

**HONG KONG HUMAN RIGHTS COMMISSION  
SOCIETY FOR COMMUNITY ORGANIZATION**

**Submission to  
the United Nations Committee on the  
Elimination of Discrimination against Women  
on the Third Report of  
the Hong Kong Special Administrative Region  
under  
the Convention on the Elimination of  
All Forms of Discrimination against Women**

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## **EXECUTIVE SUMMARY**

The Hong Kong Human Rights Commission would like to draw the attention of the Committee on the Elimination of Discrimination against Women to the following issues:

### **VULNERABLE GROUP 1: NEW IMMIGRANTS WOMEN**

Racial discrimination against new immigrants has recently been in the increase, and HKHRC is extremely concerned about this new trend. After a judicial review which had led to a revocation of a 7 year residence requirement for recipients of social security, the public has turned against new immigrants.

Tremendous discussion on the internet was held and some organizations even advertised a discriminatory advertisement against new immigrants. Certain newspapers proposed to disregard the concept of social integration between Hong Kong and the mainland China and establish a native ideology instead.<sup>1</sup> The prejudice and conspiracy against new immigrants from mainland China was thus further magnified by the mass media which chose what suited their editorial line.

While discrimination against new immigrants has increased, there is no legislation to protect them against racial discrimination. The government has excluded the Mainlanders or new immigrants from Mainland China from the Race Discrimination Ordinance. It does not recognize immigration status as a basis of race discrimination nor does it recognize new immigrants as a separate ethnic group. The HKHRC highly recommends that the government should extend protection against racial discrimination to this vulnerable group.

Secondly, new immigrant women do not enjoy the right to family reunion. In Hong Kong, there are still approximately 100,000 split families comprising parents, mostly women, and their children separated between Mainland China and Hong Kong as a result of erroneous policy. The women must apply for One-way Entry Permits from the PRC Government before they are allowed to join their parent/s in Hong Kong.

However, there is no quota for these single parent mother in one way permit system. These mainland mothers can only visit their children in Hong Kong for prolonged years with a visitor's permit. The HKHRC recommends that the single mothers should be able to share the quotas for One Way Permits on an equal basis with married persons.

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<sup>1</sup> Apple Daily (18 December 2013) Court of Final Appeal ruling bring a new awareness of nativism of Hong Kong people.

## VULNERABLE GROUP 2: FEMALE PRISONERS

While all prisoners, no matter gender or nationality, face hardship being imprisoned, foreign female prisoners find themselves in an especially vulnerable situation, because they are separated from their families and often feel marginalized as they encounter linguistic and cultural barriers. Keeping in touch with family members who are unable to visit them can highly reduce their stress levels and also increase rehabilitation. However, currently they are only allowed to make a 10 minute phone call every 2 months.

The HKHRC recommends that the government should amend the Prison Rules to recognize the placement of telephone calls as a legal entitlement and specify clearer regulations governing the placement and regulation of calls. Regulations should outline the minimum frequency and duration of phone calls that all prisoners are entitled to make.

For foreign female prisoners being transferred to their home country is a top priority. Being away from their children and spouses causes a lot of mental distress and also many family problems. However, the HKSAR has only signed Transfer of Sentenced Persons (TSP) agreements with 13 countries/jurisdictions, and most of the female prisoners do not come from these countries, making it almost impossible to be transferred back.

The HKHRC recommends that HKSAR should enter into more bilateral agreements with countries in order to transfer foreign prisoners. It should proactively negotiate agreements with countries from which its foreign prisoner population comes from.

## VULNERABLE GROUP 3: WOMEN IN POVERTY

In 2013, the median monthly employment earnings for females, were 30% lower than for males for males. This has been increasing since 2010. Apart from the fact that female workers mainly work in the elementary occupations, their income was much lower in comparing with that of the male workers for the same class, showing that the inequality of employment earning between sexes has become more serious.

In addition, there are 642,000 housewives in Hong Kong without any earnings or retirement protection<sup>2</sup> and it can be estimated that their financial situation would be the most vulnerable. As women constitute a significant proportion of the elderly population in the future, it can be estimated that women will be mostly affected.

We strongly urge that the Hong Kong SAR Government should review the current mandatory provident fund scheme and extend the overall retirement scheme to all retired persons, housewives as well as the low-income workers.

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<sup>2</sup> Census and Statistics Department (2014) Women and Men in Hong Kong: Key Statistics 2014 Edition, <http://www.statistics.gov.hk/pub/B11303032014AN14B0100.pdf>

## ARTICLE 7: EQUALITY IN POLITICAL AND PUBLIC LIFE

In the last concluding observations the Committee was concerned about the low level of political representation of women, including in the functional constituencies. It also stated that “the electoral system of functional consistencies may constitute indirect discrimination against women, as it results in the unequal participation of women in political life”<sup>3</sup>.

The State Party is obliged to ensure equal opportunities for political participation of women but it is not fully realized in Hong Kong. The representative number of women serving on advisory and statutory bodies is one of the indicators to reflect the situation of political participation, while in fact there are no women representatives on certain important advisory bodies.

The Government has set a gender benchmark of 30% in 2010 as a working target for appointments to Advisory and Statutory Bodies (ASBs). However, the benchmark is much lower in comparing with the developed countries and the HKSAR Government is reluctant to setup a fixed percentage of women for serving on these bodies.

We strongly urge that the Hong Kong SAR Government should introduce the affirmative action for appointment of women to advisory and statutory bodies and make the recommendations provided by the Women’s Commission with legal binding forces.

## ARTICLE 14: RURAL WOMEN

In the last Concluding Observations in 2006, the Committee expresses concern about the Small House Policy, under which only indigenous men, but not indigenous women, are entitled to apply for a permit to build a residence in the New Territories. However, after 15 years, there is no progress.

We strongly urge the Hong Kong SAR Government to abolish the small house policy in view of the social development, as it is discriminatory and violate the modern concept of equality between men and women.

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<sup>3</sup> Committee on the Elimination of Discrimination Against Women 2006: *Concluding comments of the Committee on the Elimination of Discrimination against Women: China.*

## **VULNERABLE GROUP 1: NEW IMMIGRANTS WOMEN**

The number of new immigrants constitute over half of the annual natural growth population of Hong Kong. Each year about 45,000 new immigrants from Mainland China come to Hong Kong for family reunion. Around 35-40% of them are children, while 60% are adults, mostly mothers. 56% of the new immigrants only have a Primary or junior Secondary education background. Most of them are from low income families and have no knowledge about Hong Kong society. The employment rate of new immigrants is only 43% and the monthly median wage is HK\$7,500 (US\$961.5) which is much lower than that of the Hong Kong people (HK\$12,000 (US\$1,538.4)).

Some of the new immigrant women and children are considered a family burden. For example, some of them need to depend on Hong Kong family members' financial support as they failed to access social security when they encountered financial difficulties. They are vulnerable to be subjected to domestic violence. In the past few years, the number of domestic violence cases has increased. Nearly 80% of the abused women and children are new immigrants in the shelter.

At the same time, social discrimination against new immigrants has become more serious. As the disparity between the rich and poor has become larger, new immigrants are made scapegoats of poverty and social problems. Even organizations working with new immigrants are criticized by the society. Therefore, it has become harder for new immigrants to integrate into society.

