

# **Submission of Shadow Report to**

## **CEDAW Committee**

**June 2006**

### **by Hong Kong Women's Coalition on Equal Opportunities (Coalition)**

Comprising of 11 Women's Rights NGOs in Hong Kong SAR, China

Action for REACH OUT

Association Concerning Sexual Violence Against Women

The Association for the Advancement of Feminism

Association of Women with Disabilities Hong Kong

Concern Group on Women's Rights

F-Union

Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)

Hong Kong Federation of Women's Centres

Hong Kong Women Christian Council

Hong Kong Women Workers' Association

Women's Committee, Hong Kong Confederation of Trade Unions

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## **I Recommendations**

- 1 The Government of China and the Government of the Hong Kong Special Administrative Region should sign an optional protocol for further implementation of the CEDAW.
- 2 The Government should thoroughly and sincerely consult civil society, particularly women's rights NGOs, when compiling its report and should not be limited to the outline only. (Para B16)

### **Part A Response to the List of Issues and Questions to HKSAR**

- 3 The Government should publicly announce the mandate, work plan and timetable of the new working group on "equal pay for work of equal value", and its follow-up work with the 2001 Government-funded study on the issue. (Para A1-2)
- 4 The Government should immediately stop police officers from receiving any form of sexual services during undercover operation. (Para A5)
- 5 The Government should review law enforcement procedures by police, immigration department and courts and promise to guarantee that all formal procedures are properly followed and equal rights of sex workers are protected. (Para A5)
- 6 The Government should investigate and follow up complaints of unfair treatments and exploitation of rights against sex workers by police, courts and related government departments. Complaints against police should be handled by an independent mechanism and disciplinary acts to be taken accordingly. (Para A5)
- 7 The Government should review the use of condoms as supporting evidence in courts for prosecution against sex workers to ensure that sex workers are able to safeguard their health and to enjoy fair and just treatment under the law. (Para A5)

- 8 The Government should establish effective communicating mechanism between sex workers concerned NGOs and related government departments in order that sex workers are able to enjoy fair and equal treatments under the law and their needs of adequate services are met. (Para A6-7)

## **Part B Central Mechanism**

- 9 A high-level central mechanism for the implementation of CEDAW, as recommended in the previous concluding comments by CEDAW Committee, is urgently needed. The Women's Commission, set up as a central mechanism, should be elevated to a status directly under the Chief Secretary for Administration, independent from any bureau, and vested with appropriate powers and resources in order to effectively monitor the Government in implementing CEDAW. (Para B1-4, B8, B10-12)
- 10 Appointments to the Women's Commission should be transparent to the public with input from women's rights NGOs. The Commission members should be expertise in the advancement of women's rights, and represent a more diverse spectrum of interests and concerns. (Para B5-9, B13-16)
- 11 The statutory body, the Equal Opportunities Commission (EOC), which aims to enforce, promote and safeguard human rights and equal opportunities, should be transparent, fair, accountable and independent. (Para B17-23)
- 12 The Coalition urges the committee to recommend the Government to reform its current procedures and criteria for selection and appointment of members to EOC so as to meet the Paris Principles. (Para B17-23)
- 13 The Coalition urges that the EOC should further strengthen its current visions and missions and advocate on equal opportunities and eliminate all forms of discriminations against women through legislative, administrative and educational measures. (Para B24-31)

## **Part C Women and Poverty**

- 14 The Government should put feminization of poverty on agenda, and tackle the structural factors that push female to such vulnerable situation. The Commission on Poverty should adopt the gender-mainstreaming checklist suggested by the Women's Commission and adopt a gender sensitive approach to poverty alleviation. (Para C1-9)
- 15 The Government should legislate a universal minimum wage to ensure a decent living for low-income workers, and to narrow the wage discrepancies between female and male workers. (Para C10-17)
- 16 The Government should legislate rest breaks and limited working hours. There are still a significant number of workers being deprived of the right to rest days. (Para C17, C19, C26)
- 17 The Government should review and revise the "4.18" definition of employment relation in Employment Ordinance in order to provide employment protection for women in casual employment. (Para C18-21)
- 18 The Government should have legislations to prohibit discrimination on the basis of age as recommended by the CEDAW Committee. (Para C22-24)
- 19 The Government should abolish the New Conditions of Stay or two-week rule for Foreign Domestic Helpers and bring the minimum allowable wage at least back to US\$470.5. (Para C25-27)
- 20 The Government should establish an employment quota system for people with disabilities to ensure equal opportunity of participation in productive and gainful employment for disabled women. (Para C28-31)

- 21 The Government should establish a universal retirement protection system for all citizens, particularly for the low-income women, homemakers and women who are not employed due to various reasons. (Para C32-36)
- 22 The Government should review and revise the Comprehensive Social Security Assistance (CSSA) system with a gender-sensitive perspective. The Government is urged to cancel the seven years' residency requirement, which is a violation of equal rights to social security of the new arrival women. (Para C37-40)
- 23 The Government should abolish the New Dawn Project under the CSSA system, which discriminates against the caring role of single parents and child carers on CSSA, whose youngest child aged 12 to 14. (Para C41-44)
- 24 The Government should set up a Maintenance Board immediately. (Para C44)

#### **Part D Violence against Women**

- 25 The Government should set up a high-level centralized body, with gender sensitivity, to coordinate and supervise all issues relating to violence against women (VAW) and the service provisions for the victims. (Para D1) This centralized body should, from a gender perspective, make binding decisions that every government department/party should follow. (Para D2-3)
- 26 This centralized body should provide training to professionals who work closely with victims of VAW, to enhance their gender sensitivity and to reduce discrimination against victims of VAW. (Para D4-6) These include medical professionals, police, legal actors, social workers, and teachers etc. This centralized body should also be responsible for public education, to promote services and cultural acceptance, to eliminate negative attitudes toward victims of VAW. Education on VAW should be included in the curriculum for both teachers and students. (Para D7)

- 27 The centralized body should provide financial support to services for victims of VAW. (Para D8)
- 28 The centralized body should establish an effective communicating mechanism between concerned NGOs/service agencies and related government departments, in order that victims of VAW are able to enjoy fair and equal treatments under the law and that their needs of adequate services are met. (Para D9)
- 29 The Government should conduct a comprehensive domestic violence law reform, so that all relevant ordinances relating to domestic violence, civil or criminal, will be brought together under the new and comprehensive Domestic Violence Ordinance (DVO). (Para D10-12)
- 30 The Government should set up a domestic violence court to handle all criminal and civil cases involving allegations of domestic violence or violations of injunction orders. (Para D13)
- 31 The Government should speed up the process of legislation against harassment behaviors, such as stalking. (Para D14)
- 32 The Government should review the cause of low report and conviction rate of VAW cases and take necessary actions to tackle the issue. (Para D15-17)
- 33 A no-drop prosecution policy should be built into the existing prosecution mechanism for domestic violence cases. (Para D18-19)
- 34 A mandatory or pro-arrest policy, court-mandated treatment programs such as Batterers' Intervention Programs (BIP) for batterers, together with provision of support services to victims are deemed necessary. (Para D18-19)

