



A Joint Parallel Report Concerning the People's Republic of China for
Consideration by the United Nations Committee on the Elimination of All
Forms of Discrimination against Women at its 59th Session

The Chinese Working Women Network
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This report is endorsed, either in part or in whole, by the following organizations (in alphabetical order):

The Chinese Working Women Network (CWWN) was set up in 1996 as a non-government organization with the mission to promote better lives for Chinese female migrant workers by developing feminist awareness and workers' empowerment. Our goal is to facilitate migrant women workers to strive for sustainable development in China. Our four directions are to enhance the labour rights, to raise the awareness of women consciousness, to promote the occupational safety and health and to practice women workers' autonomy and independence. A women workers service centre and worker education centre in Shenzhen was established for worker training and education work in migrant workers' settlement village. Our existing projects include gender programme, injured workers support network, outreach, legal counselling service, cultural activities and factory training.

Hong Kong Confederation of Trade Unions (HKCTU) was founded in July 1990, which consists of more than 90 affiliates and represents more than 180,000 members. The struggle for the rights of workers to organize independent and democratic trade unions and wage collective bargaining with employers in order to secure better livelihood for the working populace forms the foundation of the HKCTU. We also hold the belief that democracy and respect of human rights provide the best guarantee for the development of an equitable society in which workers will get their rightful share in distribution of wealth.

Labour Action China (LAC) is a Hong Kong-based non-governmental organization focusing on social justice and labour rights issues in China since 2005. Our three major aspects of work include research, advocacy and campaigns. We are engaged in doing research on the working conditions and labour relations of Chinese workers and supporting grassroots organizations formed by workers. We support campaigns for the rights of work-related disabled persons in China, and aim to strengthen the alliance between labour NGOs, workers' groups and other members of the civil society in China.

Worker Empowerment (WE) is a Hong Kong-based labour organization with a vision to promote labour rights and organisation in mainland China. WE has developed multi-dimensional intervention strategies to outreach workers, migrant workers in particular, in mainland China, and to organise them through crisis intervention in the workplace and programmes to raise labour rights awareness so that self-organization of workers is achieved in rights defending processes.

General Overview

1. This joint submission is prepared by Chinese Working Women Network, Hong Kong Confederation of Trade Unions, Labour Action China and Worker Empowerment. These four labour-rights organisations aim to provide the United Nations Committee on the Elimination of Discrimination against Women (hereafter, “the Committee”) with information on a number of key labour issues that are said to be relevant for the review of China’s combined Seventh and Eighth Periodic Report on the implementation of the Convention on Elimination of All Forms of Discrimination against Women at the 59th session. Thus, this submission does not provide a complete assessment of China’s compliance with the Convention, but rather draws on the relevant recent and current areas of the work and concerns of these four organisations.

2. The Labour Law is the principal national legislation safeguarding the rights of all workers. Its constituent rights,¹ for example, to obtain remuneration, to have health and safety protection, are enshrined in the Chinese Constitution,² the International Covenant on Economic, Social and Cultural Rights,³ as well as in this Convention where some of these rights are specifically tailored for the need of female workers.⁴ Chapter Seven of the Labour Law guarantees a bundle of labour rights which are dedicated to protect the special interests of female workers, including the prohibition of working in mining industries⁵ and engaging in severe working conditions during menstrual period;⁶ the prohibition of working overtime or at night during the third trimester period⁷ and in the first year of lactation;⁸ and the entitlement of a 90 days’ paid maternity leave.⁹ In addition, equal opportunity for employment¹⁰ and the restriction of dismissal during pregnant, puerperal or lactation periods¹¹ are the other two rights for female workers.

Gender Statistics

3. In the last Concluding Comments, the Committee has urged the Chinese authorities to make the sex-disaggregated statistical information available.¹² The disaggregated data by gender, age, marital status, regions and ethnic groups in employment are not available in the State Party’s Report, nor can they be found in the website of the National Bureau of Statistics (NBS). These data are significant to the civil society where they could help monitoring the effectiveness of all existing domestic policies and the implementation of all international human rights instruments and their recommendations by relevant treaty bodies. Meanwhile, these data are also important in advocacy.

¹ 《中华人民共和国劳动法》 [Labour Law of the People’s Republic of China] (People’s Republic of China) National People’s Congress Standing Committee, Order No 28, 5 July 1994, art 4 (*Labour Law*).

