

A Review of Residence Rights, Family Rights and Judicial Rights for Survivors of Intimate Partner Violence among New Residents

Authored by The Modern Women's Foundation

Wang Chiou-Lan

(Contact:mwf.org@msa.hinet.net)

Translated by Dennis Engbarth

Abstract

With regard to laws and regulations regarding immigrants and custodial rights or the implementation of visitation rights for children, new resident survivors of intimate partner violence face diverse forms of cultural and gender discrimination in laws and regulations, judicial processes, domestic violence protection networks and myths regarding domestic violence. These intertwined and complex forms of discrimination affect their right of residence and nationality rights, impede their exercise of custody or visitation for their children and can leave them open to denigration as "child abductors" if they take their children to their home country. In judicial processes, new residents face unfair treatment that harms the proper rights of new immigrants due to the rife discrimination against cultural diversity or gender blindness in the civil service system or among private sector professionals.

The above phenomena transgress Articles 2, 9, 15 and 16 of CEDAW and Points 23 and 24 in General Recommendation No. 19, Points 6 and 8 in General Recommendation No. 21 and Points 17 and 18 in General Recommendation No. 28. We call on the government to take the following actions: (1) intensify sensitivity training for cultural pluralism and gender awareness in the public sector and private agencies or individuals commissioned by the government and to establish monitoring systems and channels for related appeal and remedy; and, (2) revise laws regarding exit and entry, immigration and nationality to eliminate gender discrimination and grant consideration to the rights of new immigrants and their exercise of familial rights.

I. CEDAW Background

1. CEDAW Articles 2, Articles 9, Article15 and 16

2. General Recommendations

CEDAW General Recommendation No. 19

- 23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.
- 24. (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.

(i) Effective complaints procedures and remedies, including compensation, should be provided;

CEDAW General Recommendation No. 21

- 6.Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.
- 8. A woman's right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman's right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependents.

CEDAW General Recommendation No. 28

- 17. States parties also have an obligation to ensure that women are protected

against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public and private spheres. This protection shall be provided by competent tribunals and other public institutions and enforced by sanctions and remedies, where appropriate. States parties should ensure that all Government bodies and organs are fully aware of the principles of equality and non-discrimination on the basis of sex and gender and that adequate training and awareness-raising programmes are set up and carried out in this respect.

- 18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.

II. Analysis of current issues

(1) The current situation and a case example

In order to escape the threat of intimate partner violence, many new resident spouses take their children to their original country to reside but are frequently denigrated as "child abductors." In judicial processes, the ability of the victimizer to manipulate elements of patriarchal authority and gender culture approval in the legal code and customary game rules added to the discrimination against cultural pluralism or gender blindness among the civil service, judicial officers or private sector professionals affects the guarantees for the residence rights and nationality of new resident spouses and harms their child custody and visitation rights. From the following case example, we can see that new resident survivors of intimate partner violence are subject to the intersecting forms of discrimination described in CEDAW General Comment No. 28. These intersecting forms of discrimination also gravely affects our country's current policies on residence and nationality and the mentality adopted in the judicial process by judicial and other professional personnel. This state of affairs already contravenes CEDAW and the associated General Recommendations adopted by the Committee to End all Forms of Discrimination against Women.

The subject of this case is a new resident originally from Vietnam who lived with her mother - in - law and her (now former) husband. As both of the subject's children were girls, she was repeatedly subjected to mental and physical mistreatment and economic control by her mother-in-law and former husband from the beginning of her pregnancies and her freedom of movement and control over her basic living needs were abrogated. Her former husband refused to assist the subject secure a Taiwan national identity card and deliberately obstructed her efforts to apply for an extension of her residence permit. Her daughters were also mistreated and personally witnessed incidents of violence. The subject made several attempts to escape but was subjected to even more violence and torture once she returned home. In 2009, she was severely battered by her ex-husband and took an opportunity to report the case to police and, with the assistance of police, applied for and received a protection writ with a validity of 10 months, but was still subjected to mistreatment.

