

**The Convention on the Elimination of All
Forms of Discrimination against Women and
Violence against Women: Implications for
Hong Kong**

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SYNOPSIS

The Convention on the Elimination of All Forms of Discrimination, applicable to Hong Kong since October 1996, requires States parties to take steps to address all forms of violence against women. This paper first describes the increasing international concern with violence against women, the manner in which the CEDAW Convention has been interpreted to cover various forms of gender-specific violence, and the obligations binding the Hong Kong SAR government under international law.

It then describes the examination of violence against women that took place as part of the review by the Committee on the Elimination of Discrimination against Women of Hong Kong's initial report to the United Nations under the Convention. The paper argues that the standards of the Convention provide a useful framework for reviewing the situation and generating a Hong Kong plan of action to address violence against women.

Finally, the paper makes a number of recommendations for steps that could be taken to address violence against women in Hong Kong more effectively. These include the establishment of a national machinery for women, a comprehensive review of the present situation and development of a plan of action, a greater role for the Equal Opportunities Commission in addressing gender-specific violence, and a review of the legal system in its responses to the issue.

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The Convention on the Elimination of All Forms of Discrimination against Women and Violence against Women: Implications for Hong Kong

Andrew Byrnes*

A. *Introduction*

This paper takes as its theme the relevance of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (“the CEDAW Convention” or “the Convention”)’ to issues of violence against women in Hong Kong. It first describes the

Women,²

violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general

Article 2 of the Inter-American Convention provides:

“Violence against women shall be understood to include physical, sexual and psychological violence:

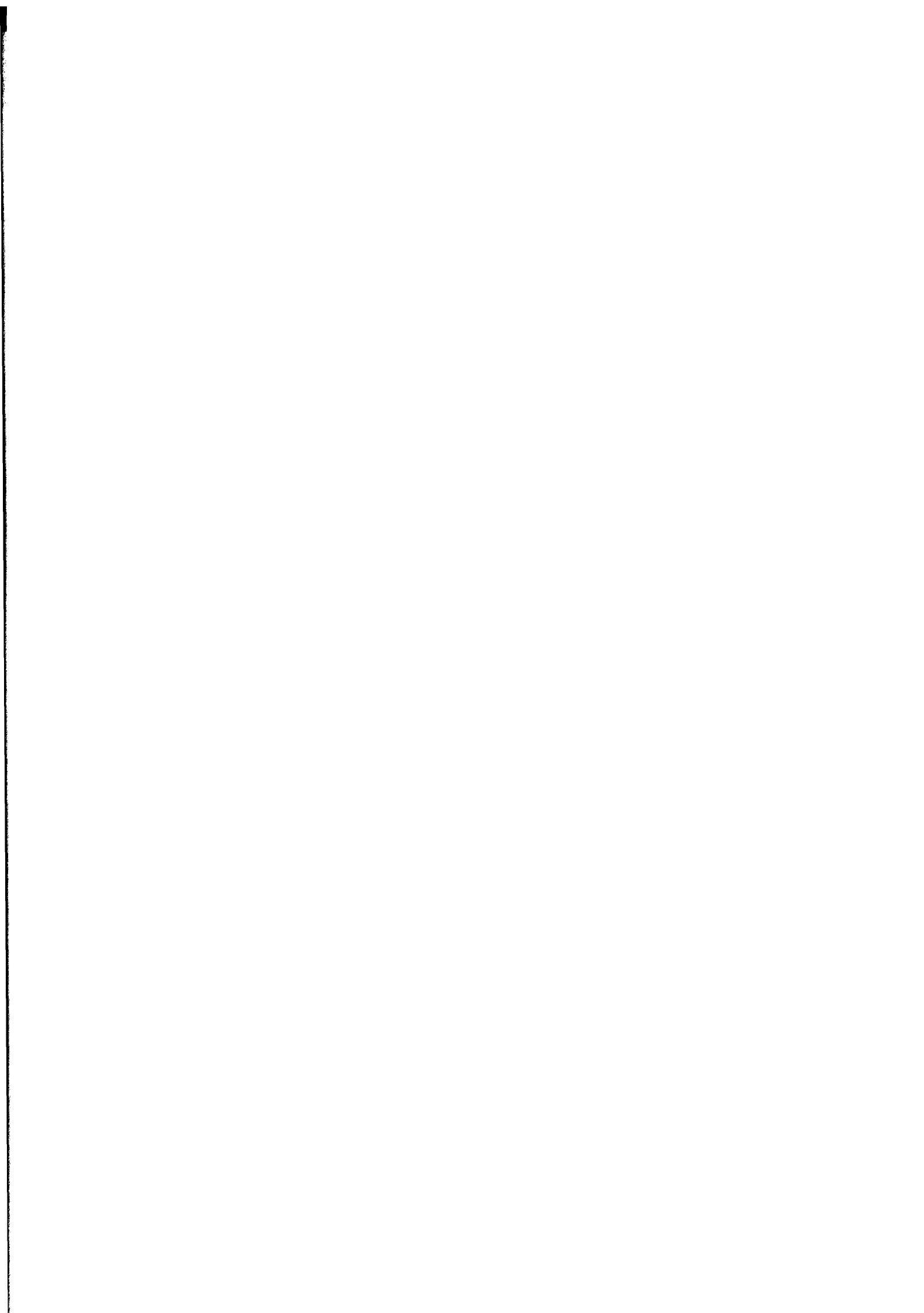
- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;*
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and*
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.”*

