

**Joint Submission from NGOs coordinated by the HK Human Rights Monitor
Hong Kong Women's Coalition on Equal Opportunities
Center for Comparative and Public Law (HKU)
Women's Studies Research Centre (HKU)
to the Committee on the Elimination of Discrimination against Women
on the implementation of the CEDAW
in the Hong Kong Special Administration Region, China**

January 2014

List of Signatories

- 1. Asian Migrant's Coordinating Body (AMCB-IMA)**
- 2. Association of Indonesian Migrant Workers in Hong Kong (ATKI-HK)**
- 3. Center for Comparative and Public Law, University of Hong Kong**
- 4. Chinese Families Reunion Rights**
- 5. Civil Human Rights Front**
- 6. Coalition for Mainland – Hong Kong Families Rights**
- 7. The Democratic Party**
- 8. Fernando Chiu Hung Cheung Legislative Councilor's Office**
- 9. Filipino Migrant Workers' Union (FMWU-HKCTU)**
- 10. Forthright Caucus**
- 11. Friends of Thai - Hong Kong (FOT-HK)**
- 12. Helpers for Domestic Helpers**
- 13. Hong Kong Christian Institute**
- 14. Hong Kong Coalition for the Rights of Persons with Disabilities, comprising of:**
 - **1st Step Association**
 - **Chosen Power (People First Hong Kong)**
 - **Concord Mutual-Aid Club Alliance**
 - **Deaf Power**
 - **Hong Kong Association of the Deaf**
 - **SEN Rights**
 - **Hong Kong Red Cross John F. Kennedy Centre Alumni Association**
 - **Self-Help Development Centre**
 - **Silence**
 - **Lala Team**
 - **Centre for Community Cultural Development**
- 15. Hong Kong Human Rights Monitor**
- 16. Hong Kong Policy Viewers**
- 17. Hong Kong Refugee Advice Centre**
- 18. The Hong Kong Society for Rehabilitation Centre on Research and Advocacy**
- 19. Hong Kong Unison**
- 20. Hong Kong Women's Coalition on Equal Opportunities, comprising of:**
 - **Action for REACH OUT**
 - **Association Concerning Sexual Violence Against Women**
 - **The Association for the Advancement of Feminism**
 - **Association of Women with Disabilities Hong Kong**

- **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**
 - **JJJ Association**
 - **New Arrival Women League**
 - **Women's Affairs Committee, Hong Kong Confederation of Trade Unions**
21. **Indonesian Migrants Muslim Alliance (GAMMI)**
 22. **Indonesian Migrant Workers' Union (IMWU)**
 23. **Land Justice League**
 24. **League of Indonesian Migrant Workers (LiPMI)**
 25. **Liberty Asia**
 26. **Mainland – Hong Kong Families Rights Association**
 27. **Mainland – Hong Kong Families Rights Association, Single Mother Concern Group**
 28. **Mission for Migrant Workers – Hong Kong**
 29. **Office of Legislative Councillor Emily Lau**
 30. **Our New Net**
 31. **Overseas Nepali Workers' Union (ONWU)**
 32. **PathFinders**
 33. **Pink Alliance**
 34. **Queer Straight Alliance**
 35. **Rainbow Action**
 36. **Student Christian Movement of Hong Kong**
 37. **Thai Regional Alliance (TRA-HK)**
 38. **Transgender Resources Center**
 39. **United Filipinos in Hong Kong (UNIFIL-MIGRANTE-HK)**
 40. **United Indonesians Against Overcharging (PILAR)**
 41. **Women Coalition of HKSAR**
 42. **Women's Foundation**
 43. **Women's Studies Research Centre, University of Hong Kong**

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ARTICLE 1: DEFINING DISCRIMINATION

1. The Sex Discrimination Ordinance (SDO)¹ lacks a definition of indirect discrimination as prescribed in Article 1 of CEDAW. This is indispensable to achieving substantive equality across all sexes and genders. Government officials and its employees, officers of the Equal Opportunities Commission (EOC) and members of the public fail to fully understand the impact of inequality in all its forms, direct and indirect. The lack of an understanding of indirect discrimination has meant that some groups of women remain unprotected by the law. This is particularly evident given the misunderstanding by government officials, EOC officers and the public harbours about the use and legitimacy of Temporary Special Measures. The misguided perception of the government and EOC officials that such measures are a form of discrimination needs to be addressed. See further paras. 28-29 of this joint submission on Article 4.
2. ***Reform of the Sex Discrimination Ordinance to Update the Definition of Indirect Discrimination:*** We request the Committee to urge the Government to amend the SDO to include an update definition of indirect discrimination that is based on CEDAW principles, and consistent with Article 1.

ARTICLE 2. OBLIGATIONS OF STATE PARTIES

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1. The current definition of indirect discrimination is modelled on the old definition of indirect racial or ethnic origin discrimination in the Race Relations Act 1976 of the United Kingdom. The UK Government has replaced the definition with a modern and better one in line with EU Directive 2000/43/EC. The outdated definition of indirect discrimination in the Hong Kong SDO is also found in all the other 3 anti-discrimination ordinances in Hong Kong.

National human rights institution

3. In its Concluding Observations on the Third Periodic Report of Hong Kong SAR on the ICCPR, the United Nations Human Rights Committee (UNHRC) noted with regret the lack of an independent Human Rights Commission in Hong Kong and was of the view that the existence of a number of bodies focused on rights of specific groups militated against the effectiveness of Hong Kong's fulfillment of its obligations to protect human rights under the ICCPR in a comprehensive manner (CCPR/C/SR.2974, para. 7).

4. The EOC, responsible for monitoring and executing anti-discrimination legislation, adopts too passive an approach in carrying out its mandate by depending on a complaints-based system and focusing on conciliation between the parties before it takes any action. In doing so, it purports to ensure its position of neutrality vis-à-vis the parties. This approach, however, neglects the weak bargaining power and other contextual factors, such as traditional gender roles, ethnic minority or immigration status or disability, that impact female victims of discrimination who are in a vulnerable position in such disputes. This undermines access to equal opportunities for vulnerable groups of women, particularly those who suffer double or triple discrimination, such as ethnic minority women (EM women) who suffer double discrimination on the basis of sex and race, or pregnant migrant domestic workers (MDWs. "Foreign Domestic Helpers" or FDHs in government terminology) who suffer triple discrimination on the basis of their sex, ethnic background and pregnancy. The EOC's stance that it cannot allow representation by counsel at such conciliation meetings nor can it assist claimants in filling out their forms on the grounds that doing so would violate its need to maintain neutrality between the parties, fails to recognize the fact that some groups of victims may not be able to lodge a complaint due to the lack of awareness of their rights, or may be culturally predisposed to non-confrontation, or receive pressure from their employers to resign from their job by being misled about their having breached the law by getting pregnant as a migrant worker. These circumstances invariably impact the ability, competence and therefore, the extent to which vulnerable victims of discrimination can successfully avail themselves to the protections in place. Filling in a complaint form and gathering evidence of discrimination is often beyond the knowledge and skill of vulnerable groups of women without professional assistance. Moreover, the EOC has rarely conducted formal investigations into public policies that violate anti-discrimination laws despite its mandate and powers to do so. As noted by the UNHRC, the EOC's powers and independence need strengthening given that the Government finances all aspects of its functions, including costs for administration and legal

proceedings, and appoints its Chairperson and members without transparency and proper requirements, thereby grossly undermining the EOC's independence.

5. ***Setting up a Human Rights Commission to Oversee Compliance with Human Rights:*** The Committee is urged to reiterate the UNHRC's previous recommendations (CCPR/C/HKG/CO/2, para.8 and CCPR/C/SR.2974, para. 7) that Hong Kong consider establishing a human rights institution, in accordance with the Paris Principles (General Assembly resolution 48/134), with adequate financial and human resources, with a broad mandate covering all international human rights standards accepted by Hong Kong, China and with competence to consider and act on individual complaints of human rights violations by public authorities and to enforce the Hong Kong Bill of Rights Ordinance.
6. Pending this, we urge the Committee follow up the UNHRC's calls (CCPR/C/SR.2974, para. 7) that Hong Kong should strengthen the mandate and the independence of the existing bodies, including the Ombudsman and the Equal Opportunities Commission. Particularly, the Government should be urged to take into account stakeholder views in the EOC's ongoing review of the anti-discrimination legislation in Hong Kong. The EOC's role ought to be comprehensively reviewed to ensure that it bears positive duties to assume a more proactive role in the exercise of its mandate, including in community capacity building, the promotion of equal opportunities policy advocacy and conducting formal investigations into policies that violate the anti-discrimination laws. These powers are especially relevant to the interests and needs of vulnerable groups including, EM women, MDWs (including pregnant ones), women with disabilities, and sexual minorities such as lesbian and bisexual women and transgender persons (LBT), who may be subject to multiple forms of discrimination. The reform exercise should be used as an avenue to set up a singular Human Rights Commission compliant with the Paris Principles, pending which, the EOC should be reformed according to the Paris Principles to ensure its independence and functions.
7. ***Question:*** Please provide information on whether the Equal Opportunities Commission has taken any measures to be more proactive in addressing discrimination against vulnerable groups including ethnic minority women, such as reviewing legal provisions concerning EOC powers, the provision of mandatory internal training and guidelines, and programmes to reach out to potential victims.