In early February 2010, the subject returned to Vietnam with her children. While she was in Vietnam, she arranged for medical care and schooling for her girls and asked her elder sister to take care of her daughters after she herself returned to Taiwan with the intention of bringing her daughters back to Taiwan after she was able to achieve economic independence. Only when the subject went to the National Immigration Administration (NIA) to apply for naturalization did she discover that she had been reported as missing by her ex-husband and that he had applied for divorce and had filed criminal charges of larceny, forgery, attempt to commit abduction, offense against the family and transporting a forcibly abducted person beyond the national territory. As a result of these criminal charges, she was unable to apply for naturalization. The subject applied for assistance from the Legal Aid Foundation in the divorce case. However, during the stage of divorce mediation, she was repeatedly subjected to verbal intimidation by mediation committee members and judicial officers. As the LAF lawyer was derelict in his responsibility in this case due to his subjective bias, the subject signed an agreement which totally lacked any guarantees for her rights and which was not entered into the mediation record.

The court determined that, although her ex-husband had committed family violence, the original cause was the conflict between the subject and her mother-in-law and, as she had taken her children from Taiwan without the knowledge of her ex-husband and thus gravely infringed on the rights of her ex-husband, both persons were at fault in the marriage. As the fact that both sides had filed numerous lawsuits against each other showed clearly that it would be impossible to sustain a marital relationship, the court ordered the dissolution of the marriage based on Article 1052-2 of the Civil Code. In addition, as the elder daughter had been under the guardianship of the ex-husband and both parents had joint custody of the younger daughter, the ex-husband took on the role of the main guardian.

Moreover, the subject was convicted of forgery and sentenced to three months's imprisonment and the passport issued to her younger daughter based on her ex-husband's forged signature were confiscated by the court. In consideration of her pitiful situation, the judges in the criminal cases reduced the penalty of seven years to life imprisonment mandated by Article 242 of the Criminal Code for transferring an

abducted person outside the national borders to one year and 10 months suspended for three years and thus a total of two years in prison suspended for three years. She was not indicted on the charge of larceny. The subject also abandoned appeals of the civil divorce case and the criminal charges in consideration of being able to have interaction with her children while they were minors.

Out of sympathy for the subject's situation, the criminal court judges mentioned in their written verdict she should be allowed to continue to reside in Taiwan out of consideration for maintaining contact with her daughters and therefore gave her light sentences. In the divorce verdict, judges also clearly stated that the subject understood that her daughters's mental state and growth and the mutual affection between the mother and daughters would be affected if she was unable to implement visitation rights as if she was unable to implementation visitation. As she was a Vietnamese citizen who had not yet been able to secure Taiwan nationality, a verdict granting the divorce would make it difficult for her to remain in Taiwan and would in substance deprive her of opportunities to interact with her children and would deprive her daughters of the room to maintain kinship and have maternal love and thereby be not beneficial to the nurturing of the daughters. However, the results of both of the civil and criminal verdicts were unfavorable to the subject's continued residence in Taiwan and she will be subject to deportation as soon as her term of residence expires. At present, with the assistance of the NIA, social work agencies and lawyers, the subject is striving to obtain the right to continue residing in Taiwan under Article 32, Section One, Clause Two or Article 31 Section Four of the Immigration Act. <FN2> The NIA already submitted written request to the Ministry of Interior. The MOI has responded that the case should be considered under Article 31, which permits conditional residence in cases of persons who have suffered from family violence and divorced after the judgment of the court and who also have minor children with registered permanent residence in Taiwan, and has asked the NIA to hold relevant hearings to decide the matter.

II. Explanation of Issues

(1) To say 'abduction' is just too much: The issue of the custody of the children of new resident spouses and returning to the home country with children

Our country's laws mandate that if new resident must return to their home countries if they divorce their spouses for reasons other than family violence. As such new resident spouses have relatively weak economic conditions and social support, they face extreme disadvantages in struggling with spouses with Taiwan nationality for custody over their children. Besides victims of family violence, the only new resident spouses who have lost their marital relationships whom the government will permit to remain in Taiwan according to the Immigration Act are those who have acquired the guardianship of their own children who have permanent residence in Taiwan after the divorce or those whose expulsion could severe and irrecoverable damage to their minor children. All of the thought behind this legislation leans toward the interests of "Taiwan people" and thus only persons who serve in the roles of spouses or mothers to Taiwanese are allowed to stay in Taiwan.