⁶ *For material on the Convention and Hong Kong and the hearings by the CEDAW Committee, see the CEDAW website of the Centre for Comparative and Public Law, University of Hong Kong: [http://www.hku.hk/cccp/cedaw . htm](http://www.hku.hk/cccp/cedaw.htm)[hereinafter “the HKU CEDAW website”].*

These functions include the examination of reports submitted by those countries that have accepted the provisions of the Convention by ratification or accession (“States parties). The CEDAW Committee has consistently asked States to provide information about the various forms of violence against women, and included reference to the subject **in its concluding comments** on the reports of individual States parties.

In addition, the Committee has made use of its power to adopt “suggestions and general recommendations” to set out its views of how the Convention applies to violence against women and obliges States parties to take measures in response to it. Of particular importance in relation to violence have been two **General recommendations** adopted by the Committee dealing specifically with the topic -- **General recommendations 12 (1989)** and **19 (1992)** (of which the latter is much more detailed)’ – as well as other General recommendations in which violence is seen as an important factor influencing the full enjoyment of other rights (**e.g., General recommendation 24 (1999)** on the right to health’).

The Committee takes the view that gender-specific violence against women is a form of “discrimination against women”, as that term is defined in article 1 of the Convention. This includes “violence that is directed against a woman because she is a woman or that affects



Of course, many of the measures suggested by CEDAW have been suggested by others, including many in Hong Kong. The relevance of CEDAW is that the government is under an international legal obligation to take appropriate measures to address the problem - it is not something that can be lightly ignored or half-heartedly pursued.

Furthermore, while the obligations under the CEDAW Convention are the most directly relevant and have been elaborated in greatest detail, obligations under other treaties applicable to Hong Kong also require the government to address many forms of violence against women.

In addition, the guarantees contained in Chapter III of the Basic Law, including the incorporation by article 39 of the two International Covenants on Human Rights, also impose both positive and negative obligations on the government to address violence against women in its various forms.

A role for the Equal Opportunities Commission?

Finally, in my view the issue of violence against women falls with the jurisdiction of the Hong Kong Equal Opportunities Commission. This includes not just sexual harassment, which is explicitly dealt with in the Sex Discrimination Ordinance (Cap 480) ("the SDO" or "the Ordinance"), but other forms of gender-based violence as well. This view is based on the argument that gender-based violence qualifies as "discrimination against women" as defined in the SDO. Although the CEDAW Convention is not referred to in the SDO, it may arguably be legitimately taken into account in its interpretation, since the SDO was enacted in part to permit the extension of the Convention to Hong Kong. However, this interpretation of the SDO is not dependent on taking the CEDAW Convention into account.

