



为平·妇女权益和性别平等 Helpline 15117905157
EQUALITY (BEIJING) Website: equality-beijing.org

Submission by: Equality (Beijing)

Related to: China

UPR Session: 45th session (Jan-Feb 2024)

Submitted: 18 July 2023

Equality is an NGO founded in Beijing, China in 2014, to promote women's rights and gender equality with expertise on domestic and sexual violence. Our main activities are service to survivors of gender-based violence, active by-standers, capacity buildings, and advocacy.

The following submission has been prepared based on information received from our helpline service, independent women's groups in different regions of China, and our periodic monitor reports on implementation of China's Anti-Domestic Violence Law and related laws. This submission covers the situation of women's rights in China between 2018 and 2023.

Contact person: Feng Yuan, founding director

Email: equality-cn@hotmail.com

I. INTRODUCTION, KEY CONCERNS, AND MAIN PROPOSALS:

1. China has made progress on women's rights and gender equality since the last UPR in 2018. Laws have been made or revised. Women and NGOs have chances to contribute to making the Civil Code, revise the Criminal Law, and Law of the People's Republic of China on the Protection of Rights and Interests of Women (the Women's Law) during 2021-2022, as well as the current Program for the Development of Chinese Women (2021-2030).

2. Following the last review, the Chinese government accepted 31 recommendations on about 14 themes/ issues of women's rights from 29 countries, Peru, Rwanda, Switzerland, Brunei Darussalam, Republic of Moldova, Colombia, (Djibouti), Morocco (items), Serbia, Mauritius, Italy, Sweden, Fiji, Dominican Republic, Tanzania, Ethiopia, Iraq, Sri Lanka, Cameroon, (Central African Republic, Tunisia, Liechtenstein (2 items), Botswana, Portugal, Guyana, Malaysia, Iceland, Armenia, India, and some recommendations on gender equality, specifically on LGBTI rights from other countries.¹

3. Despite these assurances, China still faces gaps. Equality has observed insufficient efforts to implementation of those recommendations. Laws, policies, and practices that discriminate directly or indirectly against women and girls in all diversity have limited improvement while some of them remain unchanged or even regressed according to China's international commitment. Women's representatives in public life and decision-making at all levels are unproportionally low. Discrimination against women and LGBTI in employment is common. Official data on gender pay gaps keep undisclosed. Programmes on climate change, environmental protection and disaster risk management are still gender blinded. Women help seekers find that most civil officials and government employees have a limited understanding of their duty and lack the skills to implement the laws on gender-based violence. Data and statistics on domestic violence and sexual harassment are fragmental and often inaccessible.

4. We hope the coming UPR will facilitate Chinese government to have stronger political will and take more concrete measures to implement the peer recommendations, concluding observations of the UN human rights treaties, especially CEDAW, and Beijing Platform for Action (1995); to have localized targets and indicators of SDGs to realize women's empowerment and gender equality in China.

II. AREAS NEED TO BE IMPROVED:

6. The employment laws and policies, especially the Labor Law (promulgated in 1994) discriminates against women in two ways. First, in a direct way as it prohibits women from certain jobs according to article 59. Second, in an indirect way, for example, workers above legal retirement age cannot sign labor contracts and get related rights. The retirement age for women is 5-10 years earlier than men. It further affected women's equal rights to work, and to have social security such as pension and work injury insurance; The relationship between a domestic worker (mostly a woman) and the family that employs her is not regulated is not regulated by the provision on labor. Article 2 of the Explanation on Several Articles of the Labor Law formulated by the Ministry of Labor at that time clearly stipulated that Labor Law is

not applicable to “domestic nannies”. Therefore, except for a very small number of domestic workers having signed labor contracts with employee-based domestic service companies (员工制家政企业), most of them cannot enroll into social security schemes such as pension and occupational injuries insurance, as well as join any trade union, or form their own trade unions. In addition, for those who luckily have labor contracts and join social security, if they exceed the legal working age (50 years old for female workers), they are no longer regarded as “workers” and hence fall under the category of being “ineligible to sign labor contracts” according to the “Opinions of the General Office of the State Council on Enhancing the Quality and Capacity of the Domestic Service Industry in 2019. Therefore, the age limit on the status of workers has provided a legitimate reason to decline the signing of a labor contract with the lucky small number of domestic workers, so they cannot continue to participate in insurance plans that workers are entitled to enjoy².

