

# **59<sup>th</sup> Session of the Committee on the Elimination of All Forms of Discrimination against Women**

**20 October – 7 November 2014**

## **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**

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

#### **Introduction**

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

2. The EOC was established by statute in May 1996 for the implementation of the four 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 –Eliminating discrimination against women by legislation or other means**

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

3. In 1999, the EOC completed its first legislative review and made a submission to the HKSAR Government proposing amendments to be made to the discrimination ordinances on a wide range of issues. Of particular relevance to women, a number of recommendations submitted 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 to extend the protections afforded to victims in an employment setting to cover educational settings.<sup>1</sup>

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<sup>1</sup> This extended 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.

4. The EOC recently conducted a survey on the prevalence of sexual harassment among flight attendants, one of the key service provider groups regarded as particularly vulnerable to sexual harassment. The survey findings released in February 2014 found that 27% of 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 was conducted among employees of other service industries, including healthcare and nursing, and the catering and retail industries. The findings released in May 2014 revealed that nearly one-fifth (19%) of respondents had been sexually harassed in the last 12 months and the most common harassers were customers and colleagues of the same rank. The HKSAR Government has finally introduced amendments to the SDO in the Legislative Council in June 2014, which will offer protection to goods, services and facilities providers against sexual harassment by customers.

5. In instances, however, where the identity of the customer who perpetrated the sexual harassment is not known, it will be difficult to make him/her liable for his/her conduct. In this connection, the EOC believes that the HKSAR Government should also consider making employers liable for sexual harassment of employees by customers if the employer is put on notice of the harassment but they fail to take reasonable action to prevent the harassment.

6. A “Sexual Harassment – Questionnaire Survey for Business Sector” conducted by the EOC in mid-2013 saw 6,000 questionnaires distributed to companies across the territory but only 198 were returned. The Survey found that 57% of respondents (113 companies) have a stated policy on sexual harassment whereas 43% (85 companies) did not. Among the companies without a stated policy, 46% indicated that this was not regarded as an urgent issue for the business. The low return rate and the reluctance of many private sector companies to develop a sexual harassment policy are concerning. We believe that introducing an employer liability provision as part of the SDO may help prompt employers to take the issue of sexual harassment more seriously and to review the need for a policy and for measures to prevent harassment occurring.

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

7. An exemption in the SDO relates to the small house policy which provides that a male indigenous person in the New Territories of Hong Kong is entitled to apply to the Government to build a three-storey village style house as a residence. Both women and non-indigenous persons are excluded from this policy which has been criticised by many quarters as being anachronistic and discriminatory. The EOC urges the HKSAR Government to expedite its review of the small house policy and to ensure that any possible reforms do not discriminate on the ground of sex.

(c) *Outlawing discrimination against sexual minorities*

8. Hong Kong has not yet specifically legislated against discrimination on the ground of sexual orientation, gender identity and intersex status. Lesbian and bisexual women, as well as transgender and intersex persons, are not eligible to have their grievances addressed through the complaint handling mechanism of the EOC when they encounter discrimination. Although complaints relating to sexual orientation are outside the jurisdiction of the EOC, we received 1,337 public enquiries on sexual orientation from 2009 to 2013. In an EOC Survey in 2012<sup>2</sup>, 43% of 1,504 respondents believed that sexual orientation discrimination in Hong Kong was very serious/quite serious.

9. 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 possible 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.

10. In 2014, the EOC commissioned the Gender Research Centre, Hong Kong Institute of Asia Pacific Studies of The Chinese University of Hong Kong to conduct a Feasibility Study on Legislating against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status (the Study). 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 addressed through legislation or other means.