The consequence of this is that the Equal Opportunities Commission arguably has a broad jurisdiction to review laws, policies and practices relating to gender-based violence. This arises out of functions conferred on the Commission by s 64 of the Sex Discrimination

under that section rather than under its general functions set out in s 64.

In its normal work, or as part of a formal investigation under s 70 of the Ordinance, the Commission would arguably have the power to consider the adequacy of the government's policies and programmes in relation to violence against women.

C. CEDAW and Hong Kong: the initial report of the Hong Kong SAR under the Convention

The following section looks at the application of the CEDAW Convention to Hong Kong and the extent to which the provisions which cover violence against women have been implemented in Hong Kong.

The CEDAW Convention was applied to Hong Kong with effect from 14 October 1996, after many years of lobbying for its extensions by women's groups and other human rights groups in Hong Kong. At the time of its extension to Hong Kong, the United Kingdom government attached a number of declarations and reservations limiting the obligations it accepted in relation to Hong Kong. Shortly before 1 July 1997, the People's Republic of China formally declared that the Convention would continue to apply to the Hong Kong SAR, subject to reservations and declarations that were in substance the same as those entered by the United Kingdom.¹⁴

Under article 18 of the Convention States parties are obliged to submit reports to the CEDAW Committee on their implementation of the Convention. The first report is due within a year of entry into force of the Convention (by 14 October 1997 in the case of Hong Kong), and reports are then due every four years after that. While the initial report of Hong Kong was prepared in a timely fashion by the Hong Kong SAR government, its submission had to await the finalisation of a supplement to the combined third and fourth periodic reports of China dealing with Mainland China." That supplement,¹⁶ together with the Hong Kong SAR report, were submitted at the end of August 1998 and made available in Hong Kong in mid-September 1998. The reports on Mainland China and the Hong Kong SAR were considered by the CEDAW Committee on 1 and 2 February 1999, and the Committee's concluding comments on the report became available soon afterwards.

Violence against women in the Hong Kong SAR government's report and NGO critiques

The initial report of the Hong Kong SAR government under the Convention" dealt with a number of aspects of violence against women, including sexual harassment in employment,

¹⁴ The relevant documents are available on-line on the HKU CEDAW website.

¹⁵ UN Doc CEDAW/C/CHN/3-4

¹⁶ UN Doc CEDAW/C/CHN/3-4/Add. 1

¹⁷ UN Doc CEDAW/C/CHN/3-4/Add.2, available on-line through the HKU CEDAW website (link to Home Affairs Bureau: http://www.info.gov.hk/hab/top_issue/index_e.htm or [/index-c.htm](http://www.info.gov.hk/hab/top_issue/index-c.htm))

domestic violence, but failed to mention others of some importance. In addition, critics of the report considered that the report failed to reflect the considerable problems that still existed in some areas even where some measures to address violence had been taken. They also pointed out that the information provided on some topics was incomplete, that some measures were inadequate in some areas and that the government's overall approach to issues lacked coordination and was insufficiently responsive to the needs of those who were subjected to different forms of gender-based violence.

The following are some of the concerns expressed by non-governmental organisations which prepared critiques of the government's report under the CEDAW Convention:¹⁸

