

THINKING GLOBALLY ACTING LOCALLY
A Collection of Asian Regional Seminar on Gender and Law

国际视野 本土实践

——亚洲地区性别与法律研讨会论文集

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目 录

开幕式致辞

- 在“亚洲地区性别与法律比较研究”研讨会上的致词 李 林 (8)
法律领域中社会性别主流化任重道远 陈明侠 (10)

性别平等法与性别平等法律原则

女性权益法律保障与和谐社会构建

- 以社会性别平等为视角 李春茹 陈 苇 冉启玉 (15)
论性别视角下的男女平等原则 丁 慧 付 媛 (26)
两性和谐与权利的平等保护
——私法中的社会性别意识 于 敏 (38)
社会性别主流化进程中的立法完善
——以中国妇女权益保障法修正案为例 薛宁兰 (51)
性别、法律框架与立法

- [柬埔寨] O. K. C. 塔拉 (Ouk Kim Chan Tara) (62)
从性别视角分析法律改革与司法保护中
面临的问题 [蒙古] E. 达瓦苏伦 (Enkhjargal Davaasuren) (73)

国际人权公约标准及其国内适用

性别平等中的人权视角：《公民权利和政治权利国际公约》的

- 意义及其与中国的关系 柳华文 (80)
《消除对妇女一切形式歧视公约》在中国国内的实施 黄 列 (91)
《消除对妇女一切形式歧视公约》在国家层面的实施
机制 [越南] T. T. M. 洪 (Tran Thi Mai Huong) (102)
《消除对妇女一切形式歧视公约》的国内适用评析 戴瑞君 (108)

| | |
|--------------------------|-----------|
| 《欧洲人权公约》中的平等与非歧视原则 | 朱晓青 (124) |
|--------------------------|-----------|

性别与法律问题的社会性别分析与对策

对浙江省绍兴市某区劳动就业领域性别歧视

| | |
|----------------------------|--|
| 状况的调查分析 | 李 傲 张 靓 (136) |
| 中国劳动领域性别歧视的法律对策 | 张慧强 (147) |
| “就业性别歧视”立法研究 | |
| ——美国与瑞典模式对中国的启示 | 郭慧敏 (159) |
| 从刑事案件之女性受害人分析女性的社会地位 | 王 俊 (171) |
| 中国农村征地补偿款分配中的性别不平等問題 | 蒋 月 (181) |
| 中国婚姻法修改评述 | 陈明侠 (193) |
| 中国婚姻家庭法的社会性别分析 | 李 霞 (203) |
| 社会排挤与女性婚姻财产权益的救济 | 王歌雅 (212) |
| 中国反家庭暴力立法可操作性探讨 | 李洪祥 (223) |
| 反性骚扰立法模式比较研究与选择 | 李秀华 (234) |
| 性骚扰的法律界定 | 林建军 (245) |
| 性别平等法、家庭暴力法与 | |
| 性骚扰 | [伊朗] 罗莎·盖洛克罗 (Rosa Gharachorloo) (254) |

法学研究、法律职业、法学教育中的社会性别主流化

| | |
|-----------------------------|--|
| 法学研究中的性别视角 | 谢海定 訾雪梅 (263) |
| 反对父权制统治：泰国妇女研究状况与面临的 | |
| 挑战 | [泰] 维拉达·索姆斯瓦斯迪 (Virada Somsawasdi) (272) |
| 法律职业中的性别问题研究 | 周安平 (288) |
| 社会性别主流化视角下法学课程目标与教材建设 | 肖巧平 (302) |
| 后 记 | (309) |

Contents

| | |
|---|-------------------------------------|
| Opening Remarks Asian Regional Seminar on Gender and Law at Chinese Academy of Social Sciences | Guo Ruixiang (1) |
| 福特基金会项目官员致词 | Titi Liu (5) |
| Legal Protection of Women's Rights and Interests and Construction of A Harmonious Society | Li Chunru, Chen Wei & Ran Qiyu (13) |
| On the Principle of Equality between Men and Women from A Gender Perspective | Ding Hui & Fu Yuan (24) |
| Gender Harmony and Equal Protection of Rights —Gender Perspective in Private Law | Yu Min (36) |
| Improving the Law in the Process of Gender Mainstreaming: Taking the Amendment of the Law on Protection of Women's Rights and Interests as an Example | Xue Ninglan (48) |
| Gender Issue, Legal Framework and Legislation in Cambodia | Ouk Kim Chan Tara (64) |
| Analysis of Problem Facing in Legal Reform and Judicial Protection from Gender Perspective | Enkhjargal Davaasuren (75) |
| Gender Equality and Human Rights: Significance of ICCPR and Its Relation with China | Liu Huawen (82) |
| The Implementation of CEDAW in China | Huang Lie (88) |
| CEDAW Application Mechanisms at National Level | Tran Thi Mai Huong (103) |
| Analysis of Implementation of CEDAW at Domestic Level | Dai Ruijun (106) |
| The Principles of Equality and Non-discrimination in the European Convention on Human Rights | Zhu Xiaoqing (121) |

