

立法會 CB(2)2306/07-08(03)號文件(更新本)
LC Paper No. CB(2)2306/07-08(03)(Updated)

June 13, 2008

By fax and email

Hon. Margaret Ng
Chairperson
Bills Committee on Racial Discrimination Bill
Legislative Council

Dear Hon. Margaret Ng,

Racial Discrimination Bill

The Hong Kong Council of Social Service concerns very much about the legislation process of the Racial Discrimination Bill. Enclosed please find our further views on the Bill as well as a Joint Statement co-signed by a number of organizations for the Bills Committee's reference.

Should you have any queries, please do not hesitate to contact me at 2876 2443.
Thank you for your attention.

Yours sincerely,



Angela Ng
Chief Officer (F&S)

Encl.

非政府機構及少數族裔團體 就反種族歧視立法的聯署聲明

種族歧視條例的立法工作已進入尾聲，少數族裔團體及非政府機構一方面歡迎政府就反種族歧視立法，然而，現時條例草案內有多項條文的涵蓋範圍不足和缺乏約束力。我們特別關注第三及第五十八條的內容，認為草案若不在此作出修改，會大大削弱條例對少數族裔人士的保障，甚至會導致合法歧視情況的出現。

香港社會服務聯會聯同香港融樂會草擬聯署聲明(附件一)，截至六月十二日，共有 16 間非政府機構、30 個少數族裔團體及 10 名來自政制及內地事務局促進種族和諧委員會成員聯署要求政府修訂草案中第三及第五十八條的內容。

雖然政府方面初步表示日後可考慮要求一些相關政策局及部門制定指引以實施反種族歧視措施，但此方式仍存在不足之處。故此，我們進一步建議立法推行「種族平等計劃」。

平等機會委員會在其五月十四日向草案委員會提交的文件已例出六項「種族平等計劃」的主要元素，我們另希望加上以下兩項以作參考：

1. 根據「種族平等計劃」釐定的問題開展工作計劃，並配合適當資源以施行有關計劃
2. 定期檢視並改善「種族平等計劃」

少數族裔人士早前本會舉行的一次公開論壇中清楚表示不希望草案委員會草率趕於本年度立法，以免對少數族裔人士造成長遠的不良影響。因此，我們期望政府可慎重考慮上述意見，從速修訂草案內容，以進一步保障少數族裔人士的權益。

附件

NGOs and Ethnic Minorities Groups' Joint Statement on Racial Discrimination Bill

The legislation process of the Race Discrimination Bill is entering its final stage. The introduction of such legislation is welcomed by the EMs communities and concerned NGOs. Yet, the Bill falls short in the scope of protection and binding power and many clauses are not adequate. We, in particular concern about the content of Clause 3 and Clause 58 and view that if these two clauses cannot be amended appropriately, the legislation will be weakened and existing discriminatory practices may become legalized.

The Hong Kong Council of Social Service in collaboration with Hong Kong Unison prepared a Joint Statement of our views on the Bill (Appendix 1). As at June 12, 2008, 16 NGOs 30 EMs organizations and 10 members of the Constitutional & Mainland Affairs Bureau's Committee on Promotion of Racial Harmony have co-signed the Joint Statement.

Although the Administration would consider introducing guidelines within certain Bureaux and Departments to monitor their formulation and implementation of anti-racial discrimination policies and measures, this is not sufficient and the effectiveness is also in doubt. We therefore support the implementation of a statutory "Race Equality Plan".

Apart from the 6 areas as illustrated in Equal Opportunities Commission's submission to the Bills Committee on May 14, 2008 (LC Paper No. CB(2)1900/07-08(01)), we suggest that the statutory "Race Equality Plan" for a governmental body should contain two more elements:

1. A plan of action to address racial problems identified in the "Race Equality Plan", with the proper deployment of resources;
2. Periodic reviews to update and improve the "Race Equality Plan".

