Comments:

Yes. The Recommendation should state that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day.

47. Should the Recommendation provide, with respect to standby work, that national laws and regulations or collective agreements should regulate:

- (a) that standby hours should only apply to night hours as defined in national laws or regulations or collective agreements;

Comments:

No. Please refer Question 6(c) “Standby” definition.

- (b) the maximum number of hours per week, month or year that an employer may require a domestic workers to be on standby;

Comments:

It should be regulated according to the two types of “standby” as mentioned in Question 6(c).
(1) on-call period in the employer’s home (eg. night care for children, sick, pregnant etc); (2) the standby period between the two assignments from the labour dispatch domestic service agency
Maximum number of hours to be on standby should be regulated for the first type, but there is no need to do so for the latter.

- (c) the compensatory rest period if the normal period of rest is disturbed by standby; and

Comments:

Yes. In China maternity care providers require special attention to reception of their compensatory rest period for their standby time in nights.

- (d) the extent to which the standby hours should be remunerated according to normal or overtime wage rates?

Comments:

Based on the definition of “standby” in Question 6 (c), (1) on-call period in the employer’s home (eg. night care for children, sick, pregnant etc); (2) the standby period between the two assignments from the labour dispatch domestic service agency. For the first type of “standby”, regulations should be in place for remuneration of standby hours according to normal or overtime wage rates; while for the second type, labour dispatch domestic service agencies should pay at least the minimum wage to the domestic worker.

48. Should the Recommendation provide that domestic workers whose normal duties are performed at night should be treated not less favorably than other wage earners performing night work?

Comments:

Yes. The Recommendation should state that domestic workers whose normal duties are performed at night should be treated not less favorably than other wage earners performing night work.
Work at night should be compensated with additional subsidy. In addition, the Chinese labour law specifies the shortening of working hours at night. In practice, the night shift may follow the 7-hour working system, and involve the payment of an additional subsidy.

49. Should the Recommendation provide that national laws and regulations, or collective agreements, should stipulate that ongoing needs of the household are not to be used to deprive the domestic workers of daily and weekly rest?

Comments:

Yes. The Recommendation should state that national laws and regulations, or collective agreements, should stipulate that ongoing needs of the household are not to be used to deprive the domestic workers of daily and weekly rest. Many domestic workers supplied the alternative: that two domestic workers be employed if necessary, or that the family members take some work.

50. Should the Recommendation provide that Members should give due consideration to establishing a fixed day of the week for rest, as well as compensatory rest and extra payment in the case of derogation?

Comments:

Yes. The Recommendation should state that Members should give due consideration to establishing a fixed day of the week for rest, as well as compensatory rest and extra payment in the case of derogation.

The Labour Law of the People’s Republic of China contains relevant articles:

Article 36 The state implements the working hour system that a labourer should work no more than 8 hours per day, and no more than 44 hours each week on average. (The Regulations on the Working Hours of Staff amended by the State Council on March 25, 1995 specifies the working hours should be 40 hours per week.)

Article 38 An employer should ensure a labourer can rest for at least one day per week.

Article 41 Subject to the need of production and operation, an employer may extend the working hours after consulting the trade union and the labourer, no more than an hour per day in general; when it is necessary to extend the working hours for special causes, the extended working hours should not exceed three hours per day on the condition that the physical health of the labourer is secured, but no more than 36 hours per month.

Article 42 Extension of working hours should not be restricted by Article 41 of this Law when any of the following cases happens:

- (1) Emergency treatment is necessary when natural disasters or accidents happen or the life and health of the labourer and property safety are threatened for other causes;
- (2) Rush repairs are necessitated when the failures of production equipment, traffic & transportation routes and public facilities influence production and public interests;
- (3) Other situations specified by laws and administrative regulations.

Article 43 An employer should not extend the working hours of a labourer in violation of the provisions of this Law.

Article 44 An employer should pay a labourer the remuneration higher than the remuneration of the labourer in the normal working hours in line with the following standard, when any of the following cases becomes true:

- (1) An employer should pay a remuneration not less than 150% of the normal remuneration if the employer extends the working hours of a labourer;
- (2) An employer should pay a remuneration not less than 200% of the normal remuneration if the employer asks a labourer to work on rest days but can't provide compensatory rests;
- (3) An employer should pay a remuneration not less than 300% of the normal remuneration if the employer arranges a labourer to work on public holidays.

51. Should the Recommendation provide that domestic workers should not be required to remain in or with the household during their annual leave, and that time spent accompanying the household on vacation is not considered annual leave?

Comments:

Yes. Domestic workers can hardly rest if they are required to remain in or with the household during their annual leave. In China most domestic workers are from rural areas, so they need home leave.

52. Should the Recommendation provide that, in the event of termination of employment, domestic workers who live in employer-provided accommodation are given:

- (a) an extended period of notice during which they may continue living in the employer's home;

Comments:

No. The extended period during which domestic workers may continue living in the employer's home should be determined through consultation with the employer.

The Chinese contract expressly specifies the service period, so a domestic worker has already known the contract period when signing the contract. Where there is no written contract or the written contract fails to set forth the date of termination, the employer should notify the domestic worker of the date of termination at least 7 days in advance. If the domestic worker needs to continue living in the employer's home after termination of the contract, he should consult with the employer.

- (b) reasonable time off with pay during the notice period to enable them to seek new employment?

Comments:

No. The allowance during the notice period should be borne by the unemployment insurance funds.

53. Should the Recommendation provide that Members should:

- (a) identify, mitigate and prevent occupational hazards specific to domestic service;

Comments:

Yes. in particular to prevent the occupational hazards to domestic workers in connection with the work at height or high temperature, use of electric appliances and use of fire. The contract should provide the employer's obligation in safety facility and prevention measures.

(b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic service;

Comments:

Yes.

To date, China has no special department responsible to collect and publish the statistical data concerning occupational safety and health related to domestic service. It is recommended that the labour bureaus and the statistical office be responsible for taking the leading role.

(c) advise on occupational safety, health and hygiene as well as on ergonomics and protective equipment; and

Comments:

Yes.

The health administration authority, the work safety supervision bureau and the labour bureaus can advise in this area.

Article 9 of the Labour Law of the People's Republic of China promulgated in 1994 specifies that the labour administration organ of the State Council oversees the labour work of the entire country. The labour administration organ of a local people's government at the county level and above administers the labour work in the administrative region. Later, the labour administration organ transferred the occupational hygiene business, and the Law of the People's Republic of China on Prevention and Control of Occupational Diseases formulated later stipulates that the health administration organ of the State Council is uniformly responsible for supervision and administration of methods for the prevention of occupational diseases. The Production Safety Law of the People's Republic of China decreed in 2002 does not define the administration organ. In reality, the occupational safety business was transferred to the Work Safety Supervision Bureau of the National Economic and Trade Commission from the Ministry of Labour before the promulgation and implementation of the law. The Work Safety Supervision Bureau was later upgraded to the National Administration of Work Safety, and came directly under the State Council. However, the inspection, supervision and administration of hazardous mechanical equipment belong to the General Administration of Quality Supervision, Inspection and Quarantine.

(d) develop training programs and disseminate guidelines on occupational safety and health requirements?

Comments:

Yes.

According to the current division of responsibilities concerning the supervision of occupational health, the health department is responsible for supervision and inspection of the occupational health guardianship of employers, regularization of prevention and care with respect to occupational diseases, and inspection and treatment of occupational diseases.

