

**Second Report to be prepared by the Hong Kong
Special Administrative Region under the
International Covenant on Economic, Social and Cultural Rights**

– Submission from the Equal Opportunities Commission –

Introduction

In November 2002, the Home Affairs Bureau (*HAB*) issued for public consultation a draft outline of the second report of Hong Kong Special Administrative Region (*HKSAR*) under the International Covenant on Economic, Social and Cultural Rights (*the Covenant*). The outline contains a list of topics to be covered in the report and does not provide information on the progress made in implementing the Covenant since the first report of the Government. In the absence of such information, it is difficult to gauge whether the Government has addressed all the concerns raised by the Equal Opportunities Commission (*EOC*) in its first alternative report¹ (see Annex I). Hence, this paper reiterates various prevalent issues raised by the EOC in that report as well as new concerns, and a summary of the response of the EOC to the aforementioned consultation (see Annex II).

Public Consultation

2. The EOC is aware that the HAB will not be consulting the public on the draft second report. The EOC believes that consultation would be more focused if the draft second report is released before it is finalised and hopes the HAB would reconsider its decision.

¹ The Equal Opportunities Commission submitted an alternative report under the Covenant to the Committee on Economic, Social and Cultural Rights in 2001.

Annual Progress Reports on the Covenant

3. In respect of reporting under international instruments, the current practice of the Government is to submit reports only according to the reporting cycle for each instrument. The EOC proposes that in addition to submissions to the Committee on Economic, Social and Cultural Rights (*the Committee*), the Government systematically monitors the measures it has adopted to implement the rights under the Covenant and reports on its progress annually to the Legislative Council, non-governmental organisations (NGOs) and the wider public.

NGOs' Participation

4. NGOs are social partners of the Government and represent an important voice from the community. The Government should encourage and facilitate NGOs' participation in the monitoring and implementation of the Covenant.

Exclusion from Domestic Law (Article 2 of Covenant)

5. The EOC shares the concern repeatedly expressed by the Committee that the provisions of the Covenant are excluded from domestic law in Hong Kong.² This remains the status quo and it is unclear whether and how the Government intends to address this concern.

Legal Aid for Discrimination Cases (Article 2 of Covenant)

6. In cases taken under the Hong Kong Bill of Rights Ordinance, the Legal Aid Department may waive the means test for applicants. The EOC, again, urges the Government to expand access to legal representation for persons seeking legal redress for actions under the Sex Discrimination Ordinance (*SDO*), Disability Discrimination Ordinance (*DDO*) and Family Status Discrimination Ordinance (*FSDO*) and to facilitate their access to the courts.

² The Committee had expressed its concern in its concluding observations on the third Periodic Report of the U.K. in December 1996 and again on the Initial Report of China in May 2001.

Anti-discrimination Laws to cover Race, Age and Sexual Orientation (Article 2 of Covenant)

7. To date, there is still no law in Hong Kong that deals with discrimination on the ground of race, age or sexual orientation. The Government contended that past surveys on race, age and sexual orientation discrimination revealed that discrimination on these grounds was not serious and public attitudes could best be changed through public education. The EOC believes that the true nature and extent of the problem cannot be accurately assessed based on surveys alone. The EOC therefore reiterates its proposal to the Government to introduce anti-discrimination legislation to cover discrimination on the grounds of race, age and sexual orientation.

Choice of Occupation and Labour Rights (Article 6 of Covenant)

8. The EOC notes that the Committee's Concluding Observations in 1996 had already expressed concerns that the SDO did not protect those individuals whose right to work was violated by inappropriate account being taken of their private sex lives, and the number of women forced out of the labour market, particularly older women and older workers. The EOC reiterates its proposal to the Government legislate against discrimination on the grounds of age and sexual orientation.

Equal Pay for Work of Equal Value (Article 7 of Covenant)

9. In 2000, the EOC received special funding from the Government to establish a Task Force to study the status of equal pay for work of equal value (*EPEV*) and to make recommendations on progressive implementation of *EPEV*. The Task Force subsequently recommended a study on *EPEV* be undertaken. Phase I of the study is completed and the EOC is in the process of finalising its recommendations.

Exclusion of Domestic Helpers from Mandatory Provident Fund Scheme (Article 7 of Covenant)

10. The EOC remains concerned about the exclusion of domestic helpers from the Mandatory Provident Fund Scheme due to an exemption in the legislation on domestic employees. The EOC urges the Government to review the definition of “domestic employees”, which 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.**³

Two-week Rule Binding on Domestic Helpers (Article 7 of Covenant)

11. The EOC remains concerned with the imposition of the two-week rule which requires migrant domestic helpers to leave the HKSAR within two weeks of termination of contract or the remainder of the permitted limit of stay, whichever is the shorter. Furthermore, they are not allowed to work if they leave their employment because of abuse and are awaiting legal redress. The EOC reiterates its proposal to the Government to review the two-week rule binding on domestic helpers.