- Limited statistical data in a number of areas of violence against women
- A “family-oriented” approach to spousal violence which places the unity of the (nuclear) family unit above the individual rights of the woman to be free from violence
- An attitude on the part of law enforcement authorities that spousal abuse is a “private” matter rather than a matter of individual rights and criminal law
- Insufficient training and sensitisation of law enforcement **officials** to equip them to handle such cases appropriately
- Inadequate preventive public education on issues of violence, including efforts to eradicate the stigma that attaches to those subjected to sexual violence
- Ineffective coordination of government policies and programmes addressing violence, despite the existence of the on the Interdisciplinary Working Group on Prevention of Spouse Battering
- Problems of access to alternative housing for battered spouses who wish to leave the matrimonial residence
- Inadequate resources for the provision of remedial and rehabilitative services to those subjected to violence by spouses and partners.
- The failure of the criminal law clearly to state that rape of a wife by her husband constitutes “unlawful sexual intercourse” under the Crimes Ordinance; a need to reexamine the substantive categories of criminal law relating to sexual assault, as well as procedural and evidentiary rules

¹⁸ This non-exhaustive listing is based on the papers presented at the seminar on *Hong Kong and the Implementation of the Convention of All **Forms** of Discrimination **against** Women*, Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong, on 28 November 1998, as well as reports submitted to the CEDAW Committee by a number of Hong Kong NGOs. Most of these papers are available on the HKU CEDAW **website**.

- | The need for further education and sensitisation of medical health professionals, law enforcement officials, lawyers and judges involved in responding to the needs of women subjected to various forms of violence
- | Inadequate or nonenforcement of the law relating to violence against women in the case of sex workers
- | Failure on the part of government to address the question of trafficking and forced prostitution adequately and a tendency punish or deport trafficked women from outside Hong Kong rather than seeking to use their evidence to attack the syndicates involved in this trade
- | The need for better education and services in relation to the abuse of girls, including the sexual abuse of girls in the family context.

These criticisms suggest that the Hong Kong government may have failed in a number of areas to implement fully its obligations under the Convention. While the government has clearly done much, the inadequacies which are claimed to exist suggest that they may be many more measures that the government may be obliged to undertake in order to live up to its obligation “to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”.¹⁹

CEDAW's concluding comments

All these inadequacies were brought to the attention of the CEDAW Committee in various forms, together with the many other concerns about discrimination against women in Hong Kong. In its concluding comments on the Hong Kong report, the Committee identified a number of issues about which it was concerned. The relevant paragraphs read:

“73. The Committee is concerned that the Domestic Violence Ordinance applies only to physical abuse in marital relations, and that it does not provide for counselling and treatment of offenders. It also notes with concern that the report does not contain information on rape and that marital rape is not considered a criminal offence in the Hong Kong Special Administrative Region.

74. The Committee recommends that the Administration enhance services for survivors of domestic violence, including domestic workers, with a view to their empowerment and rehabilitation, including through psychological counselling, legal aid and temporary shelter and appropriate health services. The Committee also urges the amendment of existing legislation to include marital rape as a criminal offence. It requests the Government to provide information on sexual crimes, including rape and marital rape, in its next report under article 18 of the Convention.

75. The Committee notes that while prostitution itself is not unlawful, provisions to ensure the health and safety of sex workers are unclear, and there may be

¹⁹ Article 2 of the Convention.

discrimination against women in the enforcement of related crimes.

76. The Committee recommends that adequate regulations to protect women sex workers be put in place and enforced. It also recommends that the Government monitor the links between the presence of migrant women, a regulatory approach to prostitution and trafficking in women.

77. The Committee commends efforts to develop a standard labour contract for migrant workers with provision for minimum wages, but it is concerned that these workers can be exposed to abuse and custodial violence.

78. The Committee recommends that the administration monitors and takes action to protect women migrant workers from abuse and violence, as well as to prevent such violence. ”

While the Committee took up only a number of the problems raised by Hong Kong NGOs, it should not be assumed that its failure to take up others is evidence that the Hong Kong government is not obliged under the Convention to address those matters. One should remember that the Committee had only a very brief meeting on the Hong Kong report, which was considered together with the reports on Mainland China and which therefore received less detailed attention than it might otherwise have received.

