

The Implementation of International Law on the Equal Right of Labor of Transgender Minorities in China: Revisiting the Mr. C. Case

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Abstract

The equal right of labor and anti-discrimination in occupation or employment is guaranteed in international conventions and most domestic laws. Revisiting the Mr. C. case, China should conduct legal reform to implement international law on the equal right of labor of employees including transgender minorities. China should enact an anti-discrimination law to transform international law into Chinese domestic law. Employment or occupational discrimination should be added as grounds for legal action. Reversal of burden of proof should be applied in the trial of the cases concerning equal right of labor, and compensation for emotional damage as well as punitive damages as remedies for the victims should be provided for. Efficiency of labor arbitration and administrative labor supervision should be strengthened in eliminating gender discrimination in employment or occupation.

I. Introduction

1. Equal right is protected by contemporary international law, and the equal right of labor of transgender minorities has been paid growing attention

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globally and domestically. The Mr. C. case has invited much discussion on the implementation of international law on the equal right of labor of transgender minorities in China.

2. Mr. C. (Alias) was born a female, but identifies herself and dresses as a man.¹ He was sacked after seven days working for a popular health center named The Ciming Health Checkup Center (hereinafter referred to as Ciming Checkup) located in Guiyang, Guizhou Province, People's Republic of China.

3. After a labor arbitration panel ruled against Mr. C.'s claim that he had been unfairly fired by Ciming Checkup, he filed a lawsuit in Yunyan District Court of Guiyang, the provincial capital of Guizhou Province. On 18 December 2016, the court ruled that Mr. C. was illegally dismissed by his former employer, and ordered the defendant to pay him 483 RMB for salary as well as 1,500 RMB for compensation. But the court found there was not enough evidence to prove that he was discriminated against and that his dismissal was due to his being transgendered.

4. The judgment of the case issued by Yunyan District Court of Guiyang has been commented and explained in some perspectives by some parties, but the court and the defendant are still keeping silent. The court said no one was available to speak about the case. Ciming Checkup did not respond to the request of the Associated Press for comment. The plaintiff, Mr. C., provided a copy of the judgment to the Associated Press. Mr. C. said he was "happy" with the result. "It is the first case in China where sexual minority won," he said. "It is also a piece of good news for the community. Short of a formal apology from Ciming Checkup, I think this lawsuit has achieved its purpose," Mr. C. told the Associated Press. He said, "It's never been about money. Through this case, we hope that people in similar situations will realize they have such rights, and we hope that it will eventually result in a workplace anti-discrimination law."² Some media regard the case as a half-success for gender minorities; meanwhile some others think that the court is relatively conservative towards gender orientation.

5. Although Mr. C. is satisfied with the judgment and the case is regarded as a success for gender minorities, it is necessary to identify what is the source

1 Surname of Mr. C. is Chen; he participated in UN Conference in 2013 as the head of Qiancheng Working Group in Guizhou.

2 Didi Tang, *Transgender Chinese Man Says He's Won Job Bias Lawsuit*, 15 November 2017 (<https://www.usnews.com/news/world/articles/2017-07-27/transgender-chinese-man-says-hes-won-job-bias-lawsuit>).

of international law for equal right of labor and anti-discrimination in employment and occupation, whether China has performed its obligation in international law on equal right and how discrimination in employment or occupation can be eliminated through legal reform in China.

II. Chinese obligation to eliminate discrimination in employment and occupation in international law

II.A. Chinese obligation in international treaties

6. Early in 1958, the International Labour Organization adopted the Convention Concerning Discrimination in Respect of Employment and Occupation (CCDREO). In 1966, the UN General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 1979, the General Assembly of the UN adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEAFDW).³

7. Art. 2 (2) of ICESCR provides that the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

8. CCDREO provides that for the purpose of this Convention the term discrimination includes: (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies. CCDREO requires that each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and

3 CCDREO, ICEAFRD, ICESCR and CEAFDW are general international laws; so far the parties of them are respectively 181, 179, 166 and 189. China ratified them respectively in 2006, 1981, 2001 and 1980.

practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.⁴

II.B. China's obligation under the general principle of law

9. Equal right and anti-discrimination have become a general principle of law due to being guaranteed in constitutions and laws of many States and regions in the world. In 2000, the European Commission enacted the Employment Equality Directive, which prohibits discrimination on grounds of religion and belief, age, disability and sexual orientation.⁵ In 2006, the European Union enacted the Equal Treatment Directive (2006/54/EU), which implements the principle of equal treatment between men and women in EU labor law.⁶ The Treaty on the Functioning of the European Union (TFEU, referred to as the Treaty of Rome) states the EU will combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.⁷

10. Equal right was provided for in the Chinese Constitution, Labor Law and the Employment Promotion Law. The Hong Kong Special Administration enacted The Sex Discrimination Ordinance in 1995. The United Kingdom began to enforce The Sex Discrimination Act in 1975 and Equality Act in 2006. Germany enacted its Anti-discrimination Law in 2006. The United States promulgated Anti-discrimination on Age in Employment in 1967. In 1998, South Africa enacted the Employment Equity Act.

11. In 2006, a distinguished group of international human rights experts outlined a set of international principles relating to sexual orientation and gender identity (known as the "Yogyakarta Principles").⁸ The preamble declares that sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. Principle 2 defines discrimination on the basis of sexual orientation or gender identity as any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the

4 Article 1 & 2 of CCDREO.

5 Directive 2000/78/EC.

6 The Equal Treatment Directive 2006/54/EC is a consolidation of previous Directives in this area, notably, the Directive 76/07/EEC, which was amended by Directive 2002/73/EU.

7 Article 19 of TFEU.

8 See <http://yogyakartaprinciples.org/>

recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. In 2017, the Yogyakarta Principles Plus 10 was adopted to supplement the Yogyakarta Principle.⁹ Since adoption, the Yogyakarta Principles have developed into an authoritative statement of the human rights of persons of diverse sexual orientation and gender identities. The Yogyakarta Principles Plus 10 aims to document and elaborate these developments through a set of additional principles and State obligations. These documents provide an authoritative exposition of international human rights law as it currently applies to the issues of sexual orientation, gender identity, gender expression and sex characteristics.¹⁰

12. Equal right has been protected in some cases, such as *Sabbatini v. European Parliament*. Mrs. Sabbatini, who was born in Italy and of Italian nationality, entered the service of the European Parliament in Luxembourg on 1 January 1960 as an official in Grade C/1. In 1970, she would lose her right to expatriation allowance pursuant to Article 4(3) of Annex VII of the Staff Regulations.¹¹ This was caused by her marriage on 4 November 1970, as her husband was born in Luxembourg and regarded as the head of their family. On 15 February 1971, she sent a memorandum to the Directorate-General for Administration in which she pointed out that the concept of “head of household” no longer existed in the legal systems of a number of Member States and concluded from this that the provision applied in her case should not be interpreted too restrictively. She also argued that the said provision was incompatible with Article 119 of the EEC Treaty, which embodies the principle of equal pay for men and women for the same work. She maintained that

9 See *ibid.* The Yogyakarta Principles + 10 refers to Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles.

10 In the United States, most federal courts think that discrimination only on gender orientation is excluded from gender discrimination under the Civil Rights Act. However, employment discrimination based on gender orientation and gender identity is prohibited in some States. See Jiefeng Lu, *The Groups Protected by Anti-discrimination Law: American Experience and Reconsideration of China's Regarding Legislation*. 3 *Review on Anti-discrimination* (2016), 66.

11 Article 4(3) of Annex VII of the Staff Regulation provides, “An official who marries a person who at the date of marriage does not qualify for the allowance shall forfeit the right to expatriation allowance unless that official thereby becomes a head of household.”

the measure taken against her should be reversed. But this complaint did not succeed.¹² She had to file her lawsuit in the European Court of Justice, which ruled that the decision on withdrawing Mrs. Sabbatini's expatriation allowance was invalid.

III. The implementation of international law on the equal right of labor of transgender minorities in Chinese legislation

III.A. Foundation of the implementation of international law on the equal right of labor of transgender minorities in Chinese legislation

13. Equal right has been protected by the Chinese Constitution and laws, which provide the foundation for Chinese implementation of international law on the equal right of labor of transgender minorities. Art. 33 of the Constitution of PRC provides that all citizens of the People's Republic of China are equal before the law. Art. 3 of the Labor Law of PRC provides that laborers have the right to be employed on an equal basis. The Employment Promotion Law of PRC focuses on fair employment in Chapter III. As to the gender equality of employment, Art. 27 of the Employment Promotion Law of PRC provides that the State shall ensure that women enjoy labor rights equal to those of men. When an employer recruits employees, it shall not refuse to recruit women or increase the thresholds for recruitment of women under the excuse of gender.