Retirement Protection (Article 9 of Covenant)

12. Vulnerable groups in the community, such as women homemakers, new arrival women and PWDs are likely to face financial problems in old age because they tend to have lower lifetime earnings and tend to reach retirement with smaller pensions and fewer assets.

13. The existing Mandatory Provident Fund Scheme is contribution-based and benefits only employed persons. However, even for women and PWDs who are in gainful employment, they may still be unable to work towards a reasonable pension because their labour force participation rates and earnings are comparatively lower; gender pay gap widens with age; and many women and PWD are in part-time or casual employment.

³ Part 2, Schedule 1, Mandatory Provident Fund Schemes Ordinance, Cap. 485.

14. The EOC urges the Government to review current retirement protection for vulnerable groups and take measures to address this issue.

Small House Policy (Article 11 of Covenant)

15. The small house policy was introduced to improve the housing situation that existed in the New Territories more than 20 years ago. It entitles male indigenous villagers in the New Territories to apply to the Government to build a three-storey village style house as residence. The policy excludes both women and non-indigenous persons and is exempted in the SDO (*SDO*).⁴

16. In 1997, the Government began a review of the policy that was projected to end in 1998. In November 1999, the Government informed the United Nations Committee on Civil and Political Rights that it was still reviewing the policy. Thereafter, the Government gave no further information on the progress and the result of the review until recently when it announced a new review of the policy. The reason for a new review is unclear but irrespective of the outcome, the EOC reiterates its view that the policy exemption in the SDO should be repealed.

Health Data (Article 12 of Covenant)

17. The EOC proposes that the Government should collect comprehensive data on all disabilities in order to examine all disabilities and their origins; assess and monitor disability prevalence; analyse the variables on illness, which include the use of medical services; and analyse life and health insurance coverage.

18. These health data will not only be important for health care but also for insurance purposes. At present, the lack of concrete actuarial data on some disabilities results in rejection of applications to purchase insurance products. This has cost implication for public health care in that individuals who have no insurance coverage and cannot afford private health care will be forced to use public health care.

⁴ Item 2, Part 2 in Schedule 5 of the Sex Discrimination Ordinance.

Mental Health Care Services (Article 12 of Covenant)

19. In 2002, the EOC conducted a joint study on the perceptions and experiences of discrimination of 757 persons with mental illness (*the Study*).⁵ A report on the findings of this study together with recommendations will soon be released to the public.

20. One of the key recommendations in the Study refers to the establishment of a Mental Health Council by the Government. According to government estimate, mental illness can affect one in five of the population,⁶ indicating the importance of mental health care services. Yet the success of these services hinges on many factors, such as public acceptance, effective health service, availability of effective medication, accessibility to support and legal services, and provision of occupational, vocational and rehabilitation services. However, the experiences of the respondents in the Study reveal that mental health care services in Hong Kong are fragmented and not always to the benefit of persons with mental illness.

21. To maximise access to multidisciplinary services for persons with mental illness, the EOC believes that a central body is needed to bring together all the professionals and agencies to offer comprehensive and person-focused service to persons with mental illness. Accordingly, the proposed Mental Health Council needs to be a multidisciplinary and cross sectorial body to coordinate policy formulation, programme delivery, research and public education in the area of mental health, and to safeguard the rights of persons with mental illness.

22. Medication also featured prominently in the Study with Respondents reporting that while psychiatric drugs generally have their side effects, the conventional psychiatric drugs cause greater disruption to daily activities. Medication represents only a small part of the total treatment cost of serious illness. The greater acquisition cost of the new generation psychiatric drugs is more than compensated by the decrease in clinical care

⁵ A Study of Mental Health Service Users' Perception and Experience of Discrimination in Hong Kong was conducted jointly by the EOC, the Department of Psychiatry of The Chinese University of Hong Kong and the Department of Social Work of Baptist University.

⁶ Source: *Hong Kong Rehabilitation Programme Plan* (1998-99 to 2002-03), published by the Rehabilitation Division, Health and Welfare Bureau, August 1999.

(such as shorter duration of hospitalisation) and other indirect costs (such as unemployment benefits and longer rehabilitation process). More fundamentally, new drugs create fewer side effects rendering persons with mental illness less of a hostage to stigmatisation, which leads to concealment and non-treatment.

23. In the year 2001-2002, the Government provided additional funding to 2500 patients with new psychiatric drugs. The EOC proposes that the effectiveness of the scheme should be evaluated and made public.

