

ARTICLE 16  
EQUALITY IN FAMILY LAW

*“1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

*a. The same right to enter into marriage;*

*b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*

*c. The same rights and responsibilities during marriage and its dissolution;*

*d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases the interests of the children shall be paramount;*

*e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*

*f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*

*g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;*

*h. The same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.*

*2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an*

*official registry compulsory.”*

## **Rights in respect of Marriage and Family**

### Hong Kong Bill of Rights and Basic Law

325. Article 19 of the Hong Kong BOR guarantees the rights in respect of marriage and family. The Article provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State; the right of men and women of marriageable age to marry and to found a family shall be recognised; no marriage shall be entered into without the free and full consent of the intending spouses; spouses shall have equal rights and responsibilities as to marriage, during marriage and at its dissolution and that in the case of dissolution, provision shall be made for the necessary protection of any children. Article 37 of the Basic Law provides that the freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law.

### Marriage Ordinance

326. As mentioned in paragraphs 177 – 180 of the Initial Report, the right of men and women to enter into monogamous marriage with their full and free consent is guaranteed under the Marriage Ordinance. Bigamy was rendered illegal under the Offences against the Person Ordinance. The Marriage Ordinance also provides that the marriageable age is 16 and for marriage under the age of 21, consent of a parent, guardian or a District Judge is necessary.

### Legislation regarding Maintenance and Property Rights

327. The Separation and Maintenance Orders Ordinance and the Matrimonial Proceedings and Property Ordinance provide for the court to make orders for, among other things, maintenance as well as transfer and settlement of property pending suit for separation, divorce, nullification of marriage, etc. There is no differential treatment between women and men under the Ordinances.

## **Recovery of Maintenance**

### Maintenance Orders

328. The divorced / separated persons can either reach a maintenance agreement with their ex-spouses or apply to court for a maintenance order. The Government conducted a thematic household survey in April to June 2001 on the enforcement of order for payment of alimony and found that among those divorced / separated persons interviewed and who were expected to receive maintenance, some 57.2% reported that they had not received maintenance payment in full. Among those who had not received maintenance payment in full, only 10.9% had taken legal actions to recover the maintenance arrears and their most commonly cited reasons were “the amount of maintenance was too little” (25.5%), “thought that the ex-spouse would not pay maintenance” (20.5%), “the ex-spouse was unable to pay maintenance” (18.4%), “unable to contact the ex-spouse” (16.6%) and “application procedures for prosecution too complicated” (16.3%). More than 70% of the maintenance payees are women.

329. Earlier on, an Inter-departmental Working Group reviewed the law and administrative measures affecting persons eligible for maintenance to address the difficulties encountered by maintenance payees. In the report published in May 2000, the Working Group recommended to:

- (a) relax the circumstances in which the court can issue Attachment of Income Orders;
- (b) empower the court to impose a surcharge against defaulting maintenance payers;
- (c) inform non-governmental organisations and professional bodies that cases of maintenance payers failing to notify the payees of changes of address can be reported to the police station nearest to the maintenance payer’s last known address;
- (d) synchronize the procedures in processing applications for the Comprehensive Social Security Assistance and legal aid; and

- (e) undertake publicity and public education on matters relating to maintenance.

330. The improvements to the administrative measures have been implemented. To further facilitate recovery of maintenance, the Attachment of Income Orders (Amendment) Bill was passed in July 2001. An attachment of income order is a court order that requires a maintenance payer's income source (e.g. his / her employer) to deduct maintenance payments from his / her income and pay the deduction direct to the maintenance payee. It is a means for collection of maintenance payments. It enables a maintenance payee to receive payments on time.

331. Relaxation was introduced to the Attachment of Income Order ("AIO") Scheme on 25 January 2002 through legislative amendments. Improvements to the AIO Scheme included relaxation of the circumstances under which the court can issue an AIO, as well as relaxation of the procedures and the time periods to speed up the processing in cases where the court is satisfied that it is fair and reasonable to do so.

332. The Government further introduced the Interest on Arrears of Maintenance Bill in December 2001. The Bill proposes to impose interest on maintenance arrears to compensate maintenance payees for the loss of interest on their savings or for the interest payable by them in respect of the loans they have to obtain as a result of the payer's failure to make full and punctual payment. Consideration is also being given to empower the court to impose, on application of the payee, a surcharge on maintenance arrears in case the payer is found to be of blameworthy conduct of having defaulted repeatedly without reasonable excuse. The Bill is now going through the legislative process.

#### Recovery of Maintenance from Overseas

333. The Maintenance Orders (Reciprocal Enforcement) Ordinance provides for the recovery of maintenance by persons in the HKSAR from persons in reciprocating countries. Again, men and women are being treated the same.

## **Legislation regarding Guardianship, Wardship and Adoption of Children**

### Adoption Ordinance

334. Under the Adoption Ordinance, women, both as parents of the infant to be adopted and as applicants for an adoption order, enjoy the same rights as their male counterparts. With a view to improving local adoption practices in Hong Kong and promoting greater co-operation with other countries in the field of inter-country adoption, legislative amendments will be introduced to the Adoption Ordinance.

### The Guardianship of Minors Ordinance

335. The Guardianship of Minors Ordinance consolidates the law relating to the guardianship of minors. By the provision of the Ordinance, the court, having regard to the minor's welfare, may appoint any person to be the minor's guardian, or make orders in respect of the minor's custody, maintenance and right of access to the minor of either parent. As mentioned in paragraph 184 of the Initial Report, a mother has the same right and authority as a father does under the Guardianship of Minors Ordinance. In case the parents separate or divorce, either parent may apply to court for an order requiring the payment of maintenance for the minor by the parent who does not have custody of the minor.

### Child Abduction and Custody Ordinance

336. The Convention on the Civil Aspects of International Child Abduction, which was signed at The Hague in 1980, provides an effective international mechanism for the swift return home of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights. It aims to establish a consistent approach in handling the civil aspects of the growing number of international child abduction cases. The Child Abduction and Custody Ordinance (the Ordinance) was enacted in May 1997 to implement the Convention after its extension to Hong Kong. The Ordinance took effect on 5 September 1997 and it gives effect in domestic law to the Hague Convention on the Civil Aspects of International Child Abduction. The Ordinance is consistent with Article 11 of the United Nations Convention on the Rights of the Child which provides that

State Parties shall take measures to combat the illicit transfer and non-return of children abroad and, to this end, shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.