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**Panel on Constitutional Affairs**

**Updated background brief prepared by Legislative Council Secretariat  
for the meeting on 21 May 2018**

**Reports 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 Affairs ("the CA Panel") on 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").

**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 the United Nations ("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:

- (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.

#### The first and second reports of the Hong Kong Special Administrative Region

3. CEDAW follows a four-year reporting cycle. 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 on the Elimination of Discrimination against Women ("the UN Committee") issued its concluding comments on 3 February 1999 [Annex C to LC Paper No. CB(2)1429/98-99(02)].

4. HKSAR's second report under CEDAW was submitted to UN (as part of China's combined fifth and sixth report) in 2004. After consideration of the second report, the UN Committee issued its concluding comments on 25 August 2006 [Annex B to LC Paper No. CB(2)2071/09-10(05)]. For details of the discussions of the Panel on Home Affairs ("the HA Panel") on the first and second reports, members may refer to the background briefs prepared by the Legislative Council ("LegCo") Secretariat [LC Paper Nos. CB(2)2219/05-06(05) and CB(2)2071/09-10(06)].<sup>1</sup>

#### The third report of the Hong Kong Special Administrative Region

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 CA Panel discussed the third report with deputations at the meeting on 21 July 2014. The related UN hearing on the report was held on 23 October 2014.

6. In March 2014, the UN Committee published a List of issues and questions in relation to the combined seventh and eighth periodic reports of China. The Administration's written response to the List of issues was issued vide LC Paper Nos. CB(2)2327/13-14 and CB(2)109/14-15. After consideration of the third report, the UN Committee issued its concluding observations on 7 November 2014 [Annex C to LC Paper No. CB(2)267/14-15(05)]. The CA Panel discussed the outcome of the consideration by the UN Committee of the third report at the meeting on 17 November 2014.

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<sup>1</sup> 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.

## **Discussion on the third report of the Hong Kong Special Administrative Region**

### *Status of Women's Commission ("WoC")*

7. Some members opined that WoC was only an advisory body and 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 WoC were not equivalent to those of a high-level central mechanism for the development and coordination of a women-focused policy, as advocated by the UN Committee. Some other members suggested that WoC should be more proactive in implementing measures to promote women employment and alleviate poverty among women.

8. The Administration advised that WoC performed the role of a high-level central mechanism for development and coordination of a women-focused policy. While WoC 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. WoC held meetings once every two months to discuss a wide range of issues, such as domestic violence, childcare facilities and services, women representation in advisory and statutory boards ("ASBs"), welfare for women, etc. Representatives of relevant bureaux and departments also attended the meetings and they would take into account the advice of WoC in formulating policies and programmes where appropriate. The Administration was proactively considering WoC's advice in the areas of gender mainstreaming and gender benchmark for appointment to ASBs. At the request of members, the Administration provided in August 2010 a list of policy areas which had been reviewed by WoC [LC Paper No. CB(2)2215/09-10(01)].

### *Women's political representation and participation in public affairs*

9. Some members expressed concern about the lack of representation of women in ASBs in Hong Kong, pointing out that 40 out of 400 ASBs had no representation of women. 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 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.

10. Some members considered that LegCo's functional constituency ("FC") elections were dominated by men and the FC system representing interests of major professions/industries was discriminatory against women. In their view, the FC system rendered some women (e.g. housewives) ineligible to stand for FC elections. These members considered that the FC system should be abolished and suggested that all LegCo seats should be returned by direct elections to enable women to have equal rights to stand for elections irrespective of their occupations. The Administration advised that women and men enjoyed the same rights to vote and to stand for elections, including elections of FCs of LegCo. These rights were safeguarded by the Basic Law.

#### *Domestic violence*

11. Members requested the Administration 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 the Social Welfare Department, and providing legal aid and shelter places for victims of domestic violence, etc.

12. Some members pointed out that some of the domestic violence cases involved cohabitants who were sexual minorities and considered that the Administration should also provide the same support measures and assistance to the victims in such cases. Some members considered that the decrease in domestic violence cases was just due to the new policy adopted by the Police on the classification of domestic violence cases. They expressed strong views on the introduction of the new category of "Domestic Incident". The Administration reiterated that a range of preventive, supportive and specialized services for domestic violence victims and families in need were provided. The provision of relevant support services would be further strengthened in the light of operational experience.

