

# Legislative Council

## Panel on Home Affairs on 8 March 1999

### Hearing of the United Nations Committee on the Elimination of Discrimination against Women 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 (CEDAW)

#### Information Note

#### Background

The initial report on the HKSAR under CEDAW was submitted to the United Nations (UN) in August 1998, as part of the China's report.

2. The hearing of the China's report was held on 1 February and 2 February 1999 in New York. The report of the Central People's Government (CPG) was examined on 1 February, while that of the HKSAR was examined in the morning of 2 February.

#### The delegation

3. The Chinese delegation was led by Ambassador Qin Huasun, the Permanent Representative of the Chinese Mission to the United Nations. A total of ten representatives from the HKSARG attended the hearing as part of the Chinese delegation. Representatives from the HKSARG was led by Mr. David Lan, Secretary for Home Affairs (SHA). Other members included representatives from Home Affairs Bureau, Education and Manpower Bureau, Department of Justice, Social Welfare Department and Department of Health.

#### Hearing on 2 February

4. The hearing started with a brief opening introduction of Ambassador Qin. Thereafter the entire process on the hearing on the SAR report was handled solely by the Hong Kong team headed by SHA who began by giving an opening statement in Putonghua. It is followed by replies to written questions raised by the Committee, a copy of which is at Annex A.

5. The Committee commended the HKSARG on the high standard of the report, its oral presentation and detailed replies to the questions posed by the Committee. It also raised oral questions which covered a wide range of issues. A copy of our supplementary responses to oral questions raised by the Committee is at Annex B.

#### Comments of the Committee

6. The concluding comments of the Committee and our initial response are at Annexes C and D respectively.

Home Affairs Bureau  
March 1999

Response to written questions raised by the

**UN Committee on the Elimination of Discrimination against Women on  
the Initial Report on the HKSAR under CEDAW**

*Q41. Describe the impact of the reservation lodged by the Government of China in the application of the Convention to the HKSAR. Indicate whether any discrimination protected by the reservation is inconsistent with the guarantees of the Basic Law and the Hong Kong Bill of Rights. Also indicate the Government's plan to remove the reservation within a given timetable.*

A41. Since the reunification with the Mainland, residents in Hong Kong have enjoyed even better protection as our rights are now entrenched in the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC). The Basic Law, being effectively the written constitutional document of the HKSAR, has been put into effect since 1 July 1997, the day when the Government of the PRC resumed the exercise of sovereignty over Hong Kong. One of the major principles enshrined in the Basic Law is the principle of "one country, two systems". That is to say, the socialist system and policies are not practised in the HKSAR and the previous capitalist system, and way of life will remain unchanged for 50 years. The fundamental rights and duties of Hong Kong residents are, amongst other things, fully set out in the Basic Law (Chapter III).

The HKSAR continues to abide by a number of human rights treaties and CEDAW is one of them. Upon the reunification, the Government of the PRC wrote to the Secretary-General of the UN to say that the reservations for CEDAW would continue to apply to the HKSAR. The Government of the PRC also extended to the HKSAR its reservation to paragraph 1 of Article 29.

As it was the case before the reunification, the HKSAR Government is fully committed to the protection of human rights, including of course women's rights. We in the HKSAR Government are fully committed to discharging the treaty obligations under CEDAW. We are fully aware that these obligations cannot be taken lightly. Yet we are also obliged to assess whether these obligations can be discharged for the moment, having regard to the need and special circumstances of the HKSAR, the Basic Law and the Hong Kong Bill of Rights Ordinance.

Indeed, as the British Nationality Act 1981 is no longer relevant, the reservation to Article 9 has already been removed. The remaining reservations are retained purely on a need basis. They are retained to preserve laws and policies that protect the interests of the community as a whole. These reservations, like laws and policies, have been kept under review to see if they are

- inconsistent with the Basic Law;
- inconsistent with the Hong Kong Bill of Rights Ordinance; and
- serving the interests of the community in the HKSAR as a whole.

There are suggestions that the reservations should be taken out. We welcome those views and we seriously consider them. So far, we in the HKSAR Government are of the view that these reservations are still required. Should changing circumstances suggest that any of them may no longer be

necessary or justifiable, we will review the need for their retention.

Q42. *Has the HKSAR Government adopted a plan of action as called for by the Beijing Declaration and Platform for Action. If not, what are the reasons? When does the Government intend to do so?*

A42. The HKSARG has worked unflinching for the strategic objectives of the Beijing Declaration and Platform of Action. Our efforts in promoting the welfare for women has already been mentioned in our Initial Report under CEDAW. We have described our efforts in:

- addressing the need of women in poverty under Article 13;
- ensuring equal access to education and training of women under Article 10;
- increasing women's access to appropriate, affordable and quality health care, information and related services under Article 12;
- preventing and eliminating violence against women under Article 5;
- promoting women's economic rights and independence under Articles 11 and 13;
- ensuring women's equal access to and full participation in power structures and decision making under Articles 7 and 8;
- creating of strengthened national machineries and other governmental bodies for the advancement of women under Article 3;
- promoting and protecting the human rights of women under Articles 2 and 3; and
- promoting a balanced and non-stereotyped portrayal of women in the media under Article 5.

Q43. Is there a national machinery in the HKSAR to promote gender equality and advancement of women in accordance with the provision of the Convention? If not, what plans does the Government have to establish a high-level office within the Government to take responsibility for the implementation of the Convention and the mainstreaming of gender issues into all Government policies and programmes?

A43. As policies concerning women impinge on a wide range of policy areas, its implementation is closely related to literally all policy bureaux in the Government. As already mentioned in para. 19 of our Initial Report, the Policy Groups chaired by the Chief Secretary for Administration and attended by senior representatives of the bureaux concerned already provide the necessary co-ordination among the various bureaux.

The Home Affairs Bureau has all along been working for the promotion of the CEDAW. Since the Convention was extended to Hong Kong in 1996, we have distributed more than 16,000 copies of the Convention to the public; we have also published promotional booklets and a variety of souvenirs to enhance the public awareness of the Convention.

Moreover, promoting gender equality is one of the major functions of the Equal Opportunities Commission (EOC), as stipulated by the Sex Discrimination Ordinance. EOC is tasked to implement anti-discrimination Ordinances such as the Sex Discrimination Ordinance and the Family Status Discrimination Ordinance, which aim to eliminate discrimination on the grounds of sex and family status. Setting up an extra mechanism to promote gender equality and advancement of women would be a duplication of efforts and a waste of resources.

## Article 1

Q44. Figures provided by the Equal Opportunities Commission indicate that women constitute only a small percentage of the members of statutory and other advisory boards and bodies in the HKSAR. What steps are being taken to address the situation and what has been their results?

A44. Men and women are considered on equal footing for appointments to advisory and statutory bodies, based on their expertise, experience and commitment to community services.

To encourage more members of the public with relevant expertise to serve on advisory and statutory bodies, the HKSARG regularly updates and expands its database of persons who are willing to serve on these bodies. Members of women organisations, professional bodies, academic institutions, among others, are invited to indicate their interest to serve on these bodies by submitting their personal information for inclusion into the database. Such information will be used as reference by the authorities in making appointments.

Moreover, to further provide members of the public who are interested in serving on these bodies with the opportunity to include their personal data into the above database, the relevant proforma has recently been uploaded onto the homepage of Home Affairs Bureau for their easy access.

As a matter of fact, the percentage of women appointed to advisory and statutory bodies has been increasing in recent years. In 1998, about 20% of members serving on these bodies were women, compared with 16.6% in 1995. Besides, the number of women appointed to these bodies has also been increased by about 119% in these ten years.

Q45. Is the definition of sex discrimination in the Sex Discrimination Ordinance adopted by the Hong Kong Special Administrative Region (HKSAR) compatible to that of CEDAW?

