

Changing Life Stories:
Understanding the Legal Aspects of
Working with Children and Families

Pregnancy Rights



An Introductory Manual for Child Welfare Professionals

About the Authors



母親的抉擇
Mother's Choice

Mother's Choice is a charity serving the many children without families and pregnant teenagers in Hong Kong. We join hands with our community to give hope, and change the life stories of vulnerable girls and babies. We are a champion for children and a voice for every child to be in a safe, loving and permanent family.

www.motherschoice.org

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Pregnancy Rights

Laws and policies that protect those who are pregnant are extended to all women, no matter their age. However, children under 18 who are pregnant also are rights holders under the United Nations Convention on the Rights of the Child.

The UN Committee on the Rights of the Child recognizes the high rates of pregnancy among teenagers globally and the additional risks of associated morbidity and mortality, and makes clear that children who are pregnant must be able to:

- Access counseling
- Ensure their voice is heard
- Know what medical procedures, including abortion, can take place with or without parent consent¹.

United Nations Convention on the Rights of the Child

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views **the right to express those views freely in all matters affecting the child**, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. **States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.**
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures;
 - a) To diminish infant and child mortality
 - b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.....
 - d) To ensure appropriate pre-natal and post-natal health care for mothers
 - e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation and the prevention of accident

1 UN Committee on the Rights of the Child (CRC), *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, 17 April 2013, CRC/C/GC/15, available at: <https://www.refworld.org/docid/51ef9e134.html> (III, B, 56).

Pregnancy Counselling

In accordance with their evolving capacities, children should have access to confidential counselling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child's best interests.

States should clarify the legislative procedures for the designation of appropriate caregivers for children without parents or legal guardians, who can consent on the child's behalf or assist the child in consenting, depending on the child's age and maturity.

States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.²

PREGNANCY COUNSELLING SERVICES IN HONG KONG

Mother's Choice

Mother's Choice Pregnant Girls Services is a safe space where girls in crisis are embraced, equipped, and empowered for a hopeful future of their choice. Services include a crisis hotline, counselling, peer support, workshops and training, and a residential hostel for girls needing a safe space to live during her pregnancy.

Phone 2313 5678 | WhatsApp 5633 5678 | Email bigsisiter@motherschoice.org

Family Planning Association of Hong Kong (FPAHK)

The Family Planning Association of Hong Kong (FPAHK), a non-profit making organization, advocates, promotes and provides information, education, medical and counselling services in Sexual and Reproductive Health for the community. All Birth Control Clinics offer consultation for unplanned pregnancy. FPAHK Youth Health Care provide pregnancy counseling to unmarried people under the age of 26.

FPAHK Clinic Services Hotline 2572 2222

The Birthright Society Limited

The Birthright Society provides medical, psychological, counseling and other services to pregnant women, which they may need but could not obtain, so as to ensure that the birthright of their children and their own human dignity may be safeguarded and to provide educational programmes that promote respect for human life.

Phone 2337 5551

PathFinders Limited

Provides a crisis hotline, case management, healthcare and support for foreign domestic workers facing a crisis pregnancy.

Phone 5190 4886

Evangelical Lutheran Church Social Service: "Jockey Club Support Project for Parents of New Generation"

Provides comprehensive support services to young parents aged 24 or below.

Phone 24488751

2 UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15, available at: <https://www.refworld.org/docid/51ef9e134.html> (III, A, 31).

The Family Health Service provides a comprehensive range of health promotion and disease prevention services for children and women through a network of Maternal and Child Health Centres (MCHCs) and Woman Health Centres (WHCs).

24-Hour Information Hotline 2112 9900

Pregnant Girls' Rights in Education and Employment

United Nations Convention on the Rights of the Child

Article 28

States Parties recognize the right of the child to education...with a view to achieving this right progressively and on the basis of equal opportunity.”

Introduction

All children have a right to education. This right is protected both by Hong Kong law and by international law.³ This right applies to each child, as part of his or her human dignity and inherent rights.⁴

The Convention on the Rights of the Child makes it clear that education should be directed to “[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential.”⁵ This means that each child has a right to education that meets his or her particular needs.

