

**The Women's Foundation:
Response regarding the Labour & Welfare Bureau's
Public Consultation**

**On the occasion of the Fourth Report of the Hong Kong Special Administrative
Region under the Convention on the Elimination of All Forms of Discrimination
Against Women**

**As part of the ninth report that will be presented by the People's Republic of
China in Fall 2018**

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INTRODUCTION AND SUMMARY

The Women's Foundation (TWF) is a non-profit organisation dedicated to improving the lives of women and girls in Hong Kong. Our three key focus areas are:

- Challenging gender stereotypes
- Increasing the number of women in decision-making positions
- Empowering women in poverty to achieve a better quality of life for themselves and their families

Our response to the Labour and Welfare Bureau's public consultation on the fourth report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) therefore focuses on these areas.

In October 2017, we were encouraged by the new Chief Executive's first Policy address and the recognition of the valuable role that women play in the formal economy. While it was encouraging to hear the plans for injection of funds into developing young, local talent; and exciting developments in tech and innovation, we hope this is followed by detailed, thoughtful and gender-sensitive implementation that will address the challenges that women and girls continue to face in Hong Kong.

To this end, Hong Kong's reporting to CEDAW provides an opportunity to particularly focus on some of the areas that can be improved and strengthened to better serve women and girls. In particular, there are five specific areas of the current outline of topics for the CEDAW report that we feel should garner greater government attention:

- **Lack of gender disaggregated data:** Gender segregated data maintained by government departments and bureaus are not comprehensive, consistent or always accessible.
- **Insufficient protections and preventative measures around sexual harassment and sexual assault:** Laws provide insufficient protection, sexual education curricula are outdated and there are many inhibiting factors for women to utilise existing services.
- **Inadequate provisions for caregivers:** A large proportion of women still shoulder both childcare and eldercare, and current provisions are not providing adequate support.
- **Female representation in leadership positions:** Women are under-represented in all levels of political activity, and senior executive and non-executive roles across industry sectors and professions.
- **The feminisation of poverty:** Women are still disproportionately employed in lower status jobs and earn lower incomes compared to men. There is a lack of specific consideration of women in Government welfare policies, including the MPF scheme.

While we applaud the efforts of the Women's Commission and other Government bodies to safeguard the interests of women and girls in Hong Kong, much remains to be done before Hong Kong can be said to be pursuing a comprehensive policy of eliminating all forms of discrimination against women.

We look forward to working together with the Government and other relevant actors to help close these gaps.

KEY ISSUES AND RECCOMENDATIONS

Article 3 – Appropriate Measures

The WoC notes that they will “advise the Committee of any new developments ... in respect of areas such as.... gender mainstreaming; and studies, research and data collection on women including the collection of sex-disaggregated statistics, surveys and researches conducted by WoC.”

Gender Disaggregated Data

Gender segregated data maintained by government departments, bureaus and advisory bodies is not comprehensive, consistent or always accessible. The Government collects and records valuable data without sufficiently disaggregating by gender. This reduces its capacity – despite gender mainstreaming – to design and implement policies, programmes and budgets that promote gender equality and protect women’s rights.

Some examples include:

- Gender segregated data is not maintained or at least publicly available for the Inland Revenue Department’s records of tax payment, the number of people with private health insurance, and the number and percentage of bankrupt persons
- The University Grants Committee does not disclose data on the gendered breakdown of matriculated degrees. While there are overall numbers on entrants in broad categories like science and the humanities - not having clear numbers of women going into which specific degrees makes it difficult to establish whether there is a paucity of women entering into high demand majors such as computer science and electronic engineering
- The classification of domestic abuse cases by the Hong Kong Police often obscures the prevalence of the situation. Many cases fall under a broad category called ‘domestic incidents’ which can include minor issues from noise nuisance to non-violent conflict¹
- Other critical gaps include: comprehensive data regarding teenage pregnancies, household spending on childcare and eldercare, the number and percentage of low-income women benefitting from the Work Incentive Transport Subsidy Scheme, women registering to receive government e-forms, driving licences granted to women or the ratio of men to women who contribute to Hong Kong’s carbon footprint