A45. The definition of sex discrimination in the Sex Discrimination Ordinance is: "

"A person discriminates against a woman in any circumstances relevant for the purposes of any provision of the Ordinance if on the ground of her sex he treats her less favourably than he treats or would treat a man; or he applies to her a requirement or condition which he applies or would apply equally to a man but (i) the proportion of women who can comply with it is

considerably smaller than the proportion of men who can comply with it; (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and (iii) which is to her detriment because she cannot comply with it" (section 5)

The Sex Discrimination Ordinance also prohibits discrimination on the ground of pregnancy and marital status (sections 7-8). As to the scope of application of the Ordinance, it covers the fields of employment, education, provisions of goods, facilities or services, disposal or management of premises, eligibility to vote for and to be elected or appointed to advisory bodies, activities of clubs and activities of Government.

As the term "discrimination against women" in the Convention means "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field", the definition of sex discrimination in the Sex Discrimination Ordinance is compatible to that of CEDAW.

### Article 3

Q46. Describe the effect of the Equal Opportunities Commission (EOC) and its functions including the implementation of the provisions of the Convention. Describe actions taken by the Legislative Council following receipt of the report of the EOC. Describe the relationship between the EOC and NGOs.

A46. The Equal Opportunities Commission (EOC) is an independent statutory body established under the Sex Discrimination Ordinance (SDO) in May 1996. Its responsibilities are to oversee the implementation of the SDO, the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO) and work towards the elimination of discrimination on the grounds of gender, disability and family status through conciliation, investigation, publicity, public education, legal assistance and court action as appropriate.

The HKSARG is responsible for the implementation of the provisions of CEDAW. This is done through a combination of legislative and administrative measures. The enactment of the SDO, DDO and the FSDO, as well as the establishment of the EOC has assisted the full implementation of CEDAW in the HKSAR.

The 1997/98 annual report of the EOC was tabled at sitting of the Legislative Council on 9 December 1998 for legislators' consideration. As far as we can ascertain from the Legislative Council Secretariat, no further action has been proposed by the legislators.

The EOC is an independent statutory body and maintains close liaison with NGOs. For example, staff of the EOC visit NGOs to get to know their concerns and views.

### Article 5

Q47. Describe the impact of the Domestic Violence Ordinance in addressing violence against women. What kind of services are available to women who have suffered from domestic violence?

A47 According to the Domestic Violence Ordinance, on an application by a party to a marriage, the court may grant an injunction restraining the other party from molesting the applicant or any child living with the applicant; excluding the other party from the matrimonial home, or from a specified part of the matrimonial home or from a specified area; requiring that other party to permit the applicant to enter or remain in the matrimonial home or in a specified part of the matrimonial home (section 3).

In addition, if the court is satisfied that the other party has caused actual bodily harm to the applicant or to the child concerned, at the same time as the court grants the injunction or at any time during the period for which the injunction is granted, attach to the injunction a power of arrest which authorises a police officer to arrest any person who breaches the terms of the injunction (section 5). Those victims of domestic violence who feel that their safety are at risk may seek court injunctions against their spouses under the Domestic Violence Ordinance or under the inherent jurisdiction of the Court. Legal aid is available to eligible and meritorious applicants to take proceedings for divorce, child custody, or ancillary relief.

Victims of domestic violence can have access to a wide range of social welfare services. The 65 Family Services Centres (FSCs) operated by the Social Welfare Department and non-governmental organizations, which are conveniently located, provide family counselling and casework assistance, and refer the battered spouse to receive other welfare assistance, such as temporary refuge, housing assistance and so on, where necessary. The battered women could receive assistance from the FSC nearest to their residence, join the supportive groups organised by Social Welfare Department's Group Work Units and subvented Children and Youth Centres. In fact, some battered women have been assisted to form mutual help groups under the auspices of subvented agencies.

Besides, they are also provided with service from the clinical psychologists. In addition, supportive services including family aide service, home help, child care services, are available to help alleviate stress and other problems arising from domestic violence. Individuals or families in need of financial assistance can apply for Comprehensive Social Security Assistance (CSSA) administered by the Social Welfare Department. In addition, they can also apply for charitable trust funds which aim at providing direct and temporary grants for the needy individuals or families in special and emergency situations.

Q48. Describe programmes to address domestic violence. How many shelters are there? Are the Police trained to handle domestic violence cases differently from other crimes?

A48. A number of measures are being undertaken by the HKSARG and non-governmental organizations (NGOs) to help prevent and tackle the problem of domestic violence: -

- the 79 family life education workers provide services which aim at improving the quality of family life and the prevention of family breakdown; -
- 19 family activity and resource centres are set up in all districts throughout Hong Kong to provide a focal point for local families to drop in for advice, to develop mutual aid as well as social networking opportunities; -
- both the Social Welfare Department and NGOs, such as Caritas and Harmony House, operate hotline services to provide information and enquiry services to needy couples or individuals in cases where the family relationship is at crisis situation; and -
- as mentioned in paragraph 35(j) of the Initial Report, an interdisciplinary Working Group on Battered Spouses was formed to tackle the problem of battered spouses. In 1998, it has launched a publicity campaign to educate the public on the destructive forces of family violence and encourage families at risk to seek early professional advice. Announcements of Public Interest have been broadcast on TV and Radio. Two TV episodes were broadcast in August and September. A full-colored information pack on services for battered spouses has been distributed in November.

Currently, there are three shelters for women, namely the Serene Court, the Harmony House and the Wai On Home for Women (WOHW). Each of them provides 40 places. They operate 24 hours a day, and the WOHW receives admissions round the clock. These refuges offer to battered women and their children accommodation, group work service, self-supporting groups and recreational activities. The average utilization rate for the shelters from October 1997 to September 1998 is 69%.

Domestic violence is classified by the Police as violent crime and the Police take a serious view of them. The topic of domestic violence has been included in the syllabus of the police inspector training course since July 1997 and Recruit Police Constable training course since June 1997. New instructors' notes were published. Officers from the Harmony House have been giving lectures to raise awareness of frontline police officers on sub-unit training since August 1997.

Q49. Describe legislative and other measures to address other forms of violence against women, including sexual violence and harassment.

A49. Various forms of sexual violence, including incest, rape and buggery, are outlawed by the Crimes Ordinance. Sexual harassment is outlawed by Section 23 of the Sex Discrimination Ordinance. Other forms of violence, which among other things, deals with homicide, assaults, forcible taking or detention of persons, unlawful abortions, are outlawed by the Offences Against the Person Ordinance.

Measures were adopted to combat sex violence. The Crimes (Amendment) Ordinance was passed by the Legislative Council in April 1997 and was brought into operation in May 1998 to increase the penalty level of various types of sexual offences, e.g. the maximum penalty for indecent conduct

towards child under 16 was increased from 5 to 10 years (the proposed increase in maximum penalties for sexual and related offences is enclosed at Annex A).

Legislation will be introduced in this legislative session to empower law enforcement agencies to take intimate (e.g. semen) and non-intimate samples (e.g. hair) to combat serious crimes including sexual offences.

Apart from bringing the offenders to justice, the Police has also been emphasising a sympathetic approach in investigating sexual offence cases.

The Equal Opportunities Commission has also been using a variety of publicity and public education measures to address the issue on sexual harassment e.g. a Training Module on Preventing and Dealing with Sexual Harassment, a copy of which has already been sent to the Committee, was issued to assist individuals and organisations to prevent and handle cases of sexual harassment.

Victims of sexual and related offences are provided with outreaching and casework services by caseworkers of the Family Services Centres of the Social Welfare Department and NGOs. Counselling service is provided to help the victims cope with the emotional trauma. Other supportive services include referral to women's refuge, financial assistance, child care arrangement, housing assistance such as compassionate rehousing, family aide service, etc. can also be arranged by caseworkers in Family Services Centres or medical social service units of Social Welfare Department on a need basis.