² 《中华人民共和国宪法》 [Constitution of the People’s Republic of China] art 42.

³ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) arts 6-9, 12(2)(c).

⁴ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 11.

⁵ *Labour Law*, art 59.

⁶ *Ibid* art 60.

⁷ *Ibid* art 61.

⁸ *Ibid* art 63.

⁹ *Ibid* art 62.

¹⁰ *Ibid* art 13.

¹¹ *Ibid* art 29(3).

¹² Committee on the Elimination of Discrimination against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: China*, 36th session, UN Doc CEDAW/C/CHN/CO/6 (25 August 2006) 14.

Article 1 – the Definition of Discrimination

4. The Committee has reiterated in the last Concluding Comments that the importance to incorporate the definition of discrimination against women in the domestic law.¹³ But there is no sign of implementation by the Chinese authorities. The Law on the Protection of Rights and Interests of Women, the Marriage Law and other legal instruments contain some articles that stipulate equal rights in employment, marriage, education and finance, but the definition of discrimination, whether direct or indirect, is generally absent.¹⁴ Thus, the principles of non-discrimination and gender equality are not justiciable in any tribunals. Furthermore, gender discrimination in the provisions of these statutes is narrowly defined. For instance, under the Law on Promotion of Employment, equal opportunity is limited to the recruitment and the stipulation of any clauses in employment contracts that discriminates female workers from getting married and bearing a child.¹⁵ Pregnancy, marital and family statuses are not dealt with in recruitment, promotion and employee benefits. The UN Committee on Economic, Social and Cultural Rights (UNCESCR) recommended yet the Chinese authorities to criminalize sexual harassment in the workplace in its recent Concluding Observation.¹⁶

Article 2 – the Principle of Non-Discrimination

5. *Hukou* (registration of household) system is an invisible but a key factor, inter alias, which frustrates the direct and indirect enjoyment of human rights. Although *hukou* comes over all Chinese nationals, the private individual and family livings of rural women are among the severely and adversely affected. The UNCESCR has already urged the Chinese Government, in its recent Concluding Observations in the second periodic review, to “take measures to eliminate multiple-discrimination faced by rural women, in particular in access to education, health, employment and land tenure”.¹⁷

Article 11 – the Right to Work

Equal Opportunities for Employment

6. China’s global gender gap ranking stayed at the 69th place in 2013.¹⁸ The report revealed that 36 per cent of female workers were engaged in informal employment, comparing with 30 per cent of their male counterparts in the same domain.¹⁹ The female-to-male ratio of wage equality for similar work was 0.66:1.²⁰

7. China remains a patriarchal society, by and large. Women are generally and traditionally perceived to be the primary carer in a family, especially after a child was born. As such, most companies would prioritize the opportunities for training and further education, as well as the chance for promotion to their male workers. Nevertheless, female workers always find themselves left behind by their male counterparts in the career ladder after returning from maternity leave.

¹³ Ibid 10.

¹⁴ Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Seventh and Eighth Periodic Report on States Parties, China*, UN Doc CEDAW/C/CHN/7-8 (17 January 2013) 54.

¹⁵ 《中华人民共和国就业促进法》 [Employment Promotion Law of the People’s Republic of China] (People’s Republic of China) National People’s Congress Standing Committee, Order No 70, 30 August 2007, art 27 (Employment Promotion Law).

¹⁶ Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Second Periodic Report of China, including Hong Kong, China and Macao, China*, 52nd session, UN Doc E/C.12/CHN/CO/2 (23 May 2014) 21.

¹⁷ Ibid 16.

¹⁸ Yasmina Bekhouche, Ricardo Hausmann, Laura D’Andrea Tyson and Saadia Zahidi, ‘*The Global Gender Gap Report 2013*’ (Report, World Economic Forum, 2013) 168-9.

¹⁹ Ibid.

²⁰ Ibid.

8. Despite that, these data fail to reflect the truth about systemic and structural inequality against female internal migrant workers. In a national survey conducted in 2012, there were more than 262 million internal migrant workers and one-third of them are women.²¹ The same survey conducted in 2013 outlined that the number of internal migrant workers leaped up to 268 million.²² But that report did not have the gender profiling. It could be estimated that over 89 million of these internal migrants were female. They are commonly employed in labour-intensive manufacturing industries.

