



Hong Kong Unison Limited
香港融樂會有限公司

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Hong Kong Unison

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Hong Kong Special Administrative Region (HKSAR)
CHINA



This report aims to provide an overview and recommendations regarding the ineffective legislation against racial discrimination, the dire situation of de facto racial segregation in the public school system, and the lack of Chinese-as-second-language curriculum for non-Chinese students to learn Chinese in Hong Kong.

Foreword

1. Hong Kong Unison (‘Unison’) was established in 2001 and registered as a charitable organisation in 2005. We are a local non-governmental organization that supports ethnic minority residents in Hong Kong. We are committed to eliminating all forms of racial discrimination in Hong Kong. We are concerned with the flaws of the Race Discrimination Ordinance (‘RDO’) enacted in 2009 and the lack of equitable opportunities in education for ethnic minority children. Unison has been following up closely with concerned stakeholders including academics, school teachers, ethnic minority parents and students on the amendment of the RDO, the integration of ethnic minority students in mainstream schools, and the teaching and learning of Chinese for ethnic minority children. We urge the United Nations (‘UN’) to examine the situation and provide appropriate recommendations to rectify the human rights violations towards ethnic minorities of Hong Kong.

Lack of a human rights institution in compliance with the Paris Principles

2. Hong Kong has international human rights obligations under various UN human rights treaties including the ICCPR, the ICESCR, and ICERD. UN treaty bodies such as CRC (2013), HRC (2013) and CESCR (2014) had expressed concern on the lack of a statutory body to investigate and monitor violations of human rights guaranteed by such conventions. Unison once again urges the current-term government to establish an independent human rights institution, in accordance with the UN Paris Principles, with adequate financial and human resources, with a broad mandate to promote and protect human rights covering all international human rights standards accepted by Hong Kong, and with “competence to consider and act on individual complaints of human rights violation by public authorities and to enforce the Hong Kong Bill of Rights Ordinance”¹.

A weak Equal Opportunities Commission (EOC) inconsistent with the Paris Principles

3. Currently, the EOC cannot initiate proceedings in its own name in relation to alleged breaches such as “requesting someone to provide information; discriminatory advertisements; instructions to discriminate and pressure to discriminate”². Unison suggests the HKSARG adopts Recommendation 48 proposed by the EOC without delay, to enable the EOC commence proceedings in its own name for discriminatory practices. This will allow the enforcement of law where there is no complainant or the victim of discrimination is fearful of bringing proceedings. Unison also recommends the powers of

¹ HRC 2013 Concluding Observations, para. 7

² Discrimination Law Review March 2016, Submissions to the Government, Executive Summary, para. 4.25



the EOC to include instituting judicial review proceedings, applying to intervene in or appear as amicus curiae in court proceedings and monitoring and advising the government on legislation and international human rights obligations be clearly and expressly provided for in the laws.

4. It is important that the EOC remains independent of the HKSARG in principle and in practice as emphasized by the UN Paris Principles. Unison strongly recommends the EOC to introduce provisions in the four anti-discrimination Ordinances before the next appointment of the EOC Chairman and its Board members, to maintain independence from the Government, including the appointment of its Board members, and requiring Board members of the EOC to have suitable experience and knowledge concerning human rights, elimination of discrimination or promotion of equality.

Flaws in legislation against racial discrimination

5. The flaws in the RDO have repeatedly drawn criticisms from the UN (HRC 2013, CESCR 2014, CERD 2014), showing the urgency of amendment. The EOC completed the Discrimination Law Review consultation and submitted their recommendations to the HKSARG in 2016. Although in March 2017, the Government prioritized 9 recommendations, all of them were low-priorities recommendations concerning only the private sector.
6. Currently there is no provision in the RDO which states that it is unlawful for the Government to discriminate against persons on the grounds of race in the performance of its functions or the exercise of its powers; and the RDO is the only Ordinance amongst the four anti-discrimination Ordinances that has this key flaw. This suggests that the Government does not consider ethnic minorities entitled to equal rights, for example and especially, during immigration functions, policing and detention in prisons, etc. Proposed by the EOC as a high priority for legislative reform, Unison urges the HKSARG to adopt without delay, Recommendation 6³, to bring the Government's exercise of powers and performance of functions expressly within the purview of the RDO.
7. The RDO expressly provides that nationality, citizenship, residence and related status are not within the protected characteristics of race. For many years there have been cases of banks taking a much longer time and/or refusing to open bank accounts for people of certain nationalities. This leads to inconvenience on employment and receipt of social benefits for ethnic minorities, such as the Comprehensive Social Security Assistance and student financial assistance for ethnic minorities, which could affect their right to subsistence. Echoing the recommendations made by CERD (2009) and CESCR (2014), Unison urges the HKSARG amend the RDO without delay, to include express provisions

³ Discrimination Law Review March 2016, Submissions to the Government, Executive Summary, para. 3.10



that nationality, citizenship, and residence and related status are protected characteristics under the legislation.

