

67th Session of the United Nations Human Rights Committee
Hearing of the State Reports on the Implementation of the ICCPR

Hearing of the HKSAR Report on ICCPR
1-11-99

Submission from the Equal Opportunities Commission

Purpose

The purpose of this paper is to provide the Committee with supplementary information in relation to the Report of the HKSAR on the International Covenant on Civil and Political Rights ("the Report") with particular reference to Article 3 on the equal rights of women and men and Article 26 on the right to equal protection before the law. With the passage of time since the preparation of the Report, a number of events relating to matters relevant to the Report have taken place. The Equal Opportunities Commission ("EOC") has played an active role in these events for the purposes of promoting equal opportunities and now takes the opportunity to provide the Committee with an update on what it has done.

Article 3: equal rights of men and women

(para. 58 - 87)

2. Under Article 3, a wide range of subjects are discussed in the Report including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Sex Discrimination

Ordinance (SDO) and equal rights of women in politics and in education.

CEDAW (para. 59 - 63)

3. The EOC, in the capacity of a non-governmental organisation, submitted an alternative report to the United Nations CEDAW Committee which held its hearing in February 1999. In its report, the EOC called upon the HKSAR Government to set up a central mechanism to implement and monitor the HKSAR's obligations under CEDAW. The EOC sought that such central mechanism should promote gender equality and the full participation of women in the economic, social, cultural and political life. Specifically, it should -

- deal with issues covered by CEDAW;
- formulate policies on women;
- direct funding into areas based on these policies;
- address women's problems;
- compile gender statistics and analyses; and
- act as a clearing house on training programmes for women.

4. After the hearing, the UN Committee recommended that the HKSAR Government should establish a high-level central mechanism with appropriate powers and resources to develop and co-ordinate a women-focused policy and long term strategy to ensure effective implementation of CEDAW.

Sex Discrimination Ordinance (para. 64 - 68)

5. The EOC has completed a review of the SDO and the Disability Discrimination Ordinance (“DDO”) and submitted its recommendations to the HKSAR Government in February 1999. The EOC’s recommendations for legislative amendments cover a wide range of areas. In particular, the key areas are:

- the EOC should have the power to take legal action in respect of discriminatory policies and practices;
- Schedule 5 of the SDO, which contains a number of exceptions to discrimination, should be repealed;
- the protection against sexual harassment in certain fields should be extended; and
- the protection for people with a disability in terms of the eligibility to vote or stand for election should be included.

6. In order to assure the protection of equal rights of women and men, the EOC believes that it is important to have the power to take legal action in its own name ⁱⁿ respect of discriminatory policies and practices. This approach, in addition to the existing measure whereby an individual can take action under the anti-discrimination legislation, would have the advantage of enabling the EOC to deal with the discriminatory policies and practices of public bodies or a particular industry. It would help stamp out systemic discrimination and reduce the number of individual actions which would otherwise be instituted. It would further minimise conflicts between the parties to an individual complaint.

7. Schedule 5 of the SDO contains a number of exceptions to discrimination, including an exemption relating to the “small house policy”. This is a policy whereby benefits relating to land in the New Territories of the HKSAR are granted only to male indigenous villagers. Female indigenous villagers are not entitled to the same benefits, nor are non-indigenous villagers. The EOC has recommended to the HKSAR Government that this exemption should be repealed. The EOC believes that such exemptions are contrary to the spirit of equal opportunities and defeat the purpose of equal opportunities legislation. The HKSAR Government has talked of reviewing the “small house policy”.

Women in rural elections (para. 72 - 73)

8. Since the preparation of the Report, there have been two judicial reviews relating to rural elections. The Applicants in both cases have relied on, inter alia, sections 5 and 35 of the SDO to claim unlawful discrimination. Though the two judicial reviews were sought by villager men living in the New Territories, both cases brought out the issue of women's rights in politics.

9. In the first judicial review, a man living in Sai Kung claimed discrimination under the SDO on the basis that a non-indigenous villager woman married to an indigenous villager man may vote in an election of a village representative while a non-indigenous villager man married to an indigenous villager woman may not do so. He sought to judicially review the decision of the Hang Hau Rural Committee that did not allow him to take part in the election. The court ruled that the decision of the rural committee was unlawful discrimination under the SDO.

10. The Respondents in the first judicial review have filed appeals against the court's decision and the EOC will appear as *amicus curiae* in the appeal proceedings, so as to provide input on the argument concerning the provisions of the SDO and the ICCPR as they relate to sex discrimination.

11. In the second judicial review, a non-indigenous villager man living in Yuen Long sought to judicially review the decision of the Pat Heung Rural Committee in refusing to register him as a candidate for the election of village representative. He also sought a declaration that the election was null and void. The court ruled that the 7-year residence requirement applicable to married indigenous villager women (which is not applicable to men) was discriminatory under the SDO and that the procedure for the election was therefore contrary to the SDO.

