

**立法會**  
**Legislative Council**

LC Paper No. CB(2)477/99-00

(These minutes have been  
seen by the Administration)

Ref : CB2/PL/HA

**LegCo Panel on Home Affairs**

**Minutes of meeting**  
**held on Monday, 12 April 1999 at 4:30 pm**  
**in the Chamber of the Legislative Council Building**

- Members Present** :
- Hon CHOY So-yuk (Chairman)
  - Hon Albert HO Chun-yan (Deputy Chairman)
  - Hon Cyd HO Sau-lan
  - Hon Edward HO Sing-tin, JP
  - Hon LEE Wing-tat
  - Hon MA Fung-kwok
  - Hon James TO Kun-sun
  - Hon Ambrose CHEUNG Wing-sum, JP
  - Hon Mrs Sophie LEUNG LAU Yau-fun, JP
  - Hon Andrew WONG Wang-fat, JP
  - Hon Jasper TSANG Yok-sing, JP
  - Hon Emily LAU Wai-hing, JP
  - Hon Andrew CHENG Kar-foo
  - Hon Timothy FOK Tsun-ting, JP
  - Hon LAW Chi-kwong, JP
- Members Absent** :
- Hon Christine LOH
  - Hon Gary CHENG Kai-nam
  - Hon LAU Wong-fat, GBS, JP
- Member Attending** :
- Hon CHAN Yuen-han

Action

**Public Officers :**     Item IV  
**Attending**

Mr David TSUI  
Deputy Secretary for Home Affairs (2)

Mr LUI Hau-tuen  
Deputy Director of Home Affairs

Mr Francis LO  
Principal Assistant Secretary for Home Affairs

Mr C K AU  
Assistant Director of Buildings, Buildings Department

Mr J K KWOK  
Chief Fire Officer (Protection), Fire Services Department

Mr K H LO  
Chief Electrical & Mechanical Engineer,  
Electrical and Mechanical Services Department

Item V

Mr Leo KWAN  
Deputy Secretary for Home Affairs (1)

Miss Helen TANG  
Principal Assistant Secretary for Home Affairs

Mr C M WONG  
Assistant Secretary for Home Affairs

Mr Philip CHAN  
Principal Assistant Secretary for Security

Mr Esmond LEE  
Principal Assistant Secretary for Planning,  
Environment and Lands (Lands)

Miss Sandy CHAN  
Principal Assistant Secretary for Housing

Action

Mr Simon LEE  
Assistant Director (Legal Advice), Housing Department

Mr CHAN Ying-fai  
Chief Housing Manager (Application),  
Housing Department

Miss Mandy WONG  
Commissioner for Rehabilitation (Ag)

Mrs Betty NEOH  
Principal Executive Officer (Civil Service) Management  
Civil Service Bureau

**Attendance by  
Invitation**

Item V

Equal Opportunities Commission

Dr Fanny CHEUNG  
Chairperson

Miss Alexandra PAPADOPOULOS  
Legal Adviser

**Clerk in  
Attendance** : Mrs Constance LI  
Chief Assistant Secretary (2) 2

**Staff in  
Attendance** : Miss Flora TAI  
Senior Assistant Secretary (2) 2

---

**I. Confirmation of minutes**

[LC Paper Nos. CB(2)1496/98-99 and CB(2)1649/98-99]

The minutes of the meetings held on 14 December 1998 and 8 March 1999 were confirmed.

Action

**II. Information paper issued since the last meeting**

[LC Paper No. CB(2)1487/98-99]

2. Members noted the letter from the Secretary for Home Affairs on the number of organisations and personnel participated in the fields of culture, the arts, recreation and sports.

**III. Items for discussion at the next meeting**

[Paper No. CB(2)1613/98-99(01)]

3. Members agreed to discuss the following at the next regular meeting on Monday, 10 May 1999 -

- (a) Progress of Year 2000 compliance exercise under the policy responsibility of Home Affairs Bureau;
- (b) Proposed \$500 million loan to support Ocean Park Corporation's Lowland Redevelopment Project; and
- (c) Rural elections.

Members tentatively agreed that the Panel would discuss "Difficulties encountered by divorcees in collecting maintenance payments" and "Work of the Office of the Privacy Commissioner for Personal Data" at its regular meeting in June 1999.

4. The Chairman informed members that two special meetings had been scheduled for 14 and 18 May 1999 to receive oral representations from interested organisations in the arts and sports communities on the Consultancy Report on the new institutional framework for culture, the arts, recreation and sports services.