## II Content

# Part A Response to the List of Issues and Questions to HKSAR

### (Article 11: Equality in Employment and Labour Rights)

#### *Equal pay for work of equal value*

- A1 The Government conducted a study on the above subject in 2001. The results, scheduled to release in 2003, had been once and further postponed. Up till June 2006, the results were not released. Since 2003, women's rights NGOs had, for times, inquired the Equal Opportunities Commission (EOC) about the arrangement for release of the results to public and follow-up work by the EOC and the Government. The response of Government to the list of issues and questions claimed that a new working group was set up comprising EOC members to take the issue forward. However, the Government and EOC both failed to mention in its response the working group's mandate, follow-up of the study, concrete work plan and a definite timetable.
- A2 The Coalition strongly support with the CEDAW Committee that the principle of equal pay for work of equal value has to be included in relevant legislation. The existing Sex Discrimination Ordinance (SDO) only tackles the issue of "Unequal pay for equal work", but does not address the issue of "equal pay for work of equal value". The Code of Practice on Employment issued under SDO is only a set of guidelines with no legal bindings. Organizations and enterprises can choose freely whether or not to follow. The Coalition is concerned that since 2001, the EOC and the Government had not taken observable measures to publicly promote the principle of "equal pay for work of equal value".

## **(Article 6: Exploitation of Women)**

### ***Trafficking and exploitation of prostitution***

- A3 Trafficking and prostitution are two separate issues. Trafficking is exploitation involving forced labor, which consists of coercion and deceit regarding the type or conditions of work. It takes place in many working situations, other than in prostitution. Although the Government mentioned that it uses Employment Ordinance and Crime Ordinance to deal with trafficking, these Ordinances are actually about sex work only. There are no explicit laws or policies/practices to address trafficking as defined in the Optional Protocol to Prevent, Suppress and Punish trafficking in persons.
- A4 In fact, the Coalition is worried that the small number of identified trafficked victims in Hong Kong might be a result of the discouragement the trafficked victims experienced throughout the legal process. A recent academic research<sup>1</sup> revealed that a few trafficked victims were prosecuted and imprisoned, and that the police even rejected the request of a respondent, a trafficked victim, to rescue her friend who was still being detained by the traffickers. The level of training for the police especially on sensitivity and ability to identify trafficked victims/trafficking cases and to carry out further investigation are questionable, resulting to a low reporting and prosecution rate. Trafficked victims also failed to be granted immunity from prosecution in such cases.
- A5 Despite the comments made by the CEDAW Committee, the Government has done little to combat the discrimination against women. Over the past few years, Action for REACH OUT (a local sex workers' concern group) has received complaints from female sex workers concerning the following issues<sup>2</sup>:
- Streetwalkers got arrested when simply walking on the street without any intention of "Soliciting for an Immoral Purpose".

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<sup>1</sup> Emerton, R., Laidler, K. J. & Petersen, C. (2006) *Bureaucratic Justice: The Incarceration of Mainland Chinese Women Working in Hong Kong's Sex Industry – Summary for the Roundtable on 27 Apr 2006*.

<sup>2</sup> Action for REACH OUT (2005) *A Survey on Hong Kong Police's Attitudes towards Female Sex Workers* (Survey Report).

Some sex workers were arrested even on occasions when customers and undercover police officers were the ones to solicit. Many such sex workers were being prosecuted and fined/imprisoned for such unreasonable arrest.

- Many non-residents being suspected by immigration officers as sex workers are being deported to their places of origin WITHOUT TRIAL, because their stay in Hong Kong is defined as “un-welcomed”.
- Police officers, during undercover operations, are allowed to solicit sex workers to perform certain sexual services including masturbation (which is in the end unpaid) to “collect evidence” for prosecution.
- Some sex workers reported physical / verbal assault by the police. Many even reported that their rights were exploited upon arrest and questioning at the police stations or offices of the Immigration Department. Such rights included: rights of remaining silent; making phone calls to friends; families and lawyers for help; requesting an interpreter; requesting toilet facilities; break to rest during questioning; and refusing to sign the cautioned statements etc.
- In courts, statements given by sex workers often carry less credit. Once a judge even told a sex worker that he would not trust her simply because she was a sex worker. According to a research, the average hearing time in court to complete an individual sex worker’s case was only 3 minutes<sup>3</sup>.
- Condoms for STDs/AIDS prevention and birth control are commonly used as supporting evidence in courts for prosecution against sex workers.
- Conditions of detention rooms in police stations are bad. Detained persons are forced to eat, rest, sleep and use the toilet facilities in the same small room. Some detained persons were even kept in metal cages in open areas of police stations where media could easily take photographs.<sup>4</sup>

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<sup>3</sup> Emerton, R., Laidler, K. J. & Petersen, C. (2006) *Bureaucratic Justice: The Incarceration of Mainland Chinese Women Working in Hong Kong’s Sex Industry – Summary for the Roundtable on 27 Apr 2006*.

<sup>4</sup> In 2005, over hundreds of women being suspected prostitutes from Mainland China were arrested and caged in an open area where reporters/media could easily take photographs. The cage did not offer toilet facilities, rest area and the women had to sit on the floor in an open area for over 12 hours. They failed to enjoy equal access of respect and protection under such circumstances and were guarded by

- Complaints Against Police Office (CAPO) is not an independent mechanism to process complaints against police but a division under the Hong Kong Police Force. Its transparency and reliability should be questioned and challenged.<sup>5</sup>

### ***Insensitive policies***

- A6 In the HKSAR's Second Report, it was mentioned that "Assistance such as financial relief, psychological service, vocational training, employment service and housing assistance can be arranged to help them (sex workers) tide over the hardship they may encounter upon giving up prostitution". Considering the fact that sex work is not illegal for residents, such conditional offer of service is unacceptable. Besides, sex workers had reported that service provisions by family service centers were inappropriate as they did not take into consideration of their job nature and specific needs.
- A7 In the HKSAR's Second Report, Action for REACH OUT was the NGO quoted as having close liaison. In fact, the Government's support to AFRO has been very limited and the liaison is only at a level of clinical referrals and condoms supply. Over the past few years, AFRO requested many times to meet with the Hong Kong Police and the Immigration Department to discuss problems encountered by sex workers during law enforcement; however, both departments refused such requests.

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male police. This was simply a violation of human rights and privacy.

<sup>5</sup> Also in 2005, a sex worker who was accused by the police of intimidation, blackmailing and assault with intent to commit offence on police officer, committed suicide to show her innocence. Her family publicized the incident and disclosed her complaint against police officer's requesting unpaid sexual service from her per her last wish. A complaint has been filed to the Complaints Against Police Office (CAPO) but after one year the incident is still under investigation. Women's rights NGOs are worried that the slow progress of investigation is due to a lack of transparency and reliability of CAPO, which works under the Hong Kong Police instead of running as an independent mechanism.

