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Status of Women's Rights  
in the Context of Socio-Economic Changes in the DPRK

# Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK

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## Citizens' Alliance for North Korean Human Rights

Citizens' Alliance for North Korean Human Rights (NKHR), since its establishment in 1996 as Citizens' Alliance to help North Korean political Prisoners, aims to protect the lives of North Koreans and to defend their human rights. As one of the oldest non-governmental, non-profit organizations in South Korea devoted to informing people about the human rights atrocities in North Korea and assisting in the adjustment and education of North Koreans settled in South Korea, our ultimate goal is to create a peaceful environment for a harmonious North-South reunification and a democratic national community.

## NKHR endeavors to accomplish these goals by:

- \* Proposing international organizations condemn human rights violations in North Korea, particularly with respect to the forced labor of political prisoners and extrajudicial killings
- \* Collecting and publicizing facts and other information on the current North Korean human rights situation, particularly regarding political prison camps
- \* Protecting the lives and human rights of North Korean refugees
- \* Assisting North Korean defectors living in South Korea with a focus on youth education
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# I Introduction

## 1. Purpose of Research

North Korea enacted the Women's Rights Act in December of 2010, the first of its kind since the 1948 Act on Gender Equality. It is thus far the first and only separate law on women and it was enacted along with the Children's Rights Act. The timing of both of these acts suggests that they were in many ways an outcome of North Korea's involvement at the UN and a response to the international community's pressure for changes in these areas. North Korea went through a series of reviews at the UN, first in 2005 with the review of its compliance with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Then in 2009 North Korea was reviewed by the members of the UN Committee on the Rights of the Child, and finally, North Korea came under the Universal Periodic Review in December 2009. North Korea was then given several months until the UN Human Rights Council's Session in March 2010 to consider recommendations from member states, but they ultimately did not clarify which of the 117 recommendations they would take into consideration, though they did reject many of them out of hand. One major focus of the UPR was women and children's rights.

The major objective of this research was to document the condition of women's rights in

North Korea by assessing any positive or negative changes that have taken place in the country after the adoption of the new 2010 law on women. In the past three years, North Korea made amendments to its Constitution, adopted new laws on women and children and made changes to its criminal code. The first part of this report begins with Professor Andrew Wolman's legal analysis of the DPRK's Women's Rights Act. In the following chapter, we provide assessment of the practical implementation of the Act. The second part of the report takes a closer look at the developments in women's status and rights amid on-going socio-economic changes in the country. The report concludes with Professor Wolman's commentary on each Article of the DPRK's Women's Rights Act.

This briefing report is only marking recent major trends in DPRK society between 2010 and 2012. It does not assume the role of an in-depth study. However, certain developments were visible and cross-checked among testimonies and surveys to provide the international community observations of the socio-economic changes and human rights situation in North Korea and the direction towards which they are possibly heading.

## 2. Methodology

NKHR focused on investigating changes in the areas which were identified as problematic in our previous research on women in 2009 and 2010 in addition to several new issues. The report documents developments in the following areas: economic rights, health care and reproductive rights, education, persons with disabilities, domestic violence, and violence against women in detention. Given also the existence of the new law on women, the researchers asked whether women were aware of the new law and whether its implementation had been felt locally. The investigation was conducted in the form of one-on-one surveys with 60 women who left North Korea between 2011 and 2012. The researchers supplemented the surveys with 20 in-depth interviews with North Korean women and men who due to their position or experiences in North Korea could provide significant information to the trends identified in the surveys. Interviews also included consultations with experts on health issues, economy and law. For privacy and security reasons, only general statistical data are provided regarding the North Korean re-settlers who participated in the survey. Finding North Korean re-settlers who had lived in provinces other than those bordering China proved to be an obstacle in being able to provide full analysis across the North Korean provinces. The majority of re-settlers have been coming from North Hamgyung Province and Ryangang Province (especially Hyesan City) in recent years. This is reflected in our demographic data, and as such, meaningful comparisons across provinces became impossible. Lastly, the numbers surveyed are too small to draw large-scale conclusions about the majority of women in North Korea. This research focused on finding general and meaningful trends on women's rights in North Korea.

### 3. Demographic Data

#### Age of the Respondents

Age group	20s	30s	40s	50s	60s	70s	Total
Total	8	8	23	11	5	5	60

#### Place of origin of the Respondents in North Korea

Province	Number	Total
North Hamgyong	26	60
South Hamgyong	4	
Ryanggang	19	
Jagang	1	
North Pyongan	1	
South Pyongan	5	
North Hwanghae	2	
South Hwanghae	1	
Pyeongyang	1	

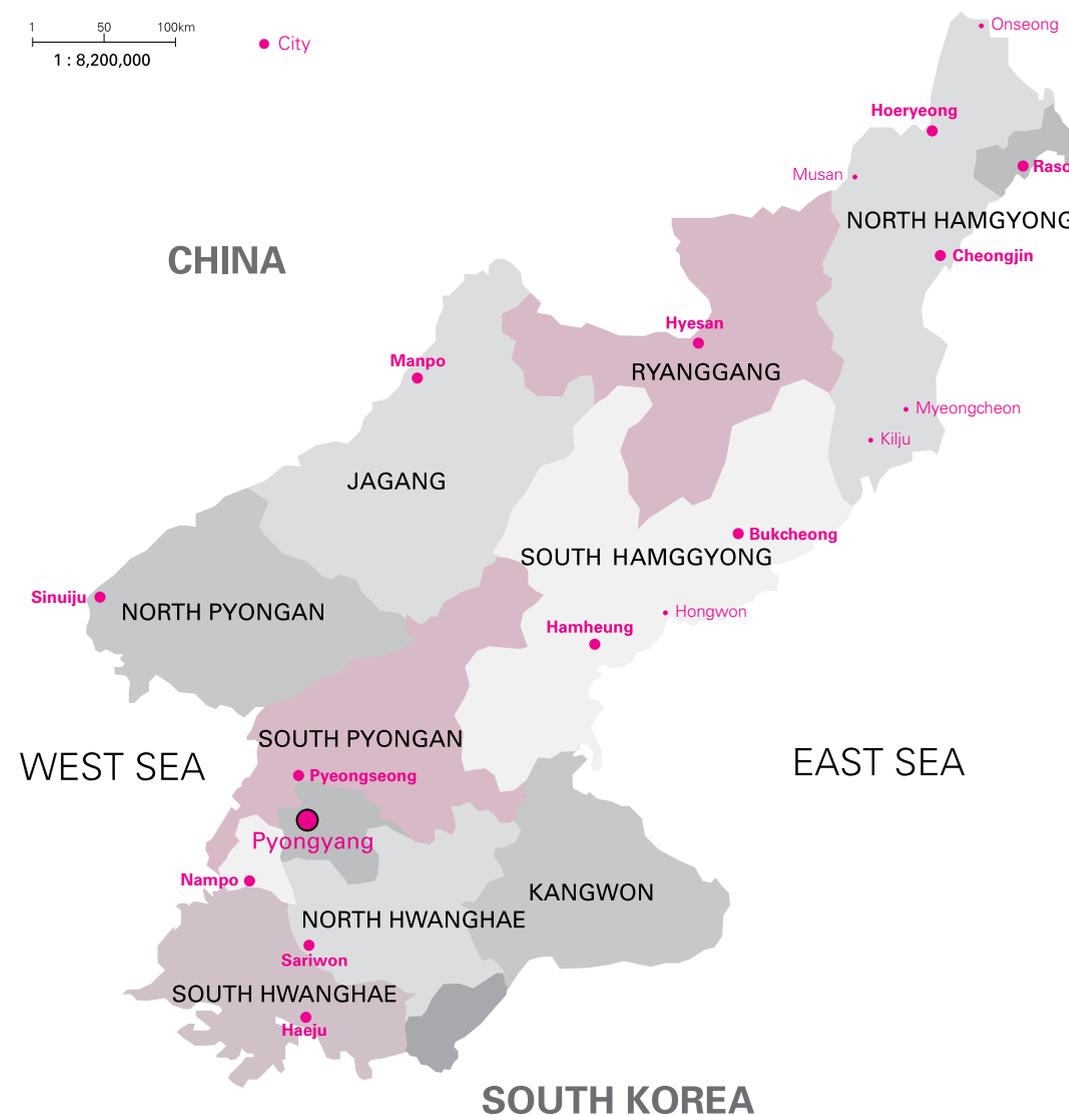
#### Education in North Korea

School	Number	Total
Middle and High School (graduate)	41	60
University degree	18	
No answer	1	

#### Main Reasons for Leaving North Korea

Reason	Number	Total
Solicitation from relatives re-settled in South Korea	16	60
Difficult living conditions	14	
Desire to experience freedom after learning information about the outside world	9	
Discrimination because of family background	5	
Desire to join a family member who escaped first	3	
Other	3	
No answer	10	

### 4. Areas inhabited by the respondents in North Korea



## II Summary of Major Arguments

**North** Korea is a country where the rule of law is not respected. However good their prescriptions may be in theory, laws must be implemented in order to benefit society. In North Korea, newly adopted laws have little impact on reality. Lack of implementation is not only because the country is impoverished and lacks institutional and financial resources; after all it invests enormous funds to maintain its military-first policy. It is rather an absence of intention to promote change in the outdated cultural aspects related to women. This is why North Korea has yet to officially sanction the changes that brought women greater economic autonomy and freedom from the state beginning in the 1990s, as this would further erode the government's authority and control. Thus, despite the new Women's Rights Act, all changes in the area of women's rights are taking place independently of the state. They do not stem from deliberate policies, but are effects of an on-going socio-economic transformation inside the country.

Some state policies during the worst economic crisis and famine in the 1990s, such as encouraging women to undertake additional economic activities, placed enormous burdens on women as sole breadwinners. In other words, the state shifted responsibility for securing the family's survival to women while leaving men in the dwindling workplaces. This shift led to results that had negative impacts on women's security and well-being, such as deterioration of health, exposure to punishment for border-crossing, exposure to prostitution, trafficking, sexual

harassment, and breakup of the family. When married women chose to give up their workplaces, they lost protection of the state in the form of salaries or retirement benefits. In practice, they were also not entitled to family protection in case of a husband's death or divorce. On the other hand, the economic changes gave some women substantial financial power and allowed them to develop entrepreneurial skills, to have a stronger say at home, or even to dissolve abusive marriages which they were unable to walk away from before.

Because advancement of women did not result from state policies, but came from organic socio-economic changes in particular regions of the country, it has to be seen that the status of women must vary among the provinces. Almost 20 years of dramatic economic changes took place primarily in the provinces bordering China (especially North Hamgyong and Ryanggang Provinces) and impacted these communities strongly. These provinces first started to experiment with the unofficial free market economy and trade, which exposed them to information about the outside world, including the position and treatment of women elsewhere. These provinces also witnessed the highest defection rates to South Korea. As a result we can observe higher emancipation rates of women in this regions, whereas in areas further south in North Korea, traditional attitudes may yet be prevailing. In the areas bordering China, differences in women's attitudes are also visible between the cities and remote rural areas.

In the past, the discrimination policies regarding a person's family background were rigid, and a family's classification as loyal, wavering or hostile defined their social status. Being classified at the bottom of this caste system was an impossible obstacle to overcome. When the state stopped being able to provide daily necessities for everyone, it ceased distribution to this bottom class first, directly resulting in at least two million deaths from hunger. In the long-term, however, the regime unintentionally propelled socio-economic changes which with time elevated many, mostly women from the bottom class. Economic and financial power often allowed citizens to get around obstacles connected to their family background. Money created access to universities and granted admission to the Party to people who only 15 years ago would have been at the bottom of society. This created a situation where access to education (even elementary) and health services was restricted to the wealthy. Those who did not manage to find their niche and better their lots during the time of economic changes remain at the bottom today and are left completely unsecured by the state. The state is powerless to reverse the changes that took place and since it is still unable to provide daily necessities to everyone or adequate salaries to teachers and doctors, it is unable to guarantee that those unable to pay can receive education and medical treatment.

In a country where money rules, but human rights concepts and rule of law are absent, new abuses of human rights often begin. Since the law is arbitrary and corruption pervasive in North Korea; the same law is applied differently to various groups. For example, divorce could be an easy procedure for those with money, or punishment might be enforced for some while others are shown leniency.

One of the areas into which the researchers call for greater investigation is the treatment of the disabled in North Korea. This is related both to the negative cultural bias against the disabled and to the role of the state in the disturbing medical practices done to the disabled, which we

further describe in that section.

In summary, the researchers are of the opinion that the Women's Rights Act was merely a façade created during North Korea's human rights review and when it was facing international pressure. In practice, many of the policies of the state run contrary to the idea of rights and freedoms. Facing the elevation of women in society, the North Korean state has recently been trying to reinforce through ideological education the traditional role of women in a patriarchal society. It educates women on bearing more children though the state does not take any responsibility for the well-being, education or health of children and though the economic situation is unstable for the majority of the population. In consequence, education on a woman's right to choose whether she wants to be a mother and practicing birth control is completely absent from schools and teachings at Women's League. Abortion as a major birth control method remains high and is practiced often at home in unsanitary conditions. Access to preventive medicine and pre-natal care is almost non-existent.

The Women's Rights Act is very vague in addressing the issue of responsible parties, punishment, and redress for female victims of violence. As identified in previous research, nothing has changed over the years for such women, except for the fact that economic empowerment allowed some women freedom from such marriages through divorce. The issue, especially the cultural aspects of violence, is still not addressed in North Korea.

Finally, we have not observed positive trends in the treatment of women in detention. Forced abortion and infanticide is reported to be still practiced. There are no minimum standards of treatment of the inmates. Long hours of physically exhausting work with minimum nourishment, lack of medical treatment, and unhygienic conditions are behind many diseases and high death rates.

## PART I

# Legal Analysis of DPRK Women's Rights Act

# III

## Legal Analysis of DPRK Women's Rights Act

### 1. Introduction

In this part I analyze the 2010 DPRK Women's Rights Act according to international standards, and compare it with other nations' gender equality acts where relevant. The DPRK is actually something of a trailblazer in the area of gender equality laws; international sources cite the DPRK 1946 Law on Sex Equality as the world's first comprehensive gender equality law.<sup>1)</sup>

This analysis will utilize CEDAW<sup>2)</sup> and recommendations and comments of the CEDAW Committee as the primary international standard for women's rights. The DPRK has been a party to CEDAW since 2001, although it has not accepted the CEDAW Optional Protocol (which authorizes an individual complaint procedure). DPRK's acceptance of CEDAW is conditioned on three

<sup>1</sup> Christine Forster & Vedna Jivan, *Gender Equality Laws: Global Good practice and a Review of Five Southeast Asian Countries* (UNIFEM, 2010) at 1.

