

HONG KONG, CHINA

1. Discriminatory family code

Article 19 of the Hong Kong Bill of Rights guarantees rights to women in respect of marriage and family. The Article provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State; the right of men and women of marriageable age to marry and to found a family shall be recognised; no marriage shall be entered into without the free and full consent of the intending spouses; spouses shall have equal rights and responsibilities as to marriage, during marriage and at its dissolution and in the case of dissolution, provision shall be made for the necessary protection of any children.¹

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.² The United Nations reports, based on 2006 data that, 0.4% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 0.3% of boys in the same age range.³ In 1971, 2.9% of girls aged between 15 and 19 were married, divorced or widowed, which suggests that societal acceptance of **early marriage** has declined in the last few decades.⁴ Indeed, the data indicates that women and men are both marrying later in Hong Kong. The median age of men and women at their first marriage rose from 30 and 27.3 respectively in 2001, to 31.2 28.7 in 2011 respectively.⁵

Parental authority in Hong Kong is shared by both parents. The Guardianship of Minors Ordinance ensures that men and women have the same rights and obligations towards their children. In 2004 the government reported that in the event of **divorce**, a court will determine custody.⁶ The guardian, be it the mother or the father, has the right to apply for maintenance payments from the other parent.⁷ However, in practice NGOs have reported that single parents, the majority of which are female, consistently fail to receive support due in part to the Government's inability to effectively enforce or monitor maintenance payments, relying instead on social security payments.⁸

Equal **inheritance** rights for sons and daughters was achieved through the implementation of the New Territories Land (Exemption) Ordinance, which exempted land from Chinese customary

¹ Hong Kong Bill of Rights, section 8, Article 19(1) (4)

² Marriage Ordinance (Cap 181), section 14 and section 29

³ UN (2012)

⁴ UN (2012)

⁵ Women's Commission of Hong Kong (2011)

⁶ CEDAW (2004)

⁷ CEDAW (2012), p.91

⁸ Joint submission (2014), p. 45

law which prevented daughters from inheriting land.⁹ Prior to the 1994 implementation of the New Territories Ordinance, women were not allowed to inherit land or property at all.¹⁰

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Bigamy is illegal under the Offences Against the Person Ordinance.¹¹

In 2010, the Women's Commission of Hong Kong reported that there had been a shift in attitudes towards **women's and men's role in the family**, although some stereotypes that dictate the role of women and men still prevail. A large scale survey found that over 80% of women and men agreed that "both women and men should contribute to the household income". The percentage of women agreeing was only 3% higher than men. This reflects a change from the traditional idea that the man should be the breadwinner. However, the survey found that the traditional idea that women should be responsible for the housework remains entrenched. Only 48% of respondents agreed that men should take up a larger share of household duties, with women (52%) outnumbering men (44%). The survey also found a gender division in the allocation of household duties, with women more likely to be responsible for cooking and caring of children and relatives while men were more likely to be responsible for household repairs. With respect to financial decision-making, 44% of respondents said that they had equal rights of using all/a portion of the money. Almost one fifth of the population said that the male spouse was responsible for managing and allocating money, of which 86% of these women had no income at all.¹²

2. Restricted physical integrity

Domestic violence continues to be a significant problem in Hong Kong, although consistent figures on the prevalence of the problem are not available. One nation-wide survey found that 9.4% of Hong Kong women had reported experiencing some form of intimate partner violence in their lifetimes.¹³ In 2012, there were 1,616 cases recorded by the police;¹⁴ however observers report that there is evidence of significant under-reporting of domestic violence. One service-provider found that, from April 2011 to March 2013, about 87% of the victims it saw did not go on to report their cases to the police. Among these victims, 22.2% did not want to be further troubled by the incident and its related matters; 17.8% feared being blamed by others; and 16.7% felt ashamed to report the incident.¹⁵ Additionally, local NGOs report that despite the high incidence of domestic violence among ethnic migrant families, there are a disproportionately low number of complaints among this group, revealing a reluctance or