Being immigrants they face a lot of challenges when trying to integrate into Hong Kong society. They have difficulties finding a new job, learning the Cantonese dialect, and they don't have support from families and friends at home. They have to adapt to new ways of doing things and to new values and a different culture. They also face the social stigma of being from the Mainland, and thus face a lot of discrimination and stereotypes. Feelings of hopelessness and helplessness are common among migrant women, and they feel alienated, unsafe and unsure about where to go for services and support.

## **ARTICLE 2: RIGHT TO NON-DISCRIMINATION**

### **Increased racial discrimination against new immigrants**

#### **Background**

The Government adopted a new population policy in 2003. The main target was to bar adult new immigrants to access welfare support. In the first stage, it introduced stricter eligibility criteria for application of Hong Kong's social security called Comprehensive Social Security Allowance (CSSA). The criteria increased from one year's residence to seven years' residence. This meant that new immigrant spouses of Hong Kong residents were not allowed to enjoy the same assistance as their Hong Kong family member after reuniting with their family in Hong Kong.

It also meant that many new immigrants could not access social security despite financial hardship. For instance more than 2,000 deprived single-parent new immigrant women could not receive assistance from the HK SAR Government when they encounter financial hardship since 2004.

From 2005-2011, 319,887 new immigrants arrived in Hong Kong. Among these only 17,253 received CSSA in 2011. 86% of these were new immigrant children. Often these children would share their CSSA with the mother, who would not be eligible for any assistance because of the 7 year residence requirement.

The 7 year rule, however, was declared unconstitutional in 2013 by the Court of Final Appeal (CFA) after HKHRC supported a new immigrant woman to launch a judicial review of the discriminatory policy.

### **Judicial review of the 7 year rule**

The appellant Madam Kong, who was assisted by HKHRC to lodge the judicial review, is a native of Guangdong province. In 2001, she met Mr. Chan Wing, a Hong Kong permanent resident, and married him in October 2003, having visited him in Hong Kong on a two-way permit on several occasions. Mr. Chan was not a man of means. His health was not good and he had been a recipient of social welfare since 1985.

Madam Kong worked on the Mainland as a home helper for the elderly until 2005. She was granted a one-way permit by the Chinese authorities on 30 November 2005, she decided to come to settle in Hong Kong with her husband. She arrived here on 21 December 2005, then aged 56, and was granted permission to remain for seven years. She was duly issued with a Hong Kong Identity Card on 28 December 2005. She thereupon became a non-permanent resident of Hong Kong within the meaning of Article 24 of the Basic Law.

Sadly, her husband (who was aged 76) died on 22 December 2005, the day after she arrived in Hong Kong. She found herself homeless, since the Housing Authority immediately repossessed her late husband's public housing unit. She was without family or friends in Hong Kong and was admitted to a shelter for street sleepers. However, with an address at a street sleepers, she was discriminated against by potential employers, and it was therefore difficult to find a full time job. She only found some casual work and was usually underemployed or unemployed.

On 20 March 2006, Madam Kong applied for CSSA but was unsuccessful. Her application was refused because the Government's policy has, since 1 January 2004, been that persons who have resided in Hong Kong for less than seven years do not qualify for CSSA, save where, in exceptional circumstances, the Director of Social Welfare waives that residence requirement as a matter of discretion. The policy was aimed at Mainland immigrants. Madam Kong's case was not considered appropriate for the exercise of that discretion and her

appeal to the Social Security Appeal Board against that decision was rejected.

### **The Final Judgment by the Court of Final Appeal**

With the assistance of HKHRC, the applicant decided to seek judicial review to challenge the constitutionality of the requirement. She was granted legal aid and instituted judicial review proceedings to challenge the Director's decision to reject her CSSA application on the ground that the imposition of the seven-year residence requirement is inconsistent with Articles 25, 36 and 145 of the Basic Law, as well as Article 22 of the Hong Kong Bill of Rights. On 23 June 2009, the Judge of the Court of First Instance dismissed her application for judicial review.<sup>4</sup> His Lordship's decision was upheld by the Court of Appeal on February 2012 which rules that the 7-year residing requirement does not violate the constitution.<sup>5</sup> HKHRC then assisted the claimant to appeal the case to the CFA and the leave to appeal is successfully obtained in December 2012.

The hearing was heard at the CFA on 18 and 19 November 2013. On 17 December 2013, the 5 judges of the CFA unanimously ruled that the 7-year residing requirement for apply social security is unconstitutional which breaches Article 36 (Right to Social Welfare) under the Basic Law.<sup>6</sup>

### **Implications on the Right to Social Welfare of the Hong Kong citizens**

The judgment of the CFA not only has significant positive impact for the new immigrants but also to the entire society. It was the first time the Hong Kong courts reassured the right to social welfare of the Hong Kong citizens as enshrined by the Article 36 of the Basic Law and where the Judiciary attempted to define the scope of right to social welfare and its applicability in the local context. Under the conventional approach of human rights, only the civil and political rights is treated as inalienable rights, while the economic and social rights are generally ignored and the Court is hesitated to intervene the administrative policy due to the limited public resources. The present ruling emphasized the importance of the right to social welfare by referring to the case laws of other common law jurisdictions that right to social welfare should be taken in serious consideration. Social welfare right is recognized as the fundamental human rights that all Hong Kong citizens should be entitled to enjoy regardless of year of residency or devotion to the society.

The CFA did not clearly define the term of social welfare under the Basic Law, while the Hong Kong Government should conduct a close examination for formulation or alternation of related social welfare policies by considering the following questions: (1) Does the public

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<sup>4</sup> *Kong Yiuming v. The Director of Social Welfare* [2009] 4 HKLRD 382.

<sup>5</sup> *Kong Yiuming v. The Director of Social Welfare* CACV 185/2009.

<sup>6</sup> *Kong Yunming v The Director of Social Welfare* FACV 2/ 2013,

policy concerned fall into the scope of the right to social welfare as defined by the Article 36 of the Basic Law? (2) If so, does the public policy concerned comply with the requirements of “development” and “improvement” as stated under the Article 145 of the Basic Law? and (3) If so, in view of the economic conditions and social need, whether the proposed amendment of the public policy concerned pursues a “legitimate societal aim” and, having identified that aim, it asks whether the impugned restriction is “rationally connected” with the accomplishment of that end. If such rational connection is established, the next question is whether the means employed are “proportionate” or whether, on the contrary, they make excessive inroads into the protected right.

As far as the 7-year residing requirement for applying social security is concerned, the Court ruled that the policy concerned is limited the scope of Article 36 as a social welfare and the Government is entitled to introduced restrictions on applying society security in accordance with the Article 145 of the Basic Law. Although the 7-year residing requirement established since January 2004 has legitimate societal aim by promoting the financial sustainability of the social security system, it does not rationally connect to the aforesaid legitimate societal aim. Moreover, the 7-year rule was wholly disproportionate and manifestly without reasonable foundation, given its contradictory policy consequences and socially insubstantial benefits. The landmark ruling clearly laid out the assessment mechanism for reviewing governmental policy to safeguard the social welfare rights of Hong Kong citizens.

