

(Revised)

Submission to the Panel on Constitutional Affairs

Regarding the first report of the Hong Kong Special Administrative Region under the Convention on the Rights of Persons with Disabilities

Submitted by Growing Together (16 March 2010)

Growing Together would like to bring the following points to the attention of the Panel on Constitutional Affairs for consideration when drafting the initial report on the implementation of the Convention on the Rights of Persons with Disabilities (“CRPD”) to be submitted to the United Nations.

A. Discrimination based on ground of disability

1. Children with special educational needs (“SEN”) suffer from discrimination on grounds of disability. On the principle of "one curriculum framework for all"¹, children with SEN currently follow the mainstream school curriculum, without having the curriculum adapted to address or consider the child’s special educational needs. The Curriculum Development Council and the Curriculum Development Institute of the Education Bureau have developed guidelines² to help schools tailor the centralised curriculum to students with SEN, but there is no official adapted curriculum and the local authorities do not monitor if and how schools adapt the centralised curriculum³.

2. Article 24 of the CRPD recognises that persons with disabilities are entitled to the right to education, free of discrimination and on the basis of equal opportunity. Thereby, this article requires states to ensure an inclusive education system, so that educational development is fully met at all levels of learning. Lack of appropriate curriculum and monitoring affects only children with SEN, not the typical student.

3. Additionally, the teacher resources that are allocated for children with SEN are insufficient. Teachers in mainstream schools who have responsibility for children with SEN have no specific degree requirements or qualifications; the very fact that such specific SEN qualifications are crucial and necessary to ensure educational milestones are achieved is not recognized or acknowledged. The training that is provided for these teachers is minimal. Currently, the training provided does not address the needs of non-Cantonese speaking (NCS) children with SEN because there are not enough teachers available for the training.

4. At the 60 aided special schools in Hong Kong, there is no established or set curriculum, nor are there established outcomes which would be used to define achievement. Though a government grant has been authorized to develop a curriculum for children with SEN, the grant is not completely sufficient or comprehensive in scope, to include an effective assessment component, as well as allocate provisions for non-Cantonese speaking children with SEN.

¹ <http://www.edb.gov.hk/index.aspx?langno=1&nodeID=2378>

² <http://www.edb.gov.hk/index.aspx?langno=1&nodeID=3257>

³ http://cd.edb.gov.hk/la_03/chi/curr_guides/Visually/index-EV.htm

B. Discrimination based on multiple grounds (disability and ethnic minority)

5. Children with SEN who belong to ethnic minorities usually do not speak Cantonese and are largely deprived from their right to education as a result of multiple discriminations based on their origin as well as disability. Efforts should be made to accommodate the needs of NCS children with SEN to guarantee that they have access to effective education (i.e., in a language that they understand). The English language is an official language in Hong Kong. Growing Together is not advocating for an education in all the languages used in Hong Kong as this would not be practicable but only in the two official languages.

6. In 2006 there were 38,048 ethnic minorities under the age of 15 in Hong Kong. If the internationally accepted standard (i.e.: 6%) is applied to represent the population of non-Cantonese speaking children under the age of 15, it would imply that 2, 283 of the total 30,048 represent non-Cantonese speaking ethnic minority children with SEN in Hong Kong. The English Schools Foundation, partially subvented by the government, offers a total of 193 places available for these non-Cantonese speaking (NCS) children with SEN (primary and secondary levels combined), while other international schools offer an additional 89 places for a total of 282 places outside of the government school system. In a June 2008 report to The Educational Panel of the Legislative Council [LC Paper No. CB(2)2164/07-08(02)], The Education Bureau identifies 22 NCS students with SEN who were attending government schools. This suggests at least 1,979 NCS students with SEN, or 86% of the projected total, were denied access to appropriate educational programming. The lack of appropriate educational programming for children with SEN is thus compounded by the lack of programming in any other language than Cantonese.

