

Report On China Migrant Workers' Labor Rights

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BZMW is the first non-profit organization providing full-time and professional legal aid to internal migrant workers in China. Its aim is to ensure access to justice for migrant workers by establishing a strong civil society and to promote migrant workers' rights protection as a priority of legal profession in China. Approved by the Beijing Bureau of Justice, the Beijing Legal Aid Office for Migrant Workers (BLAOMW) was established on 8 September 2005, as China's first non-government legal aid organization specializing on migrant workers' rights. In July 2009, the BLAOMW was registered as Beijing Zhicheng Migrant Workers' Legal Aid and Research Center (BZMW). Until the end of 2012, the BZMW has incubated 30 affiliated offices in more than 20 provinces. More than 400,000 migrant workers received professional legal services. The total amount of compensation received by migrant workers through mediation, arbitration and litigation has reached more than 200 million RMB. The offices have been playing key roles to promote to build the civil society in the whole China. In 2011, BZMW was granted with special consultative status by the ECOSOC.

Summary: About 250 million migrant workers are the largest disadvantaged group in China. Most of them have left their hometown to struggle for their lives in the big cities. The Chinese governments and civil society organizations have made efforts to resolve the problems related with migrant workers, more important policies and laws and regulations have been passed to guarantee the equal rights and equal protection and even more protection for migrant workers. But many challenges still exist. In this report, the BZMW aims to present an overview of Migrant worker's labor rights protection issues in China over the last four years, including our findings, progress, challenges and recommendations. More importantly, we will follow our former concerns and evaluate their development.

1. In the last four years, legislation on Migrant worker's labor rights has made new progress in the both areas of social insurance and civil rights. *Tort Law* and *Social Insurance Law* enacted by Chinese National People's Congress were put in force in 2010 and 2011. The two laws moved a big step forward in ensuring equal protection of citizens from both urban and rural areas. For example, articles of Tort Law clearly state that citizens get same compensation when they suffer in the same traffic accident regardless of being from urban or rural areas. Articles of Social Insurance Law ensure migrant workers get the right to get same social insurance as other employees.

2. In 2012, Chinese National People's Congress published *The draft amendment of Labor Contracts Law*. Labor dispatch system has been abused by many employers. In 2011, the BZMW publicized its evidence-based research on nine forms of abuse through a media campaign. Many other experts and organizations are also advocating the reform on the labor dispatch system. The BZMW is glad to find that the legislature is responsive to the problem. *The draft amendment of Labor Contracts Law* is to regulate the labor dispatch system in details. Firstly, the draft limited the use of the dispatch system of labor relation. Secondly, the draft required that dispatched employees should enjoy equal pay for equal work. Finally, the draft ruled that if labor dispatch entity and employment service entity violated the law, they would get severe punishment.

3. In the last four years, the judicial and administrative departments have undertaken some measures to enhance to simplify the procedures on migrant workers' right protection. For example, the courts of Jiangxi province and Sichuan province opened green ways for migrant workers' wages disputes. The labor dispute mediation and arbitration committees of Shenzhen and Shanghai labor open a special office to make the disadvantaged group apply for legal aid conveniently.

4. Based on the cases handled by the BMZW, there were some progresses about migrant worker' labor rights protection. For example,

as Labor Contracts Law and Mediation and Arbitration of Labor Disputes Law were put in force, the rate of signed labor contracts and social insurance were increased in the migrant worker's group. The rate of group's owned wages' cases were reduced because the Chinese governments took effective measures such as establishing margin system in the construction field.

5. The Chinese government paid more attention to the role of legal service especially civil society based legal service in migrant workers' rights protection. Since 2010, Chinese central government has added 200 million RMB (32 million US Dollars) as a new initiative to expand the current government based legal aid service providing. Part of the funding is also used for purchasing legal aid services from civil society based legal aid organizations. The initiative has both greatly improved migrant workers' access to justice and flourish civil society based legal aid organizations' development.

6. Although more concerns have been paid on migrant workers' rights protection by the Chinese government and the general public, and several important laws, regulations and policies have been passed, many challenges still exist. Some old challenges in our former report are still there. For example, the labor disputes resolutions are complicated and the costs for protecting rights are still high. One arbitration and two trials are still the typical procedures to go through for the settlement of labor

disputes in China. The original purpose of labor arbitration system is to serve as a diversion to trials. However, most cases couldn't be settled through labor arbitration. As a result, it just makes the rights remedy more complicated, especially for migrant workers who have to move from one place to another. Even though the *Law on Labor Disputes Settlement through Mediation and Arbitration* tried to improve the system, but the situation is not significantly changed.

7. Based on large numbers of migrant workers' cases handled by the BZMW, the main reason to result in labor disputes is that short-term labor relation generally exists for migrant workers other than long-term. Meanwhile, some companies started to take some unlawful and disguised forms to avoid their lawful responsibility such as using the dispatch of labor relation instead of the direct labor relation. We suggest that the new Amendment would efficiently stop them.