Furthermore, in the absence of the domestic legislation of the ICESCR, it has been worrying that those rights stated cannot be legally protected by law. However, the ruling (paragraph 173 to 180) closely discussed the impact of the meaning of the ICESCR, its applicability in Hong Kong and accepted that “[t]he stricter test will include imposing a heavier burden on the Government to justify potentially retrogressive measures, and the need to show that alternative measures had been carefully considered.”<sup>7</sup> Moreover, the domestic court also took the General Comments of the United Nations Committee on Economic, Social and Cultural Rights which showed the importance of the International Covenants on protecting fundamental human rights of the people in Hong Kong.<sup>8</sup> The ruling also indicates the rule of law was ensured and the fundamental human rights of an individual are protected under the independent judicial system in Hong Kong.

Comprehensive Social Security Assistance (CSSA) is the only safety net to help Hong Kong residents that encounters financial difficulty. After the ruling only 5,567 new immigrants who previously didn’t meet the 7 year residence requirement applied for social security. Currently, less than 4.2% of CSSA cases are with new immigrant members of less than one year’s residence. Most of them are single-parent women with young children or

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<sup>7</sup> Paragraph 180 of the judgment of FACV 2/2013, extracted from the “Right to Welfare” chapter of *Law of the Hong Kong Constitution* (eds. Johannes Chan and C L Lim) (2011) (Sweet & Maxwell) – a book cited by Lord Pannick in the course of argument (although not on this point) – Professor Karen Kong put it like this (at p.798, para 25.040)

<sup>8</sup> Paragraph 179 of the judgment of FACV 2/2013.

women with chronic illness husband as they need to take care of their children or family. These women need to share with their children's CSSA to support the whole family expenditure. It harms both of the development of the children and the women.

## **Opinions on the ruling from Hong Kong society**

After the CFA judgment people from Mainland China, however, have faced increased discrimination and political parties and other groups have strongly opposed the ruling.

### Political parties

In view of the increasing conflicts between Hong Kong people and mainlanders from China, the judgment triggered a greater anger among local Hong Kong residents against new immigrants from the mainland China. Some local political parties strongly opposed against the court's ruling. For example, the Liberal Party, which in support of economic liberalism, formed an Alliance against the abuse of social security, argued that the ruling will create a floodgate to enhance the abolishment of 7-year residing requirement of all kinds of public services, including application for public rental housing, etc.,. It worried that over billions of public reserve would be wrongly spent under the ruling.<sup>9</sup> In addition, public survey was conducted by the political party which found that over 82% of the respondents opposed against the ruling. While asking about the reasons of the opposition, around 40.5% of the respondent ruled that the ruling is not fair to the taxpayer, while 40.2% expressed that it will increase welfare burden of the society.<sup>10</sup>

### Local group concerning rights of local people

In addition, different groups and individuals discriminated against the new immigrants and mainlanders by arguing that the ruling would attract new arrivals depending on social welfare and lead to heavy public burden. Worse still, the rise of populism and nativism among the public is another big obstacles in the policy formulation and implementation. Due to the anger and dissatisfaction on current social development from local Hong Kong people, new immigrants from the Mainland China become the scapegoat of social problems. Some nativists and legislators even organized campaign to limit the entry of the new immigrants to Hong Kong and ignored the right of family reunion, which is the basic human right that they have been hungering for decades.

Some radical views even proposed to stop allowing mainlanders visited Hong Kong. Such

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<sup>9</sup> Press Release (17 December 2013), Liberal Party, CFA ruling shocked the society Government urged to amend law immediately to fix the loophole

[http://www.liberal.org.hk/index.php?option=com\\_content&view=article&id=886&mid=49&lang=en](http://www.liberal.org.hk/index.php?option=com_content&view=article&id=886&mid=49&lang=en)

<sup>10</sup> Press Release (6 January 2014), Liberal Party, The announcement of the survey results on the problem of "Receiving the Comprehensive Social Security Assistance for residents living low than 7 years"  
[http://www.liberal.org.hk/index.php?option=com\\_content&view=article&id=900&mid=49&lang=tc](http://www.liberal.org.hk/index.php?option=com_content&view=article&id=900&mid=49&lang=tc)

exclusionary view did draw some support from local people. For example, the State Society, a non-governmental organization stressed the importance of protecting the rights of Hong Kong permanent residents, urged the Government to amend the Basic Law in order to prioritize the interest of the permanent residents. Tremendous discussion on the internet was held and some organizations even advertised a discriminatory advertisement against new immigrants from mainland China urging the protection of rights of local people in Hong Kong.<sup>11</sup>

The criticisms not only focus on the new immigrants but also pointed a finger on the Judiciary. There are even some absurd critics which queried the judicial independence due to the ruling and the composition of the Judiciary and suggested if the judges of Hong Kong Judiciary should be elected by universal suffrage.<sup>12</sup>

### Mass media

Certain newspapers, like the *Apple Daily*, one of the leading newspapers in Hong Kong, criticized HKHRC for taking political benefits from the court case. It commented that problem created the awareness of nativism of Hong Kong people. It is recommended that the Government should amend the Basic Law, take back the power of immigration control by gaining the authority of approval of One Way Permit to prevent new immigrants from settling in Hong Kong. The column even proposed to disregard the concept of social integration between Hong Kong and the mainland China and establish a native ideology instead.<sup>13</sup> The prejudice and conspiracy against new immigrants from mainland China was thus further magnified by the mass media which chose what suited their editorial line.

### Government and the Department of Justice

Facing the wide-spreading criticism in the society, the Hong Kong SAR Government merely re-stated that it would follow the ruling of the Court and review the residence requirement of other social policies. The Government did not rebut the myth of new immigrants creating a heavy financial burden due to the judgment and it did not educate the general public to stop discrimination against new immigrants.

As for the criticism against the Judiciary, the Secretary for Justice declared that appropriate discussion or even criticism of judicial decisions is one thing, while abusive attacks and unwarranted conduct which would undermine the independence of the judiciary and public confidence in the administration of justice are totally different. The Secretary for Justice quoted the observation by Sir Anthony Mason observed that the courts "should not be made a target of irresponsible criticism. Public confidence, which is vital to the well-being of the

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<sup>11</sup> am 730 (15 January 2014) Page 31, Advertisement by State Society

<sup>12</sup> Mingpao Daily News (2 January 2014) Forum, But Sau Yin, *Who will be responsible for monitoring the Judiciary?*

<sup>13</sup> Apple Daily (18 December 2013) Court of Final Appeal ruling bring a new awareness of nativism of Hong Kong people.

administration of justice, once lost or damaged, is not easily restored."<sup>14</sup>

### **Inadequate legal protection against racial discrimination**

While discrimination against new immigrants has increased, there is no legislation to protect them against racial discrimination.

Although there is some legislation to protect against racial vilification and harassment, this does not apply to discrimination against Mainland Chinese people by Hong Kongers.

### **Race Discrimination Ordinance (Cap. 602)**

#### **New immigrants or Mainlanders not included**

The government has excluded the Mainlanders or new immigrants from Mainland China from the Race Discrimination Ordinance. It does not recognize immigration status as a basis of race discrimination nor does it recognize new immigrants as a separate ethnic group.

