



For the panel meeting on 5 Jan 2021

Hong Kong Unison Submission to Policy Briefing by the Constitutional and Mainland Affairs Bureau at the Panel on Constitutional Affairs

1. Hong Kong Unison ('Unison') is a local non-governmental organization that serves ethnic minority residents of Hong Kong. We concern about the equal opportunity and discrimination issues of local ethnic minority residents. This paper mainly focuses on the amendments of the Racial Discrimination Ordinance ("RDO"), the revised Administrative Guidelines on Promotion of Racial Equality ("Guidelines") and the Children's Rights Forum which are mentioned in the briefing paper by the Government. We also urge the Government to resume the public hearing of the International Covenant on Civil and Political Rights canceled by the Chairman of the panel in November 2020.

Amendments of the Racial Discrimination Ordinance

2. Unison takes an open and positive attitude towards the enactment of the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 and all follow-up promotion work launched by the Equal Opportunity Commission ("EOC"). However, 19 out of 27 priority amendment recommendations listed by the EOC in the 2016 Discrimination Law Review are yet to be completed. Three important recommendations regarding the RDO include prohibiting racial discrimination in relation to exercise of Government functions and powers, prohibiting discrimination on grounds of nationality, citizenship and residency status, and repealing section 13 of the Race Discrimination Ordinance which permits discrimination in employment conditions for persons from overseas with special skills, knowledge or experience. We urge the Government to put the aforementioned recommendations onto the law amendment agenda to better protect the rights of local ethnic minority residents.

The Implementation of the "Guidelines"

3. Although it is stated in paragraph 4 of the "Guidelines" that the document covers 6 different stages of policy formulation and implementation, it does not specify the inclusion of execution of power and functions of the Government. For example, one cannot file a complaint under the "Guidelines" when he/she suspect that the "stop and search" conducted



by a police officer is based on his/her skin color since such government-conducted action is not defined as part of “service” and restricted in the “Guidelines”. Therefore, it will be difficult for anyone to be held accountable if they racially discriminate against someone while performing their duties or exercising their powers. Till today Unison continues to receive reports from ethnic minority citizens that they are often discriminated against in the aforesaid situations. The government should amend the "Guidelines" as soon as possible so that it covers the performance of all duties and the exercise of any authority by the government. In principle, the Government’s work, including law-enforcement actions, is “acting in accordance with the law,” Hence the Government should explain why the law-enforcement actions are not restricted by “the Guidelines.

4. As “formulation of policies and measures” is also one stage of policy implementation that is regulated by the “Guidelines”, the authority should clarify if one “non-service” discriminatory policy or measure is introduced, does it count as “violating” the “Guidelines” and what measures can one take if they face such situation. For example, if the education policy implemented by the Education Bureau is discriminating against ethnic minorities, then how can one appeal against the measure and how can the “Guidelines” hold the related officials accountable?
5. In the long run, the Government should enact a robust Equality Act by referring to the Equality Act 2010 in order to clarify all the responsibility of the Government body, workplace and in wider society. The Hong Kong Equality act should list out all the principles that the government should follow in different stages of policy implementation, including but not limited to formulation, administration, service provision etc. Any disputes will be submitted to the court and be clarified by the judge. The Government should also take reference from recommendation 23 of the 2016 EOC Discrimination Law Review, to “conducts 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.” and clarify the scope of the relevant responsibilities of public organizations, the applicable departments, the extent of law enforcement and how to enforce them, so as to promote equality in Hong Kong.



Resuming the Public Hearing of ICCPR in the Legislative Council

6. Last month, due to the epidemic, the Legislative Council canceled the public hearing of the "United Nations Human Rights Committee on the fourth report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights." The Government invited submissions instead. However, a submission should never replace a public hearing. Stakeholders from the civil society should have a channel to directly speak to the government officials. Therefore, Unison urges the government to discuss with the Legislative Council on the resume of the ICCPR public hearing.

Children's Rights

7. Currently, the Hong Kong Committee on Children's Rights does not have legal status, nor does it have an independent team, office, budget and investigative power. We recommend that the committee should be independent of the government structure and become an independent organization with independent investigative power and legal status.
8. In order to widely absorb children's opinions, we suggest that the Children's Rights Forum can be held in schools and communities, open to children in various districts and to relevant stakeholders (such as educators, NGOs) to express their opinions regularly.
9. Unison urges the Government to submit the third report of the Convention on the Rights of the Child ("CRC") to the United Nations Committee and convene a public hearing to collect the opinions from stakeholders as soon as possible. The report has been delayed for an unacceptable time. The government should disclose the timetable.

EOC's work

10. The EOC defines the "victim-centric" approach which "seeks to recognize and pay special attention to the needs of victims at all stages of complaint-handling". The measures include speedy classification of cases, abolishing the practice of reassigning a case from one officer to another, drawing on expert opinion to add insight, and exercising the statutory power in a more proactive manner, etc. However, this definition



ignores the difficulty of obtaining evidence when the aggrieved incident occurs, and the power inequality between the aggrieved person and the respondent. Therefore, it is not a true "victim-oriented" approach. Unison urges the government to follow the twenty-first recommendation of the EOC's 2016 "Review of Discrimination Ordinance-Summary of Submissions Report to the Government" as soon as possible, "incorporate the prescribed burden of proof and "Provisions on the standard of proof", when the plaintiff stated that the facts that can be inferred to be discriminatory are presented, "once the facts are established, the burden of proof shall be transferred to the defendant to verify that there is no discrimination." This protects the aggrieved person from the current extremely high level threshold burden of proof.

11. The statutory power of "the Discrimination Questionnaire" of the EOC are guaranteed by the current Race Discrimination Ordinance to help the person aggrieved to obtain more complete evidence to follow up discrimination cases, and replies within a given time. Whether the respondent has committed an illegal act could be inferred by the District Court based on the reply of the respondent. Therefore, Unison urges the EOC to make full use of their statutory power of the "discrimination questionnaire" in handling discrimination complaints to help the person aggrieved to get justice and at the same time avoid secondary harm caused by repeated investigations.