

**Second Report to be prepared by the Hong Kong  
Special Administrative Region under the  
International Covenant on Civil and Political Rights**

**Meeting of Legislative Council Panel on Home Affairs on 11 April 2003**

**– Submission from the Equal Opportunities Commission –**

**Public consultation**

The Hong Kong Special Administrative Region (*HKSAR*) is requested by the United Nations (*UN*) Human Rights Committee (*the Committee*) to submit a report under the International Covenant on Civil and Political Rights (*the Covenant*) on 31 October 2003. In preparation, the Home Affairs Bureau (*HAB*) issued for public consultation a draft outline of the second report of the HKSAR under the Covenant in March 2003. This 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.

2. The issuance of draft outlines only for public consultation is the standard practice adopted by the Government in preparing its reports under international instruments. This practice presents difficulties for the public to (a) gauge whether the Government has addressed the concerns raised by the relevant UN committees; and (b) gain an overview of the overall progress with implementing the rights under respective instruments.

3. The preparation of UN reports is an appreciatively arduous process but cannot in itself become the reason for limiting public consultation. It should be borne in mind that major UN instruments that are applicable to the HKSAR<sup>1</sup> in fact espouse principles of good governance to human rights, such as accountability of government; enabling the participation of women, children and ethnic minority groups in decision-making processes; freedom of association and participation; availability and validity of

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<sup>1</sup> Examples include the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child; and International Convention on the Elimination of All Forms of Racial Discrimination.

information; fair and legal frameworks for a predictable and secure living environment for citizens; and empowering women as a key poverty eradication strategy. The accountability of the Government to its citizens is a fundamental tenet of good governance and civil participation is a key element in promoting transparency and accountability. The Equal Opportunities Commission (*the EOC*) therefore proposes that the HAB releases its draft report under the Covenant for consultation before it is finalised.

### **Annual Progress Reports on the Covenant**

4. The EOC proposes that 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.

### **Participation of Non-governmental organisations**

5. *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.

### **Legal Aid for Discrimination Cases (Article 2 of Covenant)**

6. Not all cases meriting legal support are given assistance by the EOC. The EOC urges the Government to expand access to legal representation for persons seeking legal redress for actions under the three anti-discrimination ordinances, i.e., Sex Discrimination Ordinance (*SDO*), Disability Discrimination Ordinance (*DDO*) and Family Status Discrimination Ordinance (*FSDO*), and to facilitate their access to the courts.

### **Anti-discrimination Laws to cover Race, Age and Sexual Orientation (Article 26 of Covenant)**

7. To date, there is still no law in Hong Kong that deals with discrimination on the grounds of race, age or sexual orientation. In November 1999, the Committee<sup>2</sup> had expressed concern for the absence of such legislation and call for their enactment in order to ensure full compliance with the Covenant. Recently, the Legislative Council

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<sup>2</sup> Concluding Observations of the UN Human Rights Committee (15 November 1999), paragraph 16.

voted in support for a motion in favour of legislation against race discrimination. The EOC strongly urges the Government to respond positively to this vote and lay down a clear time frame for the enactment of legislation. The EOC also urges the Government to consider acting similarly in respect of legislation against age and sexual orientation discrimination.

### **Equal Pay for Work of Equal Value (Articles 3 and 26 of Covenant)**

8. 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.

### **Small House Policy (Articles 3 and 26 of Covenant)**

9. The small house policy, introduced more than three decades ago, 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 currently exempted in the SDO.<sup>3</sup> The EOC has in the past recommended this exemption be repealed.

10. The Government has had repeated reviews of the policy since 1997 but has to date not indicated its decision. This year, the Secretary for Housing, Planning and Lands states that his 2003 policy agenda will include a comprehensive review of the small house policy with a view to identifying suitable options for resolving the long standing problems associated with the policy. This has led to speculations that the Government may be considering abolishing the policy.

11. The EOC welcomes the impending review while reiterating its proposal that the policy exemption in the SDO should be repealed. The EOC also urges the Government not to delay decision on the matter and to ensure that any possible options to resolve the matter do not discriminate on the ground of sex.

### **Hostile Learning Environment (Articles 3 and 26 of Covenant)**

12. Complaints of sexual harassment consistently form at least a quarter of all

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<sup>3</sup> Item 2, Part 2 in Schedule 5 of the Sex Discrimination Ordinance.

complaints lodged with the EOC under the SDO, which include cases in the education sector. These complaints do not include allegation of sexually hostile learning environment, which is outside the purview of the SDO. The SDO presently does protect individuals against sexual harassment in the education field.

