

《消歧公约》在东亚如何实施

HOW CEDAW IS IMPLEMENTED IN EAST ASIA

讲座资料

Study Package

目录

《消除对妇女一切形式歧视公约》 [Chinese text of the Convention on the Elimination of All Forms of Discrimination against Women]	4
导言.....	4
序言.....	5
第一部分.....	6
第二部分.....	8
第三部分.....	8
第四部分.....	10
第五部分.....	11
第六部分.....	12
消除对妇女歧视委员会关于中国第七和第八次合并定期报告的结论性意见 [CEDAW/C/CHN/CO/7-8]	14
Submission to CEDAW on the implementation of The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Hong Kong	27
消除对妇女歧视委员会关于日本第七次和第八次合并定期报告的结论性意见 [CEDAW/C/JPN/CO/7-8]	37
Same Surname Case: Japanese Supreme Court Holds That Forcing Couples to Share a Surname is Constitutional	49
消除对妇女歧视委员会关于大韩民国第八次定期报告的结论性意见 [CEDAW/C/KOR/CO/8]	53
Joint NGO Submission to the CEDAW Committee for the Adoption of the List of Issues [Republic of Korea]	63
Introduction.....	63
Legal Status of the Convention and Legislative and Institutional Framework.....	64
Temporary Special Measures.....	67
Violence against Women.....	67
This Women's Day, there is little to celebrate in South Korea	77

人权条约机构相关术语词汇表 [Glossary of technical terms related to the treaty bodies].....	81
积压.....	82
主席团.....	82
主席.....	82
共同核心文件.....	82
结论性评论（CONCLUDING COMMENTS）.....	83
结论性意见.....	83
在无报告情况下审议一国状况.....	83
建设性对话.....	83
国家报告员.....	83
国家工作队.....	83
声明.....	83
克减.....	84
后续程序.....	84
一般性评论.....	84
一般性建议.....	84
人权条约司.....	84
个人来文.....	84
个人投诉.....	85
调查程序.....	85
迟交报告.....	85
议题和/或问题清单.....	85
报告前的议题清单.....	86
主题清单.....	86
国家人权机构.....	86
非政府组织.....	86
不交报告.....	86
任择议定书.....	86
周期.....	87
申述.....	87
会前工作组.....	87
建议.....	87

缔约国报告导则.....	87
保留.....	87
审查程序.....	88
议事规则.....	88
秘书/秘书处.....	88
简化报告程序.....	88
专门机构、基金和方案（署）.....	88
缔约国报告.....	89
针对性或重点报告.....	89
条约、公约或文书.....	89
条约机构或委员会.....	89
条约专要报告/文件.....	89
工作方法.....	89
对议题清单的书面回复/答复.....	90
相关网站、数据库链接 [Useful Links].....	91

《消除对妇女一切形式歧视公约》 [Chinese text of the Convention on the Elimination of All Forms of Discrimination against Women]

导言

1979年12月18日，《消除对妇女一切形式歧视公约》由联合国大会通过。1981年9月3日在第二十个国家批准这项公约之后，它作为一项国际公约开始生效。到1989年公约诞生十周年之后，已有将近100个国家同意受其条款的约束。

这项公约是联合国妇女地位委员会三十多年努力的结晶。该委员会1946年设立，负责监测妇女的境况并推动她们的权利。委员会的工作协助使所有方面男女不平等的现象公诸天下。为提高妇女地位而作的这些努力已促成了一些宣言及公约的诞生。其中《消除对妇女一切形式歧视公约》是最重要及最全面的一项文件。

在各项国际人权条约之中，这一《公约》为使占人类半数的妇女成为人权问题核心的一部分起到了重要的作用。《公约》的精神扎根于联合国的各项目标：重申对各项基本人权、对人的尊严与价值及对男女权利平等的信念。本项文件解释了平等的涵义以及如何去实现这一平等。这样，《公约》不仅确立了一项国际妇女权利宪章，而且还提出了缔约各国保障享受此种权利的行动议程。

《公约》序言明确承认“歧视妇女的现象仍然普遍存在”，并强调指出此种歧视“违反权利平等和尊重人的尊严的原则”。按第一条的规定，歧视即“基于性别而作的任何区别，排斥或限制”，而这一切均发生在“政治、经济、社会、文化、公民或其他方面”。《公约》积极肯定了平等的原则，它要求缔约各国采取“一切适当措施，包括制定法律，保证妇女得到充分的发展和进步，其目的是为确保她们在与男子平等的基础上，行使和享有人权和基本自由。”（第三条）

其后的十四条确立了实现平等的步骤。《公约》所循的途径涉及到妇女境况的三个方面。对妇女的民权及法律地位作了详细的讨论。此外，不同于其他人权条约的是，《公约》涉及到人的繁衍问题及文化因素对两性关系的影响。

妇女的法律地位得到了最广泛的注意。对政治参与各项基本权利的关注自《妇女政治权利公约》于1952年通过以来一直未曾减少。因此，本文件第七条重申了上述公约的规定，即妇女有选举权、担任公职权及执行公务权。这包括，妇女有平等的权利在国际上代表自己的国家（第八条）。1957年通过的《已婚妇女国籍公约》的内容编入了第九条。该条规定：不论婚姻状况如何，妇女均可保有国籍。所以《公约》使人们注意到，妇女的法律地位往往同婚姻相联系。她们成了丈夫的依附品，而不是拥有本身权利的个人。第十、十一及十三条分别申明，妇女在教育、就业及经济和社会活动上有不受歧视的权利。这些要求围绕农村妇女的境况受到了特别的强调。正如第十四条所指出的，农村妇女的特殊斗争及重大的经济贡献值得在政策规划中给予更多的注意。第十五条申明，妇女在民事和商业企业方面具有充分的平等，并要求对旨在限制妇女法律行

为能力的所有文书“应一律视为无效”。最后，《公约》第十六条又回到婚姻和家庭关系的问题上来。它申明，在选择配偶、生育、个人权利及对财产的支配上男女具有平等的权利和义务。

除民事权问题以外，《公约》还相当重视涉及妇女的一个极为重大的问题，即其生育的权利。序言部分定出了下述基调：“妇女不应因生育而受到歧视。”《公约》对遭受歧视与女性的生育作用之间的联系一再表示关注。例如，它在第五条要求“正确了解母性社会功能”，并要求父母双方充分分担教养子女的责任。因此，有关保护母性及养育子女的条款被定为核心理念编入了《公约》的所有规定之中，就业、家庭法、保健或教育概不例外。社会有义务提供社会服务，特别是育儿设施。使个人得以兼顾家庭责任与工作及参与公共事务。还建议了一些保护母性的特别措施，对这些措施“不得视为歧视”（第四条）。《公约》并且重申妇女有生育的选择权。值得注意的是，这是提及计划生育的唯一人权条约。缔约各国必须在其教育过程中列入计划生育知识的内容（第十条(h)）并须制定家庭法规，以确保妇女有权“自由负责地决定子女人数和生育间隔并有机会获得使她们能够行使这种权利的知识、教育和方法。”（第十六条(e)）。

《公约》第三个主导方向在于加强我们对人权概念的理解，因为它郑重承认文化和传统的影响限制了妇女享受其基本权利。文化和传统的力量以陈规型的观念习俗及规范的形式出现，从而使妇女地位的提高在法律、政治和经济上受到限制。序言针对这一相互关系强调指出，“为了实现男女充分的平等，需要同时改变男子和妇女在社会上和家庭中的传统任务。”因此，缔约各国必须努力改变个人行为的社会和文化模式，以消除“基于性别而分尊卑观念或基于男女定型任务的偏见、习俗和一切其他做法”（第五条）。第十条(c)规定要修订教科书、教程及教学方法，以消除教育领域的一些定型观念。最后，将公共领域定为男性世界而将家务事归为女性活动范畴的文化模式是《公约》各条款大力抨击的对象，这些条款申明，男女双方在家庭生活中责任平等，而在教育和就业方面他们也具有平等的权利。总之，《公约》对造成并维护基于性别的歧视行为的种种势力提出了全面的挑战。

《公约》的执行由消除对妇女歧视委员会负责监督。《公约》第十七至三十条对委员会的任务及条约的管理作了规定。委员会由23名专家组成，他们作为“公约所适用领域方面德高望重和能”的人士由各国政府提名并由缔约国选举。

至少每隔四年，缔约各国要向委员会提交一份国情报告，说明已采取何种措施来落实《公约》的条款。在委员会每年会议期间，其成员同各国政府代表讨论这些报告，并同他们探讨国家具体可进一步采取行动的一些方面。委员会还就有关消除歧视妇女的问题向缔约各国提出总的建议。

《公约》全文见以下各页。

序言

消除对妇女一切形式歧视公约

本公约缔约各国，

注意到《联合国宪章》重申对基本人权、人身尊严和价值以及男女平等权利的信念；

注意到《世界人权宣言》申明不容歧视的原则，并宣布人人生而自由，在尊严和权利上一律平等，且人人都有资格享受该宣言所载的一切权利和自由，不得有任何区别，包括男女的区别；

注意到有关人权的各项国际公约的缔约国有义务保证男女平等享有一切经济、社会、文化、公民和政治权利；

考虑到在联合国及各专门机构主持下所签署旨在促进男女权利平等的各项国际公约；

还注意到联合国和各专门机构所通过旨在促进男女权利平等的决议、宣言和建议；

关心到尽管有这些各种文件，歧视妇女的现象仍然普遍存在；

考虑到对妇女的歧视违反权利平等和尊重人的尊严的原则，阻碍妇女与男子平等参加本国的政治、社会、经济和文化生活，妨碍社会和家庭的繁荣发展，并使妇女更难充分发挥为国家和人类服务的潜力；

关心到在贫穷情况下，妇女在获得粮食、保健、教育、训练、就业和其他需要等方面，往往机会最少；

深信基于平等和正义的新的国际经济秩序的建立，将大有助于促进男女平等；

强调彻底消除种族隔离、一切形式的种族主义、种族歧视、新老殖民主义、外国侵略、外国占领和外国统治、对别国内政的干预，对于男女充分享受其权利是必不可少的；

确认国际和平与安全的加强，国际紧张局势的缓和，各国不论其社会和经济制度如何彼此之间的相互合作，在严格有效的国际管制下全面彻底裁军、特别是核裁军，国与国之间关系上正义、平等和互利原则的确认，在外国和殖民统治下和外国占领下的人民取得自决与独立权利的实现，以及对各国国家主权和领土完整的尊重，都将会促进社会进步和发展，从而有助于实现男女的完全平等；

确信一国的充分和完全的发展，世界人民的福利以及和平的事业，需要妇女与男子平等充分参加所有各方面的工作；

念及妇女对家庭的福利和社会的发展所作出的巨大贡献至今没有充分受到公认，又念及母性的社会意义以及父母在家庭中和在养育子女方面所负的任务的社会意义，并理解到妇女不应因生育而受到歧视，因为养育子女是男女和整个社会的共同责任；

认识到为了实现男女充分的平等需要同时改变男子和妇女在社会上和家庭中的传统任务；

决心执行《消除对妇女歧视宣言》内载的各项原则，并为此目的，采取一切必要措施，消除一切形式的这种歧视及其现象。

兹协议如下：

第一部分

第一条（歧视）

为本公约的目的，“对妇女的歧视”一词指基于性别而作的任何区别、排斥或限制，其影响或其目的均足以妨碍或否认妇女不论已婚未婚在男女平等的基础上认识、享有或行使在政治、经济、社会、文化、公民或任何其他方面的人权和基本自由。

第二条（政策措施）

缔约各国谴责对妇女一切形式的歧视，协议立即用一切适当办法，推行政策，消除对妇女的歧视。为此目的，承担：

(a) 男女平等的原则如尚未列入本国宪法或其他有关法律者，应将其列入，并以法律或其他适当方法，保证实现这项原则；

(b) 采取适当立法和其他措施，包括适当时采取制裁，禁止对妇女的一切歧视；

(c) 为妇女与男子平等的权利确立法律保护，通过各国的主管法庭及其他公共机构，保证切实保护妇女不受任何歧视；

(d) 不采取任何歧视妇女的行为或作法，并保证公共当局和公共机构的行动都不违背这项义务；

(e) 应采取一切适当措施，消除任何个人、组织或企业对妇女的歧视；

(f) 应采取一切适当措施，包括制定法律，以修改或废除构成对妇女歧视的现行法律、规章、习俗和惯例；

(g) 同意废止本国刑法内构成对妇女歧视的一切规定。

第三条（基本人权及各项基本自由的保证）

缔约各国应承担在所有领域，特别是在政治、社会、经济、文化领域，采取一切适当措施，包括制定法律，保证妇女得到充分发展和进步，其目的是为确保她们在与男子平等的基础上，行使和享有人权和基本自由。

第四条（特别措施）

1. 缔约各国为加速实现男女事实上的平等而采取的暂行特别措施，不得视为本公约所指的歧视，亦不得因此导致维持不平等或分别的标准；这些措施应在男女机会和待遇平等的目的达到之后，停止采用。

2. 缔约各国为保护母性而采取的特别措施，包括本公约所列各项措施，不得视为歧视。

第五条（对男女角色的成见和偏见）

缔约各国应采取一切适当措施：

(a) 改变男女的社会和文化行为模式，以消除基于性别而分尊卑观念或基于男女定型任务的偏见、习俗和一切其他作法；

(b) 保证家庭教育应包括正确了解母性的社会功能和确认教养子女是父母的共同责任，但了解到在任何情况下应首先考虑子女的利益。

第六条（卖淫）

缔约各国应采取一切适当措施，包括制定法律，以禁止一切形式贩卖妇女和强迫妇女卖淫对她们进行剥削的行为。

第二部分

第七条（政治和公共生活）

缔约各国应采取一切适当措施，消除在本国政治和公众事务中对妇女的歧视，特别应保证妇女在与男子平等的条件下：

- (a) 在一切选举和公民投票中有选举权，并在一切民选机构有被选举权；
- (b) 参加政府政策的制订及其执行，并担任各级政府公职，执行一切公务；
- (c) 参加有关本国公众和政治事务的非政府组织和协会。

第八条（代表权）

缔约各国应采取一切适当措施，保证妇女在与男子平等不受任何歧视的条件下，有机会在国际上代表本国政府参加各国际组织的工作。

第九条（国籍）

1. 缔约各国应给予妇女与男子有取得、改变或保留国籍的同等权利。它们应特别保证，与外国人结婚或于婚姻存续期间丈夫改变国籍均不当然改变妻子的国籍，使她成为无国籍人，或把丈夫的国籍强加于她。

2. 缔约各方在关于子女的国籍方面，应给予妇女与男子平等的权利。

第三部分

第十条（教育）

缔约各国应采取一切适当措施以消除对妇女的歧视，并保证妇女在教育方面享有与男子平等的权利，特别是在男女平等的基础上保证：

(a) 在各类教育机构，不论其在农村或城市，职业和行业辅导、学习的机会和文凭的取得，条件相同。在学前教育、普通教育、技术、专业和高等技术教育以及各种职业训练方面，都应保证这种平等；

(b) 课程、考试、师资的标准、校舍和设备的质量一律相同；

(c) 为消除在各级和各种方式的教育中对男女任务的任何定型观念，应鼓励实行男女同校和其他有助于实现这个目的的教育形式，并特别应修订教科书和课程以及相应地修改教学方法；

(d) 领受奖学金和其他研究补助金的机会相同；

(e) 接受成人教育、包括成人识字和实用识字教育的机会相同，特别是为了尽早缩短男女之间存在的教育水平上的一切差距；

(f) 减少女生退学率，并为离校过早的少女和妇女办理种种方案；

(g) 积极参加运动和体育的机会相同；

(h) 有接受特殊教育性辅导的机会，以保障家庭健康和幸福，包括关于计划生育的知识和辅导在内。

第十一条（就业）

1. 缔约各国应采取一切适当措施，消除在就业方面对妇女的歧视，以保证她们在男女平等的基础上享有相同的权利，特别是：

(a) 人人有不可剥夺的工作权利；

(b) 享有相同就业机会的权利，包括在就业方面相同的甄选标准；

(c) 享有自由选择专业和职业，提升和工作保障，一切服务福利和条件，接受职业训练和再训练，包括实习训练、高等职业训练和经常训练的权利；

(d) 同样价值的工作享有同等报酬包括福利和享有平等待遇的权利，在评定工作的表现方面，享有平等待遇的权利；

(e) 享有社会保障的权利，特别是在退休、失业、疾病、残废和老年或在其他丧失工作能力 的情况下，以及享有带薪假的权利；

(f) 在工作条件中享有健康和安全保障，包括保障生育机能的权利。

2. 缔约各国为使妇女不致因为结婚或生育而受歧视，又为保障其有效的工作权利起见，应采取适当措施：

(a) 禁止以怀孕或产假为理由予以解雇，以及以婚姻状况为理由予以解雇的歧视，违反规定者得受处分；

(b) 实施带薪产假或具有同等社会福利的产假，不丧失原有工作。年资或社会津贴；

(c) 鼓励提供必要的辅助性社会服务，特别是通过促进建立和发展托儿设施系统，使父母得以兼顾家庭义务和工作责任并参与公共事务；

(d) 对于怀孕期间从事确实有害于健康的工作的妇女，给予特别保护。

3. 应参照科技知识，定期审查与本条所包含的内容有关的保护性法律，必要时应加以修订、废止或推广。

第十二条（保健）

1. 缔约各国应采取一切适当措施以消除在保健方面对妇女的歧视，保证她们在男女平等的基础上取得各种保健服务，包括有关计划生育的保健服务。

2. 尽管有本条第 1 款的规定，缔约各国应保证为妇女提供有关怀孕、分娩和产后期间的适当服务，于必要时给予免费服务，并保证在怀孕和哺乳期间得到充分营养。

第十三条（经济和社会利益）

缔约各国应采取一切适当措施以消除在经济和社会生活的其他方面对妇女的歧视，保证她们在男女平等的基础上有相同的权利，特别是：

(a) 领取家属津贴的权利；

- (b) 银行贷款、抵押和其他形式的金融信贷的权利；
- (c) 参与娱乐活动、运动和文化生活所有各方面的权利。

第十四条（农村妇女）

1. 缔约各国应考虑到农村妇女面对的特殊问题和她们对家庭生计包括她们在经济体系中无金钱交易的部门的工作方面所发挥的重要作用，并应采取一切适当措施，保证对农村地区妇女适用本公约的各项规定。

2. 缔约各国应采取一切适当措施以消除对农村地区妇女的歧视，保证她们在男女平等的基础上参与农村发展并受其惠益，尤其是保证她们有权：

- (a) 充分参与各级发展规划的拟订和执行工作；
- (b) 有权利用充分的保健设施，包括计划生育方面的知识、辅导和服务；
- (c) 从社会保障方案直接受益；
- (d) 接受各种正式和非正式的训练和教育，包括实用识字的训练和教育在内，以及除了别的以外，享受一切社区服务和推广服务的惠益，以提高她们的技术熟练程度；
- (e) 组织自助团体和合作社，以通过受雇和自雇的途径取得平等的经济机会；
- (f) 参加一切社区活动；
- (g) 有权取得农业信贷，利用销售设施，获得适当技术，并在土地改革和土地垦植计划方面享有平等待遇；
- (h) 享受适当的生活条件，特别是在住房、卫生、水电供应、交通和通讯方面。

第四部分

第十五条（法律）

1. 缔约各国应给予男女在法律面前平等的地位。
2. 缔约各国应在民事事务上，给予妇女与男子同等的法律行为能力，以及行使这种行为能力的相同机会。特别应给予妇女签订合同和管理财产的平等权利，并在法院和法庭诉讼的各个阶段给予平等待遇。
3. 缔约各国同意，旨在限制妇女法律行为能力的所有合同和其他任何具有法律效力的私人文书，应一律视为无效。
4. 缔约各国在有关人身移动和自由择居的法律方面，应给予男女相同的权利。

第十六条（婚姻和家庭生活）

1. 缔约各国应采取一切适当措施，消除在有关婚姻和家庭关系的一切事项上对妇女的歧视，并特别应保证她们在男女平等的基础上：

- (a) 有相同的缔婚权利；

(b) 有相同的自由选择配偶和非经本人自由表示，完全同意不缔婚约的权利；

(c) 在婚姻存续期间以及解除婚姻关系时，有相同的权利和义务；

(d) 不论婚姻状况如何，在有关子女的事务上，作为父母亲有相同的权利和义务。但在任何情形下，均应以子女的利益为重；

(e) 有相同的权利自由负责地决定子女人数和生育间隔，并有机会获得使她们能够行使这种权利的知识、教育和方法；

(f) 在监护、看管、受托和收养子女或类似的制度方面，如果国家法规有这些观念的话，有相同的权利的义务。但在任何情形下，均应以子女的利益为重；

(g) 夫妻有相同的个人权利，包括选择姓氏、专业和职业的权利；

(h) 配偶双方在财产的所有、取得、经营、管理、享有、处置方面，不论是无偿的或是收取价值酬报的，都具有相同的权利。

2. 童年订婚和童婚应不具法律效力，并应采取一切必要行动，包括制订法律，规定结婚最低年龄，并规定婚姻必须向正式登记机构登记。

第五部分

第十七条（消除对妇女歧视委员会）

1. 为审查执行本公约所取得的进展起见，应设立一个消除对妇女歧视委员会（以下称委员会）由在本公约所适用的领域方面德高望重和有能力的专家组成，其人数在公约开始生效时为十八人，到第三十五个缔约国批准或加入后为二十三人。这些专家应由缔约各国自其国民中选出，以个人资格任职，选举时须顾及公平地域分配原则及不同文化形式与各主要法系的代表性。

2. 委员会委员应以无记名投票方式自缔约各国提名的名单中选出。每一缔约国得自本国国民中提名一人候选。

3. 第一次选举应自本公约生效之日起六个月后举行，联合国秘书长应于每次举行选举之日至少三个月前函请缔约各国于两个月内提出所提名之人的姓名。秘书长应将所有如此提名的人员依英文字母次序，编成名单，注明推荐此等人员的缔约国，分送缔约各国。

4. 委员会委员的选举应在秘书长于联合国总部召开的缔约国会议中举行，该会议以三分之二缔约国为法定人数，凡得票最多且占出席及投票缔约国代表绝对多数票者当选为委员会委员。

5. 委员会委员任期四年。但第一次选举产生的委员中，九人的任期应于两年终了时届满，第一次选举后，此九人的姓名应立即由委员会主席抽签决定。

6. 在第三十五个国家批准或加入本公约后，委员会将按照本条第 2、3、4 款增选五名委员，其中两名任期为两年，其名单由委员会主席抽签决定。

7. 临时出缺时，其专家不复担任委员会委员的缔约国，应自其国民中指派另一专家，经委员会核可后，填补遗缺。

8. 鉴于委员会责任的重要性，委员会委员应经联合国大会批准后，从联合国资源中按照大会可能决定的规定和条件取得报酬。

9. 联合国秘书长应提供必需的工作人员和设备，以便委员会按本公约规定有效地履行其职务。

第十八条（国别报告）

1. 缔约各国应就本国为使本公约各项规定生效所通过的立法、司法、行政或其他措施以及所取得的进展，向联合国秘书长提出报告，供委员会审议：

(a) 在公约对本国生效后一年内提出，并且

(b) 自此以后，至少每四年并随时在委员会的请求下提出。2. 报告中得指出影响本公约规定义务的履行的各种因素和困难。

第十九条（议事规则）

1. 委员会自行制订其议事规则。

2. 委员会应自行选举主席团成员，任期两年。

第二十条（委员会会议）

1. 委员会一般应每年召开为期不超过两星期的会议以审议按照本公约第十八条规定提出的报告。

2. 委员会会议通常应在联合国总部或在委员会决定的任何其他方便地点举行。

第二十一条（委员会报告）

1. 委员会应就其活动，通过经济及社会理事会，每年向联合国大会提出报告，并可根据对所收到缔约各国的报告和资料的审查结果，提出意见和一般性建议。这些意见和一般性建议，应连同缔约各国可能提出的评论载入委员会所提出的报告中。

2. 秘书长应将委员会的报告转送妇女地位委员会，供其参考。

第二十二条（专门机构的作用）

各专门机构对属于其工作范围内的本公约各项规定，有权派代表出席关于其执行情况的审议。委员会可邀请各专门机构就在其工作范围内各个领域对本公约的执行情况提出报告。

第六部分

第二十三条（对其他条约的影响）

(a) 缔约各国的法律；或

(b) 对该国生效的任何其他国际公约、条约或协定，如载有对实现男女平等更为有利的任何规定，其效力不得受本公约的任务规定的影响。

第二十四条（缔约国承担的义务）

缔约各国承担在国家一级采取一切必要措施，以充分实现本公约承认的各项权利。

公约的实施（第二十五-三十条）

第二十五条

1. 本公约开放给所有国家签署。
2. 指定联合国秘书长为本公约的受托人。
3. 本公约须经批准，批准书交存联合国秘书长。
4. 本公约开放给所有国家加入，加入书交存联合国秘书长后开始生效。

第二十六条

- 任何缔约国可以随时向联合国秘书长提出书面通知，请求修正本公约。
- 2. 联合国大会对此项请求，应决定所须采取的步骤。

第二十七条

1. 本公约自第二十份批准书或加入书交存联合国秘书长之日后第三十天开始生效。
2. 在第二十份批准书或加入书交存后，本公约对于批准或加入本公约的每一国家，自该国交存其批准书或加入书之日后第三十天开始生效。

第二十八条

1. 联合国秘书长应接受各国在批准或加入时提出的保留，并分发给所有国家。
2. 不得提出与本公约目的和宗旨抵触的保留。
3. 缔约国可以随时向联合国秘书长提出通知，请求撤销保留，并由他将此项通知通知全体国家。通知收到后，当日生效。

第二十九条

1. 两个或两个以上的缔约国之间关于本公约的解释或适用方面的任何争端，如不能谈判解决，经缔约国一方要求，应交付仲裁。如果自要求仲裁之日起六个月内，当事各方不能就仲裁的组成达成协议，任何一方得依照《国际法院规约》提出请求，将争端提交国际法院审理。

2. 每一个缔约国在签署或批准本公约或加入本公约时，得声明本国不受本条第1款的约束，其他缔约国对于作出这项保留的任何缔约国，也不受该款的约束。

3. 依照本条第2款的规定作出保留的任何缔约国，得随时通知联合国秘书长撤回该项保留。第三十条 本公约的阿拉伯文、中文、英文、法文、俄文和西班牙文文本具有同等效力，均应交存联合国秘书长。下列署名的全权代表，在本公约之末签名，以昭信守。

消除对妇女歧视委员会关于中国第七和第八次合并定期报告的结论性意见 [CEDAW/C/CHN/CO/7-8]

