

NGO submission  
for the  
85<sup>th</sup> session of the United Nations Committee on the Elimination of  
Discrimination against Women (CEDAW)  
on Hong Kong, China

Submitted by  
Hong Kong Centre for Human Rights  
11 April 2023

## Table of Contents

<b>Summary of Key Issues</b>	<b>1</b>
<b>Women human rights defenders and women’s non-governmental organizations (LOI 13)</b>	<b>1</b>
<b>International Women’s Day march 2023 cancelled abruptly</b>	<b>2</b>
<b>Threats of reprisal against activists engaged in UN human rights mechanisms</b>	<b>3</b>
<b>Police</b>	<b>3</b>
<i>Serious cases of physical and verbal sexual abuses by the Police to female protestors</i>	3
<i>Serious problem of police-perpetuated gender-based violence and domestic violence – non-protest related</i>	4
<i>Police complaint mechanism ineffective and lacks independence, perpetuating impunity and destroys confidence</i>	5
<b>The pandemic exacerbates domestic violence but the Government failed to respond</b>	<b>6</b>
<b>Critical challenges and lack of support for caregivers during the pandemic</b>	<b>7</b>
<b>Women immigrants, including non-refoulement claimants, detained in facilities</b>	<b>7</b>
<b>Migrant Domestic Workers</b>	<b>8</b>
<i>Government proposes to hinder migrant domestic workers from changing employer</i>	8
<i>Migrant domestic workers’ situation during the COVID-19 pandemic</i>	9
<b>Discrimination against lesbian, gay, bisexual, transgender and intersex persons</b>	<b>9</b>
<i>Discrimination against same-sex couples and Non-recognition of same-sex partnership</i>	9
<i>Hate Speech, Harassment, Discrimination and Violence against LGBT persons</i>	10
<i>Gender Recognition of Transgender Persons</i>	11
<i>Violence against LBT women</i>	12

## About us

Hong Kong Centre for Human Rights (“HKCHR”), formerly known as Hong Kong Human Rights Information Centre, is established in 2022 by a group of human rights defenders from Hong Kong with strong background in policy and legal research. The mission of HKCHR is to provide credible information on the latest situation in Hong Kong, with reference to its legal, political, and human rights development in order to support the resilient civil society in Hong Kong and defend the city’s rights and freedoms in accordance with international human rights law and standards.

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### **Disclaimer**

This submission is based on information available in the public domain. The writers endeavour to verify facts and make observations based on their expertise in human rights issues in Hong Kong. There is no intent to violate any law of the Hong Kong SAR, including but not limited to the National Security Law, on the part of the writers and the Hong Kong Centre for Human Rights. The Hong Kong Centre for Human Rights does not take responsibility for any reader’s action upon receiving this submission.

## Summary of key issues:

- This submission compliments the NGO submissions to the LOI, and the recent submissions by independent NGOs (i.e. non-GONGOs) to the HRCttee, and CESCR.
- During the reporting period (2014-2023), the **main threats to the enjoyment of rights** for all in Hong Kong, including women, are the systematic suppression of freedoms, obstruction to participation in political and public life, erosion of the rule of law and other institutional safeguards of human rights.
- The Committee is urged to pay attention to the **suppression of the civil society and basic freedoms** in Hong Kong following the imposition of **the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region**, which affect women HRDs, women's NGOs, and women rights groups.
- There is no progress regarding establishing an **NHRI** or strengthening existing institutions such as the Equal Opportunities Commission.
- The **Police**, as the main law-enforcement in Hong Kong, fails to protect women and girls, and even perpetrate violations with **impunity**, both in the context of policing of protests and otherwise.
- The ineffectiveness of the **police monitoring mechanism** has furthered deteriorated.
- The government failed to assess and mitigate **impact of the COVID-19 pandemic and the Government's anti-pandemic measures on women**, especially in the areas of domestic violence and care-giving responsibilities.
- This submission also provides updates about **migrant domestic workers**, especially during the pandemic, **women in detention**, and **LBTI discrimination**.

## Women human rights defenders and women's non-governmental organizations (LOI 13)

1. Women have a strong presence and role in Hong Kong's civil society. Of the civil society organisations ("CSOs") that are prosecuted for violating "national security" offences, deregistered by the government for political reasons, forced to disband due to risk of persecution, or still struggling to operate under immense political pressure in recent years, quite a number are led by women.

2. These civil society organisations and individuals are severely impacted by the crackdown on civil society following the imposition of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL"). Since the NSL came into force in July 2020, around 100 civil society organizations

have been forced to disband or leave the city.<sup>1</sup> They include human rights organisations, teacher associations, unions, religious groups, media groups, student societies and political parties.

3. According to data from the Security Bureau, 243 people have been arrested for endangering national security, including 189 men and 54 women, aged 15 to 90, since the promulgation of the NSL (30 June 2020 to March 2023).<sup>2</sup>

4. The crackdown following the imposition of the NSL has shattered the civil society network, countering the synergy of women rights groups and other CSOs. Their capacity, such as to engage in the UN human rights mechanism, or to respond to cross-cutting themes, could be weakened.