At an open forum on RDB organized by us earlier, the EMs communities have clearly expressed their views that the Bills Committee should not rush to enact the existing Bill to avoid bringing long term disadvantage to them in future. We therefore urge the Administration to demonstrate greater commitment to eliminating racial discrimination and promoting equal opportunity for EMs by amending the Bill appropriately.

Encl.

就反種族歧視立法的聯署聲明

根據統計處資料顯示(主題性報告：少數族裔人士)，2006 年 7 月期間在港居住的少數族裔人士共有 342,198 人，佔全港人口的百份之五。正如在世界上不同的地方一樣，少數族裔人士在香港同樣面對不同程度的歧視。

有鑑於此，政府於 2006 年就種族歧視條例草案進行公眾諮詢之後，向立法會提交有關草案，同年十二月十五日，立法會成立草案委員會審議有關法例。

少數族裔團體及非政府機構歡迎政府就反種族歧視立法，而為加強對少數族裔人士的保障，我們建議將現時條例草案內的兩項條文作進一步改動，並期望各立法會議員支持我們提出的建議，敦促政府盡快於草案二讀前作相應修訂。

我們強烈要求草案委員會作以下修訂：

1. 第三條次 — 適用於政府

我們歡迎政府早前就本條次內所作出的修訂。然而，單將條文改動為：「本條例對政府具約束力」並不足夠。我們要求有關當局依據現有的三條反歧視條例的內容，將以下條款加入條次中：「政府如在執行其職能或行使其權力時歧視屬於不同種族群體的人士，即屬違法。」

2. 第五十八條次 — 語文的例外情況

少數族裔人士經常受到語言歧視。然而，現時草案中的第 58 條的出現不單未能改善現有情況，更會將有關歧視合法化，這是不能接受的。我們懇請草案委員會及各立法會議員盡快作出合理的修訂。我們認為政府部門及公共機構不應享有第 58 條次的豁免。除非有關安排會構成不合情理的困難(**unjustifiable hardship**)*，否則，該等部門及機構應合理地提供適當的翻譯服務給有需要的少數族裔人士。

我們認為政府必須依據現存本地已有的反歧視條例的條文內容，以及聯合國的標準作為訂定新法例的基本要求，並須不斷完善。因此，即將推出的種族歧視條例是不應出現任何倒退的條文。各少數族裔團體及非政府機構將繼續致力與政府合作，共同努力讓香港成為種族和諧之都。

*不合情理的困難在「殘疾歧視條例」中亦有應用，詳情請見

<http://www.eoc.org.hk/eoc/GraphicsFolder/showcontent.aspx?itemid=4673>

Joint Statement on the Legislation Against Racial Discrimination

According to the Census and Statistics Department, a total of 342,198 ethnic minorities were living in Hong Kong as at July 2006 (Thematic Report : Ethnic Minority). This is about 5% of the whole Hong Kong population. As in many other places all over the world, ethnic minorities are experiencing different levels of discrimination here in Hong Kong.

In response to this, the Government in 2006 submitted the Race Discrimination Bill to the LegCo after public consultation. A concerned LegCo's Bills Committee was formed in December 15, 2006 to scrutinize the bill.

Although the introduction of such legislation is much welcomed by the EM communities and concerned NGOs, we would like to propose further amendments on two major areas so as to enhance the protection of the legislation on EMs. We appeal to the support of all LegCo members on our proposal and request the Government to make appropriate amendments before the resumption of the second reading of the Bill.

1. Clause 3 – Government

We appreciate the Government's good intention and action in amending this clause. Yet, just specifying "This Ordinance binds the Government" is not sufficient. Based on the provision of the existing three Anti-Discrimination Ordinances, we request the Administration include the following provision in this clause:

"It is unlawful for the Government to discriminate against a person of a particular racial group in the performance of its functions or the exercise of its powers".

