

Civil Society Organization Report on the Protection of Migrant Workers' Rights in China

Summary: there are more than 200 million migrant workers in China and, while the Chinese Government, as well as civil society organizations, has made efforts to resolve the problems related to the protection of migrant workers' rights, passing relevant policies, laws and regulations, some problems still exist. One particular problem is the labor dispute resolution process which is excessively complicated, time-consuming and costly.

Keywords: migrant workers; rights protection; laws and policies; labor dispute resolution

1. Established in September 2005, the Beijing Legal Aid Office for Migrant workers (BLAOMW) was China's first civil society organization to provide free legal aid services for migrant workers. In 2007, with the support of the China Legal Aid Foundation and the United Nations Development Programme (UNDP), 20 working stations were set up in 20 provinces, autonomous regions and municipalities (other than Beijing). As of the end of July 2008, more than 160,000 migrant workers had received professional legal consultations and over 4,000 cases had been handled. As a result, the 21 legal aid working stations have become well-known both with migrant workers and in the general community for their significant achievements in protecting the rights of migrant workers.
2. In recent years, while the problem of rights protection for migrant workers has evoked general concern from the Chinese Government and the public, the situation has been improving. For instance, in 2005 and 2006 respectively, two important policies related to migrant worker issues were issued by the Chinese Central Government: *Promoting the Building of a New Socialist Countryside by the Chinese Communist Party Central Committee and State Council*, and *Solving the Problems of Rural Migrant Workers by the State Council*. These policies impose obligations to repeal any discriminatory acts and regulations which explicitly relate to migrant workers and, to improve legislation and strengthen law enforcement relating to wages and hours, occupational health and safety, social security and legal aid. The policies are consistent with the *International Covenant on Economic, Social and Cultural Rights*, the *Employment Policy Convention* and the *Discrimination (Employment and Occupation) Convention*.
3. In 2006, the Ministry of Justice and the Ministry of Construction jointly published *Providing Legal Aid Services for Migrant Workers in the Construction Trade* in an attempt to simplify the procedure and process for migrant workers applying for legal aid. In 2007, after the passage of *Payment of Litigation Costs*, the litigation costs for labor disputes became greatly reduced and, it became possible for migrant worker recipients of legal aid to apply to defer litigation costs. These two administrative regulations have lowered the threshold for applications by migrant workers for legal aid and judicial relief, making it easier for migrant workers to receive legal and judicial aid.

4. Enacted in 2008, the *Labor Contracts Law* and *Mediation and Arbitration of Labor Disputes Law* have made significant breakthroughs in enhancing labor rights protection for all workers including migrant workers. Included are articles which regulate compensation for dismissed workers, better define labor dispatching relationships and, provide for more severe punishment of employers who violate this new Law. In the *Mediation and Arbitration of Labor Disputes Law*, the time limit for applying for arbitration is extended and arbitration is now free of charge for both parties involved. However, gaps still exist which make these new laws less helpful to migrant workers due to their special and complicated labor conditions.
5. The Chinese Government has been paying increasing attention to the rights protection work of civil society organizations. During the drafting of the *Labor Contracts Law* and the *Mediation and Arbitration of Labor Disputes Law*, the National People's Congress considered opinions and suggestions put forward by the BLAOMW.
6. Despite the fact that the issue of the protection of migrant workers' rights has recently received a lot of attention from the Chinese Government and the general public and, although several important laws, regulations and policies have been passed, many challenges still exist. Based on the large number of migrant workers' cases that still come to the BLAOMW, it appears that the situation has not changed radically. The labor dispute resolution system is still overly complicated and the cost for migrant workers of protecting their rights is still high. One round of arbitration and two trials is the current system of labor dispute resolution in China. When migrant workers have labor disputes with employers they cannot bring a lawsuit directly, they must first apply for labor arbitration. However, awards made by labor arbitration are not final; either party may appeal to the courts. The primary purpose of mandatory labor arbitration is to resolve simple cases through arbitration, saving the parties time and money and freeing up the courts for more complex cases. However, in practice, most cases are not resolved in labor arbitration and have to go to court. While the *Mediation and Arbitration of Labor Disputes Law* waives the charge and shortens the time limit of labor arbitration, the situation has not improved fundamentally. Further, with respect to going to court, migrant workers' costs cannot be reimbursed by the employer as part of a compensation order, which restricts the accessibility of the courts to migrant workers. Therefore, the BLAOMW suggests that parties should be able to choose whether they prefer labor arbitration or court so as to simplify the process; laws and regulations should be revised and, where a migrant worker is successful in court, his or her costs should be borne by the losing party.
7. Whilst the protection of migrant workers' rights is a specialized area of law, most lawyers lack the knowledge and experience necessary to handle these cases, and the Government seems to lack awareness of the importance of civil society organizations and, particularly, the need for financial support of these organizations. Therefore, the BLAOMW suggests that the Chinese Government

should encourage and support both new and existing civil society organizations engaged in providing legal aid service for migrant workers, especially in terms of funding.

8. It is estimated that more than 120 million Chinese farmers have left their homes and are working in cities and, that 80 million more are working in local towns. As a developing country, migrant worker issues cannot be solved overnight. Therefore, the BLAOMW believes that a long-term collaboration between the Chinese Government, Chinese civil society organizations and the International community is required in order to protect migrant workers' rights and benefit more Chinese peasants.