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2017年7月1日

新聞稿
亞洲首個人權模擬法庭
2017 比賽題目關於少數族裔

「泛亞人權模擬法庭比賽」總決賽於二零一七年六月三十日在香港大學舉辦，並由來自菲律賓的 University of the Philippines 獲勝。是次比賽是由香港大學比較法與公法研究中心及香港融樂會共同舉辦，為首個此類型的國際性賽事，除了關注人權問題，還為法律系學生提供獨有的平台，以辯論亞太區的人權議題。

被揀選參加於二零一七年六月二十九及三十日的口述聆訊比賽的七支隊伍來自澳洲、中國、香港、菲律賓及新加坡的法學院。在教練帶領下，各隊的充足準備和比賽質素均受到模擬法庭的評判表揚。18 位來自香港法律界的成員貢獻了他們的專業知識，並對比賽鼎力支持，分別擔當了半準決賽、準決賽及總決賽的評判。成員當中有司法機構成員、法律學者及法律界人士，包括資深大律師。

第一屆「泛亞人權模擬法庭比賽」檢視虛構國家“Serenatia”的教育制度，審視其制度有否令國家內的少數族裔被邊緣化，及有否違反其國際人權義務。今次比賽在香港這個「亞洲國際都會」進行，希望引起大眾關注亞洲地區上仍然發生的制度性不公，特別是不同地區的少數族裔權益議題。是次模擬法庭的賽題提出有關平等接受教育及主流學校中制度性種族隔離少數族裔的問題，Serenatia 和香港兩者就少數族裔教育安排有甚多相似之處，間接視審視香港教育制度的現況。

代表申請人的隊伍表示答辯人的國家教育政策（包括入學差異、平行分流政策中的種族隔離狀況以及把大學入學語言測試資格優先給予主流語言族群）構成了種族歧視並違反答辯人國家的法例條文及國際人權公約。正如港府有責任確保所有種族無歧視地平等享受教育，虛擬國家 Serenatia 亦受《消除一切形式種族歧視國際公約》及《種族歧視條例》束縛。

在 6 月 29 日的半準決賽中，National University of Singapore, Singapore Management University, 北京大學及 University of the Philippines 的隊伍晉級了準決賽。

其後 National University of Singapore 及 University of the Philippines 的隊伍晉級總決賽。總決賽的評判包括高等法院原訟法庭法官薛偉成先生、帝理律師行主管帝理邁律師、香港大律師公會副主席毛樂禮資深大律師及香港大律師公會前主席李志喜資深大律師。經過一輪的龍爭虎鬥，來自 University of the Philippines 的隊伍脫穎而出。與此同時，為表揚隊伍在書面陳詞以及口述聆訊環節出色的整體表現，University of the Philippines 及北京大學分別獲得最佳摘要書（訴訟人）及最佳摘要書（答辯人）的獎項。而來自 Singapore Management University 大學的 Aaron Yoong，則獲得最佳陳述員獎項。

香港被譽為「亞洲國際都會」，但其教育制度卻未能滿足不同教育需要的學生。雖然「指定學校」的標籤已於 2013 年廢除，但少數族裔學生仍然面對被隔離於主流學校的問題。基於某些原因，這些前「指定學校」實際上仍繼續招收多於正常數量的少數族裔學童。因此，「指定學校」的情況仍然存在。然而，教育局表示少數族裔學童申請入讀這些前「指定學校」是家長的個人決定。但基於現實種種情形，如家校溝通障礙、不同的人學標準及面試程序，以及主流學校缺乏予少數族裔學童學習中文的支援，皆令家長無從選擇，只好報讀這些前「指定學校」。

同樣地，法官的提問和論點集中在語言可否被納入禁止種族歧視的範圍。如果可以的話，部分隊伍提交經濟社會和文化權利委員會在第 20 號一般性意見中所指出，*Serenatia* 根據學生語言能力把他們分散到不同學校的平行分流政策構成歧視。然而，當被問及這是否構成直接或間接歧視時，隊伍未能完全掌握 *Serenatia* 政策的複雜性。隊伍面對法官艱深的提問，如學校對申訴人的待遇是否可以被視為個別歧視性行為，抑或個別行為，雖然本身無害，但當被視為一個整體就構成歧視。這個問題的答案引申出了另一個問題，即政策的累積效應是否等於系統性歧視。法官要求隊伍協助法庭決定教學語言政策本身是否已屬違法，還是視乎政策如何落實及其對少數語言群體的影響。

法官團隊並質疑，從教學角度來看，基於學生能力分流的做法本身是否必然有害，即這種「隔離但平等」的做法是否如 1954 年美國最高法院的地標個案 *Brown v. Board of Education* 判決般屬不合法；沉浸式教學是否讓學生掌握語言能力的最佳政策，抑或本身亦有其短處。

自從 2014 年起，雖然教育局每年撥款為數 2 億港元為少數族裔提供中文學習支援，但由於缺乏具體的目標、監察、檢討、透明度以及不統一的支援方式，皆影響現時改善少數族裔學習中文的成效。相比起華裔學生，他們得到的學習機會懸殊。若要徹底解決問題和根除制度上的種族歧視，則必須建立有效的政策和配合適當的教學方法和學習環境，和恰當的評估工具，以檢討政策成效。