*(Post-meeting note : The special meetings have been re-scheduled subsequently to avoid clashing with a House Committee special meeting on 14 May 1999.)*

**IV. Legislative and administrative measures to improve management and fire safety in private building**

[LC Paper Nos. CB(2)1451/98-99(01), CB(2)1613/98-99(02) and CB(2)1670/98-99]

5. At the invitation of the Chairman, representatives of the Administration briefed members on the legislative and administrative measures to improve

Action

management and fire safety in private buildings. Deputy Secretary for Home Affairs (2) (DS(HA)2) said that "building management" consistently ranked high on the list of major concerns of the people in Hong Kong. To tackle the problem, the Administration had taken various measures in recent years to promote building management awareness and culture in order to improve management and fire safety in private buildings. Apart from encouraging owners to form owners' corporations (OCs) for managing their buildings and providing support and assistance to OCs through establishment of Building Management Resources Centres (BMRC) and other measures, legislative reviews had been carried out with a view to -

- (a) specifying management and maintenance standards for compliance by OCs and providing sanctions against non-compliance;
- (b) requiring mandatory management of problematic buildings as identified by the Director of Fire Services and/or Director of Buildings; and
- (c) requiring automatic/mandatory formation of OCs in new buildings.

6. DS(HA)2 stressed that the Administration's position was that owners should be responsible for managing their buildings, and that mandatory management was only targetted at old and problematic buildings. The Administration would consult the public and professional bodies to work out the detailed proposal including the formulation of a Code of Practice.

7. With regard to the proposed automatic/mandatory formation of OCs within one year after the land titles of the building were registered with the Land Registrar, DS(HA)2 clarified that the Administration was considering whether the requirement could be waived if the building was already well-managed and with owners' committee. DS(HA)2 added that the legislative proposal also included mandatory insurance for common parts of a building against fire, liability or other risks. Moreover, the accounts of OCs would be audited by qualified accountants only.

8. On the provision of BMRCs, Deputy Director of Home Affairs (DD/HA) informed members that Home Affairs Department (HAD) was planning to set up the third BMRC in the New Territories in the next financial year. The Hong Kong Institute of Architects was also considering joining other professional bodies in providing free professional advice at these centres. In this connection, Mr Ambrose CHEUNG remarked that BMRCs should also provide advice on government policies in respect of building management. On the establishment of District Fire Safety Committees (DFSCs), DD/HA said that only the Islands and

Action

Sai Kung Districts currently did not have DFSCs but all 18 Districts would have their own DFSC by the end of 1999.

9. Chief Fire Officer (Protection) (CFO(P)) of the Fire Services Department (FSD) said that according to FSD's territory-wide building survey in February and March 1998, the fire service installations and fire safety management of 72% of the private buildings were found unsatisfactory. FSD had carried out follow-up and enforcement actions on irregularities detected in the problematic buildings, through overtime work and re-deployment of FSD staff on leave. He stressed that the exercise had pointed to the need for improved building management, and that both fire service installations and fire safety management were necessary to tackle fire safety problems in private buildings. CFO(P) also informed members that FSD would set up a 5-member team to carry out sample survey of composite, residential, industrial and commercial buildings. FSD would consider whether legislative proposal would be necessary after studying the survey findings.

10. Assistant Director of Buildings informed members that the Buildings Department (BD) had conducted sample survey covering 1 200 buildings. The findings showed that 900 buildings had problems of unauthorised alterations and/or obstructions to exit routes in common areas. It reflected there were building management problems in these buildings and BD would carry out necessary follow-up actions. Similar problems also existed in a few thousand single staircase buildings which had unauthorised rooftop structures. As these structures caused obstruction to the means of escape, BD would expedite demolition of these unauthorised rooftop structures by two phases.

11. Chief Electrical and Mechanical Engineer briefed members on the enforcement actions taken by Electrical and Mechanical Services Department (EMSD) on about 11 400 buildings with problems in electrical installations as referred by FSD. Subsequent inspection on 7400 buildings revealed that the electrical installations in 4% of the surveyed buildings were satisfactory, whereas 73% would require minor repairs and 23% would require major rectification. EMSD would issue letters to these buildings on the follow up actions required. He added that a publicity campaign on electrical installations in buildings would be conducted in view of the successful one conducted last year on electrical appliances safety.