#### *Treatment of foreign domestic helpers ("FDHs")*

13. Some members enquired about the measures to protect FDHs from abuses by their employers and to combat illegal practices of employment agencies. The Administration reiterated that FDHs enjoyed the same employment rights and benefits provided under the labour laws as local workers, and were further protected by a standard employment contract where they enjoyed the minimum

allowable wage which would be reviewed annually. On the regulation of employment agencies, the Administration advised that according to the Employment Ordinance (Cap. 57) ("EO"), a worker only had to pay at most 10% of his/her first month salary to the employment agencies. Regarding the huge debts incurred by some FDHs due to the high level of fees and commissions charged by the employment agencies or recruiters in their home countries, the Government was concerned about the problem and had proactively brought the matter to the attention of relevant Consulates General in HKSAR and their senior officials, and had urged them to bring the problem to the attention of their respective Governments to tackle the issue at source.

14. Some members enquired about the rationale of the continued adoptions of the "two-week rule" and the "live-in requirement" for FDHs given that some FDHs had complained that they were not provided with reasonable living condition and had very long working hours. The Administration explained that the main purpose of the "two-week rule" was to allow sufficient time for FDHs to prepare for their departure and prevent FDHs from job-hopping. Besides, the "live-in requirement" formed the cornerstone of Hong Kong's policy of importing FDHs. It had been an established policy that priority in employment should be given to the local workforce, and importation of workers should only be allowed where there was proven manpower shortage in specific trades that could not be filled by local workers. A prospective employer had to demonstrate to the Immigration Department that he/she was able to provide "suitable accommodations and reasonable privacy" in his/her application for employment of FDHs.

#### *Labour rights and employment*

15. Some members were concerned that many female employees took up fragmented jobs and casual work but they were not entitled to the rights and benefits under EO for not meeting the "4-18" requirement for a continuous contract and were not protected under the mandatory provident fund scheme. Some members considered that there was also room for improvement with the existing system of paid maternity leave. Some members pointed out that many women were the "unpaid carers" of their family members with chronic diseases. They urged the Administration to enhance relief support services for these women carers and strengthen residential care services.

16. Some members considered that the traditional family value and the lack of child care support had made it difficult for women to pursue employment and to participate in public affairs. They enquired about the Administration's measures to promote flexible working arrangements for women and to release women's productivity. The Administration advised that it had facilitated employment of women by taking a number of measures, such as provision of better community

child care as well as after-school child care and elderly services, to help women balance their roles in work and family. In fact, the UN Committee also recognized the efforts made to advance the status of women in Hong Kong in various fields in recent years.

*Protection of sex workers and human trafficking*

17. Referring to paragraph 11 of the List of issues [Annex to LC Paper No. CB(2)2054/13-14(02)] which stated that there were reports that, owing to legislative provisions, women in prostitution in Hong Kong were forced to work alone in isolated settings where they were exposed to higher risk of abuse, exploitation and even life-threatening violence at the hands of the clients, some members asked whether the Administration would consider relaxing the existing policy of prohibiting more than one sex worker working at the same premises. The Administration explained that the current legislation prohibiting more than one sex worker working at the same premises struck a reasonable balance, taking account of the human rights and privacy of sex workers, the well-being of other members of the community as well as the prevailing moral values of the community.

18. Some members expressed concern that there were complaints from sex workers about the abuse of power by police officers in anti-vice operations. The Administration advised that the Police had in place a comprehensive mechanism to monitor the conduct of police officers. All officers taking part in covert operations against vice activities were required to strictly comply with the Police internal guidelines which forbade officers from having unnecessary body contact with the sex workers.

19. Some members shared the UN Committee's concerns about the non-applicability of the Palermo Protocol<sup>2</sup> to HKSAR, the lack of a comprehensive anti-trafficking legislation and the existence of legislative provisions on "vice establishment". They considered that the Administration had failed to tackle the above issues seriously.