D. Conclusions

It seems clear that Hong Kong, like nearly all other jurisdictions, has some way to go in order to address violence against women adequately and in so doing fulfil its obligations under the CEDAW Convention. The hearings on Hong Kong's initial report under the Convention provide a useful opportunity for reviewing the progress that has been made and the many challenges and problems that still need to be overcome. Many detailed suggestions have already been made and will continue to be made by those who are expert in the various fields involved, and it serves no real point in rehearsing them here.

However, I would like to make a number of suggestions which derive from the CEDAW framework and the discussion that has taken place around the initial Hong Kong report. In addition to responding substantively to the specific recommendations made by the CEDAW Committee in its concluding comments, the following should be done:

- (a) the government must establish a proper and effective national machinery within government, as recommended by the CEDAW Committee and many Hong Kong organisations : this would be responsible for developing and implementing, in consultation with NGOs, a coordinated and comprehensive government policy to address violence that overcomes the existing problems;
- (b) there should be a comprehensive review of the extent to which violence against

women in Hong Kong is being adequately addressed; the CEDAW Convention and the jurisprudence of the CEDAW Committee would provide a useful framework for this review, which should lead to the adoption of a regional plan to eliminate violence against women;

- (c) the Equal Opportunities Commission should take up the issue of violence against women as a priority issue, both as part of the performance of its general functions and also, as appropriate, as part of its investigative and other roles; and
- (d) a study of gender and the legal system (including the courts) should be carried out, in order to assess the extent to which the legal system fails adequately to respond to violence against women and the reasons for this, and to devise an appropriate plan of action to address any problems that are identified.

ANNEX A

**SOME USEFUL SOURCES ON THE CONVENTION ON THE
ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST
WOMEN**

On-line resources

United Nations Division for the Advancement of Women website:
[http:// www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw)

CEDAW website of the Centre for Comparative and Public Law, Faculty of Law, The University of Hong Kong: <http://www.hku.hk/ccpl/cedaw.htm> (with many links to Hong Kong material as well as international material)

Rebecca Cook and Valerie Oosterveld, Select Bibliography on Women's Rights: updated and made available on-line through the Internet by the Laskin Law Library at the University of Toronto: http://www.law.utoronto.ca/pubs/h_rights.htm

International Women's Rights Action Watch (IWRAW) website:

CEDAW-in-Action Internet Working Group
(to conclude mid-1 999, archived at <http://www.sdn.org/cedaw/>)

UNIFEM's Internet Working Group to End Violence against Women (concluded March 1999, archived at



Other publications

Philip Alston, "The Purposes of Reporting", in Office of the High Commissioner for Human Rights, United Nations Institute for Training and Research and United Nations Staff College Project, ***Manual on Human Rights Reporting under Six Major Human Rights Instruments*** (New York: United Nations, 2nd ed 1997) 19-24

Cecil Bernard and Petter Wille, "The Preparation and Drafting of a National Report", in Office of the High Commissioner for Human Rights, United Nations Institute for Training and Research and United Nations Staff College Project, **Manual on Human Rights Reporting under Six Major Human Rights Instruments** (New York: United Nations, 2nd ed 1997) 25-36

Noreen Burrows, "The 1979 Convention on the Elimination of All Forms of Discrimination Against Women", (1985) **Netherlands International Law Review** 419-457

Andrew Bymes, Jane Connors and Lum Bik (eds), **Advancing the Human Rights of Women. Using International Instruments in Domestic Litigation: Papers and statements from the Asia/South Pacific Regional Judicial Colloquium**, Hong Kong, 20-22 May 1996 (London: Commonwealth Secretariat, 1997)

Andrew Bymes, "Using International Human Rights Norms in Constitutional Interpretation to Advance the Human Rights of Women", paper presented at the 50th Anniversary Conference, Faculty of Law, University of Colombo, Sri Lanka, 23-26 July 1998

Andrew Bymes, "The Committee on the Elimination of Discrimination against Women" in Philip Alston (ed), **The United Nations and Human Rights: A Critical Appraisal** (Oxford: Clarendon Press, 2nd ed, forthcoming, 1999)

