
INFORMATION NOTE

The United Nations human rights treaties and measures to control the use of obstetric services by non-local women

1. Background

1.1 At its meeting held on 28 April 2011, the Subcommittee to Study Issues Relating to Mainland-HKSAR Families ("Subcommittee") discussed issues relating to the use of public obstetric services by Mainland women whose spouses are Hong Kong residents and service support plan for their Hong Kong-born children. During the deliberations, the Subcommittee expressed concern over whether the measures to control the use of obstetric services by non-local women implemented by the Government might have violated the United Nations human rights treaties such as the *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights*. Currently, a total of 15 United Nations human rights treaties apply to Hong Kong, with seven of them¹ entailing a reporting requirement and the other eight² not having such obligations.

1.2 In this connection, the Subcommittee requested the Research Division to prepare an information note extracting those Articles of United Nations human rights treaties which may be related to the issues of concern to facilitate further deliberation. For the Subcommittee's easy reference, the latest situation of measures to control the use of obstetric services by non-local women is also covered in this note.

¹ These treaties are: (a) the *International Covenant on Civil and Political Rights*, (b) the *International Covenant on Economic, Social and Cultural Rights*, (c) the *Convention on the Rights of the Child*, (d) the *International Convention on the Elimination of All Forms of Racial Discrimination*, (e) the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (f) the *Convention on the Elimination of All Forms of Discrimination against Women*, and (g) the *Convention on the Rights of Persons with Disabilities*.

² They are: (a) the *International Agreement for the Suppression of the White Slave Traffic 1904*, (b) the *International Convention for the Suppression of the White Slave Traffic 1910* and the *Protocol amending the Agreement and the Convention 1949*, (c) the *International Convention for the Suppression of the Traffic in Women and Children 1921*, (d) the *Slavery Convention 1926* and the *Protocol amending the Convention 1953*, (e) the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956*, (f) the *Convention on the Political Rights of Women 1952*, (g) the *Convention Relating to the Status of Stateless Persons 1954*, and (h) the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962*.

2. **Obstetric services for non-local women**

Government's policy on obstetric services

2.1 The Government has emphasized that the policy on obstetric services is to ensure that Hong Kong residents are given proper and adequate obstetric services. In recent years, there has been a rapid increase in the demand for obstetric services in Hong Kong by non-local women, including Mainland women. Such increase in demand has caused tremendous pressure on the capacity of obstetric services in public hospitals. A growing number of non-local women has also been seeking emergency admission to public hospitals through the Accident and Emergency Departments for delivery.

Measures to control the use of obstetric services by non-local women

2.2 To tackle the problem of rapid increase in the demand for obstetric services in Hong Kong by non-local women in recent years, the Hospital Authority ("HA") has, since 1 February 2007, implemented new arrangements of obstetric services for non-local women, including Mainland women, all being non-eligible persons ("NEPs")³. The new arrangements apply to all non-local women including those whose husbands are Hong Kong residents. Under such arrangements, NEPs who wish to receive obstetric services in public hospitals have to make prior booking and pay for a package charge of HK\$39,000.⁴ An NEP who has secured a booking and made payment would be issued a booking certificate by the hospital concerned. For cases of delivery by emergency admission through the Accident and Emergency Departments without prior booking, and/or without attending any antenatal attendance at a HA hospital, the charge would be HK\$48,000.

³ Public healthcare services are available to local residents (as Eligible Persons) at highly subsidized rates. Non-local people (as Non-eligible Persons) are required to pay the specified charges applicable to them for access to public healthcare services.

⁴ The package covers one antenatal check in specialist out-patient clinic, the delivery and the stay (first three days and two nights) for the delivery.

2.3 Under the new arrangements, HA would reserve sufficient places in public hospitals for delivery by local pregnant women and would only accept booking from NEPs when spare service capacity is available. Once the service capacity limit is reached, HA would stop making bookings for non-local pregnant women. According to the Government, this system should help ensure that local pregnant women have priority over NEPs in using obstetric services. At the same time, a booking system has been put in place for private hospitals which would issue booking certificates to non-local women using their delivery services.