54. Should the Recommendation provide that Members should consider means to facilitate the payment of social security contributions by employers, such as a system of simplified payment?

Comments:

Yes.

In China, the social security system doesn't accept the payment of social security contribution by an individual employer for his workers. Payment of social security contributions must be made through registered organizations or individual business owners. Therefore, it is necessary to open the channel for a personal employer to pay social security premiums for his domestic worker. This may refer to the social security contribution made by individual business owners.

C. Professional development

55. Should the Recommendation provide that Members should, in consultation with the employers' and workers' organizations concerned, establish policies and programs for domestic workers to encourage ongoing development of their competencies and qualifications, including literacy training as appropriate, as well as to enhance their career and employment opportunities?

Comments:

Yes.

At present, qualified domestic workers fall short of supply, so employers search for excellent domestic workers, and it has become the "experience" to solicit trained nursing care providers from hospitals. Therefore, training has become the bottleneck that restricts development of the domestic service industry and the realization of the decent work of domestic workers.

The National Occupational Standard for Domestic Workers divides domestic workers into three levels – primary, intermediate and senior-- and establishes corresponding requirements. However, domestic service agencies have no compulsory training obligation. Part of staff-style domestic service companies perform the training obligation as prescribed by the Labour Law, but can't ensure the time and quality of the training due to the lack of financial resources. As a result, employers have to assume the responsibility of training. Most domestic workers just receive elementary school education or below, so employers often feel that domestic workers are slow to start. Rich employers prefer to pay the training expenses to employ domestic workers that have the desired skills. Moreover, employers endeavor to retain excellent domestic workers, and even provide the higher education expense for the children of domestic workers. Obviously, it is of vital importance to formulate special policies and plans to encourage the development of their capacity and quality, including literary learning.

China is now implementing a Domestic Service Project to train the unemployed population and introduce them into the domestic service industry. The Project is jointly launched by the Ministry of Commerce (MOFCOM), the Ministry of Finance and ACFTU, and aims to train a batch of urban laid-off workers and migrant workers each year, and guide them to engage in domestic service. 2009 is the first year of the implementation of the project, which plans to assist 200,000 people. These people may be trained by training institutions, trade unions or qualified domestic service companies, and the training expense will be subsidized by the central finance in full amount.

The policy orientation should be to provide domestic workers with free trainings so as to enhance their career and employment opportunities, and increase wages and other treatments.

D. Migrant domestic workers

56. Should the Recommendation provide that regulation concerning repatriation of domestic workers should:
- ensure financial guarantees by those responsible for repatriation costs;

Comments:

Yes.

- prohibit any payment by migrant domestic workers to cover repatriation costs;

Comments:

Yes.

- identify the time frame and circumstances for the exercise of the right to repatriation?

Comments:

Yes.

57. Should the Recommendation provide that Members should consider additional measures to ensure the effective protection of migrant domestic workers' rights, such as:
- the development of a network of safe emergency housing; and

Comments:

Yes.

- (b) a placement visit of the household in which the migrant domestic workers will be employed?

Comments:

Yes.

58. Should the Recommendation provide that Members that are sending countries should assist in the effective protection of migrant domestic workers' rights, including by informing migrant domestic workers of their rights before departure, establishing legal assistance funds, social services and specialized consular services and by any other additional measures? Please specify.

Comments:

The Recommendation should state that Members in sending countries should assist in the effective protection of migrant domestic workers' rights, including by informing migrant domestic workers of their rights before departure, establishing legal assistance funds, social services and specialized consular services and by any additional measures necessary. For example, the industry and commerce administration should review whether the dispatch agency has enough registered capital and whether there are false advertisements, and should crack down on illegal acts in a timely fashion upon discovery. The public security organ should supervise swindlers and illegal immigration brokers, the courts should exercise their judicial right to punish illegal dispatchers, and the legal aid institutions should be encouraged to assist the victims in claiming for compensation.

E. Relationship to Other National Policies

59. Should the Recommendation provide that Members should be encouraged to develop national policies that:

- (a) promote accessible, collective measures for the delivery of child care and other personal care;

Comments:

Yes.. Collective entities or individuals should be encouraged to open more nursing homes, kindergartens, etc. Members should issue policies on subsidizing child care and elder care for the poor families.

- (b) promote work-life balance for families; or

Comments:

Yes. For example, a flexible working hour system may be implemented.

- (c) promote the domestic workers' employment in occupational categories that match their education and skills?

Comments:

Yes.

The work in the domestic service industry is being segmented. Domestic workers are traditionally regarded as mainly housekeepers, and domestic workers may be divided into 230-400 work types; the domestic services are divided into 11 main categories.

F. International cooperation

60. Should the Recommendation provide that Members should be encouraged to continue improving protection of domestic workers, notably through cooperation at bilateral, regional and international levels? Please elaborate.

Comments:

Yes. The Recommendation should state that Members should be encouraged to continue improving protection of domestic workers, notably through cooperation at bilateral, regional and international

levels. For example, bilateral/multilateral conventions which set up unnecessary obstacles in elimination of cross-border migration, and mutual social insurance conventions, etc.

VII. Special Problems

61. Are there unique features of national law or practice that are liable to create difficulties in the practical application of the instruments?

Comments:

ILO Recommendation No.116 (Reduction of Hours of Work Recommendation, 1962) proposes that the principle of standard of forty-hour week is set out as a social standard to be reached by stages; meanwhile, according to the No.1 Convention which was adopted at the No.1 ILO conference in 1919, the maximum normal working hours per week should be 48 hours. The standard of working hours and standard of overtime pay in China are advanced ones, which are difficult to implement.

Article 36 of the Labour Law of the People's Republic of China (which was implemented as of January 1, 1995) prescribes that "The state implements a working hour system under which labourers should work for no more than eight hours a day and no more than 44 hours a week on the average." Article 3 of the Provisions of the State Council on Working Hours of Employees (which was implemented from March 25, 1995) prescribes that "An employee should work eight hours every day and forty hours every week." China is a developing country, but its standard of working hours is higher than that in the developed country Japan⁹, higher than international labour standard, and also higher than the standard for certification of social liabilities SA8000¹⁰.

The overtime pay for working in legal holidays and festivals in China, is three times higher than that in developed countries, including USA and Japan, and exceeds the bearing capacity of employers. It will create some difficulties if implemented according to the Labour Law standard. Therefore, a relatively low standard may be formulated.

62. (For federal States only) In the event of the instruments being adopted, would the subject matter be appropriate for federal action or, wholly or in part, for action by the constituent units of the federation?

63. Are there any other pertinent problems not covered by the present questionnaire that ought to be taken into consideration when drafting the instruments?

Comments:

1. It is urgent to clarify responsibilities among various government authorities and coordinate their initiatives. There are four administrative departments in charge of this industry for now: (1) The Ministry of Commerce takes charge of the business and management associations and academies; (2) The industry and commerce administration is responsible for registration; (3) The labour department is responsible for occupational skill appraisal, examination and preparation of test questions, and issuance of licenses for occupational intermediaries; the migrant workers' office, which is separated from the labour bureau, is developing labour brand; and (4) The public security office is responsible for the social security issues arising from the migrant workers' entry to cities and issuance of temporary resident permit. The multi-department management has caused the confusion of duties and responsibilities. Therefore, a competent authority should be defined.