Given their disadvantages in terms of economic conditions and social support,

new resident spouses might consider the possibility of returning with their children to live in their home countries. However, at present, decisions to award guardianship is based on five principles: 1. sole custody; 2. leaving infants in the custody of the mother; 3. the primary caretaker rule; 4. maximum contact; or 5. exclusion of the victimizer in family violence as being unsuitable to have custody. It is difficult to apply any of these principles for new residents and thus guardianship is usually granted to the spouse who is a Taiwan citizen. It should be evident that it is extremely difficult for new resident spouses to gain guardianship of their minor children.

New resident spouses without guardianship rights may still legally possess visitation rights with regard to their minor children and, in theory, if their term of residence is ended should be able to use justifications of visiting of family members or tourism to enter Taiwan to visit with their minor children. However, in practice, once they return to their home countries, applications from new resident spouses for come to Taiwan to visit their family must secure a copy of the household registrations of their children from the Taiwan citizen who has guardianship rights and this may well be difficult to obtain. Moreover, it is not easy for new resident spouses to complete the administrative procedures to enter Taiwan. The rights of the new resident spouse can suffer even more serious damage if the guardian adopts a passive and uncooperative attitude or even deliberately hides the minor children. In addition, most new residents have scant economic resources to cover the fees to visit Taiwan to see their children. In sum, it is evident that the rights of new residents are closely bound with the responsibility for nurturing their children and the above state of affairs exposes the pervasive patriarchal ideology and structures in Taiwan's legal code.

In December 2012, legislators convened a public hearing among representatives of government agencies and civil society organizations to discuss the issue of cross-border abduction of children during which the discourse was inclined toward viewing the "abduction" of minor children out of Taiwan by new resident spouses as the result of the unfair and unjust linkage in Taiwan law between the guardianship rights for children and the right of residence which was unfair and as an unavoidable method adopted by new resident spouses, who lacked information and resources, to secure their own visitation rights. **<FN3> Delinking the guardianship rights of minor children from the right of residence of new resident spouses is indeed an important and necessary direction for revision of the legal code. However, the consideration of this linkage underestimates the harm inflicted by family violence to the victim and to minor children and also is somewhat lacking in appreciation and tolerance of the strategies adopted by new resident spouses who are victims of family violence to protect their minor children.**

(2) Guarantees for the rights of residence and nationality of new resident spouses

If they are unable to win custody of their minor children, new resident spouses who are divorced for reasons other than family violence find it difficult to obtain legal residence rights in Taiwan and find it even more difficult to attain the required minimum of residence of at least 183 days during each of three consecutive years needed to be qualified to apply for naturalization. According to Article 4 of the Nationality Act, new residents who lose their spouse or who are divorced after suffering family violence and after divorce retain the custody of their minor children

can continue to reside in Taiwan. However, because their marriage relationship has vanished, they must fulfill the high threshold of demonstrating financial capacity for her self-support before being able to apply for a Taiwan national identity certificate. Moreover, Article 3 Clause 3 of the Nationality Act also contain the indeterminate legal requirement that applicants must ``behaves decently and have no criminal records`` which grant executive agencies a wide degree of discretion whose utilization frequently sparks disputes. In addition, cases are common in which new resident spouses who live separately from their Taiwanese spouses or who are involved in litigation for divorce find that their applications for naturalization are rejected by the NIA or the MOI on the grounds that they ``do not have a genuine marriage.'' Such findings are inherently unfair since the new resident may be therefore deprived of the chance to obtain Taiwan citizenship even though the separation or divorce lawsuit are by no means necessarily the fault of the new resident.

In addition, Article 9 of the Nationality Act requires that new residents must first abandon their original nationality before applying for naturalization in Taiwan. If problems occur during the process of application for naturalization that cause the new resident to lose the qualifications to become a Taiwan citizen after having already lost her original nationality, she may become stateless and face the loss of both her citizenship and passport and be unable to go to other countries or even to return to the land of her birth to visit her family.

(3) Intersecting forms of discrimination influence the administrative quality of public agencies and hurt the rights of new resident spouses who are victims of family violence

Many Taiwanese families and individuals have cultural notions of respect for males and denigration of females and stereotyped gender roles and look down on different languages, cultures, ethnic groups and customs. When facing new resident spouses, many see them as property for trade, impose harsh demands to provide services (such as taking care of family burdens or home care), furnish sexual services or expect them to fulfilling the responsibility of producing a male heir for the family and frequently stereotype or denigrate new resident spouses and use inhumane methods to control them. New resident spouses who suffer family violence suffer from grave intersecting forms of discrimination from the discrimination bred by myths about family violence as well as the above gender and cultural discrimination.