States should work to ensure that girls can make autonomous and informed decisions on their reproductive health. Discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured⁶.

Discrimination in education is strictly prohibited.⁷ This includes discrimination based on gender.⁸ The government is required under international law to take steps to prevent discrimination on the basis of maternity or pregnancy,⁹ as well as to reduce

3 Education Ordinance (Cap 279), s 74; Convention on the Rights of the Child, Art. 28; International Covenant on Economic, Social and Cultural Rights, Art. 13.

4 Committee on the Rights of the Child, General Comment 1 (CRC/GC/2001/1), para. 1; Committee on Economic, Social and Cultural Rights, General Comment 13 (1999) (E/C.12/1999/10), para. 4.

5 Convention on the Rights of the Child, Art. 29(1)(a).

6 UN Committee on the Rights of the Child (CRC), *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, 17 April 2013, CRC/C/GC/15, available at: <https://www.refworld.org/docid/51ef9e134.html> (III, B, 56).

7 International Covenant on Economic, Social and Cultural Rights, Art. 2(2), 3; Convention on the Rights of the Child, Art. 2; Committee on Economic, Social and Cultural Rights, General Comment 13 (1999) (E/C.12/1999/10), para. 31; Committee on the Rights of the Child, General Comment 1 (CRC/GC/2001/1), para. 10; Sex Discrimination Ordinance, s. 25; Disability Discrimination Ordinance, s. 24; Family Status Discrimination Ordinance, s 18; Race Discrimination Ordinance, s. 26.

8 Ibid.

9 Convention on the Elimination of All Forms of Discrimination Against Women, Art. 11(2). The Committee on Economic, Social and Cultural Rights interprets articles 2 and 3 of the International

the number of girls dropping out of school.¹⁰ Discrimination in education may include acts:

- a. depriving any person or group of persons of access to education of any type or at any level;
- b. limiting any person or group of persons to education of an inferior standard; and
- c. establishing or maintaining separate educational systems or institutions for persons or groups of persons.¹¹

Education is a human right in itself, but it is also a critical means of realizing other rights, such as the right to access healthcare or the right to work.¹² Education can play a critical role in the future life of a child, and is often the primary way in which children can lift themselves out of poverty or challenging backgrounds.¹³

WHAT ROLE CAN I PLAY?

Social workers and other professionals can provide significant support to children and pregnant girls, making sure that their right to education is not violated. They can help girls understand that they have the right to stay in school, should they wish to, and help to explore the additional support which may be available in practice. They can also play a role in speaking to school officials, parents and others to make sure that they are upholding their responsibilities to the girl.

WHAT ROLE CAN OTHERS PLAY?

Hong Kong Government – The government has a legal duty to provide all children with an education that meets their needs, and not to discriminate against anyone within the education system.

School Officials – School administrators and employees have a duty to provide equal education to all students, and are strictly forbidden from discriminating against students based on gender or pregnancy (or race, disability, marital status or family status).

Covenant on Economic, Social and Cultural Rights in light of the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, (Committee on Economic Social and Cultural Rights, General Comment 13, E/C.12/1999/10 (8 December 1999), para. 31).

10 Convention on the Elimination of Discrimination Against Women, Art. 10 (f).

11 UNESCO Convention Against Discrimination in Education (1960), Art. 1. The Committee on Economic, Social and Cultural Rights interprets articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights in the light of the UNESCO Convention against Discrimination in Education (Committee on Economic, Social and Cultural Rights, General Comment 13, E/C.12/1999/10 (8 December 1999), para 31).

12 Committee on Economic Social and Cultural Rights, General Comment 13 (1999) (E/C.12/1999/10), para. 1. The right to work is enshrined in Article 23.1 of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, Article 6. The right to healthcare can be found in the Universal Declaration of Human Rights, Art 25 and the International Covenant on Economic, Social and Cultural Rights, Art. 12.

13 Committee on Economic Social and Cultural Rights, General Comment 13 (1999) (E/C.12/1999/10), para 1.

Can schools expel a girl because she is pregnant?