2. It is suggested that the domestic service companies undertake more responsibilities; for example, to arrange job placement, handle social insurance formalities for domestic workers, payroll agency service, carry out vocational training, accept complaints and participate in the coordination and settlement of disputes between domestic workers and household employers, etc. The government should support the domestic service companies in arranging job placement, especially those which have performed their duty of training, including tax preferences, training fees and subsidy to social insurance premiums, etc.

Annex.

- Annex 1. Regulating Special Labour Standard on Domestic Workers
- Annex 2. Eliminating the discrimination in employment and occupation
- Annex 3. Two cases on rights violations of domestic workers (Liuyun Case in Beijing and Zhou Dailan case in Shanghai)
- Annex 4. Maternity protection of domestic workers
- Annex 5. Model contract (1. between the employer and the domestic worker; 2. among domestic service agency, the employer and the domestic worker; 3. between the labour dispatch domestic service agency and the domestic worker)
- Annex 6. Lawsuit Case on a Domestic Service Agency

Annex 1: Establishing the Special Labor Standard for Domestic Workers

The preface of this Convention/Proposal shall mention the special conditions for taking the domestic work. Based on the following consultation and survey, we suggest this Convention/Proposal shall establish the special labor standard for domestic workers in such fields as working environment, leave and holiday, social insurance and dispute settlement.

I. Stress personal safety and freedom in the working environment standard, and prohibit sexual harassment

Compared to the workers in other industries, domestic workers are more vulnerable to sexual harassment, and evidence collection also becomes more difficult, due to the enclosure and privacy of the working environment, relatively poor education and lack of self-protection awareness and ability of domestic workers. To this end, this Convention/Proposal shall prescribe the concept of sexual harassment, prohibition of sexual harassment behaviors and penalty measures. This Convention/Proposal shall also stipulate intermediaries shall perform the obligation of review, and refuse to introduce domestic workers if an employer is found to have the record of sexual harassment.

On May 15, 2009, the International Labor Organization and the Women's Law Research and Service Center of the Law School of Peking University jointly held a consulting workshop, and invited relevant experts from the China Home Service Association, the All-China Women's Federation, China Women's Development Foundation, the Rural Women and Xi'an Home Service Association. One of the results of the meeting was to establish the special labor standard for domestic workers.

In recent years, some scholars have proposed to include home service into the coverage of the labor law, in order to safeguard the rights and interests of domestic workers¹¹. A few research teams have found through the survey that the personal rights of domestic workers are infringed, and the absolute majority of domestic workers have no labor and social insurance, and work overtime. Some of them even suffer hunger, low salary, misunderstanding as thieves, mistreatment, sexual harassment and even rape. The following cases indicate it is imperative to establish a special labor standard for domestic workers.

[Case 1] In 2001, Xiao Mo, a fifteen-year-old girl, left her native place Henan Province for Zhuhai to do the domestic work, through the recommendation of her neighbor.

Unfortunately, the employer, a sadist, would beat her because of trifles, for example, even a little fingerprint left on the table. After beating each time, the employer would threaten Xiao Mo not to tell others about it or she would kill her whole family! Nor was she allowed to escape, and otherwise she would be beaten to death if she was taken back. So, Xiao Mo had to swallow such insult, not daring to raise her head when coming across neighbors or disclosing to others the behavior of the employer.

Five years has passed, Xiao Mo was abused every day. The employer often easily threw something at hand at her face. At the beginning, Xiao Mo could not stand it, but gradually she became numb so that at last she herself took it for granted that she did do something wrong. In this way, a beautiful little girl was gradually

¹¹ See the research result – A Research on the Necessity of Legislation for the Protection of Labor Rights and Interests of Domestic Workers – a cooperative project implemented by the United Nations Theme Group on Gender, the United Nations Development Fund for Women and the Women's Law Research and Service Center of the Law School of Peking University in 2007, and the theme result – Policy Suggestions on Protection of the Rights and Interests of Domestic Workers in Beijing.

disfigured with the continuous beat by the employer - sunken eyes, swollen nose, wry and chapped mouth and ears, broken teeth.

Later one day, the employer hit Xiao Mo on the nose with a bottle of toilet water so violently just because Xiao Mo rubbed her back a bit hard that Xiao Mo's face was mangled and bloody. Only when the employer found Xiao Mo was in danger of losing life did she send Xiao Mo to hospital, claiming Xiao Mo was hit by a car while buying ice cream late into night.

After the diagnosis of doctors, they found a fracture in her left arm, but it was strange that the bones had grown together by themselves when she was taken to the hospital and the junction of the two bones was jagged-like without having been set together, which confused the doctors: How could the newly broken arm grow together so soon if she was taken to the hospital immediately after the car accident? In addition, Xiao Mo particularly got serious facial injuries and why did she only get her face knocked in the event of a car accident? Furthermore, there are many old injuries covered by the new ones on Xiao Mo's body, which can not be caused by simply a car accident!

After so many doubts were found, kind-hearted doctors contacted Xiao Mo's mother through Xiao Mo. Seeing her daughter, Xiao Mo's mother choked with sobs, not believing the ugly person beyond recognition in front of her could be actually her yearning beautiful daughter! The weeping mother asked how Xiao Mo could get such a serious injury. Though Xiao Mo still kept saying that she was hit by a car... yet the years of humiliation could not stop her sad tears after meeting her beloved mother. Her mother knew the fact must be hidden behind, so she repeatedly asked her daughter, crying. Xiao Mo finally revealed the truth: "...He beat me every day and threatened me to swear, saying that the God would kill my whole family as punishment if I told it to anyone else. I was very scared as I knew nobody in Zhuhai, I was too afraid to say..."

By the forensic identification, Xiao Mo's injury belongs to serious rating.

Xiao Mo's employer was ultimately punished by the law for his assaulting others; she was sentenced a 12-year fix-term imprisonment, deprived of political rights for 4 years.

The cases that many girls were raped by one employer also happened in Beijing.¹²

Case 2: The teenage girl Xiao Ling (anonym) is less than 16 years old. She has not received any education and therefore can not read or write. In March 2002, she went to Beijing to be a housekeeping worker through a job agency in Gansu province. Upon her arrival, she was sent to the employer's home by the housekeeping service company.

Xiao Ling's employer, a Mr. Zhang cheated the girl by saying that there were three people in his family. But when Xiao Ling arrived at his home, he explained that his wife went to the hospital to take care of their pregnant daughter-in-law. And then Zhang started to seduce Xiao Ling step by step. He restricted her freedom and did not let her go out, and he even locked the phone. Xiao Ling who was still ignorant about the society was not alert about this. On the third day upon Xiao Ling's arrival, Zhang was not satisfied with sexual harassment. He began to ask Xiao Ling to watch porn videos and finally reaped her.

After this, Zhang ordered Xiao Ling to take a shower and wash the sheet. With a mobile phone in hand, he threatened: "this is a video tape recorder. It has recorded what happened between us. If you dare to tell what happened today to anyone, I will take this video tape recorder to your hometown and play the video in front of

¹² Xie Lihua: A Probe into Domestic Workers, Guizhou People's Publishing House, August, 2008, Page 68-69

everyone. That will be a great shame for you. And it is no use suing me. My younger brother is the head of a police office. He will put you into prison and make you suffer.....”

On his way sending Xiao Ling back to the housekeeping service company, Zhang repeatedly warned her that if she told the crime to anyone, he would kill her.