This case example manifests these kinds of intersecting discrimination and how they affect the quality of services in public sector and civic sector agencies and harm the judicial and other rights of new resident spouses who are victims of family violence.

1. The Legal Aid Foundation: Social workers complained that the LAF was delinquent in its duties. Although the LAF promised to improve, social workers subsequently discovered that the lawyers assigned by the LAF, their colleagues and the members of its review committee from the beginning had preconceived conclusions about the subject of this case and believed that she had selfishly taken her children back to her mother country and was only concerned with securing a Taiwan identity card and after securing Taiwan citizenship would carry out a divorce. Therefore, the LAF lawyer did not actively defend the subject's rights and failed to

uphold the subject's legal position and equality in the legal process.

2. Custodial social workers: Article 1055-1 of the Civil Code states that when the court makes its verdict on guardianship, it should consider the best interests of the minor child, consider all the conditions and the reports on visitations made by social workers. However, the content of the visitation reports made by the social workers cited by the court also contained considerable discrimination: ``... with regard to the younger daughter's relatively poor language ability compared to children of the same age cohort, her verbal language development is fairly sluggish and at present she already receives regular language treatment. Therefore, her current situation has shown evident improvement compared to when she first arrived returned to Taiwan. . . Kindergarten teachers related that, when the elder daughter began kindergarten, her language expression ability clearly considerably lagged behind other students in the same class and her comprehension ability was also not good, . . . at present since the elder daughter has received language therapy, it is believed that her language ability should revive rapidly.'' This report did not consider that the ability of the daughters of the subject to use and learn Vietnamese was excellent but assumed that their inability to speak Chinese showed that their verbal development was sluggish and that their inability to speak Chinese meant that they had to accept ``therapy.'' Such statements display discrimination against the ability of new residents to speak their mother language.

3. Prosecutors and judicial agencies:

(1) Judicial officers and mediation committee members used the mediation meetings before divorce to improperly pressure the subject and used the pretext of ``upholding the interests of the children'' to actually engage in discrimination against the subject and threaten, induce or coax the subject, who was unfamiliar with law, to sign an unfair agreement and damage the subject's rights.

(2) Standards which discriminate against the educational system of the new resident's mother country: Although the subject related on several occasions during her court testimony and written dispositions that her elder daughter had attended kindergarten in Vietnam, the judges stated in their verdict on the divorce case that ``. . . both the subject's elder daughter and younger daughter have reached schooling age, but the fact that they were taken by the defendant to Vietnam to live for up to a year and because during this period they did not receive education has caused them to fall behind students in the same age cohort in their spoken language expression ability and thus has clearly obstructed their right to receive education . . .].

(3) The court cited the content of visitation reports written by social workers which likewise assumed that the lingual ability of the children had been delayed and that they needed ``therapy'' on the basis of their inability to speak Chinese and thus manifested discrimination toward the language capabilities of the new resident's mother country.

(4) District prosecutors office and the criminal court had limited understanding of character of family violence or appreciation for its influence on minor children. They went on and on that the subject did not at that time apply for a protection writ for her daughters or that the court did not include the daughters in the scope of the protection writ showed that the subject had difficulty proving that she had suffered

violence or that the subject could appeal to friends, social workers and police for assistance and utilize economic and asylum resources to escape violence and utilized the need to escape violence as a reason to take her daughters to return to Vietnam without permission showed that may have done this deliberately without cause. Although the prosecutors and judges showed sympathy with the subject by giving her light sentences, the sentence of over one year imprisonment (even though it was suspended for three years) was sufficient to make it very difficult for the subject to meet the preconditions of naturalization.

These new resident spouses who have suffered family violence in ``abnormal individual cases`` who are determined by of so-called ``powerful forces`` to be ``only out to get identity card`` or to be ``applying for a protective writs only for the sake of divorce`` bear a dual disadvantage in a judicial system rife with intersecting forms of discrimination and experience all kinds of insults and setbacks in all types of judicial processes.

