

**Hearing of the United Nations Committee on the
Elimination of All Forms of Discrimination Against Women (CEDAW)
on the Second Report of the Hong Kong Special Administrative Region**

**Meeting of Legislative Council
Panel on Home Affairs on 9 June 2006**

— Submission from the Equal Opportunities Commission —

Introduction

1. The Committee on CEDAW will hold its Thirty-sixth Session at United Nations Headquarters in New York from 7 to 25 August 2006. Fifteen country reports of State Parties, including China, will be examined during the Thirty-sixth Session. The Hong Kong Special Administrative Region (HKSAR) second periodic report under the CEDAW will also be examined as part of the country report of the People's Republic of China.
2. The Committee on CEDAW has recently issued a list of questions with regard to the consideration of China's country report. The questions relating to the HKSAR focus mainly on two issues, namely trafficking and exploitation of prostitution and employment situation of women. On the issue of employment situation of women, the Committee on CEDAW asks the HKSAR Government to "*provide the results of the 2001 Government-funded study on equal pay for work of equal value (EPEV) in both public and private sectors*" and "*information on steps taken to implement the principle, particularly in small and medium enterprises*".
3. The Equal Opportunities Commission (EOC) would like to take this opportunity to update the Panel on Home Affairs on our work on EPEV and to provide our general views on the implementation of CEDAW in Hong Kong.

What is EPEV?

4. EPEV is not the same as 'equal pay for equal work'. 'Equal pay for equal work' is a concept that women were paid less than men for doing the same job. EPEV, on the other hand, is a concept which deals with redressing discrimination which arises when women and men are segregated into different jobs, but the jobs done mainly by men are more highly rewarded than those done mainly by women, even though they may require similar credentials and similar work experience.

Hong Kong's Obligation

5. The principle of EPEV has been recognized in equal pay legislation in some developed countries. Although there is no specific equal pay legislation in Hong Kong, it should be noted that the Government is bound by a number of international human right instruments to implement the principle of EPEV. The Government takes the view that the provisions in the SDO already cover the concept of EPEV. The EOC was tasked to include EPEV in its portfolio.

Feasibility Study

6. Since its establishment in 1996, the EOC has worked steadily to advance the EPEV principle, first by including it in the Code of Practice on Employment issued under the Sex Discrimination Ordinance (SDO), and secondly by commissioning a 'Feasibility Study on EPEV' (Feasibility Study) in 1997 to examine the issues related to the implementation of the EPEV principle.

7. In its final report, the research team recommended a suasive approach for implementing EPEV in Hong Kong rather than making EPEV mandatory through legislation. Although it did not recommend compulsory introduction of EPEV, it made some preliminary suggestions to address the pay differentials between men and women. It suggested that the EOC could promote voluntary practice of EPEV by large organisations, while EPEV could be tackled by the current SDO. Discriminatory policies and stereotypical socialization and attitudes, on the other hand, could be changed through education.

The 2004 EPEV Consultancy Study

Background

8. In January 2001, the Government granted \$2 million for the EOC to carry out work on EPEV. It was originally decided to be a three-phase project. Phase One would involve an examination of the situation in the public sector; Phase Two would involve an examination of companies in the private sector with over 200 employees; and Phase Three would involve an examination of smaller companies. It was anticipated that benchmarks for assessing the values of jobs would have been developed by the time Phase Three was launched.

9. A Taskforce on EPEV, with representatives from the Civil Services Bureau (CSB), the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions, Home Affairs Bureau (HAB), the then Health and Welfare Bureau (*currently the Health Welfare and Food Bureau (HWFB)*), the Hospital Authority (HA) and the Labour Department was formed to oversee the study. The EOC also invited Professor Kenneth Law and Ms. Carole Petersen, academics from the Hong Kong University of Science and Technology and the University of Hong Kong respectively, to join the Taskforce, with a Member of the EOC served as the Convenor of the Taskforce.

10. The Phase One Consultancy Study adopted the Canadian job evaluation model which used four job-related factors to determine the value of the jobs selected for examination: 'skill', 'effort', 'responsibility', and 'working conditions'. These job samples were taken from two public sector employers, namely the Civil Service and the Hospital Authority. The Consultancy Study was conducted by interviewing a small sample of job holders who had to fill in a Job Analysis Questionnaire, which was designed to elicit information on the four job-related factors referred to above. The consultants then used the information to evaluate the value of each job according to a Job Evaluation Plan. The evaluation scores were then plotted against their respective salaries to assist analysis.

