

Legislative Council Panel on Constitutional Affairs

The Fourth Report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

Submission from the Equal Opportunities Commission

INTRODUCTION

This paper aims to give views of the Equal Opportunities Commission (EOC) on the Fourth Report of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, under the International Covenant on Civil and Political Rights (ICCPR).

2. Established in 1996, the EOC is an independent statutory body tasked with promoting equal opportunities and eliminating discrimination in the HKSAR. The EOC is responsible for implementing the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO), and the Race Discrimination Ordinance (RDO). Since its establishment, the EOC has actively participated in and submitted comments for periodic reports of the ICCPR and other international human rights instruments, and constantly expressed views at Government's Human Rights Forum and related Legislative Council's (LegCo's) hearings,¹ in order to monitor the implementation of human rights treaties in the HKSAR that are related to the issues of equality and non-discrimination.² This submission mainly focuses on those relevant articles of the Fourth Report under the ICCPR that are connected to EOC's role of promoting equality and eliminating discrimination in the HKSAR.

¹ Representatives of NGOs and relevant stakeholders are invited to attend Human Rights Forum organised by the HKSAR Government irregularly to express their views on the implementation of international human rights treaties.

² For all the previous submissions to international bodies in relation to international human rights instruments, see <https://www.eoc.org.hk/eoc/graphicsfolder/inforcenter/papers/cedawindex.aspx>

AREAS OF CONCERN

Article 2: Ensuring to all individuals the rights recognised in the Covenant

3. As one of the independent statutory bodies to promote and safeguard human rights in relation to equality and non-discrimination in Hong Kong, the EOC has continuously striven for expanding and strengthening its mandate.

EOC's Process Review

4. In December 2019, the EOC released the report on its Process Review,³ which was conducted between 2017 and 2019 to examine EOC's governance, management structure and complaint-handling mechanism. The EOC has found the report's recommendations highly valuable for enhancing its work, particularly those in relation to adopting a victim-centric approach in complaint handling, the holistic collection of facts and evidence in case investigation, and the re-positioning of the Chairperson as a commanding role to be ably assisted by EOC Members and a professional management team.

5. As a result, the EOC reformed its management structure in that its two enforcement divisions—the Complaint Services Division and the Legal Service Division—are now placed under one overall command, and the other administrative and operational divisions under another, in order to enhance its governance efficiency and accountability.

Further enhancement of existing work

6. Also, the EOC secured additional Government funding in 2020 to set up a dedicated Anti-Sexual Harassment Unit to combat the problem in

³ Equal Opportunities Commission (2019). *Report on Review of the Equal Opportunities Commission Governance, Management Structure and Complaint Handling Process*. Retrieved from https://www.eoc.org.hk/EOC/Upload/UserFiles/File/Process_Review/EOCs_Review_Report_E.pdf

Hong Kong. The Unit aims at conducting a holistic review of the current legal regime to identify protection gaps and recommend legislative amendments where appropriate; promoting public awareness on anti-sexual harassment policies and measures; and exploring the feasibility of serving as a first port of call for those affected by sexual harassment, providing information on provisions of the law, advice on where to lodge complaints and seek redress, and referral to counselling and therapy services.

Article 3: Equal rights of men and women

Discrimination Law Review

7. As one of the statutory responsibilities of the EOC is to keep under review the working of Discrimination Ordinances, and draw up proposals for amending the laws accordingly,⁴ the EOC conducted its second Discrimination Law Review (DLR) in 2014, including a four-month public consultation, which sought to modernise and expand the scope of the anti-discrimination legislation.⁵ After receiving and carefully reviewing 125,041 responses, the EOC detailed its 73 recommendations covering proposed law reforms on a wide range of issues relating to eliminating discrimination and promoting equality. In total, 27 issues were identified by the EOC as higher priority areas for legislative or related reforms.

8. In response, the Government gazetted the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 in June 2020,⁶ which took forward eight of EOC's 73 recommendations in the DLR. The amendments in the Ordinance related to equal rights between men and women include amending the SDO to provide protection from direct and indirect discrimination, and victimization for breastfeeding women in key sectors such as employment, the provision of services and facilities, and

⁴ *Sex Discrimination Ordinance*, s 64(1); *Disability Discrimination Ordinance*, s 62(1); Family Status Discrimination Ordinance s 44(1); *Race Discrimination Ordinance*, s 59(1).