1 Hong Kong Federation of Women’s Centres, 2017:
http://www.womencentre.org.hk/Zh/Newsroom/Pressrelease/helpline_2017/

TWF urges the Government to, among other steps:

- Require each Government department and bureau to reformulate their questionnaires and data collection methods in such a way that data can be disaggregated by gender, with regard to both numbers and percentages, and making measures consistent across all departments
- Require clear objectives, regular tracking and transparent, comprehensive reporting measures within all government departments, bureaus, and other relevant organisations

Gender Gap in Pay

The gender pay gap in Hong Kong is at 22% and it is likely wider when looking at commensurate years of age and experience². Granular data on this and the method used to calculate wage disparities is not available. This lack of transparency in organisations' pay scales and the way an organisation defines the pay gap makes it difficult for organisations to formulate initiatives and policies to rectify this gap, and they face no pressure to correct these imbalances.

TWF urges the Government to, among other steps:

- Introduce measures for gender pay disclosure by Hong Kong companies of a certain size that has been modelled in other jurisdictions, such as the UK where any organisation that has 250 or more employees must publish and report specific figures about their gender pay gap³. This would require:
 - o Organisations to be transparent around compensation and ensure benefits for each pay grade are complied with
 - o Salary differences in comparable positions (and adjusted for age / years of experience) should be made transparent
 - o Listed companies should have mandated reporting of gender statistics at management, senior management and Board level
 - o Companies should be encouraged to hire third parties to undertake and provide certification on pay disparity reviews and to validate the process and findings

² Census & Statistics Department. "Women and Men in Hong Kong: Key Statistics 2017":
<https://www.censtatd.gov.hk/hkstat/sub/sp180.jsp?productCode=B1130303>

³ Gov.Uk. "Gender pay gap reporting: an overview." <https://www.gov.uk/guidance/gender-pay-gap-reporting-overview>

Article 5 – Stereotyping and Prejudices

The WoC has committed to “address[ing]... the Concluding Observations with regard to the comprehensive review of sexual offences being carried out by the Law Reform Commission...and the protection of women against violence, such as legislation and international instruments, measures to prevent and tackle domestic violence, services offered to victims of sexual violence, cross-sector collaboration on combating violence, training to professionals, etc.”

Sexual assault and Sexual Harassment

We strongly support the WoC in updating the CEDAW Committee on two major developments in sexual assault and sexual harassment legislation: recommendations coming out of the Equal Opportunities Commission’s Discrimination Law Review and recommendations coming out of the Law Reform Commission’s review of sexual offences.

In March 2016, the Equal Opportunities Commission submitted a [series of recommendations](#) to the Government on the Discrimination Law Review, which included a number of important recommendations for better protections against sexual harassment in employment, premises, services and clubs⁴. To date, the Government has not implemented any recommendations with legislative amendments which leave many people vulnerable to sexual harassment without recourse.

Similarly, in 2012, the Law Reform Commission undertook a review of sexual offences. In September 2012, it issued a [“Consultation Paper on Rape and other Non-consensual Sexual Offences”](#) and in November 2016 it issued a [“Consultation Paper on Sexual Offences involving Children and Persons with Mental Impairment”](#). Both of these consultations have been concluded and thus far, no action has been made for the Government to take the resulting recommendations under review. There are many critical recommendations in the review including updated definitions around consent and rape, gender neutrality, avoidance of distinctions based on sexual orientation, and the protective principle for particularly vulnerable groups, among others.