9. Female internal migrant workers are said to be dominating the low-paid positions in ready-made garment and electronic industries²³ because women receive less education than men, and these female internal migrant workers receive less education than urban women.²⁴ Gender is sometimes considered as a determining factor of 'who does what job'.²⁵ Besides, it is typical that some enterprises tend to recruit workers of a particular gender to fill certain positions where it becomes impossible to find a suitable comparator to measure the equal remuneration.

10. Spending most of their time working repetitively and mechanically on production lines, being paid on a piece-rate basis and working long hours, it is substantially and fundamentally difficult for them to be trained and promoted to become a skilled worker, bringing them an inherently destined situation that they would have to stay in the existing position, without any chance for upward mobility. Their children could get caught in the same vicious circle too.

11. In the construction sector, the "right to free choice of profession and employment"²⁶ is almost non-existent for female workers, given that their choice was "exercised" by their spouse. Under the contracting system predominating in the industry, female workers join their spouse as a team to get a work in construction sites. They are usually there to take care of their working spouse, but most of them also fill in the supplementary jobs either as their spouse's assistants or auxiliary workers on site. In a survey conducted by an independent labour civil society organisation, 78 per cent of the interviewed female workers in construction sites started working in the industry solely because they were following their spouse.²⁷ 33 per cent of them said that they would prefer not to work there if they could have a choice.²⁸

12. For female workers who are dependent on their spouses to that extent, their separate and individual employment relations are also loosely defined. Their status of employment is ambiguous to the extent that their legal entitlements and rights are often not being protected at all. For example, many female workers on construction sites do not know exactly how much is their monthly wage since theirs are calculated with their spouse together as a whole and consequently directly paid into their spouse's account. Many female workers do not know who their direct employer is, not to mention having a proper written contract or any skill training opportunities. Even for some of those who

²¹ 国家统计局[National Bureau of Statistics], 《2012年全国农民工监测调查报告》[The National Survey of Internal Migrant Workers in 2012] (27 May 2013) <http://www.stats.gov.cn/tjsj/zxfb/201305/t20130527_12978.html>.

²² 国家统计局[National Bureau of Statistics], 《2013年全国农民工监测调查报告》[The National Survey of Internal Migrant Workers in 2013] (12 May 2014) <http://www.stats.gov.cn/tjsj/zxfb/201405/t20140512_551585.html>.

²³ BSR, *HERproject China: Empowering Women Workers* (4 March 2014) 5.

²⁴ BSR, *Between the Lines: Listening to Female Factory Workers in China* (March 2013) 4.

²⁵ *Ibid.* 4.

²⁶ *Convention on the Elimination of All Forms of Discrimination against Women* art 11(1)(c).

²⁷ 蒲公英工伤爱心组[Pugongying], 《惠州工地安全调查报告》[Investigative Report on the Safety Issues for Construction Sites in the Municipality of Huizhou] (29 October 2013) <<http://www.chengbiancun.com/2013/1029/36960.html>>.

²⁸ *Ibid.*

knew the amount of their wage, the majority are paid less than their male counterparts.²⁹ These female workers do not enjoy equal rights and conditions of employment as male workers do, but their “rights to conclude contracts and administer property”³⁰ are equally deprived at the same time.

13. Appalling labour situations occur to other female workers working as domestic helpers. It was estimated that there were 16 million to 21 million people engaged in this sector, which female workers constitute 90 per cent of them,³¹ most of those female domestic helpers were internal migrants or laid-off urban workers.³² The social identity of domestic workers is comparatively low because the general public would consider that domestic workers are de facto “subordinate” to their employers.³³ In addition, the job duties of domestic workers lack of technicality where it could be performed by every one without the necessity of professional training.³⁴ Hence, domestic work is deemed as a form of informal employment.

14. China is not a signatory of the Domestic Workers Convention under the auspices of the International Labour Organization (ILO)³⁵ where that Convention enshrines the right to have a written contract³⁶ and to enjoy minimum wage coverage³⁷ among other protections. It is significant for domestic workers to have a written contract with their employer because it is the best proof of an existence of legal employment relations. The absence of a written contract always lead to a situation where they have to endure long working hours, unstable income and, inter alia, absence of social security coverage.

