

107th Session of the United Nations Human Rights Committee

Hearing of the Third Report of the Hong Kong Special Administrative Region of China on the Implementation of the International Covenant on Civil and Political Rights (12 and 13 March 2013)

Submission from the Equal Opportunities Commission, Hong Kong

Introduction

This paper aims to provide the Human Rights Committee with the views of the Equal Opportunities Commission (EOC) for the consideration of the Third Report of the Hong Kong Special Administrative Region (HKSAR) on the implementation of International Covenant on Civil and Political Rights (ICCPR).

Areas of Concern

Article 3: Equal rights of men and women

(a) New Round of Review of the Discrimination Ordinances (Articles 3 and 26)

The EOC is a statutory body set up in 1996 to implement the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO), and the Race Discrimination Ordinance (RDO).

After the completion of its first legislative review, the EOC made submission to the HKSAR Government proposing amendments to be made to

both the SDO and the DDO in 1999. 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.

The EOC's proposals to amend the SDO and DDO 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 their 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. In 2000, the government said it had accepted a number of the EOC proposals and in 2003, developed a draft Bill to implement the amendments it agreed with.¹ However, the Bill was never introduced in the Legislative Council (LegCo). The only accepted proposal that was legislated for was the aforesaid extension of the sexual harassment provision of the SDO for alignment with corresponding racial harassment provisions in RDO in 2008.²

In 2011, the EOC wrote to the Government to reiterate the call for the implementation of the remaining proposals. To date, the Government has not introduced those amendments or conducted any comprehensive review of any of the four Discrimination Ordinances under the portfolio of the EOC.

It is the function of the EOC to keep under review the working of the Discrimination Ordinances. The EOC is at present conducting a new round of in-depth review of the operation of all four Discrimination Ordinances, and studying priority areas which are not yet covered by the current legislation. We aim to have a fundamental overhaul of the four Ordinances, harmonize the

¹ Discrimination Legislation (Miscellaneous Amendments) Bill 2003.

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.

discrepancies, and strengthen the weaknesses in the present legislation. After the internal review, the EOC will consult the key stakeholders and the general public before submitting proposals to the Government.

(b) Ethnic minority women (Article 3)

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) Small House Policy (Article 3)

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.

(d) Right to participate in public life (Articles 3 and 25)

While SDO has been in operation since 1996, it is generally recognized that the proportion of women taking up non-official membership of government advisory and statutory bodies (ASBs) remains smaller than that of their male counterpart. Since June 2010, the gender benchmark was raised from 25% to 30%. As at October 2012, the women's participation rate of

ASBs with Government-appointed non-official members was 32.6% on average. But among the some 400 ASBs with Government-appointed non-official members, 124 of them still fail to reach the gender benchmark. The HKSAR Government should take more appropriate measures to further enhance women's participation in the public life and raise the gender benchmark target for appointment of non-official members to the ASBs.

Article 26: Right to equal protection before the law

(a) Mental Health Policy (Article 26)

Discrimination on the ground of a person's mental illness is unlawful under the DDO. For the past three years, the EOC received an average of 100 complaints of disability discrimination on the ground of mental illness each year. That means, on average, 20% of the complaints received under the DDO are related to this type of discrimination from 2010 to 2012. Discrimination against and stigma attached to mental illness prevent persons to seek help until a crisis occurs, which in turn, further stamp the stigma on persons with mental illness and a vicious circle will continue.

Mental health is more than the absence of any mental illness. It is also related to the promotion of well-being, the prevention of mental disorders, and the treatment and rehabilitation of people affected by mental disorders.

HKSAR's public sector medical services provider, the Hospital Authority (HA), has 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, the EOC believes it is overdue for the HKSAR Government to map out a comprehensive

and long term Mental Health Policy to promote and improve the mental health of the people of Hong Kong as a whole.

Moreover, there is still a wide gap between demand and supply of services due to a shortage of mental health professionals. As at the end of September 2012, the median waiting time for first appointment at psychiatric specialist out-patient clinics under the HA is around seven weeks, and the number of persons waiting for treatment is about 13,000.