Central mechanism

8. Whilst the Government asserts that the Women's Commission (WoC) is the central mechanism to promote the advancement of women in Hong Kong, the WoC is not high-level enough and lacks resources to effectively perform this role and to promote gender mainstreaming. It continues to be placed under the purview of the Secretary for Labour and Welfare, and positions itself as an advisory body rather than an independent monitoring body of the Government. There is a lack of transparent and consistent mechanisms to ensure that equal opportunities principles, gender perspectives and principles of CEDAW are integrated into policy formulation and implementation at all levels, in particular, in the formation of all laws, public policies and fiscal decisions to ensure gender mainstreaming and gender budgeting. The WoC has failed to advise or monitor the Government on the need for a gender-sensitive approach to law and policymaking. The process of appointment of its members lacks transparency, and its current composition is not representative of diverse interests and concerns of different groups of women, including the lack of representation of LBT, EM women, underprivileged women, and homemakers.
9. ***Reform of the Women's Commission: We urge that the Government elevates the WoC to a status directly under the Chief Secretary for Administration, independent of any bureau, and vests it with appropriate powers and resources to enable the effective and comprehensive monitoring of the Government's implementation of CEDAW. Appointments to the WoC should be transparent to the public with input from women's rights NGOs, and its members should be experts in the advancement of women's rights and represent a more diverse spectrum of interests and concerns across different stakeholder groups of women.***

Anti-discrimination legislation

10. There are only four anti-discrimination ordinances in Hong Kong, prohibiting discrimination on the basis of sex, disabilities, family status and race. There are no laws prohibiting discrimination on grounds of age, sexual orientation, gender identity, and immigration status despite calls from the civil society and various UN human rights treaty bodies. The EOC has only jurisdictions over the enforcement of these four ordinances.
11. The SDO does not protect victims of sexual harassment where the perpetrator is a student from an educational institute different to that of the victim. It also fails to cover sexual harassment between tenants sharing the same apartment, between patients in a hospital, and residents of an elderly home or rehabilitation institution.

Small House Policy, a policy that entitles only indigenous men in the New Territories to build a three-story house is also exempted as a form of sex discrimination by the SDO. This undermines equal property rights of indigenous women vis-à-vis indigenous men and other women and men. See further paras. 162-164.

12. Unlike in the other three anti-discrimination ordinances, there is no explicit provision in the Race Discrimination Ordinance (RDO) that discrimination on grounds of race by the government in its exercise of powers and performance of functions is unlawful (One of the consequences is that the EOC has not been properly empowered to regulate any violations in such public powers and functions and to offer assistance to victims of such violations). The government submitted in paragraph 21 of its Third Report under CEDAW (CEDAW/C/CHN-HKG/7-8) that the Basic Law and the Bill of Rights Ordinance prohibit the government from practicing racially discriminatory acts in the exercise of its functions. This response undermines the provisions in international treaties, including CEDAW that the government undertakes to adopt consistent and comprehensive legislative measures prohibiting discrimination.
13. Moreover, unlike the Australian Racial Discrimination Act 1975, which covers past and current immigration status (immigrants), the RDO explicitly excludes the immigration status of a person, such as her or his length of residence in Hong Kong, resident status, citizenship or nationality, from the definition of discrimination based on race. Many forms of discrimination, especially indirect ones, against new arrivals from Mainland China and migrant domestic workers, many of whom are women, are thereby excluded from its purview.
14. ***Reform of Anti-Discrimination Legislation and EOC Powers and Functions: In light of the on-going EOC review of Hong Kong's anti-discrimination laws, we hope that the Committee will reiterate to the Government the importance of ensuring full and equal protection for all in accordance with Hong Kong's treaty obligations under CEDAW and CERD and to plug existing loopholes, including the lack of a statutory positive duty on the government and public bodies to promote equal opportunities and to combat discriminations, in the SDO, RDO, Disability Discrimination Ordinance (DDO) and Family Status Discrimination Ordinance (FSDO) in the upcoming law reform exercise.***
15. ***Question: Please provide the timetable for rectifying the defects in the SDO and the RDO, especially bringing all sexual harassment in all contexts within the purview of the SDO as well as bringing the government's exercise of***

powers and performance of functions in all areas under the purview of the RDO.

- 16. Question: Please explain how discrimination on the grounds of age, sexual orientation and gender identity, and immigration status can be prohibited without relevant anti-discrimination legislation.**

Lack of ordinance to prohibit discrimination on the basis of sexual orientation, gender identity, immigration status, occupation and age

17. Lesbian, Bisexual women, Transgender persons (LBT), LBT migrant workers, new arrival women from Mainland China, older women and women working in certain professions (e.g. MDWs) continue to face alarming levels of discrimination and harassment in society.² Yet, there is no legislation that prohibits discrimination on these grounds. Women with non-feminine gender expression continue to face discrimination in employment, property rental and access to services. The SDO does not protect women from such forms of discrimination, nor does the Family Status Discrimination Ordinance protect women who perform the role of carers in same sex families.

18. While the EOC is reviewing the four anti-discrimination laws in an effort to combine them into one piece of legislation in order to expand its scope and ensure its effectiveness, sources told some of the signatories of this submission that public consultation would be conducted this summer. It is still unsure whether the draft law open to public consultation will be able to cover all forms of discrimination. Even if so, and even with public support, the bottleneck in legislating a more comprehensive piece of anti-discrimination law is still the HKSAR Government. There are many instances that recommendations of legal reform from advisory bodies, e.g. Law Reform Commission of Hong Kong, have been shelved by the Government for years before the Government decides to conduct its own public consultation, not to mention the delays in drafting a bill for the legislature to enact.

- 19. *Introduction of Laws Prohibiting Discrimination on Grounds of Age, Sexual Orientation, Gender Identity and Immigration Status: We urge the Government to take immediate measures, without delay, to introduce comprehensive***

2. A 2012 study found that 70% of the general working population felt that LGBT individuals faced discrimination in the workplace. A 2010 survey reported that 53% of the lesbian and bisexual women who responded had experienced discrimination or harassment. A crowd of over 5,200 people marched on 9th November, 2013 to support anti-discrimination for LGBT people. Research results from both the Equal Opportunities Commission and the University of Hong Kong show that the majority (60%) of Hong Kong people are now more supportive for SOD legislation.

anti-discrimination laws to protect people against discrimination on grounds of age, sexual orientation, gender identity, and immigration status. Such ordinances or a consolidated ordinance should also impose positive statutory obligations on the government to promote equality of opportunities and access and to eradicate discrimination.

ARTICLE 3. APPROPRIATE MEASURES

Gender stereotyping is still pervasive

20. Research conducted by the WoC in Hong Kong has found that the advancement of women is being impeded by prejudice and misconceptions about women's roles and status at home, in the workplace and in social environments. This includes the widely held view that women should remain largely responsible for various kinds of household duties, or that men are better remunerated than women of the same rank/position, or that men usually stand a better chance of promotion than women of similar age or abilities.³

Feminization of poverty

21. Accordingly, women in Hong Kong are over-represented in lower income sectors and casual labour. Further, the gender gap in pay has increased in recent years and women are more vulnerable to poverty. Recent findings of the Government have revealed that women are disproportionately overrepresented in those falling below the newly established poverty line.

Lack of gender disaggregated data

22. While the Government publishes a book of key statistics of men and women in Hong Kong, researchers are often told that data disaggregated by sex is not collected or recorded by Government departments and other institutions. This has grossly undermined the ability of NGOs and the community at large to assess the impact of different laws and policies on the situation of women in a wide range of spheres, including education, healthcare, employment, immigration, access to justice, and political representation.

23. The lack of availability of data disaggregated by sex as a key criterion of gathering information has furthered hampered and undermined the promotion of gender mainstreaming that the WoC has requested all Government bureaus and

3. Women's Commission, "What do Men and Women in Hong Kong Think about the Status of Women at Home, Work and in Social Environments?", September 2011, available at: http://www.women.gov.hk/colour/en/research_statistics/research_status_of_women.htm.

departments to incorporate in its policy formulation although this is not mandatory, not to mention the lack of a principled approach to gender budgeting within the Administration to facilitate appropriate fiscal policies.

Lack of gender perspective in public policies

24. The absence of a gender perspective in the formulation of policies that are aimed at being family-friendly, women-friendly or elderly-friendly, rendering most of the policies unable to fill the needs of women, who compose the majority of carers and elderly.

Inadequate communication with the civil society in preparing the Government report

25. Similar to its previous practice, which was criticized by the CEDAW Committee in its last Concluding Observation, in writing up the Third Report to the CEDAW Committee, the Government failed to involve women's groups and the civil society, including women with disabilities especially those with intellectual, cognitive and psychosocial disabilities in its consultations. The Government and the WoC only organized a half-day consultation, and provided a bare outline draft (devoid of content) making it difficult, if not meaningless or impossible to comment on. There was no discussion and no assessment of the progress made since the First and Second Report, nor did the Government conduct another consultation after the full Report was written but before its submission.

26. ***Data Collection:*** We ask that the Government be urged to examine the obstacles to data collection and incorporate international best practices to enhance data collection processes to ensure the availability and wide dissemination of sex-disaggregated statistical information, by district and by ethnic group, as such information may relate to each of CEDAW's provisions to improve its capacity to design and implement targeted policies and programmes aimed at the promotion of gender equality and all women's enjoyment of their human rights. We also recommend that the government strengthen its monitoring and impact assessment of such policies and programmes and to take corrective measures, whenever necessary to bring practices in line with CEDAW. We request that the Government be asked to provide such statistical information on data trends over time and the outcome of impact assessments of existing policies in its next periodic report so that the Government's progress in the implementation of the Convention and relevant Concluding Observations can be appraised in depth.

27. ***Stakeholder Consultation in Developing Periodic Report:*** We urge the Government embrace the principle of full participation and open access to

information for the entirety of the consultation process. The Government should invite all stakeholder groups and simplify all policy information and make it widely available in audio, braille, sign, different languages and easy-read format for the diverse women's population.

ARTICLE 4. TEMPORARY SPECIAL MEASURES TO COMBAT DISCRIMINATION

28. Although the Convention and the SDO specifically provide for the use of temporary special measures (TSM) as an important corrective device to ameliorate the detrimental effects of past or structural discrimination, to date, no such measures have been used by the Government to rectify deep rooted effects of long-term discrimination on specific groups of marginalized women, nor has the EOC ever advocated their use to achieve effective change.
29. The reluctance and consequent failure to use such measures is due to the misunderstanding of government and some EOC officials that TSM is a form of discrimination. This is based on a fundamentally flawed understanding of equality, which is limited to formal -- neglecting important historical and structural impediments to equal opportunities, as opposed to substantive equality, as well as a lack of appreciation of the negative impact of indirect discrimination (See further Para. 1).
30. *Implementing Mandatory Training for Government Personnel and EOC Staff:* **We request the Committee to urge the Government to require that all relevant staff undergo mandatory training on CEDAW provisions, the Committee's decisions and their applications, for e.g. using TSM to achieve equal opportunities and substantive equal protection for all. Furthermore, the government be urged to take steps to implement TSM where appropriate to rectify the impact of past or structural inequalities for marginalized groups of women.**
31. *Positive Duty to Promote Equality and Ensure Equal Protection:* **We further request that the Government be urged to recognize that the nature of its obligations under CEDAW and other international human rights treaties entails a positive duty to take active steps to achieve human rights protection for all. This requires the Government to ensure that its personnel and EOC officials are fully versed in the need to undertake active steps based on their duties to promote equal opportunities and equal protection rather than to passively wait for victims of discrimination to complain. The Government**

should be reminded to amend the SDO and all other anti-discrimination ordinances in Hong Kong to impose such a positive duty on the government and public authorities explicitly.