15. A survey depicted that a sizeable number of female workers working in low-end sectors were highly likely found themselves in labour disputes, which could be illustrated by analysing the cases of Fangshan district people’s court in Beijing. Approximately one-third of labour disputes cases in 2010 were related to low-skilled female workers.³⁸ On the one hand, these female workers come from less educated background, whom they did not have the awareness of defending their own interests in the first place. These female workers were mostly married internal migrants in their 30s and 40s. They tended to seek short-term employment owing to the fact that short-term employment opportunities are always available in low-end sectors and these short-term employment opportunities are suitably and satisfactorily flexible to their family needs.³⁹

16. Nevertheless, those enterprises in the low-end sectors tend to ignore or are reluctant in the investment in staff welfare and security mechanisms when they pursued economic interests. Many of these low-end sectors deliberately circumvented the mandatory provisions for a written contract between both parties. Even if a written contract were concluded, the standard format would have failed to provide special protection for female workers.

²⁹ Ibid.

³⁰ *Convention on the Elimination of All Forms of Discrimination against Women* art 15(2).

³¹ 《你家请的是『保姆』还是『家政工』?》[Your Family Employ a ‘Nanny’ or a ‘Domestic Helper’?], 荷兰在线 (helanonline) (6 May 2013) <<https://helanonline.cn/article/4038>>.

³² International Labour Organization, *Factsheet of Domestic Workers in China* (1 September 2009).

³³ [Your Family Employ a ‘Nanny’ or a ‘Domestic Helper’?], above n 31.

³⁴ Ibid.

³⁵ *Convention Concerning Decent Work for Domestic Workers*, opened for signature 16 June 2011(entered into force 5 September 2013) (*Domestic Workers Convention*).

³⁶ *Domestic Workers Convention* art 7.

³⁷ *Domestic Workers Convention* art 11.

³⁸ 《低端行业女工权益易遭侵害》[Interests of Women Workers in Low-End Sectors are Vulnerable to Abuse], 中工网 (workercn.cn) (16 May 2011) <<http://right.workercn.cn/c/2011/05/16/110516024814014459397.html>>.

³⁹ Ibid.

17. It is yet to be proven whether it is direct discrimination against female workers, but the fact is their limited choice of occupation stops them from aspiring for a higher wage and better legal protection in the workplace than their male counterparts.

18. The societal network of protection is yet to be strengthened in China. First of all, All-China Women's Federation (ACWF), All-China Federation of Trade Unions (ACFTU) and other government-operated non-governmental organisations are inaction or not playing an active role in protecting and securing the special interests of female workers. Sometimes litigation has then become the only possible means to assert their own rights. The authorities, likewise, tend to impose a token-liked fine on the enterprises when the latter was found infringing and violating the rights and interests of workers. Lax enforcement of labour laws was broadly due to the intertwined vest interests between the authorities and the enterprises. At the same time, legal aid is piecemeal. Despite that, it is widely recognised that female workers are facing a much higher cost in defending their rights through legal channels, especially when the pressure comes from their family members who discourage them from doing so.

Maternity

19. Maternity is an inseparable constituent of reproductive rights. In the previous General Recommendation, the Committee has already emphasized States parties have a duty to "ensure women's right to safe motherhood and emergency obstetric services" and hence "free service where necessary" is critical to realize this guarantee.⁴⁰

20. In China, "maternity insurance" is very confusing officialese. It is often referred to the umbrella system of maternity protection, which can be divided into three parts: (1) maternity leave; (2) maternity allowance, as a form of social security in order to compensate the loss of income for female workers; and (3) maternity insurance, as a form of insurance that is aimed to cover the medical expenses incurred from delivery and conception. The latter two constitute the inseparable part of "maternity insurance" as per the Social Insurance Law (SIL).

■ Maternity leave

21. Although China is not a party to all three ILO instruments on maternity protection,⁴¹ a recent ILO study stated that China has already self-complied with the most updated ILO standards in extending the duration of maternity leave.⁴² Pregnant workers are entitled to 98 days' maternity leave, which they could take 15 days' off before their labour.⁴³

■ Maternity allowance and maternity insurance

⁴⁰ Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Article 12: Women and Health*, 20th session (1999) 27.

⁴¹ The Member States of the International Labour Organization (ILO) have adopted three Conventions on maternity protection. They are the *Convention Concerning the Employment of Women Before and After Childbirth* (Maternity Protection Convention, 1919) (No 3); the *Convention Concerning Maternity Protection (Revised 1952)* (Maternity Protection Convention (Revised), 1952) (No 103); and the *Convention Concerning the Revision of the Maternity Protection Convention (Revised), 1952* (Maternity Protection Convention, 2000) (No 183).

