

## Hong Kong, China

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Women in Hong Kong have equal rights to men to enter into marriage ( Hong Kong Bill of Rights, Article 19). In addition, there are specific legal provisions which prohibit forced marriage. For instance, Article 19 of the Hong Kong Bills of Rights provides that “no marriage shall be entered into without the free and full consent of the intending spouses”.

The law recognizes civil, religious and customary marriages (Marriage Ordinance, Art 38 & 40).

However, the law does not provide for the official registration of informal partnerships, thus a party to a de facto relationship has no legal protection. Indeed, in case of separation, a party to an informal relationship has no right in the court to seek maintenance from the other party or to get any entitlement by way of capital sum or a transfer of property for him or herself (Kitu, 2017).

#### b) Child marriage

The Marriage Ordinance sets the minimum legal age of marriage at 16 years for both sexes, but parental consent or judicial approval is required for persons younger than 21 years (Marriage Ordinance, Part 1, article 4.A). Child marriage is void in Hong Kong (Marriage Ordinance, article 27) and there are penalties for authorising child or child marriage (Marriage Ordinance, article 30). Child marriage is not a common phenomenon in Hong Kong as people tend to marry at an older age: the average ages of marriage for men and women are 30.9 and 27.7 respectively (Plan International, n.d). Nevertheless, the CEDAW Committee has expressed concerns over the fact that the minimum marriage age with parental consent remains at 16, which violates international norms including the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 2014).

#### c) Household responsibilities

Women have the same rights as men to be recognized as head of the household and choose where to live, and wives are not required to obey their husbands (Hong Kong Bill of Rights Ordinance, Cap. 383, Article 19). The Marriage Ordinance grants both the mother and father equal rights and responsibilities to their children during and after marriage ( Guardianship of Minors Ordinance, Part 2, Article 3). However, for children without married parents (“illegitimate children” as it is called in the law), the only parent who automatically has custodial rights is the mother. The father of a child born out of wedlock has to apply to the court to have the same rights as the mother (Guardianship of Minors Ordinance, Part 2, Article 3). Once the unmarried father has his application approved, there is no distinction regarding the treatment of the children and both parents can apply for custody, care, control and access to their children (Kitu, 2017).

Discriminatory stereotypes in respect of the roles and responsibilities of women and men in the family and in society persist in Hong Kong, and many people continue to believe in the stereotypical roles of the woman as the homemaker and the man as the sole-provider despite women’s participation in the formal labour force. Indeed, a study conducted in 2015 noted that domestic labor remains “women’s work” despite women working long hours outside the home. On average, employed women working outside the home worked 45 hours per week. Many of those who work as professionals,

managers, and service employees work overtime, for more than 50 hours per week. Nevertheless, working women are still expected to be responsible for housework (Ka-Lok Cheung, 2015).

#### **d) Divorce**

The Civil Code does not discriminate against women in terms of divorce rights. Both women and men have the same right to initiate divorce. The grounds for divorce are adultery, unreasonably bad behaviour, separation (one year) or desertion (Matrimonial Causes Ordinance, Part III, Art 11).

In the case of divorce, both parents continue to share parental authority over their children (Guardianship of Minors Ordinance, Part 2, Art 3). In addition, similar provisions for child maintenance are available to children of unmarried parents, such as monthly maintenance, provision of a lump sum and the transfer of property (Kitu, 2017).

In Hong Kong, the divorce rate has increased over the years. A study noted different factors linked to the increase in divorce rate: women in Hong Kong have more financial independence than before, higher sense of individualism and attitudes about marriage and divorce are changing. Nevertheless, divorced mothers in Hong Kong still experience a high degree of stress from parent-child relationships, financial stress, as well as lack of social support. In addition, there are reports that divorced women with children are often stigmatized adding stress to their life as a single parent (The University of Hong Kong, 2014).

#### **e) Inheritance**

Daughters and female surviving spouses have the same rights as sons and male surviving spouses to inherit land and non-land assets (Intestates' Estates Ordinance, sections 4 & 5). Women and men have the same rights to execute or administer a will. There are no customary, religious, or traditional practices or laws that discriminate against daughters' and female surviving spouses' legal rights to inherit.

Equality in terms of inheritance is something relatively new in Hong Kong. Indeed, equal inheritance rights for sons and daughters was achieved through the implementation of the New Territories Land (Exemption) Ordinance (1994), which exempted land from Chinese customary law which had previously prevented daughters from inheriting land. Prior to the 1994 implementation of the New Territories Ordinance, women were not allowed to inherit land or property at all (Stern, n.d.).