ARTICLE 5. STEREOTYPING AND PREJUDICES

Public awareness and education to eliminate stereotypes and prejudices

32. The government has failed to implement effective public awareness and education campaigns to ensure that appropriate and effective measures are in place to eliminate gender specific stereotypes and prejudices, which continue to negatively impact women in all walks of life. This breeds continued exclusion, discrimination and prejudice, including unequal opportunities for participation in a range of public and private activities. Negative stereotyping continues to pervade the media and in the work of law enforcement officials. Particularly affected are the most marginalized and vulnerable groups of women, including but not limited to, girl children, ethnic minority and immigrant women, women with disabilities, victims of sexual and domestic abuse, migrant workers, refugees, asylum seekers, and torture claimants, and the LBT community.

New arrivals

33. A research study conducted by The University of Hong Kong in 2012 showed that 25% of new immigrants reported experiencing discrimination since living in Hong Kong. The percentages of reporting subtle forms of discrimination (i.e. treated unfairly or rudely) were higher than those of explicit forms (i.e. being hit or threatened). New immigrants who reported discrimination were more likely to be unhappier, have poorer mental health, and experience more disharmony and discontentment in their families.

34. The sentiments against new immigrants, mostly women from Mainland China, among Hong Kong people are further fueled by exaggerated and hateful rhetoric and language about the burdens they impose on the community. The term “locusts” has been used to describe these groups and the phrase “reduce people at source” has been used to analyse how new immigrants ought to be treated, in recognition of the phrase ‘reduce waste at source’, which is applied to waste reduction. Such subtle forms of discrimination advocate non-integration, exclusion and manifest feelings of insult and alienation.

35. Despite the fact that the RDO excludes from its remit new immigrants since the length of residence in Hong Kong, resident status, citizenship and nationality of a person are explicitly excluded from being a ground of racial discrimination under it

(see further paragraphs. 12, 13 & 17), the Committee on Economic Social and Cultural Rights have stated that such discriminatory treatment are de jure and de facto discrimination against them on the basis of their origin. Yet, the Government has done nothing to respond to such xenophobia, stereotypes, prejudices and discriminatory behavior.

Negative stereotyping of women seeking protection such as asylum seekers, refugees, CIDTP victims (cruel, inhuman, degrading treatment or punishment) and torture claimant women

36. There is a lack of policies aimed at social inclusion and raising public awareness about protecting claimants (refugees, asylum seekers, CIDTP victims and torture claimants), despite a high prevalence of negative stereotyping and misconceptions in the media, which fuel negative sentiments, creating public misunderstanding and resulting in political backlashes when their human rights are advocated for by civil society organisations.

Migrant domestic workers (MDWs) rights

37. There is an overall lack of societal understanding and support for MDWs' rights. This inhibits MDWs from understanding and asserting their rights. The Government has an obligation to ensure that Government printed information given to MDWs about their rights and obligations is not withheld by agencies and has the positive duty to ensure that MDWs are educated about their rights under the standard form contract, Employment Ordinance and Hong Kong's anti-discrimination laws. However, efforts made to educate MDWs are inadequate and ineffective and MDWs remain subjected to agencies' malpractices for example, the taken away of government booklet containing information about their rights, misinformation about their rights and obligations, forced signatures on documents they cannot read or comprehend, etc.
38. The lack of societal understanding and support for the rights of MDWs extends to government service providers, including public hospitals and other government departments whose front line staff are often insensitive, ignorant or unable to respond to the needs of MDWs.
39. ***Mandatory Training for Civil Servants, Frontline Workers and EOC and Public Education:*** The Government is urged to introduce an effective public education campaign targeting different groups in society, including children, employers, teachers, local residents and all civil servants, including social workers, law enforcement officers, and other government officials through appropriate means to address and eliminate longstanding negative stereotypes

and unhealthy images portrayed about multiple vulnerable and marginalized groups of women in Hong Kong, including but not limited to girl children, ethnic minority and immigrant women, women with disabilities, victims of sexual and domestic abuse, migrant workers, refugees, asylum seekers, CIDTP victims, torture claimants, and LBT communities and to promote a healthy, positive understanding of their rights and an inclusive vision of a diverse Hong Kong.

40. It is also urged to take immediate and urgent steps to introduce mandatory and periodic internal training for all employees of its institutions to eradicate such unhealthy stereotypes and eliminate prejudice.
41. We urge the Government to reduce barriers to accessing government services by providing quality interpreters and to require mandatory training of front line staff to improve communication and reduce the risk of misunderstanding.
42. We urge the Government to educate the MDWs, their employers and employment agencies on each of their rights and obligations. We urge the Government to oblige employers of MDW to attend an educational session on MDW rights as a precondition to hiring an MDW. Also, the EOC should be more proactive in community capacity building, policy advocacy and conducting formal investigations into policies that violate the rights of MDWs and new immigrants.
43. *Outlaw Discrimination on Grounds of Migrants and other Immigration Status:* We urge the Government to outlaw all forms of discrimination against migrants and those on the grounds of other immigration status, particularly for the protection of new immigrants from Mainland China and migrant workers.

Discriminatory use of obscenity laws against cultural expression of sexual minorities

44. Information and cultural materials about sexual minorities, including the poster for “Better than Chocolate” (a lesbian movie), are often rated “obscene” and made illegal for sale in Hong Kong under the Control of Obscene and Indecent Articles Ordinance (COIAO). The HKSAR Government has recently recommended a significant increase in penalties in the COIAO, while leaving the definitions of “obscene” and “indecent” to the personal “standards of morality” of the adjudicators in the Obscene Articles Tribunal⁴. This will further limit freedom of

4. *Review Control of Obscene and Indecent Articles Ordinance*, see <http://www.coiao.gov.hk/en/faq.htm>.

expression of lesbians and other women in sexual minorities⁵.

45. **Question: What measures are being taken by the Government to ensure the COIAO is not used to discriminate against the cultural expression of sexual minorities?**

Lack of due diligence in combating domestic violence

46. Although the former Domestic Violence Ordinance (DVO) was amended in 2008 and 2009 to expand its scope to include spouses, former spouses and their children, cohabitants and former cohabitants as well as immediate and extended family members, the DVO provides only civil remedies, confined mainly to the granting of injunction orders. A lot more is required to eradicate domestic violence, including reforming the criminal justice system and providing appropriate social welfare support. In 2006, 2007 and 2008, the police had two sub-categories of crimes under “Domestic Violence”, namely “Crime Cases” and “Miscellaneous Cases”, in which the number of “Domestic Violence – Miscellaneous Cases” was twice as high as that of “Domestic Violence – Crime”.⁶ But since 2009, the police has only categorised incidents as “Domestic Violence Crimes” and has kept the number of “Domestic Violence Crimes” cases recorded by the police at fairly low level, making it unclear for women’s groups to understand their categorization of and procedure for handling cases which used to be categorized as “Domestic Violence – Miscellaneous Cases”. This new categorization has also resulted in domestic violence cases of a miscellaneous nature failing to be dealt with in accordance with the protocol in handling cases of domestic violence.
47. Access to public housing for victims of domestic violence is not as of right but subject to the discretion of the Housing Department and the Social Welfare Department, which, in recent years, have turned down many applications that social workers of NGOs regarded as needy. There is also a lack of social support for the emotional and psychological needs of the children who witness domestic violence.

Domestic violence and LBT victims

48. Despite the extension of the then DVO to cover same sex cohabitation relationships, the government has failed to extend resources correspondingly. It has never provided training on gender identity issues nor is there any mention of this

5. Restriction of freedom of expression of sexual minorities was one of the areas of concern in the Report of the UNHCHR on LGBT discrimination, A/HRC/19/41, paragraph 62.

6. See Crimes Statistics Comparison in Hong Kong Police Force website for the year of 2007, 2008 and 2009. Available at: http://www.police.gov.hk/ppp_en/09_statistics/csc.html

group of victims in the manuals of the institutions that would receive such victims. Notably, there is a lack of refuge shelters accepting LBT victims. Many Transgender women who have been placed in the "male section" of a major shelter have complained about mistreatment and consequential impact on their psychological health.

Domestic violence and ethnic minority victims

49. Despite the high incidence of domestic violence among EM families, there are a disproportionately low number of complaints among this group, revealing a reluctance or inability to effectively engage available resources. Victims suffer from cultural, structural and language barriers in accessing law enforcement, medical and other government services. For example, the use of shelters by EM women is limited because of the lack of accommodation of their dietary needs and other language and cultural barriers. Counselling and other group therapy are not useful to EM women due to the lack of support to overcome the barriers mentioned above. EM women also often fail to have access to public housing. They are ill-advised of their rights, sometimes misinformed by social workers and the police. They harbour misunderstandings about the impacts of a complaint on their own immigration status and fear of separation from their children. Due to the lack of employment or employability, they have little choice but to buckle under the pressure of financial dependence.