(d) *Defending the dignity of transgender persons*

11. In the landmark case of W<sup>3</sup>, the Court of Final Appeal of Hong Kong decided in 2013 that the Marriage Ordinance and the Matrimonial Causes Ordinance were in breach of the right to marriage of a post-operative transsexual woman W who wished to marry her male partner. The Court ruling leaves open the question of whether transsexual persons who have undergone less extensive treatment might also qualify in an affirmed gender. In February 2014, the HKSAR Government introduced the Marriage (Amendment) Bill to implement the court decision of the case of W. The Bill provides that transsexual persons will have the right to marry in their affirmed gender only after having completed full sex reassignment surgery. The EOC believes

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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>

<sup>3</sup> W v Registrar for Marriages FACV No.4 of 2012.

that imposing such a requirement for marriage rights violates the human rights of transgender persons as sex reassignment surgery is invasive and normally results in sterilisation. Many transgender persons cannot or choose not to undergo full surgery as such treatment may not be appropriate when a person has a pre-existing health or mental condition.

12. Apart from being unable to legally marry, many transgender individuals continue to face enormous social pressure to live free from harassment in other aspects of their lives because of their gender identity. There is only an administrative procedure for granting a transgender person's request to change their stated gender in their identity documents. The EOC urges the HKSAR Government to introduce a comprehensive Gender Recognition Ordinance to set out the rights of the transgender persons in their affirmed gender and to clarify the effect of gender change on different aspects of their lives, without the requirement for full sex reassignment surgery.

*(e) Protection from discrimination relating to breastfeeding women*

13. The EOC considers that it is a mother's right to breastfeed her baby in public. In 2013 and 2014 (January to June), the EOC received a total of 43 enquiries about breastfeeding. There is no express reference in the discrimination ordinances to protect breastfeeding women from discrimination. The EOC has been using provisions of the Family Status Discrimination Ordinance to conciliate related complaints on the basis of having the care of an immediate family member. The EOC believes that there should be express reference in the definition of family status to confirm that it includes breastfeeding women.

14. The EOC urges the Government to conduct more public education about the rights of nursing mothers and to provide more facilities for breastfeeding women in government and public premises in order to set a good example for private property owners and other employers, so that breastfeeding mothers will not be discriminated against in public or at work.

*(f) Maternity Leave and Paternity Leave*

15. The EOC notes that the current entitlement to statutory maternity leave in Hong Kong is 10 weeks, which is below the 14-week guideline recommended by the International Labour Organisation. In this regard, Hong Kong lags behind the 98 countries around the world that provide for at least 14 weeks statutory maternity leave and the 148 countries that provide for at least 12 weeks statutory maternity leave. The EOC believes the HKSAR Government should review the position in Hong Kong with a view to extending the statutory period to the ILO recommended 14 weeks. In terms of paternity leave, the EOC has long been advocating for family-friendly employment policies that enable husbands to give crucial support to their wives after giving birth and encourage their active participation in the family. The HKSAR Government has granted five days full-paid paternity leave to male civil servants since April 2012

but the provision of paternity leave is not yet a statutory requirement for all employers. The Employment (Amendment) Bill 2014 was introduced to the Legislative Council (LegCo) in March 2014 to make three days' paternity leave with pay (at a daily rate of four-fifth of the employee's average daily wages) a statutory benefit for employees. After several rounds of discussion, the relevant Bills Committee of LegCo completed their detailed scrutiny of the Bill this July but it was not accorded a second reading debate before the recent summer recess of the legislature. While there are still different views among Members of LegCo and between some LegCo Members and the Government regarding the duration and the extent of pay to be accorded to anyone taking statutory paternity leave, the EOC urges all parties concerned to settle the outstanding issues so that statutory paternity leave can be implemented as soon as possible.

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

16. The proportion of elderly people aged 65 or above in Hong Kong is expected to rise from the current 14% to 30% of the population in 2041. There is currently no protection from age discrimination in the HKSAR, whether it relates to older or younger people. An EOC Survey in 2012<sup>4</sup> found that age discrimination was perceived to be very serious/quite serious by 41% of respondents. Among respondents who claimed that age discrimination was very serious/quite serious, 69% of the discrimination incidents mentioned related to employment.

17. Age has a greater impact on women than men in terms of employment. The gender wage gap widens with age. The difference in median monthly employment earnings between women and men is relatively larger for the age groups of 40-49 and 50-59.<sup>5</sup> The Government issued "Practical Guidelines for Employers on Eliminating Age Discrimination in Employment" in 2006 but public education on the topic is generally piecemeal and insufficient. We believe the HKSAR Government should adopt a more proactive and comprehensive approach in addressing the challenges posed by an aging population and consider legislating against age discrimination.