Q50. Describe the effects of legislative amendments (report para. 14) to address differential treatment of women and men.

A50. Paragraph 14(a) to (f) of the Report already gives a general description of the effects of legislative amendments. The following serves to provide additional information: .

- Inland Revenue Ordinance: before the enactment of the amendment in 1989, a married woman would be jointly assessed with her spouse for taxation, usually leading to a higher total taxable income and a higher tax payment for the couple than would have been the case if they were assessed separately because of the progressive nature of tax rates. After the enactment of the amendment, a married woman can opt to be assessed separately from her spouse, and the fact that she is married will have no bearing on her tax payment. .
- Marriage Ordinance: after the amendment enacted in 1997, a mother enjoys the same parental right as a father to give consent to her child between the age of 16 and 21 to get married. .
- Matrimonial Causes Ordinance: in respect of a matrimonial proceeding, the court has to be satisfied that it has the jurisdiction to take on the petition. In the past, there were special grounds that applied only to a woman but not a man. The amendments rectified this anomaly. In respect of a petition for divorce citing adultery, the treatment of an alleged adulterer and an adulteress used to be different in that the adulteress could only be made a co-respondent at the discretion of



the court. Now an adulterer/adulteress will be made a co-respondent unless excused by the court. In respect of the definition of dependent children, it used to mean an unmarried son who had not reached 18 and an unmarried daughter of any age. The amendment removed the difference between a son and a daughter and defined dependent children as anybody who had not reached 18. .

- Separation and Maintenance Orders Ordinance: in the past, only a wife could ask for an order for maintenance. Now both a wife and a husband can do so. .
- Bankruptcy Ordinance: there used to be references to the "wives and concubines" of a male debtor. They were considered sexually biased and were now replaced by "spouse". .
- Companies (Winding Up) Rules: the reference in a form for ordering payment to "amounts payable by married women and legal representative" was considered sexually biased and the words "married women" was removed. .
- Merchant Shipping Ordinance: a provision requiring the return of the property of a deceased seaman to the "widow" of the deceased was considered sexually biased and repealed; another section that made reference to "boys under 16 years of age" working in the sea-fishing service implying that girls were excluded was also repealed.

Q51. Describe the results of the baseline survey on the Public Perception of Equal Opportunity. Has any programme been developed on the basis of survey results?

A51. The survey covered a random sample of 2 020 persons aged 16 or above with socio-demographic characteristics representative of the general population.

Some of the key findings are as follows:

- women and the better educated respondents are more sensitive to sex discrimination in the media and the workplace, more flexible with traditional home-based roles and more supportive of female political and community leaders;
- those who are employed perceive less sex discrimination at work than those who are not employed;
- those who are unmarried are more sensitive to sex discrimination at work than those who are married;
- both men and women consider dismissal due to pregnancy, sexual harassment of women at work and gender-based differential benefits as the most prominent forms of sex discrimination;
- men are more sensitive about gender stereotyping than women;
- respondents are more aware of male than female stereotyping;
- there is a general perception that discrimination in the media is

greater against women than men;

- about half of the respondents are dissatisfied with the way gender equality is reported in the media;
- a majority cite the gap in pay as the most common form of gender-based discrimination in the workplace.

Programmes developed by the Equal Opportunities Commission on the basis of survey result include:

- a free talk service, including talks given on Saturdays, was launched to disseminate information on equal opportunities legislation; in 1998, a total of 251 talks were given, reaching out to a population of 76 000;
- two training modules on "Preventing and Dealing with Sexual Harassment" and "Equal Opportunities for Women and Men at the Workplace" were launched;
- a Community Participation Funding Programme on Equal Opportunities was launched to support community activities on the promotion of gender equality;
- a set of leaflets to promote good management practices for equal opportunities in employment was published;
- regular meetings are held with the media to get across the message of equal opportunities.

Some of the educational materials, like the training modules and leaflets on good management practices, have already been given to the Committee before the hearing.

Q52. Describe measures to overcome specific obstacles including cultural and traditional practices to eliminate gender stereotype attitudes in Hong Kong society.

A52. The HKSARG has all along been working for eliminating gender stereotype attitudes in Hong Kong society. The success of elimination of stereotypes depends largely on the continuous effort in education. One of the principal functions of the Equal Opportunities Commission (EOC), which was established under the Sex Discrimination Ordinance (SDO), is to enforce the SDO and Family Status Discrimination Ordinance (FSDO), including promotional and educational activities with themes of equal opportunities for all regardless of sex and family status. The Commission has organized many activities for promoting the Ordinances, as already mentioned in para. 24 of the Initial Report. The EOC has just embarked on 16 January 1999 roadshows to be held in every district in Hong Kong in the coming 36 months. For the year 1998/99, HK\$8.5M (US\$1.1M) and HK\$6M (US\$0.8M) has been set aside for the promotion of SDO and FSDO respectively.

The concept of human rights, including equal opportunities, is continuously featured in civic education to the community. The Committee on the Promotion of Civic Education (CPCE) considers human rights as an integral

part of civic education.

The concept of equal opportunities for men and women in civil, political and social rights has been incorporated in both the formal and informal curricula at both the primary and secondary levels. Schools are encouraged to offer all subjects in the curriculum to both female and male students.

Besides, equality between the sexes and respect for each other's needs are among the core elements of school syllabuses such as General Studies, Civic Education, Social Studies, Religious Studies and Liberal Studies. In addition, the "Guidelines on Sex Education and Guidelines on Civic Education in schools" issued by the Education Department also encourages a number of topics relating to sex equality which can be included for discussion in activities such as class-teacher periods, guidance and counselling sessions as well as extra-curricular activities.

The Education Department has produced curriculum materials to help schools promote the concept of sex equality. In preparing curriculum materials and in reviewing textbooks, attention is paid to upholding the concept of the equality of sexes, avoidance of sex-biased aspirations and sexual stereotyping.

## Article 6

Q53. Is prostitution legal in the Hong Kong Special Administrative Region? If not, are both the prostitute and client prosecuted? Are brothel keeping and pimping offences? If yes, what penalties are established for these offences?

A53. Being a prostitute or a client is not unlawful in Hong Kong. However, in some limited circumstances, the "prostitute" may be prosecuted for "soliciting for an immoral purpose" under Section 147 of the Crimes Ordinance, for which the maximum penalty is imprisonment for six months. But that must be done in public or in the view of the public. Section 147 is targeted at the conduct of the person rather than herself being a prostitute.

Similarly, it is neither unlawful nor a criminal offence to employ or engage a prostitute simpliciter. It may be that the "client" commits some other offence in the course of this engagement, for example, rape, intercourse with underaged persons, indecent exposure in public etc. But that is not really connected with him engaging the prostitute.

In respect of "brothel keeping", the relevant offences are:

- Section 139 of the Crimes Ordinance provides for the offence against anyone keeping, managing, assisting in the management, or is otherwise in charge or control of a vice establishment. This offence is subject to a maximum punishment on summary conviction of three years or 10 years on indictment. That provision is frequently invoked.
- Sections 140 to 145A target the owner tenant occupier who has an element of control over the premises which are used for prostitution or which are kept as a vice establishment. Frequently invoked are

Sections 143 and 144, each of which carries a maximum penalty on indictment of seven years.

- In connection with premises found repeatedly by the Court to be the subject of convictions for vice-related offences, the Court would make a closure order under section 153B closing the subject premises for six months, subject to an application by an interested party. The full conditions are set out in sections 153A to 153D.
- Section 147A prohibits the display of signs advertising prostitution and has a maximum penalty of 12 months.

