

**Report of the Hong Kong Association of
Business and Professional Women on the
Initial Report on the Hong Kong Special Administrative Region
under the Convention on the Elimination of All Forms of Discrimination Against
Women¹**

November 1998

I. Background Information on BPW

The Hong Kong Association of Business and Professional Women ("BPW") submits this report on the Initial Report on the Hong Kong Special Administrative Region under the Convention on the Elimination of All Forms of Discrimination Against Women (the "Initial CEDAW Report"). BPW is affiliated with the International Federation of Business and Professional Women, which has ECOSOC status at the United Nations. HKBPW has been actively promoting women's equality in Hong Kong for many years. In particular, BPW was active in lobbying for the extension of CEDAW to Hong Kong; women's inheritance rights; and the enactment of the Sex Discrimination Ordinance (as well as other anti-discrimination legislation).

Section II provides a summary of BPW's principle recommendations. These recommendations are discussed in detail in Section III.

¹ Prepared by Carole Petersen and Anne Godfrey (members of BPW) for: (1) submission to the Hong Kong Legislative Council; and (2) distribution at the Seminar on Hong Kong and the CEDAW Convention, Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong, 28 November 1998. This report (or a revised version of it) will also be submitted to the United Nations CEDAW Committee. Comments may be sent to Carole Petersen at the University of Hong Kong (tel: 2975-5707; fax: 2546-0295; email: carole@hkuspace.hku.hk).

II. Summary of Recommendations

1. The Hong Kong Government needs to establish effective machinery (e.g. an Office on the Status of Women within the executive branch) for the implementation of the CEDAW Convention.
2. The Hong Kong Government should formulate, in consultation with women's organisations, a plan of action for women, as required by the Beijing Platform for Action adopted in 1995.
3. The current make-up of the legislature (which allocates 30 of the 60 seats to "functional constituencies") clearly discriminates against women.
4. The Hong Kong Government should take steps to ensure better representation of women in statutory advisory bodies and other institutions of government.
5. In view of the special history of discrimination in New Territories village elections, the Government should also be proactive in ensuring full compliance with the recent legislation prohibiting such discrimination.
6. The Hong Kong Government should remove (or at least narrow) the many unnecessary and/or overly broad reservations in the application of CEDAW to Hong Kong.
7. In particular, the Government should disclose its plans for reforming the Small House Policy (which is presently restricted to men) and a timetable for removing the reservation for said policy in the CEDAW Convention.
8. The Hong Kong Government should introduce legislation to prohibit age discrimination in Hong Kong, which disproportionately affects women workers.
9. The Government should consider reforming the offence of soliciting, as it makes female prostitutes vulnerable to harassment.
10. A programme of judicial training is urgently needed, to develop gender sensitivity among members of the Hong Kong judiciary.
11. In future, the Hong Kong Government should make its reports on the CEDAW Convention available to the public as soon as they are completed.

III. Discussion of Recommendations

Recommendation 1: The Hong Kong Government should create an Office on the Status of Women within the executive branch, with at least one high-level official, dedicated full-time to improving the status of women in Hong Kong.

Women's organizations fought long and hard for the enactment of the Sex Discrimination Ordinance and the extension of CEDAW to Hong Kong. The Equal Opportunities Commission is charged with the enforcement of the Ordinance, but it cannot be viewed as fulfilling all of the Hong Kong Government's obligations under the CEDAW Convention. The Commission's main role is to receive complaints of acts that are unlawful under the Sex Discrimination Ordinance. This limited focus means that the Commission cannot in many cases take the proactive steps required by the CEDAW Convention to address women's inequality. (Indeed, the Government has actually resisted efforts to list CEDAW and other international conventions under the terms of reference specified for the Commission.) But the Government is not taking those steps. Women have found that if they try to raise gender issues with the Government, they are most frequently simply referred them to the Equal Opportunities Commission - which in many cases has no power to take action, unless an unlawful act under the Sex Discrimination Ordinance is involved. Thus, the implications of CEDAW are often ignored.

As a result, many important problems simply are not being addressed. For example, there is no one in the Government charged with reviewing the gender implications of policies and proposed legislation. No one has drafted a Hong Kong plan of action, as called for by the Beijing Platform of Action adopted in 1995. No one is actively considering ways to increase representation of women in local government or to reduce women's inequality in the job market.