⁹ New Territories Land (Exemption) Ordinance (Cap 452), section 3; Merry and Stern (2005)

¹⁰ CEDAW (2004) p.124

¹¹ Offences Against the Person Ordinance (Cap212), section45

¹² Women's Commission of Hong Kong (2010)

¹³ Broadhurst, etal (2012), p.3

¹⁴ ACSVAW and Rainlily, p.6

¹⁵ ACSVAW and Rainlily, p.6

inability to effectively engage available resources.¹⁶ Of those cases of domestic violence that are reported, very few proceed to conviction: a mere 8% according to one national survey.¹⁷

In 2008 the Domestic Violence law was amended to expand the scope of protection in the form of injunction against molestation by former spouses, former cohabitants and their children, as well as other immediate and extended family. These protections were extended to same-sex partnerships in January 2010.¹⁸ However, the legislation is not as strong as it might be. The Hong Kong Bar association has noted that the absence of a clear definition of ‘domestic violence’ encompassing sexual and emotional harm hampers the application of the law.¹⁹ Moreover, NGOs working in the area note that the law does not contain sanctions for stalking, and have criticized the Ordinance for only providing civil remedies, confined mainly to the granting of injunction orders.²⁰

In addition to legal protection, the Social Welfare Department tackles the problem through multi-disciplinary co-ordination, public education, co-ordination of community resources, early identification and intervention activities. An inter-departmental Working Group on Combating Violence was set up in 2001, through amalgamation of two Working Groups to better address domestic and sexual violence issues.²¹ The Government has reported to the UN Committee on the Elimination of Discrimination against Women (CEDAW) that funding for domestic violence services have increased from some HK\$1.3 billion (US\$167 million) in 2004-05 to HK\$1.8 billion (US\$230 million) in 2009-10; and that the number of social workers in the Family and Child Protective and Services Units has increased by 60%.²² In recent years the Government has established a refuge centre, although as of 2010, it only has the capacity to accommodate 260 women and children – a fraction of the reported cases.²³

Violence against women is addressed under three legal frameworks: the Crimes Ordinance; the Offences against the Person Ordinance; and the Domestic Violence Ordinance. Marital **rape** is recognised as a crime under the Crimes Ordinance.²⁴ There is no specific legislation to criminalise violence against women as the Domestic Violence Ordinance is a civil instrument providing injunctions and court orders.²⁵

Sexual violence against women is reported to be rising in Hong Kong, although reliable figures on the prevalence of the crime of rape are not available. Police data shows that reported cases of sexual violence, including rape, rose from 104 in 2000 to 112 in 2010. However, these numbers likely to be significantly affected by under-reporting.²⁶ A nation-wide survey of violence

¹⁶ Joint submission (2014), p.18

¹⁷ Broadhurst, etal (2013), p.3

¹⁸ CEDAW (2012), p.29

¹⁹ Hong Kong Bar Association (2014), 3

²⁰ Joint submission (2014), p.18

²¹ CEDAW (2014)

²² CEDAW (2012), p.29

²³ CEDAW (2012), p.32

²⁴ Criminal Ordinance (Cap 200), s.117(1B)

²⁵ Law Society of Hong Kong, Submission on Bills Committee on Domestic Violence Ordinance (Amendment) Bill 2007

²⁶ Women’s Commission (2011), Figure 8.2.1

against women published in 2011 found that 19.9% of women had experienced some form of violence in their lifetime, with 13.4% reporting violence of a sexual nature, and 14% of women having experienced non-partner violence (the majority of which was sexual). The survey also found that women who worked, women who were dating as opposed to married, and women who were economically vulnerable were most at risk of non-partner sexual violence. Of those who recounted having been sexually assaulted, only 3% had reported the incident to police.²⁷