14. The Labor Contract Law of PRC provides that a written labor contract shall be concluded on the establishment of an employment relationship. Where an employment relationship has already been established with an employee, but no written labor contract has been entered simultaneously, a written labor contract shall be concluded within one month from the date when the employee begins to work.¹³ In this case, it seems that no written labor contract has been concluded between Ciming Checkup and Mr. C. Considering Mr. C. worked in Ciming Checkup, the Court applied Art. 7 to confirm the establishment of employment relationship between them.¹⁴

12 In a letter of 24 February 1971 the Directorate-General for Administration replied that the provisions which had been applied were perfectly clear and that the arguments which she advanced were not such as to alter the decision affecting her.

13 Art. 10 of Labor Contract Law of PRC.

14 Art. 7 of Labor Contract Law of PRC provides, "An employer establishes an employment relationship with an employer from the date when the employer puts the employee to work. The employer shall prepare a roster of employees for inspection."

15. In China, only under certain circumstances can an employer dissolve its labor contract with an employee.¹⁵ Through cross-examination of proof and investigation, the Court found there were no legitimate circumstances for Ciming Checkup to dissolve its labor relationship with Mr. C. Therefore the court ruled that Ciming Checkup fired Mr. C. illegally.

16. As to the normal labor compensation, the Labor Contract Law of PRC provides that an employee shall be given economic compensation based on the number of years he has worked for the employer, and he shall be compensated at the rate of one month's wage for each full year he worked. The economic compensations payable to an employee for any period of less than six months shall be one-half of his monthly wage.¹⁶ As to the punitive damage, the Labor Contract Law of PRC provides that if an employer violates this Law by dissolving or terminating the labor contract, it shall pay compensation to the employee at the rate of twice the economic compensations as prescribed in Art. 47 of this Law.¹⁷ The court applied Arts. 47 & 87 of Labor Contract Law of PRC and ruled that the defendant should pay normal labor compensation and punitive damage to Mr. C.

III.B. A special law should be enacted to implement international law on equal right of labor of transgender minorities in China

17. Although equal right is provided by the Chinese Constitution and laws, no anti-discrimination law has been made to enforce them. There is no doubt that anti-discrimination law has a positive impact on effective implementation of international law on equal right of labor of transgender minorities in China. Some scholars propose that China needs to enact legislation on anti-

15 Pursuant to Art. 40 of the Labor Contract Law of PRC, only under the following circumstances can an employer dissolve its labor contract with an employee: (a) It is proved that the employee does not meet the recruitment conditions during the probation period; (b) The employee seriously violates the rules and procedures set up by the employer; (c) The employee causes any severe damage to the employer because he seriously neglects his duties or seeks private benefits; (d) The employee simultaneously enters an employment relationship with other employers and thus seriously affects his completion of the tasks of the employer, or the employee refuses to make the rectification after his employer points out the problem; (e) The labor contract is invalidated; (f) The employee is under investigation for criminal liabilities according to law.

16 Art. 47 of Labor Contract Law of PRC.

17 Art. 87 of Labor Contract Law of PRC.

discrimination.¹⁸ Wei Zhou published an Academic Proposal on the Draft of Anti-discrimination Law of PRC.¹⁹ In the Proposal, discrimination is defined to be any unreasonable differential treatment on the basis of race, nation, religion and worship, gender, marriage, social status, age and physical feature, etc., resulting in infringement of legal rights and interests of an individual or special group. Equality of labor and employment is provided in Chapter II from Art. 8 to Art. 29. Art. 8 declares that any employer may not require any condition, standard or measure without direct connection with the post in recruiting employees or fulfillment of a labor contract. The proposal puts forward proper measures for employers to guarantee equal right of labor of employees. It stresses protecting the equal right of labor of such employees as persons with AIDS, HBV or physical or mental disability and minorities. Sexual harassment and revenge of the employer are regarded to be discrimination in the Proposal. In the Proposal, the key issue of the shifting of the burden of evidence is not included, and the issue regarding liability is not covered.