| | |
|---|-----------------------------|
| Analysis of Survey on Gender Discrimination in Employment in Shaoxing City, Zhejiang Province | Li Ao Zhang Liang (134) |
| Gender Discrimination in Chinese Employment and Legal Countermeasures There of | Zhang Huiqiang (145) |
| Legislation on “Gender Discrimination in Employment”; the U. S. and Swedish Models and Their Revelations for China | Guo Huimin (157) |
| Social Status of Women; from Analysis of Women Victims in Criminal Cases | Wang Jun (169) |
| Survey of Gender Inequality in the Division of Rural Land Compensation in China | Jiang Yue (180) |
| A Comment on the Amendment of Marriage Law in China | Chen Mingxia (191) |
| Gender Blindness in Marriage and Family Law in China | Li Xia (202) |
| Social Exclusion and Remedy/Relief for Women’s Marital Property Rights and Interests | Wang Geya (210) |
| Operability of Anti-Domestic Violence Law in China | Li Hongxiang (221) |
| A Comparative Study on Legislative Modes of Anti-sexual Harassment and Options Thereof | Li Xiuhua (232) |
| Legal Definition of Sexual Harassment | Lin Jianjun (243) |
| Gender Equality Law, Domestic Violence Law, Sexual Harassment (Emphasizing Iranian Women) | Rosa Gharachorloo (256) |
| Gender Perspective in Legal Research | Xie Haiding Zi Xuemei (261) |
| Countering Hegemonic Patriarchy; Stance of and Challenges to Women’s Studies in Thailand | Virada Somswasdi (273) |
| Studies on Gender Issues in Legal Profession | Zhou Anping (286) |
| The Objective of Legal Course and Building of Teaching Materials; from the Perspective of Mainstreaming of Gender | Xiao Qiaoping (300) |

Opening Remarks in Asian Regional Seminar on Gender and Law at Chinese Academy of Social Sciences

Beijing, 18 December, 2006

Guo Ruixiang *

Good morning all colleagues and friends,

It is a great privilege and honour to welcome you all to the Regional Seminar on Gender and Law on behalf of the UNIFEM East and Southeast Asia Regional Office based in Bangkok. We are very happy to work together with the Center for Gender and Law Studies under the Institute of Law, Chinese Academy of Social Sciences and the Ford Foundation, and provides financial support to this important Regional Seminar where representatives from civil society, academia and delegates of different countries in the region, including Vietnam, Cambodia, Thailand, Mongolia, and the host country of this seminar, China, and to have the opportunity to share our experiences of achieving gender equality through legal reform.

UNIFEM is very pleased to join you here to discuss on issues related to law and legal reform toward gender equality and protection of women's human rights, to share knowledge, information and best practices across the region; and more importantly, to establish strong network among the Seminar participants, and develop joint strategies to mainstream gender into the legislation process, and reinforce implementation of gender sensitive laws and regulations across the region.

The framework for women's human rights started almost 30 years, with the establishment of the Convention on the Elimination of All Forms of Discrimination against Women, 11 years after the Beijing World Conference on Women with its

* UNIFEM China Programme Specialist.

Beijing Platform for Action, and 6 years since the Millennium Development Goals were adopted by all member states of the United Nations in 2000. Significant progress has been made globally and also in our region on gender equality and women's empowerment especially considering the use of legal reform prevent gender-based discrimination.

Several Asian countries are working on legal reform to realize gender equality, and have gained fruitful experience in legislation relating to women's rights and interests. Vietnam, for example, has a strong legal system and a long history of women's involvement in governance system. Mongolia has recently issued its gender equality law.

Protecting women's human rights via elimination of gender-based violence is commonly regarded as central to gender equality and the empowerment of women. "Freedom from violence, especially for girls and women" is a fundamental right and essential to the ability to lead a productive life. UNIFEM, as an important player in promoting gender equality, has always placed the advancement of women's human rights centre stage, and strives to advocate and strengthen legislation.

