

# Hong Kong

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

### INTRODUCTION

Amnesty International submits the following briefing to the UN Committee on the Elimination of Discrimination against Women (hereinafter the Committee) with a view to its consideration at the Committee's 36<sup>th</sup> session when it will discuss the second report of the Hong Kong Special Administrative Region (HKSAR), annexed to the combined fifth and sixth periodic reports of China<sup>1</sup> under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, or the Convention).

CEDAW was extended to Hong Kong on 14 October 1996 by the United Kingdom. On 1 July 1997 the People's Republic of China resumed sovereignty over Hong Kong and since that date CEDAW has continued to apply to Hong Kong with seven reservations and declarations.<sup>2</sup>

Amnesty International launched a global campaign on violence against women in March 2004 and its Hong Kong section has been campaigning on this issue, in particular against gender-based violence in the family, using the framework of the government's duty of due diligence, and in collaboration with women's groups.

This submission offers the Committee further information about the 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. It is by no means a comprehensive report on the situation of women in Hong Kong. Instead, we hope this briefing will supplement other reports submitted to the Committee by NGOs concerning abuses faced by women in Hong Kong.

Concerns have been expressed by treaty bodies, including the Committee, on the issue of gender-based violence in the home in Hong Kong. In its concluding observations on China's combined 3<sup>rd</sup> and 4<sup>th</sup> reports, which included the first report on the HKSAR, in 1999 the Committee recommended that the HKSAR government introduce "enhanced services for survivors of domestic violence... with a view to their empowerment and rehabilitation,

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<sup>1</sup> UN Doc. CEDAW/C/CHN/5-6.Add.1, 14 June 2004.

<sup>2</sup> See <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> for the seven declarations and reservations made by the Government of the People's Republic of China in respect to the application of the Convention to the Hong Kong Special Administrative Region.

including through psychological counselling, legal aid, temporary shelter and appropriate health services”.<sup>3</sup> The Committee also recommended that the Chinese government consider “extending an invitation to the Special Rapporteur on Violence against Women, its causes and consequences, to visit China and all its provinces”.<sup>4</sup>

Similarly, the Human Rights Committee expressed concerns about gender-based violence in the family in its concluding observations on Hong Kong’s second report under the International Covenant on Civil and Political Rights in 2006. It stated that its “concerns persist, including regarding the handling of cases by the police and the funding of social services to assist the victims” and therefore recommended that “(t)he HKSAR should make sure that police officers receive proper training to deal with cases of domestic violence and ensure adequate allocation of resources for protection and provision of assistance to the victims.”<sup>5</sup>

Section I of this submission provides background information on the prevalence of gender-based violence in the home and major developments on this issue. Section II presents the following concerns regarding the HKSAR’s compliance with specific articles of the Convention:

**Article 2: Law and Policy Measures**

1. Failure to provide constitutional prohibition of discrimination against women;
2. Failure to introduce suitable legislation to combat gender-based violence in the home;
3. Failure of the criminal justice system to ensure justice for victims of gender-based violence in the home;
4. Court procedures have increased the chances of intimidation by perpetrators against victims who undertake legal proceedings;
5. Failure to ensure reparations for victims and inadequate and poor quality of resources for victims to restore physical and mental integrity;
6. Lack of centralization and aggregation of statistical information;
7. Scarce resources for measures to combat gender-based violence in the home;
8. Discriminatory policies towards marginalized groups of women create conditions favourable to gender-based violence;
9. Lack of measures to ensure that public awareness-raising programs adequately incorporate the specificities of gender-based violence;

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<sup>3</sup> *Concluding Observations of the Committee on the Elimination of Discrimination against Women: China*, UN Doc. A/54/38, paras. 251-336 (1999), at para. 324.

<sup>4</sup> *Ibid.*, para. 287.

<sup>5</sup> *Concluding Observations of the Human Rights Committee: Hong Kong Special Administrative Region*, UN Doc. CCPR/C/HKG/CO/2, 30 March 2006, para. 16, available at: [http://www.hab.gov.hk/file\\_manager/en/documents/policy\\_responsibilities/the\\_rights\\_of\\_the\\_individuals/ConcludingObservationsICCPR2.doc](http://www.hab.gov.hk/file_manager/en/documents/policy_responsibilities/the_rights_of_the_individuals/ConcludingObservationsICCPR2.doc)

Article 3: **Guarantee of basic human rights and fundamental freedoms**

10. 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.

Article 7: **Political and public life**

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

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 recommendations contained in the Committee's concluding observations on Hong Kong's First Report.

