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Legislative Council  
Legislative Council Complex  
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## **LEGCO PANEL ON CONSTITUTIONAL AFFAIRS**

### **MEETING ON 17 NOVEMBER 2014**

#### **IV. Hearing of the third report of the HKSAR under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre or HKRAC) is an NGO of committed human rights advocates working fearlessly to protect the rights of Hong Kong's most vulnerable forced migrants - refugees, other people seeking protection and survivors of modern slavery. Justice Centre would like to bring two points to the attention of the Panel on Constitutional Affairs in light of the developments of CEDAW's 59<sup>th</sup> session, where Hong Kong was reviewed.

##### **1. CEDAW's Concluding Observations to the HKSAR Government on Human Trafficking and Exploitation**

In its concluding observations,<sup>1</sup> CEDAW has echoed the concerns that many civil society groups have raised to the HKSAR Government, including the fact that the UN Palermo Protocol has not been extended to the territory, and the lack of comprehensive anti-trafficking legislation. The Committee recommended that the HKSAR "intensify efforts to address the root causes of trafficking in women and girls and ensure the rehabilitation and social integration of victims", that it "undertake a comprehensive study with a view to collecting data on the extent and forms of trafficking in women and girls", and that it "intensify efforts aimed at bilateral, regional and international cooperation to prevent trafficking", among other recommendations.

In relation to exploitation and working conditions of foreign domestic workers in particular, CEDAW reiterated its previous concluding observations from 2006,<sup>2</sup> noting concern that these women continue to be vulnerable to (a) abuse and unfavourable working conditions, such as lower wages, fewer holidays and longer working

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<sup>1</sup> CEDAW, "Concluding observations on the combined seventh and eighth periodic reports of China", 59<sup>th</sup> Session, UN Doc.: CEDAW/C/CHN/CO/7-8, 7 November 2014, at para. 57, 57, 64 and 65.

<sup>2</sup> CEDAW, "Concluding comments of the Committee on the Elimination of Discrimination against Women: China", 36<sup>th</sup> Session, UN Doc.: CEDAW/C/CHN/CO/6, 25 August 2006, at para. 41 and 42.

hours than what is prescribed by law (b) abuse by recruitment and placement agencies, who charge exorbitant fees and sometimes confiscate their travel documents (c) the "two-week rule", which requires them to leave Hong Kong within two weeks upon termination of their contract, and (d) the "live-in rule", which requires them to live with their employers.

These concerns were also raised by civil society deputations at a 21 July 2014 meeting of the Panel on Constitutional Affairs to examine the State Party's report to CEDAW. Furthermore, in a joint report released in March 2014 by Justice Centre Hong Kong and Liberty Asia, four recommendations were made to the Government to (1) expand its definition of trafficking to include forced labour (2) create a National Plan of Action to combat human trafficking, in cooperation with civil society and other relevant stakeholders (3) adopt comprehensive anti-human trafficking legislation and (4) offer more robust labour protections against forced labour.<sup>3</sup> Justice Centre Hong Kong urges the HKSAR Government to take steps to give effect to CEDAW's recommendations and open up spaces for more consultation with civil society on these issues.

## 2. CEDAW's New General Recommendation No. 32 on the Gender-related Dimensions of Refugee Status, Asylum, Nationality and Stateless of Women

Justice Centre Hong Kong welcomes CEDAW's new General Recommendation No. 32,<sup>4</sup> giving authoritative guidance to State Parties on the rights of asylum-seeking and refugee women in relation to the UN Convention on the Elimination of All Forms of Discrimination against Women.<sup>5</sup> Justice Centre Hong Kong notes the multiple and intersecting forms of discrimination that protection claimant women often face, and their compound negative effect on their lives in Hong Kong while they seek protection, and urges the LegCo Panel on Constitutional Affairs to read the earlier submission made by a group of protection claimant women to the Panel for its 21 July meeting.<sup>6</sup>

In the document, CEDAW provides several practical recommendations to State Parties. These include, among others, ensuring that asylum procedures take into account the special situation or needs of women, and have an informed understanding, in all its policy and operations, of the particular forms of discrimination or