## Part B Central Mechanism

### (Article 1, 2 & 3: Defining Discrimination, Obligations of States Parties & Appropriate Measures)

#### *Women's Commission*

B1 The CEDAW Committee recommended that the HKSAR Government “*establish a high-level central mechanism with appropriate powers and resources to develop and coordinate a women-focused policy and long-term strategy to ensure effective implementation of the Convention.*” (Paragraph 318, Concluding Comments, 1999)

#### Not high level enough

B2 The Government set up the Women's Commission in Jan 2001 and described it as “*a central mechanism to advise the Government on a strategic overview of women issues.*” (Article 2 Paragraph 15, Second Report, 2003). However, the Commission is **under** the purview of the Secretary for Health and Welfare, and only positions itself as an **advisory** body rather than an independent monitoring body of the Government (as shown in the list of related advisory committees of the Bureau<sup>6</sup>). The Women's Commission definitely falls far short as being a high-level central mechanism with appropriate powers and resources.

B3 The Women's Division is under the Health and Welfare Bureau, headed by a Deputy Secretary, was set up in May 2000 to take up the responsibility of all policies relating to women issues, to oversee and coordinate with different bureaux and departments. Staff of the Women's Division is also the Secretariat for the Women's Commission. The Coalition is hesitant that such officer rank has the actual authority to ensure cooperation and policy compliance across the bureaux.

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<sup>6</sup> Health, Welfare and Food Bureau. <http://www.hwfb.gov.hk/en/committees>.

B4 The Government allocated only US\$2.56M (0.8% of the 2005/06 Government budget) to Women's Commission, which is equivalent to one quarter of the budget allocation for EOC<sup>7</sup>, considering that EOC is only responsible for the implementation of three anti-discrimination legislations.

#### Lack of human rights framework in the mandate of Women's Commission

B5 The Women's Commission seldom defines its work within the CEDAW framework or that of the Beijing Platform for Action (1995), which is contrary to the HKSAR's Second Report, Article 3, paragraph 28.

B6 The Women's Commission did not set up effective work strategy and appropriate work priorities to guarantee the implementation of CEDAW. The lack of critical gender perspective to tackle gender inequalities hinders women from full realization of their rights. The Commission was slow in response to advocate women's right to safety and sometimes prone to resolve family violence through promoting family harmony and unity.

B7 The Commission emphasized the building of personal capacity of women, without identifying the structural factors causing gender inequalities, easily put blames on women for the difficulties they experienced.

B8 Promotion and public education of CEDAW is needed. A telephone survey conducted by EOC in July 2003 revealed that 67% of the respondents were not aware of CEDAW<sup>8</sup>. The exhibition tour and pamphlets prepared by Women's Commission failed to point out gender as a factor to discrimination against women, the need for CEDAW, or the way how CEDAW protects women's human rights etc. Further, no financial support is provided by Women's Commission to support NGOs' initiatives in promoting CEDAW or gender equality.

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<sup>7</sup> In the Preface of the Second Report of HKSAR under CEDAW ([http://www.hwfb.gov.hk/download/press\\_and\\_publications/otherinfo/040205\\_wo\\_cedaw/e\\_cedaw\\_pre\\_face.pdf](http://www.hwfb.gov.hk/download/press_and_publications/otherinfo/040205_wo_cedaw/e_cedaw_pre_face.pdf); Financial Secretary (2005) *Budget Speech* Para. 90 (<http://www.budget.gov.hk/2005/eng/budget32.htm>).

<sup>8</sup> Conducted by the Equal Opportunities Commission ([www.eoc.org.hk](http://www.eoc.org.hk)).

### Closed-door appointment of Commission member and lack of representation

B9 Appointments to the Women's Commission were not transparent and the appointment criteria are not disclosed. The first Chairperson had no track records in women's right issues. Further, the Commission failed to represent diverse interests and concerns and there is definitely a lack of representation of the disabled, lesbian, underprivileged women, and homemakers.

### Limited impact on Government and on society

B10 The effectiveness and sustainability of the adoption of gender mainstreaming "checklist" and the focal points in some departments are yet to be seen. However, it is noteworthy that it is not compulsory for all the government departments to evaluate their own policies for the purpose of gender mainstreaming. Since 2002, only 5 out of the 11 policy bureaux and 10 out of the 67 government departments and agencies<sup>9</sup> within the administration have used the checklist in 19 policy areas, which is a very small number. The case reports from departments that used the checklist revealed that there is no gender-based policy analysis provision in the evaluation.<sup>10</sup> Moreover, there is no mention of any gender budgeting or resources allocation in the process of implementing gender mainstreaming.

B11 In 2006, the Women's Commission no longer singles out gender mainstreaming as one of its main emphases. The half-day training session for civil servants on gender sensitivity is deemed inadequate.

B12 To create a conducive environment for the development of women's potentials, including breaking down systemic and structural barriers against women's advancement, is the key to empower women. Instead of working towards this direction, the Women's Commission encourages women to engage in self-reliance and mutual help instead of relying on protection from the Government (Preface, paragraph 22, Second Report, 2003).

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<sup>9</sup> Ibid, p.15-16; General Information on the Hong Kong Government website: <http://www.gov.hk/ef3.htm>.

<sup>10</sup> Ibid, p.26-48.

### Lack of transparency and poor consultation with women's rights NGOs

- B13 *“The Committee invites the Government to hold public consultations with non-governmental organizations in the process of the implementation of the Convention and when preparing its second periodic report.”* (CEDAW Committee, Concluding Comments, 1999, paragraph 84)
- B14 The Coalition is concerned that the process for the establishment of the Women's Commission in 2001 including its position, structure, composition, functions, and accountability mechanisms, was not transparent for public monitor.
- B15 Women's rights NGOs experienced limited **partnership** with the Women's Commission especially in areas to discuss agenda and priorities of the work. The Coalition also felt that they were only being informed, rather than consulted, whereas the Women's Commission set policy priorities and strategies.
- B16 In writing up the Second Report to the CEDAW Committee, the Government and the Women's Commission only organized a half-day so-called consultation, and only an outline draft (devoid of content) was presented. There was no discussion and no assessment on the progress made since the First Report. The Government did not conduct another consultation after the full Report was written.

### ***Equal Opportunities Commission (EOC)***

#### Lack of commitment and transparency in appointment

- B17 The Government complimented the work of the Equal Opportunities Commission (EOC) in investigating and litigating on discriminatory policies and practices, such as the formal investigation into the Secondary School Places Allocation system (SSPA). However, the Government did not reappoint the chairperson, Anna Wu, who took the Government to court regarding the SSPA system.

- B18 EOC is invested with the power to enforce anti-discrimination laws, but the appointments of the Chairperson and the commissioners are not transparent.
- B19 Besides the first and second chairpersons, none of the other chairpersons appointed have any track record in anti-discrimination work or human rights background. The dismissal of an incoming Director of Operations by the Chairperson Mr. Michael Wong in 2003, the successor of Ms. Anna Wu, without legitimate reason destroyed the reputation, credibility and confidence in EOC. By October/November of 2003, his action came under severe criticism by the human rights and women's rights groups. He resigned after only been in office for about three months.
- B20 The Government recently proposed to change the executive chairperson to non-executive. It is worrying as it may cause the Chair to become less effective and it will further diminish the advocacy role of the EOC.

