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# A Joint Parallel Report Concerning China for Consideration by the United Nations Committee on Economic Social and Cultural Rights at its 51<sup>st</sup> Session

The Chinese Working Women Network

Globalization Monitor

Labour Action China

Labour Education and Service Network

Worker Empowerment

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This report is endorsed, either in part or in whole, by the following organisations:

**The Chinese Working Women Network (CWWN)** was set up in 1996 as a non-government organisation 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.

**Globalization Monitor (GM)**, a Hong Kong-based progressive group founded in 1997, aims to provide critical information and deal with issues related to globalisation. GM is also involved in monitoring the international corporate misconduct and enhancing workers' rights in China through research, local and international campaigns, and public education. GM's board members consist of committed trade unionist, labour organiser, feminist researcher, social worker, social and environmental activists.

**Labour Action China (LAC)** is a Hong Kong-based non-governmental organisation 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 organisations 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.

**Labour Education and Service Network (LESN)** is an independent NGO established in Hong Kong in October 2001. It comprises experienced social workers, labour organisers and labour researchers in Hong Kong. LESN mainly works in mainland China targeting migrant workers. LESN is devoted to the improvement of labour's rights. Our work include: to work with multiple world renown MSIs (multi-stakeholder initiatives) and brands to provide various labour rights education and services programmes in over 30 supplier factories since 2001, to provide pre-departure labour trainings to vocational schools, to work with over 50 tertiary and secondary vocational schools since 2007 by providing direct training to over 300 teachers and 4000 students, benefiting over 50,000 students, to provide various labour education and cultural activities in industrial zones, improve workers knowledge to labour laws and labour rights.

**Worker Empowerment (WE)** is a Hong Kong-based labour organisation 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-organisation of workers is achieved in rights defending processes.

## General Overview

1. This joint submission is prepared by Chinese Working Women Network (CWWN), Globalization Monitor (GM), Labour Action China (LAC), Labour Education and Service Network (LESN) and Worker Empowerment (WE). These five labour-rights organisations aims to provide the United Nations Committee on Economic Social and Cultural Rights (the Committee) with information on a number of key labour issues that are said to be relevant for the review of China's second Periodic Report on the implementation of the International Covenant on Economic Social and Cultural Rights (the Covenant/ ICESCR) at the 51<sup>st</sup> session. Thus, this submission does not provide a complete assessment of China's compliance with the ICESCR, but rather draws on the relevant recent and current areas of the work and concerns of these five organisations.

2. The Labour Law is the principal national legislation safeguarding the right to work of a worker and its constituent components, for instance, to obtain remuneration, to have health and safety protection, as they are enshrined in the Chinese Constitution,<sup>1</sup> as well as in this Covenant.<sup>2</sup> Similar to the tripartite relationship adopted by the International Labour Organization, it regulates employment relationships through collaboration and coordination amongst workers, employers and the State. Apart from recognising and cherishing the rights of workers, the Law equally imposes a number of duties<sup>3</sup> and obligations<sup>4</sup> on the employers to guarantee the accomplishment of these rights. The Government is taking a role to promote these rights by outlining a number of measures.<sup>5</sup> As a result, a number of primary national legislations are legislated to supplement these indivisible rights, for example, the Work Safety Law<sup>6</sup> and the Law on the Prevention and Control of Occupational Diseases.<sup>7</sup>

3. *Hukou* (registration of household) system is an invisible but a key factor, inter alia, which frustrates the direct and indirect enjoyment of economic, social and cultural rights. All workers have their private individual and family lives. Their family members are also entitled to the same or different rights enshrined in this Covenant according to their own individual status. For example, the right to education is important to a minor child of a worker. The enjoyment of rights by their family members is integral and

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<sup>1</sup> 《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 3 (Labour Law).

<sup>2</sup> Article 3 of the Labour Law stipulates a number of rights for workers, which have already been preserved and cherished in articles 6, 7, 9 and 12 of this Covenant.

<sup>3</sup> *Labour Law*, above n 1, art 3.

<sup>4</sup> *Ibid* art 4.

<sup>5</sup> *Ibid* art 5.

<sup>6</sup> 《中华人民共和国安全生产法（2009修正）》[Work Safety Law of the People's Republic of China (2009 Amendment)] (People's Republic of China) National People's Congress Standing Committee, Order No 70, 29 June 2002 (Work Safety Law).

<sup>7</sup> 《中华人民共和国职业病防治法（2011修正）》[Law of the People's Republic of China on the Prevention and Control of Occupational Diseases (2011 Amendment)] (People's Republic of China) National People's Congress Standing Committee, Order No 52, 31 December 2011 (Law on the Prevention and Control of Occupational Diseases).

inseparable to the ultimate fulfilment of the rights of a worker. As such, this report does not restrict to the rights of a worker per se.

## Article 6 – the Right to Work

### *Unemployment*

4. Austerity measures across the globe have led to fewer demands of products manufactured or assembled in China, which would inevitably push high up the unemployment rate. Redundancy is always chosen to be *the* solution to the shrinking production lines. The official registered urban unemployment population has reached 9-10 millions.<sup>8</sup> This sui generis registered urban unemployment rate is full of “China’s characteristics” that it does not include the rural population, migrant workers, and the unemployed whom are not registered with the government, such as laid-off workers, unemployed college students.<sup>9</sup> What is more is this rate has a glass ceiling in the upper age limit, which is 60 years of age for men and 50 for women.<sup>10</sup> As a consequence, this statistical practice is de facto discriminatory and makes it harder to examine whether the right to work can be broadly extended to protect the interests of women,<sup>11</sup> young persons,<sup>12</sup> child labour,<sup>13</sup> older persons,<sup>14</sup> persons with disabilities<sup>15</sup> and migrant workers.<sup>16</sup>

### *Technical and Vocational Training Programmes*

5. China has proclaimed her success in developing the largest technical and vocational education system. Over 30 million students are currently enrolled in middle and higher vocational schools.<sup>17</sup> Students are required to take a one year’s internship under the vocational education policy. However, their internship does not attract any labour rights protections.<sup>18</sup> In practice, many student workers are abused as cheap and flexible labour in patches under the guise of proper technical and vocational education. Nearly half of these student workers were refrained from resigning their mandatory internship,<sup>19</sup> because their wages and documents of identity were withheld by

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<sup>8</sup> 岑逸飛 [Shum Yat-fei], 《由全球失業看中國失業問題》 [Viewing China’s Unemployment Problem from the Angle of Global Unemployment], *Hong Kong Economic Times* (online), 10 May 2012

<<http://lifestyle.etnet.com.hk/column/index.php/internationalaffairs/culture/10355>>.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 18: The Right to Work*, 35<sup>th</sup> sess, UN Doc E/C.12/GC/18 (6 February 2006) para 13 (*General Comment No 18*).