The government has emphasized that racial discrimination only refers to discrimination on the ground of race, colour, descent, national or ethnic origin. It has attempted to exclude new immigrants from the RDO in section 8(2)-8(3), where it is stated that:

*“(2)An act done on the ground of any matter specified in subsection (3) does not constitute an act done on the ground of the race, colour, descent or national or ethnic origin of a person; and section 4(1)(b) does not apply to a requirement or condition as to any matter specified in subsection (3).*

*(3) The matters specified in this subsection are—*

*(a) that the person—*

*(i) is or is not a Hong Kong permanent resident;*

*(ii) has or has not the right of abode or the right to land in Hong Kong;*

*(iii) is or is not subject to any restriction or condition of stay imposed under the Immigration Ordinance (Cap 115); or*

*(iv) has or has not been given the permission to land or remain in Hong Kong under the Immigration Ordinance (Cap 115);*

*(c) the length of residence in Hong Kong of the person; or*

*(d) the nationality, citizenship or resident status of the person under the law of any country or place concerning nationality, citizenship, resident status or naturalization of or in that country or place.*

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<sup>14</sup> Department of Justice, Hong Kong SAR Government, Secretary for Justice (13 January 2014), *Secretary for Justice's speech at Ceremonial Opening of the Legal Year 2014*.

During discussions of the Race Discrimination Bill, the Hong Kong SAR Government stated clearly that the status being an immigrant from Mainland China is not considered as a ground of discrimination because the new immigrants were viewed as being of the same ethnic group as local Chinese. The Government explained that the discriminatory treatment experienced by new immigrants is based on *social* rather than racial grounds.

#### Protection against vilification

Protection against vilification is provided for in section 45 and 46 of the Race Discrimination Ordinance (RDO). Section 45 states that “[it] is unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of the race of the person or members of the class of persons.” Race is defined as the “race, colour, descent or national or ethnic origin of the person” (RDO Section 8 (1)(a)).

It is worth noting that section 45 only renders such acts unlawful, but not criminal. Thus it is subject to the same range of civil remedies as racial discrimination, but it does not make it a criminal offence. In comparison, under the United Kingdom’s Public Order Act 1986 racial vilification is a criminal offence and offenders may be penalized by up to seven years imprisonment<sup>15</sup>.

#### Offence of serious vilification

Section 46 of the RDO states that a person commits an offence if he intentionally and incites hatred towards another person on the ground of race in public and that this activity consists of threatening physical harm or incites others to threaten physical harm towards persons or premises or property of that person.

It is worth noting that such acts are subject to a maximum fine at level 6 and to imprisonment of maximum 2 years.

#### Racial harassment

Under the RDO racial harassment is unlawful in the areas of employment; education; provision of goods, facilities or services; disposal or management of premises; elections; pupilage/tenancy in barrister’s chambers; participation in clubs. It is worth noting that such behavior is subject to civil penalties, but not considered a criminal offence.

In contrast in the United Kingdom, racial harassment is both unlawful and a criminal offence. Thus under the Crime and Disorders Act 1998 (UK) it is a criminal offence to pursue a course of conduct which amounts to harassment and which is motivated by racial hostility.

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<sup>15</sup> Public Order Act 1986 (UK) c 64 ss 27 (3)(a).

It is thus obvious that the increased racial discrimination suffered by new immigrants need legislative amendments to the racial discrimination ordinance in order to be prevented.

Currently the Equal Opportunities Commission is conducting a public consultation to review all the discrimination laws. Among the proposals are to include nationality, citizenship and immigration status in the forms of protection from race discrimination. This includes discrimination between persons from Hong Kong and Mainland China.

The HKHRC highly recommends that the government amends the Race Discrimination Ordinance to include discrimination against people from Mainland China.

## **ARTICLE 16: RIGHT TO MARRIAGE AND FAMILY**

### **100,000 split families**

In Hong Kong, there are still approximately 100,000 split families comprising parents, mostly women, and their children separated between Mainland China and Hong Kong as a result of erroneous policy. Their prospect of reunion is not regulated by a reasonable queuing system but procedures that subject them to bureaucratic manipulation and corruption.

Since China has adopted the open door policy in late 1970s, the residents of the Mainland China or Hong Kong had more and more chances to develop business or work together. Many Hong Kong single males were employed to work in mainland factories as the Hong Kong factories developed business in mainland after the open door policy. The number of cross-border marriage has grown rapidly. Nevertheless, according to existing policies, their spouse and children have to stay in Mainland China to apply for One-way Entry Permits from the PRC Government before they are allowed to join their parent/s in Hong Kong.

The One-way Permit system has been commonly criticized as unfair, ineffective, as well as lacking a transparent and uniform standard. Different provinces in Mainland China now operate their own system to allocate their share of the 150 daily quotas. We understand from the PRC government that One-way Permits are not approved on family but individual basis. In most cases, mothers and children have to wait for their turns in separate queues, resulting in prolonged and unnecessarily family separation. The worst scenario is that in some parts of China, children or mothers are absolutely denied the right of application thus causing split families of a permanent nature.

Worse still, the problem is aggregated by widespread corruption. Many applicants have reported that they have to pay a bribe ranging from HK\$60,000 to HK\$200,000 i.e. US\$7,692 to US\$25,641 to the responsible district officials or they run the risk of being disqualified. As a result, families who cannot afford to pay a bribe are forced to take the risk of taking dangerous and illegal entry to Hong Kong. In most cases, mother who have to take care of young children

have no alternatives but to turn to smugglers to bring them to Hong Kong while young children who needs motherly care are also subject to the risk of illegal entry from Mainland China.

### **Split single parent families are excluded from the family reunion policy**

The situation is worse for single-parent families, usually in which the mother is a widow or has been abandoned by the Hong Kong father, depriving them from getting a One-way Entry Permit to Hong Kong when their children are born or are already allowed to stay in Hong Kong. These children cannot stay with their mothers in mainland China as they do not have household account and identity. The only way for family reunion is for the mainland mother to apply to come to Hong Kong to take care of them and for family reunion. However, there is no quota for these single parent mother in one way permit system.

These mainland mothers can only visit their children in Hong Kong for prolonged years with a visitor's permit. Some children even need to leave Hong Kong to apply for the visitor's permit for their parents every three months or two weeks, which seriously affects the children's learning progress in school as they cannot attend lessons and delay would be inevitable.

On the other hand, without the Hong Kong Identity Card, the mother cannot be employed in Hong Kong as has to rely on children's public assistance (CSSA) on a living. Under insufficient revenue, the children's learning and living conditions would be affected, causing problems in the family's physical and mental development and well-being. At least 7,000 Hong Kong children cannot reunite with their mainland mother for years. Although China has introduced a visitor's policy lasting for more than one year, the mechanism is inconsistent and can hardly benefit the single-parent families.

These split families have waited for over 4 years for family union. Some Permits are also withdrawn when the husband died or abandoned them shortly after the Permit had been issued. There is no quota for these single parent families to apply to come to Hong Kong or take care of their children. Indeed, the 150 daily quotas are not fully utilized and only 125 were used. Many of HKHRC's single parent families have waited between 7-20 years. The China Government fails to put them into the victim's shoes and utilize the left quota to help the needy ones.

The Hong Kong government not only did not work out a policy to help the single parent for family reunion with the Chinese Central Government but also failed to help the mother to extend their visiting document in Hong Kong to take care of the children.