5. In addition, the electoral overhaul excludes all pro-democracy or independent candidates from the Legislative Council and the District Council, heavily restricting the space for women rights groups from communicating with the Government through elected representatives who are sympathetic to women rights and human rights issues.

6. Women who wish to stand for election as independent candidates would very likely not pass the nomination process.

7. Collaboration with overseas and international NGOs have also become sensitive under the NSL as it may trigger the offence of collusion with foreign elements, or be accused of being a foreign agent and be subject to excessive disclosure requirement. The chilling effect could isolate CSOs in Hong Kong.

### **International Women’s Day march 2023 cancelled abruptly**

8. A women’s NGO (the Hong Kong Women Workers’ Association) planned to organize a march for the International Women’s Day on 5 March 2023, which would have been the first since the lift of the group gathering ban from February 2020 to March 2023 which prohibited all public protests of more than a few people. Under the de facto permission system for holding assemblies in Hong Kong, the Police granted approval for the march.

9. However, prior to the march, the Police requested the organiser to provide measures in response to potential public security threats, as the Police claimed that “a lot of people, including some violent groups, said that they would attend the event”.<sup>3</sup> Such requests are believed to be unreasonable. Eventually the organizer had no choice but to cancel the march the night before the day.

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<sup>1</sup> Amnesty International Submission to the HRCtee 135<sup>th</sup> Session (2022) on Hong Kong, p.11 <https://www.amnesty.org/en/wp-content/uploads/2022/05/ASA1756632022ENGLISH.pdf> <https://www.amnesty.org/en/latest/news/2022/06/hong-kong-new-leader-john-lee-must-change-course-to-halt-collapse-of-citys-freedoms/>; for a more detailed documentation of groups disbanded, see “Timeline: 58 Hong Kong civil society groups disband following the onset of the security law”, *Hong Kong Free Press*, 30 June 2022, <https://hongkongfp.com/2022/06/30/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>

<sup>2</sup> “國安法實施後拘 243 人 接舉報訊息逾 40 萬個” InMedia (Hong Kong), 7 April 2023, available at <https://www.inmediahk.net/node/社運/國安法實施後拘 243 人-接舉報訊息逾 40 萬個>

<sup>3</sup> <https://hongkongfp.com/2023/03/04/hong-kong-womens-group-cancels-rally-night-before-demo-police-say-violent-groups-sought-to-attend/>

10. Ming Pao, a local newspaper, discovered that the so-called “violent groups hoping to join the event” were actually some pro-Beijing netizens leaving comments on different social media pretending to be violent pro-democracy protesters, giving excuses to the police to pressure the organiser.<sup>4</sup>

11. The League of Social Democrats (“LSD”), a pro-democracy political party still functioning, planned to participate in the march. However, according to the LSD’s press statement, before the cancellation of the march, national security police had warned the LSD not to join the event, or that they would be arrested, without giving any legitimate reasons.<sup>5</sup>

### **Threats of reprisal against activists engaged in UN human rights mechanisms**

12. At the HRCttee review of Hong Kong in July 2022, Hong Kong Government delegation repeatedly refused to address fears of reprisals against civil society actors taking part in the process. Later, the Secretary for Security of Hong Kong accused CSOs for smearing Hong Kong and China by submitting human rights reports, and that their engagement with the UN was a form of soft resistance, without naming any group or justifying his accusations.<sup>6</sup> A pro-Beijing tabloid magazine also did a feature report on the organisations that made submission to the HRCttee, accusing them of being anti-China, and made “unfounded” human rights allegations to the HRCttee.<sup>7</sup>

13. Following the ICCPR and ICESCR reviews, the Hong Kong Government issued strong-worded statements to berate the committees. For example, it accused the CESCR for “selectively believed, and made sweeping statements based on certain *false informatin and distorted narratives regardless of the truth*, and made one-sided and flawed comments on the human rights situation in Hong Kong...and even *politicised* its work in considering the report”. (emphasis added) These are threatening language as independent NGOs and activists supplying information to and engaging with UN treaty bodies worry they could be accused of violating the NSL or the sedition law.