What is needed is effective machinery in the executive branch. At a minimum, this should include one full-time high-level government officer, whose mandate is to improve the status of women in Hong Kong and whose job performance will depend entirely upon her effectiveness in this area. This would elevate the issue of the status of women and increase opportunities for progressive policy making. The present situation (in which the status of women is only one of many responsibilities of the Home Affairs Branch and thus receives inadequate attention) is simply not working.

Currently the Hong Kong SAR is not represented at the UN Commission on the Status of Women's annual meeting. A member of the HK government should be part of the Chinese Government delegation to these meetings.

Recommendation 2: The Hong Kong Government should formulate, in consultation with women's organizations, a plan of action for women, as required by the Beijing Platform for Action adopted in 1995.

The failure to prepare such a plan of action (more than three years after the Beijing conference) demonstrates a lack of commitment and must be remedied. This is not a task that can be fulfilled by the Equal Opportunities Commission (as it requires policy and resource commitments by the Hong Kong Government). This should be the first task of the person chosen to head an Office on the Status of Women.

Recommendation 3: The Hong Kong Government should take steps to consider the discriminatory effect of the current electoral system and to make amendments to it accordingly.

Hong Kong does not enjoy full democracy at this time. What is often overlooked, however, is that the current system for choosing the legislature and the Chief Executive is particularly disadvantageous for women. The system gives undue influence to prominent (and generally wealthy) leaders of male-dominated professions and the business community. For example, 30 of the 60 seats in the legislature are reserved for "functional constituencies". Most of these constituencies are small elitist groups, which tend to be dominated by men. Proposals to create a functional constituency to represent the interests of women who work in the home have been flatly rejected.

It should be noted that these 30 functional constituency seats hold a great deal of power. Indeed, under the Hong Kong Basic Law, any bill, amendment, or motion proposed by a member of the Legislative Council will only pass if it receives a majority of both groups of legislators - those elected by the functional constituencies and those elected by other methods (direct election and the "election committee"). This means that even if all of the directly elected representatives and 14 of the functional constituency representatives supported a bill that would benefit women (such as a bill to prohibit age discrimination) the bill could be defeated by the vote of only 16 of the functional constituencies. The election law that created this male-dominated legislature was drafted by the current Hong Kong Government and approved by an entirely appointed "provisional legislature". At no time has the Government acknowledged the gender implications of such an undemocratic structure.

Recommendation 4: The Hong Kong Government should take positive steps to increase the representation of women on statutory advisory bodies and quasi governmental organisations.

The Government has made no effort to increase women's representation on statutory advisory boards and other groups that advise the Government on policy matters, merely stating in its report that such persons are chosen on merit. It does not even show a breakdown by gender of such appointees. Informal counts suggest that it is somewhere in the region of 14%. It is a nonsense to suggest that this small percentage represents all the women who merit such an appointment.

Recommendation 5: The Hong Kong Government should take positive steps to educate women about the provision in the Sex Discrimination Ordinance which gives women the right to stand and vote in rural elections.

The New Territories village elections deserve special attention. Until recently, many villages overtly discriminated against women (by barring them from standing for election or from voting). Fortunately, as a result of an amendment to the Sex Discrimination Bill (which the Government strongly opposed), the Sex Discrimination Ordinance now prohibits such overt discrimination. However, women have reported that they still feel very intimidated by the male-dominated establishment in the villages, which discourages them from fully participating.

In its draft outline of topics for its Initial CEDAW Report, the Government did not even list the special problem of discrimination in village government. As a result of a request by the local women's movement, the Government did add a very short section on this issue to its Initial CEDAW Report. It states (at par. 52) that:

"It is now the policy of the Heung Yee Kuk, the Government's statutory adviser on New Territories matters, that village representatives should be elected on the basis of one-person-one-vote, equal voting rights for men and women, and fixed four-year term. Some 660 villages (or 94%) are already adopting this system. Others are expected to follow in the near future. . . . The Government will continue to promote compliance of the new rules in the remaining villages."

The Government does not describe, however, what it is actually doing to promote true compliance. If the villages are only adopting written rules that comply with the letter of the law, then that is not enough. The Government must also actively investigate whether women are being discouraged from exercising their rights - a very likely scenario given the initial resistance of many villages to the new law. The need for more proactive enforcement is demonstrated by the fact that a full three years after the enactment of the Sex Discrimination Ordinance, there are still only 10 female village representatives - out of a total of approximately 1,000! (See Hong Kong's Initial CEDAW Report, par. 53.)