## **GENERAL COMMENT 19: VIOLENCE AGAINST WOMEN**

In the Concluding Observations from 2006, the Committee urged the Government of the Hong Kong Special Administrative Region to strengthen its efforts in combating all forms of violence against women, including domestic violence. It urged the Government to ensure an effective response to complaints and carrying out more proactive investigations of complaints.

The number of domestic violence is increased from 1,009 in 1998 to 3,866 in 2012<sup>16</sup>. Over 80% of them are new immigrant women in refuges.

As mentioned above over 90% of the new immigrants in Hong Kong are women and children. They have experienced prolonged separation with their families. The families lack communication opportunities and spent more resources in keeping two homes.

Many new immigrant women have great difficulties in adjusting to the new society. Many of them are from the villages in the Mainland China and have received little education. Being uprooted from their network of friends and relatives, they are socially marginalized, as many do not speak the local Cantonese dialect and having little knowledge of the community resources and services in Hong Kong. Worse still, they commonly share negative self-image, being stigmatized as unintelligent and burdens of society. Therefore, many new immigrant women do not know how to seek help when they are prone to violence. They need special services. However, the Hong Kong SAR Government closed all new immigrant services centers in 2002.

Lack of special new immigrant social service support and resources, many new migrant women do not seek help when subject to domestic violence, most of these cases are unreported owing to traditional cultural factors and inadequate information about assistance and resource as well as social discrimination. Some of them reported that the social workers and police insulted them when they sought help from the Social Welfare Department and Police station. The police or social workers considered that new immigrant women deserved this kind of misfortune as they chose to married Hong Kong men.

Besides, the Domestic Violence Ordinance is not criminal offence. Most of the time, the Police considered family violence is family relationship problem, is not their duty to handle with. It is very hard for the victims to seek help under the law. What is more, there is no mandatory counseling service for the abusers. Many abusers repeated their abuse behaviors and many victims suffer again.

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<sup>16</sup> Social Welfare Department 2013.

## **ARTICLE 11: EQUALITY IN EMPLOYMENT AND LABOUR RIGHTS**

### **Lack of appropriate child-care support, deprivation of right to employment**

According to the “Survey on the needs of childcare service of the new immigrants” in 2012 published by the Society for Community Organization, 97.8% of the new immigrant women want to find a job to earn their living. 94.5% of them could not find work because they needed to take care of their child. Only 43.4% of them found a job (for local women the employment rate is 49.6%), but the pay is 40% lower than that of all new immigrants and local women. Many are unemployed because of racial discrimination and the inadequacy of child-care services. The child-care centers only serve in daytime on weekdays, but most of the new immigrant women are only able to find low skill jobs. Besides, the cost is beyond their affordability and the subsidy from the Government is not enough. Therefore, most of the new immigrant women are deprived of the right to employment.

According to the survey on the situation of the working new immigrant women published by Society for Community Organization in 2014, for those new immigrant women having a job, only 46.7% of them work as full-time. The monthly median wage HK\$5,415 (US\$694.2), which is much lower than that of the overall new immigrants HK\$7,500 (US\$961.5), and that of the Hong Kong local women HK\$8,500(US\$1,089.7), as well as general Hong Kong population is HK\$12,000(US\$1538.4) (Census and Statistics Department, 2011).

These women lack the help from the family, society and Government. They are isolated and their rights are severely undermined. New immigrants are made as scapegoat of these social problems. They are blamed as the source of poverty. They are being marginalized and are the poorest group in the society.

### **New immigrant women prone to labor exploitation**

New immigrant women are very hardworking. Their weekly average hour is 40.2 while the longest is 86 hours. 49.8% of the working migrant women never have holidays to take a rest. It was also found that the longer the working hour, the harder it is for the new immigrant woman to adjust to society. They take up the most unwanted jobs such as cleaning, dish washing and garbage clearance, yet their wages are much lowered than the local and much lower than male. It is because of social discrimination and their working experience and qualification is not recognized in Hong Kong.

However, discrimination against new immigrants will not be considered as a form of racial discrimination in the Hong Kong SAR Government’s proposed Anti-Racial Discrimination Law. New immigrants from mainland China have been explicitly excluded from the proposed law, as the government argues that they do not constitute an ethnic group separate from the local Chinese.

## **Recommendations**

1. The Hong Kong SAR Government should include discrimination against new immigrants as a form of racial discrimination in its anti-discrimination laws.
2. The Hong Kong SAR Government should abolish the 1 year residence rule for application of Comprehensive Social Security Assistance.
3. The Hong Kong SAR Government should set up an inter-departmental task force group to eradicate domestic violence.
4. The Hong Kong SAR Government should revise the Domestic Violence Ordinance with supporting services, including criminalize domestic violence and mandatory abuser counseling services. A domestic violence court should be set up. The social workers and the police should be trained with gender and cultural sensitivity.
5. The Hong Kong SAR Government should set up a mechanism with China to speed up and make the allocation of One Way Permits more transparent and efficient.
6. The Hong Kong SAR Government should allow single parent families to be part of the quota system for One Way Permits.
7. The Hong Kong SAR Government should provide comprehensive child-care services and subsidy to the low income women.
8. The Hong Kong SAR Government should set up women learning centres and provide free learning courses and resources for new immigrant women.

## **VULNERABLE GROUP 2: FEMALE PRISONERS**

### **ARTICLE 12. RIGHTS OF WOMEN IN CONFINEMENT**

As at 30 June 2014, there was a total prison population of 7,249 and 1,657 remands. Figures from end 2013 show that out of a total of 9,039 people under the Correctional Services Department's management, 1,779 were females and 7,260 were males.

Among the prison population 1,016 were non-local people sentenced in Hong Kong. As at 6 June 2014, there were 1,016 sentenced persons who were people from places outside Hong Kong/of other nationality. As seen in Table 1 the majority (653 sentenced persons) were from Asia, followed by 249 who were from Africa.

**Table 1. No. of sentenced persons of other nationality/from places outside Hong Kong.**

<b>Continent</b>	<b>No. of sentenced persons</b>
Asia	653
Western	29
Africa	249
South America	85
<b>Total</b>	<b>1,016</b>

Nearly 36% of the non-local prisoners are women<sup>17</sup>.

### **Foreign female prisoners can only call their family every 2 months**

The ultimate goal of prisons must be to protect society against crime and that released offenders are easily re-integrated to society. Prisons should therefore emphasize the continuing participation in the community so that prisoners are easily rehabilitated. Being able to maintain family relations greatly contributes to this.

### **Difficulties faced by female foreign prisoners**

While all prisoners, no matter gender or nationality, face hardship being imprisoned, foreign female prisoners find themselves in an especially vulnerable situation, because they are separated from their families and often feel marginalized as they encounter linguistic and cultural barriers.

Firstly, they seldom receive any family visits, as most family members cannot afford to visit them. Although foreign prisoners may receive visits from NGOs or friends, these cannot be seen as a substitute for family visits.

<sup>17</sup> CSD letter to our organization 31 October 2011.

Secondly, letters cannot substitute talking directly over the phone with relatives, especially for prisoners who want to communicate with children or elderly parents who may be illiterate.

Thirdly, all prisoners have expressed frustration of only being able to make a 10-minute phone call every 2 months. If a prisoner calls her parents one time, there is no time to call children and spouse for another call. She therefore has to wait another 2 months to call them.