1. 委员会于 2014 年 10 月 23 日在其第 1251 次和第 1252 次会议(参见 CEDAW/C/SR.1251 和 1252)上审议了中国第七和第八次合并定期报告(CEDAW/C/CHN/7-8、CEDAW/C/CHN-HGK/7-8 及 CEDAW/C/CHN-MAC/7-8)。CEDAW/C/CHN/Q/7-8 载有委员会的议题和问题清单 CEDAW/C/CHN/Q/7-8/Add.1 载有中国做出的答复。

A. 前言

2. 委员会赞赏缔约国遵循委员会的准则，提交其第七和第八次合并定期报告。委员会还赞赏缔约国对于委员会的会前工作组提出的议题和问题清单做出的书面答复。委员会欢迎中国代表团所做的口头发言，以及在对话过程中，对于委员会口头提出的问题中国代表团在答复中做出的进一步澄清。

3. 委员会赞扬缔约国派遣的这支由国务院妇女儿童工作委员会副主任宋秀岩女士率领的规模大、级别高的代表团。代表团不仅包括中国中央政府、香港和澳门特别行政区的代表，还包括各部委和各类政府机构的代表。

B. 积极方面

4. 委员会欢迎自其 2006 年审议缔约国第五和第六次合并定期报告(CEDAW/C/CHN/6)以来，缔约国在开展立法改革，特别是通过以下法规方面所取得的进展：

(a) 2010 年《社会保险法》对生育保险做了规定；

(b) 2007 年《劳动合同法》禁止以女职工有怀孕、生产或哺乳需要为理由终止劳动关系；

(c) 2007 年《促进就业法》禁止在就业中以(除其他外)种族和性别为理由的歧视；

(d) 2010 年修订的《村民委员会组织法》规定了参加村民委员会和村民代表会议的妇女名额。

5. 委员会欢迎缔约国努力改进旨在加快消除对妇女的歧视和增进妇女的权利的政策框架，例如缔约国通过的下列政策：

(a) 《国家人权行动计划(2012-2015 年)》；以及

(b) 《中国妇女发展纲要(2011-2020 年)》。

6. 委员会欢迎缔约国批准下列国际文书：

(a) 于 2009 年批准《联合国打击跨国有组织犯罪公约关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》；

(b) 于 2008 年批准《残疾人权利公约》；

(c) 于 2007 年批准国际劳工组织《职业安全卫生公约》(《第 155 号公约》，1981 年)；

(d) 于 2006 年批准国际劳工组织《就业和职业歧视公约》《第(111)号公约》，1958 年)。

C. 主要关切领域和建议：中国各地

议会

7. 委员会强调立法权在确保全面执行《公约》方面所起到的关键作用(参见消除对妇女歧视委员会关于“消除对妇女歧视委员会与议员之间关系”的声明，2010 年，第四十五届会议)。委员会请求全国人民代表大会根据其获得的授权，在《公约》规定的当前和下一次报告期之间，采取必要措施执行目前的结论性意见。

保留

8. 委员会感到关切的是，关于香港特别行政区，缔约国仍然对《公约》第 11 条第 2 款予以保留，另外，缔约国仍然保持对《公约》的几项解释性声明。

9. 委员会敦促缔约国考虑撤回它对第 11 条第 2 款做出的适用于香港特别行政区的保留。委员会进而敦促缔约国审查它的解释性声明，以确保这些声明与《公约》的目标和宗旨相容。

D. 主要关切领域和建议(中国大陆和香港特别行政区)

《公约》的法律地位和批准《任择议定书》

10. 委员会感到关切的是《公约》不能在缔约国的国内法院直接适用，因此国内法院尚未直接援引或适用《公约》的规定。尚不清楚在多少案件或其他争议解决机制中有妇女援引了《公约》，这种情况亦引起委员会的关切。委员会还感到关切的是，尽管缔约国在最终促成通过《任择议定书》的谈判中起到了重要作用，但是缔约国并未批准《任择议定书》。

11. 委员会吁请缔约国：

(a) 将《公约》的规定完全转成本国的法律；

(b) 加强现有的各项计划，以确保在相关的利益攸关方，包括政府官员、议员、法律专业人士、执法人员和社区领袖之间妥为宣传《公约》和委员会的一般性建议，从而在缔约国形成对妇女人权的认识；以及

(c) 考虑批准《任择议定书》并根据《任择议定书》对法律专业人士和执法人员进行关于委员会的法学理论培训。

E. 主要关切领域和建议(中国大陆)

歧视妇女的定义

12. 委员会忆及它前几次的结论性意见(CEDAW/C/CHN/CO/6，第 9 段)并仍然感到关切的是，虽然缔约国在 2005 年修订了《妇女权益保障法》，但是缔约国的法规中并没有与《公约》第 1 条一致的歧视妇女的全面定义。

13. 委员会重申它先前的建议(CEDAW/C/CHN/CO/6，第 10 段)并吁请缔约国按照《公约》第 1 条的规定在本国立法中通过关于歧视妇女的全面定义，以确保妇女在生活的各个领域不会受到

直接和间接的歧视。尤其是，缔约国应当确保有适足的执行机制和制裁措施配合禁止基于性和/或性别的歧视。

司法机关独立和司法救助

14. 委员会忆及它的前几次结论性意见(CEDAW/C/CHN/CO/6, 第 11 段), 对于有多份报告称妇女获得法律救助的机会有限, 委员会仍然感到关切。委员会还感到关切的是有多份报告称司法机关受到政治干扰, 这种局面影响案件的审理和裁判结果, 特别是那些涉及妇女的土地纠纷案件。

15. 委员会建议缔约国:

(a) 确保通过向包括介入土地申索的妇女在内的对象提供法律援助等办法, 使妇女可以有效获得司法救助, 并在相关情况下支持促进妇女获得司法救助的非政府组织; 以及

(b) 除其他外, 防止缔约国的政治机构对司法机关进行各种形式的干扰, 以便确立司法机关的独立地位, 这样才能依照法治原则审理和裁决涉及妇女人权的所有纠纷。

国家人权机构

16. 委员会关切地注意到缔约国尚未按照《关于促进和保护人权的国家机构的地位的原则》(《巴黎原则》) 设立一个具有保护和促进妇女权利的广泛授权的独立国家人权机构。

17. 委员会建议缔约国在明确的时限内, 依照《巴黎原则》设立一个独立的国家人权机构(1993 年 12 月 20 日大会第 48/134 号决议)。该机构的权能应当包括与妇女权利和两性平等有关的事务。

负责提高妇女地位和数据收集的机构

18. 委员会注意到, 缔约国通过提供更多人力和财力, 已经加强了国务院下属的妇女儿童工作委员会(国妇儿工委)。但是, 委员会感到关切的是, 有多份报告称中国妇儿工委只是一个协调机构, 不具有执行政策的权限或预算, 而且它并未被授权对法律和政策进行性别评价。国妇儿工委与缔约国众多致力于妇女权利事务的民间社会组织之间合作有限, 这种现象亦令委员会感到关切。

19. 委员会建议缔约国继续加强国妇儿工委, 使它能够作为提高妇女地位的机构, 具有明确授权和预算, 有效开展各项活动; 授予它对《中国妇女发展纲要(2011-2020 年)》进行性别评估的权力并且改进与民间社会组织的合作。

20. 委员会注意到缔约国在 2012 年对《妇女儿童状况综合统计报表制度》进行了修订。但是, 委员会感到关切的是, 评估妇女地位所需要的某些关键信息被各种安全法规划定为国家秘密, 这种局面过分地限制了取阅有关妇女权利事务的信息。令委员会进一步关切的是, 收据收集和分享系统依然薄弱, 以致无法妥为监督和评价执行《公约》的情况。

21. 委员会建议缔约国研究各种障碍, 其中包括缔约国的国家秘密法对收集、分享和传播按性别分列的数据造成的阻碍, 从而所有利益攸关方能够评价以性别平等主流化和增进妇女人权为目的的各项政策和计划所具有的影响和效果。在这方面, 委员会请缔约国关注它关于妇女处境统计数据第 9(1989)号一般性意见。

暂行特别措施

22. 委员会忆及它的前几次结论性意见(CEDAW/C/CHN/CO/6, 第 23 段), 缔约国没有依照《公约》第 4 条第 1 款和委员会关于暂行特别措施的第 25(2004)号 CEDAW/C/CHN/CO/7-814-64745 (C) 5/15 一般性建议, 为了加快实现妇女在《公约》各个领域实质上的平等而充分利用暂行特别措施, 委员会对此表示遗憾。

23. 委员会重申它此前的建议(CEDAW/C/CHN/CO/6, 第 24 段)并吁请缔约国考虑依照《公约》第 4 条第 1 款和委员会关于暂行特别措施的第 25 号一般性意见, 将暂行特别措施作为一种必要的策略, 以加快在《公约》规定的各个领域实现男女实质平等, 特别是增进在族裔和宗教方面属于少数群体的妇女以及残疾妇女的权利。

陈规定型观念和有害的做法

24. 委员会忆及它的前几次结论性意见(CEDAW/C/CHN/CO/6, 第 17 段), 委员会仍然关切重男轻女的传统所体现出来的对于男女在家庭和社会中的角色和义务持续存在而且根深蒂固的陈规定型观念, 在这种陈规定型观念的影响下, 人们采用非法针对胎儿性别进行选择人工流产, 以及强迫堕胎、强迫绝育和杀害女婴的非法做法, 导致不利的性别比率。

25. 委员会重申它此前的建议(CEDAW/C/CHN/CO/6, 第 18 段)并且敦促缔约国:

(a) 加强国妇儿工委和其他利益攸关方为改变强化男女传统角色的社会规范所做出的努力, 并且巩固促进妇女和女童人权的积极文化传统和惯例;

(b) 加强执行现有的法律措施, 以应对非法针对胎儿性别进行选择人工流产, 以及强迫堕胎、强迫绝育和杀害女婴的非法做法; 以及

(c) 由缔约国的一个独立专家机构定期监督和审查用于消除性别陈规定型观念的措施, 以便评估这些措施带来的影响。

暴力侵害妇女

26. 委员会注意到一份《反家庭暴力法(草案)》已被提交第十二届全国人民代表大会常务委员会。但是, 令委员会关切的是关于这部法律草案的内容, 特别是关于保护令、制裁措施和救助机构的规定, 以及通过这部法律的时限的信息。委员会还感到关切的是, 关于各种形式暴力侵害妇女的行为, 包括发案率、判予遭受暴力侵害的妇女的赔偿内容, 以及惩治经定罪的犯罪分子的法院命令, 缺乏充足的数据。

27. 委员会忆及它关于暴力侵害妇女问题的第 19(1992)号一般性意见(CEDAW/C/CHN/CO/6, 第 22 段), 因此敦促缔约国:

(a) 在拟订其《反家庭暴力法》的时候, 除利用委员会的法学理论外, 还利用《公约》和委员会第 19(1992)号一般性意见, 以确保该法及时获得通过, 并且确保该法全面应对包括家庭暴力在内的暴力侵害妇女的现象;

(b) 确保《反家庭暴力法(草案)》就利用保护令做出规定; 并为遭受暴力侵害的妇女提供充足而且设施健全的救助中心;

- (c) 继续加强关于各种形式暴力侵害妇女行为(包括杀戮妇女在内)的全面数据收集系统;
- (d) 鼓励遭受各种形式暴力侵害的妇女和女童举报; 以及
- (e) 有效调查关于暴力侵害妇女行为的申诉, 对此类行为进行起诉, 并妥为惩处犯罪分子。

贩运人口和意图营利使人卖淫

28. 委员会欢迎缔约国颁布《中国反对拐卖人口行动计划(2013-2020年)》。但是, 令委员会关切的是, 缺乏全面的打击贩运人口立法, 而且对于各种形式贩运人口行为, 包括为性剥削、强迫劳动、强迫婚姻和非法收养目的贩运人口, 国内法是否追究其刑事责任亦不明确。委员会进而关切的是, 虽然废除了劳动教养(劳教)制度, 缔约国却继续利用包括关押妇女手段在内的收容教育办法, 而收容教育办法过度影响到卖淫妇女。

29. 委员会建议缔约国:

- (a) 在下一定期报告中说明通过全面打击贩运人口立法的情况, 该法应对贩运人口做出明确定义, 缔约国应解释该定义如何符合国际准则;
- (b) 继续加强以防止贩运人口的双边、区域和国际合作为目标的努力, 包括与区域内其他国家/地区交流信息和协调起诉贩运人口者的法律程序; 以及
- (c) 确保所有被判处劳教的妇女得到适足赔偿; 考虑废除收容教育办法, 因为这种办法有可能被用来证明任意羁押妇女是正当合理的做法。

参与政治生活和公共生活

30. 委员会注意到缔约国在促进妇女参加政治生活和公共生活方面取得的进步, 以及缔约国通过的《中国妇女发展纲要(2011-2020年)》, 这份文件阐述了妇女参加各级决策机构的目标, 并且提到少数族裔参与管理国家事务的权利。委员会还欢迎缔约国修订《村民委员会组织法》, 该法现在规定村民委员会中应当有女性成员, 而且妇女应当占村民代表会议组成人员的三分之一以上。但是, 委员会仍然关切的是妇女代表仍然不足, 而且在报告期内增加立法、部和省级机构妇女代表的努力仍然进展缓慢。委员会还感到关切的是, 在担任决策职务的人员中, 在族裔和宗教方面属于少数群体的妇女, 例如藏族和维吾尔族妇女, 以及乡村和国内迁徙妇女的人数仍然不足。令委员会进而深切关注的是, 有多份报告称以独立候选人身份参选的妇女受到虐待和暴力侵害。

31. 委员会重申它先前的建议(CEDAW/C/CHN/CO/6, 第26段)并敦促缔约国:

- (a) 施行各种措施以确保在具有适足财力的国家和地方一级有效执行《中国妇女发展纲要(2011-2020年)》;
- (b) 依照《公约》第4条第1款和委员会关于暂行特别措施的第25(2004)号一般性建议, 以及关于妇女参加政治生活和公共生活的第23(1997)号一般性建议, 采用更多规范性暂行特别措施, 例如配额, 以便加快妇女全面而且平等地参加各类选举产生的和经过任命的机构;

(c) 确保有效执行经修订的《村民委员会组织法》，修订后的该法规定在村民委员会中应当有女性成员，而且妇女应当占村民代表会议组成人员的三分之一以上；

(d) 彻底调查关于针对以独立候选人身份参选的妇女的虐待和暴力侵害指控，确保犯罪分子受到起诉和妥善惩处；以及

(e) 通过采取特定手段促进和方便在族裔和宗教方面属于少数群体的妇女参加，确保《国家人权行动计划》得到落实。

人权维护者和非政府组织

32. 委员会欢迎缔约国各地的非政府组织积极参与委员会的工作。但是，令委员会关切的是，有多项指控表示非政府组织向委员会提交的一些报告受到缔约国国家工作人员检查，而且有些曾经向委员会提交报告的非政府组织的代表担心，由于他们参加审查缔约国的报告因此遭到缔约国报复。还令委员会关切的是有消息称，至少有一位打算向委员会介绍情况并评论缔约国建设性对话的妇女人权活动分子受到旅行限制。委员会进而关切的是，有消息称缔约国的法规要求获得赞助方可设立民间社会组织，这给非政府组织的登记带来不当限制。

33. 委员会建议缔约国：

(a) 采取一切必要手段保护妇女人权维护者，包括那些向委员会提供信息的人；采取措施确保那些想要评论缔约国后续报告审议情况的个人/人权维护者今后不会受到旅行限制；

(b) 调查关于国家机关检查非政府组织向委员会递交的报告的指控，并采取预防性措施以避免此类现象再度发生；以及

(c) 审查规范非政府组织组建事宜的国家法规，使非政府组织无须赞助即可直接办理登记，以便促进妇女权利组织参与补充缔约国为增强本国妇女权能和妇女发展所做出的努力。

教育

34. 缔约国在改善女童接受教育和降低成年妇女的文盲率方面取得进步，在 2011 年制定了“关于在科学技术领域促进女性人才成长的建议”，并在《中国妇女发展纲要(2011-2020 年)》中提出的明确目标。委员会对上述成绩表示欢迎。然而，缔约国大学教育中存在主修课程性别隔离的现象，一些院校的部分学科专门为男生设定了较低的录取分数线，委员会对此感到关切。委员会还感到关切的是，有智力残疾的妇女和女童，以及在族裔和宗教方面属于少数群体的妇女和女童，如藏族和维吾尔族妇女和女童，接受教育的机会有限。委员会还对进城务工人员的女童(所谓“留守”儿童)受教育机会有限的现象以及她们的辍学率感到关切。

35. 委员会建议缔约国：

(a) 在与男子和男童平等的基础上向妇女和女童提供教育，包括确保缔约国的妇女和女童在入学考试成绩上不会处于劣势；

(b) 增加财政和其他资源，更多地提供必要的服务，包括对其母语不是汉语的学生实行母语教育，确保在族裔和宗教方面属于少数群体的妇女和女童，特别是藏族和维吾尔族妇女和女童，以及所谓的“留守”女童获得教育；以及

(c) 消除残疾妇女和女童——特别是有智力残疾的妇女和女童——获得教育的一切障碍。

就业

36. 委员会注意到在《国家人权行动计划(2012-2015年)》中加入了“妇女权利”一节，该节(除其他外)阐述了缔约国谋求在就业方面消除基于性和/或性别的歧视现象。委员会还对缔约国制定《社会保险法》表示欢迎，该法于2011年7月1日生效，对产假保险做出了规定。但是，委员会仍然对下列现象表示关切：

(a) 性别工资差距依然存在并且不断扩大，这种现象可以部分地归因于欠缺关于同值工作同等报酬原则的立法；

(b) 劳动力市场仍然存在男女之间横向和纵向的职业隔离现象，而且妇女集中在低收入就业部门；

(c) 男女退休年龄有差别，分别是男子六十岁退休，妇女五十岁退休，但女干部例外，她们可在五十五岁退休；退休年龄上的这种差别使妇女退休以后的生活更容易陷入贫困，这是因为她们领取的退休金往往低于男子；而且

(d) 欠缺要求雇主就性骚扰承担责任的法律规定。

37. 委员会敦促缔约国：

(a) 根据《国家人权行动计划(2012-2015年)》、《就业促进法》(2007年)和其他相关的法律，加大力度消除结构上的不平等和职业分隔现象，通过规定同值工作同等报酬原则的立法，采取措施减少男女之间的工资差距，并建立解决纠纷的机制，以帮助由于遭受就业歧视因而寻求司法救助的妇女；

(b) 加快目前为统一男女退休年龄所做的工作，并确保男女平等地领取养老金；

(c) 通过要求雇主对工作场所的性骚扰承担责任的法律规定。

健康

38. 委员会欢迎缔约国在降低孕产妇死亡率方面取得的非凡进步，并且欢迎缔约国做出种种努力，遏制造成男儿童性别比率失衡的非医疗必需的胎儿性别鉴定和针对胎儿性别进行选择人工流产，以及强迫流产和强迫绝育。然而，仍然令委员会关切的是，这些非法行径在缔约国依然存在，而且杀害女童，特别是杀害残疾女童的现象尚未完全杜绝。委员会还关切的是，尽管缔约国的独生子女政策最近有所放松，但是违反这项政策的妇女仍然被处以罚款并被剥夺带薪产假，为子女办理出生登记时还会遇到不少困难。委员会进而感到关切的是，只有已婚妇女才能享受免费的计划生育措施，而且，学校中没有开展有效的适合各年龄阶段的性和生殖健康教育。

39. 委员会重申它先前的建议(CEDAW/C/CHN/CO/6, 第32段)并且敦促缔约国：

(a) 加强包括执法力度在内的各项努力，提高人们的认识，以消除长期存在的重男轻女的传统，因为这种传统常常导致非医疗必需的胎儿性别鉴定、针对胎儿性别进行选择人工流产、强迫堕胎和强迫绝育，乃至杀害女童的后果；

(b) 考虑取消对违反独生子女政策妇女的处罚，消除她们为子女办理登记的一切障碍；

(c) 彻底调查杀婴案件，妥为惩处犯罪分子；以及

(d) 向所有妇女提供免费的计划生育措施，无论其婚姻状况如何，并且在学校中开展适合各年龄阶段的性和生殖健康教育。

40. 委员会注意到缔约国开展了艾滋病毒检测和咨询服务。然而，令委员会关切的是，感染艾滋病毒的妇女人数有所增加，而且携带艾滋病毒/患有艾滋病的妇女依然受到歧视和社会羞辱。

41. 委员会建议缔约国采取措施，消除对携带艾滋病毒的妇女的歧视，并为照料这些妇女的社区妇女组织提供支助。

乡村妇女

42. 委员会注意到缔约国为乡村地区减贫所做出的努力和所取得的进展。委员会进而注意到，在 2007 年通过《物权法》之后，缔约国已经通过调解，在征用土地案件中通过提供补偿，处理涉及妇女的土地合同纠纷。但是，委员会仍然关切的是，有很高比例的乡村妇女依然无法获得承包土地。

43. 委员会吁请缔约国消除一切限制妇女(特别是乡村妇女)获得土地的障碍，并且确保此类纠纷的调解和解决能够给予妇女有效的补救。

婚姻和妇女的财产权利

44. 委员会注意到缔约国努力保护妇女对土地享有的财产权利。但是，委员会对缔约国最高人民法院于 2011 年 8 月 9 日就解释《婚姻法》做出的决定感到关切，根据该决定，在离婚或者继承的情况下，财产所有权返还原投资人。该决定具有间接歧视妇女的效果，剥夺了她们对财产享有的所有权。委员会还感到关切的是，由于乡村地区的传统和惯例，妇女仍然不能以自己的名义持有或者登记土地，而且一旦婚姻状况发生变化，她们便有丧失土地所有权的危险。

45. 委员会建议缔约国根据《公约》第 16 条和委员会第 29 号一般性建议，审查在乡村和城市环境中妨碍妇女获得土地和妇女的土地所有权的各项法律、习惯和传统，并且采取有效措施，确保妇女无论其婚姻状况如何均充分享有她们的财产权。

多种形式的歧视

46. 委员会感到关切的是，有多份报告称在族裔和宗教方面属于少数群体的妇女，如藏族和维吾尔族妇女，以及残疾妇女，继续受到多种多样而且相互交错的歧视。尤其令委员会关切的是，在族裔和宗教方面属于少数群体的妇女获得保健、教育和就业的机会依然有限。

47. 委员会吁请缔约国着力采取各种措施，谋求消除在族裔和宗教方面属于少数群体的妇女以及残疾妇女所遭受的多种多样而且相互交错的歧视，因为这些歧视影响她们获得保健、教育、就业和参与公共生活的机会，并且影响到她们享受自己的文化特征和习惯。

被拘禁的妇女

48. 委员会对于缔约国被拘禁的妇女的人数继续增加感到关切。委员会还感到关切的是，由于羁押女犯的监狱数量有限，妇女常常被羁押在远离家人的地方，羁押场所拥挤不堪，她们有

遭受暴力侵害和虐待的危险。委员会进而关切的是，有消息称缔约国设有被称为“黑监狱”的不受管制的拘禁场所，据称在那里大量地拘禁上访妇女。

49. 委员会敦促缔约国：

(a) 采取措施减少被拘禁妇女的人数，包括实施旨在解决妇女犯罪原因的有针对性的预防方案；

(b) 按照国际标准改善妇女拘禁场所的条件，以解决监狱过度拥挤的问题，保证将不同类别的犯人分开关押；确保根据《联合国女性囚犯待遇和女性罪犯非拘禁措施规则》（“《曼谷规则》”），提供适足的医疗保健设施和服务；以及

(c) 立即采取措施废除法外羁押设施（“黑监狱”），并妥为处罚包括非国家行为人在内的犯罪分子。

F. 主要关切领域和建议：香港特别行政区(香港特区)

提高妇女地位的机构

50. 委员会感到关切的是，被授权促进提高香港特区妇女地位的妇女委员会仅具有有限的职权，也缺乏开展性别平等主流化及其他活动的必要资源。

51. 委员会建议，香港特区应当(除其他外)提供适足的财政和人力资源，以加强妇女委员会的职权，从而使妇女委员会能够作为提高妇女地位的机构有效地开展活动。

暂行特别措施

52. 委员会感到关切的是，暂行特别措施并没有被用于《公约》所涵盖的相关领域，例如，妇女参加公共生活、教育和就业等，以便加快实现男女实质上 and 事实上的平等。

53. 委员会建议香港特区应当考虑根据《公约》第4条第1款和委员会关于暂行特别措施的第25(2004)号一般性建议，采用暂行特别措施，制订有具体数量的目标和时间表，以加快妇女担任各级决策职务。

暴力侵害妇女

54. 委员会注意到，香港特区法律改革委员会已经提出改革规范性犯罪的立法的建议，其中包括对强奸的定义，该定义目前限于以阴茎插入方式进行性侵犯。但是，令委员会关切的是，香港特区尚未完成任何关于侵害儿童和有智力残疾者的性犯罪的提案，以采纳法律改革委员会提出的改革建议。

55. 委员会敦促缔约国加快审议法律改革委员会提出的改革建议，并通过明确、具体的时间表来修订惩治性犯罪的法规，包括将侵害儿童和有智力残疾者定为性犯罪，并修订强奸的定义，使之符合国际标准，将以阴茎插入方式实施性侵犯定为强奸。在这方面，香港特区应当拨给适足的资源，以确保，除其他外，提供适足的救助机构和执行保护令，从而有效打击包括家庭暴力在内的各种形式暴力侵害妇女的行为。

贩运妇女和意图营利使妇女卖淫

56. 委员会感到关切的是，缔约国尚未在香港特区实施《联合国打击跨国有组织犯罪公约关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》(《巴勒莫议定书》)。委员会还对缺少全面打击贩运人口的法规的现象表示关切。委员会进而关切的是，香港特区还没有废除有关“色情场所”的法律规定，这些法律规定要求卖淫妇女必须在避人耳目的场所单独接客，从而使她们面临受嫖客虐待、剥削和暴力侵害的更高风险。

