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Hong Kong

Amnesty International Briefing to the UN Committee on the Elimination of Discrimination Against Women

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Summary

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INTRODUCTION

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW or the Convention) was extended to Hong Kong on 14 October 1996 by the United Kingdom and has continued to apply to Hong Kong since the People's Republic of China resumed sovereignty over Hong Kong on 1 July 1997.

This summary presents an overview of Amnesty International's concerns as laid out in its submission to the Committee on the Elimination of Discrimination against Women (the Committee). The briefing offers further information about the Hong Kong Special Administrative Region (HKSAR) government's policy, or lack of policy, for combating gender-based violence in the home and focuses on the HKSAR's failure to comply with Articles 2, 3, and 7 of CEDAW.

Amnesty International believes that the HKSAR government should incorporate into current legislation the framework of due diligence to prevent violations of rights; to investigate and punish acts of violence; to provide or ensure reparations for victims; to ensure full incorporation of the content and scope of international human rights standards, especially CEDAW provisions; to implement the Committee's General Recommendations 19 and 24 and the recommendations contained in the Committee's concluding observations on Hong Kong's First Report.

BACKGROUND INFORMATION

Prevalence of gender-based violence in the home

The Hong Kong Police and the Social Welfare Department maintain separate databases on violence in the home and discrepancies exist between the two sets of statistics. The Police database indicates that there were 1,274 cases of spouse battering in 2005 and the Social Welfare Department recorded 3,598 new cases of battered spouses and sexual violence in 2005.

Statistics collected by an NGO and a territory-wide survey conducted in 2005 both point to a higher prevalence of gender-based violence than official statistics indicate.

Major developments

The Law Reform Commission of Hong Kong recommended reforming the Domestic Violence Ordinance to provide greater protection for women in 2000 and 2005. Its recommendations were echoed in the results of the territory-wide survey mentioned above and a report produced by the Women's Commission in 2006.

The tragic death of Jin Shu-ying (also known as Kam Shuk Ying - 金淑英 in Chinese) in 2004 has created public pressure on the government to revisit the law and public policies related to domestic violence.

The chief executive of the HKSAR pledged to allocate more resources to government departments and non-governmental service organizations in the 2005 and 2006 Policy Addresses.

Although the government finally proposed to amend the Domestic Violence Ordinance to expand the scope of the definition of violence and the coverage of the Ordinance, the proposal fails to incorporate the framework of due diligence to prevent, investigate and punish violence against women and ensure reparation to victims.

AMNESTY INTERNATIONAL'S CONCERNS REGARDING COMPLIANCE WITH SPECIFIC ARTICLES OF CEDAW

Article 2: Law and Policy Measures

Failure to provide for constitutional prohibition of discrimination against women

Article 25 of the Basic Law, Hong Kong's 'mini constitution', does not explicitly prohibit discrimination against women. The government has not yet taken the necessary steps to implement the Committee's previous recommendation to adopt a constitutional definition of direct and indirect discrimination. **Amnesty International believes that the Basic Law should be amended to implement the Committee's recommendation in order to provide a constitutional definition of discrimination to complement the Sex Discrimination Ordinance.**

Failure to introduce suitable legislation to combat gender-based violence in the home

Legal protection available to victims of violence in the home is fragmented and found in two criminal ordinances: the Crimes Ordinance (Cap 200) and the Offences against the Person Ordinance (Cap 212) and one civil ordinance: the Domestic Violence Ordinance (Cap 189). **Amnesty International considers that a clause should be added to the Domestic Violence Ordinance to ensure that all criminal aspects of cases of violence in the family will be handled in accordance with the Crimes Ordinance (Cap 200) and the Offences against the Person Ordinance (Cap 212) making it absolutely clear that violence in the family is a criminal, and not only a civil, matter.**

The Domestic Violence Ordinance only applies to cases of physical abuse occurring within marital relationships and excludes cases of abuse committed by spouses who are divorced or living apart, or once cohabitation has ended. In addition, victims of stalking or other non-

physical abuse cannot invoke the Ordinance to seek judicial protection. **Amnesty International believes that the definition of “violence” should not be limited to physical violence but should be expanded to include other forms of abuse as well as threats of abuse directed toward victims and their children.**

Injunction orders are only valid for three months and extendable to a maximum period of six months. This period of time is not long enough for survivors of gender-based violence in the family to settle into their new lives. **Amnesty International believes it is necessary to amend the Domestic Violence Ordinance to allow the court the power to determine the period of an injunction order’s validity depending on the seriousness of the situation. The maximum period possible should be granted until the injunction is terminated by an order.**

The court may attach a power of arrest to injunctions only when the abusers have caused actual bodily harm and are likely to cause such harm again to the victims and their children but not in a situation where the abusers have merely threatened to cause bodily harm. **Amnesty International believes that the legislation should also enable the court to take into account the full facts of the case and potential for harm to the woman when considering whether to attach a power of arrest to an injunction.**

Failure of the criminal justice system to ensure justice for victims of gender-based violence in the home

The attitude of police and a lack of awareness among frontline personnel that handle cases of gender-based violence in the home continue to be of serious concern. Many survivors of gender-based violence in the home have accused frontline law enforcement officials of persuading them to drop their cases and attempting to mediate family disputes rather than assessing the safety of women. **Amnesty International believes that the HKSAR should provide training for all personnel who have contact with victims, including law enforcement officials and social workers, and enable them to deal efficiently and effectively with reports of gender-related violence in the family.**

