

List of Issues
on 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

February 2014

Introduction

This paper aims to present a list of issues proposed by the Equal Opportunities Commission (EOC) for the consideration of the Third Report of the Hong Kong Special Administrative Region (HKSAR) on the implementation of the United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

2. The EOC is established by statute in May 1996. It is responsible for the implementation of the four anti-discrimination ordinances in Hong Kong, including the Sex 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.

Issues

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

(a) Protection against sexual harassment by customers

3. The EOC completed its first legislative review and made submission to the HKSAR Government proposing amendments to be made to the anti-discrimination ordinances, including the Sex Discrimination Ordinance

(SDO) in 1999. The EOC's proposals related to a wide range of aspects: the extension of protection for providers of goods, services and facilities in respect of sexual harassment by their customers; 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.¹

4. 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 introduce amendments to the SDO, in particular, amendments offering protection to goods, services and facilities providers against sexual harassment by customers.

5. Research findings support the need for such legal protection. A "Sexual Harassment – Questionnaire Survey for Business Sector" was 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. Furthermore, the EOC conducted a survey on the prevalence of sexual harassment among flight attendants whom are regarded as one of the service provider groups prone to sexual harassment a few months ago. The

¹ 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.

survey findings due to be released by end of February 2014 revealed that the most common harassers in these cases were the customers.

(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 on the ground of sexual orientation and gender identity*

7. Hong Kong has not yet specifically legislated against discrimination on the ground of sexual orientation and gender identity. 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 (EO) Awareness Survey conducted in 2012², 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

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

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.

(d) Outlawing discrimination on the ground of age

8. 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 2012³ 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 challenges brought by an aging population and consider legislating against discrimination on the basis of age.

Article 3 – Full development and advancement of women

(a) Women in poverty

9. 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 living in

³ Equal Opportunities Commission (2012). *Equal Opportunities Awareness Survey 2012*.

low-income household below the poverty line⁴, is 18.1%, while that of men is 17.0% in the first half of 2012. 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. The gender difference is even more significant in single parent cases. Almost two-thirds (63%) of the single parent recipients of CSSA are female.

10. 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*

11. 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 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

⁴ 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.

take appropriate measures to empower ethnic minority women to facilitate their integration into the local community.

(c) *Gender mainstreaming*

12. 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 deciding 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*

13. 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.

14. 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

15. 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

16. 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.

17. At the decision-making level of public administration, female leaders are equally outnumbered by their male counterparts. In the Executive Council (ExCo) of the HKSAR Government, i.e. the de facto cabinet of the Chief Executive, only 29% of its Non-official Members are women (four 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

18. 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.⁵ 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.

19. 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 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.

⁵ Census and Statistics Department (2011). 2011 Population Census – Thematic Report: Ethnic Minorities.

20. 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 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

21. The gap between the labour force participation rate of women and that of men still exist. The labour force participation rate⁶ of women in 2012 is 53.6%, while that of men is 68.7%.⁷ 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 group between 55 and 59, while the rate for men of the same age group remains high at 78.9%.

⁶ Labour force participation rate refers to the proportion of labour force in the total land-based non-institutional population aged 15 and over.

⁷ Hong Kong Census and Statistics Department (2013). *Hong Kong Annual Digest of Statistics 2013*.

22. 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 2012.⁸ 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.

23. 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 50-59.⁹ 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.

24. 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 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

⁸ Census and Statistics Department (2013). *Women and Men in Hong Kong Key Statistics 2013*.

⁹ Ibid.

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.

25. 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 helpers*

26. Foreign domestic helpers 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 helpers 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
February 2014