When going back to the company, Xiao Ling, who was so frightened, did what Zhang told her. She lied to the company that the hostess was bad-tempered and therefore she had to come back. To everyone’s surprise, Xiao Ling is not the first victim. There were already two teenage girls in the company suffered the same tragedy. But due to the influence of traditional values, none of the three girls reported the crimes to the police.

Zhang hired the fourth girl from the company by the same way. But the fourth girl, Xiao Lian (anonym) could not bear this and fled. The she called her sister who also did housekeeping work in Beijing. Her sister told this to her employee Mrs. Liu, and the crime was exposed. Later, the press reported the crimes and the Migrant Women’s Club also involved in and asked its law assistance team to help the victims Xiao Ling and Xiao Lian to bring Zhang to the court. Till now, people started to know that Zhang was an old bachelor from Linhe, Inner Mongolia. By using a fake ID card, Zhang hired young girls from housekeeping service companies.

Xiaofang, one of the victims, said: “the old man has a very bad temper. I was very scared. I do not know anyone in Beijing. Who will help me? Besides, I feel too shameful to tell this thing out.....”

In April 2002, Zhang was detained by Shijingshan police station of Beijing. In August, the No.1 Procuratorate of Beijing Municipality prosecuted Zhang for his crimes of reaping four housekeeping workers within the two months before and after the Spring Festival of 2002. The victims are aged from 14 to 16. In October, Beijing No.1 Intermediate People’s Court reached a verdict that Zhang was guilty of reaping and should receive a life imprisonment.¹³

Case 3: Mrs. Li went to Beijing from Handan, Hebei Province in February 2005. At first she worked at a restaurant but was fired later. On May 1, after reading from a newspaper that a housekeeping service company was recruiting new staff, Mrs. Li registered her name. On the next afternoon, around five o’clock, she was sent by the company to work at a family surnamed Peng. The Peng family’s hostess was a woman in her fifties who was paralyzed from waist down due to a car accident. There was also her husband in the family. Since Mrs. Li came into the family, the hostess was unwilling to call her by her name, and always cursed with some dirty words. As long as Mrs. Li came close to her, she would beat Li with anything she could reach. Mrs. Li wanted to leave, but the door was locked and the husband did not open it. Mrs. Li began to worry about her own safety. By ten o’clock in the evening, the husband of the family, Mr. Peng began to sexually harass her. In desperation, Mrs. Li began to beg Peng to spare her and even knelt down on the ground. On the first night, Mrs. Li was so scared that she dared not fall asleep amid of the noise. On the next morning, around five o’clock, Peng asked Mrs. Li to fetch a basin of water and then followed her into the kitchen and held her quickly. Mrs. Li could do nothing but trying to resist. Peng muffled her mouth and said:” don’t cry, otherwise I will kill you. No one cares if you die.” In desperation, 31-year-old Mrs. Li freed herself from Peng and climbed onto the kitchen window and then jumped from the fifth floor. Fortunately, she reached a baffle on the second floor, otherwise she would die for sure.

¹³Xie Lihua: A Probe into Domestic Workers, Guizhou People’s Publishing House, August, 2008, Page 68-69

Seeing Mrs. Li falling from the floor, passer-bys called the emergency call 110. After negotiation, the Peng family paid RMB 1,400 for Mrs. Li's medical treatment. The urgent medical service 120 sent Mrs. Li to the hospital. The doctor diagnosed that Mrs. Li suffered from lib fracture and lung contusion. Considering healing people first, the housekeeping company paid RMB 2,000 as advance payment. However, Mrs. Li spent more than RMB 10,000 on medical treatment. How could she find so much money since her family earning per year was less than RMB 3,000. Mrs. Li was sad for her wound as well as for her misfortune. When the Migrant Women's Club sent some delegates to visit her, she said:" I jumped not because I wanted to commit suicide. I have a husband a six-year-old boy. I was helpless at that time!....."

On the afternoon of May 9th, around one o'clock, the workers of the Migrant Women's Club went to the hospital to visit Mrs. Li , gave her RMB 500 relief money, and provided legal assistance to her for free. Then the public security departments began to investigate the case under the accusation of coercive indecent assault on women, but made no progress since there was no evidence. Mrs. Li is in her hometown at present and cannot work due to the sequela of delayed treatment.¹⁴

Based on the above cases, we suggest that a written document or a convention be made to stipulate the laborer standards related to work environment and to demand every contracting state taking measures to ensure that housekeeping workers have personal safety and are free from sexual harassment in the working environment.

First, define the concept of sexual harassment.

Internationally, no binding international convention concerning sexual harassment has been in place to date. The only international convention that expressly prohibits such behavior is the Indigenous and Tribal Peoples Convention (No. 169) published by the International Labor Organization in 1989. Article 20 of the Convention explicitly provides that it is forbidden to sexually disturb indigenous and tribal women and men. However, absence of such international conventions doesn't necessarily mean the sexual harassment issue is not stressed in the international community. The International Labor Organization as well as the international forums and supervisory institutions within the framework of the United Nations have clearly condemned sexual harassment, and think that the existing international instruments concerning human rights, discrimination based on gender, violence on women and women's occupational safety and hygiene have already contained the restriction on the sexual harassment issue. For example, the Committee on the Elimination of Discrimination against Women within the framework of the United Nations defines sexual harassment as an expression of the sexual discrimination and violence against women, and the action program adopted by the Fourth World Conference on Women held in Beijing in 1995 also covers the sexual harassment issue.

Sexual harassment is also regarded as an issue in violation of human rights. Regionally, the European Union treats sexual harassment as a violence and discrimination based on gender, while the state organization in America defines sexual harassment as a reflection of the violence against women. Although the International Labor Organization has held only a few meetings to specially discuss this issue in the past ten years, the organization has listed the issue as one of the topics in many other activities. The Committee of Experts on the Application of Convention and Recommendations of the International Labor Office interprets sexual harassment as a form of discrimination based on gender. A considerable proportion of the states that expressly forbid sexual harassment, including China, haven't defined sexual harassment in legislation, only leaving the

¹⁴Xie Lihua: A Probe into Domestic Workers, Guizhou People's Publishing House, August, 2008, Page 68-69

issue to be explained by the decision-making institutions as to the types of behaviors and situations forbidden. Though different countries and territories define sexual harassment in different ways in their laws, rules, policies, court verdicts and collective agreements, the definition for sexual harassment usually contains the following elements:

1. Behaviors in violation of the dignity of women or men and in the nature of both genders, and such behaviors are not welcomed by the recipient or not reasonable, and constitute an offense against the recipient;
2. A person's refusal or resignation to such behaviors is explicitly or implicitly used as the basis to influence the work of such person, or an action to cause threat, hostility and an insulting work environment for the recipient.

The countries that have defined sexual harassment usually define behaviors that are both unreasonable and unwelcome to the recipient. Unreasonableness may be further interpreted in line with the contemporary cultural codes and different understandings of what constitutes a sexual harassment. In many cases, the scope of "prohibition" not only involves sexual behavior (improper touch, sexual comment and sexual violence), but also include the behaviors based on gender (behaviors that are triggered because a victim is a women or man (the possibility of the latter is smaller)).

Liu Minghui, a Chinese professor of labor law, so defines sexual harassment in the workplace – Sexual harassment in the workplace means the behavior, in whatever form, with sexual elements, that is implemented by an employer, a superior, a colleague, a customer or other partner during recruitment or in the workplace, and not welcomed by the other party so that the other party is threatened or insulted and stays in an intolerable hostile environment¹⁵.¹⁶

Second, specify the prohibition of sexual harassment behaviors and penalty measures.