No. In Hong Kong, the Sex Discrimination Ordinance specifically prohibits discrimination against pregnant women, i.e. when pregnant women or girls are treated less favorably than they would be if they were not pregnant¹⁴. Accordingly, if a school expels a girl based solely on the fact that she is pregnant, that would amount to unlawful discrimination. Under the Sex Discrimination Ordinance, it is unlawful for a service provider to refuse to provide goods, services, or facilities on the basis of gender (or pregnancy or marital status)¹⁵. It is also unlawful for an **educational establishment** to deny admission or access to a student because of gender (or pregnancy or marital status)¹⁶.

School attendance is **compulsory** in Hong Kong from 6 years old (Primary 1) until the completion of Secondary Education Form III¹⁷.

Can a school expel a young mother, or treat her differently, because she has child care duties?

No, discriminating against someone because she has responsibility for the care of an immediate family member is unlawful under the Family Status Discrimination Ordinance (Cap 527)¹⁸.

What can a girl do if a school discriminates against her on the basis of her pregnancy or her family status?

If a school discriminates against a girl on the basis of her pregnancy or her childcare responsibilities, she may either make a complaint to the Equal Opportunities Commission (the "**Commission**") or file a claim in the District Court. Frontline professionals may want to refer such cases to the Commission for conciliation and/or legal advice/assistance. The Commission is an independent body funded by the government that works towards the elimination of discrimination through three main functions; *investigation and conciliation, legislation and codes of practice and guidelines, education and promotion*. Through its first function it can investigate complaints lodged and conduct conciliation between parties or (in appropriate cases) provide assistance for legal action where conciliation fails.

14 Sex Discrimination Ordinance (Cap 480), s 8.

15 Sex Discrimination Ordinance (Cap 480), s 28.

16 Sex Discrimination Ordinance (Cap 480), s 25.

17 Education Ordinance (Cap 279), s 74.

18 Family Status Discrimination Ordinance (Cap 527), s 5.



Pregnancy Rights in Employment

INTRODUCTION

Women and girls who are employed and are facing a crisis pregnancy may be concerned about their job and their rights in employment during pregnancy. In particular, a young mother may encounter workplace discrimination on the basis of her pregnancy. In such cases, it is important to understand the extent of a pregnant woman's employment rights under Hong Kong law.

WHAT EMPLOYMENT BENEFITS IS A PREGNANT GIRL OR WOMAN ENTITLED TO?

A woman or girl who is working under a “continuous contract” is entitled to take maternity leave of up to 14 weeks (plus a further period equal to the number of days, if any, beginning on the day after the expected due date up to and including the actual date of birth) and up to four weeks of additional leave in the event of illness or disability arising out of the pregnancy or confinement¹⁹. The maternity leave must be taken in a continuous period beginning between two to four weeks before the due date²⁰.

“Continuous contract” means a contract of employment under which an employee has been employed to work 18 or more hours per week for at least four weeks²¹.

A pregnant employee is entitled to paid maternity leave if her contract of employment so provides the same on terms better than the ones provided under s. 14 of the Employment Ordinance (Cap. 57)²² or if she has worked under a continuous contract for at least 40 weeks immediately before taking maternity leave and has given notice of the pregnancy and her intention to take maternity leave to her employer²³ (a presentation of a medical certificate to her employer confirming her pregnancy is considered as a sufficient notice to that effect²⁴). If her confinement takes place before such notice is given, or after such notice is given but before the commencement of her maternity leave, she is required to give a notice to her employer of her confinement date and of her intention to take the 14 weeks of maternity leave within seven days of her due date²⁵.

Where an employee is entitled to maternity leave pay for the initial 14 weeks of maternity leave, the rate of pay must be at least 4/5th of the employee's average daily wages during the 12 months immediately before the date of commencement of her maternity leave, or if she has been employed for a period shorter than 12 months, the shorter period²⁶.

19 Employment Ordinance (Cap 57), s 12.

20 Employment Ordinance (Cap 57), s 12AA.

21 Employment Ordinance (Cap 57), s 3, citing Schedule I.

22 Employment Ordinance (Cap 57) s 14(1).

23 Employment Ordinance (Cap 57), s 14(2)(a).

24 Employment Ordinance (Cap 57) s 12(4).

25 Employment Ordinance (Cap 57), s 12 (5).

26 Employment Ordinance (Cap 57), s 14(3A).



If the pregnant woman or girl has worked under a continuous contract for **fewer than 40 weeks** prior to her scheduled maternity leave, she is still eligible for maternity leave **WITHOUT PAY** if she has given notice of her confirmed pregnancy and her intention to take maternity leave²⁷.

