

LC Paper No. CB(2)660/08-09(05)**Submission to the Panel on Constitutional Affairs regarding the report of the HKSAR for the United Nations Human Rights Council for Universal Periodic Review****By: Growing Together -- Hong Kong's special education needs (SEN) community for ethnic and language minorities.**

The report of the HKSAR for the UN Human Rights Council Review provides copious information regarding the framework and measures in place to protect human rights in Hong Kong, as well as the HKSAR's achievements to date and challenges that still need to be met. The report briefly touches on policies relating to or affecting children including educational policies now in place mandating 12 years of free education. The report also offers details regarding current and future measures to protect the human rights of ethnic minorities.

The report however is completely silent regarding the rights and provisions relating to the most vulnerable segments of our population, individuals with special educational needs (SEN), especially those who are members of an ethnic or language minority or non-Chinese speaking (NCS). This lack of support and protection is also evident in the 2008-09 policy address delivered in October 2008 which offers no mention of educational provisions for children with SEN regardless of their language preference.

The resulting discrimination suffered by NCS individuals with SEN and the disadvantageous position they occupy in relation to Chinese speaking individuals with SEN has been recognized by Hong Kong's EOC (please see attached correspondence).

As outlined below, the current system results in discrimination against all NCS children with SEN. This is unacceptable and we call for the government to take all legislative and administrative measures that may be necessary to protect the fundamental rights and freedoms of those persons and to ensure compliance with accepted international standards. Growing Together requests that the Panel on Constitutional Affairs take the following in account when it meets on 19 January:

1) Section 7 of the HKSAR report refers to 15 international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR). It goes on to state that Hong Kong's Bill of Rights Ordinance (BORO) was specifically enacted to give effect in local law to the provisions of the ICCPR as applied to Hong Kong. Under the ICCPR, member parties shall take all active measures to promote and guarantee the rights of all persons to pursue their economic, social and cultural development without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The language discrimination suffered by NCS individuals with SEN is a form of discrimination expressly prohibited by BORO (article 21(1) BORO provides for the right to access, on general terms of equality, to public service in Hong Kong without unreasonable

restrictions). We would also submit that Hong Kong fails to comply with the provisions of the International Covenant on Economic, Social and Cultural Rights. In addition the International Convention on the Elimination of All Forms of Racial Discrimination (1965) (which applies to Hong Kong) provides that the state shall prohibit racial discrimination in all forms and guarantee the right of everyone, without discrimination to equality before the law in respect of various rights including the right to education and training. “Racial discrimination” is defined thereunder as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. We submit that the current system violates the human and fundamental right to education of NCS children with SEN by reason of their language and amounts to racial discrimination. Furthermore, as per Mrs. Carrie Lam in her 2006 address at the United Nations hearing of the HKSAR’s second report in light of the ICCPR, “in Hong Kong, human rights and freedoms are guaranteed constitutionally by the Basic Law.” We note that pursuant to the Basic Law: (i) Chinese and English are both official languages of Hong Kong, (ii) all Hong Kong residents are equal before the law, (iii) the government shall establish policies on the development and improvement of education including policies regarding the education system and its administration, the language of instruction and the allocation of funds and the (iv) the government shall formulate new policies on the development and improvement of the social welfare system in light of the economics conditions and social needs. Denying a child access to appropriate educational services based on their language and refusing to teach children in their language when it is an official language of Hong Kong is a denial of a basic human right. Growing Together requests an investigation of this denial of basic human rights as stipulated by the BORO and the Basic Law and asks that effective measures be adopted to reflect the 21st century economics conditions and social needs of the Hong Kong residents and to address the current discriminatory system..

2) Section 18 of the HKSAR report refers to the protection of the rights of persons with disabilities and notes that since 31 August 2008 the United Nations Convention on the Rights of Persons with Disabilities has been applied to HKSAR through ratification by the Central People’s Government. The communication from the United Nations dated 12 August 2008 provides that the UN Convention was extended to Hong Kong on 1 August 2008 (rather than 31 august 2008). The UN Convention provides for the following:

Article 3:

- Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons
- Full and effective participation and inclusion in society
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Accessibility
- Non-discrimination

- Respect for the rights of children with disabilities to preserve their identities.

Article 4:

- Member parties to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programs.
- Member parties to comply and ensure that public authorities comply with this convention.

