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Migrants and cities: Research report on recruitment, employment, and working conditions of domestic workers in China

Liu Minghui

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and Working Conditions Branch

***Migrants and cities:
Research report on recruitment, employment, and
working conditions of domestic workers in China***

by Liu Minghui



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**EU-China Dialogue on Migration and
Mobility Support Project**

支持中欧人员往来和移民领域对话项目



International Organization for Migration (IOM)
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Preface

China's rapid development, emerging urban middle class, aging population, and growing household income are fuelling a demand for domestic services such as cleaning, nursing, or caring for senior citizens. Domestic work will soon become vital for Chinese families, communities, and societies. Domestic service also presents important employment opportunities for millions of rural workers with lower skills and education levels, giving them the chance to work themselves out of poverty.

Domestic workers are often migrant workers – willing to accept demanding but low-profile jobs in the hope of securing a better life for their families, while providing services without which modern societies and economies would stop functioning. However, domestic work is rarely perceived as “proper” employment. The nature of the employer (private households), the traditional absence of a valuation system for care services, and perhaps even the fact that care work is dominated by women are all contributing factors to the marginalization of domestic work. The 2030 Agenda targets the recognition and valuation of unpaid work and domestic work to achieve gender equality and the empowerment of women and girls (Target 5.4). Most domestic workers do not have a sense of professional identity and stability due to a lack of recognition as workers and a vulnerability to decent work deficits, including excessive working hours, poor working conditions, and low pay. It is time to reconsider the place of professional care services and formalized domestic work in China's future labour market landscape. Domestic work means the future of work for many workers and families alike. The International Labour Conference had this in mind when it adopted the Domestic Workers Convention (No. 189) and Domestic Workers Recommendation (No. 201) in June 2011.

This study on domestic workers in China was conducted under the EU–China Dialogue on Migration and Mobility Support Project, a collaboration between the International Organization for Migration and the International Labour Organization, funded by the European Union. It examines the current situation of domestic workers in China with a focus on the case study of Beijing, including domestic workers' recruitment, employment, working conditions, social security, accessibility to legal protection, and complaint mechanisms. The study identifies the gaps in the national policies and practices concerning domestic workers in China in light of international standards and good practices. In addition, the study provides relevant policy recommendations to narrow the gaps with regard to international instruments and to promote the legitimate rights of domestic workers in China. The study is not only an illustration of the socioeconomic impact of migration on development – and urbanization in particular. It is an expression of hope that domestic work may transition from the informal to the formal economy and become a fully-fledged urban labour market in its own right in China's near future.

Tim De Meyer

Director

ILO Country Office for China and Mongolia

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Abbreviations and acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CNY	Chinese yuan [currency]
GDP	Gross Domestic Product
ILO	International Labour Organization
IOM	International Organization for Migration
MOHRSS	Ministry of Human Resources and Social Security
NGO	non-governmental organization
O2O	Online-to-offline
UN	United Nations
UNIFEM	UN Development Fund for Women
UN Women	UN Entity for Gender Equality and the Empowerment of Women

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This study was implemented under the EU–China Dialogue on Migration and Mobility Support Project, a collaboration of International Labour Organization (ILO) and the International Organization for Migration (IOM) funded by the European Union. The study aims to evaluate and document the recruitment, employment, and working conditions of domestic migrant workers in China; identify the gaps with regard to compliance with provisions in the ILO Domestic Workers Convention, 2011 (No. 189); and provide relevant recommendations to improve the situation of this specific group of workers. From January to April 2016, the research team, including Professor Liu Minghui and her research associates, Ms Fan and Ms Zhang Hongda, carried out empirical research by organizing focus group discussions, distributing questionnaires, and conducting in-depth interviews. Empirical research was supplemented by a review of the relative literature on the topic. The research collected a large amount of primary data. The present situation with regard to recruitment, working hours, vacation, remuneration, social insurance, the awareness of legal protection, complaint mechanism, etc. of domestic workers in Beijing was documented and analysed. In addition, the findings were compared with relevant literature in this area. This exercise helped identify good practices and new trends in the realm of domestic work, and in labour migration management in general. This research will provide specific recommendations to improve the social status, working conditions, and living conditions of domestic workers in China.

Sincere appreciation goes to all the partners and colleagues involved in the completion of the report. The ILO Country Office for China and Mongolia, under the leadership of its director Tim De Meyer, provided valuable support to this publication. Nilim Baruah, ILO Senior Regional Migration Specialist, Claire Hobden, ILO Technical Specialist on Vulnerable Workers, Domestic Work, provided technical guidance to the research team and served as principal reviewers of the report. We also thank all the institutions and people who contributed to conducting the research, and to the coordination and translation work.

Executive summary

This research was conducted under the EU–China Dialogue on Migration and Mobility Support Project”, a collaboration of the International Labour Organization (ILO) and the International Organization for Migration (IOM), funded by the Partnership Instrument (PI) of the European Union (EU). The study aims to provide primary data and evidence-based recommendations for policy-makers to better protect the rights and interests of domestic workers, and to narrow the gaps with regard to compliance with the provisions in the ILO Domestic Workers Convention, 2011 (No. 189) and other relevant international labour standards, so as to improve the social status, working conditions, and living conditions of domestic workers in China.

The main findings of the study are as follows:

I. There is a relatively large gap between current Chinese legislation regarding domestic workers and the provisions contained within Convention No. 189

The Domestic Workers Convention, 2011 (No. 189) established international labour standards for domestic workers and requires ratifying countries to enact legislation to ensure that domestic workers have equal access to labour and social security rights. However, at present, only those domestic workers who have signed labour contracts with employee system-based domestic service companies in China (i.e., domestic workers who are directly employed by and receive their wages from a domestic service company) can be protected under the Labour Law 1994 as “workers”. Domestic workers employed by employee system-based domestic service companies account for no more than 10 per cent of domestic workers in China; the existing labour and social security standards do not apply to more than 90 per cent of domestic workers. This means the vast majority of domestic workers are covered by civil law, and they do not have legal labour rights the meet the standards set in Convention No. 189.

The existing laws exclude the majority of domestic workers from labour and social security protections. Current labour legislation does not intentionally exhibit employment discrimination on the basis of sex, but with females accounting for over 96 per cent of domestic workers, labour laws excluding domestic workers effectively put women at a disadvantage. This meets the definition of gender discrimination found in Article 1 of Convention on the Elimination of All Forms of Discrimination against Women, 1979.

This disregard for domestic workers’ right of labour security and indirect gender discrimination not only increase the vulnerability and marginalization of domestic workers, but also intensify conflicts within the domestic service market. Because of the mandatory and universal nature of current legislation, indirect institutional discrimination against women and direct discrimination against domestic workers ultimately deny the labour security rights of nearly 20 million domestic workers in China. Therefore, legislators must break their mindset that the employing party under a labour contract must be a unit or entity (i.e., a business or state enterprise), and that labour law does not apply to private households. Legislators should abide by the universality of human rights and non-discrimination principles enshrined in international instruments. Efforts should be made through a

tripartite consultation mechanism and social dialogue to establish the legal status of domestic workers as “workers/labourers”, and to entitle all domestic workers to labour and social security rights.

Currently there is only one ministerial regulation on domestic workers, the Interim Measures for the Administration of Domestic Service Sector issued by the Ministry of Commerce on 18 December 2012, which is at the lowest level of legislation. It is little known and inefficiently implemented. In this regulation, employers of domestic workers are defined as “consumers” and therefore shall be given special protection, which deviates from the standpoint of protecting domestic workers’ rights.

II. The need for government to formulate specific labour protection standards for domestic workers

Chinese labour law has higher labour standards in terms of working hours and other conditions than those found in International Conventions, but these standards largely do not apply to the domestic service sector. As a result of the existing high labour protection standards employee system-based domestic service companies face too much risk and too heavy a burden when it comes to service management. The sustainable development prospects for this industry are gloomy. In order to obtain financial subsidies for social security insurance, some companies operate as “one company with two systems”. That is, the company registers two business licenses: one is a business license for an employee system-based domestic service company; the other license is to act as an intermediary system-based domestic service company (i.e., a firm that places domestic workers in a home for a fee, but then has no further relationship with the worker). Some employee system-based companies have switched entirely to the intermediary system completely. All of the above affects the formalization of the domestic service sector.

The domestic service sector has its unique features. The vulnerability of domestic workers requires special protection of personal safety and human dignity. Differences in labour intensity and environment, randomness of employers' instruction, and ambiguity concerning the boundary of work and rest require unique rest- and standby-wage standards. The conflict between the “right to know” (for both employers and domestic workers), the “right to inspect” (for labour inspection authorities), and the “right to privacy” (for both employers and domestic workers) – as well as gaps in the financial capacity of employers – requires more balanced consideration. In particular, the employers’ “right to privacy” conflicts with the “right to inspect” of the labour inspection authorities. Provisions in Convention No. 189 that treat these issues are not included in the Labour Law 1994. “Labour inspection”, “right to privacy”, “standby”, and other labour standards required in Convention No. 189 are not mentioned in the Interim Measures for the Administration of Domestic Service Sector 2012. It is necessary to develop specific labour standards for the domestic service sector based on its unique characteristics.

The following considerations should be taken into account when setting labour security standards for domestic workers:

- the degree of optionality and inclusiveness of social insurance;
- supplementation of commercial insurance;
- the partially mandatory feature of commercial insurance;

-
- priorities of human rights protection;
 - the moderate flexibility of working hours;
 - the feasibility of dismissal protection; and
 - demonstration of targeted support.

Institutional discrimination should be eliminated and core labour standards on equal employment put forward by the ILO should be promoted so as to create favourable conditions for signing Convention No. 189.

III. Good practices for promoting the urban integration of and decent work for domestic workers

Relevant government departments at all levels have introduced numerous regulations and policies related to domestic service, and have enacted a number of domestic service standards in order to resolve problems of domestic service being in short supply or not attuned to the needs of the employers. Employment opportunities have also been promoted with the aim of relieving the burdens that come with the ageing of the population. Local governments are piloting projects to enable domestic workers to enjoy the same labour rights as workers in other occupations through fiscal support to employee system-based domestic service companies.

The income of domestic workers has increased significantly over the past decade. The situation of unpaid wages has become less widespread, and domestic worker living conditions have improved. With regard to employers' and domestic service enterprises' treatment of domestic workers, there are also positive developments. Civil society organizations are playing an increasing role in helping domestic workers better protect their rights and integrate into city life.

Although the low entry threshold into the domestic service sector allows many elderly rural women with lower educational levels to migrate to cities for work and escape poverty, skills development plays an important role to help domestic workers better meet market demand and improve their income and employment conditions. Vocational training policies and skills appraisal subsidies should be expanded further to promote the professionalization of the occupation. Domestic service practitioners should be encouraged to participate in vocational skills appraisal. Guidance on wage levels appropriate to different occupational skill levels within the domestic service market should be released to motivate domestic service practitioners to increase their income by improving their skill level.

In addition, community organizations and professional social workers should be given full play to help domestic workers protect their rights and fully integrate into urban society. Community-based "Domestic Workers' Homes" should be established to function as a social gathering place and communication platform for domestic workers that would help them create an equal and harmonious living and working environment. Development of these communal links, together with the improvement in laws and policies, would contribute to building an advanced domestic service culture for the whole of society.

Chapter 1. Introduction

1.1. Background and literature review

In 1978, China began to implement the basic national policy of Reform and Opening Up, and the economic system started the transition from a planned economy to a market-orientated economy. The demand among dual-earner families in big cities for domestic workers has always existed. Many urban residents, however, are not willing to engage in this type of work. Therefore, domestic work has become an attractive employment option for rural women due to the sheer demand for these services. In 1982, the Departments of Labour in some cities established employment intermediary agencies and provided vocational training in domestic service for women in regions with abundant rural surplus labour. This training was often supplied through local women's federations and labour bureaus. Also, labour transfer and training bases were established to facilitate rural–urban labour migration and to address the demand for domestic workers among urban households (Yang, 2008). In 1982, the first domestic service organization – "8 March" Domestic Service Center – was established, which was promoted by the All-China Women's Federation. It started recruiting a large number of rural women to work as domestic workers in Beijing. However, this labour transfer of rural women did not achieve the expected outcomes in terms of meeting the urban demand for domestic workers. With market demand exceeding the official supply, a large number of private and even illegal domestic service intermediary agencies sprang up. In addition, many rural women who went to Beijing and other major, primarily coastal, cities for the first time were introduced to paid domestic work by friends and relatives who had been residing in these cities for a longer period of time.

On 3 July 2000, the former Ministry of Labour and Social Security issued the National Occupational Standards for Domestic Workers (《家政服务员国家职业标准》). The term "house maid", the traditional way of describing this occupation, was officially changed to "domestic service provider". (In research circles domestic service providers are referred to as "domestic workers", which is the term that will be used throughout this paper.) Sector standards were established, and domestic workers were required to obtain a certificate in order to provide this service. (Ma, 2011). In 2002 the State Council issued the Decision on Cancellation of the First Batch of Administrative Examination and Approval Projects (issued by the State Council [2002] No. 24), and the requirement for the domestic workers to only begin working after acquiring a professional certificate was canceled in Article 178.

In 2003, the Government and private companies started working together to develop human resources by providing domestic service skills training for women in rural regions with abundant surplus labour and organizing these women to find jobs in cities, which served as another mode of labour transfer. To boost the migration of rural surplus labour in an organized, effective, and scaled-up way, the Government successively launched a series of special trainings for rural women in labour base counties in Sichuan, Shaanxi, and Gansu provinces (Yang, 2008). However, domestic workers – more than 96 per cent of whom are female – encountered a host of problems in the cities, such as long working hours, unguaranteed rest and vacation, accommodation conditions lower than the general standard, sexual harassment, and a lack of social insurance for injuries and serious medical problems. (Wang, 2010).

On 16 June 2011, during the 100th session of the International Labour Conference in Geneva, the Decent Work for Domestic Workers Convention, 2011 (No. 189) and its Recommendation (No. 201) were adopted. Twenty-two countries have ratified the Convention. The Convention No. 189 established international labour standards for domestic workers and required ratifying countries to enact legislation to ensure that domestic workers have equal access to labour and social security rights. The adoption of this international instrument was the result of years of joint efforts by the International Labour Organization (ILO) and domestic worker activists from a variety of countries.

Following the adoption of the Convention, a large number of Chinese scholars began studying the rights of domestic workers in China. They explored the situation and the legal roots of the infringement upon domestic workers' personal and property rights as well as the lack of labour and social security rights for domestic workers. Chinese researchers have worked to promote legislation that would fully protect domestic workers' equal employment rights and social security rights. Hu Dawu (2012) revealed the structural characteristics of the "vulnerability" of domestic workers in China:

1. the composition of the labour force is predominantly female;
2. the source of the labour force is primarily rural internal migrants;
3. the social cognition aspects of the "master-servant" relationship;
4. the general lack of social recognition for domestic work;
5. the isolation of the "island" type of social communication;
6. the "informal" nature of the employment; and
7. the "outside of labour law" character of rights protection.

These aspects are some of the reasons why domestic workers find themselves in a vulnerable position at the bottom of the society. The institutional lag in legal protection of the rights and interests of domestic workers excludes domestic workers from the protection of labour law, showcasing their vulnerable position. Therefore, incorporating domestic workers into the institutional framework of labour law is a necessary institutional decision required to bring change to the current situation.¹ After comparing Convention No. 189 and Chinese labour law, the research team reaffirms that there is a need to "follow the principle of universality of human rights and non-discrimination; break the mindset that labour law does not regulate employment in private households; and establish labour and social security standards for domestic workers through a tripartite consultation mechanism and social dialogue" (Liu, 2012, p. 40).² As of now, 22 countries have signed Convention No. 189³; most signatories are destination countries for either internal or foreign domestic workers in Latin America and Europe. The Philippines is the only country in the Asia-Pacific region that has signed Convention No. 189. The Philippines and other ratifying countries have introduced national laws to protect the rights of domestic workers.

¹ Hu Dawu (2012). Comparison and Reference—Study on Legal Protection for the Labour Rights of Domestic Workers. China University of Political Science and Law Press.

² Liu Minghui (2012). The Impacts of Decent Work for Domestic Workers Convention on Chinese Legislation. Collection of Women's Studies (3), 40.

³ Asia: the Philippines; Latin America: Argentina, Plurinational State of Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guyana, Nicaragua, Panama, Paraguay, Uruguay; Europe: Belgium, Finland, Germany, Ireland, Italy, Portugal, Switzerland; Africa: Mauritius, South Africa.

As noted above, the Chinese Government is implementing an urbanization strategy to promote the integration of migrant workers into cities. Because of its rapid development, the domestic service sector has received increasing attention. The Chinese Government has set up a special department and introduced a series of policies to support and regulate the development of the domestic service sector.

In July 2009, the State Council established the Interdepartmental Joint Meeting on the Promotion of Employment in the Domestic Service Sector, which was led by the Ministry of Human Resources and Social Security and participated in by the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, the Ministry of Commerce, the All-China Federation of Trade Unions, the Communist Youth League Central Committee, and the All-China Women's Federation. The aim of the joint meeting was to further the integration of multiple relevant departments and to jointly promote the development of the domestic service sector.

In September 2010, the General Office of the State Council issued the Guiding Recommendations on the Development of the Domestic Service Industry (No. 43 [2010] of the State Council), which put forward guiding opinions on such areas as the development plan for the domestic service sector; policy support; the standardization of market order; the improvement of the professional skills of practitioners; the protection of the legitimate rights and interests of practitioners; and the strengthening of organization and leadership in the development of domestic service.

In September 2011, the Ministry of Finance and the State Administration of Taxation issued the Notice on the Exemption of Business Tax on Domestic Services under the Employee System (No. 51 Finance and Taxation [2011]), which stipulates that from 1 October 2011 to 30 September 2014, the income of domestic service enterprises obtained from such domestic services as provided by domestic workers under the “employee system” shall enjoy the exemption of business tax. Employee system-based domestic service enterprises refer to businesses which directly employ domestic workers and pay their salaries, even though the domestic worker performs their work in a private residence. This is in contrast to intermediary system-based agencies, which place domestic workers in private households but then no longer have any direct responsibility for that worker, and the worker’s employer will be the head of the household. For more on the operation and management models used by domestic service enterprises, see section 2.2 below.

On 27 November 2013, during the inspection of Sunshine Sister Domestic Service Company in Jinan, Shandong Province, President Xi Jinping proclaimed, “Domestic service is a social need. Many families have the responsibilities of looking after their elderly parents and raising their children. To help others is also to help ourselves. Domestic service should have integrity and it should be formalized.” The relevant government departments at all levels introduced numerous regulations and policies related to domestic service and enacted a number of domestic service standards in order to resolve the problem of domestic service being in short supply or not attuned to the needs of employers, and to promote employment opportunities that help release the burdens that come with the ageing of the population.

In December 2014, the Ministry of Human Resources and Social Security, the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, the Ministry of Commerce, the All-China Federation of Trade Unions, the Communist Youth League

Central Committee, and the All-China Women's Federation jointly issued the Notice on Carrying out the Standardization and Professionalization of the Domestic Service Sector (No. 98 [2014] of the Ministry of Human Resources and Social Security), which put forward specific and detailed requirements for the standardization of the domestic service sector and the professionalization of practitioners in the domestic service sector. Local governments are piloting projects to enable domestic workers to enjoy the same labour rights as workers in other occupations through fiscal support to employee system-based domestic service companies.

1.2. Research objectives and scope

The research team conducted this study on recruitment, employment, and working conditions of domestic workers in Beijing, with a particular focus on working hours, leave, remuneration, social and maternity protection, medical insurance, awareness of legal protection and complaints mechanism, relevant laws and policies, and the existing problems. This study presents the results of the analysis of primary data collected during the first quarter of 2016, and provides expert advice for the competent government departments to enact regulations and policies to protect the rights and interests of domestic workers. The recommendations in this report aim to contribute to narrowing the gap between Chinese labour law and international labour standards (in particular Convention No. 189) to improve the social status as well as working and living conditions of domestic workers.

1.3. Research methodology

The research team conducted empirical research to collect and analyze relevant information. Conclusions and recommendations are presented after evaluating and documenting the recruitment, employment, and working conditions of Chinese domestic migrant workers.

1.3.1. Literature review

Reviewing relevant literature on the rights of domestic workers in China and abroad proved helpful in understanding:

- the laws and policies concerning domestic workers at the national and local levels since China's Reform and Opening Up policy began in 1978;
- the historical evolution of the recruiting process;
- transitions in the operation and management models of domestic service enterprises;
- changes in the status of domestic workers;
- the living and working conditions of domestic workers; and
- the global ratification situation after the introduction of Convention No. 189.

In addition, by comparing relevant Chinese laws with the articles of Convention No. 189, it was possible to identify those components of national legislation that are in compliance with the Convention as well as existing gaps.

1.3.2. Empirical research

1.3.2.1. Focus group discussions

Two focus group discussions were organized in order to explore the specific conditions and circumstances of domestic workers. Focus Group No. 1 was conducted on 3 March 2016 at the Beijing Jiayuexiang Domestic Service Co. Ltd and consisted of ten participants (including seven domestic workers, two managers of domestic service enterprises and one employer). Focus Group No. 2 was conducted on 9 March 2016 at the Beijing Human Resources and Social Security Bureau and consisted of eight participants from domestic service enterprises, the Ministry of Human Resources and Social Security (MOHRSS), the Labour Science Institute affiliated to MOHRSS, and the Home Economics/Domestic Studies institute.

A number of different topics were raised during these focus group discussions to cover a broad range of issues related to the domestic service sector. Topics covered in these discussions included:

- aspects of the daily lives and challenges of domestic workers, such as cost of leaving home to first undergo training in Beijing, working conditions and remuneration, domestic workers' needs and the principal difficulties they face, the current degree of occupational recognition, and their future plans;
- the policies of the Beijing Municipal Government to support employee system-based domestic service companies, the implementation of these policies, and their impacts on domestic workers;
- the comments and views of employers and the managers of domestic service companies with regard to domestic service sector and their recommendations for how the Government may better regulate the sector;
- reasons why university graduate students majoring in Home Economics⁴ are not willing to engage in domestic service; and
- the differences in the feelings and perceptions of domestic workers employed through the two management models (i.e., the employee system versus the intermediary system).

The focus group discussion helped the research team identify an evidence base for recommendations to improve the situation of domestic workers suffering discrimination, in particular through participant propositions for developing the direction of legislation.

The research team acknowledges that participation in the two focus discussion groups was limited and not necessarily representative. To avoid giving undue weight to the information obtained in these

⁴ China Women's University, Tianjin Normal University, Hunan Women's University, Dongchang College of Liaocheng University, Jilin Agricultural University, Beijing Normal University, Zhuhai, Anhui Sanlian College have all established a Home Economics major. The main curriculum offers the following courses: Introduction to Sociology, Social Medicine, Social Psychology, Introduction to Life Science, Applied Nutrition, Eugenics, Child Care and Education, Psychological Counseling and Guidance, Family Medicine, Social Security, Family Investment Banking, Life Aesthetics, Gerontology, Public Utilities Management, Family Ethics, Marriage and Family Counseling. China Women's University Senior Vocational School offers the following professional core courses for its Advanced Domestic Service Management major: Modern Home Economics, Health Education, Family Ethics, Health and Nutrition, Health Care and Nursing Courses. Employment orientation: serve as grassroots managers and trainers in domestic service companies, foreign domestic service companies, community management, and elderly service agencies, etc.

discussions, the researchers conducted a questionnaire survey and in-depth interviews by integrating financial resources from other projects. This approach helps ensure that the information obtained is both in-depth and widely representative.

