

ARTICLE 15  
EQUALITY IN LEGAL AND CIVIL MATTERS

- “1. *States Parties shall accord to women equality with men before the law.*
2. *States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.*
3. *States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.*
4. *States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”*

**Reservations entered in respect of this Article**

313. On behalf of the HKSAR, the PRC Government has entered a declaration on Article 15, paragraph 3, of the Convention that only those terms or elements of a contract or other private instrument which are discriminatory in the sense described are to be deemed null and void, but not necessarily the contract or instrument as a whole. Also, a reservation has been entered on behalf of the HKSAR on the immigration legislation governing the entry into, stay in and departure from the Region contained in Article 15, paragraph 4. The position remains the same as in the Initial Report.

**Women’s Legal Status and Civil Rights**

Bill of Rights

314. As mentioned in paragraphs 164 and 174 of the Initial Report, all the rights recognised in the Hong KongBOR, as set out in the Hong Kong BORO, are enjoyed by everyone without distinction, including sex. The position has

remained unchanged since the Initial Report.

### Women's rights to make contracts in their own name and to administer property

315. According to the laws of the HKSAR, a person, regardless of sex, shall attain full age on attaining the age of 18 years. Therefore, a woman who is aged 18 or above is no longer a minor and can enter into contracts and administer property in her own name. As regards public housing, as at end September 2002, about 2.1 million people (31% of the population in Hong Kong) lived in public rental housing estates. Women as well as men may apply for public housing and enter into a tenancy agreement with the relevant authorities if allocated a public housing unit.

### Treatment of Women in Court

316. At common law a person is not competent (i.e. not allowed) to give evidence for or against his or her spouse except in very limited circumstances. A person is, under the present law, also not compellable (i.e. cannot be made) to give evidence against his or her spouse under any circumstances. Whilst the common law rule appears to be neutral, it is more detrimental to women than men since women are more frequently victims of violence in a marital relationship. Legislative amendments have been proposed by the Administration to make a person competent to give evidence on behalf of his or her spouse or to give evidence against his or her spouse. The proposal also seeks to make a spouse a compellable witness under certain circumstances, for instance when a sexual offence is alleged to have been committed in respect of a child of the family. The proposed amendments will be considered by the legislature in detail in due course.

### Access to Legal Aid

317. To ensure that people who have reasonable grounds have sufficient means to take or defend in proceedings, the Legal Aid Scheme is provided to those eligible applicants passing a means test and a merits test, regardless of whether or not they are Hong Kong residents. The eligible applicants is provided with legal representation by a solicitor and, if necessary, a barrister in civil or criminal proceedings before the courts in Hong Kong. Legal aid is available, inter alia, to cases in the District Court, the Court of First Instance, the Court of Appeal, the Court of Final Appeal. In the first nine months in

2002, more women than men applied for the legal aid services. Out of the 8,700 female applicants, 63% of them have been granted legal aid while 37% of the 6,900 applications by men have been granted legal aid.

### Others

318. As mentioned in the paragraph 168 of the Initial Report, the Married Persons Status Ordinance was enacted to ensure that the status of a married women should be treated the same as a single person. The position has remained unchanged since the Initial Report.

319. Women are entitled to serve on juries as there is no restriction under the Jury Ordinance on service of jurors by women. As at end September 2002, there were a total of 301,048 persons on the Common Jurors' List of which 144,532 (48%) are female.

320. Also, Article 8 of the Hong Kong BOR and Article 12 of the ICCPR guarantee to women the same rights as men to liberty of movement and freedom to choose residence. The Law Reform Commission is considering the domicile of married women as part of a study on the grounds for determining domicile.

### **Appointment to the Judiciary**

321. Women enjoy the same rights as men do to be appointed to the Judiciary. Assessment on suitability for judicial appointment is based on a candidate's knowledge of the law, judicial temperament, propriety of conduct and case management. The gender of the candidate is not one of the assessment criteria. The CEDAW Committee had expressed concern over the low women representation in the judiciary during the hearing of the Initial Report. A slight improvement in the situation has been noted since then. As at the end of September 2002, there were 32 females (i.e. 20%) out of a total of 162 judges and judicial officers, representing an increase from 17% in 1998.

## **Women in Prisons**

322. The Correctional Services Department (CSD) is responsible for the safe and humane custody of persons committed by the courts to prison and the detention of persons committed for criminal proceedings. The CSD has developed over the years a penal system placing increasing importance on correction and rehabilitation of inmates. Comprehensive treatment and training programmes have been put in place for different classes of prisoners such as young prisoners, drug dependents, first offenders or recidivists, irrespective of their genders.

323. Some women's groups have raised concerns over the treatment of women in prisons. The provisions in law including the Prison Ordinance, Training Centres Ordinance, Drug Addiction Treatment Centres Ordinance, Detention Centres Ordinance, Rehabilitation Centres Ordinance, and Mental Health Ordinance, provide for an effective system to ensure that the rights of prisoners are protected and all prisoners are treated equally. Training and educational programmes and various services are provided to cater for different classes of prisoners, regardless of their genders. In some cases, special protection and treatment are provided owing to gender considerations. For example, female prisoners are in all cases kept in entirely separate facilities, or part of a prison, apart from male prisoners. Under no circumstances will a prisoner be searched by an officer of the opposite sex. Babies newly born of female inmates may stay with their mothers until they are three years old.

324. Currently, the CSD operates four female institutions and a few other facilities for female inmates. There has been a sharp upsurge in female penal population since end-2000. The increase in female inmates is mainly due to the rapid increase in imprisonment rate for those females from the Mainland charged with "breach of condition of stay". As at 1 January 2003, CSD accommodated 2,801 female inmates against a certified accommodation of 1,524. Various contingency measures have been or are being taken to address the overcrowding problem. These include the conversion of parts of a few male institutions to accommodate female prisoners and the planned construction of a new female prison. In 2001 and 2002, there was an addition of 474 female places. 432 more will come on stream by end-2005. Meanwhile, we are planning for further new facilities to provide long-term relief. Despite the increase in female prisoners, efforts have been made by the CSD to ensure that the quality of custodial and rehabilitative services are

upheld.