



Unison's position on the Government's consultation document on legislation against racial discrimination

1. General position

- 1.1 Unison Hong Kong ("Unison") welcomes the Government's commitment in legislating against racial discrimination. Indeed, the government has been obligated to enact such legislation ever since the Convention on the Elimination of Racial Discrimination was extended to Hong Kong in March 1969. It is regrettable that a global city like Hong Kong permitted racial discrimination in private sector to persist for so many years.
- 1.2 In general, Unison believes the definition of various types of discriminations and the provisions of the legislation should be wider to protect all persons suffering from various forms of racial discriminations. We also propose that the general exceptions from anti-discriminatory provision should be clearly and specifically defined and cogently justified.
- 1.3 Furthermore, Unison believes that the legislation alone can not guarantee elimination of all forms of racial discrimination. Government and public authorities should also be under a positive duty to promote equal opportunities and to develop a multicultural perspective through public and civil education. Long term plans and adequate resources should be committed to this end. The duty preferably should be made statutory and provided for in the legislation ¹

2. Specific comments

2.1 New arrivals from Mainland China

- 2.1.1 The Government has proposed to exclude the New Arrivals from Mainland China as one of the protected groups under the proposed Legislation against Racial Discrimination. Unison is strongly against this view. In fact, the New Arrivals from Mainland China are now suffering from severe discrimination and irrational prejudice. Our Government should address this issue and take actions to protect them under this legislation.
- 2.1.2 Under the "one country, two system" policy, the legal system of Hong Kong is different from the one of Mainland China. Actually, the legal system in each of the legal jurisdictions of Mainland China, Taiwan, Macau and Hong Kong is different from each other. In the coming bill, we propose that the definition of "national origin" be extended to include "any jurisdiction of the People's Republic of China". It will outlaw the discrimination against New Arrivals from Mainland China.

¹ Similar statutory obligations can be found in Section 71 of the Race Relations Act of the United Kingdom



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2.2. Discrimination on ground of language

2.2.1 Unison is disappointed that the government does not consider language as a ground of direct discrimination. In fact, according to our experience, most of the difficulties encountered by the ethnic minority are related to language problem. The ethnic minorities in Hong Kong have not got adequate support to help them integrate well into our society and many of them can speak their native language only. Very often, the Government front line workers and institutions use unjustified language barrier as an excuse for not providing service. Also, the ethnic minority members have difficulty in having access to the updated societal and government information since most of them are provided in Chinese and English only and no reasonable attempts are made to overcome such a problem. It is unacceptable that ethnic minorities have to face discriminatory treatment solely because of their language in unjustifiable circumstance. This will hinder their long-term integration to Hong Kong.

2.2.1 We propose that "language" be explicitly listed as one of the grounds of direct discrimination with appropriate exclusion provision.

2.3 Definition of Indirect Discrimination

2.3.1 We think the proposed definition of Indirect Discrimination (para. 36) is too weak and outdated. It is based on the former UK definition which has been amended and improved. We propose that a wider & clearer definition be adopted in line with the European Commission Race Directive.

2.4 Transferred discrimination

2.4.1 The proposed transferred discrimination (para 37) is only applicable to "the spouse or a relative" of a person. This is inconsistent with Article 1(1) of ICERD which intended to protect all persons against all forms of racial discrimination.

2.4.2 We propose that transferred discrimination should include those related by blood, marriage, adoption or affinity. It should also be extended to the "associates" including any relative or carer of the person, any one cared by the person, living with the person, defending or working for the interest of the person, or in a business, education, training, sporting or recreational relationship with the person.

3. General exceptions from anti-discriminatory provision

3.1 Sunset period for small companies and employers

3.1.1 Based on the experience of the enactment of the existing Sex Discrimination Ordinance, Disability Discrimination Ordinance, the Family Status Discrimination Ordinance, both the employers and government are already sufficiently familiar with the idea of discrimination



and have solid experience in deriving the code of practice and training their staff. Therefore, we don't think any sunset period for small companies and employers is necessary.