#### Inconsistent terms and short notice of the appointments

- B21 Under the Sex Discrimination Ordinance, the EOC Chairperson is appointed for a term not exceeding five years. A regular turnover will facilitate the injection of new ideas and fresh impetus into the EOC. The term of EOC Chairperson should be reasonably long to ensure continuity, stability and to facilitate long-term planning. However, the terms of appointments of EOC chair vary from one year to five years without reasonable explanation from the government.
- B22 There is a serious concern about the short notice and apparent delay in the announcement of appointments to the EOC. The re-appointment of Ms. Anna Wu in 2002 was not announced until a few days before the expiry of the contract. Similarly, the appointments of EOC Members in 2003 and 2004 were announced shortly before commencement of the new term. The recent appointment of the new EOC Chairperson seems to follow similar

lines. It reflected the government's neglectful attitude in matters relating to the promotion of equal opportunities

#### Lack of continuity and diverse representation

B23 In 2005, the appointment of a completely new board of EOC affected continuity. The new appointees were mainly from the business and professional sectors and they have no observable track record on human rights and equality issues. The Coalition is concerned that grassroots interests are not represented.

#### Conservative turn in mission and vision

B24 EOC amended its mission in 2005 with a more restrictive interpretation of anti-discrimination<sup>11</sup>. The principles of human rights are diluted.

B25 The original mission was **to eliminate discrimination** on the grounds of sex, marital status, pregnancy, disability and family status, as well as **to promote equal opportunities** on basis of sex, disability and family status.

B26 The revised mission is to **perform statutory duties** under the anti-discrimination legislation (currently the SDO, DDO and FSDO), to **promote awareness**, understanding and acceptance of diversity and equal opportunities and provide education to prevent discrimination and **to provide access** to redress for discrimination.

#### Insufficient support and recognition from government in combating sex discrimination

B27 The EOC could not initiate legislative amendment to the existing anti-discrimination ordinances. It has to go through the Home Affairs

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<sup>11</sup> The original mission of EOC is be found in their annual report 2001/2002 while their current mission is found in their website:  
<http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=Vision%20and%20Mission>.

Bureau. In 1999, the EOC proposed several legislative amendments to the Sex Discrimination Ordinance (SDO), including the resolving of the discriminatory "small house" policy<sup>12</sup> and the expansion of the protection against sexually hostile environment to education establishments. Although the proposed amendments were accepted by the Government 7 years ago, review of the amendments has not been proceeded yet.

B28 The financial independence of the EOC is of equal concern. At present, the EOC receives its funds through the Home Affairs Bureau, which has already raised doubts about the former's autonomy. In addition, the EOC has no separate funding for legal proceedings and therefore, not all cases meriting legal supports are given assistance by the EOC.

#### Insufficient protection from anti-discrimination laws

B29 Discrimination against sexual orientation is not covered under the three existing Equal Opportunities Ordinances. The existing 3 Equal Opportunities Ordinances, prohibits any discrimination because of gender, disability and family status. However, it is important to emphasize that many women are unable to avoid discrimination because of their sexual orientation.

B30 There is a considerable discrimination of lesbian and bisexual women in Hong Kong, within the frame of family law, law regulating medically assisted artificial insemination, the area of health services, the area of work and employment. The non-recognition of the role of lesbian NGOs in the civil dialogue with the state is significant.

B31 A local research on discrimination based on sexual orientation was conducted among the sexual minority women in Hong Kong from

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<sup>12</sup> The Small House Policy (SHP) introduced in 1972, entitles male indigenous villagers in the New Territories to apply to the Government to build a three-storey village style house as residence. The policy excludes both women and non-indigenous persons and is currently exempted in the SDO. It may contravene all three human rights instruments of the United Nations (UN) that apply to Hong Kong and has been criticized by various UN Committees as discriminatory. The Government has had repeated reviews of the policy since 1997 but has to date not indicated its decision.

March-May 2005 by Women Coalition of HKSAR (WC)<sup>13</sup>. It showed that over 39 % of respondents had experienced violence and harassment because of their sexual orientation. Those most commonly cited, as perpetrators of acts of violence or harassment were strangers (27.30%), family members (16.35%), classmates and teachers (12%) and co-workers (11.10%). Cleric was involved in 4.43% when police officers were in 3.83% of cases reported. Other perpetrators mentioned by respondents included service providers, neighbors and friends.

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<sup>13</sup> The Women Coalition of HKSAR (WC) was established on 1st July 2003. WC aims to contribute their parts in the local female *tongzhi* community from a female point of view.

## Part C Women and Poverty

### (Article 11 & 13: Equality in Employment and Labour Rights & Women in Economic, Social and Cultural Life)

#### *Gender inequality in the labor market*

- C1 The Concluding Comments of the CEDAW Committee expressed concern of “the highly disproportionate number of women in the lowest wage, especially given the absence of minimum wages law. The Committee is also concerned that the contraction of the manufacturing sector affects particularly low-skilled women.” (Paragraph 331, Concluding Comments, 1999)
- C2 According to government statistics, the median monthly earning in 2001 and 2005 were US\$1,282 and US\$1,256 respectively. In 2001, women earned less at US\$1,090 while men earned US\$1,539. In 2005, women earned less at US\$1,000 while men earned US\$1,410, representing a 29% difference in the median monthly earnings.
- C3 There continues to be occupational segregation among managers and administrators. The figure for male and female were 74.3% against 25.7% in 2002, and were 72.9% against 27.1% in the 4th Quarter (Q4) 2005. For elementary occupations such as clerks, 74.2% were female in 2002 and 73.0% in Q4 2005.
- C4 Amongst those employed persons with monthly earning below US\$384.6, 64.9% were female workers in 2002 and 69.4% in Q4 2005. 68.5% of those monthly earning over US\$3,846 were male workers in 2002 and 67.5% in Q4 2005. Amongst the unskilled manual labor, the median wage of male workers is US\$961 while that of female workers is US\$500.

### ***Women displaced from manufacturing sector in vulnerable position and hidden unemployment***

C5 Many middle-aged women workers being displaced from manufacturing industries now constitute a large percentage of reserve labor for the growing service sectors. The number of working women in the manufacturing sector dropped from 431,752 in 1986 to 104,576 in 1999, and 72,408 in 2004<sup>14</sup>. These 359,434 women workers displaced from manufacturing sector are middle-aged and low skilled. Government statistics of unemployment rate of middle-aged women in 1999 was 6.2%. However, a research<sup>15</sup> revealed a much higher unemployment rate, up to 25.8%, which included “hidden unemployment” that was not revealed in official statistics. The hidden unemployed women become “discouraged workers”<sup>16</sup> and being classified as “housewives” in official statistics, thus become invisible. Many female workers end up as manual workers in public housing estates, offices, restaurants, fast-food chain shops, in other word, in the lower strata of the service sectors<sup>17</sup>. These kinds of job are mostly part-time, temporary or even on subcontract basis, consequently further marginalize women workers.