At present, some states have formulated concrete articles that require an offender of sexual harassment in the workplace to compensate the loss of the victim, including the loss related to the work, or an employer to establish and effectively carry out a measure to prevent sexual harassment in the workplace. Article 40 of the Law of the Peoples Republic of China on the Protection of Rights and Interests of Women revised on August 28, 2005 prescribes, "It is forbidden to implement sexual harassment against women. The victim shall have the right to complain to the employer or relevant authority". The provincial governments have prepared the detailed rules for local implementation of the Law.

In October, 2001, the International Labor Office first held a regional three-party forum – the regional three-party workshop of the Asia-Pacific Region on the action to resist sexual harassment in workplace. At the forum, the worker representative called on the formulation of an international standard; the employer representative considered this unnecessary; while the government hoped that the International Labor Office should play a more active role before the International Labor Organization made any international convention, provided information and assistance to member states, and enhanced their understanding of this issue. It is recommended to continue holding national or regional three-party talks, or hold an expert meeting on the prevention of sexual harassment. The current consensus is that sexual harassment is both a health and safety issue that more influences women than men, and also an issue of sexual discrimination, just like the United

¹⁵ Liu Minghui: A Research on Women's Labor and Social Insurance Right, China Labor and Social Security Publishing House, October, 2005, Page 171.

Nations pointed out in Article 2 of the Declaration on the Elimination of Violence against Women published in 1993 that sexual harassment is a kind of discrimination against women that happens in the workplace.” ”

Therefore, from the perspective of implementing No. 111 Convention, this Convention shall prescribe the prohibition of sexual harassment behaviors and penalty measures.

Second, specify the employment service organization shall perform the obligation to review employers

Based on the review, an employer is qualified to employ a domestic worker if he or she meets all the following conditions, and otherwise the employment service organization shall refuse to introduce a domestic worker to them:

1. Have no track record on beating, scolding or mistreating domestic workers;
2. Have no track record of sexual harassment and crime;
3. Provide effective measures to prevent a domestic worker from infection if there is a member with an infectious disease; and
4. Take proper measures to protect a domestic worker from injuries if there is a family member with insanity.

II. Specify the minimum living conditions in the working environment standard

Almost every domestic worker has much to complain about when speaking of their domestic service career. Poor living conditions are one of the complaints of domestic workers. A domestic worker from Anhui Province said she had worked for an employer for one month. When just starting her work, she ate three steamed breads for a meal, and the employer asked her to eat one steamed bread or a bowl of rice for each meal. Even worse, some domestic workers often eat leftovers.

Domestic workers often live in basements, which are adjacent to garages, if they work in villa areas. Even worse, domestic workers often suffer noise. Families with smaller housing areas usually ask domestic workers to live with senior citizens, patients and children they take care of. Some families ask domestic workers to sleep on sofas, and even put a bed on balconies for domestic workers, making it very difficult to protect the health and privacy of domestic workers.

Therefore, the working environment standard shall specify the minimum living conditions. At least, domestic workers shall not starve or be forced to live in the same room with an opposite sex.

III. Establish special working hour standard

The labor intensity of domestic workers is generally lower than the production line workers, so it is difficult to apply to the standard working hours, i.e. not more than eight hours a day. They are busier in holidays and can not force to ask for leave. Therefore, the Trade Association proposed that the rest time shall not less than eight hours a day and not less than four days a month. Furthermore, special provisions should also be given to baby-sitters (Maternal and Child Care Nurse) and other special services as well as the services of a certain specific period.

In the forum of 2008 of domestic workers, the representative of baby-sitters said: We have too much pressure as we should be responsible for both infant and parturient. Once beginning our work, we should work all day without going out for 26 days and it is also difficult to ask for leave. Li Lifang, being a baby-sitter for six years, has only two good employers, who could understand the baby-sitters' hard working “You are not in

confinement, how can you stay at home all day? You can go out to have a walk.” So it is reasonable for us to go out for the fresh air. But others say: “Don’t you offer 24-hour services?”, which is also shown in the contract, but we could not perform it.

Wang Jinling said: the baby shall be fed at least twice every night and you hear the baby crying the time you fall asleep; after feeding the baby, the time when you fall another asleep, then the mother says “thirsty” as the parturient feels pain in the caesarean section incision and can not drink or eat anything by herself. After delivery water to the parturient, it is difficult for you to sleep again. Some employers think they treat you well enough if they allow you to sleep three hours a day. So such physical overdraft leads to catching cold often. There should be other attendants or family members to help so that we can go on perform our work well after a continuous six-hour sleep.

They feel that the general signed work for 26 days, sometimes 28 days without rest is just like sold themselves to others. If they haven’t worked as prescribed, they shall be regarded as “breach the contact”. They cannot rest well with only an average of three to four hours of rest, just like “superman”. Baby-sitters are not mules, nor are they maids bought by the employers. So I suggest that we should acquire not less than six hours of sleep every day. If it is very difficult to implement, we can ask other family members to help so as to ensure that we can rest for non-stop six hours at any appropriate time.

IV. Social insurance calls for special provision

A domestic worker said at the forum, “If the employer buys social insurance for us, it will be too great, and I want to undertake part of the payment.” Li Duolan said, “If we have no social insurance, we will have to migrate from one place to another. Now, I want to change my job.” However, domestic workers worry to undertake about 30% of their wages, which will lead to the wage decline. So they hope the employers will undertake the social insurance premium. Li Lifang suggested paying the social insurance premium based on the minimum salary standard, or specifying domestic workers should have the right to participate in the social insurance, but may give it up. They worry that if the current policy separating urban residents and rural residents continues, they will lose the income source and wait for relief when they are old. “Maybe, we will live under the overhead bridges.” Well-paid maternity matrons and housekeepers are willing to pay the social insurance premium themselves, but confused how to do the same. Domestic service organizations are only to buy commercial insurances.

Employers differ in this regard. Hi-end employers are willing to pay for stable and high-quality services, some employers claim to eliminate discrimination, protect human rights and promote social harmony from the view of social equality, while some medium- and low-end employers are only willing to pay for commercial accident insurances plus accidental medical insurance at the standard of RMB 30 per year.

V. Specify special dispute settlement route

All the parties consider if domestic service organizations coordinate the dispute between domestic workers and consumers, the effect will be better than other means.

This also needs to be specified specially.

Annex 2: Provisions on Elimination of Discrimination in the Field of Employment and Occupation

The Convention shall provide the elimination of discriminations in respect of employment and occupation, because discrimination against domestic workers is more serious than that against workers in other industries, and elimination of discrimination against domestic workers complies with the principle of universality for human rights and the policy orientation of China, and is also the performance of obligations under the relevant international conventions by the governments of the member states.

I. Discrimination to Domestic Workers Is More Serious than to Workers in Other Industries

Beijing Domestic Service Association conducted a questionnaire survey from mid-May to mid-July, 2008. They issued 2377 questionnaires in total, and 1490 ones were returned, 1442 of are effective (65 from domestic service organizations, 1099 from domestic workers, and 278 from household employers). From June 19 to August 9, 2008, Beijing Domestic Service Association, the Center for Women's Law and Legal Service of Peking University, and Beijing Cultural Development Center for Rural Women organized eight seminars in total to solicit opinions from 11 domestic workers, 14 household employers and 14 representatives from domestic service organizations. The survey result are as follows:

Human resources for the domestic work are not only in shortage but also face a serious turnover, up to one third each year, an issue faced by all the domestic work companies. Almost all the household employers have experienced the difficulty in finding qualified babysitters.