Clearly, more action is needed to help women achieve equality of representation in all levels of Hong Kong Government.

Recommendation 6: The Hong Kong Government should remove the unnecessary and/or overly broad reservations in the Convention. Those reservations which the Government insists on maintaining should be expressly justified and narrowed (in scope and time) to the extent possible.

We submit that the application of CEDAW should not be made subject to reservations unless: (1) the Government can justify the need for the reservation; and (2) the Government can show that it has drafted the reservation so as not to be overly broad.

These two principles have not been followed with respect to Hong Kong, where the application of CEDAW has been made subject to several vague and overly broad reservations, the justification for which is not clearly specified.

For example, Hong Kong's ratification of CEDAW contains a blanket reservation for the right to discriminate under immigration law regarding persons who do not have the right to enter or remain in Hong Kong. The Sex Discrimination Ordinance contains a similar exemption.

Immigration (particularly from mainland China) is a very sensitive issue in Hong Kong. In many cases, the persons "without a right to enter or remain" are not really strangers to Hong Kong - rather they are immediate family members of Hong Kong residents. Women are often separated, for long periods of time, from their husbands or their children. This can have tragic results - particularly where young children are separated from one or both of their parents and cannot receive the love and attention that they require.

We understand that the Hong Kong Government must control immigration and appreciate that this is not an easy task. However, we do not understand why the Government would need to reserve the right to discriminate against women in its immigration laws. It is our understanding that the Government has never justified this particular exemption or provided examples of when it is relevant. We call upon the Government to do so. If the reservation cannot be justified in its present form, then it should be removed or at least narrowed.

Recommendation 7: The Government should disclose its plans for reforming the Small House Policy (which only benefits men) and a timetable for removing the reservation for said policy in the Convention.

The application of CEDAW to Hong Kong is subject to a reservation for the preferential rights and privileges of New Territories male indigenous residents. The Sex Discrimination Ordinance contains a similar exemption, for Government discrimination in the application of the highly controversial "Small House Policy".

The Small House policy is essentially a social welfare policy. It was created in the early 1970's to address the problem of inadequate housing of indigenous residents of the New Territories who were generally not moving into the urban developments of the "New Towns". The Government also viewed it as a way to avoid opposition by New Territories indigenous residents to the development of the New Towns.

Under the policy, an "indigenous villager" may apply for a free building license to erect a house on his own land or (more importantly) be granted a building site on government owned land at a concessionary premium. But "indigenous villager" is defined under the policy as a male person who is descended through the male line from a resident in 1898 of a recognised village. As the value of land in the New Territories has increased, this policy has become extremely controversial in Hong Kong, both because it excludes women and because it favours indigenous residents.

The Government has (for many years) promised that it is "studying" the Small House Policy and planning to propose reforms. This promise has been made, once again, in the Government's Initial CEDAW Report: it claims that a review committee has been established and that the "aim" is to complete the review of the Small House Policy by the end of 1998. However, as of late 1998, no report has been released from this anonymous "committee". Moreover, according to the Government, this review will only form the basis for consultation with the Legislative Council and the Heung Yee Kuk (a male-dominated organisation which has a long record of resisting reforms to increase women's rights in the New Territories). (See Hong Kong's Initial CEDAW Report, par. 173.)

It is clear that the Government plans to stall any reform of the policy for as long as possible. It is for this reason that it has resisted every attempt to put a time limit on the exemption for the Small House Policy in the Sex Discrimination Ordinance. We submit that this approach is entirely inconsistent with the Government's obligations under the CEDAW Convention

Recommendation 8: The Hong Kong Government should introduce legislation to prohibit age discrimination in Hong Kong, which disproportionately affects women workers.

The Hong Kong women's movement has lobbied for many years for the enactment of age discrimination legislation. Age discrimination in employment is a gender issue because:

1. It tends to affect women more than men (and at an earlier age); and
2. It is based, to a significant degree, on sexist notions, which value women more for their appearance than for their qualifications and experience.