Draft Report

11. The draft report was submitted to members of the Taskforce set up to steer the Consultancy Study for comments in early 2003. However Taskforce members did not

reach consensus on the interpretation of data or the future steps to be taken. An embargoed draft report together with the views expressed by some Taskforce members was submitted for EOC Members' consideration in June 2003.

12. When the subject was brought up again in September 2003, under the then new Chairperson and EOC Members. No consensus was reached and it was proposed to have a synopsis of the studies and a proposal on the way forward prepared for further consideration.

Samples of Views and Reservations of Taskforce and EOC Members

13. Taskforce members' divergent views were mainly concerned with the methodology adopted in the Study, the interpretation of data and whether the findings of the study could support the recommendations made. For example, it was commented that job-related allowances were not included as part of remuneration when evaluating Hospital Authority jobs and this could significantly affect the findings. It was also commented that the samples were small and not selected on a random basis. Some of the findings on "underpaid" jobs were reached by drawing selective comparison and it was unclear as to the statistical significance of the pay inequities between the two jobs. Moreover, the female and male regression lines plotted for comparison purpose crossover about in the middle and they were not clearly separated from one another, indicating there was no systemic "sex discrimination" in the sample jobs examined nor systemic pay discrimination based on gender in general.

14. The then EOC Members, on the other hand, commented that it would be necessary to look into the background before concluding that pay differentials were due to gender discrimination. However, they noted that the Government was bound by a number of United Nations Instruments to implement the principle of EPEV. It was considered that more work should be done in identifying the issues and practicability of implementing EPEV and in mapping out a strategy for implementation.

Resumption of Taskforce Meetings

15. Following another change in chairpersonship, the Taskforce resumed meeting in March 2004. In view of the fact that no consensus could be reached, the Taskforce decided

that the report should not be positioned as the Taskforce's Report. Instead, it was proposed that it be positioned as the Consultant's Report. The proposal allowed Taskforce members and the EOC to present their respective views and comments on the Consultant's Report.

Taskforce Members' Views on the Revised Consultant's Report

16. Members of the Taskforce have divided views on the Consultant's Report. It was agreed that members' written comments would be presented to EOC Members for their consideration, and it would be up to the EOC to decide on how to take the subject forward.

17. Notwithstanding the different views of the Taskforce members, the following has been agreed upon by the Taskforce:

- ◆ Phases two and three of the Study should not be pursued, as it is not realistic to expect private sector and the small and medium enterprises (SMEs) to have clear delineation of job groups¹.
- ◆ Public education should be strengthened to remove stereotyping and to promote better understanding of the EPEV concept. This could be done in collaboration with concerned stakeholder groups and the Women's Commission (WoC).
- ◆ The Code of Practice on Employment under the SDO should be reviewed in order to provide more specific guidelines and illustrations to explain the complicated concept of EPEV.
- ◆ It should be up to the EOC to decide whether and how the Report should be published.

Ways Forward Proposed

18. Taking note of the Consultant's recommendations and the views of Taskforce members, Members of the EOC agreed in meetings held in late 2004 the following ways forward: strengthening public education and training to remove gender stereotyping; encouraging and supporting the tertiary institutes to work in collaboration with stakeholder

¹ If a pattern or trend that might point to the existence of discrimination could not be established in the public sector (where jobs types and salaries were relatively more structured and better defined), it would seem highly unlikely that a similarly study of the private sector (with a much less structured job / salary relatively) would yield any meaningful result.

groups to conduct baseline survey on public understanding of EPEV; and encouraging employers to introduce family-friendly employment policies and practices.

Current Status

19. In early 2005 (following another change in chairpersonship) further technical questions on data analysis were raised by EOC Members. The lead Consultant's answer to the technical questions and opinion of an independent expert were also obtained. In the meantime, a completely new EOC board was appointed in May 2005. In December 2005, a working group consisting of seven EOC Members was formed to take the subject forward.

20. The working group has felt that the Consultant's Report should be released as soon as possible. EOC's comments on the Consultant's Report would be appended to the report and a series of actions to be taken by the EOC to address equal pay issues in Hong Kong would also be announced during the release of the Consultant's Report.