1.3.2.2. Questionnaire survey

A closed questionnaire survey was conducted to comprehensively understand the status quo of the domestic service sector in Beijing, and a statistical analysis was conducted on the collected information. Between 20 January and 29 April 2016, the research team distributed 350 questionnaires to domestic workers, employers, and domestic service enterprises. A total of 288 questionnaires were filled out and returned to the research team, a response rate of 82.3 per cent. The breakdown of questionnaires distributed, completely filled out, and returned is as follows:

- domestic workers: 200 questionnaires distributed, of which 156 were completely filled out and returned – response rate of 78 per cent;
- employers: 100 questionnaires distributed, all of which were completely filled out and returned – response rate of 100 per cent
- domestic service enterprises: 50 questionnaires distributed via the online platform of the Beijing Association of Domestic Service, of which 32 were completely filled out and returned – response rate of 64 per cent.

Forty-four domestic worker questionnaires and 18 domestic service enterprise questionnaires were determined to be invalid due to incomplete answers.

The questionnaire survey was conducted to better understand the status of and existing problems within the domestic service sector in Beijing. Information was collected on recruitment, the signing of contracts, rest and vacation, wage levels, social security, complaints procedures, and the desires and needs of domestic workers, employers, and domestic service enterprises. The results of statistical analysis were documented and served as a basis for evaluating the working and living conditions of domestic workers. These results also helped build the foundation for evidence-based policy recommendations for improvement of the sector. The sampling of this survey has potential limitations due to the limited number of respondents.

1.3.2.3. Field observations and in-depth interviews

The research team collected primary data through field observations and in-depth interviews to supplement the inadequacy of questionnaire survey. The team went to domestic service enterprise to conduct on-site observation of the recruitment process; visited training institutions to investigate their training courses; and went to employers' homes to observe the actual practice of maternity matrons. Fourteen people were interviewed in depth, including:

- an official from the Ministry of Commerce;
- an official from the Beijing Municipal Human Resources and Social Security Bureau;
- the president of the Xi'an Domestic Workers Union;
- a former officer in charge of the Migrant Women's Club;

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- a manager from an employee system-based domestic service enterprise;
 - a manager from a membership system-based domestic service enterprise;
 - a manager from an intermediary system-based domestic service enterprise;
 - two employers;
 - a university graduate student majoring in domestic service;
 - the head of a domestic worker training institution; and
 - three domestic workers.

The interviews helped better understand the working and living conditions of domestic workers, their occupational recognition, the types of discrimination they suffered, and their needs and expectations for the legislation. The interviews also helped better understand the attitudes held by managers of domestic service enterprises with regard to the domestic service sector, their perception of decent work for domestic workers, and the influences of the "employee system", "intermediary system", "hybrid system", and "membership system" management models on domestic workers⁵. Likewise, interviews provided greater understanding of government management with regard to domestic service; non-governmental organizations (NGOs) work in safeguarding rights; good practices for employers to provide better treatment of domestic workers; and the needs and expectations of domestic workers.

This report will explore a number of approaches derived from the above research to narrow the gap between national legislation and international labour standards (in particular Convention No. 189).

⁵ For an explanation of what is meant by each of these models, see section 2.2 below.

Chapter 2. Overview of the domestic service sector in China

2.1. Scale of domestic service enterprises

According to the latest data obtained from the Ministry of Commerce, there were over 60,000 domestic service enterprises in China in 2014, with that number basically unchanged compared with previous year. According to the Ministry's data, there were 20.34 million domestic service practitioners in China in 2014, a 13.0 per cent increase on the 2013 figure of 18 million. Among these domestic workers, maternal and child care workers accounted for 30.5 per cent (2.5 % higher than in 2013); workers in elderly care accounted for 19.4 per cent (3.6 % higher than in 2013); and hourly workers accounted for 27.0 per cent.

The total gross income of national domestic service enterprises in 2014 was 230.4 billion Chinese yuan (CNY), representing a 20 per cent year-on-year growth from 2013 (for which the total gross income was CNY192 billion). The total profit of national domestic service enterprises in 2014 was CNY17.3 billion with a year-on-year growth of 11.3 per cent (CNY15.6 billion in 2013). The domestic service sector as a whole generated revenue of CNY11,300 per capita with a year-on-year growth of 5.6 per cent (CNY10.7 thousand in 2013). Large-scale domestic service enterprises, which for the purposes of this report refers to enterprises with annual incomes of over CNY5 million, accounted for 23.5 per cent of all domestic services enterprises in 2014, an increase of 1.5 per cent from the year before. Chain domestic service enterprises accounted for 21.4 per cent of the total number of domestic service enterprises in 2014 with a year-on-year growth of 1.9 per cent. The revenue of chain domestic service enterprises was CNY137.3 billion in 2014, accounting for 59.6 per cent of total revenue within domestic service sector, with a year-on-year increase of 2.6 per cent.

E-commerce among large-scale domestic service enterprises is also developing rapidly. The e-commerce of domestic service, represented by online-to-offline (O2O) model, is growing explosively. (Online-to-offline means to combine offline business opportunities with the Internet, making the Internet a platform for offline business). Cloud technology combines offline domestic service enterprises with online skills appraisal, supply and demand matching, satisfaction evaluations, reward and punishment mechanisms, payment and settlement, etc., which is reconstructing the business, operations, and management models of domestic service enterprises.

For example, the procedure of the domestic service enterprise Ayilaile operates as follows: Online consulting → interview → contract signing and payment → getting on board → feedback and complaints → contract extension or termination. The O2O model has lower costs with regard to recruitment and operation when compared with traditional physical offices. Likewise, the massive reserves of information online bring a large number of opportunities to hourly workers. However, while this model does provide management of domestic workers, in most cases no contracts are signed with these workers.

2.2. Operation and management models of domestic service enterprises

2.2.1. Employee system

Under the employee system, the domestic service enterprise and the domestic worker sign a labour contract and establish labour relations after recruitment. The domestic worker will then be dispatched to a specific household to provide domestic service. The domestic service enterprise charges a management fee and sets the wages of domestic workers based on a Domestic Service Agreement signed with the client (typically the head of the household). The domestic service enterprise pays the domestic worker as an employee; completes social insurance procedures for the worker; and bears the obligations of social insurance payments after tax deductions as prescribed by law. Domestic service enterprises provide both pre-placement and on-the-job training for employees. The enterprises are responsible for collecting feedback related to the service provided by the domestic worker; information on the tasks the domestic worker is asked to perform; the living conditions of the domestic worker; the degree of harmony between the service recipients (i.e., clients) and the domestic worker; etc. The domestic worker should be replaced in a timely manner in cases where a replacement is required. Under the employee system model, domestic service enterprises are not only responsible for managing when domestic workers enter and leave a client's household; they also participate in settling disputes between domestic workers and clients, and assist domestic workers in protecting their rights.

The pre-placement and on-the-job trainings for domestic worker employees are part of occupational training, which is an obligation of the employer regulated by labour law. These trainings are designed and implemented by the domestic service enterprises. Complaints from domestic worker employees will be reported to the Government's Labour Security Inspectorate, which is charged with ensuring that domestic service enterprises provide occupational training for their employees. The research team has not found evidence of any reported complaints to the Labour Security Inspectorate.

2.2.2. Intermediary system

Many domestic service enterprises are purely intermediary agencies, in which the domestic service enterprise acts as a mediator in the domestic service market by placing domestic workers into households for a fee paid by the head of household. After charging this lump-sum intermediary fee, the domestic service enterprise will no longer have any relationship with the domestic worker and the household owner. Under this arrangement the head of household is considered to be the employer of the domestic worker.

2.2.3. Hybrid system

Under a hybrid system, domestic works are directly employed by the household in which they work, but after placement the domestic service enterprise continues to provide services to both the domestic worker and the employer. Domestic service enterprises will charge clients with intermediary fees – also called management fees – either in one lump sum or on a regular basis. For example, they may collect CNY500 from domestic workers and CNY800 from employers to provide them with one-year of intermediary service. The enterprises conduct vocational training for domestic workers and register and archive workers' information. In addition, the domestic service enterprises may provide

household or electronic tracking management services to monitor the service quality provided by the domestic workers but also the working conditions at employers' homes. The enterprises will also accept complaints from both employers and domestic workers. Generally, hybrid system-based domestic service enterprises purchase commercial accident (health) insurance for domestic workers. In an example of a typical arrangement, a domestic service enterprise will pay CNY60 to an insurance company for each domestic worker. If an accident befalls a domestic worker, the insurance company will provide coverage of up to CNY100,000.

2.2.4. Membership system

A membership system is a special type of hybrid system. In addition to the features of the hybrid system, domestic workers are also charged admission fees. For instance, Ayilaile, an intermediary website operated by Beijing Jialehui Domestic Service Company, charges 20 per cent of the first-month wage of domestic worker as a membership fee and will then provide a “one-on-one” manager service to domestic workers and buy insurance for the worker. In addition, “Ayi College” provides a 24-hour online learning platform for members. Membership system-based domestic service companies also provide a sense of belonging to domestic workers by organizing dinner parties, picnics, and getaways; paying year-end bonuses; etc.

2.2.5. Social insurance and domestic service enterprises

Among the different management models of domestic service enterprises, only employee system-based domestic service companies cover the cost of social insurance for their employees. Companies utilizing other systems do not pay to provide social insurance for domestic workers. This is because only those workers who are hired by employee system-based domestic service enterprises are covered by labour law, while domestic workers who are placed by enterprises utilizing other systems are only covered by contract law under Chinese civil law, which stipulates that both employers (i.e., heads of household) and intermediary agencies are not obliged to pay social insurance for domestic workers.

2.3. The economic importance of domestic services on macro Level

Box 1. The service economy in China

Dr Yu Hua, Deputy Director of Service Sector Research Division, International Trade and Economic Cooperation Research Institute of the Ministry of Commerce, was interviewed by the research team on the issue of the service economy in China. He said, "Globally, the service sector accounts for about 70 per cent among all sectors. While, in China its proportion is around 40 per cent, which is about 30 per cent lower than the world average. As an important component of residents' services, domestic service is directly linked to the lives of residents. Its development will contribute to increasing the proportion of service economy."

Dr Yu Hua also said that domestic service has strategic significance for the Government in responding to the effects of the so-called "White wave" – there are over 212 million of people over 60 years of age in China, accounting for 15.5 per cent of the total population. Numbers are even greater in large cities such as Beijing and Shanghai. In Beijing people over 60 years old account for more than 20 per cent of the total population, and people over 60 account for 28.8 per cent of the total population in Shanghai. The number of elderly individuals in home-based care, community care, and institutional care represent 90 per cent, 7 per cent, and 3 per cent of all elderly care, respectively. Home-based care for the aged requires a large number of domestic workers.

With the continuing improvement of people's living standards, the structure of consumer demand in China has undergone tremendous changes. The proportion of commodity consumption has been declining, and its growth is slowing down. Meanwhile, the proportion of service consumption has been increasing at an accelerating rate (see box 1). Domestic service is an important component of services for residents. The rapid development of domestic service not only stimulates residents' consumption of services and expands domestic demand, it also has great significance in stimulating economic growth. Moreover, domestic service plays an important role in transforming the economic development pattern, adjusting the industrial structure and increasing the proportion of the economy devoted to the service sector.

According to statistics from the Ministry of Commerce, 2014 taxes derived from the domestic service sector amounted to CYN7.7 billion with year-on-year growth of 18.5 per cent compared to 2013. China has increased efforts to support the domestic service sector and has continued to lower the tax rate for domestic service. Indeed, the domestic service sector has developed rapidly, and its financial contribution to the national revenue has been increasing despite a tax policy favourable to sector players.

Additionally, the domestic service sector plays a significant role in addressing employment issues. It is estimated by the Ministry of Commerce that employment in the domestic service sector accounted for 3.0 per cent of total employment in 2014. This means 20.34 million people are employed in this sector, earning income and helping their families out of poverty.

2.4. The economic importance of domestic services on micro level

Some outstanding maternal care, elderly care, and child-care workers have gone abroad to provide professional services to families in developed countries and earn high wages. But within China, the entry threshold is low for ordinary domestic workers; so rural women who are less well-educated and lack skills also have learning and working opportunities in the China's cities. These opportunities have changed many lives and some rural women have become entrepreneurs after initially moving to urban areas for domestic work (see box 2).

Box 2. From domestic worker to entrepreneur: The story of Feng Ti

At a meeting on 3 March 2016 organized by the research team, Feng Ti, Chairman and Managing Director of Beijing Jia Yue Xiang Domestic Service Co., Ltd., shared her own experiences:

"In 2007, I was 33 years old. I was introduced by my relatives to come to Beijing from Anshan City, Liaoning Province. First, I spent 1,300 yuan on learning maternal and child care for seven days in Mary's Hospital. Working as a maternity matron, I earned 4,800 yuan from my first job that year. However, other people only earned about 3,000 yuan. Other people took seven assignments a year, while I took ten on average (26 days per assignment, and more days for some). I hardly took a break, and I felt very tired. During one spring festival, I was very tired. I got a fever and coughed. I was afraid to infect the infant and its mother. I had to quit the job and lived in the company myself.

"I worked so hard in order to raise my son. His father suffered from brain cancer and passed away when my son was six years old. When my son was 13 years old, I sent him to my mother's home. I came to Beijing to work as a maternity matron. I worked for six years. Later, I earned 6,500 yuan per assignment. At the end of 2013, I borrowed 500,000 yuan from my friends and relatives and registered this company.

"When I was a maternity matron, the manager of the company always criticized other maternity matrons and me. Thus, when I started my own company, I well understood these domestic workers. Generally, I do not criticize them and address the disputes between them and clients from their standpoint. I rented a room so that they can come back every week and have a small party – 20 people or so. Thus, they will feel at home.

"My peers lost money at the beginning of their businesses. While, I made profits as soon as I started my company. This is because the business of domestic service alone is not lucrative. I mainly do maternal and child care. The intermediary fee is 15–30 per cent of the [domestic worker's] salary. I am a lactagogue technician, and I can earn 400–500 yuan every time. I have a good reputation and a lot of business. There are nine days in one session of maternal and child-care training. The training fee is 1,380 yuan. The training for lactagogue technicians lasts for 15 days and the training costs 5,000 yuan."

Feng Ti has good moral standing and displays good technique. Also, she is good at communication. Her son completed undergraduate education with her financial support, which she takes great pride in. Domestic service in this case created a female entrepreneur, and her entrepreneurial experience is representative among outstanding domestic workers. Currently, Feng Ti is trying to expand her company and make it more competitive.

Chapter 3. Legal framework of internal migration and domestic service

3.1. Relevant International Conventions/Standards

The principle International Convention concerned with domestic work is the Convention Concerning Decent Work for Domestic Workers, 2011 (No. 189). Article 1 of the Convention defines both “domestic work” and “domestic worker”. The term “domestic work” refers to work performed in or for a household or households. The term “domestic worker” refers to any person engaged in domestic work within an employment relationship; a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Article 2 provides that Convention No. 189 applies to all domestic workers. Article 3 restates universality principle of human rights and stresses four core labour standards (fundamental principles and rights at work), especially the right of enjoying freedom of association. It stipulates that each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers. Each member State shall, with regard to domestic workers, take the measures set out in the Convention to respect, promote, and realize the fundamental principles and rights at work, namely: freedom of association and the right to collective bargaining; the elimination of all forms of forced labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Measures should be taken to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the right to collective bargaining. Member States shall protect the right of domestic workers and employers of domestic workers to establish and to join organizations, federations, and confederations of their own choosing.

Article 4 aims to prevent child labour. It reasserts the provision of prohibiting child labour by requiring members to set a minimum working age that is in accordance with previous Labour Conventions and “not lower than that established by national laws and regulations for workers generally”. Article 5 provides that each member State shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment, and violence. The provisions of Article 6 require that each member State shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Article 7 requires that each member State shall take measures to ensure that domestic workers are informed of their terms and conditions of employment through written contracts. Article 9 through Article 13 stipulate the working hours, rest and leave, minimum wage, forms of payment, payment intervals, and occupational safety and health, respectively.

Article 14 requires that measures shall be applied progressively by member States, in consultation with the representative organizations of employers and domestic workers to ensure that “domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection”.

Article 15 contains regulations on private intermediary agencies. Member States are required to take “measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers”.

Article 16 stipulates dispute resolution mechanisms, and requires that all domestic workers “have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally”. Article 17 sets the requirements for complaints and labour inspection and stipulates that “measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy”.

China has not ratified Convention No. 189, but the Chinese Government has signed the United Nations International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), all of which were ratified by the National People's Congress Standing Committee. The Conventions mentioned above have provisions on human rights protection and prohibition of employment discrimination and gender discrimination, which can also be applied to domestic workers.

The Maternity Protection Convention, 2000 (No. 183), which has not been ratified by Chinese Government, takes into account the circumstances of women workers and the need to provide protection for pregnancy, claiming these as “the shared responsibility of government and society” (Preamble). Under Convention No. 183, each member State shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or nursing women are not obliged to perform work that has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child. A woman shall be entitled to a period of maternity leave of no less than 14 weeks (maternity leave shall include a period of six weeks' compulsory leave after confinement). Under Article 6, each member State shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies. Benefits in respect of the leave shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. The amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of calculating benefits. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, confinement, and postnatal care, as well as hospitalization care when necessary.

Also, Convention No. 183 provides that it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on maternity leave and nursing referred or during a period following her return to work, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or confinement and its consequences or nursing shall rest on the employer. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave (Article 8).

As noted above, China has not yet signed Convention No. 183, preventing flexible working women like domestic workers from getting maternity protection prescribed in the Convention.

3.2. National legislation related to domestic workers

3.2.1. Specialized law related to domestic workers

On 18 December 2012, the Ministry of Commerce promulgated the Interim Measures for the Administration of Domestic Service Sector (Order of the Ministry of Commerce No. 11[2012]). This is the only special law related to domestic workers, and being a ministerial regulation it falls into the lowest category of law.

Article 12 of the Interim Measures provides that domestic service enterprises must provide the service based on a service contract. Enterprises must not withhold the wages of domestic workers and must avoid wage arrears. Also, the companies must not charge high management fees, nor can they retain domestic workers' original documents of identity, academic and qualification certificates, etc. Domestic service enterprises must not infringe upon the legitimate rights and interests of domestic workers.

Article 14 stipulates that a domestic service contract shall include at least the following contents:

1. company name, address, responsible person, and contact information of the domestic service enterprise; the name, identification numbers, state of health, skills training situation, contact information, etc. of the domestic worker; and the name, identification numbers, address and contact information of the consumer (i.e., the employer/head of household);
2. the venue, content of the work to be performed by the domestic worker, and the duration of employment, etc.;
3. the service fee and its forms of payment; and
4. the rights and obligations of the parties, as well as dispute resolution mechanisms, etc.

It is stipulated in Article 15 that domestic service enterprises shall clearly inform their domestic workers of their rights and interests in the contract. It requires that domestic workers be allowed to check the domestic service contract and retain a copy to protect their legitimate rights and interests. Under Article 36, domestic service enterprises that do not sign domestic service contracts as required or do not allow all domestic workers to acquire copies of their domestic service contracts, will be ordered by the competent department of the Ministry of Commerce or the department concerned to make corrections. If they refuse to make these corrections, they will be liable to a fine of CNY30,000.

It should be noted that questionnaire results from this study found that 22.44 per cent of domestic worker respondents did not have a contract. Yet the research team is not aware of single domestic service enterprise that has been fined or punished, which suggests potential problems in the implementation of this aspect of the ministerial regulation.

Chapter III of the Interim Measures stipulates the code of conduct for domestic workers. In addition to providing domestic service enterprises with documentation proving their true identity, education, health, skills, etc., domestic workers are required to give their domestic service enterprises a real and effective address and appropriate contact information. Domestic workers should also have the professional qualification to perform the services that they are expected to deliver. It is also stipulated that domestic workers can refuse to provide their services under any of the following circumstances: (1) the employers cannot provide the working conditions written in the contract; (2) the worker is abused or their personal dignity is seriously injured; (3) the worker is required to engage in conduct which is likely to cause personal harm; or (4) the worker is asked to engage in illegal or criminal acts. However, the Interim Measures also state, "When having disputes with consumers during domestic service provision, domestic workers should report to the domestic service enterprises in timely manner and are not allowed to leave their posts" (Article 21). This requirement differs from Article 38(6) of the Labour Contract Law⁶, which stipulates that employees may terminate their work immediately and without prior notice if the employer uses "violence, threats, or unlawful restriction of freedom to compel [the] employee to work". As noted above, in the Interim Measures, the employers of domestic workers at the household level are referred to as "consumers". If the employers of domestic workers are defined not as employers but as consumers – and therefore given special protection – there is a deviation from the standpoint from protecting domestic workers' rights.

The code of conduct for consumers in Chapter IV of the Interim Measures requires that if a consumer or their family members are suffering from an infectious disease, mental illness, or other important disease, they should inform the domestic service enterprises and domestic workers, and this information should be registered accurately. The consumer must guarantee the legal rights and interests of domestic workers; respect domestic workers' personality and labour; provide the agreed upon accommodation and other working/living conditions; and ensure that domestic workers are allowed basic daily sleep and necessary monthly rest. Consumers must not abuse or beat a domestic worker or take any other actions that infringe the domestic workers' rights. Consumers must not deduct from or delay the wages of domestic workers. Also, they must not charge high management fees, detain a domestic workers' original identity documents, academic and qualification certificates, etc.

The provisions of Article 18 of the Interim Measures concern the dispute resolution channels related to domestic service. Article 33 stipulates that if a domestic service enterprise does not properly handle complaints between consumers and domestic workers, they shall be ordered by the competent department of Ministry of Commerce to correct themselves. If they refuse to make these corrections, they will be liable to a fine of CNY20,000. However, not all domestic service enterprises are equipped with digital monitoring devices, therefore the implementation of this article depends on the appeals filed by the parties concerned. Yet many domestic workers are not aware that it is Ministry of Commerce that is in charge so that they give up appealing to relevant departments. Intermediate agencies are not responsible for dealing with disputes between domestic workers and employers if they do not operate under the employee-based system or a hybrid system. The research team has not found

⁶ Article 38(6) of the Contract Labour Law reads: If an employer uses violence, threats or unlawful restriction of personal freedom to compel an employee to work, or if an employee is instructed in violation of rules and regulations or peremptorily ordered by his employer to perform dangerous operations which threaten his personal safety, the employee may terminate his employment contract without giving prior notice to the employer.

any domestic service enterprises being fined or punished for mishandling of complaints from workers or employers.

3.2.2. General law and how it applies to domestic work

Only the domestic workers employed by employee system-based domestic service enterprises are covered under the following laws and regulations:

- Labour Law (1994);
- Labour Contract Law (issued in 2007 and amended in 2012);
- Employment Promotion Law (2007);
- Labour Dispute Mediation and Arbitration Law (2007);
- Labour Security Supervision Regulations (2004);
- Special Rules on the Labour Protection of Female Employees (2012);
- Social Insurance Law (2010);
- Regulation on Work-Related Injury Insurances (2010);
- Regulations on Employment Service and Employment Management (Order of the Ministry of Labour and Social Security 2007] No. 28).
- Interim Measures for the Integration of Urban and Rural Pension Insurance Systems (the Ministry of Labour and Social Security [2014] No. 17).

Domestic workers employed by employment system-based enterprises also enjoy the same labour and social security rights as workers from other sectors, including equal remuneration, working hours, paid leave, occupational safety and health, rights of participation in trade union, and policies related to the settling of labour disputes, among others.

Chapter VII of the Employment Promotion Law is dedicated to fair employment. The provisions of Article 31 require that “rural workers who go to cities for employment shall enjoy equal right to work as urban workers do. No discriminating restrictions may be placed on the rural workers who go to cities for employment.”

The Labour Contract Law passed in 2008 expands the coverage of the Labour Law. It incorporates “private non-enterprise entities or other organizations” into the category of “employer”. “Other organizations” is a new addition. Professor Hu Dawu from Southwest University of Political Science & Law believes that families should be covered under “other organizations”, which would mean that all domestic workers who serve within households should be covered by the Labour Contract Law. The research team agrees with this point of view, but it has proven difficult for this interpretation to be recognized by the relevant authorities. The mainstream view held by decision-makers is to insist on focusing on the connection between labour relations and industrial relations and to exclude household employment.

