

Beijing Zhongze Women's Legal Consulting Services Center &  
China Association for Employment Promotion &  
Women's Studies Institute of China

The Shadow Report of Chinese Women's NGOs  
on the Combined Seventh and Eighth Periodic Report  
Submitted by China under Article 18 of the *Convention on  
the Elimination of All Forms of Discrimination against  
Women*

**Equal Right in Employment  
(Article 11)**

(For public information)

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# Equal Right in Employment (Article 11)

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## I. Efforts and Progress

**A series of regulations and policies have been issued by the Chinese government to improve labor and social security as well as to promote employment equity.** The NPC promulgated the *Labor Contract Law*, the *Employment Promotion Law* and the *Law of the People's Republic of China on Labor Dispute Mediation and Arbitration*. The State Council enacted the *Special Rules on the Labor Protection of Female Employees*, the *Regulations on Unemployment Insurance*, the *Provisional Regulations on Collection and Payment of Social Insurance Premiums*, the *Regulations on Labor Security Supervision*, the *Regulation on the Employment of the Disabled*, the *Regulation on Paid Annual Leave for Employees* and other administrative regulations. Besides, a number of international labor conventions have been ratified, such as the *Minimum Age Convention* and the *Discrimination (Employment and Occupation) Convention*, providing a good legal basis and policy framework for the protection of women's employment rights.

**China has made progress in legislation as well as in policy formulation and execution to safeguard the labor rights and interests of women.** The *Employment Promotion Law*, which came into effect on January 1, 2008, contains a special chapter on fair employment, which prohibits employment discrimination in all forms, including gender discrimination, empowers workers with the right to appeal, and for the first time defines the legal remedies to employment discrimination; The *Social Insurance Law of the People's Republic of China* enacted on July 1, 2011 stipulates the maternity insurance, greatly improving the legal status and effectiveness of maternity insurance. The *Law on the Protection of Rights and Interests of Women* revised August 2005 for the first time prohibits sexual harassment of women, while the revised *Special Rules on the Labor Protection of Female Employees* adds provisions to address sexual harassment in the workplace.

**The Chinese government and non-governmental organizations have worked together to explore measures to promote gender equality in the field of employment, seeking breakthroughs at the local legislation.** Since 2008, Beijing Zhongze Women's Legal Consulting Services Center began to pilot in-house rules to prevent and control sexual harassment in the workplace across domestic enterprises. So far, the Center has collaborated with nearly 10 enterprises to establish similar mechanisms, which prove running in good shape. In September 2012, the People's Government of Xinle City (Hebei Province) established an equal employment commission led by the mayor, with a number of government departments involved. This is the first local affirmative organization dedicated to solving employment discrimination established since the *Employment Promotion Law* came into effect.

The functionality of the Commission is much bigger than the past affirmative mechanisms, especially in the permission to accept individual cases, including sexual harassment at workplace.

**The Chinese government is cooperating with non-governmental organizations to provide employment and entrepreneurship training and aid for different groups of women.** To foster employment of female graduates, the Government and women's organizations have jointly adopted a variety of measures and achieved remarkable results. By the end of the second quarter of 2013, a total of 151.479 billion yuan was granted to women as interest-free small loans, where the financial discount accounting for 7.762 billion yuan at the central and provincial levels, supporting more than 3 million women entrepreneurs with start-up capital while engaging nearly ten million women into employment and entrepreneurship.

## II. Gaps and Challenges

**Chinese laws and policies are not gender-sensitive and operable enough.** Although the *Employment Promotion Law* dedicates a special chapter on fair employment, it fails to define employment discrimination. What's more, the legal applicability and the effect of judicial remedies are weakened by the lack of supporting regulations in labor inspection enforcement and the lack of appropriate requirements for causes of action in litigation. There is also a lack of gender perspective in the *Regulations on Labor Security Supervision*, which therefore fails to match the requirements in the *Employment Promotion Law* and hinders the functionality of labor inspectors faced with the frequent violations regarding gender discrimination in employment. The range of prohibited labor stipulated in the *Scope of Labor Prohibitions for Female Employees* is over-extensive, showing that the initial purpose of such legislation is to protect rather than empower female employees.

**Although Chinese women enjoy a higher employment rate, structural gender segregation can still be observed in employment, both vertically and laterally.** From the lateral view, most women cannot get access to formal employment, mostly engaged in agriculture or the informal sectors of the tertiary industry, as the proportion of women employed in the formal sector is 24.8 percentage points lower than that of men. Consequently, more and more women flood into non-formal sectors characterized by low technical attributes, poor working conditions and low benefits. From a vertical perspective, according to the Third Session of the Survey on Women's Social Status in China, the proportion of female principals in all walks of life was only 29.1%.

**The income gap between men and women in China is widening.** As more women work in poor paid industries and occupations than men do, the income gap between men and women is relatively wide. The Third Wave Survey on the Social Status of Women in China conducted in 2010 showed that the average annual income of employed urban and rural women respectively accounted for 67.3% and 56.0% of that of men, respectively 1.8% and 3.6% lower than that in 2000 when the Second Wave Survey on the Social Status of Women in China was conducted.