<sup>12</sup> *Ibid* para 14.

<sup>13</sup> *Ibid* para 15.

<sup>14</sup> *Ibid* para 16.

<sup>15</sup> *Ibid* para 17.

<sup>16</sup> *Ibid* para 18.

<sup>17</sup> 《中国特色职业教育发展之路——中国职业教育发展报告（2002-2012）》 [The Road of Developing Vocational Education with Chinese Characteristics – Development Report of Vocational Education in China (2002-2012)], (Report, Center of Technical and Vocational Training, Ministry of Education, October 2012).

<sup>18</sup> The rights of student interns are separately regulated under 《中等职业学校学生实习管理办法》 [Administrative Measures for Internships at Secondary Vocational Schools] (People’s Republic of China) Ministry of Education, 2007 (Administrative Measures for Internships at Secondary Vocational Schools).

<sup>19</sup> A survey conducted in the Pearl River Delta highlighted 40% of student workers did not have a choice to their internship. See, 《2011-12年電子行業學生工調查報告》 [Report on Student Workers in Electronic Industry (2011-12)]

their schools in many cases.<sup>20</sup> These student workers are de facto forced labourers.

6. In fact, some local governments encourage the use of student workers as a source of labour supply.<sup>21</sup> A recent internship bill drafted by the Ministry of Education has revealed the clues to rescind the restrictions on duration of internship, internship allowances and working hours.<sup>22</sup> Undoubtedly, this would result in further extensive exploitation and abuse to these student workers if this bill were passed.

7. Vocational training programmes should aim at achieving steady economic, social and cultural development and productive employment under the conditions which fundamental political and economic freedoms of an individual are safeguarded. In this instance, severe violation is found within the implementation of technical and vocational training programmes.

## **Article 7 – the Right to the Enjoyment of Just and Favourable Conditions of Work**

### ***Minimum Wages***

8. Minimum wages started to implement since March 2004. It applies to all workers who work for enterprises, civil organisations and individual economic units.<sup>23</sup> The protections differ between full time and non-full time workers where only full time workers are entitled to a monthly rated minimum wage.<sup>24</sup> Rates are subject to the biennial revisions<sup>25</sup> wherefrom a number of

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(Research Report, 關注新生代農民工高校調研組 [University Research Group Concerned about the New Generation of Migrant Workers], 2012) (Report on Student Workers in Electronic Industry).

<sup>20</sup> A vocational school in the municipality of Guiyang sent student interns to work in electronic factories for more than 20 months in 3 years. Some were assigned their internship just few weeks even days after enrolment. They worked 11-13 hours per day; their wages were withheld by the school as “tuition fee” and received only a few hundred yuan as “pocket money” from the school. The students were threatened by the school that their graduation certificates would not be issued if they resign. 69 students stood up and brought their case to various government agencies. They estimated that the school made over 20000 yuan per student from their taken-away wages. The case did not receive proper investigation. Eventually, local education authorities said that each student was only entitled to a 56 yuan refund of over-charged school fees. See, 王焯捷 [Wang Yejie], 《入学第6天就被派出打工》 [Sent to Work on the Sixth Day After Admitting to a Vocational School], 《中国青年报》 ‘China Youth Daily’ (Beijing) 25 September 2011, 1 and 王焯捷 [Wang Yejie], 《要求贵阳国防学校停止招生》 [Demanding the Guiyang National Defence School Stop Enrolment], 《中国青年报》 ‘China Youth Daily’ (Beijing) 17 October 2011, 1.

<sup>21</sup> In a press interview after the revelation of child labour used, a head teacher said the local government issued unpublished orders requiring schools to send student interns to work in Foxconn factories in Yantai. See, 《烟台富士康聘学生实习校方称市里任务推不掉》 [Yantai Foxconn Employing Student Interns: Schools cannot Shirk the Task from Local Government], 《中國財經網》 *China Finance* (online) 16 October 2012 <<http://finance.china.com.cn/industry/company/20121016/1070708.shtml>>.

<sup>22</sup> The bill encourages schools to extend internship beyond the one-year’s restriction; allows schools to assign students to internship in their first year; allows over time work during internship; loosens requirement on internship allowances; waives punishment to those violate the regulations and students’ rights. See, 《职业学校学生顶岗实习管理规定（试行）（征求意见稿）》 [Administrative Provisions on the Practice of the Students of Vocational Schools by Taking Posts (for Trial Implementation) (Draft for Comments)] (People’s Republic of China) Ministry of Education <<http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/s6197/201211/144557.html>> (Administrative Provisions on the Practice of Students of Vocational Schools by Taking Posts).

<sup>23</sup> 《最低工资规定》 [Provisions on Minimum Wages] (People’s Republic of China) Ministry of Labour and Social Security, Order No 21, 20 January 2004, art 2 (Provisions on Minimum Wages).

<sup>24</sup> *Ibid* art 5.

factors are weighed in the equation namely: the average living costs of urban residents; the social insurance premiums and the public accumulation funds for housing paid by employee themselves; the average wage of the employees; the rate of unemployment; the level of economic development; and other factors not made known to the general public.<sup>26</sup>

9. Municipal governments or above are granted the autonomy to set their local minimum wages ab initio. The Guangdong provincial government, for instance, would categorise almost all cities within the province into four tiers according to the economic development of each city and sets their minimum wages accordingly.<sup>27</sup> Guangzhou is its capital city and its rate of minimum wage is significantly higher than other less affluent surrounding municipalities and counties. Despite the fact that the municipality of Shenzhen is geographically within the boundary of Guangdong province, its special economic zone status renders itself the authority to determine its own rates of minimum wage. Shenzhen has the highest rate of minimum wage up until now, which is 1600 yuan per calendar month starting from March 2013.<sup>28</sup>

10. Setting the rates of minimum wages is often denounced for its prima facie arbitrariness since a transparent mechanism of revision is generally absent. There is no way for the general public to scrutinise the decision making process. It is sometimes a haggle between governments and businesses, or even becomes a quid pro quo amongst municipalities in the competition for human resources. This problem can be exemplified in the case of Shenzhen. In early 2013, Shenzhen had not yet announced the increase in minimum wage level, and some politicians expressed their negative concern on businesses.<sup>29</sup> Meanwhile, the Guangdong provincial government announced the minimum wage in Guangzhou would be increased from 1350 yuan to 1550 yuan in May 2013, after a two years' freeze.<sup>30</sup> Coincidentally, the minimum wages of suburban areas in Guangzhou municipality would have a hefty 40 percent leap in order to meet the unified minimum wage of Guangzhou for the first time.<sup>31</sup> The Shenzhen municipal government made a surprising announcement two days later that its minimum

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<sup>25</sup> Ibid art 10.