⁵ Equal Opportunities Commission (2016). *Discrimination Law Review: Submissions to the Government*. Retrieved from <https://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf>

⁶ Full text of the Ordinance: <https://www.gld.gov.hk/egazette/pdf/20202425/es1202024258.pdf>

education; and providing protection from sexual harassment in common workplaces where there is no employment relationship (e.g. consignment workers, volunteers and interns), etc.

9. While welcoming Government's adoption of the eight recommendations, the EOC continues to urge the Government to devise a clear timetable for taking forward the remaining higher priority recommendations of the DLR, including prohibiting breastfeeding harassment and providing protection from sexual harassment between tenants and/or sub-tenants occupying the same premises.

Women's right to participate in public life

10. In Hong Kong, women's proportion among civil servants has increased over time to 37.8% today, yet the growth rate has slowed down in recent years, and women remain underrepresented in key governing or political institutions like the Executive Council (15.6% female in 2019), the LegCo (17.1% female in 2016), and the District Councils (18.8% female in 2019).⁷

11. Moreover, it is found that gender stereotypes still commonly exist among the general public toward female political leadership, according to the latest EOC's *Study on Public Attitudes towards Female Political Leadership* published in 2020.⁸ Among the 1,003 respondents of the *Study*, a significant proportion of them regarded men as more "visionary" (29.1%) and women as more "compassionate" (25.1%) and "collaborative and working out with compromises" (25.9%). Female interviewees of the *Study* also shared that they received unwanted public attention with a focus on their body shape and appearance.

12. A similar underrepresentation is also found in the private sector

⁷ Women's Commission (2020). *Hong Kong Women in Figures 2019*. Retrieved from <https://www.women.gov.hk/en/publications/statistics.html?year=2020>

⁸ SONG, J., et al. (2020). *A Study on Public Attitudes towards Female Political Leadership*. Retrieved from https://www.eoc.org.hk/EOC/upload/ResearchReport/20201007ResearchReport_MainReport_E.pdf

of Hong Kong. The latest figures show that there was only 13.7% of women on the Hang Seng Index Boards in the second quarter of 2020,⁹ which has remained at a similar level in the past two years.¹⁰ Hence, the EOC recommended that the Government should take all the appropriate measures to further enhance women’s participation in public life, such as through public education, promotion of family-friendly policies and provision of targeted training and mentorship programmes, etc.

Sexual harassment and sexuality education

13. Anti-sexual harassment has long been one of the top working priorities of the EOC, since the establishment of the Working Group on Anti-Sexual Harassment Campaign in 2012. In January 2019, the EOC published a large-scale research report entitled “*Break the Silence: Territory-wide Study on Sexual Harassment of University Students in Hong Kong*”.¹¹ The report found that near one-fourth of students (23%) participated in the study indicated that they were sexually harassed within 12 months before the survey was conducted. It also found that one of the root causes of sexual harassment of university students is misconceptions about sex and relationship which have taken shape in teenage years, and thus, a thorough reform of sex education is urgently needed.

14. In order to tackle the root causes of sexual harassment, the EOC believes a reform of the existing sex education curriculum is urgently needed. Therefore, the EOC would like to reiterate its recommendations raised in a previous submission to the Education Bureau of the HKSAR Government in 2019,¹² which recommended that the Government should

⁹ The Hang Seng Index is the most widely quoted gauge of the Hong Kong stock market, includes the largest and most liquid stocks listed on the Main Board of the Stock Exchange of Hong Kong.

¹⁰ Community Business (2020). *Women on Boards: Hong Kong 2020*. Retrieved from <https://www.communitybusiness.org/women-on-boards>

¹¹ Full text of the report:

https://www.eoc.org.hk/eoc/Upload/ResearchReport/SH2018/ENG/SH%20University%20Report_ENG_Full%20Report.pdf

¹² Equal Opportunities Commission (2019). *Submission to the Task Force on Review of School Curriculum of the Education Bureau: Key issues and recommendations raised by participants of the Roundtable on Reforming Sexuality Education in Hong Kong*. Retrieved from <https://www.eoc.org.hk/eoc/upload/20191028115746386751.pdf>

consider 1) *building capacity of teachers, social workers and parents to teach sexuality education*; 2) *enhancing and structuralising teaching materials on sexuality education*; 3) *providing structuralised curriculum, recommended lesson hours and funding for sexuality education coordinator*; and 4) *reactivating and updating the 1997 Guidelines on Sex Education in Schools*.