On the issue of domestic violence, "today, 89 states have adopted legislative provisions, including 60 states with specific domestic violence laws," as said by UNIFEM Executive Director Noeleen Heyzer end of November 2006 when UNIFEM issued grants in support of efforts to end violence against women. In East and Southeast Asia, the grants will specifically support to address obstacles to the protection of women from violence, focusing in three most prevalent forms of violence against women in the country namely domestic violence, trafficking in women, rape and sexual harassment in Mongolia.

China actively seeks ways to apply international human rights norms into legislation. The Law on the Protection of Women's Rights revised in August 2005 established an enforcement mechanism to address women's human rights issues. The criminal law, civil law and marriage law of China forbid all forms of violence against women. In particular, the new Marriage Law also explicitly prohibits domestic violence.

What we often observe, however, is a lack of political will, resources and capacity to implement these laws. In practice, denial of the human rights of women remains persistent and widespread. Where laws safeguarding women's rights exist,

enforcement is often weak and undermined by limited funding. Even social institutions charged with upholding women's rights face the challenge of eliminating gender bias with themselves. Therefore, increased efforts are needed to strengthen the legal system, in order to promote gender equality.

In China, UNIFEM, together with many government agencies, civil society organizations, academia, international community and the media, work tighter to promote women and men's equal participation in legislation and a culture that has no tolerance for violence against women.

As a implementing agency, UNIFEM China has been managing a UN joint programme entitled China Gender Facility for Research and Advocacy initiated by the UN Theme Group on Gender. This is a common pool of funds to advocate for gender equality and women's empowerment in China. The funds are from DFID, AusAID, UNICEF, UNFPA, ILO, UNIFEM as well as OMEGA Watch. Currently, UNIFEM China provides financial and technical support for more than 16 projects around the country based on two rounds of call for proposals. The third announcement of call for proposals will be made in earlier 2007.

These projects have a strong advocacy function dealing with wide ranging issues such as mainstreaming gender in decision-making, elimination of violence against women, gender and HIV/AIDS, migration and trafficking. Most of the projects have the nature of evidenced-based policy research and advocacy to influence legislation changes. We have 2 examples to share with you:

i) Engendering the drafting process of the first China Employment Promotion Law, the China Employment Promotion Association is currently working closely with legislators, government officials and gender experts and 70% ~ 80% of the gender sensitive suggestions have been well considered so far; ii) Study on patterns of localized strategies to promote women's participation in legislation, implemented by North-Western Polytechnic University, aims to establish a comprehensive local model that promotes women's participation in the design and implementation of legislation. It also strives to enhance the capacity of women's rights watch groups in undertaking a gender analysis of legislation and participation in local legislation process. So far, the team was successfully assisted in issuing the Shaanxi Implementation Details on Law on the Protection of Women's Rights where definition of discrimination was included. The project is going to hold an international conference in late 2007 to share encouraging experiences from different countries in

this respect.

UNIFEM China will make further efforts to assist the Chinese government and civil society in designing and implementing gender sensitive policies and laws. We would like to call on everyone present to work together, to emphasize the significant linkage between gender and the law; to build a society that enjoys the benefits of gender equality.

As to this important seminar, we believe it will definitely help strengthen the regional alliance and lay the foundation for further cooperation in the field. Unfortunately, due to time constraints, we are unable to attend the entire seminar but we sincerely wish you a great success during the coming days and look forward to receiving the Seminar report afterwards.

That' all, Thank you!

福特基金会项目官员致词

Titi Liu *

Good morning!

It's really a pleasure to be here today to see so many old friends from the gender and law movement here in China and meet so many new friends. I am very much looking forward to the discussion over the next two days. And I don't want to take too much time away from that discussion. So I thought what I do here today is just to give you a few thoughts about where I thought, where I think the gender law movement in China has been, where its going. And I also dispose two questions that I hope during the discussion we may address them more fully.