General Views on the Implementation of CEDAW

Review of the Sex Discrimination Ordinance

21. In 1999, the EOC completed a review of the Sex Discrimination Ordinance (SDO) and proposed to the Government 14 amendments to -

- (a) clarify the application of certain provisions;
- (b) extend the provisions against sexual harassment to additional areas. These include, for example, sexual harassment of tenants/sub-tenants by other tenants/sub-tenants, and harassment of providers of goods, services and facilities by customers;
- (c) remove certain exceptions;
- (d) provide the EOC with additional powers and means to handle discrimination;
and
- (e) amend certain headings and some parts of the Chinese text.

22. In its response to the list of issues presented by the Committee on Economic, Social and Cultural Rights (CESCR) in May 2004, the Government said it had accepted many of the EOC's proposals for the amendment of the SDO and was actively considering how to take them forward. The response also said at the time of finalising the reply to CESCR, it was thinking of incorporating some of the recommendations in the proposed legislation against racial discrimination and then to make corresponding amendments to the SDO, so widening their scope and ensuring consistency. No progress, however, is made so far in relation to these proposed amendments since there is delay in the introduction of the proposed legislation against racial discrimination.

23. The EOC strongly urges the Government to introduce the proposed amendments to the SDO as soon as possible independent of the proposed race law.

Small House Policy

24. An exemption in the existing SDO relates to the small house policy. Under this policy, a male indigenous person in the New Territories is entitled to apply to the Government to build a three-storey village style house as a residence. Both women and non-indigenous persons are excluded from this policy.

25. In February 1999, the EOC recommended to the Government, as part of the proposals made following its review of the SDO, that the small house policy exemption should be repealed. In January 2001, the HKSAR Government advised the UN Committee on Economic, Social and Cultural Rights (CESCR) that it had commenced a review of the policy in September 1997. In its second report submitted to the Committee in 2003, the HKSAR Government informed the CESCR that the review foreshadowed in the initial report was still in progress.

26. The EOC urges the Government to expedite on its decision on the small house policy and to ensure that any possible options to resolve the matter do not discriminate on the grounds of sex.

Under-representation of women in Advisory and Statutory Bodies

27. It is the Government's position that appointments to Government advisory and statutory bodies (ASBs) are made on the basis of merits, taking into consideration an individual's ability, expertise, experience, integrity and commitment to public service, regardless of gender. That said, the Government has set a gender benchmark of 25%, on the advice of the WoC, as an initial working target for appointments to ASBs. According to the Health, Welfare and Foods Bureau, as at December 2005, the 25% target of the appointed non-official posts of ASBs was met.

28. Though it is encouraging to see that the 25% benchmark is achieved, the EOC considers a more balanced gender composition would enable the views and concerns of both genders to be fully reflected in the Government's policies formulation and implementation processes. Thus, the EOC urges the Government to review and to upward adjust the working target for appointments to ASBs in consultation with the WoC and stakeholder groups.

Gender Wage-gap

29. In a paper prepared by the LegCo Secretariat on the subject of women in poverty (LC Paper No. CB(2) 1785/05-06(01)) issued for the meeting of the Subcommittee to Study the Subject of Combating Poverty on 27 April 2006, it was pointed out that there was a difference in average monthly earnings between men and women employees, and the difference was greater in non-supervisory and non-technical jobs. For example, a woman worker in manufacturing industry engaged in non-production work earned about \$6,330 a month, as compared to \$7,867 earned by a man in the same occupation.

30. In our regular contacts with women groups, we also received allegations claiming that some employers used different job titles to label the same job for male and female jobholders so that they could pay male and female jobholders differently. This problem of "unequal pay for equal work" is most apparent in certain job groups such as cleaners, security guards and manual labor in the catering industry and may have contributed to the gender wage-gap in the non-supervisory and non-technical jobs abovementioned.

31. The EOC is concerned about the persistent existence of the gender wage-gap and the practice of unequal pay for equal work. The EOC has already approached representatives of some trade unions to obtain further information about the experience of female workers engaging in certain industries where they were customarily paid less than male counterparts to decide on our next course of action.