20. The Administration advised that it had explained to the UN Committee that given Hong Kong's densely populated nature and its socio-economic situation, there were difficulties to allow the victims of human trafficking to settle in Hong Kong. The Administration considered that the extension of the Palermo Protocol to Hong Kong required careful examination. The Administration had

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<sup>2</sup> The "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime"

also explained to the UN Committee that although Hong Kong did not have a single piece of legislation to cover the criminal offences targeted by the Palermo Protocol, the relevant trafficking-related acts were prohibited under various pieces of legislation such as the Crimes Ordinance (Cap. 200), the Immigration Ordinance (Cap. 115) and Offences against the Person Ordinance (Cap. 212). The prescribed penalties were up to a maximum of 10 years' to life imprisonment.

### **Recent development**

21. The Government is preparing for the submission of the fourth report of HKSAR under CEDAW and issued an outline of topics for the fourth report on 1 March 2018 for public consultation. The CA Panel will receive public views on the outline of topics for the fourth report at its next meeting on 21 May 2018.

### **Relevant question and papers**

22. At the Council meeting of 26 November 2014, Hon SIN Chung-kai raised an oral question on the concluding observations issued by the UN Committee regarding the third report of HKSAR. Mr SIN's question and the Administration's reply are in **Appendix I**.

23. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

Council Business Division 2  
Legislative Council Secretariat  
15 May 2018

## Press Releases

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LCQ3: Elimination of discrimination against women  
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Following is a question by the Hon Sin Chung-kai and a reply by the Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung, in the Legislative Council today (November 26):

Question:

At its meeting held on the 23rd of last month in Geneva, the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee) considered the report submitted by the Government of the Hong Kong Special Administrative Region (HKSAR) on Hong Kong's fulfilment of her obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women. The Committee published its concluding observations on the 7th of this month, putting forward a number of recommendations to HKSAR Government. In this connection, will the Executive Authorities inform this Council:

(1) as the Committee is concerned that maternity leave in Hong Kong is limited to 10 weeks which does not comply with international standards, and urges the authorities to increase the maternity leave period, as well as their efforts to promote the use of flexible working arrangements and paternity leave to encourage men to participate equally in childcare responsibilities, whether the authorities will accept and implement the Committee's recommendations with a view to complying with international standards;

(2) as the Committee has pointed out the low level representation of women in politics in HKSAR, and recommends the authorities to conduct a study on the impact of the electoral system of functional constituencies on the equal participation of women in political life, whether the authorities will conduct such a study; if they will, of the details; if not, the reasons for that; and

(3) as the Committee is concerned that women foreign domestic helpers (FDHs) are subjected to abuse and unfavourable working conditions, and urges the authorities to strengthen the protection of FDHs from discrimination and abuse by employers and by recruitment and placement agencies, whether the authorities will accept the recommendation?

Reply:

President,

My reply to the question raised by the Hon Sin Chung-kai is as follows:

(a) Under the Employment Ordinance (EO), an eligible pregnant employee is entitled to a continuous period of 10 weeks' maternity leave (ML) with pay. If the employee encounters health problems owing to pregnancy or confinement before or after delivery, she is entitled to an additional period of leave up to four weeks. If the employee, by an agreement with the employer, takes further leave, the continuity of her employment shall not be affected.

Regarding paternity leave (PL), the Government introduced on March 26, 2014 the Employment (Amendment) Bill 2014 into the Legislative Council (LegCo) to provide for eligible male employees statutory PL of three days. The relevant Bills



Committee of LegCo has completed scrutinising the Bill. We are discussing with LegCo on the date of resuming the Second Reading debate of the Bill. We earnestly hope that the Bill can be passed as soon as possible to benefit the eligible employees who are fathers-to-be.

Given that the varying economic situations and social systems in different places, individual places have to formulate their own employee benefit standards according to their individual circumstances. Taking ML as an example, the cost of ML pay for female employees is fully borne by individual employers in Hong Kong, which is different from the arrangement adopted in some other places around the world where ML pay is fully or partially financed by a social insurance system with contributions from both employers and employees. We consider that the existing provisions on maternity protection under the EO in Hong Kong have offered suitable protection to pregnant employees, while striking a reasonable balance between the interests of employers and employees. In assessing whether the duration of ML should be extended, we have to take into consideration our social and economic situation, and also whether the community has a general consensus on the feasibility of this suggestion.

