

**Office of the High Commissioner for Human Rights, United Nations
Equal Participation in Political and Public Affairs in Hong Kong**

Submission from the Equal Opportunities Commission, Hong Kong

Introduction

This paper aims to present the views of the Equal Opportunities Commission (EOC) on equal participation in political and public affairs in Hong Kong Special Administrative Region (HKSAR).

Equal Opportunities Commission

2. EOC is a statutory body which is funded by the HKSAR Government. The main functions of the EOC are to eliminate discrimination and promote equal opportunities. Currently, EOC is responsible to administer four anti-discrimination ordinances, namely the Sex Discrimination Ordinance (SDO), Disability Discrimination Ordinance (DDO), Family Status Discrimination Ordinance (FSDO) and Race Discrimination Ordinance (RDO).

3. Like other local non-governmental organizations (NGOs), EOC does not enjoy any special status in the HKSAR Government decision-making process regarding the protected characteristics (i.e. sex, pregnancy, marital status, disability, family status and race) covered by existing anti-discrimination legislation. EOC mainly influences public policy decision-makings by submitting alternative reports to relevant United Nations Committees, presenting submissions to the Legislative Council (LegCo) of Hong Kong, responding to relevant public consultations, conducting formal investigations as well as research to effect policy change.

4. In response to the request of The Office of the High Commissioner for Human Rights of the United Nations, the following are the views of the EOC on equal participation in political and public affairs in Hong Kong.

Accessibility of the voting procedures, facilities and materials

5. Nobody should be deprived of the chance to exercise his voting rights due to the absence of accessible facilities for the election exercise. Section 36 of the DDO states that it is unlawful for the government to discriminate against a person with a disability in the performance of its functions or the exercise of its power.

6. The EOC is of the view that all qualified voters with a disability are entitled to equal access to the polling stations as their non-disabled counterparts, and it is the HKSAR Government's responsibility to make all polling stations fully accessible. In the 2012 LegCo Election, about 93% of the polling stations were accessible to electors with mobility difficulties¹, as compared to 82% in the 2008 LegCo Election and 57% in the 2004 LegCo Election. Given most of the polling stations were not owned/managed by the HKSAR Government, it is encouraging that the Government has already taken appropriate actions to improve the accessibility of polling stations. However, to better plan for future elections, the Government needs to consider taking reasonably practicable measures to further improve the accessibility of polling stations in Hong Kong and make sure that persons with disabilities (PWDs) would not be deprived of the right to cast votes due to inaccessible polling stations.

¹ Electoral Affairs Commission (2012), *Report on the 2012 Legislative Council Election*. Available from http://www.eac.gov.hk/en/legco/2012lce_detailreport.htm

7. Meanwhile, representatives from a NGO for persons with visual impairment (PVI) have requested the HKSAR Government to take relevant measures to facilitate electors with visual impairments to exercise their voting rights independently. In the light of it, apart from providing Braille templates for the ballot papers to facilitate PVI to vote, the Government should also consider uploading relevant information of all candidates, including their background and election manifestos, onto the dedicated election website so that PVI can get access candidates' information with the assistance of suitable reading device such as screen reader.

Participation in Advisory and Statutory Bodies

8. Rehabilitation Advisory Committee (RAC) is an advisory body to the HKSAR Government on matters pertaining to the well-being of PWDs and the development of and implementation of rehabilitation policies and services. It also co-ordinates the public education efforts made by Government departments, public bodies and NGOs. With the application of the Convention on the Rights of Persons with Disabilities (CRPD) to Hong Kong, the RAC also advises the HKSAR Government on the promotion and monitoring of the implementation of the Convention in Hong Kong. In view of public concerns about the relatively small number of the members of the RAC/its Sub-Committee on Access are PWDs, and there is no institutional representation of the NGOs for PWDs in the RAC, the HKSAR Government should consider engaging more PWDs as well as their representative organisations to join the RAC, and consulting them in the decision-making process concerning issues relating to the promotion and protection of the rights of PWDs to work.

Right of the persons with mental illness to integrate into the community

9. The international trend for mental health care is to gradually shift the focus from inpatient and bed-based psychiatric services to community and ambulatory services. According to Article 19 of CRPD, the equal right of all PWDs to live in the community should be protected and State Parties should take effective and appropriate measures to facilitate their full enjoyment of this right and their full inclusion and participation in the community. Since 2001, the HKSAR Government has launched a number of initiatives to improve community support services for persons with mental illness and discharged mental patients. Yet, the constraints in resources including land, manpower and residential care places become barriers against integration of service users into the community.

10. For instance, the Case Management Programme is one of the initiatives. Under the Programme, personalized and intensive support will be provided to service users by case managers according to users' needs. To ensure the quality of mental health services being provided, the Government needs to consider taking suitable measures to alleviate the heavy workload of case managers.

11. The establishment of 24 Integrated Community Centres for Mental Wellness (ICCMWs) to provide services to all districts across the territory has also encountered difficulties such as the lack of permanent site and opposition from local residents and community leaders. Five of the ICCMWs are still finding permanent accommodation while six others waiting for their permanent site to be ready for service. In other words, there are altogether 11 ICCMWs providing services in temporary sites and most of which are undersized or under the roof of other social welfare facilities. To enhance the provision of full services to persons

with mental illness, the Government should consider formulating a comprehensive plan to eliminate stigma and misunderstanding against persons with mental illness, provide facilities, build up the service capacity and expertise.

Woman's under-representation in public offices

12. Women are under-represented in Hong Kong's Government advisory and statutory bodies (ASBs). As at April 2014, the women's participation rate of ASBs with Government-appointed non-official members was 32.26%. This exceeded the then Government's gender benchmark target of 30% which was set in the year 2010. However, among the 419 ASBs with Government appointed non-official members, more than one-third have not yet reached the benchmark. The HKSAR Government has finally raised the gender benchmark target to 35% recently in January 2015. It is yet to see if the new target can be met.

13. 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 LegCo 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 needs to consider taking appropriate measures to encourage women to participate in public life and to become public leaders.

Provision of adequate education to ethnic minority students

14. 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.²

15. 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, there are public concerns about trainings for teachers. In this connection, the Government needs to meet the shortfall with a plan to train more teachers to cater for the schools admitting Non-Chinese Speaking students and to provide more support for kindergartens admitting these students.

Lack of anti-discrimination protection for LGBTI community

16. Hong Kong has not yet specifically legislated against discrimination on the ground of sexual orientation, gender identity and

² Census and Statistics Department (2011). *2011 Population Census – Thematic Report: Ethnic Minorities*.

intersex status. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people 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 2012³, 43% of 1,504 respondents believed that sexual orientation discrimination in Hong Kong was very serious/quite serious.

17. 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 consider conducting a public consultation on legislating against discrimination on the ground of sexual orientation, gender identity and intersex status as soon as possible.

Defending the dignity of transgender persons

18. In the landmark case of *W*⁴, 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

³ Equal Opportunities Commission (2013). *Equal Opportunities Awareness Survey 2012*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/2013191436554640807.pdf>

⁴ *W v Registrar for Marriages* FACV No.4 of 2012.

court decision of the case of W. The Bill provided that transsexual persons would have the right to marry in their affirmed gender only after having completed full sex reassignment surgery. It was voted against by the LegCo in October 2014. The EOC agrees that the Bill should not be passed as it believes 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.

19. 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.

Equal Opportunities Commission
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