

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

### **The Third Report of the Hong Kong Special Administrative Region of the People's Republic of China under the United Nations Convention on Elimination of All Forms of Discrimination against Women**

**21 July 2014**

#### **Submission from the Equal Opportunities Commission, Hong Kong**

#### **Introduction**

This paper aims to provide views of the Equal Opportunities Commission (EOC) on the Third Report of the Hong Kong Special Administrative Region (HKSAR) under the United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

#### **Issues**

#### **Article 2 –Eliminating discrimination against women by legislation or other means**

##### ***(a) Protection against sexual harassment by customers***

2. The EOC completed its first legislative review and made submission to the HKSAR Government proposing amendments to be made to the discrimination ordinances in 1999. The proposals related to a wide range of aspects and a number of recommendations submitted were related to sexual harassment provisions under the Sex Discrimination Ordinance (SDO). The Government has not implemented any of the EOC proposals so far except for amending the definition of "sexual harassment" under the

SDO in 2008, by which a conduct of sexual nature was extended to cover educational settings.<sup>1</sup>

3. The EOC conducted a survey in collaboration with the Hong Kong Flight Attendants Alliance 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 released in February 2014 found that about 27% of the respondents indicated that they had been sexually harassed in the past year and the most common harassers in these cases were customers. A similar survey on sexual harassment was conducted among employees of other service industries, including healthcare and nursing, and catering and retail industries. The findings released in May 2014 revealed that nearly one-fifth (19%) of the respondents have been sexually harassment in the last 12 months, and the most common harassers were colleagues of the same rank as well as customers. The EOC is pleased to see that the HKSAR Government has finally introduced amendments to the SDO in the Legislative Council in June 2014, offering protection to goods, services and facilities providers against sexual harassment by customers.

4. However, if the identity of the customer is not known, it will be difficult to make him/her liable for his/her deed of sexual harassment of service provider. In this connection, the EOC believes that the HKSAR Government should also consider making an employer liable for sexual harassment of an employee by a customer if they fail to take reasonable action to prevent the harassment after the employer is put on notice of that harassment.

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<sup>1</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.

5. At present, the awareness of the business sector on the prevention of sexual harassment at the workplace is on the low side. 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 198 questionnaires were returned. The Survey found 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 return 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. Hence, introducing an employer liability provision to the SDO may help prompt the employers to take steps to protect their employees from sexual harassment.

**(b) *Small house policy***

6. 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.

**(c) *Outlawing discrimination against sexual minorities***

7. Hong Kong has not yet specifically legislated against discrimination on the ground of sexual orientation, gender identity and intersex status. Women in sexual and gender minorities, including lesbian and bisexual women, as well as transgender and intersex persons continue

to face discrimination and 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 Awareness Survey conducted in 2012<sup>2</sup>, 43% of the 1,504 respondents believed that sexual orientation discrimination in Hong Kong was very serious/quite serious.

8. 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, gender identity and intersex status as soon as possible.

9. In this connection, the EOC has commissioned the Gender Research Centre, Hong Kong Institute of Asia Pacific Studies of The Chinese University of Hong Kong (CUHK) to conduct the Feasibility Study of Legislating against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status (the Study) in 2014. The Study seeks to systematically identify discrimination, harassment and vilification encountered by LGBTI (the lesbian, gay, bisexual, transgender and intersex persons) groups in employment, education and training, social interaction, public access, services and facilities, as well as management of premises. It also aims to solicit views on how such experiences of discrimination may be redressed through legislation or other means.

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<sup>2</sup> Equal Opportunities Commission (2013). *Equal Opportunities Awareness Survey 2012*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/2013191436554640807.pdf>

*(d) Outlawing discrimination on the ground of age*

10. 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 Equal Opportunities Awareness Survey in 2012<sup>3</sup> 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.

11. Age has a greater impact on women than men in terms of employment. 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.<sup>4</sup> 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. The HKSAR Government should adopt a proactive and comprehensive approach in facing the challenges brought by an aging population and consider legislating against age discrimination.

**Article 3 – Full development and advancement of women**

*(a) Women in poverty*

12. 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

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<sup>3</sup> See note 2.

<sup>4</sup> Census and Statistics Department (2013). *Women and Men in Hong Kong Key Statistics 2013*.

living in low-income household below the poverty line<sup>5</sup>, is 18.1%, while that of men is 17.0% in the first half of 2012.<sup>6</sup> It is no surprise that among those receiving comprehensive social security assistance (CSSA) in Hong Kong, 52% are women while only 48% are men. More importantly, the increase of female recipients is significant. The number of female CSSA recipients increased from 110 244 in 1996 to 218 937 in 2012, while the male recipients increased from 113 140 to 199 831 in the same period of time.<sup>7</sup> The gender difference is even more significant in single parent cases. Almost two-thirds (63%) of the single parent recipients of CSSA are female.

13. 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 incomes 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, in order to provide an enabling environment for the full development and advancement of women.

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

14. 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, in particular those married ethnic minority

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<sup>5</sup> 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.

<sup>6</sup> The Hong Kong Council of Social Service. (2013) *Poverty Web* [Internet] Available from: [http://www.poverty.org.hk/sites/default/files/121018\\_p\\_rate\\_sex\\_01-12\\_1H.pdf](http://www.poverty.org.hk/sites/default/files/121018_p_rate_sex_01-12_1H.pdf) [Accessed 3 July 2014].

<sup>7</sup> See note 4.

women immigrated to Hong Kong for family union, speak neither of the two official languages in Hong Kong, namely Chinese and English. The HKSAR Government should take appropriate measures to empower ethnic minority women to facilitate their integration into the local community.