<sup>26</sup> Ibid app 1.

<sup>27</sup> People's Government of Guangdong Province, 《广东省人民政府关于调整我省企业职工最低工资标准的通知》 [Notice of the People's Government of Guangdong Province on the Adjustment of the Minimum Wage for Workers of Enterprises in Our Province] (Media Release, 4 February 2013) <[http://zwgk.gd.gov.cn/006939748/201302/t20130205\\_365944.html](http://zwgk.gd.gov.cn/006939748/201302/t20130205_365944.html)>.

<sup>28</sup> Wei Tian, 'Shenzhen has the Highest Minimum Wage', *China Daily* (online), 10 August 2012

<[http://www.chinadaily.com.cn/bizchina/2012-08/10/content\\_15662517.htm](http://www.chinadaily.com.cn/bizchina/2012-08/10/content_15662517.htm)>.

<sup>29</sup> 《为给企业减压暂缓调高最低工资？有人大代表提此建议，官方规划则称深圳还将稳步提高最低工资标准》

[Suspend the Minimum Wage Revision to Decompress the Enterprise: Deputies Mentioning This Proposal, the Official Plan Claimed that Shenzhen will Steadily Raise the Minimum Wage], 《南方都市报》 *Nanfang Metro* (online), 18 January 2013 <[http://epaper.oeeee.com/H/html/2013-01/18/content\\_1795872.htm](http://epaper.oeeee.com/H/html/2013-01/18/content_1795872.htm)>.

<sup>30</sup> People's Government of Guangdong Province, above n 27.

<sup>31</sup> 《广州最低工资首次全市大一统：花都、番禺、南沙、从化、增城猛增四成》 [The Minimum Wages within the Municipality of Guangzhou Unifies for the First Time: Forty Percent Jump in Huadu, Panyu, Nansha, Conghua, Zengcheng], 《信息时报》 *Information Times*, 27 February 2013, A14.

wage would raise from 1500 yuan to 1600 yuan in March 2013.<sup>32</sup> Considering the geographical proximity and a long history of competition for human resources between Shenzhen and Guangzhou, it is not difficult to disguise this hasty yet strategic move of Shenzhen to retain the highest minimum wage nationwide. Additionally, this phenomenon has indirectly revealed the process of revision lacks transparency.

11. Minimum wage is a means by “providing an income [to allow] workers to support themselves and their families’.<sup>33</sup> The current rates of minimum wages have always been criticised as too low to sustain a decent living, especially for those residing in the metropolitan areas. It appears natural for provinces to revise their local minimum wages as per their performance of economic development, albeit the minimum wage is often the highest for what a lowest-ranking worker could get. This much of earning is insufficient to maintain a basic living for themselves and their family members without propelling them to work overtime.

12. It is surely difficult to generalise a picture to examine how a worker struggles for a decent living with a minimum wage. Shenzhen is a good reference to shed some light on this topic as its rates of minimum wage champion in China. A survey conducted by Dagongzhe Centre depicted that a migrant worker’s salary is barely enough to support one’s own cost of living when it is paid according to the existing rates of minimum wage in Shenzhen.<sup>34</sup> As a result, the minimum wage fell short of its legitimate purpose to “ensure the basic necessities of the labourers and their family members”.<sup>35</sup> A handsome number of workers could not afford their healthcare, as well as recreational, educational and cultural activities when these services are deemed to be basic and necessary for a city living.<sup>36</sup> Inevitably, this appalling substandard of living could never be ensued without taking extra shifts. Not only the enshrined right to have a decent living for workers themselves and their families could not be attained,<sup>37</sup> but the rights to physical and mental health<sup>38</sup> and to “rest, leisure and reasonable limitation of working hours and periodic holidays with pay” are also compromised and frustrated.<sup>39</sup> It might well be the consequence of lacking collective bargaining

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<sup>32</sup> Human Resources and Social Security Bureau of Shenzhen, 《深圳市公布2013年最低工资标准》 [Shenzhen Announce the 2013 Minimum Wage] (Media Release, 6 February 2013) <[http://www.szhrss.gov.cn/qt/zfzfgzdt/201302/t20130201\\_2106100\\_13604.htm](http://www.szhrss.gov.cn/qt/zfzfgzdt/201302/t20130201_2106100_13604.htm)>.

<sup>33</sup> *General Comment No 18*, above n 11, para 7.

<sup>34</sup> ‘How Should Minimum Wage Promise a Decent Living for Workers?’ (Research Paper, Dagongzhe Centre, February 2013) 15.

<sup>35</sup> *Provisions on Minimum Wages*, above n 23, art 1.

<sup>36</sup> ‘How Should Minimum Wage Promise a Decent Living for Workers?’, above n 34, 11.

<sup>37</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 7(a)(ii) (ICESCR).

<sup>38</sup> *Ibid* art 12.

<sup>39</sup> *Ibid* art 7(d).

when workers' interests could not be represented through independent trade unions.<sup>40</sup>

13. That aforementioned survey was, in fact, conducted with a presumption of a three persons' household of two adults and one child, with their extended family members working in their place of origin. It was estimated that they should have earned 60 percent of the average wage for a decent living in Shenzhen. Back in 2010, the same percentage served as a benchmark supported by All-China Federation of Trade Unions (ACFTU). The latest increase of minimum wage in Shenzhen is just above six percent, reaching 34 percent of the average wage of workers in 2012.<sup>41</sup> With such a peripheral adjustment, it is hard to imagine that minimum wage could lap to the targeted 40 percent before 2015 despite the fact that Shenzhen is the most prosperous metropolitan area.

14. In most areas, 40 percent is an intended target to be achieved before 2015, outlined in both Urban Employment Growth Plan (2011-2015)<sup>42</sup> and the National Human Rights Action Plan (2012-2015)<sup>43</sup> by the Beijing Authority – an annual increase from 13 to the 40 percent of the average wage among all workers. This recommendation is even worse than what the ACFTU has suggested. Instead, the minimum wages should increase to 40 percent of the average wage immediately and gradually rise to 60 percent in the foreseeable future.

15. Moreover, *hukou* plays an indirect role. Having a local urban *hukou* seems to give one a better access to most decent jobs in urban areas. Migrant workers are usually engaged in jobs with minimum wages and adverse working conditions. According to the National Bureau of Statistics, the average monthly income of a migrant worker is 2049 yuan, just 30 percent of the average wage of their urban counterparts.<sup>44</sup> Moreover, migrant workers often encounter illegal deduction or payment in arrears, and this has stirred up a significant number of disputes at the end of every year. Obviously, lacking efficient protection to safeguard migrant workers' right to decent work is the main reason behind these disputes.