13. Recent incidents involving allegations of sexually hostile environment in tertiary educational institutions demonstrate the need for protection in this area.

14. The EOC has recommended the Government to extend protection against sexually hostile learning environment and has received a positive response. It is hoped that legislative changes will soon be forthcoming.

### **Mental Health Care Services (Article 26 of Covenant)**

15. Mental illness can affect one in five of the population,<sup>4</sup> underscoring the importance of mental health care services. 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. A recent study on the perceptions and experiences of discrimination of 757 persons with mental illness<sup>5</sup> reveals that mental health care services in Hong Kong are fragmented.

16. 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. The EOC supports the establishment of a Mental Health Council, operating as 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.

### **New Drugs (Article 26 of Covenant)**

17. Medication is a key dimension of the right to health and features prominently in the treatment of mental illness. While every psychiatric drug may have its side effects, conventional drugs create greater disruption to the daily activities of an individual.

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<sup>4</sup> Source: *Hong Kong Rehabilitation Programme Plan* (1998-99 to 2002-03), published by the Rehabilitation Division, Health and Welfare Bureau, August 1999.

<sup>5</sup> *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.

Medication represents only a small part of the total treatment cost of serious illness. The greater acquisition cost of new generation psychiatric drugs is more than compensated by the decrease in clinical care (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.

18. 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.

### **Equal Opportunities Values in Schools (Article 26 of Covenant)**

19. Education is the first port of call in the development of the individual. It is an agent of change and should be seen as a long-term socialisation process built on diversity and equality. The investigations and the studies conducted by the EOC to date show that more needs to be done to mainstream equal opportunities values in schools in Hong Kong, such as in the area of textbooks, curriculum, special needs education and integrated education policies.

20. Textbooks and teaching materials play an important role in forming and reinforcing the attitudes and perceptions of children. 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 opportunities principles and concepts in their teaching schedules.

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

22. The EOC is also 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.

23. The EOC proposes that the Government should develop a strategy for learning that is suitable for children with all types of disabilities. 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 disabilities.

### **Family Friendly Policies in the Workplace (Article 26 of Covenant)**

24. Work is an integral part of everyday life. Its effects do not stop with the person who works but extend to their family and community. It is therefore vitally important that workplaces and policies provide an environment that helps parents and carers balance employment and family.

25. Family friendly policies can include flexible working hours, job sharing, scheme of time off for emergencies; paid family leave, paternity leave; working at or from home during normal working hours; ability to change from full to part-time hours; workplace or other nursery provision; sponsored childcare and assistance for women returning to work after maternity leave.

26. These policies can lead to greater productivity and benefit business through improving their image, retaining skilled workers, improving morale and quality of work, reducing absenteeism and costs associated with replacement of staff, and reducing employee stress and turnover. Furthermore, the improvement to working conditions helps reduce or eliminate the incidence of family status discrimination, which is unlawful under the FSDO.

27. Family friendly work policies need to take account of the social changes to the composition of family today. For example, single parenthood due to a rise in divorces and the split family phenomenon arising from immigration policies are increasingly common.

28. The EOC believes that family friendly policies will have particular positive effects on single parents, a majority of whom (77%) are women. The number of single mothers in 2001 were 45,072, a sharp rise of 95.4% since 1991. In comparison, single fathers rose only by 16.6% within the same decade.<sup>6</sup>

29. Due to the need to care for children, the only employment options for single mothers are often casualised and temporary modes of employment. These women work without job security and retirement benefit and enjoy limited employment protection. This causes concern, as recent data indicate a trend towards feminisation of poverty in

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<sup>6</sup> Census and Statistics Department, *Women and Men in Hong Kong: Key Statistics*, 2002 Edition.

Hong Kong, which will adversely affect single mothers. For example, women on average continued to earn less (29%) than men; 80% of employed persons who earned less than half the median monthly earnings were women; the biggest increase in the receipt of Comprehensive Social Security Assistance (CSSA) was found in female recipients (a rise of 87.6% from 1996 to 2001); and 61% of single parent families who were CSSA recipients were headed by women.<sup>7</sup>

30. The EOC urges the Government to act swiftly and look at ways to empower women and develop their individual capacities. For example, the Government could set an example by developing family friendly policies within the Civil Service and to actively encourage private sector employers to do similar.

### **Diverse Representation on Governmental and Public Bodies (Articles 3, 25 and 26 of Covenant)**

31. Equality in political participation and decision-making is integral to the advancement of disadvantaged groups, as it gives these groups important rights and responsibilities as citizens and allows their interests and perspectives to influence key decisions.

