

52nd Session of the Committee on Economic, Social and Cultural Rights

Consideration of The Third Report of the Hong Kong Special Administrative Region of The People's Republic of China under the International Covenant on Economic, Social and Cultural Rights

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Submission from the Equal Opportunities Commission, Hong Kong

Introduction

This paper aims to give views of the Equal Opportunities Commission (EOC) on The Third Report of the Hong Kong Special Administrative Region (HKSAR) on the implementation of International Covenant on Economic, Social and Cultural Rights (ICESCR).

2. The EOC is established by statute in May 1996. It is responsible for the implementation of the four anti-discrimination ordinances in Hong Kong, namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance, and for promoting equality of opportunities between men and women, between persons with and without disability and irrespective of family status and race.

Areas of Concern

Article 2 – Progressive realisation of the rights recognised in the Covenant

(a) Establishment of a Human Rights Commission

3. Currently, there are a number of statutory bodies such as the EOC and the Office of the Privacy Commissioner for Personal Data in the HKSAR to investigate and monitor the violations of specific areas of human rights. Such fragmented arrangement fails to provide comprehensive protection of all

Covenant rights. The EOC believes that a single statutory platform with a broad mandate covering all international human rights standards accepted by Hong Kong should be established.

(b) Outlawing discrimination on the ground of sexual orientation and gender identity

4. Hong Kong has not yet specifically legislated against discrimination on the ground of sexual orientation and gender identity and hence the public cannot have their grievance addressed through the complaint handling mechanism of the EOC. Although complaints relating to sexual orientation are outside the jurisdiction of the EOC, it received 1,337 public enquiries on sexual orientation for the five years from 2009 to 2013. In the Equal Opportunities (EO) Awareness Survey conducted in 2012¹, 43% of the 1,504 respondents believed that sexual orientation discrimination in Hong Kong was very serious/quite serious. The HKSAR Government established the Advisory Group on Eliminating Discrimination against Sexual Minorities in June 2013 to advise on the aspects and extent of discrimination faced by sexual minorities in Hong Kong and to advise on the strategies and measures to tackle the problems identified. The EOC believes that the HKSAR Government should conduct a public consultation on legislating against discrimination on the ground of sexual orientation as soon as possible.

(c) Outlawing discrimination on the ground of age

5. The number of people aged 65 or above in Hong Kong will surge from 940 000 in 2011 to 2 560 000 within 30 years. The proportion of elderly people will rise from the current 14% to 30% of the Hong Kong population in 2041. There is currently no protection from age discrimination in the HKSAR, whether it relates to the elderly or the young people. The EO Awareness

¹ Equal Opportunities Commission (2013). *Equal Opportunities Awareness Survey 2012*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/2013191436554640807.pdf>

Survey in 2012 found that age discrimination was perceived to be very serious/quite serious by 41% of the respondents. Among these respondents who claimed that age discrimination was very serious/quite serious, 69% of the discrimination incidents were related to employment. The “Practical Guidelines for Employers on Eliminating Age Discrimination in Employment” issued by the HKSAR Government in 2006 does not offer any legal protection and the related public education is criticised by stakeholders as insufficient. In this regard, the HKSAR Government should adopt a proactive and comprehensive approach in facing the challenges brought by an aging population and consider legislating against discrimination on the ground of age.

(d) Gap in the Race Discrimination Ordinance

6. Unlike other Discrimination Ordinances, the Race Discrimination Ordinance (RDO) does not specifically apply to the Government in the exercise of its public functions. This is a key area where review and reform are necessary.

7. In the meantime, while reform on the RDO is still pending, the EOC urges the HKSAR Government to extend the Administrative Guidelines on Promotion of Racial Equality (the Administrative Guidelines) to all government bureaux and departments and public authorities. The main administrative and executive functions of government are carried out by 12 policy bureaux and 61 departments and agencies. By end of 2013, the Administrative Guidelines are only extended to around 22 of them.

8. In addition, there is currently no protection from discrimination based on nationality, citizenship or immigration status. The EOC believes that the HKSAR Government should consider review and amend the RDO to include nationality, citizenship and immigration status in the definition of race, so that discrimination on those grounds will be outlawed.

Article 3 – Equal rights of men and women

(a) New Round of Review of the Discrimination Ordinances

9. The EOC completed its first legislative review and made submission to the HKSAR Government proposing amendments to be made to both the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) in 1999. The EOC's proposals related to a wide range of aspects in the Ordinances: the extension of protection for providers of goods, services and facilities in respect of sexual harassment by customers; the amendment of the definition of an associate for the purposes of disability discrimination; the exceptions to the principle of non-discrimination; improving the enforcement provisions; and amending the provisions relating to the EOC's powers. The Government has not implemented any of the EOC proposals so far except for the amendment of the definition of "sexual harassment" under the SDO in 2008, by which a conduct of sexual nature was extended to cover educational settings.²

10. The EOC is conducting a new round of in-depth review of all Discrimination Ordinances under its remit of powers. The EOC urges the HKSAR Government to have a fundamental overhaul of the Discrimination Ordinances, harmonize the discrepancies, and strengthen the weaknesses in the present legislation.

