

## **Panel on Constitutional Affairs**

### **The Third Report of the Hong Kong Special Administrative Region of the People's Republic of China under the United Nations Convention on the Elimination of All Form of Racial Discrimination**

#### **Submission from the Equal Opportunities Commission**

##### **Introduction**

This paper provides the views of the Equal Opportunities Commission (EOC) of Hong Kong on the Third Report of the Hong Kong Special Administrative Region (HKSAR) under the United Nations Convention on the Elimination of All Form of Racial Discrimination (the “Third Report”).

##### **Supplementary Information on EOC's Functions & Work**

2. The EOC's functions and work on promoting racial inclusion and preventing racial discrimination were outlined in the Third Report (Paragraph 6.1-6.5 & 7.3-7.11). A brief update beyond 2015 is provided below.

3. Since the enactment of the Race Discrimination Ordinance (RDO) in 2009, the EOC has handled 617 complaints and 3,487 enquiries on race discrimination and racial harassment up to end 2017. Among the complaint cases, 557 were lodged by complainants, while investigation of the other 60 cases was initiated by the EOC.

4. A number of research studies related to discrimination against ethnic minorities (EMs) have been published over the past few years, including the “Sexual Harassment and Discrimination in Employment - Questionnaire Survey for Foreign Domestic Workers” in 2015; “Study on Discrimination against Ethnic Minorities in the Provision of Goods, Services and Facilities, and Disposal and Management of Premises” in 2016; and “Survey on Kindergarten Admission Policies and Attitudes towards Non-Chinese Applicants” in 2017. In addition, to provide guidance on compliance to the RDO in the education sector, the EOC developed and distributed two guidance booklets/leaflets on non-discriminatory and racially inclusive school policies and fair kindergarten admissions for non-Chinese applicants in 2016 and 2017 respectively. Other follow-up actions of the

afore-mentioned research studies were conducted and details are provided in the following paragraphs.

5. Under the three-pronged approach of policy recommendations, training programmes and outreach activities, the EOC has made 22 submissions to the Legislative Council to provide recommendations on different issues faced by EMs, including but not limited to education, employment, access to services, poverty problem, etc., and set up meetings with 12 Government Bureaux/Departments and public bodies to discuss areas for improvement in their policies and services for EMs since 2015. Meanwhile, 277 training sessions and 714 outreach activities have been conducted with different groups and sectors, such as EM communities, schools, banks, estate agents, civil servants, etc. Based on the findings from our research projects, service providers (including public service providers, estate agents, banking practitioners, etc.), kindergartens, foreign domestic workers (FDWs), were some of the major targets for our training programmes and we strategically aligned with Government Bureaux/Departments (including the Education Bureau), Hong Kong Association of Banks, Estate Agents Authority, Consulates, NGOs serving EM parents and FDWs, etc., to put forward our follow up actions.

6. In March 2016, the EOC submitted its recommendations to the Government under the Discrimination Law Review (DLR), based on its experience of handling complaints and enquiries over the last twenty years as well as on response from public consultations to amend the anti-discrimination legislations in Hong Kong. Of the 73 recommendations for review made to the Government, 27 issues were identified by the EOC as higher priority areas for legislative or other reform. In March 2017, the Government agreed to take forward eight of the 27 high priority issues of which seven are related to the RDO.

## **Areas of Concern in the Third Report**

### ***Article 1 (Definition of racial discrimination) & 2 (Policy of eliminating racial discrimination)***

7. Public consultation on the DLR collected 125,041 responses (288 from organizations and 124,753 from individuals). Having carefully reviewed which areas should be accorded priority and had raised more serious and urgent concerns, the EOC identified 27 high priority areas among a total of 73 recommendations.<sup>1</sup> While for some of these issues, the proposed amendments are more straightforward, for others the EOC recommended further consultations and studies by the Government before legislating.

8. We acknowledge that the Government has taken up a few DLR recommendations to follow up, such as prohibiting discrimination and harassment on the ground of race of an “associate”; providing protection from direct racial discrimination and harassment by imputation in the RDO, etc. However, several major high priority issues as listed below, which were also pointed out in the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD)<sup>2</sup> in 2009, are still outstanding:

- **Prohibiting race discrimination in the exercise of government functions or powers under the RDO** out of concern that this lack of protection is not consistent with the provisions under the other anti-discrimination ordinances in Hong Kong; and is in breach of international human rights obligations;
- **Repealing the exception in vocational training and education in relation to medium of instruction** with the view that this exception is too broad and, consequently, could be interpreted as not requiring any targeted assistance to remove language barriers for EMs in their learning and training; and may not be compliant with Hong Kong and

<sup>1</sup> The factors considered for the higher priority recommendations were: it affects a large number of people; it would ensure consistency in protection across all four ordinances; the current legislation may not fully comply with United Nations international human rights obligations; and, in particular to the RDO, there has been strong support for the proposed reform from organizations during the passage of the Race Discrimination Bill and in responses to the public consultation on the DLR.