<sup>2</sup> Convention on the Elimination of all Forms of Discrimination Against Women (adopted December 18, 1979, entered into force September 3, 1981) 1249 U.N.T.S. 13, UN Doc.A/RES/34/830; 19 I.L.M. 33.

reservations, however, namely that it “does not consider itself bound by the provisions of paragraph (f) of article 2, paragraph 2 of article 9 and paragraph 1 of article 29”. Art. 2(f) commits States to “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” Art. 9(2) commits States to “grant women equal rights with men with respect to the nationality of their children.” Art. 29 provides the International Court of Justice with jurisdiction for certain disputes involving CEDAW. Although the reservation to article 29 is not particularly significant (considering that the International Court of Justice has never heard a case involving CEDAW) the other two provisions are quite meaningful, and thus DPRK's reservations are more troublesome and should be withdrawn.<sup>3)</sup>

To a lesser extent, this analysis will draw from the norms contained in the Beijing Declaration and Platform of Action, which was unanimously adopted at the 1995 Fourth World Conference on Women in Beijing (attended by the DPRK).<sup>4)</sup> Unlike CEDAW, the Beijing Declaration and Platform of Action are not considering binding under international law for the DPRK (or any other country), but they do represent prominent political commitments made by the world community regarding women's rights.

I will first provide my overall impression and a summary of notable issues that have been omitted from the Act, followed by an article by article commentary of the Act in the last part of the report. This section will focus on a de jure analysis; implementation issues are addressed separately in the following section.

### 2. Overall Impressions

The DPRK Act appears to mirror the structure of China's Law on the Protection of Rights and Interests of Women (adopted 1992, amended 2005)<sup>5)</sup> and contain much the same content (although

<sup>3</sup> The Beijing Platform for Action commits states to “limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women; formulate any such reservations as precisely and as narrowly as possible; ensure that no reservations are incompatible with the object and purpose of the Convention or otherwise incompatible with international treaty law and regularly review them with a view to withdrawing them; and withdraw reservations that are contrary to the object and purpose of the Convention on the Elimination of All Forms of Discrimination against Women or which are otherwise incompatible with international treaty law.” Beijing Declaration and Platform for Action, Fourth World Conference on Women (Beijing, September 4-15, 1995) UN Doc. A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 230(c) and (d) ('Beijing Platform').

<sup>4</sup> The speech of the DPRK representative at the conference is available at <http://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950906124532.txt>.

<sup>5</sup> Law on the Protection of Rights and Interests of Women (promulgated by the Standing Comm. Nat'l People's Cong., April 3, 1992, effective Oct. 1, 1992, amended Aug. 28, 2005) (China).

the DPRK waters down the already vaguely worded Chinese law significantly). Most of the articles of the DPRK Act express sentiments that are in themselves unobjectionable, and many of the clauses mirror CEDAW, more so in fact than most other countries' gender equality laws which are usually narrower in scope but much more detailed. The fact remains that the act is crippled by at least four, and possibly five, flaws.

First, the Act is so vague as to be make implementation unlikely (assuming it is not supplemented by much more precise implementing legislation). This vagueness manifests itself in various ways. Articles are expressed as general principles. Definitions are omitted. There is often no guidance as to which state agency is supposed to implement the law. Rights are discussed at broad levels of generality without mention of specific associated duties. There is sparse guidance about what concrete actions are necessary (or prohibited) by the law. Where plans are mandated, there is no guidance as to what these plans should contain. There are no timelines for implementation. There is little if any discussion of possible sanctions or other consequences for non-compliance.

This vagueness (which is also evident in China's gender act) has consequences. Where the law is directed at a private sector actor, it means that the private sector actor may be uncertain how to comply with the law, and the State will have more discretion to approve or disapprove of private sector behavior. In the case of criminal statutes, this violates basic rules of due process. When the law is directed at the state itself, vague statutes cede more power to the law's governmental interpreter to decide how or whether to implement the statute. Vague laws are thus particularly common in authoritarian states.<sup>6)</sup> The most commonly cited example of this phenomenon is Chinese law; according to one commentator "at all levels Chinese legislation is intentionally drafted in 'broad, indeterminate language,' which will allow administrators to vary the specific meaning of legislative language with circumstances. Standard drafting techniques include the use of general principles, undefined terms, broadly worded discretion, omissions, and general catch-all phrases."<sup>7)</sup>

Second, there are a number of quite significant omissions from the Act. These will be discussed in the next section, but in my opinion the most significant ones are the lack of attention to gender stereotyping in society or sexual harassment, and the lack of a definitions section. There are also a number of important issues that are only dealt with in the most cursory of manner, such as human trafficking and the rights of women in rural areas.

Third, the Act in most respects focuses on providing formal rather than substantive equality.

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<sup>6</sup> See, John C. Reitz, *Export of the Rule of Law*, 13 *Transnational Law & Contemporary Problems* 429, 469 (2003) (noting that statutes in authoritarian political systems have a tendency to "use broad or vague terms in order to maximize the discretion of government officials").

<sup>7</sup> Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 20 *Northwestern Journal of International Law & Business* 383, 391 (2000). See also, Claudia Ross & Lester Ross, *Language and Law: Sources of Systemic Vagueness and Ambiguous Authority in Chinese Statutory Language*, in *The Limits of the Rule of Law* 221, 223 (Karen G. Turner, James V. Feinerman, and R. Kent Guy, eds. 2000).

There are many 'negative' provisions (i.e., prohibiting discrimination), but few 'positive' obligations, such as promoting gender equality, changing policies to reflect gender goals, reserving quotas for women, or in any other way incentivizing entities to reduce discrimination or improve the status of women.

Fourth, the monitoring and implementation apparatus is weak. The subjects are dealt with only formally, without the establishment of any independent bodies or specifically gender-focused institutions to deal with gender issues. Nor is there any role envisioned for non-governmental organizations in this area.

The fifth possible flaw is that the act may exist on paper only, without a serious intent of implementation. It would be hard to imagine, for example, a judge citing directly to CEDAW rather than North Korean domestic law, as authorized by art. 10. It would also seem unlikely that sufficient funding is given to implementing social programs aimed at women, given the military first policy that has long been embraced by Pyongyang. The danger of gender laws going unenforced and unimplemented is real and has been highlighted, among other places, in the Beijing Platform for Action, which states that "de facto inequality is also perpetuated by the lack of enforcement of, inter alia, family, civil, penal, labor and commercial laws or codes, or administrative rules and regulations intended to ensure women's full enjoyment of human rights and fundamental freedoms."<sup>8)</sup>

All that said, I think few people would disagree that if the DPRK follows the spirit of this law, the status of women in the DPRK would see an improvement.

### 3. Omissions

While the Women's Rights Act covers many relevant issue areas, there are also a number of glaring omissions. While these have in most instances been noted in the commentary, they are worth briefly outlining separately below as well.

- **Definitions.** The first omission that one notices is the lack of any definitions. Definition sections are customary in gender equality laws, and are vital to provide decision-makers with guidance as to the meaning of the terms in the law.
- **Sexual Harassment.** There is no definition or general prohibition of sexual harassment. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behavior such as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions. The DPRK Criminal Code

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<sup>8</sup> Beijing Platform, supra note 3, at para. 219.

appears to address sexual harassment only very narrowly in art. 294, which prohibits a man from forcing a woman who is his subordinate to have sexual intercourse with him. This omission contrasts with China's Law on the Protection of Rights and Interests of Women, which addresses the issue, albeit in general terms, in art. 40, stating that "sexual harassment against women is prohibited. The female victims shall have the right to file complaints with the units where they work and the departments concerned".

- **Women's NGOs.** Article 7(c) of CEDAW expressly requires States to ensure the equal rights of women to participate in "non-government organizations and associations that are concerned with the political and public life of the country." The CEDAW Committee has strongly recommended that States "ensure sustained and governmental financial support at the national and local levels for the work of women's NGO's to increase their capacity to support women's human rights."<sup>9)</sup>
- **Removing Gender Stereotypes in Education.** CEDAW Article 10(c) highlights the need to eliminate stereotyped concepts in education, in particular by revising textbooks and school programs. Examples of relevant provisions in other countries include art. 19 of Iceland's Act on the Equal Status and Equal Rights of Women and Men (2000): "Introduction on educational and vocational training opportunities, and counselling within schools, shall introduce to both boys and girls those occupations which up to now have been considered as traditional male or female work" and art. 6 of Bosnia's 2003 Law on Gender Equality: "(1). The relevant authorities, education institutions and other juristic persons shall ensure that their plans and methodology provide for the establishment of an education system that will guarantee to eliminate elements of the curriculum that contain stereotypical social roles for men and women and that result in gender discrimination and gender inequality. (2). Contents that promote the equal treatment of the sexes shall be an integral part of the curriculum at all education levels."
- **Gender Mainstreaming.** Gender mainstreaming is repeatedly encouraged by the Beijing Declaration and Platform for Action. One example of gender mainstreaming provisions in a gender equality act is art. 15 of Japan's Basic Law for a Gender-equal Society, which states: "When formulating and implementing policies recognized as influencing formation of a Gender-equal Society, the State and local governments shall consider formation of a Gender-equal Society."
- **Abortion.** While there is no explicit general protection for the right to an abortion under international law, the CEDAW Committee has noted that abortion should be allowed in certain circumstances. The CEDAW Committee's General Recommendation No. 24 on Women and Health in 1999 also recommended removing punitive provisions against

women who undergo an abortion.

- **Gender Statistics and Data.** The CEDAW Committee in General Recommendation 9 stated that the collection of gender statistics and data is "absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention". According to a report published by UNIFEM, "The collection of statistics and data disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, sexual orientation and age is ... critical for the effective implementation of GEL."<sup>10)</sup>
- **Sexual Orientation.** Gender equality laws should specifically prohibit discrimination based on sexual orientation. An example of this is art. 8 of South Africa's 2000 Promotion of Equality and Prevention of Unfair Discrimination Act: "Provisions that result in a person or a group being treated less favourably than another person or group in a comparable situation because of his/her ... (m) sexual orientation ... are considered direct discrimination."
- **Stereotyping of Women in Media.** In line with CEDAW art. 5, the CEDAW Committee has encouraged States to direct the media "to discuss and promote non-stereotypical and positive images of women and promote the value of gender equality to society as a whole"<sup>11)</sup> and take measures "to sensitize members of the press, television and other media on gender equality issues."<sup>12)</sup> One example of a provision that does this is art. 36 of Spain's 2007 Constitutional Act for Effective Equality between Women and Men, which states: "State-owned media will take care to portray an egalitarian, plural and non-stereotyped image of women and men in society, and will further the understanding of and propagate the principle of equality between women and men."
- **HIV/AIDS.** CEDAW General Recommendation 15 recommends that States Parties adopt measures to prevent specific discrimination against women in response to HIV/AIDS. The Beijing Platform for Action required governments to "undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS, and sexual and reproductive health issues."

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<sup>9</sup> **Concluding** Comments of the CEDAW Committee: Lithuania (2008) 41st Session, para 27 (UN Doc CEDAW/C/LTU/CO/4).

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<sup>10</sup> **Forster & Jivan**, *supra* note 1, at 141

<sup>11</sup> **Concluding** Comments of the CEDAW Committee: Serbia (2007) at para [20] (UN Doc CEDAW/C/SBA/CO/6). See also Lithuania (2008) 41st Session at para [15] (UN Doc CEDAW/C/LTU/CO/6); Morocco (2008) 40th Session at para [19] (UN Doc CEDAW/C/MAR/CO/4); France (2008) 40th Session at para [19] (UN Doc CEDAW/C/FRA/CO/6).

<sup>12</sup> **Concluding** Comments of the CEDAW Committee: New Zealand (2007) 39th Session at para [23] (UN Doc CEDAW/C/NZL/CO/6). See also Finland (2008) 41st Session at para [20] (UN Doc CEDAW/C/FIN/CO/6).

# IV

## Commentary to the Implementation of the Women's Rights Act in the DPRK

**Given** the relatively recent enactment of the Women's Rights Act in 2010 and North Korea's prioritization of other spending, it is possible to assume that the changes may not yet be visible. On the other hand, it is possible to assume that the State had enough time to create a national plan to implement the law, which it promises in article 4 of the Act, even if implementation of plan itself may be slow. Some knowledge, at least, of the adoption of the Act should already be known to society and at the institutions that were given credentials to create plans and implement some of the obligations in the Act, including People's Committees and the Women's League.

However, neither the women surveyed nor the men who were interviewed reported this to be happening. Out of 60 interviewees, only four women were aware that there was a new law on women adopted in the country. They heard of it at the marketplace, through a neighbor or at a meeting of the People's Committee. Of the four, three interviewees claimed that there were new units created in the institutions in charge of women's rights, and the other one had never heard of any changes. Asked about whether during the meetings women were educated about the provisions in the act or whether any special actions were planned, all of them responded negatively. The sources who provided information about the workings of the Cabinet stated that no such action to implement the law really exists at the top level. Essentially, it remains on paper. There are no special

departments tasked with the promotion of women's rights, nor have new ones been created.

Some of the prescriptions in the Act run contrary to the changes taking place in society. The fact that the Act provides for equality of women with men in access to labor, wages, social safety, medical care or education is meaningless in practice. More than half of the women that we surveyed had had to quit their official jobs to provide for their family. By doing so, they were not allowed any social safety in case of disability or old age. They were also restricted from using childcare services attached to workplaces or farms (only women officially employed in the workplaces run by the state are allowed to use these services, in some areas unemployed women could use childcare services only for a payment). Similarly, education or health services were available only to people who could pay the required fees. Thus, this is not a matter of equality between men and women but rather discrimination between those who can afford access and those who cannot, irrelevant of the gender.

The Law authorizes the Women's League to protect women's rights. The League was created as the regime's outreach to enforce ideological education and organize public works and events supported by obligatory donations from members. When many women were leaving their workplaces, the League played a role in controlling unemployed women and women at the markets, and continued with public mobilization projects. The League was reported to exercise substantial influence over their members, many of whom conduct private economic activities. Thus, the League is used by authorities to mobilize women in building public infrastructure or to contribute to military-related projects from private member resources.

While 80 percent claimed that belonging to the Women's League is an obligation, not a choice, all of the interviewees reported that there have been no changes in how the League addresses the changing situation of women or their problems. Thus, unlike NGOs, which may pick up problematic issues and advocate for changes vis-à-vis local and central authorities, the League serves as a government agency which focuses on ideological education and labor mobilization. In this sense, women do not have any avenues for complaining or advocating for changes within the League or any other institution. In fact only eight women reported that there were cases of complaints during the meetings, most not addressed.