11. In particular, amendments extending protection to goods, services and facilities providers against sexual harassment by customers are overdue. Research findings support the need for such legal protection. A "Sexual Harassment – Questionnaire Survey for Business Sector" conducted by the EOC in mid-2013 had around 6,000 questionnaires distributed to companies across the territories, but only had 198 questionnaires returned. The Survey found

² This amended the application of section 2(5)(b) of the SDO to apply to education. Section 2(5)(b) provides that sexual harassment occurs where a person engages in conduct of a sexual nature which creates a hostile or intimidating environment for a woman. The amendment was legislated for in the Racial Discrimination Bill in 2008, for alignment with corresponding racial harassment provisions in the RDO in 2008.

that 57% of the respondents (113 companies) have a policy statement on sexual harassment, whereas 43% (85 companies) did not. Among the companies without a policy statement, 46% indicated that there was no urgency to formulate one. The low response rate and the reluctance of private companies to develop a sexual harassment policy indicated that the business sector has a low awareness on the prevention of sexual harassment at the workplace. Furthermore, the EOC recently conducted a survey on the prevalence of sexual harassment among flight attendants whom are regarded as one of the service provider groups prone to sexual harassment. The survey findings revealed that 27% of the respondents had been sexually harassed in the past 12 months and the most common alleged harassers in these cases were the customers.

(b) *Ethnic minority women*

12. Ethnic minority women are generally considered as one of the most vulnerable groups in Hong Kong due to their cultural and language background. Some of them speak neither of the two official languages in Hong Kong, namely Chinese and English. The HKSAR Government should take appropriate measures proactively to empower ethnic minority women to facilitate their integration into the local community.

(c) *Right to participate in public life*

13. Women are under-represented in government advisory and statutory bodies (ASBs). As at October 2013, the women's participation rate of ASBs with Government-appointed non-official members was 32.2% on average, which has achieved the gender benchmark target of 30% set by the HKSAR Government. Having said that, it is important to note that one-third of the individual 415 ASBs have not yet reached the benchmark.

14. At the decision-making level of public administration, female leaders are equally outnumbered by their male counterparts. In the Executive Council (ExCo) of the HKSAR Government, i.e. the de facto cabinet of the Chief

Executive, only 29% of its Non-official Members are women (four out of 14) and only one-fifth of Members of the whole ExCo (including both Official and Non-official Members) are women. The proportion of female Members of the Legislative Council of Hong Kong, i.e. the law-making body of HKSAR also remains low at 16%. At the senior level of civil service, the proportion of female directorate grade officers in the HKSAR Government has gradually climbed up from 15% in the mid-1990s to 33.7% in 2012, which means women only seat in one-third of the top positions in the HKSAR Administration. The EOC believes that a more balanced gender composition would enable the views and concerns of both genders to be fully reflected in the Government's policy formulation and implementation process. Hence, the Government should take appropriate measures to enhance women's participation in the public life and to empower them with the skills, connections and inspiration to become public leaders.

(d) Small House Policy

15. An exemption in the SDO relates to the small house policy. Under this policy, a male indigenous person in the New Territories of Hong Kong is entitled to apply to the HKSAR Government to build a three-storey village style house as a residence. Both women and non-indigenous persons are excluded from this policy. The EOC urges the HKSAR Government to expedite on its review on the small house policy and to ensure that any possible options to resolve the matter do not discriminate on the ground of sex.

Article 7-- Right to enjoy just and favourable conditions of work

(a) Employment of women and people with disabilities

16. The gap between the labour force participation rate of women and that of men still exist. The labour force participation rate³ of women in 2012 is 53.6%, while that of men is 68.7%.⁴ The labour force participation for never married women was 68.0% while that of ever married women was only 47.3%. This may reflect that women exit the labour force temporarily or permanently after marriage and become home makers. The gap between women's and men's participation in the labour market becomes even more substantial in the senior age groups. More women become economically inactive since the age of 40 and the labour force participation rate for women drops significantly to 45.4% for the age group between 55 and 59, while the rate for men of the same age group remains high at 78.9%.

17. Furthermore, there is a significant difference in the monthly employment earnings between women and men. The median employment earnings of women (excluding foreign domestic helpers) was HK\$11 000 while that of men was HK\$14 000 in the year 2012.⁵ The difference can be partly explained by the fact that more men worked as managers and professionals with higher monthly income, while more women worked for lower end jobs such as clerical and elementary occupations. Having said that, there is a substantial difference in income between women and men even if they attained the same level of education or worked in the same occupational group. For instance, the median monthly employment earnings of women with post-secondary education was HK\$22 000 while that of men was HK\$30 000 in 2012; the median monthly employment earnings of women in elementary occupations was HK\$7 000, as compared with HK\$8 500 for their male counterparts.