12. The Chairman then invited questions from members on the legislative measures to improve management and fire safety in private building and asked the Administration to respond accordingly. The gist of discussion is summarised in paragraphs 13 - 22.

Action

Specification of management and maintenance standards

13. Members noted that the Administration proposed to empower the Secretary for Home Affairs (SHA) to publish in the Gazette a Code of Practice on the management and maintenance standards for compliance by the OCs or owners. In response to the Chairman, DS(HA)2 said that the Code of Practice would be subsidiary legislation subject to negative vetting of Legislative Council (LegCo). It would set out the integrated standards building management and maintenance as specified by the relevant departments (FSD, BD, EMSD and HAD).

14. Mr Edward HO noted that a high percentage of the surveyed buildings were found to have problems in fire safety conditions and that the Administration had plans to require owners of pre-1987 private buildings to upgrade the fire safety measures to modern standards. In this respect, Mr Edward HO queried whether it was plausible to impose such mandatory requirements with retrospective effect, as the occupation permits of these buildings were issued on the basis of the fire safety standards prevailing at the time. He also warned the Administration that there would be wide implications of the mandatory requirements. In response, DS(HA)2 clarified that a number of these buildings might only require minor rectification. The legislative amendments which were being prepared by Security Bureau was only to implement the consultation paper on proposals to improve fire safety in private buildings. CFO(P) acknowledged Mr HO's concern about implementation difficulties. He said that the 5-member inspection team of FSD was to ascertain the difficulties of these buildings in compliance with modern fire safety standards before finalising the legislative proposals. He added that old commercial premises and buildings were already required to upgrade their fire safety standards to modern standards by fulfilling only five basic requirements. In this regard, Mr HO expressed concern that there might be co-ordination problem as Home Affairs Bureau (HAB) and Security Bureau were separately responsible for implementation of the fire safety improvements in residential and commercial buildings.

Mandatory management of problematic buildings

15. Deputy Chairman welcomed most proposals in the Administration's paper, such as the proposal to empower SHA to appoint a building manager for owners of problematic buildings where the owners declined to comply with the mandatory requirements. In this connection, he asked whether a fund would be set up to help finance the management costs which would be recovered from the owners afterwards. DS(HA)2 responded that owners could apply for loans under the Fire Safety Improvement Loan Scheme and the Building Safety Improvement Loan Scheme. He estimated that the number of these problematic buildings requiring mandatory management was about 1 000 only. Deputy Chairman suggested that the Administration should be flexible in considering

Action

applications under these loan schemes to cater for cases where an OC had not been formed. He also suggested that the loan should cover insurance for public liability in respect of the common parts of the buildings. CFO(P) informed members that so far no application had been received for the Fire Safety Improvement Loan Scheme, mainly because only owners of commercial premises/buildings were eligible to apply and security was required for a loan. FSD was now reviewing the Loan Scheme with a view to attracting more applications. DS(HA)2 explained that the Fire Safety Improvement Loan Scheme was only applicable to commercial premises and buildings in phase I but the Administration would consider extending its application to residential buildings in phase II if necessary.

16. Deputy Chairman remarked that unless financial assistance was made available to effect urgent repairs to problematic buildings, the proposed mandatory building management measures would not be effective. Mr James TO said that instead of attracting more applications from owners of commercial premises or buildings, the Administration should consider making use of the Fire Safety Improvement Loan Scheme to finance maintenance and management of problematic buildings. In this connection, the Chairman inquired about the arrangements in paragraph 10 of HAB's paper. DS(HA)2 explained that the proposed mandatory management of buildings would apply only when the building conditions had deteriorated to a very poor state and when the owners declined to appoint a manager for the building. In these circumstances, SHA would appoint a building manager, from amongst the list of authorized companies in the Gazette, for owners of the problematic building in question. The building manager could apply for financial assistance from a loan scheme to make urgent repairs, and then recover the costs from the owners. If an owner refused to pay, a charge could be registered in the Land Registry against his interest in the property. DD/HA supplemented that details of the proposal would need to be worked out carefully in view of its wide implications. He added that although mandatory formation of OCs and mandatory management of problematic buildings were not panacea to all management problems in private buildings, the Administration considered it necessary to provide a mechanism in legislation to impose a mandatory requirement on the owners where appropriate. Mr James TO stressed that the Administration should carefully evaluate the feasibility of a particular measure before stipulating it in the legislation. DS(HA)2 assured members that more concrete details would be provided in the bill after consultation with LegCo Members and concerned parties.

