

## COMMENT

### THE PARIS PRINCIPLES AND HUMAN RIGHTS INSTITUTIONS: IS HONG KONG SLIPPING FURTHER AWAY FROM THE MARK?

In July 2003, the Hong Kong Government announced that it would not renew the contract of Anna Wu, who had served as Chairperson of the Equal Opportunities Commission (EOC) since August 1999. Ms Wu was viewed as an assertive Chairperson, largely because the EOC had successfully litigated against the Government in two major cases while she was in office. Unfortunately, it is widely believed that this is precisely why Ms Wu was not reappointed. This suspicion deepened when the Government replaced her with Michael Wong, a retired judge with no particular background in anti-discrimination law or human rights advocacy. Critics of his appointment feared that Mr Wong would transform the EOC into a quieter and more passive institution, one that would process complaints under the three anti-discrimination ordinances but rarely clash with Government departments.

As it turned out, Mr Wong resigned from the EOC after only three months, having endured a storm of criticism. Some of the accusations against Mr Wong concerned his financial dealings while he was a judge, which will not be discussed here. Rather, this comment will focus upon Mr Wong's decision to terminate the contract of Patrick Yu, the EOC's incoming Director of Operations. It was this decision that caused members of the public to accuse Mr Wong of abusing his administrative powers and of violating the Paris Principles for national human rights institutions.<sup>1</sup> Although Mr Wong maintained that the incident was a simple contractual dispute,<sup>2</sup> it was clear that many in the community suspected otherwise. The matter is a serious one and deserves careful analysis, starting with the nature and purpose of the Paris Principles and the duties of public bodies like the EOC.

The international human rights community has increasingly recognised the important role played by national human rights institutions. Since the international enforcement mechanisms for human rights treaties are notoriously weak, it is important that individuals can take their grievances to a domestic body that is charged with implementing the treaties. In 1991, the United Nations

<sup>1</sup> See, for example, Ravina Shamdasani, "Watchdog faces pressure to resign: Firing breached human rights treaties, says academic", *South China Morning Post (SCMP)*, 24 Oct 2003, p C3 (quoting Rita Kwok Hoi-ye of Baptist University and Ho Hei-wah, Director of the Society for Community Organization).

<sup>2</sup> See, for example, "Human Rights Principles", letter to the editor, *SCMP*, 27 Oct 2003, p 10, in which the EOC's legal advisor wrote (while Michael Wong was still Chairperson) that "There is no question of a private contractual dispute between an employer and employee amounting to a breach of the [Paris] Principles, which are about the status of national human rights institutions."

sponsored a workshop in Paris on the subject of domestic human rights institutions.<sup>3</sup> The workshop produced several guiding principles, which were adopted by the United Nations Commission on Human Rights in 1992 and by the General Assembly in 1993.<sup>4</sup> The Paris Principles, as they are now known, are considered to be the minimum standards for the establishment and operation of domestic human rights institutions.<sup>5</sup> Among other things, the Paris Principles require that the institution be given a broad mandate to enforce human rights and enjoy absolute independence from the Government. The institution should also have a pluralistic membership and represent organisations in civil society that are actively involved in the protection and promotion of human rights. Equally important, the institution should be accountable, transparent, and accessible to the public. Of course, to a large extent, this is true of any public body but it is particularly important for an institution charged with the promotion of human rights and equal opportunities.<sup>6</sup>

In the early 1990s, the Hong Kong Legislative Council called upon the Colonial Government to establish an independent human rights commission for Hong Kong.<sup>7</sup> When the Government failed to do so, a legislator drafted a private member's bill to establish such a commission.<sup>8</sup> Unfortunately, despite a vigorous public campaign, Governor Patten used his constitutional powers to prevent this bill from being formally introduced.<sup>9</sup> The current Hong Kong Special Administrative Region Government has also thus far declined to establish a general human rights commission and it has often been criticised for this omission by the international committees that monitor compliance with human rights treaties.<sup>10</sup> When responding to these criticisms, the Hong

<sup>3</sup> The workshop was entitled the "International Workshop on National Institutions for the Promotion and Protection of Human Rights".