III. Recommendations

This case example offers two recommendations regarding how to promote the equalization of the legal standing of new residents and how to improve the problems faced by new residents when leaving Taiwan with their children or the guardianship for minor children.

(1) Equality in legal standing and judicial procedures

According to Article 2 (d) of CEDAW, States Parties should ``refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation. As noted in Paragraph 24 (b) and (i) in General Recommendation 19, ``gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention`` and ``effective complaints procedures and remedies, including compensation, should be provided.`` According to Paragraph 17 of General Recommendation 28, ``States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public and private spheres. This protection shall be provided by competent tribunals and other public institutions and enforced by sanctions and remedies, where appropriate. States parties should ensure that all Government bodies and organs are fully aware of the principles of equality and non-discrimination on the basis of sex and gender and that adequate training and awareness-raising programmes are set up and carried out in this respect.`` Based on these principles, we propose the following recommendations:

1. The government should intensify sensitivity training for cultural pluralism and gender awareness for judicial, law enforcement and other public sector personnel and civic sector agencies or individuals who are commissioned by the government so that they can avoid adopting behavior or taking actions that have any discrimination against women during the course of their duties.

2. Judicial agencies, government authorities and public sector agencies should establish channels for monitoring, appeal and remedy and provide such channels to

new residents who are subjected to procedural or substantive gender discrimination during the legal procedures, encounter lack of respect for diverse cultures or other administrative shortcomings to file complaints and appeals and monitor the progress of such cases and provide remedy and ensure that the fairness of legal proceedings and their results for persons submitting such appeals are thereby compromised because they filed complaints.

(2) Guarantee the rights of new residents to take their children abroad and to have guardianship over their minor children

According to Article 9 of CEDAW, ``States Parties shall grant women equal rights with men to acquire, change or retain their nationality . . . States Parties shall grant women equal rights with men with respect to the nationality of their children.'' Article 16 of CEDAW mandates that ``States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount'' and (f) ``The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount.'' Moreover, the government should, based on the provision in Article 2 (f) of CEDAW that States Parties should ``take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,'' State parties should revise laws related to immigration and nationality, guarantee the residence rights and nationality rights of new resident spouses and their rights to implement rights to visit family and to have their children accompany them when returning to their home countries. Based on these principles we propose the following recommendations:

1. The NIA should permit foreign citizens who have had children with Taiwan citizens or whom have guardianship over such children to reside in Taiwan. In addition, in order to ensure the residence rights of foreign parents of minor Taiwan citizens, the Ministry of Foreign Affairs should directly issue alien residence certificates to realize the provisions of Article 9 of the United Nations Convention on the Rights of the Child that ``States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.''
2. The government should revise the Immigration Act and the Nationality Act so that the handling of the questions of the guardianship of minor children, the residence rights of new resident parents and naturalization can be delinked and re-examine and reconsider the conditions by which foreign citizens can obtain residence rights and citizenship so that gender discrimination can be eliminated and the human rights of new residents be respected.
3. The Judicial Yuan should review the principles of the current practices of judgments on the guardianship of minor children, specifically as to whether there are different standards used in the handling of cases of divorces and guardianship of minor children for new residents compared to local citizens and whether there are

situations of gender discrimination and insensitivity to cultural diversity and supervise all levels of judicial officers and mediation committee members to see whether there such officers have engaged in such actions and to correct such situations and impose sanctions.

FOOTNOTES

1. This section was drafted by Ms Wang Chiu-feng () of the Modern Women's Foundation and translated by Dennis Engbarth ().
2. Translators note: An unofficial translation of the Immigration Act is available at the Laws and Regulation Database of the Republic of China
[<http://law.moj.gov.tw/eng/LawClass/LawAllPara.aspx?PCode=D0080132>](http://law.moj.gov.tw/eng/LawClass/LawAllPara.aspx?PCode=D0080132).
3. ``Fathers and Mothers Grab for Children: The Loopholes in the Judicial System,`` Lihpao Daily News (Chinese), December 19, 2012
[<http://www.lihpao.com/?action=viewnews-itemid-124923>](http://www.lihpao.com/?action=viewnews-itemid-124923). See also Kuo Yi-ching, ``When Father and Mother are on Different Sides of the Taiwan Strait`` (Chinese), Liberty Times, December 21, 2012
[<http://www.libertytimes.com.tw/2012/new/dec/21/today-o6.htm>.\]](http://www.libertytimes.com.tw/2012/new/dec/21/today-o6.htm)

The evaluation of CEDAW's practice in Taiwan from sexual assault cases.