Article 7:

- Member parties shall take all necessary measures to ensure the full enjoyment of children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

Article 9:

- Member parties' duty to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public.

Article 24:

- Member parties recognize the right of persons with disabilities to education.
- Member parties must ensure that persons with disabilities can access an inclusive, quality and free primary and secondary education on an equal basis with others in the community in which they live.
- Member parties will ensure that reasonable accommodation of an individual's requirements is provided.
- Member parties will ensure that persons with disabilities receive the support required, within the general education system, to facilitate their effective education.
- Member parties will ensure that effective individualized support measures are provided in environments that maximize academic and social development.
- Member parties to ensure an inclusive education system at all levels and life long learning directed to (i) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity, (ii) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential and (iii) enabling persons with disabilities to participate effectively in a free society.
- State to 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. To this end, State shall take appropriate measures, including by ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

The administration's failure to provide appropriate educational services for NCS individuals with SEN clearly contravenes this binding international convention whose authority and application is recognized by the HKSAR in this report.

As per the Hong Kong EOC, admitting NCS students with SEN to mainstream schools is not a practicable solution to their needs in light of their own or their family's language preferences. In addition, denying NCS children with SEN the right to receive appropriate and effective educational services in any language other than Chinese perpetrates a discrimination that is banned by the Basic Law, the BORO and many international treaties (including the Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of All Forms of Racial Discrimination) and violates international treaties which are applicable to Hong Kong (ICCPR and the UN Convention on the Rights of Persons with Disabilities). **Growing Together requests that the Panel on Constitutional Affairs call for an investigation of all of these violations with a view to eliminate and redress them.**

3). Section 7 of the HKSAR report highlights the importance attached to the promotion of human rights through public education and publicity. Public awareness is necessary to achieve acceptance, tolerance, equality and friendship among all people and to teach to all the human inalienable rights and values of mankind. We submit that public awareness cannot be satisfactorily achieved for as long as no step is taken to redress the situation of NCS children with SEN. We would like to refer to the Salamanca Statement and Framework for Action on Special Needs Education (1994) which provides that "barriers that impede movement from special to regular schools should be removed" (para 23) and submit that all barriers (including the current language barrier) which deny the NCS children with SEN from enjoying human rights and freedoms (and their inherent dignity) need to be addressed under the current legislation or, if necessary, by the enactment of new legislation and administrative measures.

To achieve the goal of becoming an education hub, Hong Kong must provide appropriate and effective educational services to all citizens – Chinese speaking and non-Chinese speaking, typical and SEN. Only then will Hong Kong rightfully be able to proclaim itself as Asia's World City.



立法會
LEGISLATIVE COUNCIL

來函檔號 YOUR REF :
本函檔號 OUR REF : CB2/HS/2/04
電 話 TELEPHONE : 2509 4431
圖文傳真 FACSIMILE : 2332 1893

LC Paper No. CB(2)1599/07-08(01)

By Fax (2840 0569)
9 April 2008

Mr John TSANG Chun Wah, JP
Financial Secretary
5/F, Main Wing
Central Government Offices
Lower Albert Road
Central
Hong Kong

Dear Mr TSANG,

**Subcommittee to Study Issues Relating to the Provision of
Boarding Places, Senior Secondary Education and Employment
Opportunities for Children with Special Educational Needs**

**Education for non-Chinese-speaking children
with special educational needs**

I write on behalf of the Subcommittee concerning the provision of education for non-Chinese-speaking (NCS) children with special educational needs (SEN).

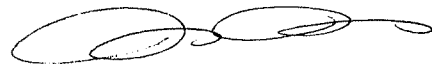
The Subcommittee received the views of 13 organizations and six individuals on the subject at its meeting on 3 April 2008. These organizations and individuals have pointed out that the special educational needs of Chinese-speaking children are catered for through 62 aided special schools and 641 special education classes in the mainstream schools. However, the only Government subvented English-speaking school which admits NCS children with SEN is The Jockey Club Sarah Roe School with 60 places operated by The English Schools Foundation (ESF). ESF also provides 126 places in the learning support classes in its mainstream schools. Currently, 103 children are on the waiting list for the limited places in ESF's learning support classes and The Jockey Club Sarah Roe School. The average waiting time is 24 to 36 months. Altogether, the subvented school places available to NCS children with SEN are less than 200. As independent international schools are reluctant to admit NCS children with SEN on resources consideration, many NCS children with SEN are given no choice but to enrol in public sector mainstream schools adopting Chinese as the medium of instruction. These children are struggling hard to learn in a language that is not conducive to the realization of their full potential.