### ***Government’s lack of gender sensitivity on feminization of poverty***

C6 Despite the rise of female employment in 2002, women continue to make up the largest proportion in every sector of the poor population. About 80% of working poor are female workers and over 80% single parents receiving government financial assistance are single mothers and most ageing population receiving government financial assistance are female.

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<sup>14</sup> Census and Statistics Department (2005) Hong Kong Annual Digest of Statistics, P.23.

<sup>15</sup> Chan, Kam Wah & Leung, Lai Ching (1999) *Women in and out of work: a research report*. Hong Kong: Department of Applied Social Studies, Hong Kong Polytechnic University, City University of Hong Kong, Hong Kong Young Women’s Christian Association.

<sup>16</sup> Ibid.

<sup>17</sup> Service sector is composed of following industries: retail and wholesale, import and export trade, catering, transportation, communication, financial, real estate, commercial, social and personal services.

- C7 The Women's Commission (WoC) and the Commission on Poverty (CoP) only emphasize building up individual capacity and increasing own competitive power in the labor market as the strategy of poverty alleviation. They have not considered tackling the structural factors that push women to such vulnerable situation and into poverty.
- C8 The closed-door appointed Commission on Poverty (CoP), set up in 2004, admitted that "among the low-income employees in mid 2005, relatively most of them were female workers, persons aged 40-59". The CoP has not defined a poverty line. Furthermore, the CoP set their priorities on "Inter-generational Poverty" and "Elderly in Poverty" and formed two Task Forces on "Children and Youth" and "District-based Approach". Definitely, women's poverty is not on the Government's agenda.
- C9 WoC shared a gender-mainstreaming checklist to CoP<sup>18</sup>. However, it is clear that the CoP has not made any effort on tackling feminization of poverty as revealed by their lack of a Task Force on women's poverty. In other words, CoP did not respond to the WoC's gender-mainstreaming "checklist" which is not mandatory. CoP has failed to adopt a women's perspective in defining the poor population and in analyzing the structural causes of poverty, thus no gender sensitive policy is suggested to address the problem of feminization of poverty.

### ***Low wages and long working hours***

- C10 The CEDAW Committee expressed concern on "*the highly disproportionate number of women in the lowest wage, especially given the absence of minimum wages law.*" (paragraph 331, Concluding Comments, 1999). To date, a statutory comprehensive Minimum Wage System is still absent. The Government only took small steps in setting up "Instruction on Wage Standard" for the tenderers of Government's direct contracts. Low-income workers, mostly female, do not benefit from the 'Instruction'.

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<sup>18</sup> Revealed in a paper submitted by the Health, Welfare and Food Bureau to the Legislative Council's Subcommittee to Study the Subject of Combating Poverty in March 2006 (LC Paper No. CB(2) 1706/05-06 (2)).

- C11 Due to low wages, many workers have to work long hours or many jobs in order to earn a living or support the family. A tragic incident<sup>19</sup> happened in March 2006 revealed this long-standing problem.
- C12 The Government should set up a statutory minimum wage system to ensure a decent living for low-income workers. The current policy on minimum wage is only applicable to Foreign Domestic Helpers (FDH).
- C13 According to the research “Situation of Hong Kong Marginal Workers in Recent Years”,<sup>20</sup> there were 322,800 working poor<sup>21</sup> in 1999 and 487,000 in 2005, with the working female accounting for high proportion of about 80%.
- C14 One out of every seven working female is surviving below the poverty line.<sup>22</sup> The median monthly earning in 2001 and 2005 remained the same at US\$1,282. Women with monthly earning less than US\$641 increased from 156,900 in 2001 to 224,500 in 2005<sup>23</sup>, a 30% increase.
- C15 Working female below one-third of the median monthly earning (i.e. US\$384) raised by 38% from 62,500 in 2001 to 101,700 in 2005, constituting 7% of the working female population.
- C16 Working hours have been longer since 2001. The number of women working 40 hours or above per week has increased significantly by 15.9% from 1,102,000 in Q4 2001 to 1,277,400 in Q4 2005. Those who worked 50 hours or more increased by 24%. There is no upper limit on the number of working hours under the Employment Ordinance.

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<sup>19</sup> A female cleaner died at the garbage room after working for over 16 hours. The 49-year old woman was a single parent of 5. Two of her daughters were working, yet the income could not cover the living costs. The woman, working 12 hours for one full-time and one half-time cleaning jobs, collected papers for sale after work in order to earn more income. She worked 7 days a week, and over 16 hours a day, because her wage was too low and not enough for a living. Her death was a protest to the lack of minimum wage in Hong Kong.

<sup>20</sup> Oxfam Hong Kong (2000) *Situation of Marginal Workers in Hong Kong*. Hong Kong: Oxfam Hong Kong.

<sup>21</sup> Working poor refer to those among the one-tenth of the working force (excluding under-employed workers) who have the lowest income. Their earnings are less than half of the median income of Hong Kong’s working population, coinciding with the internationally-accepted poverty-line.

<sup>22</sup> We have followed the internationally accepted definition of poverty line, which means half of the median income of working population.

<sup>23</sup> Census and Statistics Department (2001 & 2005) *Annual Digest of Statistics*.

C17 Besides the increase in working hours, there is no guarantee for rest breaks during the day. Both acts do not violate the present Employment Ordinance. A significant number of workers are even being deprived of the right to rest days. Setting upper limits for working hours are important in some particular services such as private aged home services, catering services, cleaning and housing security, of which 12 hours of work are common. These services employ a significant number of female workers.

***Inadequate protection of Employment Ordinance for casual women workers***

C18 The employment conditions for women have continued to deteriorate. There is a trend of longer working hours and suppressed wages in full-time employment and casualization is another trendy mode of employment. Casual workers are excluded from any labor protection under existing employment laws.

C19 The existing Employment Ordinance provides labor protection and benefit entitlement for employees working at least 18 hours a week for a continuous period of four weeks (“4.18”). Benefits include paid maternity leave, sick leave, holidays, rest day, redundancy compensation etc. However, as those workers who do not work according to the definition of employment relation (“4.18”) are not entitled to any protection laid down by the Employment Ordinance, this “4.18” labor regulation has also caused a lot of exploitations of part-time workers. In many cases, terms of employment explicitly stipulate 17.5 hours of work every four weeks, or termination for one week after working for 3.5 weeks, resulting in many new casual work patterns and serious exploitation.

C20 As a result of casualization, more women are falling out from employment benefits protection. The number of part-time workers was increased by 32%, from 82,000 in 1997 to 182,000 in 2004. The percentage of part-time workers against the whole working force increased from 2.8% to 5.5%, many of whom are middle-aged women workers displaced from manufacturing sector.