Authored by The Modern Women's Foundation
 Lai Fang-yu
 (Contact:mwf.org@msa.hinet.net)
 Translated by Carol Hsiao

Abstract

For sex victims, further damage could result from the process or the outcome of seeking legal assistance. This is due to direct or indirect sex/gender discrimination in the society and legal system regardless of the number of reported case or dark figure of crime. Even though the government has invested an extensive effort in promoting and educating sex/gender equality policy, the growth of citizen awareness and gender equality culture have seem rather inefficient and insufficient, when compared to the victims. Victims often trust the government and laws when attempting to seek for help. However, that only worsens the damage and pulls the victim into a downward spiral. Based on CEDAW article 2 (c), article 4, article 5 (a), General Recommendations NO. 28, point 10, 13, and 16, it is recommended that the government:

1. Raise the litigation status/participation right of victims. Provide equal rights as a defendant from The Code of Criminal Procedure during a legal process. Victim's under the current system should also be given locus standi, equal information right (Marking, investigation right, presence rights, also to obtain a certificate copy), evidence investigation right, cross-examination right, debate right, and the right to appeal.
2. Additional punish measure to prevent sex/gender discrimination acts by the victimizer in all forms. For example, Article 16 of Sexual Assault Crime Prevention Act has additional modification during investigation. Prosecutor or chief judge would impose additonal measure for sex/gender discrimination related items. Also, Sexual Assault Crime Prevention Act Article 13 should be modified as "Publicity material, publications, broadcasts, television, internet contents or other kinds of media should not report or publish the name or any other personal identifiable information about the victim by anyone.

I. CEDAW Background

1. CEDAW Articles 2, Articles4 and Article5

2. General Recommendations

CEDAW General Recommendation No. 28

- 10. States parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors. Discrimination can occur through the failure of States to take necessary legislative measures to ensure the full realization of women's rights, the failure to adopt national policies aimed at achieving equality between women and men and the failure to enforce relevant laws. Likewise, States parties have an international responsibility to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular.
- 13. Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor's acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities, such as banking and housing.
- 16. States parties are under an obligation to respect, protect and fulfil the right to non-discrimination of women and to ensure the development and advancement of women in order to improve their position and implement their right of de jure and de facto or substantive equality with men. States parties shall ensure that there is neither direct, nor indirect discrimination against women. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.

II. Current status and Problem analysis

According to studies, the number of reported sexual assault cases rise from 5,739 in 2005 to 7,703 in 2007, a total increase of 1,964 cases. The most significant increase is between couples, with 335 more cases. It is followed by direct blood relative, with 207 cases. Average friends ranked third with 204 more cases. Internet acquaintance also has an increase of 200 cases.

Among the 4,309 reported cases of year 2008, 21.23% of the victimizers and victims were current or past boyfriends and girlfriends; 14.92% were direct blood relatives, 9.98% were average friends, 8.68% were internet acquaintances, and 7.91% were strangers. The lowest percent group would be current/previous spouses or engaged couples.

According to of the Ministry of Interior annual bulletin of R.O.C., amongst the 10,308 female sexual assault victims of 2012, 6413 of them were under 18 year-old, make up for 62.21% of the total number. The relationship status between victimizers and victims from the year of 1999 to 2010 are listed as followed: "acquaintances" 34% (944 victims), "friends" 26% (720 victims), "strangers" 19% (534 victims), and "family members" 6% (162 victims); on the other hand, "neighbors" (95 victims), classmates (97 victims), and "relatives" (97 victims) are all about 3%. The lowest score is 1% of "no victim" and "spouses". Others include, "colleagues" 2% (44 victims), "officials under" 1% (30 victim), "inmates" 1% (36 victims). The above indicates sexual assault-related cases are usually committed by acquaintances or individuals known to the victims. When handling such cases, the factors and structures involve are far more complicated than the ones done by strangers. This applies to both legal and victim assistance topics possibly due to the cultural and law perspectives toward gender equality.

