

**URGENT**

香 港 人 權 監 察  
HONG KONG HUMAN RIGHTS MONITOR

香港上環孖沙街二十號金德樓4樓  
4/F Kam Tak Building, 20 Mercer Street, Sheung Wan, Hong Kong  
電話 Phone: (852) 2811-4488 電郵地址 Email: info@hkhrm.org.hk

**Submission to the LegCo Panel on Constitutional Affairs  
for its Meeting on Tuesday, 7 July 2009, at 4:30 pm**

**on the Draft Administrative Guidelines on Promotion of Racial Equality**

**from**

**The Hong Kong Human Rights Monitor  
& Hong Kong Unison Limited**

I am writing on behalf of the Hong Kong Human Rights Monitor and our partner Hong Kong Unison Limited. Our submissions are as follows:

1. Upon perusal of the draft set of Administrative Guidelines (hereafter “Guidelines”) on the promotion of racial equality (LC Paper No. CB(2)2064/08-09(02)), we find the mechanism for mainstreaming racial equality depicted by it to be extremely weak and entirely non-committal. Apart from lacking a legal framework, its approach only purports to be encouraging policy secretaries, civil servants and other public officers to observe it (e.g. paragraphs 1.4, 4.10, 4.11, 4.12, 5.1, 5.2, 6.1 and 6.4).
2. Firstly, the voluntary nature of the set of Guidelines seriously undermines its effectiveness. The voluntary nature and the lack of commitment in the Guidelines are reflected in the use of words like “may” signifying an option instead of words like “should” making it obligatory. It can be acted on or simply be ignored without any penalty.

3. Secondly, the approach even cannot be described as an encouragement at all. It is clear that there is no incentive e.g. in the form of additional manpower or other resources awarded to any bureau or department or public authority, which voluntarily commits to the full implementation of the Guidelines and adopts measures “encouraged” in the Guidelines.
4. To be effective, the set of Guidelines must spell out the consequences for failing to comply with it and state clearly that disciplinary actions or other sanctions would follow any violation or omission. A complete revision to make the Guidelines mandatory, to give it legal buttresses and to build into the system of Guidelines carrot and stick are therefore necessary for making the Guidelines effective.
5. Paragraph 6.1 of the Guidelines states, “Bureaux, Departments and relevant public authorities concerned are responsible for implementing the Guidelines within their policy/program areas.” In other words, to some extent, the Administration admits that they have the duty to implement the Guidelines. If so, disciplinary actions should be followed if any policy secretary, civil servant or public officer fails to carry out this duty.
6. The Administration should clarify and expand the scope of the public authorities and add an annex setting out a list of the institutions (such as UGC funded universities and government aided schools) to be treated by the Administration as public authorities.
7. At paragraph 6.4, bureaux, departments and public authorities are encouraged to designate an officer to coordinate the implementation of the Guidelines. It is totally unacceptable that it is not a mandatory measure. Further, the role of the designated officer should include coordinating the implementation, and overseeing arrangements for and the implementation of reviewing policies and measures. The officer plays a dual role of implementing and monitoring the observance of the Guidelines by her or his bureau, department or public authority. To be effective, the designated officer must be of a rank not lower than the under secretary. The central high level coordination network should

be headed by the Chief Secretary for Administration with the assistance of the Secretary for Constitutional and Mainland Affairs to ensure that priority would be given to promoting racial equality.

8. We welcome the measure of publicizing the checklists (paragraph 8 of the LegCo paper CB(2)2064/08-09(01)). To enhance the transparency, we request to publicize not only the checklists but also the posts and names of the designated officers, their annual reports on the review of effectiveness of the implementation of the Guidelines, the race impact assessment documentation and process, the policies and measures adopted by the central high level coordination network and the advice by the EOC (see paragraph 3.6 of the Guidelines). The designated officer should also organize public consultation meetings annually for the improvement of the policies, measures, checklists and the Guidelines.
9. In order to facilitate this consultation exercise, the Administration should provide documents on the evaluation of the present gender mainstreaming measures and overseas experiences of racial equality plan, such as those in UK.
10. In general, the set of Guidelines is not user friendly and is difficult for policy secretaries, civil servants and other public officers to understand. Many examples and legal authorities (such as overseas judgments) in simple language must be added to enrich the Guidelines to facilitate easy understanding. For example, paragraph 4 of the annex to the Guidelines interprets the definition of indirect discrimination regarding considerably smaller proportion (“比例遠低於”) without referring to the recent European authorities. At paragraph 5 of the annex, it should draw policy secretaries, civil servants and other public officers’ attention to special measures (section 49, RDO), otherwise, some of them may use a superficial but misconceived notion of “equality” as an excuse not to give further assistance to those ethnic minorities.
11. As to Section 3, in particular paragraph 3.2 of the Guidelines concerning the legal framework, instead of stating merely article 26 of the ICCPR, article 2

must be added as the two provide different and complementary protections. Article 2 prevents discrimination in the enjoyment of any rights recognised in the ICCPR even if there is no domestic legal provision. Article 26 ensures that all rights or entitlements under any domestic law must be enjoyed without discrimination even though they may not be recognised or set out in the ICCPR. Further, the relationship between ICCPR and the Hong Kong Bill of Rights Ordinance, Cap.383 should be added in paragraph 3.1.

12. This Section should also remind the readers of the international obligations of Hong Kong under all the related conventions such as the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.
13. We are also of the opinion that the Guidelines should be adopted by all Governmental Bureaus, Departments and public authorities, especially the law enforcement agencies which provide key services seriously affecting the rights and other entitlements of the ethnic minorities.
14. There should also at least be a publicly announced policy commitment by the Financial Secretary to give priority to fund initiatives to combating racial discrimination and to promoting racial equality and harmony.
15. The Guidelines must include measures for the periodic data collection regarding race, data analysis and survey of the racial equality situation. There should be a review of the implementation of the Guidelines after two years and the Administration should consult the public in the review on the need of a statutory race equality plan.

Chong Yiu Kwong

Chairperson

The Hong Kong Human Rights Monitor

7 July 2009