In terms of gender and law movement in China, this is really the first international meeting of this kind. And so it's a great deal of both valuable importance and I hope we will get a great deal done subsequently. Of course China has a long tradition of thinking about gender equality at least within the socialist legal tradition. But China also faces many new challenges to gender equality as we undergo massive economic and social transformation. The '95 Women's Conference was a wonderful event in terms of China, China has the opportunity to engage with international actors to understand what's going on at a global level in terms of women and law issues. Coming out of that, I think it was a much stronger sensitivity within China to the particular legal issues that women face. And we saw many legal organizations that were established to provide legal assistance to women, we also saw a lot of more research on the legal issues that women face. But at that point a lot of that research focused on issues having to do with family and having to do with marriage. I think in the last few years, we have seen another transformation take

* Senior Project officer, Ford Foundation.

place. And that is simply even raising the issue of gender and law as opposed women and law. I think it has a significant break-through in China. And I think that break-through has really been spearheaded by the Center—the Gender and Law Center and by this network, they have worked so hard to create. Now we've seen the break-through. I think we have on the table is another set of issues around gender discrimination which is quite different from the earlier set of issues around women and law. And with these new set of issues, I think we have opened up a lot of space not only to look at marriage and family law, but also to look at a whole range of legal issues, from criminal procedure to the labor law, and to understand what the gender dimensions that are embedded in those laws, what the gender inequalities that are embedded in those laws, and what are the opportunities for promoting gender equality within those laws.

And so I think the first challenge for China at least is to mainstream the study of gender and law beyond the few subsidiary areas of laws, where we have most of the expertise to the present with the issues around family and marriage, to a whole range of both substantial and procedure law issues. That also needs a gender perspective. And I have been very interested and I think I am sure all of my colleagues from China be very interested here from our guests, other parts of East and South-east Asia to see what experiences you had with this type of mainstreaming. So I think that's the first question that I hope we have the chance to talk about and the first one of the fundamental challenges (I think) that faces our movement in China today.

The second challenge given what I know about the Asian region I think it's very significant for all of Asia. And I would also be very interested to here what people have to say. And that's the question of the relationship between culture and human rights generally, but in particular around gender equality. It's a very difficult issue for many of us. And there is often a lot of resistance to the notion of gender equality that comes from different groups within the society. And it can often be excused for our governments to say that gender equality does not match well with our traditional culture. I think the question, though, is people who study culture in a more sophisticated way, would argue that the culture itself really is perpetuated by existing hierarchies many times. And I often reflect really unequal relationship in this society. So culture is not something that's independent of the other kinds of relationships we have in society. And culture is not something that is

steady and unchanging. And so I think the question we have to ask ourselves is how the culture actually yet made and transformed and how do we bring female participation and the sense of gender equality into that dynamic process of making, developing, and transforming culture. And the other issue is how we use the culture as a resource. Because I think too much of the time, people who are concerned about the types of issues that we are concerned with, get the place of position where we are being framed as working in an opposition culture. I suppose to work hand in hand with different cultures resources that are valuable our societies. So I think the other question that is very important for us to think about. And I think both of these issues really can permeated through out all of different topics that have been selected by organizers today. So I think I will stop there and I look very much for this discussion and I just want to take a minute to thank our co-sponsor the UNIFEM. Many of the countries of representatives here today do not have a Ford Foundation office unfortunately, and not cover by the Ford foundation at all. And so it's a fortunate to have the partnership of UNIFEM to enable all of us here in the room including those who learn more about what's going on in some of these countries. The next one I want to thank is the Gender and Law Center, Institute of Law, Chinese Academy Social Sciences. They provided an amazing leadership, for these issues, promoting gender and law in China. And they have worked on for many different levels, research, advocacy, but also grassroots, service provision and activities. And I think they are really interesting model for how you take these issues in China. And finally I want to thank all the participants for your time during you very busy time of everyone, thank you!

在“亚洲地区性别与法律比较研究” 研讨会上的致词

(2006年12月18日)

李 林*

我很高兴也很荣幸参加今天的研讨会。作为男性代表，我注意到今天到会的男性，包括为研讨会提供会务服务的男性，共有四位。所以，能有机会来到这里并且被安排第一个讲话，我倍感“男士优先”的荣幸。在此，我谨代表中国社会科学院法学研究所对联合国妇女发展基金的郭瑞香女士、福特基金会的刘晓堤项目官员表示热烈欢迎和衷心感谢！对来自越南、柬埔寨、蒙古、伊朗、泰国五个国家的性别与法律领域的专家学者和活动家表示热烈欢迎和衷心感谢！对来自中国20多所高校和研究机构的专家学者表示热烈欢迎和衷心感谢！