## **2. Restricted Physical integrity**

### **a) Violence against women**

Hong Kong has not ratified any convention related to the prevention and fight against violence against women and domestic violence. Violence against women can be addressed under three legal frameworks: the Crimes Ordinance; the Offences against the Person Ordinance; and the Domestic Violence Ordinance. However, there is no legislation specifically addressing violence against women.

In a survey conducted in 2006 with nearly 1,300 women, one in five respondents mentioned that they had experienced violence since age 16. Sexual violence (13%) was more frequent than physical violence (12%). Women were more likely to be abused by men they knew (14%) than by strangers (8%). However, compared with the twelve other surveyed countries, Hong Kong recorded one of the lowest rates of violence against women by both intimate partners and non-partners (Bouhours et al., 2015)

## **b) Domestic violence**

There is no specific legislation criminalizing violence against women. The Domestic Violence Ordinance is a civil instrument providing injunctions and court orders. In 2008, the Domestic Violence Ordinance was amended to expand the scope of protection in the form of injunction against molestation and physical violence by former spouses, former cohabitants and their children, as well as other immediate and extended family. These protections were also extended to same-sex partnerships (Domestic and cohabitation relationships violence ordinance, Article 3). However, the legislation does not cover sexual, psychological and economic abuse.

Individuals and families experiencing domestic violence can seek temporary accommodation at emergency shelters. There are five refuge centres for women with a total capacity of 260 places. Since 2008, the Social Welfare Department has been providing, through its hotline, 24/7 phone counselling, support and advice by social workers to individuals/families in need, and assistance arrange appropriate follow-up services. In addition, a 24-hour hotline service for victims of domestic violence and their families is also provided by all five refuge centres for women, the CEASE Crisis Centre and the Family Crisis Support Centre (CEDAW, 2014). While the CEASE Crisis Centre is managed by public hospital services, the Family Crisis Support Centre is operated by the NGO Carita (Social Welfare Department, n.d.).

The Department of Justice has also issued a guideline called “The Policy for Prosecuting Cases involving Domestic Violence”. Apart from explaining domestic violence and the role of the prosecutor, it provides guidance on charging policy and charging practice. In deciding whether to prosecute a case involving domestic violence, prosecutors should consider whether there is sufficient evidence to justify the institution of proceedings on the basis that it affords a reasonable prospect of conviction, and whether the public interest requires a prosecution to be pursued (CEDAW, 2014). The prosecutor will also consider whether special measures are required to support witnesses at court. If a domestic violence victim is a “witness in fear” under the Criminal Procedure Ordinance (Cap. 221), the testimony may be given by live television link to court. Alternatively, the court may allow a victim to testify from behind a screen inside the courtroom. (CEDAW, 2014)

Local studies performed in Hong Kong showed that the prevalence of domestic violence in Hong Kong ranged from 10 % to 16%. but due to the cultural norms against disclosing family issues and seeking help outside the family, women are often reluctant to report it (Ma et al., 2015).

## **c) Rape**

The Crimes Ordinance criminalises rape, punishable by life imprisonment (Criminal Ordinance, Article 118). However, the law does not provide for increased penalties for aggravated forms of rape and sexual violence. The definition of rape is based on the lack of consent and does not require proof of violence or penetration (Crimes Ordinance, Article 118). Marital rape is also recognized as a crime under the Crimes Ordinance (Article 1.B). There is currently no national action plan to support the implementation of the law on sexual violence.

Moreover, a study conducted in 2009 shows that attitudes blaming rape victims are still prevalent amongst all socio-economic levels of society. Additionally, marital rape is still socially accepted closely linked to the prevalence of social and cultural prescribed standards of “obedient wives” (Cheung et al., 2009).

## **d) Sexual harassment**

The Sex Discrimination Ordinance makes sexual harassment unlawful in employment and educational institutions (Articles 23 & 25). In 2014, the Sex Discrimination Ordinance has been amended making it

also unlawful for customers to sexually harass someone in the course of either seeking to be provided with goods, facilities or services by that person or being provided with goods, facilities or services by that person. The law also expressly provides for civil remedies and criminal penalties of up to two years of imprisonment (Article 88). However, the legal definition of sexual harassment does not cover harassment within sporting establishments, public place and cyber harassment.

Additionally, experts have noted that the court's application of the law has many shortcomings allowing for cases to be dismissed on the grounds that the complainant was highly sensitive to physical contact; did not resist the unwelcome sexual act; or flaunted herself (Srivastava, 2010).