Adm

Mandatory formation of OCs in new buildings

17. Mr TSANG Yok-sing expressed concern about the enforcement aspects of the proposed mandatory management of private buildings. He also asked whether an OC would be presumed to have formed once the owners in new



Action

buildings registered their titles with the Land Registrar. DS(HA)2 replied that the Administration proposed to compulsorily require the owners to form an OC within one year after they had registered their respective titles with the Land Registrar. The Administration would be prepared to consider waiving such requirement if a management mechanism, for example, an owners' committee, was already in place for the satisfactory management of the building.

18. Deputy Chairman queried whether it was necessary to compulsorily require owners of new buildings to form an OC as the empowering provision for SHA to appoint a building manager would have solved problems of building management. Some other members also expressed reservations on the feasibility and rationale of the proposed mandatory formation of OCs in new buildings. DS(HA)2 responded that it might be unrealistic to compel owners of new buildings to form OCs against their wish, but the provision was only to make clear the objective of legislation. Mr James TO asked whether a penalty would be imposed if the owners in new buildings did not comply with the requirement within the prescribed period. DS(HA)2 replied that the policy objective was more on encouragement rather than penalty, and that the Administration had no definite views on the need for penalty in this respect. Mr TO remarked that he was concerned about the practicability of such mandatory provisions and that it was unusual to stipulate a mandatory requirement without sanction in the legislation. Mr Andrew CHENG held similar views. The Chairman advised the Administration to take note of members' concerns when formulating the legislative and administrative arrangements.

Adm

19. Ms Emily LAU referred to the extract of minutes of the meeting between LegCo Members and members of the Tuen Mun Provisional District Board (TMPDB) at 21 January 1999 [Paper No. CB(2)1670/98-99(01)]. TMPDB members had expressed concern that an OC could be controlled by a small group of people if they managed to obtain sufficient number of letters of authorisation. Ms LAU said that she could not agree with the Administration's reply [Paper No. CB(2)1670/98-99(02)] that the proxy system was fair. PAS(HA) responded that section 5 of the Ordinance provided for a proxy system, the spirit of which was to encourage owners to participate in the decision making process at their convenience. He said that these individual cases did not necessarily indicate that the proxy system itself was ineffective or unfair. He said that the proxy system had been in operation for many years and was generally accepted by the owners and OCs. Ms LAU said that she knew that some owners simply gave their blank authorisation for other people to make the decision for them. She considered that the Administration should review the voting procedure for the formation of an OC to ensure fairness. PAS(HA) replied that the proxy system was based on a reasonable assumption that owners would be able to make their own decisions and that owners should not simply give a blank authorisation.

Action

20. Mr Andrew CHENG referred to a case where the owners of a composite commercial/resident building in Tai Po were unable to comply with FSD's directions to improve the fire safety measures of the building up to the stipulated standards due to insufficient portion of shares to form an OC. It was because the whereabouts of many owners could not be traced and HAD could do nothing to help. Mr CHENG was therefore of the view that the proposed mandatory formation of OCs was unfair to individual owners unless HAD would give an undertaking to assist them in forming OCs. DS(HA)2 responded that the Administration was well aware that many composite buildings had management problems and that some owners faced difficulties in forming their OCs to effect specific improvement measures to the fire safety of their buildings. Mandatory management of these problematic buildings would therefore be required.

Mandatory insurance

21. Mr James TO said that he supported in principle the proposed mandatory requirement for OCs to take insurance expressly including public liability in respect of the common parts of the building. Mr TO asked whether the Administration had any proposal on the required premium level. PAS(HA) replied that it would be for the OC to decide the premium with regard to the circumstances of the building. Mr James TO doubted the effectiveness of a mandatory insurance requirement if the premium level was not prescribed in the legislation. DS(HA)2 stressed that the owners should make their own risk assessment, while valuation by the Rating and Valuation Department could provide useful reference.

Auditing of accounts of OCs

22. Mr James TO expressed support of the Administration's proposal that exemption from the mandatory requirement of auditing by a qualified accountant could be granted on the basis of full justifications e.g. a building with a very small number of flats.