## **SECTION I BACKGROUND INFORMATION**

### *Prevalence of gender-based violence in the home*

While the HKSAR government admits domestic violence is "one of the most acute social problems,"<sup>6</sup> official statistics fail to provide an accurate picture of the prevalence of gender-based violence in the home. According to statistics compiled by the Hong Kong Police, there were 1,274 spouse battering cases in 2005.<sup>7</sup> The Central Information System on Battered Spouse Cases and Sexual Violence Cases (CISBSSV), maintained by the Social Welfare Department, recorded 3,598 newly reported cases of battered spouses and sexual violence in 2005 of which 3,155 cases (87.7 per cent) were committed by husbands, separated/divorced husbands, male cohabitants, or boyfriends. The same set of statistics also records 3,023 cases (84 per cent) of physical abuse, 8 (0.2 per cent) cases of sexual abuse, 351 (9.8 per cent) cases of psychological abuse, and 216 (6 per cent) cases of multiple types of abuse.<sup>8</sup>

However, Harmony House, an NGO that specializes in gender-based violence in the family recorded that they received 10,475 calls to their helpline in 2005.<sup>9</sup> This figure is almost 3 times higher than the CISBSSV figure and 8 times higher than that of the police. Moreover, a territory-wide survey conducted between December 2003 and August 2004 found that an average of 9.6 per cent of 5,049 respondents said they had been battered by their spouses

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<sup>6</sup> Second Report, *supra* note 1, Preface, para. 32.

<sup>7</sup> Hong Kong's population is 6.8 million. Letter from the Security Bureau of the Hong Kong Special Administrative government to the office of Legislative Councilor Dr Hon Fernando CHEUNG Chiu-hung, 15 May 2006.

<sup>8</sup> Social Welfare Department website: <http://www.swd.gov.hk/ys/english/stat.html>

<sup>9</sup> Harmony House Web site: [http://www.harmonyhousehk.org/chi/statimage/stat1\\_hotline\\_chi.htm](http://www.harmonyhousehk.org/chi/statimage/stat1_hotline_chi.htm)

during the previous 12 months. A relatively higher proportion of female respondents claimed to be victims of abuse.<sup>10</sup> The higher number of cases recorded by this survey and Harmony House, as compared with official statistics may be a result of ineffective public policies to combat gender-based violence in the family, a situation which may have resulted in reluctance by victims to report their cases to public authorities.

#### *Major developments*

The Domestic Violence Ordinance (Cap. 189) was passed in 1986. In 2000, the Law Reform Commission of Hong Kong, the body in charge of considering legal reforms on matters referred to it by the Secretary for Justice or the Chief Justice of the Court of Final Appeal, produced a report on stalking and recommended reforming the Domestic Violence Ordinance to provide greater protection for women.<sup>11</sup> In another report in March 2005, the Law Reform Commission reiterated its recommendations from 2000, particularly in light of recent reforms made to the UK legislation on which Hong Kong's Domestic Violence Ordinance is based.<sup>12</sup>

The killing of Jin Shu-ying, also called Kam Shuk Ying, (金淑英) and her two daughters by her husband on 11 April 2004 has created public pressure on the government to revisit the law and public policies on domestic violence. The resulting coroner's court verdict, released on 5 September 2005, recommended strengthening public education and training of personnel handling cases of violence in the family. It further recommended that the police end the practice of downgrading emergency cases prior to conducting full investigations and also stop mediating when handling cases of domestic violence.

Subsequently in the 2005 and 2006 Policy Addresses, the chief executive of the HKSAR pledged to allocate more resources to government departments and non-governmental service organizations for ensuring better coordination of services for victims and training in handling family crises.<sup>13</sup>

A study reviewing social and legal measures related to domestic violence was commissioned by the government and made public in June 2005.<sup>14</sup> It echoed the Law Reform Commission's recommendations to revise legislation related to domestic violence.

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<sup>10</sup> Chan, Ko Ling, *Study on Child Abuse and Spouse Battering: Report on Findings of Household Survey*, June 2005, pp. 48, 53. 9.81 per cent of women claimed to be victims of minor physical abuse whereas the figure for male was 8.75; 4.58 per cent of female respondents claimed to have been severely abused by their spouse whereas the figure for male was 3.14.

<sup>11</sup> Law Reform Commission of Hong Kong, *Stalking*, October 2000, <http://www.hkreform.gov.hk/reports/rstalk-e.pdf>

<sup>12</sup> Law Reform Commission of Hong Kong, *Child Custody and Access*, March 2005, pp. 254-265, <http://www.hkreform.gov.hk>

<sup>13</sup> For more details, see Chief Executive's Policy Address 2005 and 2006. Available at: <http://www.policyaddress.gov.hk/2005/eng/pdf/agenda3.pdf> and <http://www.policyaddress.gov.hk/05-06/eng/p45.htm>

<sup>14</sup> Chan, Ko Ling, *Peace at Home: Report on the Review of the Social and Legal Measures in the Prevention and Intervention of Domestic Violence in Hong Kong*, June 2005

The Women's Commission, the main body responsible for developing women-focused policy, issued a report on domestic violence in January 2006 and put forward a multi-dimensional strategy to tackle domestic violence. Again, it recommended revising the relevant legislation.<sup>15</sup>

Following these recommendations, the government finally announced its intention to amend the Domestic Violence Ordinance.<sup>16</sup> However, the proposed amendment, which would expand the scope of the definition of violence to include psychological and sexual abuse and the coverage of the Ordinance to include divorcees and ex-cohabitants, has addressed only some of the problems with the existing law. It still fails to incorporate the framework of due diligence to prevent, investigate and punish violence against women and ensure reparation to victims, as will be outlined in Section II of this submission. It also remains unclear when the amendment will be introduced.