If a prisoner wishes to make additional calls, she must place a request to be reviewed at the discretion of prison staff. However, because these are granted on a discretionary basis, practices vary from institution to institution. While in one prison, a regular one-month call was granted, a woman's request in another prison to regularly check on her young children were not enough grounds for being granted additional phone calls.

Lastly, overseas phone calls can be unduly expensive. A 10-minute phone call to Africa or South Asia when placed through coin phones or certain stored-value phone cards may cost \$150 while some other calling cards are much cheaper. Phone cards can be procured with the assistance of the welfare officers of the prison. However, not all prisons buy cards that are cheap to use for the prisoners. Prisoners in Lo Wu Correctional Institution have reported to only been given the choice of the most expensive option. Welfare officers now say that a new cheaper card has been provided. There is thus not one uniform practice.

As prisoners' earnings range from around \$150-600 per month, the cost of phone calls are a significant financial burden.

### **Government policy regarding prisoners' correspondence and visits**

The Hong Kong Prison Rules (Cap 234A) do not contain any provisions governing telephone use, but they do provide rules regarding visits and letters. Generally a prisoner may receive two visits per month, each visit lasting no more than 30 minutes (Rule 48). The Superintendent may on a discretionary basis grant additional visits in special circumstances.

As for telephone calls, there are no legal provisions allowing a prisoner to make such calls. Rather, the Standing Orders (Public Version) para. 56-01 and 56-02 specify that telephone calls are granted on a discretionary case-by-case basis under the following special circumstances:

- “- to inform of the prisoner's detention or whereabouts;
- to arrange for bail, fine payment or other legal matters;
- to acquire information about the latest situation of an immediate family member who is critically ill or being affected by natural disasters;
- to contact an immediate family member who by reasons of remoteness or physical disability, etc., is unable to pay any visit to the prisoner during the past three months; or
- any other situation where [Head of Institution] considers it justifiable to approve on compassionate grounds.”

In other words, telephone calls do not exist as a right, but are only granted by discretion.

The Correctional Services Department (CSD) has stated that a prisoner will not be permitted to use the telephone for more than ten minutes at any one time and that calls may only be placed during office hours from 9 am-5 pm.

When it comes to emails and web cam visits, the CSD currently already has utilized resources to implement a Video Visit Scheme through video link to allow elderly or disabled family members talk with prisoners located in remote prisons. As for internet use, there is no access to emails for prisoners.

### **Human rights standards**

From a human rights perspective, the government policy falls short of respecting international covenants and agreements.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), applicable to Hong Kong since 1976, outlines in that “[the] widest possible protection and assistance should be accorded to the family” (Article 10).

Recommendations from the Office of the United Nations High Commissioner for Human Rights specifically related to prisoners specify that: “two telephone calls a month are barely adequate to maintain meaningful contact”<sup>18</sup>. Also it has recommended that a telephone call can serve as a substitute for a letter or a visit, and that telephone contact may be especially important in the case of foreign nationals for whom visits may be virtually impossible<sup>19</sup>.

### **Overseas practice and legislation**

Overseas legislation and practice reflect recognition that maintaining social relations promotes rehabilitation of offenders.

The US Federal Bureau of Prisons (BOP) has issued a detailed set of rules and regulations concerning telephone calls of prisoners<sup>20</sup>. Also the BOP has issued a 22 page Program Statement regarding telephone calls. In comparison the paragraphs of the Standing Orders of the Hong Kong Correctional Services are confined to one page only.

Phone calls can be made from 6 am – 11.30 pm, except during working hours, and the maximum length of each call is 15 minutes. A total of 300 minutes of calls can be made, in contract to 10 minutes for prisoners in Hong Kong.

The US system thus treats telephone access like an entitlement, unlike the Hong Kong system where phone access is generally *not* available except under certain restrictive

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<sup>18</sup> Office of the United Nations High Commissioner for Human Rights 2005: “Human Rights and Prisons. Trainer’s Guide on Human Rights Training for Prison Officials”, p 120, United Nations, New York and Geneva. Professional Training Series No. 11 Add. 2.

<sup>19</sup> Office of the United Nations High Commissioner for Human Rights 2005: “Human Rights and Prisons. Manual on Human Rights Training for Prison for Prison Officials”, p 123, United Nations, New York and Geneva. Professional Training Series No. 11.

<sup>20</sup> The Code of Federal Regulations, Title 28, Chapter V, Part 540, paragraph 540.100-540.104, specify details regarding telephone calls.

circumstances. In US restrictions only occur where there is reasonable suspicion of the inmate acting in a way that would indicate a threat to the institution's good order or security.

One concern that prisons may have is security. Restricting the frequency and length of calls is perhaps the least ideal. Instead the US Bureau of Prisons has chosen to adopt several other abuse-prevention measures, namely restricting the phone numbers inmates can dial, monitoring the content of calls, and suspending privileges of those who abuse privileges<sup>21</sup>. This is done through the automated telephone system, called Inmate Telephone System (ITS). The phones are controlled by computer software programmes that allow inmates to dial certain numbers while calls are recorded. Inmates are given individual phone access codes, and the calls are debited from the prisoner's account related to the access code. This maximises efficiency and prisoners do not need to make requests each time they want to place a call.

Worth mentioning is the state of Western Australia, where the special needs of foreigners are acknowledged. The policy of the Department of Corrective Services is to provide for additional needs to overcome the disadvantage of those prisoners who have become socially isolated from their family and community due to them being unable to visit. If prisoners do not have adequate funds, they are eligible to receive two free 10-minute calls to family/friends overseas<sup>22</sup>.

### **Transfer of prisoners**

For foreign female prisoners being transferred to their home country is a top priority. Being away from their children and spouses causes a lot of mental distress and also many family problems. For instance some women have been unable to communicate with family members and the children's whereabouts was therefore unknown to them or they had been unable to arrange schooling for them.

As foreign prisoners they also face differences in language, culture and religion, which can aggravate the impact of the sentence imposed<sup>23</sup>.

Secondly rehabilitation is generally one of the express goals of transferring foreign prisoners to their home countries. Serving the sentences in their home countries means that they can more easily be rehabilitated and re-socialized into the community. For instance in prison they can participate in courses and training available preparing them for release. Also, having family support may provide prisoners with social support, which improve the likelihood of successful reintegration.

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<sup>21</sup> <http://www.justice.gov/oig/special/9908/callsp2.htm#6>

<sup>22</sup> Government of Western Australia, Department of Corrective Services 2010: "Policy Directive 36 -Communications."  
<http://www.correctiveservices.wa.gov.au/files/prisons/adult-custodial-rules/policy-directives/pd-36.pdf>

<sup>23</sup> United Nations Office of Drugs and Crime 2012: *Handbook on the International Transfer of Sentenced Persons*.

## **Multilateral instruments**

In order to be transferred an agreement, either multilateral or bilateral, must be in place between the transferring and receiving countries.

The European Convention on the Transfer of Sentenced Persons<sup>24</sup> is a multilateral instrument, which has been ratified by 64 countries<sup>25</sup>, of which 18 countries are States outside Europe. Thus it is open to signature by non-member States. For instance Japan and Korea have ratified the Convention<sup>26</sup>, but not Hong Kong or China.