CAN A PREGNANT EMPLOYEE BE ASSIGNED HEAVY, HAZARDOUS OR HARMFUL WORK?

A pregnant employee may request not to be assigned heavy, hazardous or harmful work on producing a medical certificate with an opinion that she is unfit to handle heavy materials, or to work in places where gas injurious to pregnancy is generated, or to do other work injurious to pregnancy. Upon such request, the employer may not allocate the employee the work covered by the medical certificate²⁸. If the employee is already performing such work, the employer should reassign her to other types of work as soon as practicable, but in any case not later than 14 days after the date of the receipt of the request²⁹.

However, within 14 days after the date of the request, the employer may arrange for the employee to attend another medical examination, at the employer's expense, to obtain a second opinion as to the employee's fitness to undertake the work at issue³⁰. The employer must give the employee at least 48 hours' notice of the examination³¹. If the second opinion provides that the employee is fit to do the specified work or if the employee refuses to attend the medical examination as arranged by the employer, the employer may refer the employee's request to the Commissioner for Labour for a ruling³². However, pending the result of the second medical opinion, the employer should still act upon the pregnant employee's request.

Despite any changes in the earnings of the employee as a result of her transfer from heavy, hazardous or harmful work in accordance with the above arrangement, payment for maternity leave should be calculated on the basis of the average daily or monthly wages (as appropriate) earned by the employee during the period of 12 months immediately before re-assignment of her work, or if she has worked for the employer for less than 12 months, the shorter period³³.

27 Employment Ordinance (Cap 57), s 12.

28 Employment Ordinance (Cap 57), s15AA(1) and (2).

29 Employment Ordinance (Cap 57), s 15AA(2).

30 Employment Ordinance (Cap 57), ss 15AA(2) and (3).

31 Employment Ordinance (Cap 57), s15AA(4).

32 Employment Ordinance (Cap 57), ss15AA(5) and (6).

33 Employment Ordinance (Cap 57), s15AA(8).

CAN AN EMPLOYER DISCRIMINATE AGAINST AN EMPLOYEE BECAUSE SHE IS PREGNANT?

No. Pregnancy is a protected class under the Sex Discrimination Ordinance³⁴. It is therefore illegal for an employer to discriminate against an employee on the basis of her pregnancy.

Conduct is discriminatory if the employer “treats her less favorably than he treats or would treat a person who is not pregnant”³⁵ **or** if the employer applies the same condition or requirement to her as everyone else, but the condition is something she cannot comply with because she is pregnant, and the employer cannot objectively justify that condition or requirement³⁶.

The employee’s pregnancy or family responsibilities do not have to be the sole reason for the discriminatory treatment in order for it to be prohibited. It is sufficient if the pregnancy or family responsibilities (as applicable) is one of the reasons for discriminatory treatment, even if it is not the main reason³⁷.

CAN AN EMPLOYER DISMISS AN EMPLOYEE WHEN SHE BECOMES PREGNANT?

Generally no. After an employee who is working under a continuous contract has informed her employer that she is pregnant, it is illegal for an employer to dismiss her, starting from the date on which the pregnancy is medically confirmed to the date that the employee returns from maternity leave³⁸. In addition, if the employee informs her employer of her pregnancy immediately after having been given notice of termination, the employer must withdraw such notice³⁹. Note however that the above prohibition does not apply in cases where the employee is summarily dismissed (e.g. for serious misconduct) in accordance with section 9 of the Employment Ordinance⁴⁰.

