GENDER AND THE LAW

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Editorial

This special theme of the GRC newsletter focuses on the intersections between Gender and the Law. The contributors to this edition explore the way gender is shaped by the law in a range of jurisdictions including the PRC, the Philippines, Germany and Hong Kong, exposing the failings of the law in providing redress, whether through a lack of enforcement of existing laws or through the law’s silence in relation to questions of gender.

Jiang discusses the recent controversial case of Li Yan, who beat her husband to death after experiencing sustained domestic violence. Li Yan was sentenced to death. As contextualized by Chia, though the PRC prohibits domestic violence, a lack of regulation, investigation and prosecution risks women, like Li Yan whose complaints went uninvestigated, susceptible to continued violence.

Stereotypical perceptions of women persist in laws and policies, as discussed by Pils in her examination of the Re-education through Labour system. The violence in Masanjia Women’s Labour Camp was largely perpetrated by women guards against women inmates. The notion that women can inflict violence proves to be particularly difficult to reconcile in patriarchal societies where women are seen to be weak.

Mendoza traces the continuing struggle of the women’s movement in the Philippines, examining the development of laws and policies on violence against women and more recently the contentious Reproductive Health Law of 2012, the implementation of which has been temporarily halted following a challenge against the law’s constitutionality.

Significantly, while these contributions highlight the relationship between gender-based violence and the law, focusing on women’s experiences, gender is by no means synonymous with women. The construction of gender in the law is not always clear, although legislation has traditionally perpetuated a sex-based, biological definition, which invariably creates a dichotomy between male and female. The silences of the law can also serve to exacerbate structural violence, whereby social structures serve to harm or disadvantage individuals.

I explore the way in which the transgender individual challenges the gender binary that runs through the law as seen in the recent Hong Kong case of W v Registrar of Marriages. The Court of Final Appeal granted W the right to marry her male partner, but the case exposes the reluctance of society to accept the authenticity of a post-operative transgender individual’s gender identity. In the absence of any specific laws against discrimination on the basis of sexual orientation or specifically on LGBT (Lesbian, Gay, Bisexual and Transgender) rights, W relied on the courts to provide redress, but the successful outcome of the case was by no means certain.

Laws and policies on gender equality may provide some level of protection if enforced. In Hong Kong, the Basic Law and the Bill of Rights Ordinance include the principle of non-discrimination on the basis of sex. Further, the Sexual Discrimination Ordinance (SDO) provides protection against direct and indirect sexual discrimination and pregnancy discrimination. The Equal Opportunities Commission (EOC) is the body responsible for monitoring anti-discrimination legislation in Hong Kong, however not many cases of discrimination reach the courts. The majority of cases are settled outside of court through a process of investigation and conciliation.

The law can play a positive role in trying to promote equality of opportunity or equality of outcome.
Pauschinger considers the adoption of gender equality policies in Germany, questioning whether gender quota laws provide a legitimate means to secure gender equality. Pauschinger points to the low percentage of women on Board of Directors in Hong Kong and explores whether the adoption of a gender quota law would be workable given Hong Kong's liberal economic system.

The contributors to this special theme highlight the ongoing challenge of how gender is framed and conceptualised by the law. Both directly and indirectly, the law's construction of gender impacts, and sometimes constrains perceptions of gender within society. I would like to thank all the contributors for their insightful and thought-provoking articles. A number of the contributors to this theme are affiliated to the Centre for Rights and Justice (CRJ) in the Faculty of Law. One of the CRJ's focus areas is gender and the law. For more background information on the work of the CRJ, please visit http://www.law.cuhk.edu.hk/research/crj/.

The Women’s Movement in the Philippines: Policy Reforms and Challenges

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The women's movement in the Philippines stands out in Asia. Unlike many colonized, developing countries, the Philippines had an "early" and relatively strong women’s movement, namely, the suffrage movement of the early 1900s. From the late 1960s until the 1980s, women’s struggle in the Philippines was inextricably linked to the struggle against class and foreign domination which was predominantly male-led. Women's groups joined the underground resistance movement against the Marcos dictatorship and protested against U.S. imperialism and its local feudal and capitalist allies. They also began to raise women’s liberation as a separate issue from national liberation, an action which was met with ridicule and dismissal by men in and outside the broad national democratic movement.

The women's movement steadily became more active in the post-Marcos era by challenging the Philippine government to address gender-based discrimination and inequality and by engaging in

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1 After the success of the suffrage movement in the 1930s, not so much has been written about the women’s movement until the 1960s. Scholarly works were dominated by brief biographies and case studies of some women rather than of collectivities of women. As in most historical accounts about the Philippines, for example, during the period of the revolution and the nineteenth century, women have been largely missing. Either women did not write about their roles in history or data about them have usually been taken from documents written by men.


4 Supra note 2.
transnational feminist networking. A number of women’s groups’ demands were addressed by law or through the institutionalization of women’s issues. Several women leaders were appointed into various key policymaking positions in the government and chaired panels at UN meetings and conferences of international non-governmental organizations. Nonetheless, the women’s movement continues to face various challenges that affect its ability to influence policymakers and shape public policy.

Policy reforms such as the Anti-Rape Law of 1997, the Anti-Violence against Women and their Children Act of 2004 (Anti-VAWC), and the Reproductive Health Law of 2012 (RH) languished in the Philippine Congress and became laws only after substantial changes in the policy framework and discourse were conceded to by women’s groups to meet strong objections, and only when the country’s president certified their immediate enactment. The divisions within the women’s movement, politically and ideologically; the opposition from conservative forces; as well as the spoils of patronage and oligarchic system in the country’s politics remain as further challenges.