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<sup>15</sup> Women's Commission, *Women's Safety in Hong Kong: Eliminating Domestic Violence*, January 2006, <http://www.women.gov.hk/download/report-full-version-10-jan-06.pdf>

<sup>16</sup> Health, Welfare and Food Bureau, *Paper submitted to Legislative Council's Subcommittee on Strategy and Measures to Tackle Family Violence*, (in Chinese), LC Paper No. CB(2)1439/05-06(02), 28 March 2006, <http://www3.news.gov.hk/ISD/ebulletin/en/category/ontherecord/051013/html/051013en11002.htm>

## **SECTION II CONCERNS REGARDING COMPLIANCE WITH SPECIFIC ARTICLES OF CEDAW**

### **Article 2: Law and Policy Measures**

#### 1. Failure to provide constitutional prohibition of discrimination against women

Article 25 of the Basic Law, Hong Kong's 'mini constitution', provides that "[A]ll Hong Kong residents shall be equal before the law" but the Basic Law does not explicitly prohibit discrimination against women. The lack of such a prohibition was one concern raised by the Committee in its concluding observations in 1999, which included a recommendation for the adoption of a constitutional definition of direct and indirect discrimination.<sup>17</sup> However, until today, the government has still not taken the necessary steps to implement this recommendation.

**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.**

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

The government has failed to exercise due diligence to combat gender-based violence in the home. In particular, there is inadequate legal protection to prevent, investigate and punish this kind of abuse and ensure adequate remedies to the victims. Legal protection available to victims of violence in the home is fragmented and found in three separate ordinances: the Crimes Ordinance (Cap 200), the Offences against the Person Ordinance (Cap 212) and the Domestic Violence Ordinance (Cap 189). The first two laws are part of the criminal justice system and the last is a civil statute which allows a woman to seek a three-month injunction against her husband (extendable to six months).

In its concluding observations in 1999, the Committee expressed concerns about the narrow application of the Domestic Violence Ordinance to cases of physical abuse in marital relationships.<sup>18</sup> Injunction relief under the Ordinance is available only to married persons and when a man and a woman are living together. The remedies are not available once the spouses are divorced or living apart, or once cohabitation has ended. Victims of stalking or other non-physical abuse cannot invoke the Ordinance to seek judicial protection. Although the government announced that the scope of application of the Domestic Violence Ordinance would be expanded, it has not yet announced a clear schedule for revising this outdated legislation.

At present, injunction orders, once granted, are only valid for three months and applicants

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<sup>17</sup> *Supra* note 3, paras. 315-316.

<sup>18</sup> *Ibid.*, para. 323.

must go to court to apply for extensions. Amnesty International has heard from survivors of gender-based violence in the family that three months is not long enough for them to start a new life including moving to a new residence, changing schools for their children, etc.

Breach of an injunction granted under the Ordinance is not a criminal offence. Although the Domestic Violence Ordinance enables the court to attach a power of arrest to injunctions which restrain the abusers from using violence against the applicants and their children, the court may exercise this power only if the abusers have caused actual bodily harm to the victims or their children and are likely to cause such harm again. The court cannot attach a power of arrest if the abusers have merely threatened to cause bodily harm to the applicants or their children. Furthermore, a power of arrest may be exercised only in exceptional situations when an abuser persistently disobeys injunctions and harasses the other party and other concerned parties. Amnesty International is concerned that the existing legislation does not provide adequate protection to victims of abuse.

Applying for injunctions requires applicants to spend considerable time and resources. Applicants who are financially dependent could theoretically seek assistance from the Legal Aid Department. From 2002 to 2004, however, there were only 96 successful legal aid applications for injunction under the Domestic Violence Ordinance out of a total of 187 applications.<sup>19</sup> For the legal aid application to be successful, police records on the handling of the case must be provided. This is particularly detrimental for victims who have suffered psychological abuse as police in Hong Kong will normally drop cases of non-physical abuse.

**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.**

**The organization also 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 legislation should also enable the court to take into account the full facts of the case and potential for harm to the applicant when considering whether to attach a power of arrest to an injunction.**

**In light of the problems associated with frontline law enforcement agencies, which will be discussed below, 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.**

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<sup>19</sup> Legislative Council, Legco CB(2)1725/05-06

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

The attitude of police when handling cases of gender-based violence in the home continues to be a serious concern. Amnesty International has received testimonies from many survivors who were persuaded by the police to drop their cases or never had their cases filed. The tragic death of Jin Shu-ying, also called Kam Shuk Ying, (金淑英) demonstrates the insensitivity of personnel who work directly with female victims. As a new immigrant from Mainland China married to a Hong Kong resident, Jin faced an additional layer of discrimination based on her place of origin. Jin had repeatedly requested assistance from the police and a government-run shelter before she and her two daughters were killed by her husband.<sup>20</sup>

