Fighting Domestic Violence - Hong Kong

2. Introduction: framework guiding domestic violence law

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# 2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes. Civil remedies include court orders such as the non-molestation order and the ouster order, discussed in Section 4.1below, as well as monetary compensation based on tort.

Abusers are subject to criminal liabilities and may be imprisoned if they are convicted.[16]

# 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Protection from domestic violence is not explicitly identified in national law as a human right. However, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law"), which incorporates the provisions of the International Covenant on Civil and Political Rights (ICCPR) by virtue of Article 39 and the Bill of Rights Ordinance (Cap. 383), generally prohibits torture, cruel, inhuman or degrading treatment or punishment. It follows that domestic violence may be recognized as a human rights violation if its severity meets the threshold.

# 2.3 Has your country signed and ratified the conventions?

On 14 October 1996, the Committee on the Elimination of Discrimination against Women (CEDAW) was extended to Hong Kong, at the consent of the People's Republic of China (PRC) and the United Kingdom of Great Britain and Northern Ireland. The CEDAW has continued to apply to the Hong Kong Special Administrative Region (HKSAR) (with the PRC as the relevant State Party) with effect since 1 July 1997. The HKSAR has implemented the CEDAW through the provisions of the Basic Law and local laws, as supplemented by the necessary administrative measures.

# 2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?

Not applicable.

# 2.5 If it has ratified the 1979 Convention (CEDAW), how has the recommendations part of General Comment No. 35 been implemented into national law?

The recommendations part of General Comment No. 35 have been implemented into various pieces of legislation in Hong Kong, including the following:

Article 28 of the Basic Law, which prohibits the torture of any resident, or arbitrary or unlawful deprivation of the life of any resident.

Article 3 of the Bill of Rights Ordinance (Cap. 383), which prohibits the torture and other cruel, inhuman or degrading treatment or punishment by giving direct effect in domestic law to Article 7 of the International Covenant on Civil and Political Rights.

Crimes Ordinance (Cap. 200), which deals with sexual and related offences (amended in 1997 to increase penalties for certain sexual and related offences, such as incest with women aged between 13 and 1; and amended in 2002 to make it clear that marital rape is a criminal offence).

Offences against the Person Ordinance (Cap. 212), which deals with, among other things, homicide, assaults, forcible taking or detention of persons and unlawful abortion.

Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), which was enacted to deal with domestic violence, and was amended in 2008 to further strengthen the protection for victims of domestic violence by expanding the scope to cover former spouses/cohabitants, immediate and extended family members.

Evidence Ordinance (Cap. 8), amended by the Evidence (Miscellaneous Amendments) Ordinance 2003 to remove the deficiencies in the rules relating to husbands and wives giving evidence for and against each other in criminal proceedings.

CEDAW has noted certain deficiencies in Hong Kong's implementation. On the second report submitted by the HKSAR government, the committee expressed concern about the low prosecution rate of domestic violence.[17] They have urged the HKSAR government to enhance women's access to justice, including more effective responses to complaints and launching proactive investigations. On the third report by HKSAR, the committee encouraged the government to allocate more resources to support victims of domestic violence, through providing adequate shelters and strengthened enforcement of protection orders.[18]

# 2.6 If the conventions have not been ratified or signed, is it envisaged that your country will do so?

Not applicable.

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