

Submission to CEDAW pre-sessional working group on the implementation of CEDAW in Hong Kong

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Centre of Comparative and Public Law of The University of Hong Kong, Women's Studies Research Centre of the University of Hong Kong, and Hong Kong Women's Coalition on Equal Opportunities (Coalition)

Comprising of 12 Women's Rights NGOs in Hong Kong SAR, China

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 Committee, Hong Kong Confederation of Trade Unions

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I Recommendations

A. Legislative Reform

Legal definition: Employment: The Government should review and revise the “4.18” definition of employment relation in Employment Ordinance in order to provide employment protection for women in casual employment.

Inclusion of sign language as official language: Sign language should be made an official language by the legislature to accommodate the needs of persons with disabilities.

Enactment of legislation prohibiting discrimination on the basis of sexual orientation and gender identity: Legislation prohibiting discrimination on the basis of sexual orientation and gender identity should be enacted to eliminate the prejudice and social stigmatization against lesbian and bisexual women, as well as transgender and intersex persons.

Establishment of a domestic violence court: A domestic violence court should be set up to handle all criminal and civil cases involving allegations of domestic violence or violations of injunction orders.

Abolishment of the Productivity Assessment and related special arrangement under the Statutory Minimum Wage (“SMW”) regime: The Government should abolish the special arrangement of allowing a below SMW for persons with disabilities who underwent a Productivity Assessment to narrow the wage discrepancies between ordinary and disabled workers.

Abolishment of the Functional Constituencies: Functional Constituencies should be abandoned and universal suffrage should be introduced to give rise to direct elections for the Chief Executive and the Legislative Council.

Review of the definition of ‘vice establishment’: The legal definition of “vice establishment” should be reviewed to equally protect sex workers’ lives and personal safety. Relevant legislative reform should be introduced to allow at least two sex workers to co-work in a single premise for mutual support.

Review of the political participation of women population: The Government should take all measures necessary to ensure equal representation of women in Legislative Council, District Councils, Election Committee, Executive Committee, advisory and statutory bodies and public offices. In this regard, concrete action plans, timeframe and benchmarks will be essential to guarantee progress has been made.

Review of the Race Discrimination Ordinance (“RDO”): Rectify defects in the RDO to ensure equally effective protection under the law for ethnic minority women.

Review of the “Two-week rule” of foreign domestic helpers: The government should amend the “Two-week rule” to align with the other migrant expatriate workers who are afforded four weeks to find new employment or to prepare for their departure. This would create equality in employment and not seriously impair the rights of the FDWs.

Implementation of legislation to protect migrant domestic workers: Legislation should be put into place to protect FDWs against forced labor and human trafficking for the purposes of labour exploitation and to make employers accountable for their inhumane treatment.

B. Administrative reform

Definition: Mental illness: The government should review and replace the medical definition of ‘Mental illness’ with ‘Psycho-socio disabilities’.

Review the education policy regarding ethnic minorities: The government should provide a concrete timeline to rectify the acknowledged discriminatory principles applied in the context of education provision for ethnic minority children as compared to local Chinese children, particularly insofar as this impacts ethnic minority girls detrimentally in their prospects for higher education and employment opportunities. This includes a need to abolish gender segregation internal to some schools populated by ethnic minorities as a result of the de facto racially segregated schooling system.

Establishment of a centralized center for violence against women (“VAW”): The Government should set up a high-level centralized body, that is gender sensitive, to coordinate and supervise all issues relating to violence against women (VAW) and the service provisions for the victims. This centralized body should, from a gender perspective, make binding decisions that every government department/party should follow. The centralized body should provide financial support to services for victims of VAW.

C. Fiscal/Budgetary Policies

Employment quota for women with disabilities: The Government should establish an employment preference system for people with disabilities to ensure equal opportunity of participation in productive and gainful employment for disabled women.

Implementation of universal retirement protection: The Government should establish a universal retirement protection system for all citizens, particularly for

the low-income women, homemakers and women who are not employed due to various reasons.

Review of the Comprehensive Social Security Assistance System (“CSSA”): The Government should review and revise the Comprehensive Social Security Assistance (CSSA) system with a gender-sensitive perspective. The Government is also urged to emphasize on alleviating poverty among women with special needs, such as disability and caring responsibility.

Implementation of policies to combat feminization of poverty: The Government should put feminization of poverty on agenda, and tackle the structural factors that push female to such vulnerable situations. The gender-mainstreaming checklist should be amended to ensure a gender sensitive approach is adopted to alleviate poverty and that the checklist is not a mere formality.

D. Training and Capacity building

Human rights education in school: The Government should incorporate a structured human rights education into the formal curriculum of schools, as well as in community education to eradicate stereotypes and prejudices.

Training of professionals: Training programs must be implemented to deal with particular groups of women. Training must enable professional staff, authorities and others to ensure gender and diversity training can specifically address the needs and vulnerabilities of women. Training must include a cultural sensitivity component for bodies working with ethnic minorities. Government funding must be provided for training and impact assessment. Authorities and the professional staff of bodies that deal with the following groups of women should undergo training:

- Sex workers;
- Victims of domestic violence;
- Ethnic minorities women;
- New arrival women; and
- Women with disability.