Domestic workers think that discrimination against this occupation is universal, which makes them hesitate to practice in this industry for long. A graduate student from Gansu Province doesn't tell her family that she is doing domestic work for now. Most domestic service staff said that they would rather not do domestic work, but "have to do so without any other choice", or "it's their temporary choice, and I will quit this job if there is other opportunity", including those interviewers who "are getting along well with their employers just like their family members". Because domestic service workers have a relatively low social status and income, and it's their common feeling that "they have no identity, status and prospect for development", "even if they work very hard, they would not be awarded as model workers, woman pace-setters, or recognized by the society", "they are staying at the household of other people, but it is not the way to feed themselves", "they are considered as servants, and will become worthless when they become older", and "they have no pension, no work-related injury insurance and medical insurance". The overlaps of the space for work and life have resulted in the ambiguity of work boundary, and there is no guarantee for their rest, and they are busy all the time from early in the morning. Young people have no opportunity to get to know boy friends, and have no time to date. Their choice of the domestic work which is living under somebody else's thumb means that they will inflict the emptiness and loneliness of affection and kindness.

Domestic workers said: fewer and fewer people show willingness to do this job because feedbacks from us are not good, including the exploitation of domestic companies and harshness of employers, as well as discriminations; and we are all human beings, but they treat us unfairly; so it is unable to organize our fellow sisters to do domestic work, which results in the shortage of domestic workers; if no special law is made to protect us, we would not do such work for long, and will no longer do domestic work so long as we have other choices. 50% of the domestic workers have returned home with sadness and sworn not to suffer such misery

any more. Employees in other industries who take part in social activities will not be deducted wages, but we cannot, we will be deducted wages according to the hours during which we go out. Both maternity matrons and child caring women are working with breaks, otherwise they would not come. We all want to change our occupation if there is any other choice. Li Duolan said when she came in 2000, she was full of fervor, because her husband passed away, she would rather die to work as maternity matron in order to raise her children. However, she was reluctant to do the work after one year because she was scalded on the arm, and was injured by a knife, and had to pay out of her own pocket when she got sick. When she had a cold and wanted to leave, her employer did not let her go and requested her to compensate commission fee, and scolded her with dirty words.

In the social insurance system, domestic workers are becoming marginalized. Even seconded migrant workers have not taken part in social insurance. According to the 2007 survey result of the Project for the Study of the Necessity for Legislation on Protection of Labor Rights and Interests of Domestic Workers, which is carried out through cooperation of the Center for Women's Law and Legal Service of Peking University and the United Nations Development Fund for Women, more than 60% of domestic workers don't have any insurance. Those who have social insurance are laid-off workers, some of migrant workers have commercial insurances, mainly include personal accident insurance and medical insurance for serious diseases.

Ms Gao, who has been working as a domestic worker for several years, believed that employers shall undertake liabilities for personal accident or illness. If a worker suffers from cerebral thrombosis, the enterprise will undertake medical expenses and will not ask whether such disease is caused by eating habit of the worker or due to hard work, not to mention work-related injury. Even migrant workers who work at the construction site will not undertake the liabilities for an injury caused by their fault in operation. The boss will not say that you should improve your work since we hire you, and shall undertake liabilities for any problems caused. It's the same to do the work for others, why is it different when coming to a private household? Further, the income of domestic workers is not high, but the salary is very low.

Beijing Cultural Development Center for Rural Women reports the claims of domestic workers about social insurances. Because migrant workers in other industries enjoy social insurance, and domestic workers from rural areas and towns of other places often say: It would be great if we have social insurance! We would like to undertake part of social insurance by ourselves. Domestic workers who have high income (for example, maternity matrons earn about 4000 Yuan per month) want to pay all the social insurance premiums by themselves, and those who have low income (about 1000 Yuan per month) would rather include in its wages the social insurance premiums that are borne by employers in other industry. Some domestic workers have worked for 10 years, but still worry about their pensions, and they have expressed that they are willing to undertake all the social insurance premiums by themselves, including the amount that shall be paid by the employers. However, the current system design has excluded private employment from the overall planning of social insurance, causing the domestic workers to have no channels to pay the social insurance. All the domestic workers feel that they could not find their end-result, and lose confidence about their future. Domestic service organizations only want to buy commercial insurances for domestic workers. Household employers have different opinions about this, those with high income would like to buy high quality and stable service, and some people propose to eliminate discrimination from the perspective of social fairness, so as to

safeguard human rights and promote social harmony. Employers with middle or low income only want to bear the 30 Yuan/year for the commercial accident insurance plus medical insurance for accidents.

In addition, migrant workers are unable to enjoy the vocational training paid out of unemployment insurance funds, which will affect the improvement of professional skills and further affect the amount of wages. It also causes the “supply unable to meet the demand” in domestic market. Therefore, it is urgent to eliminate the phenomenon of discrimination to domestic workers.

II. Elimination of Discrimination to Domestic Workers Complies with the Principle of Universality for Human Rights and the Policy Orientation of China

Article 1 of the Universal Declaration of Human Rights sets forth the famous assertion on basic human rights: “All human beings are born free and equal in dignity and rights”, which reveals the principle of universality for human rights.

In 2001, the Regulation on Domestic Service Industry of Shenzhen Special Economic Zone was adopted at the sixth session of the third standing committee of Shenzhen People’s Congress, and was implemented as of June 1, 2001. This Regulation vested domestic workers the labor and social security rights. However, legislators are not prepared for the obstacles encountered during the implementation of the Regulation. Many domestic service operators are labor dispatch agencies in their names, but actually they are labor intermediaries. Very few domestic workers enjoy social insurance right, some domestic workers have not been entitled to the social insurance until after signing the Babysitter Contract for Life.

In 2003, the former Ministry of Labor and Social Security promulgated the Opinions on Several Issues concerning Employment of Part-time Workers (MoL Document No.12), which points out that “If a laborer provides part-time work for any other entity, household or individual, through a lawfully established labor dispatch organization, the labor dispatch organization shall enter into a labor contract with the laborer who works part-time.” We can see that the Chinese government is making an effort to include the domestic workers in the scope of adjustment of the Labor Law and the Social Security Law.

On October 14, 2003, the third plenary session of the Sixteenth Central Committee of the Communist Party of China proposed to stick to the view of people orientation, overall coordination and sustainable development to promote the overall development of economy, society and people, and formulated the guideline for balancing urban and rural development.

In 2004, the Amendment to the Constitution of the People’s Republic of China added the provision that “The state respects and protects human rights”.

In 2005, the Chinese government committed itself to the establishment of a harmonious society, and did not emphasize unilaterally the economic targets. On November 4, the State Council distributed the Notice on Further Strengthening Employment and Reemployment Work, and proposed the guideline for “promoting the balance of overall employment in both rural and urban areas”, “improving the employment environment for rural workers in cities, canceling restrictions on the employment of rural laborers in cities and across regions, improving policies and measures with respect to the protection of the lawful rights and interests of rural laborers who come to the cities for employment and find work across regions; and carrying out the experiment work where there are conditions for labor markets with unified design between urban and rural areas.” Those

who are entitled to training subsidy shall be expanded to include all the unemployment personnel (including rural laborers who come to cities for employment) from the original laid-off and unemployment personnel.