In addition to legislation reform, there are other areas regarding sexual assault and sexual harassment victims that need further attention. Victims face a number of hurdles when trying to report an incident: a lack of knowledge on where to seek help, fear of retribution by the assailant, entrenched stereotypes and a culture of victim-blaming and social stigma from the community. If the incident takes place at work, Non-Disclosure Agreements and confidentiality clauses are often used to deter people from speaking out. Those subject to such agreements

⁴ For details, please refer to pages 61-71 of the Equal Opportunities Commission’s 2016 [“Discrimination Law Review: Submissions to the Government”](#).

would often rather comply than face any risk that they may be sued. In addition, the current sexual education curriculum in many schools does not cover definitions around consent or cover interpersonal aspects of relationships which are fundamental to sexual harassment prevention. All of these factors contribute to the statistic that 1 out of 7 women in Hong Kong will experience sexual assault in her lifetime, and 90% will choose not to report the incident⁵.

TWF urges the Government to, among other steps:

Legislation

Review of Sexual Offences

- Take the Law Reform Commission's recommendations from their papers on "Rape and other Non-consensual Sexual Offences" and "Sexual Offences involving Children and Person with Mental Impairment" under immediate review for implementation into law as soon as possible

Discrimination Ordinances

- Implement the Equal Opportunities Commission's recommendations from their submission on the Discrimination Law Review by amending as soon as possible the Sex Discrimination Ordinance, with particular attention to providing legal protection from sexual harassment for people in the following situations / roles:
 - o Volunteers, consignment workers or interns (where there is a common workplace but a non-employment relationship);
 - o Tenant or sub-tenants harassed by other tenants or sub-tenants occupying the same premises;
 - o Harassment by management of clubs of members or prospective members;
 - o Employers being made liable for employees being sexually harassed by third parties such as customers, if the employer fails to take reasonable preventative steps to prevent the sexual harassment

Mandatory Sexual Harassment Policy & Training

- Introduce legislation mandating both public and private sector organisations to have a written sexual harassment prevention policy and that all employers provide sexual harassment training for their staff⁶

⁵ Hong Kong Women's Coalition on Equal Opportunities, 2013: <https://www.rainlily.org.hk/reports.php>

⁶ For examples in other jurisdictions, look to laws in South Korea and California (USA) and proposed laws for New York (USA) among others

Non-Disclosure Agreements

- The Government should introduce legislation making any contractual clause in an NDA which prevents disclosure of future acts of discrimination, harassment or victimisation void⁷

Support Services

- Add a special unit to the Hong Kong Police Force to handle sexual assault cases that has specialist training and operates to a code of conduct as there are particular psycho-social sensitivities that may adversely affect the reporting of the case or deter a claimant from reporting an incident altogether
- Review the capacity and reach of support services for victims of sexual violence and add support where needed particularly in population-dense areas

Education & Awareness Raising

- Update the Hong Kong sexual education curriculum to be in line with international standards
- Collaborate with non-governmental organisations to promote public campaigns that encourage victims to speak out and bystanders to support and help to overturn the social stigma placed on victims

Article 7 – Equality in Political and Public Life at a National Level

The WoC will “inform the Committee of any significant developments...on the participation of women in the Legislative Council, District Councils and the Election Committee for the Election of the Chief Executive of the HKSAR, Executive Council, rural Elections, advisory and statutory bodies, public offices and the efforts in nurturing women leaders.”

Women and Political Leadership

Women comprise 54% of Hong Kong’s population yet enjoy significantly less representation in leadership and decision-making positions, meaning that over half of the population does not have a representative say in the policies that govern and shape this city. While women enjoy better representation in the Civil Service at 36.7% and comprise 32.4% of seats of Advisory &

⁷ Recommendation taken from the UK’s Equality and Human Rights Commission report “Turning the Tables: Ending Sexual Harassment at Work” and where appropriate should be modified to fit Hong Kong’s legal framework: <https://www.equalityhumanrights.com/sites/default/files/ending-sexual-harassment-at-work.pdf>

Statutory Bodies, women are vastly under-represented in other Government bodies. Women comprise only 14.6% of seats in the Legislative Council, 17.2% of seats in the District Councils, 12.5% representation as Official Executive Council Members and 18% representation as Non-Official Executive Council Members⁸. For the 2017 Election Committee for the Chief Executive, less 17% of the Committee was female⁹.

