

An outline of the topics to be covered in the Third Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child

Legislative Council Panel on Constitutional Affairs

Meeting on 15 March 2021

- Submission from the Equal Opportunities Commission –

Background

1. The Equal Opportunities Commission (“EOC”) is responsible for administering four anti-discrimination ordinances: the Sex Discrimination Ordinance (“SDO”), the Disability Discrimination Ordinance (“DDO”), the Family Status Discrimination Ordinance (“FSDO”) and the Race Discrimination Ordinance (“RDO”). Under these ordinances, the EOC is tasked with the responsibility of eliminating discrimination on the grounds of race, sex, marital status, pregnancy, disability and family status, eliminating sexual harassment, racial and disability harassment and vilification, and promoting equality in opportunities between men and women, between persons with disabilities and without disabilities, persons with family status and without family status and persons with different racial background.
2. The EOC expresses concerns regarding the rights of child, especially in the areas related to education and sexual harassment, to the United Nations, the Legislative Council and the relevant government bureaux and departments from time to time.

Progressive realization of the rights recognized in the Convention

3. Article 2 of the Convention requires that the Government shall respect and ensure the rights set forth in the Convention to each child within their

jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

4. With the latest amendments in Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020, protection for young people is further extended to sexual, racial and disability harassment in common workplaces where they are engaged as volunteers and interns under the SDO, RDO and DDO. The EOC is also pleased to see that the rights of the child is further enhanced with the enactment of legal provisions against breastfeeding discrimination and harassment, which will come into force in June 2021.

Educational support measures for children with special educational needs (SEN) during COVID-19 (Articles 2, 3, 12 and 23 of the Convention)

5. The number of children with SEN increased by 34.1% from 33,830 in 2013/14 to 45,360 in 2017/18 school year. Students with SEN represented around 7.8% and 8.6% of all primary and secondary school students in public sector mainstream schools respectively.¹
6. In the light of the growing number of SEN students, coupled with the challenges for teaching professionals in online learning presented by the COVID-19, the HKSAR Government should consider reminding schools to adopt flexible learning methods and maintain social support for students with SEN. For instance, ensuring periodic one-to-one engagement for students with Autism or Attention Deficit Hyperactivity Disorder, either in person or by telephone, to adjust learning support where appropriate. Students with SEN, like other students, should be encouraged to seek virtual peer support to reduce social isolation.

¹ Legislative Council, Research Office. *Statistical Highlights*. 19 February 2019
<https://www.legco.gov.hk/research-publications/english/1819issh22-special-educational-needs-20190219-e.pdf>

Children’s mental health and related fatality issues (Articles 6 and 24 of the Convention)

7. In the Fourth Report of the Child Fatality Review Panel, an analysis of the child death cases in 2014 and 2015 found that 18 children committed suicide out of the deaths of 166 children aged below 18. 13 jumped from height to their death, with the youngest one aged 11. “Diagnosed/suspected mental illness” was the most frequent circumstance for death by suicide, followed by “Adaptation to Form One schooling”, “Parent-Child Conflict” and “Relationship Break-Up”.²
8. The EOC is pleased to see that “one school social worker for each school” policy has been implemented with additional resources in public sector primary schools in 2018/2019, and that “two school social workers for each school” has been implemented from 2019/20 in some 460 secondary schools. The EOC also notes that in 2019/20, the 24 Integrated Community Centres for Mental Wellness (ICCMW) will extend support services to cover all secondary school students with mental health problems. As a staunch advocate for community-based support, the EOC also recommends the HKSAR Government to review the support services provided to teenagers in ICCMW, and introduce support to cover primary school students where appropriate. Children’s helplines can also be established to gauge mental health problems faced by children, especially during COVID-19.

Need for a centralized database for children under 18, especially those with disabilities, for designing policies and programmes to implement effectively various areas under the Convention (Articles 2, 3, 6, 23 – 28, 30 of the Convention)

9. While the HKSAR Government has stepped up in cross-bureau services by regularizing the On-site Pre-school Rehabilitation Services (OPRS) in 2018 under the approach of “Early Identification and Immediate Intervention”, and increasing service places to 10,000 for children with special educational needs (“SEN”)³, the EOC expresses great concerns that data concerning children is

² The HKSAR Government Press Release: Fourth Report of Child Fatality Review Panel released <https://www.info.gov.hk/gia/general/201905/31/P2019053100380.htm>

³ 2021-22 Budget <https://www.budget.gov.hk/2021/eng/el.html>

still scattered among different departments and bureaux, such as Census and Statistics Department, Social Welfare Department, Department of Health, Hospital Authority and Education Bureau, etc.