Problem Analysis:

1. The main reason of sexual assault could result from sex/gender discriminating culture or society.

When more than 70% of the sexual assaults are done by familiar faces, it almost indicates sex/gender discriminating culture and society are the main reasons behind it. Male manipulate sex as a building factor in social class and order. Having female say "no" or using violent have become an interest in sexual relationship. Taping sexual intercourse with female and numbered for collection all lead to "pornographic culture" or "sex culture". Once this was an established structure, the male oriented sex/sexual relationship would provide man the absolute sex domination under the culture and social structure. Sexual

assault of females would not be recognized under the law which seems to protect the right of female sex independence.

2. Through studying sexual assault cases, it is discovered that even if laws seem to protect rights to sex autonomy, before the dominance and structure of sex/gender being altered through society and culture, gender equality would be a beautiful mistake like a mirage.

Medias use the words “obscene” or “wolf” to condemn the victimizer. The underlining reporting direction is to target the pornographic market. On the surface, the detailed sexual intercourse coverage in the DVD is an act of denunciation, but violent sex and salacity are the main factors of increase viewership. Media and the public are all “consuming” the victims without realizing. It is believed sex/gender equality exist in the society and the laws are protecting female. However, case studying reveals this is a beautiful mistake like mirage, a confusion caused by society condition.

3. How to correct the continuing development of a sex/gender discriminating environment from social and cultural aspects. This is to establish value of sex/gender equality from law or litigation in sexual assault cases.

“Obscene” and “sex” culture could result from male manipulating sex as a building factor of social class and order. They perceive “no” from female and violent as “delights” in sexual relationships. Therefore, when judging Offense Against Sexual Autonomy cases, criminal laws with male dominance in traditional law should be reflected with sensitivity. The law operates in a structure that dominates female. Any attempt, especially from the **victimizer**, to compose a discussion based on gender discrimination culture to shirk, should be stopped by appropriate legal measure; especially when the collective consciousness of society is in harm. This not only prevents further damage to the victims, but also maintains gender equality under the social structure. Sexual offense victims could only believe laws upload fairness and justice under the circumstances. From the discourse of national policy on sexual assault crime prevention, victims only seek help when laws or judicial policy affectively prevent victimizers to oppress them in all forms. As a result, the dark figure crime would decrease.

4. A view and formation of actions on sexual assault prevention from CEDAW.

Number 28 of General Recommendation 16 indicates: “States parties are under an obligation to respect, protect and fulfil the right to non-discrimination of women and to ensure the development and advancement of women in order to improve their position and implement their right of de jure and de facto or substantive equality with men. States parties shall ensure that there is neither direct, nor indirect discrimination against women. Direct

discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure.” The intentions are infringed. As no investigation or correctional action towards gender discrimination from social or legal aspects, it is as the following explains: “Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.”

Especially during the help seeking process of the victims’, all policy needs to be reviewed for conformation with article 4 and number 28, point 10: “States parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors.” “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women.”

3. Recommendation

1. Increase victims’ litigation status/right to participate

According to article 2 (c) “To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination” number 28 General Recommendation explains the content of point 16. The victim could still be in disadvantage when sex/gender discrimination structure still exist in the society and culture or under traditional jurisprudence with male dominance; especially when the victims are females (most victims of sexual assault cases are female). This applies when victims, who are under the structure and dominance, are treated as a witness rather than a party concerned. When the party concerned in a trial system is composed of the accused and prosecutor (representing a country to exercise the right of power of punishment), victim could only play the role as a notify party or witness (reference: The Code of Criminal Procedure article 3). Therefore, even if the victims enter the legal system which claims to uphold fairness and justice, they are still at disadvantage in the controlling relationship. It would not improve or correct the sex/gender discriminating society, culture, or law, but to intensify the situation of dominance during cross-examination or trail in the legal system. From the victim who committed suicide after entering the legal system in case 1, to the mass number of victims rejecting judicial examination in case 2, it is indicated unbalanced legal

system only exploits women more. When the prosecutors enforce criminal prosecution representing the country, they are not presenting victims' right of action. The legal system and litigation structures have different stand points and purposes, which leads to low expectation of gender discrimination resolution measures for the victims. Even though under the current law, some victims try to experiment with the design of private prosecution, they are not given the power of investigation as prosecutors do.