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<sup>40</sup> Ibid art 8(1)(a). See also, 《总工会：将最低工资提至社会平均工资的40%~60%》[ACFTU: Minimum Wages Should be Raised to 40 percent to 60 percent of the Average Wage in Society] cited in 《亚心网》iyaxin.com (online), 10 March 2010 <[http://e.iyaxin.com/content/2010-03/10/content\\_1586849.htm](http://e.iyaxin.com/content/2010-03/10/content_1586849.htm)>.

<sup>41</sup> 'How Should Minimum Wage Promise a Decent Living for Workers?', above n 34, 13.

<sup>42</sup> State Council, 《促进就业规划（2011-2015年）》Urban Employment Growth Plan (2011-2015) (24 January 2012).

<sup>43</sup> State Council, 《国家人权行动计划（2012-2015年）》National Human Rights Action Plan of China (2012-2015) (11 June 2012) (National Human Rights Action Plan of China).

<sup>44</sup> 《农民工月均工资破2000仅为城镇职工平均工资30%》[The Average Monthly Wage of Migrant Workers is 2000 Yuan, only 30% of Average Wage for Urban Workers], 《国际金融报》International Finance News (online), 2 March 2012 <<http://finance.people.com.cn/GB/70846/17271906.html>>.

### ***Equal Pay for Work of Equal Value***

16. China's global gender gap ranking has slipped from the 61<sup>st</sup> to 69<sup>th</sup> in 2012.<sup>45</sup> The report revealed that the female-to-male ratio of wage equality for similar work was 0.66:1 whereas 1.08:1 and 0.20:1 were recorded in the categories of "professional and technical workers" and "legislators, senior officials and managers" respectively.<sup>46</sup> China remains a patriarchal society by and large. Women are traditionally perceived to be the primary carer of a family, especially after a child was born to a family. As such, most companies will prioritise the opportunities for training and further education to their male workers as well as the chance for promotion. Besides, women with young children always find themselves behind the career ladder after returning from maternity leave. Nevertheless, these data fails to reflect the truth and address the structural inequality between female and male migrant workers. Migrant workers are, in general, employed in labour intensive manufacturing. It is phenomenal that employers tend to recruit a particular gender for certain position where finding a comparator is almost impossible.

17. A worker can be of both genders. The Law on the Protection of Rights and Interests of Women was adopted in 1992 and amended in 2005 in order to protect the rights of women.<sup>47</sup> Shenzhen is the only municipality to localise this piece of national legislation.<sup>48</sup> Both pieces do not outline an operable practice to target gender-based discrimination and sexual harassment at work. The perpetrator faces no penalty to pay and the employer does not bear vicarious liability for that either. Without the support of public education, legislation becomes plainly decorative.

### ***Working Conditions***

18. Availability, accessibility, acceptability and quality<sup>49</sup> to a decent work are essential to the fulfilment of "the physical and mental integrity" of a worker.<sup>50</sup> Certain workers do need positive measures in order to ensure the equal opportunity on this matter. For instance, persons with disabilities are often subject to all forms of discrimination in the process of recruitment or at work. Respect, protection and fulfilment are the core to the right to work.<sup>51</sup> The Labour Law proclaims special provisions to persons with disabilities, ethnic minorities and demobilised soldiers.<sup>52</sup> Likewise, the Law on the Protection of Disabled Persons sets out similar provisions to protect the right

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<sup>45</sup> Ricardo Hausmann, Laura D Tyson and Saadia Zahidi, 'The Global Gender Gap Report 2012' (Report, World Economic Forum, 2012) 146.

<sup>46</sup> *Ibid.*

<sup>47</sup> 《中华人民共和国妇女权益保障法（2005修正）》[Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005 Amendment)] (People's Republic of China) National People's Congress Standing Committee, Order No 40, 18 August 2005.

<sup>48</sup> 《深圳经济特区性别平等促进条例》[Regulation of Shenzhen Special Economic Zone on the Promotion of Gender Equity] (People's Republic of China) People's Government of Shenzhen Municipality, Decree No 89, 28 June 2012 (Regulation of Shenzhen Special Economic Zone on the Promotion of Gender Equity).

<sup>49</sup> *General Comment No 18*, above n 11, para 12.

<sup>50</sup> *Ibid* para 7.

<sup>51</sup> *Ibid* para 22.

<sup>52</sup> *Labour Law*, above n 1, art 14.

to work of persons with disabilities.<sup>53</sup> Secondary legislation and regulations are adopted at provincial and municipal levels.<sup>54</sup>

19. Although the latest annual official statistics of work-related injuries in China is unavailable to the general public, 23812 new cases of pneumoconiosis were reported in 2010, which was a 64.28 percent increase from 2009.<sup>55</sup> Pneumoconiosis is the most common form of occupational diseases in China. It is not too difficult to project the data of all other work-related injuries and occupational diseases.

20. The Labour Law,<sup>56</sup> the Work Safety Law<sup>57</sup> and the Law on the Prevention and Control of Occupational Diseases<sup>58</sup> impose a set of responsibilities on the employers on the prevention of work-related injuries, as well as the duties on all levels of governments to set up a system to deal with work-related injuries and occupational diseases and to collect the data. In reality, businesses with political connection tend to have higher fatalities because endemic corruption is prone to prevail, thus reducing the effectiveness of these preventive measures.<sup>59</sup> Both employers and the governments are failing to comply with their statutory responsibilities<sup>60</sup> and hence these rhetorical preventative measures have become either unenforceable or sham.

21. In November 2012, the Ministry of Health proposed to enhance the administrative measures for occupational health check. Under the proposal, an occupational health inspection agency has the duty to notify the worker who is suspected to contract occupational disease, the employer, and the

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<sup>53</sup> 《中华人民共和国残疾人保障法》[Law of the People's Republic of China on the Protection of Persons with Disabilities] (People's Republic of China) National People's Congress Standing Committee, Order No 3, 1 July 2008, arts 30-40 (Law on the Protection of Persons with Disabilities).

