

Joint submission on Revised Draft Code of Practice on Employment under
the Race Discrimination Ordinance

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Hong Kong Human Rights Monitor
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Hong Kong Unison and Hong Kong Human Rights Monitor welcome the issue of revised draft of the Code of Practice on Employment (Code) under the Race Discrimination Ordinance (RDO). We appreciate the EOC has put efforts to revise the COP by adopting many of the recommendations from us and other organizations, the current version of the COP can better promote racial harmony and equality.

Since substantial revision has been made to the first draft of the COP, we recommend the EOC to conduct a series of consultations on the revised COP, including public consultation meetings held by EOC and Legislative Council, so the EOC could have a better understanding on public's view on the revised COP and also promote the COP and the RDO.

However, we still have the following concerns regarding to the revised COP:

1. Chapter 2: Meaning of Race under the RDO

- In paragraph 2.2.2, it is stated that the acts of grounds will not constitute discrimination under the RDO, those grounds should not be used as a mask to hide what is in fact race discrimination under the RDO. The EOC can consider adding the procedures on how EOC will handle these cases.

2. Chapter 3: Scope of Part 3 of the RDO

- In paragraph 3.6 about religion, "for the purpose of religion" should be added to specify that the employment limited to persons from particular racial groups of an organized religion should be made for the purpose of religion.

3. Chapter 5: Practising and Promoting Racial Equality

- Paragraph 5.2.2 states the drawing up and implementation of a policy to practice and promote racial equality. This paragraph should include: (1) to ensure all job applicants and employees to understand that the employer is determined to eliminate racial discrimination and harassment; and (2) to ensure all job applicants and employees to understand the legal definition of racial discrimination and harassment.
- Paragraph 5.2.2(5) should also ensure all job applicants and employees to understand the grievance system and ways to lodge the complaint.
- Paragraph 5.3.4(3) encourages employers to consider advertising in both English and Chinese where practicable. The EOC can consider providing some examples to illustrate under certain conditions, advertisements only in Chinese may be illegal.
- In paragraph 5.3.15 about the grievance procedure, it should be stated that all the complaints will be handled seriously and promptly. We recommend to add "seriously and promptly" after the word "effectively" in point (4) of this paragraph.

4. Chapter 6: Unlawful Acts under the RDO

- In paragraph 6.1.1(2) about the indirect discrimination, point (i) in the part "the following points should be noted" should be deleted to avoid any misunderstanding and highlighting of the weakness of the RDO.

- Paragraph 6.3.2(2) is about the hostile environment harassment. We recommend to point out in its relevant footnote that hostile environment harassment is not limited to working environment.
- In paragraph 6.5 about the discriminatory advertisements, unreasonable requirements or conditions in an advertisement, such as listing working requirements which are not relevant to the job, should be included for an unlawful advertisement.

5. Chapter 7: When discrimination and harassment is encountered

- In paragraph 7.2.10, the advantages of the complaint-handling process by the EOC should include “some of the information through the EOC process could be used as evidence in the courts and thus will show the strength of the case, which would help the applicant to decide if further legal proceeding should be taken”. Disadvantages of EOC process, such as “if the applicant is not willing to make conciliation, applicant’s time will be wasted, and the conciliation agreement does not have the same binding effect as the courts’ decisions” should be provided as well. Such information could help the person aggrieved to decide which actions should be taken.
- In paragraph 7.4.1 about other functions of EOC, “to keep the working of the RDO under review” should be included.

Also, we request the government to fully implement the RDO as earliest as possible. After the RDO being passed in July last year, the government implements the RDO in phases. Except the sections relevant to empowering the EOC to exercise its functions, all other provisions in the RDO have not been implemented. The government explained that “after the initial phase of preparing the code, at a time when the community has been more fully informed of the various provisions, other sections of the Ordinance will be brought into force”.¹ However, we are concerned that the government is now delaying the operation of the COP and the full implementation of the RDO.

Hong Kong Unison is receiving many complaints on racial discrimination in private sector, and the ethnic minorities are now waiting the full implementation of the RDO to deal with the cases of racial discrimination. **We urge the government to make the COP effective and thus the full implementation of the RDO as earliest as possible after the relevant consultation. Even the EOC is stilling drafting the COP on employment, the government should implement all the provisions in the RDO other than those related to employment. It could provide a basic protection to ethnic minorities.**

Besides above about the content of the COP, we also have the following recommendations to the EOC:

1. Provide the track changes and the amendments comparative table of the revised COP to enable the public to know the difference between the first draft and the revised version of the COP.
2. Publish the Compendium of the submission received in the consultation process and EOC’s response to those submissions, so that public can better understand the comments in the community and the EOC’s response to the comments.
3. Publish the COP in six common ethnic minority languages in Hong Kong.
4. **Publish the COP on education and provision of good, facilities and services as earliest as possible;** especially for the COP in education, the EOC should immediately start the drafting. The EOC should not delay it by the excuse of lack of resources or unfamiliarity with the subject.

¹ Government press release: Response to enquiries on Race Discrimination Ordinance, 10 July 2008. See http://www.cmab.gov.hk/en/press/press_1861.htm.