There are no official figures available on the current prevalence of sexual harassment. Although one survey conducted in 2014 by the Equal Opportunities Commission (EOC) has found that 19% of 472 female respondents had been sexually harassed at work with another 6% admitting they had either witnessed or heard about complaints of sexual harassment. One third of victims added they did not do anything about the harassment, citing reasons such as they did not think it would help to report the incident (42%), they were not aware of the complaint channels (16%), they did not want to worsen the situation or relation (13%) or they did not have the spare time or energy to take action (10%) (Zolkifi, 2014).

#### **e) Female genital mutilation**

There is no evidence that female genital mutilation (FGM) is practiced in Hong Kong.

#### **f) Abortion**

In accordance with Section 47A of the Offences against the Person Ordinance (Cap. 212), a pregnancy may be terminated if two registered medical practitioners are of the opinion, formed in good faith, that: (i) The continuance of the pregnancy would involve risk to the life of the pregnant woman or of injury to her physical or mental health, greater than if the pregnancy were terminated; or (ii) There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormality as to be seriously handicapped and (iii) in case of rape. Termination of pregnancy can only be performed within 24 weeks of pregnancy, unless it is absolutely necessary for saving the life of the pregnant woman (Offences against the Person Ordinance, Section 47A).

Children born outside marriage in Hong Kong are often regarded as illegitimate, and the social stigma of unmarried women with children is still high. Due to societal pressure, there are reports that unmarried pregnant women get abortions, sometimes illegally, due to its high cost and stringent legal requirements. It was also reported that many women travel to Mainland China instead of having an abortion in Hong Kong, due to lower costs and more lenient laws (Internations, n.d.)

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

The law provides for equal rights to married and unmarried women over the ownership, use, decision-making power, and use as collateral over land and non-land assets (Basic Law, Article 6 & Married Person Ordinance, section 4). The law also allows for both spouses to administer their personal assets and property and does not discriminate against women. The default marital regime is separation of property (Married Person Ordinance, section 4). Couples also have the option of registering a property in joint land titling (Land Titles Ordinance, Article 57).

## **b) Secure access to formal financial resources**

Married and unmarried women have equal rights as men to open a bank account at a formal institution. They similarly have equal rights as men to obtain credit (Basic Law, Art 25).

Women's access to formal financial services does not seem to be an issue in Hong Kong. According to data collected by the World Bank in 2014, 96.3% of women have a bank account. This is much higher than the average rate of 93.8% in OECD countries (World Bank, 2014).

## **c) Workplace rights**

Hong Kong has not ratified any of the following ILO Conventions: 100, 111, 156, 183 and 189.

The law mandates non-discrimination on the basis of sex in employment and specifically covers job advertisements, selection criteria, recruitment, hiring, terms and conditions, promotions, training, assignments and termination (Sex Discrimination Ordinance (Cap.480), Sec. 11(1). At present, discrimination complaints are being handled by the Equal Opportunities Commission which is a statutory body in the Hong Kong Special Administrative Region (Guideline on Public Services, Chapter 13, Equal Opportunities).

The law does not prohibit women from entering certain professions. Women can work the same night hours as men, and they do not need permission from their husband or legal guardian to either choose a profession or register a business.

There is currently no law mandating equal remuneration for work of equal value. However, the Equal Opportunities Commission has introduced a set of clear guidelines to employers to continuously strengthen the public understanding on the concept of equal pay, to address the issue of pay disparity between the two genders and to conduct investigation into alleged contraventions. However, the Commission has not received any related complaints since launch of the guideline. (CEDAW, 2014). Moreover, the gender pay gap is still an issue in Hong Kong. Indeed, according to official data collected by the Census and Statistics Department, in general, the median monthly employment earnings of female employed persons was lower than that of their male counterparts (USD 12 000 and USD 18 000, respectively)(Census and Statistics Department, 2017).

Labour law mandates paid maternity leave of ten weeks (Cap. 57 Employment Ordinance, section 12) while, since 2015, paternity leave allows 3 consecutive days off (Cap. 57 Employment Ordinance, section 15 E). 100 per cent of wages are covered by the employer for both paternity and maternity leave (Cap. 57 Employment Ordinance, section 12 & 15 I). The CEDAW Committee has noted the introduction of paternity leave in 2015 but expressed concern over the fact that maternity leave is limited to 10 weeks, which does not comply with the international standards established by the International Labour Organization (CEDAW, 2014). Under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong, section 15), a pregnant employee with a continuous contract of employment and who has given notice of pregnancy to her employer would be entitled to protection against dismissal by her employer. However, there are no restrictions on employers asking about family status during job interviews.