男女平等是中国宪法规定的一项基本国策，也是建设和谐社会与尊重保障人权的重要内容。在建设法治社会和法治国家的过程中，促进性别平等的法律主流化，具有十分重要的意义。同时，我们也看到，将社会性别平等全面纳入法律领域还面临着严峻的挑战和一定的阻力，我们必须面对一系列挑战和困难。首先，将社会性别平等纳入法律领域是对传统法学观点把法律作为公平、正义化身的挑战。在过去传统法学中，诸如亚里士多德认为正义是分配的正义、矫正的正义，罗尔斯提出分配的正义以及补偿的正义等，他们把正义说得玄而又玄，但往往回避了法律中性别平等的正义问题。我认为，人类社会最重要的正义之一是人人平等。人人平等的第一要义则是性别平等，是对法律上的人不分男女地赋予完全平等的法律地位，在男女平等的法律基础上实现性别正义。第二，将社会性别平等纳入法律领域是对性别平等等同于妇女权利的观念的挑战。妇女权利非常重要，几百年以来，在追求男

* 中国社会科学院法学研究所所长。

女平等的过程中，特别强调的是实现妇女权利，但妇女权利不等于社会性别平等。社会性别平等应该是一个更高位阶的概念，是一种社会价值目标和一种更高正义公平的标准。在这方面，记得当年美国国务卿基辛格到中国访问，在参观北京市时，他问当时的总理周恩来：北京一共有多少座厕所？周恩来机智地回答说：就两座，男厕和女厕。周恩来总理这一睿智的回答，很可能就体现了社会性别平等的观念。第三，在立法、执法和司法过程中，社会性别平等视角和理念还有缺失，这是第三个挑战。就是说，我们在观念上可能对于社会性别平等的认识还有差距，而这种观念的差距直接影响到立法、执法、司法和人们的社会行为。因观念而影响法治中的社会性别平等，这种现象在亚洲一些国家（包括中国）并不罕见。在中国和其他一些发展中国家，在普遍认为应该优先发展经济的思想支配下，社会性别平等的法治问题往往不容易被提到议事日程上，往往容易被优先发展经济的战略思维所遮蔽，在发展经济的过程中，保护性别平等的一系列政策和法律常常被忽视或弱化。

法律中的性别平等是对法律平等标准的挑战，是要建立起一个新的性别平等标准。这是一项起始于20世纪70年代的艰巨任务。在中国，这项任务才刚刚起步，我们感到任重而道远。在座的各位，多年来对推进世界性别平等做了大量工作，取得了丰硕成果。但是，就整个事业来说，在发展中国家，尤其是在文化多样性极强的亚洲国家，真正实现社会性别平等，创造人与人之间和谐的社会，还有很长的路要走，还需要再接再厉。我们相信，只要大家共同努力，持之以恒、坚持不懈，这项事业就一定能够取得更大的成绩。

中国社会科学院法学研究所将一如既往地支持这一事业。因为这是中国人的事业，也是亚洲和世界各国人们共同的事业；这是女性的事业，也是男性的事业，是我们人类大家庭共同的事业。让我们共同为促进社会性别平等主流化、为人类全面的性别平等与进步作出应有的贡献！

最后，预祝研讨会取得圆满成功。

法律领域中社会性别主流化任重道远

陈明侠*

各位同仁，早上好！

真诚感谢各位国内外同仁、朋友出席首次亚洲地区性别与法律比较研究研讨会。

作为性别与法律研究中心和中国性别与法律研究网络的一名代表，我对中国将社会性别纳入法律领域并主流化现状作一简要介绍。

第一，一般情况。

应该讲，将社会性别纳入法律领域并主流化在中国尚处于刚刚起步的阶段。

1995年第四次世界妇女大会在北京的召开，对中国妇女运动乃至中国社会是一个巨大的冲击。它大大推动了中国妇女运动，并且直接地促进了中国妇女研究和社会性别研究的发展。社会性别、社会性别意识、将社会性别纳入决策主流等词语，也是在'95世妇会前后传入中国并在社会中传播的。性别平等的观念逐渐向中国的男女平等政策中渗透。性别平等概念在价值取向上应该比男女平等更高了一个层次。但在这个问题上，中国是有一个发展过程的。1949年以来，中国政府贯彻了男女平等原则，并且将它写入了的宪法和一系列法律当中；1992年，妇女法的制定，初步形成了以宪法为依据，以妇女法为主体，包括民法、刑法、诉讼法、婚姻法、劳动法及相关法律法规的维护妇女权益的法律体系；至1995年，'95世妇会在北京召开，中国政府宣布男女平等是國家的基本國策，促进男女平等是政府的重要职能。政府开始看到，男女平等不是男女一样，而是在承认和尊重性别差异的前提下追求男女平等；认识到必须通过法律、政策、教育、舆论等手段解决妇女平等发展的问题。从1995~2005年，中国制定修改了国家级的18部涉及保

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