7. The definitions of related provisions are not in line with China’s international commitment. For example, there is no comprehensive definition on “discrimination against women”; and sexual harassment in the Civil Code and newly revised Women’s Law, which includes acts “against other’s will” rather than “unwelcome”, not in line with related articles of the CEDAW, and the CEDAW Committee’s General recommendation No. 19 and 35.

8. The laws, including revised Women’s Law failed to deal with the harmful cultural practices, especially increasing gender gaps of child marriage, and the high prevalence of bride price. These issues also failed to be addressed by the current Program for the Development of Chinese Women (2021-2030) and National Human Rights Action Plan of China, and the national action plan for SDGs. Thus, the claims of bride price refund or partial refund from a man is usually supported if a woman wants to break the relationship (marriage or cohabitation), according to the searching results of about 50,000 court verdicts during 2015-2021. This can be seen as an endorsement of the harmful practice which treats women as exchangeable items, and opposite with the guidelines published by the UN.³

9. The revised Women’s Law has important defects. For example, it has shrunk women’s rights to expression and media’s role by taking out a previous provision on women can disclosure and criticize violation of their rights and interests, while adding an article on warning media (second paragraph of Article 28). It also fails to include the proposed content on disaster management and considering women’s specific needs in this context, so that the current Article 52 has no words in these regards.

10. The revised Criminal failed to reform the definition of rape to align with international standards. The current criminal offense is a gendered title of rape, which does not protect male and nonbinary victims. But female victims still encounter many difficulties when they report to the police or resort to judicial remedies, due to the problematic definition of rape in law and the poor gender sensitivity of the police and judges.

10. Hukou/ “Household Registration” system still affects women in many ways, including registering marriages and divorces. Domestic workers (most of them are women migrant from less developed area of the country, and with rural Hukou/household registration) have not yet been treated as “workers” in a legal sense.

Migrant women often cannot send their children to public school due to Hukou-related restrictions, especially if they encounter domestic violence and the Hukou certification is controlled by their husband. It is an unspoken rule that after marriage the couple resides primarily with the family of the male partner, as well as birth certification is not issued if the new baby does not follow the father's surname. Trafficked women who return to home on their own are difficult to prove their experience for resume their household registration (Hukou).

11. All women and girls who suffered gender-based violence encounter many obstacles for reporting to police, get meaningful support from government sponsored community organizations and local women's federations, access to shelters, apply and have been granted divorces, protection orders, and other judicial justices. The courts are reluctant to issue protection orders, especially to order the perpetrator to move-out. ⁴The needs and rights of disadvantaged women, such as rural women, women with children, women in ethnical, religious and gender and sexual minorities, are hardly considered. Women only constituted around 18% of the beneficiaries of legal aid in 2019, ⁵ and the number decreased from 367,000 in 2016 to 341000 in 2020. ⁶ There is no statistics in relation to women who receive legal aid for domestic violence and sexual harassment and sexual assault. Some serious cases of abuse did not receive legal services and legal aid.

12. Violence against women conducted by agents of state authority, especially violence against women human rights defenders. Existing regulations about legal liability of responsible parties or authorities are too general and hard to hold involved parties ac-countable. There are increasing reports of sexual humiliation in police stations and detention facilities, forced admission to mental hospitals, forced disappearance, arbitrary detention, prosecution and conviction, and forced dismissing lawyer representation. Ms. He Fangmei is one example of them. As a woman with disability, she initiated a group and campaigns for the rights of child victims of faulty vaccines, including her own child, since 2018. She was forced to disappear during her third trimester of pregnancy in 2020. Her trial commenced in March 2022, so she has been subjected to excessive pretrial detention, and now she is facing serious charges that could result in a sentence of 5-7 years. Ms.He Fangmei's first girl who was disabled after receiving a faulty vaccine had been separated from her mother and other family members since 2020. In addition, no family member has any idea if this disabled child receives any medical treatment and rehabilitation since then. Now Ms. He's three underaged children are forced to separate from each other, and two of her girls, including the youngest girl born during her detention, have been kept by the government and cannot see their relatives.