Higher Prevalence Rate of Women with Mental Illness (Article 12 of Covenant)

24. Census data revealed that more women (55.1%) than men (44.9%) were reported to have a mental illness.⁷ The Study of the EOC on mental illness found that depression was more commonly reported by female respondents.⁸ This concurs with the World Health Organisation Report 2001, which points out that women were almost twice as likely to have depressive and anxiety disorders. Reasons for higher prevalence include, inter alia, the traditional role of women that exposes them to greater stresses and make them less able to change their stressful environment, and the high rate of domestic and sexual violence against women. In this regard, mental health service for women needs to be sensitive to the socio-economic context as well as the genetic and biological factors underpinning mental illnesses.

Integrated Education Scheme (Article 13 of Covenant)

25. The EOC believes that integrated education benefits students both with and without disabilities. Experience has shown that when children with and without disabilities learn together, they also learn from each other. They learn to respect, help, and socialise with each other, and the peer support produces a positive mutual learning environment. Apart from the

⁷ Census and Statistics Department, *Special Topics Report No. 28 – Persons with Disabilities and Chronic Illness*, August 2001, p.35.

⁸ See note 5.

educational values, this is a crucial step towards integration in the community.

26. Since the launch of the Integrated Education Scheme (the Scheme) in 1997 by the then Education Department, which emphasises a whole school approach, integrated education is becoming the norm, particularly after the EOC has issued the Code of Practice on Education under the DDO.⁹ The EOC is currently in the process of developing, in collaboration with the Education and Manpower Bureau (EMB), an e-training package for teachers on equal opportunities in the education field in relation to disability. The EOC has also been in regular contact with the EMB and the Hong Kong Examinations and Assessment Authority regarding the support that should be provided to students with disabilities.

27. The EOC proposes that the EMB should articulate its strategy on meeting the demands for integrated education in terms of school places, allocation of resources, teacher training, curriculum development and adaptations. To enhance the effectiveness of such a strategy, the EOC believes that key stakeholders, such as teachers and parents, should be consulted so that their needs, concerns and ideas can be taken into account.

Specific Learning Disability (Article 13 of Covenant)

28. It is estimated that about 10% of children in Hong Kong live with different types of Specific Learning Disability (SLD) and yet there exists considerable misconception about this disability.

29. SLD is a group of invisible disabilities due to neurological differences in brain development. Persons with SLDs are of average or above average intelligence and do not show any physical features that distinguish them from others. For children who have the type of SLD that involves problems in reading and writing, they experience inevitable difficulties under the present education system if no support is given to them, as almost all subjects involve reading and writing in the teaching and learning process.

⁹ The EOC published a Code of Practice on Education under the DDO to assist educational establishments to develop policies and procedures that prevent and eliminate disability discrimination; to provide educators with practical guidance on compliance with the DDO; and to enable PWDs and their associates to understand their rights and responsibilities under the DDO.

30. At present, the classification of SLD as a disability remains a subject of dispute. The EOC is of the view that SLD falls within the definition of disability under the DDO, which includes specifically a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction. This means that supporting children with SLDs in education is not a matter of discretion. It is a matter of law. These children have a right to education with reasonable accommodation.

31. The EOC proposes that the Government should develop a strategy for learning that is suitable for children with SLDs. This strategy should promulgate a multidisciplinary approach between health care professionals and educators, and both the EMB and the Department of Health must be given adequate resources to support the needs of children with SLDs. There is also a pressing need for the EMB to increase the awareness of both parents and teachers in the initial identification of SLD to help trigger professional assessment, diagnosis and education planning.

Stereotypical Depictions in Curriculum Materials (Article 13 of Covenant)

32. Textbooks and teaching materials play an important role in forming and reinforcing the attitudes and perceptions of children. In 2002, the EOC published findings from a study that investigated the nature and extent of stereotyping in curriculum materials.¹⁰ These findings showed that curriculum materials used in schools still contain stereotypical depictions of gender, disability, ethnic minority groups, children and old people. The findings were useful in developing recommended guidelines for publishers and teachers in providing alternative presentations in textbooks and teaching materials.

33. Presently, the EOC is working in collaboration with the Curriculum Development Institute on developing teaching support materials to enable primary and secondary teachers to include equal opportunity principles and concepts in their teaching schedules.

¹⁰ Equal Opportunities Commission (2002), “*Research on Content Analysis of Textbooks and Teaching Materials in Respect of Stereotypes*”.

34. The EOC urges the Government to remove stereotypical depictions from curriculum materials and to incorporate equal opportunity education in schools' basic curriculum.

Participation of Women and Persons with Disabilities in Sport (Article 15 of Covenant)

35. As part of the Government's effort to develop a new sports strategy for Hong Kong, the Government published the "Sports Policy Review Report: Towards a More Sporting Future" in 2002 for public consultation. The EOC welcomes the review on sport and would like to reproduce here some of its key recommendations to the Government:

- a. mainstream gender and disability perspectives into the new sports policy;
- b. collect data on the participation rate of women and girls and PWDs in physical education, sport and competitive sport to identify any differences in participation;
- c. ensure women and PWDs are adequately represented in policy-making positions and sports organisations;¹¹
- d. ensure sports venues, in particular the proposed new sports complex, are fully accessible to PWDs;
- e. develop an "Athletes' Plan" to provide financial, educational and career guidance support to full-time athletes with disabilities – similar to the proposal for athletes without disabilities; and
- f. work with the media to develop an inclusive sporting culture that enables full participation of women and PWDs in every aspect of sport.