Public consultation exercises (e.g. on the Green Paper on Equal Opportunities for Women and Men and on the Sex Discrimination Bill) have demonstrated that this is a real problem for Hong Kong women. Many women's organizations have made submissions complaining of age discrimination and asking that age, as well as sex discrimination, be addressed with legislation. In March 1995, Anna Wu (sponsor of the Equal Opportunities Bill, which would have prohibited age discrimination had it been enacted) received over 2000 letters from women complaining of age discrimination.

Yet the Hong Kong Government refuses to acknowledge that age discrimination is a gender issue and it has steadfastly opposed all efforts to enact legislation against it. Its only (reluctant) step has been to draft "voluntary" guidelines urging companies to avoid age discrimination. However as there are no sanctions for failing to follow the guidelines, and as a result they are ineffective. Indeed, victims of age discrimination cannot even seek the assistance of the Equal Opportunities Commission - as there is no legislation bringing the problem within its jurisdiction. (A small sample of the many job advertisements that continue to discriminate on the basis of age is attached to this report for reference.)

We understand that a member of the Legislative Council plans to introduce, once again, an age discrimination bill. We submit that the Government should at least take a neutral position and cease its vigorous opposition to this bill. The Legislative Council (the only arguably representative body at that level of Government) should be permitted to decide the matter in the best interests of Hong Kong.

Recommendation 9: The Government should consider reforming the offence of soliciting, as it makes female prostitutes vulnerable to harassment.

It is not illegal in Hong Kong to be a prostitute or to provide sexual services for money. However, it is an offence to solicit for "an immoral purpose" in a public place or to loiter for the purpose of soliciting. Although this may appear to be a "gender neutral" offence, in practice it is discriminatory and can be used by the police to harass women prostitutes. Female prostitutes have complained that they are often accused of soliciting when they were not doing so or when they had, in fact, been approached by the male customer. Naturally, a prostitute will be reluctant to testify against her customer in such circumstances and thus may be unfairly convicted. The Government should consider repealing this offence or, at a minimum, amending it so as to do away with custodial sentencing.

Recommendation 10: A programme of judicial training is urgently needed, to develop gender sensitivity among members of the Hong Kong judiciary. The judiciary should reconsider its present policy of allocating one judge to hear all cases under the Sex Discrimination Ordinance.

Hong Kong judges often make remarks that reflect sexist attitudes or a lack of awareness of gender issues. For example, when deciding upon the sentences for defendants who have been convicted of rape or sexual assault, judges sometimes make remarks indicating that they have taken into account the sexual history of the victim. These comments imply that the rape of a sexually active woman is less serious than the rape of a woman who is not sexually active. In other cases, it has been reported that the judge commented on the occupation and/or the national origin of the victim - again, implying that some women are less "pure" than others and therefore less deserving of protection from rape and sexual assault. All women, including entertainment workers and prostitutes, deserve the full protection of the law. We have also noted that where a male defendant is successfully prosecuted for sometimes horrific crimes against a woman he often receives a derisory sentence. This situation will only improve if judges receive gender sensitive training.

We are concerned that the judiciary has apparently decided to allocate all cases under the Discrimination Ordinances to one Judge. We do not believe this will enhance the development of a significant jurisprudence in this new area of law.

Recommendation 11: In future, the Hong Kong Government should make its CEDAW Report available to the public as soon as it has been completed.

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Hong Kong's Initial CEDAW Report was due to be submitted to the United Nations in October of 1997. It is our understanding that the Report was completed by that time. However, it was not submitted by China's Ministry of Foreign Affairs until one year later (apparently because the Chinese Government wanted to submit Hong Kong's Initial CEDAW Report together with updating reports on the Mainland).

Unfortunately, during this one year delay Hong Kong's Initial CEDAW Report was kept secret from the public. Now that we have finally received it, a good deal of the information is outdated. Even more troubling is the fact that NGO's (and the Legislative Council) have also been needlessly constrained in terms of the time that they can devote to studying, debating, and commenting upon on the Initial Report before the CEDAW Committee hearing in early 1999.

We submit that future reports should be made public as soon as they are completed. The Central Government has undertaken not to amend Hong Kong's reports, so there is no justification for keeping them secret for such a long period of time. This would give both the Legislative Council and local NGO's a better opportunity to monitor the extent to which CEDAW is actually being complied with in Hong Kong.

Attachment to
Report of the Hong Kong Association
of Business and Professional Women

Examples of Job Advertisements that Discriminate on the Basis
of Age (appearing in Hong Kong Newspapers in November 1998)

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