The Social Insurance Law stipulates that full-time workers should be legally entitled to the following benefits: pension, medical, unemployment, work injury, and maternity insurance without

distinction between whether the worker registered in an urban or a rural area. Currently, domestic workers employed by employee system-based domestic service enterprises generally participate in basic urban workers' pension insurance and urban and rural residents' pension insurance schemes, including two types of medical social insurance. The urban workers pension provides more favourable pension payments than the urban and rural residents pension, but it is not open to rural workers. Migrant domestic workers who move from rural areas to the cities therefore have a vested interest in securing this higher pension, but they are not immediately eligible. Under Article 3 of the Interim Measures for the Integration of Urban and Rural Pension Insurance Systems, an individual who has paid into the urban workers pension programme for at least 15 years and has reached the statutory retirement age can apply to transfer from the urban and rural residents pension insurance scheme to the urban workers pension insurance scheme, and enjoy the corresponding benefits. If an individual has paid into the urban pension insurance scheme for less than 15 years, they can apply to transfer the amount paid back to the urban and rural residents insurance scheme and enjoy the corresponding benefits. Article 8 provides that the participants shall not simultaneously receive urban workers' pension and urban and rural residents' pension.

Domestic workers who are not employed by employee system-based domestic service companies are generally excluded consideration under labour laws. However, the following laws can be applied to their situation:

- Women's Rights Protection Law (introduced in 1992 and amended in 2005);
- General Principles of the Civil Law (1986);
- Tort Liability Law (2009);
- Contract Law (1999);
- Public Security Administration Law (2005); and
- Criminal Law (1997).

The Women's Rights Protection Law prohibits sexual discrimination against women, including sexual harassment. If there are arrears in the payment of wages for domestic workers, they can go directly to the courts and claim for compensation under the Contract Law. If domestic workers suffer from beatings, abuse, or other personal rights infringements, they can choose to report to the police or go directly to the court to make a claim for compensation. Under the Public Security Administration Law, if reports of abuse are registered by the police, the infringing party shall be detained for more than 5 days and less than 10 days, and fined CNY200 to CNY500. If the circumstances are relatively minor, the infringers shall receive five days detention or a fine of less than CNY500; if the circumstances are relatively serious, the infringers shall be detained for at least ten days but no more than 15 days, and shall be fined between CNY500 and CNY1,000. If the rights infringement is so serious that it constitutes a crime, the court would make a judgment in accordance with the Criminal Law (1997). For example, a 20-year-old domestic worker was repeatedly beaten by her female employer, resulting in disfigurement. The court of Zhuhai, Guangdong Province found that the employer committed intentional assault and sentenced her to 12 years in prison (Xie and Han, 2013).⁷

⁷ Xielihua, Hanchun: The glorious road of thorns – documentary of female employment rights protection, Beijing, Jincheng Press, 2013, January Edition: pp 127–128.

The Women's Rights Protection Law and Public Security Administration Law can also be applied to domestic workers employed by employee system-based domestic service companies.

If a dispute arises, one can complain to the Labour Inspection Department or resolve disputes through labour dispute arbitration. Domestic workers introduced to domestic service by intermediary agencies or friends and relatives are excluded from consideration under the Labour Law and the Social Security Law, but the Civil Law is still applicable. Although these workers are not entitled to complain to the Labour Inspection Department or settle disputes through arbitration, they can bring a civil case to the court directly without first engaging in labour dispute arbitration.

3.3. Analysis of compliance with international labour standards and existing gaps

3.3.1. Compliance with international labour standards

At present, it can be estimated that less than 10 per cent of domestic workers in China are employed by employee system-based domestic service enterprises.⁸ According to the questionnaire survey conducted by the research team, 22.44 per cent of Beijing domestic worker respondents do not have contracts, which means they had not gone through a standardized procedure when securing their employment.

The definitions of "domestic work" and "domestic worker" in C189 are consistent with scholarly opinion⁹ but with different names. Chinese officials called it "domestic service provider" and the scholars generally call it "domestic worker". Currently, the domestic workers employed by the employee system-based domestic service enterprises enjoy the same labour and social security rights as workers in other sectors, including but not limited to the following 11 items:

1. They enjoy the right to choose their occupations and be employed on an equal basis. They shall not be forced to work.
2. Child labour is prohibited and juvenile workers enjoy special protection, including that employers should guarantee their right to compulsory education; the work should not be harmful. Also, there are weight-bearing restrictions to avoid affecting their physical development and the like.
3. Employers must sign a written labour contract with full-time workers within one month of the start of employment. This contract shall include statutory provisions.
4. Wages shall be paid in legal tender instead of in kind or vouchers, etc. Wages must not be lower than the local minimum wage, and the payment cycle cannot be more than one month.
5. The standard working hours shall be eight hours per day and 40 hours per week. The overtime hours shall be no more than 36 hours per month.

⁸ There are no financial resources for national data collection on domestic worker numbers, but this figure is estimated according to interviews with the Division of Migrant Workers, Beijing Human Resource and Social Security Bureau. Domestic workers in Beijing enjoy the best policy support, yet the percentage of employee system domestic workers is still at less than 10 per cent. Therefore, it can be estimated that the percentage of employee system-based domestic workers nationwide would not exceed 10 per cent. Consequently, at least 90 per cent of domestic workers in China do not have legal status as workers.

⁹ Wang Zhuqing, Wu Daoxia: On the Labour Rights of Domestic Workers, Collection of Women's Studies, 2009(6).

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6. From the beginning of the second year of work, workers are entitled to annual paid vacation of 5–15 days. The company shall pay no less than 300 per cent of the normal wage if the extended hours are arranged on statutory holidays.
 7. The employer shall protect workers from injury, occupational diseases, and sexual harassment.
 8. Female workers are under special protection during pregnancy, confinement, and nursing periods.
 9. Employees have the right to join trade unions and enjoy the right of collective bargaining.
 10. When there is a labour dispute, the worker can negotiate with the employer and seek all kinds of mediation from mediation agencies. They can also directly apply for arbitration. If the arbitration is refused, they can lodge a lawsuit.
 11. Employees can participate in five kinds of social insurance, including pension, medical, unemployment, work injury, and maternity insurance. For example, according to the Social Insurance Law, maternity insurance benefits include maternity medical expenses and a maternity allowance that covers prenatal examination expenses and maternity medical expenses. The maternity allowance will be reimbursed by the maternity insurance fund.

Convention No. 183 provides that pregnant women must not be engaged in work that may be harmful to the health of the mother or child (Article 3). Breaks in work or reduction in hours related to nursing shall be paid (Article 10). Women shall not be dismissed due to pregnancy, confinement, or nursing (Article 8). The maternity leave and allowance standards in Convention No. 183 are consistent with the provisions found in Chinese law, specifically the Special Rules on the Labour Protection of Female Employees. The Labour Contract Law and Social Insurance Law also have corresponding provisions.

The provisions within Chinese law mentioned in the previous paragraph are also in accordance with requirements within Convention No. 189. The Chinese legal provisions listed below surpass the corresponding standards laid out in international labour instruments, though it is worth recalling that these provisions apply only to the minority of domestic workers employed by employee system-based domestic service enterprises:

3.3.1.1. Working hours and rest periods

Convention No. 189 stipulates that "weekly rest shall be at least 24 consecutive hours" (Article 10(2)), which is in consistent with provisions in Article 38 of the Labour Law that stipulate, "the employing unit shall guarantee that its staff and workers have at least one day off in a week." According to the Labour Law and Provisions of the State Council on Working Hours of Workers and Staff, standard working hours shall be eight hours per day and 40 hours per week. The hours of overtime worked should be no more than 36 hours per month.

3.3.1.2. The number of days of maternity leave

Under the requirements related to maternity leave in the Special Rules on the Labour Protection of Female Employees, women shall receive 98 days of maternity leave following a natural delivery, and additional ten days in cases of dystocia. For multiple births, 15 more days of leave will be given for each additional baby. Furthermore, Article 18 of the Regulation of Beijing Municipality on Population

and Family Planning (2016) stipulates that if female workers in public units, state-owned enterprises, public institutions, and social organizations abide by family planning regulations, in addition to enjoying the state-prescribed maternity leave stipulated above, they can enjoy additional maternity leave of 30 days as a reward, and their spouses enjoy paternity leave for 15 days. When female workers and their spouses are on maternity or paternity leave, their employing units, enterprises, institutions, and social organizations shall not decrease their wages, dismiss them, or terminate their labour contracts or employment contracts. If approved by their employing unit, enterprise, institution, or social organization of the female worker, one to three months can be added to the maternity leave. The sum total of these maternity leave opportunities is far more than 14 weeks' of maternity leave prescribed in Convention No. 183. However, it should be noted that this example is relevant only to workers within Beijing and may not apply to other areas of China. In addition, domestic workers not employed by employee system-based domestic service enterprises are not entitled to maternity leave.

3.3.1.3. Maternity allowance

As regulated in the Social Insurance Law, the maternity allowance, which refers to wages paid during maternity leave, is based on the average monthly wage in last year for employees in the employing unit. This being the case, the maternity allowance for young female workers – who are more likely to be at the lower end of the pay scale within the employing unit – is typically higher than the wage they were earning while working. Generally the allowance received is much higher than Convention No. 183's provision that "the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits" (Article 6(3)). As above, domestic workers not employed by employee system-based domestic service enterprises are entitled to neither maternity leave nor a maternity allowance.

3.3.1.4. Obligatory written labour contracts

Under Article 82 of the Labour Contract Law, if an employer fails to conclude a written labour contract with an employee after the lapse of more than one month but less than one year of the day when the employment started, the employer shall pay the worker a monthly wage at double the current amount.

3.3.1.5. Punishment for unjustified delay or deduction of wages

According to Article 85 in the Labour Contract Law, employers who commit unjustified delays or deductions of wages (including overtime wages) shall be ordered by the Labour Administrative Department to pay the remunerations to the employee(s). If payment is not made within the time limit, the employer shall be ordered to pay an extra compensation to the employee at a rate of not less than 50 per cent and not more than 100 per cent of the amount owed.

3.3.1.6. Special protection of women during pregnancy, confinement, and nursing period

According to the provisions of Article 42 and Article 45 of the Labour Contract Law, workers who are pregnant, in confinement, or nursing shall not be dismissed from employment unless there are

specific circumstances where the employee is at fault¹⁰. When female workers show proof of being pregnant, in confinement, or nursing – even if the relevant period extends beyond the date that the labour contract expires – the labour contract cannot be terminated and it should be extended until the relevant circumstance disappears. That is, in the absence of abortion, infant mortality, etc., the contract should be extended until the nursing period of the female worker expires (i.e., when the baby is one year old). This goes well beyond the relevant provisions concerning employment protection in Article 8 of Convention No. 183. For domestic workers not employed by employee system-based domestic service companies, pregnancy typically means losing their jobs.

In addition, as regulated in Article 14 of Labour Contract Law, if the employee has been working for the employer for a consecutive period of ten years or a fixed-term employment contract has been concluded on two consecutive occasions, the employee shall receive an open-ended contract. However, these labour standards, which are higher than those of international conventions, are very difficult to apply in such a low-profit industry as the domestic service sector.

3.3.2. Gaps relative to international labour standards

3.3.2.1. *Narrow scope of Labour Law application*

The labour and social security standards discussed above cannot be applied to at present to the more than 90 per cent of domestic workers who are not employed by employee system-based domestic service enterprises.¹¹ The Explanations of the Ministry of Labour on Certain Provisions in People's Republic of China's Labour Law (Order of Ministry of Labour [1994] No. 289) and the Opinions of Ministry of Labour on Some Issues Concerning People's Republic of China's Labour Law (Order of Ministry of Labour [1995] No. 309) clearly state that domestic workers are not covered within the scope of the Labour Law. According to the provisions of Article 7 of the Interpretation of the Supreme People's Court on Several Issues about the Application of Laws for the Trial of Labour Dispute Cases (II) (legal interpretation [2006] No.6), disputes between private persons or families and domestic workers do not count as labour disputes. Only domestic workers who have signed a labour contract with an employee system-based domestic service company can be protected under the Labour Law. As such, the vast majority of domestic workers are regulated by the Civil Law, and are not in a position to avail themselves of any of the standards required in Convention No. 189, resulting in a massive gap in the protection standards offered by the Chinese Government for domestic workers and the requirements laid out in international labour standards.

3.3.2.2. *Lack of specialized labour and social security standards for domestic workers*

As noted in section 3.2.1, the only Chinese legislation dedicated to regulating the domestic service sector: the Interim Measures for the Administration of Domestic Service Sector, which as a ministerial

¹⁰ "Fault" here refers to the circumstances that allow an employer to dissolve the labour contract as stipulated in Article 39 of the Labour Contract Law, including major breaches against rules and regulations set up by the employer, or being under investigation for criminal liability pursued in accordance with the law.

¹¹ As noted above in Section 3.3.1, this figure is an estimate derived from interviews with the Division of Migrant Workers, Beijing Human Resource and Social Security Bureau.

regulation is at the lowest level of legislation. The aim of the Interim Measures is to protect the employer as a “consumer”, a distinction that ultimately deviates from the protection of domestic workers’ rights. This legislation is little known and inefficiently implemented. There are no specific labour and social security standards for domestic workers contained in any Chinese legislation or regulation.

Four major drawbacks with regard to the development of the domestic service sector and the protection of domestic workers exist:

1. The existing high labour protection standards result in employee system-based domestic service enterprises facing too high a risk and too heavy a burden. It is much cheaper for companies to operate as intermediary system-based enterprises because they do not need to concern themselves with covering social security insurance costs for workers. As a result, the sustainable development prospect for employee system-based enterprises is gloomy. In order to help bolster these businesses, employee system-based domestic service enterprises in Beijing are subsidized by the Government to help cover the cost of providing social security insurance for their domestic workers (see section 5.3.3 below). However, this has led to some companies falsely claiming to be operating as employee system-based enterprises in order to obtain these financial subsidies. This is achieved by operating as “one company with two systems”¹², that is, one company registers two business licenses: one license for operating as an employee system-based enterprise, and one license to operate as an intermediary system-based enterprise. Some companies have transformed entirely into intermediary system-based enterprises. This affects the formalization process of the domestic service sector.
2. Generally, private household employers cannot bear the burden of paying for their domestic worker’s pension insurance, which typically should amount to 20 per cent of the domestic worker’s wages as well as “the original wages and benefits during the suspension period”, “lump-sum disability employment grants”, and other work injury insurance liabilities. These pension insurance payments should be paid by the employers, rather than the workers themselves. Of course, domestic workers who are placed through employee system-based enterprises have their pension insurance paid for by the company, rather than the private household employer. And as noted above, many of these companies receive government subsidies to cover these costs. However, at the moment, domestic workers from employee system-based domestic service enterprise mostly serve “high-end employers”. Therefore, the majority of beneficiaries from these financial subsidies are high-end employers, that is, the employers who are most able to pay for a domestic worker’s pension insurance themselves. The fairness of this arrangement has been generally questioned by Beijing Homemaking Service Association.
3. Flexibly employed persons have no right to participate in work injury and maternity insurance. A flexibly employed persons refers to individual businesses without employers,

¹² Namely, one manager registers two business licenses. One is a business license for operating employee system based domestic service company. The other one is for the intermediary system based domestic service company.

non-full-time employees¹³ who do not participate in employer's social insurance, and other irregularly employed people and freelancers. Domestic workers who are directly employed by private households generally fall under this category.

Under the Social Insurance Law, individual businesses without employers, non-full-time employees, and other flexibly employed people can participate in employee's basic pension insurance and basic medical insurance by paying the premium directly to the collecting institutions of social insurance. The total cost of these social security insurances is typically borne by employers, and can be difficult for domestic workers to pay into on their wages. Flexibly employed individuals also must pay for their own unemployment insurance, but in general this is an affordable burden. The situation is very different, however, for work injury and maternity insurance. Even though domestic workers who are not working for employee system-based companies would like to pay the premiums for work injury and maternity insurance voluntarily, there are no channels to pay the contributions. If an accident happens and the employer is not at fault, they will face the great risk of bearing potentially huge costs themselves and cannot enjoy the preferential treatment of "getting the payment from the work injury insurance fund first". After confinement, they are not entitled to maternity insurance benefits, either.

Earlier legislation had given a greater share of liability to employers for compensating workers for injuries received in the workplace regardless of who was at fault.¹⁴ However, with the introduction of the Tort Liability Law (2009) the occupational injuries of domestic workers changed from employers bearing "liability without fault" to "fault liability" only. Obviously, the standpoint of the law is to protect employers. Consequently, domestic workers without injury insurance or accidental injury medical insurance will face the risk of suffering the consequences of occupational injury themselves.

4. The special needs of domestic workers are not covered by the general labour protection standards. The vulnerability of domestic workers requires special protection of personal safety and human dignity. Domestic workers have to cope with differences in labour intensity and environment and are subject to the randomness of employers' instruction. Ambiguity around the boundary of work and rest requires unique rest and standby¹⁵ wage standards. The conflict between the "right to know", "right to inspect", and "right to privacy", as well as gaps in the financial capacities of employers requires more balanced consideration. These featured provisions in Convention No. 189 are not included in the Labour Law. "Labour inspection", "the right to privacy", "standby" and other labour standards required in Convention No. 189 are even not mentioned in the Interim Measures for the Administration of Domestic Service Sector.

¹³ The term "non-full time employment" means a form of labour for which the compensation is chiefly calculated by the hour and where the employee works not more than four hours of work per day and not more than an aggregate 24 hours of work per week for the same employer, on average.

¹⁴ Article 35 reads, "Where a labour relationship is established between individuals and the party providing labour services causes damages to others due to such labour relationship, the party accepting labour services shall be subject to tort liability. If the party providing labour services suffers damages due to such labour relationship, the parties shall assume corresponding liability based on their respective faults." Article 11 of the Interpretation of the Supreme People's Court of Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury provides that "The employer should undertake the compensating responsibility when the employee suffers personal injury during the employment."

¹⁵ "Standby" is also called "awaiting job assignment". It means that during a period of time, the domestic worker cannot dispose of their time according to their will. It not only includes situations when the domestic worker should be always ready to take care of the children, the patient, lying-in woman, etc., in the employer's home at night but also when the domestic worker should be always ready to work during day. It also includes the waiting interval between two dispatches for the same domestic worker by the labour dispatching company.

3.3.2.3. *Legislative concepts lagging behind*

As previously noted, access to protection under the Labour Law is denied to the majority of people providing domestic service to families or individuals, including the right to enjoy labour and social security. The concept behind this limited application of the law demonstrates traditional "subjectivity theory", which adheres to the concept that labour relations are built on the basis of large-scale socialized production. Under this concept, private employment does not have the subject qualifications of labour law relations. As Zhang and Yang (2008) note:

The current institutional framework of social insurance is designed based on urban formal employment patterns. The expansion pattern of non-standard labour relations, which is formed by other centralized employment with standard labour relations at the core, has been formed. As the families employing domestic workers do not have the subject qualification required in the Labour Law and their employment pattern does not comply with the social collective labour standards stipulated in the Labour Law, domestic workers cannot build any labour relationship mentioned above with employers, so they [domestic workers] lose the last barrier of social security¹⁶ (p. 221).

The Labour Law was promulgated 22 years ago. As such, some parts of it still reflect the labour management system under the planned economy. Namely, the State, work units, and individuals form a vertical sequence; objectively, each worker is incarcerated in the narrow space of a work (employing) "unit". The work unit assumes pension responsibilities and the costs of social insurance, and takes responsibility for transaction management. Therefore, decision-makers emphasized that the principal focus of the labour contract must be a work unit. It is important to include household employment into Labour Law to keep in line with international standards, otherwise the law would go against the spirit of Convention No. 189.

There are "packaged" thinking views that advocate for either completely including domestic workers into the protection of the Labour Law or completely excluding them. We are of the opinion that domestic work is a type of work, and domestic workers must enjoy the same treatment as workers in other sectors. However, the unique characteristics of the domestic service industry makes it difficult to fully adopt current Chinese labour standards in the field, as it would add more cost and increase the burden on private household employers. This could lead to reduction in demand for domestic work. If this were to happen, the number of unskilled migrant workers entering the domestic service sector would be reduced, and potentially more harm would be inflicted on domestic workers than under the current application of labour law. In this case, domestic workers may generate a sense of resistance, which may also make it difficult to implement the law.

3.3.2.4. *"Employers" versus "consumers"*

As noted above, private household employers of domestic workers are classified as "consumers". This concept is inappropriate. Defined as "consumers", employers receive special protection based on

¹⁶ Zhang Xinmin & Yang Mao. Some Thoughts on Protection Mechanisms of Social Law for Labour Rights of Domestic Workers. The Construction of Harmonious Society and Social Law Protection, June, 2008, P221. China Labour & Social Security Publishing House. Beijing.

their “weak” position, a view which is not consistent with the relationship that they have with the domestic workers in their employ. The consumer protections offered to private household employers make their way back to the domestic service enterprises, which bear many obligations required in the Consumer Protection Law. Consequently, these enterprises must exert pressure on the domestic workers to meet the demands of private household employers, which has the potential to make the situation of domestic workers even worse. Use of the term “consumer of the domestic service” for private household employers triggered protests from the Beijing Migrant Women's Club, as well as some lawyers and scholars (see box 3).

Box 3. Protesting the use of the term “consumer”

On 15 March 2008, in the 15 March Female Migrant Workers Labour Rights Discussion Meeting organized by the Migrant Women's Club, Ms. Fan Xiaohong, the rights protection lawyer of the Migrant Women Club, said:

We questioned the “consumer of domestic service” concept. If one is a consumer, he/she will be protected under the Consumer Protection Law. In one “domestic service contract”, it is clearly stated that the domestic worker cannot use the phone of employers to make long distance calls. One day, a domestic worker would like to call her family, after getting the consent of the male employer, she went downstairs to make a long-distance call. Unfortunately, [while she was making the call] one elder female employer, who has intermittent mental disease, jumped from the building which led to bone fracture. After the accident, the male employer was very dissatisfied with the domestic worker and asked for compensation from the domestic service company. After our coordination, the domestic worker compensated one month's wage, 700 Yuan, to the employer. We feel very confused when handling this case. The employer was responsible for this, but why did he ask the domestic worker and domestic company to take the responsibilities? There is a habitual thinking in the domestic service sector. If there are some damaging results, the employers will conclude that the services of domestic workers and the domestic company are undeserved. However, many things are not that simple. When dealing with such cases, we realized that in the triangular relationship, the employer is protected with particular emphasis in the consumer's position. This caused some inclination in handling disputes. As an employer, he/she thought himself/herself a typical consumer under the special protection of the Consumer Protection Law.

The legal relationships of consumers are determined by the Consumer Protection Law, 1993. The main parties in a consumer relationship are limited only to business operators and natural persons. That is, one party of legal relationship is a business operator, and the other one is a natural person. Therefore, a legal consumer relationship can be formed between the private household employer and a domestic service enterprise. The aim of the Consumer Protection Law is generally to protect natural persons in the consumer relationship, because there are usually the party who holds a weaker position in the relationship. However, the majority of employers cannot rightly be considered the vulnerable party in a

relationship involving a domestic worker, at least in terms of access to information and great disparity in economic strength, etc. It is the domestic workers who are generally the more vulnerable and who should be the focus of legal protection, but the workers themselves tend to be grouped into the business operator end of the consumer relationship. Once private household employers are positioned as consumers, it is easy to flip the dynamic in the legal relationship of consumer so that the stronger party is protected, and heavy legal liabilities are placed on the domestic workers and domestic service companies. It is recommended that the current definition of private household employers as consumers be revisited.