In respect of "pimping", the relevant offences are:

- Section 130 provides for the offence of harbouring control or direction over another person with the intention that the person shall do unlawful sexual acts or with a view to that person's prostitution. The maximum penalty on indictment is 14 years' imprisonment.
- Section 131 sets out the offence of procuring another person to become a prostitute. The maximum penalty on indictment is 10 years' imprisonment.
- Section 129 deals with trafficking of persons to or from Hong Kong for the purpose of prostitution and that sets up a maximum penalty of 10 years.
- Sections 132, 133 and 135 deal with procurement or encouragement of the prostitution of underaged or defective persons. They provide for a maximum penalty of 5, 10 and 10 years of imprisonment respectively.
- Section 137 concerns the offence of knowingly living off the earnings of prostitution, which is often invoked. The maximum penalty is 10 years' imprisonment.

Q54. Describe legislative measures to address trafficking in women and girls and the impact of such measures. Describe laws and policies relating to marriage bureaux, particularly those which arrange marriages between local women and foreign nationals or arrange for "mail-order" brides.

A54. Section 126 of the Crimes Ordinance provides that any person who unlawfully takes an unmarried girl under the age of 16 years out of the possession of her parent or guardian is liable to imprisonment for ten years. Section 127 also provides that any person who unlawfully abducts an unmarried girl under the age of 18 years with the intention that she shall have unlawful sexual intercourse with men or with a particular man is liable to imprisonment for seven years. Bringing a person into or taking a person out of Hong Kong for the purpose of prostitution also amounts to an offence under the Ordinance.

The Offences Against the Person Ordinance prohibits the selling and kidnapping of any person, including a woman or female child; the maximum penalty is life imprisonment. The Ordinance also prohibits the unlawful taking away of any child under the age of 14 years with intent to deprive the child's parent or guardian of the possession of the child; the offender

is liable to imprisonment for seven years.

The Immigration Department is responsible for the duties of registration of births, deaths and marriages from July 1979. The Registrar of Marriages, who is also the Director of Immigration, is vested with the duties to register marriage and provide other related services under the Marriage Ordinance. Every marriage under the Ordinance in the HKSAR shall be a monogamous marriage of a man and a woman to the exclusion of others. There are some legal preliminaries to satisfy before a party to an intended marriage can file a notice of marriage:

- parties should not be under the age of 16. If they are under 21, written consent is required from the relevant person specified in the Third Schedule to the Marriage Ordinance. In a case where the consent required is unavailable, the parties shall apply to the court for such consent;
- persons who are within the prohibited degree of relationship may not marry;
- mentally disorder persons or persons of unsound mind are not eligible to contract any marriage; and
- parties whose lawful wife/husband is still living may not marry.

There is no residential requirement on the marrying couple. Before a marriage can be celebrated in a marriage registry or licensed place of worship, either one of the marrying parties has to give a Notice of Marriage to the Registrar of Marriages in the prescribed form. Under the same Ordinance, the notice will be filed and exhibited at the office of the Registrar and the marriage will be solemnized. If one party is outside the HKSAR, irrespective of whether he/she is a foreign national, photocopies of identification documents are acceptable on condition that the originals will be produced on the date of solemnization of marriage.

Any person in the HKSAR is free to marry another person as long as both parties are able to meet the requirement as mentioned above. Whether or not they are local men or women or how they were introduced to each other will not affect their right to marry. However, if it is found that a foreigner has entered into a sham marriage for the purpose of acquiring residence in Hong Kong, the Immigration Department may consider curtailment of stay under Section 11(6) of the Immigration Ordinance.

## Article 7

Q55. Describe measures to encourage women's participation in political life in the HKSAR. What has the effect of these measures been?

A55. In the HKSAR, women and men enjoy the same right to vote and to stand for election. The right is safeguarded in the Basic Law, the constitutional document of the Region, which stipulated that permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with law. A person's sex is not a criterion, either directly or indirectly, to qualify or disqualify a person as an elector or a candidate

in an election of the HKSAR.

For rural elections, the Government has been actively promoting the equality of opportunity between men and women. The Government's position on equal voting rights for men and women has been made clear to the Heung Yee Kuk, the Government's statutory advisor on New Territories matters. The Heung Yee Kuk, in full support of this position, implement model rules, which provide for, among other things, one-person-one-vote and equal voting rights for men and women in respect of Village Representative (VR) elections. To date, more than 95% of the villages have their VRs elected under the model rules. The current round of VR elections, expected to be completed by March 1999, will be held under these rules. In accordance with the Sex Discrimination Ordinance, the Government will not recognise the status of VRs who are not returned by a procedure in which women have not been able to participate on equal terms with men, whether as candidates, nominees, electors or in some other relevant capacity. Consequently, they will not be eligible to take part in Rural Committee and Heung Yee Kuk elections.

The number of female participating in public life has been increasing, as shown in the following table:

	Executive Council	Legislative Council	Urban Council	Regional Council
Year				
1988	2 (14.3%)	6(10.5%)	7(23.3%)	2(5.6%)
1992	3 (21.4%)	7(11.5%)	7(17.5%)	1(2.8%)
1996	3 (23.1%)	7(11.7%)	4(9.8%)	3(7.7%)
1998	4(28.6%)	10(16.7%)	6(12%)	6(12%)

Q56. Indicate the number of women in comparison with men at each level of the judiciary, including the magistracy, in the HKSAR. Describe measures to ensure that women reach high levels of the judiciary.

A56. The number of female and male judges and judicial officers at each level of the court as at the end of 1998 are as follows:

Level of Court	No. of Female Judges/ Judicial Officers	No of Male Judges/ Judicial Officers
Court of Final Appeal	0	4 (excluding non-permanent judges)
Judges of the High Court	4	31
Judges of the District Court	7	26
Magistrates (including special magistrates)	15	68
Registrar and deputy registrars	2	3

The qualifications for judicial appointments in the HKSAR are stipulated in law. Candidates are assessed on the basis of their professional competence in the law, judicial temperament and personal conduct. Gender is not a factor for consideration in

the appointment process.

## Article 10

Q57. Indicate whether sex education has been included in the school curricula. At what level has it been introduced?

A57 Sex education is implemented at all levels from pre-primary through to senior secondary, in both the formal (subject-based) and informal (talks, exhibitions, surveys, etc) curriculum. The Guidelines on Sex Education in Schools, issued by the Education Department in 1997, advocates a school-based approach and suggests that the minimum time devoted to sex education each year should be 10 periods (6 hours) at primary level, 18 periods at junior secondary and 23 periods at senior secondary level. The sex education syllabus prepared by the Curriculum Development Council is not gender specific and schools should ensure that students of both sexes have equal opportunity and access to study the subject. In implementing the syllabus, schools should have regard to the school's educational goals and background, as well as the abilities, needs and interests of the students.

Q58. Describe how the Government is addressing discrimination in employment relating to women over 30 years of age in the HKSAR. Indicate the percentage of women and in the waged labour force that work full time and part time respective.

A58. The Government produced a television announcement which was broadcast from March 1997 to March 1998, encouraging employers to hire employees on the basis of ability not age. Another announcement is being produced to encourage employers not to use age as an employment criterion. Practical Guidelines on age discrimination have been distributed widely among employers, employees and their organisations giving advice on how to avoid discrimination in various employment situations. A survey is being conducted to determine public perception of age discrimination, essentially in recruitment, and of the Government's response.

There is no strong evidence to indicate that women over 30 years of age are in fact being discriminated against. What may be giving this impression is an economic restructuring and contraction of the local manufacturing sector in which these women were previously employed. Many of such ex-workers lack the education, qualifications and skills to seek other employment. To address this problem, the Employees Retraining Scheme (ERS) has been providing full and part-time retraining courses, with an emphasis on employees over the age of 30 years with no more than junior secondary education. Since its inception in 1992, the ERS has offered training to more than 273,000 people, of whom 81% have been women and 60% have been women aged between 30-50 years. Following retraining, the average placement rate during 1997/98 has been around 75% for women (and 78% for men).