7. The government recently explained⁴ in a state report submitted to the United Nation's Committee for the Elimination of Racial Discrimination that NCS students who would cope better with English as a medium of instruction must compete with other local students for entry to the limited number of English-medium schools. This in and of itself is an inappropriate and unfair method of allocating these limited spaces as it would mean that spaces in schools designated for NCS students must be allocated first and foremost to NCS students. An additional burden results from the fact that this policy includes NCS speaking children with SEN which results in discrimination on multiple grounds and a clear comparative advantage for the typically developing and Cantonese speaking students. NCS children with SEN are disadvantaged with respect to disability and language.

8. The Equal Opportunities Commission explained in a letter dated 28 April 2008⁵ that "the distinguishing feature between NCS children with SEN and Chinese-speaking children with SEN is their different language preference. While the admission to...62 aided special schools and the 641 special classes in mainstream schools may in theory be open to NCS children with SEN, it seems clear that admission to these schools is not a practicable solution to their needs in the light of their own or their family's language preferences". The EOC however declined having the authority or duty to look into the matter further.

9. Article 24 of the CRPD provides for an educational system without discrimination and based on equal opportunity, that enables-among other things-the full development of human potential, sense of dignity, self-worth, and enabling persons with disabilities to participate effectively in a free society. It further requires states to ensure that persons with disabilities receive the support they require to facilitate their effective learning.

⁴ CERD/C/HKG/13 dated 28 July 2008, para 175

⁵ Letter dated 28 April 2008 from the EOC to Fernando Cheung, chairman of the subcommittee to study issues relating to the provision of boarding places, senior secondary education and employment opportunities for children with special educational needs

10. Article 24 of the CRPD further provides that states should enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. States are required to take appropriate measures to fulfill this goal (including the measures specified in respect of blind or deaf persons). It is important to stress that the CRPD recalls the principles of the Universal Declaration of Human Rights and the International Covenants on Human Rights in its preamble that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind. The spirit of the CRPD calls for further action to be taken in Hong Kong to ensure that NCS children with SEN do not suffer from multiple discriminations.

C. The concept of inclusive education

11. Finally, we believe that the report to be submitted to the United Nations should clearly explain how the concept of “inclusive education” is understood in Hong Kong.

12. In our view inclusive education should not simply mean sending minority NCS children with SEN to attend typical or special Chinese-medium schools. This will obviously impede their learning and it will certainly not permit those children to compete with local peers. Their ability to fit and participate effectively in society will clearly be compromised. We believe that inclusive education means that all children should have the right to education on the basis of equal opportunity. The United Nations Convention on the Rights of the Child (UNCRC) highlighted that “...placement and type of education must be dictated by the individual educational needs of the child since the education of some children with SEN will require a kind of support which a regular school cannot offer”⁶. According to the UNCRC, “[i]t is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs...School’s curricula must be re-evaluated and developed to meet the needs of children with and without disabilities”⁷. General Comment No.9 of the UNCRC further provides that as “...children with disabilities are very different from each other, parents, teachers and other specialised professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem-solving which best fit the potential of this child. Everybody, who furthers the child’s skills, abilities and self-development, has to precisely observe the child’s progress and carefully listen to the child’s verbal and emotional communications in order to support education and development in a well-targeted and most appropriate manner”⁸. The environment around them should be adapted accordingly and we think it is wrong to require children with SEN to adapt themselves to educational system in place. Inclusive education is not a one-system-fits-all solution. Instead, focus should be of the needs of children. Growing Together believes that the concept of inclusive education mentioned in the CRPD is not reflected in Hong Kong.

13. The CRPD clearly insists on the necessity of an inclusive educational system. Article 24 requires states to ensure an inclusive education system of quality. Measures should be consistent with the goal of full inclusion but should not jeopardise quality. The CRPD stresses that inclusive education should be directed to (among other things) the full development of human potential and the development of persons with disabilities without discrimination and on the basis of equal opportunity.

⁶ General Comment No.9, CRC/C/GC/9, para 66

⁷ General Comment No.9, CRC/C/GC/9, para 67

⁸ General Comment No.9, CRC/C/GC/9, para 63B