

Government's response to Concluding Observations made by UN Committee on Elimination of Discrimination against Women

A spokesperson for the Home and Youth Affairs Bureau said today (May 31) that the United Nations Committee on the Elimination of Discrimination against Women has issued its Concluding Observations on the fourth report of the Hong Kong Special Administrative Region (HKSAR), which formed part of the ninth periodic report of the People's Republic of China (PRC), under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Since the extension of the CEDAW to Hong Kong in 1996, the HKSAR has been implementing the CEDAW through the provisions of the Basic Law and local laws, complemented and supplemented by the necessary administrative measures.

"We note that the Committee appreciates that the PRC as a State Party submitted its ninth periodic report, including the HKSAR's fourth report. The Committee also appreciates the written replies to the list of issues and questions, and welcomes the high-level Chinese delegation which participated in the dialogue at its meeting held in Geneva, Switzerland, on May 12 (Geneva time). The delegation made oral presentation and provided further clarification in response to the oral questions posed by the Committee," the spokesperson said.

The delegation comprised, among others, interdepartmental representatives from the HKSAR headed by the Permanent Secretary for Home and Youth Affairs, Ms Shirley Lam. The delegation attended the Committee's meeting in Geneva on May 12. The Concluding Observations were published on May 30 (Geneva time).

"In its Concluding Observations, the Committee has noted with appreciation the relevant legislative reform in the HKSAR and welcomed the increase of resources for the Women's Commission. The Committee has also commented and made recommendations on a number of areas, which the HKSAR Government will conscientiously consider and positively respond to as far as practicable, duly taking into account the local circumstances," the spokesperson said. These areas and the HKSAR Government's positions are briefly described as follows.

Reservations

"With regard to the Committee's view that consideration should be given to withdrawing the PRC's reservation to Article 11(2), Article 14 and Article 15 of the CEDAW which is applicable to the HKSAR, the Government stressed that the Permanent Secretary for Home and Youth Affairs, when attending the

Committee's meeting on May 12, reassured the Committee that the HKSAR Government remains fully committed to implementing the provisions of the CEDAW as applied to the HKSAR."

"The PRC has entered seven reservations and declarations on behalf of the HKSAR in the light of the special circumstances in Hong Kong. Justifications for the continuation have been provided to the Committee. The reservation in respect of Article 11(2) reserves the right to apply any non-discriminatory requirement for a qualifying period of employment for the application of the provisions contained in that article. We consider that the existing requirement of a continuous contract for entitlements to maternity leave and maternity leave pay is necessary, taking into account the need to strike a balance between the interests of employers and employees."

"The reservation of Article 14 of the CEDAW allows the HKSAR to continue to implement the small house policy for the New Territories. The Government points out that the Court of Final Appeal of Hong Kong ruled in November 2021 that the small house policy is a lawful traditional right and interest of the indigenous inhabitants of the New Territories protected by Article 40 of the Basic Law. It remains lawful and constitutional despite the fact that it is only applicable to male indigenous inhabitants. Premised on the said court judgement, the Government will continue to implement the small house policy and process each application in accordance with established mechanism."

"As for the reservation of Article 15(4) of the CEDAW, it is necessary for the HKSAR to reserve the right to exercise effective immigration control in respect of persons who do not have a lawful right to enter and remain in Hong Kong. The Government emphasises that the right to liberty of movement and freedom to choose one's residence by Hong Kong residents (regardless of sex) is guaranteed by Article 8 of the Hong Kong Bill of Rights."

Legal status of CEDAW

"In response to the Committee's concern on the legal status of the CEDAW, the Government points out that the right to equality and non-discrimination is guaranteed by Article 25 of the Basic Law and Articles 1 and 22 of the Hong Kong Bill of Rights, all of which are binding on the HKSAR Government. The provisions of the CEDAW are already implemented by a wide range of legislative and administrative measures which are effective in guaranteeing the Convention rights to women in Hong Kong."