時至今日，香港還沒有「中文作為第二語言」的學習架構給非華語學生學好中文。即使少數族裔學生經過十二年免費教育的洗禮，他們的中文水平卻只有一個小二學生的程度。種種指出教學課程和少數族裔學習需要之間的差距阻礙少數族裔的享受平等的高等教育機會和就業機會，使他們陷入跨代貧困的惡性循環。

於總決賽擔任首席評判的高等法院原訟法庭法官薛偉成先生讚揚獲獎隊伍處理這個有挑戰性及複雜的個案表現自信和平穩。但他對沒有參賽者回應這個政策是否違法感到驚訝。總體而言，基於比賽問題，評判關注導致種族隔離的教育制度可能會帶來的不利影響，把大學入學語言測試資格優先給予主流語言族群，窒礙少數族裔接受高等教育的機會，令他們往後的人生被邊緣化。

此外，總決賽的另一位法官香港大律師公會前主席資深大律師李志喜亦鼓勵參加者要平衡事實與法律論點。她評論說，這個案件的癥結在於「我們與生俱來都是不平等的。我們不能改變我們出生時的狀況」，而且「現實是富裕和貧窮的人之間的教育差距正在擴大」。

二零一七年度「泛亞人權模擬法庭比賽」的目的是為了提高人們對不同地區的少數族裔群體所面對教育機會不平等問題的關注，並希望凝聚律師界和未來領袖的支持，以促進平等教育和社會正義在亞洲地區上的發展。是次比賽揭示了種族歧視以不同形式出現，提醒著我們有責任禁

止並消除種族歧視，尤其在少數族裔備受邊緣化的社會大氣候下，我們更需要繼續捍衛人權的價值。

1 July 2017

Press Release

A First of Its Kind International Moot Court Competition on Human Rights in Asia with 2017 Moot's focus on Ethnic Minorities

The University of the Philippines team from the Philippines has emerged as the Champion of the Grand Final Round of the Inaugural Pan-Asian Human Rights Moot (PANAHRM) Competition held at the University of Hong Kong on 30 June 2017. Jointly organised by the University of Hong Kong's Centre for Comparative and Public Law ("CCPL") and Hong Kong Unison, the PANAHRM Competition is the first international moot competition of its kind focusing on human rights issues and serving as a unique platform for law students from across the region to debate emerging human rights norms in the Asia-Pacific region.

Seven teams were selected for participation in the oral rounds of the Competition which spanned 29 and 30 June 2017. The teams included law schools from across the region representing Australia, China, Hong Kong, the Philippines, and Singapore. Moot judges commended the extensive preparation and quality of the performance of participating teams, many of which were accompanied by moot coaches. 18 distinguished members of the Hong Kong legal community, comprising a member of the judiciary, academics and solicitors and barristers, including senior counsel contributed their expertise and generous support by sitting as judges for the Competition's quarter-, semi- and grand final rounds.

The inaugural PANAHRM's Compromis focused on the education system in the fictitious state of Serenatia leaving teams to examine whether it contributes to the marginalization of its ethnic minorities, violating its international human rights obligations. Setting this particular Competition in Hong Kong, Asia's 'world city', serves as an important occasion to highlight the many systemic inequalities that continue to pervade across Asia, particularly in respect of minority rights. The Moots raised issues of equal access to education and systemic racial segregation perpetrated against ethnic minority children in public schools, casting Hong Kong's own education system under scrutiny in light of the many parallels that could be drawn between the city's educational provisions for ethnic minorities and those described as prevalent in fictitious Serenatia.

Teams representing the Applicant argued that the Respondent state's educational policies (including admission-based disparities, segregation under the parallel track policy, and the preference afforded to the linguistic majorities in sitting for the dominant language exam, a prerequisite to university admission) amounted to unlawful racial discrimination and violated the Respondent state's own legislative provisions and international human rights treaty obligations. Just as Hong Kong bears the obligation to ensure equal access to education for children of all races under the International Convention on the Elimination of

All Forms of Racial Discrimination and the Race Discrimination Ordinance, the fictitious country of Serenatia is similarly bound.

On the conclusion of the quarter final rounds on 29th June 2017, the National University of Singapore, Singapore Management University, Peking University and University of the Philippines teams qualified for the Semi-final rounds of the Competition.

The Honourable Mr. Justice Kevin Zervos, Judge of the Court of First Instance of the High Court; Mr. Jose-Antonio Maurellet, S.C., Vice-Chairman of the Hong Kong Bar Association; Mr. Mark Daly, Principal of Daly & Associates; and Ms. Gladys Veronica Li, S.C., Former Chairman of Hong Kong Bar Association presided over the Grand Final Championship Round, hearing arguments from the two teams – National University of Singapore and University of the Philippines – who had progressed to the Grand Final. After an intense competition, the University of the Philippines was declared the winning team of the Grand Final round. In other awards, teams were also recognised for their excellence in written submissions and a prize was awarded for the best advocate for their overall performance throughout the oral rounds of the Competition. The University of the Philippines and Peking University were awarded the prizes for the Best Memorandum (Applicant) and Best Memorandum (Respondent) respectively, and Aaron Yoong, from the Singapore Management University, was awarded the prize for Best Oralist.