<sup>54</sup> 《残疾人就业条例》[Regulation on the Employment of the Disabled] (People's Republic of China) State Council, Order No 488, 25 February 2007, 《江西省残疾人就业办法》[Measures for the Employment of the Disabled Persons of Jiangxi Province] (People's Republic of China) People's Government of Jiangxi Province, Decree No 182, 30 March 2010, 《广东省扶助残疾人办法》[Procedures of Guangdong Province on Support for the Disabled] (People's Republic of China) People's Government of Guangdong Province, Decree No 115, 30 March 2007, 《山西省保障残疾人合法权益规定》[Provisions of Shanxi Province on the Protection of the Lawful Rights and Interests of the Disabled Persons] (People's Republic of China) People's Government of Shanxi Province, Order No 196, 23 December 2006, 《江苏省人民政府关于修改〈江苏省按比例安排残疾人就业办法〉的决定(2006)》[Decision of the People's Government of Jiangsu Province on Amending the Measures of Jiangsu Province for the Proportional Employment Arrangement for Disabled Persons] (People's Republic of China) People's Government of Jiangsu Province, Decree No 31, 9 August 2006 and 《深圳市扶助残疾人办法》[Measures of the Shenzhen Municipality on the Assistance to the Disabled] (People's Republic of China) Shenzhen Municipal People's Government, Order No 146, 2 December 2005.

<sup>55</sup> 王丹·张敏 [Wang Dan and Zhang Min], 《中国2010年报告尘肺病发病情况分析》[Statistics on Notification of Pneumoconiosis in China in 2010] (2012) 30(11)《中华劳动卫生职业病杂志》*Chinese Journal of Industrial Hygiene and Occupational Diseases* 801, 801.

<sup>56</sup> *Labour Law*, above n 1, arts 52-7.

<sup>57</sup> *Work Safety Law*, above n 6, arts 21 and 28-9.

<sup>58</sup> *Law on the Prevention and Control of Occupational Diseases*, above n 7, arts 8-18.

<sup>59</sup> Christina Larson, 'In China, Politically Connected Firms Have Higher Worker Death Rates', *Businessweek* (online), 28 January 2013 <<http://www.businessweek.com/articles/2013-01-28/in-china-corrupt-officials-and-worker-deaths>>.

<sup>60</sup> 《国家职业病防治规划(2009-2015年)》[National Occupational Diseases Prevention Policy (2012-2015)] (People's Republic of China) State Council (2009) No 43.

local health administration and production safety inspectorate without undue delay. Employer should arrange the suspected worker for a timely and thorough diagnosis in due course.<sup>61</sup> Nevertheless, the proposal fails to address three issues – the privacy of workers, their rights to be informed and supervision on employers.<sup>62</sup>

## Article 9 – the Right to Social Security

22. In principle, all workers shall participate in social insurance in accordance with the Social Insurance Law.<sup>63</sup> Workers with urban and rural *hukou* are entitled to different social insurance schemes in most urban cities. As the restriction of *hukou* system, migrant workers are ineligible to enjoy the same amount of protection compared to urban workers though they have been working in urban regions for a very long period of time.<sup>64</sup> This discriminatory practice contravenes the broader application of this right. Medical insurance, for example, offers fewer protections to migrant workers. On the other hand, the subscription rate of migrant workers to social insurance schemes remains low for various reasons.<sup>65</sup> Migrant workers are difficult to enjoy social insurance benefits due to the restrictions of social insurance system, for instance, non-transferable regional based system. It remains hard to see how the discrimination against migrant workers in old age and medical insurance schemes can be eliminated in 2015 as per the National Human Rights Action Plan.<sup>66</sup>

23. Employers are required to subscribe to the mandatory work-related injury insurance for all workers.<sup>67</sup> In reality, the subscription rate remains low and only 23 percent of the working population is covered.<sup>68</sup> The procedure for claiming work-related injury insurance has long been criticised as worker-unfriendly, sometimes bureaucratic and complex. Lacking employment contracts, and missing records of health check and health and safety

<sup>61</sup> 舒晶晶 [Shu Jingjing], 《卫生部就「职业健康检查管理办法」公开征求意见》 [Ministry of Health Invite Public Comment on the Administrative Measures for Occupational Health Check], *People's Daily* (online), 22 November 2012 <<http://www.people.com.cn/24hour/n/2012/1122/c25408-19657741.html>>.

<sup>62</sup> 《对「职业健康检查管理办法」(征求意见稿)的一些意见》 [A Response to the Proposed Amendments to the Administrative Measures for Occupational Health Check] (21 February 2013) Labour Action China <<http://www.lac.org.hk/chi/node/149>>.

<sup>63</sup> 《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 4 (Social Insurance Law).

<sup>64</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 19: The Right to Social Security*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) paras 29-31.

<sup>65</sup> In 2011, the subscription rates of retirement insurance, work-related injury insurance, medical insurance, unemployment insurance and maternity insurance for migrant workers were 13.9%, 23.6%, 16.7%, 8% and 5.6% respectively. See, National Bureau of Statistics of China, *China Statistical Yearbook 2012* (China Statistics Press, 2012) 4-1 (*China Statistical Yearbook 2012*) and 《2011年度人力资源和社会保障事业发展统计公报》 [The Bulletin of Annual Human Resources and Social Security Development in 2011] (4 June 2012) Ministry of Human Resources and Social Security of the People's Republic of China <<http://www.mohrss.gov.cn/page.do?pa=402880202405002801240882b84702d7&guid=e578e8be726c4689a32b91e8f7882a45&og=8a81f3f133d01e170133d36b52df04c8>> (The Bulletin of Annual Human Resources and Social Security Development in 2011).

<sup>66</sup> *National Human Rights Action Plan of China*, above n 43.

<sup>67</sup> 《工伤保险条例(2010修订)》 [Regulation on Work-Related Injury Insurance (2010 Revision)] (People's Republic of China) State Council, Order No 375, 20 December 2010, art 2 (Regulation on Work-Related Injury Insurance).

<sup>68</sup> *China Statistical Yearbook 2012* and The Bulletin of Annual Human Resources and Social Security Development in 2011, above n 65.

inspection data often become obstacles to put forward compensation claims; the onus of proof rests on the injured workers and the standard of proof required is high. Full cooperation of their employers is absolutely essential: from reporting an accident, applying for various certificates to prove the injury, to compensating for the damages. In practice, employers' non-cooperation and non-compliance with the law leads to failed compensation claims that work to the employers' advantage.

24. It is left to the mercy of the courts when an employer fails to subscribe to the work-related injury insurance or the injured worker is employed in the informal sector. Court proceedings are costly and rulings are often not enforced against the employers. A compensation claim can take up to a decade to process, during which time the injured workers have often exhausted their source of income or support.