Non-discrimination

"As regards the Committee's recommendations on introducing amendments to the Sex Discrimination Ordinance, the Government pointed out that part of the Committee's recommendations have already been implemented. The Government has enacted the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 to enhance protection from discrimination and harassment under the four anti-discrimination ordinances, including repealing provisions which require

proof of intention to discriminate in order to obtain damages for indirect discrimination. The relevant provisions came into effect on June 19, 2020. The Government in conjunction with the Equal Opportunities Commission will continue to review the operation of the four anti-discrimination ordinances on a regular basis and put forward legislative proposals where necessary."

Machinery for advancement of women

"Regarding the Committee's questions concerning the powers of the Women's Commission (WoC) as well as the resources allocated to it, the Government highlighted the fact that the Chief Executive announced the establishment of the Women Empowerment Fund (WEF) in the 2022 Policy Address to subsidise community projects that support women in balancing job and family commitments, and unleashing their potential. The Financial Secretary further set aside \$100 million in the Budget to strengthen support for women's development. Starting from 2023-24, the Government will use this additional provision to increase the annual funding for the WEF from \$10 million to \$20 million. The WEF will subsidise women's organisations and relevant non-governmental organisations for launching appropriate projects to support women."

"Moreover, the WoC created the Gender Mainstreaming Checklist, which assisted Government departments to more systemically adopt gender mainstreaming by answering a series of straightforward questions. Since April 1, 2015, all Government bureaux and departments shall refer to the Checklist and apply gender mainstreaming when formulating major government policies and initiatives."

Gender-based violence

"With regard to the Committee's concerns regarding gender-based sexual violence against women in Hong Kong, the HKSAR Government has long been committed to combating sexual violence. Various sexual offences including rape, indecent assault, etc, are criminalised under the Crimes Ordinance. Indeed, in order to convey a clear message to the community that there are serious consequences for committing sexual offences, thereby achieving a deterrent effect and protecting possible victims, the HKSAR Government introduced specific offences in October 2021 against image-based sexual abuse such as voyeurism and publication of intimate images without consent. The Law Reform Commission also completed its comprehensive review on existing sexual offences in May 2022, making recommendations involving a major overhaul of the Hong Kong laws on sexual offences. These include a range of gender neutral non-consensual sexual offences; creation of new sexual offences involving children and persons with mental impairment; and reform of miscellaneous sexual offences. The HKSAR Government is studying in detail the recommendations and would make legislative amendment proposals with regard to similar legislative developments in other jurisdictions as and when appropriate."

Trafficking and exploitation in regard to prostitution

"In response to the Committee's concerns for the 'lack of comprehensive anti-trafficking legislation' and 'non-applicability of the Palermo Protocol to the HKSAR', the HKSAR Government would like to stress that human trafficking is never tolerated in Hong Kong. Proactive and multipronged efforts have been made to combat trafficking-in-persons (TIP) and to enhance the protection and well-being of foreign domestic helpers (FDHs) in Hong Kong. Hong Kong has a well-established legislative framework with over 50 legal provisions against various TIP conducts. This forms a comprehensive package of safeguards comparable to composite TIP laws in other jurisdictions. These legal provisions generally cover all the criminal offences as defined in the Palermo Protocol, in which some of the offences attract penalty of up to life imprisonment."

"As for the Committee's concern on the legislation related to the operation of vice establishment, the Government points out that under the existing law, the act of prostitution itself is not illegal. Police anti-vice operations are targeted at persons controlling sex workers and those operating vice establishments, not sex workers themselves. This arrangement strikes a reasonable balance between the human rights and privacy of sex workers on the one hand, and the well-being of other members of the community and the prevailing moral values in the community on the other. It also helps contain the opportunity for organised exploitation of sex workers."

Women's participation in political and public life

"In response to the Committee's concern for women's participation in political and public life, the Government points out that Article 26 of the Basic Law stipulates that all permanent residents of the HKSAR shall have the right to vote in and the right to stand for election in accordance with the law. In the HKSAR, women enjoy equal rights as men to vote in and stand for various public elections. Under the relevant legislation, a person's gender is not a criterion, whether direct or indirect, to vote in or stand for elections. Article 55 of the Basic Law also stipulates that members of the Executive Council of the HKSAR shall be appointed by the Chief Executive from among the principal officials of the executive authorities, Members of the Legislative Council and public figures. They shall be Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country. Appointments to the Executive Council adhere to the requirements of the Basic Law and are made taking into account an individual's ability, expertise, experience, integrity and commitment to public service, regardless of gender."