12. Two of the Respondents in the second judicial review have now appealed against the court's decision. The EOC may also seek to appear in such appeal proceedings as *amicus curiae*. The EOC believes that it should assume an advocacy role in promoting equal rights of women and men.

13. The EOC has expressed its overall concern to the HKSAR Government about the election procedures adopted in rural elections. Many of the villages in the New Territories draft their own election rules, which discriminate against women and men in terms of their right to vote and their right to stand for election. Pursuant to section 35(5) of the SDO, the Secretary for Home Affairs must not approve a person as a Village

Representative or Councillor, or issue a certificate recognizing a body as a Rural Committee, where the election procedures have not provided for equal participation of women and men. The EOC has met with Government representatives who have advised that the Secretary for Home Affairs has given his approval and has so certified in rural elections, without checking into the election procedures.

Equal rights of women in education (para. 78 - 80)

14. The EOC completed its formal investigation into the Secondary School Places Allocation System ("the SSPA") and announced its findings in August 1999. The findings revealed that the SSPA, used by the Education Department to allocate places for Primary 6 students to secondary schools, discriminates on the ground of sex in that:

- (i) boys and girls in the same school are treated separately in the scaling process, where gender curves are used to produce the final scores used in the placement process;
- (ii) boys and girls are put into two separate rank orders in the banding process, resulting in different band cutting scores for each sex; and
- (iii) co-educational schools are required to admit a fixed proportion of boys and girls.

15. The EOC recommended that the Government and the Education Commission should review the SSPA in light of the findings with a view

to removing the discriminatory elements in the system.

16. With regard to equality in the school curriculum, the EOC in 1999 conducted a study on the choice of subjects, namely, Design & Technology and Home Economics, available to students in secondary schools. The study revealed that restriction in the choice of subjects was prevalent. While co-educational schools offered both subjects to students, only a small number of the schools allowed boys and girls to take both subjects. In most of the single-sex schools, only one of the subjects was offered - Design & Technology for boys and Home Economics for girls. The EOC will strengthen its promotional efforts in schools and promote equal rights in education. A workshop for school principals is scheduled for October 1999.

Protection of pregnant employees (para. 83)

17. Under the SDO, it is unlawful for a person to discriminate against another person on the ground of pregnancy. The law applies to different situations, such as: a prospective female employee who is not offered employment because she did not agree to undergo an X-ray procedure in the pre-employment medical examination; or an employee who was dismissed on return from maternity leave. Of the discrimination complaints in employment handled by the EOC to date, pregnancy discrimination has made up 25 per cent of the cases.

18. Pregnancy discrimination in the pre-employment phase is of particular concern to the EOC. It is not uncommon for employers to insist that women should have an X-ray procedure to test for tuberculosis

in the pre-employment medical examination, even though they may be pregnant. Refusal to undergo the X-ray procedure means refusal of employment. The EOC recently handled a complaint where it was the HKSAR Government that was insisting that the pregnant woman undergo such X-ray procedure. Despite suggestions by the EOC that other tests to determine the presence of tuberculosis should be adopted for pregnant women, the Government insisted on X-ray tests. The case was ultimately resolved by the woman agreeing to an X-ray test after the birth of her baby.

19. Pregnancy discrimination in employment is an area which the EOC has focused on and will continue to focus its attention. The EOC intends to work in partnership with trade unions, employer organisations and human resource practitioners in eliminating discrimination against pregnant employees. The EOC is also encouraging the HKSAR Government to review its own policies.

Article 26: right to equal protection before the law

(para. 481 - 496)

20. Measures taken in relation to discrimination on the grounds of disability, family status, age, sexual orientation and race are discussed in the Report under Article 26. While there is specific legislation dealing with discrimination on the grounds of sex, disability and family status, discrimination on other grounds is addressed by administrative or educational means. At present, the EOC, the Home Affairs Bureau, the Health and Welfare Bureau, the Education and Manpower Bureau and the Labour Department have respective roles to play in eliminating

discrimination.

21. The EOC often receives enquiries relating to allegations of race discrimination, age discrimination and discrimination on the ground of sexual orientation. As it has no power to deal with these types of complaints, the EOC will either inform the enquirers that it has no jurisdiction or will try and refer the matter to another body which may be able to provide some assistance.

22. The EOC advocates for a co-ordinated approach at the policy level so that issues of discrimination and equal opportunities can be reviewed and policies developed for implementation.