If an employer violates this prohibition, it will be liable to pay the pregnant employee:

- a. the sum which would have been payable if the contract had been terminated by the employer by giving a payment in lieu of notice (unless such amount has already been paid);

34 Sex Discrimination Ordinance (Cap 480), s 8.

35 Sex Discrimination Ordinance (Cap 480), s 8(1).

36 Sex Discrimination Ordinance (Cap 480), s 8(2). See also section 11(1) and (2).

37 Sex Discrimination Ordinance (Cap 480), s. 4(b); Family Status Discrimination Ordinance (Cap 527), s. 4.

38 Employment Ordinance (Cap 57), s 15(1)(a).

39 Employment Ordinance (Cap 57), s 15(1)(b).

40 Employment Ordinance (Cap 57), s 15(1).

- b. a further sum equivalent to the monthly average of the wages earned by the employee during the 12 month period immediately before the dismissal date (or if the period is shorter than 12 months, the shorter period); and
- c. maternity leave pay for 14 weeks (if she would have been entitled to such payment)⁴¹.

In addition, the employer may be liable on conviction to a fine of up to HK\$100,000⁴². If any director, manager, secretary or other officer of the employer was involved in or complicit in the offence by the employer, such person may also be liable on conviction to such penalty⁴³.

The Minimum Employment Age in Hong Kong

Children **under 13** are **not allowed** to be employed⁴⁴. Children between the ages of **13 and 15** may work in **non-industrial** jobs or in the preparation of food on the premises for consumption and sale thereon, subject to certain conditions⁴⁵. In particular, if they have not completed Form III of secondary education they must still attend full time education⁴⁶. Children between the ages of 15 and 17 (inclusive) are considered “young persons”⁴⁷ and may be employed, though they are also subject to certain restrictions. For example, where they are employed in an industrial undertaking, their working hours can neither exceed 8 hours a day nor exceed 48 hours a week in general, but it is allowed if the employer and the young person have reached an agreement to that effect, provided that the total hours worked by the young person in that week and the next following week do not exceed 96 hours⁴⁸.

Adoption

CAN A PREGNANT WOMAN PLACE HER CHILD FOR ADOPTION?

No, a pregnant woman may have already made a decision to place her child for adoption, but she cannot place a child for adoption until after the baby is born. After the baby is born, she may work with the Social Welfare Department Adoption Unit to give consent to adoption under the Adoption Ordinance (Cap. 290). Social workers working with a woman placing her child for adoption should ensure she is provided with comprehensive counselling to support her through the decision.

DOES A GIRL UNDER AGE 18 NEED PARENTAL CONSENT TO PLACE HER CHILD FOR ADOPTION?

The Adoption Ordinance (Cap. 290) does not differentiate birth mothers based on their age.

41 Employment Ordinance (Cap 57), s 15(2).

42 Employment Ordinance (Cap 57), s 15(4); Criminal Procedure Ordinance (Cap 221), Schedule 8.

43 Employment Ordinance (Cap 57), s 64B.

44 Employment of Children Regulations (Cap 57B), reg 4.

45 Employment of Children Regulations (Cap 57B), regs 4 (3), 5 & 6.

46 Employment of Children Regulations (Cap 57B), reg 6.

47 Employment Ordinance (Cap 57), s 2.

48 Employment of Young Persons (Industry) Regulations (Cap 57C), reg 8.

Termination of Pregnancy

TERMINATION OF PREGNANCY INTRODUCTION

An unplanned pregnancy is often a crisis in a woman or girl's life, meaning it can be a time where tough decisions are required.

Social workers play an important role in this situation, including helping the woman/girl to understand her options—becoming a mother, placing her baby for adoption, or terminating the pregnancy – and the legal and practical issues surrounding these options, so that the woman/girl can make an informed decision.

Individuals counselling women and girls on this decision should be careful to examine their own values and biases, and to provide **non-judgmental counselling**, restricting their advice to clear factual information about the law and about each of the three options.

States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services⁴⁹.

WHAT ROLE CAN I PLAY?

Social workers can play a critical role in educating women and girls about the law regarding termination of pregnancy and her options. A social worker's role is to help her make an informed decision and provide support and advocacy with transitional steps following decision making. This may include hospital attendance, residential placements, changes in education and support to meet health, emotional and other needs.

Social workers can also help ensure pregnant women and girls are living in places of safety, mediate between girls and parents and respond appropriately to any pregnancies that have resulted from abusive acts such as rape or control in relationships.

WHAT ROLE CAN OTHERS PLAY?