*Jin first reported to the police on 15 February 2004 that she suspected her husband had indecently assaulted her daughters.<sup>21</sup> Her husband denied the charge, claiming that he had accidentally hurt her daughters when he bathed them.<sup>22</sup> Jin then approached the Tin Shui Wai (North) Integrated Family Service Centre (TSW(N)IFSC) of the International Social Service on 18 February 2004 to seek assistance<sup>23</sup> On 19 February 2004, her case was passed on to the Family and Child Protection Services Unit (New Territories West) (FCPSU(NTW)) under the Social Welfare Department (SWD) for investigation and temporary accommodation at the Wai On Home for Women, a government-run shelter, was arranged for Jin and her daughters.<sup>24</sup>*

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<sup>20</sup> The following account is based on a number of documents including: 1/ Jin Shu-ying's death inquest at Coroner's Court: *Report of the Coroner's Court of the Hong Kong Special Administrative Region, Death Inquest No. 642-644 & 705 of 2004*, Hearing date: 5 September 2005 at 9:42am; 2/ various press reports on the Coroner's report: "死因庭：家庭暴力零容忍 裁定三母女被殺 狠夫自殺," 《成報》, 2005年9月6日. ("Coroner's Report: Zero Tolerance to Domestic Violence," *Sing Pao Daily News*, September 6, 2005). Available at: [http://www.singpao.com/20050906/local/755932\\_main.html](http://www.singpao.com/20050906/local/755932_main.html); "裁定三母女非法被殺陪審團建議 警須徹底調查 家庭暴力," 《蘋果日報》, 2005年9月6日. ("Coroner's Report Recommends Police to thoroughly Investigate Domestic Violence Cases," *Apple Daily*, September 6, 2005.); 3/ Social Welfare Department and the Hong Kong Police reports to the Legislative Council: *Brief Report on the Tin Shui Wai Family Tragedy*, Legislative Council, Panel on Security and the Panel on Welfare Services, Paper No. CB(2)2131/03-04(02), 26 April 2004, available at: <http://www.legco.gov.hk/yr03-04/english/panels/ws/papers/sews0426cb2-2131-2e.pdf>, and *Further Report on the Tin Shui Wai Family Tragedy*, Legislative Council, Panel on Security and the Panel on Welfare Services, Paper No. CB(2)2445/03-04(02), May 2004, available at: <http://www.legco.gov.hk/yr03-04/english/panels/ws/papers/sews0524cb2-2445-2e.pdf>

<sup>21</sup> This incident was only reported in the news report. It is absent from the report given by the Hong Kong Police and the Social Welfare Department to the Legislative Council. See "死因庭：家庭暴力零容忍 裁定三母女被殺 狠夫自殺," 《成報》, 2005年9月6日. ("Coroner's Report: Zero Tolerance to Domestic Violence," *Sing Pao Daily News*, September 6, 2005). Available at: [http://www.singpao.com/20050906/local/755932\\_main.html](http://www.singpao.com/20050906/local/755932_main.html)

<sup>22</sup> *Ibid.*

<sup>23</sup> *Further Report on the Tin Shui Wai Family Tragedy*, Legislative Council, Panel on Security and the Panel on Welfare Services, Paper No. CB(2)2445/03-04(02), May 2004, para. 2.

<sup>24</sup> *Brief Report on the Tin Shui Wai Family Tragedy*, Legislative Council, Panel on Security and the Panel on Welfare Services, Paper No. CB(2)2131/03-04(02), 26 April 2004, paras. 3-4.

*The police and the SWD claimed that Jin's complaint on the alleged child abuse was referred to the police on 20 February 2004.<sup>25</sup> They also claimed to have conducted a joint investigation which found insufficient evidence to support the alleged abuse.<sup>26</sup> On 24 February 2004, Jin returned home with her two daughters,<sup>27</sup> but she resumed residing at the shelter between 28 February and 6 March 2004.<sup>28</sup>*

*Jin made several complaints about her husband's threatening behaviour to her caseworker from FCPSU(NTW), between 19 February and 18 March.<sup>29</sup> However, as the case worker could not find the knife that Jin had claimed her husband would use to kill her, she disregarded any immediate danger faced by Jin.<sup>30</sup>*

*On 5 March 2004, a multidisciplinary case conference, attended by social workers, a police officer and others was held.<sup>31</sup> The Coroner noted the failure of the participants in that meeting to consider the abuse aspect of the case which inevitably led to the downgrading of the case by referring it away from a unit specifically trained to deal with violence in the family, and back to the TSW(N)IFSC.<sup>32</sup>*

*The social worker at TSW(N)IFSC reportedly counselled Jin and her husband together in an attempt to improve their marital relationship, according to workers of a survivors' group which worked closely with Jin's friends in the shelter.*

*On 9 April 2004, Jin made a 999 emergency call as she claimed her husband intended to beat her up.<sup>33</sup> Two police officers attended the scene<sup>34</sup> and found Jin at home having a dispute with her husband, according to the police statement.<sup>35</sup> The senior officer spoke firstly to Jin's husband rather than to the complainant Jin,<sup>36</sup> who, according to the police, told the police officers that she had stepped on some broken glass during the dispute.<sup>37</sup> The senior officer also violated police guidelines by making the inquiry in the presence of both parties.<sup>38</sup> After a short period of time, the senior officer decided to dismiss the emergency unit vehicle which he could have used to send Jin's husband to the police station.<sup>39</sup> Jin went to hospital accompanied by the*

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<sup>25</sup> *Ibid.*, para. 4.