Disability discrimination (para. 487 - 488)

23. In the three years of the EOC's operation since September 1996, the number of complaints for investigation and conciliation under the DDO was the highest, compared with cases under the SDO and the Family Status Discrimination Ordinance ("FSDO").¹

24. To the extent that people with a disability are willing to lodge complaints with the EOC, the legislation is effective in affording protection to them. However, the EOC is mindful of some other people

| <u>Complaints under</u> | <u>Employment field</u> | <u>Non-employment filed</u> | <u>Total</u> |
|-------------------------|-------------------------|-----------------------------|--------------|
| DDO* | 290 | 199 | 489 |
| SDO* | 263 | 44 | 307 |
| FSDO# | 27 | 2 | 29 |

[* Period: 20 September 1996 to 31 August 1999

Period: 21 November 1997 to 31 August 1999]

suffering from mental disability or living with AIDS who are less willing to come forward with their complaints. The EOC will endeavour to explore means to act on their behalf.

25. The EOC will publish a code of practice on education under the DDO in 2000. The code is aimed to assist stakeholders in the education field, such as school principals, teachers, parents and students, to have a better understanding of their rights and obligations under the DDO and to promote good practices in educational establishments which will help eliminate disability discrimination and harassment.

Family status discrimination (para. 496)

26. The FSDO came into force in November 1997. Notwithstanding active promotion of the concept and understanding of the law by the EOC, the number of complaints has remained low. This, however, is not inconsistent with the experience of overseas jurisdictions such as Australia and New Zealand where similar legislation is in place.

Ombudsman's jurisdiction (para. 36)

27. As a concluding comment, we wish to state that the EOC has expressed its desire to be subject to the Ombudsman's jurisdiction. Under the anti-discrimination Ordinances, the EOC is empowered to make certain decisions, for instance, deciding not to continue with investigation of a discrimination complaint or deciding not to grant legal assistance. While these decisions may be judicially reviewed, we believe that having

the EOC under the Ombudsman's jurisdiction would provide an aggrieved party with an additional avenue of redress.

28. The EOC has asked the Government to make arrangements to have the EOC brought under the Ombudsman's jurisdiction.

Annex 4: EOC's major work programme

29. An update on the EOC's major work programme, including tasks to be achieved in 2000, is at the appendix.

Equal Opportunities Commission
October 1999

Equal Opportunities Commission's major promotional and educational programmes

Major tasks undertaken since September 1996:

Promotional Programmes

- community roadshows and exhibitions to bring the message of equal opportunities to all the districts in Hong Kong
- television docu-drama series and radio series on equal opportunities
- community participation funding programme to encourage community organizations to carry out projects to promote equal opportunities
- advertising campaigns on television, radio, buses, MTR and KCR stations

Educational Programme

- projects for children and young people to cultivate awareness of equal opportunities issues
- talks and seminars to explain the anti-discrimination ordinances and general equal opportunities issues
- EOC website for access by general public
- quarterly newsletters and educational publications focusing on different aspects of the legislation and on combating discrimination
- training modules to facilitate public education on eliminating discrimination and promoting equal opportunities
 - ◇ Training Module on Preventing and Dealing with Sexual Harassment
 - ◇ Training Module on Equal Opportunities for Women and Men at the Workplace
 - ◇ Training Module for Children Focusing on Equal Opportunities on Grounds of Gender and Disability

Research

- surveys and research projects to develop knowledge on equal opportunities issues and monitor public attitudes on discrimination

Gender-related

- ◇ Baseline Survey of Equal Opportunities on the Basis of Gender
- ◇ Feasibility Study on Equal Pay for Work of Equal Value

Disability-related

- ✧ Baseline Survey on Employment Situation of Persons with a Disability
- ✧ Baseline Survey on Public Attitudes towards Persons with a Disability

New initiatives including training modules and research projects in progress

Promotional Programmes

- an Equal Opportunities Month to publicize and support community activities to promote equal opportunities

Educational Programmes

- training modules to facilitate public education on eliminating discrimination and promoting equal opportunities
 - ✧ Training Module on Eliminating Disability Discrimination

Research

General

- ✧ Statistical Analysis on Census Data on Gender and Disability
- ✧ Research Project on Content Analysis of Text Books and Teaching Materials in Respect of Stereotypes
- ✧ Research Project on Insurance Issue under the DDO, the SDO and the FSDO

Gender-related

- ✧ Survey on Public Attitudes Towards Sex as a Genuine Occupational Qualification

Disability-related

- ✧ Public Opinion Survey on Obstacles to Persons with a Disability in Non-Employment Fields
- ✧ Baseline Survey on Students' Attitudes Towards Persons with a Disability

Family status-related

- ✧ Research on Family Status Discrimination

Code of Practice

- preparation of a Code of Practice on Education under the Disability Discrimination Ordinance to provide practical guidelines for the elimination of discrimination, harassment and vilification in the education field

Equal Opportunities Commission

September 1999