¹¹ For reference, the International Olympic Committee in 1995 set an objective for National Olympic Committees and International Sports Federations that at least 10% of positions in sports policy-making should be held by women by 2000 and 20% by 2005. This was in recognition that achieving gender equity required improving the representation of women at the policy-making level where they could be more effective in representing the interests of women and exerting influence.

Mainstreaming of Equal Opportunities Perspectives

36. The EOC believes that the promotion of equality should be linked with the objective of promoting long-lasting changes in institutional values and practices. The EOC therefore urges the Government to proactively mainstream equal opportunities perspectives into its policies and programmes. This involves systematic consideration of the differences between the conditions, situations and needs of various sections of the community, and systematic examination of policies and programmes to take account of possible effects on all when defining and implementing them.

37. As part of mainstreaming, the Government should develop procedures and mechanisms on handling complaints relating to violations of equal opportunities and provide training courses on implementing equal opportunities in all aspects of employment and service delivery. In view of the size of its workforce and the scales of its many functions and operations, the Government should consider designating or recruiting specialist equal opportunities officers to deal with complaints, advise on policy matters and monitor the implementation of equal opportunities in government.

38. The EOC can play an important role in assisting the Government to mainstream equal opportunities principles and values. Once these principles and values are institutionalised, the need for EOC intervention will be correspondingly reduced and the occasions for litigation minimised.

Equal Opportunities Commission
January 2003

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

**Before the 25th Session of the Committee on Economic, Social and Cultural Rights
(Geneva, April 2001)**

1. 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 (SDO); the Disability Discrimination Ordinance (DDO); and the Family Status Discrimination Ordinance (FSDO). The EOC is fully funded by the Government.
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. In the year 2000, increases of 37.9% in the complaints caseload and 75% in legal assistance applications were recorded.

4. Complaints received under the DDO which require investigation and conciliation increased significantly to 339 in 2000, representing a 76.6% increase over the previous year. Complaints received under the SDO increased to 323 in 2000 representing an increase of 51.6% over the previous year.¹

5. The overwhelming majority of the complaint cases occur in the area of employment. The increase in complaints relating to dismissal and mental illness² under the DDO and relating to pregnancy and sexual harassment under the SDO is significant.

Article 2: State Parties to take steps to achieve progressively the full realization of the rights recognized in the Covenant

6. The EOC notes the concerns expressed by the United Nations Committee on Economic, Social and Cultural Rights³ (the Committee) that the provisions of the Covenant continue to be excluded from domestic law.

¹ Up to end of 2000, the EOC has received a total of 724 complaints under the SDO, 893 complaints under the DDO. Since 21 November 1997, the EOC has received 63 complaints under the FSDO.

Breakdown of complaints received under SDO, DDO and FSDO is as follows:

<u>SDO</u>	1996	1997	1998	1999	2000	Total
Sexual harassment	0	18	54	66	93	231
Pregnancy discrimination	0	13	28	64	130	235
Sex discrimination	0	31	18	65	65	179
Marital status discrimination	0	4	7	14	14	39
Victimization	0	4	11	4	21	40
	0	70	118	213	323	724
<u>FSDO</u>						
Family discrimination	0	0	11	28	24	63
<u>DDO</u>						
Disability discrimination	5	74	206	159	290	734
Disability harassment	0	16	53	23	40	132
Disability vilification	0	3	5	9	5	22
Victimization	0	0	0	1	4	5
	5	93	264	192	339	893

² The EOC has received 168 complaints cases of discrimination where the aggrieved persons or their family members have a mental illness. 117 of these cases were related to employment and 51 related to service provision. Among the employment cases, 25 were related to recruitment, 51 to dismissal, other complaints were on promotion, transfer and training.

³ Concluding Observations on the third Periodic Report of the U.K. in December 1996.

7. 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. Of the total number of complaints received up to the end of 2000, about 50% have proceeded to conciliation. The success rate of conciliation is approximately 60% to 65%.

8. 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, a number of meritorious cases cannot be assisted by the EOC and complainants cannot pursue their rights by taking civil action in court.

9. Unlike cases taken under the Hong Kong Bill of Rights Ordinance (BORO), where the Legal Aid Department may 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 prevent most complainants from obtaining legal aid to seek redress for discriminatory acts committed against them.

10. The EOC urges the Government to expand access to legal representation for persons seeking legal redress for unlawful acts of discrimination and to facilitate their access to the courts.

