

**An Outline of the Topics in the
The Fourth Report of the Hong Kong Special Administrative
Region of The People's Republic of China under the
International Covenant on Economic, Social and Cultural
Rights**

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Submission from the Equal Opportunities Commission, Hong Kong

Introduction

This paper aims to give views of the Equal Opportunities Commission (EOC) on an outline of topics to be covered in the Fourth Report of the Hong Kong Special Administrative Region (HKSAR) on the implementation of International Covenant on Economic, Social and Cultural Rights (ICESCR).

2. The EOC is established by statute in May 1996. It is responsible for the implementation of the four anti-discrimination ordinances in Hong Kong, namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance, and for promoting equality of opportunities between men and women, between persons with and without disability and irrespective of family status and race.

Areas of Concern

Article 2 – Progressive realisation of the rights recognised in the Covenant

(a) *Establishment of a Human Rights Commission*

3. A number of statutory bodies such as the EOC and the Office of

the Privacy Commissioner for Personal Data are established in the HKSAR to investigate and monitor the violations of specific areas of human rights. However, such fragmented arrangement fails to provide comprehensive protection of all Covenant rights. The EOC is of the view that HKSAR should establish a single body with a broad mandate covering all international human rights standards accepted by Hong Kong.

(b) *Outlawing discrimination on the ground of sexual orientation and gender identity*

4. Hong Kong has not yet specifically legislated against discrimination on the ground of sexual orientation and gender identity and hence the public cannot have their grievance addressed through the complaint handling mechanism of the EOC. In the “Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity (SOGI) and Intersex Status”¹ released by the EOC in January 2016, the findings revealed that discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people is a common occurrence in Hong Kong. The study also found that over half (55.7%) of the telephone survey respondents in favour of legislation against discrimination on the grounds of sexual orientation, gender identity, and intersex status – nearly double the comparable figure from a decade ago. The EOC believes that the Government should conduct a public consultation on legislating against discrimination on the ground of sexual orientation as soon as possible.

(c) *Outlawing discrimination on the ground of age*

5. The number of people aged 65 or above in Hong Kong will surge from 1 160 000 in 2016 to 2 370 000 within 20 years. Population ageing of Hong Kong is expected to accelerate notably in the coming 20 years.

¹ Equal Opportunities Commission (2016). *Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity (SOGI) and Intersex Status*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>.

According to Government statistics, the proportion of elderly people will rise from 17% in 2016 to 30% of the Hong Kong population in 2036.² There is currently no protection from age discrimination in the HKSAR, whether it relates to the elderly or the young people. The findings of the EOC commissioned research, “Exploratory Study on Age Discrimination in Employment”³, released in January 2016 showed that over one-third of employed respondents indicated they had experienced age discrimination in the last five years before the Study. It also found that a clear majority of employed respondents (70%) across all age groups and educational levels agreed that there was a need for such legislation. The “Practical Guidelines for Employers on Eliminating Age Discrimination in Employment” issued by the HKSAR Government in 2006 does not offer any legal protection and the related public education is criticised by stakeholders as insufficient. In this regard, the HKSAR Government should adopt a proactive and comprehensive approach in facing the challenges brought by an aging population and consider legislating against discrimination on the ground of age.

(d) Gap in the Race Discrimination Ordinance

6. The Race Discrimination Ordinance (RDO) does not specifically apply to the Government in the exercise of its public functions. This is not consistent with protections in relation to sex, disability and family status discrimination and is a key area that requires review and reform.

7. In addition, there is currently no protection from discrimination based on nationality, citizenship or immigration status. In the Equal Opportunities (EO) Awareness Survey conducted in 2015, more than half of the users of EOC services considered the problem of media stereotyping and

² Census and Statistics Department (2017). *Hong Kong Monthly Digest of Statistics: Hong Kong Population Projections for 2017 to 2066*. Available from: <https://www.statistics.gov.hk/pub/B71710FA2017XXXXB0100.pdf>.

³ Equal Opportunities Commission (2016). *Exploratory Study on Age Discrimination in Employment*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/2016161633111925251.pdf>.

cyber-bullying against “visitors from Mainland China” (73% and 71% respectively) as very / quite serious.⁴ The EOC believes that the Government should consider review and amend the RDO to include nationality, citizenship and immigration status in the definition of race, so that discrimination on those grounds will be outlawed.