Brought about by intense women’s lobby, the Anti-Rape Law re-classified rape as a crime against persons rather than a crime against chastity, re-defined rape to include non-genital penetration and any act of sexual assault, and penalized marital rape. Prior to the law, marital rape was not recognized as a public crime. Due to the strong opposition from the male-dominated Congress however, the law was tempered in such a way that if a wife subsequently forgives her husband for the offence, the criminal penalty is dismissed.

The Anti-VAWC Law provides a policy regime that is more comprehensive than its counterparts in Malaysia and Singapore. Apart from a criminal action, the law provides for the civil remedy of a protection order; recognizes battered women syndrome as a defence in court; and prevents offenders from invoking being under the influence of alcohol, any illicit drug, or any other mind-altering substance as a defence. Prior to the Anti-VAWC Law, the Family Courts Act of 1997 was the only law that specifically recognized domestic violence against women in the Philippines. The law however, did not recognize VAW as a public crime and the protection orders it provided were for special provisional remedies only.

The inclusion of the children of women in the Anti-VAWC Law was a compromise made in the Senate to deal with strong opposition from lawmakers. Nonetheless, it was met with mixed reactions by women’s groups. Some women’s groups recognized the law as a policy success while others regarded it as a “watered-down” version of what was intended to be a gender-specific law. A coalition of women’s organizations, namely, the Sama-samang Inisyatiba Para sa Pagbabago ng Batas at Lipunan (SIBOL) or the Collective Initiative of Women for Transformation of Laws and Society, started the

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5 According to Amirthalingam, both the Singaporean and Malaysian laws addressing domestic violence 1) failed to recognize domestic violence as a specific crime; 2) defined domestic violence too narrowly; 3) included unnecessary constraints on obtaining protection orders; 4) discriminated against the victim with respect to residential rights; 5) failed to extend protection beyond marital relationships; and 6) failed to recognize marital rape as an offence. See Amirthalingam, Kumaralingam. 2005. Women’s Rights, International Norms, and Domestic Violence: Asian Perspectives. Human Rights Quarterly , 27, 683-708.

6 Interview with Atty. Evalyn G. Ursua, Executive Director of Women’s Legal Bureau, 27 Apr 2007.
Anti-VAW campaign. However, due to some policy and tactical disagreements between members, the coalition split into two factions: one aimed for a broad domestic violence law and another for a law covering gender-specific abuse of women in intimate relationships. Aggravating the situation were the groups’ competing organizational imperatives and political commitments. Before a compromise could be reached, the 1998 elections overtook the Anti-VAW campaign as six women’s party-list groups competed against each other for party-list seats in the House of Representatives.

The case of the Anti-VAWC Law reflects the divisions within the movement sourced from their separate organizational histories and ideological moorings. These divisions were further intensified as a result of the split of the broad political left in the 1990s. While many women’s groups claim to be autonomous, a significant number still remain affiliated with broad, national political blocs, particularly those of the political left.

The RH Law is the most contentious policy reform lobbied by women’s groups. In Congress, it was vehemently opposed by the Catholic Church as anti-life for promoting artificial contraception and abortion despite the RH bill advocates’ persistent claims that the bill promotes both natural and artificial family planning methods and does not legalize abortion. Women’s groups cannot match the influence of the Church over politicians who seek bishops’ endorsement during elections as a substantial political capital for winning votes. For fourteen years, the Church’s opposition was an indirect, yet, powerful veto to the bill, until the President of the Philippines signed it into law on 21 December 2012. On 19 March 2013 however, the Supreme Court of the Philippines issued a status quo ante order against the RH Law, temporarily stopping its implementation for four months, after various individuals and groups challenged its constitutionality.

To date, the women’s movement in the Philippines continues to struggle against strong opposition in other vital policy issues such as divorce, abortion and same-sex marriage. While other Catholic and developing countries have already liberalized their laws on abortion and legalized divorce, the Philippines still absolutely bans abortion and legally prohibits divorce. Over the past decade, bills amending the Family Code of the Philippines to introduce a provision legalizing divorce have been filed in Congress by the GABRIELA Women’s Party. These bills however, have never progressed beyond committee-level deliberations due to the resistance from conservative forces, particularly the Catholic Church. Like the RH Law, the struggle for a divorce law is long and difficult. Nonetheless, it may have a better chance of success if the Supreme Court upholds the legality of the RH Law as it will serve as green-light for other progressive policy reforms addressing women’s needs in the country and if the GABRIELA Women’s Party and other progressive individuals and groups are elected into the new 16th Philippine Congress which is due to convene in July 2013.

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7 In 1992, 13 women’s organizations made up SIBOL. These include the Center for Legislative Development (CLD), General Assembly Binding Women for Reforms, Integrity, Equality, Leadership, and Action (GABRIELA), Institute for Social Studies and Action (ISSA), Katipunan ng Kababaihan para sa Kolayaan (KALAYAAN), Kilusan ng Manggagawang Kababaihan (KMK), Lakas Manggagawa Labor Center-Women's Commission, PILIPINA, Ugnayan ng Kababaihan sa Politika (UKP), Women’s Crisis Center (WCC), Women’s Education, Development, Productivity and Research Organization (WEDPRO), Women’s Legal Bureau (WLB), Women’s Resource and Research Center (WRRC), and WomanHealth Philippines (WomanHealth). Two years later, three more organizations joined the network, namely, the Democratic Socialist Women of the Philippines (DSWP), Manggagawang Kababaihang Mithi ay Paglaya (MAKALAYA), and Kasarian Kolayaan (SARILAYA). The membership however, was reduced to nine in 1999 as seven member organizations left the coalition due to various organizational difficulties and shifts in involvements. The remaining members of the coalition lobbied for the law covering gender-specific abuse of women in intimate relationships. See Muñez, Marlea. 2004. Gaining ground? Southeast Asian women in politics and decision-making, ten years after Beijing: a compilation of five country reports. Pasig City: Friedrich Ebert Stifung.
"What Has Happened to Our Country?"
Violence against the Women of Masanjia Labour Camp

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They struck our breasts and genitals with electric batons, inserted batons into our vaginas to shock us, filled our vaginas with red pepper powder, inserted toothbrushes into our vaginas and rotated them.