Question	Yes	No	I don't know	No Answer	Total
I have heard about the adoption of the Women's Rights Act	4(6.7%)	53(88.3%)	—	3(5%)	60(100%)
There was a new body/officer in charge devoted to the protection of rights of women established in workplace / Party unit / institution	3(5%)	53(88.3%)	—	4(6.7%)	60(100%)
I felt I was discriminated in North Korea	42(70%)	15(25%)	—	3(5%)	60(100%)
The number of women elected as representatives to every level of people's assembly increased	24(40%)	18(30%)	15(25%)	3(5%)	60(100%)

Question	Yes	No	I don't know	No Answer	Total
The number of female party members increased in workplace, institution, or organization	31(51.7%)	16(26.7%)	10(16.7%)	3(5%)	60(100%)
As a woman, it is difficult to get promoted	23(38.3%)	18(30%)	15(25%)	4(6.7%)	60(100%)
Being a member of the Women's League is obligatory	49(81.7%)	2(3.3%)	—	9(15%)	60(100%)
The Women's League provides education to cultivate leaders among women	17(28.3%)	34(56.7%)	—	9(15%)	60(100%)
The Women's League receives complaints from women and proposes changes	8(13.3%)	43(71.7%)	—	9(15%)	60(100%)
A motion for change was actually implemented after a Women's League meeting	1(1.7%)	44(73.3%)	—	15(25%)	60(100%)

## PART II

### Status of Women in the Context of Socio-Economic Changes in the DPRK

# V

## Status of Women in the Context of Socio-Economic Changes in the DPRK

### 1. Changes in the socio-economic system

When the rationing system collapsed in the mid-1990s, people began to barter goods – either from their own households, self-made, or brought from China. That bartering continues to this day as a fill-in for the faltering state economy. From these first “grasshoppers markets” a full-scale underground economy was born, which later had to be sanctioned by the state. The state encouraged women to take on additional economic activities aside from their daily jobs. Married women older than 23, often quit their jobs to devote themselves to ensuring their household’s food security. With time, the state enforced restrictions that only women over 40 years old could trade on the markets, which left a majority of young women in limbo. Meanwhile, men had to continue to register at their workplaces despite the fact that food distribution, or wages were provided irregularly or not at all. Thus, the burden of economic activity fell on women. Due to restrictions on movement and transportation, women would carry 30-50 kilogram loads on their backs, traveling between markets and homes or even different provinces to sell their goods. Some women started to move their goods on bicycles, but the state imposed fines on women for doing so or for wearing trousers. The fines for bike riding have risen steadily, from 500 Won in 2009 to 1,500 Won more recently. Trains in North Korea are

rare and one has to have permission to travel – or be willing to bargain for that permission. Officials regularly capitalized on those who wanted permission for travel or sought a place in the train for money or goods. Women unable to pay reported that officials started to demand sex services. Prostitution started to flourish especially at train stations, where young women began to offer their bodies for a bowl of warm soup. Euphemistically, they were called ‘women selling flowers’. Recently, as one of the women put it, “it became an easy way for young women to make money and it was not as strictly punished as before.”

With time, other services rose in tandem with the trade. People with houses near the markets started to offer storage and protection of goods for money. The protection is necessary since many men and soldiers often engage in robbery. The system of the market has been changed as well, and now, in order to keep their spots, women are forced to pay a daily tax. Lenders appeared, traders started to use a network of people operating in various provinces to sell and distribute goods. In the recent two years, sellers also started to use the internal North Korean smart phones to communicate and adjust the prices among the provinces.<sup>13)</sup> One must add to that a system of brokers who for a commission will provide money from relatives sending remittances to the North, will help to make a phone contact on Chinese mobile phones or will make arrangements to leave the country.

North Korea has always maintained the system of providing to the privileged elites at the cost of normal citizens. Instead of investing in the economy, funds have been invested in military spending and maintaining the elites in the army and the party. As one government official put it, “the regime is able to sustain economically because of the ‘hard currency earning trade companies’ in which majority of the top elites are involved, as well as counterfeit of dollars, sell of weapons to Syria and Iran, narcotics production, et cetera.” With the economic crisis however, the local low and middle level elites were often bypassed and had to find other means to finance their living.

A major source of easy income became bribery. The corruption in North Korea is so pervasive, it permeates into all sectors of society. Corruption loosens the control structure of the North Korean regime and allows people greater freedom, yet it hits hardest common citizens who lack good backgrounds and connections, but need to pursue their private economic activities. It further affects women who are the major wheel of the private economy sector.

The fundamental problem in North Korea has been the institutionalization since the 1960s of a discriminatory caste system based on one’s family background and perceived political loyalty. This system affected educational and occupational opportunities and led to discrimination in wages and food rationing. To some extent, the wide-spread corruption has eroded the long-standing system of class discrimination in North Korea. Several women reported that “if you have money these days, your background and school performance doesn’t count; you will become a

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<sup>13</sup> A person needs to receive permission and a number (one number for one individual). It is reported that for a proper fee receiving mobile phone is very easy for everyone, but the greatest obstacle is monthly telecommunication fee that is prohibitive for majority of people except for those who have bigger volume of business.

member of the party or get to the university of your choice.” We cannot claim, however, that the class discrimination system is obsolete. It still functions, especially at the highest levels of society, but the fact that there are means to bypass it is a source of hope for many women who previously could not dream of a better life either for themselves or for their children.

It must also be stated that one’s background can still affect his or her ability to successfully function in this new system. Those with better backgrounds use personal power and connections for economic profit. They also receive preferential treatment in times of trouble with the law. Thus, it cannot be said that the system improved equally for everyone. For the privileged, the corrupted system enables additional benefits they could not enjoy before, while for the average citizen, it may ease certain obstructions, but it also creates additional burdens. The privileged, especially party nomenklatura, live off the profit earned from the (illegal) financial obligations imposed on average citizens.

As a result of the changes in recent years, there is a greater mobility between the classes, but the changes also created huge economic discrepancies. A new system has been created which discriminates between haves and have-nots. Since the authorities ceded its responsibility to people to provide for themselves, those who cannot take care of themselves (such as the sick, elderly, disabled, and orphaned children) are in the worst position because of the lack of any safety net created by the state. They not only have been abandoned by the state in terms of food distribution system, but also, the state left it to schools and hospitals to provide for their employers, which means requiring payments from the citizens and so in reality those at the bottom cannot afford these services at all.

The change creates social problems as well. The fact that the authorities required men to be registered at the workplaces further enforced the image that women should take care of the family. These days most of the workplaces are not able to provide anything, leaving men idle. This creates a situation in which many social crimes are perpetrated by men. The number of men in some labor re-education centers reportedly outnumbers women, which is a reversal from only a few years ago.

Our respondents reported that the majority of factories, especially in North Hamgyong Province and Ryanggang Province, have stopped production due to a lack of resources. Men must still report to work, but those who are able to pay a certain amount to cover their absence can bypass this formality to pursue other activities. However, party members in various institutions, as well as police or secret police officers still continue to be employed and receive benefits from the state. This applies also to women employed in privileged positions.

The industry that was reported to be still operating is the one for military purposes or the chemical industry. There are also a few companies or mines especially in Ryanggang and North Hamgyong provinces that have attracted side investors from China. Workers in those factories are receiving salary and rice provisions from China, but access to such places is very restricted and the jobs are usually given to relatives and friends of the management. Some men also use their official position to arrange for the delegations to Rason Special Economic Zone (with Chinese investments) from which they bring goods or material waste which can be re-sold elsewhere. Men are also hired for transportation of heavy goods, as truck drivers operating between the borders, doing small

repairs or hiring themselves as a farming force during the harvest.

Article 3 of the Women’s Rights Act states that “*Women play an important role in the welfare of the family and the development of the society.*” As Professor Wolman writes in his Commentary to the Act in the last part of the report “by stressing the importance of women’s “role in the welfare of the family” ahead of their role in the development of society, the article seems to imply that welfare of the family should be women’s primary role.”

It seems that by doing so, the State sanctioned by law the changes that took place in the society, which are discussed in the previous section. The State gave a limited freedom to women to secure household living since the 1990s, which created a situation in which women became major providers for the family.

However, as was mentioned before, women lost their rights to receive pensions or to use childcare services near workplaces unless they were officially employed. Married women with children are assigned food provisions through a husband’s workplace, if he receives any. In the case of divorce or spousal death, the women reported that they were left without these provisions or child support.

Furthermore, the changes that have taken place in North Korea since the mid-90s have fixed the position of certain groups. Women who began their activities early on found their niche in the market and secured their position, even developing a network of sellers between the provinces. Thus, it is very difficult for new people to break into saturated markets and make a living in areas where economic activities have been flourishing for a long time.

However, because a big number of factories stopped operations, there has reportedly been a substantial increase of people in the market trying to secure a living. Young, unmarried women are theoretically assigned to a workplace, but in recent few years this situation has changed also. Young women, like the increasing number of men who cannot get an income from their assigned factories, pay a certain amount of money in order to not be reported to authorities and proceed with private operations. Even the markets, which by regulation restrict operation only to older women started to close their eye to young women operating at the market. In some cities the restrictions seem to be harsher toward young women, thus they need to be employed outside of the market, as carriers of goods, for example. On the so called black market there is a group of inspectors (party officials) who collect taxes for people’s allotted space. In very vibrant markets, the spots where women can trade their goods have been reduced to 25 cm, so that women can only sit turning their side to the customers.

Even though the majority of women surveyed reported that the economic situation in the country deteriorated especially after the 2009 currency reform, they also admitted that overall standards of living have improved since the 1990s. The average earning that women reported was 50,000 NKWon a month, with a second biggest group reporting to have earned between 100,000 to 150,000 NKWon. There were also high-income women from South Pyongang Province who reported earning over 1 million NKWon. (The average worker’s official salary is between 2,000 - 6,000 NKWon). Some women supplemented their income with money sent from relatives in South Korea. 25 percent of women reported the average monthly spending for basic necessities and

medicines to have been at 40,000-50,000 NKWon a month and another quarter of women reported spending 100,000 NKWon. (1 kg of rice fluctuated between 5,000-7,000 NKWon and 1 kg of corn cost about 2,000 NKWon). However, the big discrepancies in society that women reported were also visible during the interviews. There was a group of women who reported earning only a few thousand Won and who had lived on the verge of starvation. Still, for the majority of women, the situation was average or good while 14 women reported that their living conditions were poor. In addition, 13 women reported deaths in their close family since 2010 but only two among them related the death to malnutrition and two to terminal disease while other were related to natural causes or accidents. Small number of deaths related to malnutrition would indicate some positive change compared to the 1990s, although it cannot definitely represent the whole spectrum of the society.

It must be underlined that we do not know what the situation of the most vulnerable groups is, since these groups would not have means to leave the country. This is in stark contrast to the interviews in the past years when most North Koreans were leaving because of starvation. It might be that because of increased border security, the vast majority leaving the country are those who can afford the bribes.

#### What was your economic condition in comparison to other women?

Category	Numbers	Percentage
Very Good	2	3.3
Good	14	23.3
Average	27	45.0
Poor	10	16.7
Very Poor	4	6.7
No answer	3	5.0
Total	60	100.0

#### How was the economic situation in the country before you left?

Category	Numbers	Percentage
Very Good	2	3.3
Good	4	6.7
No change	7	11.7
Poor	28	46.7
Very Poor	16	26.7
No answer	3	5.0
Total	60	100.0

Question	Yes	No	Don't Know	No Answer	Total
I earned money for food but it was not enough to buy medicines, clothing, etc.	40(66.7%)	17(28.3%)	—	3(5.0%)	60(100%)
I only earned money through private economic activities, not the workplace	34(56.7%)	22(36.7%)	—	4(6.7%)	60(100%)
I was the only person in the family earning the living	26(43.3%)	31(51.7%)	—	3(5.0%)	60(100%)
The inspection of the markets have increased	43(71.7%)	13(21.7%)	—	4(6.7%)	60(100%)
Women who are unable to work because of health issues receive special protection	2(3.3%)	54(90.0%)	—	4(6.7%)	60(100%)
Women with more than 3 children receive additional monetary protection from the state	36(60.0%)	11(18.3%)	10(16.7%)	3(5%)	60(100%)
Women who do not attend official workplace cannot use facilities for children	35(58.3%)	19(31.7%)	2(3.3%)	4(6.7%)	60(100%)
Since 2010 there was a death in my close family	13(21.7%)	44(73.3%)	—	3(5.0%)	60(100%)

## 2. Education

In the past, various NGOs, including Citizens' Alliance, reported the alarmingly low rates of school attendance in many areas in North Korea. In the 1990s the attendance rate dropped dramatically due to hunger. Then in the early 2000s when the situation stabilized to a certain extent and the private economy started to grow, children were still not sent to schools, this time because of the financial burdens imposed by the teachers. Instead, many children helped their parents with money-making activities, such as collecting wood, herbs, grass, or stayed at home to take care of younger siblings.

In the last few years the situation improved to such an extent that children whose mothers engage in private economic activities regularly attend schools. Interviewees reported that only parents who can pay the daily required dues are able to send children to school. The attendance rate improved substantially, but in each area there are reportedly children that were unable to attend schools due to poor economic standing of their parents. Such children are discriminated against at schools both by children and teachers, and often forced to stay longer to do certain duties instead if they did not bring the required materials or money; as a consequence they drop out from school.

Children are required to bring scrap metals, corn, rabbit skins, sunflower seeds, or wood for heating the school. Some of these products are required by the party, some by the school itself in order to be later turned into a monetary fund for the class. Parents are also required to equip the

school with desks, trash bins and other school supplies. The schools are also shifting renovation costs, such as painting and installation of windows, to the students (and their parents). Nothing is provided by the state. The textbooks also have to be bought by the students. The teachers receive food products or the equivalent in money. “In classes with well-off children, parents have to even sponsor the wedding of a young teacher. As a consequence, the competition between the teachers to become the head of such a class is stiff,” one of the mothers reported. The financial burden placed especially on women who have children in schools is heavy; “If my mom did not have money to give me for the products assigned by the school, such as metal scraps, I would steal her old pots from the kitchen to take to school,” said a recent female high school graduate. The cost to keep a child at school was about 1,000 NKWon, or its equivalent in products.

Both parents and young women who recently graduated from high school in the North agreed that there is a trend among those who have such economic power to get through school and even get to the university with the help of money, because that may open a road to party membership and other benefits if they choose the right department. The most popular departments - economy, accounting, management, Chinese - are very expensive to get into. Women reported that the entrance fee costs between 1~3 million NKWon (the average worker’s official salary is 2,000 - 6,000 NKWon a month, which at lower range may be enough to pay for 1 kg of corn). We have also witnessed cases of parents sending young people to South Korea on their own to receive education. One interviewed girl from Pyongyang was particularly prescribed by her father to enter Seoul National University, nothing less. The parents remained in North Korea.

It was also reported that the number of women sent to the army by their parents (in order to later enter university) is increasing. However, in North Korea, the internal directives of the leader always take precedence over any law, and the recent directives of Kim Jong Il to members of government called for “not sending women to universities, at maximum to send them to colleges”. Since 2012 women are allowed to enter university only after they finish their military service.<sup>14)</sup> Kim Jong Il assessed that women cannot be provided with secure social activities and remain dependent on family if they graduate from the higher education institutions.

For mothers in low economic standing, it is common to require their young daughters to help with private activities and learn the market business instead of continuing their education beyond high school. It is both an echo of old patriarchal patterns in society and the economic reality in the country, where a young woman is expected to quickly get married, give up their official workplace and provide for the family through private economic activities. Such parents perceive that putting a

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<sup>14</sup> After graduating secondary school at the age of 17 or 18 years old, women may join the military and serve 5 years in general, or 7 years to become an officer in the army. In comparison, the military service for men is 10 years. The military service is reserved only to those whose loyal background have been checked and confirmed, because the military service opens the way to be accepted to the Party. This however slowly changes due to economic power that allows some to get around the rules.

female child through higher education is useless because women can generate an income without it. The burden is placed only on girls, the sons are expected to stay at school, and they are not involved in private activities, unless the situation of the family is dramatic.