<sup>2</sup> CERD/C/CHN/CO/10-13; paragraph 27 & 28.

international human rights obligations to prevent discrimination on the grounds of language under the Bill of Rights and the International Covenant on Civil and Political Rights; and

- **Conducting public consultation with the aim of introducing protection from discrimination on the grounds of nationality, citizenship and residency status under the RDO, including the scope of protection and what exceptions may be appropriate** in view of the fact that the current lack of protection on these grounds is a significant gap in anti-discrimination protection; there is ample evidence that racial groups face discrimination on these grounds; and the lack of such protection is not compliant with international human rights obligations.

9. The EOC has urged the Government to take immediate action to look into these outstanding issues and initiate the necessary consultations and/or reforms to the RDO thereby making them more effective and in keeping with the needs of a changing society.

#### *Article 5(e) (Economic, social and cultural rights)*

##### Education issues of EMs

10. The lack of an official education policy for teaching Chinese as a second language was pointed out in the 2009 concluding observations of CERD<sup>3</sup>. The EOC set up the Working Group on Education for EMs (the “Working Group”) in 2010 to study the education barriers faced by EM students and submitted the “Education for All” Report to the Government. Partially based on the recommendations in the Report, the Government since then launched the Chinese Language Curriculum Second Language Learning Framework (the “Learning Framework”) and introduced the Applied Learning (Chinese) Subject in 2014, together with extra funding to schools admitting non-Chinese speaking (NCS) students for additional support.

11. Following repeated requests from the EOC, NGOs and teachers of NCS students, the Government is going to make available more school information in English and also provide information on support measures in schools for NCS

<sup>3</sup> CERD/C/CHN/CO/10-13; paragraph 31.

students, to facilitate EM parents to make informed school choices for their children. However, feedback from stakeholders in sharing sessions conducted by the Working Group since April 2018 shows that EM parents, Chinese subject teachers of NCS students and NGO representatives remain doubtful of the current policies effectively reducing barriers for NCS students in learning Chinese and subsequently getting equal opportunities in education and career pursuits, owing to the following issues:

- No clear indicators or targets for measuring the effectiveness of the Learning Framework;
- Lack of second language pedagogy in the Learning Framework;
- Lack of a complete set of textbooks, leading to non-standardized learning across different schools
- Learning progress and outcome of NCS students mostly not considered encouraging by their teachers;
- Inadequate training and skills development for schools and teachers to cater for the learning diversity among NCS students;
- Insufficient support for EM parents to be involved in their children's education process or help with their children's Chinese learning after school;
- Relatively high concentration of NCS students in a few schools<sup>4</sup>, gravely affecting their integration into mainstream society; etc.

12. The EOC and concerned stakeholders therefore urge the Government to make efforts to address the above issues by:

- Formulating clear indicators as well as setting targets for measuring the success of the Learning Framework, making clear how NCS students are progressing in their learning since the implementation of the Learning Framework;
- Undertaking the development of a full set of textbooks and teaching/learning materials (e.g. story books) for the Learning

<sup>4</sup> According to the figures provided by the Government to the EOC in January 2018, 40.6% NCS primary students and 36.2% NCS secondary students were studying in schools with student population comprised of 70% or more NCS students (11 primary schools and 7 secondary schools) in the 2016/17 school year.

Framework that take into account the specific learning needs of second language learners; and

- Requiring a stipulated percentage of teachers from each school with second language learners to be formally trained to teach NCS students; and incorporating a dedicated and compulsory module in this subject as an essential part of the training programme for all graduating teachers;
- Further improving EM parents' access to school information regarding language medium and learning support offered in order to help them with school choice for their children; and
- Finding ways to reduce the high concentration of NCS students in a few schools.

### Poverty among EMs

13. According to the Government's Poverty Situation Report on Ethnic Minorities 2016, the rate of EMs living below the poverty line had risen from 15.8% in 2011 to 19.4% in 2016.<sup>5</sup> Worryingly, the number of working poor among EMs has increased. The major cause is seen as lower employment earnings due to lower education attainment and skill levels.

14. The EOC has grave concerns for the children of the EM poor who may get caught in a cycle of poverty. Firstly, education as a way out of poverty may not work the same way for EMs. Data seems to suggest that the prospects for NCS students pursuing post-secondary education are lower compared to the general population even though it has seen a slight increase over the years.

15. Secondly, for most EM youth who do not get into university or other tertiary education, the combined factors of lower Chinese language proficiency and lack of professional qualifications continue to obstruct them from upward progression through employment. Recognizing these barriers, the government is urged to promote more and diverse vocational training programs with language support for EM youth. Repealing the exception in the RDO to medium of instruction in vocational training becomes critical in this subject.

<sup>5</sup> Census & Statistics Department (2018), *Hong Kong Poverty Situation Report on Ethnic Minorities 2016*, pp. xv & xvii.