Rebecca Cook and Valerie Oosterveld, "A Select Bibliography of Women's Human Rights", (1995) **44 American University Law Review** 1429-1471 [This bibliography is updated and made available on-line through the Internet by the Bora Laskin Law Library at the University of Toronto: http://www.law.utoronto.ca/pubs/h_rights.htm]

Rebecca Cook (ed), **International Human Rights Law and Women's Human Rights** (Philadelphia: University of Pennsylvania Press, 1994)

Zagorka Ilic and Ivanka Corti, "The Convention on the Elimination of All Forms of Discrimination Against Women", in Office of the High Commissioner for Human Rights, United Nations Institute for Training and Research and United Nations Staff College Project, **Manual on Human Rights Reporting under Six Major Human Rights Instruments** (New York: United Nations, 2nd ed 1997) 305-366

International Women's Rights Action Watch and the Commonwealth Secretariat, **Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women** (2nd ed 1996) [also available in Chinese and other UN languages]

Japanese Association of International Women's Rights, **Commentary on the Convention on the Elimination of All Forms of Discrimination Against Women** (Bunkyo: Japanese Association of International Women's Rights, 1995)

Ilana Landsberg-Lewis (ed), **Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women** (New York: United

Nations Development Fund for Women [UNIFEM],1999), available on-line
<http://www.unifem.undp.org/cedaw/indexen.htm>

Lars Adam Rehof, **Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women** (Dordrecht: Martinus Nijhoff, 1993)

United Nations, **The Work of CEDA W: Reports of the Committee on the Elimination of Discrimination against Women (CEDA W), volume 1 (1982-1985)** (New York: United Nations, 1989), UN Sales No. E.89.1V.4

United Nations, **The Work of CEDA W: Reports of the Committee on the Elimination of Discrimination against Women (CEDA W), volume 2 (1986-1987)** (New York: United Nations, 1990), UN Sales No. E.90.1V.4

ANNEX B

**GENERAL RECOMMENDATIONS 12 AND 19
ADOPTED BY THE
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST
WOMEN**

**General Recommendation No. 12 (eighth session, 1989)
Violence against women**

The Committee on the Elimination of Discrimination against Women,

Considering that articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life,

Taking into account Economic and Social Council resolution 1988/27,

Recommends to the States parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc.);
2. Other measures adopted to eradicate this violence;
3. The existence of support services for women who are the victims of aggression or abuses;
4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

**General Recommendation No. 19 (11th session, 1992)
Violence against women**

Background

1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.
2. In 1989, the Committee recommended that States should include in their reports information on violence and on measures introduced to deal with it (General recommendation 12, eighth session).

3. At its tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on article 6 and other articles of the Convention relating to violence towards women and the sexual harassment and exploitation of women. That subject was chosen in anticipation of the 1993 World Conference on Human Rights, convened by the General Assembly by its resolution 45/ 155 of 18 December 1990.

4. The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.

5. The Committee suggested to States parties that in reviewing their laws and policies, and in reporting under the Convention, they should have regard to the following comments of the Committee concerning gender-based violence.

General comments

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under

prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Article 11

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual

other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Specific recommendation

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that:

- (a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;
- (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;
- (c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;
- (d) Effective measures should be taken to ensure that the media respect and promote respect for women;
- (e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures;
- (f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);
- (g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;
- (h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;
- (i) Effective complaints procedures and remedies, including compensation, should be provided;
- (j) States parties should include in their reports information on sexual harassment,

and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;

- (k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling ;
- (l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;
- (m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;
- (n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;
- (o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;
- (p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers ;
- (q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;
- (r) Measures that are necessary to overcome family violence should include:
 - (i) Criminal penalties where necessary and civil remedies in cases of domestic violence;
 - (ii) Legislation to remove the

sexual harassment in the workplace;

(ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;

(iii) Protective measures, including refuges, **counselling**, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;

- (iv) States parties should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims;
- (v) The reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.
