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Panel on Constitutional Affairs

**Updated background brief prepared by Legislative Council Secretariat
for the meeting on 21 July 2014**

Third Report of the Hong Kong Special Administrative Region under the United Nations Convention on the Elimination of All Forms of Discrimination against Women

Purpose

This paper summarizes the discussion of the Panel on Constitutional Affairs¹ ("the CA Panel") on the outline of topics to be covered in the third report of the Hong Kong Special Administrative Region ("HKSAR") under the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") (see paragraphs 15 to 20). This paper also recapitulates the main points of discussion of the Panel on Home Affairs ("the HA Panel") on the concluding comments issued by the United Nations Committee on the Elimination of Discrimination against Women ("the UN Committee") after consideration of HKSAR's second report in the light of CEDAW (see paragraphs 7 to 13).

Background

2. The Government of the United Kingdom extended CEDAW to Hong Kong in 1996. The People's Republic of China ("PRC") is a State Party to CEDAW. The Government of PRC notified the Secretary-General of UN that the Convention would apply to HKSAR with effect from 1 July 1997 with a number of reservations and declarations. Apart from the reservation against paragraph 1 of Article 29 of the Convention which relates to the arbitration of disputes among States Parties by the International Court of Justice, the declarations and reservations applicable to HKSAR are substantially the same as those applicable to Hong Kong prior to 1 July 1997. These reservations and declarations include, among other things, the following -

¹ With effect from the 2008-2009 legislative session, issues relating to human rights have been transferred from the HA Panel to be placed under the purview of the CA Panel.

- (a) laws, regulations, customs or practices that treat women more favourably do not constitute discrimination against women within the meaning of Article 1 of the Convention;
- (b) reservation of the right to continue to apply law enabling male indigenous villagers in the New Territories to exercise certain rights over property and to enjoy certain privileges in respect of land and property;
- (c) reservation of the right to discriminate against women in legislation relating to pensions and retirement and similar benefits; and
- (d) reservation of the right to apply any non-discriminatory requirement for a qualifying period of employment for women in respect of the application of provisions in Article 11(2) of the Convention.

First report of HKSAR

3. CEDAW follows a four-year reporting cycle. The HKSAR's first report was submitted to UN in 1998 (as part of China's combined third and fourth report). After consideration of the first report, the UN Committee issued its concluding comments on 3 February 1999 [Annex C to LC Paper No. CB(2)1429/98-99(02)]. The HA Panel discussed the first report at its meetings on 9 November and 7 December 1998. At its meeting on 8 March 1999, the HA Panel discussed the relevant concluding comments. For details of the discussions of the HA Panel on the first report, members may refer to the background brief on CEDAW prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)2219/05-06(05)] and issued on 8 June 2006.

Second report of HKSAR

4. The responsibility of drafting HKSAR's reports under CEDAW was transferred from the Home Affairs Bureau to the then Health, Welfare and Food Bureau in May 2000. The HA Panel discussed the outline of topics to be covered in the second report at its meeting on 8 November 2002. The HKSAR's second report was submitted to UN (as part of China's combined fifth and sixth report) in 2004. The HA Panel discussed the second report at its meeting on 9 June 2006. After consideration of HKSAR's second report, the UN Committee issued its concluding comments (**Appendix I**) on 25 August 2006. The HA Panel discussed the concluding comments at its meeting on 9 February 2007. For details of the discussion at these meetings, members may refer to the background brief on CEDAW [LC Paper No. CB(2)2071/09-10(06)] issued on 14 July 2010.

Third report of HKSAR

5. In June 2010, the Labour and Welfare Bureau issued the outline of topics to be included in the third report of HKSAR for public consultation. The CA Panel discussed the outline of topics at its meeting on 19 July 2010. HKSAR's third report was submitted to UN (as part of China's combined seventh and eighth report) in January 2012. The related hearing is scheduled for October 2014.

Major issues raised by the HA Panel on the concluding comments issued after consideration of HKSAR's second report

6. The major issues raised by the HA Panel at its meeting on 9 February 2007 regarding the concluding comments in Appendix I on HKSAR's second report are summarized in paragraphs 7 to 13 below.

