

**Equal Opportunities Commission's Comments on the
Report on the Hong Kong Special Administrative Region on the
International Covenant on Economic, Social and Cultural Rights
(ICESCR)**

**prepared for LegCo Panel on Home Affairs
Meeting on 26 February 2001**

The Equal Opportunities Commission (EOC) was established by statute in May 1996 and is responsible for administering three anti-discrimination laws in Hong Kong: the Sex Discrimination Ordinance, Cap. 480 (SDO); the Disability Discrimination Ordinance, Cap. 487 (DDO); and the Family Status Discrimination Ordinance, Cap. 527 (FSDO).

2. The EOC is charged with the responsibility of eliminating discrimination on the grounds of sex, marital status, pregnancy, family status and disability, eliminating sexual harassment and disability harassment and vilification, and promoting equality between men and women, between persons with disabilities and without disabilities, and persons with family status and without family status.

3. By way of statistical background, there has been an increase of 37.9% in complaints caseload and an increase of 75% in legal assistance applications in the year 2000.

4. Complaints received under the Disability Discrimination Ordinance (DDO) which require investigation and conciliation increased significantly to 339 in 2000, compared to 192 in the previous year, i.e. an increase of 76.6%. Complaints received under the Sex Discrimination Ordinance (SDO) increased to 323 in 2000, compared to 213, which is an increase of 51.6%

5. Complaint statistics on mental illness in 2000 has doubled that of 1999. There was a 41% increase in sexual harassment complaints when compared with the previous year. An overwhelming majority of these cases occur in the area of employment.

6. The EOC has not finished its Report on the ICESCR. However, the EOC wishes to make a number of observations at this stage.

Article 2. State Parties to Take Steps to Achieve Progressively the Full Realization of the Rights Recognized in the Covenant.

7. The EOC notes the concerns expressed by the United Nations Committee on Economic, Social and Cultural Rights¹ (the Committee) that the provisions of the Covenant continue to be excluded from domestic law.

8. Whilst persons may invoke the provisions of the SDO, DDO and FSDO where discrimination on the given grounds has occurred, in practice it is difficult for individuals without funds to seek redress. Since 20 December 1996, the EOC has received a total of 742 complaints under the SDO and 952 complaints under the DDO. Since 21 November 1997, the EOC has received 63 complaints under the FSDO. Of these, 337 complaints under the SDO, 364 complaints under the DDO and 16 complaints under the FSDO have proceeded to conciliation. The success rate of conciliation is approximately 60% to 65%.

9. Approximately 33% of complainants whose complaints are not successfully conciliated apply to the EOC for legal assistance. Yet, although the EOC has a wide discretion as to which cases it should assist and the type of assistance it may provide, the EOC is not funded specifically for legal actions and so must use its own monies from its operating budget to strategically assist those cases which have impact on a large number of persons in Hong Kong or which involve questions of principle or questions of law that need to be clarified. Accordingly, many meritorious cases cannot be assisted by the EOC and complainants cannot pursue their rights by taking civil action in court.

10. Unlike cases taken under the Hong Kong Bill of Rights Ordinance, Cap. 383 (BORO), where the Legal Aid Department may

¹ Concluding Observations on the third Periodic Report of the U.K. in December 1996.

waive the means test for applicants wishing to bring proceedings under the BORO, the present criteria by which the Legal Aid Department funds civil cases effectively prevents most complainants from obtaining legal aid to seek redress for discriminatory acts committed against them.

11. The EOC also notes that Article 2(2) of the Covenant refers specifically to discrimination on the ground of sex, race, colour, language, religion, political or other opinion, national or social origin, property birth or other status. There are no domestic laws in Hong Kong dealing with discrimination on the ground of race / ethnicity / national or social origin, nor age or sexual orientation (“other status”).

12. The BORO only binds the Government and public authorities in respect of discriminatory acts attributed on the grounds of race, age, sexual orientation and the like. Discriminatory acts of such nature occurring in the private sector or between individuals cannot be redressed legally.

13. Although the Government has conducted some surveys on race, age and sexual orientation discrimination, it contends that any discrimination on these grounds is not serious and believes that public attitudes can best be changed through public education. The true nature and extent of the problem cannot be accurately assessed based on these surveys. Perception and experience surveys could provide more valuable assistance. Furthermore, EOC experience in the area of gender and disability discrimination shows that both public education *and* legislation are required in order to eliminate discrimination.