25. In January 2013, the Ministry of Human Resources and Social Security proposed some changes to the Regulation on Work-Related Injury Insurance.<sup>69</sup> But the proposal did not address the long incubation period of occupational diseases, which is different from other work-related injuries. It often creates another problem in a system that needs to identify one solvent employer. Compensation that is tied to a static assessment of health conditions ignores long-term progression of some diseases. Diagnosis criteria are inflexible and fail to accommodate variation among patients, or new materials used in production. Moreover, workers who are suspected of contracting occupational diseases are, in fact, required to advance their medical payment, which is found contradicting against the Social Insurance Law.<sup>70</sup>

26. Victims of work-related injuries and occupational diseases are de facto persons with disabilities, albeit their status of disability is contestable. Labour capacity appraisal is the official mechanism to assess against the degree of impairment in work functions vis-à-vis the ability to self-care after suffering from a work-related injury.<sup>71</sup> The result primarily serves as the ground for claiming work-related injury insurance. However, impairment in labour capacity does not automatically render one the status of disability unless one has also passed the classification of disabilities, which is currently administered by China Disabled Persons' Federation (CDPF).<sup>72</sup> Together with the Ministry of Health, the Ministry of Human Resources and Social

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<sup>69</sup> 《关于执行工伤保险条例若干问题的意见征求意见稿》 [An Invitation to Public Comment on a Number of Issues on the Implementation of the Regulation on Work-Related Injury Insurance] (5 February 2013) The Central People's Government <[http://www.gov.cn/gzdt/2013-02/05/content\\_2327092.htm](http://www.gov.cn/gzdt/2013-02/05/content_2327092.htm)>.

<sup>70</sup> *Social Insurance Law*, above n 63, arts 41-2. See, 《对于关于执行〈工伤保险条例〉若干问题的意见（征求意见稿）的一些建议》 [A Response to the Invitation to Public Comment on a Number of Issues on the Implementation of the Regulation on Work-Related Injury Insurance] (23 February 2013) Labour Action China <<http://www.lac.org.hk/chi/node/150>>.

<sup>71</sup> *Regulation on Work-Related Injury Insurance*, above n 67, arts 21-8.

<sup>72</sup> *Law on the Protection of Persons with Disabilities*, above n 53, art 2.

Security announced a proposal to change the administrative measures of this appraisal in February 2013.<sup>73</sup> Nonetheless, the proposal ignored this problem. The exclusive list of disabilities is discriminatory per se where occupational diseases are not recognised. A disabled person's card is a proof of disability, but can also be the passport to other social benefits. Yi Yeting, a 33-year-old victim of occupational disease-turned-activist, and some 140 victims co-signed an open letter appealed to the National People's Congress and the Chinese People's Political Consultative Conference for the status of disability at the dawn of their conventions in March 2013.<sup>74</sup>

27. The ex gratia minimum subsistence allowance<sup>75</sup> appears to be the last safety net. This is a residual and minimal measure available to workers diagnosing with an occupational disease, as well as other persons in need, for instance, expectant mothers. Nevertheless, this is not a universal scheme. The quota is arbitrarily allocated according to geographical regions, rather than taking the least minimal account of disability or the actual medical needs of the applicants. Life-sustaining medical treatments for occupational diseases are unaffordable without medical insurance. Surely, it is to be hoped that the allowance should be "covering everyone in need" in 2015 as per the National Human Rights Action Plan (2012-2015).<sup>76</sup>

## Article 10 – the Right to Family Life

### *Maternity Protection*

28. The entitlements to maternity leave,<sup>77</sup> pre-<sup>78</sup> and post-natal work arrangements<sup>79</sup> are guaranteed in the Labour Law. In fact, almost all female migrant workers cannot enjoy these rights because of the nature of their works in the labour intensive manufacturing industries. Demanding physical labour intensity, night shifts, and usually toxic work environment are, inter alia, a few visible deterring factors for pregnant migrant workers. On the other hand, it is hard for a pregnant migrant worker to access pre-natal medical services with a rural *hukou*. Opting for a resignation becomes a prima facie "norm" as a consequence. Unpaid maternity leaves are often the treatment to office workers in the factories. Likewise, the implementation of maternal insurance varies amongst cities. Some provinces and cities provide maternal

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<sup>73</sup> 《两部委就〈劳动能力鉴定管理办法〉征求意见》[Two Ministries Invite Public Comment on the Administrative Measures for Labour Capacity Appraisal], 《中国新闻网》 *China News Service* (online), 18 February 2013 <<http://www.chinanews.com/gn/2013/02-18/4572217.shtml>>.

<sup>74</sup> 阳广霞、马强、叶丹 [Yang Guangxia, Ma Qiang and Ye Dan], 《职业病人联名上书盼获「残疾人」身份》[A Joint Letter Appealing for the Status of Disability Submitted by Victims of Occupational Diseases], 《南方都市报》 *Nanfang Metro* (online), 3 March 2013 <[http://epaper.oeeee.com/H/html/2013-03/03/content\\_1813284.htm](http://epaper.oeeee.com/H/html/2013-03/03/content_1813284.htm)>.

<sup>75</sup> 27,858 persons with disabilities recorded of enjoying the Minimum Subsistence Allowance and the average subsidy was ¥109.19 in December 2012. See, Ministry of Civil Affairs of the People's Republic of China, 《2012年12月份全国县以上农村低保情况》[The Situation of Minimum Subsistence Allowance on the County Level in December 2012] (2013) <<http://files2.mca.gov.cn/cws/201301/2013012818080188.htm>>.

<sup>76</sup> *National Human Rights Action Plan of China*, above n 43.

<sup>77</sup> *Labour Law*, above n 1, art 62.

<sup>78</sup> *Ibid* art 61.

<sup>79</sup> *Ibid* art 63.

insurance for migrant workers. A friendly environment to expectant migrant workers with pre- and post-natal supports are quintessential.

### ***Domestic Violence***

29. Domestic violence is indirectly outlawed by a number of scattered clauses in various legislations.<sup>80</sup> However, there is no clear legal definition of domestic violence. Women groups have advocated for a national domestic violence legislation for more than a decade. It is rather disappointing that it is not on the cards of the Beijing Authority. Besides, there is no clear legal framework or national policy that directly addresses domestic violence on local and national levels. Although duties are imposed on public security, civil affairs, judicial administrative departments, and urban and rural grassroots organisations to prevent and assist the victims within its parameter, these organisations and their frontline staff, such as police constables, doctors and nurses, have been criticised as lacking the knowledge of gender mainstreaming and even simply ignorance.<sup>81</sup> Habeas corpus may be issued to the victims of domestic violence by the prerogative of a court, but domestic violence per se is never treated as a criminal offence.