Although Hong Kong positions itself as “Asia’s world city”, the city’s public education system fails to reflect receptivity towards children of diverse learning needs. Ethnic minority students are still segregated from Chinese students in mainstream schools despite the abolishment of “designated schools” in 2013. For some reason, therefore, ethnic minority children continue to be substantially overrepresented in the former designated schools, which have remained intact in all but their official designation as such. While the Education Bureau claims that the decision to send their children to former designated schools is a matter of parental choice, the bitter reality is that the home-school communication barrier, in particular disparate admission criteria and interview procedures, and the lack of support from mainstream schools to assist ethnic minority children in Chinese learning leaves these students with no options other than to attend the former designated schools.

In similar vein, the arguments and questions raised by the judges presiding centered on whether language serves as a proxy for discrimination on a prohibited ground, such as ethnicity or race. If so, as some of the teams submitted as declared by the Committee on Economic Social and Cultural Rights in General Comment No. 20, the implementation of Serenatia’s parallel track policy to stream students on the basis of linguistic ability into separate schools would constitute discrimination. When pressed on whether this was a form of direct or indirect discrimination, however, teams struggled to grasp the legal complexities of the Serenatian policy. Teams found themselves fielding tough interjections from the bench about whether individual aspects of the complaint (i.e. schools’ treatment

of the complainant) could be treated as discriminatory in themselves or whether the individual acts, though innocuous on their own, when viewed as a comprehensive whole, were tantamount to discrimination. Furthermore, the answer to this begged the question as to whether the cumulative effect of the policies rendered the discrimination systemic. The teams were also asked to assist the court in determining whether a medium of instruction policy to teach in a particular language can, in and of itself, be unlawful, or whether this would depend on *how* it is administered and its impact on linguistic minorities.

The esteemed panel of judges also queried whether it could be said from a pedagogical point of view that streaming based on competence was *always* necessarily a ‘negative’, i.e. was separate but equal unlawful here as it was held to be in the US Supreme Court’s landmark judgement of *Brown v. Board of Education* in 1954; or whether immersion was the best policy in mastering language aptitude or if this laden with its own negative burdens.

Although additional funding in the amount of HK\$200 million is poured into schools every year since 2014 to support the teaching of Chinese language to minority children, the lack of concrete policy goals, oversight of implementation, regular monitoring, evaluation and transparency of these policies and impact of inconsistent practices across mainstream schools casts doubts as to the effectiveness of the current policies in achieving any improvement in ethnic minorities’ access to educational opportunities when compared with their Chinese counterparts. Resource allocation alone is insufficient. Effective policies coupled with appropriate pedagogical curricula, learning environments and suitably developed measurement tools to assess and evaluate the impact and educational outcomes of such policies on a continuous basis, are required to address these issues comprehensively to eradicate systemic racial discrimination.

To date, Hong Kong does not have a “Chinese as a Second Language (CSL)” curriculum for non-native Chinese speaking children to learn Chinese (unlike the fictitious state of Serenatia). The level of Chinese for many ethnic minority students remains at Primary Two level even after 12 years of education in the public education system. These point to significant gaps in the education curriculum and context undermining the prospects of ethnic minorities to enjoy equal opportunities in higher education and employment in the future, entrapping them in a vicious cycle of intergenerational poverty.

Chief Judge of judicial panel for the Grand Final round of the Competition, the Honourable Mr. Judge Kevin Zervos commended the winning team for presenting with confidence and smoothness a challenging and complex case, although his Lordship expressed surprise that neither teams in the final round responded to his question whether the policies violated the law. Overall, based on the Moot problem, the judges expressed concerns over the potentially detrimental implications of an education system which resulted in racial segregation, and effectively denied ethnic minorities the ‘ticket’ to higher education due to

the prioritisation of the dominant ethnic group in the sitting of university entrance exams, condemning them to a life of marginality.

Another Judge of the Grand Final round, Ms. Gladys Li, S.C. also encouraged the mooters to balance the facts with the law. The crux of the case, she commented, is that “we are all born unequal. We cannot change the circumstances where we are born,” and that “the reality is the education gap for the wealthy and the poor is enlarging.”

The 2017 PANAHRM Competition has helped raise awareness about the systemic barriers to equal access to education experienced by minorities in the region and globally and helped garner support among the community of lawyers and future leaders to advance social justice and equity in education and to address these inequities as they manifest themselves across various spheres of life. In particular, however, it has presented a unique lens into the myriad ways in which discrimination can manifest itself invidiously and therefore must be rigorously tackled. This is all the more so in a climate of rising intolerance towards minorities which threatens to endanger hard won achievements in the arena of human rights.