

# USALI Perspectives

## CEDAW's Impact in East Asia: Part II

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*In Part I, the author analyzed the impact of CEDAW in Japan, South Korea, and mainland China. In Part II, she looks at Hong Kong and Taiwan.*

### **Hong Kong**

The CEDAW Committee reviewed the Hong Kong Special Administrative Region in May 2023, at the same time that it reviewed mainland China. CEDAW has an interesting history in Hong Kong. Although the United Kingdom ratified the treaty in 1986, Hong Kong's British colonial government initially asked to be left out – almost certainly because it knew that it was enforcing many discriminatory

laws and policies. But in the 1990s, the Hong Kong women's movement prioritized extending CEDAW to the colony, and regularly lobbied legislators and government officials to accept it. Eventually, the colonial government agreed to accept CEDAW – albeit with some controversial reservations – and to enact a Sex Discrimination Ordinance (SDO). Hong Kong also created an independent Equal Opportunities Commission (EOC) to help enforce the ordinance.

When I was teaching in Hong Kong, a colleague and I compared the impact of CEDAW in Hong Kong and the UK. Although CEDAW had been in

force longer in the UK, [we concluded](#) that the treaty was having more influence in Hong Kong. This was partly because Hong Kong feminists were immediately engaged in the CEDAW reporting process and because the Hong Kong Legislative Council regularly reviewed the Concluding Observations of treaty bodies. Hong Kong's High Court also relied upon CEDAW in an early case brought under the SDO. The EOC had filed an action for judicial review, alleging that the government was unlawfully adjusting test scores to benefit boys who were applying to elite secondary schools. In its defense, the government argued that it was simply practicing "temporary special measures" for boys and that this was permissible under the SDO. But [the High Court rejected the defense](#), citing CEDAW, and compelled the government to change its system of allocating students to secondary schools. This case set an important precedent: even though Hong Kong was a dualist jurisdiction and the SDO did not directly incorporate CEDAW into domestic law, judges could look to CEDAW for guidance when interpreting the SDO.

The Hong Kong government also voluntarily amended some laws to comply with recommendations from the CEDAW Committee. For example, it clarified that marital rape is a crime, expanded the scope of the law

prohibiting domestic violence, and enacted certain amendments to strengthen the SDO. Yet the government has also stubbornly defended its reservations (including a reservation for the Small House Policy, which benefits only male descendants of indigenous villagers) and it has refused to implement many important recommendations from the CEDAW Committee.

Now that Hong Kong has entered the "national security era," in which Beijing's security concerns take precedence over other government goals, it is difficult to predict whether the CEDAW reporting process will continue to have any significant impact. On one hand, we might think that the Hong Kong government would be eager to implement recommendations by the CEDAW Committee and thereby improve its human rights record. But the May 2023 review indicates that the local government is adopting a different strategy, one borrowed from Beijing's playbook. In the spring of 2023, a host of pro-government organizations that had not previously engaged in the CEDAW reporting process suddenly sent brief "shadow reports" to the CEDAW Committee. They were all clearly intended to emphasize one main point: the new National Security Law, which was imposed on Hong Kong by Beijing in 2020, has been simply

wonderful for women’s rights in Hong Kong.

Yet the traditional feminist organizations in Hong Kong are now understandably nervous about criticizing the local government in an international forum. Peaceful protest marches – once a common strategy for raising awareness and public support for gender equality – have also largely disappeared from Hong Kong’s streets. The CEDAW Committee commented on this change in its Concluding Observations on Hong Kong, questioning why the annual march for Women’s Rights and Gender Equality did not take place in 2023. The Legislative Council is also now far less likely to challenge government policies as a result of [changes in the method of selecting legislators in 2021](#). In this political climate, CEDAW and other human rights treaties will almost certainly become less influential in Hong Kong.

## **Taiwan**

Because it lacks a UN seat, Taiwan cannot participate in the official CEDAW reporting process. But it is still worth examining in any comparative study because the Legislative Yuan voted to adopt CEDAW in 2007 and the government has designed its own quasi-international reporting process. Taiwan’s initial report was reviewed by a panel of

experts, all with prior experience on the CEDAW Committee. The reporting process is repeated every four years and Taiwan’s [most recent report](#) (published in 2022) lists extensive laws and policies designed to further implement CEDAW. Taiwan has also enacted the “Enforcement Act of CEDAW,” which essentially makes provisions of CEDAW enforceable as domestic law. In theory, that could be the case in every monist country, but in reality, we know that judges in many monist jurisdictions (including mainland China and Japan) are simply not enforcing CEDAW. So, in one sense, Taiwan’s model is a dream come true for members of the CEDAW Committee, who regularly recommend that state parties incorporate the treaty into domestic law.

Taiwan’s government would prefer to participate in the official reporting process in Geneva. But, from the perspective of promoting gender equality in domestic society, its quasi-international reporting process may be superior. The UN CEDAW Committee is under-resourced and has a backlog of reports waiting to be reviewed. As a result, many lengthy state reports become stale by the time they are publicly reviewed. The CEDAW Committee is attempting to address this problem by encouraging a [simplified reporting process](#), which commences with a more focused List of Issues rather than a lengthy state report. But that will

not entirely resolve the backlog, especially as some state parties (including China and South Korea) have [declined to adopt the simplified process](#).

In contrast, Taiwan's reports are always reviewed promptly by its international review panel. Although the panel is chosen by Taiwan, it still has credibility because it consists of recognized international experts who have served on treaty-monitoring bodies. Moreover, the review panels have not hesitated to make critical comments. Perhaps most important, the international review panel comes to Taiwan rather than sitting in Geneva, making the process more visible and accessible to the local community. It also ensures that the panel will be better informed, as it is not just reading documents and hearing from a small selection of officials and NGOs. [During the most recent review](#), completed in December 2022, the panel met with 119 representatives of nongovernmental organizations and 418 government officials.

Perhaps Taiwan's experience can benefit other jurisdictions. For example, there are many large cities in the United States that have joined the

["Cities for CEDAW"](#) project because they are frustrated by the refusal of the US Senate to ratify CEDAW. An American city that has adopted CEDAW in its local legislative framework could invite a panel of international experts to review the city's compliance with CEDAW. In addition to promoting gender equality in that particular city, the process might help to demonstrate the benefits of CEDAW to American citizens generally.

Taiwan's innovative process may also provide ideas for strengthening the formal UN CEDAW reporting process. It would not be possible for the entire CEDAW Committee to visit every state party to the treaty. But it may be possible for individual members or a sub-committee to experiment with a more localized CEDAW review, at least in those states that are willing to participate. Of course, the CEDAW reporting process will still be a soft enforcement process – one that depends on dialogue and good will. But if the process is closer to local communities, then the dialogue may be more effective. Perhaps the world can shrink that persistent gender gap just a little faster.

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