<sup>4</sup> General Assembly Resolution 134, 48th Session, 85th Meeting, UN Doc. A/RES/48/134(1993).

<sup>5</sup> I say "minimum" because the Paris Principles are often criticised as being the lowest common denominator rather than true benchmarks for effective national human rights institutions. See, for example, Linda C. Reif, "Building Democratic Institutions: the Role of National Human Rights Institutions in Good Governance and Human Rights Protection" (2000) 13 *Harvard Human Rights Journal* 1, especially pp 24–6.

<sup>6</sup> For an elaboration of the Paris Principles and best practices to be followed by human rights institutions, see *National Human Rights Institutions: Best Practice* (Commonwealth Secretariat 2001).

<sup>7</sup> See, for example, the debates in the Legislative Council on the Bill of Rights, in *Official Proceedings of the Legislative Council*, 27 June 1999, p 1767 and 5 June 1991, p 2307.

<sup>8</sup> See *Human Rights and Equal Opportunities Commission Bill*, draft distributed for public consultation, Mar 1994 and published as an Appendix to George Edwards and Andrew Byrnes, eds, *Hong Kong's Bill of Rights: 1991–1994 and Beyond* (University of Hong Kong, 1995).

<sup>9</sup> Clause XXIV of the Royal Instructions provided that a bill that would put a charge on the public revenue could only be introduced by an individual legislator (as opposed to the Government) if the Governor gave permission, which Governor Patten declined to do.

<sup>10</sup> See, for example, the Concluding Comments of the Human Rights Committee on the Hong Kong Special Administrative Region, CCPR A/55/40 (2000), para 237 where the Committee stated that it "remains concerned that there is no independent body established by law to investigate and monitor human rights violations in HKSAR and the implementation of Covenant rights". See also the *Concluding Comments of the Committee on Economic, Social and Cultural Rights on China*, CESCR E/2002/22 (2001), para 177(d).

Kong Government often points to various specialist institutions, including the Ombudsman, the Privacy Commission, and the EOC. The international monitoring bodies have not fully accepted this response because these institutions all have limited jurisdiction and do not have the broad powers and functions that a national human rights commission should enjoy.

Moreover, there is rising concern that the independence of these domestic institutions has been eroded in Hong Kong since 1997. In 1998, the contract of Ombudsman Andrew So was not renewed and many people suspected that he lost the position because he had actively pursued a human rights perspective in his position. In 1998, he produced a report on Hong Kong's obligations under various international human rights treaties and the extent to which the Ombudsman's office could play a role in their implementation. The report also suggested the removal of certain limitations on the Ombudsman's jurisdiction and investigatory powers, a suggestion which was not supported by the Government.<sup>11</sup> Later that year, the decision was made not to reappoint Mr So, apparently because Government officials did not want the office to become more like a general human rights commission.<sup>12</sup> Human rights activists worried that So's removal would cause the next Ombudsman to "exercise restraint, for fear of losing his job."<sup>13</sup> Similarly, in 2001, Stephen Lau Ka-men was not reappointed as Privacy Commissioner and there was widespread speculation that this was because he had submitted files for possible prosecutions to the Secretary for Justice.<sup>14</sup> In particular, Lau had sent a report on the alleged breach of the Personal Data (Privacy) Ordinance by Xinhau, which had failed to allow legislator Emily Lau to see a personal file she claimed was kept on her by the agency within 40 days. Lau had also expressed concerns regarding the Government's proposal to introduce "smart" identity cards, which he worried would give authorities access to a vast amount of personal data.

In the case of the EOC, its difficulties with the Government can be traced primarily to two major cases against Government departments. In the first case, the District Court held unlawful the Government's long-standing policy of rejecting an applicant to the disciplined services if the candidate had a

<sup>11</sup> See Office of the Ombudsman, *The Ombudsman and the Protection of Human Rights in Hong Kong* (Office of the Ombudsman, Jan 1998), especially paras 35 and 43, regarding possible expansions to the Ombudsman's jurisdiction and the Government's reply. Available at <http://www.ombudsman.gov.hk>.