2.4 Meanwhile, the Immigration Department has stepped up arrival clearance checks for all non-local pregnant women who are at an advanced stage of pregnancy.⁵ Pregnant Mainland women who are suspected of entering Hong Kong to give birth will be asked by immigration officers upon entry to produce the booking confirmation certificates issued by Hong Kong hospitals to prove that a local hospital has confirmed the arrangements for their admission to the hospital. Those who fail to do so may be denied entry.⁶

2.5 The Government has stated that the objectives of the new arrangements set out above are to:

- (a) ensure that local pregnant women are given proper obstetric services and priority to use such services;
- (b) limit the number of non-local pregnant women coming to Hong Kong to give births to a level that can be supported by the healthcare system; and
- (c) deter dangerous behaviour of non-local pregnant women in seeking emergency hospital admissions through the Accident and Emergency Departments shortly before labour.

⁵ Women who have been pregnant for seven months (i.e. 28 weeks) or above will be deemed to be at an advanced stage of pregnancy.

⁶ It was reported that the Immigration Department denied a total of 480 non-local pregnant women of entry into Hong Kong in the first four months of 2011.

Latest situation

2.6 Despite the implementation of the above measures, the demand for local obstetric services from non-local women (mainly from the Mainland) has continued to grow in recent years. The total number of live births born in Hong Kong increased from 70 900 in 2007 to 88 500 in 2010. Specifically, the number of live births born to Mainland women increased from 27 600 to over 40 000 during that period.⁷ Under such circumstances, public hospitals have stopped accepting booking of obstetric services from non-local women since 8 April 2011 till the end of the year as they are at full capacity.⁸

2.7 The Government is concerned about the ongoing surge of the number of Mainland women giving birth in Hong Kong because of the strain on the overall healthcare system and local obstetrics and neonatal services. In particular, as most of the private hospitals are not providing neonatal intensive care service, newborns requiring intensive care in these private hospitals are transferred to public hospitals for treatment.⁹

2.8 In the past few months, the Government held a series of meetings with HA, the representatives of the concern groups on Hong Kong's obstetrics and neonatal services, the Hong Kong College of Obstetricians and Gynaecologists, the Hong Kong College of Paediatricians and the representatives of 10 private hospitals that provide obstetric services in Hong Kong to work out new measures to further control non-local women using obstetric services. After discussion, they agreed on the following four objectives:

- (a) putting local mothers and local babies as the priority of services in both the public and private sectors;

⁷ The numbers of Mainland women giving birth in public hospitals and in Hong Kong overall in recent years are set out in **Appendices I and II** respectively.

⁸ The number of non-local pregnant women seeking emergency hospital admissions through the Accident and Emergency Departments shortly before labour was significantly down by 92% when comparing the respective figures in 2006 and 2010. However, the trend reversed in the first half of 2011, having a total of 538 deliveries by non-Hong Kong resident women in public hospitals through the Accident and Emergency Departments, an increase of 79% compared with the corresponding period in 2010. The Government has stated that the increase of deliveries through the Accident and Emergency Departments was due to the implementation of tougher measures of controlling non-local women using obstetric services.

⁹ The bed occupancy rate of neonatal intensive care unit of public hospitals rose from an average of 94% in 2010 to about 108% in February 2011.

- (b) maintaining the high professional standard and level of services to ensure that all the mothers who deliver babies in Hong Kong are safe and their babies are given the best of care;
- (c) ensuring that the obstetric and gynaecology services as well as the paediatrics services in Hong Kong would receive the support for long-term development; and
- (d) tackling the problem relating to some illegal practices of making use of Mainland pregnant women giving birth in Hong Kong.