8. CERD (2009) has been concerned with the blanket exemption in the RDO in accommodating the medium of instruction in education and vocational training for persons of any racial groups. Some members of ethnic minority have been unable to receive vocational training or apply to a range of post-secondary courses because institutions do not offer courses in English, which is one of the two official languages in Hong Kong that is currently more accessible to ethnic minorities. According to Unison's research on post-secondary education programmes in 2015, 71% (132 out of the 186 programmes that responded to the study) were not suitable for students who did not speak or write Chinese. This violates the right to education and seriously hampers minorities' chance of further education, as well as limits their economic opportunity. Unison urges the HKSARG without delay, to repeal the provision regarding education and vocational training in relation to modifying or making different arrangements for medium of instruction.

Right to education

9. The *de facto* racial discrimination against ethnic minority children and racial segregation in the public school system had been criticized by CERD (2009), CRC (2013), and CESCR (2014). Despite the HKSARG removed the label of 'designated school' in 2013, *de facto* segregation still exists where over 80 or 90% of the student body is ethnic minority. Since 2012/13, the HKSARG has refused to release data on ethnic minority student distribution and concentration in public schools. These schools are not conducive to students' Chinese learning or social integration. Ethnic minority students graduating from these schools often have lower level Chinese abilities affecting their tertiary education and career prospects. Unison recommends the HKSARG to take immediate and effective steps to desegregate schools with disproportionate percentage of ethnic minority students in the public education system. We also urge the Government to offer adequate and professional training for all teachers to raise their cultural sensitivity to promote ethnic minority access to education in mainstream schools.
10. The concerns on the lack of an official education policy for teaching Chinese-as-a-second (CSL) language to ethnic minority students; the underrepresentation of ethnic minorities in higher education; and the discrimination and prejudice in employment faced by non-Chinese speakers due to the requirement of written Chinese language skills, even for manual jobs, have been noted in the concluding observations of CERD (2009), HRC (2013), CRC (2013), and CESCR (2014); yet the CSL curriculum is still absent. The current mainstream Chinese language curriculum assumes all students' mother tongue to be Chinese and the learning of other subjects also depends on a student's Chinese ability. The majority of ethnic minorities do not speak Chinese as a first language, and most ethnic



minorities graduate from 12 years of public school education with Chinese abilities comparable to only mainstream primary two level. As a result, they enjoy limited further education and employment opportunities.

11. Although the Government implemented the “Chinese Language Curriculum Second Language Learning Framework” starting from September 2014 and has since spent about US\$100 million, Unison is concerned about the effectiveness of the support. Limited guidance has been provided to schools on pedagogic principles, teachers are not required to be trained professionally before teaching CSL, and there is no progressive learning in the Chinese language subject. Unison urges the Government to formulate a comprehensive and adequate “Chinese as a second language” policy with a concrete policy goal, an implementation plan, outcome indicators, and a transparent monitoring and evaluation mechanism no later than September 2018.
12. Kindergarten is often where ethnic minority children are first exposed to the Chinese language and can have far-reaching impact on their future Chinese learning. In a recent EOC survey⁴, it was found that one in four kindergartens rejects or dissuades ethnic minority applications, although the Government established “Guidelines to Kindergartens on Admission Arrangement” promoting non-discriminatory practices in July 2017. Unison calls on the HKSARG to rigorously monitor admissions in kindergartens to ensure fair and non-discriminatory admissions and equal access to education. Unison also suggests pre-primary training for kindergarten staff to enhance their skills and ability to cater to the diverse needs of ethnic minority NCS children.

Right to information

13. Ethnic minority parents cannot make informed decisions when choosing a school for their children. Currently, when applying for primary or secondary schools, ethnic minority parents seeking information on support provided by different schools have to call the schools one by one, creating a huge burden on parents and school staff alike. Unison urges HKSARG to require all public schools to include available support and measures for ethnic minorities in the Government-published School Profiles. All parents regardless of race should be given adequate information from the Government about the support system on education so that they can make informed decision when they choose schools.

⁴ <http://www.eoc.org.hk/eoc/graphicsfolder/ShowContent.aspx?ItemID=15520>