<sup>12</sup> See, Gren Manuel, "A new watchdog in the jungle", *SCMP*, 27 Dec 1998, p 6.

<sup>13</sup> See, Linda Yeung, "Sharpening the watchdog's teeth", *SCMP*, 8 Dec 1998, p 19.

<sup>14</sup> See Michelle Chak, "Shock as privacy chief says he will step down; announcement sparks calls for an official explanation", *SCMP*, 31 July 2001. See also the Letter to the Editor of Lai Wing-Yiu, "Concern over privacy chief's departure", *SCMP*, 5 Aug 2001; and Human Rights Monitor, Urgent Press Release, "EOC Appointment and Independence of Statutory Watchdogs – Open Letter to Tung Chee Hwa", 28 July 2002.

close relative with a history of mental illness.<sup>15</sup> All three of the plaintiffs had been denied employment solely on the ground that their respective parents had suffered from mental illness. Without the EOC's assistance, the plaintiffs could not have afforded litigation and the Government would have continued to violate the law. In the second case, the Court of First Instance issued a declaration that the Department of Education's system of allocating students to secondary schools (known as the SSPA) was unlawful because it discriminated on the ground of sex, primarily penalising girls.<sup>16</sup> The EOC had first conducted a formal investigation into the system and recommended that the Government reform the system and treat male and female applicants equally. However, the Government refused to follow these recommendations and the EOC ultimately decided that it must seek judicial review. As a result of the litigation, a significant number of students from the 2001 allocation were reallocated and subsequent allocations have been conducted in accordance with the law. Thus the case had real systemic impact, which is the goal of strategic litigation for an organisation like the EOC. The case may also have impact beyond the field of education since the court held that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) could be used as a guide to interpreting the Hong Kong Sex Discrimination Ordinance.

These two cases were impressive legal victories for the EOC but politically dangerous. The decision to litigate against the Government made the EOC unpopular with certain Government officials and certain sectors of society. Anna Wu, the EOC's Chairperson at the time, bore the brunt of the hostility. This is somewhat ironic in that both matters commenced under the EOC's first Chairperson, Dr Fanny Cheung.<sup>17</sup> However, the actual litigation occurred after Ms Wu assumed the office and there is no question that she was perceived to be a very assertive and committed Chairperson. In the spring of 2002, certain newspapers began reporting rumours that the Government was unhappy with the EOC's litigation strategy and that Ms Wu's contract

<sup>15</sup> *K, Y, and W v the Secretary for Justice* [2000] 3 HKLRD 777. The EOC assisted three plaintiffs to sue the Fire Services Department and the Customs and Excise Department under the Disability Discrimination Ordinance, for discrimination on the grounds of a disability of an associate. These two Government departments had refused to hire the plaintiffs solely because they each had a parent with a history of mental illness; no individual analysis had been done to determine whether the plaintiffs themselves were at risk of inheriting the mental illnesses of their parents. A similar hiring policy was applied by the Police, Correctional Services, and the Immigration departments. For further discussion of the case, see Carole J. Petersen, "The Right to Equality in the Public Sector: An Analysis of Post-Colonial Hong Kong", (2002) 32 *HKLJ* 104, 110–116.

<sup>16</sup> *Equal Opportunities Commission v Director of Education* [2001] 3 HKLRD 690. For further discussion of the case, see Petersen (n 15 above), 117–131.