Domestic violence against women

15. According to the statistics of the Social Welfare Department of the HKSAR Government, there were 2,920 new reported cases of spouse or cohabitant battering in 2019.¹³ Among those, 84.2% of victims were female and around 8 to 9% of victims were ethnic minorities (EMs). There was no breakdown indicating the percentage of victims who are persons with disabilities. All these indicated that there is a high incidence of domestic violence in the HKSAR.

16. In this regard, the EOC would like to urge the Government to ensure the provision of assistance and protection to victims, the criminal prosecution of perpetrators of such violence, and the sensitisation of society as a whole to this matter. These measures are more imperative than ever during the COVID-19 pandemic, as worldwide data showing that domestic violence flourished amid social distancing and lockdown measures in place which compelled people to spend considerably more time at home.¹⁴

17. In addition, the EOC recommends that the Government should collect and release data on domestic violence cases disaggregated by victim's disability status, in order to better understand the crux of the problem and tailor appropriate and effective solutions to protect women and girls with disabilities.

¹³ Social Welfare Department, HKSAR Government (2019). *Statistics on child abuse, battered spouse and sexual violence cases*. Retrieved from [https://www.swd.gov.hk/vs/stat/stat_en/201901-12/Statistics%20on%20CPR%20CISSCBSV%20\(Jan-Dec%202019\)%20\(EN\).pdf](https://www.swd.gov.hk/vs/stat/stat_en/201901-12/Statistics%20on%20CPR%20CISSCBSV%20(Jan-Dec%202019)%20(EN).pdf)

¹⁴ Taub, A. (2020). A New Covid-19 Crisis: Domestic Abuse Rises Worldwide. *The New York Times*. Retrieved from <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>

18. For the issues of domestic violence against EMs, the EOC would like to reiterate its submission made for a LegCo's hearing in 2018,¹⁵ which recommended that the Government should make an extra effort to promote extensively all the available legal and support services for victims of domestic violence among the EM community, and recruit more EM-language-speaking social workers and counselling professions to meet the increasing service need for EM victims of domestic violence.

Article 8: No slavery or servitude; no forced or compulsory labour

Discrimination and abuses countered by foreign domestic workers

19. The predicament faced by foreign domestic workers (FDWs) in Hong Kong has been a serious concern raised by various stakeholders and civil society organisations from time to time, and the latest COVID-19 pandemic would only aggravate the situation.

20. For example, a concern group of domestic workers told the EOC in a meeting that some of its FDW members faced unfair and discriminatory treatment during the pandemic, such as being dismissed even after completing quarantine and was declared virus free, or compelled by the employers to stay at home during statutory rest days and were requested to do additional household chores.

21. On another note, the Government's "two-week rule" (whereby FDWs have to leave Hong Kong within two weeks upon termination of contract) and the compulsory live-in requirement make FDWs particularly vulnerable to deal with situations like abuse, exploitation and sexual harassment. Such policies created immense hurdles for FDWs to seek help while facing those situations, at the same time imposed an onerous burden on them, if they decided to report the perpetrators who are also their employers.

¹⁵ Equal Opportunities Commission (2018). *Subcommittee on Rights of Ethnic Minorities Issues Relating to Ethnic Minority Women (including Poverty and Employment Issues)*. Retrieved from <https://www.eoc.org.hk/eoc/upload/201865142844277595.pdf>

22. While the main purpose of the two-week rule is for effective immigration control, this rule is currently relaxed in view of the current COVID-19 pandemic, which might affect the arrival and departure of FDWs from/to their place of origin. At the moment, the Immigration Department will flexibly consider applications from FDWs to extend their stay in Hong Kong for a maximum period of one month as visitors for the purpose of finding a new employer in Hong Kong if their existing contract is due to expire or is terminated on or before 31 December 2020.¹⁶ Therefore, the EOC urges the Government to consider relaxing or repealing the abovementioned rules and requirements, in order to safeguard the rights of FDWs and protect them from potential abuses. The Government should also strengthen measures to equip FDWs with information regarding legal protection against discrimination and harassment available to them.