16. The EOC has repeatedly requested the Government, as the largest employer, to take the lead in removing barriers for EMs in employment by reviewing the Chinese language proficiency requirement (LPR) for civil service jobs, which few EMs are able to meet. Following a recent review exercise the Government has adjusted the Chinese LPR for an additional 22 grades, making 53 grades in the Civil Services seemingly more accessible to EMs. However, many argue that most EMs may still be screened out by the adjusted requirements given that approximately 70% of EM students study a simplified Chinese language curriculum in school. Besides strengthening Chinese language learning in schools as mentioned above, Chinese language training after recruitment is one of the suggestions to overcome this barrier.

17. Undoubtedly, Chinese proficiency is somehow necessary in a majority of jobs in Hong Kong given its population is over 90% Chinese. However, it is common for many employers to adopt a “one-size-fits-all” approach in laying down Chinese LPRs in recruitment. Despite the critical manpower shortage in certain sectors such as nursing and residential care, EMs who are locally educated (but learn Chinese in a simplified curriculum) and can speak fluent Chinese are still barred from joining the ranks. The EOC continues to urge the Government to mobilize vocational and tertiary institutions to develop workplace Chinese courses to help EMs reach the functional Chinese proficiency in reading and writing required to cope with their work and pursue careers in these sectors. More important is for regulatory and registration bodies in respective sectors, such as the Social Welfare Department and Nursing Council, etc., to remove language hurdles for EM candidates to pursue professional training and registration for upward mobility in these industries.

18. To address the poverty, under-achievement, and language barrier faced by EMs, two research studies will be launched by the EOC in the last quarter of 2018. While one of them will aim at identifying the facilitators and obstacles in school-to-work transition of EM youth and producing a practical guidebook for EM youth in career and life planning, the other one will explore a model for accreditation and regulation of interpreters and translators in EM languages in Hong Kong. It is expected that these on-going research efforts would give evidence-based recommendations to provide EM with adequate equal opportunities to integrate into the mainstream society.

## Foreign Domestic Workers

19. It has been brought to the EOC's attention that some employers terminate the employment contract of their FDWs, often in the pretext of poor work performance or attitude, when the FDWs are found pregnant or having certain chronic illnesses even if it might not affect their fitness to work. Additionally, FDWs are vulnerable to sexual harassment in employment, partly due to the live-in work condition. According to the "Sexual Harassment and Discrimination in Employment – Questionnaire Survey for FDWs" conducted by the EOC in 2014, 6.5% of 918 FDW respondents encountered sexual harassment at work or at a work-related event in the 12 months prior to the survey. The most common alleged harassers were male employers (33%), followed by female employers (29%) and "persons living in the same household" (20%). The survey also showed that 64% of the respondents had never received any information on anti-sexual harassment. Therefore, the EOC intensified its training and public education by firstly, publishing a booklet entitled "Preventing Sexual Harassment – A Guide for FDWs and Their Employers" in six languages and secondly, by working with consulate offices and NGOs to conduct over 50 workshops in this area for FDWs over the past three years.

20. To address the issue, the EOC has urged the Government to put in place measures to equip FDWs with information regarding the legal protection against discrimination and harassment available to them. The Government is also being asked to take measures to fully inform both employers and employment agencies of their roles and responsibilities to provide a discrimination and sexual harassment free workplace for FDWs and the employers' liability in case of infringement of these laws. Besides, the Government should provide FDW victims necessary and sufficient assistance in filing complaints or lodging legal proceedings in case they are dismissed or have to resign on account of discrimination or sexual harassment, either to stay in Hong Kong whilst awaiting or going through the proceeding, or return to Hong Kong to attend the hearing.

### *Article 7 (Measures to combat prejudice)*

21. There has been a growing reporting of online hate messages and racial vilification, particularly targeted at South Asians as well as asylum seekers and some at NGOs working with these groups. While the average number of racial vilification complaints received from 2009 to 2015 was 3.7, the number was 47 for the year 2017 alone.

22. To address the issue, the EOC feels the need to strengthen regulations for social media operators and related service providers to make them accountable for content and postings on their sites. Active efforts should also be made to combat stereotyping of EMs and asylum seekers which lead to their negative portrayal in news media and social media.

### **Conclusion**

23. We would like to work towards a Hong Kong where systemic discrimination has no place and every law and policy that is made takes into consideration the interests of EMs. These ideals can only be met if the objectives run the length of all government machinery to start with, extending to the private sector in due course. In the current practice, the needs and issues of EMs are addressed by different Government Departments/Bureaux, most of which do not have a dedicated EM unit, leading to fragmented and inconsistent implementation of EM-related policies and measures. Hong Kong has race discrimination laws and a statutory body overseeing the implementation of the laws. However, what it lacks is a central Department/Bureau responsible for all minority affairs, similar to the practice in other jurisdictions such as the UK, Australia and Singapore. Having such a dedicated body shows intent and purpose for racial inclusion and can be a shining light for others in the region.