Domestic and sexual violence

7. Some members expressed concern about the prevalence of domestic violence and the measures taken by frontline officers to combat these cases. The Administration advised that the Police would refer all reported domestic violence cases to the Social Welfare Department ("SWD") for follow-up. The more serious cases would be dealt with by the Family and Child Protective Services Units of SWD. Members noted that resources for SWD had been enhanced continuously. With the emphasis on early identification/intervention of domestic violence, prevention, education and outreach through various service platforms, people in Hong Kong had become more aware of domestic violence and the need to report such cases.

8. Some members criticized that while the Administration had stated its determination in meeting its international obligations under CEDAW, it failed to respond to a number of the UN Committee's specific recommendations, including the provision of a specialized one-stop service to victims of sexual violence. They pointed out that the new Multi-purpose Crisis Intervention and Support Centre had a mixed clientele and it was inadequate to provide specialized services for victims of sexual violence.

9. The Administration explained that apart from providing 24-hour service to victims of sexual/domestic violence, the Administration acknowledged the need to provide a one-stop service and sensitivity in service-delivery to victims of sexual violence, the main target group of the Centre. The Centre was just

one of the many facets of the client-oriented services offered. Outreach services could be delivered flexibly at various locations to accommodate the needs of clients.

10. Some members, however, were disappointed that the Administration had insisted on adopting the new service model for victims of sexual violence, which had deviated from the aspirations of the community/concerned women groups and the recommendations of the UN Committee. They were also concerned about the Police's handling of sex workers/persons suspected of engaging in prostitution, and called for a comprehensive review of the code of practice governing the conduct of such investigations and arrests.

Treatment of foreign domestic helpers ("FDHs")

11. Some members were of the view that the protection of women's rights in Hong Kong was clearly inadequate. They expressed concern about the exploitative/discriminatory treatment of FDHs by agents/employers and urged the Administration to adopt UN Committee's recommendation that the Government should provide simple complaint/redress mechanism for FDHs and enhance FDHs' awareness of their legal rights.

12. The Administration advised that FDHs enjoyed the same rights and benefits provided under labour laws as local workers. FDHs were further protected by a standard employment contract and minimum allowable wage. Employment agencies, including those placing FDHs, would be liable to prosecution and revocation of licenses for overcharging of placement fee. The Labour Department conducted regular inspections of employment agencies and liaison with relevant consulates to combat malpractices of these agencies. The Administration further advised that in administering the "Two-week Rule", under exceptional circumstances such as termination of the employment contract due to emigration or financial difficulties of the employer, the Immigration Department might allow FDHs to change employer without requiring them to return to their home countries before commencing new contracts in Hong Kong. FDHs seeking redress might apply to the Immigration Department for extension of stay. In 2006, out of some 6 800 such applications, some 4 700 cases had been approved for extension of stay while some 1 300 cases had been rejected with a number of the remaining cases withdrawn.

Women's political representation and participation in public affairs

13. Some members asked whether the Administration would consider raising the working target of 25% as a gender benchmark for appointments to advisory

and statutory bodies ("ASBs") and taking more proactive steps to facilitate women's participation in the work of ASBs. The Administration explained that appointments to ASBs were made on the basis of the merit of the individual concerned, taking into account the candidate's ability, expertise, experience, integrity and commitment to public service etc, and having regard to the nature of work of the board or committee concerned. The Chairman of the Women's Commission informed members that the benchmark had been increased from about 20% in 2001 to over 25%. The Commission had recommended that the Administration should consider increasing the target to 30% in line with international standard.

Major issues raised by the CA Panel on the outline of topics to be included in HKSAR's third report

14. The major issues raised by the CA Panel at its meeting on 19 July 2010 regarding the outline of topics are summarized in paragraphs 15 to 20 below.

Status of Women's Commission

15. Some members noted that in its concluding comments on the HKSAR's first report, the UN Committee had recommended the setting up of a high-level central mechanism for development and coordination of a women-focused policy. They opined that the Women's Commission did not formulate policies, legislation and budgets relating to women, nor assess the impact of government policies on women. They considered that the functions of the Women's Commission were not equivalent to those of a high-level central mechanism advocated by the UN Committee.