Overall review of the Building Management Ordinance

23. The Chairman asked whether the proposed legislative amendments only covered private residential buildings. DS(HA)2 responded that the Building Management Ordinance and the proposed amendments applied to all private buildings including residential, commercial and composite buildings. Deputy Chairman said that it was now opportune to have an overall review of the Ordinance, on the basis of operational experience. Issues requiring review included the role of HAD, evasion of management responsibilities by property developers and other inadequacies in the legislation to cope with recent changes such as increased participation of owners in building management. In this connection, he also expressed concern that the deeds of mutual covenant drawn

Action

up by some property developers stipulated an unfair proportion between the title shares and management shares of the developers. The Chairman expressed similar concerns. Mr Ambrose CHEUNG also pointed out that many provisions of the Ordinance warranted review such as section 20A, section 1(a) of Schedule 2 and section 5(b) of Schedule 3. For example, section 1(a) of Schedule 2 (Composition and Procedure of Management Committee) categorised a building on the basis of the number of flats, i.e. not more than 50, not more than 100 and more than 100, whereas an OC would only be formed for buildings with over 1 000 flats. Mr CHEUNG also suggested that the quorum for meetings of OCs and percentage of shares for convening meetings and making decisions should be specified in a Code of Practice or in the Ordinance. He therefore urged the Administration to include any necessary amendments in the legislative proposals.

Adm

24. DS(HA)2 responded that the current exercise was to implement the relevant recommendations in the "Public Consultation on Proposals to Improve Fire Safety in Private Buildings". However, he assured members that the Ordinance was subject to regular reviews and he would welcome Members' comments and suggestions to address other problems. As regards the disproportion between title shares and management shares, DS(HA)2 said that he would look into details of these cases. Deputy Chairman undertook to provide relevant information to the Administration for follow-up.

Adm

25. On the timing for introducing the proposed legislative amendments, DS(HA)2 said that HAB was bidding for a legislative slot to introduce an amendment bill into LegCo in the 1999-2000 session and the drafting would be completed in the summer of 1999. The Administration would consider other amendments proposed by members if these were urgently required, or include the amendments in the next review. Mr Andrew CHENG suggested that members should forward their proposed amendments to the Administration as soon as possible so that these could be incorporated in the bill. With reference to the Administration's legislative timetable, the Chairman requested members to forward their suggestions to the Administration by the end of May 1999.

*(Post-meeting note : The Administration subsequently requested members to forward their proposals on amendments by 15 May 1999 in its letter of 17 April 1999 circulated vide LC Paper No. CB(2)1743/98-99.)*

Other comments

26. Mr Edward HO indicated no objection to the Administration's proposals to improve the fire safety and building management in private buildings. However, he requested the Administration to attach equal importance to address the problem of structural safety of private buildings.

Adm

**V. Review of the Sex Discrimination Ordinance and Disability Discrimination Ordinance**

[Paper No. CB(2)1613/98-99(03)]

27. At the invitation of the Chairman, Chairperson of the Equal Opportunities Commission (CEOC) briefed members on the paper on the review of the Sex Discrimination Ordinance (Cap. 480) (SDO) and the Disability Discrimination Ordinance (Cap. 487) (DDO). Members noted that EOC was tasked with the function of keeping under review the working of SDO and DDO. CEOC said that EOC had conducted a review which focused on the three areas as set out in the paper. EOC had submitted its recommendations on the legislative review to the Chief Executive in February 1999. The recommendations were mainly to clarify and simplify those ambiguous provisions and to rectify defects in the legislation. CEOC highlighted that the legislative review mainly covered the following -

- (a) EOC should have the right to take legal action for discriminatory practices;
- (b) Schedule 5 of SDO which contained a number of exemptions should be repealed; and
- (c) the protection against sexual harassment in certain fields should be extended.

In this connection, CEOC informed members that EOC's recommendations had included proposed amendments to section 64 of DDO which the Administration had already rectified as early as in 1997.

28. In response to the Chairman's enquiry about the Administration's initial response to EOC's recommendations, Deputy Secretary for Home Affairs (1) (DS(HA)1) said that as a matter of policy, the Administration supported the principle of equal opportunities and welcomed suggestions from EOC on improvements to the legislation. As the recommendations touched upon both policy and legal issues, relevant bureaux and departments were now examining the implications. The Administration would also like to listen to views of Members of LegCo and non-government parties. No conclusion had been made at the present stage. On the legislative timetable, DS(HA)1 said that the Administration would expedite the process but no timeframe could be set at the present stage. He assured members that the Administration would report to the Panel on the progress.