<sup>17</sup> The original complaints in *K, Y, and W v the Secretary for Justice* and the Formal Investigation of the SSPA system both commenced while Dr Cheung was Chairperson (although Anna Wu was an ordinary member of the commission at the time).

might not be renewed by the Chief Executive when it expired at the end of July 2002. Several human rights groups wrote to the Government to support Ms Wu and the EOC.<sup>18</sup> They argued that any move to penalize a statutory body for successfully suing the Government would damage its independence. Nonetheless, it was clear that the EOC's critics had some impact because Ms Wu's contract was not renewed until just a few days before it expired and then the Government offered her only a one-year extension rather than a normal three-year renewal. This was highly unusual and indicates that there was intense disagreement within the Government about whether Wu's contract should be renewed. The Government claimed that it was restricting the reappointment to one year because it wanted to conduct a "review" of the work of the EOC. However, the Government never did conduct any such review – at least not one that the public was invited to participate in. Many people in the community interpreted the one-year reappointment as implying that Ms Wu and the EOC were being put on "probation."<sup>19</sup>

Anna Wu made it clear that she would not be intimidated. She welcomed the review and suggested that it should include whether to enact a race discrimination law and whether to establish a general human rights commission.<sup>20</sup> She also delivered public speeches on the importance of the Government abiding by the law and the continued independence of the EOC. No doubt this was not the response the Government had hoped for and in early 2003 the rumours began to circulate again. This time it was not only reported that Wu would not be renewed after the one-year extension but also that the Government was considering restructuring or even dismantling the EOC. Although some of the rumours were rather far fetched, they would certainly have lowered morale at the EOC. Wu called upon the Government to dispel the rumours and to assure the EOC of its independence and continued status.<sup>21</sup> In the end, the Government did not downgrade the position. However, on 2 July 2003 (less than one month before the end of Wu's contract) the Government announced that Wu would be replaced by

<sup>18</sup> See, for example, Ravina Shamdasani and Quinton Chan, "Groups rally to save rights chief's job", SCMP, 19 June 2002, p 4.

<sup>19</sup> See, for example, Quinton Chan, "Review Plans Prevented longer Anna Wu Contract", SCMP, 29 July 2002, p 2; and Human Rights Monitor (n 14 above), expressing its concern over the Government's refusal to give Anna Wu a normal three-year renewal, as well as the failures to reappoint previous heads of independent statutory bodies.

<sup>20</sup> See "Anna Wu welcomes review of rights body", SCMP, 30 July 2002. The Government has since agreed to introduce a race discrimination bill but has not yet done so. It is expected that the Government will conduct a public consultation on the contents of the bill in the spring of 2004 and introduce a bill in late 2004 or early 2005.

<sup>21</sup> See, for example, Anna Wu, "The Role and Work of the Hong Kong Equal Opportunities Commission – Its Impact and Challenges", speech delivered at the Foreign Correspondents' Club, Hong Kong, 2 June 2003, especially the section on the Paris Principles where Wu called upon the Government to give "an unequivocal public statement of support" for the work of the EOC.

Michael Wong, a retired judge from the Court of Appeal. Although the Government insisted that it was just a normal turnover, the appointment of Mr Wong was widely interpreted as confirmation that the Government wanted to reign in the EOC and make it a less assertive statutory body.

This background virtually guaranteed that Mr Wong's decision to abruptly fire Patrick Yu would cause controversy. The recruitment of Yu had been a long process and had started well before Wong's appointment to the commission. In 2001, the EOC decided to merge the Gender Division and the Disability Division into one Operations Division, which would be responsible for processing complaints under the three anti-discrimination ordinances. The EOC also advertised for a Director of the new Operations Division. A selection committee was formed (consisting of the Chairperson and four other members of the EOC) and a shortlist of five candidates was drawn up, all of whom were interviewed. Mr Yu was unanimously selected by the committee and offered the position. His appointment was announced on 17 July 2003 and he was due to start working for the EOC in November 2003. He has a strong background in the field, having served as a Commissioner of the Northern Ireland Human Rights Commission and the Deputy Chairman of the Commission for Racial Equality for Northern Ireland. Moreover, he is also a native of Hong Kong, speaks both Cantonese and English, and has maintained strong ties with the territory. Thus many non-governmental organisations (NGOs) considered him uniquely qualified for the position and were eagerly anticipating his arrival.