3.1.2 It is our view that the enactment of the legislation is unlikely to lead to huge additional production and operation cost to employers. However, the Government should take active measures, e.g. providing training workshops and translation services to help the small companies that are really in need.

3.2 Immigration and other legislation

3.2.1 Unison is disappointed that the immigration legislation will be exempted from the proposed anti-discriminatory provision. The existing two-week rule requires the foreign domestic workers to leave HK within 14 days after the termination of their contract even if they have found another employer. It is an indirect discrimination against ethnic minorities from South and South East Asia and it has been severely criticized by UN treaty bodies. We propose that the existing Two-week Rule should be abolished.

3.2.2 Moreover, we are also disappointed to find in the descriptions on effects of the legislation on government and in the definition of indirect discrimination that the government makes no attempt to amend but to preserve those pre-existing local legislation which are racially discriminatory in nature. To combat all forms of racial discrimination and to prevent their institutionalization, the proper way forward is for the government to review all the local laws to identify and amend those provisions, which have the effect of requiring public officers to act in a discriminatory way in discharging their duty or which in other way racially discriminatory. We urge the Government to publicize as soon as possible a list of laws which are racially discriminatory, together with proposed amendments to rectify the situation.

3.2.3 The government should remind itself that there is no point in preserving racially discriminatory provision because the Hong Kong Bill of Rights and the Basic Law, which domesticates and entrenches the standard in the two international human rights Covenants, nullify such offending laws for unconstitutionality. Therefore, unless the derogations in the provisions can actually be justified to be in line with international standards or to be within the reservations made to the Covenants, an exemption or similar immunity clauses in the prospective Race Discrimination Ordinance will not be able to validate the offending local legislation or protect the officials. Such discriminatory legislation serves no purpose but to confuse the officials and the public as to the true effect of the law. At the end of the day, no government official and the governmental agency he belongs can claim immunity by relying on any unconstitutional legal provision in any local legislation, including a race discrimination ordinance.



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4. Implementation Body

- 4.1 We support the EOC as the body responsible for implementing the provisions of the legislation on the condition that it is adequately resourced and empowered so that it can investigate and monitor unlawful discriminatory acts.
- 4.2 The appointment of the members of the implementation body should be open and transparent with adequate public accountability. The members should be independent and have multi-cultural background with a fair proportion of ethnic minority members should be appointed.
- 4.3 Unison finds that the existing Race Relation Unit of HAB serves the useful function of mediating and helping the government departments to improve their services to ethnic minority members. We propose that a review be conducted on its future roles and functions before making any decision on dissolution.

5. Comments on the consultation exercise

- 5.1 Unison appreciates the extension of the consultation period to 8th February 2005. It gives the public more time to express their views.
- 5.2 Yet, we are disappointed that the Government hasn't translated the consultation paper into the languages of the major ethnic minority groups in Hong Kong. We have received many complaints from ethnic minority members especially Pakistani and Nepalese that they have difficulty in reading the English and Chinese versions of the paper and the information written in the leaflets is not detailed enough.
- 5.3 Also, we believe the Government could play a more active role in promoting the consultation paper. According to our front-line contact with the ethnic minority members, most of them have not received any information from Government about this legislation. Obviously, only a few discussion forums are far from adequate to make the ethnic minority members aware of the proposed legislation. The Government could consider organizing exhibitions in the neighborhoods that are densely populated with ethnic minority members.

6. Conclusion

We believe that legislation is crucial to provide basic protection to ethnic minorities in Hong Kong. In order to help them to integrate to the mainstream society, our government should be more proactive in conducting various positive support measures. We believe that ethnic minority members are vital human capital; they can contribute to the social and economic development of Hong Kong. Our government should put more resources in providing education and vocational trainings that fit their needs. Supportive employment measures should also be provided to help ethnic minority members lead a decent, dignified life here.

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