In September to November 1998, the labour force comprised 3.39 million persons, of whom 2.06 million were men and 1.34 million were women, giving

participation rates of 75.6% and 48.7% respectively. Of these, 3.20 million were employed (1.94 million men and 1.26 million women). Women enjoyed a lower unemployment rate (4.7%) and underemployment rate (1.6%), compared with those of men (6.3% and 3.8% respectively).

Information on whether an employee is working "part-time" or "full-time" is not regularly collected. However, statistics showing the number of employees by hours of work during the seven days before the enumeration for September to November 1998 is available:

Hours of Work During The Seven Days Before Enumeration	Male	Female	Total
Less than 20	48 200	41 800	90 000
20 - 29	67 300	63 000	130 300
30 - 34	45 700	28 000	73 600
35 - 39	149 100	160 600	309 700
40 - 44	447 900	384 800	832 700
45 - 49	509 500	240 300	749 800
50 - 54	161 600	96 700	258 300
55 - 59	24 600	10 400	35 000
60 and over	193 100	188 700	381 800
Total	1646 800	1214 400	2861 200

Q59. Does the principle for equal pay for work of equal value form a binding provision of the Sex Discrimination Ordinance?

A59. The Sex Discrimination Ordinance does not specifically refer to the principle of equal pay for work of equal value.

The Code of Practice on Employment under the Sex Discrimination Ordinance published by the Equal Opportunities Commission (EOC) states that employers are encouraged to progressively implement equal pay for equal value.

We support proposals that will enable the realization of equality. However, since the principle of equal pay for work of equal value is a completely new concept to Hong Kong, we need to proceed with caution and to provide more specific guidance to facilitate compliance. The EOC therefore commissioned an inter-university research team to examine its feasibility. The result has not been finalized yet.

Section 11 of the Sex Discrimination Ordinance provides that it is unlawful

for an employer to discriminate against a woman in the terms of employment he offers her. Therefore, when an employer offers a job or a post to a person, the terms of the employment should be the same irrespective of that person's sex. An aggrieved employee may apply to court for damages in respect of an unlawful act (section 76).



- Q60. Are there any legislative measure to address sexual harassment and violence against women in the work place and if so describe the impact of these measures.
- A60. Sexual harassment in work place is unlawful under the Sex Discrimination Ordinance (section 23). A person sexually harasses a woman if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favour or engages in other unwelcome conduct of a sexual nature in relation to that woman in circumstances in which a reasonable person would have anticipated that she would be offended, humiliated or intimidated (section 2). To date, the Equal Opportunities Commission has received 72 complaints on sexual harassment, and one of the complaints resorts to litigation.
- In addition, it is unlawful for a person, alone, or together with other persons, to engage in conduct of a sexual nature which creates a sexually hostile or intimidating work environment for her.
- Other forms of violence, which among other things, deals with homicide, assaults, forcible taking or detention of persons, unlawful abortions, are outlawed by the Offences Against the Person Ordinance.
- Q61. Describe the child care provisions available to both private and public sector workers.
- A61. There is no difference between the provision of child care service to private and public sector workers. As at end of November 1998, there were a total of 1,607 day creche places and 41,902 day nursery places.
- Normal operating hours of the nurseries is from 8:00 .a.m. to 6:00 p.m. from Monday to Friday and 8:00 a.m. to 1:00 p.m. on Saturday. Some nurseries provide extended hour service, with service hours running from either 7:30 a.m./8:00 a.m. to 6:30 p.m./7:00 p.m. from Monday to Friday and from 8:00 a.m. to 6:00 p.m. on Saturday. At present 5 centres are offering a total of 70 extended hour service places.
- Number of subvented residential creche and residential nursery places as at 30.11.98 was 200 and 132 respectively. Service is provided round the clock i.e. 24 hours a day, 365 days a year. The service is fully subvented by the Government and is provided free of charge to users.
- The Government has secured resources to provide an additional 3,197 aided day nursery places by 1999/00.
- Q62. Describe the impact of the Occupational Safety and Health Ordinance and regulation (para. 116).
- A62. The Occupational Safety and Health Ordinance was enacted in 1997. Its purpose is to extend the legislation on occupation safety and health to all workplaces, both industrial and non-industrial. Under the subsidiary legislation made under the Ordinance, the Government can prescribe minimum safety and health standards in places of work.

Q63. Describe the impact of the reservation lodged to article 11 on existing legislation in particular with regard to pension schemes. Describe the impact of the reservation on article 11(2) with regard to qualifying periods of employment with respect to benefits.

A63. There is presently no mandatory HKSAR-wide retirement or pension scheme. It is left to individual employers (1) to determine what provisions to make for their employees' retirement, (2) to set the retirement age and (3) to fix the rate of contribution from employer/employee, subject to these complying with the Occupational Retirement Schemes Ordinance. Accordingly, some employers may have devised schemes with different retirement ages, contribution rates and benefits for male and female employees. Prior to the coming into operation of the Sex Discrimination Ordinance, such differences were not unlawful. Given the impracticability of retrospectively equalising schemes which predated this Ordinance, a reservation has been entered to permit such old schemes to continue.

Article 11(2) is silent on whether maternity protection can be invoked and maternity benefits commence immediately. A reservation has been made because the Employment Ordinance provides for qualifying periods before a pregnant employee gains employment protection, entitlement to maternity leave and maternity leave with pay. We consider that, despite this reservation, maternity protection and benefits in the HKSAR are adequate and strike an equitable balance between employer's and employee's interests. These protection and benefits are already more generous than those in many other countries (despite the latter being financed by either the state or through contributory schemes and not by employers as is the case in the HKSAR).

Q64. Describe the employment conditions of women migrant workers, in particular household maids in Hong Kong. Do they enjoy the same treatment benefits as Hong Kong workers?

A64. Both migrant and local workers enjoy the same benefits conferred by the Employment Ordinance and other labour legislation, except that occupational safety and health laws do not apply to domestic helpers (whether local or foreign) because their working environment is residential, not commercial or industrial.

Migrant workers and foreign domestic helpers enjoy a minimum wage stipulated in their standard employment contracts, which also contain provisions for food, accommodation and free medical treatment. By contrast, local workers do not enjoy these provisions as a statutory right, although some employers may provide them as an fringe benefit. There is also no statutory minimum wage for local workers.

## Article 12

Q65. Describe the legal status of abortion in Hong Kong. Are family planning services available to women free of charge?

A65. As described in paragraph 133 of the Initial Report, the Offences Against the Person Ordinance provides for medical termination of pregnancy by a

registered medical practitioner in an approved hospital or clinic if two registered medical practitioners are of the opinion, formed in good faith, that the continuance of pregnancy would involve risk to the physical or mental health of either the pregnant women or the child.

Family planning advice and services, including counselling and follow up services are available in all 50 Maternal and Child Health Centres located over the territory under the Department of Health. This service is charged at a nominal fee of \$1 (US\$0.13).

## Article 15

Q66. Describe the impact of the reservation to article 15.

A66. This reservation is entered in order to reserve the right to apply such immigration legislation governing entry into and remaining in Hong Kong of persons, men and women alike, who do not have a lawful right to enter and remain in Hong Kong. Freedom of movement of Hong Kong residents is guaranteed by Article 31 of the Basic Law.

Q67. Describe the impact of the New Territories Land (Exemption) Ordinance 1994. Describe the impact on women of the reservation entered to article 15 with regard to New Territories land policies. Describe the progress of the HKSAR Government review of the New Territories land policies.

A67. The New Territories Land (Exemption) Ordinance exempts all non-rural land and all rural land for the purpose of entitlement in succession in the New Territories from Part II of the New Territories Ordinance, thereby removing the traditional inhibition against women to inherit land and housing properties in the New Territories.