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 enquiries 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 realize that such complaints are outside the EOC's jurisdiction and redress is generally not available. In the year 2000 the enquiries and complaints recorded by the EOC, as compared to the total of the preceding three years, represented a threefold increase in the area of age and a twofold increase in the area of race.⁴

15. **The EOC believes that the Government should introduce anti-discrimination legislation to cover discrimination on the grounds of race, age and sexual orientation.**

16. The EOC has received one complaint from the mentally ill regarding the right to see a District Judge or Magistrate under section 31 of the Mental Health Ordinance when a mandatory application for a patient's

⁴ Statistics on specific enquiries related to areas outside EOC's jurisdiction:

Areas	1996	1997	1998	1999	2000	Total
Age	6	12	26	36	97	177
Race	6	20	10	26	66	128
Religious faith	1	9	5	4	14	33
Sexual orientation	5	5	4	3	14	31
Others	57	107	126	221	650	1161
	75	153	171	290	841	1530

detention is made. The Ombudsman⁵ has found that the general procedures laid down by the Hospital Authority have failed to discharge the legislative intention of the Mental Health Ordinance. The EOC is concerned that the mentally ill are not adequately represented by independent third parties in these situations.

17. The EOC recommends that the Government review the need for the mentally ill to be represented by independent third parties when a mandatory application for a person's detention is made.

Article 3: Equal rights of men and women

18. The EOC was not specifically set up to implement the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). While the EOC, through its promotion of the three ordinances, has played a significant role in fulfilling some of the obligations under the CEDAW, it notes that there is a need to mainstream gender issues in the formulation and implementation of Government policies and programmes. This concept of mainstreaming is new in Hong Kong and sensitivity to it on the part of policy makers needs to be developed.

19. In January 2001 the Government set up a Women's Commission, an advisory body, to further promote the interest and well being of women. The EOC looks forward to collaborating with the Women's Commission in mainstreaming gender perspectives in policy formulation and service delivery to meet the needs of women.

20. However, the EOC also urges the Government to develop gender mainstreaming methodology to more effectively meet the needs of women.

⁵ Ombudsman's Investigation Report (June 2000). Case ref. OMB 1999/3066. http://www.sar-ombudsman.gov.hk/english/link_05_reports.html.

Article 6: Choice of occupation and labour rights

21. In September 2000 judgment was delivered in the District Court in the cases of K & Ors v Secretary for Justice⁶, 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.

22. Although all three Plaintiffs were young men 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.

23. 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 with the Police Force because he has a sister with schizophrenia. The EOC is funding this fourth case on behalf of the Plaintiff, and will again need to expend funds for litigation.

24. The EOC urges the Government to review all its recruitment policies and comply with all equal opportunities and anti-discrimination legislation to ensure there is no unlawful discrimination.

25. 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.

⁶ Due to the vulnerability associated with disclosure of identity in the area of mental illness, the EOC requested and the Court granted an order requiring non-disclosure of the personal particulars of the plaintiffs other than the surnames.

26. The EOC reiterates the need of the Government to introduce anti-discrimination legislation to cover discrimination on the grounds of age and sexual orientation.

Article 7: Right to enjoy just and favourable conditions of work

27. The Government in its reply of January 2001 to the Committee on a list of issues identified in the Concluding Observations refers to a feasibility study⁷ on equal pay for work of equal value (EPEV) commissioned by the EOC in 1998/99. In the study's report, the authors did not recommend introduction of EPEV legislation in Hong Kong, because they were of the view that the potential benefits were less than the associated cost. Despite their views, they pointed out in the study that the gender earnings differential in monthly wages for 1996 was estimated to be 19% and at least 73.7% (namely 14%) of this differential could not be attributed to any market factor. They went on to provide recommendations on implementation of equal value. The EOC does not accept the authors' position that there should be no legislation, nor is it the EOC's recommendation that there should only be promotion but not coercion.

28. In addition to the ICESCR, the Government is also bound by the CEDAW to take action on its own to meet its obligations for the implementation of EPEV. The Government's position in that matter is that EPEV is implicitly covered by the SDO. However, the EOC feels that this is a precarious route to take and is concerned that there is no specific statutory framework for EPEV.

29. In May 2000 the EOC convened a task force to look into the issue of EPEV in the HKSAR. The EOC is of the view that, whether or not statutory backing exists, promotion and implementation of the principle must commence, beginning with the public sector.

⁷ The study was one of the series of paper presented at a conference on Equal Pay for Work of Equal Value organized by the Equal Opportunities Commission in March 2000. At the conference, Ms Constance Thomas, Coordinator of the Equality and Employment Branch of International Labour Standards Department, International Labour Office, and other important speakers presented different views on implementing equal pay for work of equal value.

30. The EOC recommends that active consideration be given by the Government to legislating for equal pay for work of equal value.

31. 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.**⁸ This exemption predominantly applies to women. 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.