16. The Administration advised that the Women's Commission had performed the role of a high-level central mechanism for development and coordination of a women-focused policy. While the Women's Commission was neither an executive nor a funding body, it had provided concrete advice and guidance to the Administration on issues relating to women, including the implementation of strategies and allocation of resources for the well-being and interests of women. The Women's Commission held meetings once every two months to discuss a wide range of issues, such as domestic violence, childcare facilities and services, women representation in ASBs, welfare for women, etc. Representatives of relevant bureaux and departments also attended the meetings and they would take into account the advice of the Women's Commission in formulating policies and programmes where appropriate. At the request of members, the Administration provided in August 2010 a list of policy areas which had been reviewed by the Women's Commission [LC Paper No. CB(2)2215/09-10(01)].

Gender mainstreaming

17. Some members expressed concern that despite gender mainstreaming had been implemented in Hong Kong for years, many government officials and the public still did not have a good understanding of the concept. The Administration advised that it would continue to promote gender mainstreaming. So far, training had been provided to over 4 000 civil servants. Apart from class-room training, the Administration had launched in January 2009 a gender-related online training programme to facilitate self-learning by civil servants. Gender mainstreaming was also applied to the design of the new government headquarters in the Tamar site to cater for the needs of women.

Women's political representation and participation in public affairs

18. Noting that 40 out of 400 ASBs had no representation of women, including seven District Councils with no female appointed members, some members queried why there was no woman qualified for those appointments in Hong Kong. The Administration advised that while it had always strived to enhance women's participation in public affairs, there was still room for improvement. The gender benchmark for appointments to ASBs had been raised from 25% to 30% since 1 June 2010. In fact, the gender benchmark had already reached 28.1% in 2008. However, it would take time to groom and encourage women to participate in public affairs. The Administration had also advised that the percentage of women working at the directorate level in the civil service surpassed 30% in 2008, and seven out of the 17 Permanent Secretaries at that time were women. It was envisaged that the number of female directorate officers would continue to rise in the next 10 years.

19. Some members considered that the Administration should reject the recommendations of government departments for appointing new male members to ASBs which had not met the 30% gender benchmark. The Administration advised that bureaux and departments were required to observe the 30% gender benchmark and would strive to exceed the benchmark.

Domestic violence

20. Members requested the Administration to address some deputations' concern about the need to enhance protection for women against domestic violence. The Administration advised that it had amended the former Domestic Violence Ordinance (Cap. 189) (amended as the Domestic and Cohabitation Relationships Violence Ordinance) to enhance protection for victims of domestic violence and stepped up efforts to provide assistance to them. This included providing training to the Police and social workers to

enhance their sensitivity in handling domestic violence cases, increasing the number of Family and Child Protective Services Units which were dedicated to handle domestic violence cases in SWD, and providing legal aid and shelter places for victims of domestic violence, etc.

Recent development

21. The HKSAR's third report was submitted to UN (as part of China's combined seventh and eighth report) in January 2012. In anticipation of the relevant UN hearing to be held in October 2014, the CA Panel will discuss the HKSAR's third report with deputations at the next meeting on 21 July 2014.

Relevant motions/questions and papers

22. Details of questions and motions relating to CEDAW raised/moved at Council meetings since the First LegCo as well as relevant papers available on the LegCo website (<http://www.legco.gov.hk>) are in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
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**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of
Discrimination against Women**

Thirty-sixth session
7-25 August 2006

**Concluding comments of the Committee on the Elimination
of Discrimination against Women: China**

[Note: This document only contains extracts of paragraphs concerning principal areas of concern and recommendations pertaining to the Hong Kong Special Administrative Region (HKSAR)]

**Principal areas of concern and recommendations pertaining to the Hong Kong
Special Administrative Region**

35. While commending the efforts of the Government to protect women against violence, including the “zero tolerance on domestic violence” principle, the Committee expresses concern at the low prosecution rate of domestic violence in the Hong Kong Special Administrative Region.

