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**Convention on the Elimination of All Forms of Discrimination against Women**

**Shadow Report**

by

**PathFinders**

for the

**59th CEDAW session (20 Oct 2014 - 07 Nov 2014), CEDAW Committee**

on the implementation of the CEDAW

in the Hong Kong Special Administration Region, China

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*This submission can be posted on the CEDAW website for public information purposes.*

## **ARTICLE 2. OBLIGATIONS OF STATE PARTIES**

### **Complaint-driven approach of the Equal Opportunities Commission**

1. The complaint-driven approach of the Equal Opportunities Commission (**EOC**) jeopardizes the access to equal opportunities of foreign domestic workers. It fails to recognize the fact that they 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 foreign domestic worker. These circumstances invariably impact the ability, competence and therefore, the extent to which vulnerable victims of discrimination can successfully avail of the protections in place.

Even if a pregnant foreign domestic worker is aware of her maternity rights, when she receives pressure from her employer to resign from her job, the EOC suggests that the worker lodge a complaint with the EOC. Filling in a complaint form (in a foreign language) and gathering evidence of discrimination are often beyond the knowledge and skill of a foreign domestic worker.

***R1 We urge the EOC to take a more proactive approach to promoting and educating relevant parties on equal opportunities, especially regarding vulnerable groups including pregnant foreign domestic workers who may be subject to triple discrimination on the basis of their sex, ethnic background and pregnant. We also urge the EOC to take a more proactive approach in investigating alleged pregnancy, sex and race discrimination. Instead of relying heavily on the victim to gather and provide evidence, EOC should interview the foreign domestic worker and take more of a leadership role for this less well-educated population and then, if appropriate, initiate investigation and prosecution.***

### **Women's Commission**

2. The Women's Commission expressly excludes foreign domestic workers from its statistics and reports.

***R2 We urge the government to require the Women's Commission to research and report on the status of foreign domestic workers in Hong Kong who now number around 320,000.***

3. The Women's Commission does not have a dedicated, independent office looking after the rights of migrant workers, including foreign domestic workers.

***R3. We urge the Women's Commission, and other government departments as appropriate, to create an office, or similar, tasked with watching over, and lobbying for, this population. We urge the government to conduct a review of the structure of the Women's Commission to ensure its independence and that it has a voice which truly represents and lobbies for the full spectrum of women in Hong Kong, including the 320,000+ female migrant***

**and foreign domestic workers and which is specifically tasked with implementing CEDAW recommendations.**

#### **ARTICLE 5. STEREOTYPING AND PREJUDICES**

4. There is an overall lack of societal understanding and support for foreign domestic workers rights. This inhibits foreign domestic workers from understanding and asserting their rights. In particular, and based on PathFinders' experience, employers and employment agencies often ensure that the foreign domestic workers are not aware of their rights and/or seek to obfuscate and/or misinform them of their rights.

***R4. We urge the government to educate foreign domestic workers, their employers and employment agencies about their respective rights and obligations. We urge the government to require employers to attend an educational session on the rights and obligations of employers of foreign domestic workers as a contractual precondition of hiring a worker.***

5. The lack of societal understanding and support for foreign domestic workers rights extends to government service providers, including public hospitals and other government departments (Social Welfare Department, Immigration Department, Labour Tribunal) whose front line staff can be extremely insensitive to, ignorant of, or simply not equipped personally or professionally to respond to the situational and cultural needs of foreign domestic workers.

***R5. We urge the government to address the barriers this population experiences in accessing government services by providing translators and better training front line staff to improve communications, to reduce the service gaps and bias and to improve understanding and tolerance.***

#### **ARTICLE 9. EQUALITY IN NATIONALITY LAWS**

6. When a foreign 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).

***R6. Review barriers to 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 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 foreign domestic worker or housewife.***

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

7. Improve foreign domestic workers' practical access to justice. A foreign domestic worker who has been unlawfully terminated and is making civil and/or criminal claims against her former employer may not be granted the ability to work (if she is pregnant, it is almost impossible for her to find a job) or, alternatively, be provided with housing and social security payments to cover her living and visa extension expenses pending hearing or trial. This lack of practical support severely impedes and, indeed, often disables this group from making claims in practice. The reality is that they cannot afford to stay in Hong Kong to pursue their legal claims.