57. 委员会建议香港特区：

(a) 加大力度解决贩运妇女和女童问题的根源，确保受害人康复和融入社会，包括向她们提供获得救助场所、法律、医疗和社会心理援助的便利，以及其他赚取收入的机会；

(b) 开展一项综合研究，以便收集有关贩运妇女和女童活动的规模和形式的的数据，数据应按照年龄、地区或原籍国分列；

(c) 加强以防止贩运人口的双边、区域和国际合作为目的的各种努力，包括交流情报和协调起诉贩运者的法律程序，特别是与印度尼西亚和菲律宾等被贩运

人口的来源国加强合作；

(d) 考虑将《巴勒莫议定书》适用于香港特区并且通过全面打击贩运妇女活动的立法；以及

(e) 废止关于“色情场所”的法律规定，给予卖淫妇女更大保护，包括为那些想要从良的卖淫妇女制订出路计划。

参加政治生活和公共生活

58. 委员会忆及它先前的建议(CEDAW/C/CHN/CO/6, 第 39 段)，并对从政妇女代表包括功能界别中的妇女代表级别低的现象仍然感到关切。委员会进而关切的是，尚未努力开展研究，以求了解功能界别的选举制度对妇女平等参与政治生活的影响。

59. 委员会重申它先前的建议(CEDAW/C/CHN/CO/6, 第 40 段)并且建议香港特区：

(a) 根据《公约》第 4 条第 1 款和委员会关于暂行特别措施的第 25(2004)号一般性建议和关于妇女参加政治生活和公共生活的第 23(1997)号一般性建议，采取具体措施，包括施行暂行特别措施，加快提高妇女在政治上的代表权；以及

(b) 研究功能界别选举制度对妇女平等参加政治生活具有的影响。

教育

60. 令委员会关切的是有多份报告称有残疾的妇女和女童，特别是有智力残疾的妇女和女童，受教育的机会有限。

61. 委员会敦促香港特别行政区排除一切妨碍残疾妇女和女童，特别是有智力残疾的妇女和女童接受教育的因素，并确保有残疾的妇女和女童有效参加教育。

就业

62. 委员会注意到香港特区实行了男子陪产假制度，但是仍然令委员会关注的是，妇女的产假却以十个星期为限，这不符合国际劳工组织确立的国际标准。

63. 委员会建议香港特区按照国际标准延长妇女的产假，并且做出更大的努力，提倡采用弹性工作时间和陪产假，以鼓励男子平等地担负照料子女的责任。

家庭女佣

64. 委员会忆及它先前的结论性意见(CEDAW/C/CHN/CO/6, 第 41 段)，并注意到缔约国代表团所做的答复，即香港特区的外籍家庭佣工基本上受到雇主的公正对待。然而，委员会仍然关切的是，始终有多份报告称，外籍家庭女佣由于她们的性和/或性别以及族裔背景而持续遭受歧视。委员会进而关切的是，外籍家庭女佣继续受到下列对待：

(a) 虐待而且工作条件差，例如，相较法律规定而言，更低的工资、更少的休假和更长的工作时间；

(b) 受到招聘和职业介绍机构的虐待，这些机构收取高得离谱的费用，有时甚至没收她们的旅行证件；

(c) “两星期规定”要求她们在合同终止后两个星期内离开香港；以及

(d) “同住规定”要求她们与雇主一起生活。

65. 委员会重申它先前的建议(CEDAW/C/CHN/CO/6, 第 42 段)并且敦促香港特区：

(a) 加强其对外籍家庭女佣的保护机制，使她们免受雇主、招聘和职业介绍机构的歧视和虐待；

(b) 考虑延长“两星期规定”，以确保合同已被终止的外籍家庭女佣有足够的时间寻找其他就业机会或对原雇主提起诉讼；

(c) 修改“同住规定”，使其成为一项可供选择的要求；以及

(d) 通过符合国际劳工组织《关于家庭工人体面劳动的公约》(《第 189 号公约》，2011 年)所规定的各项要求的法规。

婚姻和家庭关系

66. 委员会对于香港特区的最低结婚年龄仍然为十六岁感到关切。该最低婚龄违反了包括《儿童权利公约》和与委员会第 21 号一般性建议一并理解的《消除对妇女一切形式歧视公约》在内的国际规范。委员会也注意到香港特区所做的答复，即有一项法律修正案正在审议，该修正案根据法律改革委员会提出的建议，将不经父母同意的最低结婚年龄从二十一周岁降低到十八周岁。

67. 委员会吁请香港特区加快通过一部法律将最低结婚年龄提高到十八周岁。多种形式的歧视

68. 委员会感到关切的是，有多份报告称香港特区的同性恋、变性和跨性别的妇女和女童受到歧视和虐待，特别是在就业和教育方面以及在享受保健服务方面受到歧视和虐待。

69. 委员会敦促香港特区加大力度，抵制在就业、教育和享受保健服务方面对同性恋、变性和跨性别妇女的歧视。

G. 主要关切领域和建议：澳门特别行政区(澳门特区)

人权机构

70. 委员会感到关切的是，澳门特区尚未依照《关于促进和保护人权的国家机构的地位的原则》(《巴黎原则》)设立人权机构。

71. 委员会敦促澳门特区考虑根据《巴黎原则》(1993年12月20日大会第48/134号决议)，设立一个具有促进和保护人权(包括妇女权利)的广泛权限的独立人权机构。

暴力侵害妇女

72. 委员会注意到澳门特区在抵制包括家庭暴力在内的暴力侵害妇女现象方面所取得的进步，并且欢迎澳门特区起草《防止家庭暴力法(草案)》。据缔约国代表团表示，该草案不久将被提交立法会。然而，委员会忆及它此前的结论性意见(CEDAW/C/CHN/CO/6，第45段)，对于普遍存在包括家庭暴力在内的暴力侵害妇女现象，委员会仍然感到关切。

73. 委员会忆及它关于暴力侵害妇女的第19(1992)号一般性建议和它先前的建议(CEDAW/C/CHN/CO/6，第46段)，因此建议澳门特区：

(a) 确保《防止家庭暴力法(草案)》全面应对家庭暴力的各个方面，而且确保将家庭暴力认定为一种应被当然起诉的刑事犯罪；

(b) 加强关于各种形式的暴力侵害妇女行为，特别是强奸的资料收集系统；

(c) 鼓励举报包括家庭暴力在内的一切形式的暴力侵害妇女和女童行为；

(d) 确保有效调查关于暴力侵害妇女行为的投诉并对此类行为进行有效起诉，确保犯罪分子受到妥善惩处；

(e) 确保《防止家庭暴力法(草案)》就使用保护令做出规定；以及

(f) 确保为遭受暴力侵害的妇女，包括遭受家庭暴力的妇女，提供数量充足而且设施健全的救助场所。

H. 适用于中国各地

《北京宣言》和《行动纲要》

74. 委员会吁请缔约国利用《北京宣言》和《行动纲要》来努力执行《公约》的规定。

千年发展目标和2015年后发展框架

75. 委员会呼吁按照《公约》的规定，将性别平等观点融入为谋求实现千年发展目标而做出的所有努力并且融入2015年后发展框架。

传播

76. 委员会忆及缔约国有义务有系统而且连续不断地执行《公约》的规定。委员会敦促缔约国优先关注在目前和提交下一次定期报告期间执行当前的结论性意见和建议。委员会因此要求缔约国以本国的官方语言向相关的各级(地方、省级和国家一级)国家机关,特别是向中央人民政府、各部委、全国人民代表大会以及向司法机关及时传达本结论性意见,使这些结论性意见能够得到全面落实。委员会鼓励缔约国与所有利益攸关方开展合作,例如雇主协会,工会,人权和妇女组织,大学和研究机构,媒体,等等。委员会进而建议采用适当的形式在地方社区一级宣传它的结论性意见,使这些结论性意见能够得到执行。另外,委员会要求缔约国继续向所有利益攸关方宣传《消除对妇女一切形式歧视公约》、《公约》的《任择议定书》、委员会的一般性建议以及法学理论。

批准其他条约

77. 委员会注意到缔约国遵守九项主要的国际人权文书将会增进妇女在生活的各个方面享受人权和基本自由。委员会因此鼓励缔约国考虑加入其并非缔约方的《公民权利和政治权利国际公约》,《保护所有移徙工人及其家庭成员权利国际公约》和《保护所有人免遭强迫失踪国际公约》。

结论性意见的后续行动

78. 委员会要求缔约国在两年内以书面形式说明它采取了哪些步骤来执行上文第 15 段(a)分段及(b)分段和第 31 段(b)分段、(d)分段及(e)分段中包含的建议。

编写下一次的报告

79. 委员会请求缔约国于 2018 年 11 月提交其第九次定期报告。

80. 委员会要求缔约国遵循“包括共同核心文件和条约专要文件准则在内的根据国际人权条约提交报告的协调准则”(HRI/MC/2006/3 和 Corr.1)。

Submission to CEDAW on the implementation of The Convention on the Elimination of All
Forms of Discrimination against Women (CEDAW) in Hong Kong
Submitted by Hong Kong Federation of Women's Centres

Date: April 11, 2023

1. Introduction

This Submission will cover the following articles of CEDAW:

Article 2: Policy measure

Article 5: Stereotypes and prejudice

Article 7: Social and Political Participation

Article 10: Education

Article 11: Employment

Article 13: Social Security

Article 16: Marriage and Family

2. Carer

2.1. Issues of concern

2.1.1. Lack of recognition toward carer's work (unpaid work)

Although there are no official statistics on carers, scattered data reflects that many carers in our society are primarily women.^{1 2} Women bear most care duties. Still, their efforts and contributions have not been formally recognised because economic care work has been classified as unpaid work and not accounted for in the Gross Domestic Product (GDP). This anomaly prevents recognition of carers' economic contributions in a widely understood way and underestimates the carer's dedication to society and family.

2.1.2. Lack of carer-oriented policy to support carers with different needs

Many carers or employed women with caring responsibilities bear financial, mental, and emotional pressure, especially during Covid-19. However, the current social welfare structure cannot respond to the needs of carers as it is a care-recipient-

¹ According to "Special Topics Report No. 63: Persons with Disabilities and Chronic Diseases", there are at least 204,200 carers residing with disabled people and 248,000 carers living with patients with chronic diseases. "2016 Population By-census Thematic Report: Older Persons" reflects that 916,389 households live with older people, of which 219,530 are in elderly care. Referring to the statistics of the Education Bureau, there were 53,256 special education students (including mainstream schools and special schools) in 2017/18. Suppose you add up the amounts of disabled people, patients with chronic diseases and students with special needs. In that case, you can imagine hundreds of thousands of carers in our society, which is not included Child Carers.

² Social Welfare Department, HKSAR, 2022, "Residential Respite Service", "Residential Respite Service for the Elderly" and "Child Welfare Services".

orientated structure. Although many consultation reports on carer-related services and carer-oriented policies have been conducted, the implementation schedule still needs to be determined. Without the carer-oriented policy, it is not easy to have overall planning for the carers' development and supportive services. Nowadays, it relies on scattered time-limited projects to provide limited services.

2.1.3. Heavy caring responsibilities and workloads caused a physical and mental burden on carers

Due to enormous caring pressure, women have suffered from mental and emotional health problems. Carers are usually less aware of their emotional status and personal needs, which easily spiral into suffering physical pain and mental illness. With limited immediate support, their situation would worsen, such as limited respite service. Subsidised respite services account for only 160 places for the disabled, 228 for the elderly and 852 for children.³ Furthermore, Covid-19 has amplified their caregiving burden with a higher standard of hygiene concerns and classroom suspension. In a survey conducted by the HKFWC in late February 2020, among the 850 female carer respondents, 58% of them shouldered the sole responsibility of purchasing face masks and disinfectants for the family. In contrast, only 22% stated that this responsibility was shared among family members. 15% of the respondents rated the highest score of their anxiety level (10), and the average score was 7, a relatively high level.⁴ It confirms that carers have heavy caring responsibilities, which cause mental wellness issues.

2.1.4. Lack of economic opportunity for women as carers in different stages

Women usually need more economic opportunities and life planning for their development. The limited respite service is one of the factors hindering women re-joining the labour market. Childcare services are an effective way to release the carer's responsibility, but the provision of government-subsidised childcare is insufficient to meet with the demand. According to the Census and Statistics Department, there were more than 221,000 children aged 0-4 at the end of 2021 but there are only 852 places in subsidised independent childcare centres, and the occupancy rate is 97%, indicating a shortage of childcare services.⁵

2.2. Recommendations

2.2.1. Reform Carer's Allowance for recognition and financial support

Recognising care work as work with value and its contribution to the advancement of society will involve recognising carers as paid labour with labour rights set out by the International Labour Organization (ILO).⁶ Allocating adequate social protection for

⁴ Hong Kong Federation of Women's Centres, 2020, "*International Women's Day 2020: Women Voice under Epidemic*".

⁵ Legislative Council, HKSAR, 2022, "*Replies to initial written questions raised by Legislative Council Members in examining the Estimates of Expenditure 2022-23*".

⁶ International Labour Organization, 2022, "*Care at work: Investing in care leave and services for a more gender equal world of work*".

carers, including Child Carers, enhances their recognition as formal work with economic and social value. Thus, establishing an all-rounded allowance scheme for various types of carers is essential.

2.2.2. Set up a Carer-oriented Policy to integrate carers' services

Countries like Australia and the United States have established carer-oriented policies to provide comprehensive support for women's wellness and economic opportunities. Within a proper framework and regular research, a carer-oriented policy can provide needed physical, mental, and emotional support to carers and create a carer-friendly community.

3. Divorce and single parents

3.1. Issues of concern

3.1.1. Failures in receiving maintenance

According to the Census and Statistics Department, in 2015, there were 13,900 cases which failed to receive maintenance. But we believe more cases are facing a similar situation due to the complicated legal procedure in making outstanding maintenance claims. There were only 844 hearings of judgment summons in 2015 and only 35 Attachment of Income Orders granted by the Court.⁷

NGOs have advocated for the government to set up an intermediary body to facilitate maintenance payments for many years. In 1997 and 1999, the Legislative Council (LegCo) passed a motion to urge the Government to set up a Maintenance Board, but the Government did not follow this LegCo's recommendation.⁸ Under the current system, it is hard to ensure that women, especially single mothers who form the majority of single parents, can enjoy equal rights and responsibilities with men.

3.1.2. Limited social support and service barriers of Comprehensive Social Security Assistance Scheme (CSSA) for single parents

The number of impoverished single-parent households was 36,000 before the policy intervention, with a poverty rate as high as 49.2% in 2020.⁹ As a group with a higher risk of poverty, they have to face enormous financial pressure on their own and deal with the defaulted maintenance and family crises. Although their plight is noted, the welfare CSSA scheme for an additional provision of HKD390 subsidy is woefully insufficient. The current welfare policy is not meeting the aims of Articles 13 and 16.

⁷ Census and Statistics Department, HKSAR, 2016, *"Thematic Household Survey Report No. 61 -- Enforcement of maintenance orders"*.

⁸ Legislative Council, HKSAR, 2020, *"Enhancing collection of child maintenance payments for single parents"*.

⁹ Census and statistics Department, HKSAR, 2021, *"Hong Kong Poverty Situation Report 2020"*.

3.2. Recommendations

3.2.1. *Setting up an intermediary body to handle maintenance issues*

In dealing with single-parent poverty and the economic dependence of women, the government should proactively establish an intermediary body with legal authority for collecting and recovering maintenance, simplify the process and avoid too many legal procedures. The body should coordinate relevant departments to solve maintenance issues and conduct public education on family issues and women's rights.

3.2.2. *Review the CSSA system and establish crisis intervention funding.*

CSSA is the primary social welfare funder in Hong Kong to support the basic needs of people living in poverty. But more financial allowance is needed for female single parents to secure their basic needs. In addition, the government should establish a fund that provides short-term family-oriented financial intervention for families in crisis or women facing emergencies.

4. Domestic violence (DV)

4.1. Issues of concern

4.1.1. Lack of Gender Sensitivity among professionals

Violence against women is often neglected. There were 4,082 cases of violence against children, spouses, and cohabitants in 2021 (1,367 cases of violence against children¹⁰ and 2,715 cases of violence against spouses and couples), a significant increase from 3,541 cases in 2020 (940 cases of violence against children and 2,601 cases of violence against spouses and couples).¹¹ Among them, 85% of the survivors were female. We estimate that DV cases could be higher in reality and emerge in different forms, such as physical violence, psychological violence, and social control.

Gender sensitivity is necessary for handling DV cases. However, many professionals and trained frontline workers, such as social workers, police and teachers, lack the sensitivity to address domestic violence that may cause a second assault on the survivors.

4.1.2. The classification system underestimates DV's situation

Police currently classify "domestic conflict cases" into "domestic violence (criminal)", "domestic violence (miscellaneous)", and "domestic incidents" according to their severity. Only the first two have been classified as domestic violence incidents.¹² According to LegCo's information in 2017 and 2021, nearly 85% of the police cases were classified as "domestic incidents" of lower severity, thus significantly reducing the

¹⁰ Social Welfare Department, HKSAR, 2021, "*Child Protection Registry Statistical Report 2021*"

¹¹ Social Welfare Department, HKSAR, 2021, "*Central Information System on Spouse/Cohabitant Battering and Sexual Violence Cases Statistical Report 2021*"

¹² Legislative Council Panel on Welfare Services, HKSAR, 2015, "*Administration's paper on the Police's handling of Domestic Violence and Family Violence Cases*"

number of domestic violence cases and ignoring mental abuse or lower level physical violence.¹³¹⁴ Furthermore, from the data provided by the police in 2021, there were only 1,196 criminal cases of domestic violence. In other words, many DV cases may be neglected under the current classification system.¹⁵

4.1.3. Insufficient assistance in the crisis supports survivors of Violence Against Women.

The current social, medical, and legal assistance in crisis support is insufficient and have not fulfilled the standard set by the Guidelines for Medico-legal Care of Victims of Sexual Violence published by the World Health Organization.¹⁶ The survivors of sexual violence or intimate partners psychologically experience a second assault in the formal procedure when they sought assistance because they needed to repeat the case's details more than five times. Also, NGOs are essential in providing crisis assistance that helps survivors to cope with negative feelings after the violence. Therefore, when they complete all help-seeking procedures, it is not difficult to imagine that the survivors will feel insecure. As a result, more women suffering from DV are unwilling to seek help from social service agencies.

4.1.4. Lack of recognition of various forms of sexual violence and intimate partner violence

There are multiple forms of sexual and intimate partner violence in different settings, such as intimate sexual assault, sexual humiliation, emotional violence, verbal intimidation, economic or social isolation, non-contact physical violence, etc. Referring to the research from Hong Kong Women's Coalition on Equal Opportunities in 2022, more than 30% were most often "sexually abused or forced to have sex" (35.52%), while the rest were more often subject to "verbal abuse or intimidation" (22.01%) and "physical violence" (14.29%)¹⁷. These forms have been developed to harm women's physical and mental health.

4.1.5. Lack of education in the formal curriculum and the public sphere

Many cases of sexual violence and intimate partner violence showed that the survivors did not know how to seek help, and perpetrators did not note that he/she is executing violence against women in different mediums and fields. There is still much misunderstanding about violence against women. Psychological barriers, like stigma,

¹³ Legislative Council, HKSAR, 2017, "LCQ14: Handling of domestic violence cases"

¹⁴ Legislative Council Panel on Welfare Services, HKSAR, 2021, "Support for victims of domestic violence and sexual violence"

¹⁵ Legislative Council Panel on Security, HKSAR, 2022, "2021 Policy Address Policy Initiatives of Security Bureau"

¹⁶ World Health Organization, 2003, "Guidelines for medico-legal care of victims of sexual violence. World Health Organization".

¹⁷ Hong Kong Women's Coalition on Equal Opportunities, Zonta Club of Kowloon, Department of Sociology and Social Policy of Lingnan University, 2022, "Hong Kong Women's Experiences of Violence 2021: A Research Report".

retaliation and conservative social norm, hinder women from seeking help from others.¹⁸

4.1.6. Ineffectiveness of anti-abuse programme, treatment, and counselling for perpetrators of domestic violence

There are ineffective anti-abuse measures from the Social Welfare Department and Department of Justice to help perpetrators. According to LegCo's statistics, using compulsory and voluntary anti-abuse programs for perpetrators of intimate partner violence is ineffective. In 2017-2019, the Batterer Intervention Programme (BIP), which is voluntary, had only 152 batterers participating. The Anti-Violence Programme (AVP), which is compulsory, had only two male batterers referred to by the Court in the Programme.¹⁹

4.2. Recommendations

4.2.1. Establish a Crisis Intervention Support Centre for survivors of Violence Against Women

It is essential to refer to the "Guidelines for medico-legal care for Victims of Sexual Violence" issued by the World Health Organization and set up a one-stop crisis intervention support centre to handle the medical, judicial, and social service needs of battered women. The centre should include medication, judicial support, support from social workers, and counselling to enhance the support for women who suffer from violence and prejudice and reduce the psychological harm that is a consequence from institutional policies and adjudicative process.

4.2.2. Training for professionals

More training programmes must be implemented for professionals, such as social workers and police, to deal with survivors of violence against women. The government should increase resources in public administration for gender education and training to ensure that survivors have sufficient assistance and rights in the help-seeking process. Professionals need gender sensitivity training to address the needs and vulnerabilities of women.

4.2.3. Review existing guidelines and case classification system for frontline staff on sexual and intimate violence

The government should review existing guidelines and case classification systems for frontline workers on sexual and intimate violence to provide appropriate support more quickly and ensure unified support from different professionals seeking help.

¹⁸ Hong Kong Women's Coalition on Equal Opportunities, Zonta Club of Kowloon, Department of Sociology and Social Policy of Lingnan University, 2022, "*Hong Kong Women's Experiences of Violence 2021: A Research Report*".

¹⁹ Legislative Council, HKSAR, 2019, "*11 December 2019 Council meetings, Written answers to questions -- Sexual violence on social disturbances*".

4.2.4. Increase resources in continuous support for survivors of Violence Against Women

Increasing resources for NGOs serving female survivors of violence will help them provide better support services to women. With the service suspension experience of Covid-19, the government and funders should increase the flexibility to allow the NGOs for the service re-arrangement.

4.2.5. Improve anti-abuse programme for perpetrators

The government should improve the system and regulation for anti-abuse programmes, treatments, and counselling to increase the participatory rate and effectiveness of the programs.

5. Economic participation

5.1. Issues of concern

5.1.1. Lack of “women-friendly” employment environment

The labour market of Hong Kong is not “women-friendly”. Women in the grassroots usually work as casual or low-skilled workers because of care responsibilities. Thematic Household Survey Report No. 72 mentioned that 203,500 short-duration or working hours (SDWH) employees worked in the non-government sector during enumeration.²⁰ These women lack labour protection and are vulnerable to poverty, information, and background restrictions. It showed there is room for Hong Kong to improve the working environment to be more women-friendly and eliminate discrimination against women in other areas of economic and social life. The employment arrangement and environment do not favour women’s rights for Article 11 related to employment in terms of opportunity, promotion, benefit, and training.

5.1.2. A discrepancy in the wage level and employment opportunity between male and female worker

Male and female workers still have a discrepancy in wage level and employment opportunities. According to “Quarterly Report on General Household Survey in April to June 2021”²¹, the median monthly salary of men workers was \$20,000, \$XXXX3,000 higher than that of women’s. Female Talent Pipeline Study by HKU and Meraki showed that only 22% of middle and senior management are female, and the number of men earning more than HK\$20,000 per month in employment is as high as 60% as compared to women.²² While the “Sex Discrimination Ordinance” and the “Family Status Discrimination Ordinance” are currently in place in Hong Kong, many people are unaware of the relevant legislation. In a survey by the Equal Opportunities Commission in 2018, it was found that only 30% of employees and less than 20% of employers were

²⁰ Census and Statistics Department, HKSAR, 2021, “Thematic Household Survey Report No. 72”.

²¹ Census and Statistics Department, HKSAR, 2021, “Quarterly Report on General Household Survey in April to June 2021”.

²² The University of Hong Kong and Meraki Executive Search & Consulting, 2019, “Participate in HK’s Female Talent”.

aware of the "Family Status Discrimination Ordinance". Only 38.9% of employers were willing to hire women without family care responsibilities, and only 16.7% were willing to employ mothers who needed to care for their children²³. It showed that there are gender inequalities in the labour market, and employers have different expectation on women than on men.

5.2. Recommendations

5.2.1. Lobby the companies to create a women-friendly workplace

The women-friendly workplace is a significant culture and system for women or carers to balance work, living and care responsibilities, such as affordable daycare service and flexible work schedules. The government should proactively promote a "women-friendly" culture in the labour market and legislate ordinances to facilitate women/carer-friendly employment.

5.2.2. Provide more affordable childcare services in the community

To release the female labour force, the government should provide sufficient and affordable alternative care options for women and carers, such as respite services for the elderly and the disabled, childcare services for 0-12 years old children and special-needs education students.

6. Social Security and Retirement Protection

6.1. Issues of concern

6.1.1. Absence of Universal Retirement Protection

Hong Kong relies on the old age allowance and Mandatory Provident Fund (MPF) for retirement welfare. MPF payments depend on the length and amount of employer and employee contributions. This scheme is not favourable to elderly workers, low-income workers, and, most importantly, unpaid homeworkers who are predominantly women. There are approximately 650,000 homemakers in Hong Kong, and over 95% are women.²⁴ Women involving in unpaid care responsibility, unemployed or casual workers had limited or no investment in their accounts. Therefore, women are not protected by any statutory retirement protection scheme. As the aging problem worsens and women live longer than men, the number of elderly women constantly increases. The absence of a well-functioned retirement protection system has violated Article 11 that the right to social security in retirement.

6.1.2. Absence of unemployment protection for women in transient workers

Hong Kong does not have unemployment insurance for grassroots families, especially women as carers and casual workers, so they cannot apply for workfare to pass the unemployment period. The financial pressure on women, working carers, and

²³ Equal Opportunities Commission, HKSAR, 2018, "A Study on Family Status Discrimination in the Workplace in Hong Kong".

²⁴ Women's Commission, HKSAR, 2022, "Hong Kong Women in Figures 2021".

grassroots families during the pandemic underscores the dire need for a cash protection policy when unemployed. Although the government argued that they eventually set up the short-term Employment Support Scheme, it could only meet basic needs instead of addressing the structural unemployment problem.

Also, the function of the CSSA is to provide a safety net for basic living rather than to respond to the needs of the unemployed. According to a survey commissioned by Oxfam Hong Kong in 2021, 60% of the respondents believe that the CSSA failed to help the unemployed through hard times.²⁵ It showed that the government needs to take action to deal with unemployed and grassroots women in social protection. Inadequacies in unemployment protection cannot fulfil Article 11, which refers to the right to social security in unemployment, sickness, and other work incapacities.

6.2. Recommendations

6.2.1. *Set up an unemployment protection system and establish the crisis intervention funding*

The government should establish short-term family-oriented crisis intervention funds for families or women in crisis. When they suffer from crises, such as unemployment or being laid-off, it can prevent the client from applying for CSSA as a long-term subsidy. In the long-run, the government should set up an unemployment protection system, such as unemployment insurance.