In the Basic Norms of Domestic Service (SB / T 10643-2011), issued 2 February 2012, the "objects who accept domestic service" are referred to as "domestic service consumers". Likewise, the Interim Measures for the Administration of Domestic Service Sector released on 18 December 2012 provides, "In the measures, the consumers refer to the objects receiving domestic service." Article 1 of the Interim Measures specifies its legislative purpose, stating: "The measures are enacted in order to meet consumers' demand for domestic service; safeguard the legitimate rights and interests of consumers of domestic service, domestic workers, and domestic service agencies; standardize domestic service business practices; and promote the development of domestic service." With regard to regulation of the business practice of domestic service, the measures aim to promote the development of the domestic service sector to satisfy the needs of private household employers for domestic service. The Interim Measures put the "the legitimate rights and interests of consumers of domestic service" as the top priority in the legislation and then move on to make requirements for the vocational qualifications, service attitude, etc. of domestic workers. It should be noted that some protective regulations on signing contracts, rest and leave, wages, and human dignity, etc. are included in the Interim Measures. But the existence of employee system-based domestic service companies is essentially ignored. Also, the legal status of domestic workers is not confirmed, as domestic workers are only regarded as service providers to satisfy the needs of the consumers of domestic service. Article 21 of the Interim Measures requires that "when domestic service providers have disputes with consumers during the provision of domestic services, they should report to the domestic service agencies immediately and are not allowed to leave their posts". This is in sharp contrast from the right of constructive dismissal in exceptional circumstances conferred in Article 32 of the Labour Law¹⁷ and Article 38 of the Labour Contract Law¹⁸. Such a deviation in legislative concepts will inevitably lead to an imbalance of the rights and obligations between legal objects.

¹⁷ Article 32 of the Labour Law reads:

A labourer may notify at any time the employing unit of his decision to terminate the labour contract in any of the following circumstances:

1. within the probation period
2. where the employing unit forces the labourer to work by resorting to violence, intimidation, illegal restriction of personal freedom; or
3. failure on the part of the employing unit to pay labour remuneration or to provide working conditions as agreed upon in the labour contract.

¹⁸ Article 38 of the Labour Contract Law reads:

An employee may terminate his employment contract if his employer:

- (1) fails to provide the labour protection or working conditions specified in the employment contract;
- (2) fails to pay labour compensation in full and on time;
- (3) fails to pay the social insurance premiums for the employee in accordance with the law;
- (4) has rules and regulations that violate laws or regulations, thereby harming the employee's rights and interests;

3.3.2.5. *Lack of awareness of institutional discrimination*

The existing laws exclude the majority of domestic workers from labour and social security protection. Although legislators have not intentionally created a scenario of employment discrimination on the basis of sex, because females account for over 96 per cent of domestic workers, the laws excluding domestic workers put the female population at a disadvantage compared with male workers. This meets the definition of gender discrimination in Article 1 of Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)¹⁹. According to gender equality laws in many developed countries, the de facto legal position of domestic workers in China would be considered “actual” sex discrimination against women in employment. For instance, in Norway, “the most important provision of Gender Equality Law is the general provision which prohibits any form of discriminatory treatment of men and women based on gender... besides obvious discriminatory treatment, general provisions also prohibit indirect discrimination on grounds of gender, that is, the so-called ‘actual’ discrimination” (Li, 2006, p. 658).²⁰ For example, the differentiated treatment between permanent and temporary workers in Norway is illegal, as 90 per cent of temporary workers are female. Differentiating between temporary and regular workers actually places women in a weak position (Li, 2006). Discrimination against domestic workers is the principal reason why home economics/domestic studies graduates in China do not want to engage themselves in this field.

Equal employment is one of the core labour standards of the ILO. There is a famous statement on the basic concept of human rights in Article 1 of the Universal Declaration of Human Rights that “all human beings are born free and equal in dignity and rights”, which reveals the principle of universality of human rights. There is a consensus in the international community that the right to work and rights at work are not only the core of social and economic rights, but also the core of basic human rights. In the early twentieth century, two other more comprehensive and humanitarian viewpoints gained popularity. The first view emphasizes the interdependence between labour conditions, social justice, and peace. The second one promotes the labour concept to human value, social needs, self-realization, and development of the human personality. These views obtained an optimal explanation of their significance in the inspiring statement of the Declaration of Philadelphia that “all human beings... have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity” (Ge, 2003).²¹ Recognizing this, the Chinese Government signed the International Covenant on Economic, Social and Cultural Rights

(5) causes the employment contract to be invalid due to a circumstance specified in the first paragraph of Article 26 of this Law;

(6) gives rise to another circumstance in which laws or administrative statutes permit an employee to terminate his employment contract.

If an employer uses violence, threats or unlawful restriction of personal freedom to compel an employee to work, or if an employee is instructed in violation of rules and regulations or peremptorily ordered by his employer to perform dangerous operations which threaten his personal safety, the employee may terminate his employment contract without giving prior notice to the employer.

¹⁹ Article 1 of CEDAW reads: For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

²⁰ Li Weiwei (2006). *Prohibiting Discrimination in Employment—International Standards and National Practices*. Chinese Law Books Co., LTD. Beijing April 2006, pp: 658.

²¹ Ge Zhenming (2003). *International conventions on economic, social and cultural rights and their implementation*. China Social Sciences Press. Beijing. September 2013, pp: 25–26.

(1966), CEDAW, and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and therefore the Government has an obligations to eliminate discrimination in employment.

Domestic workers are generally recognized as a vulnerable group who hardly have any negotiation capacity. It is clearly stated in the intermediary contract for Chinese domestic workers, “During the service period, if the employee cannot engage in domestic service due to illness, they will be sent home at their own expense.” In an employment setting covered by the Labour Law, this provision would be illegal, but it is allowed within the domestic service sector. The existing laws do not have requirements for intermediary enterprises and private household employers to take responsibility to pay any medical costs for domestic workers. Also, there are no provisions stating that domestic workers should be entitled to receive sick pay. This situation is totally contrary to provisions in labour law stipulating that workers have the right to receive sick pay and be reimbursed for medical costs according to legal standards.

In particular, private household employers generally fall back on the provision of “fault liability” in the Tort Liability Law, 2009, when work-related injuries happen. Under this provision, if domestic workers cannot prove that the employer is at fault, then the employer will not need to compensate the worker. In that event, those domestic workers who do not have employment injury insurance or accidental injury medical treatment insurance will have to bear the consequence on their own. This also runs counter to the standards laid out in Chinese labour law (see section 3.3.2.2 for more details).

Ms Gao, a former domestic worker and officer of the Migrant Women's Club questioned the validity of this arrangement when interviewed for this study:

If people get cerebral thrombosis when they work in a factory, companies will cover the medical treatment without asking how they got this disease; so it is work-related injury. It works the same way for construction workers. If a construction worker gets injured at a construction site, he does not need to cover the expense on his own even if it is due to his negligence. However, how come it is a different story when it comes to work in a private household?

Such disregard for the right to labour security for domestic workers not only increases the vulnerability and marginalization of domestic workers, but also intensifies problems related to domestic workers being "short in supply" or "not attuned to the needs" of the domestic service market. This indirect institutional discrimination against women and direct discrimination against the identity of domestic workers causes more serious consequences than the conceptual gender discrimination because of its mandatory and universal nature, which denies the labour security rights of nearly 20 million domestic workers.

Chapter 4. Internal migration and domestic service: Competent authorities and social organizations

4.1. Government bodies responsible for internal migration and domestic service at the national and local levels

Since the foundation of the People's Republic of China, the Ministry of Commerce has been the national competent authority for the domestic service sector. The Ministry is mainly responsible for conducting statistical analysis of sector data; monitoring the state of business operation related to domestic service; understanding service quality and customer satisfaction; understanding forms of service innovation and other current conditions; development trend; regulating the order of domestic service market; and formulating the regulations and policies to promote the development of the domestic service sector and monitoring the implementation of those orders. The commerce committees of local government at all levels are the competent authorities over the domestic service sectors within their respective competencies. The Ministry of Commerce is ultimately in charge of all domestic workers recruited or introduced through domestic service enterprises. Under the administration of the Ministry of Commerce, where domestic worker can benefit most are from vocational training initiatives under financial support from the Government. For each trainee who receives 150 hours of operational training pertaining to theoretical knowledge and professional skills; passes the examination; and gets engaged in domestic service for at least one year, the training institution gets subsidized between CNY1,200 to CNY1,500. In 2009, 200,000 laid-off urban workers and migrant workers received financial support to work in the domestic service sector after they had been trained at specialized institutions. The Ministry of Commerce provides support all over the country to create domestic service network platforms to match supply and demand. Also, information management by the Ministry helps solve the problem of insufficient information of the domestic workers.²²

The Ministry of Commerce first released its special regulations on the domestic sector, the Interim Measures for the Administration of Domestic Service Sector, at the end of 2012. In particular, Article 4 stipulates that the Ministry of Commerce assumes management responsibilities for the national domestic service sector. Under the Interim Measures, the Ministry claims responsibility for supervising and regulating the service quality of domestic services agencies; guiding and coordinating the text specifications of the contract; and handling service conflicts and disputes. The competent departments of commerce above the county level are responsible for supervising management of domestic service within their respective jurisdictions.

However, as noted above the Interim Measures is concerned primarily with ensuring that the consumers of domestic service (i.e., employers) receive satisfactory service. The regulation expresses

²² The name list of laid-off migrant workers who have not terminated the contract with different agencies and units can be found in these organizations. This research does not include the statistics relevant to the 200,000 laid-off workers in the cities. For farmers with social insurance, they can get unemployment insurance benefits if they lose their jobs. So far, there is no such case nor regulation as reported to the government directly.

many requirements for the qualifications of domestic workers, such as integrity, service attitude, skills, and many other aspects, yet rights protection for domestic workers is missing.

In addition to the above, the Ministry of Commerce focuses on standardization within the industry. On 2 February 2012, the Ministry issued the Basic Norms for Domestic Service (SB / T 10643-2011). The sector standards in this regulation specify the terms and definitions and the basic requirements of domestic service operators, domestic service processes, service contents, service monitoring, as well as contents and requirements to be improved. Ten national standards and more than 70 local standards have been gradually introduced. In addition, based on the provision in Article 30 of the Interim Measures for the Administration of Domestic Service Sector that "the competent commerce departments above county level should guide the formulation of the text specifications of the contract and handle service conflicts and disputes", the Ministry developed the Domestic Service Contract Template.

The outbreak of the financial crisis in 2008 caused a scarcity of employment opportunities, which prompted the Government to focus on the "employment reservoir" function of the domestic service market. Economist Tang Min (2010) estimated that there are 190 million urban households in China. If even 15 per cent of these households had the demand and capacity for domestic service, there would be 28.5 million job opportunities. Deducting the 15 million domestic workers already employed in urban homes, there would still be 13.5 million jobs available to be filled. Tang Min wrote to the State Council and suggested that the State takes measures to promote the development of domestic service sector. In February 2009, the State Council adopted the recommendation from Tang Min and started drafting sector guidance policies. In comments appended to the draft policies, Ma Kai, the Secretary-General of the State Council, pointed out that there is a great demand for domestic service as well as a market potential. He added that households with elderly family members in need of care cannot find appropriate domestic workers. If done well, Ma noted, development of the sector could serve multiple purposes, such as employment management, promoting the employment of migrant workers, improving people's livelihood, and expanding domestic demand. Then-Premier Wen Jiabao and then-vice premiers Li Keqiang and Zhang Dejiang made special instructions and approved that relevant departments should coordinate their research on the sector and develop Guiding Opinions on Standardizing and Developing the Domestic Service Sector.

In order to promote the development of domestic service and further expand employment, the State Council approved the Notice on Establishing Department Coordination Mechanism to Promote the Development of Domestic Service Sector and Employment issued by Office of Central Institutional Organization Commission. In May 2009, a committee was set up of eight ministries and commissions, including the Ministry of Human Resources and Social Security (MOHRSS), the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, the Ministry of Commerce, the All-China Federation of Trade Unions, the All-China Women's Federation, and the Communist Youth League Central Committee. The committee's principal responsibilities are:

- coordinating and handling major issues related to promoting the development of the domestic service sector and employment;
- stimulating the establishment and improvement of relevant laws and regulations;

-
- facilitating the formulation of guiding opinions on the development of domestic service sector and employment as well as long-term development planning and major sector policies;
 - promoting the establishment of service specifications and sector standards; and
 - reinforcing sector management and supervision.

MOHRSS took the lead in organizing the drafting of sector guiding opinions.

According to the comments of the State Council, MOHRSS in conjunction with the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, the Ministry of Commerce, the All-China Federation of Trade Unions, the Communist Youth League Central Committee, and the All-China Women's Federation established an inter-ministerial coordination mechanism to promote the development of the domestic service sector and employment. The first plenary session of the joint conference was held on 8 June 2009.

Issued on 26 September 2010, the Guiding Opinions of the State Council on Promoting the Development of Domestic Service (Order of State Council General Office [2010] No. 43) proposed to protect the legitimate rights and interests of domestic service practitioners with regard to four aspects, including labour relations, labour remuneration, social security and rights protection approaches. These were the preliminary outcomes of the inter-ministerial coordination mechanism to promote the development of domestic service sector and employment, which laid the foundation for the introduction of specific laws. After the document was issued, local governments adopted an inter-bureau coordination mechanism to put forward the implementation of Measures or Opinions.

On 24 December 2014, eight ministries and committees, including MOHRSS in conjunction with the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, the Ministry of Commerce, the All-China Federation of Trade Unions, the Communist Youth League Central Committee, and the All-China Women's Federation, jointly issued the Notice on Standardization and Formalization of Domestic Service Sector (Order of the Ministry of Human Resources and Social Security[2014] No. 98) to declare publicly that the Ministry of Human Resources and Social Security is the lead ministry of the inter-ministerial coordination mechanism to promote the development of the domestic service sector and employment, and that the Ministry of Commerce was one of the members.

In practice, this inter-ministerial joint council is the national competent authority and local inter-bureau joint council is the local competent authority for developing and regulating the domestic service sector. To date, the multi-ministerial management has not yet led to synergy across institutions.

4.2. Civil society and mass organizations

4.2.1. Women's federations and other women's organizations

Women's federations operate at all levels within China, with their own development departments implementing research, conducting legislative advocacy, supporting domestic service enterprises within the women's federation system, and organizing vocational skills competitions. Across all levels,

women's federations have established 2,449 domestic service enterprises and 1,519 training bases. Annually, 560,000 women receive training and 600,000 women are matched with employers. In total, 1.87 million households per year employ domestic workers placed by women's federation enterprises. Through the federations, a large number of female domestic service enterprises have developed into well regarded brands, such as Shandong Sister, Longyuan Sister, Long Sister, Hao Su Sao, Wan Sao, and Hong Du Juan. These enterprises are found satisfactory by the general public, trusted by the market, and abide by standard management regulations and procedures (Qiao, 2014).²³

Other women's organizations work on research, rights protection, and legislative advocacy. One such organization with outstanding performance is the former Women's Law Study and Service Center of the Law School of Peking University, now called the Beijing Qianqian Law Firm (which means "to serve millions of women"). In 2007, with financial support from the United Nations (UN) Theme Group on Gender and the UN Development Fund for Women (UNIFEM, now part of UN Women), the project team of the centre published the findings of the *Study on the necessity of legislation to protect the labour rights of domestic workers* including the draft *Regulations on Protecting the Labour Rights of Domestic Workers*.

4.2.2. Trade unions

Affiliated trade unions of the All-China Federation of Trade Unions at all levels attach importance to the trainings for domestic workers and the relevant research work on the sector. They are mainly responsible for the implementation of the "Domestic Service Programme".²⁴

However, there is only one trade union that is specifically for domestic workers, and it operates in the city of Xi'an. On 23 September 2004 the Xi'an Trade Union of Domestic Workers was founded. The union began with just 162 members, but by the end of 2015 the total number of registered members had reached 1,980. Under the support of the All-Xi'an Federation of Trade Unions and all sectors of society, normal operation of the Trade Union of Domestic Workers has been maintained by membership fees and self-pooled funds. In January 2016, Wang Wei, the current president, said in a telephone interview that the Xi'an Trade Union of Domestic Workers is mainly engaged in the following activities:

1. Receiving visiting members every week to understand their current living conditions at different stages of the employment process and to solve any difficulties they are facing.
2. Organizing trainings for core members and new members to learn the trade union bylaws and the professional ethics required for domestic workers; to cultivate a sense of responsibility among the members; to enhance the awareness of core members to serve the group; and to give full play to the role of core members in the group.

²³ Qiaohong (2014). Build Women's Domestic Service Brands to Accelerate the Healthy Development of Domestic Service. China Women's News Daily. 28 March 2014.

²⁴ In order to effectively implement the Notice of the State Council on Employment Promotion under the Current Economic Situation (No.4 [2009] of the State Council) and the Notice of the General Office of the State Council on the Vitalization and Expansion of Consumption (No.134 [2008] of the General Office of the State Council) to further promote employment in the domestic service sector and expand domestic service consumption, the Ministry of Commerce, the Ministry of Finance, and the All-China Federation of Trade Unions launched the "Domestic Service Programme" in 2009.

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3. Participating in seminars across the country on domestic service legislation and actively advocating for legislation for the domestic service sector.
 4. Holding legal training for domestic workers to improve their awareness of rights protection.
 5. Organizing spring outings, cooking competitions, theatrical performances, domestic workers skills contests, etc., to enrich domestic workers' lives in their spare time.
 6. Holding seminars on work injury protection for domestic workers.
 7. Organizing forums of employers, domestic workers, and intermediary agencies in order to reinforce tripartite communication and promote the development of the domestic service sector.
 8. Recovering the delayed wages of domestic workers in a consultative manner.
 9. Conducting questionnaire surveys among members to understand the basic working situation of domestic workers and occupational disease conditions.
 10. Actively seeking resources from government and communities to help domestic workers in difficulty.

Beyond the assistance and development opportunities offered by the trade union, domestic workers in the organization make new friends working in the same sector. They talk to each other and share their ups-and-downs at work and their happiness and unhappiness in life.

As noted above, the Xi'an Trade Union of Domestic Workers is the sole domestic workers' trade union in China. The committee is elected by its members, who are domestic workers. The president and vice-president are elected based on their public awareness and dedication. The work of the union leaders is long-term and unpaid. This kind of organization, which truly represents the interests of domestic workers, is urgently needed by domestic workers across China.

4.2.3. Migrant Women's Club

The Migrant Women's Club was established on 7 April 1996 by Xie Lihua to remedy the complete lack of organizations serving migrant women in China. Xie Lihua worked as the chief editor of *Rural Women* under the *China Women's Daily*. She was also an officer of the All-China Women's Federation. Xie found that when rural women who came to cities to find work encountered problems, they came to the magazine for help. She recognized that an organization needed to be established to provide service for these women. Since its founding, the Migrant Women's Club has mobilized multiple social resources and provided services to migrant women workers (including many domestic workers) to protect their rights and better integrate into urban life through various channels and in diverse forms (see box 4).

Box 4. An interview with the former head of the Migrant Women's Club

On 9 January 2016, the research team interviewed Ms Han Huimin, former head of the Migrant Women's Club (and current head of the Beijing Tianyi Nursing Home in Beijing). Her review of the experiences of rights protection for the migrant women's club is presented as follows:

"After the Migrant Women's Club was founded, we realized that migrant women were mainly engaged in domestic work, and so we went to different domestic service companies. [Club founder] Xie [Lihua] herself wrote a letter titled "The Letter to the Domestic Workers" to tell them that there was one organization particularly serving them. They could come to read books on weekends. If they had legal problems, the organization would help them. We told them we were their family. Thus, there were nearly one hundred people attending the inaugural meeting of the Migrant Women's Club. The first batch of members were mainly domestic workers. After the establishment, the first things were to teach them to speak Mandarin, to use a computer, and teach them how to adapt to city life.

"Later, we received a lot of complaints/ For example, one domestic worker was bitten by the employer's dog and the employer refused [to pay] compensation. In 2002, we established a rights protection team. Ten more volunteer lawyers and scholars joined the team. Regularly, we sent small cards to domestic workers to inform them to call us for help. When they called us for help, we asked the lawyers to represent them to handle some cases.

"We also did some legal and policy advocacy work. By conducting questionnaire surveys, we understand that the social status of domestic workers is not high and they have no dignity. Some employers were hyper-critical and did not treat them as human beings, and they lacked social security. They also felt that they did not get recognition from this work. Even worse, they did not dare to tell their families that they have worked as domestic workers or they were currently working as domestic workers. For example, one domestic worker was financially supporting her daughter to study at the university, and she did not dare to tell her daughter about her work.

"After knowing this, we published one white paper, *Research on the Rights and Interest of Domestic Workers*, jointly with the Chinese Academy of Social Sciences. We organized seminars. In 2005, the Beijing Migrant Women's Club was subsidized by the United Nations Educational Scientific and Cultural Organization (UNESCO) to propose Policy Recommendations for the Protection of Rights and Interests of Domestic Workers in Beijing. Professor Liu Minghui completed the *Project Report on Policy Recommendations for the Protection of Rights and Interests of Domestic Workers in Beijing including the draft Regulations on the Protection of Rights and Interests of Domestic Workers in Beijing* (expert proposal).

"Later, we asked Professor Liu Minghui to draft the domestic service contract template, including at least eight hours' rest, a separate place for rest, and other provisions.

"After the domestic service training, we composed a training manual for them. The contents of the training manual include how to adapt to city life, how to save money, how to get familiar with the

transport, and how to get familiar with the employer's family. Also, professional knowledge and skills are included. We gave them the manuals through various domestic companies.

“At the spiritual level, domestic workers entered a relatively intimate space and they could not regard the employer as their family. They had some negative emotions. When understanding their relations with their husbands and families, we found that many of domestic workers are single mothers. They had to leave their home to find employment due to divorce, their husband's death, or for some other reason, could not return to their parental homes. Therefore, we established a "single mother mutual-help group" and carried out some group activities regularly. They found this kind of organization very helpful to release their emotions. Thus, this organization [the mutual help group] was fixed. Later, a mutual assistance network between them was formed which could operate independently.

“Domestic workers need a platform to present themselves in a positive light. Thus, we set up a choir for them. They could not only sing but also act their stories through role-play to release their stress. Thus, the Ding Hua Drama Club was founded. This conveyed the message to the public that domestic service work is work with dignity, and they [domestic workers] should be respected. The teacher from the Central Academy of Drama guided their performance. Later, they created a drama themselves and gave a performance publicly at the Chaoyang Theatre. At the beginning of 2016, they were interviewed by the *Focus Interview* programme of China Central Television.”

Source: Interview with Ms Han Huimin, 1 January 2016

The Migrant Women's Club was tasked by the ILO with collecting Chinese opinions on Convention No. 189 while it was still in draft form. The club organized many rounds of dialogue between scholars, lawyers, domestic workers and their trade union representatives, government officials, as well as employers to facilitate the gradual agreement from all parties on the adoption of the text of the Convention and its Recommendations, and submitted the proposed revisions to the ILO Country Office for China and Mongolia.

Chapter 5. Recruitment process

5.1. The factors attracting the rural labour force to cities

5.1.1. Huge demand among urban residents for domestic services

According to Ministry of Commerce figures, in 2014 China's GDP per capita increased to US\$7,575, which is above the global average according to the World Bank.²⁵ With the rapid increase in living standards and growing demand for a higher quality of life, more and more families have chosen to employ domestic workers to assist with the household chores. There is demand among approximately 25 per cent of Chinese families for advanced domestic workers who specialize in roles such as family education, family financial management, family secretary, family driver, home decoration, and other smart-home and housekeeper-type high-end domestic service. In addition, the ageing of the population is a serious concern. As parents of only children gradually join the ranks of the elderly there has been a surging demand for domestic service to provide care.