Given the shortage of manpower, the Government should also map out long-term manpower plans in relation to the training of mental health professional as well as allied health personnel with experience in community mental health services.

At present, the HA provides front line medical services, while a number of Government bureaux and departments all have a role to play in community care and re-integrating persons with mental illnesses into community. Although the Food and Health Bureau assumes the co-ordinating role, a comprehensive mental health policy can only be formulated and implemented effectively if a high level and broad-based central coordination body, namely the Mental Health Council, is established to be accountable for the mental health policy as a whole.

The Mental Health Council, preferably chaired by the Chief Secretary for Administration, should proactively co-ordinate and monitor the formulation and implementation of both short term and long term policies and action plans related to mental health support services.

(b) Outlawing discrimination on the ground of sexual orientation (Article 26)

In the 2006 Survey³ commissioned by the Government on public attitudes towards homosexuals, 29.7% of the respondents perceived that discrimination against homosexuals because of their sexual orientation was “very serious/serious” in Hong Kong, 41.7% considered the situation “average”, while 25.2% found the situation “posed little problem/no problem at all”. However, 41.1% of the respondents with frequent contact with homosexuals considered the problem of discrimination in Hong Kong “very serious/serious”.

Both the Hong Kong Bill Of Rights (HKBOR) Ordinance⁴ and the corresponding article 26 of the ICCPR protect the right to equality, but they do not expressly refer to “sexual orientation”. The Court of Final Appeal (CFA) of Hong Kong in the case of Secretary for Justice v. Yau Yuk Lung [2007] 3 HKLRD 903 held that “discrimination on the ground of sexual orientation would plainly be unconstitutional under both article 25 of the Basic Law and article 22 of the Hong Kong Bill of Rights in which sexual orientation is within the phrase “other status”.

Even so, there remains no legal protection against sexual orientation in the private sphere as the HKBOR Ordinance only covers the public sector. Moreover, Hong Kong has not yet specifically legislated against discrimination on the ground of sexual orientation and hence the public cannot have their grievance addressed through the complaint handling mechanism of the EOC. Complaints relating to sexual orientation are outside the jurisdiction of the ECO. Yet, for the three years from 2010 to 2012, EOC received 1258 public enquiries on sexual orientation.

³ Home Affairs Bureau (2006). *Survey on Public Attitudes towards Homosexuals – Report*.

⁴ Article 22 of the HKBOR Ordinance.

Last November, a motion was moved in the LegCo urging the Government to launch a public consultation exercise on enacting legislation to safeguard equal opportunities for people of different sexual orientations. The motioned was not passed as it was vetoed by legislators returning from functional constituencies under the spilt voting system of LegCo.⁵ When the Chief Executive of the HKSAR delivered his maiden Policy Address in January 2013, he announced that this is a highly controversial issue and at present, the Government has no plan to conduct consultation.⁶

In the Third Report of the HKSAR on the implantation of the ICCPR, the Government reiterates that at this stage, self-regulation and education, rather than legislation are the most appropriate means of addressing discrimination in this area. However, the Government Survey released in 2006⁷ has already pointed out that 41.6% of the respondents thought that the existing arrangement of addressing the problem of discrimination by means of public education is insufficient and only 23.5% thought otherwise.

In the EOC Awareness Survey conducted in 2012⁸, 43% of the 1,504 respondents believed that sexual orientation discrimination in Hong Kong was very serious/quite serious. For the forthcoming areas of work of the EOC, 60% of the respondents considered the introduction of legislation against discrimination on the ground of sexual orientation very important/quite important.

⁵ Under the voting system of LegCo, a motion moved by a legislator has to be supported by both groups of Members, those returning from the functional constituencies and those from the geographical constituencies. The motion moved by The Hon. Cyd Ho on public consultation for outlawing discrimination on the ground of sexual orientation was supported by legislators returning from geographical constituencies, but not those returning from functional constituencies on 7 November 2012.