C21 The Government should review and revise the “4.18” definition of continuous employment under the Employment Ordinance, in order to provide employment protection for women in casual employment.

### ***Age discrimination***

C22 Age discrimination is a threat in job opportunities and employment conditions, especially for middle-aged women. This is particularly so for jobs mostly done by women. The flight attendants’ population in Hong Kong, predominantly women (more than 80%), is required to retire at the age of 35 or 45 years! Some transnational airline companies do not apply the same retirement age for workers employed in their countries of origin, but impose retirement age of 45 only for those employed in Hong Kong. There is no such law provision to prohibit age discrimination.

C23 Many middle-aged women workers displaced from manufacturing sector, with low skill and low education are being discriminated on the basis of age in the job seeking process.

C24 The Government failed to have legislation to prohibit discrimination on the basis of age as recommended by the CEDAW Committee. The Government has not provided a timetable on how to provide legal protection for persons who are being discriminated on the basis of age.

### ***The New Conditions of Stay for Foreign Domestic Helper (FDH)***

C25 Under the New Conditions of Stay (NCS) or two-week rule, Foreign Domestic Helpers (FDH) are allowed to stay for further two weeks as soon as an employment contract has expired or terminated. The chance to get new employment within a two-week period is slim thus forcing FDH to tolerate unreasonable employment conditions.

C26 Some common violations of contract terms include underpay (Indonesian reported 42% underpay, Indonesian Migrant Workers

Union: 2005), no rest days, no paid statutory holidays, no sick leave and medical treatment.

### ***Wage hike***

C27 Minimum wage policy is only applicable to FDH. The Minimum Allowable Wages are reviewed annually by the Government but without genuine respect to FDH. After 5% wage cut in 1998, another US\$51 wage cut was imposed in 2003 with a corresponding US\$51 levy charge towards their employers for the local workers' retraining fund. As a result, the wages of FDH has dropped to US\$419 per month. There was a pay rise of US\$6.4 and another US\$10.2 in 2005 and 2006 respectively when Hong Kong economy has started to recover. It is definitely a small step to return what FDH have been contributing to the Hong Kong economy.

### ***Women with disability***

C28 Disabled women are more likely than non-disabled women to live in households below the poverty level. This is especially true for women with three or more functional limitations.

C29 According to Special Topic Report No. 28 (2001) on people with disabilities and chronic diseases, the unemployment rate of disabled person is 12% which is 2.5 times of that of the general population. Barile (2003)<sup>24</sup> found that the unemployment rate, for disabled women was 16% compared to 13.2% of men with disabilities against 9.9% for women without any disabilities.

C30 The most serious problem amongst women with disabilities is low economic status, which is associated with the lack of medical insurance and consequently, the loss of access to medical care and health services. Apart from income, the unemployed would easily lose self-confidence, social network and linkage with the society.

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<sup>24</sup> Barile (2003) *Disablement and Feminization of Poverty*. Disabled Women's Network Ontario, via <http://dawn.thot.net/mbarile1.html> on 12/4/2006.

C31 The Government should commit to promote employment for people with disabilities and to ensure that they have equal opportunity of participating in productive and gainful employment. The establishment of an employment quota system is essential to enhance employment opportunities of disabled women.

### ***Lack of universal retirement protection***

C32 Among the cases who received Comprehensive Social Security Assistance (CSSA) in Hong Kong in 2004, over half (50.7%) are elderly cases<sup>25</sup>. There were totally 199,085 elderly recipients of CSSA in 2004, while 52.6% were female recipients<sup>26</sup>. As the female elderly population aged 65 and over will increase from 438,900 in 2004 to 1,308,800 in 2033, and the proportion of female elderly of the same age group will increase from 53.6% in 2004 to 58.3% in 2033<sup>27</sup>, it is clear that the number and proportion of women elderly who are poor and have to depend on CSSA will be increasing. It follows that we have to concern about the retirement protection of elderly women.

C33 The Government claims that the existing Mandatory Provident Fund (MPF), together with the citizens' individual savings and CSSA, are the three pillars of retirement protection as suggested by the World Bank. However, these pillars are inadequate in protecting the grassroots women, low-income women and the unpaid homemakers.

C34 It is a myth for low-income women to rely on their own savings as their scanty incomes are mostly used for their daily living. As CSSA is a means-tested scheme, it is by nature, not a universal scheme that provides adequate retirement protection to all citizens.

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<sup>25</sup> Census and Statistics Department (2005). *Hong Kong Monthly Digest of Statistics Feature Article: Statistics on Comprehensive Social Security Assistance Scheme (1995-2004)*.

<sup>26</sup> Census and Statistics Department (2005) *Women and Men in Hong Kong Key Statistics*.

<sup>27</sup> Hong Kong Council of Social Service and Oxfam Hong Kong (2005) *Social Development Thematic Report on Women's Profile*.

C35 MPF was introduced in 2000. The final benefits gained by MPF are totally dependent on the length and amount of contribution from both the employers and the employees. This scheme is not favorable to elderly workers, low-income workers and also those employees who have not had a continuous and long record of joining the scheme. As indicated, a great number of women are engaged in casual or part-time low-income employment and a significant number of them have broken employment records. Therefore, to these underprivileged women workers, the MPF will only provide a meager retirement protection.

C36 MPF is a gender insensitive retirement scheme. Unpaid homemakers are predominantly women and women who are not engaged in employment due to disability, chronic illnesses etc are excluded from the scheme. In 2004, there were 647,500 women homemakers, occupying 98.2% of all homemakers. When these women grow old, they are not protected by any statutory retirement protection scheme, unless they are poor enough to become eligible for CSSA.

### ***Discriminatory social security measures***

C37 New residence requirements of CSSA and the New Dawn Project are examples of gender-insensitive social security measures.

C38 Before 2004, to be eligible for CSSA, applicants must have resided in Hong Kong for at least one year. Effective 1 Jan 2004, residence requirements have changed as follows:

- (a) he/she must have been a Hong Kong resident for at least seven years; and
- (b) he/she must have resided in Hong Kong continuously for at least one year immediately prior the date of application.

C39 Hong Kong residents aged below 18 are exempted from the residence requirements in (a) and (b) above. It is obvious that even though a newly arrived woman is very poor, she is not entitled to CSSA support until she has resided in Hong Kong for seven years. On the contrary

her children, disregarding of their period of residency, will be covered by the CSSA protection. The eligibility criterion (a), therefore, is definitely discriminative against the immigrant women but not their children.