E. Monitoring and Assessments

Appointment of diversity officers: Diversity officers should be appointed in all Government agencies and departments to monitor and oversee the implementation of diversity in policy execution and service delivery.

Review the functions and roles of the Equal Opportunities Commission (“EOC”): The EOC should take a leading and proactive role in raising awareness and public understanding of the harms of discrimination and to facilitate harmony and respect in the society. The EOC must also take all steps to exercise the full range of its

powers and functions to properly investigate problematic practices and policies that affect the best interests of women, especially domestic violence, education and right to life and marriage, especially for ethnic minorities women and disabled women. The government should desist from appointing EOC chairperson or members as its cabinet members or other role, compromising their actual or perceived independence. It should also assist the EOC's reviews and in implementing proposals with a view to strengthening EOC in line with the Paris Principles.

Women's Commission: The government should upgrade the status and revise the terms of reference, the composition and the selection of the membership, and to enhance the transparency and the accountability of the Women's Commission.

Establishment of the Equal Opportunities Tribunal ("EOT"): The establishment of the EOT will provide a user-friendly, formal and flexible adjudication system, which will facilitate the prompt resolution of discrimination cases without the need to engage legal representation.

Article 2: Anti-discrimination laws and policies

Equal Opportunities Commission (“EOC”)

Lack of commitment to adhere to the Paris Principles: Hong Kong lacks a national human rights commission to protect human rights of its citizens. The EOC is a statutory body with a vital role to implement the four anti-discrimination laws in Hong Kong on the basis of sex, disability, family status and race. Nevertheless, Mr. Lam Woo Kwong, while he was still serving as the Chairperson of EOC, has been simultaneously appointed as the president of the Executive Council, which is an organ responsible for advising the Chief Executive in policy-making and administration of the government. The conflicting dual-appointment of Mr. Lam clearly violated the Paris Principles and is deemed to be negatively impacting the independence of the EOC.

Lack of a transparent process of appointment for the commissioners: The EOC lacks a transparent process of appointments of the Chairperson and the commissioners. In para. 2.34 of the Government report, the Government defended the appointment of EOC Chairperson as transparent. However, besides the first and second chairpersons, none of the other chairpersons appointed have any track record in anti-discrimination work or human rights background. One of the commissioners, Paul Tse Wai Tsun, has openly made a provocative speech against migrant domestic workers. The failure to disclose the criteria of appointment, if any, harms the accountability and effectiveness of the EOC.

Lack of financial independence of EOC: The financial independence of the EOC is of equal concern. At present, the EOC receives its funds through the Home Affairs Bureau, which has already raised doubts about the former’s autonomy.

Lack of advocacy role of EOC: The EOC emphasizes its role as mediator. However, there is an increasing concern that the EOC should assume a more proactive role in policy advocacy as well as formal investigation into suspected cases of discrimination. The EOC has failed to take into account the situation of imbalanced bargaining power among parties when enforcing anti-discriminatory laws and investigating alleged discriminatory instances. Provided the EOC has consciously positioned itself as a neutral mediator between the perpetrators and the victims of discrimination, it fails to take the impact of traditional gender roles which often put women in a vulnerable position with weak bargaining power in disputes into account, especially in the domestic context. Most importantly, the EOC has only taken the initiative to conduct three formal investigations ever since its establishment. This passive role in investigating complaints and positioning itself as a complaint-driven Commission has significantly undermined the effectiveness of the EOC.

Failure to address various issues concerning the education of ethnic minority girls: It has been reported repeatedly that the EOC has failed to undertake any

formal investigation regarding issues concerning the education of ethnic minority girls. These issues include the adoption of discriminatory policies by a particular school whereby ethnic minority girls receive fewer hours of education and are segregated from their male counterparts at this school; and traditional prospect of early marriage and engagements which gave rise to the truncation of education of ethnic minority girls before completion of compulsory schooling in some instances. The failure to give proper weight to various complaints related to the education of ethnic minority girls has undermined the best interests of young ethnic minority girls in the respect of having a right to equal education and protection against forced and / or early marriage.

Sex Discrimination Ordinance (“SDO”)

Limited scope of SDO: The Sex Discrimination Ordinance has a limited scope in regards to the circumstances in which the Ordinance can be applied. Yet, sexual harassment between students of different institutions, sexual harassment between sub-letters and sexual harassment between residents in elderly home and hospitals are not covered by SDO. The problematic coverage of the SDO renders its protection insufficient for all women in all circumstances.

Lack of anti-discrimination laws and policies

Age discrimination and immigration status discrimination: There are currently no appropriate legislation and policies against age discrimination, immigration status, sexual orientation and gender identity discrimination. For instance, the flight attendants’ population in Hong Kong, predominantly women, is required to retire at the age of 45 years. Some transnational airline companies only impose such retirement age limit for those employed in Hong Kong. This lack of anti-discrimination law and policies has left the issues of age discrimination, discrimination against new arrivals, mostly women from Mainland China, and sexual orientation and gender identity discrimination unaddressed.