6.2.2. *Implement Universal Retirement Protection*

The government should establish universal retirement protection to cover different groups, particularly low-income women, carers, and unemployed women.

7. Gender Education

7.1. Issues of concern

7.1.1. *Missing pages on reforming the curriculum of gender education*

Gender education is underdeveloped in the formal curriculum. Education Bureau established “the Guidelines on Sex Education in Schools” in 1997, and they have not been reviewed and amended for over 25 years. According to research from MWYO, secondary school students have less than two learning hours annually for gender education.²⁶ Therefore, the existing curriculum is not favourable for students to build up gender sensitivity. Furthermore, as the implementation of sexuality education / gender education programmes is school-based, there is scanty information available in the public domain about the approach, content and delivery mode of that education implemented in schools in Hong Kong. For example, the Government has included topics such as gender identity, gender role and equality in gender education, but there are few

²⁵Oxfam Hong Kong, 2021, “Poll results: Public satisfaction with Budget”.

²⁶MWYO, 2021, “Sex and Relationship Education Survey Report”.

studies available in the public domain about the coverage and delivery of gender education in primary and secondary schools.²⁷

7.2. Recommendation

7.2.1. Established periodical review to ensure the content of sex and gender education is suitable for the social context

Introducing the updated guideline for sex and gender education is a milestone for Hong Kong to promote CEDAW and gender equality. Also, the guideline should be periodically reviewed to ensure the content on sex and gender education is suitable for the current social situation.

²⁷ Legislative Council, HKSAR, 2018. *“Information Note – Sexuality education”*

消除对妇女歧视委员会关于日本第七次和第八次合并定期报告的结论性意见 [CEDAW/C/JPN/CO/7-8]

1. 委员会在 2016 年 2 月 16 日第 1375 次和第 1376 次会议上（见 CEDAW/C/SR.1375 和 1376）审议了日本第七次和第八次合并定期报告（CEDAW/C/JPN/7-8）。委员会的议题和问题清单载于 CEDAW/C/JPN/Q/7-8，日本的答复载于 CEDAW/C/JPN/Q/7-8/Add.1。

A. 导言

2. 委员会对缔约国提交其第七次和第八次合并定期报告表示赞赏。委员会还感谢缔约国对会前工作组提出的议题和问题清单作出书面答复，并欢迎代表团在对话期间就委员会口头提出的问题作口头介绍以及进一步说明。

3. 委员会称赞缔约国派出由外交部副部长杉山晋辅率领的大规模代表团，成员包括来自不同部委和政府机构的代表，其中有法务省、外务省、教育、文化、体育、科学与技术省、卫生、劳动和福利省、内阁办公室、国家警察厅，以及日本常驻联合国日内瓦办事处和日内瓦其他国际组织代表团的代表。

B. 积极方面

4. 委员会注意到自 2009 年审议缔约国第六次定期报告（CEDAW/C/JPN/6）以来该缔约国在立法改革方面取得的进展，尤其是通过了：

(a) 2014 年经订正的《非全日制劳动法》，以改善非全日制劳动者的待遇，其中大多数是妇女；

(b) 2015 年《促进妇女就业和职业提升法》；

(c) 2014 年《监管和处罚与儿童卖淫和儿童色情制品相关行为及保护儿童法》；

(d) 2013 年经订正的《反跟踪法》；

(e) 2012 年《儿童和儿童保育支助法》。

5. 委员会欢迎缔约国努力改进旨在加快消除对妇女的歧视和增进妇女的权利的政策框架，例如缔约国通过的下列政策：

(a) 2014 年《打击贩运人口行动计划》；

(b) 2013 年《日本振兴战略》；

(c) 2010 年《第三个促进性别平等基本计划》；

(d) 2015 年《第四个促进性别平等基本计划》。

6. 委员会欢迎自审议缔约国上次定期报告以来其已批准以下国际文书：

(a) 2014 年批准了《残疾人权利公约》；

(b) 2009 年批准了《保护所有人免遭强迫失踪国际公约》。

C. 主要关切领域和建议

议会

7. 委员会强调立法机构在确保全面《公约》得到充分实施方面的关键作用（见 2010 年委员会第四十五届会议上通过的关于委员会与议员之间关系的声明）。委员会请议会依据其任务规定，从现在到根据《公约》提交下一次定期报告期间，采取必要步骤落实本结论性意见。

《公约》的法律地位、《任择议定书》的能见度和批准

8. 委员会注意到，根据缔约国《宪法》第 98 条第 2 款，已缔结和颁布的条约作为国内法的一部分具有法律效力。然而，委员会关切的是，《公约》的规定没有全面纳入国内立法，且 2014 年 3 月 28 日东京最高法院裁定，不承认《公约》可直接适用或自动生效。委员会还关切的是：

(a) 尽管缔约国已采取努力提高认识，但在该国对《公约》条款的了解并不充分；

(b) 未提供资料说明缔约国打算批准《公约任择议定书》的时间框架；

(c) 缔约国未充分落实委员会之前的建议（CEDAW/C/JPN/CO/6）。

9. 委员会敦促缔约国：

(a) 充分将《公约》规定纳入本国立法；

(b) 加强现有方案，以提高对《公约》、委员会的一般性建议的认识，以及提高缔约国相关利益攸关方，包括政府官员、议员、法律从业人士、执法官员和社区领袖对妇女人权的认识；

(c) 考虑批准《任择议定书》，就《任择议定书》下委员会的判例对法律从业人士和执法人员培训；

(d) 考虑通过一项国家行动计划，其中有关于委员会的本结论性意见执行情况的明确目标和指标。

歧视妇女的定义

10. 委员会仍然关切的是，根据《公约》第一条，对于包括公共和私人领域的直接和间接歧视在内的歧视妇女行为，没有一个全面的定义。委员会重申，缺乏这样的定义阻碍了缔约国充分适用《公约》。

11. 委员会重申其之前的建议（CEDAW/C/JPN/CO/6，第 22 段），并呼吁缔约国立即依据《公约》第一条在本国立法中通过关于歧视妇女行为的综合定义，目的是确保妇女在生活所有领域免遭直接和间接歧视。歧视性法律和缺乏法律保护

12. 委员会感到遗憾的是，其之前关于现有歧视性规定的建议没有得到落实。委员会尤为关切：

(a) 《民法》保留了歧视性条款，因为该法将妇女和男子的结婚最低年龄分

别设定为 16 和 18 岁；

(b) 《民法》仍仅禁止妇女在离婚后一定期限内再婚，尽管最高法院决定将该期限从 6 个月缩短到 100 天；

(c) 2015 年 12 月 16 日，最高法院裁定《民法》第 750 条合宪，该条款要求已婚夫妇使用同姓，实际上这通常迫使妇女采用其丈夫的姓；

(d) 尽管 2013 年 12 月废除了在继承事项上歧视非婚生子女的规定，但各种歧视性规定，包括《家庭登记法》有关出生通知期间歧视性说明的规定，仍予以保留；

(e) 没有涵盖对各少数族裔群体妇女交叉歧视的综合性反歧视法，这些群体经常遭到骚扰、污名化和暴力。

13. 委员会重申其之前的建议（CEDAW/C/JPN/CO/5 和 CEDAW/C/JPN/CO/6），并敦促缔约国毫不拖延地采取以下步骤：

(a) 修订《民法》，以便将妇女的法定结婚最低年龄提高至 18 岁，从而使其与男子平等；订正有关已婚配偶选择姓氏的立法，从而使妇女能够保留其娘家姓氏，并废除妇女离婚后再婚的任何等待期；

(b) 废除有关非婚生子女地位的一切歧视性规定，确保法律保护这些子女及其母亲在社会中不会遭到污名化和歧视；

(c) 依据关于缔约国在第二条下核心义务的第 28 (2010)号一般性建议，颁布综合性反歧视立法，禁止针对属于不同族裔群体妇女的多重/交叉形式歧视，保护她们免遭骚扰和暴力。

国家人权机构

14. 委员会重申其关切，缔约国尚未依据《关于促进和保护人权的国家机构的地位的原则》（《巴黎原则》）建立独立的国家人权机构，其广泛任务授权是促进和保护妇女的各项权利，包括保护妇女免遭多重形式的歧视。

15. 委员会重申其之前的建议（CEDAW/C/JPN/CO/6，第 24 段），缔约国须依据《巴黎原则》在明确时间框架内建立一个独立的国家人权机构，并确保其任务授权涵盖妇女的各项权利和性别平等。

提高妇女地位国家机构

16. 委员会注意到缔约国提交的资料，《内阁组建法》明确规定，指定两性平等事务大臣担任提高妇女地位国家机构负责人。然而，委员会关切的是，没有明确界定促进两性平等理事会和促进两性平等联络会议的职责。委员会还关切，缺乏明确性影响政策协调与实施，包括将性别平等观点纳入预算编制。

17. 委员会建议缔约国继续加强提高妇女地位国家机构，办法是阐明其不同组成部分的职责，从而使其能够有效开展活动，包括性别平等主流化和将性别平等观点纳入预算编制。

暂行特别措施

18. 委员会注意到，缔约国努力引入第三和第四个性别平等基本计划规定的数字目标，从而加快实现事实上的男女平等。然而，委员会关切的是，没有包括配额在内的法定暂行特别措施来解决妇女在公共和私营部门、政治生活，特别是在议会决策职位上代表性不足的问题，包括少数民族和其他族裔妇女。委员会尤其关切的是，缔约国没有采用法定配额，而是继续采用效力不高的志愿举措和其他激励措施，如在公共采购竞标过程期间对企业做出较高评价。

19. 委员会重申其之前的建议（CEDAW/C/JPN/CO/6，第 28 段），并呼吁缔约国依据《公约》第四条第 1 款和委员会关于暂行特别措施的第 25 (2004)号一般性建议，考虑采用暂行特别措施，如法定配额，将其作为一项必要战略，以加速实现男女实质性的平等，尤其是加强少数民族和其他族裔妇女、土著妇女和残疾妇女在《公约》所有领域的各项权利。

陈规定型观念和有害做法

20. 委员会仍然感到关切，男尊女卑思想以及关于男女在家庭和社会中角色和责任的根深蒂固的陈规定型观念长期存在。委员会特别关注：

(a) 这种陈规定型观念的持续存在继续体现在媒体和教科书中，对男女的教育选择以及家庭责任和家务的分担造成影响；

(b) 媒体对妇女和女童往往有模式化的描述，包括将她们塑造为性对象；

(c) 陈规定型观念仍然是对妇女实施性暴力的根源，色情制品、电子游戏和动画产品，如漫画，助长了对妇女和女童的性暴力；

(d) 针对妇女、少数民族妇女和其他族裔妇女，如阿伊努人、部落民、在日朝鲜妇女和移徙妇女的性别歧视言论仍在继续。

21. 委员会重申之前的建议（CEDAW/C/JPN/CO/6，第 30 段），敦促缔约国：

(a) 加大努力，改变强化男女传统角色的社会规范，推广优良文化传统，增进妇女和女童的人权；

(b) 有效执行现有法律措施和监测方案，对加深歧视性的性别陈规定型观念以及助长对妇女和女童性暴力的色情材料、电子游戏和动画的制作和发行加以规范；

(c) 审查教科书和教学材料，消除歧视性的性别陈规定型观念；

(d) 通过立法，对歧视女性的言论和宣传加以禁止和惩处，这些言论和宣传鼓吹种族优越论或仇恨，包括攻击少数民族和其他族裔妇女，如阿伊努人、部落民、在日朝鲜妇女和移徙妇女；

(e) 通过一个独立的专家机构，定期监测和评估为消除歧视性的性别陈规定型观念和对阿伊努人、部落民、在日朝鲜妇女和移徙妇女的偏见而采取的措施的影响。

暴力侵害妇女行为

22. 委员会注意到，司法部设立了一个委员会对《刑法》进行审查，解决各种问题，包括：

- (a) 强奸罪的狭隘定义，只适用于阴茎插入阴道的情形；
- (b) 加重对性犯罪的最低处罚；
- (c) 通过明文规定婚内强奸为犯罪的法律条款；
- (d) 将性犯罪定为依职权起诉的罪行。

然而，委员会关注的是，法务省的《刑法》审查委员会不认为有必要明文规定婚内强奸为犯罪。委员会还感到关切的是，同意发生性行为的最低年龄仍然是 13 岁，而且法定强奸罪的最低刑罚仅为三年监禁。委员会进一步关注：

(a) 《刑法》中没有专门将乱伦定为犯罪的条款；

(b) 有报道称，法院签发紧急保护令存在严重拖延，使暴力行为受害者，包括家庭暴力受害者面临进一步的暴力风险；

(c) 有消息称，受暴力侵害，包括遭受家庭暴力的移徙妇女、少数民族和其他族裔妇女以及残疾妇女不愿向当局报案，移徙妇女尤其不愿意这样做，因为她们的居留身份有可能被取消，原因是其必须提供根据《移民控制和难民承认法》得到保护的“正当理由”；

(d) 对家庭中所有妇女适用《防止配偶暴力法》存在不确定性，在这类案件中司法部门不愿签发保护措施。

23. 忆及其关于对妇女的暴力行为的第 19（1992）号一般性建议以及委员会以往的建议（CEDAW/C/JPN/CO/6, 第 30 段），委员会敦促缔约国：

(a) 在修订《刑法》时，充分利用《公约》规定和委员会第 19 号一般性建议及其判例，以确保全面处理暴力侵害妇女行为，包括家庭暴力行为，并将乱伦作为专门的罪行处理；

(b) 加快修订《刑法》，扩大强奸的定义，确保依职权起诉性犯罪；

(c) 修订《刑法》，明文规定将婚内强奸定罪并提高法定强奸罪的最低刑罚；

(d) 加快签发紧急保护令的司法程序；

(e) 鼓励遭受一切形式暴力侵害的妇女和女童，特别是移徙妇女报案，确保为受暴力侵害的妇女提供庇护所且庇护所有适当设施；

(f) 确保培训一线人员，确保彻底、有效地调查所有暴力侵害妇女和女童的案件并起诉犯罪者，如罪名成立，予以应有的处罚；

(g) 确保《防止配偶暴力法》也适用于家庭中的所有妇女。

24. 委员会注意到，缔约国根据《优生保护法》，通过地方优生保护委员会，力求防止有先天性疾病或残疾的儿童出生，导致残疾人被迫绝育。委员会注意到，在约 16 500 件未经同意的绝育案例中，70%涉及妇女，而缔约国未作任何补救努力，例如赔偿、正式道歉和提供康复服务。

25. 委员会建议缔约国研究以往根据《优生保护法》对妇女实施强迫绝育的严重程度，起诉犯罪者，如罪名成立，予以应有处罚。委员会还建议缔约国采取具体措施，帮助所有强迫绝育的受害者获得法律补救，并向他们提供赔偿和康复服务。

贩运人口和利用卖淫营利

26. 委员会注意到缔约国 2014 年 12 月通过了一项《打击贩运人口行动计划》，并设立了打击贩运人口措施促进委员会。委员会欢迎缔约国通过提出立法草案（目前议会正在审议），努力改革工业培训和技术实习方案。然而，委员会感到关切的是，缔约国仍然是贩运人口，尤其是出于劳动和性剥削目的贩运妇女和女童的来源国、过境国和目的地国，以及：

- (a) 在娱乐业中妇女继续遭受性剥削，特别是参与卖淫和色情影片制作；
- (b) 通过工业培训和技术实习方案来到缔约国的妇女和女童继续遭受强迫劳动和性剥削。

27. 委员会建议缔约国：

- (a) 加大定期劳动监察的力度和打击贩运人口，特别是贩运通过工业培训和技术实习方案招募的妇女和女童的其他努力；
- (b) 加强针对成人娱乐和色情影片制作场所的监测和监察方案，以防止性剥削；
- (c) 继续努力开展双边、区域和国际合作，包括与区域内其他国家交流信息，以及统一起诉贩运者的法律程序，以防止贩运活动；
- (d) 在下一期定期报告中提供资料，说明工业培训和技术实习方案下设想的改革的实施情况；
- (e) 批准《联合国打击跨国有组织犯罪公约关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》。

“慰安妇”

28. 委员会回顾以往的结论性意见（CEDAW/C/JPN/CO/6，第 37 和第 38 段），以及联合国其他人权机制，如消除种族歧视委员会（CERD/C/JPN/CO/7-9）、人权事务委员会（CCPR/C/JPN/CO/6）、禁止酷刑委员会（CAT/C/JPN/CO/2）、经济、社会和文化权利委员会（E/C.12/JPN/CO/3）、联合国人权理事会若干特别程序任务负责人，以及普遍定期审议（A/HRC/22/14/Add.1，如第 147 至第 145 段）就尚未解决的“慰安妇”问题提出的大量建议。委员会注意到缔约国为解决“慰安妇”问题所做的努力，包括最近于 2015 年 12 月 28 日宣布的缔约国与大韩民国之间的双边协定，但是委员会遗憾的是，缔约国没有落实上述建议，并以据称侵害行为发生在《公约》1985 年对缔约国生效之前为由，坚持“慰安妇”问题不属于委员会职权范围的立场。

还令委员会感到遗憾的是：

- (a) 最近，公职人员和领导人就缔约国侵害“慰安妇”行为的责任发表的言论增多，并宣布与大韩民国缔结了双边协议，其中称“慰安妇”问题得到了“最终、不可逆转的解决”，这并没有采取以受害者为中心的方针；

(b) 一些“慰安妇”直到临终，缔约国也没有明确承认对她们遭受的严重侵犯人权行为负责；

(c) 缔约国没有在其他相关国家履行国际人权法规定的对“慰安妇”的义务；

(d) 缔约国将“慰安妇”问题从教科书中删除。

29. 委员会重申以往的建议（CEDAW/C/JPN/CO/6，第 37 段和第 38 段），并指出“慰安妇”问题引发了严重的侵权行为，由于缔约国军方在第二次世界大战期间犯下的侵权行为的受害者/幸存者一直得不到有效补救，所以侵权行为对她们的权利产生持续的影响。委员会因此认为，属时理由不妨碍它处理此类侵权行为，委员会还敦促缔约国：

(a) 确保其领导人和公职人员不再就责任问题发表令受害者再次蒙受创伤的自相矛盾的言辞；

(b) 明确承认受害者有权获得补救，并据此提供充分而有效的补救和赔偿，包括补偿、抵偿、正式道歉和康复服务；

(c) 确保在实施 2015 年 12 月与大韩民国联合宣布的双边协议过程中，缔约国适当考虑到受害者/幸存者的观点，并确保其获得真相、正义和赔偿的权利；

(d) 将“慰安妇”问题适当纳入教科书，确保向学生和广大公众客观地呈现历史事实；

(e) 在下一定期报告中提供资料，说明开展磋商的范围及为保障受害者/幸存者获得真相、正义和赔偿的权利所采取的其他措施。

参与政治和公共生活

30. 委员会指出，缔约国努力促进妇女参与政治和公共生活，为此通过了第三个和第四个性别平等基本计划，其中设定了数字指标以及在 2020 年前实现妇女在政治、公共和私人生活中的代表比例达到 30% 的具体目标。然而，委员会仍然关切的是：

(a) 妇女在立法机构、中央省厅、地方（市级）政府及司法机构、外交部门和学术界所占比例较低；

(b) 缺乏加快实现男女在政治和公共生活中事实上平等的法定暂行特别措施；

(c) 残疾妇女和阿伊努族、部落民、在日朝鲜妇女等少数民族和其他族裔妇女在决策职位所占比例不足。

31. 委员会重申以往的建议（CEDAW/C/JPN/CO/6，第 42 段），并呼吁缔约国：

(a) 依照《公约》第四条第 1 款和委员会第 25 号一般性建议及关于妇女参与政治和公共生活的第 23（1997）号一般性建议，采取更多的暂行特别措施，例如法定配额，从而加快妇女充分而平等地参与选举产生和任命的职位；

(b) 确保有效实现第三和第四个性别平等基本计划中设定的、在 2020 年之前使妇女在立法机构、中央省厅、地方（市级）政府等所有各级机构，以及在司法机构、外交部门和学术界中所占比例达到 30% 的目标；

(c) 采取具体措施，包括暂行特别措施，提高残疾妇女和阿伊努族、部落民、在日朝鲜妇女等少数民族和其他族裔妇女在决策职位所占比例。

教育

32. 委员会称赞缔约国优先保障妇女和女童平等接受各级教育，并使更多女童接受初等和中等教育。然而，委员会关切的是：

(a) 高等教育男女入学比例差别较大，尤其在大学和研究生院，以及理学、技术工程和数学等传统上以男性为主导的研究领域；

(b) 接受高等教育的女生中有很一部分不能完成四年的大学学业，因此在劳动力市场处于不利地位；

(c) 妇女很少在教育机构中担任高级管理和决策职位，主要集中在级别较低职位，并且女教授的人数较少；

(d) 政界人士和公职人员对有关性健康和生殖健康及权利的适龄教育内容过于敏感；

(e) 有报告称，少数族裔和其他族裔群体，尤其是阿伊努族和部落民老年妇女的识字率较低；

(f) 没有数据表明移徙妇女和残疾妇女的教育状况，也没有资料说明处理校园欺凌现象和种族主义情绪表达的措施，尤其是针对在日朝鲜妇女和女童的这种行为。

33. 委员会建议缔约国：

(a) 加强职业指导活动，鼓励女童学习非传统科目，如科学、技术工程学和数学，提高教职人员对于女生完成高等教育的重要性的认识；

(b) 采取具体措施，包括暂行特别措施，提高妇女在教育部门的高级管理和决策职位所占的比例，并增加女教授的人数；

(c) 解决公众对于提供有关性健康和生殖健康及权利的适龄教育以及教育内容的关切，以便将这些内容系统地纳入学校的课程安排；

(d) 消除一切妨碍残疾妇女和女童、移徙妇女和阿伊努族、部落民、在日朝鲜妇女等少数民族和其他族裔妇女接受教育的障碍；在下次定期报告中提供资料，说明她们接受教育和获得奖学金的情况；

(e) 进一步采取措施，预防、惩治和消除对妇女和女童一切形式的暴力行为，包括教育机构中的欺凌现象和表现种族主义情绪的行为，尤其是针对在日朝鲜妇女和女童的这种行为。

就业

34. 委员会欢迎缔约国于 2015 年通过了《促进妇女就业和职业提升法》，努力在就业领域增强妇女权能，包括非正规就业者、少数民族和其他族裔妇女的权能。然而，委员会仍然关注：

(a) 男女薪资差异不断扩大，部分原因在于没有充分执行同工同酬原则；

(b) 劳动力市场持续存在横向和纵向隔离，妇女集中在低收入部门就业，部分原因在于聘用制度以职业轨迹为基础；

(c) 妇女由于承担家庭责任，依然集中在非全时工作部门就业，影响了她们的养老金待遇，部分导致了退休后的贫困；一直有报告显示妇女受到与育儿和分娩有关的骚扰；

(d) 没有充分禁止性骚扰，同时缺乏适当的制裁，而且缔约国尚未批准国际劳工组织的核心公约 1958 年《就业和职业歧视公约》（第 111 号公约）；

(e) 就业部门持续存在对土著妇女、少数民族妇女和其他妇女（部落民、朝鲜人和冲绳人）、残疾妇女和移徙女工的多重/交叉形式歧视；

(f) 没有资料说明缔约国内家政女工的状况。

35. 委员会敦促缔约国：

(a) 加紧努力执行 2015 年《促进妇女就业和职业提升法》和《劳动标准法》及其他相关法律，消除结构上的不平等和职业隔离现象，执行同工同酬的原则以缩小男女薪资差异；

(b) 加紧努力，提倡利用灵活的工作安排及推行父母共体育儿假的办法，鼓励男子平等承担育儿责任；确保提供充足的育儿设施；

(c) 通过法律条款禁止工作场所的性骚扰并加以适当制裁，以遏制这种行为；确保妇女在因怀孕和育儿及其他原因受到就业歧视时能够诉诸司法；

(d) 定期开展劳动监察，以便确保有关性骚扰的劳动法和行为守则得到遵守；

(e) 在就业部门开展调查，编制性别统计数据，尤其是关于土著妇女、少数民族妇女及残疾妇女和移徙女工的数据；

(f) 在下一期定期报告中提供资料，说明缔约国内家政女工的状况；

(g) 考虑批准国际劳工组织 1958 年《就业和职业歧视公约》（第 111 号公约）和 2011 年《家政工人体面劳动公约》（第 189 号公约）。

卫生

36. 委员会注意到缔约国已采取努力解决与 2011 年福岛第一核电站事故发生后辐射相关的健康关注。然而，委员会关切地注意到，缔约国计划解除将年度核辐射水平低于 20 毫西弗的污染区划定为疏散区，这可能严重影响妇女和女童的健康。

37. 委员会建议缔约国再次确认解除将辐射暴露的污染区划分为疏散区的做法是否符合国际公认的关于影响妇女和女童的危险因素的知识，同时考虑到妇女比男子对辐射更为敏感。还进一步建议缔约国进一步向受辐射影响的妇女和女童尤其是福岛县的孕妇提供医疗和其他服务。

38. 委员会关注到缔约国中少女和妇女堕胎和自杀率较高。委员会尤为关切的是：

(a) 根据《孕产妇保护法》第 14 条（与《刑法》第 212 条一并解读），妇女只能在继续妊娠或分娩可能严重损害其身体健康，以及在暴力或威胁方式下被强奸或既不能抗拒也无法拒绝怀孕的情形下堕胎；

(b) 妇女堕胎须征得其配偶同意；

(c) 缔约国妇女和女童的自杀率居高不下。

39. 根据关于妇女和卫生的第 24 (1999) 号一般性建议以及《北京宣言》和《行动纲要》，委员会建议缔约国：

(a) 修订《刑法》和《孕产妇保护法》，确保孕妇的生命和/或健康受到威胁的情况下，以及所有强奸案件中的堕胎行为合法化，无论是否使用暴力、威胁或受害者是否反抗、乱伦和胎儿严重缺陷，并将所有其他情况下的堕胎行为合法化；

(b) 修订《孕产妇保护法》，取消孕妇要堕胎须征得配偶同意的要求；并确保在以胎儿严重缺陷为由寻求堕胎时，得到孕妇的自由和知情同意；

(c) 通过一项综合计划，其中制定旨在预防妇女和女孩自杀的明确目标和指标。

经济和社会福利

40. 委员会注意到缔约国努力制定通过创收活动和获得小额贷款促进减贫的战略。然而，委员会关注的是有关妇女尤其是家庭户主、寡妇、残疾妇女和老年妇女贫困的报告。委员会特别关切她们的生活条件，因为在养恤金福利方面存在巨大性别差距。委员会还关切，《提供灾害慰问补助金法》扩大了男女之间的收入差距，原因是