32. In 1990, the UN Economic and Social Council adopted a resolution to increase the proportion of women in leadership positions to at least 30% by 1995 and 50% by 2000. This was echoed again at the Fourth World Conference on Women in 1995 where one strategic objective of the Beijing Platform for Action concerned governments committing to establish gender balance goal in governmental bodies and committees, public administrative entities, the judiciary and so forth. An EOC information paper on UN targets recently compiled for the Home Affairs Panel is annexed for reference (Annex I).

33. The EOC believes that the complexion of governmental and public bodies should reflect the diverse make-up of the community on their boards and committees. Using the UN resolution as a guide, the EOC proposes that the Government sets targets for public bodies to achieve specific levels of representation as milestones towards achieving fair representation of different groups at decision-making and policy-formulation level of these bodies.

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<sup>7</sup> Same as note 6.

## **Rights of Migrant Workers (Articles 26 of Covenant)**

34. The Government announced in February 2003 that: (i) with effect from 1 April 2003, the minimum allowable wage of foreign domestic helpers (*FDHs*) will be reduced by \$400; and (b) an Employees Retraining Levy of \$400 per month for each FDH would be imposed on employers of FDHs with effect from 1 October 2003.

35. As legal proceedings are pending in respect of the aforementioned changes, the EOC will not comment in this paper whether the changes may give rise to discrimination. However, the EOC wishes to raise a general concern for the employment rights, terms and status of migrant workers.

## **Mainstreaming of Equal Opportunities Perspectives**

36. The promotion of equality should be linked with the objective of promoting long-lasting changes in institutional values and practices. The EOC therefore wishes to reiterate here that the Government should proactively mainstream equal opportunities perspectives into its policies and programmes.

**Equal Opportunities Commission**  
**April 2003**



## INFORMATION PAPER

### United Nations Targets for Proportion of Women in Leadership and Decision-Making Positions

#### Overview of context for the United Nations (UN) targets:

Year	Activity
1972	UN General Assembly proclaimed 1975 to be International Women's Year
1975	<p>UN General Assembly endorsed the World Plan of Action for the Implementation of the Objectives of the International Women's Year, adopted by the World Conference of the International Women's Year at Mexico City in 1975.</p> <p>UN also proclaimed 1976-1985 the UN Decade for Women: Equality, Development and Peace.</p>
1980	<p>UN General Assembly endorsed the Programme of Action for the second half of UN Decade for Women adopted by the "World Conference of the UN Decade for Women: Equality, Development and Peace" at Copenhagen in 1980.</p> <p>UN General Assembly adopted the International Development Strategy for the Third United Nations Development Decade and reaffirmed the recommendations of the Copenhagen World Conference.</p>
1985	Third World Conference on Women held in Nairobi adopted the Nairobi Forward-looking Strategies for the Advancement of Women to review and appraise the achievements of the UN Decade for Women: Equality, Development and Peace. The Forward-looking Strategies presented concrete measures to overcome the obstacles to the Decade's goals and objectives for the advancement of women.
1990	<b>UN Economic and Social Council (ECOSOC) Resolution</b> in 1990 recommended targets for increasing the proportion of women in leadership positions: <b>30% by 1995 and 50% by 2000.</b>
1995	<p>Fourth World Conference on Women at Beijing reported little progress had been made in achieving the ECOSOC target of <b>30% women in positions at decision-making levels by 1995.</b></p> <p>Conference adopted the Platform for Action, which included strategic objective G.1: "Take measures to ensure women's equal access to and full participation in power structures and decision-making". Proposed actions included Governments committing themselves to establishing the goal of gender balance in governmental bodies and committees, public administrative entities and the judiciary. UN to continue to monitor progress towards achieving the UN target of 50% women in managerial and decision-making positions by 2000.</p>

## **Relevant text of UN Economic and Social Council Resolution**

### **1. Economic and Social Council Resolution,<sup>1</sup> E/RES/1990/15 (24 May 1990)**

[Adopted recommendations and conclusions arising from the first review and appraisal of the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women to the year 2000 and urged governments to implement the recommendations.]