Domestic violence and women with disabilities

50. Women with disabilities are particularly vulnerable to domestic violence due to their physical, intellectual or cognitive disabilities, which may render them uninformed about their rights. Their circumstances often inhibit their access to available services to seek protection against such violence. Like other vulnerable groups, they may also fear repercussions against complaints, particularly, if the perpetrator is also the primary carer. Moreover, their high level of dependence on family makes it even harder to detect such cases and unlikely that this group of victims will come forward. There is also a concern regarding existing refuge centres' capacity to cope with the specific needs of this group.
51. ***Obligation of Due Diligence Under CEDAW: The Committee is requested to remind the Government that it has an obligation of due diligence pertaining to the prevention of and protection against domestic violence, and to prosecute and punish perpetrators in accordance with the law. This obligation requires the Government take active measures to achieve these goals, including public education, reform of laws to provide appropriate remedies to ensure effective protection against recurring violence, provision of resources to provide for***

housing, medical and other social welfare needs of survivors and their families, and appropriate punishment to deter such conduct.

52. ***Setting up a Domestic Violence Court:*** We urge the Government to set up a domestic violence court to handle all criminal and civil cases involving allegations of domestic violence, including breaches of injunction orders. The criteria used to categorize various cases of violence and disputes should be made transparent. A no-drop prosecution policy should be built into the existing prosecution mechanism for domestic violence cases to enable the case to continue without the victim's cooperation provided that there is admissible evidence sufficient to justify instituting or continuing proceedings, and that the general public interest requires that the prosecution be conducted.
53. ***Provision of Additional Resources and Training:*** The Government should be required to provide additional resources to render available housing and counselling services to all survivors of domestic violence and children who have witnessed domestic violence, in a manner that is accessible to them, with interpretation and accompanying medical services where necessary.
54. We urge the government to amend their policies, extend resources and provide training to law enforcement officers and social service agencies, including government-subsidized NGOs, and to raise their awareness to protect all victims of domestic violence, including LBT and EM victims and women with disabilities more effectively, and to ensure all refuge centres are LBT, EM and disability friendly.

Lack of coordinated measures to effectively address sexual violence against women

55. Despite calls from the CEDAW Committee urging the Government to rebuild a rape crisis support centre for the victims of sexual violence to provide care and service for anonymous victims in its Concluding Observations in 2006, a "Rape Crisis Intervention Centre" has not yet been established in Hong Kong to provide for a one-stop location for victims of sexual violence to seek comprehensive assistance from relevant professionals. The current "Multi-purpose Crisis Intervention Centre" is not a hospital-based model nor does it provide a one-stop supply for all the services needed by victims of Sexual Violence. The government has also failed to provide sexual violence victims with information on assessing such health services. Besides, due to the lack of effective gender sensitivity training to serve women with sexual violence, most healthcare staff and police officers maintain victim-blaming attitudes, thereby discouraging women from reporting.

56. The World Health Organization has issued specific guidelines to provide healthcare and legal support for victims of sexual violence emphasizing that the multi-agency response model involving medical, legal and social services can help victims recover and reduce pressure on the financial, social and health resources. Therefore basic healthcare for the victims, such as wound treatment, pregnancy and STD test, are crucial. Apart from providing basic healthcare services, the care and support provided to the victims is vital to their self-respect, self-esteem and their dignity.
57. ***A Hospital Based One-Stop Support Centre: We urge the Government to set up a one-stop rape crisis and support centre in the hospital in accordance with the WHO's guidelines to offer all-rounded services to the victims to meet their physical, emotional, legal and other needs. The Centre can offer necessary medical treatment, allow the victims to complete legal procedures and provide counselling to assist them after the tragedy.***
58. ***Question:*** Does the Government plan on setting up a hospital-based rape crisis support centre in Hong Kong and if so, what is the expected time-frame within which it will do so?

Violence against women and girls with disabilities

59. Women with disabilities, especially those with intellectual, cognitive or psychosocial disabilities, and female carers with disabilities, are more vulnerable to violence and abuses. Support for victims with disabilities calls for disability expertise in the services, and improvement in awareness among public decision makers and the general public.
60. **The Committee should request the HKSAR Government to provide information to address issues of access to justice similar to those stated in paras. 23 & 24 of the Concluding Observations of the CRPD regarding China (CRPD/C/CHN/CO/1) 2012.**

Violence against elderly women

61. Many elderly women are subjected to physical, economic, and sexual abuse. In particular, elderly women in institutional care are vulnerable to such abuses, particularly in the unnecessary use of physical restraints against them.
62. ***Question:*** How does the Government plan to ascertain the extent of the problem of such abuse in institutional care and generally and what steps does it plan to take to ensure effective protection of the rights and well-being of this group of women against abuse?

Sexual harassment and bullying at schools

63. An EOC report, published in April 2013, revealed that 47% of Hong Kong's schools do not train teachers and students on how to deal with molestation issues or lack have explicit policies against sexual harassment. This is alarming, as a survey conducted in 2011 has revealed that 3,000 of 6,000 students interviewed had experienced harassment.
64. Sexual harassment especially in special schools for students with disabilities is under reported especially for those who are of intellectual disabilities and deafness due to communication barrier and readiness to understand their messages. Even the EOC's procedures of investigation are not user-friendly to female students with disabilities.
65. Around one-third of LBT students have been found to have suffered from unfair punishment, discrimination and bullying on the basis of their sexual orientation and gender expression in schools. Many cases of discrimination were encouraged by or even perpetrated by school officials and teachers⁷.
- 66. *Rights-based Sex Education and Training:* We urge the Committee to recommend that the EOC scrutinize schools to ensure that they have effective policies to handle complaints relating to sexual harassment and that they provide training to Senior Management and teachers regarding the definition of sexual harassment and materials to raise awareness among students to ensure such conduct is properly dealt with and ultimately eradicated.**
- 67. We recommend more rights-based sex education is needed for all students, their parents and teachers, including senior management at schools. The EOC should review its investigative procedures to ensure it is more user- friendly. The present complaint-driven model may undermine the rights of girls who experience such harassment where their teachers or parents may not wish to lodge complaints. To protect the child's rights, complaints should be capable of being initiated by a third-party. It is also essential to provide staff training to enable the staff to receive a girls/women diverse community.**
- 68. *Law Reform: Protection Against Sexual Orientation Discrimination:* We urge the Government to introduce sexual orientation anti-discrimination legislation that includes protection in the area of education and to introduce a "Safe**

7. A study in 2010 showed that 31% of participants faced discrimination in school based on their sexual orientation: <http://wchk.org/2012/tc/content.php?key=sodsurvey/survey-result.php>. Cases of discrimination include: unfair punishment by teachers, teachers encouraging other students to isolate students of different sexual orientation, teachers abusing students with insulting terms (死基婆), etc.

Schools" policy.

69. **Question: What measures are being taken to ensure that students of all sexual orientations and gender expression are protected equally and are free from discrimination and bullying in schools?**

ARTICLE 6. EXPLOITATION OF WOMEN

Forced labour: migrant domestic workers

70. The anti-trafficking legislation in Hong Kong is archaic and inadequate as it focuses on movement, which detracts from the fact that the essence of trafficking is exploitation. The legislation further fails to protect MDWs, who are largely women, trafficked for forced labour or under the false pretences of a domestic worker contract or an entertainment visa, into Hong Kong. For instance, Indonesian MDWs are commonly forced into modern slavery⁸ in HK by Indonesian recruitment agencies and HK placement agencies by paying excessive agency fees under conditions of debt bondage (often with loan and financing agreements between MDWs and finance companies signed in Hong Kong), confiscating documents and restriction of movement (Kartika case, and more recently the cases of Ms. Erwiana Sulistayaniangsih, an Indonesian MDW who reportedly fled Hong Kong because she was gravely beaten by her employer every day for eight months. Notably, this same employer is now being investigated for other cases of abuse against MDWs).⁹ The two-week rule, mandatory live-in arrangement of the Hong Kong authorities and the requirement to have their work only arranged by a limited number of agencies by the Indonesian Government subject them to human rights exploitation. Further, the Hong Kong law prohibits human trafficking for the purposes of prostitution, but not any forms of trafficking and forced labour. It fails to comply with international human rights standards set in the Palermo Protocol (UN TIP Protocol), CEDAW and other relevant core UN human rights treaties. In fact, some intending MDWs have been brought to Hong Kong under the pretense of an entertainment visa or MDW visa, and find

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8. Many MDWs are required to work for long indeterminate working hours, enjoy no or reduced rest days and inadequate accommodation, with their first 7 months' salaries eaten up as various fees to the agencies designated by the Indonesian authorities, receive thereafter actual salaries well below allowable minimum, and face or are prompt to physical, verbal and sexual abuses.
9. Indonesian MDWs normally pay agency fees as high as US\$2710 over a seven month deduction period. Amnesty International, *“Exploited for Profit, Failed by Governments. Indonesian Migrant Domestic Workers Trafficked to Hong Kong”*, 2013. The high proportion of deductions leaves them practically empty-handed in the first seven months of their employment.

themselves trafficked into prostitution.

71. ***Enactment of Comprehensive Anti-Trafficking Legislation & Support Structures:***
We ask the Committee to urge the HKSAR Government to enact comprehensive anti-trafficking laws encompassing all forms of trafficking and forced labour in accordance with international standards, including the CEDAW, other core rights treaties and the said Palermo Protocol.
72. **We ask the Committee to urge the HKSAR Government to request the Central Government to extend the said Palermo Protocol to Hong Kong.**
73. **We ask the Committee to urge the HKSAR Government to introduce legislation to tighten regulations of agencies and finance companies and banks, and to negotiate agreements with sending countries to regulate employment agencies, to open up the agency market, to remove the mandatory requirements for MDWs to go through agencies for jobs (especially for renewal of contracts), to ban excessive fees of all descriptions charged by agencies, and to prevent and detect all kinds of conflict of interests of any official and corruption.**
74. **We ask the Committee to urge the HKSAR Government to protect victims of trafficking by providing food, shelters, psychological, medical, interpretation and legal support. The HKSAR Government should also implement a national referral mechanism, which will ensure that all cases are assessed and referred to onward support services as appropriate.**

Exploitation of sex workers

75. Many Mainland women come to Hong Kong with the intention to work as a sex worker but such work is in breach of their conditions of stay. This renders these women vulnerable to police. Some women have however been misled into sex work in Hong Kong from all parts of the world as a form of trafficking, including MDWs who are told that they have jobs as masseuses or waitresses. Many other people who take advantage of these voluntary or compelled sex workers by threatening and exploiting them further.
76. Police officers, during undercover operations, are allowed to solicit sex workers to perform certain sexual services (which is, in the end, unpaid) to ‘gather evidence’ for prosecution. Some sex workers reported physical/verbal assault by the police and immigration officers. Also their fundamental legal rights are often abused, such as: the right to remain silent; the right to make telephone calls; the right to legal advice and representation; the right to an interpreter (with correct dialect);

and the right to have the correct criminal procedures implemented. Based on their experience, NGOs specialized in sex workers generally believe that statements given by sex workers were often given less credit by the judges.¹⁰

77. In the year 2008 and year 2009, 10 sex workers were murdered and among them 9 worked in ‘one woman apartments’. According to Hong Kong laws, it is not illegal for an individual Hong Kong resident to work as a sex worker. However, any premises within which two or more persons provide commercial sexual services it is considered a ‘vice-establishment’, and is therefore deemed to be illegal. Sex workers are therefore forced to work in an isolated setting, exposed to all sorts of dangers yet without any support.