Parents – Although not required by law, it is the policy of many Hong Kong hospitals to require consent from the girl's parents before they will perform a termination where she is under 18. Parents therefore play a critical role in the decision-making process. Parents are often also a key source of support for the girl but social workers should be mindful to provide independent support and maximize additional support available by third parties such as friends, schools, partners and relatives where safe and appropriate.

Medical Professionals – Medical professionals play a primary role in determining the medical needs of a woman/girl and what her available options are. As with all professionals involved with the care of unplanned pregnancies, medical professionals must be careful not to let their personal ethics or values affect their professional judgment.

49 UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15, available at: <https://www.refworld.org/docid/51ef9e134.html> (III, B, 56).

UNDER WHAT CIRCUMSTANCES CAN A PREGNANCY BE TERMINATED LEGALLY?

Termination of pregnancy can only be legally performed if

- a. it takes place within 24 weeks of pregnancy, unless it is necessary for saving the life of the pregnant woman;⁵⁰
- b. it is performed by registered doctors in specific hospitals and clinics.⁵¹ This requirement does not apply if the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman;⁵² and
- c. two registered medical practitioners agree in good faith that the termination of pregnancy should be performed. The doctors would only determine that a termination should be performed if:
 1. continuance of the pregnancy would involve risk to the life of the pregnant woman/girl or be of injury to the physical or mental health of the pregnant woman/girl, greater than if the pregnancy were not terminated; or
 2. there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormality as to be seriously handicapped.⁵³

In cases where the pregnant woman/girl is under 16 or has been the victim of a sexual offence (and has made a report to the police within 3 months of the offence), the doctor will automatically presume that the continuance of her pregnancy would involve risk of harm to the pregnant woman/girl and may therefore perform a termination of pregnancy if requested.⁵⁴

WHAT ARE THE LEGAL CONSEQUENCES FOR ILLEGAL TERMINATION OF PREGNANCY?

Any termination of pregnancy not performed by medical practitioners, or not in a designated clinic or hospital is illegal.

Any termination of pregnancy performed by medical practitioners after 24 weeks is illegal, unless it is necessary to save the life of the pregnant woman/girl.⁵⁵

For women who attempt to abort their own baby with unlawful administration of poison or other noxious thing or by use of any form of instrument, the maximum sentence is 7 years.⁵⁶ The gestation time or age of pregnant person has no bearing on this offence.

Any person who with intent to procure the miscarriage of any woman has unlawfully administered substances or instruments shall be liable to a fine and imprisonment with up to life sentence.

Anyone who supplies substances or instruments with knowledge of intended use for illegal abortion is liable to 3 years imprisonment.⁵⁷

50 Offences Against the Person Ordinance (Cap 212), s 47A(2C).

51 Offences Against the Person Ordinance (Cap 212), s 47A(3). Unless immediately necessary to save the life of the woman. See section 47A(4).

52 Offences Against the Person Ordinance (Cap 212), s 47A(4).

53 Offences Against the Person Ordinance (Cap 212), s 47A(1).

54 Offences Against the Person Ordinance (Cap 212), s 47A(2A).

55 Offences Against the Person Ordinance (Cap 212), s 47A(2C).

56 Offences Against the Person Ordinance (Cap 212), s 46(a).

57 Offences Against the Person Ordinance (Cap 212), s 46, 47.

Is anyone obligated to report illegal termination of pregnancy or attempted illegal termination of pregnancy?

Generally, a person or entity is not under any positive obligation to report crimes or provide assistance in any criminal investigation. Failure to report crimes does not generally attract any criminal liability.

However, there is a possibility for a person to be charged with (i) conspiracy with others to commit the offence of “illegal abortion” or (ii) aiding and abetting the commission of such offence by another if such person had gotten involved in the process thereof, such as unlawfully administering to and causing to be taken by a woman certain noxious things or operating on a woman with an instrument, with the intent to procure the miscarriage of the woman⁵⁸.

SEEKING TERMINATION OF PREGNANCY OUTSIDE OF HONG KONG

If a woman or girl obtains an abortion abroad after 24 weeks, it is unlikely that she will face any criminal charges in Hong Kong. This is because the Hong Kong courts only have jurisdiction over criminal acts that take place within Hong Kong territory.⁵⁹ Whether or not she is criminally liable in the country where the abortion is sought would depend on that country’s domestic laws.