32. The EOC continues to be concerned with the imposition of the two-week rule which requires migrant domestic helpers to leave the HKSAR within two weeks of termination of contract or the remainder of the permitted limit of stay, whichever is the shorter. Furthermore, they are not allowed to work if they leave their employment because of abuse and are awaiting legal redress. According to the International Social Service Hong Kong Branch, many are forced to drop their claims for economic reasons.

33. The EOC urges the Government to review the two-week rule binding on domestic helpers.

34. The EOC is concerned that the employment rate of persons with disabilities continues to be low. In a survey commissioned by the EOC, it was found that in 1997 the overall unemployment rate of the respondents ranged between 25% - 50%, depending on the type of disability involved, with the mentally handicapped and mentally ill at the higher end of the spectrum.

35. In the year 2000, women’s labour force participation rate was 49% compared with 75% for men. But it is worth noting that women aged 30-39 represented the largest age group to leave the labour force followed by those aged 40-49. The largest age group for men to leave were those

⁸ Part 2, Schedule 1, Mandatory Provident Fund Schemes Ordinance, Cap. 485.

aged 60 or above followed by those aged 50-59. These statistics point to the nexus between age and employment. As a consequence of the restructuring of the economy in the HKSAR, many women, in particular older women, now find themselves working in temporary or casual employment due to the lack of education and training.

36. The EOC urges the Government to adopt more supportive measures to assist persons with disabilities and older women to enter the job market.

Article 9: Right to social security

37. The EOC notes that, whilst the newly established Mandatory Provident Fund Scheme will provide at least, in part, for the retirement of employed persons, women who are homemakers, the elderly and persons with disabilities do not have similar protection.

38. The EOC urges the Government to provide for retirement protection for women who are homemakers, the elderly and persons with disabilities.

Article 10: Protection of the family

39. There has been a dramatic increase in separation and divorce in the HKSAR. By 1999, the estimated divorce rate had grown to 2 in every thousand people (regardless of marital status or age) compared to 0.9 ten years ago. It is notable that single parent families had almost doubled from 13,303 in 1996 to 25,311 in 1999.

40. Although no gender breakdown of the heads of these families is available, given the traditional role of women as carers, it is probable that women head the majority of these families. The number of women recipients of Comprehensive Social Security Assistance has risen from 112,000 in 1996 to 188,000 in 1999. These factors have brought about a

rise in the number of female heads of households who have less economic resources.

41. There is a need to review the definition of a family from the traditional nuclear family to include other types of family for the purpose of service delivery, and to strengthen child care and after school care services for these families.

42. The EOC recommends that the Government broaden its definition of a family for its policy planning and service delivery.

43. It is also noted that the incidence of domestic violence in the HKSAR has risen⁹. Sensitization of doctors, law enforcers and other professionals involved in responding to the needs of the women subject to domestic violence and co-ordination of the related services are badly needed.

44. The EOC recommends that the Government focus on the socio-economic backgrounds of the women who have experienced abuse to identify more effectively preventive and support services required for these women and their children.

Article 11: Right to an adequate standard of living

45. The EOC also notes that the SDO contains an exemption which makes it possible to discriminate between persons of different marital status in respect of the public housing schemes known as the Home Ownership Scheme and the Private Sector Participation Scheme¹⁰. The EOC has recommended the removal of this exemption from the SDO, but the Government has maintained its stance that nuclear families must be given priority in the matter of public housing.

⁹ The number of spouse abuse cases requesting various forms of assistance from the Social Welfare Department (SWD) rose from 1,172 in 98/99 to 1,689 in 99/2000. The overwhelming majority of the victims were women. The number of new child abuse cases registered by the SWD rose from 409 in 1998 to 575 in 1999.

¹⁰ Item 6, Part 2 Schedule 5, SDO.

46. Another exemption in the SDO relates to the small house policy. This policy was introduced to improve the housing situation which existed in the New Territories more than 20 years ago. Under this policy, a male indigenous person in the New Territories is entitled to apply to the Government to build a three storey village style house as a residence. Both women and non-indigenous persons are excluded from this policy.

47. The Government advised the EOC that it had commenced a review of the policy in September 1997, which was expected to be completed at the end of 1998. In February 1999, the EOC recommended to the Government, as part of the proposals made following its review of the SDO and the DDO, that the small house policy exemption should be repealed. In November 1999, the Government informed the United Nations Committee on Civil and Political Rights (at the hearing of the fifth Periodic Report on the International Covenant on Civil and Political Rights in Geneva) that it was still reviewing the policy.

48. The EOC urges the Government to repeal the exemptions in the SDO on the Home Ownership Scheme, the Private Sector Participation Scheme and the small house policy.

Article 12: Right to health

49. Medical care for the disadvantaged groups relies heavily on the public health system.¹¹ The Government has recently proposed to set up health protection accounts requiring contribution of 1-2% of earnings from the working population age between 40 and 64. Women who are homemakers, the elderly and persons with disabilities will not have similar cover.