- C40 Between December 2002 and December 2003, the number of CSSA cases with new arrival recipients having resided in Hong Kong for less than 7 years increased from 36,023 to 40,510 (an annual rise of 12.4%), while the increase rate of the same cases between December 2003 and December 2004 dropped sharply to 2.6% (from 40,510 to 41,571 cases)<sup>28</sup>. It demonstrates clearly that after the restriction on residency requirement was introduced on 1 Jan 2004, the number of new arrival CSSA cases dropped tremendously and a significant number of new arrival women had to live in poverty.
- C41 The New Dawn (ND) Project specifically designed by the Social Welfare Department is an 18-month trial employment assistance program implemented for period Apr 2006 to September 2007. Single parents and child carers on CSSA whose youngest child is aged 12 to 14 are required to join the ND Project to actively seek paid employment with working hours of not less than 32 per month. Project participants are required to sign a Job Seeker's Undertaking to state that they are willing to make efforts to find and engage in paid jobs and fully understand their obligations to comply with all the requirements. Social Welfare Department claims that this project aims at assisting the target single parents and carers to enhance capacity for self-help; integrate into society and move towards self-reliance through engagement in work<sup>29</sup>. However, before introduction of ND project, these target CSSA recipients were not required to engage in paid jobs.
- C42 HK\$200 (US\$26) will be deducted from their monthly CSSA entitlements for those who refuse to sign the Job Seeker's Undertaking or fail to comply with any of the requirements under the ND Project without good reasons. It demonstrates clearly that these single parents and carers are punished for not following these new

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<sup>28</sup> Census and Statistics Department (2005) *Hong Kong Monthly Digest of Statistics Feature Article: Statistics on Comprehensive Social Security Assistance Scheme (1995-2004)*.

<sup>29</sup> Social Welfare Department [http://www.swd.gov.hk/en/index/site\\_thematic/#58](http://www.swd.gov.hk/en/index/site_thematic/#58).

guidelines. This ND Project is criticized for compelling single parents and carers to involve into paid work in the disguise of building up self-reliance. It sounds that unpaid work made by these single parents (in the form of voluntary work, homemaking etc.) are of lesser value than paid work. In this regard, this social security measure is discriminating against the caring role of these CSSA recipients.

C43 According to the data provided by the Social Welfare Department to the Legislative Council, 18,000 target participants were affected by this ND project as on 31 October 2005<sup>30</sup>. These target participants occupied about 45.8% of the total single parents CSSA cases which amounted to 39,307 cases in May 2006<sup>31</sup>.

C44 Single parents occupy the second largest group of CSSA recipients. Amongst the 542,017 CSSA recipients, 102,623 are single parent families<sup>32</sup>, of which 81.7% were female, mostly in their thirties and forties with 61.6% being divorced or separated<sup>33</sup>. It is undeniable that most of these female single parents occupy a significant number of the poor women's population. A reason for their dependence on CSSA is the lack of maintenance or failure in getting maintenance. Women's rights NGOs have been urging the Government to set up of a Maintenance Board to facilitate the single parent family to obtain maintenance payments. In 1997 and 1999, Legislative Council passed the motion to urge the Government to set up a Maintenance Board. Even under such great pressure, the Government still refuses to set up a Maintenance Board.

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<sup>30</sup> Legislative Council

[http://www.legco.gov.hk/yr05-06/english/panels/ws/ws\\_cssa/papers/ws\\_cssa1031cb2-175-1e.pdf](http://www.legco.gov.hk/yr05-06/english/panels/ws/ws_cssa/papers/ws_cssa1031cb2-175-1e.pdf).

<sup>31</sup> Social Welfare Department (2006) *Statistics and Figures on Social Security*

[http://www.swd.gov.hk/en/index/site\\_pubsvc/page\\_socsecu/sub\\_statistics/](http://www.swd.gov.hk/en/index/site_pubsvc/page_socsecu/sub_statistics/) (as in Jun 2006)

<sup>32</sup> Census and Statistics Department (2005) *Women and Men in Hong Kong Key Statistics*.

<sup>33</sup> Census and Statistics Department (2005) *Hong Kong Monthly Digest of Statistics Feature Article: Statistics on Comprehensive Social Security Assistance Scheme (1995-2004)*.

## Part D Violence Against Women

### (Article 5: Stereotyping and Prejudices)

#### *Lack of coordinated effort*

- D1 “Working Group on Combating Violence”, a cross-sector collaboration coordinated by the Social Welfare Department, fails to enforce other government departments’ compliance to the two related guidelines<sup>34</sup>. Further, the procedural guideline has no monitoring mechanism and that the functions of these guidelines are still to be realized. Occasional failure to provide service information to victims of violence against women (VAW) revealed that many frontline personnel received insufficient training on the administrative procedures.
- D2 The Government has no central database on VAW<sup>35</sup>. Due to the lack of analysis of the different forms of violence, no strategies based on a women’s perspective could be developed to deal with gender-based violence. According to the statistics provided by the Social Welfare Department, there were 3,153 cases of battered female spouses in 2005, which was 140% of the 2001 figure (2254) and 325% of 1998’s (970). About 90% of victims of spousal abuse cases were women and 61% of child abuse victims were female. In 2005, only 234 domestic violence cases were brought to the court, 118 abusers were found guilty and 27 were imprisoned. The rest of the abusers were released and received no counseling or treatment.
- D3 Domestic violence is often neglected. An unpalatable tragedy<sup>36</sup> in 2004 reflected a severe lack of coordination between different

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<sup>34</sup> *Multi-disciplinary Guidelines on the Handling of Battered Spouse Cases* (1996) and *Procedural Guidelines for Handling Sexual Violence Cases* (2002)

<sup>35</sup> Social Welfare Department and the Police maintain separate database for their own analysis.

<sup>36</sup> A newly arrived immigrant mother, Jing, and her 5-year-old twin daughters, were allegedly stabbed by her husband, Li, died 13 days later in hospital. Jing sought help from different government and welfare agencies, including the Social Welfare Department, crisis center and police numerous times before the murder took place. Unfortunately, her pleas went largely unnoticed amongst the poorly coordinated government departments and welfare agencies. The last social worker who dealt with Li convicted that she did not recognize herself handling a domestic violence case, despite that Li had threatened to kill Jing on several occasions. The duty officer at the local police station failed to detect the danger of Jing was in when she requested to be escorted home on the day when the violence occurred. Breaching standard practice, the police officer did not record her visit to the police station.

departments in protecting abused women. This incident also demonstrated the lack of sensitivity in domestic violence amongst many trained front-line workers, involving social workers, police officers and medical professionals. Inevitably, this reflected that the guidelines and training for social workers and police officers were woefully inadequate.

### ***Lack of gender sensitivity amongst professionals***

- D4 Discrimination against women, especially victims of VAW, was long neglected by the Government. This negative attitude without gender perspective is very common amongst the professionals.
- D5 In a research “Attitudes Toward Rape and Sexual Assault: A Comparative Analysis of Professional Groups in Hong Kong”<sup>37</sup>, it was found that “*police officers consistently obtain the lowest mean scores in all the scales. The police officers are especially holding a hostile attitude towards women when compared with the other 2 target groups*”.
- D6 A local research on medical professional’s attitude towards rape victims<sup>38</sup>, revealed that 33% of emergency ward doctors believed that women are partly to be blamed for rape (for their appearance, behaviors etc); 36% believed that a woman should be responsible for preventing her own rape; 7% believed that women secretly have the desire to be raped; 10% believed that a woman could successfully resist rape if she wanted to; and 78% of the respondents had received no formal training on dealing with rape victims.
- D7 To date, the Government did not provide support or instruction to schools on setting up mechanism to respond to sexual violence in schools. A research on “Secondary School Students’ Views on Sexual Violence”<sup>39</sup> showed that 29% of sexual violence against

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<sup>37</sup> Law, Lik Hang Darick (2004) *Attitudes Toward Rape and Sexual Assault: A Comparative Analysis of Professional Groups in Hong Kong*.

