



Hong Kong Unison 香港融樂會

Hong Kong Unison's Submission for the third report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

July 2010

Foreword

Hong Kong Unison (Unison) is a non-Governmental organization serving ethnic minority (EM) communities in Hong Kong. Throughout the years we have been working hard in advocating and promoting basic human rights and equal opportunities for EM people. Our vision is to build a culturally inclusive city in which people from different races being treated equally.

Unison always treasures United Nations (UN) as an effective mechanism in promoting human rights and racial equality in Hong Kong. Regarding the submission of the third report of the Hong Kong Special Administrative Region (HKSAR) in the light of the UN International Covenant on Civil and Political Rights (ICCPR), we hereby submit our written opinion. We sincerely wish the HKSAR Government would take into account of our concerns and include them in its final report.

We would list our opinions in according to the related articles in the ICCPR:

Article 1: Progress and development of democracy

Unison believes constitutional development as a matter of fundamental importance for all the people in Hong Kong. We consider the present political system as unfair and undemocratic, leading to the over-emphasis on interests of business sector in our policy making process. We believe only a democratic political system; that our Chief Executive and the Legislative Council being turned out by universal suffrage; would guarantee an open and fair Hong Kong. At the same time, the Government would better look after interests of low income and vulnerable groups.

We consider the package of constitutional development in 2012, passed by the Legislative Council in June 2010, as unsatisfactory. On the one hand, our Chief Executive would still be turned out by a "small circle" of privileged people. On the other, both the Central and the HKSAR Government failed to make any concrete promise for the abolition of "functional constituency election" in the Legislative Council. Such election is widely considered as a major stumbling block for development of democracy in Hong Kong.

In light of above circumstances, Unison strongly urges the HKSAR Government to explain clearly in the report how Hong Kong could achieve full democracy, i.e., to provide a road map for universal suffrage. A commitment to abolish functional constituency election should also be included.



Article 37: Right to participate in public life

EM people in Hong Kong are often ignored in participation of public life. Taking the recent debate on constitutional development in 2012 as an example, many EM people told us their communities had no idea on what had been going on. Part of the reason might be due to the Government's consultation exercise mainly directed at the Chinese majority in Hong Kong.

Unison believes EM communities, being a part of the society, should be better informed and engaged in our policy making process. Instead of only approaching their business and community leaders, the Government should reach out to the larger communities, seeking their opinions on important policies and issues relating to future development of Hong Kong. In addition, measures should also be taken to enhance EM people's understanding on the political systems; and to encourage their participation in politics and community affairs.

Article 2: Ensuring to all individuals the rights recognized in the Covenant

In relation to this article, we are particularly concerned about the role and function of the Equal Opportunities Commission (EOC), as equal opportunity is one of the core elements in human rights protection. Unison acknowledges that under the leadership of the new Chairman, Mr. Lam Woon-kwong, EOC has been becoming more proactive in promoting equal opportunities; so as helping people suffered from different forms of discrimination. To further facilitate their work, there is a need to formulate an Equal Opportunity Tribunal. Such tribunal would provide a simpler and cheaper channel for adjudication of equal opportunities cases, bear in mind that not all these cases could be settled through conciliation.

Another issue we would like to mention is the lack of independence in the present police complaint mechanism, which had been raised by the UN Human Rights Committee in its concluding observations responding to the HKSAR's second report on ICCPR. Sadly speaking, only minimal improvement has been seen since then. According to our experience, officers in the Complaint Against Police Force (CAPO) still adopt hostile attitude towards our complainants (NB: they are all EM people). Many of our complainants were frustrated by the tedious procedure and repeated questioning during the complaint process. To put it simply, they felt themselves being treated like "suspects" when being questioned in the interview room.

As far as we understand, the above situation is not limited to EM complainants. Generally speaking, the credibility of the police complaint system is rather low. Unison believes only an independent complaint handling body could resolve the problem and restore confidence of complainants, as well as the general public as a whole.



Article 6: The Right to life

The killing of a Nepalese street-sleeper by a police constable in March 2009 had aroused widespread anger and concern among EM communities. Although the inquest hearing finished in May 2010 and the jury turned out a verdict of lawful killing, there exists a doubt that if justice has been done in this tragic case. On the one hand, the investigation had been carried out by the police and there was apparently a role conflict which inevitably harmed the credibility of its outcome. On the other, given its limited jurisdiction, the Coroner's Court could hardly look into those matters of wider importance, for instance, whether there were any defects in the police practice when handling cases involving EM people.

Given the above circumstances, we reiterate the need to establish an independent commission of inquiry if similar cases; i.e., a civilian being killed by members of disciplinary forces; happened again in future. Such commission would provide the independence in which the Government needs to win public confidence. Besides examining causes of death, it will also look into the defects of the current systems and suggest ways for improvement.

Article 19: Freedom of opinion and expression

Freedom of expression is always considered as one of the pillars for the success of Hong Kong. It is especially important for vulnerable and minority groups, as without such freedom, their voices could hardly be heard in the society.

Unison particularly concerns about the future of the Radio Television Hong Kong (RTHK). We insist an open city like Hong Kong does not need a "mouthpiece". Instead an independent and autonomous public broadcasting agency would provide spaces for different minority groups to voice out their opinions. Such agency would also perform the inherent mission of press and media, i.e., to monitor the Government and ensure its proper governance. Therefore, we believe the Government should specify in its report that it will not sacrifice editorial independence being enjoyed by the RTHK in its review of public service broadcasting.

Article 26: Right of equal protection before the law

In relation to this article, Unison would like to point out the limitations of the Race Discrimination Ordinance (RDO), which has become effective since July 2009. One of the key issues is its failure to bind the Government in its performance of functions and duties. Such exemption enables government departments, especially those law enforcement agencies to continue their discriminatory practices against EM people in Hong Kong.



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In addition, the fact that “nationality” does not fall within the definition of “race” under the RDO creates another loophole. It gives ways for a party to treat people of a particular race differently; without fear of being sanctioned by the new law. For instance, some of the banks in Hong Kong have already used “nationality” as an excuse to turn away Pakistani and other minority customers. The latter failed to find a remedy even they lodged complaints to the EOC. Unison fears that such cases will repeat in future. When people learned how to avoid being in breach of the RDO, the law will lose much of its power in protecting people from racial discrimination.

Article 27: Right of the ethnic minorities

Article 27 protects rights of ethnic minorities in a society. In relation to this, we would like to raise the issue that EM people could hardly enter the civil service since 1997. Such situation was largely due to the imposition of Chinese language proficiency requirement in civil service posts after sovereignty transition.

The Government has slightly amended its recruitment policy since late 2007. Yet for degree and professional posts, applicants are still required to pass the Chinese language Paper in the Common Recruitment Examination, which is an insurmountable hurdle for most of EM people. For non-degree posts, most of the Government departments still do not accept GCSE Chinese qualifications, or impose their own Chinese language requirement.

The unsatisfactory situation continues despite amendment in policy. The Civil Service Bureau claimed that individual departments have flexibility or discretion to relax the Chinese language requirement. In practice, seldom exercise such discretion or they are simply reluctant to accept and accommodate EM applicants.

Given that Chinese language education has not been provided to EM children until 2004, the present recruitment practice could be amount to indirect discrimination. Unison sincerely urges the Government to review its present policy and relax the Chinese language requirement as far as they could. As suggested by some legal scholars like Prof Kelley Loper in the University of Hong Kong, positive measures should be taken to accommodate EM residents in the civil service. The Government should clarify its stance on the issue in the report and committed to improve the situation.

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