(a) 给予“收入主要来源”者的慰问补助金翻倍；以及

(b) 家庭户主优先获得救灾贷款，而户主往往是男子。

41. 委员会呼吁缔约国加紧努力，以减少贫困和实现可持续发展。委员会还呼吁缔约国特别关注家庭户主、寡妇、残疾妇女和老年妇女的需求，并探讨是否有可能改革养恤金制度，以保障她们的最低生活标准。委员会还建议缔约国审查《提供灾害慰问补助金法》，以便纳入两性平等的观点。

农村妇女

42. 委员会注意到，缔约国于 2015 年通过了新的粮食、农业和农村地区基本计划。但是，委员会关切的是，农村妇女对决策的参与程度较低，特别是在政策制定方面，并且《所得税法》不把配偶、个体经营户家庭成员和农民的收入视为业务支出，这实际阻碍了妇女的经济独立性。

43. 委员会呼吁缔约国消除限制农村妇女参与制定政策的一切障碍；并考虑审查《所得税法》，以便承认妇女在家族企业中的工作，从而促进增强其经济权能。

减少和管理灾害风险

44. 委员会赞扬缔约国在减少和管理灾害风险中的领导力及其对通过《2015—2030 年仙台减少灾害风险框架》的全球努力所做的贡献。委员会还赞扬缔约国将性别平等观点纳入其减少灾害风险政策的主流，以及通过了一项国家灾害管理基本计划。然而，委员会关切的是，自 2011 年日本东部大地震后，妇女在减少灾害风险领域以及国家和地方各级管理层中担任领导职务的比例较低。

45. 委员会建议缔约国推动妇女参与各级决策以及与灾难相关的恢复过程，尤其是在地方一级。还应该继续努力，目的是将性别平等观点纳入各项可持续发展政策以及减少灾害风险和灾后管理工作。

处境不利的妇女群体

46. 委员会关注有报告称土著和少数民族，如阿伊努人、部落民、在日朝鲜妇女、残疾妇女、女同性恋、双性恋和变性妇女及移徙妇女，继续遭到多重和交叉形式的歧视。委员会尤其关切的是，这些妇女获得保健、教育和就业的机会仍然有限。

47. 委员会呼吁缔约国积极寻求努力，目的是消除土著和少数民族妇女，如阿伊努人、部落民、在日朝鲜妇女、残疾妇女、女同性恋、双性恋和变性妇女及移徙妇女遭到的多重和交叉形式的歧视，这将影响她们获得保健、教育和就业的机会、影响其参与公共生活，以及享有保健和教育服务及职场生活。

婚姻和家庭关系

48. 委员会关注缔约国缺乏有关婚姻解体时财产分配的立法。委员会指出，财产分配由夫妻双方根据夫妻递延共有财产制度下形成的判例法协商并达成一致，根据这一制度，被证明是夫妻双方共同生活期间积累的所有财产均需平均分配，不论财产所有权归谁。委员会关切的是：

(a) 关于财产分配的谈判和商定是在法律规定之外进行的，而男女权利存在不平衡，因此，妇女处于不利地位；

(b) 据称大多数离婚妇女缺乏要求其丈夫披露财务状况的必要信息和手段，包括业务资产和工资资产，因为法律没有提供任何程序工具和准则；

(c) 根据协议离婚制度，法律没有对监护和子女抚养事项的司法复核程序作出规定，以保障子女的福利，结果是如果未就子女抚养费达成协议，子女将变得一贫如洗。

49. 根据关于婚姻、家庭关系及其解体的经济后果的第 29（2013）号一般性建议，委员会建议缔约国：

(a) 通过关于所有形式婚前财产分配的综合立法，其中列明离婚配偶可遵循的明确和界定分明的程序；

(b) 确保离婚妇女有机会获得信息，使她们能够要求其配偶披露其财务状况并获得这方面信息；

(c) 审查关于监护和子女抚养问题的法律，以提供配偶双方协议离婚案件中的司法复核程序，并确保保障子女的福利，包括通过子女抚养费保障其经济需要。

《公约任择议定书》

50. 委员会鼓励缔约国批准《公约任择议定书》。《北京宣言》和《行动纲要》

51. 委员会呼吁该缔约国在执行《公约》各项规定时运用《北京宣言》和《行动纲要》。

2030 年可持续发展议程

52. 委员会呼吁在执行 2030 年可持续发展议程的整个过程中，根据《公约》各项规定实现实质性的性别平等。

传播

53. 委员会请缔约国确保及时使用其官方语文向相关各级(国家、区域和地方)国家机构传播本结论性意见，尤其是政府、各部、议会和司法部门，以使结论性意见得到充分落实。

批准其他条约

54. 委员会指出，缔约国通过遵守所有九项主要国际人权文书，将促进妇女在生活各方面享有其人权和基本自由。因此，委员会鼓励缔约国考虑批准《保护所有移徙工人及其家庭成员权利国际公约》。

结论性意见的后续行动

55. 委员会请该缔约国在两年内提供书面资料，说明为落实上文第 13 (a)段以及第 21 (d)和 (e)段所载建议而采取的步骤。

下一次报告的编写

56. 委员会请缔约国于 2020 年 3 月提交其第九次定期报告。

57. 委员会请缔约国遵循包括共同核心文件和条约专要文件准则在内的根据国际人权条约提交报告的协调准则（HRI/GEN/2/Rev.6，第一章）。

Same Surname Case:

Japanese Supreme Court Holds That Forcing Couples to Share a Surname is Constitutional

<https://harvardlawreview.org/print/vol-135/same-surname-case>

Japan is the only country in the industrialized world that forbids married couples from having different surnames.¹ Though most Japanese people oppose the system, the Supreme Court of Japan (SCJ) recently upheld the laws that make married couples share a surname.² The SCJ's reasoning typified weak judicial review, consisting of deference to the legislature and failure to balance constitutionally protected interests against the public welfare, both of which implicate concerns about the legitimacy of the Japanese Constitution. Its reasoning also showed how weak judicial review can lead the SCJ to overlook constitutional rights, like freedom of expression.

In 2018, three couples asked on their marriage registration forms that the husband and wife have different surnames.³ The Mayor of Kokubunji denied the requests because of Civil Code Article 7504 (CC-750), which says that “[a] husband and wife shall adopt the surname of the husband or wife . . . at the time of marriage,”⁵ and Family Register Act Article 746 (FRA-74), which says that couples need to put “the surname that the husband and wife will take” on their applications.⁷ The couples appealed, arguing that the laws violated the Japanese Constitution's equal protection and marriage provisions.⁸

The Tōkyō High Court upheld the Mayor's dismissal.⁹ In a twelve-to- three decision, the Supreme Court affirmed, holding that CC-750 and FRA-74 were constitutional.¹⁰ The majority relied on a case from 2015 (the “2015 case”), where the SCJ, on similar facts, held that surnames are part of the legal system, so harms stemming from changing surnames affect personal *interests*, not constitutional *rights*.¹¹ Although the Constitution requires the Japanese Legislature, the Diet, to account for personal interests, CC-750 was constitutional and reasonable.¹² The 2021 majority agreed and held that, under the 2015 case's reasoning, FRA-74 was “obvious[ly]” constitutional as well.¹³ The majority acknowledged a shift in some important social factors, like a higher percentage of women in the workforce and lower percentage of people who agreed with the system, but held that the 2015 case still controlled.¹⁴ Last, the majority argued that since the same-surname system was constitutional, it was up to the Diet to decide what kind of system to use.¹⁵

Justices Miyama, Okamura, and Nagamine wrote a concurring opinion.¹⁶ They argued that the system is an indirect constraint on marriage because it does not limit the act of marriage itself, but rather is one *effect* of marriage that does not hinder the free and equal decision making of the couples.¹⁷ Next, the Justices looked at whether the system was unreasonable “in light of . . . individual dignity and the essential equality of the sexes” and therefore unconstitutional.¹⁸ The Justices thought changed circumstances could make the system unconstitutional¹⁹ but argued that none of the changes since 2015 — like increased female employment, less popular support, or the disapproval of the Committee formed by the Convention on the Elimination of All Forms of Discrimination Against Women²⁰ (CEDAW) — made it unconstitutional.²¹ The Justices acknowledged that forcing someone to change their surname can harm personal interests through, for example, feelings of identity loss, and that, to avoid this harm, some people have chosen not to marry; however, they asserted that addressing these consequences was the Diet's job.²²

Justice Miura concurred only in the judgment, arguing that the same-surname system was unconstitutional but still agreeing that the SCJ should uphold the dismissal of the applications.²³ He noted that since the reasonableness of a restriction involving constitutional rights was in question, the SCJ needed to examine the constitutionality of the laws “according to the nature of the relevant right[s].”²⁴ He argued that surnames and given names had value as symbols of one’s individuality even if surnames traditionally showed relationship status.²⁵ He noted that the law makes one spouse give up those personal interests, *directly* constraining the marriage.²⁶ He thought that not allowing exceptions was unconstitutional because of how today’s family structures differ from traditional family structures.²⁷ Justice Miura also said that two factors lessened the system’s rationality: first, the law affects only some families, which weakens the “public announcement” rationale; and second, more people are informally using maiden names after marriage, which weakens the “family unity” rationale.²⁸ Then he argued that even though the statutes’ texts were gender-neutral, that did not mean the system’s effects were also gender-neutral.²⁹ He voted to uphold the system, however, as he contended that the SCJ could not strike it down without the Diet first making changes to the broader legislative framework; to do otherwise would cause “confusion in society.”³⁰

Justices Miyazaki and Uga dissented.³¹ They agreed with Justice Miura that the same-surname system is unreasonable and unconstitutional but argued that the SCJ should have ordered the applications’ acceptance because the Mayor did not have discretion to deny them.³² The Justices asserted that marriage is a natural human activity and not simply a state service.³³ They also noted that, in modern society, the *full* name carries import and identifies the individual.³⁴ Some requirements, like notifying the government of a marriage, were reasonable because they were necessary to provide services, but the Justices argued that the same-surname system went too far.³⁵ They stressed the different outcomes for men and women, noting it is almost always women who change their surnames,³⁶ and cited societal changes like the increasing popularity of maiden names as evidence of the system’s irrationality. ³⁷ They also argued that marriage is private, so any “public announcement” justification could not be sustained, ³⁸ and that the CEDAW committee’s recommendations against the system signaled the same-surname system was unconstitutional.³⁹

Justice Kusano also dissented, arguing that the system went against a constitutionally required welfare analysis.⁴⁰ He argued that Article 13 of the Constitution requires grounding laws in individual dignity, and if it is obvious the Diet is “ignor[ing] individual dignity” in its weighing of values, the SCJ should step in.⁴¹ He asserted that allowing exceptions would not harm people who want to change their names, but that not allowing exceptions harms people who do not, including by making people share their relationship statuses with employers.⁴² He also considered children’s and third parties’ welfare, concluding that the welfare gained from allowing exceptions far outweighed the welfare lost.⁴³

The opinions in favor of upholding the system epitomized a weak form of judicial review that is deferential to the legislature and that does not weigh rights and interests, ignoring some altogether. In the abstract, this decision says little about the status of individual rights, but, in the Japanese context, there might be cause for concern. Scholars question whether Japan’s current Constitution, which enshrines individual rights and gives the SCJ judicial review, ⁴⁴ emerged democratically and is therefore legitimate.⁴⁵ General Douglas MacArthur had U.S. officials draft a constitution for Japan in eight days after he rejected the Japanese government’s attempt at a draft.⁴⁶ None of the writers were experts in constitutional law, and the first draft was in English.⁴⁷ After its debate in the Diet and translation into Japanese, the Constitution became law in 1947, and it remains the oldest unamended constitution in

the world.⁴⁸ Worries about the Constitution's legitimacy could make the SCJ reluctant to scrutinize the legislature's decisions with a strong form of judicial review.⁴⁹

As of 2021, the SCJ has used judicial review to strike down laws only ten times.⁵⁰ As a result, scholars have called the SCJ "the most conservative constitutional court in the world"⁵¹ and decried it as "so subdued as to deprive judicial review of all its significance."⁵²

The reasons for this wariness are still unclear.⁵³ But, as Professor Nobuhisa Ishizuka explains, the *result* of this wariness is crystal: the constitutional text has not changed, but the Diet passes laws in line with traditional values and not the Constitution, "adapting the democratic principles of the constitution to the conservative social and political conventions of the country."⁵⁴ And today's effective one-party rule in Japan might facilitate this adaptation.⁵⁵

This is the milieu in which the SCJ decided this case, plainly deferred to the legislature, did not balance the rights at stake, and as a result, overlooked the free expression implications of its logic. The majority opinion, concurring opinion, and 2015 case showed their deference by suggesting that "[h]ow this type of system should be designed is a matter that needs to be discussed and determined by the Diet."⁵⁶ That the SCJ deferred in one more case does not evince weak judicial review. This case is an example of weak judicial review, however, because none of the opinions that deferred to the legislature *compared* the public interest to private, personal interests. They minimized the private interests, pointing to the use of premarriage surnames postmarriage as a way of alleviating social disadvantages, but never balanced the *significance* of any interests against each other.⁵⁷

Article 13 of the Japanese Constitution says "[a]ll of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs," which implies a balancing test with individual rights on one side and the public interest on the other.⁵⁸ But the majority opinion, concurring opinion, and 2015 case did not weigh interests. Instead, they just said that the personal interests were not enough. The 2015 case majority gave three public welfare interests in forcing couples to share a surname: showing the legitimacy of children, providing ease for the child in sharing a surname with both parents, and having feelings of unity for all family members with that surname.⁵⁹ These public interests, the 2021 concurring opinion explained, conflict with the personal interests of avoiding feeling a "loss of identity and . . . disadvantages in social life" that come with changing one's official surname.⁶⁰ However, instead of weighing the interests as Justice Kusano did in dissent⁶¹ and despite acknowledging societal changes since the 2015 case, the 2021 majority and concurring opinions deferred entirely to the legislature on the question of the proper surname system.⁶²

So, rather than analyze the significance of competing interests to see if the system was unreasonable and therefore unconstitutional, the majority and concurring opinions acknowledged the interests and deferred to the Diet. Notably, Justice Miura's opinion did weigh the interests but still deferred for broader societal reasons.⁶³ For such an opinion to be possible calls into question whether the SCJ's role as interpreter of the Constitution is about enforcing individual rights, and it reveals how reluctant Justices might be to strike down laws.

Last, the SCJ's failure to weigh the free expression rights implicated by its reasoning shows how weak judicial review might lead the SCJ to overlook some rights altogether. Surnames involve more

personal interests than any of the opinions acknowledged.⁶⁴ And forced changes of a surname implicate political speech for both spouses.⁶⁵ Previously, the SCJ said free expression is “a fundamental human right . . . that underpins democratic society,”⁶⁶ but, in this case, the holding recycled problematic reasoning from the 2015 case. ⁶⁷ Not all couples want to “publicly indicate to others that they are members of one unit.”⁶⁸ In fact, they might want to indicate something to the contrary. So, forcing couples to share a surname is both a privacy concern, as the dissents noted,⁶⁹ and a concern of compelled political expression. Whether the public interests outweigh those concerns in this case is for the SCJ to decide. But that scholars have a difficult time pinning down the Court’s free expression doctrine⁷⁰ evinces the SCJ’s failure to weigh interests in this case and others. This vagueness and the fact that the SCJ has yet to strike down a single law on free expression grounds is likely why scholars describe the free expression jurisprudence as “highly deferential to the government and . . . not underpinned by any serious analysis.”⁷¹

Weak judicial review does not necessarily mean individual rights are on the chopping block.⁷² But in modern Japan, if both the Japanese public and Supreme Court question the legitimacy of the Constitution and a single party dominates politics, leaving scant room for competing voices in constitutional adaptation, there might be a reason to worry.

FOOTNOTES (omitted, see <https://harvardlawreview.org/print/vol-135/same-surname-case/>)

消除对妇女歧视委员会关于大韩民国第八次定期报告的结论性意见 [CEDAW/C/KOR/CO/8]

1. 委员会在 2018 年 2 月 22 日举行的第 1576 次和第 1577 次会议(见 CEDAW/C/SR.1576 和 CEDAW/C/SR.1577)上审议了大韩民国第八次定期报告(CEDAW/C/KOR/8)。委员会的议题和问题清单载于 CEDAW/C/KOR/Q/8, 缔约国的答复载于 CEDAW/C/KOR/Q/8/Add.1。

A. 引言

2. 委员会赞赏缔约国提交其第八次定期报告。委员会还感谢缔约国的后续报告(CEDAW/C/KOR/CO/7/Add.1)、对会前工作组提出的议题和问题清单作出书面答复, 并欢迎代表团进行口头介绍, 以及对委员会在对话期间口头提出的问题作进一步澄清。

3. 委员会赞扬缔约国由两性平等和家庭部长官郑铉栢率领的高级别代表团, 代表团成员包括外交部、两性平等和家庭部、司法部、教育部、卫生与福利部、就业和劳动部、人事管理部、韩国国家警察厅、大韩民国常驻联合国日内瓦办事处和其他国际组织代表团的代表。

B. 积极方面

4. 委员会欢迎自 2011 年审议缔约国第七次定期报告(CEDAW/C/KOR/7)以来该国在开展立法改革方面取得的进展, 特别是通过或修正了以下文书:

(a) 2017 年修订的《多元文化家庭支助法》, 旨在协助移民妇女建立社会支助网络;

(b) 2014 年, 《性别平等框架法》;

(c) 2012 年和 2014 年修订的《防止性侵犯和保护受害者法》;

(d) 2012 年和 2014 年修订的《劳动标准法》, 延长怀孕十六周之前出现流产或死产的妇女的产假;

(e) 2012 年和 2014 年修订的《平等就业机会和工作与家庭平衡援助法》, 将照顾子女的年龄上限提高到子女包括养子女九岁, 以确定父母享有育儿假的资格, 鼓励父母休育儿假; 要求雇主及其雇员接受预防性骚扰教育, 对拒不履行者给予处罚;

(f) 2012 年和 2014 年修订的《防止性贩运和保护受害者法》;

(g) 2012 年、2013 年和 2014 年修订的《防止家庭暴力和保护受害者法》;

(h) 2011 年、2012 年、2013 年和 2014 年修订的《性犯罪处罚等特殊案件法》。

5. 委员会欢迎缔约国努力完善体制和政策框架, 以加快消除歧视妇女行为并促进性别平等, 例如通过以下文件:

(a) 韩国国际协力团《中期部门战略》, 涵盖 2016 至 2020 年;

(b) 《第二个促进性别平等政策基本计划》, 涵盖 2018 至 2022 年。

6. 委员会欢迎自审议上一次报告以来，缔约国加入了(2015年)《联合国打击跨国有组织犯罪公约关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》(《禁止贩运人口议定书》)。

C. 议会

7. 委员会强调立法机构在确保全面执行《公约》方面发挥着关键作用(见委员会关于其与议员关系的声明，2010年第四十五届会议通过)。委员会请国会按照其任务授权采取必要步骤，从现在起直至提交下一次报告时，落实本结论性意见。

D. 主要关切领域和建议

保留意见

8. 委员会注意到缔约国相关部委就撤回对《公约》第十六条第1款(g)项的保留持续进行的磋商将于2018年结束。

9. 委员会回顾其之前在1998年第十九届会议上通过的建议(CEDAW/C/KOR/CO/7, 第11段)及其关于保留意见的声明，认为对《公约》第十六条第1款(g)项的保留不符合《公约》目的和宗旨，因此不应该准许，而应该予以撤回。《公约》及其《任择议定书》以及委员会结论性意见和一般性建议的知名度

10. 委员会注意到缔约国为传播委员会之前的结论性意见(CEDAW/C/KOR/CO/7)所作的努力，包括向国民议会提交结论性意见，注意到缔约国就《公约》及其《议定书》所作的其他提高认识工作。然而，令它感到关切的是，这种努力并没有针对执法官员、检察官和司法人员，妇女本身并不了解《公约》赋予她们的权利或《任择议定书》规定的申诉程序，因此缺乏提出权利主张的能力。

11. 委员会重申其之前的建议(CEDAW/C/KOR/CO/7, 第13段)并鼓励缔约国：

(a) 确保将本结论性意见、《公约》及其《任择议定书》以及委员会的一般性建议传播给所有利益攸关方，包括政府和执法官员、检察官和司法人员；

(b) 提高所有妇女、尤其是弱势群体妇女的认识，使她们认识到《公约》赋予她们的权利以及可以根据《任择议定书》采取的提出权利主张的程序；

(c) 如上所述，促进所有相关利益攸关方就《公约》规定的权利实施能力建设方案。

歧视妇女定义和歧视性法律

12. 委员会关切地注意到，缔约国尚未按照韩国国家人权委员会在2006年和2016年提出的建议通过一项全面的反歧视法律。委员会注意到缔约国在对话期提供的信息，指出将就歧视行为，包括以性取向和性别认同为由实施的歧视行为

采取行动，涵盖2017-2021年期间的《第三个国民行动计划》将包括通过一项全面的反歧视法。它还关切地注意到，自2005年废除《禁止性别歧视和救济法》以来，大韩民国还没有颁布关于禁止性别歧视的单行法。委员会进一步注意到，2015年，两性平等和家庭部要求大田市政委员会从其《性别平等基本条例》中删去有关女同性恋、双性恋、跨性别者和双性者的规定。

13. 委员会重申其之前的结论性意见(CEDAW/C/KOR/CO/7, 第 15 段), 建议缔约国根据《公约》第一条的定义, 并按照关于缔约国在《公约》第二条下应负核心义务的委员会第 28(2010)号一般性建议, 通过一项禁止歧视妇女的全面的反歧视法, 包括禁止影响到弱势妇女群体, 如贫困妇女、在族裔、种族、宗教信仰和性取向上属于少数群体的妇女、残疾妇女、难民妇女和寻求庇护妇女、无国籍妇女和移民妇女、农村妇女、单身妇女、少女和老年妇女的直接、间接和交叉形式歧视。

国家域外义务

14. 委员会赞赏缔约国努力将性别平等纳入其国际合作方案主流。它注意到缔约国的环境政策, 特别是那些旨在到 2022 年将细粉尘降低 30%的环境政策。然而, 委员会感到关切的是, 缔约国与化石燃料和燃煤火力发电厂有关的能源政策导致排放温室气体和其他排放物, 对妇女、特别是孕妇产生了不利影响, 因为这些排放物提高了女性和儿童的死亡率。

15. 委员会建议缔约国审查其能源和气候变化政策, 确保这些政策不会对妇女和女童的生命和健康产生不利影响。

提高妇女地位的国家机制

16. 委员会欢迎缔约国在 2015 年设立性别平等委员会, 在国务总理的领导下开展工作, 并在 2017 年进行了改革, 还欢迎缔约国计划将该委员会改为一个由总统领导的统筹协调机构。委员会还欢迎 2015 年在 47 个中央行政机构和 17 个市级和道级政府实体任命性别平等政策官员。然而, 委员会感到关切的是, 由两性平等和家庭部全权负责处理性别平等和家庭事务问题可能会直接或间接地加深对妇女和男子在家庭和社会中所扮演角色和所承担责任的歧视性陈规定型观念。

此外, 委员会感到关切的是, 由企划财政部长官负责的促进性别平等预算编制常设合作机构缺乏法律框架, 并且只配备了 10 名官员。

17. 委员会回顾其关于有效的国家机制和宣传的第 6(1988)号一般性建议, 并建议缔约国:

(a) 在总统办公室设立性别平等委员会, 并为其配备必要的人力、财政和技术资源以及明确的任务授权, 以协调缔约国提高妇女地位的国家机制;

(b) 按照《性别影响分析和评估法》加强各级政府的性别影响和分析机制, 并为其配备充足的人力、财政和技术资源;

(c) 拟定一个法律框架, 促进由企划财政部长官负责的促进性别平等的预算编制常设机构的有效运转, 并为其提供必要的人力、财政和技术资源。

国家人权机构

18. 委员会感到关切的是, 2018 年新设立的性别平等处并没有足够的能力来处理数量剧增的有关歧视妇女的诉状。

19. 委员会建议缔约国加强韩国国家人权委员会在性别和妇女权利方面的任务授权, 并分配充足的人力、财政和技术资源, 以加强其处理性别歧视的职能。

暂行特别措施

20. 委员会感到关切的是，缔约国在经济合作与发展组织(经合组织)29国的玻璃天花板指数排名中一直排在末尾，自2002年起实施的旨在加强妇女在公共部门代表性的五年计划在妇女担任公共部门高级别职务方面产生的结果有限。委员会注意到，2022年计划的目标是，妇女人数在二级及以上劳动力队伍中占到10%，在四级(处长级)及以上就业的比率达到21%，目标不算高大。委员会还感到关切的是，2015年，小学、初中和高中的女校长占比仅为28.7%、23.2%和9.5%，公立和国立大学的女教授占比为14.2%。

21. 委员会建议缔约国根据《公约》第四条第1款和委员会关于暂行特别措施的第25(2004)号一般性建议，在明确的时限内充分利用暂行特别措施，确保妇女在高级别公职上、包括在各级公立学校和学术界有平等代表性。

基于性别的暴力侵害妇女行为

22. 委员会注意到缔约国为打击性别暴力所作的努力，包括开通应急热线，设立为受害者提供临时收容的中心，提高社会对家庭暴力是一种罪行的认识，以及采取措施加强预防和保护。委员会欢迎缔约国修正《性犯罪处罚等特殊案件法》，修正案删除了性暴力受害者提出申诉的要求，以便对案件进行调查和起诉。然而，

委员会关切地注意到：

(a) 《刑法典》第297条中现行的强奸定义要求就“施暴或恐吓手段”提供证据，缔约国没有落实委员会之前提出的在立法中而不仅仅在判例法中将婚内强奸定为具体刑事犯罪的建议(见CEDAW/C/KOR/CO/7，第20段和第21(e)段)；

(b) 从2013年到2016年，举报的家庭暴力案件数量从160 272起增加到264 528起；从2012年到2016年，根据《家庭暴力犯罪处罚等特殊案件法》针对家庭暴力提供家庭保护的案件从494起增加到19 834起；鉴于该法的主要目的是维持和恢复家庭关系，在2015年发生的16 868起家庭保护案件中，有43.4%的案件未涉及任何刑事惩罚；违反禁止令者仅受到了行政罚款处罚；

(c) 对性暴力受害者强加社会污名和体制性偏见，包括部分上由男性组织产生的普遍错误观念，对妇女和女童向警察报案构成阻碍；对向主管机关举报或告知亲友暴力性犯罪的受害者提出诽谤指控，并考虑将受害者的性背景作为诉讼程序中的证据，这些导致受害者再度受到侵害，令受害者保持沉默；