78. *Protection Mechanism for Sex Workers & Training to Identify Victims of Trafficking:* We ask the Committee to urge the Government to implement protection mechanisms for sex workers. The legal definition of ‘vice establishment’ should be reviewed and relevant legislative reform should be introduced to allow at least two sex workers to co-work in a single premise for mutual protection.

79. We ask the Committee to urge the Government to ensure that the rights of sex workers are effectively protected under law without discrimination, including more transparency with the procedures used for victim recognition, prosecutions and convictions. This would further require more intensive and widely rolled out training of victim identification across the government and law enforcement agencies.

Child victims of sexual exploitation

80. There is a lack of procedures to identify and support child victims of sexual exploitation and trafficking in Hong Kong. Children with disabilities, especially those who are of intellectual disabilities, whether living with family or in different forms of group homes or institutions, are the most vulnerable group, not to mention victim children with ethnic minority background. There is only limited access to justice, shelter, medical services, psychological counseling and compensation for child victims of sexual exploitation and abuse under existing service provisions.

81. We strongly urge the Committee to require the HKSAR Government to

10. A research revealed the average hearing time in magistracy court to complete an individual sex worker’s case was only 3 minutes. Laidler, K.J., Peteren, C. and Emerton R., ‘Bureaucratic Justice The Incarceration of Mainland Chinese Women Working in Hong Kong’s Sex Industry’, *International Journal Offender Therapy and Comparative Criminology*, Volume 51(1), February 2007, p.78.

provide its plan and measures, the resources provided to implement the recommendations stated in paras 45 – 47 of the Concluding Observations of the CRC (CRC/C/CHN/CO3-4), 2013.

ARTICLE 7. EQUALITY IN POLITICAL AND PUBLIC LIFE AT THE NATIONAL LEVEL

Advisory and statutory bodies

82. In the present day, the participation rate of women in advisory and statutory bodies is very low. Until 31st of December, 2012, of the 410 advisory and statutory bodies, there are 384 bodies that have non-official members appointed by the government, and in 142 of those bodies, the participation rate of non-official female members appointed by the government is lower than 30%.

83. *Implement Measures to Ensure Effective Participation of Women: The Government is urged to review existing processes for appointment of personnel to advisory and statutory bodies and to urgently implement measures to ensure the effective and full participation of women in such bodies and to ascertain and address any barriers to such appointments.*

Functional constituencies

84. The current electoral system, which maintains functional constituencies, results in inequality in women's participation in political life. The Committee has continuously identified them as problematic. Functional constituencies have generally had fewer women, thereby causing indirect discrimination and undermining the equal participation of women in politics. After considering the First report on Hong Kong in 2005, the Committee urged "the Government to take all measures necessary to ensure... the equal representation of women in all constituencies, including rural committees, on the basis of the principle of universal and equal suffrage..." It also urged the Government to "take temporary special measures, to increase women's representation in politics, including in the functional constituencies." (Paras. 319-22, CEDAW Concluding comments: China, Supplement No. 38 (A/54/38/Rev.1) 1999).

85. *Question: When will the Government abolish functional constituencies and reform the electoral system to ensure that all women enjoy equal opportunity and access to the rights to stand for election, to vote, and to take up public offices, including the elections of the HKSAR Chief Executive, by universal and equal suffrage?*

Women with disabilities

86. Pursuant to Articles 25 and 26 of the Basic Law, all Hong Kong residents shall be equal before the law, and permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law. Discriminatory sections in electoral laws violate Article 7 of CEDAW and Article 29 of CRPD, which requires States Parties guarantee to persons with disabilities their political rights and opportunity to enjoy them on an equal basis with others. Persons with disabilities, especially those who are living in institutions and hospitals, are denied their voting rights. Persons with disabilities have the right to stand for elections, to hold public office and perform all public functions at all levels of government. Persons with disabilities, especially those with intellectual or cognitive disabilities, should be able to effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives.
87. Currently, section 53 of the Legislative Council Ordinance (Cap 542) and section 30 of the District Councils Ordinance (Cap 547) state that an elector is disqualified from voting at an election if the elector is found under the Mental Health Ordinance (Cap 136) to be "incapable", by reason of "mental incapacity", of "managing and administering his or her property and affairs". "Mental incapacity" refers to those who are "mental handicapped" or with "mental disorder". But on what grounds can one be identified as within the definition for which a legal basis is yet to be determined. At present, it depends primarily on the diagnosis of the doctors. Even if a patient has intellectual, cognitive or psychosocial disabilities, it does not mean that they do not have the mental capability to vote.
- 88. *Reform provisions to Protect Equal Right to Vote and Stand for Elections: The Government should immediately amend the legislation to render it consistent with the Basic Law and international treaties and the CRPD Committee's recommendations that rights of political participation of all persons be fully protected and prohibit laws which unjustifiably strip women with intellectual, cognitive or psychosocial disabilities of their right to vote and stand for election.***
89. Although the Government has improved the accessibility of polling stations for people with disabilities that percentage of barrier-free polling stations have increased from 85% in 2009 to 94% in 2012, it is still possible for women with disabilities to be sent to election booths with no facilities for such persons, and if the booth is to be changed, five days' notice is required. This means the person with disabilities has to first inspect the venue before election, causing unnecessary

inconvenience.

90. Although polling stations have mostly been barrier free, they continue to have problems and discourage women with disabilities from voting, e.g. entrances for persons with disabilities are sometimes locked with doorbells beyond the reach of wheelchair users. Local NGOs estimated that although 70% of persons with disabilities are registered electors, only 20% exercise their votes. Reports state persons with disabilities complained of inconvenience when at polling stations, thus refraining from voting in future.
91. ***Ensuring Equal Access to Election Polling Stations for Persons with Disabilities:*** It is recommended that the Government allow flexibility when allocating venues, allowing persons with disabilities to choose the most convenient voting venue. It must promptly improve the facilities and support services of polling stations to create a complete barrier-free election process.

ARTICLE 8. EQUALITY IN POLITICAL AND PUBLIC LIFE AT THE INTERNATIONAL LEVEL

ARTICLE 9. EQUALITY IN NATIONALITY LAWS

New arrivals from Mainland China

92. Since the Government introduced the consultation document on population policy, some views promoting discrimination, xenophobia and the “Hongkonger first” attitude by calling for restricting and reducing the quota of immigrants from the Mainland. Such views, which stand in opposition to family-reunion, are not in line with basic human rights and justice. **We urge the Government to safeguard the rights of family-reunion in the One Way Permit Scheme.**
93. Long waiting time for applicants of One Way Permit to settle in Hong Kong under the “separated spouses” category harms family unity and harmony. Unlike other nationalities, separated spouses between Hong Kong and Mainland China have to wait at least four years before applying for reunion in Hong Kong.
94. Due to their immigration status, Hong Kong residents’ Mainland spouses lack the entitlement to rights and benefits to public services, such as public housing and certain medical services and concessionary medical service rates. Mainland women whose spouses are Hong Kong residents are treated as “non-eligible persons” and are therefore denied access to obstetric services in public hospitals due to a zero-quota policy and have to pay much higher charges of such services in private

hospitals (see paragraphs 134, 140 & 141).

95. Mainland women who become single mothers for various reasons after marrying Hong Kong permanent resident men and having children born in Hong Kong are not themselves eligible to One Way Permit. They can only travel to Hong Kong as a visitor and lack the support to take care of their Hong Kong born children, who are Hong Kong permanent resident by law. The CRC criticises in its Concluding Observations such a system as “creating an unstable and vulnerable family situation for their children.” (para 50, CRC Concluding Observations: China (CRC/C/CHN/CO3-4), 2013)
96. ***Remove Barriers to Access to Services and Administration of One Way Permit Scheme:*** We urge both governments of Hong Kong and Mainland China to review and improve the One Way Permit Scheme, to ensure Mainland single parents can settle in Hong Kong to take care of their dependent children there and to shorten the waiting period, make it more transparent and free from corruption. The Hong Kong SAR Government should not introduce any financial, educational or age screening and thresholds for applicants who are spouses, parents or children of Hong Kong people. We urge the government to revise discriminatory policies against such families and allow them to entitle to the rights and benefits of Hong Kong residents in accessing public hospital obstetric services and other medical treatments and health services.

Naturalization and dependent visa applications

97. One has to be a Chinese national to obtain an HKSAR passport and there is a requirement of reasonable income in the naturalisation application. Ethnic minority applicants, including housewives are deterred by this requirement.
98. When a migrant domestic worker marries a Hong Kong resident, there is a requirement of reasonable income of the husband before she would be allowed to remain in Hong Kong on a normal visa (unlike her usual foreign domestic worker visa which has many restrictions on her conditions of stay in Hong Kong).
99. ***Review Barriers to Naturalisation and Dependent Visa Applications:*** We urge the Government to take the right to family reunion seriously over any financial concerns and to consider the family as a whole in handling naturalisation and dependent visa applications from the family. There should not be any discrimination on the basis of the applicants' or their sponsors' or their family members' sex as a woman, or occupation as migrant domestic worker or housewife.

