

Research Center for Human Rights and Humanitarian Law under the Law
School of Peking University &

Center for Gender and Law Studies, Institute of Law under the Chinese
Academy of Social Sciences (CASS)

The Shadow Report of Chinese Women's NGOs
on the Combined Seventh and Eighth Periodic Report
Submitted by China under Article 18 of the *Convention on
the Elimination of All Forms of Discrimination against
Women*

Definition of Discrimination and Laws and Policy Measures
to Eliminate Discrimination against Women

(Articles 1-3)

(For public information)

September 2014

Definition of Discrimination and Laws and Policy Measures to Eliminate Discrimination against Women (Articles 1-3)

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I. Efforts and Progress

Since the approval of the CEDAW in 1980, China has enacted and modified a variety of laws to perform the Convention. For example, anti-discrimination provisions including gender discrimination are specified in the *Marriage Law of the People's Republic of China*, the *Labor Law of the People's Republic of China*, the *Employment Promotion Law of the People's Republic of China* and the *Education Law of the People's Republic of China*, etc.. In particular, there are special provisions combating discrimination against women in the *Law on the Protection of Rights and Interests of Women* (1992, Articles 2, 24, 31, 35 and 36) and its *Amendment* (2005, Articles 2, 25, 27, 31, 35 and 36), the *Law on the Protection of the Rights and Interests of the Elderly* (1996, Article 4), the *Labor Law* (1995, Articles 12 and 13), the *Employment Promotion Law* (2007, Article 3), the *Law on the Protection of Disabled Persons* (2008, Articles 3, 38 and 64) and the *Organic Law of the Villagers' Committees of the People's Republic of China* (2010 Revision, Articles 6, 9 and 25). The *National Human Right Action Plans of China* (2009-2010 / 2012-2015) also spells out the equal rights for women in access to work and economic resources.

The legal system to protect women's rights has been constantly refined. For instance, the *Law on the Protection of Rights and Interests of Women* (2005 Amendment) incorporates the anti-discrimination principle, and explicitly prohibits sexual harassment. The *Employment Promotion Law* approved in 2007 bans any employer from posing limitations on married and child-bearing women in hiring female workers, a provision not included in the *Labor Contract Law* approved previously. In April 2012, the State Council adopted the *Special Rules on the Labor Protection of Female Employees* in replacement of the *Regulations Concerning the Labor Protection of Female Staff and Workers* promulgated in 1988. The above legislative accomplishments are undoubtedly conducive to the advancement of equal rights for women.

The situation of women has been considered in a number of state policy measures released recently. For example, the *Outline of the National Health Education and Health Promotion Program* (2005-2010) sets out a special plan for health education and health promotion across focus groups, including measures to promote women's health. In the *National Human Rights Action Plan of China* (2009-2010), dedicated programs are designed to safeguard women's rights, including

the right to political engagement, employment, education, reproduction and personal freedom, while its successor (2012-2015) identifies in the sections concerning women's rights a serial of goals, such as continuing to promote women's equal participation in administrating state and social affairs, eliminating gender discrimination in employment, ensuring women's equal access to economic resources and equal engagement in economic development, etc.

Some local governments have made distinctive attempts in building up a mechanism to enhance the status of women. In China, the state mechanism for gender equality mainly refers to the Working Committees on Children and Women at all government administration levels. Since the submission of the Country Report, there are some positive changes in China's institutional arrangement for the advancement of women. One example is the inception of the "Jiangsu Advisory and Evaluation Committee on Gender Equality Policies and Regulations" in 2012. The mission of the committee is to promote the incorporation of the gender equality principle into local policies and regulations, as well as to internalize the philosophy of gender equality in decision-making, administration and public service, through gender-based review and examination of local policies and regulations. Since its inception, the Committee has put forward relevant suggestions and comments from a gender perspective on 12 local regulations and policies, including the *Regulations of the Jiangsu Province on Maternity Insurance* (Draft for Review), many of which incorporated into the related policies and regulations. In June 2012, the first *regulation on gender equality promotion* of China was launched in the Shenzhen Special Economic Zone, which defines *gender discrimination* in line with the requirements of the *Convention*, and provides for the establishment of a dedicated body to promote gender equality, coupled with groundbreaking provisions on gender budgeting and gender impact assessment, gender-disaggregated statistical reporting, media responsibility and other issues concerned. These initiatives serve as useful practices to follow in gender equality legislation and policy making nationwide.