13. Scarcity of resources for service providers due to policy constraints and limited government budget for services. In 2022, only 37 social organizations and independent groups provided services for survivors of gender-based violence, mainly domestic violence survivors. In 2018, there were 73 organizations engaged in anti-domestic violence work in China. Due to discouraging policies and a lack of budget, some of these organizations closed, reducing or canceling projects on domestic violence. Due to economic constraints, there is a big possibility of having even fewer service providers in the GBV field in the future.

14. Shrunk space for independent women's groups, although the role of women's organizations other than the All-China Women's Federation has been acknowledged in the revised Women's Law, and the role of social organizations (NGOs) has been acknowledged in the Anti-Domestic Violence Law. NGOs working for equal rights of women in all diversity still face difficulties to register as non-profit organizations and lack enabling and safe environment. Women's rights advocates and NGO workers are harassed or prohibited to organize, or participate in education events, capacity building, or speak about specific issues such as high-profile cases of gender-based violence, even cooperation with the UN. Social media of NGOs and women's rights advocates often encounter posts deleted, accounts suspended or banned, or other kinds of censorship.

III. RECOMMENDATIONS:

Equality (Beijing) calls upon the member states of the UN Human Rights Council to urge the Chinese government to strengthen its political will for advance women's rights and gender equality, to prioritize the issue of gender-based violence against women and in doing so:

1. Review and revise laws that discriminate against women directly or indirectly in the current term of the National People's Congress, including the labor law and policies in line with international conventions, with an enhanced accountability mechanism, and provide a timeline to repeal the Hukou system.
2. Review and revise laws related to sexual offenses to meet international standards according to CEDAW, including replacing the conventional title of rape with a gender-inclusive title, expanding the scope of forced sexual intercourse to include more sexual acts, and adopting the "consent-based model" to define the offense rather than the "coercion-based model".
3. Review and update policies and programmes to promote women's rights and gender equality, including repealing the retirement age difference and making a women's empowering family support and care policy; adopting a gender-responsive climate change and environmental protection strategy.
4. Take real temporary special measures on the below issues: women's participation in politics and decision making; gender equality education; multiple discriminations faced by women with disadvantaged HUKOU, ethnical, religious, cultural, gender/sexual, martial, and linguistic status.
5. Promote gender equality and prevent gender-based violence from education. Develop curriculums for all levels of schools, and review and transform gender stereotypes in textbooks, classrooms, news media, and the entertainment industry.
6. Training judicial, and law enforcement professionals, as well as relevant government employees to better understand and implementation of laws to protect women's rights. Stop to support refunding the bride price in the law court.

7. Release all HRDs currently detained under all arbitrary detention or begin formal, legal charges against them and provide them full access to legal counsel and appeal. Ensure their family members' rights, especially their children's right to have a family life.
8. Withdraw its reservations to the CEDAW and ratify its optional protocol.
9. Sign and ratify ILO Violence and Harassment Convention No. 190.
10. Set SDG targets and indicators with perspective of women's rights and gender equality in national level and its 189 SDG experimental zones in 31 provinces. Establish mechanism for civil participation with proportional women in all diversity and gender specialists in monitoring and implementation of Agenda 2030, including contextualize indicators and strengthen measures especially those related to the elimination of all forms of violence against women and girls, besides targets 5.2, 5.3, 5.6,5.a,5.b,5.c, also and 3.4, 3.7; 4.7, 4.a; 8.7,8.8; 11.7; as well as 16.1,16.2, 16.3, 16.6, 16.7, 16.a, 16.b.

¹ Matrix of recommendations of the third UPR of China, <https://www.ohchr.org/en/hr-bodies/upr/cn-index>

² Also refer to Qian Junyue.(2022). “Formalizing” the Informal: The Segregation of the Labor Market and the Domestic Service Companies—Based on the 2019 Survey of Domestic Workers in Four Cities.’ *Collections of Critiques on Women Studies* (01), 35-51.

³ <https://www.un.org/womenwatch/daw/vaw/v-handbook.htm>

⁴ More information can be seen at Equality (written by Xia Tian &Feng Yuan): *Four-Year Monitoring Report on the Implementation of the Anti-Domestic Violence Law of the People's Republic of China*, Beijing Equality (2020), <http://www.equality-beijing.org/newinfo.aspx?id=80>

⁵ *Women and Men in China Facts and Figure* (2019), p156

⁶ 《妇女发展纲要终期评估》， http://www.stats.gov.cn/xxgk/sjfb/zxfb2020/202112/t20211221_1825526.html.