Besides from this, there are The Scheme for the Transfer of Convicted Offenders within the Commonwealth and The Inter-American Convention on Serving Criminal Sentences which has 17 States parties.

The benefit of ratifying a multilateral agreement is that a State can enter into agreements with several other States in one go, and avoid the lengthy and costly process of negotiating new bilateral treaties. On the other hand bilateral agreements offer flexibility regarding which States a State enters into agreements with and allows for special provisions.

## **Bilateral agreements**

Many bilateral agreements are entered into by States, also where there are multilateral agreements. For instance United Kingdom has 23 bilateral agreements with other States/jurisdictions. Also being a signatory to other multilateral instruments, the United Kingdom has agreements with 94 jurisdictions<sup>27</sup>.

Australia has an International Transfer of Prisoners Scheme where it has entered into bilateral agreements with 5 jurisdictions and by being a signatory to the multilateral agreement Convention on the Transfer of Sentenced Persons it can transfer prisoners to or from Australia with 68 countries.

The United States of America has bilateral agreements with 12 jurisdictions and is additionally party both to the Inter-American Convention on Serving Criminal Sentences, and the Convention on the Transfer of Sentenced Persons. Altogether it can transfer prisoners to/from 89 jurisdictions.

## **Hong Kong's transfer agreements**

Currently the HKSAR has only signed Transfer of Sentenced Persons (TSP) agreements

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<sup>24</sup> Entry into force 1 July 1985 <http://conventions.coe.int/Treaty/EN/reports/html/112.htm>. This however, has been replaced by framework decision 2008/909/JHA in respect of transfer decisions among European Union member States.

<sup>25</sup> <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=8&DF=14/08/2014&CL=ENG>, extracted on 14/8/14

<sup>26</sup> <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=8&DF=08/08/2014&CL=ENG>

<sup>27</sup> <http://www.prisonersabroad.org.uk/uploads/documents/prisoners/Prison%20transfer%20v7.1.pdf>, extracted 14/8/14

with 13 countries/jurisdictions. The first was entered into with United Kingdom in 1998, and the latest agreement was concluded with Korea in June 2014.

The 13 countries/jurisdictions with which HKSAR has an agreement are Australia, Belgium, France, Italy, Portugal, Spain, United Kingdom, United States of America, Philippines, Sri Lanka, Thailand, Korea and Macao Special Administrative Region.

People from countries that do not have such a bilateral agreement with Hong Kong, must seek a transfer on an ad hoc basis, where the Government of HKSAR, the receiving country/jurisdiction and the sentenced person all agree on the transfer. As mentioned, it is nearly impossible to be transferred on an ad hoc basis.

Applications for outward transfer

During the period 1 June 2001 -16 June 2014, the government received 259 transfer applications from foreign prisoners in Hong Kong.

Of these only 23 have been successful, and nearly all (22) were to countries that have a Transfer of Sentenced Persons agreement with Hong Kong, while the last one was made through an ad hoc transfer. That person was from Nigeria. When one compares the success rates, the rate with TSP agreement (33%) is much higher than that of the ad hoc applications (0.5%). Thus transfers without a transfer agreement between HKSAR and the receiving country is nearly impossible.

**Table 2. Applications for outward transfer made by sentenced persons in HK  
(1 June 2001 – 16 June 2014)**

<b>Country to be transferred to</b>	<b>No. of applications received</b>	<b>No. of successful applications</b>	<b>No. of unsuccessful applications</b>	<b>No. of withdrawn applications</b>	<b>No. of applications under process</b>
With TSP Agreement	66	22	12	14	18
Without TSP Agreement (ad hoc)	193	1	49	6	137
<b>Total</b>	<b>259</b>	<b>23</b>	<b>61</b>	<b>20</b>	<b>155</b>

Source: Letter to our organization from Security Bureau of HKSAR 17 July 2014

## **Recommendations**

1. Amend the Prison Rules to recognize the placement of telephone calls as a legal entitlement and specify clearer regulations governing the placement and regulation of calls. Regulations should outline the minimum frequency and duration of phone calls that all prisoners are entitled to make. Similar to visits and letters, phone calls may be subject to restrictions and surveillance necessary to maintain security and prison order.
2. Increase the frequency of phone calls allowed. At minimum this should be two calls per month. The objective of phone call policy should be to allow prisoners to meaningfully maintain relationships with friends and relatives.
3. The HKSAR should enter into more bilateral agreements with countries in order to transfer foreign prisoners. It should proactively negotiate agreements with countries from which its foreign prisoner population comes from.

## **VULNERABLE GROUP 3: WOMEN IN POVERTY**

### **ARTICLE 11: RIGHT TO WORK**

#### **Feminization of poverty**

The discrepancies in wages earned by men and women and the disproportionate number of women in the lowest wage levels remain a problem in Hong Kong.

In 2013, the median monthly employment earnings for females, at HK\$10,500 (US\$1,355), were 30% lower than the median monthly employment earnings of HK\$15,000 (US\$1,935) for males in that year. This has been increasing since 2010<sup>28</sup> (see Table 3).

**Table 3. Median monthly employment earnings of employed persons by sex (2008 to 2013)**

<b>Sex / year</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Women</b>	<b>8,500</b>	<b>8,500</b>	<b>9,000</b>	<b>9,300</b>	<b>10,000</b>	<b>10,500</b>
<b>Men</b>	<b>12,000</b>	<b>12,000</b>	<b>12,000</b>	<b>13,000</b>	<b>14,000</b>	<b>15,000</b>
<b>Overall</b>	<b>10,600</b>	<b>10,500</b>	<b>11,000</b>	<b>11,300</b>	<b>12,000</b>	<b>13,000</b>
<b>% of Women lower than that of Men</b>	<b>29%</b>	<b>29%</b>	<b>25%</b>	<b>28%</b>	<b>29%</b>	<b>30%</b>

(Source: Census and Statistical Department, 2014)

When it comes to occupation, the percentage of women employed in professional and managerial positions remained lower than that of men in 2013. For instance only 31.1% of managers and administrators are women. And women constitute the majority when it comes to elementary occupations (66.5%), clerical support workers (73.1%) and service and sales workers (57.2%)<sup>29</sup>.

Apart from the fact that female workers mainly work in the elementary occupations, their income was much lower in comparing with that of the male workers for the same class, showing that the inequality of employment earning between sexes has become more serious. (see Table 4)

<sup>28</sup> Census and Statistics Department (2014) *Women and Men in Hong Kong: Key Statistics 2014 Edition* (<http://www.statistics.gov.hk/pub/B11303032014AN14B0100.pdf>)

<sup>29</sup> Ibid, p. 115.

**Table 4. Median monthly employment earnings of employed persons by Occupation and Sex (2008 to 2013) (extracted)**

Occupation		2008	2009	2010	2011	2012	2013
Manager and administrators	Female	30,000	30,000	30,000	30,000	30,000	33,000
	Male	30,000	30,000	30,000	30,000	32,000	36,000
Professionals	Female	29,000	30,000	30,000	30,000	30,000	35,000
	Male	30,000	32,000	35,000	35,000	36,000	37,000
Elementary occupations	Female	3,500	3,600	3,600	3,700	3,700	3,900
	Male	7,000	7,000	7,000	8,000	8,500	9,000

(Source: Census and Statistical Department, 2014)

As for elderly women, the current pension scheme cannot alleviate the poverty condition of the low-income women working population. The Mandatory Provident Fund (MPF), the existing retirement scheme introduced in 1999, requires employees and employers to contribute 5% of employee's monthly salary, but this cannot fully secure the retirement protection for the working elderly. The low-income level results in a low amount of pension; the retired elderly women could not sustain their living standard after retirement.