ARTICLE 10. EQUALITY IN EDUCATION

Continuing education opportunities

100. Continuing education opportunities for women are insufficient, especially adult education that is quality-assured and commissioned by the Education Bureau. The lack of related equipment as childcare services also hinders women to attend the evening course. These barriers limit the chance for women to actively enhance their own knowledge and skills, particularly the new arrivals, whose academic qualifications are not recognized in Hong Kong.

101. *Financial Assistance and Childcare Services: The Government should be urged to provide the daytime continuing education courses with financial assistance and childcare services so that women have more opportunities to attend.*

Ethnic minority girls

102. The education policy fails to equip ethnic minority girls with an adequate level of Chinese language to have equal access to higher education and employment, including manual jobs, as Chinese boys do. The mainstream Chinese language curriculum falsely assumes the first language of all students to be Chinese, and ethnic minorities have a poor passing rate in it. On the other hand, many schools, such as most ‘designated schools’, put ethnic minorities under an alternative Chinese curriculum, under which ethnic minority girls only learn local primary-two level Chinese upon graduation from secondary school. The government has announced the establishment of a “Chinese Language Curriculum Second Language Learning Framework”, but the concrete implementation plan, policy goal and evaluation mechanism are lacking.

103. Also, there is de facto racial segregation in the public education system. In 2012/13, in 8 public schools, non-Chinese speaking students account for over 90% of the student population. The government claims it has changed the mode of funding to ‘designated schools’, but this does not in substance solve the problem of segregation in the de facto racially segregated schools.

104. Moreover, according to news reports, in 2012/13, there was segregation of ethnic minority girls within some secondary schools, such as the prohibition of interaction between male and female students. Also, in one school, Pakistani girls faced gender and racial segregation because they had a timetable different from that of Pakistani boys and non-Pakistani boys and girls. Pakistani girls had less learning time under this timetable.

105. *Implement a Chinese as a Second Language Policy & End Racial and Gender Segregation in Schools:* We urge the Government to set out the policy goal and a transparent monitoring and evaluation mechanism related to the Chinese language education of ethnic minorities, to take immediate, effective measures to eliminate the de facto racial segregation in the public education system and the gender segregation within certain schools.

106. *Question:* (a) Please inform the Committee of details of any concrete implementation plan, policy goal and monitoring and evaluation mechanism, such as measures to ensure their transparency, related to the Chinese language education of ethnic minorities. (b) Please explain the impact of measures taken by the Government, including the change of mode of funding to schools admitting ethnic minority students, and on lowering the concentration of ethnic minority students in the de facto racially segregated schools. (c) Please provide information on measures taken to monitor whether there is gender segregation in schools and measures taken to address any such segregation.

Girls with disabilities and ethnic minorities in higher education

107. There is a lack of inclusive higher education policy to support girls with disabilities. The percentage of students with disabilities in higher education is very low, not to mention the students with intellectual disabilities and ethnic minority female students.

108. *Review Higher Education Policy to Eliminate Barriers to Equal Access:* We demand a review of the inclusive higher education policy as to mainstream the needs of ethnic minority students and the students with different (dis)abilities.

ARTICLE 11. EQUALITY IN EMPLOYMENT AND LABOUR RIGHTS

Women with caring responsibilities

109. Women are still assumed to be natural carers who should take up the major duties in taking care of family members who are unable to take care of themselves, such as children, elderly, persons with disabilities or in chronic illness. These caring duties generally limit their participation in society, in the labour market, in public affairs as well as in their personal development. Many of them were displaced from the labour market due to the lack of supportive services in order to perform the caring responsibilities. They are likely to experience economic dependency and to be trapped in poverty because care work is unpaid work, and are not eligible to enrol in the Mandatory Provident Fund, a compulsory savings scheme contributed

to by employers and/or employees towards their retirement benefits. Yet, the Government has done very little to ease the burden of carers. Subsidized childcare services, elderly homes and institutions for people with disabilities are inadequate, inflexible, located in inconvenient locations, expensive for low-income families and ill-equipped to promote family and community life.

- 110. *Comprehensive Review of Demand for and Provision of Supportive Care Services.* We urge the Government to have a comprehensive review of the demand for supportive services for child care, elderly, aging carers and carers with disabilities, in particular on service target, provision, location, and the fee of the services, and assess how far the current provision of services meets actual demand. We also urge the services to be accessible, affordable and available to carers. We also propose the Government to introduce Universal Childcare Allowance for all children under 16 for better upbringing of children, and Carer Allowance for full-time carers of people with special needs to recognize their unpaid work.**

Inadequate protection of Employment Ordinance for casual women workers

111. The employment conditions for women have continued to deteriorate, especially with the lack of childcare and elderly care services, and under the trend of casualization of employment. There is a sharp increase in the number of casual female workers, who are excluded from labor protection under existing employment laws.
112. 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”). This opens a legal loophole for employers to exploit 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. As the result, more women are excluded from employment benefit protections, which include paid maternity leave, sick leave, and holidays, rest days, redundancy compensation etc. It is a form of discrimination and undervalues the contribution of women workers.
113. The Government has not actively undertaken to review or reform the “4.18” definition of continuous employment under the Employment Ordinance and even encourages enterprises to employ workers in the form of part-time workers, which pays no attention to the situation of casual women workers which encourages exploitation.

- 114. The government should review and revise the “4.18” definition of continuous**

employment under the Employment Ordinance and provide employment protection proportionally for women in casual employment.

Government's lack of gender sensitivity on feminization of employment poverty

115. Despite the rise of female employment, women continue to make up the larger proportion in every sector of the poor population. The Women's Commission only emphasizes building up individual capacity but neglects the structure of the labour market that worsens the employment poverty of female workers, who are overrepresented in lowest wage brackets and high mobility and casual work that are excluded from the protection of the Employment Ordinance and Mandatory Provident Fund. It is hard for female workers to lift themselves out of poverty and they end up in employment poverty, especially with the lack of universal retirement protection, females will inevitably be represented in disproportionately higher numbers of elderly poverty. Under these conditions, female workers are in the dilemma of being both, the working poor and invisible poor.

116. The Government should adopt a gender perspective in defining the poor population and in analyzing the structural causes of the problem of feminization of poverty and implement gender sensitive policies to improve the circumstances. The protection of casual workers and the universal retirement protection are also significant to cope with the feminization of poverty.

Gender-segregated job market

117. Under the economic transition, there are highly disproportionate numbers of women, particularly the low skilled women, in lowest wage, longest working hours and casual work. The vocational training offered by the Employees Retraining Board continues the gender-segregated market, with women it trains mainly working in food services and retail industry that have returns inferior to men.

118. According to government statistics in 2011, there are only 9% of women working in the construction industry, which is a key industry supported by the Government's HK\$2.2million subsidies. Women barely benefit.

119. The Government should extend financial support to industries that more women are working in, provide a wider variety of training courses to expand industry choices for women, and support the development of social economies that facilitates women's participation in the labour market.

Insufficient family-friendly policies

120. The existing family-friendly policy makes no difference to women's working conditions and fails to release women from the role of taking care of housework. The lack of Paternity Leave obstructs the opportunities for men to share the housework and take care of household members. Also, the existing Maternity Leave pay is four-fifths of the average daily wages, which violates the International Labour Convention 183 - Maternity Protection Convention that "a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks."
121. Moreover, the lack of daily breaks and places for breastfeeding children limit women's opportunities to work. In service sectors employing a significant number of female workers, such as private aged homes, cleaning and housing security, and catering services, long working hours of 12 hours a day is common. Women employees are unable to maintain a proper balance between work and family life.
- 122. The Government should legislate to extend Maternity Leave to 14 weeks with full pay, provide seven days Paternity Leave and set up standard working hours. There should also be adequate childcare and elderly care services to provide an environment for women and men to share family responsibilities.**

Discrimination in working conditions

123. Discrimination in the workplace is a threat in job opportunities and employment conditions for women, especially middle-aged women with low skills and education level who are discriminated against on the basis of age in the job seeking process. However, the Government has no timetable on the provision of legal protection against age discrimination. Moreover, the legal definition of sexual harassment in the Sex Discrimination Ordinance excludes service providers and fails to protect workers in the service sectors which employ significant numbers of female workers.
- 124. The Government should legislate to prohibit discrimination on the basis of age and provide a timetable for implementing such reform. The Government should also revise the definition of sexual harassment to provide female workers with safe working conditions and equal protection against sexual harassment.**

Women with disabilities

- 125.** According to the Special Topics Report No.48 of the Census and Statistics Department regarding persons with disabilities and chronic diseases, it is estimated that the employment rate of women with disabilities among working age group is 42.5%, much lower than the 69.4% of men with disabilities. **We urge the**

Government to raise the proportion of persons with disabilities it employs from the current 2% to at least 3%.

126. The introduction of the Work Assessment Mechanism for persons with disabilities is a discriminatory measure with no wage support for employees with disabilities. **We urge the Government to provide wage supplement for those who earn less than the minimum wage in the open market.**
127. **The Government should adopt positive measures to realize the rights of persons with disabilities, particularly their right to work and to encourage the labour market to exercise positive employment preferences in employing women with disabilities.**

Ethnic minority women

128. Ethnic minority women have a lower labour force participation rate than ethnic minority men and the whole male population. The median income of women is lower than that of men in some ethnic groups.
129. ***Reviewing Barriers that Prevent Participation in Workforce by Ethnic minority Women:* The Government is urged to review existing barriers, including language, racial discrimination, cultural factors or lack of requisite skills / training or other factors that impact the participation of ethnic minority women in the workforce and introduce programs and policies to effectively address and eradicate the barriers.**

Migrant domestic Workers

130. The Government should investigate and punish recruitment agencies, which charge excessive fees from MDWs in Hong Kong. Yet, the Government has failed to tackle the problem and even have tendency to restrict rights of domestic workers.
131. The "New" Conditions of Stay adopted by Immigration Department restrict rights of domestic workers and are inferior to those of other expatriates. The "two-week rule" discourages MDWs from insisting on their own rights and from seeking for justice on human and labour right abuses cases for fear of being forced to leave Hong Kong and the need to find another employer from afar and face another round of agency rip-off. Immigration Department refuses to process visa application of MDWs who are considered as "premature termination of contract". **We urge the government to abolish the "two-week rule".**
132. **To improve vulnerable groups' access to justice, we urge the government to waive the costs of visa extensions for MDWs who are seeking compensation for human and labour rights abuses, allow them to work unless there are**

reasonable grounds to the contrary, and ensure that they have effective access to adequate support, such as food, transportation, shelters, medical, interpretation and legal, at all stages of redress, including the conciliation process at the Labour Department. We also urge the government to review Labour Tribunal's claims adjudication process to ensure no MDWs are pressured to settle.