However, on 23 October, Mr Yu dropped a bombshell. He flew to Hong Kong and held a press conference, announcing that he had been dismissed by the new Chairperson. Mr Yu disclosed that he had been offered two months' salary with benefits as compensation for the dismissal but that he had declined the offer. Instead, Yu requested a public explanation. According to Yu, the only reason provided to him was that the new Chairperson disapproved of certain statements attributed to Yu in a local newspaper article. On their face, the statements in the article did not appear particularly controversial and Yu did not believe that they could possibly justify instant dismissal.<sup>22</sup> Yu therefore asked Michael Wong to provide full reasons, noting that

<sup>22</sup> The article primarily described Patrick Yu's background and prior experience in the field. The article also reported that Yu said he would uphold the integrity and mission of the EOC and that he hoped to play some role in advising on the new race discrimination legislation. See Ravina Shamdasani, "Anna Wu gives key post to rights lawyer", *SCMP*, 18 July 2003, p 3. Michael Wong later stated that he considered these comments to be insulting to him which made him decide that Yu lacked the proper judgment and respect. See letter dated 5 Nov 2003, from Michael Wong, Chairperson of the EOC, to the Panel on Home Affairs, tabled at the Legislative Council as LC Paper No. CB(2)266/03-04(01), especially pp 7 and 9. However, it is difficult to believe that the article could provide a justification for firing Yu, particularly since Wong had not actually assumed office when the article was published and Yu had obtained permission from the existing Chairperson to give the interview.

the “credibility and independence of the commission depend upon its transparency and accountability to the public. This is a public body with collective responsibility, not dictatorial powers. Mr Wong owes the public an explanation.”<sup>23</sup>

The press conference created an uproar, particularly among NGOs. Some feared that Patrick Yu had been dismissed because he was considered too liberal and too activist by the new Chairperson. Others speculated that Wong was deliberately trying to downsize and weaken the EOC. In either case, the dismissal would constitute a breach of the Paris Principles. It is also possible that Mr Wong was simply annoyed that a major appointment had been made shortly before he assumed office. However, the Chairperson should not have been offended by this, as the recruitment process had taken the better part of a year and was completed by five members of the commission, who at the time had no way of knowing that Mr Wong would be the new Chairperson. Perhaps Mr Wong would have preferred to choose his own Director of Operations but this would not justify breaching an employment contract. The Chairperson does not own the EOC and cannot run it like his private company – it is a public body and the Chairperson is obligated to retain employees so long as they are qualified for their jobs and fulfilling their duties. At a minimum, one would have expected the new Chairperson to allow Mr Yu to start his position and demonstrate his worth. This is particularly true because part of the EOC’s mandate is to prevent unfairness and discrimination in hiring and firing decisions. As such, the EOC must be an exemplary employer and should go out of its way to be fair to employees.

The EOC’s initial response to NGO criticism was to issue a statement simply confirming that Mr Yu was dismissed and stating that the action was authorised by the entire commission. However, individual members of the commission disputed this statement and it was later revealed that Mr Wong had taken steps to remove Patrick Yu before even discussing the matter at a commission meeting.<sup>24</sup> Two former commission members, who had been on the panel that selected Patrick Yu, also expressed their concern that Yu had been fired without following proper procedures.<sup>25</sup> The EOC itself initially declined to give the reason for Mr Yu’s dismissal, claiming that it would be improper to do so because legal proceedings may arise. Of course, this lack of transparency only made the public more suspicious that the decision to fire Yu was politically motivated. A coalition of women’s organisations requested that the Ombudsman investigate the dismissal, arguing that Wong had abused

<sup>23</sup> See Ravina Shamdasani, quoting Patrick Yu, in “Sacked rights official wants answers”, *SCMP*, 24 Oct 2003.

<sup>24</sup> See Elaine Wu and Benjamin Wong, “EOC members speak out on sacking; Doubts emerge over whether chairman had full backing to dismiss a key staffer”, *SCMP*, 28 Oct 2003, p 1.