### 3. Family Environment

Changes in the economy and in the growing roles of women had a large impact on the family environment. First, children remain outside of the family’s protection when parents are away in China, come to South Korea or are simply detained in North Korea. Secondly, the divorce rate has increased since 2009. Economic difficulties and women’s increasing economic power create conflicts between married couples.

Spread of information from the outside world, particularly movies on DVDs, infiltrated new ideas into society, like the status and treatment of women outside North Korea. Women started to demand more rights at home. Traditionally inclined men often replied with violence. In the survey, both men and women confirmed that beatings of women are so inherent in the culture that it is considered normal. But they also report that change is slowly taking place, especially in the younger generation, and that in some families men are starting to participate in domestic duties while women are busy with economic activities.

Women reported that there is no place to seek help in case of physical abuse. The police will not intervene as it is seen as a domestic issue. Many women see no option but to stay in abusive marriages. However, among women who have been economically successful, there is a growing trend to get out of abusive marriages through a divorce. The divorce is not equally available to all women. The procedure is complicated and it is said to be resolved when a woman uses her economic power to bribe the judge. A growing number of women simply leave their husbands, avoiding the complicated divorce procedure and financial cost. Also, an interviewee connected with the police reported that some women use their connections and money to actually prosecute their abusive husbands and send them to detention because that will grant them an automatic divorce (in North Korea the spouse of a person accused of a crime is granted an automatic divorce during the defendant’s trial). Among our interviewees 13 reported to have been beaten weekly or up to few times a month. We have to take into consideration the fact that some women may have not been comfortable in reporting such a fact. Among them 11 never reported the abuse in North Korea and two received help from officials. However, 50 women reported to have heard of violence at home from their female relatives or friends. Among them five women reported that women made official statements to the police. In three of those cases the men were sentenced, in the other two cases the police did not take any measures.

The reported incidents of violence are still high. North Korea did not implement a separate law on violence against women and provisions in the Women’s Rights Act are very vague. The reported situation also indicates of inequality before the law of different groups of women. The

inequality may possibly also lead to arbitrary detention of those who may be put there by another person's economic power and connections.

Question	Yes	No	Don't Know	No Answer	Total
Women can freely choose their husbands regardless of their family's background	21(35.0%)	33(55.0%)	3(5.0%)	3(5.0%)	60(100%)
Have you been beaten by a husband in North Korea?	13(21.7%)	44(73.3%)	—	3(5.0%)	60(100%)
Have you heard of other women in the neighborhood being beaten?	50(83.3%)	7(11.7%)	—	3(5.0%)	60(100%)
Women think that they have to remain in an abusive marriage	37(61.7%)	11(18.3%)	9(15.0%)	3(5.0%)	60(100%)
Number of divorce has increased	50(83.3%)	5(8.3%)	1(1.7%)	4(6.7%)	60(100%)
Anybody can get a divorce	15(25.0%)	39(65.0%)	3(5.0%)	3(5.0%)	60(100%)
The divorce procedure is so complicated it is difficult to get the divorce	38(63.3%)	14(23.3%)	5(8.3%)	3(5.0%)	60(100%)
You can get a divorce only when you bribe the judge	43(71.7%)	5(8.3%)	7(11.7%)	5(8.3%)	60(100%)
Women have equal rights as men regarding property upon divorce	27(45.0%)	10(16.7%)	17(28.3%)	6(10.0%)	60(100%)

#### 4. Health Issues

Medical services in North Korea are centrally managed by the state. According to article 56 of the DPRK's newly amended Constitution, *“the State develops the general free medical service system and strengthens the system of preventive medicine and system of regional medical doctors to enhance the health of working class and protection of life of the people”*. Furthermore, according to article 72, *“the people have a right to free medical treatment and old-age patients or people who are unable to work, or young children without a protector have right to material assistance. This right through the national security insurance and the system of social security guarantees free medical treatment, increase of number of hospitals and medical infrastructure including sanitariums.”* At the same time, however, the State emphasizes protection (Art. 76) for special groups such as *“revolutionary fighters, families of revolutionary martyr soldiers, families of patriotic martyr soldiers, families of North Korean People's Army soldiers, awarded soldiers”*.

With a changing socio-economic situation in North Korea, however, free access to medical services as provided by the state is virtually impossible. A patient may receive a free visit with the

doctor, but any medical treatment or medicines have to be paid for by the patient. If a surgery is necessary, a person needs to provide money or food products to the doctors. Women from farming areas usually pay in food products. The patient also needs to secure his own food and food for the doctors in charge when staying in the hospital or rely on provisions from family members. The majority of medicines prescribed by the doctors have to be bought at the private markets or in special wholesale houses which serve as “pharmacies”.

The doctors are also required by the hospital to “earn hard currency” thus they engage in additional private activities, such as gathering medicinal herbs in the mountains, buying medicine from wholesalers and reselling them in markets or selling the medicine provided as humanitarian aid. Their income is also supplemented by paid medical treatment in hospitals or visiting homes for abortion. However, the majority of medicines commonly bought at the market are digestive medicines or strength drinks. People tend not to trust medicine, since there are reportedly many fake pills. Instead homeopathic doctors and acupuncture are more popular, especially since normal medical treatment is prohibitively expensive. A woman who was employed in the pharmaceutical factory reported that the number and types of medicines produced in North Korea has been reduced dramatically. Her factory stopped production of antibiotics and produced only pain killers or pills for digestive problems and bandages.

The medical system in North Korea resembles privatized medical systems in capitalist countries, but people's earning power is very limited in comparison to the requirements of financial payments in various sectors of the society. Such a system clearly puts an additional burden on the underprivileged, and as with other services, such as education, this again creates a situation in which people without financial resources will not receive proper services. Although it was reported to us that even Pyongyang military hospitals require monetary payment to treat those with loyal background but who come from other provinces, Party officials from Pyongyang confirmed that their medical service was free even recently. Thus, full-fledged access to hospitals and treatment remains limited to the wealthy or privileged members of the *nomenklatura*.

In addition, if medical treatment is required, women prefer to offer it to their sons rather than themselves or their daughters, which still reflects the strong patriarchal and Confucian values of “male first” in North Korean society. Furthermore, there is a prevailing culture in North Korea that people should go to hospitals only when very sick. Women reported lack of awareness regarding preventive medicine and lack of knowledge about various diseases and success in treatment if those diseases are treated early on. And because every test or treatment requires some payment, people tend to avoid treatment as long as they can.

Under the circumstances, preventive tests for female diseases or screening tests for breast cancer do not exist, although one doctor who worked in North Korea in the 70s and 80s reported that they were available in her area at the time. Women reported that hospitals lack basic medical apparatuses. Each hospital has usually only one x-ray machine and some of them, one ultrasonography machine. The equipment is very old because the state is not making any new investments. These hospitals also only exist in bigger cities; small towns or rural areas have only simple medical outposts: “In my farming area there was no hospital, so you needed to make a

special trip to the city. As a result, people would even give themselves injections.” In addition, the doctor reported that there is a lack of knowledge in terms of operating machines, such as ultrasonography. She claimed that the one used by her hospital was donated as humanitarian aid, but the doctors were not trained in using it. The doctor would have to go to Pyongyang with his/her own food supplies for two months of training which is impossible for most doctors. When finally one person went to receive the training and started to give tests back home, every person was required to bring an egg (to use egg whites) for there is no gel to use with the ultrasonographic test. The doctor was from a large city, important for the regime for its chemical and industrial production. One would think that hospitals in such cities may have more trained doctors and better medical equipment. Well-equipped, modern hospitals are located in Pyongyang or in the provinces where they operate as private hospitals and are reportedly the results of Chinese investment.

In case of pregnancy and childbirth, almost half of women reported that they did not see a doctor throughout their pregnancy. Even the ones that did go, reported that doctors usually only checked the position of the fetus with their hands, but as neighborhood midwives can also do this, they did not feel the need to go to hospital regularly. Women admitted that awareness of complications or disabilities is very low, and this lack of education - after economic reasons - might be why women tend not to go to hospitals. In terms of childbearing, almost half of the women reported delivering at home, regardless of whether the woman was from a village or major city and regardless of age. Women also reported that the death of mother or baby during or after childbirth was not uncommon.

Knowledge about family planning and contraception is also very low. The majority of women reported that they learned about contraception only when they had already given birth and were desperate not to have more children. Contraception is generally considered to be a female responsibility, thus many reported using intrauterine device, or those who could afford it, had female sterilization. Some reported of experiencing pain after long-term of usage, but because they had no other option for contraception in North Korea, they were removing the device only after arrival in South Korea. It is also very worrying that the major birth control method is abortion. According to our survey, 23 women reported to have had an abortion and 20 had it more than once. Abortion in North Korea is said to be illegal. Consequently, many pregnancies are aborted at homes, without anesthesia and proper sanitary conditions, though it seems that the number of women bribing doctors at hospitals for abortions has been increasing. Women and doctors reported that a doctor would be punished for performing an abortion if discovered, which could happen if the woman died of complications. In the aspect of abortion, nothing has changed when we compared it over the years, apart from the fact that the number of abortions increased due to unstable economic conditions for raising children. Women also reported that in the last few years they received constant education to bear more children (the state is encouraging women to have at least three) which is contrary to the social trend in North Korea.

Women also reported lack of education in terms of sexually transmitted diseases particularly HIV/AIDS. Some women heard HIV/AIDS mentioned during the meetings of the Women’s League

but it was not explained by the medical expert. They were not given explanations on how it can be transmitted or how it can be prevented. The doctor also reported that there is very little education about STDs in hospitals. Usually the doctors have special weekly meetings, during which they are supposed to make presentation about new diseases. However, the doctors lack access to contemporary information.

One additional problem that should be mentioned here is the increasingly widespread use of narcotics. Opium is most commonly available, and people tend to grow it near homes: “Because opium is considered a medicine, people keep it in the house.” Methamphetamine (“ice”) is also increasingly available in North Korea and originates mostly from Hamheung city. It was reported to cost about 200 NKWon per 1 gram, so it is not prohibitively expensive and used by those who earn money instead of medicines as a strong pain killer. This narcotic is also used for recreational purposes or for other reasons. According to women, recent rumor has it that women get prettier when they use it, so young girls have been trying it. Women admitted that knowledge about side effects or addiction issues is non-existent until it happens to someone.

Many re-settlers have failing health and commonly require medical services within their first year of arrival in South Korea. We can surmise that most escapees postpone dealing with health issues until their arrival here.

Question	Yes	No	I don't know	No Answer	Total
I received a breast cancer screening test	1(1.7%)	55(91.7%)		4(6.7%)	60(100%)
I received a screening test from gynecologist	4(6.7%)	52(86.7%)		4(6.7%)	60(100%)
I never received contraception education	46(76.7%)	10(16.7%)		4(6.7%)	60(100%)
Young girls recently receive education about family planning and contraception	0(0%)	56(93.3%)		4(6.7%)	60(100%)
There was education provided about sexually transmitted diseases including HIV/AIDS where I lived.	9(15%)	47(78.3%)		4(6.7%)	60(100%)
I visited a doctor and received a test when pregnant	29(48.3%)	26(43.3%)		5(8.3%)	60(100%)
I was assisted by a local midwife when pregnant	22(36.7%)	31(51.7%)		7(11.7%)	60(100%)
I regularly visited the hospital when pregnant	11(18.3%)	43(71.7%)		6(10%)	60(100%)
I received free medical assistance from hospital when giving birth	15(25%)	36(60%)	1	9(15%)	60(100%)
I gave birth in a hospital	36(60%)	16(26.7%)		8(13.3%)	60(100%)
I gave birth at home with the help of nearby people	27(45%)	29(48.3%)		4(6.7%)	60(100%)
Female babies tend to be killed after birth	3(5%)	42(70%)		4(6.7%)	60(100%)

Question	Yes	No	I don't know	No Answer	Total
There was a case in my neighborhood when a woman or a child died after delivery at home	32(53.3%)	20(33.3%)		8(13.3%)	60(100%)
In North Korea, abortion is illegal	41(68.3%)	14(23.3%)		5(8.3%)	60(100%)
I never had an abortion	29(48.3%)	23(38.3%)		8(13.3%)	60(100%)
I had an abortion more than once	20(33.3%)	34(56.7%)		6(10%)	60(100%)
Abortion is done secretly at home	27(45%)	23(38.3%)		10(16.7%)	60(100%)
Abortion is possible at the hospital for money	49(81.7%)	6(10%)		5(8.3%)	60(100%)
Medicine is only bought at the market	20(33.3%)	34(56.7%)		6(10.0%)	60(100%)
There were women addicted to narcotics in my neighborhood	24(40%)	32(53.3%)		4(6.7%)	60(100%)
I have seen/ heard of addicted persons being sent to jail	24(40%)	30(50%)		6(10%)	60(100%)
Drug dealing was often seen in my neighborhood	23(38.3%)	33(55%)		4(6.7%)	60(100%)
There were children addicted to narcotics in my neighborhood	13(21.7%)	42(70%)		5(8.3%)	60(100%)
Children addicts were punished in my neighborhood	7(11.7%)	48(80%)		5(8.3%)	60(100%)

## 5. Persons with Disabilities

The issue of the disabled is very hard to research, because information on this topic is scarce. Our original intention was to establish how disabled women or mothers with disabled children are treated in North Korea and what kind of system of support is available to them. It has become apparent throughout the interviews that there are traditional social norms in North Korea which allow for discrimination of this minority group. First of all, North Koreans often reported that the person/family is “cursed” if a disabled child is born into the family. North Koreans have a common traditional saying that the person must have committed a crime in the “previous life” and thus the disabled and the family is being punished in “present life”. There are no neutral words, such as “person with disability” used by North Koreans. It is common to use derogatory terms toward various disabled groups in North Korea, and North Korean women reported that they learned that it is not proper to use such terms when re-settling in the South.

When asked about people with disabilities, North Koreans gave us examples of people who lost their limbs in common accidents in factories and mines, blind or deaf-mute persons or persons with mental disorders. Most had seen such disabled people in their environments and said they

were very common in areas bordering China. Only a few interviewed women attended schools or worked with mildly disabled persons, but all of them reported that they have never seen special infrastructure built for the needs of people with disabilities. They confirmed that there were separate schools or factories - especially for deaf-mute people. Many of them were also aware of special hospitals for mentally disabled people in each province.

The situation got trickier when we asked questions about children born with genetic diseases. One female doctor who spent 30 years in practice said that “genetic disabilities are very rare; such children are not being born in North Korea.” This is quite an unusual statement, because disabled people are born everywhere in the world and genetic disorders, such as Down syndrome are quite common (1 child in less than 1,000 births). Furthermore, there were few North Korean women who had similar opinion that disabled children are not commonly born in North Korea. According to experts, contemporary research on the relationship between poverty and disability suggest that poor diet and stressful living conditions increase the chances of premature birth and low birth weight, which may be indicators of future disability. Given the fact that North Korean women experienced nutritional deficiencies over prolonged period of time and commonly suffer from chronic untreated health problems, this must affect the health of the children born to those mothers. Thus, the North Korean doctor’s statement may be an indication that either the doctors are poorly trained and are not able to recognize many genetic disorders, or that children with disabilities are not under special medical care. Doctors know neither about the number, nor type of defects of those who survived and are hidden at homes. The doctor herself explained to us that she saw a young adult with genetic disorder only once and it was at home of a person with very privileged background, who was also very rich. Nobody was aware that this family had a disabled member because he was kept indoors and never received medical treatment in the nearby hospital, but the disabled person was well taken care of due to the parents’ wealth.