⁶ The Government of the HKSAR (2013). *The 2013 Policy Address: Seek Change, Maintain Stability -- Serve the People with Pragmatism*. Available from: <http://www.policyaddress.gov.hk/2013/eng/pdf/PA2013.pdf>.

⁷ See Note 3.

⁸ Equal Opportunities Commission (2013). *Equal Opportunities Awareness Survey 2012*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/2013191436554640807.pdf>

Existing Discrimination Ordinances in Hong Kong do not provide protection for people from sexual orientation discrimination. The EOC believes that a public consultation on legislating against discrimination on the ground of sexual orientation is overdue.

(c) Outlawing discrimination on the ground of age (Article 26)

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 HKSAR population in 2041. There is an urgent need for the Government to evolve its policies and services for older persons in areas such as employment, healthcare and housing. For example, as people are living longer and healthier lives many elderly employees may wish to stay longer at work. This may also benefit the economy by ensuring that skilled people continue to be productive. Despite this, the government's policies towards older persons are lagging far behind the reality of changing demographics.

Although age discrimination is outside the remit of the EOC's powers and functions, it received a total of 891 enquiries relating to this subject for the three years from 2010 to 2012. The Equal Opportunities Awareness Survey in 2012⁹ found that 41% of people considered that the levels of age discrimination was "very/ quite serious" and 69% of those claimed that employment was the area in which they had encountered age discrimination.

There is currently no protection from age discrimination in the anti-discrimination legislation in HKSAR, whether it relates to older or younger people (including children). The HKSAR Government is urged to consider legislating against discrimination on the basis of age.

⁹ Ibid.

(d) Gap in the RDO (Article 26)

In 2012, the EOC published a report on racial discrimination experienced by South Asians.¹⁰ It found that seeking employment is a key area where South Asians face discrimination and prejudice. For example, they are required to possess written Chinese language skills even for manual jobs.

Some focus group participants of the study also claim that South Asians are more susceptible to police abuse. For instance, they find that South Asians are often searched in the streets, and some of them allege that their countries as well as they themselves had been publicly insulted by policemen.¹¹ This report highlights the need to close a key gap in the current RDO. Unlike the other Discrimination Ordinances, the RDO does not specifically apply to the Government in the exercise of its public functions such as the operations of the Hong Kong Police Forces and Correctional Services Department. This is a key area where reform is necessary.

(e) Provision of adequate education to ethnic minority students (Article 26)

The HKSAR Government plays a crucial role in providing adequate education to ethnic minority groups. Previously the EOC expressed views and recommendations to the Government for catering the needs of ethnic minority students by strengthening pre-primary and junior primary language support, developing an alternative curriculum/qualification assessment, and capturing relevant information for policy formulation and improvement of support measures. The Government and relevant stakeholders are urged to collaborate with the EOC as well as concern groups in enhancing equal opportunities of ethnic minority students to enjoy quality education.

¹⁰ Equal Opportunities Commission (2012). *Study on Racial Encounters and Discrimination Experienced by South Asians*. Available from: http://www.eoc.org.hk/EOC/Upload/UserFiles/File/ResearchReport/201203/Race_eFull%20Report.pdf

¹¹ Ibid.

*(f) Data collection for policies and measures to eliminate discrimination
(Article 26)*

Currently, there is no systematic and accurate statistics about the ethnicities, main language spoken by ethnic minority students studying in tertiary education institutions as well as primary and secondary education institutions. In the absence of accurate data and information collected by means of a systematic mechanism, it is difficult for policymakers to make out the scope and intensity of the issue, and to formulate effective policies and measures for improvement. In this connection, the HKSAR Government should develop an effective data collection system to capture the relevant information regarding ethnic minority students in Hong Kong.

Mainstreaming of Equal Opportunities Value

No citizen shall be deprived of the right to be treated equally. EOC strives for incorporating the value of equal opportunities in all stages of the policy formulation and implementation. The HKSAR Government is urged to accelerate the process in upholding and prioritizing equal opportunities perspectives while deciding policies concerning gender, disability, race and more. 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

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