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

*(a) Women in poverty*

18. The poverty rate of women has been consistently higher than that of men over the past 10 years. According to the Hong Kong Council of Social Service (HKCSS)<sup>6</sup>, in the first half of 2012, the poverty rate of women, i.e. the rate of women living in low-income households below

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<sup>4</sup> See note 2.

<sup>5</sup> Census and Statistics Department (2014). *Women and Men in Hong Kong Key Statistics 2014*.

<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].

the poverty line<sup>7</sup>, was 18.1%, while that of men was 17.0%. 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 number of female CSSA recipients increased from 110,244 in 1996 to 206,969 in 2013, while male recipients increased from 113,140 to 187,938 over the same period.<sup>8</sup> Almost two-thirds (63%) of single parent recipients of CSSA are female.

19. The HKSAR Government 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 the 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 to adopt a comprehensive strategy to provide an enabling environment for the full development and advancement of women.

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

20. Ethnic minority women are generally considered as one of the most vulnerable groups in Hong Kong due to their cultural background and language limitations. Many ethnic minority women, in particular married ethnic minority women who immigrated to Hong Kong for family reasons, speak neither of the two official languages in Hong Kong, namely Chinese and English. The EOC believes the HKSAR Government should take appropriate measures to empower ethnic minority women to facilitate their integration into the local community.

**(c) *Gender mainstreaming***

21. The EOC urges the HKSAR Government to uphold and prioritise equal opportunities perspectives, inter alia, the gender perspective, when designing public policies. In 2002, on the recommendation of the Women's Commission, the Government 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. Equally important is the provision of training to enhance the gender sensitivity of senior civil servants so that gender perspectives are taken into account during the policy formulation.

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<sup>7</sup> The HKCSS 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>8</sup> See note 5.

## **Article 5– Eliminating stereotyping and prejudices**

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

22. An EOC study of almost 6,000 students of secondary schools and tertiary institutions in 2011 found that half of them had experienced various forms of sexual harassment and among these victims, 58% of them had not reported the harassment or sought help. Furthermore, an EOC questionnaire survey for primary and secondary schools and tertiary institutions last year found that almost half (47%) of the 321 responding institutions do not have a policy statement on sexual harassment. The EOC urges the HKSAR Government to invest more resources on training and education in this area including requiring the Hong Kong Institute of Education to make dealing with sexual harassment a core topic for its teacher education programmes.

23. The low awareness of the business sector on the prevention of sexual harassment is also alarming. The HKSAR Government has been conducting seminars and talks in collaboration with the Women’s Commission and the EOC for human resource personnel of private sector companies to enhance their awareness of sexual harassment issues. The EOC believes that more work needs to be done to engage the management tier of companies on the topic.

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

24. The EOC believes the HKSAR Government should take steps to outlaw the growing practice of upskirting, i.e. the act of photographing or videoing up a woman’s dress or skirt. While the majority of cases are likely to go undetected or unreported, the number of upskirting incidents in the Territory is on the increase.<sup>9</sup> There is currently no law in Hong Kong that specifically addresses the secret taking of images. Offenders can potentially be prosecuted under loitering laws or public order laws, while the common law offence of outraging public decency is harder to prove. The EOC believes that legislation that specifically targets upskirting and penalises the distribution of offensive images would send a clear message to predators and perverts that this type of behaviour is not condoned. The Government should seriously consider and adopt the recommendation of the Law Reform Commission of Hong Kong to extend the scope of sexual assault (a new category recommended to replace the current indecent assault offence) as soon as possible, so as to provide protection for women against upskirting.

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<sup>9</sup> The number of reported incidents of upskirting increased from 78 in 2011 to 110 in 2013 in the Railway District of the Hong Kong Police Force which covers all the railway stations in the territory.