They opened our mouths with vaginal dilators to force-feed and insult us.

We don’t understand what has happened to our country.

Liu Hua, in ‘Above The Ghosts’ Heads’ (Du Bin, May 2013)

‘Re-education through labour’ (‘RTL’) has long been a practice condemned by scholars, activists, lawyers, NGOs and not least many victims of RTL, whose origins reach deep into the Mao Zedong era, when the internment of ‘enemies of the People’ for ‘re-education’ purposes was part of the political system. Despite violating the 1982 PRC Constitution as well as international human rights norms, the system continues in use; and as of today, it allows for people to be locked up without any judicial process for up to four years.

There are many things that can land you in RTL: committing a minor offence; or being a prostitute; or seeking redress for injustice as a ‘petitioner;’ or criticizing the government; or belonging to the banned religious group ‘Falun Gong,’ for example. And once you have been sent to RTL, you are not likely to be able to bring any legal challenge against this measure, for complaints are extremely difficult to initiate and frequently unsuccessful. For decades, critics have not only pointed out the unconstitutionality of such detentions, but also complained about abuses occurring in some of the labour camps. The government has always rejected such criticisms, even though it has now and then made moves to reform the system and even as right now, reform or abolishment seems once more to...

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8 Du Bin (杜斌), 小鬼頭上的女人[Above the Ghosts’ Heads: the Women of Masanjia Labour Camp], independent documentary film, May 2013, (‘Above the Ghosts’ Heads’).


10 Cp. Article 37 of the 1982 PRC Constitution in conjunction with Articles 8 and 9 of the 2000 Law on Legislation. The RTL system also violates the ICCPR, which China has signed albeit not yet ratified.

11 For an exposition of the regulatory basis for RTL see CHRD, ‘Reeducation through Labour Issues Continue Unabated: Overhaul Long Overdue,’ 4 February 2009 (‘CHRD Report’).

12 CHRD Report, supra.

13 CHRD Report, supra.
Since March 2013, thanks to the courage and ingenuity of the inmates of one particular camp, we have better insight into the reality of RTL today. These inmates are women, detained in recent years in Masanjia Women's Labour Camp in Liaoning Province, where they suffered horrible abuses, largely at the hands of their women guards and other women inmates. These included electroshocks to their breasts and genitals; techniques such as the well-known ‘Tiger Bench,’ forced stretch positions on a ‘Death Bed,’ beatings and in one reported case gang rape arranged by the guards of the camp ‘for punishment.’ Among the women who exposed the horrors of Masanjia is Liu Hua, a petitioner in her 50s with little formal education, who was sent to RTL for protesting against corruption along with her husband. Circumventing the ban on writing materials and invasive body searches, she memorized fellow inmates’ detailed narratives of abuses and suffering and asked some inmates to hide bits of rolled-up paper in their vaginas upon leaving the camp. These efforts resulted in a domestic media report censored soon after publication (reposted here), and in a documentary film in which Liu Hua takes a prominent role as narrator.

Violence in RTL Camps is without any doubt committed against persons of both gender. Yet the story told here is one of violence committed against women and, largely, by women. What is the particular significance of this kind of violence? Perhaps a crucial aspect in understanding Masanjia – the abuses as much as the efforts to expose them -- is the notion, characteristic of all patriarchal societies, that women are weak. They are especially vulnerable to physical and sexual abuses (as the arranged gang rape illustrates). They are also not expected – and in fact less likely - to perpetrate violent crimes.

Women make ‘good’ victims, also in public perception: violence against women, and violence perpetrated by other women, is not only personally humiliating but also considered especially shameful for society. So when Liu Hua asks, ‘What has become of our country?’ she delivers a damning judgment on her society. And just as the women have made a place in their body once used to inflict excruciating pain and humiliation a tool of resistance and symbol of their regained agency, so, too, have the women of Masanjia now become protagonists of a citizen movement against the evils of RTL.

Steps to curb abuses and, perhaps, abolish RTL and similar systems would come none too soon, given the scope and depth of the problem. In a weibo message in late April, renowned human rights lawyer Jiang Tianyong stated, ‘In recent days the domestic media have shocked the world by reports about the Masanjia Labour Camp. Actually, we talked about the torture going on there much earlier, but because it was cruel beyond imagination, only a few people believed us. What I want to add now is, in the Beijing Women’s Labour Camp (in Daxing), the Hebei Women’s Labour Camp and Gaoyang Labour Camp, and the Qianjin Labour Camp of Harbin, the comprehensiveness, cruelty, nastiness and insidiousness of torture far exceeds that reported about Masanjia.’

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15 Above the Ghosts’ Heads, supra.


17 Above the Ghosts’ Heads, supra.

18 Another prominent and much discussed victim of RTL was Tang Hui, detained for seeking the death penalty for the convicted perpetrators of the gang rape and murder of her teenage daughter.