Prior to the enactment of the New Territories Land (Exemption) Ordinance, should an owner of land or property in the New Territories die intestate, succession to the land or property would be dealt with in accordance with Chinese custom, that is male-line succession only. After the New Territories Land (Exemption) Ordinance had taken effect, this Chinese customary succession law no longer applies to such land or property. Women will be entitled to inherit New Territories land according to the rules of intestacy, thereby having the same rights as men to inherit land or property in the New Territories in the absence of a will.

This reservation entered provides for the continuation of the present HKSAR legislation which enable male indigenous villagers to exercise certain rights in respect of property and which provide for rent concessions in respect of land or property held by indigenous persons or their lawful successors through the male line. Rent concessions are provided for in Annex III of the Sino-British Joint Declaration and Article 122 of the Basic Law.

The HKSAR Government set up a committee in September 1997 to review the Small House Policy. We aim to complete the review in 1999.

## Article 16

Q68. Indicate whether the legal regulation of family life, including marriage, divorce, financial provision on divorce and death of the other spouse and child custody is consistent with article 16 of the Convention.

A68. Legislation of the HKSAR in relation to family is described under Article 16 of the Initial Report on the HKSAR under CEDAW. The differential treatment for women and men in the Marriage Ordinance, the Matrimonial Causes (Amendments) Ordinance, the Matrimonial Causes Ordinance, the Marriage and Children (Miscellaneous Amendments) Ordinance have been removed. They are now all consistent with Article 16 of the Convention.

Q69. Describe the legal regime which governs cohabitation in the HKSAR.

A69. There is no law which prohibits cohabitation in the HKSAR.

If a relation between cohabitants dissolves, any dispute regarding properties may be settled in court in accordance with common law rules. In addition, the inheritance and succession right of "de facto" spouse under a will is the same as husband and wife.

According to the Births and Deaths Registration Ordinance, the name of the father of an illegitimate child is not required to be included in the registration of birth. Nevertheless, the father may be named at the request of both parents or the mother together with the necessary court declaration. A father can apply to court for a declaration regarding his parentage status in accordance with the Parent and Child Ordinance (section 6). If there is any dispute regarding parental rights, custody or maintenance, such disputes may be settled in Court in accordance with the Guardianship of Minors Ordinance.

In addition, the Domestic Violence Ordinance applies to the cohabitation of a man and a woman, therefore, a woman who chooses to cohabit is still entitled to the same protection as a married woman under the Ordinance.

Annex A

### **Increase in Maximum Penalties for Sexual and Related Offences**

Section	Offence	Maximum Penalty Imprisonment (no. of years)	
		From	To
47(1)(i)	Incest by men with woman at 16 or above	7	14
47(1)(ii)	Incest by men with girl of or above the age of 13 and under the age of 16	7	20
47(3)	Attempting, or inciting a girl under 16, to commit incest	2	10
48	Incest by women of or over 16	7	14
125	Intercourse with defective	5	10
126	Abduction of unmarried girl under 16	5	10
128	Abduction of defective from parent or guardian for sexual act	7	10
129	Trafficking in persons to or from Hong Kong for prostitution	7	10
131	Causing prostitution	7	10
133	Procurement of defective	5	10
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16	5	10
137	Living on earnings of prostitution of others	5	10
139	Keeping a vice establishment	2	3
		(on summary conviction)	
		7	10
		(on indictment)	
143	Letting premises for use as a vice establishment	2	7
144	Tenant etc. permitting premises or vessel to be kept as a vice establishment	2	7
145	Tenant etc. permitting premises or vessel to be used for prostitution	2	7
146	Indecent conduct towards child under 16	5	10
147A	Prohibition of signs advertising prostitution	6 months	12 months

**Supplementary response to oral questions raised by  
the Committee on the Elimination of Discrimination against Women  
on the Initial Report on the HKSAR under the Convention on the Elimination of All Forms  
of Discrimination against Women**

The supplementary response to oral questions raised by the Committee at the hearing on 2 February 1999 is as follows:

**Employment protection for foreign domestic helpers in the HKSAR**

Foreign domestic helpers (FDHs) enjoy the same rights and protections under labour

legislation as local domestic helpers. The Employment Ordinance provides for minimum standards in respect of rest days; statutory holidays; paid annual leave; sickness allowance; maternity protection; severance payment; long-service payment; termination of employment contract; protection against anti-union discrimination; and protection against unreasonable dismissal, unreasonable variation of employment contract and unlawful dismissal. The Employees Compensation Ordinance provides for cash compensation for death, permanent total incapacity, constant care, prostheses/surgical appliances and limited medical treatment. Unlike their local counterparts, FDHs are also entitled to minimum wage as well as food, accommodation and medical treatment at their employers' expense.

### **Equal pay for work of equal value**

The Sex Discrimination Ordinance presently does not specifically refer to the principle of equal pay for work of equal value. However, the Code of Practice on Employment published under that Ordinance encourages employers to progressively implement equal pay for work of equal value. We support proposals that will enable the realisation of equality. The Equal Opportunities Commission has in fact commissioned a research to examine its feasibility and the result is awaited.

### **Female student dropout rate**

As indicated in the Annex E of the initial report on the HKSAR under CEDAW, the dropout rate for female students in 1996/97 was only 0.245%. Among students who dropped out, 46% were female (the other 54% being male). The dropout rate for female students in 1995/96 was 0.223%. The male student dropout rates were 0.263% and 0.270% for the same periods. The male-female and year-on-year differences are not statistically significant.

### **Health care services enjoyed by commercial sex workers**

Prostitutes, better named as commercial sex workers (CSWs), like other residents in the HKSAR, are entitled to a wide range of medical services provided by the Hospital Authority and the Department of Health (DH). In particular, the Social Hygiene Service of DH provides free services to all CSWs. These include :

- a. health counselling and sexually transmitted diseases (STDs) education;
- b. contact tracing and outreach services including visits to the workplace;
- c. screening services including HIV testing, tests for syphilis and cervical smear as appropriate ;
- d. medical treatment for various STDs. Social worker support will be available to assist CSWs to change job if necessary and to maintain an average daily living in the community;
- e. dissemination of health education materials and information on relevant community support groups to enhance social support for the CSWs.

All CSWs are given priority to be seen in the Social Hygiene Clinics. No prior appointment is required.

**Concluding comments of the United Nations Committee on the Elimination of  
Discrimination against Women on the initial report on the Hong Kong Special  
Administrative Region (HKSAR) under the Convention on the Elimination of All Forms of  
Discrimination against Women (CEDAW)**

**Initial Response**

The Government welcomes the concluding comments made by the United Nations Committee on the Elimination of Discrimination against Women after its hearing in New York in February 1999 on the initial report on the HKSAR under Article 18 of CEDAW.

The Government welcomes the Committee's appreciation for the high level HKSAR delegation to the hearing, and for submitting a "well-structured and informative" initial report "in a timely manner". We also welcomed the Committee's commendation on the Government's "oral presentation of the report and for the detailed oral and written replies, including statistical information to the questions posed by the Committee."

The Government considers it particularly important that the Committee welcomed the guarantee of human rights and fundamental freedoms of women and men in the Basic Law (BL) and the Hong Kong Bill of Rights Ordinance (HKBORO).

The Committee also commended on a number of positive aspects, including the continuing applicability of the Convention to the HKSAR following the resumption of Chinese sovereignty over Hong Kong on 1 July 1997 under the principle of "one country, two systems"; the dissemination of the Convention by the Government, including through the Internet; the recent adoption and revision of laws to eliminate discrimination against women particularly the Sex Discrimination Ordinance (SDO) of 1995 and the establishment of the Equal Opportunities Commission; the high level of literacy and the universal system of free primary education.

The Government also notes that the Committee raised concerns on a number of issues and suggested recommendations. The Government will consider carefully all the points made by the Committee.