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<sup>3</sup> Justice Centre Hong Kong and Liberty Asia, "How Many More Years a Slave? Trafficking for forced labour in Hong Kong", March 2014, available at: [http://www.justicecentre.org.hk/framework/uploads/2014/03/JCHK\\_Report\\_final\\_spreads.pdf](http://www.justicecentre.org.hk/framework/uploads/2014/03/JCHK_Report_final_spreads.pdf)

<sup>4</sup> The UNHCR has also commended CEDAW for issuing this general recommendation. See: UNHCR, "UNHCR welcomes new General Recommendation on refugee and stateless women", Press Release, 5 November 2014, available at:

<http://www.unhcr.org/545a24a76.html>

<sup>5</sup> CEDAW, General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, UN Doc.: CEDAW/C/GC/32, 5 November 2014

<sup>6</sup> Women of Voices for Protection, Submission to the Panel on Constitutional Affairs, 21 July 2014, Agenda III: Third Report of HKSAR under the UN Convention on the Elimination of All Forms of Discrimination against Women, LC Paper No. CB(2)2082/13-14(01), available at: <http://www.legco.gov.hk/yr13-14/chinese/panels/ca/papers/ca0721cb2-2082-1-ec.pdf>

persecution and human rights abuses that women experience on grounds of gender and sex. CEDAW emphasises that owing to shame, stigma or trauma, some women may be reluctant to disclose the true extent of the persecution that they have suffered or fear.

CEDAW also notes that receiving States have a responsibility towards women granted asylum status when it comes to helping them, among other things, with finding proper accommodation, training and/or job opportunities, providing legal, medical, psychosocial support for victims of trauma and offering languages classes and other measures facilitating their integration. The general recommendation goes on to note that State Parties have an obligation to give practical information on how to gain access to services in a language that these women can understand, that they must report on asylum claims, with disaggregated statistics and that they should cooperate with all UN agencies, in particular the UN Refugee Agency (UNHCR) in relation to asylum systems and procedures, as well as collaborate with civil society and grass-roots non-governmental organisations supporting women asylum seekers and refugees.

Given that the HKSAR Government has just recently introduced its "Unified Screening Mechanism" (USM) to assess "non-refoulement" claims in March of this year,<sup>7</sup> Justice Centre Hong Kong strongly urges the government to give weight to CEDAW's recent general recommendation, which can offer significant guidance at a time when Hong Kong's screening system is in transition from the UNHCR to government-led status determination. Justice Centre has repeatedly requested that the government ensure that this new system is fair, transparent and include procedures to prioritise screening of vulnerable claims and attend to their needs, such as women with trauma or survivors of sexual and gender-based violence, for example.<sup>8</sup> Justice Centre requests the government to provide regular, disaggregated statistics on the number of claims screened in the system.<sup>9</sup> Justice Centre also recommends that the Hong Kong Government respect, protect and fulfil protection claimants' basic economic and social rights to ensure they can live in dignity in Hong Kong, and offer long-term solutions for all successful claimants, such as voluntary repatriation, local integration and resettlement to a third country.

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<sup>7</sup> For more information on the USM, see: HKSAR Government, Paper by the Administration to the 3 June 2014 Meeting of the Panel on Security on the Implementation of the Unified Screening Mechanism, LC Paper No. CB(2)1621/13-14(06), available at: <http://www.legco.gov.hk/yr13-14/english/panels/se/papers/se0603cb2-1621-6-e.pdf>

<sup>8</sup> See for example, Justice Centre's report "Meeting the Bare Minimum, Hong Kong's New Screening Process for Protection: A stocktake of the first months of implementation of the Unified Screening Mechanism for non-refoulement claims", May 2014, available at: <http://www.justicecentre.org.hk/framework/uploads/2014/03/USM-Briefing-Meeting-the-Bare-Minimum-HK-New-Screening-Process-for-Protection.pdf> and its own shadow report to CEDAW's 59<sup>th</sup> session, available at: <http://www.justicecentre.org.hk/framework/uploads/2014/03/CEDAW-NGO-Submission-Justice-Centre-Hong-Kong.pdf>

<sup>9</sup> Jennifer Ngo, "Refugee screening system still slow and opaque, critics say", South China Morning Post, 9 November 2014, available at: <http://www.scmp.com/news/hong-kong/article/1635373/refugee-screening-system-still-slow-and-opaque-critics-say>