Article 3 – Equal rights of men and women

(a) Discrimination Law Review

8. The EOC conducted its second Discrimination Law Review (DLR) in 2014, including a four-month public consultation, which sought to simplify and modernise the anti-discrimination legislation. The EOC completed its review and made submission to the Government in March 2016⁵, which detailed its 73 recommendations covering proposed reforms on a wide range of issues relating to eliminating discrimination and promoting equality. In total, 27 issues were identified by the Commission as higher priority areas for legislative or related reforms. In response, the Government introduced a bill into the Legislative Council on 12 December 2018, which seeks to amend the four discrimination ordinances to take forward eight recommendations of priority in the EOC’s Report. The EOC looks forward to seeing the updating of the Government on the implementation of other priority recommendations of our DLR.

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

(a) Employment of women and people with disabilities

9. The gap between the labour force participation rate of women and

⁴ Equal Opportunities Commission (2015). *Equal Opportunities Awareness Survey*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/201671593507836810.pdf>.

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

that of men still exist. The labour force participation rate⁶ of women in 2017 is 55.1%, while that of men is 68.5%.⁷ Women usually exit the labour force temporarily or permanently after marriage and become home makers.

10. The EOC commissioned research, “Study on Pregnancy Discrimination and Negative Perceptions Faced by Pregnant Women and Working Mothers in Small and Medium Enterprises”, found that among the working mothers who gave birth in the past 12 months and/or had children aged below six, 21% who did not return to their original work position after giving birth.⁸ The majority resigned for personal reason. Yet, still some (16%) claimed that the reasons for resignation were related to treatment by employers (7% were transferred to a poorer working environment during maternity leave; 6% said the employers changed their employment package during maternity leave; and 4% were laid off during maternity leave). The EOC believes that the Government should introduce a statutory right of women to return to their previous role after maternity leave.

11. The EOC “Study on Family Status Discrimination in the Workplace in Hong Kong” released in 2018 found that 7.8% of employees with family caring responsibilities reported being discriminated against on the grounds of family status in the past two years (15% in hiring, 13.5% when resigning, and 7.8% during employment), particularly in labour intensive industries.⁹ To better assist them in balancing work and family needs, high-quality and affordable day-care centers and after-school care programs are more desirable directions.

⁶ Labour force participation rate refers to the proportion of labour force in the total land-based non-institutional population aged 15 and over.

⁷ Hong Kong Census and Statistics Department (2013). *Hong Kong in Figures 2018*. Available from: <http://www.statistics.gov.hk/pub/B10100062018AN18B0100.pdf>.

⁸ Equal Opportunities Commission (2016). *Study on Pregnancy Discrimination and Negative Perceptions Faced by Pregnant Women and Working Mothers in Small and Medium Enterprises*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/20169281137202878231.pdf>.

⁹ Equal Opportunities Commission (2018). *Study on Family Status Discrimination in the Workplace in Hong Kong*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/20188211629521937156.pdf>

12. Persons with disabilities are even more disadvantaged in the labour market. Of the 558 000 persons aged 15 and over with disabilities, some 85.5% were economically inactive. Discounting those who have retired, about 135 800 persons with disabilities were economically inactive.¹⁰

(b) *Employment of ethnic minorities*

13. Ethnic minorities, particularly South Asians, encounter a lot of barriers when looking for appropriate employment. According to the Hong Kong Poverty Situation Report on Ethnic Minorities 2016¹¹, one in five South Asians lives under the poverty line. The disturbing fact is that they are the working poor. Language barrier, low education, employer bias and prejudice are all factors that contribute to the situation. Apart from improving access to language education and acquisition of higher skills, the Government should undertake mass media awareness campaigns that help eliminate workplace stereotypes and barriers about ethnic minorities and recognise them as an integral part of Hong Kong.

