



For discussion on 14 February 2018

**Hong Kong Unison's submission to the Panel on Constitution Affairs on  
Work Progress of the Equal Opportunities Commission**

1. Hong Kong Unison is a human rights-based organization fighting for racial equality with a focus on equal and equitable education opportunities for ethnic minorities of Hong Kong. Under the Race Discrimination Ordinance (RDO), the Equal Opportunities Commission (EOC) bears great responsibility to maintain a proactive stance in handling racial discrimination compliant cases; ensure **equal opportunities in education and employment** for ethnic minorities and resolve the problem of *de facto* racial segregation in the public education system. This paper provides a brief account of the concerns of Hong Kong Unison on the work of the EOC.

**Access to redress for discrimination**

2. In 2017, the EOC only handled 73 complaints under the RDO, which are at least 75% less than those complaints under the SDO and the DDO. It is not because there is less discrimination based on the ground of race but because the **RDO is the weakest of all four anti-discrimination ordinances**. Unison has repeatedly urged the EOC, the supposedly *independent* statutory body, to proactively pursue with the Government on amending the RDO, namely **covering the exercise of Government powers and functions, including nationality as a protected characteristic, and repealing the exception in vocational training and education in relation to medium of instruction under the RDO**. To date, there is still no timetable from the Government on the priority recommendations on the RDO.
3. It was reported that there was an increase in complaints on racial vilification. In 2017, the EOC received 47 such complaints, of which more than 50% of such complaints were lodged by non-Chinese board members from a single NGO. Unison believes that the threshold for establishing a prima facie case is often too high; the scope of the “requirement or condition” and the establishment of detriment are too narrow. The RDO has in fact been underused and redress afforded under the complaint system has been scant. Unison urges the Panel to conduct a **public hearing on the quality of assistance and service provided by the EOC**.
4. Unison finds the complaint process too long and cumbersome. As only a very small number of cases (compared to the number of unsuccessful conciliated cases) actually receives legal assistance from the EOC, the purpose of investigation by the Complaint Services Division should aim towards conciliation, and not to gather information for legal analysis by the Legal Services Division should the case seeks legal assistance. The process of information collection and investigation by the Complaint Services Division is often too detailed and too long. Unison suggests **cases that failed early conciliation should be immediately transferred to the Legal Service Division for in depth investigation**.



5. The granting of **legal assistance** to complainant (aggrieved person) is **not transparent**. Although the EOC mentioned “the decision on granting legal assistance depends on a number of factors, including whether the case involves a **question of principle**, and whether litigation can help **raise public awareness of discriminatory issues**”, it is almost certain that the “strength of evidence to support a good prospect in court” is the key priority consideration. Unison once had a case whose limited legal assistance was discontinued because the respondent provided information that the EOC *believed* was unfavorable to establish the claim of race discrimination before the Court, despite the respondent took two months (instead of two weeks) to submit “further evidence” and presented in the form of written explanation instead of original documentation.

### **Ensure equal educational opportunities of ethnic minorities**

6. The EOC has only been promoting but not ensuring equal and equitable education opportunities for ethnic minority students, particularly under the Chinese Language Curriculum Second Language Adapted Learning Framework (“Learning Framework”) implemented since 2014. Despite numerous grievances from relevant stakeholders on the learning support for ethnic minority students, the EOC **has not initiated any investigations** nor submitted reports on the **effectiveness of Government support measures** for Chinese learning of ethnic minority students. As a statutory body to eliminate all forms of discrimination, the EOC should proactively **conduct independent reviews of the measures** instead of passively waiting for the Government to provide periodic progress reports on the implementation of the Learning Framework<sup>1</sup>.
7. The EOC has published guidance booklets such as “Promotion of Racial Integration and Prevention of Racial Discrimination in Schools” and “Easy Guide on Promoting Racial Equality in Schools: Kindergarten Admission” that set out practices which schools should adopt to promote racial equality. However, these booklets do not warrant accountability and compliance of schools to eliminate racial discrimination. As a statutory body, besides public education, the EOC should **strengthen its effort to enforce compliance with the RDO**.

### **Eliminate *de facto* racial segregation in the public education system**

8. Currently 70 to 75% of ethnic minority students continue to go to about 50 primary and secondary public schools in Hong Kong. The situation of *de facto* racial segregation has been criticized by the Committee on the Rights of the Child in 2013 and by the International Covenant on Economic, Social and Cultural Rights in 2014. To date, the EOC has not taken any measures to **eliminate such racial segregation** nor has it taken any action against the Government for the lack of progress.

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<sup>1</sup> LC Paper No. CB(2)1180/16-17(05), page 4