⁴² See, Giuseppe Casale and Changyou Zhu, *Labour Administration Reforms in China* (International Labour Office, 2013) 34. The authors highlighted that the duration of maternity leave has been extended to 98 days after the promulgation of the *Special Regulations Concerning the Labour Protection of Female Staff and Workers* [sic]. Contra Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women – China*, 59th sess, UN Doc CEDAW/C/CHN/7-8 (20 January 2012) para 155.

⁴³ 〈上海市人民政府关于贯彻实施《女职工劳动保护特别规定》调整本市女职工生育保险待遇有关规定的通知〉 [Notice of Shanghai Municipal People's Government on the Provisions on Implementing the Special Regulations Concerning the Labour Protection of Female Workers and Regulating the Maternity Insurance Benefits for Female Employees of This Municipality] SMPG [2013] 5.

22. The legalities of maternity protection was first rudimentarily appeared on the Labour Law.⁴⁴ The subsequent secondary legislations, such as the Provisional Measures for Maternity Insurance of Staff and Workers of Enterprise⁴⁵ and the Special Regulations Concerning the Labour Protection of Female Workers⁴⁶ are aimed at laying out a structure of how it could be implemented. The enactment of the SIL is generally perceived as a milestone in the development of a universal social security and insurance conglomerate.⁴⁷ Under the SIL, five main areas – pension, medical care, unemployment, work injury and maternity – are covered.⁴⁸

23. Maternity protection is pegged to the employment status. The principal subject of this entitlement is the “workers”, and they could enjoy the maternity protection when their employers subscribe and pay the premium. The unemployed spouse of a “[male] worker” can also be benefited from this protection because it is paid out from a central fund.

24. In accordance with the Outline for the Development of Chinese Women (2001-2010), the coverage of maternity protection in urban areas should have reached 90 per cent or above of the entire population.⁴⁹ The ILO documented that 138.92 million people were entitled to maternity protection in the beginning of 2012, which was a significant leap from 2001 when 34.55 million people could be benefited from it.⁵⁰ In the latest Outline for the Development of Chinese Women (2011-2020), the Chinese Government stated that it would further enhance the coverage of both maternity insurance and basic medical insurance; whereas the new rural cooperative medical system would serve the backbone of antenatal care for rural residents.⁵¹ The subscription rate of maternity protection, in reality, remains low since it is not compulsory for employers to contribute to the premium. From 2008 to 2012, the subscription rate among internal migrant workers showed a slight increase from 2 per cent to 6.1 per cent.⁵²

25. According to the SIL, female workers are entitled to maternity allowance when they are on maternity leave, on leave due to abortion, and other situations permissible by law.⁵³ Likewise, maternity insurance covers the expenses related to maternity, which includes any costs incurred from abortion.⁵⁴

26. In reality, female workers are often ill-informed of these rights guaranteed by law. Almost all female internal migrant workers cannot enjoy these rights because of the nature of their work in the labour intensive manufacturing industries. Demanding physical labour intensity, night shifts, and usually hazardous and toxic work environment are, inter alia, a few visible deterring factors for pregnant workers. Using the situation

⁴⁴ *Labour Law*, arts 70 and 73.

⁴⁵ 《企业职工生育保险试行办法》 [Provisional Measures for Maternity Insurance of Staff and Workers of Enterprises] (People’s Republic of China) Ministry of Labour, Order No 504, 14 December 1994.

⁴⁶ 《女职工劳动保护特别规定》 [Special Regulations Concerning the Labour Protection of Female Workers] (People’s Republic of China) State Council, Order No 619, 28 April 2012, art 8.

⁴⁷ Casale and Zhu, above n 42, 80.

⁴⁸ Pension and medical care are the most comprehensive and extensive ones. Each of them has three schemes in order to cover the different needs of urban and rural residents. See Casale and Zhu, above n 42, 80-3.

⁴⁹ 《中国妇女发展纲要（2001-2010）》 [Outline for the Development of Chinese Women (2001-2010)] (People’s Republic of China) State Council, 22 May 2001.

⁵⁰ Casale and Zhu, above n 42, 83.

⁵¹ [Outline for the Development of Chinese Women (2011-2020)], above n 49.