Gender Studies: News and Views (June 2013)
W’s Right to Marry

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In a recent landmark judgment, The Court of Final Appeal, granted W the right to marry her partner. The judgment marks the culmination of W’s long journey for legal recognition as a woman. After undergoing publically funded sex reassignment surgery in 2008, W applied for her identified gender to be shown in her educational and other records. W’s passport and identity card state her sex as female, though an application to amend her birth certificate was refused on the grounds that an individual’s sex at birth cannot be amended. Crucially, for the purposes of marriage, an individual’s birth certificate is required to establish identity. W sought confirmation from the Registrar of Marriages that she could marry her male partner, a request that was denied, leading W to apply for judicial review proceedings to challenge the decision. Significantly, W’s case reflects the failure of the law to recognise the authentic gender identity of transgender individuals.

Legal classifications of gender have traditionally reinforced the gender binary, by perpetuating the dichotomy between male and females and resisting any challenge from alternate gender constructions. In many jurisdictions, laws governing marriage have situated marriage as a heteronormative institution, that is, the union of one man and one woman to the exclusion of all others. In Hong Kong, the Marriage Ordinance replicates this provision. W’s case led to intensive scrutiny of the meaning of ‘man’ and ‘woman.’ In the original ruling, the Court continued to adopt a restrictive interpretation of ‘woman,’ focusing on the biological and chromosomal factors first enunciated in the English case of Corbett, with little consideration given to psychological factors. The Court effectively failed to recognise the authenticity of W’s gender identity, and in doing so, concentrated on the repercussions of allowing W to marry in the gender stated on her birth certificate – male – a decision which the Court argued would effectively sanction same-sex marriage in Hong Kong. Without clear societal consensus on same-sex marriage, the Court argued that it would be inappropriate to rule in W’s favour, and the question of amending the Marriage Ordinance should be left to the Legislative Council (LegCo). In the area of minority rights, judicial activism is potentially a panacea for inaction on the part of the legislature, which is why The Court of Final Appeal’s majority ruling should be commended.

22 See for example Hyde v Hyde and Woodmansee [LR] 1 P&D 130.
23 Marriage Ordinance Cap. 181, s.40.
24 Corbett v Corbett (otherwise Ashley) [1970] 2 ALL ER 373.
25 The Corbett criteria no longer apply in the UK. In Goodwin v. UK (2002) 35 EHRR 18, the European Court of Human Rights found that the applicant’s right to marry had been infringed. As a result of the case, the UK adopted primary legislation, The Gender Recognition Act 2004, which allows for legal recognition of a transsexual person’s identified gender in cases where individuals are able to demonstrate that they have taken steps to live permanently in their identified gender.
The Court’s decision was based on the unconstitutional nature of the Marriage Ordinance and the Matrimonial Causes Ordinance\(^26\), which effectively impaired the very essence of the right to marry under Article 37 of the Basic Law (BL) and Article 19(2) of the Bill of Rights Ordinance (BORO). The process of sex reassignment surgery is irreversible. By denying W the right to marry her male partner, W had effectively been denied the right to marry at all. Further, the Court determined that reliance on an absence of majority consensus as a reason to reject the claims of a minority undermined W’s fundamental rights. In the light of the Court’s decision, references to ‘woman’ and ‘female’ under the Marriage Ordinance and Matrimonial Causes Ordinance must be construed to allow for recognition of post-operative male-to-female transsexual persons for marriage purposes.

The Court of Appeal’s ruling of unconstitutionality allows a period of twelve months to enable LegCo to review the Marriage Ordinance and Matrimonial Causes Ordinance with a view to amending the law or enacting specific legislation to address the status of transgender individuals within society. The judgment was welcomed by the Equal Opportunities Commission (EOC), which stated that the adoption of anti-discrimination legislation on gender identity and sexual orientation would provide transgender individuals with some level of protection against inequality on the basis of their gender identity.\(^27\) While W was keen to emphasise that her case did not concern the question of whether same-sex marriage should be legalised, W’s personal journey to acquire marital status has inevitably triggered broader scrutiny on the purpose of marriage.

In Hong Kong, as in other cosmopolitan societies, marriage is no longer based on procreation, leading to the question of why the institution of marriage should be restricted to the voluntary union of one man and one woman. As the W ruling emphasised, societal consensus is no longer an adequate justification to deny the right to marry to sexual minorities. With increasing recognition of lesbian, gay, bisexual and transgender rights (LGBT), laws regulating intimate relationships have been reviewed in a number of jurisdictions, though not without significant opposition from conservative political groups and right-wing religious groups.

Recently, New Zealand became the first state in the Asia-Pacific region to legalise same-sex marriage.\(^28\) In the UK, which already recognises same-sex civil partnerships, the Government recently proposed to legalise same-sex marriage.\(^29\) W’s case provides LegCo with an opportunity to review the laws governing the institution of marriage. At this juncture, LegCo should not only extend the right to marry to post-operative transgender individuals but also to same-sex couples, who continue to fight for equality in the absence of anti-discrimination legislation on sexual orientation. If Hong Kong prides itself as a cosmopolitan and international city, a review of the laws governing marriage presents a concrete opportunity to demonstrate its commitment to diversity and equality.

\(^26\) Matrimonial Causes Ordinance Cap. 179, s.20(1)(d)  
Rising Pressure
Legal challenges for a gender quota in Hong Kong

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On 25th April Germany was reviewed in the Human Rights Council in Geneva as part of the Universal Periodic Review (UPR). The UPR is a mechanism which involves the review of the human rights performance of all 193 UN member states on a regular basis. Many comments and questions were expected about the protracted investigations of the murders of immigrants from Greece and Turkey by a right-wing extremist terror group on. However there was also a focus on gender inequality in Germany.\(^3\) As well as many international treaties such as CEDAW, Art. 3 (2) of the German constitution urges the German Government to “promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist”.