2.9 To fulfil the above objectives, the relevant parties co-worked to formulate new measures:

- (a) working out details of the measures in the long term and meeting in the first quarter of each year to determine the delivery number of the following year;
- (b) developing a guideline so that obstetricians can take it as a reference when they examine and assess non-local pregnant women who intend to have delivery in Hong Kong. The guideline will be formulated by the Hong Kong College of Obstetricians and Gynaecologists to ensure that it is feasible and applicable. For those non-local pregnant women who are not suitable to travel for a long distance, the Government will not give them any "Certificate on confirmed antenatal and delivery booking" to facilitate their deliveries in Hong Kong;
- (c) unifying all the antenatal and delivery booking certificates undertaken by the Department of Health to enhance them to trace and facilitate the Immigration Department's enforcement;
- (d) designing a clinical audit system jointly by the Hong Kong College of Obstetricians and Gynaecologists and the Hong Kong College of Paediatricians to follow up the outcome of maternal, paediatrics as well as neonatal services, and ensure that those figures and analysis of the clinical audit would enhance further modification of any policies in future; and

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- (e) tackling illegal activities from the agencies that tend to cooperate with some of the obstetricians and ensuring that the hospitals are not cooperating with them. Any obstetricians working with them and receiving kick-back will be violating the code of practice of the Medical Council of Hong Kong.

2.10 On 24 June 2011, the Government announced the details and current status of some of the above measures.

- (a) Limiting non-local women giving birth in Hong Kong in 2012 – The number of non-local pregnant women giving birth in Hong Kong in 2012 will be limited to 35 000. In particular, HA will only accept bookings from non-local women when spare service capacity is available. It is estimated that some 3 400 booking places from public hospitals may be allocated to this group of people in 2012¹⁰, down from the quota of about 10 000 in 2011. HA will stop accepting bookings once the service capacity is full.

The 10 private hospitals offering obstetric services have also agreed to reduce bookings from non-local pregnant women based on their individual circumstances. The number set for deliveries by non-local pregnant women in private hospitals in 2012 will be around 31 000, a decrease of about 7% as compared with 33 000 in 2011. The level of reduction will vary among the hospitals.

¹⁰ The Kwong Wah Hospital, the Tuen Mun Hospital and the Prince of Wales Hospital will suspend bookings for non-local pregnant women considering the high demand from local residents in their catchment areas as well as their obstetric and neonatal intensive care unit service capacity. The other five public hospitals, which are the Pamela Youde Nethersole Eastern Hospital, the Queen Mary Hospital, the Queen Elizabeth Hospital, the United Christian Hospital and the Princess Margaret Hospital, will monitor their obstetric and neonatal intensive care unit service capacity and adjust the quota available for non-local pregnant women according to the spare capacity after meeting demand from local residents.

As regards the provision of obstetric services to Mainland pregnant women with Hong Kong husbands¹¹, the Government has stated that in line with the existing practices, the new proposal does not intend to address the relationship of any patients with their spouse or any other relations. Nevertheless, the Government has considered that there is a need of giving them a priority regarding the quota in the private medical sector. Hence, the Government has negotiated with the Hong Kong Private Hospitals Association and some private hospitals to set aside, among the quota of 31 000 each year, about 7 000 for this type of pregnant women.

For the number of deliveries in 2013, the Government will discuss with HA and the private hospitals in the first quarter of 2012 to set a quota.

- (b) Providing two types of "Certificates on confirmed antenatal and delivery booking" – The Department of Health will provide two types of "Certificates on confirmed antenatal and delivery booking" to public and private hospitals respectively. The certificates, issued by the hospital concerned, will carry personal information of the pregnant women, names and contacts of the obstetricians and dates of antenatal checkups, and will serve as booking confirmation and proof of entry for non-local pregnant women. Non-local pregnant women will be required to present the confirmation certificates at the immigration control points when entering Hong Kong.
- (c) Formulating guidelines for the checkups to facilitate obstetricians in making clinical assessment – Apart from limiting the number of deliveries by non-local pregnant women, the Government will also require them to undergo antenatal checkups by obstetricians in Hong Kong at an appropriate stage to assess if they are suitable to give birth in Hong Kong. The Hong Kong College of Obstetricians and Gynaecologists is formulating guidelines for the checkups to facilitate obstetricians in making clinical assessment. The guidelines are expected to be compiled by August 2011.

¹¹ The Government has stated that about 6 000 Mainland pregnant women with Hong Kong husbands give birth in Hong Kong each year.

