

**LegCo Panel on Home Affairs**  
**Special Meeting on 23.9.99**

**HKSAR Report on ICCPR**

**Submission from the Equal Opportunities Commission**

**Purpose**

The purpose of this paper is to provide supplementary information in relation to the Report of the HKSAR on the International Covenant on Civil and Political Rights [hereafter refers to "the Report"] with particular reference to Article 3 on equal rights of men and women and Article 26 on right to equal protection before the law. Opportunity is taken to give an update on the work of the Equal Opportunities Commission (EOC).

**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), equal rights of women in politics and in education, and so on.

3. Since the preparation of the Report, a number of events relating to the subjects discussed have taken place. The EOC has played an active role in these events for the purposes of promoting equal opportunities.

CEDAW (para. 59 - 63)

4. 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 government to set up a central mechanism to implement and monitor the HKSAR's obligations under CEDAW. The 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 in 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.

5. 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)

6. The EOC has completed a review of the SDO and the Disability Discrimination Ordinance (DDO) and submitted its recommendations to the government in February 1999. The proposal for legislative amendments covers a wide range of areas. In particular, the key areas are:

- the EOC should have the power to take legal action for discriminatory 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 for or stand for election should be included.

7. In order to assure the protection of equal rights of men and women, the EOC believes that it is important to have the power to take legal action on discriminatory 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 discriminatory policies and practices of public bodies or a particular industry. It would help stem 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.

Women in rural elections (para. 72 - 73)

8. Since the preparation of the Report, there have been two judicial reviews on rural elections. The Applicants in both cases have relied, inter alia, on the provisions of the SDO, namely, s.5 and s.35(5) of the SDO. 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 s.35 of the SDO.

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 applied to declare that the election was null and void. The court ruled that the 7-year residence

requirement applicable to married indigenous villager women (while not applicable to men) was discriminatory under s.5 of the SDO and the procedure for the election offends s.35(5) of the SDO.

12. It is anticipated that at least one of the Respondents in the second judicial review will appeal against the court's decision. If so, 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 men and women.

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

13. 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.

14. 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.

15. With regard to equality in 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 at schools and promote equal rights in education. A workshop for school principals is scheduled for October 1999.

#### Protection of pregnant employees (para. 83)

16. 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 take X-ray 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, pregnancy discrimination made up 25 per cent of the cases.

17. This is an area of discrimination in employment 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.

**Article 26: right to equal protection before the law**

(para. 481 - 496)

18. 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 as well as the Labour Department have respective roles to play in eliminating discrimination.

19. 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)**

20. 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.<sup>1</sup>

21. 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 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.

22. 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 promote good practices in educational establishments which will help eliminate disability discrimination and harassment.

### Family status discrimination (para. 496)

23. The Family Status Discrimination Ordinance came into force in November 1997. Notwithstanding active promotion of the concept and understanding of the law by the EOC, the number of complaints remained low. This, however, is not inconsistent with the experience of overseas

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Footnote <sup>1</sup>:

<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]

jurisdictions such as Australia and New Zealand where similar legislation is in place.

Ombudsman's jurisdiction (para. 36)

24. As a concluding comment, we wish to make clear that the Equal Opportunities Commission would like to be subject to the Ombudsman's jurisdiction. Under the anti-discrimination ordinances, the EOC is empowered to make certain decisions, for instance, in deciding not to continue with investigation of a discrimination complaint or in deciding not to grant legal assistance. While these decisions can be judicially reviewed, we believe that having the EOC under the Ombudsman's jurisdiction would provide an aggrieved party with additional means of redress.

25. We have asked the government for such an arrangement to be realised as soon as practicable.

**Annex 4: EOC's major work programmes**

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

Equal Opportunities Commission  
September 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

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