<sup>25</sup> See Ravina Shamdasani, “EOC sacking ‘did not meet procedure’”, *SCMP*, 29 Oct 2003, p 1.

his administrative powers, both by withholding “information from the other commission members and the public” and by wasting public money.<sup>26</sup> Within just a few weeks, 60 NGOs had banded together and asked for Mr Wong’s resignation.<sup>27</sup> The incident became so controversial that the Secretary for Home Affairs felt obligated to write to the EOC and request a report on the matter, a rare move given the EOC’s status as an independent statutory body. The Legislative Council’s Home Affairs Panel also scheduled a special session to discuss the issue and invited Mr Wong to attend, which he initially agreed to do. Two days before the panel meeting, Mr Wong sent a written statement to the Legislative Council, maintaining that the reasons for dismissal included not only the news article but also Mr Wong’s judgment that “Mr Yu was not suitable to focus on investigation and conciliation” and that Yu would not be able to work harmoniously with himself, EOC members, and EOC staff.<sup>28</sup> However, Patrick Yu then disclosed copies of correspondence from the EOC which he felt did not support these explanations. Yu argued that the letter Wong had submitted to the Legislative Council contained “made up stories” as to why he was fired.<sup>29</sup> It was clear that Wong was about to face tough questioning by legislators.

Unfortunately, Wong never did appear at the Legislative Council. On the day before the Home Affairs Panel meeting, Wong announced that he was resigning and would not attend the meeting or answer any further questions. This may have been a calculated strategy – it allowed Wong to publish his own version of events, in the form of the letter to the Home Affairs Panel, while avoiding the need to answer any questions on alleged inconsistencies with the documents that had been released by Yu. Since legislators were denied that opportunity, the underlying motivation for Yu’s dismissal is still an unanswered question. If Yu was fired simply because Wong took personal offence at a news article published before he even became Chairperson then the dismissal would almost certainly constitute a breach of the EOC’s contractual duties, as well as a violation of the general principles of administrative law. If, on the other hand, the underlying motivation was that Wong was seeking to weaken the EOC or to make it a more conservative and less assertive body then the dismissal also constituted a breach of the Paris Principles. Either way, the incident has done significant damage to the EOC’s reputation. This is unfortunate because the EOC had been well-regarded by

<sup>26</sup> See “Coalition calls for ombudsman probe”, *SCMP*, 31 Oct 2003, p 1, quoting Lam Wai Ha, spokeswoman for a coalition of 13 women’s organisations.

<sup>27</sup> See Ravina Shamdasani, “60 groups unite to call for sacking”, *SCMP*, 1 Nov 2003, p 1.

<sup>28</sup> See letter dated 5 Nov 2003 from Michael Wong (n 22 above), especially p 9.

<sup>29</sup> See Ravina Shamdasani, “Sacked EOC officer releases dossier”, *SCMP*, 7 Nov 2003, p 1.



international monitoring bodies and therefore enhanced Hong Kong's reputation for human rights protection.<sup>30</sup>

We may never know what truly motivated Michael Wong to dismiss a key member of staff on such flimsy grounds. However, we can conclude that the very appointment of Wong as the new EOC Chairperson demonstrated a lack of commitment to the Paris Principles. The Paris Principles require that the institution be given adequate resources, which must include a strong Chairperson who is qualified in the field and capable of leading the organisation. In addition, the Paris Principles require that the composition of the institution shall be established in accordance with a transparent procedure, one that ensures the pluralistic membership, including organisations that actively promote human rights and qualified experts. The first Chairperson of the EOC, Dr Fanny Cheung, was selected after the Government advertised the post and publicly disclosed the job requirements and selection criteria. However, since 1997, the Government seems determined to maintain very tight control over the appointment process. The position of EOC Chairperson is no longer advertised and the selection process is entirely hidden from NGOs, legislators, and the general community. Had NGOs and legislators been given the opportunity to comment upon Michael Wong as a nominee, they would almost certainly have opposed his appointment. This is because Wong had no background in the field and no relationship with the NGOs that regularly work with the EOC. He also seems to have had very little stamina when subjected to public criticism and investigative reporting. Indeed, one of his supporters was quoted as saying that Mr Wong could have asked to be excused from attending the Home Affairs Panel Meeting because his health would not stand up to two hours of questioning by legislators.<sup>31</sup> If that is true, then one can only wonder how he would have coped with such a stressful job had he held it longer.