Members are gravely concerned about the inadequate provision of education opportunities for NCS children with SEN to learn in English or their mother-tongue. Apparently, there is a lack of parity between the services provided for Chinese speaking and NCS children with SEN. NCS children with SEN are in dire need of equal opportunities in education to maximize their chances in life. Members are given to understand that some expatriates have left Hong Kong solely because of the lack of appropriate education services for their children with SEN. Members consider that without the provision of sufficient and affordable education services for NCS children with SEN, Hong Kong can hardly attract or retain talents from all over the world to maintain its competitiveness.

Members are of the view that the responsibility for providing education for NCS children with SEN falls squarely on the Administration. Increased funding to ESF to enable its provision of more learning support classes in its mainstream schools and more places in The Jockey Club Sarah Roe School is urgently needed. The provision of appropriate Government support for independent international schools is necessary to encourage their sharing of the responsibility for providing education for NCS children with SEN. Members call on the Administration to critically and expeditiously review its policy on the provision of education for NCS children with SEN and the allocation of resources for that purpose. They have asked me to convey to you their requests for an increase of resources for the provision of equal opportunities in education for NCS children with SEN and a review of the Government policy in that regard.

As the Subcommittee is winding up its work, I should be grateful for your response **by the end of April 2008.**

Yours sincerely,



(Fernando CHEUNG Chiu-hung)
Chairman of Subcommittee

c.c. Secretary for Education
Secretary for Labour and Welfare



立法會

LEGISLATIVE COUNCIL

來函檔號 YOUR REF :
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LC Paper No. CB(2)1599/07-08(02)

By Fax (2511 8142)

9 April 2008

Mr Raymond TANG Yee Bong
Chairperson
Equal Opportunities Commission
19/F, Cityplaza Three
14 Taikoo Wan Road
Taikoo Shing
Hong Kong

Dear Mr TANG,

**Subcommittee to Study Issues Relating to the Provision of
Boarding Places, Senior Secondary Education and Employment
Opportunities for Children with Special Educational Needs**

**Education for non-Chinese-speaking children
with special educational needs**

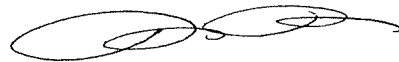
I write on behalf of the Subcommittee concerning the provision of education for non-Chinese-speaking (NCS) children with special educational needs (SEN).

The Subcommittee received the views of 13 organizations and six individuals on the subject at its meeting on 3 April 2008. These organizations and individuals have pointed out that the special educational needs of Chinese-speaking children are catered for through 62 aided special schools and 641 special education classes in the mainstream schools. However, the only Government subvented English-speaking school which admits NCS children with SEN is The Jockey Club Sarah Roe School with 60 places operated by the The English Schools Foundation (ESF). Together with the 126 places in learning support classes run by ESF mainstream schools, the subvented school places available to NCS children with SEN are less than 200. The average waiting time for the limited places in ESF's learning support classes and The Jockey Club Sarah Roe School is 24 to 36 months. As independent international schools are reluctant to admit NCS children with SEN on resources consideration, many NCS children with SEN are given no choice but to enrol in public sector mainstream schools adopting Chinese as the medium of instruction. These children are struggling hard to learn in a language that is not conducive to the realization of their full potential.

Members are gravely concerned about the inadequate provision of education opportunities for NCS children with SEN to learn in English or their mother-tongue. Apparently, there is a lack of parity between the services provided for Chinese speaking and NCS children with SEN. NCS children with SEN are in dire need of equal opportunities in education to maximize their chances in life. Members are concerned whether the present situation is in breach of the international human right treaties applicable to Hong Kong and the provisions of the Disability Discrimination Ordinance. They have asked me to seek the views of the Equal Opportunities Commission on the matter.

