

Outline of the Third Report of the Hong Kong Special Administrative Region of the
People's Republic of China in the light of the United Nations Convention on the
Elimination of All Forms of Discrimination Against Women

COMMENTS OF THE HONG KONG BAR ASSOCIATION

General Observation

1. The Hong Kong Bar Association (“the HKBA”) proposes that the general profile of the Hong Kong Special Administrative Region (“the HKSAR”) should also include a concise and accurate summary on what the HKSAR Government has done or intends to do (and within what timeframe) to address the areas of concern highlighted in the Concluding Comments of the Committee (CEDAW/C/CHN/CO/6, 25 August 2006) (“the Concluding Comments”).

Article 1: Defining Discrimination

Article 4: Temporary Special Measures

2. The HKBA notes the proposal in paragraph 8 of the outline to state in the Third Report the reservation entered in respect of Article 4 and the justification for its continued maintenance.
3. In this regard, the HKBA invites the HKSAR Government to seriously consider whether it is necessary or justifiable to retain the relevant reservation, which provides that *“The Government of the People's Republic of China understands, on behalf of the Hong Kong Special Administrative Region, the main purpose of the Convention, in the light of the definition contained in article 1, to be the reduction, in accordance with its terms, of discrimination against women, and does not therefore regard the Convention as imposing any requirement upon the Hong Kong Special Administrative Region to repeal or modify any of its*

existing laws, regulations, customs or practices which provide for women to be treated more favourably than men, whether temporarily or in the longer term. Undertakings by the Government of the People's Republic of China on behalf of the Hong Kong Special Administrative Region under article 4, paragraph 1, and other provisions of the Convention are to be construed accordingly.”

4. It is suggested that such reservation is unnecessary if it is intended to cover measures which differentiate on the basis of gender but which in substance alleviate gender inequality, since such measures are not prohibited by Article 1 of the Convention and in fact expressly permitted by Article 4(1). On the other hand, if the reservation is intended to preserve measures ostensibly in favour of women but in fact perpetuate gender-based stereotypes or the denial of equality, the reservation is incompatible with the object and purpose of the Convention and should in any event be withdrawn.

Article 5: Stereotyping and Prejudice

5. Under paragraph 36 of the Concluding Comments, the Committee “*urges the Government of the Hong Kong Special Administrative Region to strengthen its efforts in combating all forms of violence against women, including domestic violence.*” The measures that have been adopted by the HKSAR Government to reduce the occurrence of sexual offences, or its proposals for the implementation of such measures, should be fully addressed in the Third Report.
6. As such, it is suggested that under the sub-heading “(d) Protection of women against violence”, a summary of the following reports prepared by the Law Reform Commission should be included:
 - (1) Sexual Offences Records Checks for Child-related Work: Interim Proposals (proposing the establishment of an administrative scheme to enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons to check the criminal conviction records for sexual offences of employees; see: <http://www.hkreform.gov.hk/en/publications/rsexoff.htm>).

- (2) Interim Proposals on a Sex Offender Register (Consultation Paper) (see: <http://www.hkreform.gov.hk/en/publications/sexoff.htm>).
7. Further, despite the laudable efforts of the HKSAR Government in 2008 to amend the Domestic and Cohabitation Relationships Violence Ordinance (previously the Domestic Violence Ordinance) to strengthen protection for victims of domestic violence, there are still outstanding issues concerning problems of violence, harassment and other offensive behaviour towards women which the HKBA would invite the HKSAR Government to comment on in the Third Report.
 8. In particular, it has long been observed that stalking is a social problem which is inadequately addressed under existing laws and policies. Existing criminal law deals mainly with single incidents of criminal behaviour and is often inapt in dealing with stalking behaviour which is continuous and cumulative in effect. Neither are victims of stalking, who are often women, sufficiently protected by provisions of the Domestic and Cohabitation Relationships Violence Ordinance which is limited to present or former spouses and cohabitants.
 9. The Law Reform Commission produced a report on stalking in 2000, proposing legislation against such harassment behaviour, but it appears that there has been little progress in the matter since. The HKBA therefore urges the HKSAR Government to review and update the Committee on this issue in the Third Report.

Article 11: Equality in Employment and Labour Rights

10. In addition to the relevant legislation against discrimination in employment, the HKBA considers that the HKSAR Government should indicate in the Third Report the recent introduction of the minimum wage legislation and to provide reasons for the exclusion of women foreign domestic helpers from such legislation.

Article 12: Equality in Access to Health Facilities

11. The HKBA invites the HKSAR Government to address the effect of the decision of the Court of Appeal in *Fok Chun Wa and another v. the Hospital Authority and another* CACV30/2009 (10 May 2010), which concerns a challenge brought by a HKSAR permanent resident and his mainland Chinese wife against the Hospital Authority's policy of charging mainland mothers higher obstetric fees. The Court of Appeal upheld the constitutionality of the policy of charging higher fees, but considered that the Authority's refusal to reconsider an application for a waiver or reduction of fees to be unlawful. It is hoped that the HKSAR Government would evaluate the issues concerning women's access to health facilities in Hong Kong arising from this case.

Article 13: Women in Economic, Social and Cultural Life

12. It is noted that the HKSAR Government proposes in paragraph 17 of the outline to advise the Committee of major developments in, among others, the social security system and in particular, the Comprehensive Social Security Assistance Scheme ("CSSA") in Hong Kong.
13. In this connection, the HKBA invites the HKSAR Government to address in the Third Report the impact of the Court of First Instance decision in *Yao Man Fai George v The Director of Social Welfare* (HCAL 69/2009, 21 June 2010, Andrew Cheung J), in which the rule requiring less than 56 days absence in Hong Kong one year prior to an application for CSSA was held as in violation of the Basic Law. It is noted that the longer life expectancy of women renders social welfare a particularly pertinent issue for them, and there has long been public concern over the fact that many elderly Hong Kong residents who live on the mainland suffer great difficulties in applying for welfare assistance and the old age allowance (i.e. "fruit money").

14. The HKBA also invites the HKSAR Government to explain developments concerning housing policy measures adopted to cater for the increasing needs of single elderly women.

Article 14: Rural Women

15. The HKBA urges the HKSAR Government to pay serious consideration to paragraphs 37 and 38 of the Concluding Comments and explain any progress (or the lack thereof) in repealing discriminatory provisions under the Small House Policy for the New Territories to ensure that indigenous women have the same rights and access to property as indigenous men.

Article 16: Equality in Family Law

16. The HKBA invites the HKSAR to address in Third Report whether and how the interests of women and children in matrimonial litigation are better protected pursuant to the Civil Justice Reform, and in particular, the impact of promoting mediation as a alternative method of dispute resolution.

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Hong Kong Bar Association.