³ Labour force participation rate refers to the proportion of labour force in the total land-based non-institutional population aged 15 and over.

⁴ Hong Kong Census and Statistics Department (2013). *Hong Kong Annual Digest of Statistics 2013*.

⁵ Census and Statistics Department (2013). *Women and Men in Hong Kong Key Statistics 2013*.

18. The gender wage gap widens with age. The differences in median monthly employment earnings between women and men were relatively larger for the age groups of 40-49 and 50-59.⁶ The differences can be explained by the barriers which block women's career advancement, such as family responsibilities and interrupted employment history, which make women less competitive than men of the same age.

19. The EOC urges the HKSAR Government to adopt more supportive measures to assist women to enter and stay in the labour force, and to combat the gender inequality in pay. In order to encourage those who gave up work for their families to return to work, the Government should adopt more supporting measures such as increasing the provision of child care services. The Government should also take the lead and spend more effort to encourage employers of the private sector to adopt more family friendly practices, such as flexible working schedules for both women and men employees. Flexibility in working hours helps female workers manage the demands of both work and family and allows their male family members to take a fair share of the domestic duties.

20. For those middle and old age women who left the labour force due to limitation of job opportunities and age discrimination, the Government should provide more training to upgrade their vocational skills, and eliminate age discrimination through education and legislation.

21. Persons with disabilities are even more disadvantaged in the labour market. According to the General Household Survey conducted from November 2006 to December 2007⁷, among the 347 900 persons aged 15 and over with disabilities, only 11.8% (around 41,000 persons with disabilities) were employed persons. A significant proportion (37.9%) of these employed

⁶ Ibid.

⁷ Hong Kong Census and Statistics Department (2012). *Special Topics Report No. 48 – Persons with disabilities and chronic diseases*.

persons with disabilities was workers in elementary occupations, while only 18.8% of the total employed population were engaged in elementary occupations. The EOC urges the HKSAR Government to take the lead to employ more persons with disabilities and to provide more supporting measures to assist persons with disabilities to enter and stay in the job market.

(b) *Foreign domestic helpers*

22. Foreign domestic helpers are prone to the risk of being abused and sexually harassed by their employer or employers' family members. The EOC urges the HKSAR Government to adopt more proactive measures to disseminate information to the foreign domestic helpers upon their arrival or issuance of working visa about their rights and how to seek help in case of abuse or sexual harassment.

Article 11 – Right to an adequate standard of living

23. The poverty rate of women is consistently higher than that of men over the past 10 years. According to the Hong Kong Council of Social Service (HKCSS), the poverty rate of women, i.e. the rate of women living in low-income household below the poverty line⁸, is 18.1%, while that of men is 17.0% in the first half of 2012. It is no surprise that among those receiving comprehensive social security assistance (CSSA) in Hong Kong, 52% are women while only 48% are men. The gender difference is even more significant in single parent cases. Almost two-thirds (63%) of the single parent recipients of CSSA are female.

⁸ The Hong Kong Council of Social Service established a poverty line by defining low-income households as those with a monthly household income of less than or equal to half of the median monthly household income for the corresponding household size. Thus women living in the low-income households are considered to be women in poverty.

24. The HKSAR Government has reinstated the Commission on Poverty in late 2012 and announced the setting of a poverty line in line with the approach of HKCSS in September 2013. The household income-based approach of poverty line assumes there is a fair share of income among household members. However, in reality, women usually receive fewer resources and tend to spend more on their children to the detriment of their own health and livelihood. The EOC urges the Government to pay more attention to the hidden phenomenon of women poverty, and adopt a comprehensive strategy to deal with this unacceptable state of affairs.

Article 12 – Right to health

(a) Formulation of a comprehensive and long term Mental Health Policy and establishment of a Mental Health Commission

25. Health is a fundamental human right and there is no health without mental health. The HKSAR has invested more resources in the past few years to improve the mental health services, but the provision of services remains fragmented. The public sector medical services provider, the Hospital Authority, adopted the Mental Health Service Plan for Adults in 2011, which is a framework to guide the mental health services for adults in the years 2010-2015. However, corresponding service plans for children, adolescents and the elderly are yet to be formulated. Instead of piece meal solutions to address specific problems related to mental health issues one at a time, it is overdue for the HKSAR Government to map out a comprehensive and long term Mental Health Policy for the people of Hong Kong as a whole.