18. Although it's a long way ahead for China to complete its legislation on anti-discrimination, China can draw useful guides from above-mentioned international or national documents. China should legislate a clear definition of discrimination in its constitution and in its legislation on anti-discrimination. It's necessary to stress the operability and pertinence of future anti-discrimination law through proper allocation of burden of evidence, special attention to sex and gender discrimination and heavier liability for violators. It is highly advisable that the Chinese government seek utmost assistance from the academic arena in drafting or discussing anti-discrimination law.

IV. The implementation of international law on equal right of labor of transgender minorities in Chinese scheme of justice

IV.A. Fair judicial remedy for sexual minority victims in China

19. In order to implement international law on equal right of labor domestically, Chinese courts have received more and more cases brought by sexual

18 In 2008 the Institute of Constitutionality of China University of Political Science and Law drafted an Academic Proposal on Anti-discrimination in Employment of PRC.

19 Wei Zhou, *Zhonghuarenmingongheguo Fanqishifa Xueshu Jianyigao* [Academic Proposal on the Draft of Anti-discrimination Law of PRC], 25 *Hebei Faxue* [Hebei Law Science] 5 (2007), 11-16.

minorities and made more and more judgments in recent years. Some victims have gotten remedies from justice. In 2014, Haidian Court of Beijing made a judgment ordering Xinyupiaoxiang Clinic in Chongqing to pay Yang 3500 RMB for compensation and made the clinic apologize to him through the home page of its official website for a continuous 48 hours. Yang is gay. The clinic promised to him that it could cure him of homosexuality through electric shock treatment. The court ruled that homosexuality is not a mental disorder. The clinic's promise was false advertising. The electric shock treatment provided by the clinic was beyond its licensed service of psychological consultation.²⁰

IV.B. Employment or occupation discrimination should be added to the current grounds of legal action in China

20. In order to eliminate gender discrimination in employment and occupation, China should add employment or occupation discrimination to its current grounds of legal action. Discrimination mostly happens in employment or occupation. As no employment or occupation discrimination is provided in the current grounds of legal action promulgated by the Supreme Court in 2011, the victim has to bring the case to the court with the ground of either right of personality dispute in civil law or labor contract dispute in labor law. Different grounds may lead to different claims and even different judgments. The lack of employment or occupation discrimination as a ground of legal action prevents victims from getting effective and fair remedy from justice.

IV.C. Reversal and reallocation of burden of proof should be carried out in trying the cases involving discrimination in employment or occupation of gender minorities

21. Employment or occupation discrimination is, in most cases, hidden, and the victim finds it very difficult to secure the evidence to testify the existence of discrimination. In the Mr. C. case, two key facts are involved. The first fact concerns whether Mr. C. is qualified for his work. The defendant stated in the trial that Mr. C. didn't wear a working uniform during his work, in violation of the work manual, and therefore he was not qualified for his post. Mr. C. rebutted that Ciming Checkup never gave him any working uniform,

20 Ma Xiaochun, Landmark lawsuit victory inspires China's gay community, english-people.cn, 3 January 2018 (<http://en.people.cn/n/2014/1222/c90882-8826391.html>).

and the evaluation sheet issued by the trade union of the defendant, which appraised that Mr. C. was not qualified, was not authentic but fabricated. Mr. C. and his attorney maintained that the evaluation sheet was sealed much later than the alleged day. Furthermore, they argued that the trade union was formed illegally.²¹ The second fact concerns whether Mr. C. was fired due to his being transgendered. Mr. C. provided the court with a record of a staff member which demonstrates that the defendant was not satisfied with Mr. C.'s dress and appearance. However, the court accepted Ciming Checkup's defence that the view of the staff member could not represent his employer's. So the court concluded that no sufficient evidence proved that Mr. C. was discriminated on in the case.