Separate court procedures have increased the chances of intimidation by perpetrators against victims who undertake legal proceedings

The existence of separate court procedures dealing with the criminal and civil aspects of cases of gender-based violence in the home creates more opportunities for the perpetrators to harass and intimidate the victims. This situation also presents logistical and other difficulties for women who need to attend different courts in order to resolve issues arising from the same case. **Amnesty International believes that all measures should be taken to ensure the safety of victims of gender-based violence in the family is protected while undergoing legal proceedings.**

Failure to ensure reparations for victims and inadequate and poor quality of resources for victims to restore physical and mental integrity

Although shelter services, economic assistance, and housing resources are available to victims of violence in the family, the effectiveness of these measures is undermined by a lack of awareness on the part of frontline personnel, a lack of resources, and discretionary decisions regarding the allocation of resources. **Amnesty International believes that services, shelters and assistance should also be provided to surviving victims of gender-based violence in the family and those under threat of such violence. The management of such services must be performed in accordance with the human rights of women, clearly taking into account gender-related matters and aimed at increasing women's autonomy.**

There is a lack of action by the government to ensure that victims of gender-based violence in the home will be compensated for the pain they have suffered, the loss of opportunities, material damage, harm to their reputation, and the cost of legal, medical and psychological services. **Amnesty International believes that the HKSAR government should ensure timely and adequate reparation for victims of gender-related violence, including fair compensation and, where necessary, medical care and comprehensive recovery practices.**

Lack of centralization and aggregation of statistical information

There is no centralized database to collate different departments' statistics in a standardized format, which results in statistical discrepancies and adversely affects decision-making and policy-making efforts in crime prevention and support to victims. Adequately aggregated official statistics are not available to the public. **Amnesty International believes that the HKSAR government should create a centralised database to standardize the compilation of official figures on violence against women and make these figures publicly available.**

Scarce resources for measures to combat gender-based violence in the home

The government has budgeted a total of HKD 30 million (USD 3.9 million) in 2006-2007 to recruit social workers who will provide outreach services for families at risk. However, these social workers work in family centres that are not specifically designed to handle cases of domestic violence. **Amnesty International believes that the HKSAR government should ensure sufficient resources to implement plans and measures that address gender-based violence and provide details about budget allocations for each action included in these plans.**

Discriminatory policies towards marginalized groups of women create conditions favourable to gender-based violence

Since January 2004, applicants for Comprehensive Social Security Assistance (CSSA) over 18 years of age must have resided in Hong Kong for at least seven years. This new residence requirement has primarily affected the newly arrived women, leaving them financially dependent on their husbands and making it difficult for them to leave abusive relationships. **Amnesty International believes that policies should protect all women from gender-based violence and provide redress for all victims of such violence without any discrimination whatsoever, and the HKSAR government should therefore deploy special measures to remedy the current disadvantages facing newly arrived women from Mainland China.**

Lack of measures to ensure public awareness-raising programs adequately incorporate the specificities of gender-based violence

Public education programs only aim to strengthen individuals' capabilities of resolving life difficulties, relieve stress and enhance family harmony, and fail to address gender inequality as the root cause of gender-based violence in the family. **Amnesty International believes that the HKSAR government should launch long-term campaigns targeting men and women that promote women's human rights and, in particular, raise awareness about gender-based violence in the family**

Article 3: Guarantee of basic human rights and fundamental freedoms

Insufficient authority vested in the Women's Commission to implement gender-mainstreaming throughout policy design and evaluation processes, including those related to combating gender-based violence

The lack of authority vested in the Women's Commission makes it difficult to obtain necessary assistance and cooperation from other bureaux and departments to effectively advocate and implement gender mainstreaming. **Amnesty International recommends that the status of the Women's Commission be upgraded to a "high-level central mechanism with appropriate resources to develop and coordinate a women-focused policy and long-term strategy to ensure effective implementation of CEDAW" as previously recommended by the Committee.**

The gender-mainstreaming checklist established by the Women's Commission lacks a gender audit to determine whether the overall situation of women has been analyzed and evaluated comprehensively. The policy of designating resource personnel, known as "gender focal points", has not been evaluated since its implementation in 2003. **Amnesty International believes it is important that the HKSAR government ensure gender mainstreaming in all policies and legislation and analyse the impacts on women and men of all existing and planned policies and laws before they are implemented. The organisation also believes that the HKSAR government should periodically analyse, evaluate and review plans and measures adopted to combat gender-based violence in the family, and allow women and women's organisations to actively participate in and contribute to the process by making comments on such measures. Women's participation should be a strategic objective of these plans.**

Article 7: Political and public life

Low representation of women in public office, resulting in a low level of participation by women in the making and implementation of policy

Women continue to be grossly under-represented in decision-making bodies.

KEYWORDS:

This report summarizes a 19-page document (7,450 words): *Hong Kong: Amnesty International Briefing to the UN Committee on the Elimination of Discrimination Against Women* (AI Index: ASA 19/001/2006) issued by Amnesty International in June 2006. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

http://www.amnesty.org/email/email_updates.html