Recommendation VI: [2<sup>nd</sup> para] Governments, political parties, trade unions and professional and other representative groups should each aim at targets to increase the **proportion of women in leadership positions to at least 30% by 1995**, with a view to achieving **equal representation between women and men by the year 2000**, and should institute recruitment and training programmes to prepare women for those positions.<sup>2</sup>

## **Additional information from other relevant documents**

### **2. UN Commission on the Status of Women, 39<sup>th</sup> session (15 March-4 April 1995)**

Report of the Secretary-General on the second review and appraisal of the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women:

“20. Existing research indicates a more encouraging trend. If women are represented in sufficiently large numbers in the decision-making arena (constituting what has been termed a "critical mass", estimated at a level of **at least 30-35% in decision-making bodies**), they have a visible impact on the style and content of political decisions. For example, in the Nordic countries, the only region where women have achieved a critical mass at the policy-making level, owing to pressure exerted by women, issues that have long been ignored, such as equal rights, women's control over their own bodies, child care and protection against sexual violence, have gradually been incorporated into public agendas and reflected in national budgets. Evidence for this has been documented in a number of United Nations studies and reports of the Secretary-General on the priority themes.”<sup>3</sup>

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<sup>1</sup> ECOSOC coordinates the work of 14 UN specialised agencies, 10 functional commissions and five regional commissions; receives reports from 11 UN funds and programmes; and issues policy recommendations to the UN system and to Member States. Under the UN Charter, ECOSOC is responsible for promoting higher standards of living, full employment, and economic and social progress; identifying solutions to international economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and fundamental freedoms. ECOSOC's purview extends to over 70% of the human and financial resources of the entire UN system.

<sup>2</sup> United Nations (1996), *The United Nations and The Advancement of Women 1945–1996*.

<sup>3</sup> “Equality: Equality in political participation and decision-making” (E/CN.6/1990/2); “Peace: Equal participation in all efforts to promote international cooperation, peace and disarmament” (E/CN.6/1992/10); “Women in Politics and Decision-making in the Late Twentieth Century” (United Nations publication, Sales No. E.91.IV.3).

### 3. Fourth World Conference on Women (September 1995)

#### Conference diagnosis of status of women in power and decision-making:

- Despite widespread movement towards democratisation in most countries, women are largely underrepresented at most levels of government, especially in ministerial and other executive bodies.
- Little progress was made in attaining political power in legislative bodies or in achieving the target endorsed by the Economic and Social Council of having 30% women in positions at decision-making levels by 1995.

#### Platform for Action: Strategic objective G.1 – Take measures to ensure women's equal access to and full participation in power structures and decision-making

##### Actions to be taken by governments:

- Commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including, inter alia, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions.

##### Actions to be taken by UN:

- Continue to collect and disseminate quantitative and qualitative data on women and men in decision-making and analyse their differential impact on decision-making and monitor progress towards achieving the **Secretary-General's target of having women hold 50% of managerial and decision-making positions by the year 2000.**

### 4. Conceptual Basis of 30% Target

The following is extracted from Part Three of *The Long March to Beijing: the United Nations and the Women's Revolution*, an unpublished history of UN and the advancement of women covering the period 1945-1995.

#### Chapter Eight. Women and politics: defining the critical mass

- The **concept of critical mass was borrowed from nuclear physics** where it referred to the quantity of plutonium that needs to be brought together to produce a nuclear explosion. It had first been applied to gender in the mid-1970's by an American feminist scholar, Rosabeth Moss Kanter, who was studying women in business. She reviewed studies of the behaviour of minorities in task-oriented groups to find out the level of participation that was necessary for the minority members to function effectively as a group to press their interests. She estimated that **when the proportion of minority members reached about 30%, they were able to influence decision-making autonomously as a group.** At levels lower than that, effectiveness required the minority members to act more like those of the majority and, failing that, they would be ineffective and lonely dissenters.

- In the 1980's, these findings were picked up by the Danish feminist political scientist Drude Dahlerup, who argued that the critical mass phenomenon could apply to politics as well. In some countries in Scandinavia, critical mass levels were being approached as some levels of government and it was possible to see whether this made a difference. The findings made considerable sense: if a critical mass was not achieved, any gender differences that might exist would remain uninfluential in decision-making and the stereotype of "no difference" would remain confirmed.
- The inclusion of a numeric expression for the critical mass was pushed because of a belief that a quantifiable target that was based on an empirical premise would make it easier for women to advocate for changes in their own society and would make governments more accountable. The fact that the 30% level had been met in a number of countries in different regions indicated that it was realistic. The fact that it was backed by research showing that differences in policies would only be seen when it was reached gave it a special weight. A universal target would allow women's advocates to use comparative methods to push for governmental policies.

Equal Opportunities Commission  
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