

## **Legislative Council Panel on Constitutional Affairs**

### **The Third Report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights**

**17 February 2014**

#### **Submission from the Equal Opportunities Commission**

##### **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).

##### **Issues**

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

###### ***(a) Establishment of a Human Rights Commission***

2. 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***

3. 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 2012<sup>1</sup>, 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***

3. 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 older or younger people. The EO Awareness 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 piece meal and insufficient. In this regard, the HKSAR Government should adopt a proactive and comprehensive approach in facing the

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

challenges brought by an aging population and consider legislating against discrimination on the basis of age.

*(d) Gap in the Race Discrimination Ordinance*

4. Unlike other Discrimination Ordinances, the Race Discrimination Ordinance (RDO) does not specifically apply to the Government in the exercise of its public functions such as the operation of the Hong Kong Police Force and the Correctional Services Department. This is a key area where review and reform are necessary.

**Article 3 – Equal rights of men and women**

*(a) New Round of Review of the Discrimination Ordinances*

5. 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.<sup>2</sup>

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<sup>2</sup> 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.

6. 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.

**(b) *Ethnic minority women***

7. 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. Taking into account the basic rights of these women and the influence on the growth and development of their children, 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***

8. While the SDO has been in operation since 1996, the proportion of women taking up non-official membership of government advisory and statutory bodies (ASBs) remains much smaller than that of their male counterpart. 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 about among the 415 ASBs with government appointed non-official members, one-third of the individual ASBs have not yet reached the benchmark. The HKSAR Government should take more appropriate measures to enhance women's participation in the public life and to empower women with the skills, connections and inspiration to become public leaders.

**(d) *Small House Policy***

9. 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***

10. The gap between the labour force participation rate of women and that of men still exist. The labour force participation rate<sup>3</sup> of women in 2012 is 53.6%, while that of men is 68.7%.<sup>4</sup> The gap becomes even more substantial in the senior age groups. More women become economically inactive starting at 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%.

11. According to the General Household Survey conducted from November 2006 to December 2007<sup>5</sup>, 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 persons with disabilities was workers in elementary occupations, while only

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

<sup>4</sup> Hong Kong Census and Statistics Department (2013). *Hong Kong Annual Digest of Statistics 2013*.

<sup>5</sup> Hong Kong Census and Statistics Department (2012). *Special Topics Report No. 48 – Persons with disabilities and chronic diseases*.

18.8% of the total employed population were engaged in elementary occupations. The EOC urges the HKSAR Government to adopt more supportive measures to assist persons with disabilities and women to enter and stay in the job market.

### **Article 12 – Right to health**

#### ***(a) Formulation of a Comprehensive and Long Term Mental Health Policy and establishment of a Mental Health Commission***

12. 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.

13. 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 organisation 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***

14. The HKSAR Government plays a crucial role in providing adequate education to ethnic minority groups. The hardship ethnic minority students face in accessing higher learning and potential employment opportunities stems primarily from their struggle to master Chinese in their school years. It is unfair to impose the same Chinese language requirement on ethnic minorities without adequate and appropriate support. Hence, an alternative Chinese curriculum and testing system is necessary.

15. Recently, the HKSAR Government 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. However, related teaching training 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.

### ***(b) Assessment for identifying students with special educational needs***

16. 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.<sup>6</sup> 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.<sup>7</sup> 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. Moreover, a comprehensive and detailed assessment report should be provided to parents, teachers and professionals.

### **Mainstreaming of Equal Opportunities Value**

17. 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 this regard, the Government may consider developing and adopting an equal opportunities checklist, so that bureaux and departments may go through the checklist to make sure they have addressed various equal opportunities issues and catered for the needs of various stakeholder groups, especially the disadvantaged and the minorities in society, at the stage of policy and action plan formulation. Fundamentally, through education, people can learn and truly embed this core value provided that the HKSAR Government allocates more resources for equal opportunities mainstreaming activities.

*Equal Opportunities Commission  
February 2014*

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<sup>6</sup> 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](http://www.eoc.org.hk/EOC/Upload/ResearchReport/IE_eReport.pdf)

<sup>7</sup> 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.