

USALI Perspectives

Assessing Proposed Changes to China's Women's Protection Law: Part I

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Highlights of the draft revision

At the end of December, China's National People's Congress publicized the draft of proposed revisions to the Law of the People's Republic of China on the Protection of Women's Rights and Interests (Women's Protection Law), and [invited comments](#) from the public. By the time the 30-day comment period ended, 85,221 people had submitted a total of 423,719 suggestions. By comparison, during the same period fewer than 7,400 suggestions were submitted with respect to nine other draft laws pending at the

NPC, including the revised Company Law. The huge number of submissions clearly illustrates the intense public interest in the Women's Protection Law. It shows the extent to which women's rights has become a focal concern for the whole society in recent years.

When [introducing the changes](#) that are currently under consideration, the drafters praised the law for having "made the basic national policy of gender equality deeply rooted in people's hearts." But they also noted:

[I]t is undeniable that some persistent problems in the field of women's rights and interests have not been fundamentally solved, such as trafficking in women, sexual assault and harassment of women, and domestic violence against women. ... [T]he contradiction between having children and working has intensified after the adjustment of the childbirth policy; gender discrimination in employment has become more prominent; the protection of rural women's property rights and interests has faced new challenges following changes in forms and distribution methods of rural property rights; family stability has continued to decline, the divorce rate has risen, conflicts and disputes arising from marital and family relations have become increasingly complex, and so on.

As that comment suggests, the current revision process did not begin overnight. It is a response to complex changes in the country's social and economic life over many years. Delegates to the NPC and the Chinese People's Political Consultative Conference, a high-level political advisory body, have repeatedly proposed revisions to the 1992 law, which was previously revised in 2005 (comprehensively) and 2018

(selectively). The All-China Women's Federation began preparing for another round of comprehensive revisions several years ago, and the NPC Standing Committee finally placed it into last year's legislative work plan. After reviewing the responses from the recent public outreach process, the Standing Committee is likely to make further changes before approving a final version.

Highlights of the draft revision

The revisions proposed in the December draft are extensive. Forty-eight of the existing 61 articles are revised; new provisions bring the revised draft to 86 articles.

On a macro level, the draft revision improves and refines the system for promoting gender equality and the all-round development of women. It comprehensively addresses women's rights and interests in the realms of politics, culture, education, labor, property, and personality rights, as well as rights related to marriage and the family. The draft language in many cases is more specific and clear and should be easier to implement. It addresses issues closely related to many problems women face in their daily lives, with new or revised provisions to support women's participation in public consultations and deliberations, eliminate discrimination and sexual harassment in the workplace, protect

rural women’s land rights, better protect women who suffer domestic violence or sexual assault, and better protect women’s financial interests in divorce.

The draft also clarifies legal responsibilities and provides some new tools for enforcement. It proposes to expand the scope of prosecutors’ public interest litigation authority (Article 78)

to include bringing suits to protect women’s rights. It also calls for prosecutors and other government agencies and public entities to provide support to private litigants (支持起诉制度) (Article 79) when women’s rights have been violated. This might involve, for example, helping to collect evidence relevant to a claim.

HIGHLIGHTS OF DRAFT REVISION

CHAPTER 1: GENERAL PROVISIONS

- Defines “discrimination against women”;
- Requires evaluation of gender equality impacts of laws and policies;
- Requires collection, publication of gender-related statistics;
- Incorporates gender equality into education and training.

CHAPTER 2: POLITICAL RIGHTS

- Requires village committees, urban residential committees, and employers to organize women to participate in consultation and deliberation activities;
- Number of women in workplace employee representative assemblies should be proportionate to women in the workplace.

CHAPTER 3: CULTURAL & EDUCATION

- Improves provisions to ensure that school-age girls complete compulsory education;
- Explicitly requires government to take measures to ensure women’s equal access to secondary and higher education.

CHAPTER 4: LABOR & SOCIAL SECURITY

- Specifically bars major types of gender discrimination in employment;
- Establishes a gender equality reporting system for enterprises;
- Says rights protections apply to new forms of employment such as Internet-based “platform” employment.

CHAPTER 5: PROPERTY RIGHTS

- Adds measures to protect rural women's land rights;
- Holds township governments responsible to guide and correct villages' self-governance charters, village rules, and decisions where they infringe on women's lawful rights and interests.

CHAPTER 6: PERSONALITY RIGHTS

- Specifically bars common forms of sexual harassment, and requires schools and employers to take measures to stop and prevent sexual harassment;
- Expands the scope of application of protection orders;
- Public facilities should provide more toilets for women than for men and places for women to nurse.