TWF urges the Government to, among other steps:

- Raise the 35% female representation on ASBs target to 40% and ensure implementation across all ASBs
- Research the reasons which are putting women off political participation and respond with proactive, corrective measures
- Introduce initiatives to encourage the full and equal participation of women in political life including collaborating with political parties on awareness raising

Article 11 – Equality in Employment and Labour Rights

The WoC commits to report on “women and poverty; employment services for women....childcare facilities and services; promotion of family-friendly employment practices.”

Childcare

We are encouraged by the Government taking important steps to provide more robust services for childcare including supplying additional childcare centres and in undertaking a research report to determine the best way forward on improving long term childcare services.

The Government’s commitment to undertake a study on the enhancement of maternity leave and their review of the Labour Bureau’s suggestion of extending paternity leave from 3 to 5 days is a much needed reform¹⁰. Currently, Hong Kong’s 10-week maternity leave at 80% pay falls below international standard of 14 weeks and has remained unchanged for 20 years¹¹. While increasing maternity and paternity leave is in the right direction, we believe Hong Kong would do well to follow the approach being adopted in more progressive countries which have

⁸ Percentages were taken from the official websites of the Councils and Bureaus. Where official percentages were not available, they were counted manually.

⁹ Bloomberg, “Graphic of Hong Kong 2017 Election”: <https://www.bloomberg.com/graphics/2017-hk-election/>

¹⁰ While there is no international standard for paternity leave, the ILO recommends that it contributes to advancing gender equality and that a framework and structure should be put in place with duration, pay structure, and other details let to the discretion of the government in reference.

¹¹ Legislative Council, “Maternity Leave in Selected Places.” 2017: <http://www.legco.gov.hk/research-publications/english/1617in05-paid-maternity-leave-in-selected-places-20170210-e.pdf>

embraced the concept of gender neutral parental leave, allowing parents to choose which of them assumes the greater share of childcare responsibilities.

We hope discussions will also look to the many examples of international best practice in terms of duration and scope in determining what will best fit Hong Kong's needs such as innovative private-public partnerships to reduce the financial burden on employers like publicly funded maternity cash benefits or compulsory social insurances schemes.

TWF urges the Government to, among other steps:

- In the short term, expand the maternity leave entitlement and paternity leave entitlements looking to other leading actors in the region such as Singapore with 16 weeks of maternity leave at 100% coverage
- Expand paternity leave in line with Greater China's provincial government's standards of at least 7 days' paid leave¹²
- In the long term, replace maternity leave and paternity leave with gender-neutral parental leave whereby parents can choose which of them stays at home to be the primary caregiver

Eldercare

The need for policies, practices and services for caregivers (with particular attention to eldercare) are critical additions to this report.

Hong Kong faces a double jeopardy given its rapidly aging population and low birth rate which are projected to result in acute labour shortages. According to Government statistics, the labour force will shrink from 3.7 million people in 2018 to 3.5 million people by 2031¹³. Meanwhile, the number of residents aged 65 and over is projected to increase from the current 16.6% to 31% persons by 2038¹⁴. Owing to the disparity between the number of those working and those that will need caregivers, it is vital for the overall economy that working age citizens remain in the workforce as long as possible. Because of societal expectations and traditional gender mindsets, women make up a larger number of caregivers.

At the family level, it is critical for households to have dual earners where possible be able to cover the cost of care for parents, parents-in-law, and children. According to a survey

¹² 29 of 32 provinces in Mainland China offer paternity leave ranging from 7 – 30 days:

<http://www.scmp.com/news/china/policies-politics/article/2028401/most-chinese-provinces-roll-out-official-paid-paternal>

¹³ HKSAR Government, Press Release. "Hong Kong population projections for 2017-2066."

