

**Mandate of the Working Group on the issue of discrimination against women in law and in practice**

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Excellency,

I have the honour to address you in my capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolution 23/7.

In this connection, I would like to refer to the Working Group's visit that took place from 12 to 19 December 2013 and take the opportunity to express again the Group's appreciation to your Excellency's Government for its invitation and cooperation during and after the visit. As part of this continuing dialogue with your Excellency's Government and building on the favourable impression expressed in the Working Group's report regarding China's ongoing commitment to equality for women, the Group would like to receive an update regarding the recommendations made in its report (A/HRC/26/39/Add.2).

In its report, the Working Group welcomed the recognition given by the Third Plenary Session of the 18th Central Committee on the role of civil society and social organizations in governance and on the need for greater cooperation between those actors and the Government. In this context, the Group emphasized the need for the immediate implementation of policies to strengthen the cooperation between the Government and civil society organizations "*as a matter of urgency, particularly in the light of the rapid expansion of civil society organizations, including the autonomous group of women's non-governmental organizations (NGOs)*" (para.65).

The Working Group also expressed its deep concern at "*reports of repressive measures, mostly judicial in nature, including arrest, administrative detentions and prevention of freedom of movement, taken against women who seek to advance human rights*". (para.67). This was followed by a recommendation that your Excellency's Government "*provide legal protection for all defenders of women's human rights and autonomous women's groups and coalitions in civil society to allow them to advance implementation of the law and advocate for policy changes affecting gender equality as*

*part of the overall strengthening of the rule of law, democracy and human rights in China” (para. 108).*

In this regard, the Working Group has, since its visit, continued to receive information about restrictions imposed on women human rights defenders and detention and conviction of women journalists about which it remains deeply concerned. As emphasized in its report, the Working Group is of the opinion that *“for women to have the capacity to participate in political and public life on equal footing with men, including to build autonomous movements for their own empowerment, they must be able to exercise their rights to freedom of thought, conscience, religion, expression, movement and association”*, as mentioned in its thematic report on participation in political and public life (A/HRC/23/50, para.34).

The Working Group would like to enquire how the government intends to provide for full protection for all defenders of women’s human rights and ensure that they are able to carry out their legitimate work in a safe and enabling environment without fear or acts of intimidation and harassment of any sort.

The Working Group noted in its report *“that existing anti-discrimination legislation does not provide access to judicial or administrative agencies for its implementation. There are no provisions which facilitate action by victims of discrimination to enforce their rights under those laws, such as the possibility of class actions, the submission of claims by civil society organizations, shifting the burden of proof to the defendant, punitive compensation, or regulations to protect plaintiffs or witnesses against retaliation. This seriously impedes enforceability of the legislative anti-discrimination framework nationwide”* (para.21). It further noted that *“the inadequate implementation of laws prohibiting discrimination against women is partly due to the fact that some of the national legal provisions are not considered sufficiently concrete to provide a cause of action, resulting in a lack of accountability”* (para. 22).

In this connection, the Working Group would like to enquire about any progress on ensuring the enforceability of existing equality guarantees in its legislation as highlighted in the recommendations to its report (para. 107).

With regards to women’s equal participation in political and public life, the Working Group found that the participation of women in high level decision making positions remained weak at the time of the visit (para. 61). It also noted that *“there [was] no special mechanism consisting of independent experts, such as an equal opportunities commission (except in Hong Kong) or a national human rights institution, to monitor the gender impact of existing laws and policies, address individual complaints from women who experience discrimination, provide input into the drafting of new laws and policies or recommend an agenda for change”* and recalled that *“such institutions are essential to promote and protect the human rights of women, which have been enshrined in the constitution, laws and policy frameworks of China”* (para. 33).

The Working Group would like to know if any special measures have been introduced to increase the number of women in top decision-making positions at the national, provincial and local levels as well as in legislative, executive, judicial and administrative bodies and whether the numbers of women have in fact increased. It would like to be advised whether there has been any development regarding its recommendation to implement a mechanism responsible to review the gender impacts of current laws and policies (para. 108, b).