⁵² [The National Survey of Internal Migrant Workers in 2013], above n 22.

⁵³ 《中华人民共和国社会保险法》 [Social Insurance Law of the People’s Republic of China] (People’s Republic of China) National People’s Congress Standing Committee, Order No 35, 28 October 2010, art 56 (*Social Insurance Law*).

⁵⁴ *Social Insurance Law*, art 55.

of those female workers in the construction sites in the municipal of Huizhou as an illustration, the respondents replied that they were not advised what kinds of duties they should not performed during the “four periods”,⁵⁵ and hence they would opt for taking a rest spontaneously when they felt sick.⁵⁶

27. On the other hand, it is hard for a pregnant internal migrant workers to access pre- and post-natal medical and social services with a rural *hukou*. The vast majority of female internal migrant workers are daunted by the high costs of giving birth and raising children in urban areas. It is never simple and straightforward for them to make a decision to stay on their job during their pregnancy and in the lactation period. The childcare facilities in industrial zones are absent. Also, it is a common practice that employers would not adjust the workload of these affected female workers. Hence, these pregnant internal migrant workers prefer to deliver and have their baby raised in their rural hometown where they could resort to familial and social support. Yet it becomes a dilemma that they would have to resign from their current job or separating with and leaving their newborn baby behind for the full-time care by the grandparents.

28. Quitting their jobs in the urban areas and returning to their rural hometown for delivery becomes a “norm”. In such case, their employers do not need to compensate for their resignation because it is merely a personal decision, not an unfair dismissal. In a factory investigation,⁵⁷ it was said that the management tended to employ married female workers with children for the reason that they do not have to worry about the potential claims for maternity leaves and the contribution to the maternity insurance⁵⁸ under the existing one-child family planning policy. At the same time, that could solve the risk of temporary labour shortage since the possibility of taking maternity leaves is ruled out. This is a form of indirect discrimination against women in relation to maternity.

29. Besides, informal workers might not be able to benefit from both maternity allowance and insurance unless the employer of their spouse has contributed to the Insurance.

30. In a nutshell, implicit violations against the rights of female workers are painfully problematic in regulation. Constructive dismissal is rather common. For instance, many female workers were deliberately deployed to another posts during their pregnancy and lactation period where they could not adapt to it and then choose to resign in the end. At this moment, the laws could not resolve this tricky situation and redress those dismissed female workers.⁵⁹

31. Second, the legal framework of regulations is outdated. Traditional tortious damages in equity might not be suffice to deal with stillbirth, miscarriage or deformed children related to radiation, chemical poisoning, pollution, or other novel causal factors.⁶⁰

32. Punitive provisions hitherto are unrivalled. Perpetrating enterprises seldom face impeding punishment where reformation in practices are lacking motivation.⁶¹

⁵⁵ The four periods are the menstrual period, pregnancy, and labour and lactation periods.

⁵⁶ [Investigative Report on the Safety Issues for Construction Sites in the Municipality of Huizhou], above n 27.

⁵⁷ This factory investigation was conducted in May 2013, where a Japanese-invested plant in Shenzhen was visited.

⁵⁸ Workers do not need to contribute to maternity insurance. Their premium is paid by their employers. See, *Social Insurance Law*, art 53.

⁵⁹ [Interests of Women Workers in Low-End Sectors are Vulnerable to Abuse], above n 38.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

33. Maternity Insurance and Health Insurance are closely related. Apart from maternity allowance, it covers the medical expenses for delivery and abortion. In many cases, both insurances are difficult to coordinate which gives a great deal of inconvenience. The maternity insurance authority is unable to supervise the medical institutions where the former becomes passive in managing the cost that could lead to a serious waste. It could be beneficial to merge the Maternity Insurance with the Health Insurance and become a single and integrated insurance to cover the cost of all kinds of medical expenditures. Thus, the integrated health insurance could cover the medical needs incurred by maternity for all women.

Article 16 – the Right to Equality in the Family

Domestic Violence

34. According to the Marriage Law, a married couple can either direct petition to a tribunal or go through legal mediation when they seek for a divorce.⁶² Domestic violence is one of the five legitimate reasons to annul a marriage.⁶³ If the applicant was an internal migrant, the tribunal would request for a proof of domicile that they have been residing in the current abode for more than one year due to the fact that they do not have a local *hukou*. Otherwise, they would have to return to the place where their *hukou* is registered, this could, undeniably, prolong the physical and/or psychological sufferings of the victim and increase the difficulty.