Family-friendly Employment Policies and Practices (FFPPs)

32. In recent years, we are seeing a gradual increase in participation of women (some of them with children) in the work force in Hong Kong. On the other hand, Hong Kong's aging population implies that more responsibility for care of the elderly population would fall onto the shoulders of our working population, including women. It is encouraging to note that the Government is setting good example by taking initiative to introduce 5-day workweek to address work-life balance of the civil servants. However, the initiative is but one of the many established good practices adopted by employers in some overseas countries to address work-life balance of their employees and more FFEPs suitable for use by employers in Hong Kong should be explored.

33. For Members information, the EOC and the WoC has in January 2006 commissioned a study on FFEPs. Objectives of the study include:

- To investigate the prevalence of FFEPs in Hong Kong
- To identify an inventory of FFEPs that are available in organisations in Hong Kong
- To assess the level of awareness among Hong Kong employers of the value and benefits of FFEPs
- To gauge employers' willingness to adopt FFEPs
- To explore possible incentives that would encourage employers to adopt FFEPs

34. Hopefully, findings and recommendations of the abovementioned study on FFEPs would be available for release in mid 2006. The EOC urges the Government to seriously consider the findings and recommendations of the study and take the lead to introduce more FFEPs to address employees' work-life balance.

Women with Disabilities

35. In early 2005, the Association of Women with Disabilities Hong Kong expressed their concern on the inaccessibility of some Maternal and Child Health Centres (MCHC) of the Department of Health. The key problems identified by the Association include lack of signage and tactile guide-paths; blockage of passages, entrances, tactile guide-paths and lift entrances; steep gradient of some access routes; lift press-buttons too high for wheelchair users; lack of toilets for the disabled; and reception counters too high for wheelchair users etc. The problems identified by the Association were then conveyed to the Department of Health in February 2005. Subsequently, a seminar was held with participation from the Association, the Department of Health and the EOC to discuss how to improve the accessibility of services and facilities of the MCHCs to women with disabilities. Due to physical constraints, retrofitting to improve accessibility of some of the MCHCs was not feasible and the Department of Health undertook to facilitate patients with disabilities to transfer to other accessible MCHCs for follow up.

36. The incident clearly illustrates the unique nature of the kinds difficulty faced by women with disabilities. The EOC urges the Government to critically audit the accessibility of all premises where government services or facilities are provided, particularly those providing special services to women, and to make improvement where possible.

Integrating Gender Equality and Equal Opportunity Concepts into School Curriculum

37. In the past few years, the EOC was in constant dialogue with the Curriculum Development Institute (CDI) of Education and Manpower Bureau (EMB) to advocate for the integration of gender equality and equal opportunity concepts into school curriculum. According to the CDI, the concept of equal opportunity and human rights were incorporated in subjects such as the General Studies for junior secondary students, and in Social Studies, History and GPA for higher forms under the existing curriculum. In addition, the concept of equal opportunity was introduced in morning assemblies, cross-curricular activities and extra-curricular activities. Moreover, the concept of equal opportunity would be introduced in the Liberal Studies subject of the proposed New Senior Secondary academic structure. “Gender” as an issue of enquiry and “gender” as a perspective for issue enquiry would also be introduced in the study area of “Self and Personal Development” in the Liberal Studies.

38. While recognising EMB's effort in integrating the concepts of gender equality and equal opportunity into school curriculum, the EOC is concern whether teachers, particularly teachers of the future Liberal Studies subject, have sufficient knowledge and training on these complicated and evolving concepts. In this connection, the EOC urges the EMB to invite different experts, including the NGO community providing services to women, to providing training on these specific topics to enrich knowledge of the teachers concerned. The EOC is most willing to contribute to such enrichment exercise if required.

39. Addition to the above listed issues of concern, the EOC urges the Government to take into account views and concerns express by women groups and NGOs providing direct services to women from time to time in their formulation and implementation of government policies and programmes.

Domestic Violence

40. The EOC is concerned about the increase in terms of number and seriousness of reported domestic violence incidents, most notably the Tin Sui Wai tragedy, in recent years. There are also patterns that most battered wives are new arrivals from the mainland; that they tends to reside in districts like Tin Sui Wai and Shamshuipoo; and that they are Comprehensive Social Security Allowance (CSSA) recipients.

41. The EOC urges the Government to formulate its public education and prevention strategies and programmes having regard to the abovementioned patterns and trends as well as to provide appropriate awareness and sensitivity trainings to front-line staff such social workers, police officers, healthcare workers, etc.

Equal Opportunities Commission

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