133. Mandatory live-in rule requirement increases risk of physical and sexual abuse, lack of privacy and overly long working hours. **We urge the government to allow live-out arrangements subject to employment negotiation between the parties.**

134. Pregnant MDWs are often unlawfully dismissed from their employment because of their pregnancy. We urge the government to (1) set out explicitly on MDWs contract that they are entitled to maternity leave and (2) educate employers and employment agencies that it is a criminal offence to terminate pregnant workers. Due to the two-week rule, a pregnant MDW who is terminated or not renewed for her employment will make her a “non-eligible persons” who is no longer eligible to resident rates of hospital fees, resulting in her owing a substantial amount of medical charges to the government after giving birth in a public hospital (at least HK\$90,000 which she is unable to pay). This government debt in turn taints her record and she may not be allowed to work in Hong Kong again. After the introduction of the zero-quota policy in all public hospitals, all “non-eligible persons”, including dismissed MDWs, are now basically denied obstetric services in public but private hospitals. **We urge the government to waive these fees of maternal health services and to delete the related non-payment record from their immigration files** (see also paragraph. 140 &141 for further recommendations, paragraph 94 & 96 on situation of and recommendations on Mainland spouses of Hong Kong resident husband).

135. Domestic workers are being excluded from statutory minimum wage, mandatory provident benefits and social protection. **We urge the government to ensure domestic workers receive equal treatment as other workers as ILO Convention number 189 has stated – decent work and equal rights for domestic workers.**

ARTICLE 12. EQUALITY IN ACCESS TO HEALTH FACILITIES

Inadequate public primary health services for women

136. There is a lack of public primary health services for women of all ages. There are only three woman health centres (WHCs) and 10 maternal and child health centres

(MCHCs). In 2011, a total of 19 356 women were registered for such services. Given that there were 3.77 million women in Hong Kong, less than 1% received the services. **We urge the Government to allocate more resources to set up more service points and increase the service capacity to shorten the waiting time. The Government should also examine whether additional resources can be allocated in the coming budget to set up more health centres to serve more women.**

- 137.** The primary health services for aged women are also inadequate. There were only 38676 members of the Elderly Health Centres (EHCs) in 2009. Elderly people who wish to enroll as members of EHCs have to wait for more than one year. Among the EHCs members, 24867 were aged women and there are insufficient preventive services for aged women. **We urge the government to provide EHC members with examination services, including those for male or female diseases. Parts of the additional resources the Government allocated to improve primary care services should be given to improve EHC and other public services.**

Population-based breast cancer screening

138. Breast cancer is the most frequent cancer affecting Hong Kong women and ranked third in mortality. It has increased 3-fold from 1993 to 2010,¹¹ with an above average incidence rate of 54.8 /100,000 women (world average 39). Despite recommendations by the World Health Organization, Hong Kong has no population-based breast screening. Prevention of breast cancer is mainly through leaflets or limited health talks, but not large-scale or effective enough.

- 139.** **We urge the government, 1) to collect local data on breast cancer and to conduct local studies on the feasibility of population-based screening as soon as possible; 2) provide more free qualified screening centres to women who opt for screening, so the grassroots women will not be excluded; and 3) to conduct routine population-based examination for other diseases that may be specific to particular ethnic groups.**

Ethnic minority women and migrant domestic workers

140. Ethnic minority women and girls do not have equal access to healthcare services. Some ethnic minorities have complained of the inaccuracy of the interpretation provided and the inadequate promotion of the interpretation services. Misdiagnoses can prove detrimental or even fatal to health. This contravenes equal right to health services. Pregnant MDWs unlawfully terminated would become "ineligible

11. Dr. Polly CHEUNG, Founder, Hong Kong Breast Cancer Foundation, "Global and local status of Breast Cancer and Screening", April 2013.

persons" and therefore are no longer entitled to give birth in, or receive maternal health care from, any public hospitals now under a "zero-quota policy" for non-residents. "Ineligible persons" also have to pay higher rates for other public medical services still available to them. (See also paragraph 134. See also paragraphs 94 and 96 on situation of and recommendations on Mainland spouses of Hong Kong resident husband)

141. We urge the government to ensure that all MDWs, including those who have been dismissed from their employment or engaging in labour claims, to have unobstructed equal access to maternal and other medical and health services in public hospitals and clinics at the rate of "eligible persons".

142. We urge the government to ensure all vulnerable groups, including MDWs, EM women and girls, have access to public medical services with proper interpretation of their native language in a culturally sensitive manner. Appropriate and adequate sex education, including proper use of contraceptives, should be made available to them. The publicly funded Family Planning Association and women's clinics should make their services more easily accessible and culturally friendly to these vulnerable groups of women.

Insufficient healthcare services and support for women with physical or mental disabilities and chronic illnesses as well as their carers

143. The need of healthcare services for women with disabilities has been severely neglected. There is a lack of medical facilities and professional services both in public community clinics, public hospitals under the Hospital Authority and health centres¹². Moreover, for women who are of psychosocial disabilities, it is very difficult for them to have medical insurance or they need to pay a very high premium.

144. Female caregivers for persons with chronic illnesses were suffering more severe mental health problem. Female with chronic illnesses/disabilities showed higher level of depression and anxiety symptoms than the male with chronic illnesses/disabilities. This is associated with their dual roles as both patient and care-givers of family members with disabilities, subjected to high stress and

12. For instance, The Department of Health (DH) has planned to provide Women Health Centers and Maternal and Child Health Centers (MCHCs) with gynecological examination tables for disabled women since 2011, but by the end of 2012 only 9 out of 34 centers have been available and most of healthcare staff are not able to conduct general and gynecological examination to serve women with disabilities.

burden of care.¹³

- 145. We urge the Government to enhance more hospital and community-based supporting and rehabilitation services to those female with chronic illnesses/ disabilities, especially for those who are under stress of dual role as both patients and caregivers.**
- 146. *Question:* (a) What has the Government done to provide supportive services to address the mental health needs of women with disabilities who are also caregivers? (b) What measures has the Government taken to implement the recommendations in CRPD's and CRC's Concluding Observations, that more human and financial resources be allocated to public medical services and to secure the cooperation of insurance companies?**

Access to healthcare and forced sterilization for women in sexual minorities

147. Lesbian and bisexual women are excluded from health promotion services, and awareness of women's health issues among such communities remains low.
148. Transgender persons who identify as and desire to be accepted into another sex are forced to undergo highly invasive genital and sterilization surgeries, in order to obtain legal recognition of their preferred gender. Further, due to the delayed reopening of the sex clinic, transgender persons have had serious difficulties accessing sex reassignment-related services at general psychiatric clinics.
- 149. We urge the Government to increase the sensitivity towards LBT women in the public healthcare system and to swiftly reopen the sex clinic. We also urge the Government to enact gender recognition legislation that covers all areas of law and removes surgical prerequisites in recognizing the preferred gender of transgender persons who identified as and desire to be accepted into another sex.**

ARTICLE 13. ECONOMIC, SOCIAL AND CULTURAL LIFE

Women in poverty

150. With the official poverty line formulated in 2013, women were proven to be impacted more severely by poverty than men in Hong Kong. According to the official figure, a higher percentage of women are living in poor households, even

13. Female with disabilities/ chronic illnesses were more likely to also take the role of caregivers (21.3%) than male with disabilities/ chronic illnesses (13.2%). Among those who were both patients and caregivers, 31.7% and 54.7% female showed depression and anxiety symptoms respectively while 22.5 and 42.1% male did.

after receiving cash-based benefits / cash-equivalent supplements recurrently provided by the Government. The situation illustrates the loopholes in the existing supporting measures offered by the Government in tackling women and poverty.

151. Worse still, women were recorded with higher ratio in vulnerable family settings, including households receiving Comprehensive Social Security Assistance (CSSA), elderly households (households with all members aged 65 and above), single-parent households (households with at least one never married, widowed, divorced or separated member living with children aged below 18), and new-arrival households (households with at least one member from the Mainland having resided in Hong Kong for less than seven years).

152. Moreover, the existing retirement protection, i.e. the Mandatory Provident Fund (MPF) Scheme, is fundamentally problematic in terms of providing protection to women for old age and retirement. First, women who are not in the workforce are excluded. Second, although the minimum level of income per month was amended to HK\$6,500 on 1 November 2011 (i.e. employees earning less are not required to contribute), anyone with a relatively low-income level will receive less retirement pension. As women generally earn less and work in low-paid, temporary jobs, a retirement protection scheme benefits them less than men. Foreign domestic helpers, most of who are women and are not required to join the scheme, are also not protected. The elderly or those who will soon retire cannot rely on the MPF to provide any immediate financial assistance. Their only option is to fall back on CSSA, which is far from adequate.

153. We urge the Government adopt effective measures to support the women living in vulnerable families. Simultaneously, as a substantial number of women are currently out of the job market, the existing retirement protection systems are unlikely to benefit them when they get old, which makes them vulnerable to poverty in the future. The Government should set up a sustainable universal retirement protection scheme.

154. Question: Will the Government take concrete measures to support women in vulnerable family settings and set up a universal retirement protection scheme?