**Labor protection of female employees remains an outstanding problem,** particularly in the individual and private enterprises, where overtime is a very common practice. Toxic and hazardous working conditions still need to be addressed. As for prevention of sexual harassment in the workplace, neither the state laws nor local regulations require employers to assume any liability, as sexual harassment has

not yet become a labor safety concern. In reality, women suffering sexual harassment in the workplace are only allowed to account for civil liability of the offenders through personal damage lawsuits, while employers will not be held liable in any form.

**Legal system regarding social security of women is still to be perfected.** For example, since most of house services are not covered by the Labor Law, freelancers are still not allowed to subscribe injury or maternity insurance, though both being critical employers of rural women.

**There are still differences in the retirement age for male and female workers.** The retirement age prescribed in the *Interim Measures of the State Council for the Placement of Elderly, Sick and Disabled leaders* and the *Interim Measures of the State Council for the Retirement or Resignation of Workers* is 60 for men, 55 for female leaders and 50 for female workers. The original intention of this retirement age policy formulated under the planned economy was to protect women, but it began to impose an adverse impact on women with the development of market economy since the reform and opening up. Early retirement not only means a loss of wages but also directly affects the level of post-retirement pension. If calculated against the average life expectancy of 74 years, a woman getting retired 10 years ahead of a man will lead to a direct economic loss of nearly 300,000 yuan. Early retirement also means that women are deprived of their opportunity for promotion, very unfavorable for women's political participation and employment rights. The ACWF has proposed to the NPC and the State Council on modifying the legislative policies for more than ten consecutive years. But unfortunately, this issue has not been resolved up to now.

### **III. Suggestions in Response**

**The laws and policies in respect of labor security should be refined.** The *Detailed Rules for Implementation of the Employment Promotion Law* should explicitly define the connotation and denotation of discrimination in employment, while the *Labor Law* should be modified, or supplemented by the introduction of new judicial interpretations, for convergence with the *Labor Contract Law* and the *Employment Promotion Law*. Furthermore, sexual harassment in the workplace needs to be incorporated in the chapter dedicated to labor safety and health, requiring the employer to assume liability for prevention and control of sexual harassment in the workplace. The maternity insurance system should be bettered to include non-formal employees into the maternity insurance coverage. Employment discrimination and gender discrimination should be added as causes of action to the *Provisions of the People's Court on Cause of Action*. The *Regulations on Labor Security Supervision* should be modified, with offenses involving gender discrimination in the workplace included in the scope of supervision. And also effective measures should be taken to promote equal pay for equal work by value, narrowing the income gap between the genders. Relevant regulations and policies should be promulgated to specify the income, working conditions, social security and other issues regarding employees in the informal sectors.

**Efforts should be made to establish legal mechanisms for anti-discrimination in employment.** Specialized government departments or bodies should be established to combat discrimination in employment, similar to the Equal Opportunity Commission in other countries which are empowered to handle complaints, conduct investigations and impose interrogations.

**Education and information campaigns should be propelled regarding gender equality and anti-discrimination in employment.** The Government should increase investment in non-governmental organizations and cooperate with research institutes and NGOs to strengthen training and publicity for the *CEDAW* and the *International Labour Convention* as well as for gender discrimination in employment across various government departments, changing the conventional stereotype view of policy-makers and the general public on women's role.

# Appendix

## Catalog of the Organizations

### **China Association for Employment Promotion**

The China Association for Employment Promotion, founded in March 2005, is a national community organization with a mission to promote employment. Since its inception, the Association has been service-oriented and open to the public, playing a connecting role to collaborate with governmental departments and organizations in the roll-out of all types of employment services and activities, making contribution to the development of the employment endeavor.

Website: <http://www.zgfy.org>

### **Women's Studies Institute of China**

The Women's Studies Institute of China, founded in January 1991 and sponsored by the All-China Women's Federation, is a national institution specializing in comprehensive studies on women and gender issues. The Institute has conducted studies on women-related theories, history, empiricism, and laws and regulations. It has also made comparisons of domestic and foreign theories from a multidisciplinary perspective, sparing no efforts to promote women's development and gender equality.

Website: <http://www.wsic.ac.cn>

### **Beijing Zhongze Women's Legal Consulting Services Center**

The predecessor of Beijing Zhongze Women's Legal Consulting Services Center is the Research Center for Women's Law under the Law School of Peking University. Zhongze Center was founded in December 1995, being the first non-profit civil society organization dedicated to women's legal aid and research in China. The center targets at women and provides legal aid as a means of relief, committed to protecting the legitimate rights and interests of poor and vulnerable women by shooting their problems from a unique and innovative perspective, ensuring their rights in social, political and economic affairs, raising their rights and law awareness, and helping them embark on a path to self-esteem, self-reliance and self-improvement.

Website: <http://www.woman-legalaid.org.cn>