



For information on 6<sup>th</sup> November 2017

**Submissions to the Legislative Council's Subcommittee on Rights of Ethnic Minorities  
on the Implementation and review of the Race Discrimination Ordinance**

1. Ethnic minorities face discrimination and unequal treatment in many areas of their life such as education (including admission, Chinese learning and further education), employment, facing government powers (e.g. police powers), receiving public services (e.g. health care or job-matching services at the Labour Department) and even when trying to open a bank account or renting a flat.
2. The current Race Discrimination Ordinance (RDO) has many flaws making it ineffective in protecting ethnic minorities' right to equal participation in society; also it severely limits the scope of Equal Opportunity Commission's power. There are many gaps in the RDO unfound in the other three anti-discrimination ordinances making it the weakest one out of the four ordinances.
3. In March 2017, the Constitutional and Mainland Affairs Bureau (CMAB) responded to the submissions on the Discrimination Law Review (DLR) by the Equal Opportunities Commission (EOC). The CMAB prioritised the following 7 recommendations:
  - 3.1 Recommendation 7: Replacing the provisions regarding near relatives with a definition of an associate;
  - 3.2 Recommendation 8: Protection from direct discrimination and harassment by perception or imputation that a person is of a particular racial group;
  - 3.3 Recommendation 16: Protection from racial harassment of service providers by service users;
  - 3.4 Recommendation 17: Protection from racial harassment of service providers by service users where such harassment takes place outside Hong Kong, but on Hong Kong registered aircraft and ships;
  - 3.5 Recommendation 18: Protection of tenants or sub-tenants from racial harassment by another tenant or sub-tenant occupying the same premises;
  - 3.6 Recommendation 19: Protection from racial harassment by management of clubs of members or prospective members;
  - 3.7 Recommendation 22: Repealing the provisions under the RDO which require proof of intention to discriminate in order to award damages for indirect discrimination claims.
4. Hong Kong Unison welcome the CMAB advancing the law amendment procedure as this is an important step since the DLR public consultation in 2014. However, the seven recommendations prioritised by the Government concerning the RDO did not touch on key changes that ethnic minorities and civil societies like Hong Kong Unison have been advocating regarding the RDO. Even after amending the above aspects of the RDO, it is



still the weakest among the four existing anti-discrimination ordinances. One cannot but wonder about the Government's determination to eliminate racial discrimination.

5. We are anxious to know what the next round of law amendment will cover and when it will be announced as it has been over a year since the EOC made the submission to the CMAB.
6. We are especially concerned about the following recommendations related to the RDO:

6.1 Recommendation 6: Making it unlawful for the Government to discriminate in performing its functions or exercising its powers.

This gap in the law has far-reaching effects on ethnic minorities' daily life such as when facing racial profiling by the police force. A case in point was Mr. Arjun Singh's case against the police. Arjun filed a case against the police for discriminating him on the grounds of race by failing to provide adequate police services. Arjun is a permanent resident of Indian ethnicity and was 11 years-old at the time of the incident in 2010. He had an altercation with a lady of Chinese ethnicity on the escalator in the MTR station; they both called the police but Arjun was arrested and detained in the police station for hours while the lady of Chinese ethnicity was free to go. The court holds that the acts of the police in investigation and arrest do not amount to 'services' for the purpose of the RDO and policing is not bound by the RDO. This shows how vulnerable the current RDO can render ethnic minorities when facing the police and the rest of the Government.

6.2a Recommendation 9: Repealing the provision regarding vocational training in relation to modifying or making different arrangements for medium of instruction, under section 20(2) of the RDO.

6.2b Recommendation 10: Repealing the provision regarding education in relation to modifying or making different arrangements for medium of instruction, under section 26(2) of the RDO.

Currently, educational and vocational training bodies do not have to make different arrangements in the medium of instruction for persons of any racial group. Some members of ethnic minorities have been unable to receive vocational training or apply to a range of post-secondary courses because institutions do not offer courses in English, which is one of the two official languages in Hong Kong that is currently more accessible to ethnic minorities. According to our research on post-secondary education programmes in 2015, 71% (132 out of the 186 programmes that provided adequate information) are not suitable for students who do not speak or write Chinese. This violates rights to education and seriously hampers minorities' chance of further education, as well as limits their economic opportunity.