Hong Kong is a place with a mixture of eastern and western cultures and over the past hundred years or so, women have benefited from the progress and opening up of the society, and have been advancing continuously in terms of socio-economic status. According to data compiled by the World Bank in 2017, the ratio of female-to-male labor force participation rate was 79% (World Bank, 2017). Yet at the same time, women's employment (especially in high level management) in Hong Kong is still subject to constraints which include traditional Chinese culture and thinking, as well as deep-rooted gender stereotypes (Hong Kong Women's Commission, 2011). For instance, only about 10% of the board members of listed companies are female, even though women account for almost half of



the total workforce. In 2013, the Hong Kong Stock Exchange has introduced amendments to its Corporate Governance Code requiring the board of each listed company to disclose a summary of any diversity policies that are in place in its corporate governance report, as well as the progress they have made toward their objectives. However, since the implementation of these rules, there has been no significant increase in the percentage of women directors in Hong Kong (Deloitte, 2015).

## 4. Restricted Civil liberties

### a) Citizenship rights

Married and unmarried women have the same rights as men to acquire, change, retain their nationality (Constitution, Article 24). Married women also have equal rights as married men to confer nationality to their spouse and children (Nationality Law, Arts 4 & 7).

However, married and unmarried women do not have equal rights as men to register the birth of their children (Cap. 174 Births and Deaths Registration Ordinance, Section 7). The law requires the father to register the birth of his child if he is not married to the mother. Only in cases of “death, illness, absence, or inability of the father”, the mother of the child is allowed to replace the father.

Married and unmarried women have equal rights as men to apply for identity cards and passports (ID application procedures & CAP 539 Passports Ordinance, Section 7) The law does not discriminate against women with respect to the passports and other travel documents of minor children and both unmarried and married women have the same rights as men to travel outside the country. To apply for a national identity card, individuals must fill out the appropriate form (Identity card procedures).

The Constitution does not recognise and prohibit multiple and intersectional discrimination despite various reports that lesbian, transsexual and transgender women and girls in Hong Kong, China, are subjected to discrimination and abuse, particularly in the context of employment, education and access to health-care services (CEDAW, 2014).

### b) Voting

The Basic Law, Art 25 stipulates that Hong Kong residents shall have the right to vote and the right to stand for election in accordance with the law. Women and men enjoy the same rights to vote and to stand for elections to the Legislative Council, the District Councils and the Election Committee for the Election of the Chief Executive. The legislation makes no reference to a person’s gender, ethnic origin<sup>1</sup> or religion to qualify a person as an elector or a candidate in elections. The Hong Kong Bill of Rights (Chapter 383) also stipulates that every Hong Kong permanent resident, regardless of sex, shall have the right and opportunity to take part in the conduct of public affairs.

Female electors constitute around half of the registered electorate. In the 2012 Legislative Council election, there were 1.75 million registered female electors on the electoral register, representing 50% of all the registered electors in the HKSAR (CEDAW, 2014). In Hong Kong, people do not have strong bias against women candidates or politicians and the success rates of women politicians is in general slightly higher than of men politicians (Cheung, 2009).

### c) Political voice

Women in Hong Kong have equal rights to men to hold public and political office in the legislature, executive and judiciary (Basic Law, Article 26).

There are currently no quotas in place in Hong Kong and the CEDAW Committee has recommended that Hong Kong consider using temporary special measures with numerical goals and timetables, to accelerate the representation of women in decision-making positions at all levels (CEDAW, 2014).

Indeed, women in Hong Kong still lag behind men in terms of participation in decision making. This, to a certain extent, is due to gender stereotypes in society. Under the influence of such stereotypes, more women are engaged in community service than in politics. According to a 2010 survey, women tend to express their views and requests in a more quiescent manner, such as by signing petitions via the internet (Hong Kong Women's Commission, 2011).

#### **d) Access to justice**

Married and unmarried women have equal capacity to men to sue and be sued. Married and unmarried women's testimony also carries the same evidentiary weight as a man's in civil, criminal, family court, and tribunals (Constitution, Article 25).

There are no specific measures in place to protect women from violence in political and public life.

The Women's Commission is the governmental agency tasked with monitoring gender equality in Hong Kong. As such, it advises the Government on the development of a long-term vision and strategies related to the development and advancement of women, the integration of policies and initiatives, identifies priority areas for action, and monitors the development of new or improved services, initiates and undertakes independent surveys and research studies on women's issues and organizes educational and promotional activities (Women's Commission, n.d.). However, the Commission does not have the power to receive complaints or to monitor compliance of national law and policies with international human rights standards. Moreover, the CEDAW Committee has expressed concern over the fact that its mandate is weak and it currently lacks the resources necessary to undertake gender mainstreaming (CEDAW, 2014).

There is currently no law governing the production and dissemination of gender statistics. However, in practice, the Census and Statistics Department issues an annual report on key statistics on Women and Men in Hong Kong (Census and Statistics Department, 2017).

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