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**“Constitutional Adjudication and Substantive Gender Equality in Hong Kong”**

This paper considers the impact of constitutional adjudication on the rights of women in Hong Kong. It examines a small body of case law produced by Hong Kong courts which interprets the right to equality expressed in Article 25 of the Basic Law, Hong Kong’s mini-constitution, and relevant provisions of the Bill of Rights Ordinance – a law which essentially duplicates the 1966 International Covenant on Civil and Political Rights. The courts have also referred to a series of anti-discrimination laws which prohibit direct and indirect discrimination in both the public and private sectors on the grounds of sex, marital status, pregnancy, disability, and family status.

An analysis of these cases sheds light on the theoretical underpinnings of a right to equality in Hong Kong. While much of the courts’ reasoning has been firmly grounded in formal conceptions of equality, more recent decisions have exhibited substantive elements recognizing the existence of power imbalances and indirect discrimination. Hong Kong courts’ general willingness to refer to international human rights instruments - including interpretive materials produced by their monitoring bodies - and comparative constitutional jurisprudence has influenced these developments and pushed the courts toward a richer equality model. This experience has broader comparative value and contributes to a better understanding of the potential – and the limits – of international human rights law for furthering gender equality at the domestic level.

The protection of rights in Hong Kong has been explicitly influenced by international standards. Although the Bill of Rights is the most direct example, other Hong Kong statutes have also implemented international human rights provisions and courts have recognized this connection. In a case challenging discriminatory educational policies, for example, the court relied on the Convention on the Elimination of Discrimination Against Women to flesh out the content of a right to non-discrimination on the basis of sex. Also, the Hong Kong Legislative Council recently passed a race discrimination law which ostensibly entrenches its obligations under the Convention on the Elimination of all Forms of Racial Discrimination.

Obstacles exist, however, and the government has attempted to limit the judiciary’s influence in response to rulings against discriminatory public policies. The UN Committee on the Elimination of Racial Discrimination has expressed concerns about several provisions in the new race discrimination law. The Basic Law’s protection of the rights of “indigenous” Chinese villagers has preserved land policies which discriminate against women. Immigration exceptions in the Bill of Rights, based on reservations to the ICCPR, have allowed discriminatory policies affecting migrant domestic workers.

This paper considers the implications of these issues for feminist objectives in Hong Kong. What is the interplay between these obstacles and the courts’ apparent progression toward a conceptual model of substantive equality and their regard for international

human rights materials? What has been – and remains to be – accomplished through constitutional adjudication in Hong Kong?