Article 26: Right to equal protection before the law

Outlawing discrimination on the grounds of sexual orientation, gender identity and intersex status

23. There is a prolonged absence of legislation prohibiting discrimination on the grounds of sexual orientation, gender identity (SOGI) and intersex status. In addition, the emergence of various judicial review and court cases in the last few years highlighted the inadequacy of the existing legal framework in protecting the equal rights and opportunities of lesbian, gay, bisexual, transgender and intersex (LGBTI) people in different public domains.¹⁷

24. According to EOC's *Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status*

¹⁶ HKSAR Government (2020). *Measures to assist foreign domestic helpers and employers to cope with COVID-19 pandemic extended*. Retrieved from <https://www.info.gov.hk/gia/general/202009/30/P2020093000609.htm?fontSize=1>

¹⁷ *QT v Director of Immigration* [2018] HKCFA 28; *Leung Chun Kwong v Secretary for the Civil Service and Commissioner of Inland Revenue* [2019] HKCFA 19; *Infinger Nick v The Hong Kong Housing Authority* [2020] HKCFI 329; etc.

published in 2016,¹⁸ public opinion of Hong Kong has visibly shifted in favour of legislation against discrimination on the grounds of SOGI and intersex status. Over half (55.7%) of the survey respondents agreed with the option of enacting legislation—nearly doubled the comparable figure from a decade ago.¹⁹

25. Therefore, the EOC strongly recommended that the Government should embark on the necessary work, as early as possible, for introducing legislation to prohibit discrimination on the grounds of SOGI and intersex status, especially in key areas of public life, including education, employment, and provision of goods, services and facilities. On this ground, the EOC has released a commissioned report in 2019 which analysed 21 areas of Hong Kong law and identified differential treatment between opposite-sex marriages and other alternative relations, such as same-sex marriages and civil partnerships.²⁰ The EOC will continue to conduct legal research work in the abovementioned three key areas of public life.

26. Furthermore, the EOC believes that there should be comprehensive gender recognition legislation to address the predicament faced by transgender people under the existing legal framework, as underlined in the landmark case of *W v Registrar of Marriages* ruled by the Court of Final Appeal in 2013.²¹ As a statutory organisation tasked with promoting equal opportunities, the EOC is concerned that the long-overdue legal recognition for transgender persons could cause them distress, stigmatisation, discrimination, and even harassment. The EOC, thus, urges the Government to introduce a comprehensive Gender Recognition Ordinance, which devises a gender recognition system in Hong Kong that safeguards transgender persons' rights.

¹⁸ Suen, Y.T., *et al.* (2016). *Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status*. Retrieved from <http://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

¹⁹ According to The Chinese University of Hong Kong's latest study published in 2020, the figure of people agreed with legislation has increased to 60%: https://7bb73318-120e-454d-84c6-9da78469b28b.filesusr.com/ugd/c27b9b_3a3de20a3fba492b974e883d8a09d3aa.pdf

²⁰ Allen & Overy (2019). *The Recognition and Treatment of Relationships under Hong Kong Law*. Retrieved from <https://www.eoc.org.hk/EOC/upload/ResearchReport/2019626142922933384.PDF>

²¹ [2013] HKCFA 39

Outlawing discrimination on the ground of age

27. Currently, there is no legal protection against age discrimination in the HKSAR, whether it relates to the elderly or young people.

28. While the Labour Department of the HKSAR Government issued a non-binding *Practical Guidelines for Employers on Eliminating Age Discrimination in Employment* in 2006,²² the phenomenon of age discrimination, especially in workplaces, is still very prevalent. According to EOC's *Exploratory Study on Age Discrimination in Employment* released in January 2016,²³ over one-third of employed respondents indicated they had experienced age discrimination in the five years prior to the Study. It also found that a clear majority of employed respondents (70%) across all age groups and educational levels agreed that there was a need for such legislation.

29. Therefore, the EOC would like to reiterate the recommendation made in 2016's Study regarding age discrimination, which the Government should start:

“...conducting large scale prevalence survey of age discrimination regularly to collect public views on the issue. The last time that the Government conducted similar survey was more than 10 years ago. Regular surveys allows the Government to monitor closely the prevalence and trend of age discrimination and ensures sufficient public discussion of the related issues, so as to start discussion of legislating against age discrimination as soon as possible.”²⁴

²² Labour Department, HKSAR Government (2006). *Practical Guidelines for Employers on Eliminating Age Discrimination in Employment*. Retrieved from <https://www.labour.gov.hk/eng/plan/pdf/eade/Employers/PracticalGuidelines.pdf>