Housing problem of women

155. The amendments of the Landlord and Tenant (Consolidation) Ordinance (LATO) in 1999 and 2004 have removed rent control and statutory rights of the domestic tenants to renew their tenancy. The average rent of a flat less than 40 square meters

has increased 68% in the period from 1999 to 2012¹⁴. The rent rate has speculated and the unaffordable rent level resulted in a blossom of subdivided units (SDU) which has caused significant hygiene and safety problems to the residents. The SDU has found in ordinary domestic building and even industrial building, it has estimated that there were at least 66,900 domestic households living at SDU and 45.6% residents of SDU were female¹⁵. The average area of SDU per capita was around 6.2 square meters for all households living in SDU, it included the kitchen and toilet if they were supplied in the SDU.

156. The Committee should express grave concern on the adverse impacts of the amendments of LATO and urge the Government to repeal the amendments and provide protections to the tenants in a speculated real estate market. In addition, the Government should provide effective measures to improve the poor living condition of the female residents.

Safeguard the fundamental rights of affected residents in urban renewal

157. The Government has introduced the Land (Compulsory sale for redevelopment) Ordinance (LCSRO) in 1999 which allowing the majority owner who acquired 90% of the lot to apply a compulsory sale order to force the minority owner to sell their unit for redevelopment. The application threshold has further lowered from 90% to 80% in 2010 for the building aged 50 years or above. The number of application has been rapidly increasing after 2010. The minority flat-owners have been complaining that they were being harassed during property acquisition in the flux of urban redevelopment and there were no sufficient support for the minority flat owner to object the application or preserve their interest. Furthermore, due to the lack of any statutory rent control and security of tenure, the tenants can be evicted with little legal restraints by terminating the tenancy. Thus tenants evicted before the formal acquisition are unable to receive compensation although they would have been entitled to be compensated under the provisions of LCSRO had they not been evicted.

158. The Committee should express grave concern on the adverse impacts of the LCSRO to the affected residents and urge the Government to safeguard their

14. Rating and Valuation Department, HKSAR Government 2013.

15. To estimate the number of subdivided units (SDU) in private domestic domestic/composite buildings aged 25 and above in Hong Kong and gather relevant information on tenants living in SDU, the Long Term Housing Strategy Steering Committee (Steering Committee) of the HKSAR Government has commissioned Policy 21 Ltd. to conduct the “Survey of Subdivided Units in Hong Kong” during the period from 31 January to 30 April 2013. http://www.legco.gov.hk/yr12-13/english/panels/hg/hg_lths/papers/hg_lths0626cb1-1371-3-e.pdf

fundamental rights. It is observed that elderly women are strongly affected by urban redevelopment and they are facing more difficulties in seeking assistance.

- 159. The Committee should urge the Government to provide legal-aid to the eligible minority owners in defending their rights in a LCSRO application which the legal aid service does not cover LCSRO cases in current legal-aid scheme and supplementary scheme.**

Permanent resident women marry protection seekers

160. A Hong Kong Permanent Resident woman, who is married to a non-local man, that being typically a man who is in Hong Kong with refugee, CAT Claim or CIDTP status pending, often the dependant visa application is refused or the process takes years for the Immigration Department to come to a result. During this time, most of the women have to work two jobs in order to financially support their husbands (and children – if any). This puts great pressure on the women and family environment, and further impacts their poverty situation. As most of the refugee, CAT and CIDTP claimants in Hong Kong are male, this further leads to a higher percentage of women living in poor households. Further, the Immigration Department, in their refusals, often suggests that the Hong Kong Permanent Resident woman can move to her husband's country of origin in order to keep her marriage intact. Therefore, she in turn, effectively has to adopt her husband's nationality and/or religion.

- 161. We ask the Committee to urge the HKSAR Government to acknowledge the rights of Hong Kong permanent resident women under Article 37 of the Basic Law ('the freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law') and grant their husbands dependant visas so that the husband can work and provide for the family. Further, we urge the Hong Kong SAR Government to further acknowledge the rights of the Hong Kong permanent resident women in maintaining her nationality and/or religion, and most importantly, keep her family intact, especially where there are children involved.**

ARTICLE 14. RURAL WOMEN

162. In terms of village representatives' election, of the 1700 village representatives, currently only 30 of them are female, with a ratio of 2%, heavily imbalanced.

163. Property rights accrue mainly to male descendants of indigenous lineage, privileging these men in the acquisition of landed property, thereby discriminating against indigenous women and violating their equal rights to property.

164. *Question:* The Government should be asked to ascertain and explain to the Committee the reasons why there is a low female participation in village affairs and elections of village representatives, and how greater participation of women can be encouraged in the village representative elections.

ARTICLE 15. EQUALITY IN LEGAL AND CIVIL MATTERS

Rights of women seeking protection such as asylum seekers, refugees, CIDTP victims (cruel, inhuman, degrading treatment or punishment) and torture claimant women

165. The HKSAR government is now required, following the Court of Final Appeal cases of “C” and “Ubamaka”¹⁶—to set up a “unified screening mechanism” (USM) for the processing of refugee, CIDTP and torture claims¹⁷. In a paper presented at meeting of a Legislative Council Panel on Security on 2 July 2013, the Administration first announced its intention to adopt the USM to process “non-refoulement claims”¹⁸. However, to date no information has been provided as to the new USM process or its expected commencement date. The lack of details about the USM is creating a significant amount of stress and uncertainty among claimants.

166. With no legal status in Hong Kong, and legally treated as “overstayers”¹⁹,

16. On 21 December 2012, the Court of Final Appeal released its judgment that ruled that Hong Kong has an obligation to offer protection to those facing the threat of cruel, inhuman or degrading treatment or punishment (CIDTP) and on 26 March 2013, the Court of Final Appeal handed down its judgment that calls for the government to independently screen refugee claims, rather than relying exclusively on the UNHCR refugee status determination, in the decision to deport them.

17. Said mechanism will process three kinds of claims: (a) Torture as defined under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (b) Torture or cruel, inhuman or degrading treatment or punishment under Article 3 of the Hong Kong Bill of Rights; and/or (c) Persecution with reference to the principle of non-refoulement under Article 33 of the 1951 Convention relating to the Status of Refugees.

18. HKSAR Government, Panel on Security of the Legislative Council: Screening of Non-refoulement Claims, LC Paper No. CB(2)1465/12-13(01), June 2013, available at: <http://www.legco.gov.hk/yr12-13/english/panels/se/papers/se0702cb2-1465-1-e.pdf>

19. Rather, asylum seekers, refugees and torture claimants are granted discretionary permission to remain in Hong Kong by the Director of Immigration.

claimants (even recognized refugees and successful torture claimants) are not granted the right to work. While the Director of Immigration has the authority to issue discretionary permission to work on a temporary basis, this has hardly ever been granted in practice. This forces claimants to be dependent on a basic “humanitarian assistance” package provided by the HKSAR government. However, the assistance to claimants for housing, food, medical and other basic needs—even with recent “enhancements”²⁰—is drastically inadequate and inappropriate, forcing these women into destitution and resulting in a negative impact on this already vulnerable group’s dignity, right to an adequate standard of living, and mental, emotional and physical state.

167. We ask the Committee to urge the HKSAR Government to ensure that the rights of all women, as articulated in CEDAW and other core human rights instruments, are fully respected, protected and fulfilled, regardless of their immigration status. We also recommend that the Committee urge the HKSAR Government to amend its Immigration Ordinance to give non-refoulement claimants legal status in Hong Kong SAR.

168. We ask the Committee to urge the HKSAR Government to grant at least recognised claimants the right to work, which is intrinsically related to their right to an adequate standard of living, their social inclusion in Hong Kong society, feelings of dignity and self-worth, and mental and physical health. We also recommend that medical assistance in terms of psychological and physical health support be provided, especially for women.

169. Furthermore, we urge the Government to review its in kind assistance scheme currently in place to assess whether it adequately meets these needs, especially specific to women, for example, women’s supplies, children’s school uniforms and extracurricular expenses, contraception, etc..

Cruel, inhuman or degrading treatment of transgender people in detention

170. The Government does not have any policy or measures to prevent the degrading treatment or even torture of transgender persons by enforcement officers when they are detained or incarcerated.

171. Horrifying mistreatment of transgender detainees have been reported in Hong Kong since 2009. Some detainees were housed in a psychiatric centre since they

20. HKSAR Government, “*Humanitarian Assistance for Non-refoulement Claimants in Hong Kong*”, LC Paper No. CB(2)626/13-14(06), 7 January 2014, available at: <http://www.legco.gov.hk/yr13-14/english/panels/ws/papers/ws0113cb2-626-6-e.pdf>

were identified as “gender variants”. Male-to-female transgender detainees were incarcerated in male facilities and were forced to appear as male detainees. They were refused female underwear regardless of the breast implant surgeries they had, and have had their hair cut. They were even refused hormone treatment, such refusal being a cause for depression and suicidal tendencies. Such mistreatment denies their own identity and dignity, and constitutes cruel, inhuman and degrading treatment, possibly even torture, for transgender persons

172. We encourage the Committee to ask the Government to account for its failure to set up regulations for treating transgender detainees and prisoners with humanity and respect.

ARTICLE 16. EQUALITY IN FAMILY LAW

Maintenance of single parent family

173. Single parents, of which 62.7%, (approximately 53,100) are female, occupy a large group of Comprehensive Social Security Assistance Scheme (CSSA) recipients. 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 a Maintenance Board to facilitate the single parent family to obtain maintenance payments but the Government has refused setting up such an agency.

174. We urge the Government to echo calls from the civil society and the Legislative Council to set up a Maintenance Board to act on behalf of single-parent families to obtain maintenance by their divorced spouse.

Migrant domestic workers

175. In situations where an MDW is a single mother or married with a Hong Kong resident but is divorced, even her child has permanent resident status by virtue of the birth father, she and her child may be removed from Hong Kong if she loses her residency status or overstayed her visa. In these situations, the Department of Immigration failed to take into account the best interests of the child when making removal and/or deportation orders against the women.

176. We urge the Government recognize that women falling within this situation be given permission to remain. The Government should not issue any removal orders to women who have a Hong Kong permanent resident child. And, if a woman has a removal order they should be rescinded, on the basis that they have a Hong Kong permanent resident child. Further, if they are in the process of obtaining legal aid, or have legal aid and are in the court process

regarding declaration of paternity, they should not be issued any removal orders. In other words, their immigration status should be pending until the child's immigration status is determined.