Race Discrimination Ordinance (“RDO”)

Limited application to the government: Given the Hong Kong Special Administrative Region Government (HKSAR)’s position that the Basic Law and the HKBORO prohibits from racially discriminatory acts in the performance of its functions and exercise of powers, the compliance with the requirement for state parties to ensure a comprehensive framework for protection against discrimination is made available to all persons is significantly undermined. When compared to the three other anti-discrimination laws which are the Sexual Discrimination Ordinance, Family Status Discrimination Ordinance and Disability Discrimination Ordinance, section 3 of the Race Discrimination Ordinance has a different formulation which excludes from its purview all the functions and powers of the Government in the

exercise of its public functions such as the operations of the Hong Kong Police Forces and Correctional Services Department, except the areas specifically identified in the RDO. Section 26 of the Race Discrimination Ordinance also excludes the Education Bureau from the remit of the law thereby limiting the scope and applicability of the law across a wide range of government services and provisions.

Inaccessibility of the Race Discrimination Ordinance: The prerequisite to attempt reconciliation with the perpetrator of discrimination before the Equal Opportunities Commission can consider providing support for a legal claim under the RDO necessarily weakened the effectiveness of the RDO. Such limitation not only undermines the rights of access to justice and equal treatment before the law for all persons, but also makes it more difficult for people to invoke the RDO. Since its enactment, there has not been a single case brought on the basis of the RDO in courts.

Women's Commission ("WoC")

Not high level enough: The WoC is called a central mechanism in para. 2.24 of the Government's report. However, it is under the purview of the Secretary for the Labour and Welfare Bureau and only positions itself as an advisory body rather than an independent monitoring body of the Government. The WoC definitely falls short as being a high-level central mechanism with appropriate powers and resources. Therefore, the WoC is not an effective central mechanism to promote the interests and well-being of women in Hong Kong. The WoC also receives its secretariat support from Team 2, Division 1 of the Labour and Welfare Bureau. Such officer rank has the actual authority to ensure cooperation and police compliance across the bureau.

Lack of transparency in appointment of Commission member and lack of representation: The WoC was not transparent in its appointment of members. There is also a lack of mechanism in regard to the criteria used to appoint its members to ensure different groups of women in the community are represented.

Limited impact on Government and on society: It is unclear the extent to which the policies and programmes of the WoC are accessible and made available to the community, especially to the ethnic minority women who might not know English and Chinese.

Inadequate emphasis on diversity mainstreaming: The WoC fails to incorporate a diversity mainstreaming policy that would encourage the Commission to include in its considerations, the impact of laws, policies and programmes on the lives of different types of women, especially that of ethnic minority women. In particular, it is apparent from the list of issues covered under the Commission's Gender Mainstreaming Checklist, which fails to elaborate the experiences of ethnic minority women. The adoption of gender mainstreaming within the government is shown to be ineffective and unsustainable. According to information provided at WoC's

website, in the past 12 years (i.e. since 2002), the Government has only evaluated 40 policies or one-off programmes for the purpose of gender mainstreaming.ⁱ Moreover, gender budgeting has always been a crucial part of gender mainstreaming; yet, there is no mention of any gender budgeting or resource allocation to complement the process of implementing gender mainstreaming.

Implementation of the Convention impacted by the lack of data: The Government has failed to publicly provide disaggregated data on the basis of gender. 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. If the Government currently does not maintain such statistics, this critically undermines the prospects of developing policies and laws which address the substantive needs of this group of women. This undermines their access to basic rights in addition to a range of other goods and services.

Lack of a mechanism to implement CEDAW in policy formulation and administration: There is a lack of a transparent and consistent mechanism to ensure equal opportunities principles and gender perspectives are integrated into policy formulation and implementations. In particular, the Government has not set up effective work strategy and appropriate work priorities to guarantee the implementation of CEDAW. Such low level of awareness of the concept and principles of human rights in the political framework has contributed significantly to the continual under-representation of women in the Legislative Council, District Council, the Executive Committee, the Election Committee and consultative bodies.

Article 4 Temporary Special Measures

Lack of implementation mechanism and coherent legislation: Temporary Special Measures have never been invoked to advance the interests of marginalized groups, including women as a whole nor women who face multiple discrimination, including but not limited to ethnic minority women and women with disabilities.

Lack of Employment Preference for women with disabilities: With reference to the Special Topics Report No.48 on Persons with disabilities and chronic diseases in 2008,ⁱⁱ 11.8% of persons aged 15 and over with disabilities were employed, which only constituted 1.2% of the total employed population of Hong Kong. Among all employed persons with disabilities, there were proportionally more males (56.0%) than females (44.0%). Therefore, there is a pressing need for the government to provide adequate protection for women with disabilities and establish an efficient mechanism to increase job opportunities for women with disabilities.

Article 5 Stereotyping and Prejudices

General

Lack of gender education: There is a lack of gender education in formal curriculum to address the problem of stereotypes and prejudices. Public education is pivotal for the promotion of CEDAW in order to increase services and cultural acceptance to eliminate the negative attitudes towards different groups of women.

Ethnic Minority Women

Lack of proactive actions and gender sensitive initiatives from the Equal Opportunities Commission: Given the marginality of the ethnic minority women which ultimately impacts their basic rights, quality of life and hence prospects for upward social mobility, the various forms of exclusion and discrimination these women face often made them an unlikely complainant. Therefore, it is incumbent on the EOC to take a proactive approach to empower the ethnic minority women who are victims of discrimination, to voice out and seek help.

Limited public education to raise awareness: There is a deep-rooted gender stereotypes in the community regarding women and their capacities in a range of spheres in public and private life. However, the government has devoted limited effort to raising the awareness of the public on stereotypes and prejudices as well as the content of existing anti-discriminatory laws to address such type of discrimination.

In particular, there is an exacerbating discrimination against ethnic minority women and girls by different members of the public, including but not limited to educators, employers, government officers, law enforcement officers and judicial staff. These attitudes detrimentally impact the interests of ethnic minority women who are routinely stereotyped negatively on account of misperceptions about cultural practices, religious beliefs as well as prejudices towards their appearances, such as attire and skin color.

Inaccessibility of anti-discrimination legislation: In the Government Report, It was mentioned that the Government had organized public education programmes and initiatives to promote gender equality. However, these programmes and initiatives are often inaccessible due to various underlying difficulties faced by the ethnic minority women. These difficulties include language barriers, lack of awareness of the availability of translated information, illiteracy, dependency due to lack of independent financial resources contributing to immobility, fear, as well as a fundamental lack of trust of public officials due to stereotyping and prejudice.

Lesbian, Bisexual and Transgender persons (LBT)

Highly inadequate policies to address the discrimination against lesbian and bisexual women as well as transgender persons: The LBT community continues to face discrimination in the society. A 2012 study found that 70% of the general working population felt that LBT individuals faced discrimination in the workplace, and a majority of LBT employees concealed their sexual orientation or gender

identity at work.ⁱⁱⁱ A 2010 survey reported that 53% of the lesbian and bisexual women who responded had experienced discrimination or harassment, much of which occurred in schools.^{iv} There is no legislation that prohibits discrimination on sexual orientation or gender identity even after the issue has been widely addressed by the Human Rights Committee, CESCR and CRC.

Violence Against Women (“VAW”)

Lack of gender sensitivity amongst professionals: Discrimination against women, especially victims of VAW, is often neglected. The lack of sensitivity in domestic violence amongst many trained front-line workers, involving social workers, police officers, teachers and medical professionals reflected the insufficiency of guidelines and training for social workers and police officers. The unsympathetic and insensitive environment in court also may present a second assault to victims of VAW and further deterred them from reporting.

Insufficient support given to victims of VAW with disabilities: It is alarming that there is a low reporting rate of VAW involving victims with disabilities due to the lack of support in the law enforcement process and litigation procedures, such as the unavailability of sign language for deaf women and the insufficient support given to women with intellectual disabilities.

Lack of continuous support to victims of VAW: Continuous social, psychological and medical support for victims of VAW are often insufficient, thereby, affecting the psychological and physical recovery of victims to leave shelter homes and start their new lives.

Problems of law implementation: In fear of social criticism, the reporting rate of VAW is low. However, initiation of criminal proceedings against batterers relies solely on the victim’s willingness and determination. The lack of proactive actions within the legal system, such as a witness protection programme, allows the continuation of abusive behaviour of the abusers. In response to the Government report which suggested that the Community Investment and Inclusion Fund (CIIF) has been providing seed funding to support community-initiated projects that deals with domestic violence, it is concerned that CIIF is not established to provide seed funding support women-specific and domestic violence- related projects.

Domestic Violence

Problematic data collection due to the unclear definition of ‘domestic violence’: Recently, the number of domestic violence cases has reduced drastically. From information provided at the Hong Kong Police Force’s website, In 2006, 2007 and 2008, the police had two sub-categories of crime under “Domestic Violence”, namely “Crime Cases” and “Miscellaneous Cases”, in which the number of “Domestic Violence – Miscellaneous Cases” was twice as much as that of “Domestic Violence – Crime”.^v But since 2009, the police have only categorized it as “Domestic Violence

Crimes” and have kept the number of “Domestic Violence Crimes” cases recorded by the police at a low level, leaving it unclear for the public to understand their categorization of and procedure of handling cases which used to be categorized as “Domestic Violence – Miscellaneous Cases”. This new categorization has also resulted in domestic violence cases of miscellaneous nature departed from the protocol in handling cases of domestic violence. This amounts to a failure to offer substantive equal protection for victims of domestic violence categorized under the new category. Moreover, statistics provided at the police website is not consistent. For example, the number of Domestic Violence Crime cases for 2007 is difference in its comparison with 2006 and 2008. The lack of clear data prevents a comprehensive assessment for the causes and consequences of domestic violence on women.

Deterrence to report cases of domestic violence: The report of child sexual abuse is not mandatory and the responsibility lies within the families. This put the sexually or physically abused children in a very vulnerable condition. Very often, the traditional gender roles and dependency on the males are major reasons for not reporting instances of domestic violence.

Ineffectiveness of anti-abuse programme, treatment and counseling for perpetrators of domestic violence: Even though there are anti-abuse programme, treatment and counseling available for abusers, these programmes and treatments are often not compulsory which render them ineffective and not influential enough.

Sexual Violence

Insufficient resources allocated to victims of sexual violence: Albeit CEDAW has pressed the government for building a crisis support center for anonymous victims in the 2006 periodic reports, a “Rape Crisis Intervention Centre” has not yet been established to provide for a one-stop location for victims of sexual violence to seek comprehensive assistance from professionals. The existing “Multi-purpose Crisis Intervention Centre” is not a one-stop supply for all the services needed by victims of sexual violence, including but not limited to check up specifically for sexually transmitted diseases.

Domestic Violence Ordinance

Lack of substantive equal protection for victims of domestic violence: Although the Domestic Violence (Amendment) Ordinance 2008 and Domestic Violence (Amendment) Ordinance 2009 have amended the former Domestic Violence Ordinance to expand the scope of the ordinance to include spouse, former spouse and their children, cohabitants and former cohabitants as well as immediate and extended family members, the Domestic and Cohabitation Relationships Violence Ordinance still fails to account for specific factors and circumstances of particular groups of women which work to compound their situation of violence, including but

not limited to disability, immigration status, cultural, religious, and family compositions. This renders the failure of the Domestic Violence and Cohabitation Relationships Ordinance inaccessible to offer substantive equal protection for all victims of domestic violence.

Article 6 Trafficking and Prostitution

General

Inadequacy of anti-trafficking legislation: The existing anti-trafficking legislation in Hong Kong only prohibits human trafficking for the purpose of prostitution but not for other forms of trafficking and forced labour. Moreover, the international standards set out in the Palermo Protocol, the ICCPR or CEDAW has not been extended to Hong Kong. The current legislation is not adhering to these international standards due to the inclusion of a requirement of movement of victims, the single-minded focus on trafficking for the purposes of prostitution, the exclusion of forced labour.

Migrant Domestic Workers

Unaddressed debt bondage situation: MDW from Indonesia and the Philippines usually face notable indebtedness assumed in their home countries as part of the terms of job placement through agencies, which have the potential to lead to situation of debt bondage. Migrant domestic helpers from the Philippines and Indonesia are generally charged the equivalent of approximately \$1,950 and \$2,725, respectively, by recruiters in their home countries, debts that may comprise more than 80 percent of workers' salaries for the first seven to eight months of employment. It has been reported that several of Hong Kong's domestic worker employment agencies have charged fees in excess of Hong Kong law and illegally withheld passports, employment contracts, and bank debit cards of domestic workers until their debt has been paid.

Sex Workers

Discrimination against sex workers: Some sex workers reported physical/ verbal assault by the police or immigration officers upon arrest and questioning. These sex workers are being deprived of their basic human rights, such as the right to remain silent; right to legal representation, right to a fair investigation by requesting for an interpreter, right to have toilet breaks and rest during questioning, and the right to refuse signing the cautioned statements. Based on their experience, NGOs specialized on sex workers generally believe that statements given by sex workers were often given less credit by the judges.^{vi}

Moreover, there is an alarming situation of sex workers being murdered while

working in ‘one woman apartments’. According to the Hong Kong laws, it is not illegal for an individual HK resident to work as a sex worker. However, any premises within which two or more persons provide commercial sexual services are considered an illegal “vice-establishment”. Sex workers are therefore forced to work in an isolated setting, which exposes them to dangers.

Exploitation by law enforcement officers: Police officers, during undercover operations, are allowed to solicit sex workers to perform certain sexual services including masturbation (which is in the end unpaid) to “collect evidence” for prosecution. The law enforcement process is discriminatory and exploitative. Nevertheless, Complaints Against Police Office (“CAPO”) is not an independent mechanism to process complaints against police but a division under the Hong Kong Police Force. Its transparency and reliability should be questioned and challenged.

Article 7 Political and Public Life

Negative impact of Functional Constituencies of the Legislative Council (LegCo), Ex Officio Members of the District Councils and the Election Committee on political representation of women: As acknowledged by CEDAW in the 2006 Concluding Observations, there is a need to increase the political representation of women in the Functional Constituencies of LegCo, which is considered undemocratic and reinforces male dominance. However, the government has yet to adopt any measures to address the problem. The undemocratic appointment of Ex Officio Members of the District Council and member of the Election Committee has also been considered a hindrance to the political representation of women due to the stereotype of a male-dominant Chinese society.

Structural barriers undermine different groups of vulnerable women to participate in public life: Although in theory all women have an equal right to vote, stand for office and participate in public life, various structural barriers operate to undermine their ability to do so, such as language barriers to exercise their rights and lack of knowledge of the political system.

Article 10 Education

The right to equal education and access to higher education of women from vulnerable groups, women of multiple minorities in particular, are seriously undermined: Mainstream schools fail to provide rights-based education support and adequate individualized support to non-Chinese speaking ethnic minority students, new arrival girls and students with disabilities. This lack of support often results in a lower academic achievement and narrower further education prospects, which contributes to women’s poverty.

The inadequacies in the education system to provide continued education opportunities for women from various vulnerable groups: The public education system fails to fully equip women of ethnic minority origin, new arrival women and women with disabilities to exercise their full range of rights as protected by CEDAW after they graduated. The insufficient provision of evening adult education and part-time education has deprived women who have other commitments of their access to continued education, which in turn decrease their social and occupational mobility.

Ethnic Minorities Children

Segregation of ethnic minority children and lack of language support in education policy: There is a practice of segregated schooling of ethnic minority children in Hong Kong and the lack of official curriculum for teaching Chinese as a second language for non-Chinese speaking students. Even for schools that accommodate ethnic minority girls, there is a practice of separating ethnic minority girls and boys which results in a shorter class time for ethnic minority girls. The lack of adequate attention from both the community and the Education Bureau to the education of ethnic minority children generally has exacerbated the situation of ethnic minority girls who face gender-based segregation, unequal hours of schooling and early departure from school due to forced marriage.

Misapplication of the principle of CEDAW on equality of opportunity: The Government has misapplied the principle of equality of opportunity when attempting to provide equal educational opportunities to non-Chinese speaking girls. The Government claimed that non-Chinese speaking girls should receive equivalent education opportunities as compared to non-Chinese speaking boys. However, the proper application should result in non-Chinese speaking girls receiving equivalent education opportunities as compared to *all other* male counterparts, not only non-Chinese speaking boys.

Exclusion of ethnic minority girls in sex education classes: Sex education is a delicate and sensitive issue for many ethnic minority parents. However, this should not be a basis on which to deny access to sex education to ethnic minority girls.

Article 11 Employment

Inadequate protection from the Employment Ordinance (“EO”) for casual women worker: The EO provides labor protection and benefit entitlement for employees working at least 18 hours a week for a continuous period of four weeks (“4.18”). Therefore, casual workers who do not work according to the definition of employment relation (“4.18”) are not entitled to any protection laid down by the Employment Ordinance. This “4.18” labor regulation has also caused a lot of exploitations of 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, resulting in many new casual work patterns and serious

exploitation. As a result of casualization, more women are falling out of the employment benefits protection.

Discrepancy between the wage level of male and female workers

Lack of universal retirement protection: As the population is aging and women live a longer life than men, the number of the number and proportion of women elderly is constantly increasing. It follows that we have to concern about the retirement protection of elderly women.

As CSSA is a means-tested scheme, it is by nature, not a universal scheme that provides adequate retirement protection to all citizens. While the final benefits gained by the Mandatory Provisional Fund (“MPF”) are totally dependent on the length and amount of contribution from both the employers and the employees. This scheme is not favorable to elderly workers, low-income workers and also those employees who have not had a continuous and long record of joining the scheme. Most importantly, the MPF is a gender insensitive retirement scheme since unpaid homemakers are predominantly women. There are approximately 700,000 homemakers in Hong Kong, more than 99% of them are women. When these women grow old, they are not protected by any statutory retirement protection scheme, unless they are eligible for CSSA. Therefore, to these underprivileged women workers, the MPF will only provide a meager retirement protection.

Lack of vocational training and accreditation for women workers: Existing vocation training and programmes provided by the Employees Retraining Board (“ERB”) are not effective to some groups of women. For women with children, they cannot access ERB training courses because the class schedules and timetables are rigid and cannot accommodate the needs of childcare. For new arrival women and ethnic minorities women, their skills and knowledge are often not recognized due to language barriers to examinations and assessments. The lack of vocational training and accreditation has significantly undermined the employability of these women workers.

Lack of gender budgeting in regard to employment: The Government claimed that women can already benefit from the society’s resources on a par with men based on the observation that half of the service users of the three largest components in Government’s recurrent spending, namely education, social welfare and health, are women. As the Government is satisfied with the present situation and is only focusing on the three areas mentioned above, the Coalition noticed that there is no mention of any gender budgeting or resources allocation in the process of implementing gender mainstreaming. The lack of gender budgeting has created difficulty for employers to employ through a gender perspective.

Pregnant Migrant Domestic Workers

The risk associated with unplanned pregnancy of Foreign Domestic Helpers: The Coalition is concerned about the wellbeing of pregnant MDW in Hong Kong due to a

lack of social and medical support. Since the employment contract of MDW has no provisions regarding pregnancy, MDW are excluded from the employment benefit of having maternal leave and, for most of the time, are at risk of being laid off by their employers due to unexpected and unplanned pregnancy. Once they have been terminated, these pregnant MDW, as visitors to Hong Kong, are not entitled to public healthcare services. The prevalent practice is to rush to the emergency room of hospitals at times of laboring which are obviously dangerous and risky for both the mother and the baby. The resulting unpaid medical bills usually tint the record of these MDW and impaired their ability to seek approval from the government on subsequent employment contracts. Most importantly, as the baby will be born a permanent resident of Hong Kong, the MDW often resort to overstay and become more vulnerable to abuse and human trafficking.