²³ Equal Opportunities Commission (2016). *Exploratory Study on Age Discrimination in Employment*. Retrieved from <http://www.eoc.org.hk/eoc/upload/ResearchReport/2016161633111925251.pdf>

²⁴ *Ibid.*

Article 27: Rights of ethnic minorities

Systemic barriers encountered by ethnic minorities in education

30. Paragraph 22 of the Concluding Observations noted EOC's report in 2012 which found that non-Chinese speaking EMs faced discrimination and prejudice in employment due to the unnecessary language requirement imposed upon them.²⁵ The Human Rights Committee also urged the Government, in collaboration with the EOC, to improve the quality of Chinese language education for EMs and non-Chinese speaking students with an immigrant background.²⁶

31. In this connection, the EOC set up a Working Group on Education for EMs to study the issues and published the *Closing the Gap* Working Group Report in 2019, detailing a long list of recommendations with the following top three priority areas:²⁷

- a) *Plug the gaps in the current Chinese-as-a-second-language learning system to provide a complete curriculum for non-Chinese speaking students;*
- b) *Strengthen teacher training to fully equip teachers with both skillset and mindset in teaching second language learners; and*
- c) *Revisit the Chinese language examination options for second language learners and structure these options into a qualification ladder and pathway.*

32. Furthermore, another EOC's 2017 Study found that discrimination against EM students actually started at the early stage of kindergarten.²⁸ The Study found that one in four (26.3%) kindergartens

²⁵ United Nations Human Rights Committee (2013). *Concluding Observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session*, CCPR/C/CHN-HKG/CO/3. Retrieved from https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/Advance_Version_2013_ICCPR_e.pdf

²⁶ *Ibid.*

²⁷ Equal Opportunities Commission (2019). *Closing the Gap: Report of the Working Group on Education for Ethnic Minorities*. Retrieved from https://www.eoc.org.hk/EOC/upload/ResearchReport/Closing_the_Gap_Full_Report.pdf

²⁸ Equal Opportunities Commission (2017). *Survey on Kindergarten Admission Policies and Attitudes towards Non-Chinese Applicants*. Retrieved from

gave rejecting, discouraging or highly ambiguous responses when asked about admitting non-Chinese speaking students. The Study also indicated that a considerable number of kindergartens and schools were not adequately equipped to cater to the needs of EM students.

33. The EOC, therefore, urges the Government to implement the recommendations raised by the EOC in the abovementioned reports and studies, as well as to facilitate the smooth integration of non-Chinese speaking students into the education system, and ensure that children of all ethnicities enjoy their right to inclusive and Chinese-language education.

Closing the gaps in the RDO

34. The EOC has raised its concern regarding the key gaps in the RDO, in particular, its inapplicability to Government's exercise of its public functions and powers. It is inconsistent with the protection offered in the other three Discrimination Ordinances which provide explicit coverage for all Government's performance of its functions or exercise of its powers.²⁹ The EOC urges the Government to vigorously explore measures with a view to closing such gaps.

35. Furthermore, as mentioned in the DLR, the EOC recommended that the Government should conduct a public consultation and then introduce protection from discrimination on grounds of nationality and citizenship under the RDO, as currently, Section 8(3)(b) specifically excludes from the protection of the RDO whether or not a person is a permanent resident. The abovementioned consultation, thus, should consider relevant issues including how nationality and citizenship should be defined, and which exceptions relating to nationality and citizenship may be appropriate to be retained, repealed or introduced.³⁰

<https://www.eoc.org.hk/eoc/upload/ResearchReport/201843152327916041.pdf>

²⁹ *Sex Discrimination Ordinance*, s 38(1); *Disability Discrimination Ordinance*, s 21(1); *Family Status Discrimination Ordinance* s 17(1).

³⁰ See Recommendation 24 of the DLR:

<https://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf>

CONCLUSIONS

36. To conclude, as an independent statutory body aims at creating a pluralistic and inclusive society free of discrimination and with no barriers to equal opportunities, the EOC has applied a holistic “three-pronged approach” to its work over the years, encompassing law enforcement, prevention and education. The EOC, thus, will continue to remain vigilant and diligent to prevent discrimination in the HKSAR, such as monitoring and submitting comments regarding the implementation of international human rights treaties in the territory.

Equal Opportunities Commission
November 2020