

EO Files (December 2018)

70th anniversary of the Universal Declaration of Human Rights – A long road to equal rights

Alfred C.M. CHAN says the Government should stop hiding behind social conversation as an excuse for its slow progress in strengthening laws to root out discrimination and protect those who are disadvantaged and marginalised in society.

Politicians try to be popular; leaders try to do the right thing. I cannot help but dwell on this saying as celebrations of the 70th anniversary of the Universal Declaration of Human Rights spring up across the world this month. Adopted by the United Nations on 10 December 1948, the declaration proclaimed that “all human beings are born free and equal in dignity and rights”, with the hope of ending injustice, allaying fears of oppression, and reigniting faith in humanity in the aftermath of the second world war.

To this day, however, those fears have hardly been put to rest. At home and abroad, we see governments pleasing rather than leading constituents, parties choosing partisanship over peace, and social media responding sluggishly to hate speech – often at the expense of perpetuating a toxic cycle of prejudice, discrimination and even violence.

In Hong Kong, our freedoms and equal rights are enshrined in the Bill of Rights Ordinance and in four anti-discrimination ordinances, a localised version of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the two treaties that give legal force to the otherwise non-binding Universal Declaration of Human Rights.

But, of course, laws can be flawed. In 2016, the Equal Opportunities Commission (EOC) recommended 73 revisions to the anti-discrimination ordinances to the Government, with the aim of strengthening legal protection against discrimination, harassment and vilification. Yet, only eight of our recommendations have been taken forward in the Discrimination Legislation (Miscellaneous Amendments) Bill gazetted last month.

This piecemeal approach, conveniently chalked up to controversy over more comprehensive reforms, has left the marginalised and disadvantaged an easy target for discrimination. To begin with, our Disability Discrimination Ordinance is not fully compliant with international human rights obligations, as there is no express provision requiring employers, schools and providers of goods, services and facilities to offer people with disabilities reasonable accommodation.

According to the United Nations Convention on the Rights of Persons with Disabilities, which entered into force in Hong Kong in 2008, reasonable accommodation refers to necessary and appropriate arrangements that allow people with disabilities to enjoy different aspects of life on an equal basis with others.

It may take the form of modifications to built environments (such as installing visual fire alarms at housing estates), assistive services (such as providing audio narration at cinemas) or flexible workplace policies (such as allowing employees with mobility difficulties to work from home).

While Article 2 of the UN Convention states that denial of reasonable accommodation may constitute disability discrimination, our ordinance clearly does not reflect the same commitment to equal rights for people with disabilities, and the Government has not announced any plans yet to plug the loophole or sound out stakeholders, despite talks of making our city barrier-free.

Meanwhile, the Race Discrimination Ordinance even grants immunity to the Government, which is exempt from the law in performing its functions and exercising its powers. Also, race as currently defined under the ordinance does not cover nationality, citizenship and residency status, leaving new immigrants, asylum seekers and their children particularly vulnerable to bullying, ridicule and threats by right-wingers.

Another yawning gap lies in the legal protection of LGBTI rights. Citing concerns from religious and parenting groups, rather than pointing out their misconceptions, has become the authorities' kneejerk response to calls for change, whether it is legislating against discrimination based on sexual orientation, gender identity and intersex status, or introducing a gender recognition scheme that imposes no or

minimal medical requirements on transgender persons.

In a desperate and costly attempt to reclaim their rights, the LGBTI community has been forced to file application after application for judicial reviews of discriminatory practices and systems.

Sure enough, as a statutory body tasked with enforcing the anti-discrimination ordinances, the Equal Opportunities Commission, too, has drawn doubts from time to time, with some calling us a paper tiger and others frowning upon our LGBTI advocacy. We have embraced each and every one of these impassioned criticisms, as they present an opportunity for us to better grasp the needs of the people we serve.

We are finalising the report on an in-depth review of our complaint-handing process and governance structure, and will soon be submitting it to our Board and hearing from stakeholders. I look forward to seeing the Commission evolve in lockstep with the expectations of the local community and taking our services to the next level.

To quote from Chief Executive Carrie LAM CHENG Yuet-ngor's policy address in October, "divergence of views should not become an obstacle to the Government's leading Hong Kong to make progress and more importantly, it should never bring Hong Kong to a standstill."

We have long understood that such a proactive spirit is essential to our effort in rooting out discrimination; let's hope that the Government will apply the same logic to its work in protecting marginalised groups and promoting equality.

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