- (d) Putting more resources to enhance the services of the neonatal intensive care units – HA is committed to putting more resources to enhance the services of the neonatal intensive care units.¹² At the same time, individual private hospitals will further improve their special baby care services in order to reduce the number of referrals to the neonatal intensive care units of public hospitals.

3. Articles of the United Nations human rights treaties related to the issues of concern

Convention on the Rights of the Child

3.1 The United Nations General Assembly enacted the *Convention on the Rights of the Child*¹³ in 1989 to safeguard the basic human rights of children, which include the right to life; the right to the development of their full physical and mental potential; the right to protection from influences that are harmful to their development; and the right to participation in family, cultural and social life. States parties to the *Convention* should fulfil the obligations under the *Convention* and submit reports to the United Nations periodically. The *Convention* came into force in Hong Kong in 1994, and its provisions continue to apply to Hong Kong after the establishment of the Hong Kong Special Administrative Region.

3.2 The Articles of the *Convention on the Rights of the Child* related to the issues of concern are extracted as follows:

- (a) Article 2 (Non-discrimination) – The *Convention* applies to all children. Race, religion, abilities and type of family should not be taken into account. No child should be treated unfairly on any basis.
- (b) Article 3 (Best interests of the children) – The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

¹² To cater for the present and upcoming demand, neonatal intensive care unit beds will be further increased to 110 in 2012, following an increase from 85 to 100 in 2011.

¹³ A child is a person below the age of 18.

- (c) Article 4 (Protection of rights) – Governments have a responsibility to take all available measures to make sure that children's rights are respected, protected and fulfilled. When countries ratify the *Convention*, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the *Convention* in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. In some instances, this may involve amending existing laws or enacting new ones.
- (d) Article 5 (Parental guidance) – Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Parents are also encouraged to deal with rights issues in a manner consistent with the evolving capacities of the child.
- (e) Article 6 (Survival and development) – Children have the right to live. Governments should ensure that children survive and develop healthily.
- (f) Article 8 (Preservation of identity) – Children have the right to an identity. Governments should undertake to respect the right of children to preserve their identity, including nationality, name and family relations as recognized by law without unlawful interference.
- (g) Article 9 (Separation from parents) – Children have the right to live with their parents. Children whose parents do not live together have the right to stay in contact with both parents.
- (h) Article 10 (Family reunification) – Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

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- (i) Article 18 (Parental responsibilities; state assistance) – Parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments must respect the responsibility of parents for providing appropriate guidance to their children. This Article places a responsibility on governments to provide support services to parents, especially if the parents work full time.
 - (j) Article 24 (Health and health services) – Children have the right to good quality health care to safe drinking water, nutritious food, a clean and safe environment and information to help them stay healthy.
 - (k) Article 25 (Review of treatment in care) – Children who are looked after by their local authorities, rather than their parents, have the right to receive treatment in care on their best interests.
 - (l) Article 26 (Social security) – Children have the right to receive help from governments if they are poor or in need.
 - (m) Article 27 (Adequate standard of living) – Children have the right to an adequate standard of living to meet their physical and mental needs. Governments should help families and guardians who cannot afford to meet such needs, particularly with regard to food, clothing and housing.

International Covenant on Civil and Political Rights

3.3 The General Assembly of the United Nations adopted the *Universal Declaration of Human Rights* in 1948. The *Declaration* sets out the general principles of human rights as a common standard of achievement for all peoples and all nations. To put those principles into practice, the United Nations adopted two human rights treaties – the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* in 1966. These *Covenants* set out the basic human rights and fundamental freedoms, and impose an obligation on all state parties to implement those rights by appropriate means.

3.4 The two *Covenants* came into force in 1976. In the same year, they were extended to Hong Kong. Article 39 of the *Basic Law* also states that the provisions of the two *Covenants* as applied to Hong Kong shall remain in force and shall be implemented through the law of the Hong Kong Special Administrative Region. The *Hong Kong Bill of Rights Ordinance* (Cap. 383) enacted in 1991 gives effect in local law to the related provisions of the *International Covenant on Civil and Political Rights* as applied to Hong Kong.