¹¹ A recently released Government survey on health status shows that 12.8% of the population has diseases that require long-term medical care. The occurrence rate rises to 50% for people over the age of 65. A survey on medical benefits conducted in 1999 indicated that 59.8% of the population in Hong Kong did not have medical protection provided by employers or by medical insurance purchased by individuals.

50. The EOC urges the Government to review the long term health care needs of women, the elderly and persons with disabilities and allocate resources for their needs.

51. Medication is a subject of serious concern for persons with mental illness. The Government has been criticized for its reluctance to prescribe, for cost reasons, new drugs that have been shown to produce less side effects for the mentally ill.

52. The EOC recommends that the Government review the medication and treatment needs of the mentally ill and provide them with more effective services and medication.¹²

Article 13: Right to education

53. 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 with the adverse effect of the lack of schooling on young girls from ethnic minority groups.¹³

54. In particular, the EOC is concerned with 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

¹² According to the Hospital Authority Annual Plan 1998/99, 100 patients were prescribed new schizophrenia medication in 1997/98. The Government has recently announced the provision of new psychiatric drugs to 2,500 mental ill persons. The estimated budget for this is HK\$50 million. However, this number appears to be small compared to the number of mentally ill persons requiring medical treatment. Although there are no published figures on total number of mentally ill persons receiving medical treatment, the need in this area could be estimated from other sources. In 1999, 32,888 mentally ill persons were discharged from public hospitals. In these hospitals, there are about 5,700 hospital beds with an average occupancy rate of 90%. The number of out-patient attendees for psychiatric treatment in 1999 was 423,988.

¹³ Also relevant to Article 14: Free and Compulsory Primary Education.

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.

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

56. In information technology and science related subjects, girls are still under-represented in all levels of education due to subject streaming by gender and stereotyping. Curriculum materials used in schools still contain gender stereotype depictions and equal opportunity education is not widely taught in schools.

57. The EOC urges the Government to remove gender streaming in schools and gender stereotyping from curriculum materials and to incorporate equal opportunity education in schools' basic curriculum.

58. The Government has since 1997 adopted the Integrated Education Program for students with disabilities. Despite a two-year pilot programme, there are only 40 participating schools (31 secondary schools and 9 primary schools) comprising less than 4% of schools in the HKSAR. In the school year of 2000/2001, these schools took in about 200 students with various types of disabilities. The lack of resource allocation by Government and the lack of teacher training to meet these needs contributed to the low participation rate. The DDO requires schools to provide equal opportunity in education to students with disabilities. The EOC has proposed a set of guidelines to assist schools to comply with their obligation. The public consultation on the guidelines concluded in March 2001.

59. The EOC also notes that the opportunities for higher education and vocational training beyond the nine-year free education period are limited for persons with disabilities as compared to others.

60. The EOC urges the Government to adopt a more pro-active strategy for integrated education for children with disabilities at all levels (primary, secondary and tertiary) of education and to provide sufficient resources and support for its effective implementation.

Article 15: Right to cultural life, scientific progress and its application

61. The EOC commenced its “IT for All” campaign at the end of 1999 to highlight the need to provide access to women and persons with disabilities in information technology. The EOC’s Information Technology Task Force was set up to review the needs of these groups.

62. The EOC has conducted a study on the web accessibility of 163 public service homepages in November 2000. It was found that most of them were not designed in a way that enabled equal access to public information for persons with disabilities. The EOC believes this barrier should be removed as quickly as possible to enable persons with disabilities to have fuller access to information technology.

63. The EOC urges the Government to develop clear guidelines and adopt a comprehensive strategy to address the digital divide that may occur for persons with disabilities and for women.

64. Sport plays a significant role in human development and, in Hong Kong, athletes with disabilities have more than proved the case at the recent Paralympic games¹⁴. It is therefore important that persons with disabilities enjoy equal opportunities to train and develop to the highest levels of excellence through coaching and training facilities, administrative support and opportunities for local and international competition.

65. The EOC welcomes the recent pledge made by the Government to support disabled athletes¹⁵ and would like to add that

¹⁴ At the 2000 Summer Paralympics in Sydney, the Hong Kong team won eight gold, three silver, and seven bronze medals. At the 2001 Special Olympics World Winter Games in Alaska, the Hong Kong team won ten gold, nine silver and five bronze medals.

¹⁵ The Government has earmarked a special grant of HK\$50 million in 2001/02 to provide subsidies for disabled athletes and help them find employment at the end of their athletic careers.

longer-term commitments are necessary to ensure continuity in the overall development of sports for persons with disabilities.

Conclusion

66. In conclusion, the EOC wishes to highlight the following roles that it must play in combating discrimination in Hong Kong.

67. First, the EOC must provide institutional support and proactive intervention when victims are unable to seek protection under the law.