Lack of awareness of various genetic diseases and lack of medical access to identify mother’s health issues or early defects in fetuses leads parents to resort to various drastic measures when the child is born with obvious disabilities. Because of the social discrimination as well as lack of economic conditions to raise these children, many interviewed women said that parents decide to kill the disabled child or abandon the child if they are informed at the hospital that the child will be disabled. The doctors usually inform the parents that placing a child face down will cause quick death from suffocation.<sup>15</sup> It seems that the trend became more common after the time of great hunger in North Korea because those children would limit family’s mobility which substantially increased with a development of private economy.

Women reported that the severely disabled are usually confined to their homes, so people may not even know about such cases in their neighborhood. In North Korea, there are no welfare

<sup>15</sup> This has also been a common practice if the child was born in the detention center to a mother repatriated from China.

centers which would have specialized protection systems for those born with the disabilities.

Special places for people with dwarfism or disabled people in North Korea has been mentioned since the 1990s. A rumor that disabled are sent to “some island” was sometimes cited among North Korean women we interviewed. Hearing commonly that parents decide to send away the child “to a special place” we decided to ask those who could have more information about this procedure, especially people formerly in higher ranks in the People’s Safety Agency (police) or government.

It was reported to us that in case a family has a problem with the disabled and wants to find a solution, they might seek help locally from the *boanwon* safety officer (police). It was reported that the police might help to send the disabled child away if it is burdensome for the family, or if an adult person constitutes a threat to the family due to for example dangerous behavior caused by mental disability. The police would inform the family that such option exists and prepare necessary documents. Then the disabled person will be sent away for good.

One official of the People’s Safety Agency (police) also reported that there is an island with “Hospital 83” (under administration of South Hamgyong Province) to which disabled persons are being sent for medical tests such as dissection of body parts, as well as tests of biological and chemical weapons. He said that the average citizen will not know about this fact, they might think that the disabled are sent to secluded places. Parents either voluntary give away the child or the agency in charge proposes to the parents to give the child away. It was also reported that it is very difficult for Pyongyang citizens to keep disabled children at home. If the fact is discovered, the family will be expelled. The parents or guardians need to sign documents giving up the rights to the child. The ID number associated with the person will be deleted.<sup>16)</sup> The island where disabled people are sent is reportedly completely secluded. Apart from the island, our interviewee reported of a long-term reform through labor detention (correction center), *Gyohwaso* No. 1 in Kaechon where disabled are often sent to. Another person with a police background in North Korea reported that a similar institution practicing chemical and biological tests on disabled and criminals is in a secluded mountainous area of North Hamgyong Province, from where two healthy people (criminals) allegedly escaped spreading information about the tests.

Since similar reports have long been mentioned by various groups and media, we are of the opinion that there should be an investigation conducted by the international community to establish more evidence on reported existence of eugenic practices.

We told the male interviewee from Pyongyang that more disabled people have been observed on the streets of Pyongyang, which caused visible amusement. He claimed that reality is totally different, but “the international community sees only a tie attached to the person’s front, and cannot judge whether it’s real or what’s attached to the person’s back.”

<sup>16</sup> He said that there have also been instances of Party members who committed crime being sent to that island. In such case, the “guilt by association” is not applied to the rest of the family.

Question	Yes	No	No Answer	Total
I have seen a disabled person in my area	43(71.7%)	10(16.7%)	7(11.7%)	60(100%)
I’ve seen or heard that newly born children with disorders are killed	23(38.3%)	30(50%)	7(11.7%)	60(100%)
I’ve seen or heard that newly born children with disorders are abandoned	25(41.7%)	27(45%)	8(13.3%)	60(100%)
I’ve heard that there is an isolated area to relocate the disabled	26(43.3%)	30(50%)	4(6.7%)	60(100%)
There was a disabled person in my school	9(15%)	48(80%)	3(5%)	60(100%)
There was a disabled person employed in my workplace	5(8.3%)	51(85%)	4(6.7%)	60(100%)
There was a special organ in my area for the care of persons with disabilities	6(10.0%)	49(81.7%)	5(8.3%)	60(100%)
There was a special education institution in my area for persons with disabilities	17(28.3%)	38(63.3%)	5(8.3%)	60(100%)
There was a psychiatric hospital for people with mental disorders	38(63.3%)	15(25.0%)	7(11.7%)	60(100%)
There was a special infrastructure in my area adjusted to the needs of people with disabilities	1(1.7%)	55(91.7%)	4(6.7%)	60(100%)

## 6. Women in Detention

During the wave of great hunger in the 1990s, women were desperately leaving North Korea in search of food and job opportunities in China. Since not all women had the resources or skills to go into the private economy in North Korea, many were looking for their chance outside of the country. Slowly, the business of trafficking grew on both sides of the border. Brokers were encouraging women to leave for China and then subsequently were handing them to traffickers who usually sold them as “housewives” to Chinese farmers.

In our previous research on women, we reported that since approximately 2003, the majority of “criminals” were women who had illegally crossed the border into China and then were subsequently deported and punished. Most of the women interviewed for this current report either did not have such an experience, or had it a long time ago. This is not to say that there are no deportations from China and people are not continuing to be punished. Rather, the system of bringing relatives from North Korea to South Korea has improved and those who have financial resources or whose family finances the trip have a greater chance to have a successful journey. If persons are joining their families and relatives in the South, their stay in China is no longer than one to two months on average.

There are different types of detention facilities in North Korea. The majority of crimes, according to the North Korean Criminal Code, are punishable through short-term labor (*Rodong danryeonhyeong*) in temporary labor facilities (*Rodong danryeondae*); more serious crimes are

punishable through long-term reform through labor (*Gyohwahyeong*) and prisoners are confined to *Gyohwaso* (long-term detention with reform through labor). Finally, perpetrators of very serious political crimes are sent to political prison camps, (*Gwalliso*) which are not mentioned in the Criminal Code and North Korea denies their existence. In addition, there are also several other facilities, such as simple jails, military jails, underground jails, temporary holding facilities for those waiting for transport to detention in their hometown, et cetera.

Among the women we interviewed, 10 admitted to have been detained and among them only three between 2010 and 2012. We focused on gathering additional information to see whether the situation has changed from the 2005-2006 period, when there was generally more leniency for simple border crossers.

The first thing which became apparent was that penalization increased when North Korea amended its Criminal Code in 2009. Women reported that they were charged with Article 233 (nicknamed by North Koreans as “Seagull”) which states that “*A person who illegally crosses a border of the Republic shall be punished by short-term labor for less than two years. In case when the person commits grave offense, he or she will be punished by reform through labor for less than five years.*” In the past, women would be often sent to short term detention centers, but after reinforcement of the law, it was reported that women who are forcibly repatriated from China receive a sentence in the long-term detention center with reform through labour (*Gyohwaso*). Our interviewees received one-to-three year terms in *Gyohwaso* and reported that recent new arrivals were receiving five-year terms on average.

The former inmates reported that on average there were 1,000-1,200 inmates among them, of whom about 90 percent were border crossers. It seems also that the number of men increased in comparison to the ratio of women, which seems to indicate a reversal of earlier times. The men are reported to be there for social crimes such as bribery, domestic abuse, and stealing. This indicates that as the economic roles of men declined and workplace went out of operation, the number of crimes committed by men increased in North Korea.

The investigators at the detention center possess documents submitted by the Chinese side which include information on whether the person had contacts with Christian churches. Women reported that men are severely beaten during the investigation and women usually are not, unless the person is accused of a higher crime, such as contact with “South Korean religion” then both women and men are tortured.

Even though the places of detention differed, there were many similarities reported by women. First of all, women (detained and not detained) were aware of the fact that there is a law which defers a woman’s detention in case she is pregnant. The provision, which existed earlier and was mentioned by the North Korean delegation in the CEDAW review in 2005, was also sanctioned by the Women’s Rights Act (Article 38). Women who spent time in detention reported, however, that the law protects only women who become pregnant in North Korea. Women were aware of cases when a woman would come back to serve her sentence after delivery. However, women who had been deported after getting pregnant in China were reportedly forced to have abortions or were given an injection to induce labour, with the child being put into a

vinyl bag. It seems that nothing has changed in this “ethnic cleansing” practice. There were also a few cases reported of North Korean children under the age of 10 who accompanied their mothers into detention.

Women also reported that they had to provide transportation costs (20,000 NKWon) as well as a few kilograms of corn before being sent to detention. Since detainees serve sentences usually in the province of their residence, those who had families operating in the market or in South Korea counted on additional provisions for food, medicine and hygienic supplies from the families outside. Obtaining products such as clothes, soap, toothbrush and toothpaste needed to be resolved by the inmates themselves.

Each detention center is divided into different wards, each responsible for different production. In general, these are farming, lumbering work and production for China, mostly wigs and artificial eyelashes. Men and women are separated. Women are also assigned to heavy work, such as lumbering. This is considered the harshest work and accidents are frequent, but the provision of food is the same as that given to those with easier labor. Women resort to other work such as washing fellow inmates’ clothes in the stream or stealing to get an additional ration of food.

Because of the lack of sanitary conditions, inmates suffer from skin diseases. There are many fleas and bugs, and the most common skin disease is scabies. Since the detention centers are old, unrenovated and dirty, and people sleep next to each other in overcrowded rooms, infectious diseases spread quickly. There is no medical assistance provided to the inmates. Any illness, from skin disease to tuberculosis goes untreated unless a family is able to provide medicine to the inmate from outside. Deaths from untreated medical conditions or malnutrition are reported to be high. One woman also admitted to being raped by a supervisor and stated that it was a common practice for young, pretty inmates to be called out at night under some pretext.

One woman summed up the situation in the detention center in the following way: “This is a real irony, the government sends us to detention, but we support our detention with our own or our families’ money”.

# VI Recommendations

North Korean authorities should be first and foremost requested to address the reports on the treatment of persons with disabilities. Organizations who work in the country and provide assistance to the disabled should engage with the North Korean authorities on educational programs that would change the negative cultural discrimination toward persons with disabilities.

The international community should document information on the existence of special detention facilities for the disabled in North Korea as well as special medical institutes that allegedly conduct chemical and biological tests. North Korea should be strongly condemned and urged to stop these inhumane practices on the disabled and political enemies.

The medical community which engages in various projects in North Korea should consider donations of special medical appliances with accompanying special training programs for provincial doctors such as pre-natal care, sexually transmitted diseases including HIV/AIDS, and preconception. It would be advisable to focus on successful educational programs in other countries that could be implemented locally. It is of utmost importance that such programs be conducted from region to region and not centrally as well as with the provision of food assistance throughout the training. The international community should engage with the North Korean authorities to establish special educational programs regarding various health risks including disabilities and to establish centers or medical vehicles so that foreign medical doctors could visit

and have access to the inhabitants, including those who normally cannot afford to access the North Korean public health care system.

The international community should step up again to condemn North Korean authorities for their imposition of harsh penalties on people crossing the border. Punishing by law those who are repatriated from China should be completely abolished together with practices of forced abortion and infanticide and severe torture and punishment for those who are religious believers.

Special training programs (including study-visits to other countries) should be targeted at the People's Safety Agency officers to actively react in cases of sexual harassment and domestic violence. People's Safety Agency and State Security Agency should eradicate practices of inhumane treatment of inmates, especially women in reform institutions.

North Korea is strongly recommended to draft a separate law regarding violence against women. Furthermore, it could use the expertise of UNIFEM or acclaimed women's rights NGOs to create programs and conduct nation-wide trainings on violence against women.

Lastly, a recommendation of high priority is for North Korea to abolish policies based on the caste system and the investigation of one's background and political loyalty. North Korean authorities should introduce policies for protection of vulnerable groups which due to the operation of the de facto market economy in the country have no access to education or medical assistance.

# VII DPRK's Women's Rights Act with Commentary

## *Article 1 (The Mission of Women's Rights Act)*

*Women's Rights Act of the Democratic People's Republic of Korea serves to firmly guarantee the rights of women in all fields of social life and heighten the position and role of women.*

The mission statement is quite brief and vague. Art. 1 of the Laos Law on the Development and Protection of Women (which was drafted with the assistance of UNIFEM) is an example of a more fully developed mission statement: “The Law on the Development and Protection of Women is issued to guarantee and promote the roles of women, to define the fundamental contents of, and measures for developing and protecting, the legitimate rights and interests of women, and to define the responsibility of the State, society and family towards women with the [following] aims[:] promoting the knowledge, capability and revolutionary ethic of women, [and] gender equality[;] eliminating all forms of discrimination against women[; and] preventing and combating trafficking in women and children and domestic violence against women and children, in order to [create conducive conditions for] women to participate and to be a force in national defence and development.”

## *Article 2 (The Principle of Gender Equality)*

*It is a consistent policy of the Democratic People's Republic of Korea to guarantee gender equality. State shall strictly prohibit all forms of discrimination against women.*

The main problem here is the lack of a definition (here or anywhere else in the Act) of the phrase “discrimination against women”. According to a report published by UNIFEM, “a clear definition of discrimination, consistently applied, identifying the actions and behaviours that constitute discrimination is a critical component of effective antidiscrimination provisions.”<sup>17)</sup> The CEDAW Committee has criticized other countries’ legislation for the lack of a definition of discrimination.<sup>18)</sup> The NGO Human Rights in China stated with reference to a similar problem in the Chinese gender law that “without a definition, effective education, and training cannot be undertaken to combat societal discrimination. Further, reporting, assessment and monitoring are all hindered, and women are less able to invoke legal procedures and remedies.”<sup>19)</sup>

The standard definition at the international level is contained in art. 1 of CEDAW, which states that discrimination is “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>20)</sup> The CEDAW Committee has repeatedly emphasized the importance of including a definition that makes the above points into gender legislation.<sup>21)</sup> It has also emphasized that the definition of discrimination should include both direct and indirect discrimination.<sup>22)</sup>

One example of a relatively broad definition of discrimination is that of art. 6(1) of the 2003 Croatian Gender Equality Act: “Discrimination on the basis of gender (hereinafter: discrimination) shall mean any normative or real, direct or indirect differential treatment, exclusion or limitation based on one’s gender which renders more difficult or denies equal recognition, enjoyment or exercise of human rights of men and women in political, educational, economic, social, cultural, civil and any other sphere of life.”

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<sup>17</sup> Forster & Jivan, *supra* note 1, at 35.

<sup>18</sup> **Concluding** Comments of the CEDAW Committee: China (2006) 36th Session, para 9 (UN Doc. CEDAW/C/CHN/CO/6) (“The Committee remains concerned that Chinese domestic legislation still does not contain a definition of discrimination against women, in accordance with Article 1 of the Convention, encompassing both direct and indirect discrimination, as already noted in previous comments.”)