(c) *Employment of Foreign Domestic Workers (FDWs)*

14. The EOC continues to receive complaints related to termination of FDW contracts due to pregnancy and illness. According to the “Sexual Harassment and Discrimination in Employment – Questionnaire Survey for FDWs” conducted by the EOC in 2014¹², 6.5% of 918 FDW respondents had encountered sexual harassment at work or at a work-related event in the 12 months prior to the survey. The most common alleged harassers were male

¹⁰ Census and Statistics Department (2018). *Hong Kong Monthly Digest of Statistics: Persons with disabilities and chronic diseases in Hong Kong*. Available from: <https://www.statistics.gov.hk/pub/B71501FB2015XXXXB0100.pdf>.

¹¹ Census and Statistics Department (2018). *Hong Kong Poverty Situation Report on Ethnic Minorities 2016*. Available from: <https://www.povertyrelief.gov.hk/pdf/Hong%20Kong%20Poverty%20Situation%20Report%20on%20Ethnic%20Minorities%202016.pdf>

¹² Equal Opportunities Commission (2014): *Sexual Harassment and Discrimination in Employment – Questionnaire Survey for FDWs*. Available from: <http://www.eoc.org.hk/eoc/upload/ResearchReport/2014112711564340970.pdf>

employers (33%), followed by female employers (29%) and “persons living in the same household” (20%). The survey also showed that 64% of the respondents had never received any information on anti-sexual harassment. The Government has been urged to strengthen measures to equip FDWs with information regarding legal protection against discrimination and harassment available to them. Employers and employment agencies should also be made aware of their roles and responsibilities in providing a safe and fair workplace for FDWs.

Article 10 – Protection of the family

Support for unpaid caregivers

15. According to Government statistics, among the 506 600 persons with disabilities residing in households, 203 700 persons (40.2%) cited that they had a person to take care of their day-to-day living as a result of their disabilities. For the 1 303 000 persons with chronic diseases residing in households, 175 600 persons (13.5%) reported the same. These carers, mostly unpaid, are invisible from the welfare or health policies and strategies of the Government since these policies and strategies are most user-oriented. The Government should map out a holistic plan to find out the kinds of support needed by various types of carers and provide the appropriate service and policy. Unpaid caregivers themselves, in particular those who take care for elderly and persons with disabilities in their family, should be cared for as well. Some of them need better services to facilitate their looking after of elderly family members while the latter “ageing in place”, while some others need financial support or some statutory protection for them to take leave to care for their family members’ urgent needs.

Article 12 – Right to health

(a) Formulation of a comprehensive and long term Mental Health Policy and establishment of a Mental Health Commission

16. The HKSAR has invested more resources in the past few years to improve the mental health services, but the provision of services remains fragmented. The public sector medical services provider, the Hospital Authority, adopted the Mental Health Service Plan for Adults in 2011, which is a framework to guide the mental health services for adults in the years 2010-2015. However, corresponding service plans for children, adolescents and the elderly are yet to be formulated. Instead of piece meal solutions to address specific problems related to mental health issues, it is overdue for the Government to map out a comprehensive and long term Mental Health Policy for Hong Kong as a whole.

(b) Health policy for the elderly

17. By 2036, almost one in three of the Hong Kong population will age 65 or above. Elderly citizens encounter different health issues than the general public, such as dementia which will bring the elderly both physically and mentally disabilities. The Government needs to work out a plan take up the health challenges of an ageing population.

Article 13 – Right to education

(a) Provision of adequate education to ethnic minority students

18. Ethnic minority students in general face the hardship in accessing higher learning and potential employment opportunities due to their struggle to master Chinese in their school years. While the Government has allocated funds for supporting the Chinese learning of ethnic minority students,

feedback from stakeholders including teachers and NGOs show that they remain doubtful of the current policies effectively reducing barriers to Chinese learning. Major concerns included the lack of second language pedagogy in the Chinese Language Curriculum Second Language Learning Framework introduced in 2014; obscure indicators or targets for measuring the effectiveness of the Framework; insufficient and non-standardized teaching materials; inadequate training and skills development for schools and teachers to cater for the learning diversity among non-Chinese speaking (NCS) students; relatively high concentration of NCS students in a few schools¹³, gravely affecting their integration into mainstream society; etc.

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¹³ According to the figures provided by the Government to the EOC in January 2018, 40.6% NCS primary students and 36.2% NCS secondary students were studying in schools with student population comprised of 70% or more NCS students (11 primary schools and 7 secondary schools) in the 2016/17 school year.