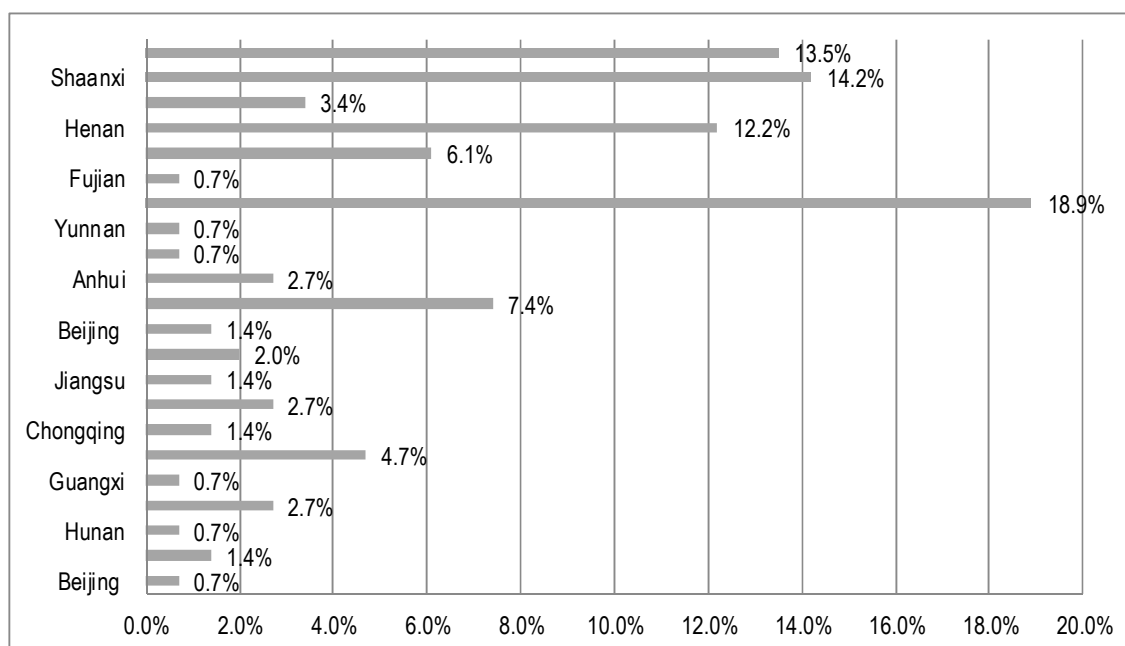
Despite the high demand, recruitment difficulties are common in the domestic service sector. The already short supply of domestic workers in the labour market becomes even worse during the busy farming season and the spring festival. For example, around the spring festival the shortage of domestic workers compared to market demand can climb to between 30 to 50 per cent. The short supply of domestic workers indeed increases their bargaining power, and places domestic service enterprises in a weak position during recruitment. The research conducted for this report shows that this trend is most obvious with maternity matrons. Before 2007, their monthly income was about CNY4,000 (see the story of Feng Ti in box 2, in which one assignment means one month). Among maternity matrons surveyed for this study, the average 2015 income earned for a one-month assignment was CNY8,256, with the highest at CNY19,800 and lowest at CNY3,200. In general, the monthly income of most domestic workers surveyed falls between CNY3,000 to CNY4,000 yuan, a range that accounts for 49 per cent of all domestic workers surveyed investigated. Back in 2003, 68.9 per cent of domestic workers earned an average salary in the range of just CNY300 to CNY500, demonstrating the strong growth in wages within the sector. As part of the study, domestic workers were asked to recall the methods employers used to keep them on as employees; 36 out of 156 respondents (22.4 per cent) stated that a pay raise was the main incentive. This response also suggests that the bargaining power of domestic workers has indeed increased due to short supply.

5.1.2. The low entry threshold into domestic work

The research team surveyed 156 domestic workers from 22 provinces and cities who are currently working in Beijing. The top three sources provinces among the domestic workers surveyed are Hebei, Shanxi, and Gansu (figure 1). Among respondents, 81.4 per cent have rural permanent residence registration and only 18.4 per cent have urban permanent residence registration.

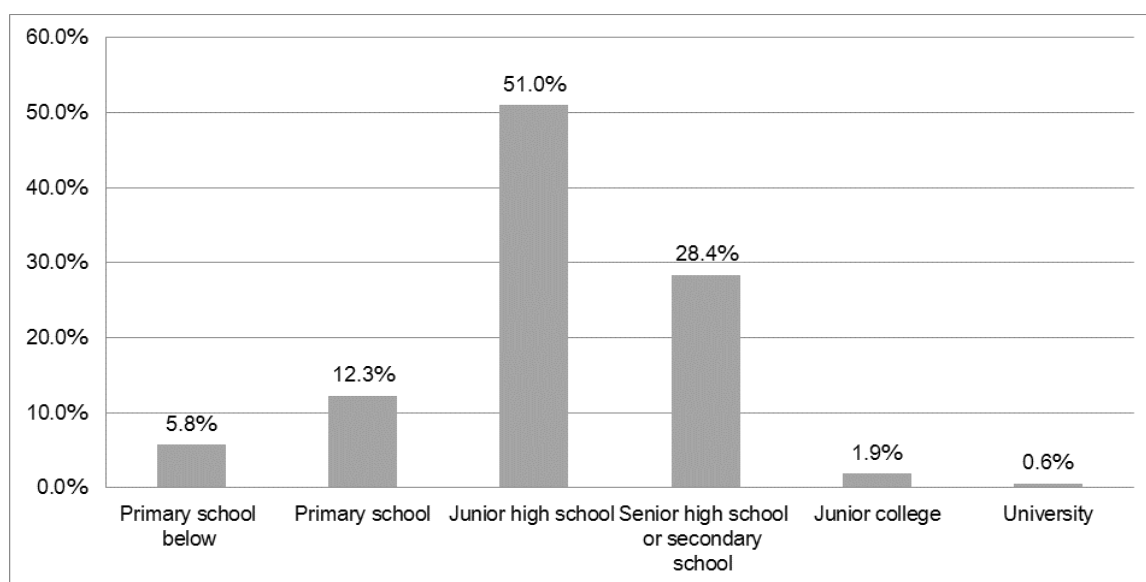
²⁵ Interview with Ministry of Commerce officials, June 2016.

Figure 1. Home provinces and cities of domestic workers surveyed, by percentage



The education level of the surveyed domestic workers is relatively low, and they tend to be older than the average age for Chinese migrant workers. The majority of surveyed domestic workers (51 per cent) have a junior high school education; those with a senior high school education account for 28.4 per cent; graduates of primary school or below account for 18.1 per cent. Only 2.5 per cent had a tertiary education degree (figure 2).

Figure 2. Highest education attainment of domestic workers surveyed, by percentage



The oldest surveyed domestic worker was 55 years old and the youngest was 24 years old. The average age of the surveyed group was 42.2 years old. Most of the domestic workers surveyed were between 41 and 50 years old. There are few people below 30 or over 50 years old in the survey group (see Table 1-1 and 1-2).

Table 1.1. Age data for domestic workers surveyed (N=153)*

Average	Maximum	Minimum	Most common
42.2	55	24	46

* Three survey respondents did not provide valid age data

Table 1.2. Distribution of domestic workers surveyed into age groups (N=153)

24–30 years old	31–40 years old	41–50 years old	51–55 years old
11	39	90	13

* Three survey respondents did not provide valid age data

When asked why they chose this profession, the surveyed domestic workers replied that given their advanced age and low educational background, they found themselves unable to secure other employment.

5.1.3. The upward trend in wages

The latest statistics acquired from the Ministry of Commerce shows that the disappearance of demographic dividend has caused rapid appreciation of labour costs in China. In 2014 the wages of domestic workers increased by 20 per cent over the previous year. In some large cities, the increase in wages is even greater. The average wages of maternity matrons²⁶ in Shanghai increased by 27 per cent from CNY8,322 in January 2014 to CNY10,532 in December 2014. Domestic service in general has developed from only providing simple cleaning, cooking, and the other traditional types of service to knowledge- and skill-based domestic service, such as home nursing, nutrition, children rearing, tutoring, housekeeping, etc. With demand rising, the wages of domestic workers are rising correspondingly.

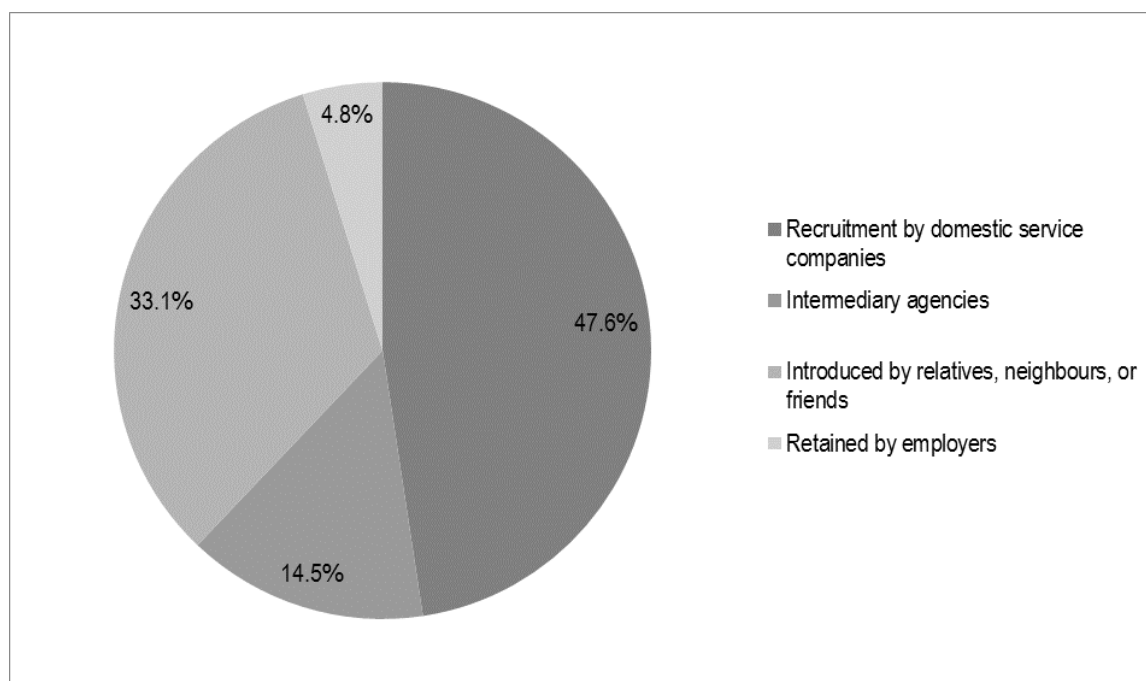
²⁶ That is, the amount paid by employers, which includes the worker's salary and another 30 per cent for agency fees (if an employee system-based enterprise is involved).

5.2. The channels for entering the domestic service sector

Among the surveyed domestic workers, the major channels for entering the domestic service sector are:

- (1) domestic service enterprises – 46.6 per cent; and
- (2) introduction by relatives, neighbors, and friends – 33.1 per cent (figure 3).

Figure 3. The channels by which survey respondents entered the domestic service industry, by percentage



As noted in section 2.2, there are three types of business models for domestic service companies: employee system, membership system, and intermediary system. If job seekers apply for jobs offered by employee system-based domestic service enterprises, they will be dispatched to places where employers need domestic service, such as homes, hospitals, or during travels when needed. Domestic workers sign labour contracts with the domestic service enterprise and are managed by that enterprise. As such, they are identified as "workers" by the State and enjoy the benefits of an urban social pension, as well as medical, unemployment, work injury, and maternity insurance. Employee system-based domestic service enterprises sign labour dispatching contracts with the actual private household employers. As agreed in that contract, the private household employers contribute the money and the domestic service enterprises handle the procedures of securing social insurance for domestic workers.

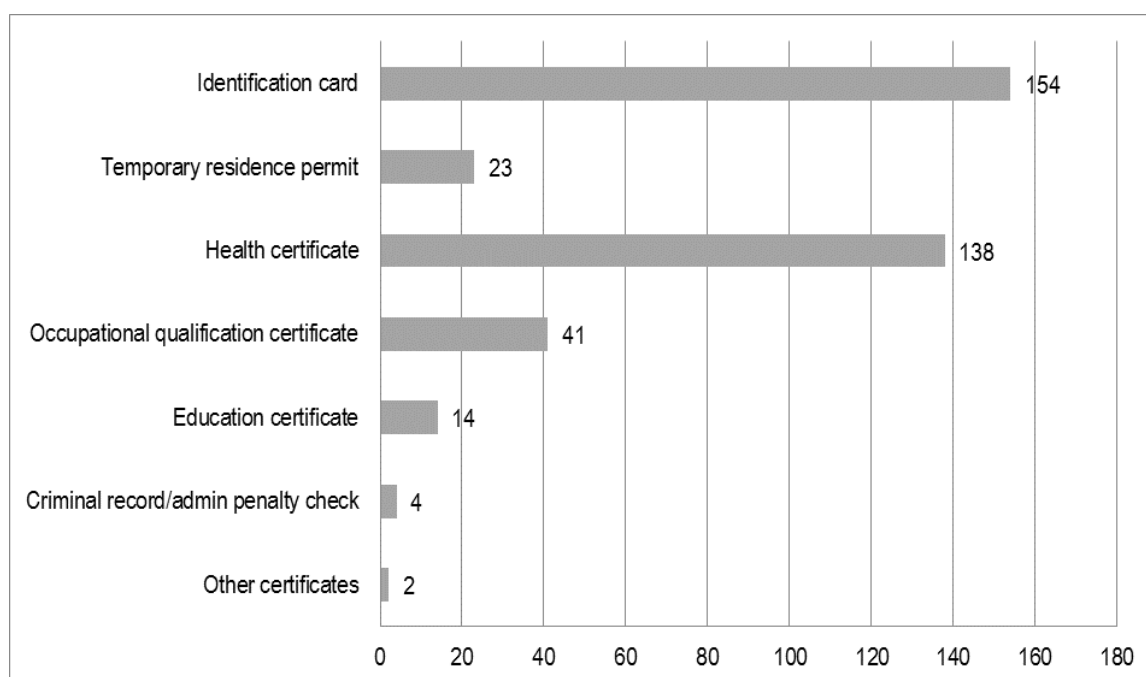
If the job seekers apply for jobs offered by membership system-based or intermediary system-based domestic service enterprises, generally they only receive the intermediary service (i.e.,

placement in a private household workplace) and are not protected as "workers", as the Labour Law does not apply to these types of domestic workers.

5.3. Cost and time involved

Regardless of which legal channel they choose to enter the domestic service sector, domestic workers are required to provide documentation in accordance with the requirements of employers, particularly their identity card and health certificate (see figure 4). It is rare that domestic workers are required to provide proof of not having a criminal record or any record of administrative penalties. A general physical examination is required, as is a health certificate that costs CNY76. The cost of a vocational qualification certificate varies based on the different types of work, ranging from CNY400 to CNY2,000.

Figure 4. Certificates required of domestic workers surveyed to secure employment (N=156, more than one answer possible)



5.3.1. Introduction by relatives, friends, and neighbours

This approach costs the least and takes the shortest time. The domestic workers only bear the cost of travel expenses and the CNY76 cost of securing a health certificate. The domestic workers agree on the date to start service through the acquaintance, and they directly go to the employer's home to work after coming to Beijing. However, these domestic workers and employers face the highest risks, because there

are no domestic service enterprises involved to review the health and integrity of both the domestic worker and the private household employer. Also, there are no vocational trainings and insurance for the domestic workers, and often there are no contracts to bind both parties.

5.3.2. Introduction via intermediary system-based enterprises

**Box 5. Placement by an intermediate agency:
The experience of maternity matron Li Duolan**

“Most of the maternity matron companies charge a 30 per cent management fee. They think that after determining the wages with the maternity matrons, how much they actually charge the clients is their own business and has nothing to do with maternity matrons. However, this is not like buying something, and one can bargain freely. The more money the clients pay to the maternity matrons’ companies, the higher requirements they will impose on the quantity and quality of the service, such that maternity matrons will feel more exhausted. As the company charged us a management fee, they should fulfill some obligations. First, they should help us pay for work injury insurance. Second, they should undertake the responsibilities for follow-up services to coordinate the conflicts or disputes caused by rights and interests between employers and us. Also, they should pay us a minimum living allowance or the minimum wage during our working gaps. Only then we can accept a management fee of up to 20 per cent.”

From an interview with Li Duolan, a former Beijing maternity matron from Jiangxi Province. Now she is a waitress in a restaurant.

The possibility of domestic workers being exploiting and defrauded exists if they enter the sector through intermediary system-based enterprises. There are no standards dictating the fees that intermediary agencies can charge. Some intermediary agencies deduct one month’s worth of the domestic worker’s wages as the intermediary fee. Some “illegal intermediary agencies” charge fees but do not provide intermediary services. In these cases, domestic workers sometimes find themselves in a community away from their home without a source of income and have no recourse but to return home empty-handed.

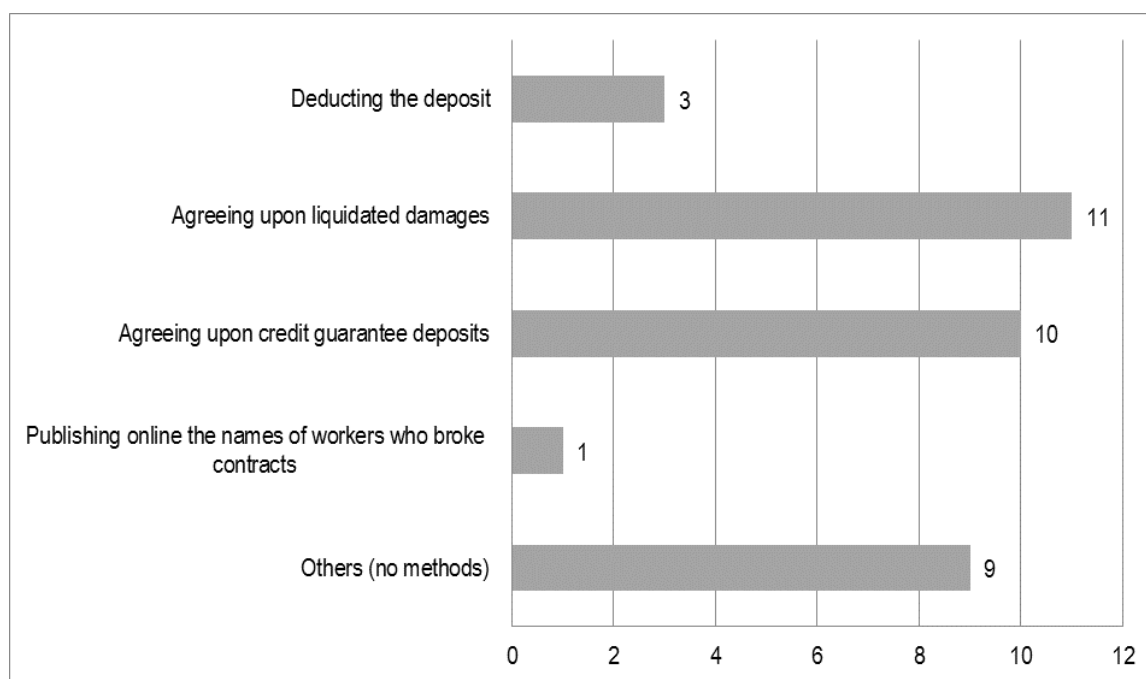
In recent years many domestic workers have aspired to go abroad to work on temporary assignments as maternity matrons and nannies. The monthly wage for maternity matrons or nannies can be about CNY15,800 for assignments in the United States, Canada, and other developed countries. For example, Mr Zhang, an employer from Beijing interviewed for this study, sought to employ a maternity matron for two months to take care of his daughter-in-law, who is living in New York. The intermediary company not only charged him CNY11,000, but also deducted one month’s wage, CNY12,000, from Ms Wang, the domestic worker. The company claimed that the CNY12,000 would be returned to Ms. Wang only if came back after the expiration of two-month contract and if she would continue to receive future intermediary services from the company. It should also be noted that the intermediary fee paid by Mr Zhang was equivalent to 41.67 per cent of what Ms Zhang would be paid for the assignment, higher than the 30 per cent average rate charged by employment system-based agencies (which provide social

insurance to workers). The domestic worker signed a domestic service contract with the intermediary company in duplicate. However, both copies were kept by the company; the domestic worker did not have a copy of the contract. This presents the risk that the intermediary company could tamper with the contract contents. The domestic worker could not remember the terms in the contract and did not know how to safeguard her rights if the deducted wages would not be returned. Such cases are not rare.

For-profit intermediary agencies charge domestic workers about CNY1,500 in training fees, and generally this money will be returned only if the domestic workers fulfils a one-year work stint as stipulated in the contract. Moreover, one-month wage is deducted as potential “penalty for contract breach” or as a “credit guarantee deposit”. If a domestic worker quit their job within one year, the “penalty” or “credit guarantee deposit” monies will be retained by the company. Intermediary agencies use this as a way to prevent the unforeseen departure of domestic workers from their employment situations. Figure 5 shows the methods adopted by the 32 domestic service enterprises surveyed to prevent job hopping.

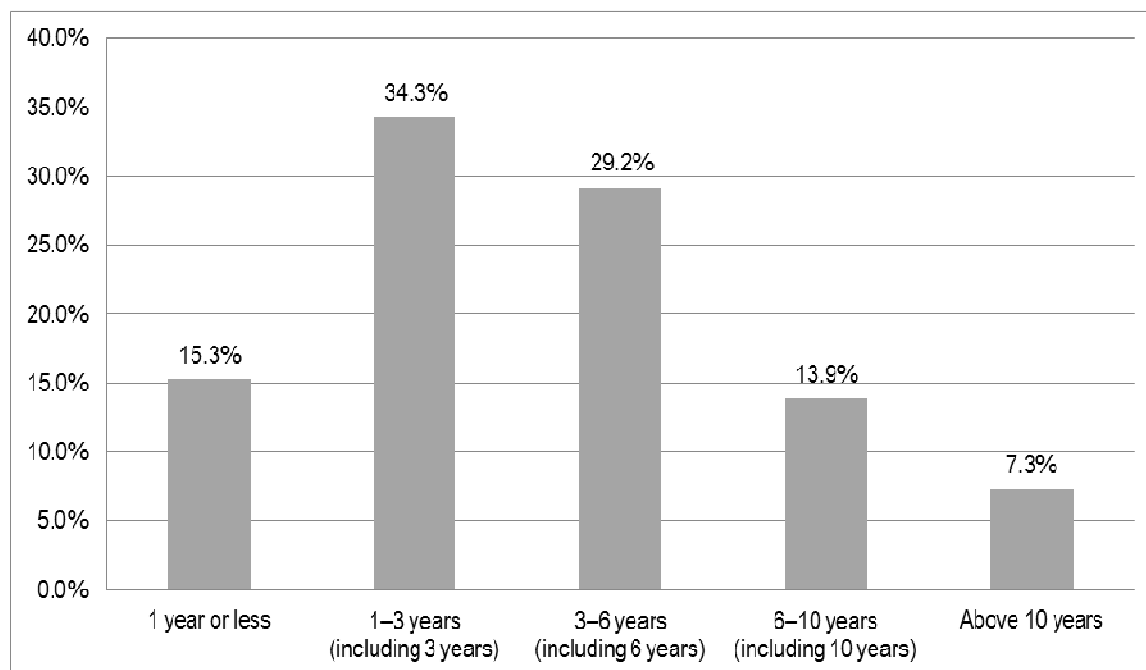
The Labour Law has prohibited employers from charging any recruitment fees in other sectors.

Figure 5. Methods used by domestic service enterprises to prevent “job hopping” by domestic workers



Survey responses from domestic workers indicate that 15.3 per cent of them have been working as a domestic worker for less than one year (figure 6). The domestic workers who found their job via domestic service companies paid the equivalent of the one month’s wage for this.

Figure 6. Time spent working as a domestic worker in years, by percentage of survey respondents



The survey questionnaires for employers (N=100) show a high amount of domestic worker turnover, with the average employer changing to new domestic workers twice in one year. Indeed, one employer respondent changed domestic workers ten times in the span of a single year (table 2). The problem that the supply of qualified domestic workers cannot meet the demand is a serious one, and can be associated with the low education level, poor quality of service, and low professionalism of domestic workers. With so much changeover, the cost of securing employment increases for domestic workers, given that every time they start a new job they may have to pay another intermediary fee.