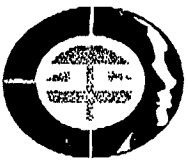
As the Subcommittee is winding up its work, I should be grateful for your response **by the end of April 2008.**

Yours sincerely,



(Fernando CHEUNG Chiu-hung)
Chairman of Subcommittee

c.c. Secretary for Education
Secretary for Labour and Welfare



平 等 機 會 委 員 會

EQUAL OPPORTUNITIES COMMISSION

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Our Ref: L/M (3) to EOC/LEG/01

Your Ref: CB2/HS/2/04

Tel: 2106 2178

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28 April 2008

By Fax: 2332 1893 Only

Dr. Hon. Fernando CHEUNG
Chairman of Subcommittee to
Study Issues Relating to the Provision of Boarding
Places, Senior Secondary Education and
Employment Opportunities for Children
with Special Educational Needs
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Dr. Hon. Cheung,

**Subcommittees to Study Issues Relating to the Provision of
Boarding Places, Senior Secondary Education and Employment
Opportunities for Children with Special Education Needs**

**Education for non-Chinese-speaking children
with special educational needs**

I refer to your letter dated 9 April 2008 to the Commission's Chairperson. The Chairperson has instructed me to consider the issues raised and respond accordingly.

The Subcommittee is concerned that there is a lack of parity between the number of subvented school places available for non-Chinese-speaking (NCS) children with special educational needs (SEN) and the number of subvented school

places available for Chinese-speaking children with SEN. The information outlined in your letter indicates that the number for the former is less than 200, and the number for the latter is significantly more (the exact number is not clear from your letter, except that there are 62 aided special schools and 641 special classes in mainstream schools catering for Chinese-speaking children with SEN). NCS children with SEN are in a relatively disadvantaged position when compared to Chinese-speaking children with SEN.

The distinguishing feature between NCS children with SEN and Chinese-speaking children with SEN is their different language preference. While admission to the above 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 preference.

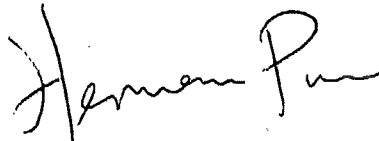
The issue is one about language. Any direct discrimination arising from this situation is likely to be defined as language discrimination. Generally speaking, language discrimination may in some circumstances constitute indirect discrimination on the ground of another characteristic such as race if, for example, the same rule applies to people of different races but one race would suffer a disadvantage when compared to another race.

As for disability, however, language discrimination in the above situation is unlikely to be indirect disability discrimination. The disadvantage identified in your letter arises from a comparison between people having the same disability. The difference is language not disability. In this context, the provisions of the Disability Discrimination Ordinance are unlikely to be of much assistance to NCS children with SEN.

The solution to the problem is likely to lie in devoting more resources to NCS children with SEN. This will depend on setting priorities between competing interests in the light of resources available. In the end, a sustainable and satisfactory allocation of resources is likely to come through a continuous process of dialogue among policy-makers and different interests, arriving at an agreeable balance for all concerned. The EOC hopes all parties to the process will show understanding of the needs of others and to strive to meet those needs.

As for whether there is any illegal language discrimination or race discrimination under international human right treaties, or indeed under the Basic Law or Hong Kong Bills of Rights Ordinance, authoritative experts on these instruments will be better placed to give advice, after examining the relevant Government policies in the light of available resources and constraints.

Yours faithfully,



Herman L.H. Poon

Chief Legal Counsel

Equal Opportunities Commission

cc: Secretary for Education (Fax: 2523 1973)
Secretary for Labour and Welfare (Fax: 2893 0858)

Mr. Raymond TANG Yee Bong
Chairperson
Equal Opportunities Commission
19/F Cityplaza Three
14 Taikoo Wan Road
Taikoo Shing, Hong Kong

27 May 2008

Subcommittee to Study Issues Relating to the Provision of Boarding Places, Senior Secondary Education and Employment Opportunities for Children with Special Educational Needs.

Education for non-Chinese speaking children with special educational needs.

Dear Mr. TANG,

I write in response to your reply to Dr. Fernando CHEUNG Chiu-hung regarding ongoing efforts to increase and improve educational provisions for non-Chinese speaking (NCS) children with special educational needs (SEN).