The political party Alliance 90/The Greens tabled a bill in the German Bundestag to try to promote the implementation of the right of equality. The bill included a gender quota law for women in supervisory boards of public listed companies. It attempted to force public listed companies to include 20% women in their supervisory board by 2018 and 40% by 2023. Since the majority of the Liberals and the Christian Union voted against this bill, it failed. Nevertheless the debate has had a significant impact on German politics. The Christian Democratic Union changed their party programme and therefore all major political parties in Germany are planning to implement a legally binding quota of at least 30% of women in supervisory boards in public listed companies.\(^3\) By doing so, Germany will be one more country with a legally binding gender quota.

The necessity to enable more women to break through the glass ceiling is the main argument given in favour of a quota. However the strongest counterarguments are that if it is a fixed gender quota, especially of 50% or more, it could lead to a discrimination against men as it potentially makes gender the deciding factor when it comes to filling vacant positions.

Since in Hong Kong only 10% of the members of Board of Directors are women, there is no doubt about the need for greater gender equality. However it is very controversial whether a gender quota law would be the right answer in such a liberal economic system.\(^3\) As the HKEx stated in their consultation paper on Board Diversity, such a method would be something completely new to Hong Kong’s regulatory scheme.

Legal arguments are often very strong when it is not clear which path to choose. The legal foundation of such a quota law could be the United Nations Convention on the Elimination of All Form of Discrimination Against Women which Hong Kong has signed and ratified. It allows “temporary special measures” to abolish discrimination against women. Even though the aim of a gender quota is to eliminate discrimination against women it may conversely delegitimize women’s membership on a board. In some people’s eyes they will perceive that women have secured their position on the board.

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\(^3\) Dernbach, Andrea Die Welt prüft Deutschlands Menschenrechtsbilanz in Der Tagesspiegel, 25 Apr 2013.


\(^3\) Yiu, Enoch. 2012. HK Missing Female Touch in Boardroom, South China Morning Post, 10 Dec 2012.
of directors because of the quota and not due to their performance, merit or expertise.\textsuperscript{33}

However, some may argue that any gender quota could also potentially be discriminatory against men. Art. 22 of the Bill of Rights Ordinance (BORO) prohibits discrimination on the grounds of sex.

Another very important aspect is the potential discrimination against men since they would not be able to get onto the board if the quota is not fulfilled. However any such perceived discrimination against men could be justified since it is only a temporary measure to abolish discrimination against women.\textsuperscript{34} Especially in comparison with the German Basic Law the law in Hong Kong has one significant difference. Art. 3 (2) of the German Basic Law urges the implementation of measures to abolish discrimination. There is no such provision either in the Basic Law or the BORO. This might weaken the point that the possible discrimination is justified. It is therefore not clear whether a gender quota would conflict with Hong Kong’s constitutional law.

This leads to another very important issue of human rights law. Especially in legal systems following a dualist approach like Hong Kong, international obligations are often not completely fulfilled. In dualist systems the legislative body has to integrate the international obligations into their legal system before they have legally binding effect and their citizens can invoke them directly. Despite the fact that Hong Kong is a member of CEDAW, the treaty is obviously not sufficiently incorporated into its national law yet. If Art. 4 CEDAW, which demands temporary measure aimed at accelerating de facto equality, would be incorporated the legal issues of a gender quota law would be significantly reduced.\textsuperscript{35}

Regardless of the fact that a gender quota law seems very far away in Hong Kong, changes are necessary. Since states like Norway set positive examples of gender equality there will rising pressure on other states or regions lacking behind in promoting gender equality such as Hong Kong; not just from its own population but also from international bodies like the UN Human Rights Council and the CEDAW Committee which already called fourteen years ago in its comments on Hong Kong for the implementation of temporary measures to abolish the discrimination against women.\textsuperscript{36}

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**Domestic Violence, Gender and the Law in China:**  
The Li Yan Case in Context

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If you are a Chinese woman, there is a 3 in 1 chance that you will experience family violence in your lifetime.\textsuperscript{37} If you live in rural China, 64.8% of the women in your community have experienced violence

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in one form, be it psychological, physical or sexual. Yet, it’s also very likely that you and community members would not seek help from the very institutions meant to help you as only 5.5% of domestic abuse cases are reported to authorities.

The recent Li Yan case underscores the tragic consequences of systemic failure to combat domestic violence in China. Although Chinese law has broad prohibitions against domestic violence, there is little national regulation regarding the investigation or prosecution of domestic violence (much less its prevention) and few clear legally-enforceable definitions—thus leaving government response to the discretion of local officials. However, even the best-intentioned officials operate within communities and institutions with embedded and gendered notions of violence and spousal duty, notions that normalize spousal violence and prioritize social harmony.

Laws both shape and reflect a society’s understanding of gender and violence, even in framing what kind of violence counts as “real violence.” The PRC legal system has created a hierarchy of violence, prioritizing physical abuse to the exclusion of psychological, economic and sexual violence (contradicting international standards and the lived experiences of Chinese women). By punishing family violence only when it is frequent and “flagrant” enough to rise to the level of a crime, the law ranks violent acts in the family, signalling that infrequent physical violence does not require legal sanction. By imposing different, more severe punishments for violence inflicted by strangers and violence at the hands of intimates, the law implicitly suggests that women’s experiences of violence (which is disproportionately inflicted by family members) are less worthy of prosecution, and, thus, less important.