<http://www.info.gov.hk/gia/general/201709/08/P2017090700379.htm>

¹⁴ Ibid

conducted by the University of Hong Kong's Sau Po Centre on Ageing, 40% of caregivers dip into personal savings to provide care with 28% noting that they give up basic necessities to provide care. One third of the caregivers surveyed take paid leave of absences to provide care while 25% decrease their hours of work and 20% quit work altogether¹⁵. In addition, we know from research that eldercare is a much more psychologically taxing burden than childcare and that carers for elderly dependents have a higher risk of suffering from depression, insomnia, chronic diseases and experience poorer physical and psychological health¹⁶.

We already know women are outliving men by 6 years and, on average, saving 29% less for retirement than men which puts them at a disadvantage¹⁷. However, we are particularly concerned for unofficial part time and full time care providers who do not have adequate long-term protections. For example, Hong Kong's compulsory retirement scheme –the Mandatory Provident Fund (MPF) – does not place an economic value on the work carers (and, similarly, homemakers) provide. It is estimated that approximately one million women – home makers, part-time workers and the elderly – are ineligible for pension protection. This is particularly concerning since women are outliving men by an average of six years.

TWF urges the Government to, among other steps:

- Provide support for retirement for people who have not worked or who do not otherwise qualify for MPF particularly women who are more disadvantaged in retirement age¹⁸
- Develop methods for assessing the quantitative value of unremunerated work
- Encourage the private sector to introduce and expand the applicability of flexible working arrangements, expanding paid leave to include care days, etc

¹⁵ University of Hong Kong - Sau Po Centre on Ageing, 2017. "Economic Impacts of Caregiving."
<http://ageing.hku.hk/upload/file/627%20Policy%20Brief.pdf>

¹⁶ Suzanne C. Ho, Alfred Chan, Jean Woo, Portia Chong, Aprille Sham; Impact of Caregiving on Health and Quality of Life: A Comparative Population-Based Study of Caregivers for Elderly Persons and Noncaregivers, *The Journals of Gerontology: Series A*, Volume 64A, Issue 8, 1 August 2009, Pages 873–879,
<https://doi.org/10.1093/gerona/glp034>

¹⁷ JP Morgan Asset Management survey 2018:
<http://www.scmp.com/business/money/wealth/article/2148339/women-face-bigger-shortfall-men-when-it-comes-saving>

¹⁸ Look to innovative solutions from other economies like Malaysia's newly proposed legislation to deduct 2% of the working spouse's 11% contribution to the Employee Provident Fund. This 2% goes directly into a separate Employee Provident Fund for the stay-at-home spouse. The Government of Malaysia will also contribute RM50 a month to the stay-at-home spouse's fund: <https://www.thestar.com.my/news/nation/2018/05/24/wan-azizah-mechanism-for-housewives-to-contribute-to-epf-to-be-looked-into/>

Women and Poverty

Women are over-represented among casual, part time or low status full-time workers and under-represented in decision-making positions, top status jobs and high earning fields. Women represent the bulk of the workforce in the 4C's – catering, caring, cashiering and cleaning—and they lack statutory protections with respect to the employment and other benefits enjoyed by full-time workers. In 2009, 64.4% of all part-time employees were women (mostly aged between 40 and 59) and 66.7% of all casual workers were women. Among casual workers, women made up 67.7% of those paid less than HK\$4,000 a month¹⁹. At the other end of the spectrum, women comprised just 29% of top-status jobs such as managers and professionals in 2018²⁰ which is lower than other cities in Asia. Issues of gender bias, gender insensitive workplace policies (including flexible work arrangements) and a lack of appropriate care services or parental leave options, must be tackled to redress the imbalance.