Exemptions under Schedule 5 of SDO

29. Mr James TO indicated support for EOC's recommendation to remove exemption for the small house policy. In response to Ms Emily LAU, CEOC clarified that EOC had not recommended similar privileges be conferred on female indigenous villagers in the New Territories. EOC had only pointed out that the existing small house policy was a form of sex discrimination as female indigenous villager did not enjoy the same right as her male counterpart. EOC had therefore recommended the Administration to repeal the exemption but made no specific proposal in this respect. In this connection, Ms LAU stressed that indigenous villagers in the New Territories should not have more rights or privileges over other residents in Hong Kong.

Extension of protection against sexual harassment

30. Mr James TO said that under existing legislation, sexual harassment was unlawful only under specified circumstances or if a specified relationship was involved, for example, in an employer-employee relationship. He therefore questioned the rationale for extending the protection to tenant/sub-tenant relationships, since the parties were of equal status and no power relationship was involved. CEOC explained that EOC had received complaints about sexual harassment from female single parents and single women involving sexual harassment by a landlord against a tenant, or by a tenant against another tenant or sub-tenant. However, existing legislation did not cover these situations and EOC could not take action in these cases. EOC therefore considered it necessary to extend the protection to address the unfair situation.

31. CEOC further explained that a man was usually perceived to be in a dominant or threatening position in his relationship with a woman residing in the same premises. She said that EOC had taken into account the special circumstances of tenancy relationships in Hong Kong when putting forward the proposal. Mr James TO expressed reservations about the rationale and justifications for the proposal. He was concerned that the proposal introduced a new principle of proximity in addition to the principle of a power relationship for legislation on sexual harassment. In response, CEOC pointed out that existing legislation already covered sexual harassment between students in educational organisations. Mr TO said that he would consider the proposal reasonable only if existing legislation actually covered students in educational institutions.

32. Referring to the principle of proximity, the Chairman asked whether EOC would consider extending the protection against sexual harassment to public areas. CEOC replied that EOC only proposed amendments to those areas or institutions already in SDO. She added that criminal offences involving sexual assault were dealt with by other relevant legislation. EOC did not consider it

Action

necessary to extend the protection to circumstances of brief encounters e.g. in public transportation.

EOC

33. Deputy Chairman said that EOC appeared to give more emphasis to the review of SDO as it made proposals to remove the exemptions under Schedule 5 of SDO but no similar proposal was made for DDO. CEOC explained that although DDO also had Schedule 5 for further exemptions to the Ordinance, no exemption had actually been specified in the Schedule. EOC had therefore recommended repeal of the whole Schedule 5 from DDO. Deputy Chairman considered that EOC should also review whether the exemptions of all voluntary bodies from application of DDO was still necessary.

#### Right to take legal action for discriminatory practices

34. With reference to EOC's proposal that SDO and DDO should be amended to allow EOC to bring civil proceedings in the District Court for discriminatory practices, Deputy Chairman expressed concern that the proposal might undermine the impartiality of EOC, since EOC also had a conciliatory function under the legislation. He said that there had been criticisms that EOC had acted in favour of the complainants during conciliation. Deputy Chairman therefore suggested EOC to differentiate the conciliatory staff from those staff for the legal proceedings, and to ensure that these staff would not exchange information. If this was not possible, EOC might have to consider engaging outside arbitrators. CEOC clarified that the proposal was to bring proceedings against discriminatory practices rather than individuals. EOC acknowledged the need to differentiate staff for taking legal action from those responsible for conciliation. Due to manpower constraint, it was not feasible to set up different divisions for these two types of work, but EOC would make appropriate procedural arrangement to ensure impartiality of its staff in bringing about the legal proceedings.

Concluding comments of the United Nations Committee on the Elimination of Discrimination against Women (UN Committee) on the Initial Report on the Hong Kong Special Administrative Region (HKSAR) under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

35. Ms Emily LAU referred to the recommendations of the UN Committee that HKSAR Government should establish a high-level central mechanism to develop and co-ordinate a women-focused policy, and to increase women's participation at high level decision-making and in government advisory boards and statutory committees. Ms LAU asked whether any amendment to SDO could be made to implement these recommendations. CEOC replied that no provision of SDO could cover these recommendations.