Even when anti-violence ideas gain traction within the community, the effectiveness of anti-violence laws and systems can also be diminished by cultural assumptions and structural failings on the part of the police and other officials. Without working definitions, police officers are left to classify whether behaviors count as domestic violence or mere family disputes. They often refer victims to local

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38 Id. (also breaking down the forms of violence experienced as follows: 58.1% (psychological); 29.7% (physical); 29.7% (sexual)).


41 The 2004 PRC Constitution states that the State “respects and preserves human rights” and prohibits the maltreatment of women. PRC Constitution art. 33 (1982). The 2001 PRC Marriage Law directly prohibits family violence, as well as maltreatment or desertion of one family member by another. Marriage Law of the People’s Republic of China, art. 3 (1980, amended 2001). The 2005 PRC Law on the Protection of Rights and Interests of Women (LPRIW) prohibits “discrimination against, maltreatment of, or cruel treatment in any manner causing injury, even death, of women.” Law on the Protection of Rights and Interests of Women, art. 2 (China 1992, amended 2005). Unfortunately there is no definition under national-level PRC law for either discrimination against women, or domestic/family violence, or even a definition of “family”.

42 Interpretation No. 1 of the Supreme People’s Court on Several Issues in the Application of Marriage Law, art. 1 (Dec. 27, 2001) stating “domestic violence refers to acts that cause physical and psychological harms to family members by beating, tying up, mutilation, deprivation of personal freedom and other means”


branches of the Women’s Federation, or undertake ‘mediation’ themselves, persuading the abuser to cease violence and pushing the abused towards reconciliation. Most often, these actions are done informally and without clear record keeping about incidents or physical injuries.

Li Yan’s case exemplifies how ambiguity and silence in the law, compounded by gendered responses to violence, can result in wide systemic failure that resulted in the violent death of one individual and the death sentence of the other. The police failed to investigate her complaints of her husband’s abuse, labelling the abuse as a “private matter.” Repeated complaints to multiple government agencies were met with inertia—the local neighbourhood committee pushed off responsibility to the local ACWF branch, which in turn told Li Yan to go to the police, which told her to go back to the neighbourhood committee. The abuse continued until Li Yan beat her husband to death after he kicked her and threatened her with an air-gun in November 2010.

Help-seeking and claim-making by women victims are essential first steps to anti-protection from domestic violence. One of the saddest parts of Li Yan’s story is that her repeated requests for help from multiple institutions were to no avail. Li Yan had recognized that the abuse she faced was egregious, and, unlike more than 90% of her countrywomen, reported the abuse to the authorities. Institutional inaction not only failed to stop further violence from Li Yan’s husband, it also impacted Li Yan’s defense efforts—in the absence of corroboration from investigations by the authorities, the court doubted Li Yan’s claims of domestic abuse. The court eventually convicted her of intentional homicide, without acknowledging previous abuse as a mitigating factor, and sentenced her to death. The power to decide Li Yan’s fate now rests with the Supreme People’s Court.

Anti-violence efforts face an uphill battle against gender-insensitive policies that indirectly disadvantage women. For example, policies that prioritize mediation with the intention to boost efficiency end up channel family disputes away from courts, rendering domestic violence even more invisible. Although legal reform is urgently needed, it will not be the panacea that activists hope for without genuine government commitment to critical evaluation of laws and effective change.

應該怎樣對待殺害施虐者的長期受虐者？
——由李彥案談起

姜玨
香港中文大學法律學院人權與公義研究中心副研究員

「不堪回首，打我，罵我，當眾侮辱我成了他的家常便飯，特別是晚上，稍不順他意就打我，扯住我頭髮往牆上撞，用煙頭燙我臉和下身…（我）整天沉默寡言，不敢和別人交談，如果讓他知


48. Tatlow, Chinese Courts Turn A Blind Eye to Abuse, supra note 4.

49. Human Rights Watch, supra note 4.
道了，又是一頓毒打，並揚言要用槍打死我。」

在給二審法院院長的信中，李彥講述著自己長年忍受的丈夫的虐待。她曾數次求助，卻次次失望而歸。她去婦聯，婦聯只讓她去找社區幹部或親朋調解。她去派出所報案、找居委會，可是「我遭受了這麼多的家庭暴力，而他們說是家庭糾紛，（我）出示過被暴力的照片和傷情診斷證明，（他們）沒有對我們進行調解和傳喚。」有一天下班，丈夫依然拿著手槍打罵她並揚言要打死她時，她「痛得心慌」打了他，她發現他死了，「慌亂中」肢解、烹煮了屍體。

法院一審和二審均認定李彥故意殺人罪成立，判處死刑立即執行。2012年8月，案件被送至最高人民法院進行死刑覆核。如果核准，她將在七天內被執行死刑。截至本文完成時，此案仍在最高人民法院覆核中。

根據《中華人民共和國刑法》，法官在量刑時享有一定的自由裁量權。於是，爭論的焦點落在了法院對李彥長期遭受家暴這一情節和一系列相關證據不予認定，也沒有採納其律師提出的李彥在當時的情形下做出這一舉動是「防衛過當」，而僅因其事後對屍體的處理認定其「罪行極其嚴重，手段殘忍」並判處死刑立即執行。非政府組織「反對家庭暴力網」的馮媛指出，李彥事後對屍體的處理很有可能源於其長期遭受家庭暴力而患上了「受虐婦女綜合症」。然而，雖然「受虐婦女綜合症」多年前便在中國國內引起了關注和討論，也有人大代表提議將其引入司法領域。