Women with Caring Responsibilities

Lack of childcare support for women to participate in the labor market: Many married women workers are displaced from the labor market due to the lack of childcare services. Currently, mothers who would like to participate in the economy are often left limited option of subsidized childcare services which is usually limited in its supply, expensive, located in inconvenient locations, and sometimes loosely supervised. A significant number of women become “discouraged workers” who are deterred from re-entering the labor market after giving birth. The lack of childcare support that fits the needs of women with young children consequently deprives women the freedom to employment and further marginalizes women workers.

Inadequate maternity leave and the lack of paternity leave legislation: The benefits conferred on pregnant employees by the existing employment law regime fall short of the international labour standard. According to the ILO Treaty No. 183, pregnant employees should be entitled to a maternity leave which is at least 14 weeks long. However, the statutory maternity leave in Hong Kong is only 10 weeks long. In addition to extending the duration of the statutory maternity leave, the society has an increasing demand for statutory paternity leave. While the proposal was discussed in LegCo in January 2013, the government has not yet put forth any bill. There is therefore an urgent need to facilitate the drafting and implementation of statutory paternity leave in order to provide women with more support from their spouses after childbirth.

Casualization of women workers: There are an increasing number of women employed as casual workers. Women with caring responsibilities are often forced to work as casual workers who are excluded from any labor protection under existing employment laws (as discussed above). The working poor female population is more likely to be victims of poverty. Thus, the government must alleviate poverty by focusing on the under-employment of women with caring responsibilities.

Women with Disability

Discriminatory special arrangement that renders protection from the Statutory Minimum Wage (“SMW”) inadequate for employees with disabilities: Although the SMW applies to employees with disabilities and able-bodied employees alike, a special arrangement is provided under the Minimum Wage Ordinance (“MWO”) so that employees with disabilities whose productivity may be impaired by their disabilities are entitled to have their productivity assessed to determine whether they should be remunerated at the SMW rate. Despite the right to invoke a productivity assessment is entirely vested in the employees with disabilities, their likelihood to be employed is apparently smaller if they have not gone through the Productivity Assessment to indicate their ability. This special arrangement is discriminatory in itself that often results in disabled women not protected by the SMW.

Migrant Domestic Workers (“MDW”)

The conditions of stay known as the “Two-Week Rule”: Under the “Two-Week Rule”, MDW are allowed to stay for further two weeks as soon as an employment contract has been terminated or expired. This short period is unreasonable and insufficient for MDW to secure new employment opportunities. We are dissatisfied with the Government’s response to the CEDAW report dated 17 January 2008 which suggested that the rationale of the Two-Week Rule is to maintain an effective immigration control by deterring job-hopping because contrastingly other migrant workers, such as expatriates, are allowed a four-week transitional period. Most importantly, as they do not receive any financial support in the two-week period even if there is a breach of contract by the employers. Therefore, the MDW are put at a risk of accepting new employment opportunities in a rush manner or tolerating unfair and abusive terms and conditions.

Live-in Rule: Due to lack of regulations and monitoring of working conditions, the “Live-in Rule” exposes FDWs to abuse and custodial violence. Despite the objective of protecting the FDW by implementing a Live-in Rule, there are cases of MDW suffering from inhumane living conditions and treatments. The recent case of Kartika in which an Indonesian MDW was chained to a chair while her employers were on vacation is one of the alarming cases reflecting the risk the Live-in Rule posed on MDW.

Agency exploitation: The Coalition is concerned with the exploitative practices that take place in the process of recruitment of MDW. MDW are often forced by the agency to sign a loan agreement in their home country before they report to work in Hong Kong. The amounts secured by these loan agreements, which are approximately HKD 21,000 for Indonesians and HKD 12,000 for Filipinos, are treated as agency fees owed to the agency. However, as the loan agreements were entered into in their home countries, MDW often find no resort to such exploitation even though the amounts of such loans exceeded the 10% agency fees allowed in the EO. Most importantly, these MDW often have their passports and employment

contracts confiscated upon their arrival in Hong Kong, which deterred them from voicing out their ordeals.

Exclusion from the Statutory Minimum Wage: The Coalition is concerned with the exclusion of MDW from the protection of the MWO due to the mandatory and distinctive live-in requirement, which is different from that of other migrant workers. However, as recognized by the CERD, the HKCTU and FADWU referred to alleged reports of sub-standard accommodations and express concerns at the lack of a mechanism to calculate the cost of accommodation, which is used to justify a significantly lower wage level. As suggested by the CERD, while the treatment applied by the State to migrant workers does not have to be identical to that enjoyed by nationals, it should nonetheless be equivalent in its effects. The exclusion from the minimum wage is discriminatory against MDW who are primarily women based their nationality and occupation.

Article 12: Health

General

The lack of population based breast screening: Hong Kong has an above average incidence rate of women diagnosed with breast cancer which amounts to 54.8/100,000. The lifetime risk of Hong Kong women having breast cancer is 1 in 19. In order to ensure timely treatment, population based breast cancer screening is adopted in 33 countries in the International Cancer Screening Network. Unlike these countries, despite of the fact that breast cancer is the most frequent cancer affecting Hong Kong women and ranked third in morality, Hong Kong does not have a population based screening provided for women.

