



(中文版本請見下方。)

6th October, 2014

**Press Release: Response to the Discrimination Law Review and the Related Public Consultation of
the Equal Opportunities Commission**

Hong Kong Unison welcomes the initiative of the Equal Opportunities Commission (EOC) to review the Discrimination Ordinances and conduct public consultation. As Hong Kong aspires to be a democratic society, it is fundamental that Hong Kong has legislation that embodies the value of equality for all, including the most vulnerable groups. Also, Hong Kong has signed a number of international conventions and has the corresponding obligations to eliminate discrimination by means including legislation and law amendments. The flaws in the Discrimination Ordinances in Hong Kong have repeatedly drawn criticisms from the United Nations, showing the urgency of a comprehensive review.

We have made our written submission to the EOC and below is a summary of our views:

A. Bringing the Government's exercise of powers and performance of functions expressly within the purview of the Race Discrimination Law

The Government's commitment to racial equality is of the utmost importance, and this must be fully and visibly reflected in the way the government exercises its powers and functions. Currently, there is no provision in the Race Discrimination Ordinance (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 Discrimination Ordinances that has this key flaw. This flaw should be rectified. The existence of this flaw suggests that the Government does not consider equal rights for ethnic minorities and treats ethnic minorities as second-class residents. The United Nations Human Rights Commission has shown concern in 2013 over this gap and recommended Hong Kong to rectify the gap in close consultation with the EOC.

B. Including nationality, citizenship, residency and related status as protected characteristics

Currently the Race Discrimination Ordinance does not apply to discrimination on grounds of nationality, citizenship, residency and related status. Ethnic minorities face discrimination on these grounds too besides race. For example, there have been cases of banks taking a much longer time and/or refusing to open bank accounts for people of certain nationalities. Our service users have complained that ethnic minority construction workers sometimes receive a lower pay if they do not hold an HKSAR passport. The United Nations Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights have shown concern over this problem.

Regarding residence and related status, it is possible to introduce exceptions related to social welfare and government functions such as housing, education and social security, but each exception must be individually justified on grounds of legitimacy, reasonableness and proportionality. Also, the Basic Law



provides that permanent residents have the right to vote and to stand for elections, which would not be affected by discrimination ordinances.

C. Removing the exemption regarding the medium of instruction in education and vocational training

The blanket exemption in the Race Discrimination Ordinance that schools and vocational training institutions are not required to make arrangements regarding the medium of instruction for persons of any racial groups should be removed. Some members of ethnic minorities have been unable to receive vocational training because institutions are not required by the RDO to instruct in one of our two official languages that is more accessible to ethnic minorities, which is currently English in most cases. Also, many courses in tertiary institutions where the medium of instruction is supposedly English, in practice, are taught in Cantonese.

Hong Kong Unison has been advocating for years that ethnic minorities should have equal opportunities as Chinese students to learn both Chinese and English, our official languages, at school in order to have equal further education and employment opportunities. The provision of such equal opportunities should not be compromised by the removal of this blanket exemption about the medium of instruction.

As a matter of practicality, we hope the EOC would address concerns over schools' choice between Chinese and English, Cantonese and Putonghua, and Traditional Chinese and Simplified Chinese as the medium of instruction. Some of our service users have also expressed their concerns over, in the situation where ethnic minorities are outnumbered by Chinese students in a class, whether teachers will teach in Chinese, even if the schools have originally promised to teach in English.

Public education efforts and advocacy strategy of the EOC

We urge the EOC to devise a clear and effective strategy for advocating these proposed amendments. Also, before this consultation exercise, the EOC has done far from sufficient groundwork for advocating these amendments, such as public education on the content of the law and why the gaps in the ordinances need to be rectified.

Discriminatory and confrontational sentiments against certain groups such as new immigrants or arrivals among some members of the public have been observed. We stress that no groups or individuals should be discriminated against. Some of these sentiments are based on misunderstandings of concepts such as discrimination. We urge the EOC to proactively make the mass public understand these concepts. A correct understanding of these concepts among the public is as fundamental to achieving equality as the adequacy of the law under review.