22. Reversal of burden of proof should have been applied in trying the Mr. C. case. In 2001, the Chinese Supreme Court adopted the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (I) which provides, "With respect to a labor dispute arising due to a decision of an employer on expulsion, removal, dismissal, rescission of labor contract, reduction of labor remuneration, or calculation of the number of working years, the employer shall assume the burden of proof."²²

23. As only the employer knows why he discriminates against certain groups of job seekers or employees, therefore, in the trial it's reasonable for the employer to take the burden to prove that he has not committed the alleged discrimination. The court must examine such evidence prudently, and only after reasonable doubts about it have been excluded can the court exempt the employer from legal liability. In the Mr. C. case, all of the defendant's evidence was not admitted by the court. When the defence of Ciming Checkup failed, the court should have ruled in favor of Mr. C. However, the court did not do so. Only if the reversion of burden of proof had been applied could the Mr. C. case have been avoided.

24. In trial of the cases involving discrimination in employment or occupation against gender minorities, where there are no explicit statutory provisions

21 The judicial expertise on the time of the sealing has been applied in the trial process, but the application has been refused by the judicial expertise institution for its being unable to do so. Mr. C. and his attorney think that the head of the trade union of the defendant is also its personnel administrator, which violates the relevant provision of the Trade Union Law of PRC, so its evaluation on Mr. C. is not objective and valid.

22 Article 13 of Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (I).

and it is not possible to define who shall be responsible for producing evidence according to the present provisions or other judicial interpretations, the court may allocate the burden of proof according to the principle of fairness, the principle of honesty and credit as well as the ability to produce evidence.²³

IV.D. Apology and compensation for emotional damage should be stressed in judgments involving discrimination in employment or occupation

25. In the Mr. C. case, the judgment only ordered the defendant to pay Mr. C. his economic compensation. No compensation for Mr. C.'s spiritual damage and no apology to him was awarded, which caused Mr. C. regret. In *Gao Xiao (Alias) v. Guangdong Huishijia Economic Development Co., LTD and Guangzhou Yuexiu Minhaoxian Fin Restaurant*, the court ruled that the defendants must apologize to Gao Xiao in writing within 10 days after the judgment came into force. The content of their apology must be examined by the court. In the case that the defendants failed to comply with the said order, the court would publish the judgment in the newspapers in Guangzhou at the defendants' cost. In *Huang Rong (Alias) v. Hang Zhou West Lake Oriental Cuisine Vocational Skill Training School* and *Ma Hu (Alias) v. Beijing Post Express Logistics Co., LTD and Beijing Hand by Hand Labor Dispatch Co., LTD*, the courts ordered the defendants to pay 2000 RMB respectively to the plaintiffs for their spiritual damage.²⁴ The sum of the compensation for spiritual damage in the cases above mentioned was very limited. In order to prevent and even get rid of discrimination in employment or occupation effectively, it's indispensable for the court to order the discriminating defendant to pay the victim much more compensation, and therefore, the court should be encouraged to award punitive compensation to the victims in its judgments.²⁵

23 Art. 7 of Some Provisions of the Supreme People's Court on Evidence in Civil Procedures adopted by the Supreme People's Court in 2001.

24 Liu Minghui, Legislation on Anti-discrimination in Employment is at All Imminent, 4 December 2017 (www.sohu.com/a/73075029-116449).

25 BAI Jiang, Woguo Ying Kuoda Chengfaxing Peichang Zai Qinquanfa Shang De Shiyong Fanwei [Punitive Compensation should be applied widely in Chinese Tort Law], 9 Qinghua Faxue [Tsinghua University Law Journal] 3 (2015), 131.

V. The implementation of international law on equal right of labor of transgender minorities in Chinese arbitration and administration

V.A. Effective quasi-judicial remedy for gender minorities in China

26. Labor arbitration has a special impact on the implementation of international law on equal right of labor of transgender minorities in China, for all disputes involving discrimination against an employee must be arbitrated before Chinese judicial procedure is initiated. Such a systematic framework grants more empowerment and liability to labor arbitration commissions at all levels. If they function effectively, the time and cost to applicants as well as judicial resources are saved. Because of lack of experts on labor law and lack of neutrality, some labor arbitration commissions are not entirely competent. The labor arbitration tribunal which decided the Mr. C. case is so partial and ineffective that the case had to be brought to the court, which tried the case and made a completely different decision. More experts, equipped with legal knowledge and practical skills, or those who have passed a national legal examination, should be encouraged to become labor arbitrators, and independence and neutrality of labor arbitration tribunals should be strengthened by excluding interference from local governments or enterprises.²⁶