3.5 The Articles of the *International Covenant on Civil and Political Rights* related to the issues of concern are extracted as follows:

- (a) Article 2 (Fundamental rights) – Everyone can enjoy the rights recognized in the *Covenant* without any discrimination on race, colour, sex, language, religion, political opinion or other status.
- (b) Article 12 (Freedom of movement) – Everyone lawfully within the territory shall have the right to liberty of movement and freedom to choose his residence.
- (c) Article 23 (Role of a family unit) – The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- (d) Article 24 (Rights of children) – Every child shall have the right to measures of protection, provided by his family, society and the State. Every child shall be registered immediately after birth and shall have a name. In addition, every child has the right to acquire a nationality.
- (e) Article 26 (Rights to equality) – All persons are equal before the law and entitled without any discrimination to the equal protection of the law.

International Covenant on Economic, Social and Cultural Rights

3.6 The *International Covenant on Economic, Social and Cultural Rights* came into force in 1976, and was extended to Hong Kong in the same year. The provisions continue to apply to the Hong Kong Special Administrative Region. The Articles of the *Covenant* related to the issues of concern are summarized below:

- (a) Articles 1, 2 and 3 (Fundamental rights) – All peoples have the right to freely determine their development in political, economic, social and cultural fields. Further, everyone can exercise the rights contained in the *Covenant* without any discrimination on race, colour, sex, language, religion and so forth. The economic, social and cultural rights enjoyed by men and women should also be equal.
- (b) Articles 9 and 10 (Rights to social security and protection) – Every person has the right to social security, including social insurance. The family should receive the best possible protection and assistance. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be provided paid leave or leave with adequate social security benefits. Special measures of protection and assistance should be provided to children and young persons.
- (c) Article 12 (Right to health) – Everyone possesses the right to enjoy the highest attainable standard of physical and mental health.

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Appendix I

Number of deliveries in public hospitals of Hospital Authority

Year	Total number of deliveries	Deliveries by Eligible Persons	Deliveries by Non-eligible Persons ⁽¹⁾ (deliveries by Non-eligible Persons whose spouses are Hong Kong residents)
2002	36 909	28 709	8 200 (7 298)
2003	35 259	26 498	8 761 (7 347)
2004	37 335	26 414	10 921 (8 203)
2005	40 916	27 090	13 826 (7 616)
2006	40 063	28 118	11 945 (5 149)
2007	39 183	30 556	8 627 (3 817)
2008	41 031	30 586	10 445 (3 764)
2009	40 575	30 525	10 050 (3 448)
2010	42 606	31 911	10 695 (3 581)

Note: (1) The Non-eligible Person patients are not obliged to disclose the resident status of their spouses when using the Hospital Authority's services. The figures provided above are based on the information provided by the Hospital Authority.

Source: Hospital Authority

Appendix II

Number of live births born in Hong Kong to Mainland women

Year	Number of live births ⁽¹⁾	Of which number of live births born in Hong Kong to Mainland women			
		Whose spouses are Hong Kong permanent residents	Whose spouses are not Hong Kong permanent residents ⁽²⁾	Others ⁽³⁾	Total
2000	54 134	7 464	709	Not available	8 173
2001	48 219	7 190	620	Not available	7 810
2002	48 209	7 256	1 250	Not available	8 506
2003	46 965	7 962	2 070	96	10 128
2004	49 796	8 896	4 102	211	13 209
2005	57 098	9 879	9 273	386	19 538
2006	65 626	9 438	16 044	650	26 132
2007	70 875	7 989	18 816	769	27 574
2008	78 822	7 228	25 269	1 068	33 565
2009	82 095	6 213	29 766	1 274	37 253
2010 ⁽⁴⁾	88 495	6 169	32 653	1 826	40 648

Notes: (1) The figures refer to the total number of births actually taking place in that reference period.

(2) Including Hong Kong Non-permanent Residents (Persons from the Mainland having resided in Hong Kong for less than seven years being grouped in this category) and non-Hong Kong residents.

(3) Mainland mothers chose not to provide the father's residential status during birth registration.

(4) These are provisional figures.

Source: Census and Statistics Department

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