Hong Kong Unison's full submission to the EOC can be viewed here: <http://tinyurl.com/unisondlr>

Media Inquiries: Miss Annie Li, Campaign Officer, on 53188779 or 27893246



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新聞稿：回應平等機會委員會歧視條例檢討公眾諮詢

香港融樂會歡迎平等機會委員會(平機會)檢討歧視條例並就此作諮詢。在香港發展成為民主社會的同時，我們亦需要完善的反歧視法例，使即使最弱勢社群亦能受保障，平等這原則能確切實踐。香港亦有簽署不同國際公約，有相關責任以立法及修例等方法去消除歧視，本港歧視條例的問題一再受聯合國批評，顯示全面檢討的迫切性。

我們已向平等機會委員會提交書面意見，以下為意見摘要：

一、明文規定政府在執行職能及行使權力時受種族歧視法例約束

政府堅守種族平等這原則極為重要，必須在行使權力和職能時充分體現這原則。目前，《種族歧視條例》沒有條文規定政府在執行職能及行使權力時受種族歧視法例約束，是四條歧視條例唯一一條例有此漏洞的。這顯示政府似乎視少數族裔為二等居民；聯合國人權委員會亦於 2013 年對此漏洞表示關注。本會認為應修例填補此漏洞。

二、把國籍、公民身份、香港居民身份或其他相關身份加為保護特徵

目前種族歧視條例並不適用於國籍、公民身份、香港居民身份或其他相關身份。少數族裔除了種族歧視外，亦面對這幾類歧視。例如，多年來不斷有銀行拒絕為持某些護照的少數族裔開設銀行戶口，或需時很久才為這些少數族裔開設戶口。我們亦收到少數族裔投訴，因為未持有特區護照而較其他少數族裔得到較低工資。聯合國經濟、社會、文化權利委員會及消除種族歧視委員會已經表明關注這個問題。

關於香港居民身份或其他相關身份，本會認為可以考慮加入有關社會福利和政府職能(如住房、教育和社會保障)的豁免條款，但每個豁免條款必須合法、合理及合乎比例(*legitimate, reasonable and proportional*)。此外，基本法規定永久居民享有選舉權和被選舉權，歧視條例不會凌駕基本法。

三、廢除於教育和職業訓練範疇有關教學語言的豁免

《種族歧視條例》中的豁免條款使學校和職業訓練機構不需為任何種族群組的人作教學語言上的調節。很多職業訓練課程以廣東話授課，某些少數族裔因此無法接受訓練。此外，一些大專院校雖聲稱課程以英語教授，但其實導師以廣東話授課。《種族歧視條例》中這全面的豁免條款應該廢除。

本會多年來一直倡議少數族裔應有平等學習中文和英文這兩個官方語言的機會，以保障他們平等的升學和就業權利，廢除這有關教學語言的全面豁免後，少數族裔學習中、英文的不平等機會不應受到影響。

在實際運作層面上，我們希望平機會會回應一些公眾人士的憂慮，例如中文和英文、粵語和普



通話，以及繁體字和簡體字之間的選擇。一些少數族裔學生也擔心，在班中華人學生人數較多，會否使本來規定以英語授課的課堂需改為以中文授課。

平機會倡議策略及公眾教育工作

我們促請平機會就此歧視條例檢討制定一個清晰而有效的倡議策略。此外，是次公眾諮詢開始前，平機會的公眾教育工作不足以廣泛加強公眾人士對條例內容及漏洞的認識。

社會上有些對某些群體（如新移民）的歧視和對抗情緒，是基於對歧視等概念的誤解。我們重申任何群組或個人不應受歧視，促請平機會主動向公眾澄清這些概念的意思。公眾清楚理解反歧視及平等這原則，與良好的反歧視條例一樣，對促進平等都是不可或缺的。

本會書面意見全文請見 <http://tinyurl.com/unisondlr>（只有英文版）。

傳媒查詢： 本會倡議主任李敏小姐（電話 27893246 或 53188779）