<sup>19</sup> **Human** Rights in China, “Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in the People’s Republic of China,” (June 2006), iv.

<sup>20</sup> CEDAW, art. 1.

<sup>21</sup> **Concluding** Comments of the CEDAW Committee: Iceland (2008) 41st Session, para 12 (UN Doc CEDAW/C/ICE/CO/6); Yemen (2008) 41st Session, para 11 (UN Doc CEDAW/C/YEM/CO/6); Morocco (2008) 40th Session, para 11 (UN Doc CEDAW/C/MAR/CO/4).

<sup>22</sup> **Concluding** Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41st Session, para 15 (UN Doc CEDAW/C/TZA/CO/6); Saudi Arabia, (2008) 40th Session, para 13 (UN Doc CEDAW/C/SAU/CO/2); Maldives (2007) 38th Session, para 14 (UN Doc CEDAW/C/MDV/CO/3).

**Article 3 (Social Awareness of Women)**

*Women play an important role in the welfare of the family and the development of the society. State shall raise awareness of women and firmly guarantee their rights in all parts of the society.*

There are three main problems with this article. First, it is very vague. Second, by stressing the importance of women's "role in the welfare of the family" ahead of their role in the development of society, the article seems to imply that welfare of the family should be women's primary role. This is contrary to art. 5(a) of CEDAW, which requires States to take all appropriate measures to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on [ ... ] stereotyped roles for men and women." Third, the instruction that the "state shall raise awareness of women" is essentially meaningless. Everybody is already aware of women. The sentence would make more sense if it had said to "raise awareness of women's rights".

**Article 4 (Plan to Guarantee Women's Rights)**

*State shall establish a basic plan to guarantee women's rights and execute it. Municipal People's Committees shall establish detailed plans on yearly basis according to the state's basic plan to guarantee women's rights and execute it with precision.*

The concept of a national plan has been endorsed by the CEDAW Committee and is contained in some other countries' gender equality laws. The Beijing Platform for Action also instructs governments to "consider drawing up national action plans identifying steps to improve the promotion and protection of human rights, including the human rights of women."<sup>23</sup>

The principal problem with this provision, however, is again its brevity and imprecision. Specifically, it fails to mention what agency within the State should establish the basic plan, what the areas covered by the plan should be, whether there will be any framework for monitoring implementation of the plan, and what time frame should be given for implementation of the plan.

The analogous article 3 in China's Law on the Protection of Rights and Interests of Women differs from this article in its requirement that planning for women's issues be included in the national and local economic and social development plans: "The State Council shall formulate an outline for the development of Chinese women and include such outline in the national economic and social development plan. Local people's governments at or above the county level shall, in accordance with the outline for the development of Chinese women, formulate programs for the development of women in their respective administrative regions and include the programs in their national economic and social development plans."

**Article 5 (The Responsibility of Institution, Corporate Association and Organization to Guarantee Women's Rights)**

*It is mandatory for institutions, corporate associations and organizations to guarantee women's rights. Institutions, corporate associations and organizations shall firmly guarantee women's rights in accordance with this act.*

The main fault with this article is its vagueness. It does not mention how these institutions, associations, and organizations should guarantee women's rights. In some countries, such as Spain, the gender equality act requires that employers draft gender action plans.<sup>24</sup>

The DPRK article is somewhat less protective than its Chinese counterpart (art. 4 of China's Law on the Protection of Rights and Interests of Women) which explicitly highlights the State role in regulating societal compliance: "The protection of women's lawful rights and interests is a common responsibility of the whole society. State organs, public organizations, enterprises and institutions as well as urban and rural mass organizations of self-government at the grass-roots level shall, in accordance with the provisions of this Law and other relevant laws, protect women's rights and interests. The State takes effective measures to provide necessary conditions for women to exercise their rights according to law."

**Article 6 (The Responsibility of All Municipal People's Committees to Guarantee Women's Rights)**

*The guarantee of women's rights is an important responsibility of each Municipal People's Committee. Each Municipal People's Committee shall designate the guarantee of women's rights as an important assignment and take measures to ensure the rights of women in the area of jurisdiction.*

This provision echoes in a narrower way art. 6 of China's Law on the Protection of Rights and Interests of Women, which states "People's government at all levels shall attach great importance to and strengthen the protection of the rights and interests of women. Institutions in charge of work for women and children under the people's governments at or above the county level shall be responsible to organize, coordinate, direct and urge the relevant departments concerned to ensure the protection of women's rights and interests. The relevant departments of the people's governments at or above the county level shall, within the scope of their duties, ensure the protection of women's rights and interests."

**Article 7 (The Responsibility of Labor Organizations to Guarantee Women's Rights)**

*Women's Coalition is an organization of women for guaranteeing the rights of women. The Central Committee of the Democratic Women's Coalition of Korea and each Women's Coalition organization shall responsibly endeavor to guarantee women's rights in accordance with this law and the Charter of Women's Coalition. Workers' organizations including the General Coalition of Vocations, the Agricultural Workers' Coalition and Youth Alliance shall establish plans to guarantee the rights of the women in their organizations in accordance with this law.*

<sup>23</sup> Beijing Platform, *supra* note 3, at para. 230(e)

<sup>24</sup> Constitutional Act for Effective Equality between Men and Women, art. 45(2) (2003) (Spain) ("In companies with over 250 employees the formulation and implementation of an equality plan is mandatory")

This article is perhaps intended as a substitute for the DPRK's CEDAW art. 7 duty to ensure the equal rights of women to participate in non-government organizations that are concerned with the political and public life of the country. The provision is similar to art. 7 of China's Law on the Protection of Rights and Interests of Women, which states "The All-China Women's Federation and local women's federations at various levels shall, in accordance with law and the Constitution of the All-China Women's Federation, represent and uphold the interests of women of all nationalities and all walks of life, and strive to safeguard the rights and interests of women. The trade unions and the Communist Youth League organizations shall, within the scope of their respective work, strive to safeguard the rights and interests of women."

**Article 8 (The Responsibility of Legal Institutions to Guarantee Women's Rights)**

*Legal institutions shall strictly enforce legal control in order to prevent women's rights from being violated by any act of crime or violation of law.*

**Article 9 (International Exchange and Cooperation)**

*State shall promote exchange and cooperation with other countries and international institutions in the field of women's rights.*

Similar provisions are contained in some but not all other gender equality laws. One example is art. 19 of Japan's Basic Law for a Gender-equal Society, which states that "to promote formation of a Gender-equal Society based on international cooperation, the State shall make efforts to take necessary measures for exchanges of information with foreign governments and international institutions, and the smooth promotion of international mutual cooperation related to formation of a Gender-equal Society."

**Article 10 (The Extent and the Application of the Law)**

*This law regulates matters which arise from guaranteeing women's rights. Any item related to women's rights which is not regulated by this law shall be governed by relevant law. Concerning women's rights, an international treaty to which State is a party shall have the same force as this law.*

While different legal systems vary widely in the degree to which courts can directly rely upon international treaties, many human rights advocates have favored allowing international human rights treaties to be directly enforced by judges, as is provided for in this article.

## Chapter 2 Social and Political Rights

**Article 11 (The Basic Demands of Social and Political Rights)**

*Women have the equal rights with men in the field of social and political life. No one may restrict or violate the woman's social and political rights and status.*

This echoes art. 9 of China's Law on the Protection of Rights and Interests of Women, which states that "the State guarantees that women enjoy equal political rights with men."

**Article 12 (Suffrage and Eligibility)**

*Women have the equal rights with men to vote and to be elected. State shall actively encourage women to participate in social and political activities, and increase the proportion of female representatives in each People's Assembly.*

The main problem with this article is that it does not specifically say how the State will increase the low participation of women in DPRK political life. Recommendation 23(15), states with respect to political participation that "while removal of de jure barriers is necessary, it is not sufficient" to achieve full compliance with Article 7, and therefore temporary special measures should be considered. Special measures can include "recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies."<sup>25)</sup>

One example of a gender law with more specific guidelines on equal participation in the political sphere is the 2004 Kosovo Law on Gender Equity, which reads, in part:

3.1 The implementation of legal and affirmative measures [to] establish equal participation for both females and males in legislative, executive, judicial bodies of all levels and in public institutions, so that representation of both genders in these institutions [has] its level of their representation in the general population of Kosovo.

3.2 Equal gender participation of both females and males, according to Section 3.1, is achieved in cases where the participation of the particular gender in the institutions, bodies or at the level of authority is 40%.

3.3 Equal gender participation, in compliance with section 3.2, must be observed during appointments in central and local government bodies.

10.1 All registered political parties shall ensure in compliance with 3.2 that both males and females are equally represented."

**Article 13 (The Right to Acquire, Change and Retain Nationality)**

*Women have the equal rights with men to acquire, change and retain nationality. The nationality of a woman shall not be changed by marriage or divorce in the Democratic People's Republic of Korea.*

This article only covers a few of the suggested elements of protection for women regarding nationality. One report published by UNIFEM recommends that a gender equality law, in addition to stating that women have the equal rights with men to acquire, change and retain nationality, also: guarantees that marriage to a non-national or a change to a husband's nationality does not change a wife's nationality; provides for equal rights of both spouses to

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<sup>25</sup> CEDAW General Recommendation 23: Political and Public Life (16th session, 1997) UN Doc. A/52/38/Rev.1, para. 15 (1997).

residency, citizenship and employment when married to a nonnational; provides for equal rights of both parents to determine the nationality of their children;<sup>26)</sup> extends the rights of wives and husbands to partners in de facto relationships including same-sex partnerships; and guarantees the equal right of women to choose their domicile and residence.<sup>27)</sup> This final element is expressly guaranteed by CEDAW Article 15(4), which requires States Parties to provide to men and women the same rights in law relating to the freedom to choose their residence and domicile.

**Article 14 (The Right to Work in State Organs)**

*Women have the right to work in all State Organs. State Organs shall actively take in female workers and guarantee appropriately their conditions of work and livelihood.*

This provision should specify non-discrimination rather than just the right to work. The CEDAW Committee has stated that women are often “excluded from top-ranking positions in cabinets, the civil service and public administration, in the judiciary and in justice systems”<sup>28)</sup>

**Article 15 (Appointment of Female Officers)**

*Institutions, corporate associations and organizations shall systematically train and appoint female officers. There must be no discriminations against women in the screening, training and appointment of officers.*

This is an area where temporary special measures may be needed to increase the level of female officers.

**Article 16 (Protection in the Legal Sphere)**

*Legal institutions shall respect the personality of the women and firmly guarantee their rights and interests when handling cases concerning women.*

This reflects the CEDAW article 15 obligation for States Parties to provide women a guarantee of equality before the law. In General Recommendation 21, the CEDAW Committee states that any hindrance to a woman’s capacity to initiate litigation, to access legal advice or to seek redress from the courts denies her right to equality.

**Article 17 (The Processing of Claims and Petitions)**

*Women have the right to make claims or submit petitions. Institutions, corporate associations and organizations shall responsibly look into any claims or petitions submitted by women and process it within due date. There shall be no failure to receive any claim or petition submitted by women, nor shall such claims or petitions be neglected.*

According to a report published by UNIFEM, an individual complaints process is key to

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<sup>26</sup> Article 9(2) of CEDAW requires equal rights for both men and women in determining the nationality of their children (but DPRK has made a reservation with respect to this provision).

<sup>27</sup> Forster & Jivan, *supra* note 1, at 49.

<sup>28</sup> CEDAW General Recommendation 23, *supra* note 18, at para. 30.

having an effective legal framework for gender equality.<sup>29)</sup> Among other requirements, a good complaints procedure should “be facilitated by a funded independent body; ... should be staffed by gender experts; ... be free of charge to complainants; [and] extend to violations by both public authorities and private institutions and individuals.”<sup>30)</sup>

The DPRK provision is somewhat weaker than art. 14 of China’s Law on the Protection of Rights and Interests of Women, which states: “The departments concerned shall listen to and accept criticisms or rational suggestions regarding the protection of women’s rights and interests; with respect to complaints or charges against, or exposures of infringement upon women’s rights and interests, the departments concerned must ascertain the facts, and be responsible for their disposition; no organization or individual may suppress such complaints, charges or exposures or resort to retaliation.”

### Chapter 3 Educational, Cultural and Medical Rights

**Article 18 (The Basic Demands of Women’s Rights in Educational, Cultural and Medical Sphere)**

*Women have the equal rights with men in educational, cultural and medical sphere. In the Democratic People’s Republic of Korea, women’s rights to education, culture and medical aid shall be firmly guaranteed by the proper State policy for women.*

This article is similar to art. 15 of China’s Law on the Protection of Rights and Interests of Women, which states: “The State guarantees that women enjoy equal rights with men with respect to culture and education.”

**Article 19 (Gender Equality in School Admissions, Advancement and Placement after Graduation)**

*Organs supervising education and Municipal People’s Committees shall firmly guarantee women’s rights to equally enter or advance to each school and to receive equal placement after graduation. In case of recruitments by universities or vocational schools, there must be no exclusion or limitation of women in recruitment on grounds of gender, except in departments of specialized majors.*

The exception in the second part of this article allows for exclusions or limitation of women in departments of specialized majors. This violates the CEDAW curricular non-discrimination provision (art. 10(b)). In addition, the article does not address the possibility of temporary special measures, even though CEDAW Committee General Recommendation 5 encourages State Parties to make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women’s integration into education.

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<sup>29</sup> Forster & Jivan, *supra* note 1, at 133.

<sup>30</sup> *Id.* at 133-134.

According to a report published by UNIFEM, it is good practice for a gender equality law to include the following provisions related to education:<sup>31)</sup>

- 1) anti-discrimination provisions with specific protection from expulsion or discrimination in relation to pregnancy;
- 2) a positive responsibility on educational authorities and institutions to ensure an environment free of sexual harassment in all educational institutions and equipped with effective internal grievance procedures;
- 3) a guarantee of compulsory free education for all children between the ages of 5-16;
- 4) a guarantee of compulsory sex education in schools;
- 5) a guarantee that women shall have equal access to all educational facilities and equal delivery of benefits;
- 6) a guarantee that the educational curricula will promote gender equality and be free from stereotypes of men and women;
- 7) the inclusion of temporary special measures provisions including (where relevant) scholarships for girls and women, programs for rural women and girls and women who have left school prematurely, and programs to foster skills in non-traditional fields, and
- 8) a guarantee that girls shall receive equal opportunities to participate in sports and leisure activities in schools.

**Article 20 (Promotion and Protection of Female Students' Body and Health)**

*Educational organs shall provide education that accommodates the physical attributes of female students and facility for females, and protect and promote the health of female students.*

**Article 21 (Parents' Responsibility Concerning Compulsory Education)**

*Parents or guardians shall perform their responsibility to ensure female children who reach school age receive education in accordance with Secondary General Compulsory Education System.*

*Except for cases in which the relevant Municipal People's Committee's approval has been obtained due to illness or other necessary reasons, all female children who reach school age must enter school.*

This is a more general version of art. 18 of China's Law on the Protection of Rights and Interests of Women, which states: "Parents or other guardians must perform their duty of ensuring that female school-age children or adolescents receive the compulsory education. Where parents or other guardians fail to send female school-age children or adolescents to school, the local people's governments shall admonish and criticize them and, by adopting effective measures, order them to send their female school-age children or adolescents to school, with the exception of those who, on account of illness or other special circumstances, are allowed by the local people's governments not

to go to school. The governments, society and schools shall take effective measures to solve the actual difficulties of female school-age children or adolescents in schooling and create the necessary conditions to ensure that the needy, disabled and migrant female school-age children or adolescents finish compulsory education."