CHAPTER 7: MARRIAGE & FAMILY

- Local governments should provide family counseling services;
- Revises common property provisions in keeping with the 2021 Civil Code;
- Adds provisions on property registration and protecting women's financial interests during divorce.

CHAPTER 8: LEGAL REMEDIES

- Authorizes government "women and children's work committees" to submit written opinions when agencies fail to act or mishandle significant violations of women's rights;
- Establishes system of procuratorate-initiated and supported public interest litigation to protect women's rights;
- Adds legal liability for employers who discriminate against women or fail to take measures to stop/prevent sexual harassment.



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Importantly, the draft provides a definition of discrimination for the first time and authorizes affirmative action to benefit women. Chinese law currently has no clear definition of discrimination against women. This legislative gap has

repeatedly been noted by the UN Commission on the Elimination of Discrimination against Women when commenting on the Chinese government's reports on implementation of the [Convention on](#)

the Elimination of All Forms of Discrimination against Women (CEDAW) (see, for example, CEDAW/C/CHN/CO/7-8, 6, and a 1999 committee report, para. 283).

The draft revision's Article 2 provides:

The state shall take necessary measures to gradually improve institutions for the protection of women's rights and interests, eliminate all forms of discrimination against women, prohibit all gender-based exclusion or restrictions on women's enjoyment and exercise of rights and interests in accordance with the law, and prohibit the exclusion or restriction of women from lawfully enjoying and exercising their various rights and interests on the basis of sex.

The article adds: "The state may take temporary special measures to achieve equality between men and women."

Discrimination in the workplace receives significant attention in the draft, which specifically bars five forms of gender discrimination in employment (Article 28). Of special note, it bars employers from asking women job applicants if they are married or about their plans for having children. Although these provisions could be further improved, as will be discussed in

Part II of this essay, they would provide clearer guidance than currently exists to employers, women seeking employment, and government agencies tasked with implementing the law.

Provisions on sexual harassment and gender violence

With respect to sexual harassment, which has received increased attention in China as around the world, the draft revision continues the process of gradual clarification and refinement that we have seen in other recent legislation including the 2021 Civil Code. The draft specifically lists a number of common types of behavior that constitute sexual harassment and spells out measures that schools and employers should take to fulfill their obligation to stop and prevent sexual harassment.

Article 56 prohibits pestering or harassing women with the excuse of "being in love" or "just wanting to make friends," or after a breakup; it also bars disclosing or disseminating women's personal information. This article makes up for some of the deficiencies in the Anti-Domestic Violence Law.

Another provision addresses the rights of women who have been sexually assaulted. Article 54 states that when a woman gives birth to a child as a result of sexual assault, she may choose not to raise the child (relinquishing her guardianship obligations) and

unilaterally decide to place the child for adoption; if no one adopts the child, the local civil affairs department becomes the child's guardian. This provision gives women who have been sexually abused **two special rights**: the right to decline to raise a child who is the result of rape and the right to place the child for adoption.

Women's property rights

Following the lead of the 2021 Civil Code, the draft revision further refines the provisions on the common property of husbands and wives and enhances legal protection for women's property rights. Provisions were added regarding the registration of property ownership, clarifying common property at the time of divorce, and providing financial compensation for past domestic housework in divorce settlements. Article 42 stipulates that village self-governance charters, village rules, and the decisions made at village representative meetings may not infringe upon the rights of women within rural collective economic organizations – referring to the village collectives that own rural land and decide how it is allocated among village households. Many villages still have rules that deny land allocations for single women of marriageable age or to women after divorce. The revised draft requires township governments to guide rule making in the villages within their jurisdiction and promptly correct the

content of village documents that violate women's legitimate rights and interests.

Gender evaluations and better data collection

The draft revision adds a provision (Article 9) requiring governments at each level – local, provincial, and central – to conduct gender impact evaluations of proposed new laws, regulations, or revisions of laws and regulations. In April 2020, the State Council Working Committee on Women and Children issued a document that called for such evaluations when laws, regulations, and policies are developed and implemented in order to avoid or correct possible discriminatory content. Thirty-one of China's 34 provincial level governments have already established mechanisms for evaluating laws and regulations from a gender equality perspective, and some have even written this step into local legislation. Now the draft revision elevates the measure from an administrative regulation to the status of national law.

The draft also calls (Article 10) for more systematic collection of data relating to women and gender. Although more such data has been collected in recent years, the lack of a clear legal requirement has resulted in statistical gaps that hamper decision-making and research. The draft revision also calls on companies to include gender data in their annual

reports, including the number of women employees and the gender ratio at the staff and management levels (Article 35). Information such as this can be a useful reference for government when

formulating policies related to women’s employment.

To be continued in Part II

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