6.3 Recommendation 20: Amending the four anti-discrimination Ordinances to include a provision that they apply to all public authorities, and it shall be unlawful for them to discriminate in the performance of their functions and exercise of their



powers. Consideration should also be given as to whether a definition of a public authority is required.

The Government should improve the execution and monitoring of the current “Administrative Guidelines on Promotion of Racial Equality” (the “Guidelines”). The Government has issued the Guidelines aiming to ensure minorities of different races have equal access to public services. The Guidelines provides that the relevant government bureaux and departments covered by the Guidelines should take measures to promote racial equality and eliminate discrimination in the formulation and implementation of policies. However, many bureaux and departments are not aware of the existence of the Administrative Guidelines as seen in incidences in which frontline staff at hospitals or birth registrar is unaware that they have the obligation to arrange interpretation service. The Government should review the implementation of the Administrative Guidelines, and the scope of application of the Guidelines should be extended to all departments and bureaux, made statutory, and strictly enforced with extra resources and mechanism to ensure all ethnic minority residents enjoy the rights, opportunities and entitlements given to their Chinese peers.

- 6.4 Recommendation 21: Amending the four antidiscrimination Ordinances to include provisions on the standard and burden of proof: (a) In relation to the standard of proof, these should indicate that the plaintiff must prove that there was discrimination on the balance of probabilities; (b) In relation to the burden of proof these should indicate that the plaintiff must establish facts from which discrimination can be inferred, and that once they have done so the burden of proof shifts to the defendant to show there was in fact no discrimination.
7. Apart from the above recommendations, the EOC also recommended conducting further consultation and research on three points related to race discrimination. The Government should take prompt action regarding:
  - 7.1 Recommendation 23: Conducting a public consultation and research to introduce a public sector equality duty to promote equality and eliminate discrimination which applies to all the protected characteristics.
  - 7.2 Recommendation 24: Conducting a public consultation and then introducing protection from discrimination on grounds of nationality and citizenship under the RDO. The consultation should consider relevant issues including how nationality and citizenship is defined, and which exceptions relating to nationality and citizenship may be appropriate to be retained, repealed or introduced.
  - 7.3 Recommendation 25: Conducting a public consultation then introducing protection from discrimination on grounds of residency status in Hong Kong under the RDO. The consultation should consider all relevant issues including the possible scope of protections, whether existing exceptions regarding residency status should be repealed or amended, and whether any other specific exceptions may be appropriate.



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It is further recommended that the Government and the EOC should promote better understanding of the application of the RDO and what would be the effect of protections relating to residency status.

The present RDO 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. Several United Nations committees including the Committee on Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights have shown concerns over the standards for protection as many ethnic minorities in Hong Kong face discrimination on the grounds of nationality and citizenship.

8. The EOC is the statutory body that implements the RDO but it has not fully executed its functions and duties. The Government should comprehensively review the Commission's work and reform its complaint mechanism. Although racial discrimination is obvious and prevalent in Hong Kong – for example, there is de facto segregation in some public schools, and the EOC has noted in its research that ethnic minorities are discriminated against when seeking employment and accessing services – the EOC has not taken action to combat these phenomena. Besides, its complex and time-consuming complaint mechanism discourages victims from speaking up and even when they do, they did not get the justice they deserve.
9. International treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) are applicable to Hong Kong, and these treaty bodies have criticized the RDO on multiple occasions for failing to meet international standards and urged the HKSAR Government to improve the law. Equality is a fundamental principle of a democracy with the rule of law; it is high time for the Government to amend Hong Kong's flawed discrimination ordinances to make Hong Kong an inclusive world-class city it claims to be. Since the EOC consultation has made clear the dire need for discrimination law changes, CMAB should act proactively and set timeline for legislative procedures of law amendment so that the Legislative Council can debate on the amendment bills as soon as possible.