However although the woman/girl herself will not be liable, anyone in Hong Kong who assists her in seeking a termination of pregnancy outside Hong Kong may still face criminal charges for the actions they took inside Hong Kong in helping the woman/girl to obtain an abortion.

IS PARENTAL CONSENT REQUIRED FOR A TERMINATION OF PREGNANCY FOR GIRLS UNDER 18 YEARS OLD?

Whether parental consent has to be obtained for medical decisions of a child (including termination of pregnancy) depends on the capacity and ability of the child to make an informed decision.

Under the Medical Council of Hong Kong’s Code of Professional Conduct Guide, children under 18 may consent to medical treatment if they are capable of understanding the nature and implications of the proposed treatment.⁶⁰ This is also supported by case law.⁶¹ If the child is not capable of sufficient understanding, consent has to be obtained from the child’s parent or legal guardian.

In practice, although it is not a legal requirement, many public and private hospitals in Hong Kong require parental consent for a girl under 18 to undergo termination of pregnancy.⁶²

58 (*R v Whitchurch* [1809] 24 QBD 420, *R v Sockett* [1908] 72 JP 428, 24 TLR 893), *HKSAR v Tam Chi Shing* CACC 443/2000 20 September 2001, <https://www.scmp.com/news/hong-kong/law-crime/article/2107682/two-women-jailed-over-illegal-abortions-carried-out-hong>

59 Since Section 46 of the Offences Against the Person Ordinance (Cap 212) does not fall under Sections 2(2) and 2(3) of the Criminal Jurisdiction Ordinance (Cap 461), the common law principle applies that Hong Kong courts only have jurisdiction over criminal offences which are committed within the territorial limits of Hong Kong.

60 Section 2, Code of Professional Conduct for the Guidance of Registered Medical Practitioners (2016), Part II Section 2.12.1, available at https://www.mchk.org.hk/english/code/files/Code_of_Professional_Conduct_2016.pdf.

61 *Gillick v West Norfolk and Wisbech Health Authority* [1986] AC 112 (HL), approved in *PD v KWW (Child: Joint Custody)* [2010] 4 HKLRD 191, [2010] HKFLR 184 (CA).

62 See Suet Lin Hung, Access to safe and legal abortion for teenage women from deprived backgrounds in Hong Kong, 18(36) REPRODUCTIVE HEALTH MATTERS (2010), at 107, available at <https://pubmed.ncbi.nlm.nih.gov/2111354/>.

Where a hospital requires parental consent for a termination of pregnancy, but the parents refuse to give such consent, it may still be possible for a girl to undergo abortion. For example, it may be possible to obtain a court order allowing the girl to have the procedure without parental consent where it is deemed in the girl's best interests. In these cases, the social worker involved should seek legal advice.

DOES THE BIOLOGICAL FATHER OF THE BABY HAVE ANY LEGAL RIGHTS REGARDING THE DECISION TO TERMINATE A PREGNANCY?

No, the biological father of the baby has no legally enforceable right to stop the girl from terminating a pregnancy. This is the case whether or not the couple is married.⁶³

CONTACT INFORMATION

List of Approved Hospitals and Clinics providing treatment for the termination of pregnancy⁶⁴

Hong Kong Adventist Hospital – Stubbs Road
Hong Kong Sanatorium & Hospital Limited
Kwong Wah Hospital
Matilda & War Memorial Hospital
North District Hospital
Pamela Youde Nethersole Eastern Hospital
Pok Oi Hospital
Prince of Wales Hospital
United Christian Hospital
Gleneagles Hong Kong Hospital
Princess Margaret Hospital
Queen Elizabeth Hospital
Queen Mary Hospital
Tsan Yuk Hospital
Tseung Kwan O Hospital
Hong Kong Adventist Hospital – Tsuen Wan
Tuen Mun Hospital
Union Hospital
The Family Planning Association of Hong Kong (Wanchai Nursing Home)

This chapter has highlighted that any person who is pregnant has rights under Hong Kong law (and the UN Convention on the Rights of the Child, where under age 18). These include the right to receive information, understand their options regarding termination or continuing their pregnancy, and to protect their education and employment.