**Article 22 (Vocational Technique Education)**

*Each Municipal People's Committee and relevant organs shall provide adequate conditions for women to receive vocational technique education in accordance with the actual circumstances of the province.*

This article is similar to art. 20 of China's Law on the Protection of Rights and Interests of Women, which states: "People's governments at various levels and the departments concerned shall, in light of the need of urban and rural women, take measures to organize women in receiving vocational education and practical technological training."

**Article 23 (The Right to Cultural Life)**

*Women have the equal rights with men to enjoy cultural life. Institutions, corporate associations and organizations shall provide what is necessary for women to equally participate in science, technology, literature, arts and athletics.*

This reflects art. 13(c) of CEDAW, which requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life.

**Article 24 (The Right to Receive Medical Care)**

*Women have the equal rights with men to receive medical care. Medical institutions shall be furnished with professional medical facility for women, protect the health of women and ensure that women are given access to medical care without experiencing inconveniences. Relevant institutions, corporate associations and organizations shall give priority to women's access to medical care.*

This article is insufficiently broad in that it does not directly address family planning. Family planning is dealt with in CEDAW art 12(1), which obligates States to "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning". Pregnancy-related care is addressed in art. 51, although logically it belongs in this section.

Another example of an article that addresses family planning and reproductive health is art. 13 of the 2003 Bosnia Law on Gender Equality, which states: "(1). Everyone has an equal right to health care and access to health care services, including those relating to family planning, regardless of gender. (2). Health care institutions shall take all necessary steps to prevent discrimination on the grounds of gender in the enjoyment of all forms of health care. (3). The relevant authorities shall take all necessary steps to protect and advance the reproductive health of women."

**Article 25 (Educational, Cultural and Medical Rights of Women in Rural Areas)**

*Municipal People's Committees and relevant organs shall provide necessary facilities and conditions for women in rural area to receive equal education and medical treatment with women in urban areas and lead cultural life.*

This article to a certain extent misses the point of art. 14(2) of CEDAW, which is not focused

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<sup>31</sup> *Id.* at 51.

on equalizing conditions for women in rural and urban areas, but rather on ending discrimination against women in rural areas. Specifically, it obligates States to “take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development.” The DPRK also neglects to deal with almost all of the subarticles of art. 14(2).<sup>32)</sup> The CEDAW Committee has elsewhere required States to adopt measures to address violence against women in rural areas,<sup>33)</sup> rural women’s nutritional needs,<sup>34)</sup> and the rights of rural women in the informal economy.<sup>35)</sup>

## Chapter 4 Labor Rights

### *Article 26 (The Basic Demands of Women’s Rights in Labor)*

*Women have the equal rights with men in labor.*

Municipal People’s Committees and relevant organs shall guarantee equal rights for women to take part in labor, to be given protections in labor and to be given social security.

This is similar to art. 22 of China’s Law on the Protection of Rights and Interests of Women, which states: “The State guarantees that women enjoy equal rights, with men, to work and to social security.”

### *Article 27 (Guarantee of Labor Conditions)*

*Municipal People’s Committees and relevant organs shall provide all conditions for women to actively participate in social labor. Relevant institutions, corporate associations and organizations shall run properly day care centers, kindergartens and other facilities so that working women may participate in labor without concern.*

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<sup>32</sup> **These** subarticles require States to ensure rural women the right: “(a) To participate in the elaboration and implementation of development planning at all levels; (b) To have access to adequate health care facilities, including information, counseling and services in family planning; (c) To benefit directly from social security programmes; (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency; (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment; (f) To participate in all community activities; (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

<sup>33</sup> **CEDAW** General Recommendation 19: Violence Against Women (11th session, 1993) UN Doc. A/47/38/, para. 24 (1997).

<sup>34</sup> **CEDAW** General Recommendation 24: Women and Health (20th and 21st session, 1999) UN Doc. A/54/38/Rev.1, para. 7 (1999).

<sup>35</sup> **CEDAW** General Recommendation 16: Unpaid Women Workers in Rural and Urban Family Enterprises (10th session, 1991) UN Doc. A/46/38 (1991).

This article is overly vague in that it does not specify which institutions are “relevant”. Article 11(2)(c) obligates States Parties to encourage the provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life. In particular, this should be achieved through promoting the establishment and development of a network of childcare facilities. Likewise, it is recommended in the Beijing Platform for Action para 173 that governments provide “high quality, flexible and affordable childcare services which take into account the needs of working men and women.”

### *Article 28 (Prohibition of Discrimination in Labor Assignment)*

*Institutions, corporate associations and organizations, except for those professions or departments that are not appropriate for women, are not allowed to not take in women or restrict them for reasons such as gender, marriage, pregnancy and childbirth. It is prohibited to take in female persons who have not yet reached the legal age for labor.*

The main problem here is the reference to “professions or departments that are not appropriate for women”. This phrase seems to contravene CEDAW art. 11(1)(c) which protects women’s “right to free choice of profession and employment.”

### *Article 29 (Protections in Labor for Women Workers)*

*Institutions, corporate associations and organizations must pay full attention to the protection of women workers. Prescribed labor safety facilities and labor hygiene facilities shall be provided for women, and labor safety must be ensured in accordance with women’s physical attributes. Women cannot be assigned to work that is not appropriate for women. Women are given special protection during the periods before and after childbirth and during the breastfeeding period.*

The concept of ‘work not appropriate to women’ is troublesome. This phrase also seems to contravene the CEDAW art. 11(1)(c) protection of women’s “right to free choice of profession and employment.”

### *Article 30 (Fields and Professions Prohibited for Women)*

*The supervising organ for labor administration shall determine which fields and professions must be prohibited for women and enforce it. Institutions, corporate associations and organizations must not make women work in prohibited fields or professions, nor make a women worker who is pregnant or has an infant work at night.*

The notion of particular fields and professions being prohibited by women goes against the spirit of CEDAW. Specifically, it would violate the 11(1)(b) right to the same employment opportunities for men and women. This provision also violates the CEDAW art. 11(1)(c) protection of women’s “right to free choice of profession and employment.”

### *Article 31 (Gender Equality in Wage)*

*Institutions, corporate associations and organizations must pay women the same wage as men for the same labor. The working hours a day for a women worker with three or more children is six, and her living expenses shall be paid for.*

Article 11(1)(d) of CEDAW and para 165 of the Beijing Platform for Action guarantee women the right to equal remuneration. This article fails to mention equal benefits, however,

unlike art. 24 of China's Law on the Protection of Rights and Interests of Women, which states: "Equal pay for equal work shall be applied to men and women alike. Women shall enjoy equal rights with men in receiving welfare benefits."

The second part of this article implies that a mother's proper place is in the home, which perpetuates gender stereotypes in violation of CEDAW art. 5(a) and 5(b), which recognizes the "common responsibility of men and women in the upbringing and development of their children". It also denies the right of certain women to work more than six hours a day, contrary to CEDAW art. 11(c) which protects women's "right to free choice and employment."

**Article 32 (Gender Equality in Technical Qualifications and Grade Certificates)**

*When carrying out qualifications or giving certifications for technique, relevant institutions, corporate associations and organizations must not discriminate women on grounds of sex.*

This is a watered-down version of art. 25 of China's Law on the Protection of Rights and Interests of Women, which states: "In such aspects as promotion in post or in rank, evaluation and determination of professional and technological titles, the principle of equality between men and women shall be upheld and discrimination against women shall not be allowed."

**Article 33 (Guarantee of Maternity Leave)**

*State provides women workers with maternity leave of 60 days before childbirth and 90 days after, regardless of the length of service and in addition to regular and complementary holidays. Women cannot be made to work during maternity leave.*

This article is deficient in that it does not explicitly require that maternity leave be granted with pay or comparable social benefits, as required by Article 11(2)(b) of CEDAW.

At the international level, detailed standards on maternity leave are found most prominently in the International Labor Organization Maternity Protection Convention 183 (2000). This convention is ratified by 28 States, but not the DPRK. It requires (in art. 4) maternity leave of at least 14 weeks, of which 6 weeks of post-natal leave are generally compulsory. It also requires (in art. 6) that the government provide women during their maternity leave with benefits "at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living". While this article allows an acceptable period of maternity leave, it does not comply with the benefits requirement.

**Article 34 (Prohibition of Unjust Dismissal)**

*Except for when the worker demands to do so, institutions, corporate associations and organizations must not dismiss a women worker from her workplace for reasons such as marriage, pregnancy, maternity leave and breastfeeding period.*

This article partially reflects CEDAW article 11(2)(a), which states that to prevent discrimination against women on the grounds of marriage or maternity, States Parties shall "prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discriminations on the basis of marital status". While the article protects against dismissal, however, it does not address other types of potential workplace discrimination based on pregnancy, maternal or marital status.

The article is therefore somewhat weaker than art. 27 of China's Law on the Protection of

Rights and Interests of Women, which also protects women from discriminatory wage reductions and retirement provisions: "No unit shall reduce the salaries or wages of female workers and staff members, or dismiss them, or unilaterally cancel the labour (or employment) contracts or service agreements with them because they are married, pregnant, on maternity leave or breast-feeding, except where female workers and staff members request termination of the labour (or employment) contracts or service agreements themselves. In implementing the retirement system of the State, no unit shall discriminate against women on the pretext of sex."

**Article 35 (Application of Social Insurance System)**

*Each Municipal Peoples' Committee and relevant organs must thoroughly carry out Social Insurance System for women and stabilize the livelihood of women who has temporarily lost the ability to work due to reasons such as illness or injury and ensure adequate medical care for them.*

While narrowing the focus to temporary loss of work, this article is broadly similar to art. 25 of China's Law on the Protection of Rights and Interests of Women, which states: "The State develops social insurance, social relief, social welfare and medical and health services to guarantee that women enjoy social insurance, social relief, social welfare and health care services, and other rights and interests. The State advocates and encourages public welfare activities that aim to help women."

## Chapter 5 Personal and Property Rights

**Article 36 (The Basic Demands of Women's Rights of Person and Property)**

*Women have equal personal and property rights with men. No one may violate women's rights of person and property.*

This article provides no definition of the phrase "personal and property rights." The article combines art. 30 ("The State guarantees that women enjoy the equal right, with men, to property.") and art. 36 ("The State guarantees that women enjoy equal rights with men relating to their persons") of China's Law on the Protection of Rights and Interests of Women.

**Article 37 (The Inviolability of Person)**

*Women have the inviolable right of person. It is prohibited to illegally restrict the liberty of women, damage the body of women by violent and non-violent means, and search the body of women.*

This article would have been an appropriate place to also note that women's inviolable rights include the right to define and express her sexuality and to choose her lifestyle.

The article is similar to art. 37 of China's Law on the Protection of Rights and Interests of Women, which states: "Women's freedom of the person is inviolable. Unlawful detention or deprivation or restriction of women's freedom of the person by other illegal means is prohibited; and unlawful body search of women is prohibited."

**Article 38 (The Inviolability of Health and Life)**

*Women have the inviolable right of health and life. It is prohibited to kill a newborn infant because she is a female and to mistreat or show contempt for women who give birth to a female child or are pregnant, ill, disabled or old. The execution of criminal punishment is suspended for pregnant women from three months before childbirth to seven months after childbirth.*

This article is phrased strangely to prohibit female infanticide in the same sentence that prohibits mistreatment of showing contempt to women who are pregnant, ill, disabled or old. The article should be phrased to as to prohibit “discrimination” in addition to “mistreatment” or “showing contempt” to women who are ill, disabled, old, or mothers of girls. The CEDAW Committee has on many occasions emphasized the necessity of anti-discrimination provisions in these circumstances, especially for the disabled and elderly.<sup>36)</sup>

The article is similar to art. 38 of China’s Law on the Protection of Rights and Interests of Women, which states: “Women’s right of life and health is inviolable. Drowning, abandoning or cruel infanticide in any manner of female babies is prohibited; discriminating against or mistreating of women who give birth to female babies or women who are sterile is prohibited; cruel treatment causing bodily injury to or death of women by means of superstition or violence is prohibited; mistreating or abandoning of women who are ill, disabled or aged is prohibited.”

**Article 39 (Prohibition of Kidnapping and Trafficking)**

*No one may kidnap, trade, rape or gang-rape women. Relevant organs shall thoroughly establish plans to prevent kidnapping, trafficking, rape and gang-rape of women, and punish strictly anyone who has committed such act, in accordance with the law.*

This is extremely vague. There is no definition of “trafficking” or “rape” or “gang rape” or “trade”. Also, there is no specificity as to exactly which organs are “relevant”. Nor is there any guidance as to what types of provisions the prevention plans are supposed to include. Most countries have separate anti-trafficking legislation, but some provide detailed provisions in their gender equality laws, a good example being the Laos Law on the Development and Protection of Women, which contains an anti-trafficking chapter that has strong prevention, prohibition, victim assistance, and international cooperation provisions.

The DPRK article is similar (although much vaguer than) art. 39 of China’s Law on the Protection of Rights and Interests of Women, which states: “Abducting of, trafficking in, or kidnapping of women is prohibited; buying of women who are abducted, trafficked in, or kidnapped is prohibited; obstructing the rescue of women who are abducted, trafficked in, or kidnapped is prohibited. People’s governments at various levels and the departments of public security, civil affairs, labour and social security, and health shall, in compliance with their

<sup>36</sup> **The** CEDAW Committee stated in General Recommendation 18 that women with disabilities suffer from a “double discrimination linked to their special living conditions”. CEDAW General Recommendation 18: Violence Against Women (11th session, 1993) UN Doc. A/47/38/, para. 24 (1997)

respective duties, take timely measures to rescue women who are abducted, trafficked in or kidnapped and well settle the problems arising thereafter, and women’s federations shall assist and cooperate with the governments and departments in doing a good job of the above. No one shall discriminate against the women who are abducted, trafficked in, or kidnapped.”

**Article 40 (Prohibition of Prostitution)**

*Anyone who engages in prostitution shall be punished in accordance with the law. Anyone who organizes, promotes or coerces prostitution shall also be punished in accordance with the law.*

The main problem with this article is that it criminalizes prostitution (largely engaged in by women) but does not criminalize the use of prostitutes (mainly by men). This gives the anti-prostitution regime a discriminatory effect, contrary to article 2(d) of CEDAW. The CEDAW Committee has condemned similar rules in several places, including its 2009 concluding observations to Japan, where it expressed its concern “that prostitutes are subject to prosecution under the Anti-Prostitution Law, while their clients do not face punishment”<sup>37)</sup> and its 2007 concluding observations to Kenya, where it expressed its concern “that while prostitution in Kenya is illegal, only prostitutes and not clients are subject to prosecution”.<sup>38)</sup>

**Article 41 (Respect for the Personality and Honor of Women)**

*Women have the rights of personality and honor. Institutions, corporate associations, organizations and citizens must respect the personality and honor of women.*

This article is vague. It is difficult to know what it means in practice to respect the personality and honor of women. In art. 42 of China’s Law on the Protection of Rights and Interests of Women, there is more guidance as to what this means. It states in full: “Women’s rights of personality, including their right of reputation, right of honor, right of privacy and right of portrait, shall be protected by law. Besmirching women’s personal dignity by such means as humiliation and libel is prohibited. Decrying or besmirching women’s personality through the mass media or by other means is prohibited. The use of a woman’s portrait for profit-making purposes in advertisements, trademarks, window display, newspapers, magazines, books, audio-video products, electronic publications, internet, etc., without the women’s personal consent, is prohibited.”