"Article 92 of the Basic Law provides that judges and other members of the judiciary of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions. The professional qualifications for appointment as judges and judicial officers at different levels of courts are set out in the respective ordinances. Gender is not a relevant consideration."

"On the other hand, Hong Kong residents' freedoms of assembly and procession are fully protected by the Basic Law and the Hong Kong Bill of Rights. However, like any other jurisdictions, such rights are not absolute or unrestricted. One must observe the law when exercising his/her right of peaceful assembly. The Police have been handling public order events in accordance with the Public Order Ordinance and relevant laws, and will make comprehensive assessment of individual public order events to consider whether to issue a Letter of No Objection and impose corresponding conditions with regard to a public order event. If there is any illegal or violent act, the Police are duty-bound to take appropriate actions to restore public safety and public order."

Female foreign domestic workers

"Regarding the Committee's concern for the working condition of female FDHs and the protection accorded to them, the Government is committed to safeguarding the welfare of FDHs. FDHs are offered statutory protection under the Employment Ordinance as well as additional benefits in accordance with a Government-prescribed Standard Employment Contract. The latter stipulates, amongst others, the Minimum Allowable Wage for FDHs. The Government does not tolerate any exploitation or abuse of FDHs. Under the Employment Ordinance, offences such as overcharging commission from job seekers and underpayment of wages are subject to a maximum penalty of HK\$ 350,000 and imprisonment for three years. The Code of Practice for Employment Agencies also clearly stipulates that employment agencies (EAs) shall not retrieve or withhold any personal property, including but not limited to a job seeker's passport, personal identification document, etc. Government authorities have conducted regular and surprise inspections of EAs. We investigate each and every complaint case (including complaints against employers) promptly and prosecute cases where there is sufficient evidence. From 2018 to April 2023, the Labour Department has successfully prosecuted 41 EAs. FDHs who consider their employments rights infringed should report to Government authorities promptly."

"Under the Immigration Department (ImmD)'s prevailing policy, FDHs can terminate their contract and apply for change of employer, but they should leave Hong Kong and submit a fresh visa application. In exceptional circumstances such as migration of the original employer, abuse or exploitation experienced by the FDH, FDHs may apply to the ImmD for change of employer without first leaving Hong Kong."

"As for the 'live-in requirement', it underpins the long-established Government policy that priority in employment should be given to the local workforce and importation of workers will only be allowed when there is proven manpower shortage in specific trades that cannot be filled by local workers. It is along this policy objective that live-in FDHs have been imported since the 1970s to meet the shortage of local live-in domestic helpers. Besides, the 'two-week rule' is essential for maintaining effective immigration control (including preventing illegal employment). It does not obstruct FDHs from applying to work in Hong Kong again after returning to

their places of origin and has allowed sufficient flexibility to cater for exceptional circumstances."

Sexual minorities

"In response to the Committee's recommendation to continue the HKSAR Government's efforts to combat discrimination against lesbian, transsexual and transgender women, the Government reaffirmed its commitment to promoting equal opportunities for all and eliminating all forms of discrimination including discrimination on the grounds of sexual orientation and gender identity. The HKSAR Government is committed to promoting the message of inclusiveness, mutual respect and non-discrimination for people of different sexual orientations and transgender persons through various channels."

The Committee will inform the PRC on the due date of submitting its next report under the CEDAW at a later stage. It will contain the next (fifth) report of the HKSAR Government which will set out, among others, the detailed response to the Committee's Concluding Observations. In the interim, the HKSAR Government will provide the necessary information in accordance with the Committee's request by May 2025.

The spokesperson reaffirmed that the HKSAR Government will continue to further promote the realisation of women's due status, rights and opportunities in all aspects of life, in a continuing process of faithfully implementing the CEDAW.

The Committee's Concluding Observations will be uploaded to the Home and Youth Affairs Bureau's website at www.hyab.gov.hk.