<sup>38</sup> Wong, Wong, Lau & Lau (2002)

<sup>39</sup> Chiu, W.S. & Ng, W.C. (2002) *Survey Report on Secondary School Students’ Views on Sexual Violence*. Hong Kong: Association Concerning Sexual Violence Against Women.

secondary school students happened in schools. Another research conducted by the Chinese University of Hong Kong<sup>40</sup> revealed that 43% of secondary school students faced sexual violence from schoolmates. 51% of the teachers interviewed in another research “Secondary School Teachers’ Views and Knowledge on Sexual Violence” admitted that they were not capable to handle sexual violence against students<sup>41</sup>.

### ***Lack of support to NGOs***

- D8 The Government does not allocate adequate resources in its budget to the elimination of VAW. In the Second Report, the Government promised to review the 3-year pilot service project of RainLily (the only rape crisis centre that offers one-stop service in Hong Kong). The review was not conducted; request for financial support from Government was denied and the continuation of this unique service was still unclear. This demonstrated the lack of willingness to fulfill its duties under the CEDAW.
- D9 Victims who do not receive one-stop service would have to run between police stations, forensic department for evidence collection, hospital emergency rooms for medical treatments and Health Department clinics for Sexually Transmitted Disease checks.

### ***New legislation and law reform***

- D10 Hong Kong should take reference of the law reforms in the UK, US and Taiwan to criminalize domestic violence by reviewing the existing Domestic Violence Ordinance (DVO). All relevant ordinances, civil or criminal, relating to domestic violence e.g. the DVO (Cap. 189), Crimes Ordinance (Cap. 200), Offences Against the Person Ordinance (Cap. 212) including rape, marital rape, assault,

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<sup>40</sup> Tang, S.K. (2004) *青少年及兒童朋輩間性侵犯問題調查 (A survey on peer sexual abuse among adolescents and children)* (in Chinese). Hong Kong: The Chinese University of Hong Kong.

<sup>41</sup> Chiu, W.S. & Ng, W.C. (2003) *Survey Report on Secondary School Teachers’ Views and Knowledge on Sexual Violence*. Hong Kong: Association Concerning Sexual Violence Against Women.

harassment, stalking, injunction, etc shall be brought together under the new and comprehensive DVO.

- D11 The definitions of “domestic violence” and “family members” in the ordinance are narrow. “Violence” should include physical assault, sexual violence, psychological abuse, neglect (for children and elderly), stalking and exposing a child to domestic violence while “domestic” shall include current and former partners and extended family members. Besides, the length of injunction order was very short that hardly allow victims of abuse to deal with divorce-related matters.
- D12 Logistic support, e.g. protection of victims of VAW as witnesses; court-mandated batterers’ counseling program to help the batterers to change their attitudes towards VAW etc. are important components to be included in the existing ordinance.
- D13 There are two major but separate procedures dealing with domestic violence cases. The criminal aspects are dealt with in criminal courts like magistracies<sup>42</sup> whilst the civil aspects will be dealt with in the District Court<sup>43</sup>. Other family related matters such as application for divorce, child custody, maintenance, etc, are separately dealt with in the Family Court. Such system is totally unsatisfactory. The victims have to be testified several times and the holding of responsibility for batterers is diffused due to inconsistent judgment made by different judges based on different ordinances. Thus, it fails to provide “*appropriate protective and support services*” to the victims of domestic violence cases.
- D14 It is noteworthy that the Law Reform Commission completed a study on stalking in 2000 and proposed to legislate against such harassment behavior. There was only little progress and the Law Reform Commission has also expressed concern on the much delayed legislation progress.

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<sup>42</sup> Perpetrators of domestic violence are mainly punished under various sections of two statute laws: Crimes Ordinance, Cap. 200 and Offences Against the Person Ordinance, Cap. 212.

<sup>43</sup> The only civil aspect of domestic violence cases provided for by the laws of Hong Kong is the application of an Injunction Order under the Domestic Violence Ordinance, Cap. 189 (DVO).

## ***Problems of law implementation***

- D15 In fear of social criticism, the reporting rate of VAW is low. From 2001 to Sept 2003, the rates of criminal charges laid against alleged offenders were from 14% to 24% for domestic violence cases and 25% to 34% for child abuse cases<sup>44</sup>. Amongst the rape victims served by RainLily (455 cases, from Jan 2001 to Jun 2004), only 47% (215 cases) reported to the police. Statistics from the RainLily hotline also revealed that only 11% of the callers who experienced VAW reported to the police. Bearing in mind that those approached RainLily are victims more inclined to seek help, thus the number of overall cases are expected to be much higher.
- D16 The conviction rate of reported sexual violence cases is very low. From Jan 2001 to Jun 2004, amongst the 215 reported cases to police through RainLily, 50.7% of the cases investigation was discontinued by police. Among these 215 cases, only 48 cases were put to the court, and yet the conviction rate for cases reported to police is only 18.4%<sup>45</sup>.
- D17 The unsympathetic and insensitive environment in court presented a second assault to victims of VAW and further deterred them from reporting. The remarks of a gang rape handled by barrister Finny Chan<sup>46</sup> demonstrated a general lack of gender sensitivity amongst personnel in the legal system and the urgent need for training.
- D18 Initiation of criminal proceedings against batterers relies solely on the victim's willingness and determination. The lack of proactive actions within the legal system allows the continuation of abusive behaviour of the abusers. It is suggested that under sufficient evidence, the police can lay charge on the abusers without the victims' consent to act as witnesses, thus empower the women victims to seek protection. At

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44 Chan, K.L. (2005) *Study on Child Abuse and Spouse Battering: Report on findings of Household Survey*. [A Consultancy Study Commissioned by the SWD of the HKSAR.] Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong.

45 Ng, W.C. (2005) *Voice of 466 victims of sexual violence from RainLily cases statistic: 2001-6/2004*. Hong Kong: Association Concerning sexual Violence Against Women: Hong Kong.

46 In a case of gang rape, barrister Finny Chan Fei Nai made the following remark when defending the prosecuted: "a gentlemanly sort of rape.... as soon as one finished he leaves the room and another takes over" Mrs. Justice Verina Bokhary's response was "The victim was slightly more vindictive than hurt".

the same time, a witness protection program for these women is needed.

- D19 The report of child sexual abuse is not mandatory and the responsibility lies within the families. This put the sexually abused children in a very vulnerable condition. Moreover, there is no mandatory criminal record check for all frontline workers who are involved in services for children.