35. In accordance with the Civil Procedure Law, the *onus probandi* rests upon the applicant.⁶⁴ In reality, many police officers and medical personnel did not receive proper training in handling cases of domestic violence. Under the traditional patriarchal concept of harmonious family, they often prefer to mediate at the spot; even if the case were filed, it could then become a case of general disputes. Internal migrants always encounter difficulties in collecting evidence because they, firstly, lack an informal and casual supporting network from family and friends; as well as the unavailability of social services in the community under the auspices of the authorities.

36. In 2011, ACWF and NBS jointly released the third national survey of women's status, which unfolded the fact that one in four women "were verbally abused, assaulted, restricted their personal freedom, controlled their financial independence, and/or forced to have sexual intercourse during their marriage".⁶⁵

37. Women groups have called for an initiative to outlaw domestic violence over a decade. But the authorities remain reluctant to adopt any specific legislation to tackle and to criminalize domestic violence as per the UNCESCR.⁶⁶ The civil society has been trying to allocate and mobilize their limited resources. However, such an effort is just a drop in the ocean because the availability of resources in the civil society is next to nothing. Sometimes, the obstruction is institutional and therein lies the UNCESCR urging the Chinese Government "to protect all victims by providing adequate access to shelters

⁶² 《中华人民共和国婚姻法》[Marriage Law of the People's Republic of China] (People's Republic of China) National People's Congress, Order No 9, 10 September 1980 (amended in 2001) art 32 (*Marriage Law*).

⁶³ *Marriage Law*, art 32(2).

⁶⁴ 《中华人民共和国民事诉讼法》[Civil Procedure Law of the People's Republic of China] (People's Republic of China) National People's Congress, Order No 44, 9 April 1991 (amended in 2012 for the second time) arts 64-5 (*Civil Procedure Law*).

⁶⁵ All-China Women's Federation, 《第三期中国妇女社会地位调查主要数据报告》[The Third Phase of Chinese Women's Social Status] (2011) 108(6) *Collection of Women's Studies* 5, 14.

⁶⁶ *Concluding observations on the second periodic report of China, including Hong Kong, China and Macao, China*, UN Doc E/C.12/CHN/CO/2, 25.

for immediate physical protection, legal aid and medical services, as well as to remedies and compensation".⁶⁷

⁶⁷ *Concluding observations on the second periodic report of China, including Hong Kong, China and Macao, China*, UN Doc E/C.12/CHN/CO/2, 25.

Appendix 1 – A Case of Domestic Violence

Yang (a pseudonym) is a female internal migrant from Hunan province. She began to work in Shenzhen in 1995. She got married in 2006. Her nightmare of domestic violence started to surface just six months after her wedding. In 2008, she underwent an abortion surgery to terminate an unexpected pregnancy and was beaten to bleeding in her genitalia during recuperation period. Yang called the police and then she was “interrogated like a suspect” when the police recorded the case. In the end, the police decided that it was a violence within the family and that should be resolved between the couple.

Domestic violence came back to her in 2011. Consequently, she called the police again. She was shocked when the police officer warned Yang that both she and her perpetrator would be detained for 15 days and fined ¥1,000 if she insisted to report her case. Hence, she had to give up. Her spouse did not stop abusing her. Yang approached the local office of ACWF for help. Nevertheless, ACWF staff pushed her away and told her to go for mediation or seek assistance from a lawyer.

She found a public interest lawyer in mid-2012, who could represent her free in the divorce litigation. Unfortunately, they could not find any relevant evidences, including police and hospital records. On the other hand, her perpetrator denied the allegation of domestic violence by falsification. The tribunal, therefore, dismissed her application.

Yang petitioned to the tribunal again in mid-2013. She also received legal aid. But her petition was rejected owing to her *hukou*. She appealed to the tribunal and, subsequently, discovered that the proof of domicile for her spouse was invalid which meant that Yang could not prove the couple had been resided in Shenzhen for more than one year. The tribunal turned down her appeal and ordered her to re-apply in the place where her *hukou* is registered. Later, she found out her spouse had been living in the factory dormitory. But the local police station and the dormitory management were reluctant to print out and provide relevant information. Yang is still seeking alternative ways.