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

25. Women are under-represented in Hong Kong’s government advisory and statutory bodies (ASBs). As at October 2013, women’s participation rate on ASBs with Government-appointed non-official members was 32.2% on average. This exceeds the Government’s gender benchmark target of 30%. However, among the 415 ASBs with government appointed non-official members, one-third have not yet reached the benchmark.

26. Female leaders are also outnumbered by their male counterparts in the Hong Kong Government. Only one-fifth of the members of the Executive Council (ExCo) of the HKSAR Government, i.e. the de facto cabinet of the Chief Executive, are women. The proportion of female Members in the Legislative Council is also low at 16%. At the senior level of the Civil Service, the proportion of female directorate grade officers in the Government has gradually risen from 15% in the mid-1990s to 33.7% in 2012, which means women only occupy one-third of the top positions in the HKSAR Administration. The EOC believes that a more balanced gender composition would enable the views of both genders to be fully reflected in the Government’s policy formulation and implementation process. Hence, the Government should take appropriate measures to encourage women to participate in public life and to become public leaders.

## **Article 10 Right to education**

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

27. The school attendance rate for ethnic minorities (excluding foreign domestic workers) falls off when it comes to tertiary education, in particular for female ethnic minority students. In 2011, attendance rates for ethnic minority late teens aged 17-18 stood at 80.1% for girls and 72% of boys in 2011 versus attendance rates for young adult ethnic minorities (aged 19 to 24) of 31.3% for girls and 34.4% for boys in the same period.<sup>10</sup>

28. Ethnic minority students of both genders face hardships in accessing higher learning due to their struggle to master Chinese in their school years. 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 primary and secondary students from the 2014/15 school year. However, related training for teachers is still insufficient. In the upcoming three years, the Professional Enhancement Grant Scheme is targeting to train only 450 Chinese teachers to enhance their

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<sup>10</sup> Census and Statistics Department (2011). *2011 Population Census – Thematic Report: Ethnic Minorities*.



professional capability in teaching Chinese as a second language. The Government should train all 2,000 teachers from about 500 schools admitting Non-Chinese Speaking students and to provide more support for kindergartens admitting these students.

29. The media has reported that ethnic minority girls studying in some co-educational secondary schools are prohibited from interacting with male fellow 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 closely monitor whether there are gender segregation arrangements within schools and to take proactive measures to ensure that female ethnic minority students have equal opportunities to education.

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

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

30. The labour force participation rate of women continues to lag behind that of men in Hong Kong. The labour force participation rate<sup>11</sup> of women in 2013 was 50.6% versus 69.1% for men.<sup>12</sup> The rate for never married women was 66.2% while forever married women, the participation rate was much lower at 44.1% in 2013. This reflects the fact that many women exit the labour market temporarily or permanently after marriage and become home makers.

31. The gender wage gap is also significant in Hong Kong. In 2013, the median employment earnings of women (excluding foreign domestic helpers) was HK\$12,000 versus HK\$15,000 for men.<sup>13</sup> The difference can be explained in part by the fact that more men work as managers and professionals and earned higher monthly income, while more women work in lower end jobs such as clerical and elementary occupations. However, there is also a substantial difference in income between women and men who have attained the same level of education or are working in the same occupational group. In 2013, the median monthly employment earnings of women with post-secondary (degree) education was HK\$22,000 versus HK\$30,000 for men and the median monthly employment earnings of women in elementary occupations was HK\$7,500, as compared with HK\$9,000 for their male counterparts.<sup>14</sup>

32. The EOC urges the HKSAR Government to adopt more supportive measures for working mothers such as increasing the provision of child care and elderly care services. The Government should also take the lead to encourage private sector employers to adopt more family friendly practices, such as flexible working schedules for both women and men employees.

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<sup>11</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>12</sup> See note 5.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

Flexibility in working hours helps female workers to manage the demands of both work and family and allows male family members to assume their fair share of domestic duties.

**(b) *Foreign domestic workers***

33. Foreign domestic workers are prone to the risk of being abused and sexually harassed by their employer or employers' family members. The HKSAR Government should consider adopting more proactive measures to disseminate information to foreign domestic workers about their rights and how to seek help in the event of abuse.

*Equal Opportunities Commission*  
*September 2014*