(d) 在过去十年里，涉及网络性暴力的犯罪数量大幅增加；起诉比例偏低，且对犯罪者惩罚较轻；让韩国通讯标准委员会根据执法机关的请求删除和拦截犯罪内容的计划只用作事后措施而不是预防措施；这种措施尚未得到实施，此类罪行受害者不得不求助于昂贵的“数字殡葬服务”，将此类内容从数字空间上删除；

(e) 就业和劳动部在2012至2016年间接到了2 100多份有关工作场所性骚扰的投诉，但由于对受害者造成的伤害必须有确凿的证据才能进行诉讼，没有此类证据，便以支付过失罚金方式结案，起诉案件数量极少(在2012至2015年的1674起案件中，只有83起)，其中包括对《平等就业机会和工作与家庭平衡援助法》第14条第(2)款所禁止的雇主对性骚扰受害者采取不利措施提起诉讼；缔约国对预防和保护工作场所性骚扰政策的监督不充分；

(f) 在学校、大学和军队等公共机构，包括教师，对妇女实施的性暴力行为极为普遍；

(g) 据报告，面向朝鲜民主主义人民共和国女性“脱北者”的辅导和心理治疗中心和收容所提供服务不足。

23. 委员会提及其之前的建议(CEDAW/C/KOR/CO/7, 第 21 段), 并考虑到其更新第 19 号一般性建议、关于基于性别的暴力侵害妇女行为的第 35(2017)号一般性建议, 同时回顾可持续发展目标中具体目标 5.2, 建议缔约国加大努力, 打击基于性别的暴力侵害妇女的行为, 并:

(a) 修正《刑法典》第 297 条, 以便将缺少受害者自由同意置于定义核心, 并明确将婚内强奸定为刑事犯罪;

(b) 修正《家庭暴力犯罪处罚等特殊案件法》, 以确保将受害者及其家人作为主要目标, 除其他外, 将其适用范围扩大到同性伴侣或家庭以及所有妇女, 不论其性取向或性别认同; 废除在家庭保护案件中针对家庭暴力提供辅导或培训条件下暂停指控的制度, 并禁止在此类案件中使用和解与调解方式; 确保采取法定制裁措施对犯罪者给予刑事处罚; 以及通过强制逮捕政策, 在违反禁止令的情况下对家庭暴力施害者实施强制逮捕;

(c) 采取一切必要措施, 防止通过对性虐待受害者提出莫须有罪名而滥用刑事诉讼程序, 包括确保提供免费的法律代理人为其辩护, 并禁止将受害者的性背景用作诉讼程序的证据;

(d) 加强防范网络性暴力的预防措施, 包括颁布立法, 明确规定将这种新形式针对妇女的性暴力行为定为刑事犯罪, 考虑对未能在各自平台删除或拦截犯罪内容的网络平台和网络经销商处以严厉的经济制裁, 并立即执行计划, 让韩国通讯标准委员会根据受害者等提出的请求删除和拦截此类犯罪内容;

(e) 建立以预防为重点的管理和监督工作场所性骚扰案件的有效制度, 特别是针对中小企业的制度, 并确保严格遵守《平等就业机会和工作与家庭平衡援助法 2017 年修正案》, 对施害者采取强制性纪律措施。

(f) 确保对在中小学、大学和军队等公共机构的性暴力施害者给予更严厉的惩罚; 采取步骤避免让施害者恢复原职; 并作出更严格的保密规定, 以便于举报和提供辅导;

(g) 为面向朝鲜民主主义人民共和国女性“脱北者”的中心提供充足的财政资源, 以便提供有效的心理治疗和辅导, 包括在她们遭受性暴力的案件中。贩运人口和利用妇女卖淫意图营利

24. 委员会欢迎缔约国批准《禁止贩运人口议定书》并通过《刑法典》第 296.2 条, 确定了对贩运人口罪行有限的普遍管辖权。委员会承认缔约国为向遭到贩运的外国妇女提供支助服务所作的努力。然而, 委员会仍对以下几点感到关切:

(a) 缺少关于人口贩运的全面法律, 人口贩运的相关方面在部门立法中仍然分散;

(b) 凭 E-6-2 签证入境在该国娱乐行业工作的移民妇女的处境, 她们往往是人口贩运和利用妇女卖淫意图营利的受害者, 容易受到性骚扰、性暴力和其他犯罪侵害, 还面临着被驱逐出境的风险, 除非她们主动对其施害者提起诉讼, 以及朝鲜民主主义人民共和国女“脱北者”的处境, 她们往往为供养家人而被迫卖淫;

(c) 对贩运妇女和女童案件的起诉和定罪率较低，对施害者处罚较轻，缺少关于受害者的分类数据；

(d) 缺少以受害者为中心的解决人口贩运和利用妇女卖淫意图营利的办法，因为未受到胁迫从事卖淫的妇女，包括配合假扮买春者的警察盯梢行动的妇女都会受到刑事处罚，遭受卖淫剥削的儿童、包括女童未被归类为受害者，只作为“受保护青少年”接受治疗 and 矫正教育；

(e) 缺少面向希望脱离卖淫行业的妇女的退出方案的信息。

25. 委员会重申其之前的结论性建议(CEDAW/C/KOR/CO/7, 第 23 段)，并建议缔约国：

(a) 制定一部关于人口贩运的全面法律，该法律应符合《禁止贩运人口议定书》规定的支助和保护人口贩运受害者标准，受害者包括在居住、逗留和遣返母国等问题上需要特殊保护和援助的外国妇女和女童；

(b) 修订现行的 E-6-2 签证制度，并加强对征聘外国妇女的娱乐公司的监管，包括实地走访在该制度下从业的妇女的工作场所；采取措施确保 G-1 签证制度适用于所有遭受贩运的女性受害者，无论其是否愿意或是否有能力与检察机关合作；设计并实施以其生活条件调查为基础的政策，解决朝鲜民主主义人民共和国女性

“脱北者”被迫卖淫的结构原因；

(c) 采取适当措施，提高对贩运和拐卖妇女和女童的施害者的刑事定罪率，并采取法律措施，减少暂缓执行刑事判决数量；

(d) 采取以受害者和人权为中心的做法，努力打击贩运以及利用妇女和女童卖淫意图营利行为；

(e) 设计并实施针对希望脱离卖淫行业的妇女的退出方案。

“慰安妇”

26. 委员会回顾其有关日本的结论性意见(CEDAW/C/JPN/CO/6, 第 37-38 段和 CEDAW/C/JPN/CO/7-8, 第 28-29 段)，并欢迎缔约国自 2017 年 12 月 27 日公布其与日本在 2015 年 12 月 28 日进行的双边协定审查的结果后采取的补充措施。它又注意到，缔约国计划按照以受害者为中心的做法实施后续措施，受害者/幸存者及其家人反对根据双边协定由日本出资 10 亿日元成立的和解与愈合基金会。

27. 委员会建议缔约国：

(a) 确保在执行与日本于 2015 年 12 月联合宣布的双边协定的过程中适当考虑受害者/幸存者及其家人的意见；

(b) 确保充分维护受害者/幸存者及其家人了解真相、获得公正和得到补救的权利，包括通过毫不拖延地帮助她们康复并提供公平和适足的赔偿。

参与政治和公共生活

28. 委员会关切地注意到，2016年，国民议会中只有17%的议员为女性(而2012年为15.7%)，其中，在根据比例代表制选出的47名议员中，女议员占53.2%(而2012年占51.9%)，相比之下，在253名基于选区的地区议员中，女议员仅占10.3%(而2012年占7.7%)。委员会尤其感到关切的是，尽管《公职人员选举法》要求各政党提名参加国民议会选举的候选人中妇女至少占30%，但并没有辅之以执行机制，因此，在2016年大选中，只有10.5%的候选人为女性。委员会还感到关切的是，尽管《公职人员选举法》要求各政党在每个地方选区(不包括农村地区)至少任命一名女性候选人参加道级或地方政府议会的选举，在2014年选举中，只有8.2%和14.41%的妇女分别当选为道级和地方议会议员。

29. 委员会建议缔约国考虑增加国民议会中比例代表制席位相对于地方选区席位的数量，以增加女议员人数，并推出附加罚款的强制性和可执行的性别配额，以便各政党提名候选人参加国民议会及道级和地方政府议会的选举。

30. 委员会关切地注意到，2017年，由于“性别隔离征聘做法”，在缔约国的总警力中，妇女所占比例仅为10.9%(2015年为9.9%)，由于报告的具有性别歧视性的安置和晋升政策，只有5.7%的妇女担任管理职务，据报告韩国国家警察厅已根据韩国国家人权委员会和警察改革委员会的建议撤销其决定，同意优先征聘女性担任正规警务人员。

31. 委员会建议缔约国采取必要步骤，废除“性别隔离征聘”警察做法，并采取必要措施，增加女警察人数，包括巡警及以上职等的警察人数。

妇女与和平与安全

32. 委员会欢迎缔约国在2014年通过第一个《妇女与和平与安全国家行动计划》。

33. 委员会建议缔约国继续致力于确保有效执行安全理事会关于妇女与和平与安全的第1325(2000)号决议及后续决议，以根据委员会关于妇女在预防冲突、冲突及冲突后局势中的作用的第30(2013)号一般性建议，应对在冲突及冲突后局势中侵犯妇女人权的行为以及妇女大量参与和平建设。

国籍

34. 委员会关切地注意到：

(a) 由于社会对单身母亲强加污名的性别歧视持续存在，因缺少社会共识，国民议会未能通过关于外籍父母所生子女进行登记的法律草案，缔约国缺少具有普遍性和强制性的出生登记制度，导致无证移民妇女，特别是无证未婚移民妇女所生子女面临无国籍风险；

(b) 与大韩民国男性国民结婚的移民妇女面临的困难以及入籍过程耗时长；

(c) 移民官员有时仍要求女性移民申请者提交一份韩国公民出具的担保信才能延长合法居住期，尽管2012年颁布了一项法律修正案取消这一要求。

35. 委员会建议缔约国：

(a) 通过并实施关于外籍父母所生子女进行登记的必要法律和程序，包括由医院和专业保健人员进行强制性出生登记；

(b) 加快采取必要措施，以确保大大缩短与大韩民国男性国民结婚的移民妇女的入籍进程，并确保无论如何如何在缔约国最长合法居住期内结束；

(c) 在申请延长居住期时，严格执行废除大韩民国公民出具担保信的法律要求，包括通过开展能力建设和为移民官员提供培训。

教育

36. 委员会欢迎缔约国为让更多的女学生进入科学和技术等非传统领域学习所采取的措施。然而，委员会感到关切的是，自 2017 年 3 月以来开始执行的《国立学校性教育准则》(于 2015 年 2 月发布)偏重生育率和环境卫生内容，据报告有关预防性暴力的内容加深了具有性别歧视的陈规定型观念，并刻画了某些类型负面家庭形象，如单身母亲家庭。

37. 委员会鼓励缔约国考虑采取更有效的措施，包括暂行特别措施，如为教育机构规定配额，为渴望进入非传统领域学习的妇女和女童提供定向赠款或贷款。委员会建议缔约国修订其《国立学校性教育准则》，消除歧视性陈规定型观念，提供适龄、循证、科学准确的与性健康和生殖健康权利有关的信息。

就业

38. 委员会感到关切的是，缔约国的薪酬持续存在着性别差异(2016 年差额达到 35.4%)，仍是所有经合组织国家中差异最大的国家。此外，委员会感到关切的是，缔约国 70.2%的短期工人为妇女，《劳工标准法》和《保护定期和非全时工人法》等劳工法完全没有为此类女工提供任何保护，或提供的保护有限，而此类女工只能作为个人参保人参加国家养老金计划，并且只有在连续工作三个月后才能参加就业保险计划。

39. 委员会重申其之前的结论性意见(CEDAW/C/KOR/CO/7，第 31 段和 33 段)，并建议缔约国：

(a) 严格执行《平等就业法》，以落实等值工作同等报酬原则，特别是大力提高就业和劳动部调查性别薪酬差异的能力；对违反同值工作同等报酬原则的行为给予严厉制裁；并推出公营和私营公司工资通报制度；

(b) 根据《劳工标准法》和《保护定期和非全时工人法》加强对女性短期工人的保护；

(c) 继续开展提高认识运动，并扩大福利范围，包括提高产假和育儿假的福利水平，以便加强父母分担育儿责任的奖励措施。

卫生保健

40. 委员会欢迎缔约国努力完善面向妇女的保健服务，包括扩大面向低收入老年妇女的社会和保健服务。然而，委员会感到关切的是，缔约国的性健康和生殖健康权利政策狭隘地偏重于已婚妇女和孕妇的健康和家庭保健。委员会还感到关切的是，据报告变性人获得的医疗服务受到限制，双性者在未经其知情同意的情况下对其实施了不可逆转的性别分配、绝育或“生殖器矫正手术”。

41. 委员会建议缔约国审查其保健立法和政策，特别是与妇女性健康和生殖健康及权利有关的立法和政策，在必要时采取纠正行动，以便在保健部门推动实质性性别平等，纳入遭受交叉形式歧视的所有妇女。委员会还建议缔约国确保变性人有权获得医疗服务，包括参加国家医疗保险计划，确保不强迫双性者接受非自愿的医疗干预。

42. 委员会表示关切的是，尽管《母婴保健法》等规定，在某些情况下，包括在强奸和乱伦情况下，堕胎是合法的，但按照《刑法典》的规定，堕胎仍属于一种应受惩罚的犯罪行为。此外，委员会感到关切的是，据报告，2016年9月，卫生与福利部将违反《母婴保健法》的堕胎定义为一种不道德的医疗行为，对所涉医疗专业人员处以刑事处罚，并吊销医疗执照。然而，委员会欢迎缔约国后来撤回该政策措施。在这方面，委员会注意到缔约国提供资料指明宪法法院正在审议是否将堕胎定为刑事犯罪。

43. 委员会重申其之前的结论性意见(CEDAW/C/KOR/CO/7, 第35段)，并考虑到不安全堕胎是导致孕产妇死亡率和发病率的主要原因，呼吁缔约国将在强奸、乱伦、威胁孕妇生命和(或)健康或胚胎严重受损情况下的堕胎行为合法化，并将所有其他情况下的堕胎行为非刑罪化，取消对堕胎妇女的处罚措施，并为妇女提供获得高质量堕胎后护理的渠道，特别是针对不安全堕胎引起的并发症的护理。

农村妇女

44. 委员会注意到缔约国努力将性别平等政策纳入《2016-2020年培养女农民的第四个五年框架计划》，承认妇女在平等的基础上与丈夫共同拥有农场，扩大女农民参与国家养恤金计划，并提高她们的职业能力。然而，委员会感到关切的是，区域渔业合作社(到2017年底为5.7%)和农业合作社中的妇女主任比率极低，尽管法律要求女性成员比例达到30%下限的合作社至少任命一名妇女主任，这表明这些合作社中的妇女成员人数很少。

45. 根据《公约》和关于农村妇女权利的第34(2016)号一般性建议，委员会建议缔约国采取适当措施，继续改善农村妇女的境况，包括执行由韩国海洋研究所赞助的旨在提高妇女在渔业中的参与和增强其这方面权能的研究项目的结果。委员会还建议缔约国采取强有力措施，任命更多妇女担任渔业和农业合作社主任，并确保听取妇女的意见，同时充分考虑到性别平等关切问题。

婚姻和家庭关系

46. 委员会感到关切的是，《民法典》第781条第(1)款维护父系原则，规定子随母姓必须是在父母结婚时父亲表示同意。委员会还感到关切的是，离婚时婚内财产分割依据的是配偶各自的相对贡献，除非他们在合同中另作规定。委员会进一步感到关切的是，和解程序是强制性的，即便在因家庭暴力导致的离婚案件中，由于存在着维护家庭完整观念，施虐的父亲也享有探视权和儿童监护权。它还感到关切的是，缺少对事实婚姻关系中的妇女的社会和经济保护。

47. 委员会呼吁缔约国修正《民法典》第781条第(1)款，废除父系原则，以便

使其法律与《公约》第十六条第1款(g)项保持一致。委员会回顾之前的结论性建议(CEDAW/C/KOR/CO/7, 第39段)，即缔约国按照委员会关于婚姻、家庭关系及其解除的经济后果的第29(2013)号一般性建议，采取法律措施，纳入关于在解除婚姻或事实婚姻关系时平等分配婚内财产的规则。委员会还呼吁缔约国确保寻求离婚的家庭暴力受害者在获得离婚准许前不会被强

迫同施暴者进行和解或调解，并确保司法部门成员接受了要求在儿童监护权案件中将家庭领域性别暴力考虑在内适足的强制性培训，优先考虑对罪行进行起诉而不是家庭和解，以便对基于性别的暴力侵害妇女行为给予适当惩罚并防止再次发生。委员会还建议缔约国考虑将社会和经济保护扩大到处于事实婚姻关系中的妇女。

《北京宣言》和《行动纲要》

48. 委员会呼吁缔约国在努力执行《公约》条款时运用《北京宣言》和《行动纲要》。

《2030年可持续发展议程》

49. 委员会呼吁在执行《2030年可持续发展议程》的整个过程中，根据《公约》条款实现实质性的性别平等。

传播

50. 委员会请缔约国确保以其官方语文向相关各级(国家、区域和地方)国家机构及时传播本结论性意见，尤其是政府、各部委、议会和司法部门，以使结论性意见得到充分落实。

批准其他条约

51. 委员会注意到，缔约国加入主要的九项国际人权文书，¹将有助于妇女更好地在生活所有方面享有其人权和基本自由。因此，委员会鼓励缔约国考虑批准其尚未批准加入的《保护所有移徙工人及其家庭成员权利国际公约》和《保护所有人免遭强迫失踪国际公约》。落实结论性意见的后续行动

52. 委员会请缔约国在两年内提供书面资料，说明为落实上文第13段、第23(b)和(d)段和第25(b)段所载的建议而采取的措施。

下一次报告的编写

53. 委员会请缔约国在2022年3月提交其第九次定期报告。报告应按时提交，如有延迟，则应涵盖截至提交之时的整个期间。

54. 委员会请求缔约国遵循“包括共同核心文件和条约专要文件准则在内的根据国际人权条约提交报告的协调准则”(见HRI/GEN/2/Rev.6，第一章)。

Joint NGO Submission to the CEDAW Committee for the Adoption of the List of Issues [Republic of Korea]

CEDAW Pre-Sessional Working Group for the 86th Session

(27 Feb. - 3 Mar. 2023)

Durebang, Korea Cyber Sexual Violence Response Center, Korea Differently Abled Women United, Korea Sexual Violence Relief Center, Korea Women Workers Association, Korea Women's Hot-Line, Korea Women's Political Solidarity, Korea Women's Associations United, Korean Network of Gender Budgeting, MINBYUN - Lawyers for a Democratic Society, National Solidarity Against Sexual Exploitation of Women, Rainbow Action Against Sexual-Minority Discrimination of Korea, Saewoomtuh, Solidarity for USAFIK Camptown Women's Human Rights, The Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan, Women Making Peace, Women Migrants Human Rights Center, Women's Human Rights Defenders, Womenlink

Contact Details

- Korea Women's Associations United, kwau@women21.or.kr
- MINBYUN - Lawyers for a Democratic Society, admin@minbyun.or.kr

Introduction

According to the 2022 Gender Gap Report (World Economic Forum), the Republic of Korea (RoK) ranked 99th out of 146 countries on the gender equality scale²⁸. Gender wage gap stood at 31.12percent as of last year. The RoK has retained the top position in terms of gender pay inequality among the OECD countries for 26 consecutive years since joining the group in 1996. Gender inequality still persists in society, and women experience diverse forms of gender-based discrimination and violence in daily lives.

While the RoK government has declared overseas that it firmly upholds and prioritizes the value of human rights, the current president Yoon Suk-yeol, who took office in May 2022, keeps denying the rights of women and vulnerable groups and continuously tries to capitalize on backlash against feminist movements in Korean society for his own political interest. He made abolishing the Ministry of Gender Equality and Family (MOGEF), a national machinery for gender equality, a central pledge of his presidential campaign, saying that “systemic “structural discrimination based on gender” doesn’t exist in the RoK”²⁹. In October 2022, a government organization reform bill to abolish the MOGEF was proposed to the National Assembly with the support of the entire MPs of the ruling party. The Yoon administration and the ruling party are still pushing for the abolition plan for the MOGEF, continuously denying the existence of gender-based discrimination and instead describing it as a “personal matter” or

²⁸ The RoK ranked 115th out of 146 countries on the economic participation and opportunity sub index; 97th on the educational attainment; 52nd on the health and survival; and 72nd on the political empowerment.

https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

²⁹ Time, “How South Korea’s Yoon Suk-yeol Capitalized on Anti-Feminist Backlash to Win the Presidency”, May 10, 2022,

https://time.com/6156537/south-korea-president-yoon-suk-yeol-sexism/?fbclid=IwAR346wZK3II4IQuj1S-zF4v4IMEGG5AmiUZI_EmiBUOo8l-EdYwKiOydzBs

The Guardian, “‘Devastated’: gender equality hopes on hold as ‘anti-feminist’ voted South Korea’s president”, March 11, 2022 <https://www.theguardian.com/world/2022/mar/11/south-korea-gender-equality-anti-feminist-president-yoon-suk-yeol>

“an issue that incites conflict between men and women”. Women and CSOs are now deeply concerned about the risks of great regression in women’s rights in Korea, which have been gradually advanced over the past 30 years through women’s long struggles³⁰.

Legal Status of the Convention and Legislative and Institutional Framework

1. Enactment of a comprehensive Anti- discrimination Act

15 years after the first attempt to legislate the bill in 2007, the comprehensive Anti-discrimination Act has not yet been enacted. Currently, four bills have been proposed in the National Assembly (NA). In addition, a public petition, signed by 100,000 people, demanding the enactment of the bill has also been submitted to the NA. Nevertheless, the NA continues to delay the legislative process on the bill. Even though the two activists fought a hunger strike for 46 days to urge the enactment, the NA has not started any specific legislative process except for one public hearing at the Legislation and Judiciary Committee at the NA in May 2022.

Suggested questions

- Submit information on measures to enact a comprehensive Anti-discrimination Act that prohibits all forms of discrimination, including sexual orientation and gender identity.

2. Withdrawal of reservation to Article 16.1(g) of the Convention

In its periodic report, the government mentioned that there was a policy task focusing on abolishing the patrilineal surname principle and revising Article 781(1) of the Civil Act in the Fourth Basic Plan for Healthy Families (2021) and the Fourth Basic Plan for Low Fertility and Aging Society (2020), reflecting the survey result³¹ that 73.1 percent of respondents agreed on determination of a child’s surname based on agreement between parents at the time of registering the birth of the child. The report also included provision for a reform bill to abolish the patrilineal surname principle (introduced by a member of the NA and currently under discussion). However, implementation of the task for revising the Act has virtually halted under the current administration. The Ministry of Justice (MOJ) in charge will reportedly take steps to revise the Act only after a national consensus has been reached³². In October 2022, the MOJ also submitted a written answer to the NA³³ at the Parliamentary Inspection of State Administration, stating that abolition of the patrilineal surname principle must be conducted in a deliberate manner based on a national consensus.

Suggested questions

³⁰ 116 global CSOs, Joint Statement to South Korean president-elect Yoon Seok-yeol on Women’s Rights, April 3, 2022, <https://www.hrw.org/news/2022/04/04/joint-statement-south-korean-president-elect-yoon-seok-yeol-womens-rights>

³¹ Ministry of Gender Equality and Family (2020), National Survey on Family Diversity, http://www.mogef.go.kr/mp/pcd/mp_pcd_s001d.do?mid=plc503&bbsSn=704886

³² The Hankyoreh, “The government’s policy task of abolishing the patrilineal surname principle has halted just a year after it was planned”, May 11, 2022 (in Korean), <https://www.hani.co.kr/arti/society/women/1042235.htm>

³³ MP Park Joo-min, 2022, Written answer submitted by the MOJ at the 2022 Parliamentary Inspection of State Administration

- Explain the government's clear position on the policy task of abolishing the patrilineal surname principle, which was included in the Fourth Basic Plan for Healthy Families and the Fourth Basic Plan for Low Fertility and Aging Society, and provide information on the concrete plans to revise Article 781(1) of the Civil Act, including steps taken by the Ministry in charge to consult with diverse stakeholders.

3. National machinery for the advancement of women

The Ministry of Gender Equality and Family (MOGEF), the national machinery for gender equality policy, has existed as a form of government ministry for more than two decades, since its establishment in 2001. While gender-based discrimination and violence are still prevalent in diverse areas, the MOGEF operates with an extremely inadequate budget (0.24% of the nation's annual budget) and human resources (279 officials, 2021), which makes it difficult to effectively carry out its mandates. Various CSOs and citizens have been strongly calling for strengthening of the capacity of the MOGEF by allocating sufficient financial and human resources to enable it to play an effective role in coordinating gender policies in all ministries.

However, President Yoon pledged to abolish the MOGEF during his presidential campaign, claiming that there is no systemic gender discrimination in society and therefore no longer a need for the MOGEF³⁴. On October 7, 2022, a government organization reform bill, including abolition of the MOGEF and establishment of the Office of Population, Family and Gender Equality, under the Ministry of Health and Welfare (MOHW), was proposed with the support of all parliamentarians in the ruling party. If the MOGEF is abolished and the existing women's policies are allocated to different ministries, such as the MOHW and the MOJ, the coordination and integration mechanism for gender equality policies among ministries and local authorities will shrink or even disappear completely. The mandates given to the head of the ministry, including the mandates to 1) deliberate and decide on important policies as a member of the State Council and 2) propose the bill and issue ordinances concerning matters that are within its jurisdiction, will be lost. The legal and policy frameworks for women's rights will become fragmented and lose priority, leading to worsening of the human rights of women and vulnerable groups. However, the government and the ruling party keep trying to mislead citizens by claiming that abolition of the MOGEF will do good in terms of advancing gender equality.

Recently, the terms "women" and "gender equality" have started being deleted from the existing institutional mechanisms and policies on gender equality³⁵. The local execution structure for gender equality policies is being severely impacted by the government's abolition plan for the MOGEF.

