



Submissions of Hong Kong Unison Limited
to the Committee on Economic, Social and Cultural Rights
on the parts of the Report of Hong Kong of China
(E/C.12/CHN-HKG/3)
about ethnic minorities
for the 52th session in April and May 2014

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Hong Kong Unison is an NGO which serves **ethnic minorities** in Hong Kong. Our clients are mainly of Asian ethnic origin. We receive no government funding.



Introduction

1. According to the 2011 Census, the size of the ethnic minority population in Hong Kong excluding foreign domestic helpers was 197,022, constituting about 3% of the whole population. Most of the ethnic minority residents are of Asian ethnicity or white. Many of them are second or third generation residents in Hong Kong.

Article 2- Race Discrimination Ordinance

No specific provision regarding the government's exercise of powers and performance of functions

2. The Race Discrimination Ordinance is the weakest among all the 4 non-discrimination ordinances in Hong Kong in the sense that there is no specific provision of the RDO that discrimination by the government in its exercise of powers and performance of functions is unlawful. Also, the section about education in the RDO does not apply to the Education Bureau.

3. The government submitted in paragraph 2.13 of its Third Report under CEDAW (CEDAW/C/CHN-HKG/7-8) that the Basic Law and the Bill of Rights Ordinance prohibit the government from practicing racially discriminatory acts in the exercise of its functions. This response undermines the provisions in international treaties including CEDAW that the government undertakes to adopt legislative measures prohibiting discrimination. Also, the Equal Opportunities Commission (EOC) has no mandate to handle complaints made under the Basic Law and the Bill of Rights. Moreover, the time bars and remedies provided for by the Basic Law and the Bill of Rights on one hand and the RDO on the other are different.

No provision for positive duties of the government

4. Under the 4 non-discrimination ordinances including the RDO, the government has no positive duty to eliminate discrimination and promote equal opportunities.

5. While the Administrative Guidelines on Promotion of Racial Equality provides that the relevant government departments should ensure different races have equal access to public services when formulating and implementing policies, the Administrative Guidelines only applies to 22 departments or public



bodies. Moreover, it does not have a statutory status. Also, other than having individual departments implementing the Guidelines reflect to the Bureau responsible for monitoring the implementation of the Guidelines, there is no other monitoring mechanism known to the public.

Mandatory conciliation before litigation

6. Under the RDO, if a claimant lodges a complaint with the EOC, he or she must attempt conciliation with the alleged discriminator before the EOC would start litigation. This makes it difficult for victims of discrimination to invoke the RDO and limits their access to the law. Since the RDO came into operation in July 2009, not a single case has been brought to the court. This lack of cases brought under the RDO is partly the result of the complaint-driven approach of the EOC, which is discussed below.

Nationality not covered as a ground of discrimination

7. Nationality is not a ground of discrimination covered under the RDO. Some banks have refused to or taken several months to open accounts for ethnic minority residents who are not of Chinese nationality. Some ethnic minority residents thus ran into difficulties when they sought employment or tried to receive government financial aid for students.

8. In paragraph 2.8 of the government's report to the Committee on Economic, Social and Cultural Rights for this session, the government argues that immigration status is not a prohibited ground of discrimination under ICERD when the government justifies the fact that immigration status is not covered under the RDO. However, any such argument used to justify the non-application of the RDO to nationality or immigration status discrimination status is unfounded. According to the General Comments of the Committee on the Elimination of Racial Discrimination in 2004, international treaties should be taken holistically and ICERD should not be interpreted to detract from the protection of rights enshrined in other treaties¹.

¹ Paragraphs 1 and 2 of the General Comments No. 30 of CERD in 2004 read
“Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2 provides for the possibility of differentiating between citizens and non-citizens. Article 1, paragraph 3



9. Recommendations

- The Equal Opportunities Commission is conducting a law review and we urge the EOC to proactively advocate amendment to the RDO to bring government's exercise of powers and performance of functions under its purview.
- The RDO and other non-discrimination ordinances should provide for positive duties of the government to eliminate discrimination and promote equal opportunities, including by training government personnel to eradicate discriminatory attitudes among government officials.
- The Administrative Guidelines on Promotion of Racial Equality should be given statutory status. At the same time, the government should strictly enforce the Administrative Guidelines.
- Conciliation with the alleged discriminator should not be a prerequisite to legal action for claimants who seek the assistance of the EOC.

Article 2- Complaint-driven approach of the Equal Opportunities Commission

10. The Equal Opportunities Commission (EOC) takes a complaint-driven approach to eliminating discrimination. For example, when the media sought comments from the EOC on gender segregation within schools, the EOC, instead of stating that it would look deeper into the issue, stated that victims could lodge a complaint with the EOC. It was only after we wrote to the EOC did they investigate the matter. This approach particularly jeopardizes the access to equal opportunities of ethnic minority women, some of whom are victims of patriarchal oppression and are pressured by their community not to lodge a complaint. **We urge the EOC to adopt a more proactive approach to promoting equal opportunities, especially regarding vulnerable groups**

declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality;

Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”



including ethnic minority women. For example, it should review the law of EOC powers, provide internal training and guidelines and implement programmes to reach out to potential victims.

Article 10- Education

11. The majority of ethnic minority students in Hong Kong were born in Hong Kong and enjoy the right of abode here.

Chinese language education

12. Chinese language proficiency is very important for ethnic minorities to enjoy equal education and employment opportunities. In its latest Concluding Observations in March 2013 (CCPR/C/CHN-HKG/CO/3), the United Nations Human Rights Committee noted with concern that non-Chinese speaking migrants face discrimination and prejudice in employment due to the requirement of written Chinese language skills, even for manual jobs.