26. The HKSAR Government has set up a Review Committee on Mental Health in 2013 with a view to mapping out the future direction for development of mental health services. However, mental health requires more than a medical solution. Labour, welfare, housing and education policies all have a role to play in treatment and rehabilitation. Therefore, the HKSAR

Government should set up a high-powered and broad-based Mental Health Commission to proactively co-ordinate various government departments, non-government organisations and the private sector, and to monitor the formulation and implementation of policies as well as action plans related to mental health services.

Article 13 – Right to education

(a) Provision of adequate education to ethnic minority students

27. Ethnic minority students in general face the hardship in accessing higher learning and potential employment opportunities due to their struggle to master Chinese in their school years. It is unfair to impose the same Chinese language requirement for local Chinese on ethnic minorities without adequate and appropriate support.

28. In response to the demand for an alternative Chinese curriculum and testing system by the EOC and other advocates, the HKSAR Government recently announced the provision of an Applied Learning (Chinese Language) subject for ethnic minority students at senior secondary levels and the implementation of a Chinese Language Curriculum Second Language Learning Framework with supporting learning and teaching materials for ethnic minority students in primary and secondary schools from the 2014/15 school year. The EOC urges the Government to disclose details of the new initiatives as soon as possible to ensure they are equivalent to the second Chinese curriculum demanded by the stakeholders. In addition, related training for teachers is still insufficient. In the upcoming three years, only 450 teachers will be benefitted from the Professional Enhancement Grant Scheme to enhance Chinese teachers' professional capability in teaching Chinese as a second language. The HKSAR Government is urged to provide more resources to train the 2 000 teachers from about 500 schools admitting non-Chinese speaking students, and to provide more support for kindergartens admitting these students.

29. Moreover, ethnic minority girls studying in some co-educational secondary schools are prohibited to interact with male fellow students. Some girls even have a different school time-table so as to avoid contact with male students. It is difficult for ethnic minority girls to lodge complaints to defend their own right of education due to the pressure of their community and family. The EOC urges the HKSAR Government to monitor closely whether there is gender segregation within schools, and take proactive measures to ensure that female ethnic minority students have equal opportunities to education.

(b) Assessment for identifying students with special educational needs

30. Early assessment and identification are critical for the education and development of students with special educational needs (SEN). The assessment reports are being criticized as “sloppy and simple” in a study commissioned by the EOC in 2012.⁹ Moreover, another study found that it took an average of six to 12 months for primary students to be assessed and 20% of the primary students waited for more than one year before an assessment was conducted.¹⁰ With a view to allowing early and effective intervention, the EOC urges the HKSAR Government to devote more resources to conduct assessment, so that the waiting time for assessment can be shortened and more children with special educational needs can have access to pre-school assessment. A comprehensive and detailed assessment report should also be provided to parents, teachers and professionals. In addition, the aforementioned EOC study¹¹ found that training related to inclusive education¹²

⁹ The Equal Opportunities Commission (2012). *Study on Equal Learning Opportunities for Students with Disabilities under the Integrated Education System*. Available from: http://www.eoc.org.hk/EOC/Upload/ResearchReport/IE_eReport.pdf

¹⁰ The study conducted by the Hong Kong Association for Specific Learning Disabilities has interviewed 148 parents of primary students with dyslexia from December 2012 to January 2013.

¹¹ See note 9.

¹² Inclusive education is defined by UNESCO as a process of strengthening the capacity of the education system to reach out to all learners. The Education Bureau of the HKSAR Government adopts the term “integrated education” which is generally linked to a process of placing students with SEN in ordinary mainstream schools. The EOC believes that inclusive education rather than integrated education should be the ultimate goal for the education and development of students with SEN.

is insufficient. The HKSAR Government should provide sufficient training and incentives for teachers to pursue further studies in special education. Not only are the teachers, students and their parents are also not yet prepared for inclusive education. Sometimes, students with SEN are subject to bullying in schools. More public education is needed for all stakeholders to understand and accept the implementation of inclusive education.

Mainstreaming of Equal Opportunities Value

31. No citizen shall be deprived of the right to be treated equally. The HKSAR Government is urged to uphold and prioritize equal opportunities perspectives while deciding policies concerning gender, disability, race and more. In 2002, the Government accepted the Women's Commission's recommendation and endorsed the introduction of gender mainstreaming into various policy areas on an incremental basis. The Women's Commission has designed a Gender Mainstreaming Checklist to assist Government officers to evaluate the gender impact of new public policies, legislation and programmes. Over the years, less than 50 policy and programme areas have applied the Gender Mainstreaming Checklist. In this regard, the Government may consider developing and institutionalising the use of an equal opportunities checklist, so that bureaux and departments are required to go through the checklist to make sure they have addressed various equal opportunities issues and catered for the needs of various disadvantaged and the minority groups in society, at the stage of policy and action plan formulation. The EOC also urges the Government to promote the application of such checklist outside the Government in order to mainstream equal opportunity values in the society.

*Equal Opportunities Commission
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