Table 2. Length of service of domestic workers (for one family), as reported by employers*²⁷

	Maximum	Minimum	Average	Most common
Length of service, short-term hire (in days)	840	1	66	30
Length of service, long-term hire (in years)	15	0.1	2.84	1
No. of times changing domestic workers in previous year	10	0	2	0

* Corresponding data from domestic workers is not available.

²⁷ This table which comes from employers shows that employers change domestic workers at a frequent rate, up to ten times a year. No source of domestic worker is given.

In recent years, recruiting domestic workers through online platforms has become popular, which is referred to as O2O e-commerce (online payment and offline consumption). Popular websites for domestic worker recruitment include 58 Dao Jia, Jia Wu Bao, and Wu You Bao Mu. This method of recruitment has a strong impact on businesses with physical office locations, because hourly domestic workers prefer to take jobs through the websites and their incomes increase due to more orders for their services. E-commerce benefits from the advantages of the internet, such as trans-regional, boundless, mass information, and mass users. Internet-based domestic service enterprises can not only recruit already-trained domestic workers, thereby saving themselves the training cost, but they also save the cost that other domestic service companies pay to go to countryside to recruit people. (Domestic service enterprises generally pay about CNY300 per worker to the local women's federation and other bureaus in the labour-sending locale). Many web-based domestic services also charge an intermediary fee referred to as an "information service fee", which is actually the entry cost to be paid by the domestic worker. Membership system-based network platform A Yi Lai Le charges 20 per cent of its members' first month's wages. This includes CNY60 of commercial insurance to cover personal accidents (including medical costs) to a maximum amount of CNY100,000 (see table 3 for another a sample fee structure).

Table 3. Information service fees (including insurance) charged by domestic worker recruitment website 58 Dao Jia

Length of service term	Information service fee
3 months	30% of the first month's wage
6 months	40% of the first month's wage
1 year	50% of the first month's wage

Source: <http://bj.daojia.com/baomu/> (accessed 5 March 2016).

5.3.3. Recruitment via employee system-based domestic service companies

Employee system-based domestic service enterprises do not charge any intermediary fees, and according to the Labour Law they should provide free occupational training of 150 to 180 course hours (three to four weeks). Article 60(3) of the Labour Contract Law stipulates that "no dispatch service provider or labour-receiving entity may charge any fee against any dispatched worker". However, employee system-based domestic service companies charge management fees of private household employers. For example, the monthly wage for the maternity matron working abroad is CNY 15,800. An employee system-based domestic service company would charge the employer a monthly management fee equivalent to 30% of that wage, while the company itself pays five types of social insurance, an expense of at least CNY1,274 per month, per worker (in 2015). At the moment, five employee

system-based domestic service enterprises in Beijing are being subsidized by the Government to enable them to better afford the CNY1,720/person monthly social insurance fee.²⁸

In addition, domestic workers employed by employee system-based enterprises are entitled to be paid the minimum wage (CNY1,720 per month in Beijing in 2015) during the hiatus period between two work assignments. This payment between assignments is in accord with the provisions of Article 58(2) of the Labour Contract Law: “

The labour contracts between a dispatch service provider and the workers to be dispatched shall be fixed-term labour contract with a term of no less than two years. The dispatch service provider shall pay the remunerations on a monthly basis. During the time period when there is no work for the workers, the dispatch service provider shall compensate the workers on monthly basis at the minimum wage prescribed by the local government of the place where the dispatch service provider is located.

The domestic workers with employee system-based domestic service enterprises typically have a high degree of occupational recognition and their jobs are relatively stable. The entry cost for these domestic workers is extremely low. Besides transportation costs, the workers only pay a "credit guarantee deposit", which they would forfeit to the company if they leave before one year. However, the majority of these can work for at least one full year, and the risk of losing the deposit is typically not high. Hourly workers and other domestic workers who do not live in the employers' homes can live in a company-provided dormitory at a cost of CNY10 per night.

During one of the group discussions held for this study²⁹, Zhang Yingxin, manager of the employee system-based enterprise Beijing Right at Home in-Home Care and Assistance Co., Ltd, noted that benefits of the employee system are that it helps reduce staff turnover and attracts qualified workers: "Basically, our employees are very stable because we adopted an employee system at the beginning. Although there is a certain turnover rate (i.e., change of employer) and some of the employees dropped out, the rate is very low. If someone is unqualified, we encouraged her to look elsewhere."

Relatively high turnover rates among domestic workers placed by intermediary system-based domestic service enterprises increases the domestic workers' entry costs accordingly.

²⁸ The reason for these government subsidies is because no agency responded to the Beijing Municipal Government's advocacy in support of the employee system. The five companies currently receiving subsidies were chosen for pilot testing, and their main business is providing domestic workers who are urgently needed by citizens, such as maternity matrons, elderly care workers, nannies, and nursing workers. There are no additional resources at present for subsidizing domestic worker social insurance.

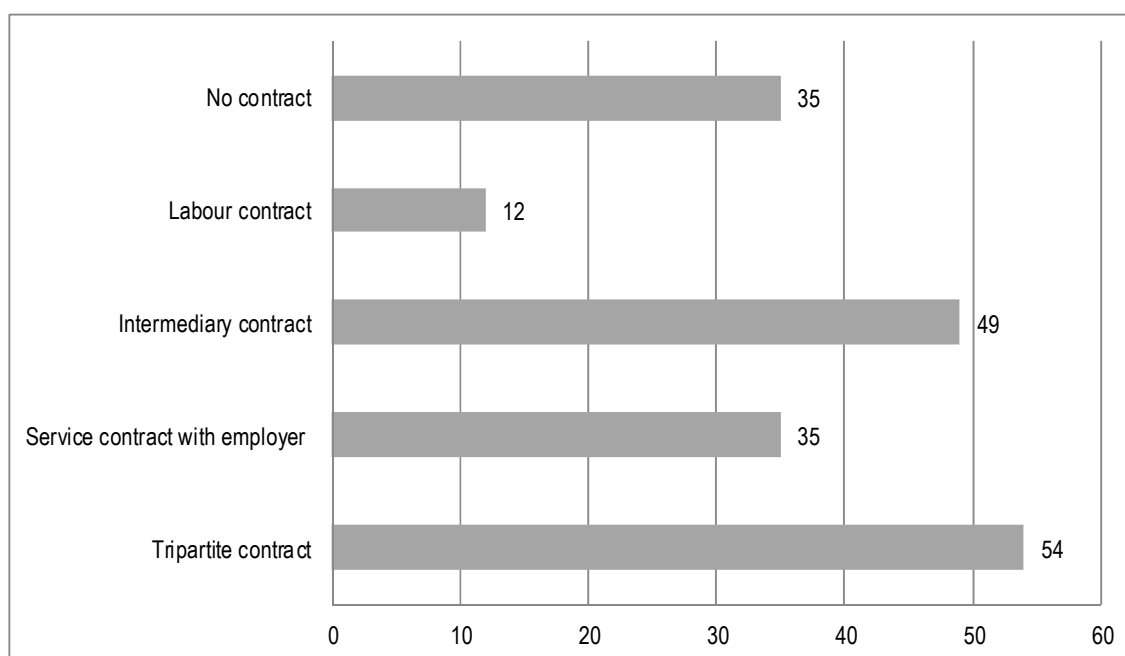
²⁹ On 9 March 2016, a focus group discussion was held at Beijing Human Resource and Social Security Bureau with eight participants from domestic service enterprises, MOHRSS, Labour Science Institute and Home Economics/Domestic Studies institute.

Chapter 6. Employment, working conditions, and treatment of domestic workers

6.1. Current situation with regard to signing a written contract

Only 12 out of the 156 surveyed domestic workers have signed a labour contract. Fifty-four of the surveyed domestic workers signed a tripartite contract (i.e., a contract signed among the domestic service company, the domestic worker, and the employer). Forty-nine people signed intermediary contracts. And 35 people (22.4 per cent of respondents) did not sign any contract at all (figure 7).³⁰ It is important to note that tripartite contracts and intermediary contracts are not admissible under the Labour Law, which applies only to labour contracts. Domestic workers who sign a tripartite contract or an intermediary contract do not have legal status as workers. Their employment is regulated by civil law.

Figure 7. Types of contracts signed by surveyed domestic workers (N=156)



6.2. Working hours, rest, and annual leave

The average daily working hours of general domestic workers who responded to the survey are 12.9 hours. For the purposes of this report, “general domestic workers” refers to domestic workers who

³⁰ Tripartite contract and intermediate contract are not applicable to Labour Law, only labour contract is applicable to Labour Law. Domestic workers who sign a tripartite contract as well as intermediate contract do not have legal status as workers but are adjusted by Civil Law.

are neither maternity matrons nor nannies. The majority of general domestic worker respondents (59.3 per cent) work for 8–12 hours per day (figure 8). Most general domestic workers surveyed (63.8 per cent) receive four rest days per month (figure 9).

Figure 8. Typical daily working hours reported by general domestic worker survey respondents (N=59), by percentage

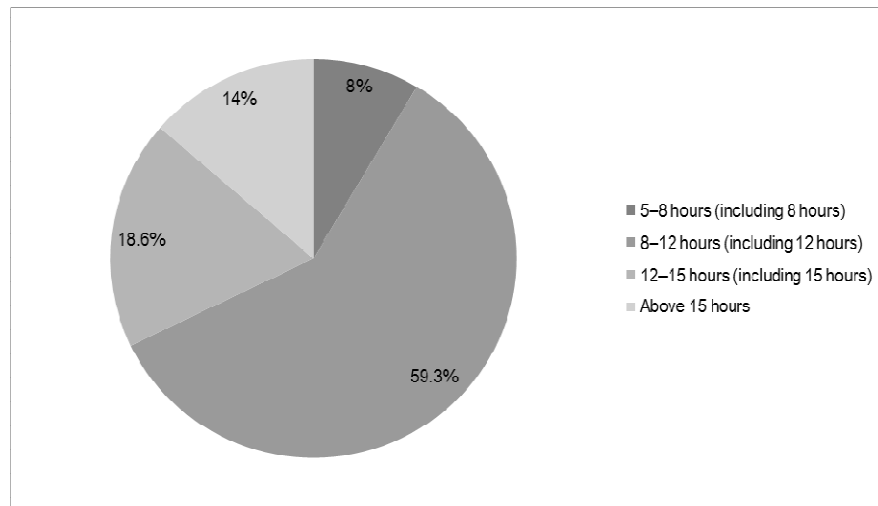
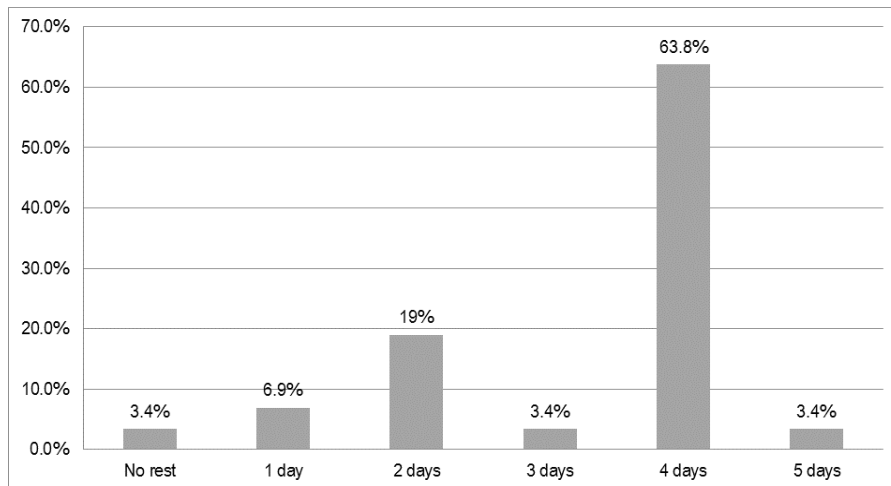


Figure 9. Average days of rest reported by general domestic worker survey respondents (N=59), by percentage



The average daily working hours of domestic workers engaged in maternal and child care were generally reported to be higher than domestic workers engaged in other tasks. Maternity matrons surveyed for the study (N=42) averaged 16.5 hours of work per day. The shortest daily working time

reported by maternity matrons was 8 hours and the longest reported was a full 24 hours. The average daily sleeping hours for maternity matrons was 5.6 hours. The longest sleeping time reported by a maternity matron respondent was eight hours and the shortest was only two hours. The average daily sleeping time desired is 7.6 hours (table 4).

Table 4. Typical daily working hours and rest times reported by maternity matrons surveyed in the study (N=42)

	Maximum	Minimum	Average
Working hours	24	8	16.5
Sleeping hours	8	2	5.6
Desired daily sleeping hours	10	4	7.6

Households employing maternity matrons will provide those matrons with varying levels of support in the domestic sphere. Employers who made use of the services of maternity matrons (N=42) were asked about how domestic tasks were distributed during the period when the maternity matron was in their home. Nearly half of employers (47.60 per cent) did not employ additional domestic workers while the maternity matron was in the house, but the family attended to chores to enable the matron to focus on her caring duties. Nearly a quarter of employers (23.80 per cent) did not employ another domestic worker, and required the matron to also handle all the housework tasks. Only 19 per cent of employers employed additional domestic workers to provide domestic service during the period when the maternity matron was employed.

One-third of maternity matrons (33.3 per cent) reported that they seldom went out for a walk outside; 26.2 per cent walked outside occasionally; and 23.8 per cent of the maternity matrons were completely unable to go out for a walk. Only 9.5 per cent of the maternity matrons surveyed could often take a walk outside.

Nannies surveyed for the study (N=44) reported average daily working hours of 12.5 hours. The longest daily working time reported was 24 hours and the shortest was 6 hours. The average annual vacation reported was 34.5 days. The longest vacation time reported was 60 days and the shortest was just one day (table 5).

Table 5. Daily working hours and days of annual leave reported by nannies surveyed (N=44)

	Maximum	Minimum	Average
Daily working hours	24	6	12.5
Days of annual leave	60	1	34.5

Data from the employers surveyed suggests that general domestic workers receive approximately four rest days per month on average, which is in line with what was reported by the workers themselves (see figure 9 above).. The smallest number of monthly rest days reported by employers was no rest and the highest reported was ten days per month. Maternity matrons generally receive significantly fewer rest days during their one-month assignments, which the average reported by

employers being less than a single day (0.7 days). The smallest number of monthly rest days reported by employers was no rest and the most common answer provided by employers was two (table 6).

Table 6. Number of rest days per month for general domestic workers and maternity matrons as reported by employers

	Maximum	Minimum	Average	Most common
General domestic workers	10	0	4.3	4
Maternity matrons	6	0	0.7	2

Maternity matrons, among all domestic service roles, have the shortest rest, which is quite at odds with the desired rest periods put forward by the matrons themselves. Their right to rest is in urgent need of legal protection.

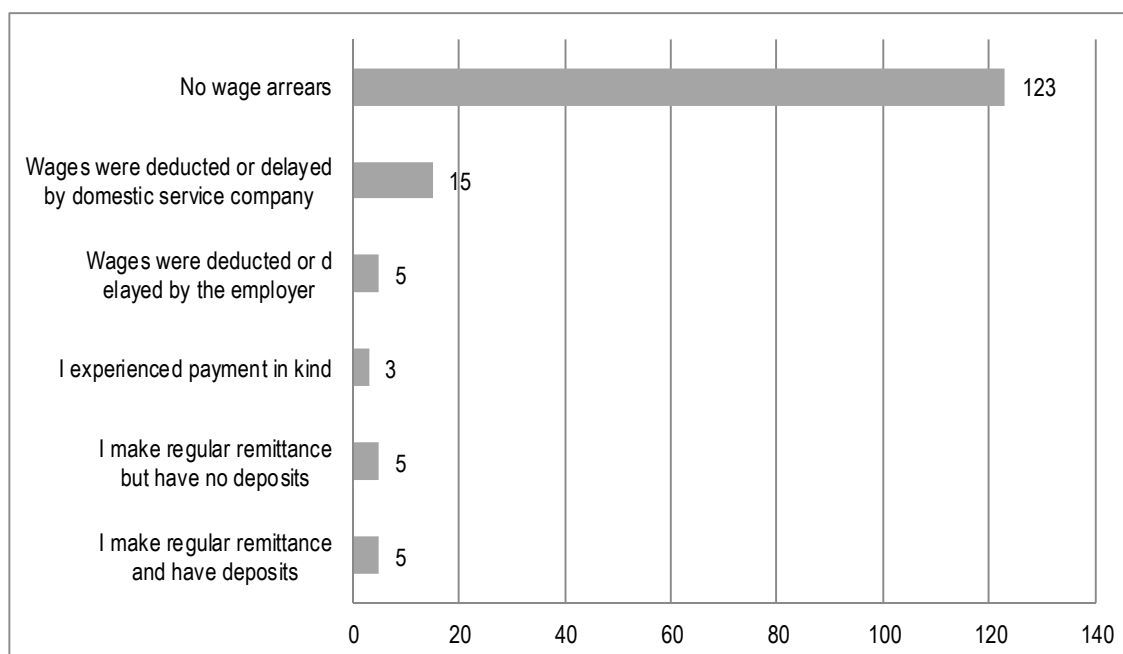
6.3. Wages, payment terms, and the pay cycle

Wages depend on the supply and demand relationship within a sector and the skills required. Maternity matrons and nannies are short in supply and there are high skills requirements. Consequently, their wages are also high relative to other types of domestic workers. The supply of general domestic workers, who often lack sufficient skills, exceed demand and their wages are relatively low. There are two types of payment: cash and deposit via bank card. Payment in kind is very rare.

As noted above, the average 2015 income per assignment reported by surveyed maternity matrons was CNY8,265. The highest income per assignment reported was CNY19,800 and lowest income reported was CNY3,200. The average monthly income reported by nannies surveyed in the study was CNY4,760. The highest income reported was CNY8,000 and the lowest CNY2,000. The maximum monthly income reported by general domestic workers surveyed was CNY5,000 and the minimum was CNY2,500. The most common monthly income reported by general domestic workers was CNY3,000. The monthly income of nearly half of all workers surveyed for this study (49 per cent) lies between CNY3,000 and CNY4,000. Employers were asked what they pay to domestic workers that work on holidays instead of taking a day off; 47 employers said they pay double wages; 17 pay triple wages; and, 21 employers just pay the normal wage.

According to various types of full-time domestic workers and hourly workers, the wage payment cycle can be one month, one week, or one hour, depending on the arrangement with the employer. Among the 156 domestic workers surveyed, 15 experienced their wages being held in arrears by a domestic service enterprise (see box 6 for example) and five people's wages were delayed by an employer. Ten workers reported making regular monthly remittances (figure 10). Among the domestic workers surveyed, 11.4 per cent experience a situation where their wages were delayed for one month, and an additional 2.1 per cent experienced delays of two months.

Figure 10. Domestic worker responses to whether they have experienced wage payment delays



Box 6. Delay in wage payment by domestic service enterprises: A case study

Surveyed workers who did experience delayed payment or wage deductions tended to claim that these delays were caused by a domestic service enterprise. This finding is in accord with the findings of the *Research on the Legislation of Domestic Service Industry Management* under the Ministry of Education's "Humanities and Social Sciences Project", conducted between December 2009 and December 2012 by Liu Minghui. In an interview in 2010 conducted under the above-mentioned research, Mr Wang, an employer, said.

Xiao Yue got her first job after joining the company. A woman had abortion and needed to be taken care of for two weeks. [Xiao Yue] looked after the woman for 16 days and returned to the company. However, the company paid her nothing based on the regulations that the employees could get their wages only if they worked for one month. I paid the company punctually every month but the company did not timely pay the wages to domestic workers for various reasons. When working at my home, Xiao Yue was always thinking about her wages. She was always in that state so that we were afraid that she could not even take good care of the baby.

Source: Research on the Legislation of Domestic Service Industry Management under the Ministry of Education's "Humanities and Social Sciences Project", December 2009 - December 2012

As the dependence of employers on domestic workers has increased, delayed wage payment by the employers is becoming less common. Domestic workers frequently apply the method of "voting with the feet" by leaving employers who are slow to pay their wages. There is short supply of workers in the domestic service market, and employers who delay paying wages face the awkward situation of losing their current domestic worker and finding it difficult to locate a replacement immediately. The domestic service enterprises that delay paying the wages of domestic workers are often the ones with hybrid management and administration systems.

Compared with previous investigations, there is a substantial increase in the wages of domestic workers. In October 2003, a research team on the rights and interests of informally employed workers from the Migrant Women's Club visited 109 domestic workers. They found that regardless of skill level and working experience, domestic workers being paid CNY300–500 accounted for 68.9 per cent of all the sample group. In September 2004, according to data collected from 206 domestic workers by the Migrant Women's Club, monthly wages for domestic workers had increased compared to 2003, but half of the domestic workers surveyed were being paid wages below the then-minimum wage of CNY545 per month. Despite the imbalance between supply and demand in the domestic service market, the wages of domestic workers increased by only CNY50 in 2004 in Beijing compared to the previous year (see table 7 for more).

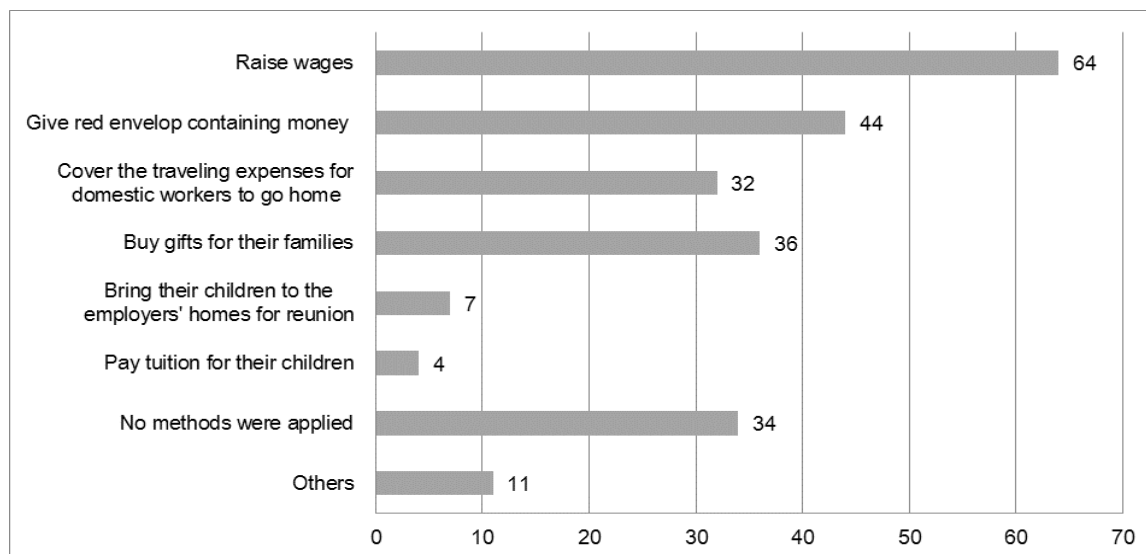
Table 7. The wages of domestic workers in Beijing in 2004

Monthly wage (CNY)	Percentage
301–400	5.80%
401–500	16.50%
501–600	31.60%
601–700	19.90%
701–800	15.50%
801–1 000	7.80%
1 001–1 500	2.90%
Source: Migrant Women's Club, 2004	

Even removing the factor of inflation from the new survey of domestic workers in Beijing, domestic worker wages have indeed increased considerably. As noted above, nearly half domestic workers were making between CNY3,000 and CNY4,000 per month. And not a single domestic worker surveyed for this study reported earning a wage at or below the Beijing minimum wage (CNY1,720 per month in 2015).