## **Police**

### **Serious cases of physical and verbal sexual abuses by the Police to female protestors**

14. During the city-wide protest movement in Hong Kong in 2019, there were numerous complaints of police committing or acquiescing anti-protestors to commit gender-based violence against protestors. These have been duly covered by submissions to the Committee for the consideration of the LOI in 2021. For example, please refer to the submission from a Hong Kong NGO “Sounds of the Silenced”,<sup>8</sup> which documented incidents of violence against

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<sup>4</sup> <https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20230308/s00002/1678212231678>;  
<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20230309/s00002/1678298769993>

<sup>5</sup> <https://hongkongfp.com/2023/03/06/hong-kong-pro-democracy-party-says-police-warned-members-against-joining-womens-rights-march/>

<sup>6</sup> 談反修例事件 鄧炳強：七成判囚者深感懊悔, Mingpao Daily, 12 September 2022,

<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20220912/s00002/1662918984021>

<sup>7</sup> “揭反華組織狂造假報告(Reveal: anti-China organisations fabricate reports)”East Weekly, 21 August 2022, p.14-17, [https://epaper.singtaousa.com/flippingbook/magazine\\_ny/2022/20220821-EW/14/](https://epaper.singtaousa.com/flippingbook/magazine_ny/2022/20220821-EW/14/)

<sup>8</sup> Available for download at

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FICO%2FHKG%2F44436&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FICO%2FHKG%2F44436&Lang=en)

women by the police and anti-protestors against women protestors, including physical and verbal sexual violence.

15. As documented by the Sounds of the Silenced, police officers often used gendered and sexually charged verbal abuse against female protestors during the 2019 protest movement, including rape threats, to insult and to intimidate people.<sup>9</sup> The Police was alleged of committing similar acts in handling the mass protests in 2014 during the Umbrella Movement. The Government, the Police, the Women’s Commission, and the Equal Opportunities Commission did not take any action against the police officers for the instances in 2019.

16. Anti-protestors smeared the 2019 protest movement by saying young women who participated in the protest movement were misled into offering free sex and providing comfort to fellow protesters.<sup>10</sup> Female protesters faced serious image-based sexual violence and doxxing. The free-sex allegations were not supported by evidence but a government adviser spoke of it as of truth on a radio programme. According to Sounds of the Silenced, it “relegates women to their sexuality and diminishes their political agency. In any event, safe and consensual sex between adults should not be stigmatised.”

### **Serious problem of police-perpetuated gender-based violence and domestic violence – non-protest related**

17. Unrelated to policing protests, the trend of police officers committing crimes including rape, indecent assault, sex with underage girls, voyeurism, stalking, domestic violence etc is observed to be continuing to rise. There are insufficient response from the Police in deterring such trend.

18. There are also insufficient transparency and accountability of the consequences dealt to the police officers involved, except in cases that are prosecuted.

19. In relation to a public indecency case in June 2022 that went viral on the internet, it was reported that hundreds of police officers who had no role in the investigation of the incident logged into the police computer system to see what the woman suspect looked like; some allegedly took photo of her picture on police file and shared on message group.<sup>11</sup> The Police later stated that the police officers involved did so to satisfy their curiosity, and had been disciplined without giving detail of the disciplinary action. The Police also concluded that after

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<sup>9</sup> Two of the instances documented in the Sounds of the Silenced’s submission, with links replaced (the news agencies cited in the submission and their websites had closed down since then): 1. A woman reported that police officers called her a “stinky whore” and said if he were to rape someone he would not rape a “thing” like her. See <https://web.archive.org/web/20201201175206/https://hk.appledaily.com/local/20191117/K6ZPGNTGKIW6SX6W57KZ2VC44M/>; 2. A student activist recalled that police officers told him they were exhausted from working overtime during the protests, and that it was “normal” for police officers to want to have sex with female protesters. See <https://web.archive.org/web/20211018134424/https://www.thestandnews.com/politics/831-%E5%A4%AA%E5%AD%90%E7%AB%99-%E8%A2%AB%E6%8D%95%E5%A5%B3%E4%BA%8B%E4%B8%BB-%E8%AD%A6%E7%BD%B2%E5%85%A7%E8%A2%AB%E7%94%B7%E8%AD%A6%E7%A2%B0%E8%83%B8-%E5%A5%B3%E8%AD%A6%E8%A7%80%E7%9C%8B%E5%A6%82%E5%BB%81-%E7%AB%99%E5%85%A7%E6%9C%89%E4%BA%BA%E8%A2%AB%E6%89%93%E8%87%B3%E6%9A%88%E5%80%92/>

<sup>10</sup> Almen Chui, “Govt adviser slammed for claim girls offer sex to protesters”, Asia Times (10 September 2019). Available at: <https://asiatimes.com/2019/09/govt-adviser-slammed-for-claim-girls-offer-sex-to-protesters/>

<sup>11</sup> 私查春宮片女子容貌 數百警員疑獲包庇 | 東方日報 | 要聞港聞  
[https://orientaldaily.on.cc/content/news/odn-20221120-1120\\_00176\\_202/](https://orientaldaily.on.cc/content/news/odn-20221120-1120_00176_202/)

an internal investigation, no officers had to bear criminal liability. However, as a lawyer had commented, the acts could constitute criminal offences such as misconduct in public office and access to a computer with criminal or dishonest intent.<sup>12</sup>

20. The police officers involved abused their power to satisfy their “curiosity”, which was unprofessional and offensive towards women. As hundreds of police officers exhibited such level of unprofessionalism and offence towards women but could walk with impunity to a larger extent, it is alleged that the Police failed to take the incident seriously. The incident and its handling exemplify the vulnerability of women when facing the Police, and that strict discipline and professionalism are often sacrificed for protecting the morale of the police force.