**Article 42 (Property Rights of Women within the Family)**

*A married woman has the joint ownership of family property with her husband. A woman may possess, use and dispose of family property equally with her husband regardless of her income. When she divorces her husband, a woman may claim her individual property rights.*

This clause differs from art. 47 of China’s Law on the Protection of Rights and Interests of Women, in that the Chinese law anticipates the possibility of separate ownership of marital property, stating “A woman shall enjoy equal rights with her spouse in possessing, utilizing,

<sup>37</sup> **Concluding** Comments of the CEDAW Committee, Japan (2009) 44th Session, para 39 (UN Doc CEDAW/C/JPN/CO/)

<sup>38</sup> **Concluding** Comments of the CEDAW Committee, Kenya (2007) 39th session, para 29 (UN document CEDAW/C/KEN/CO/6).

profiting from and disposing of the property jointly possessed by the husband and wife according to law, which shall not be affected by the status of income of either party. Where the husband and the wife agree in writing that the property acquired separately by them during the period in which their wedlock exists is owned by them likewise, and the wife has been shouldering more duties in respect of bringing up the child, taking care of the old, assisting the husband in work, etc., she shall, at the time of divorce, have the right to request the husband to make compensation for the above.”

**Article 43 (Gender Equality in Inheritance)**

*Women have equal rights in inheritance with men. When the order of inheritance is the same, women must not be discriminated on grounds of sex.*

This article reflects the concerns of CEDAW General Recommendation 21, where the CEDAW Committee notes that serious discrimination against women occurs when the law and practice concerning inheritance does not treat females equally with men.

While the substance of this article is also contained in art. 34 of China’s Law on the Protection of Rights and Interests of Women, the Chinese law also contains protections for widows that are not included here. They are (in art. 34): “Widowed women have the right to dispose of the property inherited by them, and no one may interfere with the disposition thereof.” And, in art. 35: “Widowed women who have made predominant contributions in maintaining their parents-in-law shall be regarded as the statutory successors first in order, and their rights of succession thereto shall not be affected by inheritance in subrogation.”

## Chapter 6 Marital and Household Rights

**Article 44 (The Basic Demands of Women’s Rights in Marriage and Family)**

*Women have equal rights in marriage and family with men. Marriage and family are under State’s protection.*

Article 16(1)(g) of CEDAW requires States Parties to ensure that a husband and wife have the same personal rights including the right to choose a family name. It is not clear whether this latter right would be protected here.

**Article 45 (The Freedom of Marriage of Women)**

*Women have the freedom of marriage. Women’s freedom of marriage may not be violated or be interfered with.*

This very general article reflects CEDAW article 16(1)(b), which obligates States Parties to ensure women have the right to freely choose a spouse and to enter into marriage only with their free and full consent. It is also similar to art. 44 of China’s Law on the Protection of Rights and Interests of Women, which states: “The State protects women’s right of self-determination in marriage. Interference with women’s freedom of marriage or divorce shall be prohibited.”

**Article 46 (Prohibition of Domestic Violence)**

*There must not be any form of domestic violence against women in the family. Municipal*

*People’s Committees, institutions, corporate associations and organizations shall adequately educate residents and employees against domestic violence so that domestic violence does not appear in the district or at the homes of the citizens under their supervision.*

The language used here is very vague. One particular problem is that there is no definition of the term “domestic violence”. In addition, the article only provides for specific preventive measures without criminalizing domestic violence or providing any legal protection for victims of domestic violence or sanctions for offenders. The DPRK Criminal Code does not contain any specific prohibition on domestic violence either. This is in violation of CEDAW General Recommendation 19, which obligates States Parties to institute effective legal measures to combat domestic violence, including criminal and civil sanctions, support and protection services for victims, and rehabilitation programs for perpetrators.

Most gender equality laws do not address domestic violence (because it is dealt with separately as part of the criminal code), but some do. For example, art. 46 of China’s Law on the Protection of Rights and Interests of Women states: “Domestic violence against women is prohibited. The State takes measures to prevent and stop domestic violence. The departments of public security, civil affairs, judicial administration, etc. as well as urban and rural mass organizations of self-governance at the grass-roots level and public organizations shall, within the scope of their respective duties, prevent and stop domestic violence, and provide succour to female victims.”

Another example of a gender equality law provision on domestic violence that addresses the underlying issues more explicitly is art. 17 of the 2003 Bosnia Law on Gender Equality, which states: “All forms of gender-based violence in private and public life is prohibited. Competent authorities shall also develop measures of protection of gender-based violence in public and private life and shall provide instruments of protection, assistance and compensation to victims. The relevant authorities shall also take steps to prevent gender-based violence, particularly in the field of education, to eliminate prejudices, customs and all other practices based on the idea of the inferiority or superiority of either gender or on the stereotypical roles of men and women. This includes but is not restricted to education and awareness-raising among state officials, the general public, etc.”

**Article 47 (Suspension of Filing for Divorce)**

*When there is an issue of divorce between the married couple, the male may not file a divorce if the wife is pregnant or has given birth within a year. The foregoing does not prejudice a woman’s right to file a divorce against her husband.*

To a large extent, this article mirrors art. 45 of China’s Law on the Protection of Rights and Interests of Women, which states that “a husband shall not apply for a divorce when his wife is pregnant, or is within one year after the birth of the child, or within six months after the termination of her gestation. This restriction shall not apply in a case where the wife applies for a divorce, or where the people’s court deems it necessary to accept the application for divorce made by the husband.”

**Article 48 (Division of Property in Divorce)**

*When a married couple divorces, the question of dividing the house and family property shall be decided by the agreement between the two parties. When agreement is not reached, the presiding court shall decide the matter based on the specific circumstances of both parties and*

*the principle of protecting the interests of the children and the woman.*

This article does not discuss the possibility of provision of support. According to a report published by UNIFEM, gender equality laws “should direct the State to incorporate into the family law framework, a right to obtain maintenance orders in favour of children and ex-spouses based on clear criteria such as commitments, income and earning capacity, in to respond to the ‘negative economic and social consequences of divorce for women’”<sup>39)</sup>

**Article 49 (Right and Responsibility Regarding Underage Children)**

*A woman has equal right and responsibility to protect underage children with her husband.*

*When the husband has deceased, lost his legal capabilities, or for other inevitable reasons cannot be the guardian of the underage children, the woman has the right and responsibility to protect the children.*

This provision is similar to art. 49 of China’s Law on the Protection of Rights and Interests of Women, which states: “Both parents enjoy the equal right to guardianship of their minor child (children). In a case where the father is deceased, incapacitated or under any other circumstances that make him unable to act as the guardian of a minor child (children), nobody may interfere with the mother’s right of guardianship.” It should be noted, however, that the DPRK law appears to speak in terms of woman and husband, leading to some uncertainty as to the protections granted single mothers.

**Article 50 (The Freedom of Childbirth)**

*Women have the right to give or not give birth to children. Nationally, it is encouraged that women give birth to and raise many children. A physician shall be designated to a woman who gives birth to and raises triplets or more, and her child, and special benefits and considerations such as good residence, medicine, grocery and household goods supplied free of charge shall be given.*

In CEDAW General Recommendation 19, the CEDAW Committee has required that State Parties prevent coercion in regard to fertility and reproduction. While this seems to be protected here, there may be some concern that the “encouragement” to give birth to and raise many children may perhaps in practice lead to coercion.

Art. 51 of China’s Law on the Protection of Rights and Interests of Women covers freedom of childbirth as well as provisions on family planning which are absent here, stating in part: “Women have the right to child-bearing in accordance with relevant regulations of the State as well as the freedom not to bear any child. Where a couple of child-bearing age practise family planning according to the relevant regulations of the State, the departments concerned shall provide safe and effective contraceptives and techniques, and ensure the health and safety of the woman receiving any birth-control operation.”

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<sup>39</sup> Forster & Jivan, *supra* note 1, at 79.

**Article 51 (Protection of Pregnant Women)**

*When women give childbirth, the relevant medical institution shall provide safe and effective medicine and technology and responsibly ensure the health of women. Medical institutions and relevant institutions, corporate associations and organizations shall show deep concern for the protection of pregnant women and take good care of the mother and the child.*

This article reflects CEDAW art. 12(2), which obligates States to “ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, and as adequate nutrition during pregnancy and lactation.” The CEDAW Committee has emphasized that such services are particularly important in rural areas,<sup>40)</sup> and that such services should be allocated to “the maximum extent of available resources.”<sup>41)</sup>

Art. 51 of China’s Law on the Protection of Rights and Interests of Women states in part: “The State institutes a system of premarital health care and health care for the pregnant and lying-in periods and develops the maternal and infant health care undertakings. People’s governments at various levels shall take measures to ensure women’s access to technical services for family planning in order to improve their reproductive health.”

## **Chapter 7 Supervision of the Protection of Women’s Rights**

**Article 52 (Supervision of the Protection of Women’s Rights)**

*The supervision of the protection of women’s rights shall be executed under the uniform direction of the cabinet by the relevant central organs and Municipal People’s Committees. Relevant central organs and Municipal People’s Committees shall rightly establish the supervision system for the protection of women’s rights and give adequate supervision and have control.*

This provision is inadequate because it relies on existing DPRK organs to supervise the protection of women’s rights, rather than establishing new machinery for this purpose. The Beijing Platform for Action (para 203) recommends that governments create a national machinery “for the advancement of women at the highest possible level of government’ with the ability and competence to ‘influence policy and formulate and review legislation”.

One way that this has been achieved in some countries is by the appointment of a gender ombudsman. For example, the 2003 Croatian Gender Equality Act states in art. 19(1): “Gender Ombudsman (...) shall be appointed and dismissed by the Croatian Parliament on the proposal of

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<sup>40</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41st Session, para 34 (UN Doc CEDAW/C/NGA/CO/6).

<sup>41</sup> CEDAW General Recommendation 24, *supra* note 27 at para 17.

the Government of the Republic of Croatia” and in art. 21(1) states: “The Ombudsman shall act autonomously and independently.”

In addition, the DPRK Act does not specify the method of supervision or any way of incentivizing agencies or organizations to protect women’s rights. Some gender equality laws have used rewards or bonuses as incentives to comply.<sup>42)</sup> For example, art. 8 of China’s Law on the Protection of Rights and Interests of Women states: “People’s governments at various levels and relevant departments shall commend and award those organizations and individuals that have made notable achievements in the protection of women’s lawful rights and interests.”

**Article 53 (The Responsibility of Women’s Organizations)**

*The Central Committee of the Democratic Women’s Coalition of Korea and each Women’s Coalition organization shall organize and execute enterprises of various forms and methods to raise social awareness on women’s rights and to raise the status of women.*

Institutions, corporate associations and organizations shall actively cooperate and aid the Women’s Coalition organizations.

This provision addresses social awareness of women’s rights. It reflects the CEDAW art. 2(e) requirement to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” and the CEDAW 5(a) requirement to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

One example of a comparable awareness-raising provision is art. 7 of the 2002 Slovenian Act for Equal Opportunities for Women and Men, which mandates in part: “programme measures in the form of awareness-raising activities and action plans for the promotion and establishment of equal opportunities and gender equality.”

**Article 54 (Monitoring of the Protection of Women’s Rights)**

*The monitoring of the protection of women’s rights shall be carried out by the relevant central organs, Municipal People’s Committees and monitoring organs. The relevant central organs, Municipal People’s Committees and monitoring organs shall strictly monitor the situation regarding the protection of women’s rights.*

This is a singularly unspecific clause that essentially says that monitoring will be done by monitoring organs who shall (strictly!) monitor.

While there are different ways to monitor, a UNIFEM report notes that “an obligation on all public and private institutions to report on the measures they have taken to implement the [gender equality law] is a frequently employed and effective monitoring mechanism.”<sup>43)</sup> One example of

this type of monitoring scheme is detailed in section 5 of Denmark’s 2002 Gender Equality (Consolidation) Act: “5(1). Prior to 1 September of every second year, ministries, state institutions and state-owned undertakings shall prepare a report on gender equality. State institutions and state-owned undertakings shall prepare reports only if their number of employees exceeds 50. 5 a(1). At least every second year, the local council and the county council shall submit a report on gender equality among local and county authority employees to their citizens. Such reports shall be subject to adoption by the local council and the county council. 5(2). Such reports shall include information on: (i) whether the ministry, the institution or the undertaking has formulated a policy on gender equality and if so, the detailed contents of such policy; (ii) the gender distribution across job categories; and (iii) any other matter deemed to be of importance for an evaluation of the efforts made by the ministry, the institution or the undertaking in respect of gender equality.”

There are also reporting schemes which involve the government reporting to the public or legislature on implementation of gender policy. For example, art. 12 of Japan’s Basic Law for a Gender-equal Society states that: “1. The Government shall submit annually to the Diet a report on the state of formation of a Gender-equal Society and the policies implemented by the Government related to promotion of formation of a Gender-equal Society. 2. The Government shall make and submit annually to the Diet a document explaining the policies the Government is going to implement related to promotion of formation of a Gender-equal Society, considering the state of formation of the society described in the report in the preceding paragraph.”

**Article 55 (Administrative or Criminal Liabilities)**

*Administrative or criminal liabilities shall be imposed according to each situation on individual citizens and responsible workers of institutions, corporate associations and organizations that have hindered the protection of women’s rights by violating this law.*

This is a very vague article on implementation of the law, and most notably fails to provide for the drafting of implementing regulations, but rather seems to adopt a case by case approach to sanctions. By comparison, art. 60 of China’s Law on the Protection of Rights and Interests of Women states: “The standing committees of the people’s congresses of provinces, autonomous regions, and municipalities directly under the Central Government may formulate measures for implementation on the basis of this Law. The people’s congresses of national autonomous areas may formulate regulations with appropriate adaptations or supplements in accordance with the principles laid down in this Law and in light of the specific conditions of the local ethnic women. The regulations formulated by autonomous regions shall be submitted to the Standing Committee of the National People’s Congress for approval before going into effect; the regulations formulated by autonomous prefectures or autonomous counties shall be submitted to the standing committees of the people’s congresses of the relevant provinces, autonomous regions, or the municipalities directly under the Central Government for approval before going into effect, and shall be submitted to the Standing Committee of the National People’s Congress for the record.”

<sup>42</sup> Forster & Jivan, supra note 1, at 129.

<sup>43</sup> Id. at 131.