According to NGOs, the Government has not adopted a comprehensive obligation to combat sexual violence.²⁸ Although the Government stated that it had established a Multi-purpose Crisis Intervention Centre for victims of sexual violence in 2007, NGOs have criticized the Centre for not providing privacy and confidentiality for victims; not being hospital-based; and failing to tailor services to the specific needs of female victims of sexual assault. These groups have instead identified the need for a hospital-based 'one-stop' multi-disciplinary support service to address the multifaceted needs of women victims of violence.²⁹

Woman-blaming attitudes towards rape are indicative of a societal acceptance and normalisation of sexual violence against women. In 2006, the Women's Commission reported on research that found that 71 of respondents (male and female) agreed that a woman 'dressing and behaving sexy' can incite rape.³⁰

The Sex Discrimination Ordinance makes **sexual harassment** unlawful not only in employment but also in educational institutions and other fields,³¹ and also expressly provides for punitive and exemplary damages to a victim of sexual harassment.³² However, the legal definition of sexual harassment excludes service providers and therefore fails to protect workers in the service sectors, such as domestic work, that employ significant numbers of female workers.³³ Additionally, experts have noted that the court's application of the test is problematic, allowing for cases to be dismissed on the grounds including that the complainant was highly sensitive to physical contact; did not resist the unwelcome sexual act; or flaunted herself.³⁴ There are no official figures available on the current prevalence of sexual harassment, although one survey conducted in 2011 revealed that 3,000 of 6,000 students interviewed had experienced harassment.³⁵ The impact of the law is also hampered by a lack of commitment by employers: with the Equal Opportunities Commission reporting that only 43% of surveyed companies have a policy statement on sexual harassment in effect.³⁶

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

²⁷ Broadhurst, et al (2012), p.3

²⁸ ACSVAW and Rainlily (2014), p.4

²⁹ ACSVAW and Rainlily (2014), p.3; Joint Statement, p.20

³⁰ The Women's Foundation (2006) p.149

³¹ Sexual Discrimination Ordinance, (1996) Cap. 480, 1., section 2

³² Sexual Discrimination Ordinance, (1996) Cap. 480, 1, section 82

³³ Joint submission (2014), p.34

³⁴ Srivastava (2010), p.179

³⁵ Joint submission (2014), p.22

³⁶ EOC (2013)

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According to the US State Department, Hong Kong is a destination and transit territory for men, women and teenage girls from mainland China, and elsewhere in Southeast Asia, subjected to sex **trafficking** and forced labour.³⁷ International NGO's have consistently found that migrant domestic workers, the majority of which are women, are routinely lured by deceptive and unlawful practices of labour recruitment and, once arrived, are routinely deprived of their rights, wages and even their freedom of movement. For example, in 2011 Amnesty International released a report into what it described as the 'modern day slavery' of Indonesian female domestic labourers.³⁸ There have been several reports of migrant workers being subject to abuse or custodial violence, including a high profile case, in which a couple was found guilty of false imprisonment and torture of their Indonesian helper.³⁹ Although trafficking is addressed under the criminal law of Hong Kong, the provisions only address trafficking for the purposes of prostitution, and not labour: an omission that falls short of the international definition of trafficking, and leaves the large numbers of female migrant domestic workers vulnerable to abuse and exploitation.⁴⁰

Regarding women's reproductive autonomy, the Offences against the Person Ordinance provides for medical termination of pregnancy by a registered medical practitioner in an approved hospital if two registered medical practitioners are of the opinion that the continuance of the pregnancy would involve risk to the physical or mental health of the pregnant woman or child.⁴¹ Research by the Family Planning Association in Hong Kong found that in 2007, 86% of women had used a condom and 36% had used an oral contraceptive pill,⁴² and the United Nations estimated in 2007 that 79.4 women used some form of modern contraceptive.⁴³

3. Son bias

Hong Kong currently has a male-to-female **sex ratio** at birth is 1.07 and for the working age population (15-64 years old) is of 0.93.⁴⁴

There is evidence to suggest a low concern in relation to **missing women** due to elevated child sex ratios in Hong Kong.⁴⁵

³⁷ US State Department (2013), p.190

³⁸ Amnesty International (2013)

³⁹ South China Morning Post (2013)

⁴⁰ Amnesty International (2013), p.4

⁴¹ CEDAW (2004), p.97

⁴² Family Planning Association of Hong Kong (2007)

⁴³ UN (2012b)

⁴⁴ CIA. <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 28/03/2014)

⁴⁵ Computed by Pr. S. Klasen using the method discussed in S. Klasen and C. Wink (2002), "A Turning Point in Gender Bias in Mortality? An Update on the Number of Missing Women", Population and Development Review, 28, pp. 285-312.