21. It is worried that the serious trend of police-perpetuated gender-based violence and domestic violence have deterred victims of such crimes from seeking help from the Police.

22. It is also worried that not all cases have been made public, so that the public is unable to have the full picture of sexual violence perpetuated by police officers for effective monitoring. The suppression of press freedom further restricts the space for the media to report on allegations against the law enforcement.

23. We recommend that the Hong Kong Government urgently conduct a comprehensive review of police-perpetuated violence against women and girls.

### **Police complaint mechanism ineffective and lacks independence, perpetuating impunity and destroys confidence**

(Gov Reply paragraphs 94-95)

24. There have been no reform or improvement to the police complaint mechanism despite consistent criticism from the UN human rights bodies and even from a domestic court.

25. The function and credibility of the Independent Police Complaints Council (“IPCC”) even further declined due to the lack of diversity of its members. There is no appointment and re-appointment of pro-democracy figures and legislators to the membership of IPCC since 2017. The Council is overwhelmingly dominated by pro-government figures and legislators, and most of them have no professional training in law and human rights.

26. In November 2020, the Court of First Instance ruled in a judicial review that “the Government of the HKSAR is under a duty, pursuant to Article 3 of the Hong Kong Bill of Rights, to establish and maintain an independent mechanism capable of conducting effective investigation into complaints of suspected ill-treatment by police officers in contravention of Article 3 of the Hong Kong Bill of Rights, and that the existing complaints mechanism involving the Complaints Against the Police Office (“CAPO”), with oversight by the [IPCC], is *inadequate to discharge this obligation*.”<sup>13</sup> (emphasis added) Article 3 of the Hong Kong Bill of Rights is cross-reference to article 7 of the ICCPR.

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<sup>12</sup> 性片女主照遭百警擅入內部系統查閱並瘋傳 港警：純好奇不涉刑事 律師批雙標  
<https://www.rfa.org/cantonese/news/hkm/hk-police-11212022064857.html>; An explanation of the common law offence of misconduct in public office: <https://www.nortonrosefulbright.com/en/knowledge/publications/583be7ce/hong-kong-revisiting-the-offence-of-misconduct-in-public-office>

<sup>13</sup> HCAL 2915/2019 para.124  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=131964&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=131964&currpage=T)

27. In addition to the lack of independency, both IPCC and CAPO are not mandated to provide legal protection to prevent self-criminalisation when the complainant or witness give evidence to IPCC and CAPO. The potential risk of self-incrimination makes victim reluctant to file a complaint, or complainant to follow-up his/her complaint.<sup>14</sup>

28. We recommend:

(1) Establish a fully independent mechanism mandated to receive and investigate complaints against all officials and ensure that there is no institutional or hierarchical relationship between the investigators of that particular body and the suspected perpetrators of the acts that form the basis of a complaint<sup>15</sup>. The mechanism should be empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints<sup>16</sup>.

(2) The complaint mechanism should be able to provide legal protection to the complainant and witness for giving evidence. The evidence given by complainant and witness, should not be used against the complainant and witness in criminal and civil proceeding unless the proceedings are in relation to the false or misleading evidence given by the complainant and witness.

(3) The Committee to express concern that the existing composition of the IPCC is not compliant with the Paris Principles, and that the IPCC members should have sufficient knowledge in human rights.

### **The pandemic exacerbates domestic violence but the Government failed to respond**

29. In the first 3 months of the COVID-19 pandemic in Hong Kong, social welfare service providers (NGOs) recorded 25% increase in calls for help related to domestic violences and 30% increase of that related to sexual violence. The NGOs publicly called for government's support.<sup>17</sup> An increased stress levels, the fact of being forced to spend prolonged periods with their perpetrators, and limited access to support services all contribute to the increased vulnerabilities victims face during COVID pandemic. Studies have shown the loss of employment or financial stability would also contribute to greater likelihood of abusers murdering their partners or others.<sup>18</sup>

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<sup>14</sup> HK01,梁定邦義務舉報論惹質疑 監警會澄清資料絕不交警方 <https://www.hk01.com/sns/article/350377>; 明報,【逃犯條例】民權觀察:市民投訴警察隨時「原告變被告」

<https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20190706/s00001/1562395375369>

<sup>15</sup> UN Committee against Torture (2016), Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, Para. 9, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/CHN-HKG/CO/5](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/CHN-HKG/CO/5)

<sup>16</sup> Human Rights Committee (2013), Concluding observations on the third periodic report of Hong Kong, China, Para. 12, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CHN-HKG/CO/3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CHN-HKG/CO/3)