2. Clause 58 – Exception for Language

Many ethnic minority persons are experiencing racial discrimination in the form of language discrimination. However, the inclusion of Clause 58 in the Race Discrimination Bill will not prohibit these situations but legalize existing discrimination practice, which is unacceptable. We urge the Bill Committee and all LegCo members to make appropriate amendment to this clause. We view that **the exemption stipulated in Clause 58 should not be provided for Government and the public bodies. They should render appropriate interpreting services to the ethnic minorities unless such arrangement will cause unjustifiable hardship* to the Government or public bodies.**

Based on the existing local anti-discrimination legislations and the requirement of United Nations, our government should set the minimum standard of any discrimination laws. Therefore, as our 4th anti-Discrimination laws, the future **Racial Discrimination Ordinance should not include any regressive clause** as compared with the previous three. Concerned EM communities and NGOs will spare every effort to work hand in hand with the Government in order to make Hong Kong a place of racial harmony.

* unjustifiable hardship is also adopted in Disability Discrimination Ordinance, please refer to <http://www.eoc.org.hk/eoc/GraphicsFolder/showcontent.aspx?itemid=4673> for more details.

Co-signing Organizations (as at 12/6/2008)

NGOs

1. Asian Outreach Hong Kong (亞洲歸主協會)
2. Boys' and Girls' Clubs Association (香港小童群益會)
3. Christian Action (基督教勵行會)
4. Hong Kong Christian Service (香港基督教服務處)
5. Hong Kong Council of Social Service (香港社會服務聯會)
6. Hong Kong Family Welfare Society (香港家庭福利會)
7. Hong Kong Unison (香港融樂會)
8. Kely Support Group (啟勵扶青會)
9. Mission to New Arrivals (新福事工協會)
10. Mother's Choice (母親的決擇)
11. Oxfam (Hong Kong) (樂施會)
12. SKH Lady Macle hose Centre (聖公會麥理浩夫人中心)
13. The Child Development Centre (明德兒童啟育中心)
14. United Christian Nethersole Community Health Centre (基督教聯合那打素社康服務)
15. Watchdog Limited (監護者)
16. Young Men's Christian Association of Hong Kong (香港基督教青年會)

Ethnic Minority Groups and Trade Unions

1. Asian Human Rights Commission
2. Asian Migrants Centre
3. Bethune House Migrant Women's Refuge
4. Civil Human Rights Front
5. Civil Rights for Sexual Diversities
6. Coalition for Migrants Rights
7. Color in Peace
8. Filipino Migrant Workers Union
9. Hong Kong Against Racial Discrimination
10. Hong Kong Christian Council
11. Hong Kong Christian Institute
12. Hong Kong Human Rights Monitor
13. Hong Kong Islamic Youth Association
14. Hong Kong Nepalese Federation
15. Human Welfare Services
16. Indonesian Migrant Workers Union
17. International Human Rights Forum
18. International Human Rights Foundation
19. Mt. Hermon House of Prayer
20. MAGAR Association Hong Kong
21. Non-Chinese Residents – Women Force
22. Pakistan Association of Hong Kong
23. Society for Cultural Integration
24. Southern Democratic Alliance
25. The Hong Kong Coalition for Migrants Rights
26. The Hong Kong Coalition of Indonesian Migrant Workers Organization
27. The Indian Resources Group

28. The Mission For Migrant Workers – Hong Kong
29. Women Coalition of HKSAR
30. Zi Teng

Individuals

10 Members from Constitutional & Mainland Affairs Bureau's Committee on the Promotion of Racial Harmony

1. Ms Raees Begum Baig
2. Ms Aruna Gurung
3. Ms Devi Novianti
4. Ms Vandana Rajwani
5. Mr. Buddhi Bahadur Thapa
6. Ms Wong Wai Fun, Fermi
7. Mr. James Arthur Elms
8. Mr. Manohar Chugh
9. Muhammed Javed Shahab
10. Mr. Amarjeet Singh Khosa