Suggested questions

³⁴ 116 global CSOs, Joint Statement to South Korean president-elect Yoon Seok-yeol on Women's Rights, April 3, 2022, <https://www.hrw.org/news/2022/04/04/joint-statement-south-korean-president-elect-yoon-seok-yeol-womens-rights>

³⁵ The name of the annual statistical report published by the MOGEF has been changed this year – from "Women's Lives as Seen Through Statistics" to the "Lives of Men and Women as Seen Through Statistics". The names of divisions dedicated to women and gender equality policies in local governments have been changing, with the term "women" being deleted (Division of Women, Youth and Families -> Division of Population and Families, Division of Welfare and Women -> Division of Social Welfare, Division of Women and Families -> Division of Family Policy), The Hankyoreh, "1 year passed since the RoK president had pledged to abolish the MOGEF. The term "women" is being deleted, and only "families" and "population" are left", January 6, 2023 (In Korean), https://h21.hani.co.kr/arti/politics/politics_general/53180.html

- Explain the government's clear position on the question of whether structural gender-based discrimination against women exists in Korean society, and whether it will stick to its plan to abolish the MOGEF despite the deep concerns of Korean CSOs and international communities.
- Submit information on the government's concrete plans to fulfill its obligations to eliminate structural gender-based discrimination and achieve gender equality.

4. Gender Impact Assessment and Gender-responsive Budgeting

The periodic report mentions that Gender Impact Assessment (GIA) implementation rates became a part of government performance evaluation indicators in 2019. However, it was excluded again as of 2022 when the idea of abolishing the MOGEF was put on the table. It can be assumed that the government's decisions regarding the utilization of the GIA outcomes were affected by the controversy over the existence of the MOGEF. In addition, precarious employment conditions and high turnover of professional staffs of the 16 Local Gender Impact Assessment Center (LGIAC) is an obstacle to the support of the local governments' implementation of GIA; This problem becomes more worrisome in the current situation where there is a possibility that the national machinery for gender equality might be weakened, as the MOGEF's mandate includes designation of and budget allocation to the LGIAC³⁶.

The gender-responsive budgeting (GRB) system in RoK has several limitations: there are no meta-analysis mechanisms on the GRB statements and procedures to revise the resource allocation structure, and therefore adding or adjusting budget is not possible; the gender mainstreaming strategies of the budgeting process lacks policy tools to promote citizen participation. Since the government didn't provide sufficient information to the public on the characteristics of the GRB system except for its budget size, it has been often misunderstood as the "budget only for women beneficiaries" even among experts and domestic journalists. However, the government has so far not taken any action to set the record straight on such misconceptions about and raise public awareness on the GRB system after it began in full force in 2010. Recently, there have been anti-feminist groups' attempts to block the adoption of GRB ordinances in the local councils, such as occupying the meeting rooms and collectively sending text messages to politicians.

Suggested questions

- The government announced that it will maintain and strengthen the existing policy tasks and programs under the MOGEF, even if the MOGEF is abolished. Provide information on plans to improve the effectiveness of GIA at both central and local administrations, including expanding human and financial resources of the GIA division of the MOGEF and ensuring job security of staff of the LGIAC.
- Provide information on concrete plans to enhance effectiveness of the GRB system, including plans to establish a meta-analysis mechanism on GRB statements; to include the result of meta-analysis in the government performance evaluation framework; and to promote citizen (women) participation and engagement.

³⁶ Gender Impact Analysis and Assessment Act (Article 17)

https://elaw.klri.re.kr/eng_mobile/ganadaDetail.do?hseq=33723&type=abc&key=GENDER%20IMPACT%20ANALYSIS%20AND%20ASSESSMENT%20ACT¶m=G

- Provide information on measures taken to raise public awareness on the GRB system, including its operation and impact.

Temporary Special Measures

5. Participation in public sectors

Under the Plan to Improve Women’s Representation in the Public Sector (2018-2022) prepared in 2017, the MOGEF has been monitoring its implementation progress every year. While the percentage of women in senior positions is steadily increasing, as of 2021, the rate of women at senior managerial levels in central administrative bodies is still 10%; those at Level 4 or higher is 24.2%; women executives in public institutions is 22.5%; women senior managers in local public enterprises is 11.8%; women professors in national universities is 18.9%; women police officers is 14.2%; and women senior military officers in the army, navy and air force is 8.2%. The rates of women in government committees are less than 30%, except for the committees under the central administrative bodies that have a mandatory 40% gender quota for women. As of November 2022, the number of female heads of central administrative bodies is only 6 (15%), and there are only 4 women high-level public officials (Level 3 or higher) in the Office of the President (7.7%).

Suggested questions

- Provide information on concrete steps taken and plans to address women’s low representation in public sectors, including specific measures to enhance women’s representation at high-level positions in governmental bodies, such as ministers and public officials with Level 3 or higher.

Violence against Women

6. Solution to domestic violence and punishment on the perpetrator

The government’s perspective on domestic violence remains to be centered on “the maintenance and recovery of the family.” Comprehensive Countermeasures on Domestic Violence Prevention, announced by the government in 2018, still includes suspending indictment on condition of counseling (suspension of indictment on condition of counseling) and newly added “perpetrator counseling” as one of the temporary measures, with no mentioning of the amendment of the purpose clause of the Act on Special Cases Concerning the Punishment, Etc. of Crimes of Domestic Violence focusing on the maintenance and restoration of family. Meanwhile, only 20% of the 221,824 cases reported as domestic violence in 2020 were arrested, and about 35% of these cases were transferred to family court instead of criminal court as ‘Family Protection Cases’ which focuses on counseling and education.³⁷ Even among those cases reported as criminal cases, only about 10% were indicted and only 0.5% of the perpetrators were arrested and charged. The government should abolish alternative proceedings which incapacitates punishment on the domestic violence perpetrator and take necessary measures to ensure victims’ rights through practical and functioning law.

Suggested questions

³⁷ MP Jeong Chun-sook (2021), material submitted by the Prosecution Service and the Korean National Policy Service Agency at the Parliamentary Inspection of the State Administration.

- Describe concrete steps taken to amend article 1 (purpose clause) of the Act on Special Cases Concerning the Punishment, Etc. of Crimes of Domestic Violence to ensure victims' safety and human rights as its purpose.
- Provide information on measures taken to enhance the report rate and arrest rate of the domestic violence cases and to prevent inappropriate transfer of cases to Home Protection Cases.

7. Online sexual exploitation industry and victim support system

Digital sexual violence is still occurring on various online platforms, including the Telegram sexual exploitation incident in 2020. It is difficult to criminally punish those who design and operate the sexual violence industry by distributing sexual exploitation videos as they do not directly commit acts of abuse, such as illegal filming and distribution of non-consented images. In addition, despite legal grounds that require Internet platform operators to implement "technical measures" to prevent digital sexual violence on their platforms and criminally charge them if they neglect or bypass it, in reality, such platform operators have rarely been held accountable since it is difficult to prove that they bypassed it.

In 2018, the MOGEF started operating the Digital Sex Crime Victim Support Center, and currently, 10 of the sexual violence counseling centers across the country are commissioned to operate the Specialized Counseling Center on Digital Sex Crime. In addition, local governments in Seoul, Incheon, Gyeonggi, and Busan also operate digital sex crime support centers. As there is no centralized nationwide blueprint for the victim support system at the central government-level policy, support systems were formed sporadically from one center to another. The scope, content, and case management system of each project are not comprehensively implemented, and their roles are unclear due to overlapping functions or are treated in a way separate from existing sexual violence cases.

Suggested questions

- Provide government-level measures against the ever-changing industrialization of digital sex crimes in a situation where it is difficult to properly punish those who run the sexual exploitation industry.
- Provide concrete plan(s) to improve a nationwide digital sex crime victim support system that is in line with the existing sexual violence support system, considering particular characteristics of digital sex crimes as well as various concerns raised due to the segmented supports from each center and absence of a comprehensive support system.

8. Amendment of Article 297 of the Criminal Act and criminalization of marital rape

The #Metoo movement in 2018 showed the Korean society that sexual violence can occur from an exercise of power and status without physical assault and explicit threat on the part of the perpetrator. Among the 1,030 cases of rape and imitative rape reported to 66 Sexual Violence Relief Centers nationwide from January to March 2019, 71.4% (735) of the cases involved no assault or threat.³⁸ However, the government still has not implemented Article 5 of the CEDAW Convention despite the long-standing demands of women's rights organizations and the CEDAW Committee's two previous

³⁸ Report released by the Korean CSO coalition for the revision of the legal definition of rape, Jul.9, 2019

recommendations (CEDAW/C/KOR/CO/7, para. 21 and CEDAW/C/KOR/CO/8, para. 23). The current Article 297 of the Criminal Act creates a vacuum in the punishment of rape without consent, such as marital rape. It also causes negative side effects such as secondary victimization during the investigation and trial proceedings and abuse of criminal proceedings in the form of retaliatory counterclaim. Even when the bill was proposed, it would be politically used and either remained pending for a long time or eventually discarded. Ten related bills were proposed at the 20th NA, but they were all discarded due to the expiration of the session, and three related bills have been proposed and pending at the current 21st NA for more than a year now³⁹.

The 3rd Basic Plan for Gender Equality Policy (2023-2027), released on Jan.26, 2023, included a policy task to take steps to revise the Criminal Act (Article 297) to define rape based on the lack of consent, but the MOJ and the MOGEF suddenly withdrew this amendment plan on the very same day it was announced⁴⁰. It has received harsh criticism from women's rights groups and citizens.

Suggested questions

- Explain concrete reasons for the government's sudden decision to withdraw the plan to take steps to amend Article 297 of the Criminal Act to define rape on the basis of consent, despite the CEDAW Committee's previous recommendations.
- Provide the government's concrete steps taken to criminalize marital rape in legislation.
- Explain the government's position on the current perpetrator-centered sentencing standards.

9. Rights of sexual violence victims

According to the Korean Women's Development Institute, the majority (84.1%) of false claims made against victims of sexual violence by perpetrators in 2017-2018 were not prosecuted, and of those cases prosecuted, 15.5% of cases were acquitted and only 6.4% of cases were found guilty.⁴¹ This shows that counterclaims such as false charges and defamation are abusively made by perpetrators. As the number of counterclaims made against not only victims but also supporters is increasing, it is necessary to develop a system that guarantees the rights of both victims and supporters.

In the course of a sexual violence trial, the perpetrator would demand re-evaluation of the medical records and physical assessment submitted by victims⁴² and the court would accept the victims' sexual history unrelated to the case as evidence of the trial and doubt the victims' credibility. All these acts prolong the trial and make the victim shrink. In addition, perpetrators request investigation of fact and

³⁹ Kyunghyang News "Is this law disappearing again?" 1 year has passed since the amendment bills to change the legal definition of rape based on the lack of consent of the victim were proposed at the NA, but they are still pending." (in Korean,)https://www.khan.co.kr/kh_storytelling/2021/lawrevision/

⁴⁰ The Korea Herald, "Ministry blasted over rape law U-turn", Jan.26, 2023, <https://www.koreaherald.com/view.php?ud=20230127000672>

⁴¹ Korean Women's Development Institute Press release, 117th Policy Forum on Gender Equality, Jul.19, 2019

⁴² The Hankyoreh, "Perpetrators of sexual violence often demand re-evaluation of the medical records and physical assessment of victims. Is this okay?", Jan.18, 2022 (in Korean), <https://www.hani.co.kr/arti/society/women/1027727.html>

deliberately leak the victims' personal information through the media, social network services, etc. in the name of exercising the defendant's right to defend. This causes secondary victimization.⁴³

Suggested questions

- Provide concrete plans to guarantee the rights of victims of sexual violence against retaliatory counterclaims made by perpetrators.
- Provide information on the government's efforts to prevent the court's recognition of victims' medical records and sexual history unrelated to the case as evidence of the trial.
- Provide concrete steps taken by the government to prevent the perpetrators' indiscriminate requests of investigation of fact and secondary victimization.

10. Prevention of sexual harassment in workplace

In September 2022, a female worker was killed by a co-worker's crime of stalking. Gender-based violence at work, including sexual harassment in the workplace, is directly related to workers' right to work safely, and thus the employer should be held accountable more heavily than now. In particular, 36.6% of all female workers work at workplaces with less than five employees.⁴⁴ Despite difficulties to take victim protection measures (such as separation of space of victim/perpetrator, paid leave order, etc.) In the case of small businesses, workplaces with less than 10 employees can exceptionally replace sexual harassment prevention education with distribution of educational materials or promotional materials. Considering that the implementation of sexual harassment prevention education affects the perception and reporting rate of sexual harassment, the government should abolish the exception clause and thoroughly conduct sexual harassment prevention education as well as management and supervision for all small businesses.

Suggested questions

- Are there plans to abolish the exception clause for sexual harassment prevention education? Provide information on the present condition of sexual harassment in the small business workplaces and the specific measures taken by the government to improve this situation.
- Suggest government-level measures such as legal amendments and policy proposals to strengthen employers' responsibility for gender-based violence in the workplace.

11. Elimination of sexual violence in public institutions

In 2022, the seriousness of sexual violence in public institutions became recognized due to the "illegal filming of prostitutes by the police" in July and the "Sindang Metro Station stalking murder"⁴⁵ in September. The National Police Agency and the Seoul Metro respectively reported that 77.25%⁴⁶ and

⁴³ Korea Sexual Violence Relief Center & Law Public Interest and Legal Clinic Center of Seoul National University (2021), 1st legal workshop, "Overcoming backlash and resolving sexual violence through effective legal measures"

⁴⁴ Jang Jin-hee (2022), Federation of Korean Trade Unions (FKTU) Research Center

⁴⁵ The Korea Times, "Public outraged by yet another stalking murder", Sep.15, 2022, https://www.koreatimes.co.kr/www/nation/2023/01/113_336180.html

⁴⁶ Korea Safety Union News, "Sexual violence crimes are on the rise, but sexual violence prevention education completion rates of members of Korean National Police Agency and Ministry of justice are lowest.", Sep.23, 2022 (in Korean), <http://www.csbn.co.kr/mobile/article.html?no=238127>

100%⁴⁷ of their members completed sex crime prevention training, but above-mentioned cases show the problem of the current sexual violence prevention education which judges the effectiveness of education based on the completion rate.

Lack of gender sensitivity in public institutions is more evident when sexual violence cases are handled by the military which has a strong hierarchical order and tends to be closed. Only 17% of female soldiers and 54.7% of male soldiers said they trusted the military's measures for sexual violence incidents.⁴⁸ Due to the low level of punishment for perpetrators of sexual violence and insufficient protection of victims in the process of handling the cases, the trust of the victims is low, which causes the victims to remain silent about their bad experience. According to a survey by the National Human Rights Commission of Korea (NHRCK) in 2021, 32.1% of female soldiers and 8% of male soldiers admitted that they had experienced sexual harassment. The survey also showed that 2.2% of female soldiers and 0.3% of male soldiers had experienced sexual violence.⁴⁹

Suggested questions

- Explain in detail what efforts the state is making to develop an effective violence prevention education system that reflects the differences in the characteristics of public institutions (schools, universities, military), as well as in the demographics (age, position, etc.) of the members
- Explain what efforts the state is making to encourage reporting of sexual violence cases in the military and to improve system for secondary victimization prevention

12. Human rights of women defectors from DPRK

According to the 2017 National Survey on Violence Against Women Defectors from the Democratic People's Republic of Korea (DPRK) and Policies for Support (MOGEF), the majority of women defectors from the DPRK are exposed to diverse forms of gender-based violence (GBV): 18.7 percent of respondents said that they had experienced sexual violence or human trafficking in the DPRK, and 26.8 percent of these individuals had experienced this in China or a third country before entering the RoK; 25.2 percent of respondents had also experienced sexual violence after entering the RoK; 42.3 percent of respondents experienced domestic violence in the RoK in their 30s; 30.8 percent in their 40s; 15.4 percent in their 50s; and 7.7 percent in their 20s. However, the MOGEF operates only 10 counseling and psychological therapy centers for women defectors from the DPRK in the country: low accessibility to centers is a big obstacle for victims trying to access services in a timely manner.

Suggested questions

- Provide information on concrete plans to effectively provide support for women defectors from the DPRK who have suffered a trauma caused by sexual violence, etc., including early intervention, the provision of effective support measures in specialized GBV counseling institutions, and the expansion of resources for and programs in counseling and psychological therapy centers for women defectors from the DPRK.

⁴⁷ MOGEF, Performance of Violence Prevention Education in Public Institutions

⁴⁸ Ministry of National Defense (2019), Survey on sexual violence in military

⁴⁹ Chosun News, "32% of female soldiers have experienced sexual harassment... four times as many men as men ", May. 9, 2022 (in Korean), https://www.chosun.com/national/national_general/2022/05/09/MEVWC5HTEJDFZPE6LK3CVFZ554/

13. Protection of migrant women victims of sexual exploitation and human trafficking

While E-6-2 visa policy has been partially improved since 2020, there are still limitations. When applying for extension of stay, E-6-2 visa holders must complete a checklist at the Immigration office that aims to screen for victims of human trafficking, but the checklist is available in Korean and English only. Even when a migrant worker checks items that suggest the worker is a potential victim, the immigration officers simply send the potential victim back home with their club owner or promoter, without any safety measures in place. Afterwards the Immigration office would forward the potential victim's phone number to a victim-support organization, yet the phone number is typically invalid. There are reportedly zero cases of the immigration authorities neither effectively reporting exploitative establishments and promotion companies nor successfully referring potential victims to victim support organizations through this screening process for E-6-2-visa holders. Under the supervision of the MOGEF, four Ministries conduct joint inspections of foreigner-exclusive adult entertainment establishments to identify sexual exploitation cases of E-6-2 visa holders. However, the inspections are ineffective as the establishment owners can easily pass the inspections by covering up the illegal aspects of the establishments and forcing women workers to memorize scripted answers to pass the inspection interviews.

Undocumented migrant women and migrant women who enter Korea on other visas such as tourist visas or student visas, are experiencing forced prostitution or sexual exploitation in massage parlors, clubs, etc. When they are caught in raids, authorities simply deport them as criminals of sex trade, without conducting proper victim identification screenings. Currently, only victims undergoing legal proceedings (claim, investigation or trial) for human trafficking, sexual violence or sexual exploitation are granted the G-1-11 visa. Victims who do not undergo such legal proceedings and instead seek only shelter, medical, psychological and/or other support are ineligible to apply for the G-1-11 visa.

Suggested questions

- Explain reasons for the lack of victim assistance and lack of reporting potentially exploitative establishments in the process of screening for E-6-2-visa-holding human trafficking victims.
- Provide information on procedures/standards that the police and immigration authorities have in place to identify victims of sexual exploitation and trafficking, and concrete steps taken to effectively provide proper protection and the right to a remedy for human rights violations for migrant women, including undocumented women and other visa holders such as tourist visas or student visas, who are victims of sexual exploitation and human trafficking.
- Clarify whether the government has alternative plans to effectively monitor and investigate foreigner-exclusive adult entertainment establishments other than inspections and raids, considering that the inter-ministerial joint inspections have reportedly not led to any actual police investigations of traffickers.
- Clarify whether the government plans to amend the G-1-11 visa regime so that all victims can receive the visa for recuperation purposes, regardless of their participation in legal proceedings.

14. Human trafficking and Exploitation of prostitution

The government amended the Criminal Code in 2013 to add a penal provision for human trafficking. The following year, the Act on Prevention of Traffic in Persons and Protection of Victims (Hereafter the anti-trafficking law) was legislated. However, the current clause in the Criminal Code does not follow the UN protocol for human trafficking, and the anti-trafficking law lacks penal provisions. The MOJ has put little effort into prosecuting the offenders. Based on these findings, the US State Department demoted South Korea from tier 1 to 2 in its 2022 Trafficking in Persons Report. While the anti-trafficking law is to take effect in 2023, a specific enforcement plan, including facilities to protect the victims, has not progressed due to the government's recent project to abolish the MOGEF.

The government's aid system for victims of prostitution is organized and enforced effectively. Victims of human trafficking for sexual purposes can receive assistance based on the said system. However, those unable to prove "coercion into prostitution" are penalized, and international sex-trafficking victims are subjected to either penalization or deportation. The penal provision for prostituted women has hindered the victims from accessing aid services and exiting the sex trade.

Suggested questions

- The state must amend the anti-trafficking law or the Criminal Code to modify the definition of human trafficking in line with the UN protocol and add penal provisions. How does the government plan to take these steps?
- The government has not shown interest in intra-government, inter-municipal, and international negotiation and cooperation necessary for the effective enforcement of the anti-trafficking law. There is a discussion about abolishing the MOGEF that should play an essential role in this process. Various government departments have also expressed negative attitudes toward the law. What are the government's measures to securely enforce the anti-trafficking law?
- Has the government built a comprehensive system to prepare for the anti-trafficking law which will take effect in 2023? What are the specifics regarding human trafficking prevention, cultivating experts, early identification, assistance for victims, and protection of victims' rights during juridical proceedings?
- Is the government interested in removing the penal provision for prostituted women, which penalizes the victims of the sex trade and hinders the prevention of human trafficking? What are the measures to stop the victims from being penalized if not?

15. Military Sexual Slavery by Japan

On November 4, 2022, the UN Human Rights Committee expressed strong regret to the Japanese government for not making any progress regarding the issue of the Military Sexual Slavery by Japan. It reiterated its previous concluding observation (2014) and urged the Japanese government to take immediate measures to ensure punishment of perpetrators; full reparations to victims, and officially apologize to victims⁵⁰. However, the Japanese government is refusing to accept the obligation to make reparations for victims.

⁵⁰ UN Human Rights Committee, Concluding observations on the seventh periodic report of Japan, 30 November 2022, CCPR/C/JPN/CO/7, para.29

In July 2022, the RoK foreign minister Park Jin even announced that the ““2015 Korea-Japan Agreement” should be respected as an official agreement between two governments”⁵¹, although the Agreement had a significant deficiency as it was against the principle of truth and justice and excluded the voices of survivors.

In the meantime, the victims of the Military Sexual Slavery by Japan are experiencing serious human rights violations amidst the obstruction of Wednesday demonstrations, denial of history and sexist verbal abuses/insults against them by far-right history denialists⁵². Activists and participants of demonstrations are also exposed to various sexual harassment and misogynistic behaviors⁵³. In January 2022, the NHRCK recommended the active intervention of the police to control the far-right activists through issuing an emergency relief decision, but the government and police do nothing but to keep ignoring this situation.

Suggested questions

- Indicate whether the Korean government’s position of “compliance with the spirit of the 2015 Korea-Japan Agreement” means that it agrees with the Japanese government’s claim that the issue of the Military Sexual Slavery by Japan was resolved through the Agreement. Provide information on concrete plans to resolve the issue of Military Sexual Slavery by Japan, protect victims and restore human rights and dignity of them.
- The amendment bill on Protection, Support, and Commemorative Projects for the Victims of Military Sexual Slavery by Japan under Japanese Occupation was recently proposed at the NA to establish a legal basis for punishing history denialists for defamation of victims. Provide information on the government’s specific plans to pass the amendment bill and protect victims from defamation.

16. Violence against U.S. Military Camptown “Comfort Women”

On September 29th 2022, the Supreme Court ruled in favor of 122 plaintiffs, who had filed the “Compensation Lawsuit for Former Camptown “Comfort Women” for US Troops” against the RoK government on June 25, 2014⁵⁴. The plaintiffs are survivors of the camptown sex industry. The Supreme Court declares that by operating and managing the camptowns, the government agencies and officials are responsible for the justification and promotion of the illegal camptown sex industry. In doing so, the government violated the comfort women’s human rights and human dignity, consequently subjecting all of the plaintiffs to psychological damage. This is a historic court ruling, as it is the first time the RoK’s Judiciary—over seventy years since the division of the Korean peninsula and the US Armed Forces being stationed in RoK—declared the government’s responsibility in the various illegal acts and human rights violations that the government and US Armed Forces carried out against Korean camptown comfort

⁵¹ The Korea Herald, “Yoon makes economic diplomacy a top priority”, July 21, 2022,

<https://www.koreaherald.com/view.php?ud=20220721000922>

⁵² The Hankyoreh, ““Comfort women” protest obstructed by far right despite call for safeguarding”, Jan.20,2022

https://english.hani.co.kr/arti/english_edition/e_national/1028191.html

⁵³ Newstapa, “Hatred in streets, people sabotaging Wednesday demonstrations”,

<https://www.youtube.com/watch?v=bHhWCJk8zo>

⁵⁴ The Hankyoreh, After 40 years in US camptown sex trade, S. Korean woman rejoices in court victory, Sep.30, 2022,

https://english.hani.co.kr/arti/english_edition/e_national/1060900.html

women. This ruling is the culmination of Korean camptown comfort women’s brave acts of telling their stories of experiencing state violence and human rights violations in the camptowns.

Currently the Special Act on the Investigation of Human Rights Violations Against US Military Camptown “Comfort Women” and Support for Survivors has been proposed at the NA, but it has yet to be properly reviewed. The Gyeonggi Provincial Assembly passed the Ordinance on Support for Camptown Women in Gyeonggi Province on April 29, 2020, but the provincial government claims that it cannot take steps to provide any actual support without the enactment of a higher law at the national level.

Suggested questions

- Indicate whether the government plans to formally apologize to US military camptown “comfort women”, in accordance with the recent Supreme Court ruling.
- Provide information on specific plans to investigate the human rights violations against US military camptown “comfort women”, create measures to prevent recurrence, and provide specific support measures for victims and survivors.
- Indicate whether the government plans to include that the RoK, where US Armed Forces has been stationed for over seventy years, is a country still currently affected by ongoing war and wartime sexual violence, and add the issue of U.S. military camptown “comfort women” alongside the issue of Japanese military sexual slavery in the National Action Plan for the UN Resolution 1325 on Women, Peace and Security and propose solutions.

17. Rights of women with disabilities

In 2021, 9,200 victims of sexual violence and 267 victims of domestic violence were women with disabilities, accounting for 77.9% of the total 12,147 women victims of violence. The types of violence include rape and imitative rape (63.8%), Indecent act by compulsion (29.3%), Obscene Acts by Using Means of Communication (5.8%), and others (1.1%)⁵⁵. As for the type of disability of victims of violence, 13.2% were women with physical disabilities, 83.5% were women with mental disabilities, and 3.3% of women with multiple disabilities,⁵⁶ resulting that violence against women with psychological disabilities is the most severe of all. Despite the widespread damage of violence against women with disabilities, integrated and specialized national statistics are insufficient to identify the status of sexual violence, domestic violence, and digital sex crime against women with disabilities.

In addition, protection facilities are highly lacking as there is only one mid- to long-term shelter (protection facility) for disabled women victims of violence in the country despite it being one of the quintessential conditions to support the sexual violence victims with disabilities. Furthermore, there are only three living facilities for self-reliance support (in Busan, Chungcheongbuk-do, Gyeongsangnam-do) and one transitional housing(in Jeollanam-do). Because of this situation, women victims with disabilities cannot find support institutions due to disabilities and eventually had to return to their homes where violence occurred, or may enter homeless facilities or institutions for persons with disabilities that allow persons with disabilities to enter, not facilities that support women victims of violence.