<sup>17</sup> [https://twfhk.org/sites/default/files/joint\\_statement\\_apr\\_chi\\_final.pdf](https://twfhk.org/sites/default/files/joint_statement_apr_chi_final.pdf); also see “Study finds almost 40% of Hong Kong women have experienced sexual abuse, as NGOs urge more gov’t support”, *Hong Kong Free Press*, 8 March 2022, <https://hongkongfp.com/2022/03/08/study-finds-almost-40-of-hong-kong-women-have-experienced-sexual-abuse-as-ngos-urge-more-govt-support/>

<sup>18</sup> <https://www.twfhk.org/blog/domestic-violence-epidemic-amid-covid-19>



30. Contrary to the Hong Kong Government's reply to the LOI paragraph 77, NGOs working on domestic abuse and women rights have reported cases where victims were unable to get help during COVID.<sup>19</sup>

### **Critical challenges and lack of support for caregivers during the pandemic**

31. The Hong Kong Government shutdown schools for prolonged periods during the pandemic; services, such as extra-curricular activities, youth centres, tutoring centres etc were also suspended. As dual-earner families is predominant in Hong Kong, parents struggle to look after the stay-home children without the usual support. The burden is overwhelming for women. A mother committed suicide and attempted filicide in late 2020 while tutoring her two young children on homework. Social workers commented on the case saying that the deceased mother did not have to be the primary caregiver of her children, but had to take up the new role due to the pandemic, and had faced economic pressure brought by the pandemic, causing immense stress.<sup>20</sup>

32. It is submitted that the Hong Kong Government failed to evaluate and mitigate the impact on women by the pandemic and its anti-pandemic measures.

33. We recommend the Committee to ask the Hong Kong Government whether the Women's Commission established by the Hong Kong Government in 2001 had failed to advise the Government on policies and initiatives in this regard which are of grave and urgent concern to women. And whether gender-mainstreaming in policy making was applied when responding to the pandemic.

### **Women immigrants, including non-refoulement claimants, detained in facilities**

34. According to an amendment to the Immigration Ordinance in 2021, non-refoulement claimants may be detained during their screening process.<sup>21</sup> Claimants whose claims are found to be unsubstantiated are also detained pending removal. From 2014 to the end of 2021, only 257 out of 20,453 claims (1.2%) were held to be substantiated under the Unified Screening Mechanism, with 65% of these substantiated at appeal stage.<sup>22</sup> According to Amnesty International's submission to the CESCR, 638 non-refoulement claimants were detained in 3 designated facilities including Castle Peak Bay Immigration Centre ("CIC") at the end of September 2022, with the detention periods and reasons undisclosed. The Hong Kong Government was planning to expand detention capacity in 2023 by 36%.<sup>23</sup> Amnesty International complained in the submission that the lack of official statistics on the individual periods of detention makes independent monitoring and complaints difficult to pursue.

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<sup>19</sup> [https://womencentre.org.hk/Zh/Newsroom/Pressrelease/dv\\_2020/](https://womencentre.org.hk/Zh/Newsroom/Pressrelease/dv_2020/); [https://twfhk.org/sites/default/files/joint\\_statement\\_apr\\_chi\\_final.pdf](https://twfhk.org/sites/default/files/joint_statement_apr_chi_final.pdf); <https://hk.news.yahoo.com/庇護中心限制嚴受害人卻步-214500544.html>

<sup>20</sup> <https://www.hk01.com/突發/568385>

<sup>21</sup> Sections 32 and 37ZK of the Immigration Ordinance, <https://www.elegislation.gov.hk/hk/cap115>

<sup>22</sup> HKSAR Immigration Department, Annual Report 2021, [https://www.immd.gov.hk/publications/a\\_report\\_2021/en/chapter6.html](https://www.immd.gov.hk/publications/a_report_2021/en/chapter6.html)

<sup>23</sup> Amnesty International's submission to the Committee on Economic, Social and Cultural Rights on Hong Kong for the 73<sup>rd</sup> Session, 13 February – 3 March 2023, p.4-6, Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FHKKG%2F51379&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FHKKG%2F51379&Lang=en)

## **Poor condition, indefinite period of detention, and lack of female doctor**

35. In fact, at least 28 immigration detainees at CIC staged a hunger strike in June 2020 to protest long-standing problems of indefinite periods of detention and very poor sanitation, hygiene conditions and healthcare at CIC, which are worsened due to the pandemic.<sup>24</sup>

36. Amnesty International also reported a case where a woman detainee at CIC was strip-searched in the presence of a male doctor due to the lack of a female duty medical officer.<sup>25</sup>

## **Migrant Domestic Workers**

### **Government proposes to hinder migrant domestic workers from changing employer**

37. Hong Kong has around 340,000 migrant domestic workers (“MDW”), mostly women from the Philippines and Indonesia. They are bound by the live-in requirement and the two-weeks rule. Their visa to Hong Kong is contingent upon an employment contract. The Government-required standard contract is set for 2 years, which can be terminated by any party with a 1-month notice period.<sup>26</sup>