此外，有研究表明，在中國，大多數在監獄中服刑的女性都是家庭暴力的受害者，但她們往往被處以重刑。例如，「反對家庭暴力網」發現遼寧省鞍山市的一所監獄裡有60%的人遭受過家暴；福建省福州市的一所監獄中，80%服重刑的女性遭受過家暴。學者邢紅枚的研究顯示，四川省的一所女子監獄中，80%以上的因受虐而攻擊或殺害自己伴侶的女性被判處了故意殺人罪、故意因家暴被判死刑的李彥向四川高院發出的懇請信，2013年4月26日在http://boxun.com/cgi-bin/news/gb_display/print_versiOn.cgi?art=/gb/china/2013/01&link=201301301159.shtml獲取。
李彥案體現出的社會總體上對遭受丈夫虐待和暴力的女性的質疑和漠視（或許在一定程度上源自心理上的認可）也許不難解釋女性在中國刑事司法中的艱難處境：在法官運用自由裁量權進行量刑的時候，那些可能從輕量刑的因素（如：遭受家暴和可能患「受虐婦女綜合症」）往往不被認定，她們反而被處以十分嚴峻的刑罰。

64 同前。
"Gender Studies: News" is a session dedicated to bringing you the latest happenings in GRC. We love to share with you our activities. Please circulate it to your friends and colleagues who are interested in gender studies.

近期活動 Recent Activities

Annual Gender Roles Workshop 2013

GRC Annual Gender Role Workshop 2013 was held on 1 June at CUHK campus. The topic is "Gender Sensitivity and Education". Many researches have shown that over the years, gender stereotypes appear frequently in Hong Kong education process. To date there is no significant improvement on gender sensitivity in formal or hidden curriculum - textbook content, extracurricular activities, teacher-student interaction, and school management for example - thus it is difficult for students to fully understand the diversified roles of different genders in the community nowadays.

To raise public awareness on the importance of gender sensitivity in education, policy makers, scholars, teachers, parents and students were invited to discuss and analyze the phenomenon. Dr. Anita Chan from Institute of Education and Dr. K.K Chan from the Education Bureau were the keynote speakers. In the forum session, our guest speakers included Professor Esther Ho, Faculty of Education; Ms. Bell Wong, Supervisor of Tung Wah Group of Hospitals Long Love Integrated Family Service Centre, Tung Wah Group of Hospitals; Ms. Jackie Chan, Corporate Communications Officer of Equal Opportunities Commission; Mr. Poon Yu-hin, MPhil Graduate of Gender and Education; Ms. Pat Lo, secondary school teacher; Ms. Chung Yuen-yi, parent; and Ms. Alison So, MPhil Graduate of Gender and Education. 97 participants joined the workshop. We hope that the coming generations can develop their own talents freely without restrictions from traditional gender roles.
Public Seminar: “Gender Bias in Science Education?”

Gender issues are seldom mentioned in the Science field. This public seminar was jointly presented by the British Council and GRC on 20 November 2012. Dr. Maggie Aderin-Pocock, a space scientist from the UK, was invited to share her views and experiences on gender bias in the science fields, the opportunities for women researchers and how to achieve gender parity in the industry. The seminar was chaired by GRC director, Prof. Susanne Choi. Prof. Li Quan from Department of Physics was invited to be the discussant of the seminar. Many female science students came to share their experiences.

Public Lecture by Prof. Louise Berglund

Prof. Louise Berglund from the School of Humanities, Education and Social Sciences, Örebro University, Sweden and Visiting Scholar at CUHK History Department (2012) gave a public lecture co-organised by Department of History and GRC. The topic was “Male and Female in the Exercise of Power and Authority: Equality and Inequality in Sweden in a Historical Perspective”, and was held on 5 November 2012. In the lecture, Prof. Berglund focused on the historical development of legal, economic, cultural and political structures in Sweden from the perspective of gender.

Roundtable Seminar on Sex Workers in China

The seminar was jointly presented by the Centre for Rights and Justice, CUHK; Human Rights Watch (HRW) and GRC. The theme was “Sex Workers in China: A Rights Perspective”. This seminar brought experts and academics from the fields of gender studies, women’s rights, and law together with representatives from non-governmental organizations to discuss the findings of a new report.
by Human Rights Watch, “Swept Away: Abuses against Sex Workers in China,” which documents a number of issues faced by women who engage in sex work in mainland China, including police and client violence, a lack of legal remedies, discriminatory practices, coercive HIV testing and infringement to privacy and health rights, as well as obstacles to the operations of sex workers’ organizations. The seminar was held on 13 May 2013 at CUHK Graduate Law Centre, Central.

即將舉行 Upcoming Activities

International conference on “Gender and Migration: Changes and Challenges” 2013

Based on the strategic partnership agreement, the Institute for Women’s Studies, Peking University and Institute for Women’s Studies, Keimyung University and Gender Studies Programme (GRS) and GRC at CUHK, jointly host regular international conferences so as to provide the occasion for scholars to share their latest research. GRC will be the host this year. The theme of the conference is “Gender and Migration: Changes and Challenges”. It will be held on 9-11 December 2013 at The Chinese University of Hong Kong. The organizing committee, chaired by Prof. Susanne Choi, is now calling for papers. Please visit the conference website for the latest information. (Conference Website: http://www.cuhk.edu.hk/hkiaps/grc/conference2013)

The proposed sub-themes include-

- Theories of gender & migration
- Innovative research methods on gender & migration
- Cross-border marriages and families
- Migration law, policies and citizenship
- Gender, migration & health
- Gender, migration & parenthood
- Gender, migration & elderly support
- Gender, migration & sexualities
- Gender, migration & labour market outcomes
- Gender, migration & social capital
- Gender, migration & development
- Information Communication Technology (ICT), gender & migration
- Skills, education, gender & migration

新書 New Publications

Women and Girls in Hong Kong: Current Situations and Future Challenges

Choi, Y. P. & Cheung F. M. (2012). Hong Kong: Hong Kong Institute of Asia-Pacific Studies, CUHK.