<sup>26</sup> *Ibid.*, paras. 4-5.

<sup>27</sup> *Ibid.*, para. 4.

<sup>28</sup> *Report of the Coroner's Court of the Hong Kong Special Administrative Region, Death Inquest No. 642-644 & 705 of 2004*, Hearing date: 5 September 2005 at 9:42am, p. 12

<sup>29</sup> *Ibid.*, p.6

<sup>30</sup> *Supra* note 21

<sup>31</sup> *Supra* note 28, p. 11.

<sup>32</sup> *Ibid.*, p. 12-13.

<sup>33</sup> *Ibid.* p. 13.

<sup>34</sup> *Ibid.*, p. 13.

<sup>35</sup> *Supra* note 24, para. 7.

<sup>36</sup> *Supra* note 28, p. 13.

<sup>37</sup> *Supra* note 24, para. 7.

<sup>38</sup> *Supra* note 28, p. 13.

<sup>39</sup> *Ibid.*, p. 13.

two police officers, who left after an attempt to mediate and before speaking to the attending doctor.<sup>40</sup> Jin told the doctor that her husband had hit her head and face, which made the Coroner wonder why Jin was reluctant to tell the same story to the police officers.<sup>41</sup> After receiving medical treatment, Jin was readmitted to the shelter, but left her two daughters at home.<sup>42</sup>

On April 11, Jin received a phone call from her husband, who told her that she would not be able to see her daughters again if she did not return home.<sup>43</sup> She went to the Tin Shui Wai police station, hoping that a police officer could accompany her home to ascertain the safety of her children.<sup>44</sup> However, the police officer on duty chose not to provide any police escort for Jin to return to her home. According to the police statement, this was based on the information Jin gave him at the time.<sup>45</sup> The police officer reportedly asked Jin to seek help from her social worker and did not record Jin's enquiry although he was obligated to do so.<sup>46</sup> That evening, Jin's husband called the police, claiming that he had been stabbed by Jin. When the police arrived at his home, Jin and her two daughters had already died and her husband was injured. The inquest into the death determined that Jin and her daughters had been unlawfully killed by her husband through the infliction of multiple stab wounds. Her husband later died as a result of multiple self-inflicted stab-wounds.<sup>47</sup>

After this tragedy, the police began to recognize the need for training in handling domestic violence cases. A police officer told Amnesty International that such training tends to focus on procedures without providing information about the rationale behind these procedures. Amnesty International believes that proper training is necessary to ensure that police officers are fully aware of the ways that gender-based violence occurs and persists with impunity, and know how to respond efficiently and effectively. This is vital in supporting the victims when pursuing their cases and in bringing the abusers to justice.

Prosecution rates remain low. Out of 1,274 cases of spouse battering recorded by the police in 2005, 1,159 people were arrested because of criminal acts such as murder, assault, etc. Only 234 were prosecuted of which 118 were subsequently convicted, accounting for only 10 per cent of all alleged perpetrators of reported cases.<sup>48</sup>

**Amnesty International believes that the HKSAR government should provide training for all personnel who have contact with victims, including law enforcement officials and**

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<sup>40</sup> *Ibid.*, p. 13.

<sup>41</sup> *Ibid.*, p. 14.

<sup>42</sup> *Supra* note 24, para. 7.

<sup>43</sup> *Supra* note 21

<sup>44</sup> *Supra* note 23, para. 10.

<sup>45</sup> *Ibid.*, para. 10.

<sup>46</sup> *Supra* note 21

<sup>47</sup> *Supra* note 28, p. 18-19.

<sup>48</sup> *Supra* note 7.

**social workers, and enable them to deal efficiently and effectively with reports of gender-based violence in the family, particularly in cases where a variety of staff from different professions must cooperate effectively to secure the safety of women at risk of violence. There should be a particular focus on how to detect and manage crisis situations to secure the safety of women.**

**The organization urges the police to take full responsibility for initiating prosecutions and not to rest it with victims subjected to gender-based violence in the family.**

**All personnel who work with victims of gender-based violence in the family should inform the victims of their rights to seek redress through the criminal justice system.**

**The existing practice of having one social worker represent all parties in the family reportedly often leads the social worker to decline to believe one side of the story and to mediate for family reconciliation instead of informing victims of family violence of the possibility of having a new life, Amnesty International recommends that separate social workers represent different interests in a family in dispute, with the aim of ensuring victims are provided with necessary impartial and professional support.**

4. Court procedures have increased the chances of intimidation by perpetrators against victims who undertake legal proceedings

One reason that female victims of gender-based violence in the family are reluctant to come forward to report their cases is that they do not find the current system helpful. The court system in Hong Kong separates the family courts from the criminal and civil courts. One court does not necessarily need to consider evidence submitted to other courts. When different courts address the criminal and civil aspects of a single case, there may be more opportunities for the perpetrators to meet and possibly intimidate the victims. Fear of retaliation is one reason why women decide to drop charges against perpetrators, according to a Hong Kong study on violence in the family.<sup>49</sup> The existence of separate court procedures also creates logistical and other difficulties for women who need to attend different courts in an effort to resolve issues arising from the same case. An NGO worker told Amnesty International that they frequently come across cases where victims of gender-based violence are subjected to further distress when the perpetrators exercise their rights to access their children granted by the courts.