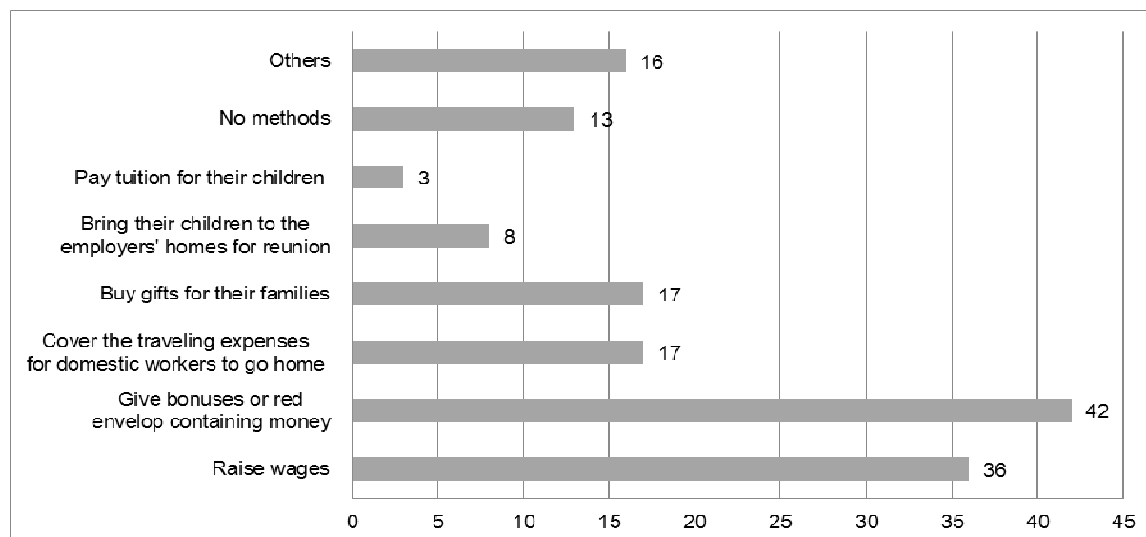
Domestic workers were asked as part of the survey to state the methods that employers used to retain them. The most common methods utilized by employers – according to domestic workers – was to raise wages or provide bonuses. In addition to increasing wages and other commonly used methods, seven domestic workers surveyed recalled that the most touching way used by the employers to retain them is to bring the workers' children to employers' home for a reunion (figure 11). Although this is rare, it is nonetheless a good practice.

Figure 11. Methods utilized by employers to retain domestic workers, according to domestic workers (N=156, more than one answer possible)



One-hundred employers were also asked what steps they have taken to retain domestic workers, and their responses largely align with the answers provided by the workers themselves. Forty-two employers chose to give their domestic workers bonuses or red envelopes containing money as a gift; 36 raised their employee's wages; 17 covered the traveling expenses for domestic workers to visit home; 17 bought gifts for workers' families; eight brought the domestic worker's children to their home for a reunion; and three people chose to pay tuition for the children of domestic workers.

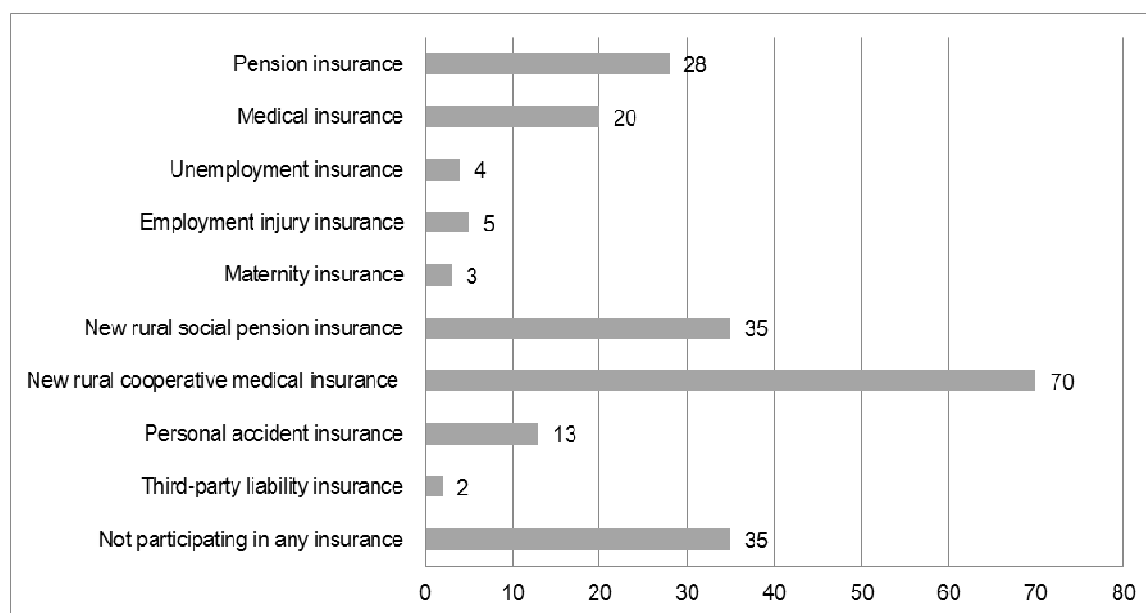
Figure 12. Methods utilized by employers to retain domestic workers, according to employers (N=100, more than one answer possible)



6.4. Maternity and other social security

The survey questionnaire asked domestic workers about their access to and use of social insurance policies and programs (figure 13). Thirty-five out of 156 domestic workers surveyed were "not participating in any insurance". The most commonly accessed social insurance utilized by the domestic workers surveyed, with 70 participants, was the new rural cooperative medical insurance, and 35 domestic workers participated in the new rural social pension insurance, which is related to preparing for their old age. If a domestic worker would like to receive a pension from the social insurance for urban workers program, they have to pay a total of 15 years of pension insurance contributions. Under that scheme, female workers retire when they are 50 years old. If they start to pay their insurance contribution when they are 40, many of them cannot fulfill the 15-year obligation. This being the case, only 28 of the domestic workers surveyed participated in this pension insurance. Only three domestic workers surveyed participated in maternity insurance, because the Social Insurance Law does not enable the workers considered to be of the "flexible employment group" to pay into maternity and work injury insurance. When asked, "If you wish to give birth, what is your concern?"³¹, 33 people expressed worries over losing their job due to their pregnancy and having to return home, and 28 replied that they feared "the working conditions and the environment [would] not [be] suitable for fertility". In interviews it was found that once pregnant domestic workers tend to return to their hometowns and prepare for delivery. The new rural cooperative medical insurance can reimburse part of the medical costs related to maternal health and delivery.

Figure 13. Social insurance programs participated in by domestic worker survey respondents (N=156, multiple answers possible)



When the 156 domestic workers surveyed answered the question, "Who pays for the medical expenses when you are sick?", 100 selected, "Myself"; 31 selected "Employer"; and 11 selected

³¹ The sample of domestic workers asked this question (N=156) does not include those domestic workers from employee system-based domestic service enterprises, as all of them participate in the five social insurances for urban workers.

domestic service enterprises. Just three domestic workers selected reimbursement by insurance companies. Nine workers chose to borrow money from relatives and friends, while seven selected "Endure due to lack of money" (figure 14). With regard to meeting the costs of commercial health insurance, 32 domestic workers said their insurance costs were covered by a domestic service enterprise; 23 people's costs were paid by the employers; 56 people paid the insurance contribution by themselves; and 58 (37.2 per cent) did not buy insurance (figure 15). The results suggest that the situation with regard to health insurance coverage of domestic workers is not optimal.

Some domestic worker respondents are from Beijing Fu Ping Domestic Service Center. In 2002, Mr Mao Yushi, and Dr Tang Min, then-chief economist at the Asian Development Bank, jointly initiated the non-profit Beijing Fu Ping Domestic Service School and Beijing Fu Ping Domestic Service Center. They hoped to provide reliable, professional, and guaranteed domestic service to urban residents, as well as decent job opportunities for disadvantaged women from central and western regions at the same time. Between the establishment of Fu Ping Emergency Medical Relief Fund for Domestic Workers in July 2005 and the end of 2015, 147 domestic workers in total from the centre have received relief money, amounting to CNY189,322.36. This is a good practice. However, given that the centre operates as a charity institution rather than a profit-oriented commercial institution, it will likely be very difficult to popularize the centre's practices among domestic service enterprises. For examples of good practices by employers related to provision of health coverage, see box 7 below.

Figure 14. Domestic worker response to question, "Who pays for medical expenses when you are sick?" (N=156)

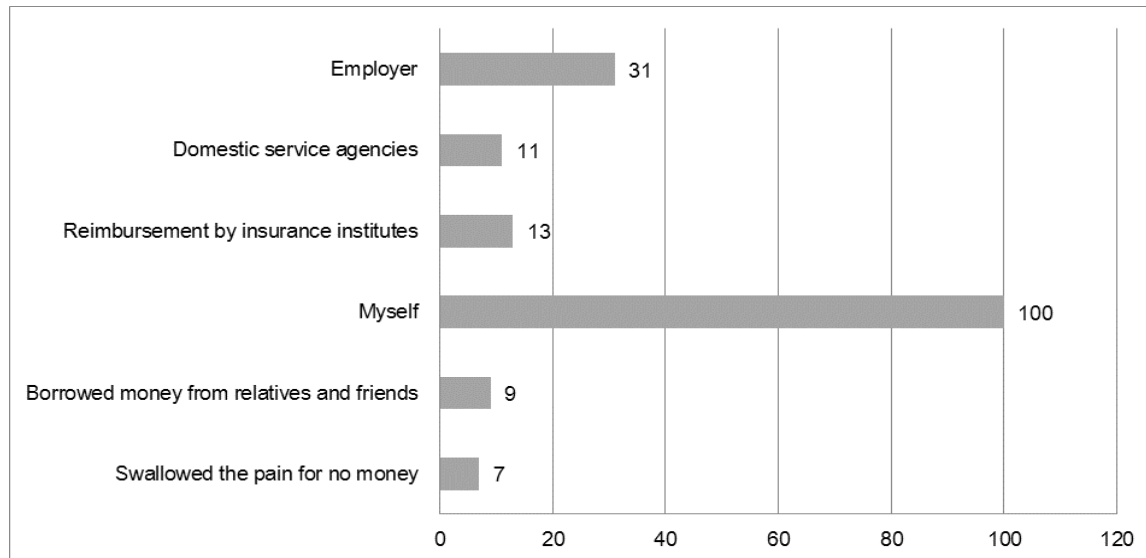
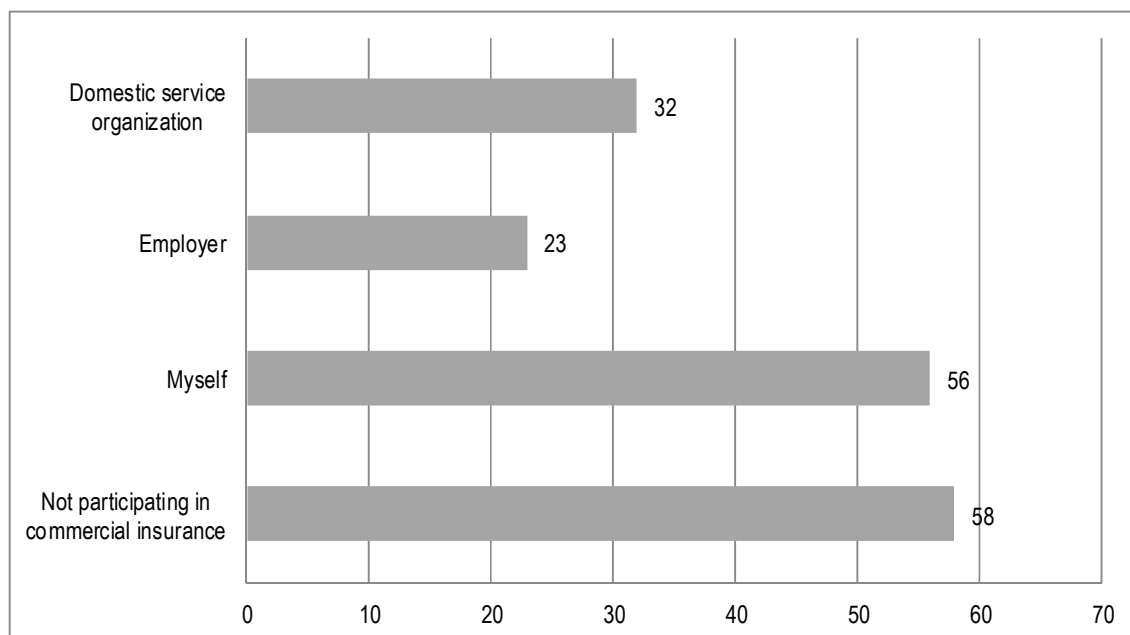


Figure 15. Domestic worker responses to question, “Who paid for commercial insurance for you?” (N=156)



Box 7. Case study: Good practices in employing domestic workers

In the absence of medical and social security, some domestic workers turned to their employers for help. In late February 2016, the research team interviewed Ms Liu, a middle-aged associate professor and gender equity specialist. She told us a story about how she kindly treated her domestic worker.

Q: How is the domestic worker in your home? How many years has she been working in your home?

A: Very good. She has worked for six years.

Q: Other people change domestic workers very often, why has this domestic worker worked for you so long?

A: My family regarded her as a family member. My daughter is in Grade 4 in primary school. When the domestic worker was sent her to school and her classmate asked her, "Who is she?", my daughter replied, "She is my aunt". If someone asks my daughter, "How many people are there in your family?", she will answer, "Four people: father, mother, aunt, and me."

Q: Why does your daughter regard the domestic worker as a family member?

A: Because my husband and I are very busy. I travel very often. My parents are in our hometown, and they cannot help me to take care of my daughter. My daughter is very dependent on the domestic worker.

Q: What method have you use to retain the domestic worker?

A: Every time I come back from overseas missions, I buy a gift for my daughter and for the domestic worker as well. In recent years I have been to more than ten countries, and every time I bought a gift for the domestic worker. Usually, we get along like a family. There is not much work for her. It takes 20 minutes to send the child to school. After finishing the laundry, grocery shopping, cooking, cleaning, she can watch TV if she would like to.

Q: What if the domestic worker is sick?

A: Last year I took her to hospital to have a medical examination, which costs more than 1,000 yuan. She was diagnosed with multiple cervical precancerous ulcers and other diseases. Considering she was 52 years old, the doctor used laparoscopic surgery to perform a hysterectomy for her. Fortunately, I took her for that examination. It could have developed into cancer if the disease was detected two years later. Physical examination is a kind of benefit.

Q: You really did a good deed! You saved her. Did you pay the medical expenses?

A: I paid 5,000 yuan and additionally I gave her one-month paid leave. The wage is 4,000 yuan per month. After one-month rest, she came back to work.

Q: Does she have paid annual leave? Who pays for the traveling expenses?

A: She has concentrated vacations. She gets paid winter and summer vacations every year. I pay the travel expenses. Round trip train tickets from Beijing to Shenyang are about 400 yuan. Sometimes, if she could not buy train tickets, she would fly back to her hometown and the one-way ticket is about 700 yuan.

Q: Does the domestic worker have personal leave? If so, is it paid?

A: When her daughter gave birth, she went to take care of her daughter for one month. When her mother was seriously ill and passed away, she asked for personal leave and returned to her hometown. I gave her wages while

she paid her travel expenses herself.

Q: Who replaced her when she was on leave?

A: I brought my parents-in-law from Shenyang for help.

Q: According to the provisions of the Labour Law, employers are not required to give wages to their employees during their personal leave. You paid the wages even on her personal leave. This is over the statutory standard and makes her enjoy higher treatment than workers from other sectors. How much is your family income?

A: The annual family income is 1 million yuan on average.

The employer does not only have financial capacity to subsidize the domestic workers with medical expenses, but also she has the awareness of equity. She educated her child to consider the domestic worker as a family member. Consequently, she received satisfactory and reliable services.

6.5. Working and living conditions

When asked "Did you encounter unequal treatment?", the domestic workers surveyed cited the following issues:

- 12.82 per cent replied that they experienced purposefully created difficulties;
- 5.13 per cent faced restrictions to their personal freedom; 2.56 per cent suffered from being beaten;
- 1.28 per cent experienced verbal abuse; and
- 1.28 per cent were accused of stealing.

When asked about dining conditions, domestic workers responded as follows:

- 70.7 per cent have meals with the employer family;
- 20.0 per cent reserve part of the food prepared for the family for themselves;
- 2.9 per cent cook by themselves;
- 2.1 per cent eat leftover food from others;
- 2.1 per cent said, "Sometimes the food is not enough"; and
- 0.7 per cent replied, "Often eating instant noodle" (figure 16).

In response to a question about accommodation conditions:

- 52.2 per cent of the domestic workers have single and ordinary bedrooms;
- 30.9 per cent live in the same room as the person they take care of;
- 4.4 per cent live in the basement; and
- 1.5 per cent live in the corridor; and
- 10.3 per cent do not live at their employer's home (figure 17).

During field observations, the research team found that in the households of the Venice Garden Villas complex in Beiqijia, Changping District of Beijing, there are bedrooms designed to be used by domestic workers located in the basement adjacent to the complex's garage, and there is the frequent

disturbing noise of cars running. The author visited these bedrooms and there were indeed domestic workers living there.

The research team came to understand from the interviews conducted that families with small homes sometimes require domestic workers to live in the same room with the patient, elderly person, or children being taken care of. Some families arrange for domestic workers to sleep on the sofa in the living room or even set beds on the balcony for them. Domestic workers' health, personal dignity, and privacy rights are easily infringed.

Figure 16. Dining conditions reported by domestic workers surveyed, by percentage

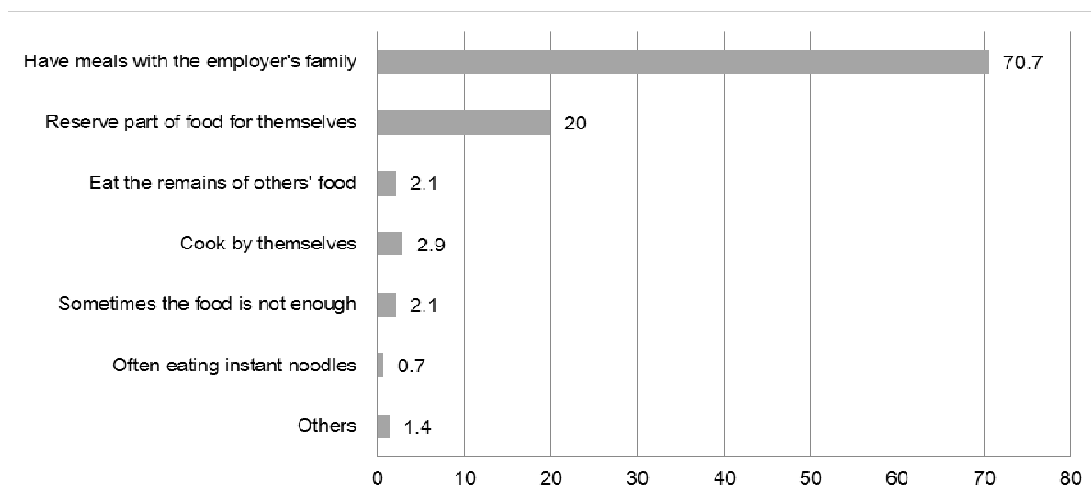
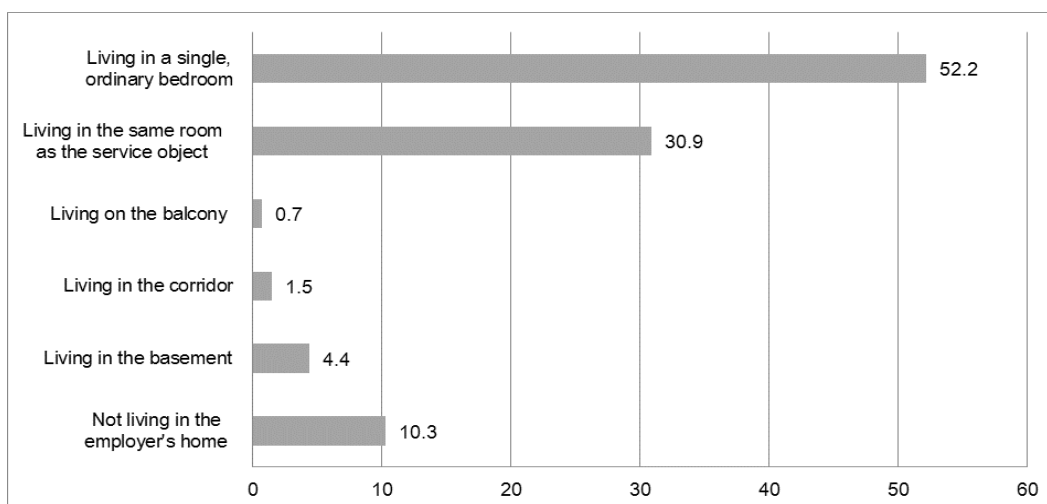


Figure 17. Accommodation conditions as reported by domestic workers, by percentage

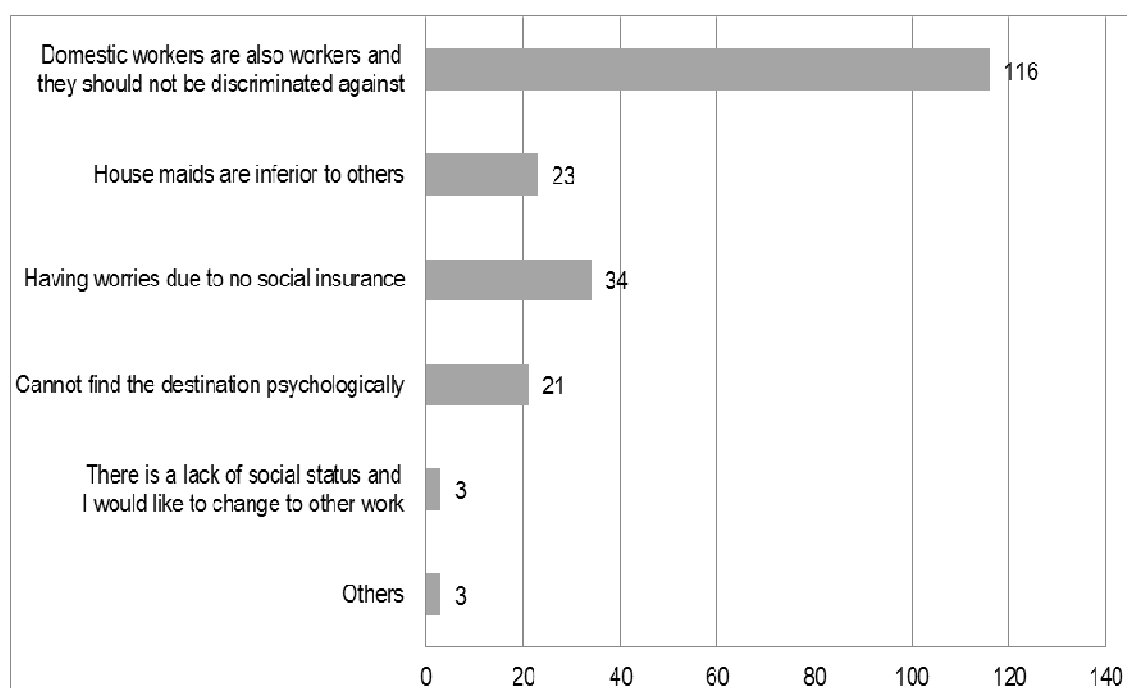


6.6. Perception of domestic workers

In recent years, Chinese media has reported many cases of domestic workers abusing their employers. Especially after one highly-publicized case of the murder of an elderly person at the hands of their caretaker³², the media has focused on "how to make a vicious housemaid no longer a nightmare for the elderly"³³. The media used this individual case to exaggerate the extent of problems, stigmatizing the whole domestic service sector. Domestic workers hence face an unfair level of mistrust.

Domestic workers and their organizations have been fighting against such discrimination. The 156 domestic workers surveyed were asked to appraise their occupation; 116 domestic workers (74.4 per cent) answered that "domestic workers are also workers and they should not be discriminated against" (figure 18). This response rate shows that the awareness of rights due to domestic workers is increasing.