Action

36. Ms Emily LAU referred to section 35 of SDO concerning discrimination in eligibility to vote for and to be elected or appointed to advisory bodies. In view of the low participation of women (below 20%) in government advisory and statutory bodies, Ms LAU urged EOC to consider reviewing the legislation in order to exert pressure on the Administration to take affirmative action to increase women's participation in public affairs. CEOC responded that SDO had provided adequate protection against sex discrimination with regard to eligibility for appointment to advisory bodies. Administrative measures should be taken if affirmative action was considered necessary. She also drew members' attention to section 48 of SDO which provided that a special measure would not be rendered unlawful if it was reasonably intended to ensure equal opportunities to persons of a particular sex or marital status. Ms LAU doubted the effectiveness of section 35 of SDO in ensuring equal opportunities for both sexes to participate in government advisory and statutory bodies. She queried why affirmative action by legislative means was considered not necessary. CEOC responded that the issue of affirmative actions had been fully debated by LegCo when the anti-discrimination ordinances were passed into law. It was then considered that administrative measures and education were more appropriate than legislative measures to promote equal opportunities. She stressed that the spirit of SDO was to protect the rights of individual whereas women's participation in public life was a different issue. She advised that the low participation of women in public affairs could be caused by factors other than sex discrimination.

37. Referring to section 48 of SDO, Deputy Chairman asked whether the potential beneficiary could complain to or claim damages from the Government or organizations concerned for the latter's failure to implement a special measure recommended by EOC to ensure equal opportunities for persons of a particular sex or marital status. He also asked whether EOC would consider publicising its recommendations not adopted by Government or organizations. CEOC reiterated that the legislative intention of SDO was to stipulate the minimum benchmark to combat sex discrimination in the legislation rather than to take affirmative action to ensure equal opportunities for both sexes. During the initial stage of implementation, EOC concentrated on promoting the policy of equal opportunities for both sexes particularly in employment practices. In this connection, EOC had maintained close liaison with the Administration, particularly the Civil Service Bureau, in promoting the Code of Practice in employment. The Administration had made corresponding changes to its policies in response to EOC's recommendations. As regards HKSAR's initial report on CEDAW, EOC had made a submission urging the Administration to appoint more women to statutory advisory bodies as a first step to enhance women's participation in political and public life. The Administration had yet to respond to the recommendation. At the request of Deputy Chairman, CEOC undertook to provide information on its recommendations to the Administration on discrimination issues and the Administration's responses.

Action

(*Post-meeting note* : EOC provided an information paper on its advice to the Administration on discrimination issues vide LC Paper No. CB(2)1843/98-99.)

38. Ms Emily LAU asked whether the Administration had taken any administrative measure to increase women's participation in government advisory and statutory bodies. DS(HA)1 said that appointment to statutory boards and advisory committees was primarily based on the abilities, expertise, knowledge and experience, and commitment to public service, rather than the gender of appointees. In this respect, HAB maintained a Central Personality Index System which was a database containing personal data of individuals who were serving or had served on government and statutory bodies and those who had indicated an interest to do so. DS(HA)1 pointed out that the Administration had recently approached members of over 100 women bodies and other non-governmental organisations inviting them to indicate their interest to serve on those bodies by providing information to be included in the database. The Administration had also uploaded on the Internet a proforma to facilitate the inclusion in the database by interested members of the public. He said that women's participation in government advisory and statutory bodies was currently around 20%. It was a matter of judgement as to whether the figure was satisfactory but the rate had increased in recent years. Ms LAU remarked that 20% was clearly a very low participation rate as developed countries such as Norway had set a 40% quota of either sex for such bodies. She therefore requested the Administration to provide information on the numbers of men and women members in government advisory and statutory bodies. DS(HA)1 said that he did not have the information in hand but members could make reference to the replies by the Secretary for Home Affairs to a LegCo Member's question at the Council meeting on 24 March 1999.

39. The Chairman stressed that there had been suggestions in the community for a mechanism on gender impact assessment or a gender policy in the government policy-making process. She pointed out that the Central People's Government of the People's Republic of China had set a pre-determined quota for appointing women to advisory and statutory bodies. DS(HA)1 said that the Administration would examine the proposals on a central mechanism on women and consult concerned parties. As regards appointment to government advisory and statutory bodies, DS(HA)1 reiterated that these were made on ad personam basis regardless of the gender. Nevertheless, the Administration would give due regard to members' concerns in considering appointments.

40. There being no other business, the meeting ended at 6:50 pm.

Legislative Council Secretariat  
25 November 1999