30. On a micro level, female migrant workers have to battle domestic violence with a much greater effort and courage. It is true to say that there is no temporary refuge for female urban workers as well. In addition, female migrant workers lack a private support network. They are more isolated and helpless as always. This is, by and large, due to the discriminatory *hukou* system where those with a rural *hukou* are excluded from census and unemployment rates. As a result, the genuine needs of migrant workers would never be considered. Female migrant workers always find themselves in a much worse situation than their urban counterparts.

### ***Employment of Young Persons***

31. Student workers are generally referred to those interns aged between 16 and 18 being sent to work in factories by technical and vocational schools. Sometimes, students as young as 14 years of age were also arranged and organised.<sup>82</sup> Cases reported that some were deployed to work just after a few

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<sup>80</sup> 《中华人民共和国婚姻法（2001修正）》 [Marriage Law of the People's Republic of China (2001 Amendment)] (People's Republic of China) National People's Congress Standing Committee, Order No 51, 28 April 2001, arts 3 and 43, and *Law on the Protection of Women's Rights and Interests*, above n 47, art 46.

<sup>81</sup> The Supreme People's Court sentenced Li Yan to death penalty, who murdered her abusive husband. The Court ignored the evidences that she was suffered from extreme abuse. Li tried to appeal to the local women's association and police for help when the violence escalated. However, they took no action because domestic violence is considered to be a family matter. See, Amnesty International, 'China: Halt Imminent Execution of Woman who Killed Violent Husband' (Media Release, 23 January 2013) <<http://www.amnesty.org/en/news/china-halt-imminent-execution-woman-who-killed-violent-husband-2013-01-23>>.

<sup>82</sup> In 2012, several cases of student intern abuses were reported in Foxconn. The company found some of the interns working in its Yantai factory aged from 14 to 16 years old. These under aged interns were mainly sent to Foxconn by schools. Reports also discovered that student interns were told that they had to produce the accessories in order to receive academic credits, and they were forced to work overtime in the company's Jiangsu factory. See Don Reisinger, "Foxconn Admits to Child Labour Law Breach with Underage Intern Hires", *CNET* (Online) (16

days in school.<sup>83</sup> They regularly work the same hours and perform the same tasks as formal workers, including overtime and night shifts.<sup>84</sup> Although it is prohibited,<sup>85</sup> it is common for student workers to work in hazardous environment.<sup>86</sup> They are not regarded as workers in the eyes of the law and hence lacking labour right protections, including minimum wages and social security.

32. A significant number of student workers are subject to exploitation by their employers and schools. On the one hand, employers are not required to pay minimum wages. Some schools could withhold their wages in a “lawful” manner.<sup>87</sup> The abusive situation of student workers proves child labour prevention and juvenile worker protection legislations fail to protect young persons from economic exploitation.

33. These “internships” have limited contribution to technical and vocational education in pure but rather serve as brutal evidence of exploitation. The abusive situation is harmful to morals or health and dangerous to life of these young persons. The deprivation of education opportunities is also hampering their normal physical and psychological development.

34. While employers may hold responsible by the reference of labour protection legislations, there is only a weak regulation holding schools accountable in sending out student workers and sanction the act of withholding their wages and documents of identity. Despite the dire need for a comprehensive, national policy framework to protect the rights of student workers, the bill proposed by the Ministry of Education has deleted the phrase of “holding violating schools responsible”. Nonetheless, schools would be appraised for performing well in arranging student internship for a quid pro quo.<sup>88</sup>

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October 2012) <[http://news.cnet.com/8301-1001\\_3-57533056-92/foxconn-admits-to-child-labor-law-breach-with-underage-intern-hires](http://news.cnet.com/8301-1001_3-57533056-92/foxconn-admits-to-child-labor-law-breach-with-underage-intern-hires)>.

<sup>83</sup> 王烨捷 [Wang Yejie], above n 20.

<sup>84</sup> 84% of student workers worked more than eight hours per day, as reported. See, *Report on Student Workers in Electronic Industry*, above n 19.

<sup>85</sup> *Administrative Measures for Internships at Secondary Vocational Schools*, above n 18, art 14.

<sup>86</sup> 28.2% of student workers were assigned in positions which required using blades and pressing machines; 22.1% had frequent contact with hazardous chemicals; 16.8% worked in workshops full of flammable and explosive materials; and 6.7% worked at height. See, *Report on Student Workers in Electronic Industry*, above n 19.

<sup>87</sup> Only 37.9% of student workers did not need to pay any fees to their schools for arranging their mandatory internship, as reported in a survey. See, *Report on Student Workers in Electronic Industry*, above n 19.

<sup>88</sup> *Administrative Provisions on the Practice of the Students of Vocational Schools by Taking Posts*, above n 22, art 25.

## Article 12 – the Right to the Enjoyment of Physical and Mental Health

35. Although the Covenant focuses on the improvement of industrial hygiene<sup>89</sup> and the prevention, treatment and control of occupational diseases,<sup>90</sup> China does not have a comprehensive national policy framework for the rehabilitation of workers with work-related injuries and occupational diseases. Long-term care plan in the community for victims of occupational diseases is absent, which restricts the full reintegration and hence the ability to live independently with due respect and dignity. CDPF is a resourceful non-statutory public body which a significant part of its financial income comes from the Government.<sup>91</sup> China has 85 million of persons with disabilities where 90 percent of them have the need for rehabilitation, but only 10 million of them are currently receiving rehabilitative services.<sup>92</sup> According to the National Human Rights Action Plan (2012-2015), the Government has pledged to offer key rehabilitation programmes to 13 million persons with disabilities, the supply of five million pieces of supporting equipments, and to subsidise community or household services on 1.6 million occasions.<sup>93</sup> As mentioned above, victims of occupational diseases are not recognised as persons with disabilities de jure. It remains questionable that victims of occupational diseases would have a fair share to this prospect.

## Article 13 – the Right to Education

36. Primary education is free to all children but restricted by their *hukou*. 15 million children of migrant workers live with their parents in urban areas.<sup>94</sup> They are ineligible to enter public school. In many cities, migrant workers can send their children to public schools as long as they can afford an extra sum for tuition fee. As a result, most children are left behind in the rural area by their parents and live with hardship in their childhood.

37. Although some private schools have been found to meet the education needs for these rural children, local education authorities have used different pretexts to shut down these private schools without rendering any support to the affected students.<sup>95</sup>

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<sup>89</sup> ICESCR, above n 37, art 12(2)(b).

<sup>90</sup> Ibid art 12(2)(c).

<sup>91</sup> 《中國殘疾人聯合會章程》 [Constitution of China Disabled Persons' Federation] (13 April 2011) China Disabled Persons' Federation <[http://www.cdpcf.org.cn/dlgk/content/2011-04/13/content\\_30318400.htm](http://www.cdpcf.org.cn/dlgk/content/2011-04/13/content_30318400.htm)> art 24.

