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14 August 2008

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19 AUG 2008

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**Convention on the Rights of Persons with Disabilities
Legal Measures for the Ratification and
Effective Implementation**

Thank you for your letter of 4 June 2008.

I have pleasure in submitting an information paper from the Equal Opportunities Commission for your attention. We are agreeable to your uploading our paper on to the OHCHR website.

If you need further information, please do not hesitate to contact us.

Best regards,

Yours sincerely,

Raymond TANG
Chairperson

Enc.

Convention on the Rights of Persons with Disabilities Legal Measures for the Ratification and Effective Implementation

Submission of the Hong Kong Equal Opportunities Commission on the Status in Hong Kong

Introduction

1. The Hong Kong Equal Opportunities Commission (EOC) welcomes the opportunity to submit views and information in relation to the ratification and implementation of the Convention on the Rights of Persons with Disabilities (“the Convention”).
2. The Equal Opportunities Commission (EOC) was established by statute in May 1996 and is responsible for administering four anti-discrimination laws in Hong Kong: the Sex Discrimination Ordinance (SDO); the Disability Discrimination Ordinance (DDO); the Family Status Discrimination Ordinance (FSDO); and the Race Discrimination Ordinance (RDO)¹. The EOC is currently 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. Addressing race discrimination and racial harassment would be another substantial area of work for the EOC in the coming years once the Race Discrimination Ordinance comes into force (likely to be in 2009).
3. This report sets out the concerns and corresponding recommendations of the EOC in various policy areas affecting people with disabilities (PWDs) in Hong Kong.

¹ The Race Discrimination Ordinance was enacted in July 2008 and has not yet come into force. It is anticipated that the effective date of this ordinance will be announced by the government later in the year.

Legal Measures for Ratification and Implementation of the Convention and Optional Protocol

4. The Standing Committee of the National People's Congress of the People's Republic of China (PRC) has ratified the Convention on the Rights of Persons with Disabilities on 26 June 2008, which was a major move of the Central Government to reaffirm its commitment to protect and promote the rights and dignity of persons with disabilities. We anticipate that the Convention will soon be extended to the Hong Kong Special Administrative Region (HKSAR). In this connection, we need to briefly explain the legal framework for the application of international conventions to the HKSAR.
5. The Basic Law is the constitutional document for the HKSAR. It prescribes the various systems to be practiced in the HKSAR. According to Article 152 of the Basic Laws, representatives of the HKSARG may, as members of delegations of the PRC, participate in international organizations or conferences in appropriate fields limited to states and affecting the HKSAR, or may attend in such other capacity as may be permitted by the Central People's Government (CPG) and the international organization or conference concerned, and may express their views, using the name "Hong Kong, China".
6. Article 153 of the Basic Law further governs that the application to the HKSAR of international agreements to which the PRC is or becomes a party shall be decided by the CPG, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the HKSARG.
7. For the timing of the extension of the Convention to the HKSAR, it will be a matter of negotiation between the CPG and the HKSAR government. In this connection, the EOC urges the early conclusion of negotiation between the Central Government and the HKSAR government regarding extension of the Convention to the HKSAR.

Legal measures on national monitoring, particularly in relation to Article 33

8. Hong Kong is a special administrative region of the PRC and has no "national" monitoring measures. Monitoring measures in the Hong Kong context refers to the monitoring measures applicable within the territorial limit of the HKSAR. Notwithstanding that the Convention is yet to be extended to Hong Kong,

coordination mechanism and focal points are in place in HKSAR.

9. The enactment of the Disability Discrimination Ordinance (DDO) in 1995, giving rights to individuals to take action against disability discrimination, signalled a significant shift towards the individualistic, rights-based anti-discrimination approach, that is, the civil rights model of disability. The DDO came into effect in December 1996, prohibits unlawful discrimination on the grounds of disabilities in specific areas of activity, such as employment, education and provision of goods, services and facilities. The Ordinance is binding on the HKSAR government as well as all other public bodies and agencies. It is also applicable to discriminatory acts committed by commercial entities in the private sector as well as by individuals. The Ordinance also outlaws disability harassment as well as discriminatory practices in many facets of daily life, including the publication of discriminatory advertisements. The Equal Opportunities Commission of Hong Kong is entrusted with the responsibility to handle disability related complaints and encourages conciliation between parties in dispute, provide assistance to aggrieved persons and undertake public education and research programmes to promote equal opportunities in Hong Kong. The EOC functions as an independent statutory regulatory authority with funding provided from public revenue.

10. In addition to its statutory responsibility to investigate and conciliate disability discrimination complaints, the EOC also provides legal assistance for court proceedings in selected areas, for instance, where public interest is involved, where a legal precedent needs to be set, or where there is strategic value in terms of promoting equal opportunities or eliminating discrimination. For disability rights issues, the EOC provides the primary facility to address disputes. Besides dispute resolution, the EOC would also take proactive and preventive measures to protect the rights of people with disabilities. The EOC would conduct self-initiated investigations where rights of specific groups of people with disabilities are violated. For issues that would have a mass impact on people with disabilities in general, formal investigation would be conducted by the EOC even though there is no complaint received. Participation and buy-in at the policy making level of both public and private institutions is an important preventive measure to safeguard the rights of people with disabilities. To this end, the EOC has assumed an active role in advocating for the rights and equal opportunities of people with disabilities, for example, in the revision of the “Design Manual - Barrier Free Access” for buildings and facilities and petitioning

for concessionary public transport fare for the disabled.

11. Several other government bureaux also deal with disability rights issues from different perspectives. The Constitutional and Mainland Affairs Bureau (CMAB) has policy responsibility for matters relating to human rights. While overall human rights issues relating to disability discrimination are placed under the purview of the CMAB, the rehabilitation and other support issues in connection with disabilities are handled by the Labour and Welfare Bureau. The Food and Health Bureau takes care of the healthcare issues whilst the education and vocational training for people with disabilities are undertaken by the Education Bureau.

12. At the policy level, the Rehabilitation Advisory Committee (RAC) of the Government's Labour and Welfare Bureau, an advisory body to the Government, advises the HKSAR government on disability-related issues. However, there is no institutional representation of non-governmental disability groups on the RAC; the Government appoints individuals with disabilities to serve on the RAC in their personal capacities. The RAC has limited advisory powers and functions; rehabilitation policies and services are mainly developed and implemented by relevant Government bureaux and departments, and non-governmental organizations (NGOs). There is no central coordinating body to oversee rehabilitation policies and services development and implementation process. In this connection, the EOC urges the HKSAR government to set up a central coordinating body in early course to deal with overall disability issues.

13. The EOC would be pleased to provide further information or clarification as may be requested by the OHCHR.

August 2008

Equal Opportunities Commission