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Sex-disaggregated data on infant mortality in Hong Kong does not suggest a son bias, with males having a slightly higher mortality rate than females.⁴⁶ With respect to access to education, in 2009 the Women’s Commission reported that gender parity in primary and secondary education had been achieved in Hong Kong, with women outnumbering men in tertiary education.⁴⁷ However, despite these advances, the Women’s Foundation reports that gender segregation education is deeply entrenched, which may indicate differences in family expectations of sons and daughters.⁴⁸ The Education Bureau in Hong Kong has embarked on an “equal opportunities for all subjects” initiative, rejecting the practice of streaming girl and boy students to different subjects, which reinforces gender stereotyping at an early age; however data on the effectiveness of the program is not yet available.⁴⁹

4. Restricted resources and assets

There is limited data available in terms of women’s ownership of **land and non-land assets**. The law grants women and men above the age of 18 years equal **access to land and access to property other than land**.⁵⁰ However, some gender disparities continue to exist under customary law. Pursuant to Section 16 of the Sex Discrimination Ordinance, indigenous customary laws, especially those regarding property and land rights, are exempted from scrutiny: an accommodation that the Hong Kong Bar Association has identified as “preserving past discriminatory practices.”⁵¹ Rent concessions in respect of certain rural properties owned by indigenous villagers are provided for under Article 122 of the Basic Law, however these apply only where the property is granted to a lessee descended through the male line from a person who is a resident of a designated indigenous village.⁵² In this way, children of indigenous women are discriminated against in the provision of these property rights. The UN Committee on the Elimination of Discrimination against Women (CEDAW) has also expressed concern over the ‘Small House Policy’, under which only indigenous men, but not indigenous women, are entitled to apply for a permit to build certain residences in the New Territories.⁵³

Women in Hong Kong have equal rights to freely enter into contracts and access **financial services**, including bank loans and other types of credit, and it is unlawful for anyone who provides banking or insurance facilities to discriminate against a person on the grounds of gender.⁵⁴ There has been a rise in women entrepreneurs in recent years, and while overall the number of self-employed persons has increased between 1998 and 2010, the increase was greater amongst women (from 29,100 to 59,500) compared to men (133,500 to 159,300).⁵⁵ This

⁴⁶ Women’s Commission of Hong Kong (2011) p.34

⁴⁷ Women’s Commission of Hong Kong (2011), p.16

⁴⁸ The Women’s Foundation (2006), p.11

⁴⁹ Economic and Social Commission for Asia and the Pacific (2009), p.16

⁵⁰ CEDAW (2004) p.120; CEDAW (2012), p.91

⁵¹ Hong Kong Bar Association (2014), 3

⁵² CEDAW (2012), p.89

⁵³ CEDAW (2006), p.8

⁵⁴ CEDAW (2004) p.115; CEDAW (2012), p.91

⁵⁵ Women’s Commission (2011), Figure 4.3.7

suggests there may be a growing societal acceptance of women as business owners. However, the Women's Foundation has warned that this growth may also be a result of women choosing to run their own businesses because of the barriers they face in employment in large organisations.⁵⁶ In fact, women continue to be under-represented in economic life, due largely to traditional roles and expectations. In a 2010 survey, the Women's Commission of Hong Kong found that engagement in household duties was the major cause for women not participating in the labour market.⁵⁷