13. Nevertheless, the education policy fails to equip ethnic minority girls with an adequate level of the Chinese language. The mainstream Chinese language curriculum falsely assumes the first language of all students to be Chinese, and ethnic minorities have a poor passing rate in it. On the other hand, many schools, such as most ‘designated schools’², put ethnic minorities under an alternative Chinese curriculum and prepare them for the GCSE (Chinese) examination, the level of which is about that of primary 2 in the mainstream curriculum, upon graduation from secondary school. **A Pakistani student attaining an A in GCSE (Chinese) could not even manage the duties of a delivery assistant because the student could not read the list of goods and addresses in the Chinese language.**

14. The government has announced the implementation of a “Chinese Language Curriculum Second Language Learning Framework” in 2014/2015. Even though the Framework is to be implemented in September 2014, the policy goal, implementation plan and timetable, output indicators, the monitoring mechanism and measures to ensure the transparency of the policy formulating, implementation and monitoring process are lacking.

² The name of ‘designated schools’ has been changed by the government. Please see paragraph 17 below.



15. We urge the government to formulate a “Chinese as a Second Language” policy with a concrete policy goal, an implementation plan and timetable, outcome indicators and a transparent monitoring mechanism as soon as possible.

De facto racial segregation in the public education system

16. There is de facto racial segregation in the public education system. In 2012/13, in 8 public schools, non-Chinese speaking students account for over 90% of the student population.

17. To address the concerns over ‘designated schools’, the government has removed the label ‘designated school’ and relabelled them ‘schools provided with recurrent funding by the Bureau to enhance school-based support in servicing the needs of non-Chinese speaking students’ with a change of funding mode for 2013/2014. There was no measure announced to address the de facto segregation in the latest Policy Address in January 2014.

18. *Our response to this policy:* Despite the expansion of funding support, the government has not taken any effective measure to address the high concentration (over 90%) of non-Chinese speaking students in the 8 public schools. Those schools are still segregated schools in substance and violate Hong Kong’s commitments under the CERD Convention and result in harmful social and economic consequences for the children and their future integration into the society.

19. The Education Bureau claims that ethnic minority parents choose to send their children to ‘designated schools’.³

20. *Our response to this claim:* The government does not provide adequate information to help ethnic minority parents make educated and informed choices. In the information given to ethnic minority students on choosing schools in September 2013, the Education Bureau includes the names of the 33 offering alternative language subject or adapting Chinese curriculum for non-Chinese speaking students’, but does not inform the students that many of these schools teach a Chinese language level much lower than that of mainstream schools nor does it advise parents that there is a concentration of

³ Please see paragraph 9 in <http://www.legco.gov.hk/yr11-12/english/panels/ed/papers/ed1212cb2-486-7-e.pdf> for example.



ethnic minority students in some of these schools. This necessarily impacts the decision-making of students and parents given the limited information they have regarding the local schooling system and which schools they might opt for and why.

21. Moreover, many ethnic minority children have no choice but to attend ‘designated schools’ because they cannot manage the Chinese curriculum at mainstream schools since there is no adequate learning support or resources provided in these schools to enable teachers to provide assistance to non-Chinese students so that they may learn the local curriculum at a pace that is suitable for them.

22. Furthermore, any reliance on parental choice to evade the responsibility of eliminating de facto racial segregation violates Article 3 of the CRC on the best interests of the child. The Committee on the Elimination of Discrimination states in its General Recommendation No. 19 that a condition of racial segregation can arise without any initiative or direct involvement by public authorities. The government should work towards the eradication of any negative consequences that ensue.

23. We urge the government to take immediate, effective measures to eliminate the de facto racial segregation in the public education system.

Racial and gender segregation within schools

24. Moreover, according to news reports, in 2012/13, there was segregation of ethnic minority girls within some co-educational secondary schools, such as the prohibition of interaction between male and female students. Also, in one school, Pakistani girls faced gender and racial segregation because they had a timetable different from that of Pakistani boys and non-Pakistani boys and girls. Pakistani girls had less learning time under this timetable. Even though the incident was reported in the media more than once, it is not clear to the public what the Education Bureau has done to investigate the issue. **We urge the government to take immediate, effective measures to prevent and address any gender segregation within schools.**

Article 6- Entry to civil service



25. Ethnic minorities do not have equal opportunities to become civil servants. Most civil service positions require Chinese language proficiency. However, most ethnic minorities had not had a chance to learn Chinese at school until about 7 years ago and the majority of ethnic minority students only learn the Chinese language of the local primary-two level. The government has promised to review the language proficiency requirements of various civil service posts, but from 2010 to 2013, the only examples of grades for which the Chinese language proficiency requirement has been adjusted are Workman and Artisan and Motor Driver. **We urge the government to intensify its efforts in reviewing the language proficiency requirements of individual civil service posts and actively inform ethnic minorities about any resulting adjustment of the requirements.**

Article 12- Access to healthcare

26. There have been cases where ethnic minorities who tried to book interpretation service at public hospitals (for example before going to the Accident and Emergency Unit of the hospital) were refused and told that only doctors could book the interpretation service. Also, the existence of the interpretation service is unknown to many ethnic minorities and there have been complaints of the inaccuracy of the interpretation. The failure to address the language needs of ethnic minorities can result in misdiagnosis and wrongful prescription of medication, a gross violation of ethnic minorities' rights to health. **The government should ensure ethnic minorities know about the interpretation service and strengthen the monitoring and complaint handling mechanism of the interpretation service and its transparency.**

Submitted in March 2014