36. **The Committee urges the Government of the Hong Kong Special Administrative Region to strengthen its efforts in combating all forms of violence against women, including domestic violence. It urges the Government to enhance women’s access to justice, including by ensuring an effective response to complaints and carrying out more proactive investigations of complaints, and to improve gender-sensitivity training for judicial and law enforcement officials and health and social workers on violence against women. The Committee encourages the Government to re-establish the Hong Kong rape crisis centres so as to ensure that victims of sexual violence receive specific attention and counselling in full anonymity. The Committee recommends that the Government allocate sufficient resources to combat all forms of violence against women, including domestic violence, and to provide details about budget allocation in its next periodic report.**

37. The Committee expresses concern at the Small House Policy, under which only indigenous men, but not indigenous women, are entitled to apply for a permit to build a residence in the New Territories.

38. The Committee urges the Government of the Hong Kong Special Administrative Region to repeal all discriminatory provisions from the Small House Policy and ensure that indigenous women have the same rights and access to property as indigenous men.

39. While acknowledging that the established target of 25 per cent of women in advisory and consultative bodies has been reached by the Government of the Hong Kong Special Administrative Region, the Committee notes with concern the low level of political representation of women, including in the functional constituencies. The Committee is concerned that the electoral system of functional constituencies may constitute indirect discrimination against women, as it results in the unequal participation of women in political life.

40. The Committee urges the Government of the Hong Kong Special Administrative Region to take temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25 so as to increase women's representation in politics, including in the functional constituencies.

41. The Committee is concerned about the situation of female foreign domestic workers who may be subject to double discrimination on the basis of their sex and ethnic background. The Committee is also concerned about the "Two-Week Rule", which requires foreign domestic workers to leave Hong Kong no later than two weeks after the expiration or termination of their employment contract thus pushing foreign domestic workers to accept employment which may have unfair or abusive terms and conditions in order to stay in Hong Kong. It further raises concern at the reported abuse perpetrated by employment agencies against domestic workers, such as lower wages, fewer holidays and longer working hours than what is prescribed by law.

42. The Committee recommends that the Government of the Hong Kong Special Administrative Region ensure that female foreign domestic workers are not discriminated against by their employers or subject to abuse and violence. It urges the Hong Kong Special Administrative Region to repeal the "Two-Week Rule" and to implement a more flexible policy regarding foreign domestic workers. It also calls upon the State party to strengthen its control of employment agencies and to provide migrant workers with easily accessible avenues of redress against abuse by employers and permit them to stay in the country while seeking redress. The Committee further urges the State party to make migrant workers aware of their rights so that they have access to justice and can claim their rights.

43. The Committee expresses concern at the situation of women asylum-seekers and refugees in Hong Kong. It notes with concern the representative's statement that the Hong Kong Special Administrative Region has no intention of having the 1951 Convention Relating to the Status of Refugees extended to Hong Kong.

44. The Committee calls on the State party to extend the 1951 Convention Relating to the Status of Refugees to Hong Kong so as to ensure that women asylum-seekers and refugees can fully benefit from its protection.

Appendix II

Relevant documents on the reports of the Hong Kong Special Administrative Region under the United Nations Convention on the Elimination of All Forms of Discrimination against Women

Committee	Date of meeting	Paper
Panel on Home Affairs ("HA Panel")	9 November 1998 (Item III)	Agenda Minutes
	7 December 1998 (Item I)	Agenda Minutes
	8 March 1999 (Item IV)	Agenda Minutes
Legislative Council	21 April 1999	Official Record of Proceedings (Motion moved by Hon Emily LAU)
HA Panel	8 November 1999 (Item II)	Agenda Minutes
Legislative Council	26 January 2000	Official Record of Proceedings Pages 58 – 61 (Written question raised by Hon Christine LOH)
	31 May 2000	Official Record of Proceedings Pages 5 – 60 (Motion moved by Hon Cyd HO)
HA Panel	2 June 2000 (Item IV)	Agenda Minutes
	8 November 2002 (Item IV)	Agenda Minutes
Legislative Council	11 February 2004	Official Record of Proceedings Pages 56 – 57 (Written question raised by Hon Cyd HO)

Committee	Date of meeting	Paper
HA Panel	9 June 2006 (Item IV)	Agenda Minutes
	9 February 2007 (Item VI)	Agenda Minutes
Legislative Council	4 November 2009	Official Record of Proceedings Pages 48 – 61 (Oral question raised by Hon Emily LAU)
Panel on Constitutional Affairs	19 July 2010 (Item IV)	Agenda Minutes

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