Figure 18. Surveyed migrant workers' appraisal of their own vocation (N=156, more than one answer possible)



³² He Tiandai was suspected of using her domestic worker identity to kill seven elderly people and attempt the murder of two others between June 2013 to December 2014. Due to a lack of sufficient evidence, prosecutors only prosecuted He Tiandai for the death of one victim. On the morning of 23 December 2015, Guangzhou Intermediate People's Court publicly heard the case of He Tiandai for suspicion of intentional murder. The prosecution accused He Tiandai, who was suspected of killing He Yanzhu, her 70-year-old employer, by putting poison in the victim's meat soup and using nylon rope to strangle her. He Tiandai claimed at the trial that the reason for murdering her employer was to get the wage in advance. On 4 May 2016, Guangzhou Intermediate People's Court handed down a guilty verdict and sentenced He Tiandai to death.

³³ *Legal Daily*, 30 December 2015, p. 7.

6.7. Labour inspection and dispute settlement procedures

6.7.1. The complaint channels available to domestic workers from employee system-based domestic service companies

If domestic workers have disputes with the employee system-based domestic services enterprise that employs them, the domestic workers can complain to the local labour inspectorate. If the wages of a domestic worker are deducted or delayed without justification, the labour inspectorate, after verification, can order the company to pay the wages within a given time. If the company fails to make the payment that specified time limit, the labour inspectorate can fine the company and require it to pay to the domestic worker the amount owed as well as compensation equal to 50–100 per cent of the amount owed.

If there is a labour dispute, a domestic worker from an employment system-based enterprise can protect their rights through the dispute resolution procedures stipulated in the Labour Law and the Labour Dispute Mediation and Arbitration Law. The worker can negotiate with the companies first and ask mediation organizations for mediation. The worker can also go to the local labour dispute arbitration committee for arbitration. If the results of the arbitration are not accepted, the worker can lodge a lawsuit within 15 days of receiving the arbitral awards. Since 1 May 2008, no fees should be charged for labour dispute arbitration. The litigation cost is CNY5–10 per case regardless of the amount of money at stake in the contract.

If there is employment discrimination during recruitment, whether due to nationality, race, sex, religion, age, residence, appearance, etc., or the job applicant is treated unfairly and differently, the applicant can go directly to the court to sue the company who infringed their right of equal employment, free employment, and human dignity. This ability to file a suit with the court is provided in Article 62 of the Employment Promotion Law³⁴.

If the company does not handle the employment registration in a timely manner after the domestic worker is employed, the domestic worker can request the labour inspectorate to order the company to correct this matter, based on the provisions of Article 75 of the Regulations on Employment Service and Employment Management (Order of the Ministry of Labour and Social Security [2007] No. 28). Also, the labour inspectorate can fine the company for up to CNY1,000. However, this right is only entitled to domestic workers employed by employee system-based enterprises, and as noted above these workers account for less than 10 per cent of all domestic workers in China.

6.7.2. The complaint channels available to domestic workers placed by intermediary system-based domestic service companies

Domestic workers may encounter fraud perpetrated by intermediary agencies. An intermediary agency may not provide promised services or they may provide false intermediary services after charging intermediary fees. For example, a company charges and intermediary fee and in return provides to a domestic worker the telephone number of an employer. When the domestic worker calls

³⁴ Article 62 reads: Where anyone practices discrimination in employment in violation of the provisions of this Law, the workers concerned may lodge a lawsuit in the people's court.

the employer, the employer says that they already hired another domestic worker. The intermediary enterprise then refuses to refund the fee to the worker. In this case, the domestic worker can report the matter to the local Industrial and Commercial Bureau. After verification, the Industrial and Commercial Bureau can order the intermediary agency to return the intermediary fees, fine it, or even revoke its business license. The domestic worker can also go directly to the court to issue a lawsuit. If there is verbal and physical conflict, anyone can call 110 for the police.

The provisions of Article 58 of Regulations on Employment Service and Employment Management prohibit employment intermediary agencies from providing false employment information. Domestic workers can also report such illegal acts to the labour inspectorate. Under Article 65 of the Employment Promotion Law the labour inspectorate can order the agencies to “make a correction; confiscate the illegal gains, if existing, and fine [the agency] not less than 10, 000 yuan but not more than 50, 000 yuan; or revoke the employment agency license if the circumstance is severe”.

If the identity cards or other certificates of domestic workers are detained by a domestic service intermediary agency, the domestic worker can report this violation to the labour inspectorate. Under Article 66 of the Employment Promotion Law, the labour inspectorate can order the domestic service intermediary enterprise to return the documents and prescribe a punishment in accordance with the relevant laws. In this instance the relevant law – Article 16 of the Resident Identity Card Law – calls for the local police station to impose a fine of up to CNY200.

If a domestic worker encounters wage deduction by an intermediary agency or suffers personal damage (for example, the domestic worker gets infected with a dangerous disease because the intermediary agency did not provide adequate information about an infectious patient), the worker can go to the court directly and claim compensation according to the Contract Law and the Tort Liability Law.

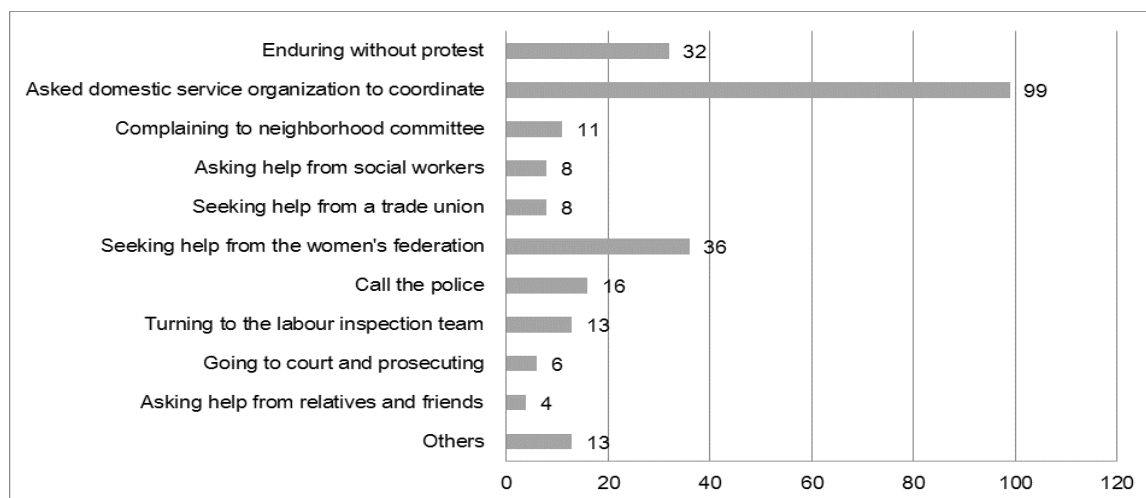
6.7.3. The complaint channels available to individual domestic workers³⁵

Many individual domestic workers enter the sector through introductions by relatives, friends, and neighbours. There are no domestic service organizations for them to rely on. If they have disputes with employers, they usually endure without protest or ask for help from their relatives and friends. Individual domestic workers have no rights to complain to the labour inspectorate. If there is any infringement or contract dispute, the worker can go to the court directly and claim compensation according to the Contract Law and the Tort Liability Law. Individual domestic workers can also turn to social organizations, social workers, or women’s federations to help them protect their rights. If they face serious personal harm, they can call police.

The survey results from this study indicated that when domestic workers have disputes with their employers, usually they generally prefer to ask a domestic service organization (if they have access to one) to intervene and coordinate the resolution (figure 19), but individual domestic workers obviously do not have this option open to them.

³⁵ For the purposes of this report, the term “individual domestic worker” refers to a domestic worker who has secured employment without the assistance of a domestic service enterprise.

Figure 19. Rights protection channels utilized by surveyed domestic workers (N=156, more than one response possible)



When asked about their approaches to protecting their rights, the domestic workers surveyed highlighted the following channels (figure 19 above, workers could provide more than one channel utilized):

- 99 domestic workers turned to a domestic service organization for assistance;
- 36 turned to women's federation for help;
- 16 selected calling the police;
- 13 selected other approaches, including seeking help from Migrant Women's Club;
- 13 sought help from labour inspectorate;
- 11 turned to the neighborhood committee;
- eight looked for help from the trade union;
- eight sought help from social workers;
- six went to court to sue; and
- 32 domestic workers selected "endure without protest".

The results of the survey correspond to the reality that the vast majority of domestic workers are not protected by labour law and that labour inspection authorities have no right to intervene in private homes. Furthermore, the findings also reflect the lack of legal aid.

As employers' and domestic workers' trust in agencies with a simple intermediary management model has eroded, the majority domestic service enterprises are now hybrid system-based. This type of domestic service company provides vocational trainings and registers and files the information of domestic workers. Hybrid system-based enterprises also often have at-home service or electronic tracking management service to monitor both the service quality provided by domestic workers and the working conditions provided in employers' homes. They also receive complaints from employers and domestic workers.

The management personnel of domestic service organizations are more familiar with the domestic service sector than staff from other rights protection agencies. They are more experienced and able to timely coordinate and handle the disputes among different parties.

Table 8 below summarizes employment conditions that domestic workers face under the various employment models.

Table 8. Employment conditions under different employment models

Employment model	Contract	Avg. daily working hours	Wages (in CNY)	Social security available	OSH	Compliance with laws and regulations
Employee system-based enterprise	Labour contract	About 12 hours	3 000 to 19 800	Social insurance; some have commercial insurance	Yes	Report to labour inspectorate. If not satisfied with the arbitration result, they can lodge a lawsuit
Intermediary model	Some with labour contract; Many without	About 12 hours	3 000 to 19 800	Commercial insurance	No	Labour inspectorate is not responsible. Lodge a lawsuit directly without labour arbitration.
Hybrid	Labour contract	About 12 hours	3 000 to 19 800	Commercial insurance	No	Labour inspectorate is not responsible. Lodge a lawsuit directly without labour arbitration.
Direct hire	Some with labour contract; Many without	About 12 hours	3 000 to 19 800	Some have commercial insurance	No	Labour inspectorate is not responsible. Lodge a lawsuit directly without labour arbitration.

Chapter 7. Conclusions and recommendations

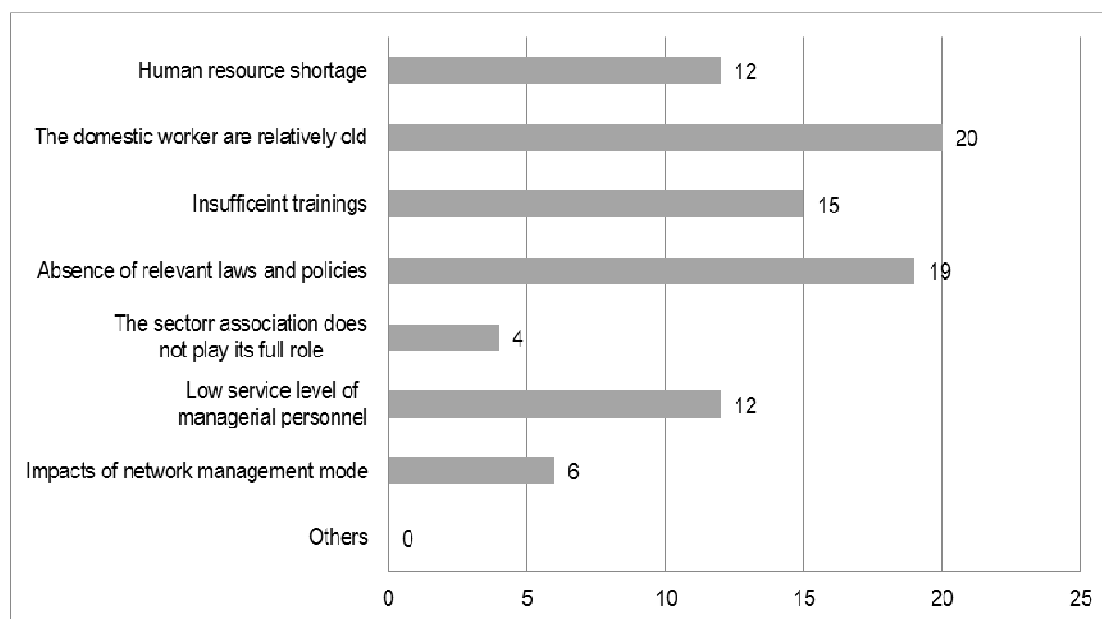
7.1. Conclusions

7.1.1. The situation of domestic workers in China has improved but there are still bottlenecks

This study successfully surveyed 156 domestic workers from Beijing. The survey results show that, excluding inflation factors, the income of domestic workers has increased significantly. It is less likely than previously to have wages held in arrears, and their living conditions have improved. Regarding the treatment of domestic workers by employers and domestic service enterprises, there are some positive developments.

Strong mobility is the characteristic of this group. And according to the 32 domestic service enterprises surveyed for this study, domestic workers are facing development bottlenecks throughout the domestic service sector, the most important issues being the relatively older age of domestic workers, the absence of relevant laws and policies, and insufficient training (figure 20).

Figure 20. Bottlenecks impeding development of the domestic service sector, according to surveyed domestic service enterprises (N=32, more than one answer possible)



7.1.2. Large gap between national legal protection and Convention No. 189

National standards stipulated in the Labour Law of the People's Republic of China for working hours and rest hours; days of maternity leave; maternity allowances; the obligation to sign a written labour contract; punishments for wages held in arrears or deductions without justification; and special protections for women during pregnancy, confinement, and nursing period are higher than the corresponding international labour standards. But the Labour Law can only be applied to the small percentage of domestic workers who have signed labour contracts with employee system-based domestic service enterprises. The vast majority of domestic workers (more than 90 per cent) are instead

covered by the Civil Law, which has nothing to do with the requirements set forth in Convention No. 189. As such, less than 10 per cent of domestic workers are eligible to benefit from the existing labour protections standards that most other workers enjoy. This causes the large gap between the protection standards made by the Chinese Government for domestic workers and the requirements of Convention No. 189. Under current legislation, flexibly employed people are not permitted to participate in work injury and maternity insurance. This means that more than 90 per cent of domestic workers cannot even pay into the programs voluntarily, as there is no channel for them to make a contribution. This indirect institutional discrimination against women and direct discrimination against domestic workers excludes nearly 20 million domestic workers from their labour security rights. The universal and mandatory nature of current legislation has much more serious consequences than mere conceptual discrimination.

Even though the Labour Law can be applied to the less than 10 per cent of domestic workers who are with employee system-based domestic service enterprises, special labour provisions relevant to domestic service do not exist in Chinese labour law. For example, Convention No. 189 states that “periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to person calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements (Article 10 (3)). There is nothing in Chinese labour law or special regulations that addresses this on-call time that is a special concern of domestic workers. Likewise, the conflicts among “right to information”, “right of supervision/inspection”, and “right of privacy” is not resolved. Also, the minimum resting time required is not clear due to the ambiguity of the boundary between work and rest. The absence of special labour protection standards for specialized domestic workers (like maternity matrons) and the existing high labour protection standards results in employee system-based domestic service enterprises being threatened by too high a risk and too heavy a burden. Because their domestic workers have access to protection under labour law, these enterprises represent a model that is better for domestic workers, but the current prospect of sustainable development among employee system-based enterprises is gloomy.

7.1.3. Good practices for promoting the standardization and formalization of domestic work

On 8 June 2009, the Ministry of Commerce, the Ministry of Finance, and the All-China Federation of Trade Union issued the Notice on the Implementation of the “Domestic Service Project” (Ministry of Commerce [2009] No. 276), which stipulates that fiscal funds can be used to support the organization of trainings for domestic service practitioners, supply and demand matching, employment security, and other related work. The aim being to provide support to engage laid-off urban workers and migrant workers from rural areas to take up domestic service work. Subsequently, the Detailed Implementation Rules for the “Domestic Service Project” was issued across the country.

On 28 September 2011, the Ministry of Finance and State Administration of Taxation issued the Notice on Exemption of Business Tax on Employee System Based Domestic Service Companies (MoF and SAT [2011] No. 51). The Notice required that from 1 October 2011 to 30 September 2014, employee system-based domestic service enterprises would be exempt from pay the business tax on profits derived from domestic services provided through their domestic workers. In Beijing, these exemptions totaled CNY950,000.

On 24 December 2014, eight ministries and committees, including the Ministry of Human Resources and Social Security in conjunction with the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, the Ministry of Commerce, All-China Federation of Trade Unions, the Communist Youth League Central Committee and All-China Women's Federation, jointly issued the Notice on Construction of Standardization and Formalization of Domestic Service Sector (The Ministry of Human Resources and Social Security [2014] No. 98). It appealed to further implement the Guiding Opinions of the State Council on Promoting the Development of Domestic Service (State Council General Office [2010] No. 43), and to make greater efforts to achieve the standardization and formalization of the domestic service sector by 2020.

On 28 October 2012, the Beijing Municipal Human Resources and Social Security Bureau, the Commerce Committee, and the Development and Reform Commission and the Bureau of Finance jointly issued the Opinions on Pilot of Encouraging the Domestic Service Enterprises to Implement Employee System (Beijing Bureau of Human Resources and Social Security, Migrant Workers Department [2012] No. 233). It provides that the subsidies provided to the pilot enterprises to help cover the pension, medical and unemployment insurance premiums paid by the enterprises. Under the arrangement, pilot enterprises would receive subsidies equal to 100 per cent of the cost of premiums in the first year, 80 per cent in the second year, 60 per cent in the third year, and 50 per cent in the fourth and fifth years. The pilot enterprises can apply for social insurance subsidies every six months.

By the end of 2015, Beijing Municipal Human Resources and Social Security Bureau had provided CNY4,115,700 in social security insurance subsidies for pilot enterprises. Three groups with 226 domestic workers in total from Beijing Ci Ai Jia the Old Caring Service Ltd. were reimbursed in the amount of CNY1,527,900. One group with a total of 218 people from Beijing Hui An Ju Domestic Service Ltd. were reimbursed in the amount of CNY1,746,000. One group with 160 people in total from San Ti Group Beijing Domestic Service Ltd. were reimbursed CNY848,100.

The policy lasts for five years to fiscally subsidize employee system-based domestic service enterprises in Beijing. However, this policy is only for a limited time. Upon expiration of the policy, the employee system will still not be sustainable, and the prospect of the policy's impact does not seem promising, as enterprises will still bear prohibitively high costs due to high social insurance fees and labour protection standards. That said, although these subsidies for the 400,000 domestic workers in Beijing are just a drop in the ocean, they are after all a practice of using fiscal resources to guide and support employee system-based domestic service enterprises to promote the standardization and formalization of domestic work.

7.2. Recommendations

7.2.1. Determining the competent authorities and introducing regulations on rights protections for domestic workers

Currently, there are no clearly, legally defined competent agencies responsible for internal migration and domestic service. In practice, there is a dispute on whether the competent authority is the

Ministry of Commerce or the Ministry of Human Resources and Social Security (MOHRSS). Multi-ministry management has not led to synergy. It is advisable that MOHRSS be legislated as the competent authority to promote the formalization of the domestic service sector. MOHRSS already issued the Regulations on Labour Management of Domestic Service Sector (Draft). These draft regulations have clear guidelines and direction on protecting the rights of domestic workers. The legislation has been welcomed by the public. When the research team investigated the expectations of employers (N=100) with regard to the policies and laws related to domestic service, 80 per cent answered, "The State should introduce special legislations to promote the domestic service sector and the Government should strengthen supervision." Thirty-eight per cent of employers surveyed stated that the State should "encourage more people to engage in the domestic service sector to solve the short supply problem". Of the 32 domestic service enterprises surveyed, 81.25 per cent expressed the belief that "the State should introduce special legislations to promote domestic service sector and the Government should strengthen the supervision".

It is recommended that the Ministry of Commerce rectify the purpose of its legislation related to the domestic service sector, by shifting the focus away from its current employer-centric position, which denies domestic workers adequate protection under the law while shielding employers from responsibility. There is a particular need to move away from the concept of defining private household owners as "consumers" of domestic worker services rather than "employers" of domestic workers. There is also the need to make sure that domestic workers have legal status as "workers".

According to the provisions of Article 21 of the Guiding Opinions of the State Council on Promoting the Development of Domestic Service (State Council General Office [2010] No. 43), "Concerned departments of the State Council should research and formulate labour and employment policies and labour standards adapted to the characteristics of domestic service to promote decent work for domestic workers." This already being the position of the State Council, it is advisable that MOHRSS introduce regulations on protecting domestic workers' rights and creates conditions for signing Convention No. 189.

7.2.2. Formulating specific labour protection standards for domestic workers

The research team suggests that, in the areas where the common labour standards cannot be applied, labour standards should be adapted to the characteristics of the domestic service sector. For example, special standards on working time are to be determined. It is required in the Convention No. 189 that "weekly rest shall be at least 24 consecutive hours". Survey results from this study suggest that maternity matrons and nannies on average do not receive 24 consecutive hours of rest each week – indeed, maternity matrons on average reported receiving less than 24 hours of rest time in an entire month. Consequently, special provisions related to rest can be introduced for nannies and other special professional services, and stipulations could be made around the specific periods in which these workers should be expected to provide their services. Domestic workers strongly call for compensating their rest time, because they often cannot sleep due to waiting to be summoned to perform work at night. Considering that it is difficult for them to have real rest when they are requested to work at night, it is suggested to stipulate that domestic workers under the age of 18 shall not work at night.

Based on the "standby service is often in need" characteristic of domestic work, the connotation and denotation should be defined. As for the compensation to be paid for standby periods, if the employers, for their own convenience, impinge on what would otherwise be the free time of a domestic worker, they should pay the domestic worker according to usual practice. It is suggested that for standby periods, employers pay daily or overtime wages to domestic workers, taking into account the situation of each individual case.

Furthermore, a multi-channel complaints mechanism could be established. The labour inspectorate would be given the right by judicial authorities to enter an employer's home for law enforcement purposed in exceptional circumstances.

The following considerations could be taken into account when setting the labour security standards for domestic workers: the optionality and inclusiveness of social insurance; supplementation and the partially mandatory feature of commercial insurance; the priorities of human rights protection; moderate flexibility of working hours; the feasibility of dismissal protection; and the demonstration of targeted support. It is advisable to include provisions to focus on the vulnerability of domestic workers and special protections related to personal safety and dignity.

7.2.3. Enhancing the fiscal support for vocational training

According to the Opinions of the State Council on Strengthening Vocational Training to Promote Employment (issued by the State Council [2010] No. 36), vocational training policies should be further improved and implemented according to the characteristics of the domestic service sector. All workers (including domestic service providers employed by private households) who have applied for domestic service skills training should be able to participate in the training as much as possible. Vocational training subsidies could be provided to those participating in domestic service skills training in accordance with the regulations. As best possible, all individuals who meet the criteria for these subsidies should be able to obtain the subsidies.

Meanwhile, a policy of vocational skills appraisal subsidies has to be implemented. Domestic workers have to be encouraged to participate in vocational skills appraisal. Guidance on wage levels in the domestic service market associated with different occupational skill levels should be released to motivate domestic workers to increase their income by improving their skill level.

7.2.4. Eliminating institutional discrimination, implementing core international labour standards, and creating conditions for signing Convention No. 189

Legislators have to consider that the employing party under a labour contract is not necessarily a unit or entity, meaning that labour law applies also to private households. Legislators should follow the universality of human rights and non-discrimination principles. Efforts can be made to establish a legal status for domestic workers as "workers/labourers" through a tripartite consultation mechanism and social dialogue, and thereby entitle all domestic workers to labour and social security rights.

In addition, the research team suggests that full play be given to community mediation organizations and professional social workers. Community-based "domestic workers' homes" should

be established to function as a part-time gathering place and communication platform for domestic workers and to create an equal and harmonious cultural atmosphere to help migrant domestic workers to integrate themselves into the city. This will, together with improvement in laws and policies, contribute to building an advanced domestic service culture for the whole society.

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