Your letter correctly recognizes that NCS children with SEN are the victims of language discrimination and are in a relatively disadvantaged position when compared to Chinese speaking children with SEN. You go on to state that since this is not a case of discrimination based on disability, the Disabilities Discrimination Ordinance (DDO) is not applicable. Is the EOC only able to assist individuals who are the victims of disability, sexual or family status discrimination? As an agency committed to promoting diversity and equality, fostering an inclusive society in which all individuals are treated with respect and dignity and whose mission is to eliminate discrimination and promote equal opportunities, the EOC would be the appropriate government body to assist those who are the victims of any type of direct discrimination. Why is the purview of the EOC so limited? Isn't language discrimination a direct discrimination which would fall under the purview of the EOC in other developed countries?

This language discrimination is a form of racial discrimination which, in 1991, was specifically prohibited by the Bill of Rights Ordinance (BORO). Can the EOC assist us with a thorough investigation of this violation of the BORO and with the enforcement of this policy? Furthermore, denying a child access to appropriate services based on their language is a denial of a basic human right. As per Mrs. Carrie Lam in her 2006 address at the United Nations hearing of the Hong Kong SAR's second report in light of the International Covenant on Civil and Political Rights (ICCPR), "in the Hong Kong, human rights and freedoms are guaranteed constitutionally by the Basic Law." Can the EOC assist with the investigation of the violation of this constitutionally guaranteed right?

In addition, the Basic Law states that English is an official language of Hong Kong; how does the EDB justify their lack of support for programming in that language? This is another example of the type of discrimination that is expressly banned by the BORO and the Basic Law. As one of the Executive Authorities in Hong Kong, is the EDB not bound to uphold the Basic Law?

Lastly, on 30 March 2007, China became a signatory to the United Nations Convention on the Rights of Persons with Disabilities. By signing this convention, an obligation was created, in the period between signing and ratification, to refrain from acts that would defeat the object and purpose of the treaty. The objectives of the convention include non-discrimination, full and effective participation and inclusion in society, equality of opportunity and accessibility. By denying NCS children with SEN the right to receive services in any language other than Chinese, Hong Kong is defeating all of these objectives. How does Hong Kong reconcile its position as 'Asia's World City' with this defiance of an internationally accepted UN Convention?

NSC children with SEN are the victims of direct discrimination – discrimination that is prohibited by the BORO and the Basic Law. The parents and children of NCS children with SEN thank you for your time and attention in redressing this discrimination and I look forward to the favour of your reply. Of course if you would like to discuss further or have any questions please feel free to contact me. It would be a pleasure to be able to speak to you further on this matter.

Sincerely,

Virginia Wilson
Chairman
Growing Together

cc: Letters from children, parents, professionals to Donald Tsang and copied to relevant departments.

Attachments:
Press Clippings
Submission to EDB and LEGCO on non Chinese speaking SEN provisions



Our Ref: L/M (3) to EOC/LEG/01

Tel: 2106 2178

Fax: 2824 3892

17 June 2008

Ms. Virginia Wilson
Chairman
Growing Together Ltd
4 Mt. Kellett Road
The Peak
Hong Kong

Dear Ms. Wilson,

Education for non-Chinese speaking children with special education needs

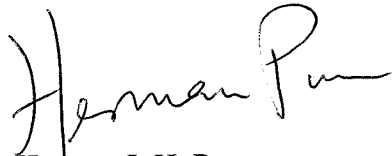
Thank you for your letter dated 27 May 2008 to the Chairperson. The Chairperson has asked me to provide you with the following information about the Commission.

In Hong Kong, the mandate of the Equal Opportunities Commission is delineated by local laws. At present, the Commission's jurisdiction and functions are defined by the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. The Commission may and do make general comments as appropriate on issues that are relevant to its jurisdiction, but it does not have power or jurisdiction to enforce the Bill of Rights Ordinance, the Basic Law or Hong Kong's international obligations in respect of discrimination or human rights issues that do not fall under the 3 discrimination ordinances, and it also does not have power to handle complaints or initiate investigation into those issues as part of its functions.

While it is clearly important that the needs of all children with special educational needs are equally and properly met, the relative disadvantage faced by non-Chinese speaking children when compared to Chinese-speaking children does not appear to fall under the Ordinances. The problem will need to be addressed through continuous dialogue among policy-makers and all stake-holders. The EOC hopes all

concerned will work towards a satisfactory solution in the interest of the affected children. The Commission will keep in view of the developments on this matter.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Herman Poon". The signature is written in a cursive style with a large initial "H" and a long, sweeping tail.

Herman L.H. Poon

Chief Legal Counsel

Equal Opportunities Commission