Women with disability

Disabled women are more likely than non-disabled women to lose their access to medical care and health services due to heavy medical expenses incurred: The major reason for disabled women to be more susceptible to the traps of poverty is that their medical expenses incurred are often overly burdensome to their family due to the lack of medical insurance and, consequently, the loss of access to medical care and health services. Apart from income, the unemployed would easily lose self-confidence, social network and linkage with the society.

Women with psycho-socio disabilities: It is observed that women who are prone to psycho-socio disabilities are often treated as patients suffering from mental illness, which may result in excessive psychiatric medication. Given the lack of professional and medical knowledge in regard to the illnesses they suffer, women with psycho-socio disabilities are more often victims of mental impairment due to over-dosage.

Insufficient healthcare services support for women with disabilities: The need for healthcare services of women with disabilities has been severely neglected due

to lack of medical facilities and professional services both in public community clinics, public hospitals managed under the Hospital Authority and health centers, such as Women Health Centers and Maternal and Child Health Centers. The Department of Health has planned to provide gynecological examination tables for disabled women since 2011, but by the end of 2012 only 9 out of 34 centers have been available. Additionally, the government also failed to provide disabled women with information on how to use those services, which increase risks of suffering from gynecological diseases. Besides, given insufficient training to serve women with disabilities, most of healthcare staff is not able to conduct general and gynecological examination properly.

Pregnant Foreign Domestic Helpers

The risk associated with unplanned pregnancy of Foreign Domestic Helpers: The Coalition is concerned about the wellbeing of pregnant MDW in Hong Kong due to a lack of social and medical support. Since the employment contract of MDW has no provisions regarding pregnancy, MDW are excluded from the employment benefit of having maternal leave and, for most of the time, are at risk of being laid off by their employers due to unexpected and unplanned pregnancy. Once they have been terminated, these pregnant MDW, as visitors to Hong Kong, are not entitled to public healthcare services. The prevalent practice is to rush to the emergency room of hospitals at times of laboring which are obviously dangerous and risky for both the mother and the baby. The resulting unpaid medical bills usually tint the record of these MDW and impaired their ability to seek approval from the government on subsequent employment contracts. Most importantly, as the baby will be born a permanent resident of Hong Kong, the MDW often resort to overstay and become more vulnerable to abuse and human trafficking.

Article 13: Women in Economic, Social and Cultural Life

The Comprehensive Social Security Assistance Scheme (“CSSA”)

Insufficient financial support for single parents: It is undeniable that most of these female single parents occupy a significant number of the poor women’s population. 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 of a Maintenance Board to facilitate the single parent family to obtain maintenance payments. In 1997 and 1999, Legislative Council passed the motion to urge the Government to set up a Maintenance Board. Even under such great pressure, the Government still refuses to set up a Maintenance Board.

Income requirement for persons with disabilities often results in the loss of financial independence: In order to receive CSSA, the applicants with disabilities must have a household income lower than the upper limit set by the Social Welfare

Department. In Hong Kong, persons with disabilities mostly live with their family members who undertake the role as caretakers. These family members, such as siblings are often not financially responsible for the medical expenditure of the persons with disabilities. However, the fact that the disabled persons are living with their family members under the same roof is likely to increase the aggregated household income to a level exceeding the upper limit and renders these persons with disabilities ineligible for CSSA.

CSSA has not been pegged to the poverty line introduced recently: The government announced that there are 1.31 million Hong Kong people living below the poverty line newly drawn, while 235,600 of them are receiving CSSA.^{vii} However, the government insisted that the CSSA would not be directly pegged to the poverty line. This results in the CSSA losing its relevance as a tool for alleviating poverty. Population living under poverty line, which consists of how many women, cannot afford basic needs necessary for daily living.

ⁱ List of policy and programme areas that have applied the Gender Mainstreaming Checklist, Enabling Environment, Women's Commission:
http://www.women.gov.hk/colour/en/enabling_environment/gm_applied.htm, access date: 21 Jan 2014.

ⁱⁱ Special Topics Report No.48 on Persons with disabilities and chronic diseases in 2008

ⁱⁱⁱ Chung, R. (2012) *Hong Kong LGBT Climate Study 2011-12*. Retrieved from http://hkupop.hku.hk/english/report/LGBT2011_12/content/resources/eng_presentation.pdf. 78% of the Hong Kong working population thinks that LGBT individuals face discrimination or negative treatment. For the focus survey on LGBT employees, a majority was not open about their sexual orientation or gender identity at work (for example, 60% were "not open" with their "colleagues in general")

^{iv} Women Coalition of HKSAR (2010) *"Discrimination against Women on the Grounds of Sexual Orientation in Hong Kong" Survey* (in Chinese) Retrieved from <http://wchk.org/2012/tc/content.php?key=sodsurvey/survey-result.php>

^v 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

^{vi} 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., Petersen, C. and Emerton R, "Bureaucratic Justice The Incarceration of Mainland Chinese Women Working in Hong Kong's Sex Industry", *International Journal of Offender Therapy and Comparative Criminology*, Volume 51(1), February 2007, p. 78.

^{vii} <http://www.scmp.com/news/hong-kong/article/1326054/reform-cssa-welfare-payments-urged-bring-people-out-poverty>