Another key issue is that the gender pay gap is arguably worse in blue collar fields. Among Craft workers, women earn 33% less than men; in Service & Sales women earn 30% less than men; and in Plant & Machine operators, women earn 27% less than men²¹. Two-thirds of workers earning less than HK\$5,000 per month are women, while women aged 65 and over earn 35% less than their male counterparts²². Approximately 85% of single parents who live below the poverty line are single mothers²³.

TWF urges the Government to, among other steps:

- Review and take steps to encourage the reformulation of wage structures where women are currently disadvantaged
- With findings from the Minimum Wage Public Consultation, review the application of the Minimum Wage and its impact on alleviating poverty, particularly among marginalised women groups
- Collaborate with businesses and NGOs to provide training programmes and confidence and leadership building initiatives for women who are either in, or trying to enter, the workforce
- Provide public workshops, specifically targeting vulnerable populations, to educate them about available support services and subsidy schemes

¹⁹ There are no updates from the Census & Statistics Department on these numbers

²⁰ Hays, 2018. Hays Asia Salary Guide. https://www.hays.com.hk/press-releases/HAYS_1940945

²¹ Census & Statistics Department, 2016. "Median Monthly Employment Earnings by occupation and sex."

²² Census & Statistics Department, 2017. "Women and Men in Hong Kong: Key Statistics."

<https://www.statistics.gov.hk/pub/B11303032017AN17B0100.pdf>

²³ Oxfam Hong Kong, 2016. <<香港婦女貧窮狀況告>>. Access:

http://www.oxfam.org.hk/content/98/content_31064tc.pdf

Women on Boards

Despite a wealth of qualified women, and numerous studies demonstrating a positive correlation between gender diversity and more effective decision-making, stronger corporate governance and higher profit margins, women remain significantly under-represented on corporate boards. Women currently comprise 13.8% of all board seats on Hang Seng Index listed companies which lags far behind competitors like the FTSE 100 at 27.7% and the S&P 500 at 22%, respectively^{24 25 26}. 19.6% of Hong Kong listed companies have no women on their boards at all²⁷.

In 2012, the Hong Kong Stock Exchanges & Clearing issued a change to its corporate governance code to encourage companies to implement board diversity policies. Six years later, the number of female representation on HSI-listed companies has moved only incrementally from 9% to 13.8% - a 0.8% per year increase²⁸. These poor results suggest more stringent changes are needed to bring about meaningful change. Repeated conversations with the Hong Kong Stock Exchanges & Clearing have led to only minimal changes to support increasing the number of women on Hong Kong boards.

TWF urges the Government to, among other steps:

- Encourage companies to set gender diversity targets for listed companies at the Board and management levels taking the lead from the targets set for Advisory & Statutory Bodies (ASBs)
- Require listed companies to have Board diversity policies that focus specifically on gender diversity including a requirement for listed companies to set measurable objectives for tracking and achieving greater gender diversity at Board level
- Require listed companies to report annually on their progress of meeting their measurable objectives set under their Board diversity policies
- Make listed companies accountable through requiring regular, transparent public disclosure of their diversity numbers at Board and management levels

²⁴ Spencer Stuart U.S. Board Index, 2017. https://www.spencerstuart.com/~media/ssbi2017/ssbi_2017_final.pdf?la=en

²⁵ Cranfield University. "The Female FTSE Board Report 2017." <https://www.cranfield.ac.uk/~media/files/som-ftse-reports/cranfield-female-ftse-report-2017.ashx>

²⁶ Community Business, Women on Boards Hong Kong Report 2018: <https://www.communitybusiness.org/latest-news-publications/women-boards-hong-kong-2018>

²⁷ Community Business, 2018.

²⁸ Community Business, 2018.

Equal Pay for Equal Work

Women in the workforce are coming into salary negotiations behind their male counterparts. Offers at successive companies are calculated largely based off of what that candidate is currently earning, placing women at a disadvantage and exacerbating the gender pay gap.

TWF urges the Government to, among other steps:

- Ban employers from both the public and private sectors from asking applicants about salaries from their previous jobs