38. Recently, the Hong Kong Government alleged that there is the practice of job-hopping by MDWs, meaning that after acquiring a visa to Hong Kong, they would pre-maturely terminate the contract looking for another employer while in Hong Kong (during the two-week period). The Government is proposing to review the Code of Practice for Employment Agencies to discourage “job-hopping” by requiring employment agencies to explain clearly to MDW job seekers that under the prevailing policy, an application for change of an employer in Hong Kong within the two-year contract period will normally not be approved save for the exceptional circumstances deemed reasonable by the Immigration Department (including the premature termination of contract owing to the transfer, migration, death or financial reasons of the original employer, or where there is evidence that the MDW has been abused or exploited).<sup>27</sup>

39. If the Immigration Department does not approve a change of employer, the MDW would have to return to the home country after 2 weeks of end of current contract. Under the Immigration Department’s policy, the record may affect future applications for a visa to Hong Kong to work as MDW.

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<sup>24</sup> Global Detention Project, Hong Kong (China), [globaldetentionproject.org/countries/asia-pacific/hong-kong-china/#country-updates](https://globaldetentionproject.org/countries/asia-pacific/hong-kong-china/#country-updates); Chew, Surabhi Chopra, Rachel Li, “Covid-19 and Immigration Detention in Hong Kong” in V., Phillips, M. & Yamada Park, M. (eds) 2020. COVID-19 Impacts on Immigration Detention: Global Responses, International Detention Coalition and HADRI/Western Sydney University, p. 23 - 25, <https://doi.org/10.26183/swc5-fv98>

<sup>25</sup> Amnesty International Hong Kong, open letter dated 4 August 2020, <https://web.archive.org/web/20211117144836/https://www.amnesty.org.hk/wp-content/uploads/2021/03/INHUMANE-CONDITIONS-AT-CASTLE-PEAK-BAY-IMMIGRATION-CENTRE-NOT-IN-LINE-WITH-INTERNATIONAL-LAWS-AND-STANDARDS.pdf>

<sup>26</sup> <https://www.immd.gov.hk/eng/forms/forms/fdhcontractterms.html>; see an explanation by NGO: <https://www.helperchoice.com/c/domestic-helper/employment-contract-regulations>

<sup>27</sup> Labour Department of Hong Kong, “Consultation on the review of Code of Practice for Employment Agencies”. Eight-week public consultation from 21 March to 15 May 2023. Consultation paper available at <https://www.eaa.labor.gov.hk/en/copconsultation2023.html>

40. The policy reinforces the vulnerable situation of MDWs. Women rights groups found such proposal to be discriminatory, stressing that changing employer is a human right that everybody is entitled to.<sup>28</sup>

### **Migrant domestic workers' situation during the COVID-19 pandemic**

41. This submission reiterates the situation of MDWs as reported in Amnesty International's submission to the CESCR regarding Hong Kong:-<sup>29</sup>

“As a marginalized group, migrant domestic workers were disproportionately affected by the COVID-19 pandemic. Due to the live-in requirement, without jobs, migrant domestic workers had nowhere to stay, and nowhere to self-isolate if they tested positive after their employment was terminated and before they are able to leave Hong Kong.<sup>30</sup> There were media reports that some were fired by their employers after developing symptoms or testing positive for COVID-19, leaving them homeless.<sup>31</sup> Limited capacity boarding houses run by Employment Agencies became seriously overcrowded and local NGOs rallied to set up temporary shelters including Help for Domestic Workers, who reported they had received over 60 calls in one week from domestic workers who had been made homeless.”

## **Discrimination against lesbian, gay, bisexual, transgender and intersex persons**

### **Discrimination against same-sex couples and Non-recognition of same-sex partnership**

42. A lesbian couple registered abroad first brought the fight for equal partnership rights to local courts in 2014 regarding their dependent visa application and won in 2018.<sup>32</sup> However, recent complaints suggest that same-sex couples still face discrimination during the visa application process, such as unnecessary interrogation and intimidation leading to rejection.

43. The local courts limited their power in handling same-sex partnership rights to specific facts and context of a particular case in front of them only.<sup>33</sup> The piecemeal approach leads to a long and bitter journey for same-sex couples to fight against the systemic discrimination, by bringing the discriminatory matters to the court one at a time, and the list is long: housing, health care, inheritance, welfare and compensation, to name a few. This journey would last for

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<sup>28</sup> [https://hongkongfp.com/2023/03/20/changing-jobs-a-human-right-domestic-workers-say-as-hong-kong-ramps-up-crackdown-on-job-hopping/?fbclid=IwAR2\\_L7Rx5c6BU-CKkKbNuW4M\\_UHsnbpdMjAweMFh7\\_Urbg1JrKGfokQflGE](https://hongkongfp.com/2023/03/20/changing-jobs-a-human-right-domestic-workers-say-as-hong-kong-ramps-up-crackdown-on-job-hopping/?fbclid=IwAR2_L7Rx5c6BU-CKkKbNuW4M_UHsnbpdMjAweMFh7_Urbg1JrKGfokQflGE)