10. Support for children is investment for our future. A systematic and centralized database about children, with particular attention to children with disabilities, is still not in place as recommended in paragraphs 17, 18 and 61 of the Concluding Observations by the UN Committee on the Rights of the Child from the previous report. This is a paramount objective in order to design strategic policies and deploy resources from kindergarten to tertiary education, child health care, mental health support services, and other types of social services; as well as anticipate future demands in different areas of services to fulfil the obligations under the Convention.

Timetable for introduction of sexual offences involving children and persons with mental impairment (Articles 24 and 34 of the Convention)

11. The HKSAR Government has indicated that it intends to introduce a Bill to implement new offences relating to voyeurism, intimate prying, non-consensual photography of intimate parts and related offences in the second half of 2021 and proposed to include two offences, voyeurism and non-consensual photography of intimate parts, in the Specified List of Sexual Offences under the Sexual Conviction Record Check Scheme.
12. The EOC believes that there should be a new offence to protect children between the ages of 16 and 17 from sexual abuse by persons in positions of trust. Also, penalties for sexual offences involving children and persons with disabilities where it involves a position of trust should be higher than for an equivalent offence involving adults or persons without disabilities, as children and persons with disabilities are more vulnerable to sexual abuse.⁴ The EOC suggests the Government to set out a clear timetable to introduce other proposed sexual offences stated in Law Reform Commission's Review of Substantive Sexual Offences to criminalize all forms of sexual assault, exploitation and

⁴ Equal Opportunities Commission, *Submission to the Law Reform Commission's Consultation on Sentencing and related matters in the review of sexual offences*, February 2021
<https://www.eoc.org.hk/eoc/upload/202128191246906356.pdf>

abuse of children with or without mental impairment⁵. Setting a clear timetable will be in line with the Convention with regard to introducing legislative measures to appropriately protect children and persons with disabilities from sexual violence.

Review the nature and the scope of Sexual Conviction Record Check (“SCRC”) Scheme for sufficient child protection (Articles 24 and 34 of the Convention)

13. The Law Reform Commission’s proposal for SCRC Scheme was intended to be an interim administrative measure in 2011. The EOC is of the view that a mandatory legislative scheme would offer better protection for children or mentally incapacitated persons. In other jurisdictions with similar legal systems such as the United Kingdom and Australia, the systems for checks of employees working with vulnerable groups such as children and persons with disabilities are predominately mandatory legislative schemes.
14. While starting from April 2015, the Police has widened SCRC's coverage to those employees seeking contract renewal in private tutorial centres and institutions offering interest classes⁶, volunteers and private tutors are not covered under the existing SCRC Scheme⁷. The EOC recommends the Government, as a first step of review, to consider extension of coverage to private tutors and coaches who may have regular and unmonitored contact with children, whether these self-employed persons work at home or other premises. The EOC believes there is no logical reason why private tutors and coaches should be excluded, when their nature of work is similar to those at private tutorial centres and institutions offering interest classes.

⁵ Law Reform Commission, *Review of substantive sexual offences*, December 2019
https://www.hkreform.gov.hk/en/docs/rsubstantive_sexual_offences_e.pdf

⁶ Legislative Council, *Disclosure of sexual offence records for child protection* (2016-17)
<https://www.legco.gov.hk/research-publications/english/essentials-1617ise14-disclosure-of-sexual-offence-records-for-child-protection.htm>

⁷ Hong Kong Police Force https://www.police.gov.hk/ppp_en/11_useful_info/scrc_faq.html

Education for ethnic minority children (Articles 28 – 31 of the Convention)

15. While the EOC is glad to see that some new measures announced in 2019 Policy Address on enhancing the funding model for schools, introducing longitudinal studies on non-Chinese speaking (NCS) students' progress and strengthening parent support, the EOC urges the HKSAR Government to develop a full-fledged Chinese-as-a-second-language curriculum complete with specific pedagogy, corresponding teaching tools and textbooks, systematic teacher training and assessment options in public examinations for second language learners, etc., which were inadequate in the current “Chinese Language Curriculum Second Language Learning Framework”.⁸

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⁸ Equal Opportunities Commission *Closing the Gap: Report of the Working Group on Education for Ethnic Minorities* (2019) https://www.eoc.org.hk/EOC/upload/ResearchReport/Closing_the_Gap_Full_Report.pdf