In addition, there are 642,000 housewives in Hong Kong without any earnings or retirement protection<sup>30</sup> and it can be estimated that their financial situation would be the most vulnerable. As women constitute a significant proportion of the elderly population in the future, it can be estimated that women will be mostly affected (see Table 5)

**Table 5. The number of elderly population by sex and by age (2016 to 2041)**

Age \ Year		2016	2021	2026	2031	2036	2041	
65 to 74	Female	310,000	443,200	546,300	628,600	636,600	605,500	
	Male	310,100	421,200	508,200	541,100	491,300	446,400	
75 or above	Female	312,100	333,800	430,200	560,100	725,000	886,500	
	Male	232,300	252,400	331,300	429,600	547,200	619,200	
% of elderly women 65 or above to the whole elderly population			52%	52.8%	53.6%	54.4%	55.2%	56%

(Source: Census and Statistics Department, Hong Kong Population Projection 2012, <http://www.statistics.gov.hk/pub/B1120015052012XXXXB0100.pdf>)

<sup>30</sup> Census and Statistics Department (2014) *Women and Men in Hong Kong: Key Statistics 2014 Edition*, <http://www.statistics.gov.hk/pub/B11303032014AN14B0100.pdf>

## **Recommendations**

1. We strongly urge that the Hong Kong SAR Government should take actions against the feminization of poverty and strengthen the safety net for the welfare recipients.
2. We strongly urge that the Hong Kong SAR Government should introduce sufficient training opportunities and supporting services for the middle-aged, low-educated women as well as the single parents in order to strengthen their employability and competitiveness.
3. We strongly urge that the Hong Kong SAR Government should review the current mandatory provident fund scheme and extend the overall retirement scheme to all retired persons, housewives as well as the low-income workers.

## **ARTICLE 7: EQUALITY IN POLITICAL AND PUBLIC LIFE**

### **Female representation on advisory and statutory boards**

In the last concluding observations the Committee was concerned about the low level of political representation of women, including in the functional constituencies. It also stated that “the electoral system of functional consistencies may constitute indirect discrimination against women, as it results in the unequal participation of women in political life”<sup>31</sup>.

The State Party is obliged to ensure equal opportunities for political participation of women but it is not fully realized in Hong Kong. The representative number of women serving on advisory and statutory bodies is one of the indicators to reflect the situation of political participation, while in fact there are no women representatives on certain important advisory bodies.

In respect of women’s participation in decision-making, according to the Women’s Commission, the Government has set a gender benchmark of 30% in 2010 as a working target for appointments to Advisory and Statutory Bodies (ASBs). Furthermore, all Government bureaux /departments have been asked to adopt a more proactive approach to reach out, identify and cultivate potential women candidates. With these efforts, women’s participation in ASBs has been improving: From 24.2% in 2004 to 29.1% in 2010<sup>32</sup>. However, the benchmark is much lower in comparing with the developed countries.

The SAR Government is reluctant to setup a fixed percentage of women for serving on these bodies as it might constitute a kind of affirmative action by arguing that the primary consideration should be suitability, rather than gender, of the appointees. However, the Government should take a more proactive approach to encourage women to participate in public service, such as eliminating the obstacles for the political participation of women and identifying suitable women candidates for serving on these bodies. Such affirmative action (e.g. quota system) for appointment of women to advisory and statutory bodies would not go against the principle of appointment based on individual merits and not an insult to women, as it reflected that the public recognized the difficulties for women’s participation in the political affairs and positive measures are required.

### **Recommendations**

1. We strongly urge that the Hong Kong SAR Government should introduce the affirmative action for appointment of women to advisory and statutory bodies and make the recommendations provided by the Women’s Commission with legal binding forces.

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<sup>31</sup> Committee on the Elimination of Discrimination Against Women 2006: *Concluding comments of the Committee on the Elimination of Discrimination against Women: China*.

<sup>32</sup> Women’s Commission 2011: *Hong Kong Women’s Development Goals*.  
([http://www.women.gov.hk/text/download/library/report/WDG\\_Report\\_Eng.pdf](http://www.women.gov.hk/text/download/library/report/WDG_Report_Eng.pdf))

## **ARTICLE 14: RURAL WOMEN**

### **Small House Policy**

At present, there is an exemption provided at the Sex Discrimination Ordinance. Under this policy, a male indigenous person in the New Territories is entitled to apply to the Government to build a three-storey village style house as a residence. Both women and non-indigenous persons are excluded from this policy. Such policy is totally discriminated against the female and also criticized by the Equal Opportunities Commission.

In the last Concluding Observations in 2006, the Committee expresses concern about the Small House Policy, under which only indigenous men, but not indigenous women, are entitled to apply for a permit to build a residence in the New Territories. However, after 15 years, there is no progress. The Government made an excuse by reviewing the policy and did nothing showing that it did not intend to eliminate the exemption.

Admittedly, the legislation should respect the cultural development of the society, but the State party is obliged to comply with the Covenant and proactively lead to the change of the cultural myths, which lag behind the modern concept of gender equality.

### **Recommendations**

1. We strongly urge the Hong Kong SAR Government to abolish the small house policy in view of the social development, as it is discriminatory and violate the modern concept of equality between men and women.

## **Introduction to the Hong Kong Human Rights Commission**

The Hong Kong Human Rights Commission is a coalition of eleven non-governmental organizations including religious, women, and community organizations and students groups. It was founded in March 1988.

Although coming from different backgrounds, we share in the belief of the dignity and respect of each person and that every man and woman has inherent rights. As the “Human race is one”, the Commission member organizations consider that mutual respect, equality and freedom form the foundation on which a just, peaceful, and humane society is built.

Over the years, the Commission has endeavored to promote and protect the human rights of the community. Not only does Hong Kong lack a democratic political system, its legislation also allows the government substantial power so as to maintain social control. Civilians are forced to submit to this power and therefore justice often fails to prevail. The Commission has been gathering resources in order to consolidate civil power. By doing so we hope to arouse public concern to the level where the people will push the government to reform.

Since it was founded, in addition to lobbying for the Bill of Rights and subsequent amendments to the law at local level, the Commission has also submitted reports to UN treaty bodies, attended hearings and lobbying at international level. Recognizing that public awareness and participation are vital to the development of human rights, the Commission has promoted human rights education through exhibitions, gatherings in schools and community centers. Although the Commission recognizes that its work has benefited many, there is the lingering feeling that much more can be done.

### **Members of the Hong Kong Human Rights Commission:**

Christians for Hong Kong Society  
Hong Kong Catholic Youth Council  
Hong Kong Christian Industrial Committee  
Hong Kong Christian Institute  
Hong Kong Federation of Catholic Students  
Hong Kong Social Workers' General Union  
Hong Kong Storehouse and Transportation Staff Association  
Hong Kong Women Christian Council  
Justice and Peace Commission of the Hong Kong Catholic Diocese  
Society for Community Organization  
Student Christian Movement of Hong Kong

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