On the Committee's concern about the absence of a constitutional definition of discrimination in addition to the SDO, Article 8 of the BL already provides that the laws previously in force in Hong Kong shall be maintained. As such, the HKBORO, apart from the provisions which were declared to be inconsistent with the BL, continues to be in force in Hong Kong, including Article 1 which provides the equal rights of men and women to the enjoyment of all rights set out in the Hong Kong Bill of Rights (HKBOR). Besides, Article 3 of the International Covenant on Civil and Political Rights, on which Article 1 of the HKBOR is based, is entrenched in our constitutional document by virtue of Article 39 of the BL.

The Government notes the Committee's suggestion of establishing a high-level central mechanism to develop and co-ordinate a women-focused policy. However, since women's issues impinge on a wide range of policy areas, we consider that the existing Policy Groups chaired by Chief Secretary for Administration and attended by senior representatives of the bureaux concerned already served the purpose.

The Government notices the Committee's concerns of women representation in constituencies on the principle of universal and equal suffrage. Women and men enjoy the same right to vote and to stand for election. In fact, the right is safeguarded by the BL. A person's sex is not a criterion to qualify a person as an elector or a

candidate in elections of the HKSAR. The Government cannot agree that the current electoral system contains structural obstacles to women's equal political participation. The ultimate aim, as stipulated in Article 68 of the Basic Law, is the election of all the members of the Legislative Council by universal suffrage.

The Government is also committed to upholding the principle of equal opportunities between men and women in participation in Rural Committees. In accordance with the SDO, the Government will not recognize a body as a Rural Committee where members of its executive committee are not returned by a procedure in which women have been able to participate on equal terms with men.

Regarding the Committee's concerns of participation of women in public life, the Government seeks to ensure that recruitment to the Civil Service is free of sex discrimination. Selection of candidates for appointment is made on the basis of merits regardless of their gender. Similarly, gender is not a factor for consideration in the judicial appointment. The qualification for judicial appointments are stipulated in law. Candidates are assessed on the basis of their professional competence in law, judicial temperament and personal conduct.

For the appointment to advisory and statutory bodies, women and men are considered on equal footing. Regarding the suggestion of adopting affirmative action (e.g. quota system) for appointment of women to these bodies, the Government considers that it goes against the principle of appointment based on individual merits. Nevertheless, the Government will continue to encourage more women with relevant experience and expertise to serve on these bodies. The Government will regularly update and expand its database of individuals who are willing to serve on such bodies. In particular, members of women organisations will be invited to indicate their interest to serve on these bodies.

The Government notes the Committee's concern for the services provided for the survivors of domestic violence. In fact, an interdisciplinary Working Group on Battered Spouses, chaired by the Social Welfare Department and comprising representatives from other Government departments, Hospital Authority and welfare agencies, has been formed to strengthen their co-ordination and co-operation in handling and combating the problem of battered spouse. The Working Group has been organising various publicity and education programmes to educate the public on the destructive forces of domestic violence, and encourage those at risk to seek professional assistance. The Social Welfare Department will continue to monitor the provision and utilisation of various services, including counselling and temporary refuge services, provided for the victims of spouse battering and to introduce improvements where necessary.

As regards the Committee's recommendation to amend the existing legislation to include marital rape as a criminal offence, the common law rule that a husband cannot be criminally liable for raping his wife because a wife cannot revoke her consent to sexual intercourse was abolished by the House of Lords in 1991, resulting that a husband can be guilty of raping his wife if he has sexual intercourse with her without her consent. Our Crimes Ordinance provides that a man commits rape if he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it. A husband may be guilty of raping his wife, if on the evidence of the case, his wife does not consent to the sexual intercourse.

On the Committee's recommendation to provide adequate protection of women sex workers, the Government has adequate and appropriate measures in place to sanction those who organize and exploit prostitution, and will continue to take all necessary steps to tackle vice activities.

The Committee commended the Government's efforts to develop a standard labour contract



for migrant workers with provision for minimum wages. For the Committee's recommendation to provide protection to women migrant workers, they enjoy safeguards against abuse and violence like all other workers in Hong Kong.

Concerning women in education, the Government strictly observes gender equality in appointments to teaching positions, as well as in student admissions to courses in schools and faculties in tertiary institutions. The SDO has rendered unlawful the discrimination on the ground of sex in the fields of, inter alia, education and employment

On the Committee's recommendation of including the principle of equal pay for work of equal value in relevant legislation, the Government supports, as a matter of principle, proposals that will enable the realisation of equality. The SDO provides for the principle of equal pay for equal work and the Code of Practice on Employment under the Ordinance also encourages employers to progressively implement the principle of equal pay for work of equal value. In fact, the Equal Opportunities Commission has already commissioned a research to examine the feasibility of implementing this principle in Hong Kong.

The Government notes the Committee's concern on the reservations and declarations entered to the Convention. We are fully committed to discharging the treaty obligations under CEDAW and are aware that these obligations cannot be taken lightly. Yet we are obliged to assess whether these obligations can be discharged for the moment, having regard to the need and special circumstances of Hong Kong, the BL and the HKBORO. Our present view is that the reservations and declarations, including those in relation to religious organisations and the Small House Policy, remain necessary. Should changing circumstances suggest that any of them may no longer be necessary, we will review the case for their retention.

**Extract of the Committee on  
the Elimination of Discrimination  
against Women's draft report on the  
Third and Fourth periodic reports on China**

CEDA/W/C/1979/UL/1/Add.7

## China

1. The Committee considered the combined third and fourth periodic reports of China (CEDAW/C/CHN/3-4 and Add.1 and 2) at its 419th to 421st meetings, on 1 and 2 February 1999. Addendum 2 to the third and fourth periodic reports covered the implementation of the Convention on the Elimination of All Forms of Discrimination against Women by the Government of the Hong Kong Special Administrative Region, over which the Government of China resumed the exercise of sovereignty on 1 July 1997.

8. The representative of the Hong Kong Special Administrative Region, in introducing the initial report of the Hong Kong Special Administrative Region (CEDAW/C/CHN/3-4, Add. 2), noted that the Government of China had resumed the exercise of sovereignty over Hong Kong, with effect from 1 July 1997, under the principle of "one country, two systems". The Convention had been extended to Hong Kong on 14 October 1996 and had remained in force since the reunification on 1 July 1997.

9. The representative of the Hong Kong Special Administrative Region noted that the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the constitutional document of the Hong Kong Special Administrative Region, included a list of fundamental rights and freedoms of residents and other persons in the Region,

applicable to women and men. The Basic Law also provided for the continuing application of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the Hong Kong Bill of Rights Ordinance.

10. The representative explained that in the period between 1996 and 1998, a legislative review had been undertaken leading to the enactment of a number of amendments and ordinances to eliminate discriminatory or unfair treatment of women. The rights of women were also protected by legislation that included the Sex Discrimination Ordinance (1995) and the Family Status Ordinance (1997). The Equal Opportunities Commission, an independent statutory organization established in 1996, was responsible for the elimination of discrimination and the promotion of equality between women and men, for enforcing the anti-discrimination ordinances and for handling complaints.

11. The Government's Policy Groups, chaired by the Chief Secretary for Administration and attended by senior representatives of the policy bureaux, ensured coordination among the various bureaux on all matters concerning women.

12. The improvement of the position and status of women in Hong Kong was apparent in different areas. In 1997, women accounted for 39 per cent of the total working population and made up 33 per cent of the civil service. Women also occupied two out of the three highest ranking government posts. Almost a third of the members of the Executive Council were women. Women made up between 21 and 36 per cent of the legal, accounting and medical professions.

13. The Hong Kong Special Administrative Region Government was committed to providing equal access to and opportunities in education, which included nine years of free and universal basic education. More than half the university graduates in 1997 were women.

14. Women's health remained a government priority, and a range of health-care services was available to women, including with regard to reproductive health. Hong Kong's infant mortality rate was among the lowest in the world, and women's life expectancy was 82.2 years.