5. Restricted civil liberties

There are no reported restrictions, legal or in practice, on women's freedom of **access to public space**; and Article 8 of the Hong Kong Bill of Rights provides women the right to equally enjoy freedom of movement.⁵⁸

Hong Kong does have an active civil society that addresses a wide variety of women's issues. However, these groups have complained about the lack of transparency and availability of relevant data and information, which places significant restrictions on Hong Kong women's ability to monitor the government's protection and implementation of their rights and its responses to rights-violations between official reviews.⁵⁹

Under the Basic Law women have equal rights as men to vote and to stand for elections to District Councils and the Legislative Council, including Functional Constituencies.⁶⁰ However, women's social roles can affect their voting rights. For example, the Functional Constituencies, which elect 28 of the 30 legislative council seats, give greater voting power to corporate and professional individual members: the majority of which are men.⁶¹

In terms of political participation, data from 2010 indicates that women only made up 31% of Executive Council Members⁶²; and the Government reports that, as of March 2010, seven out of 29 members (24.1%) of the Executive Council, (responsible for electing the Chief Executive of the HKSAR), are female.⁶³ This data could indicate that social and cultural barriers to women's political participation remain. There is no **quota** for women at the national or sub-national levels. Surveys of community attitudes towards women's political participation highlight the persistence of discriminatory attitudes. For example, one survey found that 17% of the public considered women relatively less capable of making decisions than men. The same survey found that 34% of the public considered men more knowledgeable about politics than women.⁶⁴

⁵⁶ The Women's Foundation (2006) p.37

⁵⁷ Women's Commission of Hong Kong (2011), Figure 4.3.9

⁵⁸ CEDAW (2004) p.121

⁵⁹ HRIC (2014), p.1

⁶⁰ CEDAW (2012), p.41

⁶¹ Kapai (2013), p.27

⁶² Women's Commission of Hong Kong (2011), Figures 6.1 and 6.3

⁶³ CEDAW (2012), p.42

⁶⁴ The Women's Foundation (2008) p.16

Women's participation in the public service is still relatively low, with the percentage of female staff in the Civil Service rising to only 34.6% in 2009 from 33% in 1999.⁶⁵

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With respect to women's equal participation in **employment**, the Sex Discrimination Ordinance protects women from discrimination in employment on the grounds of sex, marital status or pregnancy. An employer who breaches the relevant maternity discrimination provisions, for example, will be liable to pay compensatory damages to the woman, in addition to a fine of HK\$100,000 (US\$12,800). However, the practice continues, with the government reporting that pregnancy discrimination accounts for nearly half of the complaints lodged under the SDO (approximately 150 complaints annually).⁶⁶ In 2009, eight summonses relating to the termination of employment on the grounds of maternity leave were taken out, as a result of which six employers were convicted.⁶⁷

Under the Employment Ordinance, women in Hong Kong are entitled to 10 weeks' paid **maternity leave**, paid at 80% of wages.⁶⁸ However, these, as well as other employment safeguards are only available to full time workers on a 'continuous contract', leaving part time workers – the majority of which are women⁶⁹ – unprotected. Under the law, female migrant workers are also afforded the same entitlement to maternity protection as local female employees⁷⁰; although live-in domestic helpers are exempt from minimum working hours and wage protections.⁷¹ However, in practice, international NGOs have consistently found that migrant domestic workers, the majority of which are women, are routinely deprived of their rights, wages and even their freedom of movement.⁷²

⁶⁵ CEDAW (2012), p.43

⁶⁶ CEDAW (2012), p.56

⁶⁷ CEDAW (2012), p.52

⁶⁸ Hong Kong Labour Department (n.d.) http://www.labour.gov.hk/eng/faq/cap57h_whole.htm

⁶⁹ Women's Commission of Hong Kong (2011), Figure 4.3.5p.56; Joint statement , p.12

⁷⁰ Women's Commission of Hong Kong (2011), Figure 4.3.5p.56; Joint statement , p.12

⁷¹ CEDAW (2012), p.59

⁷² Amnesty International (2013)

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