<sup>29</sup> Above

<sup>30</sup> “Covid-positive domestic worker, baby left to wait overnight outside Hong Kong hospital”, *Hong Kong Free Press*, 25 February 2022, [hongkongfp.com/2022/02/24/covid-positive-domestic-worker-baby-left-to-wait-overnight-outside-hong-kong-hospital/](https://hongkongfp.com/2022/02/24/covid-positive-domestic-worker-baby-left-to-wait-overnight-outside-hong-kong-hospital/)

<sup>31</sup> “Covid-19: Show “kindness” to domestic workers, Hong Kong labour chief says amid reports of firing, homelessness”, *Hong Kong Free Press*, 7 March 2022, [hongkongfp.com/2022/03/07/covid-19-employers-should-show-kindness-to-domestic-workers-labour-chief-says-amid-reports-of-firing-homelessness/](https://hongkongfp.com/2022/03/07/covid-19-employers-should-show-kindness-to-domestic-workers-labour-chief-says-amid-reports-of-firing-homelessness/)

<sup>32</sup> *Director of Immigration v. QT* (04/07/2018, FACV1/2018) (2018) 21 HKCFAR 324, [2018] HKCFA 28 ([https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=116049&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=116049&currpage=T))

<sup>33</sup> *Sham Tsz Kit v. Secretary for Justice* (18/09/2020, HCAL2682/2018) [2020] 4 HKLRD 930, [2020] HKCFI 2411, para. 22-27 ([https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=130883&currpage=&loc=p22](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=130883&currpage=&loc=p22))

decades and cannot guarantee that all the same-sex couples can have the equal enjoyment of rights without a legal formalization of same-sex unions.

44. The housing rights of same-sex couple is a clear example. Two separate court rulings<sup>34</sup> have granted same-sex couples married abroad equal housing rights as heterosexual couples, the Hong Kong government's appeal has prevented these rights from being implemented. The appeal hearing was concluded in February 2022,<sup>35</sup> but the judgment still has not been handed down as at the date of this report (April 2023).

45. The equal rights of same-sex couples cannot be ensured given that there is no legal recognition of same-sex partnerships. The Hong Kong government should develop a legal institution, such as registered partnership to recognize same-sex couples, and ensure same-sex couples, including those married abroad, are entitled to the same rights as heterosexual couples.

### **Hate Speech, Harassment, Discrimination and Violence against LGBT persons**

46. In its previous concluding observations, the Committee urged the Hong Kong Government to intensify its efforts to combat discrimination against LBT women.<sup>36</sup> Disappointingly, Hong Kong still does not have a specific set of legislation to protect LBT women and intersex persons from hate speech, harassment and discrimination based on their sexual orientation, gender identity, gender expression and sex characteristics.

47. In Hong Kong, homophobic and transphobic hate speech and discrimination against LBT women is prevalent both on the internet and in person. Please refer to the HKCHR's submission to the HRCtee for notable instances.<sup>37</sup>

48. In June 2021, Junius Ho who is a legislator, gave speech in the Legislative Council calling LGBT+ people "disgraceful" and money earned from LGBT+ event Gay Games was "dirty money".<sup>38</sup> The chairperson of the EOC said that as there was no legislation in Hong Kong to prevent discrimination against sexual orientation, it was hard to prove whether Ho's

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<sup>34</sup> *Infinger, Nick v. The Hong Kong Housing Authority* (04/03/2020, HCAL2647/2018) [2020] 1 HKLRD 1188, [2020] HKCFI 329 ([https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=126959&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=126959&currpage=T)), which is about the Allocation of Public Rental Housing; and *Ng Hon Lam Edgar v. The Hong Kong Housing Authority* (25/06/2021, HCAL2875/2019) [2021] 3 HKLRD 427, [2021] HKCFI 1812

([https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=136766&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=136766&currpage=T)), which is about Home Ownership Scheme.

<sup>35</sup> Hong Kong Free Press, Gay couples can't have equal access to subsidised housing due to 'intrinsic biological differences,' Hong Kong gov't tells court, <https://hongkongfp.com/2022/02/18/gay-couples-cant-have-equal-access-to-subsidised-housing-due-to-intrinsic-biological-differences-hong-kong-govt-tells-court/>; Hong Kong Free Press, Same-sex couples not allowed subsidised Hong Kong housing because of 'scarcity of resources,' gov't argues in appeal, <https://hongkongfp.com/2022/02/17/same-sex-couples-not-allowed-subsidised-hong-kong-housing-because-of-scarcity-of-resources-govt-argues-in-appeal/>

<sup>36</sup> CEDAW/C/CHN/CO/7-8, para 68-69, available for download at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8)