**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.**

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<sup>49</sup> *Supra* note 14

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

Victims of human rights violations have the right to a remedy, which includes the restoration, to the greatest extent possible, of the original situation before the violation occurred; proportional compensation; medical, psychological and social services geared toward rehabilitation; and guarantees of non-repetition and future prevention.

However, assistance available to victims of violence in the family is limited and decisions about access to assistance are subject to discretion. For instance, there are only four shelters in Hong Kong, providing around 170 places which is a starkly inadequate number for a population of 6.8 million. Women in need complain of inadequate legal and psychological support from social workers and often feel isolated and confused.<sup>50</sup> According to some social service organizations, their heavy workload and increasingly limited resources affect their ability to respond effectively. They are prevented from offering additional victim support services as they struggle to find adequate time and funding.<sup>51</sup>

Victims of violence in the family are eligible for public housing under the Compassionate Rehousing Scheme upon recommendation from the Director of Social Welfare. In practice, however, it is reportedly often difficult for victims to benefit from this assistance due to the attitudes of some social workers. Some survivors told Amnesty International that they have felt humiliated by social workers who believed they were asking for special privileges when they requested rehousing.

Policy on monetary assistance for single-parent families provided under the Comprehensive Social Security Assistance (CSSA) scheme has recently been modified. A trial employment assistance project, the “New Dawn Project”, was introduced in April 2006. Single-parents are now required to seek employment when their youngest children reach 12 to 14 years of age. CSSA single-parent allowance recipients are required to seek and engage in paid employment for no less than 32 working hours a month.<sup>52</sup> Failure to comply will result in a HKD200 (about 25 USD) deduction from a parent’s monthly CSSA allowance.<sup>53</sup> Special family circumstances, such as recent bereavement or violence in the family, may allow exemption from this scheme and a social worker’s recommendation for exemption may be required.<sup>54</sup> Although the new practice allows victims of violence in the family to obtain exemptions, Amnesty International believes that the procedure to obtain recommendations from social workers demands that social workers are fully aware of the victims’ needs, including the need to restore physical and mental integrity after being subjected to violence. Otherwise, further distress may be created due to inadequate awareness and assessment by the social workers.

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<sup>50</sup> *Supra* note 11, p.34

<sup>51</sup> *Ibid.*

<sup>52</sup> Social Welfare Department, [http://www.swd.gov.hk/en/index/site\\_thematic/#58](http://www.swd.gov.hk/en/index/site_thematic/#58)

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

The Employment Ordinance has no provisions to protect women from dismissal by their employers when they are absent from work because they are staying in shelters.

Victims of gender-based violence in the family can initiate civil litigation to claim compensation for damages caused by the violence. Where victims are even aware of these rights, pursuing such additional legal proceedings requires considerable energy and resources. . There is a lack of alternative 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 is concerned that the Domestic Violence Ordinance, which deals with application for injunction orders, has no provision for judicial measures to guarantee and strengthen the right of survivors of gender-based violence to receive fair and adequate reparation. It is also worth noting that survivors often have difficulties obtaining support from their former husbands.

**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.**

**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.**

#### 6. Lack of centralization and aggregation of statistical information

The Committee has emphasised that “statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention,”<sup>55</sup> The Social Welfare Department and the police maintain separate databases and use different methodologies, and no centralized body collates them in standardized form, which results in statistical discrepancies and duplication of research efforts. For instance, the Social Welfare Department recorded 3,598 cases of battered spouses and sexual violence in 2005 whereas the police recorded 1,274 cases during the same period. While there may be a need to distinguish between the two bodies and the practice of maintaining separate databases and employing different methodologies may be justified, the lack of a centralized database which aggregates the data from these different databases will adversely affect decision-making and policy-making efforts in the areas of crime prevention and the need for services.

There is an inadequate breakdown of publicly available official statistics, making it difficult to conduct further analysis. For example, statistics on sexual assault only provide the crime rates for rape and indecent assault. Other important information, such as rates of reporting,

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<sup>55</sup> *General Recommendation No. 9, Statistical data concerning the situation of women* (eighth session, 1989).

prosecution and conviction, as well as the rates and reasons why cases are discontinued at each stage (police, prosecutor, etc), are not included.<sup>56</sup> Assessment of reasons for discontinuing a case should look at the points of view of the victim as well as the official, in order to assess the reasons why cases do not progress. For instance, where the victim is unwilling to give evidence and withdraws, her reasons for withdrawing should be sought, in order to identify if other issues (e.g. threats to safety) are coming into play. Well-documented analysis of such information is crucial for assessing the effectiveness of the criminal justice system in combating violence against women, protecting the safety of victims and bringing perpetrators to justice. Without detailed statistical information and thus an adequate understanding of the situation, it is difficult to design effective intervention programs and policies.