In 2006, the Central Committee of the Communist Party of China came up with the target for building a harmonious socialist society in its Decision on Several Significant Issues concerning the Building of a Harmonious Socialist Society, which is an important sign for the transition of Chinese social development. Therefore, elimination of discrimination to domestic workers complies with the principle of universality for human rights and the policy orientation of China, there is no reason to allow the existence of discrimination to domestic workers any longer.

III. Elimination of Discrimination to Domestic Workers Is the Performance of Obligations under relevant International Conventions by the Governments of the Member States

Article 9 of the International Covenant on Economic, Social and Cultural Rights which is executed by Chinese government in October 1997 and ratified by the Standing Committee of the National People's Congress on February 28, 2001 prescribes: "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." Even during the serious shortage of resources, the States Parties shall also have the obligation to protect the vulnerable members in the society.

At present, workers who were laid-off from state-owned enterprises have social insurance, but only some of migrant workers have commercial insurance, mainly including insurances for personal accidents and serious diseases. Most of them will return home for treatment at their own cost if they get sick, and all the women who are pregnant and delivering babies will return home and pay at their own cost. Therefore, domestic workers are strongly calling for equal treatment, while those who hold urban household register of other places strongly request for social security, because they have neither the social security of an urban citizen nor the land security of farmers, and worry that they will not be looked after properly after they become old. They are the vulnerable members of the society.

The Convention on the Elimination of All Forms of Discrimination against Women, which was implemented on July 17, 1980 by the Chinese government, came into force in China on September 3, 1981. Since then, it has become the legal obligation of the Chinese government to eliminate all forms of discrimination against women in China.

The common issue of low skill, low education background, low social status, and low value work, as well as feminization exists in the domestic industry. According to the statistics of the Migrant Job-hunting Girls Center, females account for more than 90% of the domestic workers. From the perspective of social gender, they are excluded from the society, the low capacity resulting from little educational resources itself is the result of gender discrimination. Meantime, the group being excluded from the scope of application of the Labor Law and the Social Security Law, mainly women, also constitutes a gender discrimination to females in the system. That the value of domestic work is unable to be duly respected reflects the influence of traditional gender role stereotyping to choosing of job. Most domestic workers wasted their green years without seeing any hope. No matter how hard they have worked, they could not get reward, therefore, they are in an anxiety state, and lack the sense of recognition on their profession and stability. Many of them who work as domestic worker use this

opportunity as a springboard, and will make a job-hopping to other industries once they have the opportunity. The result thereof is the shortage of babysitters time after time, which has affected the professional career development of domestic workers and the quality of life of citizens. Elimination of discrimination in the field of employment and occupation will ensure a permanent cure for the aforesaid problems, and is also the specific action of the Chinese government for performance of relevant obligations under international conventions. Elimination of employment discrimination is one of the core labor standards. The 1958 Discrimination (Employment and Occupation) Convention (Convention No.111) Concerning Discrimination in Respect of Employment and Occupation, which was ratified on August 28, 2005 by China, specifies the performance of obligations with respect to elimination of employment discrimination to enable everyone to have the right to pursue both their material welfare and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, which is the basis for decent work.

Annex 3: Liu Yun Case in Beijing and Zhou Dailan Case in Shanghai

I. Liu Yun Case in Beijing

Liu Yun, a migrant job-hunting girl from a poor family in Zaozhuang City of Shandong Province, came to a cleaning company in Beijing to find a job through the recommendation of a relative when she was only 18 years old. On May 21, 2003, she was assigned to clean the window of an apartment in Tongzhou District, and worked continuously for almost 12 hours without protection of safety belt. She fell down to the ground from the window of the fifth floor with exhaustion, and suffered a “compression fracture of lumbar” and “fracture of left wrist”.

Since the cleaning company did not maintain an insurance of work-related injury for Liu Yun, the Social Insurance Center refused to pay medical expenses for her or operation deposit for her. As a result, she was forced to lie down outside the operation room for six days and six nights. The operation needed more than 40,000 Yuan. At last, the cleaning company was afraid she would die, and thus paid for her, but asked her father to sign an IOU! Thereafter, the company rented a small room for her with an area of only 5 square meters in the suburb, and only paid a one-month rent, without undertaking the living and medical expenses any more.

After the accident, Liu Yun’s parents immediately came to Beijing from their hometown to take care of her, three people of the whole family huddled together in such a small room, and suffered physical and mental pains. Afterwards, the company began to force them to return to their hometown while she had not recovered. When the secretary of right protection from the Beijing Cultural Development Center for Rural Women hurried up to their small and stuffy room, the emaciated girl said with a weak but angry voice, “They want to throw us out only because we are country people and my parents don’t have much education.” Liu Yun’s father said the old couple had sold out their house property in order to initiate a legal proceeding and claim justice for their daughter, their peach garden was faced with total crop failure since nobody was taking care of it. “We are driven to the wall, I will bring a lawsuit for this child even if we are reduced to poverty and ruin”, said Liu Yun and her father in tears.

Since Liu Yun did not sign a labor contract with the cleaning company, the Labor Bureau asked her to provide the evidence with respect to her labor relations with the employer. With the help of Zhou Xihong, a volunteer lawyer, Beijing Cultural Development Center for Rural Women found the client in Tongzhou District and the security guard in the residential quarter, who provided the evidence for Liu Yuan. After a nine-month lengthy and difficult litigation, this case ended with mediation. The cleaning company paid a total of 36,500 Yuan at one lump sum to Liu Yun as allowance for food, work-related injury allowance, disability subsidy, and one-off employment subsidy.

II. Zhou Dailan Case in Shanghai

Zhou Dailan, who came from Anhui Province, worked as a domestic worker at Mr. Ding’s home in Shanghai through a labor service intermediary agency in 2002. On December 24, 2003, she fell down from the fourth

floor with carelessness when she was cleaning windows of Ding's home, causing massive haemorrhage from her abdominal cavity, and burst of spleen, as well as comminuted fracture of her lumbar. After having paid a medical fee for about 30,000 Yuan, Ding's family expressed that they couldn't afford any more. Zhou Dailan was driven to the last ditch. Fortunately, warm-hearted readers sponsored a donation campaign and helped her raise the basic medical fees.

This case caused a wide concern and heated discussion on the media all over the country, and led to a so-called "Zhou Dailan Phenomenon". Driven by this event, Shanghai began to implement comprehensive insurances for domestic service workers from July 1, 2004, specifying an employer only needs to pay as little as 30 Yuan to buy a domestic service comprehensive insurance for domestic workers for an insurance amount of up to 100,000 Yuan at maximum.

After Zhou Dailan left the hospital, she filed a lawsuit against her employer, claiming a damage of more than 120,000 Yuan. She waited for three years until June 2007 she could finally get the judgment of first instance. The court held that Zhou Dailan's employer has the duty of care and safety to her labor service activities during she was hired as housekeeper of the employer; otherwise, and be liable to compensate her personal injury; window cleaning activity involves a certain danger, so Zhou Dailan should also strengthen self-protection; however, she was overconfident during the activity and got hurt from falling down, and had an obvious fault to the result of her damage. The court therefore ruled that the employer shall pay her an amount of 65,000 Yuan at one lump sum as the compensation for loss of working hours, disability compensation and damages for emotional distress.