The Government has also made great efforts in promoting gender-based statistics. On January 2, 2006, the State Council issued the *Directory of Key Indicators in Gender Statistics regarding China National Program for Women's Development and the Program for the development of Chinese Children*, requiring all localities and authorities to set up a well-established work reporting system for gender statistics, calling for the collation, summary and analysis of gender-disaggregated data from eight aspects, respectively population, marriage and family, participation in decision-making and administration, health, education, employment and social security, and judicial protection. The requirement to improve gender statistical systems has been written into the *Outline of the Twelfth Five-Year Plan for National Economic and Social Development* (2011-2015). And it is also provided in the *National Human Rights Action Plan of China* (2012-2015) that the state will strengthen gender statistics and improve the collection and dissemination of gender-disaggregated data in economic and social development domains in the coming four years. The National Bureau of Statistics (NBS) has been collecting information on the situation of Chinese women and children constantly, notably reflected in the Third Wave National Survey on The Social Status of Women in China which NBS jointly conducted with the ACWF in 2010, where the setting of statistical indicators and describing of statistical data were richer than ever and more informative.

II. Gaps and Challenges

Although the relevant laws stipulate anti-discrimination provisions, they are not yet been fully enforced. Indeed, the principle of gender equality is stipulated in the *Constitution*, the *Law on the Protection of Rights and Interests of Women* and the *General Principles of the Civil Law*, but these provisions on paper are often not equipped with operational supporting measures for effective enforcement, which, therefore, impacts the implementation of legal provisions to protect women's rights. On the other hand, as there are provisions protecting women, in particular pregnant women, from being engaged in inappropriate work and labor with harmful conditions in certain laws, such as the *Labor Law* and the *Law on the Protection of Rights and Interests of Women*, some employers take such special protection provisions as an excuse and deprive female workers of their legitimate employment opportunities, which in practice hinders women from enjoying equal right to employment on a wider range.

Some policy makers and judiciary officials are not well aware of gender equality. The lack of gender awareness in judicial practice and the poor knowledge of the CEDAW among decision-makers have impeded the successful application of CEDAW principles in the formulation and implementation of laws and policies in China.

There is not enough attention raised to the concept "positive discrimination" described in the CEDAW. There are insufficient preferential or exclusive measures in this regard in the existing programs and outlines. Even the released requirements for female political engagement are flawed in a low proportion threshold and a lack of mandatory assurance.

Institutional influence is limited for the advancement of women. The Working Committees on Children and Women at all government administration levels are often constrained in terms of financial and human resources, adding the lack of power, and thus fail to effectively play their role in promoting gender equality.

Lack of gender-disaggregated statistics in many facets remains a problem, which results from two reasons: the limited resources, capabilities and technologies on the part of statistics authorities, and the lack of gender awareness on the part of policy makers and executors who fail to well recognize the importance of gender-disaggregated statistics and assessment.

III. Suggestions in Response

The CEDAW definition of discrimination should be widely publicized. We recommend that both the central and local governments further develop specific action plans on how to publicize, internalize and disseminate the definition of discrimination so as to deepen people's understanding of discrimination from the leadership group to the masses.

The laws and policies should be analyzed and evaluated on paper and in practice from a gender equality perspective. We recommend the relevant state bodies take the initiative to use the CEDAW definition of gender discrimination as a guide for gender analysis of the text of laws and policies and the corresponding enforcement process, evaluating the content involving direct and indirect discrimination in existing laws and developing corrective measures.

Efforts should be redoubled in training the legislative, judicial and enforcement

personnel to raise their gender awareness as soon as possible in the legal workplace, as the general lack of gender awareness across the above groups has undermined the importance of the definition of gender discrimination in the law and the introduction of temporary special measures in support. Gender awareness training should be accelerated for these people at the state level.

National mechanisms for the advancement of women's social status should be consolidated by increased investment at all levels to raise and enhance awareness and capacity of the related staff.

Gender statistics should be furthered, with efforts made to incorporate it into the *Statistical Law*, while gender-disaggregated statistics as well as data analysis established as a basic system. The relevant authorities should be urged to phase in gender statistics as a key component of their daily work, with extensive training conducted regarding gender statistics, so that they can gradually be aware of the significance of gender statistics.

Appendix

Catalog of the Organizations

Research Center for Human Rights and Humanitarian Law under the Law School of Peking University

The Research Center for Human Rights and Humanitarian Law under the Law School of Peking University, founded in April 1997, is an academic association with scholars in international law, criminal procedure law, administrative law, comparative law and other human rights areas. The Center aims to promote international academic exchanges in the field of human rights and humanitarian law, advance education and research and development of human rights and humanitarian law, and raise awareness of human rights among Chinese citizens.

Website: <http://www.hrol.org>

Center for Gender and Law Studies, Institute of Law under the Chinese Academy of Social Sciences (CASS)

The Center for Gender and Law Studies of the Institute of Law under the Chinese Academy of Social Sciences, founded in September 2002, is mainly dedicated to the theories and practices in relation to gender and legal issues. The Center aims to promote a theoretical study on gender and law in China, provide legislative proposals for the state legislature, conduct public policy advocacy, propel gender mainstreaming in legal research and legal education, strengthen exchange between domestic and foreign counterparts, disseminate research results, and raise public gender awareness.

Website: http://www.iolaw.org.cn/web/organ/org_xingbie.asp