***R7. We urge the government to waive the costs of visa extensions for foreign domestic workers who seek legal redress and compensation for human and labour rights abuses. We urge the government to ensure that those seeking legal redress have effective access to adequate support, such as food, transportation, shelter and interpretation services, at all stages of redress, including specifically the conciliation process at the Labour Department and Labour Tribunal and in the preparation for criminal proceedings. We ask the government to open Labour Tribunal office on a Sunday (the only rest day of a foreign domestic worker) and to employ full-time Indonesian speaking officers to interact and nurture Indonesian foreign domestic workers' claim for redress. We also urge the government to review the Labour Tribunal's claims adjudication process to ensure foreign domestic workers are not inappropriately pressured to settle.***

8. Pregnant foreign domestic workers are often unlawfully dismissed from their employment because they are pregnant.

***R8. We urge the government to (1) set out explicitly within the standard foreign domestic workers' contract that they are entitled to maternity leave and protections; (2) educate employers and employment agencies that it is a criminal offence to terminate pregnant employees including foreign domestic workers; and (3) track and publicly report on the number of civil and criminal cases brought against defaulting employers of foreign domestic workers, setting out how the cases are settled and whether criminally convicted and/or abusive employers (and their households) are tracked and prohibited from employing again.***

## **ARTICLE 12. EQUALITY IN ACCESS TO HEALTH FACILITIES**

9. Once an employer notifies the Immigration Department of the termination of the foreign domestic worker's employment, even an unlawfully termination, pregnant foreign domestic worker loses her access to the heavily subsidized public healthcare system, despite the fact that she is the aggrieved party and carries the health risks associated with being pregnant. Her entitlement to access the public healthcare system stops when her employment is terminated. She can only access the hospital in an emergency. She and her baby have no access to public peri-natal care and cannot afford private healthcare. When the foreign domestic worker does access the public healthcare

system in an emergency, she will be charged at least HK\$90,000 for giving birth 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.

**R9. We urge the government to conduct a wholesale review of this public healthcare system and policy anomaly. We urge the government to conduct a public healthcare risk assessment of this population (both mother and baby) which are denied peri-natal care including checks and immunisations for communicable and preventable childcare diseases. We urge the government to waive the hospital fees charged to foreign domestic workers for giving birth and to provide mother and baby with same level of peri-natal care as local residents. Hong Kong government hospitals should record data on the specific health needs of foreign domestic workers, including those that seek for family planning, pregnancy termination and birthing services.**

10. Unplanned or crisis pregnancy of foreign domestic workers can be prevented by providing them with access to sex education and contraceptives.

**R10. We urge the government to ensure all vulnerable groups, including foreign domestic workers, migrant workers, ethnic minority women and girls and special needs women have access to mother tongue, culturally sensitive, appropriate and adequate sex education including the proper use of contraceptives. We urge Hong Kong's Family Planning Association and women's clinics to make their services more linguistically, culturally and practically accessible to these vulnerable groups of women (all of these clinic close on Sundays which is the only rest day of foreign domestic workers).**

#### **ARTICLE 16. EQUALITY IN FAMILY LAW**

11. In situations where a foreign domestic worker is a single mother (or was formerly married to a Hong Kong resident but is now divorced), and her child has permanent Hong Kong residency status by virtue of the birth father's Hong Kong residency status, the mother and her child can both be removed from Hong Kong if the mother loses her residency status or overstays her visa. When issuing removal and/or deportation orders against the women, the Department of Immigration fails to take into account the best interest of the child.

**R11. We urge the government to allow the mothers of these children with Hong Kong permanent residency status to remain in Hong Kong with their children.**