14. The number of complaints and inquiries received by the EOC in respect of discriminatory acts outside its specific remit (e.g.: race, age and sexual orientation) has been increasing in the past four years. It is believed that the numbers are far from reflecting the true state of the problem, as people have given up coming to the EOC as they realize that such complaints are outside the EOC’s jurisdiction.

Article 6: Choice of Occupation and Labour Rights

15. In September 2000 judgment was delivered in the District Court in the cases of K & Ors v Secretary for Justice, in which the Court found that the recruitment policies of the Fire Services Department and the Customs and Excise Department were unlawfully discriminatory under the DDO because they excluded from employment persons with family members with mental illness.

16. Although all three Plaintiffs were young men were of excellent health and had passed all the recruitment tests, they were denied employment with these disciplinary services because each one had a parent with schizophrenia. Disability discrimination on the ground of genetic history poses an area of extreme concern for the EOC, and the EOC funded the litigation of these cases on behalf of the Plaintiffs.

17. Notwithstanding the decision of the Court in these three cases, the Government is arguing the same points in a fourth case involving a young man who was denied employment in the Police Force because he has a sister with schizophrenia.

18. The EOC also notes that, in its Concluding Observations, the Committee expressed its concern that the SDO did not protect those individuals whose right to work was violated by inappropriate account being taken of their private sex lives. Similarly, the Committee expressed particular concern about the number of women forced out of the labour market, particularly older women and older workers generally. Sexual orientation discrimination and age discrimination have not been addressed by the Government through legislative means, and the EOC doubts the effectiveness of public education alone for employers and employees.

Article 7: Right to Enjoy Just and Favourable Conditions of Work

19. In May 2000 the EOC convened a task force to look into the issue of equal pay for work of equal value in Hong Kong. The task force

will look at ways of promoting, and recommend ways to progressively implement, the principle. The task force hopes to divide its work into three phases. The first phase is to look at the status in the public sector, as the Government is bound to implement equal pay for work of equal value under CEDAW. The second and third phases will focus on the private sector.

20. The EOC is also concerned about the exclusion of domestic helpers from the Mandatory Provident Fund Scheme, which came into operation on 1 December 2000. One exemption in the legislation relates to domestic employees, but “domestic employees” is confined only to employees whose contract of employment is wholly or substantially for the provision of domestic services **in the residential premises of the employer.**² Chauffeurs, gardeners and the like (who are predominantly male) would therefore seem to be covered by this legislation, but maids, cooks, cleaners (who are predominantly female) would seem to be excluded.

21. The EOC is concerned that the employment rate of people with disabilities continues to be low. In a survey commissioned by the EOC, it was found that in 1997 about a quarter of people with disabilities were without a job. Complaints received under the DDO increased by 76.5% in 2000. A very significant portion of the increase was accounted for by the increase in dismissal complaints.

Article 9: Right to Social Security

22. The EOC notes that, whilst retirement schemes such as the Mandatory Provident Fund Scheme will provide for the retirement of employed persons, women who are at home, the old and the disabled do not have similar protection.

² Part 2, Schedule 1, Mandatory Provident Fund Schemes Ordinance, Cap. 485.

Article 13: Right to Education

23. The Government has stated in its report that access to education in Hong Kong is not constrained on grounds of race, religion, sex, age or language. Yet, children of certain ethnic minorities, such as the Nepalese, are unable to commence their primary school education because of language difficulties. Although this is not an issue directly linked to the EOC's remit, the EOC is concerned at the adverse effect such lack of schooling has on young girls from ethnic minority groups.³

24. In particular, the EOC is concerned at the attitude of the Government in respect of girls' education generally and points to the specific problem with the Secondary School Places Allocation System (SSPA). In its Formal Investigation Report published in August 1999, the EOC recommended the removal of the discriminatory elements of the SSPA. The Education Department, however, maintains that the policy is necessary to ensure equal opportunities for boys, who would otherwise be left behind by girls who do much better at school.

25. The Government's refusal to remove the discriminatory elements of the SSPA has led to the EOC taking judicial review proceedings against the Government.

Equal Opportunities Commission

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Also relevant to Article 14: Free and Compulsory Primary Education.