Suggested questions

⁵⁵ Internal statistics of Korea Differently Abled Women United

⁵⁶ Korea Differently Abled Women United

- Provide concrete plans to build integrated and professional statistics to identify the actual conditions of violence against women with disabilities.
- Provide concrete plans to expand shelters dedicated to protecting women victims with disabilities and to support self-reliance after discharge from the shelters.

<https://www.aljazeera.com/opinions/2023/3/8/this-womens-day-there-is-little-to-celebrate-in-south-korea>

[Opinions](#) | [Women](#)

This Women’s Day, there is little to celebrate in South Korea

President Yoon Seok-yul’s conservative government is on a quest to reverse the progress made by South Korean feminists in recent years.



Hawon Jung Journalist and author of *Flowers of Fire: The Inside Story of South Korea's Feminist Movement and What It Means for Women's Rights Worldwide*.

Published On 8 Mar 2023 8 Mar 2023



Figure 1 South Korean activists throw placards on discrimination against women during a protest to mark International Women's Day on March 8, 2021 in Seoul, South Korea [Photo by Chung Sung-Jun/Getty Images]

On March 4, recipients of South Korea’s annual “obstacles to gender equality” award were announced at an early International Women’s Day rally in Seoul. As expected, among the “winners” were companies with discriminatory practices and a politician who had recently made a sexist remark. But one recipient stood out from the crowd: Gender Equality Minister Kim

Hyunsook. Kim, who is supposed to be the top advocate for women's rights in the country, was selected to receive the tongue-in-cheek award reportedly for her "ignorant and irresponsible" attitude towards sexism.

The so-called gender equality minister's tragicomic achievement encapsulates the state of women's rights in South Korea after a year under Yoon Seok-yul's conservative government.

Yoon won the March 9, 2022, presidential election on an openly misogynistic platform – he worked hard to appeal to men who are anxious about losing ground to women and expertly capitalised on the growing anti-feminist backlash in the country.

And since Yoon's ascent to the presidency, gender equality has become a taboo topic in Korean public life. Political efforts to further women's rights hit a wall, and past achievements came under sustained attack. This is a deeply worrying development, as South Korea's record on women's rights, especially in workplaces, was already much worse than most of the industrialised world before the Yoon presidency.

South Korea is the world's 10th-largest economy. It is a tech giant that is home to Samsung and many other leading technology companies. It is also a cultural powerhouse whose many movie, TV and pop stars boast large global followings. But the country is also deeply patriarchal and remains a leader in gender inequality by many measures. It has recorded the largest gender pay gap among the OECD member nations every single year for nearly three decades. It has also been at the bottom of the Economist magazine's Glass Ceiling index for a decade.

Korean women are often pressured to give up their careers after childbirth and those who work outside the home still carry out the lion's share of household chores and childcare duties. Sexual crimes against women, especially technology-facilitated sexual violence, such as the use of spy cams to secretly film women, are rampant in both public and private spheres.

Since the late 2010s, however, Korean women have been fighting against their country's patriarchal culture with unprecedented force. Through a local #MeToo movement, arguably the most robust in all of Asia, they exposed the sexual misconduct of many powerful men, including that of a presidential contender. They fought vigorously for tougher punishments for spy-cam crimes. They successfully campaigned to abolish the country's decades-long abortion ban. And millions of them vowed to stay unmarried and childfree in a so-called "birth strike" against patriarchal customs and traditions, causing South Korea to break its own record for the world's lowest fertility rate in 2022.

This outburst of feminist advocacy, however, triggered an angry pushback from men who thought women were going too far, demanding too much and, in the process, harming Korean society. Feminists began to be vilified online as "mentally diseased" people following an "antisocial ideology". The resentment was most palpable among young men who saw feminist gains as personal losses and felt their place in society was being threatened (in one recent poll, for example, nearly 80 percent of South Korean men in their 20s said they see themselves as victims of "gender discrimination").

Yoon's right-wing People Power Party (PPP) expertly tapped into this well of resentment. During his presidential campaign, Yoon said structural sexism no longer existed in South Korea. He blamed feminism for the country's low fertility rates, claiming feminist ideas make it "difficult for men and women to date". He also vowed to introduce tougher punishments for those who make false accusations of sexual assault, although such cases are extremely rare and focusing the conversation on alleged false accusers discourages real victims from coming forward. His campaign's key promise to dismantle the Gender Equality Ministry – which has played a pivotal role in tackling gender discrimination and violence in recent years – proved to be a hit, and shored up significant support from young, male voters.

And since Yoon took office last May, attacks on South Korea's women's rights movement and the gains it made over the years have unfolded with numbing regularity.

State offices tasked with furthering gender equality and women's rights in local contexts were swiftly rebranded as those for "family" or "children" and made to focus solely on women's reproductive and child-rearing roles. The government decided to remove the term "gender equality" from textbooks and funding for youth programmes combatting everyday sexism was scrapped.

The president has not yet managed to dismantle the Gender Equality Ministry, but his party remains committed to replacing it with a smaller office responsible for, among other things, "population and family". And the ministry's powers and influence have already been significantly curtailed.

When the Gender Equality Ministry suggested reforming South Korea's outdated rape law defined on the basis of physical violence rather than a lack of consent, for example, the justice ministry struck down the proposal within hours.

The gender equality minister appointed by Yoon, "Obstacle to gender equality" award holder Kim Hyunsook, has also been working to undermine the work of her own ministry.

Last year, when the violent murders of two women – one in a subway station toilet and the other on a college campus – at the hands of men who stalked or raped them occupied news headlines in South Korea, Kim rejected the idea that misogyny was at play. She went as far as to blame one victim for not working hard enough to protect herself from male predation and stressed that such incidents should not be used to fan "conflicts" between men and women.

In this context, there is very little to celebrate this International Women's Day in South Korea. Women are angry and upset to see the government's determined efforts to reverse the progress made by the feminist movement in the past decade.

This frustration was palpable at Saturday's rally in Seoul. Women were more sombre and angrier than usual. "Let's fight against this era of regression!" they chanted. "Stop erasing women and gender equality!" they shouted as they marched down the streets, pumping their fists into the air in unison.

“It’s undoubtedly a very difficult time for us,” Lee Hyo-rin, an activist with the nonprofit Korea Cyber Sexual Violence Response Center, told me. “The only way we can survive these difficult times is through more solidarity and by connecting with each other.”

Lee said the COVID-19 pandemic and the restrictions on social gatherings it necessitated made it difficult for South Korean women to resist the anti-feminist backlash in the country.

“But now we are ready to meet each other again,” she said at Saturday’s rally – the first major gathering of feminists since the pandemic began in 2020. “We’ll ride out the backlash. We’ll be stronger when we’re connected.”

The views expressed in this article are the author’s own and do not necessarily reflect Al Jazeera’s editorial stance.



Hawon Jung

Journalist and author of *Flowers of Fire: The Inside Story of South Korea's Feminist Movement and What It Means for Women's Rights Worldwide*.

Hawon Jung is the author of *Flowers of Fire: The Inside Story of South Korea's Feminist Movement and What It Means for Women's Rights Worldwide*, and a former Seoul correspondent for the AFP news agency. Jung's work has appeared in *The New York Times*, *The Globe and Mail*, and *The Nation*, among others.

人权条约机构相关术语词汇表 [Glossary of technical terms related to the treaty bodies]

人权条约机构相关技术术语词汇表

来源: <https://www.ohchr.org/zh/treaty-bodies/human-rights-treaty-bodies-glossary-technical-terms-related-treaty-bodies#backlog>

如何使用这份词汇表

十大人权条约机构已开发出一些大体上相似,但在一些重要方面有所区别的工作方法和做法。其委员会采用的术语也有所区别。本词汇表旨在对条约机构系统中的一些重要部分作出解释,并重点强调术语方面的一些显著区别。

括号中为对应英文词汇

- [积压 \(Backlog\)](#)
- [主席团 \(Bureau\)](#)
- [主席 \(Chair\)](#)
- [共同核心文件 \(Common core document\)](#)
- [结论性评论 \(concluding comments\)](#)
- [结论性意见 \(concluding observations\)](#)
- [无报告情况下审议一国状况
\(Consideration of a country situation in
the absence of a report\)](#)
- [建设性对话 \(Constructive dialogue\)](#)
- [国家报告员 \(Country rapporteur\)](#)
- [国家工作队 \(Country task force\)](#)
- [声明 \(Declaration\)](#)
- [克减 \(Derogation\)](#)
- [后续程序 \(Follow-up procedures\)](#)
- [一般性评论 \(General comment\)](#)
- [一般性建议 \(General recommendation\)](#)
- [人权条约司 \(Human Rights Treaties
Division\)](#)
- [个人来文 \(Individual communication\)](#)
- [非政府组织 \(Non-governmental
organizations\)](#)
- [不交报告 \(Non-reporting\)](#)
- [任择议定书 \(Optional protocol\)](#)
- [周期性 \(Periodicity\)](#)
- [申述 \(Petitions\)](#)
- [会前工作组 \(Pre-sessional working
group\)](#)
- [建议 \(Recommendation\)](#)
- [缔约国报告准则 \(Reporting guidelines
for State parties\)](#)
- [保留 \(Reservation\)](#)
- [审查程序 \(Review procedure\)](#)
- [议事规则 \(Rules of procedure\)](#)
- [秘书/秘书处 \(Secretary/secretariat\)](#)
- [简化报告程序 \(Simplified Reporting
Procedure\)](#)
- [专门机构、基金和方案 \(署\)
\(Specialized agencies, funds and
programmes\)](#)

- [个人投诉 \(Individual complaint\)](#)
- [调查程序 \(inquiry\)](#)
- [迟交报告 \(Late reporting\)](#)
- [议题和/或问题清单 \(List of issues and/or questions\)](#)
- [报告前议题清单 \(List of issues prior to reporting\)](#)
- [主题清单 \(List of themes\)](#)
- [国家人权机构 \(National human rights institutions\)](#)
- [缔约国报告 \(State party report\)](#)
- [针对性或专题报告 \(Targeted or focused report\)](#)
- [条约、公约或文书 \(Treaty, convention, covenant or instrument\)](#)
- [条约机构或委员会 \(Treaty body or committee\)](#)
- [条约专要报告/文件 \(Treaty-specific report/document\)](#)
- [工作方法 \(Working methods\)](#)
- [对议题清单的书面答复/回复 \(Written response/replies to list of issues\)](#)

积压

除了缔约国迟交和不交报告的问题，一些条约机构还发现难以完成每年大量的报告审议工作。由此产生的积压意味着从缔约国提交某份报告到委员会完成审议可能间隔两年之久。获取最新信息的需求是发布问题清单做法的原因之一（见下文）。更有效的工作方法能减少积压，一些委员会也提出了创新的方法。例如，儿童权利委员会和消除对妇女歧视委员会有时会在两个平行小组中会面。

主席团

主席团通常由主席、副主席、报告员或委员会任何其他指定成员组成，召开会议决定与委员会工作相关的程序性和行政性事务。

主席

每个条约机构选举一名成员担任主席，任期为两年。主席根据商定的议事规则主持每次会议。所有条约机构的主席每年会面一次以协调条约机构的活动。

共同核心文件

缔约国向秘书长提交的包含与所有条约相关的该国一般性信息的文件，如有关土地与人口、政治体制、该国保护人权的一般法律框架、非歧视、平等和有效补救措施等方面的信息。文件构成了

提交条约机构的所有国家报告的共同起始部分。1991 年的主席会议引入共同文件作为减少报告中的重复部分的方法。2006 年审议了有关该文件的导则 (HRI/GEN/2/Rev.6) 。

结论性评论 (CONCLUDING COMMENTS)

见“结论性意见 (concluding observations) ”

结论性意见

条约机构在审议缔约国报告后发布的意见和建议。结论性意见既包括缔约国在落实条约中的积极方面，也包括条约机构建议缔约国需进一步采取行动的值得关注的领域。条约机构致力于发出具体、重点突出且可落实的结论性意见，并日益关注能确保有效跟进其结论性意见的措施。

在无报告情况下审议一国状况

参见“审查程序”

建设性对话

所有条约机构采取的邀请缔约国派代表团出席其报告受审议的会议的做法，以便于其回应委员们的问题，并就其落实相关条约规定方面的努力提供附加信息。建设性对话的概念强调了条约机构并不是司法机构这一事实（即使其具有部分准司法职能），其创设目的在于审议条约落实情况。

国家报告员

大多数委员会委任一名或两名成员作为受审议的缔约国报告的国家报告员。国家报告员通常负责起草议题清单，在会议期间向代表团提问，并起草委员会将要讨论和通过的结论性意见。

国家工作队

人权事务委员会已将之前由会前工作组进行的审议报告的准备工作分配给国家工作队，工作队在全体会议期间召开会议。国家工作队包含由主席提名的四至六名成员，其中一名是全面负责起草议题清单的国家报告员。

声明

一国可以选择或被要求就其加入的某一条约发表声明。声明类型如下：

- **解释性声明**

一国可就其对某一条约中特定规定中包含问题的理解或对规定的解读发表声明。与保留不同，此类声明并不意在排除或更改条约的法律效力。其目的仅仅在于澄清一国对于整个条约或某些条款含义的立场。

- **任择性和强制性声明**

条约允许各国发表任择性和/或强制性声明。这些声明对发表者具有法律约束力。因此，例如在《公民权利和政治权利国际公约》第 41 条规定下，各国可发表一项有关其接受人权事务委员会审议国家间投诉的能力的任择性声明。与此相似，《儿童权利公约》关于儿童卷入武装冲突问题的任择议定书第 3 (2) 条规定要求缔约国发表具有约束性的声明，说明该国允许自愿应征加入国家武装部队的最低年龄，并列出具已采取的确保这种应征不受强迫或胁迫的措施。

克减

克减是缔约国部分暂停一项条约中的一项或多项规定的措施，至少是临时暂停。一些人权条约允许缔约国在威胁国家生存的公共紧急状态下，例外并暂时地克减一些权利，并需严格限于该情况要求的程度。然而，缔约国不能克减一些特定权利，也不能采取歧视性措施。各国一般有义务就此类克减告知其他缔约国，说明理由并明确克减结束的日期。（参见人权事务委员会第 29 号一般性评论（2011））

后续程序

为确保缔约国落实条约机构的结论性意见或与投诉程序下的案件相关的决定中所包含的建议而设立的程序。禁止酷刑委员会、消除种族歧视委员会、人权事务委员会和消除对妇女歧视委员会已通过正式后续程序，所有委员会都要求各国在定期报告中提及后续问题。议会、司法机构、国家人权机构、非政府组织和民间社会组织都在后续工作中具有重要地位。

一般性评论

条约机构对人权条约规定、专题问题或其工作方法的解读。一般性评论通常旨在澄清缔约国在一些规定方面的报告义务，并就落实条约规定的方法提出建议。又称“一般性建议”（消除种族歧视委员会和消除对妇女歧视委员会）。

一般性建议

见“一般性评论”

人权条约司

人权高专办（OHCHR）下属的人权条约司（位于日内瓦威尔逊宫）向所有条约机构和联合国酷刑受害者自愿基金提供秘书支持。

个人来文

见“个人投诉”

个人投诉

声称其在某一条约下的权利受到一缔约国侵犯的个人提出的正式投诉，大多数条约机构都有权对其进行审议。相关缔约国必须以下列三种方式之一明确承认条约机构审议个人投诉的权利：

(a) 在条约相关条款下发表声明（该程序适用于《消除一切形式种族歧视国际公约》、《禁止酷刑公约》和《保护所有移徙工人及其家庭成员权利国际公约》）；

(b) 批准或加入条约自身（该程序适用于《保护所有人免遭强迫失踪国际公约》），或

(c) 批准或加入某条约中关于个人投诉权规定的相关任择议定书（该程序适用于两大国际公约、《消除对妇女一切形式歧视公约》、《儿童权利公约》和《残疾人权利公约》）。

参见 <https://www.ohchr.org/zh/treaty-bodies/cedaw/individual-communications>

调查程序

如果消除对妇女歧视委员会收到可靠信息，表明某一缔约国严重或系统性侵犯了《公约》所载的任何权利，就可以启动调查程序。

调查只能对承认委员会在这方面具有权限的缔约国进行。[检查缔约国是否在“声明和保留”一节中作出了这一声明。](#)

以下资源能够提供更多有关调查的信息：

[消除对妇女歧视委员会所有调查报告清单](#)

[所有条约机构调查程序概览](#)

迟交报告

各条约期望其缔约国正常提交报告；但事实上，许多国家发现难以严格遵守其所在条约规定的周期进行报告。迟交报告已被确定为条约报告系统面临的主要挑战之一，而条约机构也一直在寻求使各国报告更加简易的方法，例如通过简化报告程序等。

可提供有关各条约缔约国报告状况的信息。

议题和/或问题清单

条约机构根据缔约国报告和其他可用信息（来自联合国专门机构、国家人权机构、非政府组织等）拟出一个议题或问题清单，并在条约机构审议报告的会议之前将其转交给缔约国。议题清单向缔约国代表团提供了建设性对话的框架。一些委员会鼓励缔约国提前提交书面回复，以使对话更快触及具体问题。在等待审议的过程可能长达两年的情况下，议题清单为委员会提供了该国的最新信息来源。

报告前的议题清单

见“简化报告程序”

主题清单

专题或主题清单不需要答复，旨在在审议缔约国报告的过程中引导和聚焦缔约国代表团和消除种族歧视委员会之间的对话。

国家人权机构

许多国家已建立国家人权机构（NHRIs）以促进和保护人权。因其不受政府控制的独立性能得以保证，这类机构正日益被视为任何国家人权保护系统的重要部分。被称为“巴黎原则”的一系列国际标准被一致认为是用来衡量国家人权机构独立性和完整性的准绳。了解更多关于国家人权机构的信息，请参见国家人权机构：历史、原则、作用和职责，职业培训系列 No.4/Rev.1（联合国出版物，销售编号 E.09.XIV.4）

非政府组织

非政府组织（NGOs）可以有助于促进普遍或某一特定主题方面的人权。存在非政府组织参与众多联合国人权机制的框架，如授予其经社理事会咨商地位，使之能够参与人权理事会。国际和国家非政府组织都密切遵照条约机构的工作，多数条约机构也为它们提供了为报告进程作贡献的机会，例如提交有关特定国家落实条约的附加信息（有时也被成为“替代报告”或“平行报告”）。各条约机构处理此类信息的方法有所不同。

国际和国家非政府组织在从国家层面跟进条约机构结论性意见中包含的建议，及在报告起草时及之后促进关于落实人权的全国公开辩论方面也发挥着重要作用。非政府组织还对推动在世界范围内批准人权条约作出了重要贡献。

不交报告

一些国家虽然大量承担了其批准的人权条约规定的法律义务，却未能向条约机构提交报告。国家未提交报告的原因很多，如战争、内乱和资源有限等。人权高专办可向各国提供实现其报告义务的技术援助。若缔约国未对条约机构寻求信息的请求作出回应，条约机构还通过了一些程序确保对未报告的缔约国落实条约的情况进行审议。委员会还会特别在无报告情况下审议一国的情况。

（可提供有关各条约缔约国的报告情况。网站还提供有关缔约国可获得的技术援助信息。）

任择议定书

“议定书”一词指某项条约新增或补充的附加法律文书。议定书的主题可与原始条约的任何方面相关，可用于进一步解释原始条约中的某项内容（如《公民权利和政治权利国际公约》第二任择议

定书)；提出新出现的问题（《儿童权利公约》的头两项任择议定书）或为条约的运作和执行增加程序——如增加个人投诉程序（《公民权利和政治权利国际公约》第一任择议定书和《消除对妇女一切形式的歧视公约》、《禁止酷刑公约》和《经济、社会和文化权利国际公约》任择议定书及《儿童权利公约》有关来文程序的任择议定书）。议定书并不会自动对已批准原始条约的国家产生约束力，所以是“任择”的。各国必须单独批准或加入议定书。

周期

由各项条约或个别委员会根据条约要求规定的缔约国向条约机构提交初始报告和定期报告的时间表。缔约国在条约生效后的一定时间内应提交一份初始报告，并在之后定时提交定期报告。各条约周期有所不同。

申述

各程序中向条约机构提出申述的总称。申述既可包括个人对缔约国侵犯某项条约的指控，也可包括一缔约国对另一缔约国侵犯某项条约的指控（国家间投诉）。

会前工作组

一些条约机构在每次全体会议之前或之后为计划其未来会议工作而召集的工作组。会前工作组的工作视各委员会而有所不同：一些工作组在缔约国报告受审议前起草议题和问题清单，一些具有审议个人来文能力的委员会通过工作组提出与投诉程序相关的案件和其他事宜有关的初步意见。会前工作组通常举行闭门会议。

建议

条约机构发布的正式建议或决定。该词可被用于描述有关特定事项的正式决定，也可用于更一般性质的决议，如在一般讨论日通过的决议。结论性意见包括特定建议，而“条约机构建议”一词有时可与“结论性意见”通用。消除种族歧视委员会和消除对妇女歧视委员会也将其一般性意见称为“一般性建议”。

缔约国报告导则

各条约机构为缔约国提供的关于其应按照相关条约提交的报告的形式和内容方面的书面导则、一些委员会提供逐条具体导则，其他委员会则提供更一般性的指导。（参见 HRI/GEN/2/Rev.6）

保留

保留是一种缔约国用来排除或更改某项条约中的规定对该国的适用情况的声明，无论其措辞或名称如何。保留可使一国加入某些其本来不能或不愿意参与的多边条约。各国可在签署、批准、接

受、同意或加入条约时作出保留。一国若在签署条约时作出保留，则必须在批准、接受或同意时再次确认。

保留是《维也纳条约法公约》的规定，故不能背离该条约的目的和宗旨。因此，在签署、批准、接受、同意或加入某项条约时，各国在下列情况之外才可作出保留：（a）该条约禁止保留；或（b）该条约只允许特定保留，而相关保留不属于其中。其他缔约国可对一国的保留提出反对。缔约国可在任何时候全部或部分地撤回保留。

审查程序

条约机构在无报告情况下审议一国情况的程序。该程序在报告迟交过久且缔约国对条约机构的提醒不予回应的情况下使用。在多数情况下，缔约国提交报告以避免审查程序，或者在无法提交报告的情况下派代表团出席条约机构会议并回答其问题。消除种族歧视委员会 1991 年首次采用审查程序。其他委员会则使用“在无国家报告情况下审议一国情况”的说法。一些委员会在无报告情况下仍向缔约国发送议题清单。大多数委员会在进程最后会提出结论性意见，但缔约国若希望提交报告则可暂时保密。

议事规则

条约机构采取的用于指导其工作方式的正式规则。除经济、社会和文化权利委员会之外的各委员会都根据各自条约通过其议事规则。规则通常包括选举官员、通过决定流程（尤其是在未达成共识的情况下）等事宜。议事规则与工作方法相关但有所不同。

秘书/秘书处

各条约都要求联合国秘书长向其条约机构提供秘书处支持。每个条约机构都设有一个处于联合国秘书处之内、由一名秘书和其他国际公务员组成的秘书处，负责管理委员会日程并协调其工作方案。所有条约机构的秘书处都设在位于日内瓦的人权高专办。

简化报告程序

禁止酷刑委员会、人权事务委员会和移徙工人委员会通过的这项新的任择报告程序涉及到提交各自定期报告之前转交缔约国的议题清单的准备工作，以推动报告程序。缔约国对议题清单的回复构成了其对以上三个条约机构的报告。

专门机构、基金和方案（署）

联合国系统中开展包括促进和保护人权在内的多项工作的各专门机构、基金和方案（署）。所有条约机构都允许联合国机构在审议特定国家报告的情况下提供附加国别信息。一些专门机构还向

各国提供落实条约义务和为条约机构撰写报告方面的技术援助。联合国人权系统系统中的一些专门机构、基金和方案有：联合国粮农组织、国际劳工组织、人道主义协调厅、联合国艾滋病/艾滋病联合方案、联合国发展计划署、联合国教科文组织、联合国人口基金、联合国人类住区规划署、联合国难民事务高级专员办事处、联合国儿童基金会、联合国促进性别平等和增强妇女权能署、世界卫生组织等。联合国国家工作队也在不断参与人权条约机构的工作。

缔约国报告

某项人权条约的缔约国根据该条约规定，需定期向条约机构提交的报告，包含其所采取的落实条约规定的措施和面临的困难。所有条约都要求缔约国在批准条约后的一定时间内提交一份全面初始报告，并在之后定时提交后续定期报告（《保护所有人免遭强迫失踪国际公约》除外）。

针对性或重点报告 见“条约专要报告”

条约、公约或文书

条约和公约在法律意义上没有区别，都是在国际法中对根据这些文书的最后条款成为缔约国，从而选择接受其所规定的义务的国家具有法律约束力的国际法律文书。

条约机构或委员会

被委任审议缔约国对某项国际人权条约的落实情况的独立专家委员会。各条约中都使用“委员会”一词贯穿始终，但由于其根据所监督的条约规定设立而被广泛称为“条约机构”。虽然接受联合国秘书处的支持并向联合国大会报告，条约机构在很多重要方面独立于联合国系统之外。有时也被称作“条约监督机构”。

条约专要报告/文件

针对性的条约专要文件与共同核心文件一道提交给条约机构，重点关注与相应条约具体相关的问题。虽然通常被称作“条约专要报告”，提交各个条约机构的报告实际上都包含一份共同文件（对所有委员会相同）和一份条约专要文件（具体针对每个条约机构）。两份文件共同构成了缔约国的报告。

工作方法

各条约机构为促进其工作而开发的程序和做法。这类做法并不总被议事规则所正式采纳。各条约机构的工作方法随工作量和因素而变化。近年来，年度主席会议推动了简化和协调工作方法的趋势，尤其针对委员会间的不同方法所造成的混乱和不一致的情况。

对议题清单的书面回复/答复

缔约国对某条约机构在其报告受审议的会议之前提交的议题和问题清单的书面答复。对议题清单的书面回复对缔约国的报告提供补充或更新。

相关网站、数据库链接 [Useful Links]

- 中国加入的联合国人权公约、周期报告及相关文件（需要在下拉菜单中选择“China”）
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx
- 观看联合国会议直播（大部分会议提供中文同声传译）：<https://media.un.org/en/webtv>
- 联合国人权索引：<https://uhri.ohchr.org/zh/>
- 查看委员会发布的所有一般性建议：
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=11
- 查看委员会针对所有国家发布的各类文献（可通过更改检索条件查询结论性文件、调查报告和针对个人来文的意见）：
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5
- 查看委员会发布的所有调查报告：
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeCategoryID=7
- 联合国人权高专办法学数据库：<https://juris.ohchr.org/>