<sup>92</sup> China Disabled Persons' Federation, 《关于共同推动残疾人康复机构与医疗机构加强合作的通知》 'A Joint Promotion on the Cooperation with Medical Institutions to Strengthen the Rehabilitation of Persons with Disabilities' (Media Release, 16 February 2013) <[http://www.cdpcf.org.cn/kangf/content/2013-02/16/content\\_30435444.htm](http://www.cdpcf.org.cn/kangf/content/2013-02/16/content_30435444.htm)>.

<sup>93</sup> *National Human Rights Action Plan of China*, above n 43.

<sup>94</sup> 熊易寒 [Xiong Yihan], 《教育吸纳对农民工子女融入城市作用甚微》 [Education has Little Help for Rural Children to Integrate in the City] 《瞭望东方周刊》 *Oriental Outlook* (April 2010) cited in *Sina* (online) <<http://news.sina.com.cn/pl/2010-06-29/113220571613.shtml>>.

<sup>95</sup> In June 2012, Tong Xin Experimental School (a primary school for rural children) and other 50 schools were suspended by the local education authorities in Beijing. 14000 students were affected. Although government officials allowed a small amount of affected students to enrol in a local public school, the majority were forced to return to the rural areas. See, 同心实验学校 [Tong Xin Experimental School], 《同心实验学校致社会各界公开信》 [An Open Letter from Tong Xin Experimental School] (online) (4 July 2012) <<http://www.tongxinedu.org/Item/Show.asp?m=1&d=272>>.

38. Obtaining the high school education is not fair for all students in the city. Children of rural migrants though study in the urban cities; they have to battle the inequality of examination system. Restrictive enrolment practices in public examinations mean that rural children cannot sit for the exams in urban areas which provide, ipso facto, lower requirements of university entrance for urban students.<sup>96</sup> As the result, restriction of rural children enters for exams in urban areas means restricting them from entering a better university in the urban cities.

39. Students in technical and vocational training are spending more than half of their school terms working in production lines of factories. Many students are being sent to work in their first year, sometimes even after the first few weeks since enrolment. They receive no proper technical and vocational education once they are at work. This is surely a contrary to the intention of technical and vocational education and a jeopardy to its quality. The latest internship bill proposes further extension of duration of internship.<sup>97</sup> It is doubtful of what a student could learn from technical and vocational training.

40. Although technical and vocational schools and employers are required to setup education plans for student workers during internship, the submission of these plans are not mandatory.<sup>98</sup> On the other hand, there is no government agency to monitor their implementations.

41. This unregulated and abusive situation of student workers has brought huge profits to schools in return of sending hundreds of students to the labour force. This has caused serious deterioration in the quality of vocational education programmes.<sup>99</sup>

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<sup>96</sup> In 2012, a daughter of a migrant worker demanded to enrol in the advanced level examination in Shanghai after her completion of nine years' education. The girl went to appeal to higher authority with her father to fight for her examination rights in urban area. The case was disclosed by the media and became a controversial debate. However, her father was detained by the police and the case was quickly rejected. See, 《上海警方证实微博“约辩”少女占海特之父被拘》 [Shanghai Police Arrested the Father of the Girl Who Asking for Debate on Opening Examination for Rural Children], 《中国新闻网》 *China News Service* (online), 10 December 2012 <<http://www.chinanews.com/fz/2012/12-10/4397110.shtml>>.

<sup>97</sup> *Administrative Provisions on the Practice of the Students of Vocational Schools by Taking Posts*, above n 22, art 10.

<sup>98</sup> *Administrative Measures for Internships at Secondary Vocational Schools*, above n 18, art 16.

<sup>99</sup> *Report on Student Workers in Electronic Industry*, above n 19.

## **Annex I – A Sexual Harassment Case**<sup>100</sup>

Xiao Li (a pseudonym) was a worker of an electronic factory. She was first harassed by a male co-worker who repeatedly called her “big tits” when the four of them were sent to work in the stockroom. Xiao Li was furious and slapped in his face. The harassment did not stop even though Xiao Li explicitly warned him that she would complain to the management and report to police.

Xiao Li considered resigning from this factory to escape from the harassment, but she finally filed a complaint to her line manager. The line manager just separated Xiao Li and her perpetrator colleague in the workplace. Xiao Li dissatisfied with this handling method since it was not a formal and serious response from the factory. She then decided to complain to the general manager. Xiao Li intended to have a female co-worker to testify. But that co-worker declined because she thought that it was nothing. An administration officer was appointed to deal with this complaint. The perpetrator resigned as a consequence. However, discrimination by other workers, the majority were female ironically, began to take place after Xiao Li complained to the top management. Troublemaker was they called her.

All public bodies, enterprises and organisations are responsible to develop a mechanism to prevent sexual harassment at work<sup>101</sup> where a gender equality authority is taking a monitoring role as per the new regulation in Shenzhen.<sup>102</sup> The story of Xiao Li has unfortunately revealed that this Regulation is toothless and ineffectual.

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<sup>100</sup> Interview (Shenzhen, 2012).

<sup>101</sup> *Regulation of Shenzhen Special Economic Zone on the Promotion of Gender Equity*, above n 48, art 4.

<sup>102</sup> *Ibid* arts 6-7.

## **Annex II – A Domestic Violence Case<sup>103</sup>**

Like the vast majority of single women in the thirties, Ying (a pseudonym) had to face tremendous pressures from the society, expectations from family and friends. She dreamt her husband would bring a secured life with financial stability. However, her husband started to punch her approximately one year after their wedding. When she looked back on their wedding day, it was her first visit to her husband's home which was under equipped due to poverty. Her disappointment could be the seed of this geminated domestic violence.

Violence had never stopped even after she underwent an abortion. Luckily, their neighbours came over and tried to interfere. He begged for her forgiveness and promised it would never happen again. She was seriously injured once and called the police. The police recorded her testimony and suggested her to go to the hospital. Her husband understood that the police would not want to get involved and interfere in his "family dispute". His violence escalated and intensified. Once, Ying ran to the police station after she was badly mauled. The police warned her that domestic violence is a disruption to social order which could result in a 15 days' detention and a fine for 1000 yuan. Both Ying and her husband were taken to the detention centre until Ying backed down and dropped her complaint at last. Ying has appealed to the court for a divorce and the case is in process.

At the moment, there is no legislation on domestic violence in China. Perpetrators seldom face criminal charges because domestic violence is often perceived as a family dispute.

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<sup>103</sup> Interview (Shenzhen, 2012).