**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. Statistics should be disaggregated to differentiate between different acts of gender-based violence, for example distinguishing between violence committed against women by their partners or former partners and other forms of violence.**

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

The government has budgeted an extra HKD 22 million (USD 2.8 million), bringing the total amount of available funds to HKD 30 million (USD 3.9 million) for 2006-2007, in order to recruit additional staff to implement family support projects which aim to reach out to families in urgent need of intervention because of violence in the family but unwilling to seek help.<sup>57</sup> This sum, however, is used to employ social workers in family centres which 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.**

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

Since 1 January 2004, residents above the age of 18 who have resided in Hong Kong for less than seven years have not been eligible for welfare assistance under the Comprehensive Social Security Assistance (CSSA) scheme. This policy shift resulted from a report prepared by the Task Force on Population Policy which pointed out that from 1997 to 2001, 93 per cent of Hong Kong's population increase could be attributed to new arrivals from Mainland China

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<sup>56</sup> Census and Statistics Department, *Hong Kong Annual Digest of Statistics: 2005 Edition*, 2005, p.344–346.

<sup>57</sup> Meeting document for the Subcommittee on Strategy and Measures to Tackle Family Violence, Panel on Welfare Services, Hong Kong Legislative Council on 23 May 2006, [http://www.legco.gov.hk/yr05-06/chinese/panels/ws/ws\\_fvi/papers/ws\\_fvi0523cb2-2074-1c.pdf](http://www.legco.gov.hk/yr05-06/chinese/panels/ws/ws_fvi/papers/ws_fvi0523cb2-2074-1c.pdf)

under the One-Way Permit Scheme. This scheme allows children and spouses of Hong Kong residents to settle in Hong Kong for the purpose of family reunion.<sup>58</sup> In 2003, 87.4 per cent, and in 2004, 86.6 per cent, of one-way permit holders were women aged 20 to 59.<sup>59</sup> At the end of December 2002, approximately 48 per cent of CSSA recipients had lived in Hong Kong for less than seven years.<sup>60</sup> Therefore, the new residence requirement has primarily affected newly arrived women who have been deprived of their rights to social welfare. This leaves them financially dependent on their husbands making it difficult for them to leave abusive relationships. The Women's Commission has failed to advise the government to end this discriminatory policy against newly arrived women, despite the Commission's primary responsibility to promote the well-being of women.

**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.**

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

The Social Welfare Department has conducted two levels of public education on domestic violence: (i) publicity campaigns using posters, billboards, bookmarks and beer mats; and (ii) family life education conducted by government-sponsored NGOs to enhance family functioning and strengthen family relationships. The stated major objectives of these public education and publicity programs include promoting positive life values as well as strengthening families and enhancing the ability to cope with stress in order to prevent abuse and violence.<sup>61</sup> Messages contained in these educational materials indicate that violence in the family results from the inability to relieve stress in an appropriate way, failure to cope with life difficulties in a positive manner, and discord in family relationships. These public education measures assume that violence is an individual act that is not gender-based and fail to address gender inequality as a root cause of such violence.

**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.**

<sup>58</sup> Task Force on Population Policy, *Report of the Task Force on Population Policy*, 2003, p. ii, <http://www.info.gov.hk/gia/general/200306/03/0603160.htm>

<sup>59</sup> Census and Statistics Department, *Hong Kong Annual Digest of Statistics: 2005 Edition*, 2005, p. 11

<sup>60</sup> Health, Welfare and Food Bureau, *Paper submitted to Legislative Council's Panel on Welfare Services: Residence Requirements for Comprehensive Social Security Assistance and Social Security Allowance*, Paper No. CB(2)734/03-04(01), 18 December 2003, Annex I. p. 7, <http://www.legco.gov.hk/yr03-04/english/panels/ws/papers/ws1218cb2-734-1e.pdf>

<sup>61</sup> Social Welfare Department Web site, [http://www.swd.gov.hk/vs/english/promote\\_new.html](http://www.swd.gov.hk/vs/english/promote_new.html)

### Article 3: Guarantee of basic human rights and fundamental freedoms

10. 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 Women's Commission (the Commission), established in January 2001, is the "central mechanism" responsible for advocating gender mainstreaming.<sup>62</sup> Its authority over other bureaux and departments is handicapped by its position under the Health, Welfare and Food Bureau. Without the assistance and cooperation of other bureaux or departments, gender mainstreaming efforts are likely to fail.

No information on the budget for gender mainstreaming is provided in the Commission's annual reports, nor has it asked the bureaux and departments to set budgets for gender mainstreaming.