63 Paton v British Pregnancy Advisory Service Trustees [1979] QB 276, [1978] 2 All ER 987, [1978] 3 WLR 687.

64 Department of Health, List of Hospitals/Clinics Approved under Section 47A (3) of the Offences Against the Person Ordinance (Cap. 212), retrieved from https://www.orphf.gov.hk/en/useful_information/approved_hospital_clinic_under_cap_212A. (last visited on 28 August 2020)



What are the Rights of the Child?

We have a responsibility to uphold children's rights. How does understanding the rights of children help us to be the voice for vulnerable children and families?

- 1 Everyone under 18 has these rights
- 2 **All children have rights, and I should be treated fairly and equally no matter who I am, what I look like, where I live, what language I speak, what my religion is, whether I am a boy or a girl and whether I have a disability.**
- 3 Adults must do what is best for me.
- 4 The government has a responsibility to make sure my rights are protected and respected.
- 5 **My family has the responsibility to help me learn to exercise and protect my rights.**
- 6 I should be supported to live and grow.
- 7 I have the right to a name, and to belong to a country.
- 8 I have the right to an identity which no one can take away.
- 9 **I have the right to live with a family who cares for me.**
- 10 I have the right to be together with my family if we live in different countries.
- 11 I have the right to be protected from kidnapping.
- 12 **I have the right to be listened to, and to be taken seriously.**
- 13 I have the right to find out and share information, unless it harms or puts someone in danger.
- 14 I have the right to have my own beliefs and choose my own religion, with my parents' guidance.
- 15 I have the right to meet with friends and join groups, unless it harms or puts someone in danger.
- 16 I have the right to my privacy.
- 17 **I have the right to get information in lots of ways, and adults have a responsibility to make sure it is not harmful.**
- 18 I have the right to be raised by both parents if possible.
- 19 **I have the right to be protected from abuse – from being hurt or badly treated in body and mind.**
- 20 & 21 **I have the right to special protection, care and support if I cannot live with my parents. I have the right to have care and protection if I am adopted or living in foster care.**
- 22 If I am a refugee (if I have been forced to leave my home country), I have the same rights as children in my new country.
- 23 **If I have a disability, I have the right to special care and education.**
- 24 I have the right to good quality healthcare, to clean water, and good food.
- 25 **If I am waiting for my safe, loving, and permanent family, I have the right for my care to be reviewed regularly to make sure it is good for me.**
- 26 I have the right to receive help from the government if my family doesn't have enough money.
- 27 I have the right to a safe place to live, food, and clothing to help me reach my potential.
- 28 I have the right to an education, and I should be encouraged to go to school to the highest level I can.
- 29 I have the right to an education which allows me to thrive, live peacefully, protect the environment, and respect others.
- 30 I have the right to speak my own language, and follow my family's religion and culture if I choose.
- 31 **I have the right to play and rest.**
- 32 If I work, I should be paid fairly, and I should not be made to do work that is dangerous or hinders my education and development.
- 33 I should be protected from dangerous drugs.
- 34 **I have the right to be free from sexual abuse. No one should touch me in ways that make me feel uncomfortable, unsafe, or sad.**
- 35 I should not be kidnapped, or sold.
- 36 I have the right to protection from being taken advantage of.
- 37 I have the right not to be punished in a cruel or hurtful way.
- 38 I have the right to not be enlisted in the army until I am 15 (18 years old in HK).
- 39 I have the right to help if I have been hurt, neglected, or badly treated.
- 40 I have the right to legal help and to be treated fairly if I have been accused of breaking the law.
- 41 If my country has laws that treat me better than the UNCRC, then those laws apply.
- 42 **I have the right to know my rights! And everyone around me should learn about my rights.**
- 43 - 54 These articles are about how governments and international organizations will work together to give children our rights.

Hong Kong agreed to the United National Convention on the Rights of the Child (UNCRC) in 1994.

I am a child, and I have all of these rights.

As I grow older, I have more responsibility to make choices and exercise my rights.

These rights will help me thrive and reach my full potential.