68. When dealing with discrimination associated with HIV/AIDS arising from the operation of a multi-purpose health clinic which provides treatment for HIV/AIDS, the EOC found that HIV/AIDS patients were reluctant to bring complaints to the EOC. HIV/AIDS patients, like the mentally ill, fear further isolation and reprisals when their identities are disclosed. The staff working in the multi-purpose clinic and a nursing home nearby were also subject to harassment. These individuals were also reluctant to come forward with complaints for fear of reprisals and a worsening of the community relationship.

69. Another problem that surfaced when dealing with the same case was that the alleged discriminators consisted of a loose group of people whose number and identities were very difficult to ascertain.

70. The EOC was ultimately able to resolve some of the operational difficulties through detective work of its own. Legal action against a few respondents is in train. The Government has now agreed to amend the law to give power to the EOC to commence action in its own name seeking declaratory, and in some cases injunctive, relief where either complainants or respondents (as the case may be) cannot be found. The EOC intends only to use this power where public interest requires it. The early intervention by the EOC in these situations would help to forestall a deterioration of the community relationship.

71. Secondly, the EOC must assume an independent monitoring and advisory role when systemic issues are involved.

72. The findings relating to the Secondary School Places Allocation System were made by the EOC after conducting a detailed investigation over the period of one year. The matter is now before the court by way of judicial review undertaken by the EOC in its own name. It is inappropriate in matters of this type to subject all individual complainants to the pressure of high profiled litigation.

73. As an alternative to litigation, the Government has also agreed to provide the EOC with power to secure from third parties voluntary binding undertakings which will be enforceable in court. Such undertakings may be entered into by entities whose policies and practices are discriminatory, but who may require some time to eliminate the discriminatory elements.

74. Arising from the loss of the autistic boy, Yu Man Hon (age 16), in August 2000 at an immigration check point between Mainland China and the HKSAR, the EOC has commenced a study on the handling procedure and training needs of the Immigration Department when dealing with persons with disabilities. This study is undertaken with the support of the Immigration Department.

75. Thirdly, the EOC should have the power to deal with all attributes giving rise to discrimination as this is a natural extension of its functions.

76. The EOC finally notes that many issues which arise out of its remit are also influenced by other attributes, such as age or race. Older women, particularly those from ethnic minorities, may suffer from multiple forms of discrimination arising from gender, age and race.

Equal Opportunities Commission

April 2001

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2106 2154
2877 7600

27 December 2002

Secretary for Home Affairs
Home Affairs Bureau
31st Floor, Southorn Centre
130 Hennessy Road
Wan Chai
Hong Kong
(Attn.: Mr. Ricky LEUNG)

Dear Mr. Leung,

**Consultation on the outline of topics to be covered in the
second report on the HKSAR under the
International Covenant on Economic, Social and Cultural Rights**

The Equal Opportunities Commission welcomes the opportunity to comment on the captioned outline document, preparatory to the drafting of the second report on Hong Kong under the International Covenant on Economic, Social and Cultural Rights (*the Covenant*).

We find the outline, which lists amongst its topics all the issues that were raised in the concluding observations of the Committee on Economic, Social and Cultural Rights (*the Committee*),¹ a useful starting point in discussing the implementation of the Covenant. However, we were disappointed to learn at the consultation meeting held on 9 December 2002 that the Government would not be conducting further consultation on the draft report.

¹ Concluding observations of 11 May 2001 of the Committee on Economic, Social and Cultural Rights on the initial report of HKSAR under the Covenant.

While it may be possible for the public to suggest topics for inclusion in the report, the present outline is not a self-contained document and does not provide sufficient information to facilitate structured and in-depth comments on the implementation of the Covenant. Specifically, an essential component of the report, that is, an evaluation of the progress with implementing the Covenant, is absent for consultation. Given the very wide scope of the Covenant, this information is important in enabling the public to gain an overview of the current situation. For example, we submitted an alternative report under the Covenant to the Committee in 2001 and raised issues of concern (a copy of the report is enclosed for reference). We do not know how some of these issues will be addressed in the second report and so cannot assess whether these issues should continue to be raised.

We believe the current consultation would be more focused if the draft report is released before it is finalised. We therefore urge the Home Affairs Bureau (*the HAB*) to reconsider conducting a second round consultation on the draft report prior to its submission to central government.

As regards the availability of the final report, we are aware that it will only become available to the general public after central government has incorporated it as part of its overall report. We hope the Government will inform the public as soon as that takes place and to disseminate the report widely in the community through a variety of channels.

For your information, we will be submitting an alternative report under the Covenant to the Committee. A copy will be forwarded to the HAB once it is prepared.

If you have any queries, please feel free to contact Miss LAM Siu Wai, Senior Equal Opportunities Officer, at 2106 2202.

Yours sincerely,

(LI Siu Kwai)
for Chairperson
Equal Opportunities Commission

Encl.