<sup>37</sup> HKCHR Submission to HRCtee 135<sup>th</sup> session (2022) on Hong Kong, p.75, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FCSS%2FHKG%2F48958&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FCSS%2FHKG%2F48958&Lang=en)

<sup>38</sup> Hong Kong Free Press, "Pro-Beijing lawmaker claims hit Hong Kong TV show featuring same-sex romance violates China's national security law", 19 July 2021, available at <https://hongkongfp.com/2021/07/19/pro-beijing-lawmaker-claims-hit-hong-kong-tv-show-featuring-same-sex-romance-violates-chinas-national-security-law/>

speech was discriminatory on a legal basis.<sup>39</sup> He said that the EOC had begun putting together a proposal for the legislation to protect LGBT+ people from discrimination and hoped to discuss the proposal with stakeholders by the end of 2021. However, no progress is made to date.

49. According to a survey in 2018, 69% of the public favoured an anti-discrimination legislation that protects people from being discriminated because of sexual orientation.<sup>40</sup> The Hong Kong government should introduce anti-discrimination law immediately that prohibits discrimination, hate speech and harassment on the basis of sexual orientation, gender identity, gender expression and sex characteristics.

## Gender Recognition of Transgender Persons

50. The Hong Kong Court of Final Appeal granted a favourable ruling In February 2023 to two transgender men, permitting them to amend the gender marker on their identity cards (ID cards) to male according to their gender identity, without the previous requirement of completing full gender affirmation surgery.<sup>41</sup> However, the ruling does not address whether transgender women can change their gender marker under the same circumstances. The government has not updated its policies in accordance with the court's decision.

51. Moreover, even if transgender persons can change their gender marker on ID cards, their gender assigned at birth remains their legal gender, which cannot be altered and results in many daily challenges. For example, official documents or certificates are not mandated to be reissued by the government or corporations to match their acquired gender. The Covenant rights of transgender persons cannot be ensured without the gender recognition law.

52. HRCtee expressed concern in its concluding observations on Hong Kong in 2022 that “despite an interdepartmental working group on gender recognition having been established in 2014, no progress has been made towards drafting a law on gender recognition, and transgender persons continue to be required to undergo surgery in order to have their gender marker changed in their identity documents”.<sup>42</sup>

53. We recommend that the Hong Kong government resume the work of Working Group on Gender Recognition and to complete the gender recognition legislation in two years.

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<sup>39</sup> The Standard, Rights chief throws support behind staging of Gay Games, <https://www.thestandard.com.hk/section-news/section/11/231135/Rights-chief-throws-support-behind-staging-of-Gay-Games>

<sup>40</sup> In 2018, the Centre for Comparative and Public Law, University of Hong Kong published a report named “Support in Hong Kong for Same-sex Couples’ Rights Grew Over Four Years (2013-2017)”. The result showed that 69% of the public favoured the anti-discrimination legislation that protects people from being discriminated because of sexual orientation, [https://ccpl.law.hku.hk/content/uploads/2018/07/Change%20Over%20Time%20Paper%20English%20\(3%20July%20Final%20for%20Distribution\).pdf](https://ccpl.law.hku.hk/content/uploads/2018/07/Change%20Over%20Time%20Paper%20English%20(3%20July%20Final%20for%20Distribution).pdf)

<sup>41</sup> *Tse Henry Edward v. Commissioner of Registration* (06/02/2023, FACV9/2022) [2023] HKCFA 4 ([https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=150362&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=150362&currpage=T))

<sup>42</sup> CCPR/C/CHN-HKG/CO/4, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CHN-HKG/CO/4](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CHN-HKG/CO/4)

## Violence against LBT women

54. In its previous concluding observations (CEDAW/C/CHN/CO/7-8, para. 54-55<sup>43</sup>), the Committee urged the Hong Kong Government to expedite consideration of the Law Reform Commission's proposals to revise the legislation on sexual offenses, including amending the definition of rape to align it with international standards. However, nine years have passed since the Law Reform Commission released its consultation paper on "Rape and Other Non-Consensual Sexual Offences" in 2012, and there has been no legislative progress or timetable for amending the law.<sup>44</sup>

55. We recommend that the sexual offenses legislation should be amended in accordance with the Law Reform Commission's recommendations, including adding "sexual penetration without consent" of the same degree of severity as rape, which should include the insertion of a penis or any other object, such as fingers or sex toys, into the vagina, and the definition of 'vagina' should encompass surgically constructed vaginas. Hong Kong government should take immediate steps to amend its sexual offenses legislation to provide protection for all women, including lesbian, bisexual women, and transgender women.

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<sup>43</sup> CEDAW/C/CHN/CO/7-8, para. 54-55, above 36

<sup>44</sup> The Law Reform Commission of Hong Kong, Project Title: Rape and Other Non-consensual Sexual Offences <https://www.hkreform.gov.hk/en/publications/subject.htm>