Annex 4: Maternity Protection of domestic workers

The Convention shall provide that each Member state shall take measures to ensure the right of domestic workers to maternity protection, the reasons lie in:

I. The Multiple Significance of Maternity Insurance

In China, all the urban employers jointly undertake the maternity insurance premium no more than 1% of the total income of the urban employees, and the employees don't pay such fees. Maternity insurance fund will pay the examination fee and delivery fee for maternity of female employees, operation fee, cost of hospitalization and medicine fee related to maternity, as well as allowances for maternity leave (which equals to the average wages before leave). Since those enterprise that have not employed female workers also pay maternity insurance fee, which avoids the "gender loss" for employment of female workers to some extent, and promotion of fair competition of enterprises is also beneficial to elimination of sexual discrimination to female workers.

Maternity insurance will make up the deficiency caused by market mechanism and distribution according to work, ease the unfairness caused by market mechanism, and realize the equal distribution to some extent; it may satisfy the need of domestic workers for basic living and basic medical care during the maternity period, and ensure the recovery of female laborers, as well as avoid the sudden declining in the living standard of female workers themselves and their families due to undertaking of maternity responsibilities; moreover, the insurance will also help drawing more attention to the social implications of maternity, as a part of the values of the society.

II. International Labor Organization (ILO) Have Attached Great Importance to Maternity Protection Since Its Establishment.

In as early as 1919, the first International Labor Conference adopted the Convention Concerning Employment of Women Before and After Childbirth (No.3) of ILO, and in 1952, the No.103 Maternity Protection Convention came into being after revision and the Maternity Protection Recommendation. In 2000 the International Labor Organization (ILO) adopted a new Maternity Protection Convention and Recommendation (Convention No. 183 and Recommendation No.191), which set forth the common responsibility of government and society for protection of females, whether married and unmarried, and any child, whether born of marriage or not, and which applies to all the working females, including informal workers.

Each Member state is required to take appropriate measures after consultation with most representative employers organization and workers organization to ensure pregnant or nursing women are not obligated to perform any work that is detrimental to the health of the mother or child as determined by the competent authority, or any work that is assessed as having great danger to the mother or child.

A woman shall, on the production of a medical certificate stating the expected delivery date, be entitled to a period of maternity leave for 14 weeks, which shall include a period of 6 weeks for compulsory leave after labor. The pre-labor leave shall be extended by any period elapsing between the expected delivery date and the actual date of labor and the period of compulsory leave to be taken after labor shall not be reduced on that account. In case of illness medically certified arising out of pregnancy or labor, the woman shall be entitled to an extension of the leave before or after giving birth to her child, the maximum duration of which may be fixed by the competent authority.

While absent from work on maternity leave, the woman shall be entitled to receive cash and medical benefits. The rates of cash benefit shall be fixed so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living; and the cash benefits shall be at a rate

of not less than two-thirds of the woman's previous earnings before labor. Medical benefits shall include pre-natal, labor and post-natal care by qualified midwives or medical practitioners as well as hospitalisation care where necessary. Women who fail to qualify for benefits provided as a matter of right shall be entitled, subject to the means test required for social assistance, to adequate benefits out of social assistance funds. The cash and medical benefits shall be provided either by means of compulsory social insurance or by means of public funds.

Each member shall take appropriate measures to ensure protection against discrimination in employment on the grounds of maternity, ensure guaranteed right of women to return to same position or an equivalent position at equal pay after expiration of the maternity leave. An employer shall not dismiss a woman during pregnancy, whilst on maternity leave or whilst nursing, or during the period as provided by national laws and regulations after she returns to her post, unless grounds are unrelated to pregnancy, delivery or nursing.

III. The Chinese Government Is Improving its Maternity Insurance Law

The Labor Insurance Regulation of the People's Republic of China, which was promulgated in 1951 and revised in 1953 by the Government Administrative Council, established the maternity insurance system of China.

In 1955, the State Council promulgated the Notice on Maternity Leave of Female Staff, which expanded the coverage of maternity insurance to all the women workers including government organs and institutions from the original enterprises.

The Female Employees Labor Protection Regulation promulgated in 1988 prescribes that "Female employees shall be entitled to a maternity leave of 90 days, including 15 days leave before the presumed date of her labor. If she has difficulties in giving birth, an additional 15 days shall be added to the maternity leave. In case of multiple births, an additional 15 days of maternity leave shall be given for each new born baby. Female staff and workers who have a miscarriage shall be granted a certain period of maternity leave by their employers according to a certificate issued by medical department." The state and local regulations on population and family planning grant more leaves as encouragement for late marriage and late childbirth and only one child. The Regulation of Beijing Municipality on Population and Family Planning (2003) prescribes that "Female employees who postpone childbearing (married women who have reached the age of 24 and become first-time mother) shall be entitled, in addition to the maternity leave prescribed by the state, an additional 30 days of leave as encouragement, which may also be enjoyed by the man. During the maternity leave, the employer shall not reduce her basic wages or terminate employment contract; if she does not take the encouraged leave, she shall be given an award equal to her basic salary for one month." Women who have been issued the Honorable Certificate for Only Child Parents may be given another three months as maternity leave, but their incentive fees for only one child parents shall be deducted for three years. Thus, the maternity leave may reach more than seven and a half months.

On September 1, 1988, Nantong of Jiangsu Province began implementing the Tentative Measures of Nantong City for the Overall Planning of Child Birth and Raising Funds for the state-owned enterprises and big collectively owned enterprises. In the same year, Zhuzhou city in Hunan Province also rolled out as a trial the overall social planning for maternity insurance funds. Thereafter, pilot program was carried out in Kunming, Qufu, Shaoxing, Ningbo and Dezhou, and other dozens of cities and counties, and gradually spread to 27 provinces, autonomous regions and municipalities directly under the Central Government.

On December 14, 1994, the former Ministry of Labor promulgated the Trial Measures for the Implementation of Maternity Insurance of Enterprise Employees (Lao Bu Fa [1994] No.504), which prescribes that overall social planning shall be implemented on maternity insurance fees.

Up to now, 27 provincial governments have successively promulgated the maternity insurance measures/regulations, however, big cities including Beijing and Shanghai have excluded the right of women whose household register is in places other than these cities from participation of maternity insurance, only

those who have obtained the “Resident Permit” may enjoy the treatment of a citizen. Therefore, women organizations protest against such discrimination on household register.

Article 49 of the Social Insurance Law of the People’s Republic of China (Draft) prescribes that “Employees shall take part in maternity insurance according to state provisions”. Such provision has vested all the employees the right to take part in maternity insurance, which is an important measure for implementation of the basic national policy of equality between women and man and elimination of employment discrimination and building of a harmonious society. It is approximately the same as the scope of protection under the No.183 Convention.

The All China Federation of Trade Unions has proposed in the implementation plan for carrying out the National Program for the Development of Chinese Women (2001-2010) that government shall be pushed to ratify the No.183 International Labor Convention in due course.

IV. Conclusions

After the promulgation of the Social Insurance Law of the People’s Republic of China, it has become mature for the government to ratify the No.183 Convention. China has set a standard which is far beyond that as set forth in the said convention in terms of the number of days for maternity leave and amount of benefits. During investigation and research, we have discovered that all the female domestic workers will return home to give births, they would rather to participate in the maternity insurance even if they shall pay the insurance fee by themselves. Therefore, they urgently need to be entitled the right to participate in the maternity insurance equally. Considering that domestic workers are not suitable for work during pregnancy and nursing, this Convention may formulate a special standard, such as extension of the period of maternity leave, reduction of allowances for the leave period, etc.