15. The representative noted that the People's Republic of China had entered seven reservations and declarations in respect of the application of the Convention to Hong Kong. These would be kept under review.

16. In conclusion, the representative of the Hong Kong Special Administrative Region welcomed the Committee's views and suggestions in support of the full implementation of the Convention.

Concluding comments by the Committee

A. China

Introduction

19. The Committee commends the Government of China for having sent a high-level and large delegation that included specialists from different departments of the central Government, as well as the Hong Kong Special Administrative Region, headed by the permanent representative of China to the United Nations.

B. Hong Kong Special Administrative Region

Introduction

58. The Committee expresses its appreciation to the Government of China, Hong Kong Special Administrative Region, for submitting, in a timely manner, a well-structured and informative initial report. It commends the Government on its oral presentation of the report and for the detailed oral and written replies, including statistical information, to the questions posed by the Committee.

59. The Committee notes that there are many non-governmental organizations working actively in Hong Kong for the full implementation of the Convention.

Positive aspects

60. The Committee commends the Government of China for the continuing applicability of the Convention to the Hong Kong Special Administrative Region following resumption of Chinese sovereignty over Hong Kong on 1 July 1997 under the principle of "one country, two systems". It notes that the Government has disseminated the Convention, including through the Internet.

61. The Committee welcomes the guarantee of human rights and fundamental freedoms of women and men, contained in the Hong Kong Basic Law and in the Bill of Rights Ordinance. It also notes the recent adoption and revision of laws to eliminate discrimination against women. The Committee commends, in particular, the Sex Discrimination Ordinance of 1995 and the establishment thereunder of the Equal Opportunities Commission as an independent statutory body and with adequate resources, responsible for addressing complaints on discrimination and promoting gender equality through public education and other means.

62. The Committee welcomes the recent judicial decision which has enforced the right to non-discrimination by recognizing that a non-marital child can claim residence in the Hong Kong Special Administrative Region on the basis of the residence rights of either her mother or father.

63. The Committee expresses satisfaction at the high level of literacy and the universal system of free primary education.

*Factors and difficulties affecting the implementation of the Convention*

64. The Committee notes with concern that China has entered seven reservations and declarations in respect of the provisions of the Convention as applied to Hong Kong. Of particular concern is the reservation exempting "the affairs of religious denominations or orders" from the scope of the Convention.

*Principal areas of concern and recommendations*

65. The Committee expresses concern that the Basic Law does not contain an explicit prohibition of discrimination against women.

66. The Committee recommends the adoption of an explicit constitutional definition of discrimination, both direct and indirect consistent with the provisions of the Convention, to complement the prohibition of discrimination in civil law under the Sex Discrimination Ordinance.

67. Notwithstanding the important mandate and valuable work of the Equal Opportunities Commission, the Committee is concerned about the absence of a governmental mechanism for the advancement of women in Hong Kong charged with the pro-active development of policy and long-term strategies on gender equality.

68. The Committee recommends that the Hong Kong Special Administrative Region Government establish a high-level central mechanism with appropriate powers and resources to develop and coordinate a women-focused policy and long-term strategy to ensure effective implementation of the Convention.

69. The Committee expresses concern that the Hong Kong Special Administrative Region electoral system contains structural obstacles to women's equal political participation, which is indirect discrimination against

CEDAW/C/1999/AL.1/A44.7

women, especially with respect to the functional constituencies.

70. The Committee urges the Government to take all measures necessary to ensure women's equal representation in all constituencies, including rural committees, on the basis of the principle of universal and equal suffrage, in accordance with the Committee's general recommendation No. 23.

71. The Committee notes the low representation of women in governmental advisory boards and statutory committees, as well as in the civil service and the judiciary.

72. The Committee recommends that the Government make use of affirmative action and temporary special measures in accordance with article 4, paragraph 1, of the Convention to realize women's right to participation in all areas of public life and particularly at high levels of decision-making. It also recommends that the Government study the experience of other countries in using quotas, timetables for achieving specified goals and databases on women candidates, with a view to applying them in Hong Kong.

73. The Committee is concerned that the Domestic Violence Ordinance applies only to physical abuse in

marital relations, and that it does not provide for counselling and treatment of offenders. It also notes with concern that the report does not contain information on rape and that marital rape is not considered a criminal offence in the Hong Kong Special Administrative Region.

74. The Committee recommends that the Administration enhance services for survivors of domestic violence, including domestic workers, with a view to their empowerment and rehabilitation, including through psychological counselling, legal aid and temporary shelter and appropriate health services. The Committee also urges the amendment of existing legislation to include marital rape as a criminal offence. It requests the Government to provide information on sexual crimes, including rape and marital rape, in its next report under article 18 of the Convention.

75. The Committee notes that while prostitution itself is not unlawful, provisions to ensure the health and safety of sex workers are unclear, and there may be discrimination against women in the enforcement of related crimes.

76. The Committee recommends that adequate regulations to protect women sex workers be put in

CEDAW/C/1999/SL.1/Add.7

place and enforced. It also recommends that the Government monitor the links between the presence of migrant women, a regulatory approach to prostitution and trafficking in women.

77 The Committee commends efforts to develop a standard labour contract for migrant workers with provision for minimum wages, but it is concerned that these workers can be exposed to abuse and custodial violence.

78 The Committee recommends that the administration monitors and takes action to protect women migrant workers from abuse and violence, as well as to prevent such violence.

79 Noting that over 50 per cent of recent university graduates were women, the Committee is nevertheless concerned at the degree of segregation in the educational specialization of women and men and at the low percentage of women in the higher levels of the teaching professions and academia.

80. The Committee recommends the adoption of temporary special measures aimed at increasing de facto equality between women and men within the meaning of article 4.1 of the Convention to increase the number of women in non-traditional specializations of

education, especially in science, technology and engineering, and to promote women from junior and auxiliary positions in teaching and academia to senior positions. It urges the Government address the perpetuation of gender stereotypes in early education and to allocate adequate resources for gender studies programmes.

81. Noting the growing participation of women in the formal economy and the low level of unemployment of women, the Committee is nonetheless concerned about the large discrepancies in wages earned by men and women. The Committee is also concerned about the highly disproportionate number of women in the lowest wage levels, especially given the absence of minimum wage laws. The Committee is also concerned that the contraction of the manufacturing sector affects particularly low-skilled women.

82. The Committee recommends that the principle of equal pay for work of equal value be included in relevant legislation and that criteria be established to determine the measure of equal value in a largely gender-segregated labour market.

83. The Committee encourages the Government to review regularly the reservations entered to the

19/496



Convention. It urges the Government to amend all laws incompatible with the Convention, including those relating to immigration and to pension schemes, with a view to removing the relevant reservations. In particular, it encourages the Government to eliminate discrimination against indigenous women following its review of the small house policy. The Committee also encourages the Government to re-examine the reservation relating to the favourable treatment of women in respect of labour law protection of pregnancy and maternity, which might well be in accordance with articles 4, paragraph 1, and 11, paragraph 2, of the Convention, as well as that regarding religious denominations.

84. The Committee invites the Government to hold public consultations with non-governmental organizations in the process of the implementation of the Convention and when preparing its second periodic report.

85. The Committee requests the Government of China and the Administration of the Hong Kong Special Administrative Region to provide information addressing the concerns raised in these concluding comments in the next periodic reports required under article 18 of the Convention.

18

86. The Committee requests the wide dissemination in the China and the Hong Kong Special Administrative Region of the present concluding comments, in order to make the people of China and the Region, and particularly government administrators, politicians and senior level cadres, aware of the steps that had been taken to ensure de jure and de facto equality for women and further steps that are required in that regard. It also requests the Government to continue to disseminate widely, and in particular to women's and human rights organizations, the Convention, the Committee's general recommendations and the Beijing Declaration and Platform for Action.

20/1/96

TOTAL P. 28

778