In its report, the Working Group welcomed the fact that China is currently drafting a law against domestic violence and emphasized *“the importance of bringing effective legislative measures into force to prevent, prosecute and punish perpetrators and protect victims as soon as possible, through the establishment of effective protection orders removing the perpetrator from the home and providing adequate shelters and redress for victims”* (para. 24). It noted that *“no clear legal definition of domestic violence [or] a clear legal framework that directly addresses domestic violence at the national level”* was included at that time. It further expressed concern that *“over a third of the lesbian and bisexual women [...] has suffered domestic violence, perpetrated by family members or partners”* (para. 77) and that *“a large number of female prisoners have been jailed for killing or wounding abusive husbands after enduring years of domestic violence”* (para. 80).

While the Working Group is pleased to see that the bill on domestic violence has been drafted and that it integrates a definition of domestic violence and streamlines the process for obtaining restraining orders, it is extremely concerned about the recent (24 April 2015) decision of the Sichuan Provincial People’s High Court. This bill, if passed, would represent a landmark legislation. The Working Group is interested in learning the process of elaboration and development of this bill and whether relevant stakeholders have been consulted, including civil society organisations. The Working Group would also like to know its current status as well as its expected date of adoption. Furthermore, the Expert Group would like to know whether the bill covers violence that affects all forms of family and conjugal relationships, including cohabiting and same sex relationships and if it integrates a clear legal framework which provide effective prevention, prosecution and punishment of perpetrators, as recommended by the Working Group in its report (para. 107 a).

Regarding women’s equal participation in economic and social life, the Expert Group appreciated the fact that a comprehensive legislative framework to prevent discrimination against women in employment and create minimum employment standards had been established (para.36). However, the Working Group expressed concern regarding different issues, including discrimination in recruitment, wages and dismissals (para. 39-44) and the statutory retirement age imposed on women at 50 (para. 45). Furthermore, the Working Group expressed concern regarding privatisation of the care economy, including child care (para. 49), care of parents (para. 50) and the rights of domestic workers (para. 53).

In this connection, the Working Group wishes to know whether any mechanisms and measures to monitor optimally and carefully the impact of the socialist market economy on women have been established. It would like to be informed if your Excellency's Government is planning on initiating any legislative reform, especially regarding the equal pay legislation, the employment rights and the conditions of domestic workers, the introduction of paternity leave, the elimination of the early mandatory retirement of women. Finally, it would like to know whether your Excellency's Government has taken or plan to take any measures to extend labour protections to women working in the informal labour market, especially including all social security and maternity leave rights.

In its report, the Working Group paid attention to the situation of rural and migrant women, women with disabilities, lesbian, bisexual and transgender women, women in detention, ethnic minority women, women vulnerable to trafficking in persons women suffering from violence (Section VII). It made recommendations regarding the rights of women in vulnerable situations, including to *“continue and extend measures to empower women in vulnerable situations, particularly women in detention, refugee women, disabled women, women living with HIV/AIDS and lesbian, bisexual and transgender women and facilitate their participation in economic, social and political life”* as well as to *“protect and humanely treat all North Korean women in China, especially those who are pregnant and have children, respect the principle of non-refoulement, provide access for the Office of the United Nations High Commissioner for Refugees to the provinces bordering the Democratic People's Republic of Korea, implement specific legislative and administrative provisions on refugees and establish national asylum procedures under the provisions of the Convention relating to the Status of Refugees”* (para. 110).

In this connection, the Working Group would like to be informed about measures that have been implemented to empower and protect the aforementioned groups of women as well as to facilitate their participation in economic, social and political life.

The Working Group would like to enquire about the actions and measures taken by your Excellency's Government to raise public awareness on gender equality and rights, including on gender-based violence and discrimination and to tackle gender-based stereotypes. Furthermore, in light of the recent detention of five young women for their efforts to raise public awareness on sexual harassment, it would like to know what measures your Government will take to regain public confidence in playing an active part in raising public awareness on these matters.

The Working Group would like to encourage your Excellency's Government to further pursue its efforts to advance the respect, protection and fulfilment of women's rights and equality in cooperation with all stakeholders. It is committed to continuing the fruitful dialogue undertaken to date and remains at the disposal of your Excellency's Government for any additional support it may provide in implementing the recommendations of its report.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Emna Aouij  
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women in law and in practice