V.B. Labor supervision should be strengthened to prevent the violation of equal right of gender minorities in China

27. Currently the position, objective and content of Chinese labor supervision is not clear, the working method is much outdated, the cost of violation to law is low, and local administration is not proper.²⁷ All these problems will be resolved through reform of the labor supervision system. Legal power should be granted to labor supervision teams at all levels. The teams above mentioned should be independent from the local labor administration. The cost of violation to the law should be raised by imposing much heavier punishment on

26 WANG Qi, *Laodong Zhengyi Tiaojie Zhongcaifa Zhong Zhongcai Jigou Cunzai De Queshi Yu Wanshan* [On the Scarcity and Perfection of Arbitration Law on Labor Dispute Mediation], 31 *Hefei Xueyuan Xuebao (Shehui Kexueban)* [Journal of Hefei University (Social Science)] 4 (2014), 115.

27 TANG Kuang, TAN Hong, *Jiaqiang Laodong Jiancha Gongzuo De Luoji Sikao He Lujing Xuanze* [Logical Thinking and Path Choice to Strengthen Labor Supervision], 29 *Zhongguo Laodong Guanxi Xuryuan Xuebao* [Journal of China Institute of Industrial Relations] 3 (2015), 11.

the violators. It is expected that discrimination against transgender cases like that in the case of Mr. C. can be found timely through local labor supervision and the dispute can be resolved effectively without time-consuming and high-cost judicial remedy.

28. An Equal Employment and Occupation Commission should be established in China in the near future. Equal Opportunity Commissions or similar bodies are set up in some countries or regions.²⁸ They have played an important role in protecting the rights of minorities and eliminating discrimination. An Equal Employment and Occupation Commission in China is supposed to be responsible for enforcing Chinese laws which make it illegal to discriminate against a job applicant or an employee on account of sex (including sexual orientation, sexual harassment, gender identity, pregnancy), age and disability. It should also be illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The Commission should be empowered to receive complaints of applicants, investigate the disputed facts, conciliate the parties to reach friendly settlement, and decide whether the discrimination alleged happens and how to punish the infringer. It is possible that a victim like Mr. C. can file his complaint before an Equal Employment and Occupation Commission and his complaint will be dealt with by professional and authoritative commissioners in the future.

VI. Conclusion

29. Equal right is a fundamental human right protected by international conventions and most domestic laws as a general legal principle in international law. Equal right of gender minorities in employment or occupation is being promoted by evolving international law, and currently more and more victims can get remedies from regional or national justice.

30. Equal right as well as equal right of labor is provided in Chinese constitution and laws. China has ratified most international conventions on equal rights of labor. More and more cases involving gender discrimination are

28 The U.S. Equal Employment Opportunity Commission was established in 1965. The French Equal Opportunities and Anti-Discrimination Commission was founded in 2004. The Equal Opportunity Commission was established in Australia in 1985. The Equal Opportunity Commission was founded in Hong Kong in 1996.

being filed and dealt with by Chinese courts, and the Mr. C. case is one of them. The judgment shows how long China needs to go to implement its obligation to eliminate the discrimination against gender minorities under contemporary international law.

31. To implement international law on the protection of equal right in employment and occupation, China should carry out systematic reform in legislation, administration, justice and arbitration. Making an Anti-Discrimination Law is fundamental for transforming international law on equal right into Chinese domestic law against discrimination, and current Labor Contract Law should be amended accordingly. Equal right of labor should become one of the grounds for legal action in Chinese courts, and reversal and reallocation of burden of proof should be carried out in trying the cases involving discrimination in employment or occupation of gender minorities. Labor arbitration should function more effectively and labor supervision should be strengthened to eliminate discrimination on gender minorities. However, all these cannot be realized in a short time, and thorough legal reform is desperately needed beyond question.

32. It seems that a historic opportunity is emerging in China, which will likely motivate such thorough reform. China is transforming from being rising, rich and strong to being good. This new era may lead China to move from sufficient employment to equal opportunity of employment, from stable occupation to decent occupation, from physical enjoyment to dignity. China's rule of law will advance from quantity to quality. This tendency will probably eliminate discrimination against gender minorities like Mr. C. The judgments on similar cases will truly comfort the offended emotions of the victims, and international law on equal right will probably be implemented in China.