(c) *Gender mainstreaming*

15. No citizen shall be deprived of the right to be treated equally. The HKSAR Government is urged to uphold and prioritize equal opportunities perspectives, inter alia, the gender perspective, while formulating various public policies. 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 (the 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 Checklist. The EOC urges the Government to institutionalise the use of the Checklist in the policy decision-making process in all Government bureaux and departments and to promote its application outside the Government in order to mainstream gender equality in the society.

**Article 5– Eliminating stereotyping and prejudices**

(a) *Sexual harassment in schools and the workplace*

16. In terms of the number of complaints received by the EOC concerning the SDO, sexual harassment always ranked second after pregnancy discrimination. An EOC study of almost 6 000 students of secondary schools and tertiary institutions in 2011 found that half of them have experienced various forms of sexual harassment and among these victims, 58% of them kept silent without seeking help. Furthermore, an

EOC questionnaire survey for primary and secondary schools in Hong Kong as well as the local tertiary institutions found that almost half (47%) of the 321 responding schools do not have a policy statement on sexual harassment. It is obvious that current provision of education and training on sexual harassment is inadequate. The EOC has provided a series of seminar and workshops for educational workers in 2013; however, the demand for training among teachers and students cannot be satisfied by the resources of the EOC alone. The EOC urges the HKSAR Government to invest more resources on training and education in this area and to ask Hong Kong Institute of Education to make sexual harassment one of the core courses in its teacher education programmes.

17. Apart from the education sector, the low awareness of the business sector on the prevention of sexual harassment as mentioned in paragraph 5 is also alarming. The HKSAR Government has been conducting seminars and talks in collaboration with Women's Commission and the EOC to human resource personnel of private companies to enhance their awareness of sexual harassment issues at the workplace. The EOC believes that more work needs to be done at the management level of the private companies, so as to effectively encourage the business sector to formulate a corporate policy sexual harassment of their own for the provision of a harassment free workplace for employees.

***(b) Respect for sexual autonomy and privacy of women***

18. The prosecution of the HKSAR Government always has difficulty in finding the right charge for prosecuting the shooting of videos or taking of photographs in a public place up inside a female's clothing or skirt. It is even more difficult to find the right charge where such "under-the-skirt" photography takes place in a private place. With the advancement of technology, especially the common use of smart phones, "under-the-skirt" photos and videos can easily be taken without any notice.

Such behaviour treats women simply as sexual objects and violates the sexual autonomy and privacy of women. It is nothing but sexual assault without physical contact. The EOC urges the HKSAR Government to seriously consider and adopt the recommendation of the Law Reform Commission of Hong Kong to extend the scope of sexual assault (a new category replacing the current indecent assault) as soon as possible, so as to cover “under-the-skirt” photography in a public or private place.

### **Article 7– Equality in political and public life**

19. 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 about among the 415 ASBs with government appointed non-official members, one-third of the individual ASBs have not yet reached the benchmark.

20. At the decision-making level of public administration, female leaders are outnumbered by their male counterparts as well. In the Executive Council (ExCo) of the HKSAR Government, i.e. the de facto cabinet of the Chief Executive, only 36% of its Non-official Members are women (five 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 in 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. Having said that, women only seated 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 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.

## **Article 10 – Right to education**

### ***(a) Provision of adequate education to ethnic minority students***

21. The school attendance rates of ethnic minorities in Hong Kong exhibited sex differentials. The rates for female ethnic minorities (excluding foreign domestic workers) aged 17-18 (80.1%) were higher than that of their male counterparts (72.0%) in 2011. In contrast, the school attendance rate for male ethnic minorities aged 19-24 (34.4%) was higher than their female counterparts (31.3%) for the same period of time.<sup>8</sup> In addition, ethnic minority students in general face the hardship in accessing higher learning and potential employment opportunities stems 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.

22. In response to the demand for an alternative Chinese curriculum and testing system by the EOC and other advocates for the rights of ethnic minorities, 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. However, related teaching training is still insufficient. In the upcoming three years, only 450 teachers will be benefitted from the Professional Enhancement

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<sup>8</sup> Census and Statistics Department (2011). *2011 Population Census – Thematic Report: Ethnic Minorities*.

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.

23. 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 fellow male students. Since 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 their 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 and higher learning.

### **Article 11—Equality in employment and labour rights**

#### ***(a) Employment of women and the gender wage gap***

24. The gap between the labour force participation rate of women and that of men still exist. The labour force participation rate<sup>9</sup> of women in 2012 is 53.6%, while that of men is 68.7%.<sup>10</sup> 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 market temporarily or permanently after marriage and become home makers. The gap between women 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

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<sup>9</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>10</sup> Hong Kong Census and Statistics Department (2013). *Hong Kong Annual Digest of Statistics 2013*.

group between 55 and 59, while the rate for men of the same age group remains high at 78.9%.

25. 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.<sup>11</sup> The difference can be partly explained by the fact that more men worked as managers and professionals who had 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.

26. 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.<sup>12</sup> 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.

27. 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 so as to ease their domestic burden. The Government

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<sup>11</sup> See note 4.

<sup>12</sup> Ibid.

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 to manage the demands of both work and family and allow their male family members to take a fair share of the domestic duties.

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

*(b) Foreign domestic workers*

29. Foreign domestic workers 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 workers upon their arrival or issuance of working visa about their rights and how to seek help in case of abuse or sexual harassment.

*Equal Opportunities Commission  
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