Victims clearly do not have the same resource and support, and have to fight "bare hand" and be responsible to provide proof in the legal system. This impractical operation would lead to a failed attempt of the victims.

Further Recommendation:

The status of victim during a legal process should be raised by law. Even if he/she is not the party concerned, the litigation participation right should be extended. Victim's under the current system should also be given locus standi, equal information right (Marking, investigation right, presence rights, also to obtain a certificate copy), evidence investigation right, cross-examination right, debate right, and the right to appeal. For example, article 15 of Sexual Assault Crime Prevention Act should be modified to: "**Victims should exercise procedural right as a defendant in criminal law.** The victim's legal representative, spouse, immediate family member or relative within the third degree, parents, family members, doctor, psychiatrist, consolation workers or social workers may accompany the victim during investigation or trial and offer their opinions. **They should also take on the role as victim's assessor, who would act under related regulation of Criminal Procedural law.**

In the case of the victim being a child or teenager, unless it is obviously unnecessary, the relevant authorities of the Municipality or County (City) should appoint a social worker to accompany the victim and provide opinions."

2. Additional punish measure to prevent sex/gender discrimination acts by the victimizer in all forms

According to article 4 of the convention, "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women", number 28 point 10 explains: "States parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors." and intentions as such.

Victims often fear of being judge by the society with prejudice after the private matter is revealed. Victimizer on the other hand could be good at utilizing social environment that

works against female individuals, and emphasize sex/gender discrimination arguments to shirk the responsibility. This could lead to greater oppression on female from the legal system. It is compulsory for the law to prevent further sex/gender discrimination structure when it exist from social and cultural aspects. In another word, legal policy should prohibit the extension of sex/gender discriminating environment with awareness under sensitivity.

Article 16 of Sexual Assault Crime Prevention Act states, "Neither the defendant in a sexual assault case nor his or her defense attorney shall question or raise other sexual experience that victim had". The cross-examination would be change to questioning session if it was done inappropriately. However, sex/gender decimation expound does not only apply to the sexual experience of the victims and others. The litigation structure cannot rule out sex/gender discrimination factors limited to cross-examination and evidence. When the coverage of a particular case from news outlet or social media (blog, ppt, Facebook, etc) presents sex/gender discrimination intention and value that oppress females, measures should be taken on the legal policy side. Victims should be given the legal right to forbid victimizer's action, or at least restrict any potential words and deeds of sex/gender discrimination towards the victim.

Recommendation :

1. **Sexual Assault Crime Prevention Act Article 16:** Additional modification during investigation and trial of sex/gender discrimination related measure: "Upon application by victims or duties of judicial officers, the inquiries or questioning of the victim may be carried out outside the court via technology equipment such as audio, video conference or any other suitable means so that the victim could be separated from the defendant or judge. The judge or military judge should undertake the above isolating-for-questioning approach, when the victim is unable to speak freely or completely during the face-to-face questioning in court due to mental disability, physical or psychological injury. The chief judge should also make inquiry when the defendant or defense attorney is forbidden from questioning the victim due to one's inappropriate or **gender discrimination** manner. Neither the defendant in a sexual assault case nor his or her defense attorney shall question or raise other sexual experience that victim had, unless the judge or military judge considers it to be necessary. **If the accused or the defendant of the accused of a sexual assault case makes any gender discrimination statement or action towards the victim, it would be stopped immediately or restricted by the judge when necessary.**"

2. To avoid further damage outside of the court room, **Sexual Assault Crime Prevention Act Article 13** should be modified as "Publicity material, publications, broadcasts, television,

internet contents or other kinds of media should not report or publish the name or any other personal identifiable information about the victim **by anyone**. However, there will be no such limitation if a consent is given by a competent victim, or if, in accordance with the law, the police or prosecutor consider disclosing the information is necessary. Those who violate this provision should be fined between six thousand and sixty thousand NT dollars by the relevant authorities; and objects involved should be confiscated, contents should be ordered to be removed or taken off shelves, or dealt with accordingly. If there are any correction not made as ordered within the specified period, each and every lapse may be subject to additional separate penalty. In the case where the victim is dead, the fine could be voided after the social benefits are assessed by the relevant authorities.”