I have to point out that the EO only serves to prescribe the minimum level of rights and benefits which the employers have to provide to their employees. The Government will continue to actively encourage employers to adopt employee-oriented good people management practices and, having regard to their own circumstances and the needs of their employees, implement family-friendly measures to enable their employees to take care of family needs through the adoption of more flexible working hours. Employers are also encouraged to draw up, in consultation with their employees, employment terms that are more favourable than those stipulated under the EO.

(b) The Hong Kong Special Administrative Region (HKSAR) Government will, in accordance with the law, ensure that all public elections are conducted in an open, fair and honest manner. Article 26 of the Basic Law stipulates that permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with the law. The legislation governing voter registration or the eligibility of candidates, etc. in the functional constituencies of LegCo does not contain any special arrangements on the grounds of gender.

(c) Foreign domestic helpers (FDHs) enjoy equal protection and benefits as local employees under our labour laws, e.g. the EO and Employees' Compensation Ordinance. FDHs also enjoy further protection provided by the Standard Employment Contract, including the Minimum Allowable Wage, free accommodation, free food (or food allowance), free medical benefits and passages to / from their places of domicile.

We consider that ensuring that FDHs, employers, employment agencies (EAs) as well as the general public are fully aware of the rights of FDHs is an effective way of preventing FDHs from being exploited. As such, the Government has already stepped up the relevant publicity and promotional efforts in different channels, such as distributing information packs and pamphlets at the airport and through various government departments, staging information kiosks at FDHs' popular gathering places, placing advertisements in local Filipino and Indonesian newspapers, and screening television and radio Announcement of Public Interests (API) in various local media to disseminate information on the rights of FDHs and on the channels for their seeking assistance. The Labour Department (LD) also participates in briefings and cultural activities organised by various consulates for newly-arrived FDHs from time to time, and has intensified collaboration with the consulates of the major FDH exporting countries in Hong

Kong, including setting up a regular liaison mechanism for enhancing co-operation and exchanging information on problematic EAs, employers and FDHs.

The Government has always been committed to protecting the rights of FDHs in Hong Kong. We do not tolerate any malpractices of the employers or the EAs and will take rigorous enforcement and prosecution actions against any contraventions of laws. Those FDHs who suspect that they are being exploited or abused should come forward and report their cases to the authorities as soon as possible. Upon receipt of complaints, the Government will promptly investigate and will initiate prosecution if there is sufficient evidence. Furthermore, if satisfied on reasonable grounds, LD may revoke or refuse to renew the licences of EAs involved. At the same time, the Government has increased the frequency of inspections of EAs and is considering to issue a Code of Practice for the industry in a continuing process to strengthen the regulation of EAs.

Ends/Wednesday, November 26, 2014  
Issued at HKT 15:33

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## 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)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	7 December 1998 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	8 March 1999 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	21 April 1999	<a href="#">Official Record of Proceedings (Motion moved by Hon Emily LAU)</a>
HA Panel	8 November 1999 (Item II)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	26 January 2000	<a href="#">Official Record of Proceedings Pages 58 – 61 (Written question raised by Hon Christine LOH)</a>
	31 May 2000	<a href="#">Official Record of Proceedings Pages 5 – 60 (Motion moved by Hon Cyd HO)</a>
HA Panel	2 June 2000 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	8 November 2002 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	11 February 2004	<a href="#">Official Record of Proceedings Pages 56 – 57 (Written question raised by Hon Cyd HO)</a>

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
HA Panel	9 June 2006 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	9 February 2007 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	4 November 2009	<a href="#">Official Record of Proceedings Pages 48 – 61 (Oral question raised by Hon Emily LAU)</a>
Panel on Constitutional Affairs	19 July 2010 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	21 July 2014 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	17 November 2014 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	26 November 2014	<a href="#">Official Record of Proceedings Pages 24 – 32 (Oral question raised by Hon SIN Chung-kai)</a>

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