Since 2002, the Commission has established a gender mainstreaming checklist, in the form of a questionnaire, for policymakers to use as a tool to implement gender mainstreaming.<sup>63</sup> Policymakers have been advised to consult frontline workers when completing the questionnaire. Frontline workers are provided a self-learning manual which has reference materials on the concept of gender mainstreaming,<sup>64</sup> but there are still concerns about whether this new concept is adequately understood and the materials are not available for public monitoring.

Amnesty International welcomes the government's efforts to implement gender-mainstreaming but believes that the lack of a comprehensive gender audit<sup>65</sup> significantly undermines these efforts. A gender audit, analysing the overall situation of women would act as a benchmark against which progress could be comprehensively evaluated. . The checklist only requires yes or no answers without requiring more detail that explains the situation or the underlying rationale of policies.<sup>66</sup>

Only six bureaux and seven departments have been involved in examining 19 policies between 2002 and 2006.<sup>67</sup> The Commission's claim that it must implement gender mainstreaming "incrementally"<sup>68</sup> stems from its lack of authority to ensure the cooperation of other government departments.

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<sup>62</sup> Women's Commission, *Gender Mainstreaming - Hong Kong Experience*, 2006, pp. 5, 8, 11

<sup>63</sup> *Ibid.*, p. 13

<sup>64</sup> *Ibid.*, p. 54

<sup>65</sup> The Association for the Advancement of Feminism, a local women organization, produced a report in 2001 on implementing gender mainstreaming in Hong Kong, entitled, *Gender Mainstreaming – A New Milestone in Women's Affairs* (in Chinese), it has also recommended that the Women's Commission conduct a gender audit.

<sup>66</sup> *Supra* note 52, pp. 54-60

<sup>67</sup> *Ibid.*, pp. 15, 16

<sup>68</sup> *Ibid.*, p. 14

The Commission's report on gender mainstreaming fails to provide feedback or advice to concerned bureaux and departments to ensure real improvements. For instance, the report submitted by the Social Welfare Department on Family Education Services claims that the Department has addressed the unique needs of women and has increased their access to resources.<sup>69</sup> However, the report and the Women's Commission have failed to critically examine the impact of traditional gender roles that result in greater family responsibilities for women, which can effectively deprive them of the time and space necessary for their own self-development. According to a survey conducted in 2001-2002, women generally spend two more hours than men caring for the family and completing household work every day.<sup>70</sup>

Over 70 senior officials have been designated as resource persons, known as "gender focal points", within government bureaux and departments and have been tasked with promoting gender mainstreaming since 2003. The lack of gender-based analyses in the reports from various bureaux and departments, however, raises doubts about the effectiveness of these resource persons in assisting the implementation of gender mainstreaming in their respective departments. Their role was not evaluated in the 2006 Women's Commission's report on gender mainstreaming.<sup>71</sup>

**Amnesty International believes that the status of the Women's Commission should 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.<sup>72</sup>**

**Amnesty International also believes it is important that the HKSAR government ensure gender mainstreaming in all policies and legislation. It should evaluate the impacts on women and men of all existing policies and laws, and thoroughly assess these likely impacts for all policy and legal reforms before they are implemented.**

**In order to improve existing efforts to implement gender-mainstreaming, Amnesty International recommends the checklist be revised to include more in-depth and open-ended questions in order to stimulate and facilitate the respondents to reflect deeply and broadly into the concerned policy areas.**

**Instead of relying on the self-learning manual on gender-mainstreaming, compulsory training courses on gender mainstreaming should be provided to government officials and civil servants.**

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<sup>69</sup> *Ibid.*, p. 27

<sup>70</sup> Census and Statistics Department. Hong Kong Special Administrative Region Government, *Women and men in Hong Kong - Key Statistics: 2005 Edition*, 2005, p. 110

<sup>71</sup> *Supra* note 52, pp.19 –21

<sup>72</sup> *Supra* note 3, para. 318

**The Women's Commission should review, comment and provide concrete recommendations to government bureaux and departments which have submitted the gender-mainstreaming checklist with an aim to identify areas of improvement in different government structures to mainstream gender into different policies and capacity build these bodies in understanding the impact of public policies and laws to different sexes.**

**“Gender focal points” should provide periodical reports on the progress of the implementation of gender-mainstreaming in their government bureaux and departments. Their reports should be accessible to the public for monitoring.**

**Amnesty International 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 organizations actively to 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**

11. 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:

- 2 of the 11 decision-making bureaux (18.2 per cent) are headed by women;<sup>73</sup>
- 11 of 60 legislators (18.3 per cent) are women;
- 72 women (14 per cent) are now serving as District Councilors in different districts;
- 1,200 women (20 per cent) served on government advisory and statutory bodies in 2002.<sup>74</sup>

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<sup>73</sup> Hong Kong Special Administration Region government Web site, *Organizational Chart of the Government*, [http://www.info.gov.hk/govcht\\_e.htm](http://www.info.gov.hk/govcht_e.htm)

<sup>74</sup> Women's Commission Web site, <http://www.women.gov.hk/eng/issue/issue.html>