This volume, which includes eleven chapters on the most pressing issues concerning women and girls in Hong Kong, is a joint initiative of the Gender Research Centre (GRC) and the Women’s Foundation (TWF). The chapters address the current status and future challenges.
of women in areas related to education, labour market participation, poverty, health, violence against women, family, leadership, media, ethnic minority and migrant women, the girl-child, and institutional mechanisms for gender equality.

The contributors to this edited volume include twenty scholars in the disciplines of law, psychology, sociology, journalism, public health, social work, political science, criminology, education, business studies, anthropology, and demography in Hong Kong’s higher education institutes. Together they provide a thorough review of the status of women in the aforementioned areas, delineate the causes of persistent inequalities, compare the situations in Hong Kong with those in other developed countries, and make recommendations on policies to reduce gender inequalities.

新書預告 Publication in Press

《香港女性：現況與挑戰》(暫名)
蔡玉萍 張妙清 主編
香港: 商務印書館 (預計在 2012 年尾出版)
本書由性別研究中心及婦女基金會(The Women’s Foundation, TWF)攜手編製，包括11個章節，詳細分析了香港女性的當今的處境，涵蓋香港女性及女童最迫切的問題：教育、經濟、貧窮、健康、針對女性的暴力、家庭、政治參與、媒體、移民和少數族裔女性的處境、女童及兩性平等機制。本書首先介紹《消除對婦女一切形式歧視公約》及《北京行動綱要》的背境，進而概述目前香港女性的情況，及後討論需要處理的主要挑戰，以期改善女性的地位及達致兩性平等。

Gender and Family in East Asia
Edited by Angela Wai Ching WONG, Maria Siumi TAM, and Danning WANG
To be published by Routlegde in December 2013

Gender Studies: News and Views (June 2013)
Gender and Family in East Asia explores how the macro-transformation effected by the introduction of modernity triggered adaptations at the local level of the micro-community and the family, and demonstrates how our individuals have exercised their agency upon encountering clashes and challenges during this period of cultural change. Divided into three sections, the contributors to this volume focus on marriage and motherhood, religion and family, and migration. In doing so, they reveal how actions and decisions implemented by the state trigger changes in gender and family at the local level, the impact on East Asian culture of increasing domestic and transnational migration, and how religion interweaves with the state in shaping gender dynamics and daily life within the family.

sexuel research centre information  GRC Info

Sexual Research Center Visiting Scholar Program

为了鼓励及促进性别研究的学术交流，性別研究中心邀请来自世界各地的学者申请访問学者计划。被选中的访問学者的访問期间可达12个月，期间请注意研究或出版计划项目，并於香港亚太研究所学术论文系列(occasional paper series)发表一篇論文。訪問學者也將會參加校內其它研討會和學術活動，並於週三性別座談會系列中主講一節講座。

有兴趣申请人士，请将有关研究计画内容、預計访問期间及個人簡歷，寄：香港沙田香港中文大学黄瑶璧楼 5 樓香港亚太研究所性別研究中心，或以电子邮件传至grcentre@cuhk.edu.hk，或传真 (852) 26035215。

To encourage exchange of scholarship in gender studies, the Gender Research Centre invites scholars from different parts of the world to apply to this program. The Visiting Scholar is an honorary position for up to 12 months, attached to the Hong Kong Institute of Asia-Pacific Studies (HKIAPS), and carries no remuneration. The Visiting Scholar will be provided with desk space in the HKIAPS, with a desktop computer and internet access, as well as access to the university library system. Affiliation with a colleague in a related field could be arranged as appropriate.

During the stay, which should cover at least part of the academic semester, the Visiting Scholar is expected to work on her/his own research or book project, and to publish a paper in the Institute's Occasional Papers Series. The Visitor will also participate in seminars and other academic activities on campus, and to give a seminar in the Wednesday Gender Seminars Series.

Please send applications including information on the research project, intended period of stay, and a CV, and mail to: The Director, Gender Research Centre, HKIAPS, Esther Lee Building 5/F, The Chinese University of Hong Kong, Shatin, Hong Kong, or by email to grcentre@cuhk.edu.hk or by fax at (852) 2603 5215. We look forward to seeing you in Hong Kong!
投稿須知 Call for Contribution

稿件請以電郵擲交 香港中文大學 香港亞太研究所 性別研究中心 (grcentre@cuhk.edu.hk)，並附上以下資料：
投稿人姓名、電話號碼、電郵地址及所屬機構。

投稿格式：
如包括圖像或相片，請用 JPEG 格式製作之圖像，並附加註解。
中文來稿請使用繁體中文（Big 5 碼）。

性別研究中心有權刪改並決定是否刊登來稿。

Contributions to Gender Studies: News and Views should be submitted to the Gender Research Centre, Hong Kong Institute of Asia-Pacific Studies, CUHK (grcentre@cuhk.edu.hk) with the following information:
Name, telephone number, email address, and affiliation

Submission format:
Images or photos should be in JPEG format. Please include a short caption for each image or photo. Traditional Chinese (Big 5 Code) is preferred for submission in Chinese.

Gender Research Centre reserves the editorial right to reject and to edit contributions at its full discretion.

性別研究資訊第二十四期 Gender Studies: New and Views (No.24)

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