Moreover, there is mounting evidence that Michael Wong's appointment was an attempt to change the direction of the EOC. It has been revealed that Wong was recommended by Dr Raymond Wu, a conservative member of the EOC who has publicly criticised the EOC for litigating against the Government. It has also been confirmed that the Secretary for Home Affairs and Raymond Wu met with Michael Wong the evening before he resigned. During this meeting, Raymond Wu gave Michael Wong a list of allegations against Anna Wu (the former Chairperson of the EOC) and urged Michael

<sup>30</sup> See, for example, the Concluding Comments of the Committee on Economic, Social and Cultural Rights on China, CESCR E/2002/22 (2001), para 169, where the Committee on Economic, Cultural and Social Rights noted "with satisfaction that the Equal Opportunities Commission established in 1996 is effectively carrying out its mandate without interference from the Government."

<sup>31</sup> See Claudia Lee, "EOC chief 'quit post to avoid grilling'; Colleague feared stress of Legco probe could harm his health", SCMP, 9 Nov 2003, p 1.

Wong to use them in his statement of resignation. Michael Wong had the good sense not to do this but the allegations, which Raymond Wu later admitted were based upon hearsay, were published in a magazine. This gave rise to concern that the Secretary for Home Affairs may have been involved in, or at least privy to, a smear campaign against Anna Wu. The Secretary insists that he took no part in this<sup>32</sup> but the incident has left the impression that the Secretary and Raymond Wu shared a certain vision of the EOC's proper role and that Wong's original appointment was exactly what NGOs had feared, an attempt to reign it in.

It now falls upon the Government to appoint a new Chairperson. This time, the Chief Executive should not keep the process of selection a secret but rather should open it to public participation and scrutiny by the Legislative Council. A recent Commonwealth Secretariat report<sup>33</sup> elaborates on the Paris Principles and advises that appointment process for national human rights institutions should be designed to secure the best qualified members. The report further advises that the executive should not exclusively determine the selection of members. Rather, the process of appointment should be transparent and should involve both the legislature and civil society. The Hong Kong Government has not done this in the past because it is too concerned about maintaining tight control over the ultimate result. Perhaps it does not want to run the risk that another assertive Chairperson might emerge as the most qualified candidate to lead the EOC. However, the Chief Executive would do well to consider the results of his current approach to such appointments. Michael Wong's brief stay at the EOC created far more problems for the Government than any action taken by Ms Wu in her four years as Chairperson. The EOC's reputation has also been severely damaged by this incident and it will take a strong and competent leader to rebuild it. Strict adherence to the Paris Principles would help the Government to find that leader and to rebuild credibility, not only for the EOC but also for the Government itself.

*Carole J. Petersen\**

<sup>32</sup> When questioned about why he organised this private meeting (which also included Executive Councillor Andrew Liao), the Secretary stated that he only wanted to find out whether Michael Wong intended to resign and that he temporarily left the room while the allegations were discussed. See Hong Kong Legislative Council, Minutes of the Panel on Home Affairs, Special Meeting of 14 Nov 2003. However, Raymond Wu later claimed "memory loss" when asked whether the Secretary attended this portion of the meeting. See Carrie Chan, "EOC board member's amnesia", SCMP, 20 Nov 2003, p 1. See also "Patrick Ho denies 'smear campaign' role", SCMP, 15 Nov 2003, p 1 and Ravina Shamdasani, "Anna Wu calls upon home affairs chief to explain role in 'smear campaign'", SCMP, 21 Nov 2003, p 1.

<sup>33</sup> See n 6 above, p 15.

\* Associate Professor and Director, Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong.