



Hong Kong Unison Limited  
香港融樂會有限公司

For information on 16<sup>th</sup> November 2015

**Submissions to the Legislative Council Panel of Constitution Affairs on  
The Third Report of the HKSAR under the  
International Convention on the Elimination of All Forms of Racial Discrimination**

1. The Hong Kong SAR Government (“the Government”) is preparing the submission of the third report (“the Report”) on its implementation of ICERD through the PRC. Since its last report in 2008, although the Government has made some progress in a few issues related to ethnic minorities, the big picture of public policies disadvantaging ethnic minorities remains unchanged. In its sixth year of implementation, the same flaws still exist within the Race Discrimination Ordinance (RDO), and new education policies remain a skeleton with no substantive change from before. We maintain that the Government is rich in resources but lack political will and commitment to this human rights cause. We ask the Constitutional and Mainland Affairs Bureau to consider Unison’s concerns below and include them in the Report. We urge the Government to make improvements to help realise racial equality.
2. While there have been complaints against the readability of translated government documents in ethnic minority languages, we regret to discover that the outline of the Government’s ICERD submission at least in Hindi was unreadable to a native Hindi speaker who holds a bachelor’s degree from a university in India. The wordings used are archaic; the prose unnecessarily elevated and the meaning rendered hard to understand. As echoed below, ethnic minorities who do not read English or Chinese only have formal but not substantive participation.
3. **Article 3: No racial segregation or apartheid**  
*De facto* segregation still exists in former ‘designated schools’. Despite the Government removing the label ‘designated school’ in 2013 and changing its funding mode in 2014, it has not taken any effective measures to address the high concentration (over 90%) of ethnic minority students in at least 10 public schools, comprising more than 60% total ethnic minority student population in Hong Kong. To date, there is no measure announced to address the *de facto* segregation. The segregation violates the ICERD, resulting in harmful social and economic consequences for the segregated children and their integration into the society.

The EDB claims that ethnic minority parents choose to send their children to schools admitting a large number of ethnic minority students. However, the Government does not provide adequate information to help ethnic minority parents make educated and informed choices. In the information provided to ethnic minority students on choosing schools in September 2013, the EDB included the names of the 33 schools offering alternative language subject or adapted Chinese curriculum for non-Chinese speaking students, but did not advise parents the concentration of ethnic minority students in the schools and that many of them teach a Chinese language level much lower than that of mainstream schools. Such information



regarding the local schooling system and which schools they might opt for and why is important for the decision-making of students and parents.

In Unison's 2015 "Research on Ethnic Minority Parental Choice in Primary School Selection in Hong Kong", 73% of the ethnic minority parents surveyed did not think it was important to choose a school in which most of the students are ethnic minorities and this factor was considered as the most unimportant school choice factor amongst 13 factors.

We urge the Government to take **immediate and effective steps to eliminate the *de facto* racial segregation** in the public education system.

4. **Article 5(e): economic, social and cultural rights – right to education and training (including a response to the Committee's call for a policy on Chinese teaching for non-Chinese speaking students from immigrant background under paragraph 31 of the Concluding Observations)**

The current public education system in Hong Kong has been criticized as discriminating against ethnic minorities for whom Chinese is their second (or third) language by failing to provide sufficiently targeted and adapted education to meet their special needs. Although the Government announced in January 2014 the implementation of the "Chinese Language Curriculum Second Language Learning Framework" starting from September 2014, there is very little new in this Learning Framework compared with pre-existing piecemeal initiatives that can render this Learning Framework effective in honouring ethnic minorities' right to education and employment. The Chinese as a second language (CSL) **curriculum lacks concrete guidelines for implementation**. The Learning Framework is developed from a Chinese as mother tongue perspective. The Government has not set stage learning objectives and provided limited guidance to schools on pedagogic principles and methods to adopt. There are no policy goals, outcome indicators, detailed implementation plan and timetable, and monitoring mechanism. The lack of accountability severely undermines the effectiveness of the Framework in giving ethnic minorities equal opportunities to learn the Chinese language. Parents commented the lack of school information on language support and measures to help ethnic minority children learn on an equitable basis.

We urge the Government to **formulate a comprehensive and adequate "Chinese as a second language" policy** with a concrete policy goal, an implementation plan, output indicators, and a transparent monitoring and evaluation mechanism as soon as possible.

5. **Alternative Chinese curriculum should be short-term measures and cannot replace an effective Chinese as Second Language curriculum.** Due to the lack of an effective Chinese curriculum for ethnic minority students, many are arranged to study for and take the GCSE (Chinese) examination that is equivalent to local primary 2/3 level, upon graduating from secondary school. This lack of Chinese proficiency adversely impact on their right to further education and employment. Allowing students to sit for GCSE (and GCE) Chinese exams and



use the results to apply for universities should be a short-term measure. All ethnic minority students should eventually be able to sit for the Diploma for Secondary Education Exam (DSEE) given an effective CSL policy.

In 2014, the Government announced two new 2-year applied Chinese courses with focus on Chinese used in service and hospitality industries for secondary-four students. Although results of the courses will be accepted by some tertiary education institutes as alternatives for DSEE (Chinese), this move steers ethnic minority students towards the service industry and does not equip them with inclusive Chinese capability. These courses should only be short-term measures; the Government should **work towards a long-term strategy on Chinese learning for ethnic minorities.**

6. The Government does not have a policy that supports Chinese language learning of ethnic minority students in kindergartens. Based on Unison's 2015 "Research on Kindergarten Support and Attitude towards Ethnic Minority Students in Hong Kong" and complaints from ethnic minority parents, more than 60% kindergartens surveyed conducted admission interviews in Chinese, which indirectly **screens out non-Chinese speaking children constituting indirect racial discrimination.** Kindergartens surveyed also lack language support to both parents and children. Though profile of kindergartens published by the EDB is officially bilingual, much of the crucial information such as curriculum details and school characteristics are in Chinese only, making the information inaccessible to most ethnic minority families. Some ethnic minority parents surveyed feel humiliated, discriminated and not welcomed during kindergarten application process.

We urge the EDB to **closely monitor kindergarten admission procedures and mechanisms,** and ensure an encouraging environment that offers **effective assistance in Chinese language learning** for ethnic minority students and their parents in kindergartens.

7. **Vocational training opportunities are limited for ethnic minorities who are not proficient in Chinese.** Many ethnic minorities are employed in low-paying jobs and living at or below the poverty line. Education and vocational training are supposed to enhance economic opportunity and lift ethnic minorities from inter-generational poverty. However, there are limited vocational training and support programmes available to them due to requirements in Chinese. Currently, only 4 out of 160 vocational education programmes are conducted in English. Due to discrepancies in programmes' medium of instruction, interview language and accommodations on Chinese compulsory courses, according to Unison's 2015 "Research on Ethnic Minority Students' Access to Post-Secondary Education", 71% of the 186 non-degree programmes surveyed is not suitable for students do not have abilities in Chinese and 50% of those programmes is not suitable for students who do not read or write Chinese.

Currently, there are express limitations on the RDO's operation in education and vocational training, which relates to language and the medium of instruction. Sections 26(2) and 20(2) of



the RDO states that the “prohibition on racial discrimination in education and vocational training does not require modifying or making different arrangements in the medium of instruction for persons of any racial group”. This **violates rights to education and seriously hampers minorities’ chance of further education.**

- 8. Ethnic minority students with special education needs face challenges and discriminations in mainstream schools.** The situation of ethnic minority special education needs (SEN) students is severe as there is a severe shortage of English school places and resources to cater ethnic minority SEN students. A recent study shows that “placing them in a Chinese learning environment can further delay their ability to communicate, compromise their development and result in poor educational outcomes, leaving their equal right to education grossly unmet”<sup>1</sup>. Coupling the problem is the lack of English or mother-tongue SEN assessments for ethnic minority children, which resulted in mis-diagnoses and under-diagnoses.

We urge the government to make **English or mother-tongue SEN assessments more accessible and English school places more available** for ethnic minority SEN students so they “do not miss the critical developmental window of opportunity for learning in an appropriate environment”.

- 9. Teachers and Chinese students in general do not understand the real meaning of racial equality, diversity and human rights, hence ethnic minority students in mainstream schools often suffer from isolation and bullying.** We urge the Government to offer **adequate and professional training for teachers** on raising their sensitivity towards the racial and cultural backgrounds of ethnic minority students; and enhancing the knowledge and skills involved in teaching Chinese as second language in a multi-cultural context.

**10. Article 1: Definition of racial discrimination**

The RDO provides protection from racial discrimination in relation to “race, colour, descent or national or ethnic origin” of a person. It does not provide protection from discrimination based on nationality, citizenship, or Hong Kong residency or related status. Although in 2009, CERD made a specific recommendation to the Government to include in the RDO “immigration status and nationality” as prohibited characteristics of discrimination, no amendment has been made to the RDO as yet.

**11. Article 2: Policy of eliminating racial discrimination**

**The critical flaws of the RDO continue to exist despite recommendations made in the 2009 CERD Concluding Observations.** The RDO came into effect July 2009 and is the weakest amongst the four anti-discrimination ordinances with the following exceptions:

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<sup>1</sup> Puja Kapai (2015). “The Status of Ethnic Minorities in Hong Kong 1997-2014”. Chapter 3, page 15.



- It does not cover “the performance of Government’s functions” or “the exercise of Government’s power”;
- As mentioned above, it excludes discrimination based on immigration status, length of residence, nationality from the scope of racial discrimination;
- It does not protect against discrimination by language or religion;
- As mentioned in Section 6, it excludes vocational training bodies and education bodies from making different arrangements regarding medium of instruction for persons of any racial group.

Although the Equal Opportunities Commission (EOC) conducted a comprehensive review on the four discrimination laws, it remains to be seen how many of the existing flaws of the RDO will be amended. We urge the Government to amend the RDO to **rectify the flaws** and ensure it fully complies with the ICERD’s obligations. We urge the EOC to proactively advocate amendment to the RDO in this regard and the Government to put forward an amendment bill in the Legislative Council.

12. **A racial equality plan is absent to ensure effective implementation of the RDO.** Given the weak RDO, a racial equality mandate according to which the Government has a statutory duty to eliminate racial discrimination and to promote racial equality and harmony even within the Government is indispensable. Such a system would not open any flood gate for litigation, a worry cited by the Government to deny making the Ordinance applicable to government functions. The statutory equality plan should list Government functions and policies, including policies proposals; assessing relevance to racial equality; monitoring for any adverse impact on racial equality; mandating a plan of action to address racial problems identified, with the proper deployment of resources; and include periodic reviews to update and improve the equality plan.

13. **Power abuse and lack of cultural sensitivity of Police Force**

Over the past decade, civil societies have received many complaints from members of ethnic minorities of various socio-economic backgrounds that they have been racially discriminated against, harassed or insulted by the police. In 2009, a Nepalese man, Limbu Dil Bahadur was shot dead by a police constable who was responding alone to call-out. Among other criticisms of the fatal shooting, the police officer made his warnings towards Limbu in Cantonese, without regard whether the ethnic minority man understood the warning<sup>2</sup>. Although the Jury of the Court returned a verdict of lawful killing, no recommendations have been made to prevent similar incidents or improve police function when dealing with linguistic minorities. The Police Force lacks internal guidelines and sanction against discriminatory practices leaving ethnic minorities vulnerable to police power abuse. There are no provisions on non-

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<sup>2</sup> In addition, despite the fact that Mr. Limbu’s family cannot understand Cantonese, the inquest of Mr. Limbu was conducted in Cantonese.



discrimination nor cultural sensitivity in the Police Force's Operation Manual and Standing Order.

14. **The “Administrative Guidelines on Promotion of Racial Equality” is poorly implemented<sup>3</sup>.** In respect of access to government services for linguistic minorities, the Constitutional and Mainland Affairs has issued the Administrative Guidelines on Promotion of Racial Equality which aims 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. Given the fact that not all the government bureaux, departments and public organizations are covered by the Guidelines and it does not have any statutory or legally-binding force, it is argued that **the Guidelines have a very limited effect on providing for positive duties or obligations on the part of the Government to facilitate access to official information for linguistic minorities even in principle.** The checklists of measures drafted by individual bureaux and departments fail to assess their policies' impact on ethnic minorities, nor describe how they plan to eliminate racial discrimination and promote racial harmony.

**We urge the Government to review the implementation of the Administrative Guideline, and extend its coverage to all government bureaux and departments. The Government should devise a system to monitor the bureaux and departments' adherence to the Guideline, and allocate adequate resources to this function.**

15. Not only do public officers lack cultural sensitivity, it is noted that many social workers is not culturally sensitive when handling ethnic minority cases. This problem is particularly alarming in domestic violence cases.
16. **Article 6: Provision of effective protection and remedies against any acts of racial discrimination**  
**The EOC fails to maintain racial justice.** The EOC is not independent from the Government, which does not comply to the standards set in the Paris Principle. Its Chairperson and the board members are appointed by the Chief Executive. The Commission is limited in power in investigating and eradicating institutionalized racism in government, public or private bodies such as banks, schools, etc. The EOC, which is responsible for monitoring acts of racial discrimination is at the same time bounded by the limited RDO. Racial discrimination complaints to the EOC that Unison have handled are often rejected as unsubstantiated because

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<sup>3</sup> Stella Wong (2015). “Research on Hong Kong linguistic minorities' access to official information in relation to political and public participation in terms of language”.



there is no protection from racial discrimination by perception and the burden of proof on racial discrimination claims is on the complainants which is often difficult to prove because often these are not acts of overt discrimination. Rather than seeking justice against unfair treatment due to race or nationality, EOC resorted to conciliation without determining whether the act is unlawful.

We urge the Government to **establish an authentic Human Rights Commission and seriously review the current flaws with the RDO and the EOC**. While the Government is openly recruiting for the Chairperson of EOC, we urge the Government to abide by the Paris Principle to **instate procedures for electing the next Chairperson** to ensure pluralistic representation of social forces. We urge that the EOC to **review its role and assume a more proactive role in community capacity building**, thus promoting understanding of the Ordinance and awareness of their rights to the general society, especially ethnic minority community. We also urge the Commission to **play a more proactive part in policy advocacy and conduct formal investigations into policies that may be violating the Ordinance**.

17. **Article 5(c) and 5(d) Civil and political participation**

**Civil participation is undermined by the lack of information in English<sup>4</sup>**. Language is a major obstacle to ethnic minority's participation in the civil and political arena. Although the official languages of Hong Kong are Chinese and English, much government information is only accessible and available in Chinese. The right of having linguistic access in achieving effective participation for persons who do not speak the majority language, i.e. Cantonese, is enshrined in the International Covenant on Civil and Political ("and the Hong Kong Bill of Rights. We urge the Government to act on its legal and international obligation to ensure civil and political participation of ethnic minorities by requiring all its departments to provide information in Chinese and English and increase the accessibility of English version of documents.

18. **Political participation is limited for ethnic minorities**

Although ethnic minorities who are permanent residents can vote in elections and run for district councils, their chances for running in elections for the Legislative Council ("LegCo") are limited. Only Chinese nationals who are permanent residents of Hong Kong with no right of abode in a foreign country can run for LegCo elections except for the candidature in the 12 functional constituencies, which is open to Hong Kong permanent residents who are not Chinese nationals or who have the right of abode in a foreign country. Based on 2011 Census data on their occupations, ethnic minorities have a very low representation in those 12 functional constituencies. Difficulties to naturalize for ethnic minorities is one of the reasons for such low representation.

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<sup>4</sup> Stella Wong (2015). "Research on Hong Kong linguistic minorities' access to official information in relation to political and public participation in terms of language".



Despite being the second or third generation in Hong Kong, it is still very hard for some ethnic minorities to apply for Chinese Nationality and be naturalized. The current system is opaque and applicants are rarely notified of the reasons for refusal. The standards and requirements seemed to vary from one case to another, making it a frustrating process for them.

We urge the Immigration Department to treat applications for naturalisation from long-time and locally born minority residents in Hong Kong with compassion.

19. **Article 5(e): economic, social and cultural rights – employment rights**

**The Labour Department (LD) is unable to provide suitable service to ethnic minorities<sup>5</sup>.** The Labour Department services are not fully accessible to ethnic minority job seekers. Many LD job postings do not cater to ethnic minorities who are not fluent in Cantonese. According to a recent survey<sup>6</sup>, a third of the ethnic minority respondents are not aware of the existence of the department and its services. More than 50% respondents did not find its services useful and 85% did not receive employment via the assistance of LD. The Employment Service Ambassadors (ESA) programme, launched by the LD for ethnic minority youths, did not fulfill the objective of helping ethnic minority job seekers find employment.

Language barrier remain the major difficulty for ethnic minority job seekers. We urge the Government to provide incentives for employers to hire minority job-seekers. These strategies can make the most of minority job-seekers' talents while encouraging them to integrate into Hong Kong by learning Cantonese.

20. **Employment opportunities as civil servants are limited.** Since 1999, most public service vacancies stipulate the requirement to pass the Chinese Common Recruitment Examination (CRE) and some require individual department's internal Chinese language proficiency assessments. This poses hurdles to minorities and amounts to indirect discrimination. Ethnic minority residents have in *de facto* been barred from civil service out of language consideration, preventing them from being adequately represented in the Government and its policy decisions.

We urge the Government to re-assess the requirements on Chinese proficiency for civil service positions in different ranks and departments including but not limited to immigration, police and fire, and correctional and ambulance services, and consider waiving or lowering such requirements for ethnic minority applicants. Employing minorities could be beneficial to

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<sup>5</sup> Observations and recommendations made in this section are summarized from Survey on the Government's Support towards Employment of South Asian Ethnic Minorities (Aug 2015) conducted by Diocesan Pastoral Centre for Workers.

<sup>6</sup> Diocesan Pastoral Centre for Workers (Aug, 2015). "Survey on the Government's Support towards Employment of South Asian Ethnic Minorities".



the Government – as evident in the case of minority prison officers who, on top of carrying out their daily duties, also serve as a bridge with minority inmates.

21. **Article 5(e): economic, social and cultural rights – right to housing**

**Ethnic minorities often face direct and indirect discrimination when seeking for accommodations.** The Housing Authority does not and cannot cater ethnic minorities' needs when providing services. Ethnic minority families are generally subjected to indirect discrimination by the public housing scheme because of their big family size and the resident status of household members. Most flats in the public housing scheme are targeted for nuclear families and public housing is only allocated if at least 50% of household members are permanent residents. Often, ethnic minorities have no choice but to seek private housing. Time and again, ethnic minorities face direct discrimination by landlords and real estate agents because of their race and color. Many ended up living in poor housing conditions paying exorbitant rent.

22. **Article 5(f): right of access to services**

**Government funded interpretation services vary in quality and are under-utilised.** Language barrier is one of the main obstacles for ethnic minorities to access services and seek help. However, the existing interpreting services funded by the Home Affairs Department are under-promoted to government departments and ethnic minorities. Moreover, the quality and professionalism of interpretation services vary, which affect ethnic minorities' access to legal protection, medical services, and housing and welfare services. There is currently no comprehensive assessment nor licensing body for interpretation service, and ineffective feedback mechanism in place to inspect the qualifications and conduct of interpreters as well as control the quality of interpretation.

The Government should ensure relevant bureaux, departments and ethnic minorities know about the interpretation service and strengthen the monitoring and complaint handling mechanism of the interpretation service and its transparency.



Hong Kong Unison Limited  
香港融樂會有限公司

2015年11月16日會議  
資料文件

香港融樂會向政制事務委員會提交

香港特別行政區根據《消除一切形式種族歧視國際公約》

提交的第三份報告項目大綱的意見

1. 香港特別行政區政府（政府）正準備提交根據聯合國《消除一切形式種族歧視國際公約》（公約）的第三份報告（報告）。
2. 政府於 2008 年提交了第二份報告。六年來，政府雖然在幾項與少數族裔相關的問題上，工作有所進展，但整體公共政策並沒有太大的改善，少數族裔仍然處於劣勢。《種族歧視條例》仍存在漏洞；新推出的「中國語文課程第二語言學習架構」仍圖具形式而欠實質改進。因此，我們促請政制及內地事務局考慮本會下列的意見，並納入於報告內。
3. **第三條：禁止種族分隔或種族隔離**  
「指定學校」仍存在實際上的種族隔離現象。儘管政府在 2013-14 年除去「指定學校」的名稱，並改變了資助模式，但並沒有採取有效措施以解決少數族裔學生過度集中於部份學校的問題。目前，最少有 10 間公立或資助學校的少數族裔學生比例超過 90%，合共接收了全港 60% 以上的少數族裔學生。政府忽略少數家長的需要，沒有協助他們在獲得全面的資訊下，作出選擇。我們懇請政府立即採取有效措施以消除公共教育制度中的實質種族隔離現象。
4. **第五(辰)條：經濟、社會及文化權利**  
香港的公共教育制度未能照顧非華語學生的特殊需要。2014 年 9 月推出的「中國語文課程第二語言學習架構」只是新瓶舊酒，了無新意。「中文作為第二語言」的課程缺乏明確的實施指引。我們促請政府制定一套有明確政策目標、計劃內容、成效指標，有效監察和評估機制的「中文作為第二語言」政策。
5. 當局仍未為少數族裔提供一套有效的中文教育課程。很多少數族裔學生被安排修讀及報考只相等於本港小學二/三年級中文程度的 GCSE 中文科考試。中文能力不足，嚴重影響了他們的升學和就業機會。容許少數族裔學生以 GCSE（及 GCE）的成績報讀大學，以及 2014 年為中四學生推行的應用學習中文課程，都只應該是短期或適合新移民的措施。長遠而言，政府仍應訂立一套有效的「中文作為第二



語言」政策，並令他們有能力應考香港中學文憑試（DSE）。

6. 政府並無一套支援少數族裔學童在幼稚園學習中文的政策。根據融樂會 2015 年的調查，有超過 60%的幼稚園使用中文進行入學面試，因而間接篩走了非華語學生，構成間接種族歧視。受訪的幼稚園亦缺乏對家長和學童在語言方面的支援。我們促請教育局密切監察幼稚園的收生程序和機制，並確保幼稚園協助少數族裔學童在校內有效地學習中文。
7. 中文能力不足的少數族裔人士欠缺職業訓練機會。根據融樂會 2015 年的調查，大部份的非學位課程均不適合不諳中文的學生報讀。現行《種族歧視條例》仍存在局限，嚴重妨礙少數族裔人士的擁有平等的升學機會。
8. 在主流學校就讀的、有特殊教育需要（SEN）的少數族裔學生，正面對挑戰和歧視。研究發現，業界未能提供適當的支援錯誤評估他們的需要，會進一步延誤他們溝通能力的發展，影響教育成效，削弱他們接受平等教育的權利。我們促請政府加強以英語或母語進行 SEN 評估的服務，以免他們在關鍵發展階段，錯失了在合適環境中學習的機會。
9. 教師和華裔學生普遍並不了解種族平等、多元文化及人權的真正意義。因此，主流學校的少數族裔學生經常遭到孤立和欺凌。我們促請政府協助學校提供專業培訓，確保每間學校最少有一名老師受過文化敏感度訓練，以協助學生能在一個多元共融的環境下學習。
10. **第一條：種族歧視的定義**  
雖然在 2009 年，公約曾建議政府在《種族歧視條例》中列明「居留身份及國籍」為受保障的特徵，但至今當局仍未作出相關修訂。
11. **第二條：消除種族歧視的政策**  
儘管 2009 年公約已經提出建議，但《種族歧視條例》至今仍存在嚴重缺陷：
  - 未有包含「政府職能的表現」或「政府權力的行使」
  - 未涵蓋針對居留身份、居住年期及國籍的歧視；
  - 未能保障免受語言或宗教的歧視；
  - 未有規定職訓及教育團體須為少數族裔提供所需的教學語言。我們促請政府儘快修訂《種族歧視條例》，解決上述問題。



12. 政府欠缺一個有法定效力的種族平等計劃以確保有效執行《種族歧視條例》。該計劃須詳細列明及評估各項政府職能是否包括種族平等的指引；監察它們有否對種族平等造成負面影響；如有缺失，必須投入資源及採取實際行動以修補漏洞；並定期檢討及更新，以確保少數族裔能夠得到公平的對待。
13. **警方濫權及缺乏文化敏感度**  
過去十年，民間組織收到多宗涉及警察種族歧視、的投訴。警隊欠缺防止歧視行為的內部指引和處分，令少數族裔容易被警方濫權所害。現行的警察通例和業務手冊並無涉及歧視或文化敏感度的條款指引。
14. 政制及內地事務局推行的《促進種族平等行政指引》執行情況未如理想。多個政策局和部門並未知悉有該指引。例如醫院及出生登記處的前線員工不知道他們有責任提供傳譯服務。由於該指引並未涵蓋所有政府部門和公共機構，亦無法律效力，因此作用有限。我們促請政府檢討該指引的實施情況。
15. 我們發覺除公職人員外，很多社工在處理少數族裔問題時亦欠缺文化敏感度訓練，尤其在涉及家庭暴力問題的個案，以致未能協助受害人得到適當的支援。
16. **第六條：針對任何種族歧視行為提供有效的保護與補救**  
平等機會委員會未能維護種族公義。平機會並非獨立於政府，其主席及委員均由行政長官委任。此有違《巴黎原則》的規定。平機會沒有足夠的權力調查政府部門和公、私營機構，以致未能根除其制度上的種族歧視。我們促請政府成立真正的人權委員會；認真檢視《種族歧視條例》和平機會的工作；按照《巴黎原則》選任能代表不同社會力量的平機會主席。我們促請平機會更主動地增強社區（特別是少數族裔社群）對《種族歧視條例》及其權利的認知，並且更積極地參與推動政策，就可能違反《種族歧視條例》的政策進行正式調查。
17. **第五(寅)條及第五(卯)條：政治和公民參與權利**  
語言是少數族裔參與政治和公民活動的主要障礙。很多政府資訊只以中文發放。《公民權利和政治權利國際公約》以及《香港人權法案》均保障不諳主流語言人士有權以另一語言獲取資訊。我們促請政府各部門以中文及英文發放資訊，以確保少數族裔亦能享有公平的政治和公民參與權利。
18. **少數族裔的政治和公民參與權利受限制**  
香港的少數族裔永久性居民參選立法會議員的機會受到限制。除功能組別的選舉



外，民選的議員必須是香港永久性居民中的中國公民，並且沒有外國居留權者才有可參選。然而這項條件卻大大的限制了少數族裔的參與權利，因為即使是第二或第三代的少數族裔香港永久性居民，亦很難申請加入中國籍。現時的人藉申請制度欠缺透明度，被拒絕者甚少獲知理由。我們促請入境處能合情理地處理土生土長、長期居港的少數族裔居民的人藉申請。

19. **第五(辰)條：經濟、社會及文化權利 - 就業權利**

勞工處未能為少數族裔提供適切的服務。很多勞工處介紹的工作都要求操流利廣東話。最近調查顯示，三分之一的少數族裔受訪者不知道有勞工處及其服務；超過一半受訪者認為它提供的服務無用；85%未能透過勞工處的協助而獲得聘用。勞工處推行的「少數族裔就業服務大使計劃」未見成效。我們促請政府提供誘因，鼓勵僱主聘請少數族裔人士。

20. **少數族裔獲聘為公務員的機會十分有限。**自 1999 年起，大部分公務員職位均要求應徵者在綜合招聘考試中取得合格，包括中文運用。部分更須通過部門的內部中文能力評估。這政策為有志成為公務員的少數族裔人士增添了障礙，並構成間接歧視。我們促請政府檢討各部門及各級公務員的中文能力要求，包括（但不限於）入境處、警務處、消防處、懲教處及緊急救護服務等。

21. **第五(辰)條：經濟、社會及文化權利 - 居住權利**

少數族裔在尋求居所時經常面對直接或間接歧視。由於目前的公屋編配政策側重於核心家庭(小型家庭)，並且要求最少一半家庭成員為香港永久性居民，人數較多而大部分成員未取得永久居民資格的少數族裔家庭被迫租住私樓。然而，他們往往受到業主和地產代理的歧視，因而他們被迫居住於惡劣的環境和承受昂貴的租金。

22. **第五(巳)條：使用服務的權利**

由民政事務總署資助的傳譯服務質素參差，而且由於缺乏宣傳，以致使用量偏低。目前對於傳譯服務並無一套完備的審核或發牌制度，亦沒有有效的機制讓使用者反映傳譯員的服務質素。政府應確保相關部門及少數族裔知悉該等傳譯服務，並加強對服務的監察、投訴處理和透明度。



**Submissions to the Constitutional and Mainland Affairs Bureau on  
The Third Report of the HKSAR under the  
International Convention on the Elimination of All Forms of Racial Discrimination**

1. The Hong Kong SAR Government (“the Government”) is preparing the submission of the third report (“the Report”) on its implementation of ICERD through the PRC. Since its last report in 2008, although the Government has made some progress in a few issues related to ethnic minorities, the big picture of public policies disadvantaging ethnic minorities remains unchanged. In its sixth year of implementation, the same flaws still exist within the Race Discrimination Ordinance (RDO), and new education policies remain a skeleton with no substantive change from before. We maintain that the Government is rich in resources but lack political will and commitment to this human rights cause. We ask the Constitutional and Mainland Affairs Bureau to consider Unison’s concerns below and include them in the Report. We urge the Government to make improvements to help realise racial equality.
2. While there have been complaints against the readability of translated government documents in ethnic minority languages, we regret to discover that the outline of the Government’s ICERD submission at least in Hindi was unreadable to a native Hindi speaker who holds a bachelor’s degree from a university in India. The wordings used are archaic; the prose unnecessarily elevated and the meaning rendered hard to understand. As echoed below, ethnic minorities who do not read English or Chinese only have formal but not substantive participation.
3. **Article 1: Definition of racial discrimination**  
The Race Discrimination Ordinance (RDO) provides protection from racial discrimination in relation to “race, colour, descent or national or ethnic origin” of a person. It does not provide protection from discrimination based on nationality, citizenship, or Hong Kong residency or related status. Although in 2009, CERD made a specific recommendation to the Government to include in the RDO “immigration status and nationality” as prohibited characteristics of discrimination, no amendment has been made to the RDO as yet.
4. **Article 2: Policy of eliminating racial discrimination**  
**The critical flaws of the Race Discrimination Ordinance (RDO) continue to exist despite recommendations made in the 2009 CERD Concluding Observations.** The RDO came into effect July 2009 and is the weakest amongst the four anti-discrimination ordinances with the following exceptions:
  - It does not cover “the performance of Government’s functions” or “the exercise of Government’s power”;
  - As mentioned above, it excludes discrimination based on immigration status, length of residence, nationality from the scope of racial discrimination;
  - It does not protect against discrimination by language or religion;



- As mentioned in Section 15 of this submission, it excludes vocational training bodies and education bodies from making different arrangements regarding medium of instruction for persons of any racial group.

Although the Equal Opportunities Commission (EOC) conducted a comprehensive review on the four discrimination laws in 2014, it remains to be seen how many of the existing flaws of the RDO will be amended. We urge the Government to amend the RDO to **rectify the flaws** and ensure it **fully complies with the ICERD's obligations**. We urge the EOC to proactively advocate amendment to the RDO in this regard and the Government to put forward an amendment bill in the Legislative Council.

5. **A racial equality plan is absent to ensure effective implementation of the RDO.** Given the weak RDO, a racial equality mandate according to which the Government has a statutory duty to eliminate racial discrimination and to promote racial equality and harmony even within the Government is indispensable. Such a system would not open any flood gate for litigation, a worry cited by the Government to deny making the Ordinance applicable to government functions. The statutory equality plan should list Government functions and policies, including policies proposals; assessing, consulting and monitoring policy for any adverse impact on racial equality; mandating a plan of action to address racial problems identified, with the proper deployment of resources; and including periodic reviews to update and improve the equality plan.
6. **The “Administrative Guidelines on Promotion of Racial Equality” is poorly implemented.** In terms of access to government services, the “Administrative Guidelines on Promotion of Racial Equality” has been issued by the Constitutional and Mainland Affairs to ensure minorities have equal access to public services. 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” (Administrative Guidelines, 3). 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. “Given the fact that not all the government bureaux, departments and public organizations are covered by the Guidelines and it does not have any statutory or legally-binding force, it is argued that **the Guidelines have a very limited effect on providing for positive duties or obligations on the part of the Government to facilitate access to official information for linguistic minorities even in principle**” (Wong, 11-12). The checklists of measures drafted by individual bureau and department fail to assess their policies’ impact on ethnic minorities, nor describe how they plan to eliminate racial discrimination and promote racial harmony.

**We urge the Government to review the implementation of the Administrative Guideline, and extend its coverage to all government bureaux and departments. The Government should**



devise a system to monitor the bureaux and departments' adherence to the Guideline, and allocate adequate resources to this function.

7. **Article 3: No racial segregation or apartheid**

*De facto* segregation still exists in former 'designated schools'. Despite the Government removing the label 'designated school' in 2013 and changing its funding mode in 2014, it has not taken any effective measures to address the high concentration (over 90%) of ethnic minority students in at least 10 public schools, comprising more than 60% total ethnic minority student population in Hong Kong. To date, there is no measure announced to address the *de facto* segregation. The segregation violates the ICERD, resulting in harmful social and economic consequences for the segregated children and their integration into the society.

The Education Bureau (EDB) claims that ethnic minority students participating in the Central Allocation System would be distributed all over their school net; ethnic minority parents choose to send their children to schools admitting a large number of ethnic minority students. However, the Government does not provide adequate information to help ethnic minority parents make educated and informed choices. In the information provided to ethnic minority students on choosing schools in September 2013, the EDB included the names of the 33 schools offering alternative language subject or adapted Chinese curriculum for non-Chinese speaking students, but did not advise parents the concentration of ethnic minority students in the schools and that many of them teach a Chinese language level much lower than that of mainstream schools. Such information regarding the local schooling system and which schools they might opt for and why is important for the decision-making of students and parents.

In Unison's 2015 "Research on Ethnic Minority Parental Choice in Primary School Selection in Hong Kong", 73% of the ethnic minority parents surveyed did not think it was important to choose a school in which most of the students are ethnic minorities and this factor was considered as the most unimportant school choice factor amongst 13 factors.

We urge the Government to take **immediate and effective steps to eliminate the *de facto* racial segregation** in the public education system.

Even in mainstream schools, ethnic minority students may face social isolation and bullying. Teachers and ethnic-Chinese students in general do not understand the concept of racial equality, diversity and human rights.

We urge the HK government to **offer adequate and professional training for teachers including** to raise their sensitivity towards the racial and cultural backgrounds of ethnic minority students; and enhancing the knowledge and skills involved in teaching Chinese as second language in multi-cultural contexts.

8. **Article 5(a): equal treatment before tribunals and organs administering justice**



Despite being the second or third generation in Hong Kong, it is still very hard for some ethnic minorities to apply for Chinese Nationality and be naturalized. The current system is opaque and applicants are rarely notified of the reasons for refusal. The standards and requirements seemed to vary from one case to another, making it a frustrating process for them.

We urge the Immigration Department to treat applications for naturalisation from long-time and locally born minority residents in Hong Kong with compassion.

9. **Article 5(b): security of person**

**Power abuse and lack of cultural sensitivity of Police Force**

Over the past decade, civil societies have received many complaints from members of ethnic minorities of various socio-economic backgrounds that they have been racially discriminated against, harassed or insulted by the police. In 2009, a Hong Kong-born Nepalese man, Limbu Dil Bahadur was shot dead by a police constable who was responding alone to call-out. Among other criticisms of the fatal shooting, the police officer made his warnings towards Limbu in Cantonese, without regard to whether Limbu understood the warning<sup>1</sup>. Sadly, the Jury of the Court returned a verdict of lawful killing, and no recommendations have been made to prevent similar incidents from recurring or improve police function when dealing with linguistic minorities. The Police Force lacks internal guidelines and sanction against discriminatory practices leaving ethnic minorities vulnerable to police power abuse. There are no provisions on non-discrimination nor cultural sensitivity in the Police Force's Operation Manual and Standing Order.

Poor treatments of minorities and their lack of confidence towards the Police can be gleaned from the lack of action taken against police employing excessive force against local Chinese during the Umbrella Movement. The impartiality of the two-tier police complaint system involving Complaints Against Police Office (CAPO) and Independent Police Complaints Council (IPCC) came under scrutiny as IPCC's ruling that a superintendent assaulted a bystander was not accepted by CAPO.

We also urge the HKSAR Police Force to **include cultural sensitivity training as well as mandatory Human Rights training** in the Police Academy and on the job training.

10. **Article 5(c): political rights**

**Political participation is limited for ethnic minorities.** Although ethnic minorities who are permanent residents can vote in elections and run for district councils, their chances for running in elections for the Legislative Council ("LegCo") are limited. Only Chinese nationals who are permanent residents of Hong Kong with no right of abode in a foreign country can run for LegCo elections except for the candidature in the 12 functional constituencies, which is open to Hong Kong permanent residents who are not Chinese nationals or who have the

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<sup>1</sup> In addition, despite the fact that Mr. Limbu's family cannot understand Cantonese, the inquest of Mr. Limbu was conducted in Cantonese.



right of abode in a foreign country. Based on 2011 Census data on their occupations, ethnic minorities have a very low representation in those 12 functional constituencies. Difficulties to naturalize for ethnic minorities is one of the reasons for such low representation.

11. **Article 5(d) Civil rights**

**Civil participation is undermined by the lack of information in English.** Language is a major obstacle to ethnic minority's participation in the civil and political arena. Although the official languages of Hong Kong are Chinese and English, much government information is only accessible and available in Chinese. The right of having linguistic access in achieving "effective participation for persons who do not speak the majority language," i.e. Cantonese, is enshrined in the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights (Wong, 6). We urge the Government to act on its legal and international obligation to ensure civil and political participation of ethnic minorities by requiring all its departments to provide information in Chinese and English and increase the accessibility of English version of documents.

12. **Article 5(e): economic, social and cultural rights**

**CSL curriculum lacks concrete guidelines for implementation.** The current public education system in Hong Kong has been criticized as discriminating against ethnic minorities for whom Chinese is their second (or third) language by failing to provide sufficiently targeted and adapted education to meet their special needs. Although the Government announced in January 2014 the implementation of the "Chinese Language Curriculum Second Language Learning Framework" starting from September 2014, there is very little new in this Learning Framework compared with pre-existing piecemeal initiatives that can render this Learning Framework effective in honouring ethnic minorities' right to education and employment. **The Chinese as a second language (CSL) curriculum lacks concrete guidelines for implementation.** The Learning Framework is developed from a Chinese as mother tongue perspective. The Government has not set stage learning objectives and provided limited guidance to schools on pedagogic principles and methods to adopt. There are no policy goals, outcome indicators, detailed implementation plan and timetable, and monitoring mechanism. The lack of accountability severely undermines the effectiveness of the Framework in giving ethnic minorities equal opportunities to learn the Chinese language. Parents also noted the lack of school information on language support and measures to help ethnic minority children learn on an equitable basis.

We urge the Government to **formulate a comprehensive and adequate "Chinese as a second language" policy** with a concrete policy goal, an implementation plan, output indicators, and a transparent monitoring and evaluation mechanism as soon as possible.

13. **Alternative Chinese curriculum should be a short-term measure and cannot replace an effective Chinese as Second Language curriculum.** Due to the lack of an effective Chinese



curriculum for ethnic minority students, many are arranged to study for and take the GCSE (Chinese) examination that is equivalent to local primary 2/3 level, upon graduating from secondary school. This lack of Chinese proficiency adversely impact on their right to further education and employment. Allowing students to sit for GCSE (and GCE) Chinese exams and use the results to apply for universities should be a short-term measure or for new immigrant students only. All ethnic minority students should eventually be able to sit for the Diploma for Secondary Education Exam (DSEE) given an effective CSL policy.

In 2014, the Government announced two new 2-year applied Chinese courses with focus on Chinese used in service and hospitality industries for secondary-four students. Although results of the courses will be accepted by some tertiary education institutes as alternatives for DSEE (Chinese), this move steers ethnic minority students towards the service industry and does not equip them with inclusive Chinese capability. These courses should only be short-term measures; the Government should **work towards a long-term strategy on Chinese learning for ethnic minorities.**

14. The Government does not have a policy that supports Chinese language learning of ethnic minority students in kindergartens. Based on Unison's 2015 "Research on Kindergarten Support and Attitude towards Ethnic Minority Students in Hong Kong" and complaints from ethnic minority parents, more than 60% kindergartens surveyed conducted admission interviews in Chinese, which indirectly **screens out non-Chinese speaking children constituting indirect racial discrimination.** Kindergartens surveyed also lack language support to both parents and children. Though profile of kindergartens published by the EDB is officially bilingual, much of the crucial information such as curriculum details and school characteristics are in Chinese only, making the information inaccessible to most ethnic minority families. Some ethnic minority parents surveyed feel humiliated, discriminated and not welcomed during kindergarten application process.

We urge the EDB to **closely monitor kindergarten admission procedures and mechanisms,** and ensure an encouraging environment that offers **effective assistance in Chinese language learning** for ethnic minority students and their parents in kindergartens.

15. **Vocational training opportunities are limited for ethnic minorities who are not proficient in Chinese.** Many ethnic minorities are employed in low-paying jobs and living at or below the poverty line. Education and vocational training are supposed to enhance economic opportunity and lift ethnic minorities from inter-generational poverty. However, there are limited vocational training and support programmes available to them due to requirements in Chinese. For example, "only 4 out of 160 vocational education programmes provided by the Hong Kong Institute of Vocational Education are conducted in English" (Kapai, 13, Chapter 3). Due to discrepancies in programmes' medium of instruction, interview language and accommodations on Chinese compulsory courses, according to Unison's 2015 "Research on Ethnic Minority Students' Access to Post-Secondary Education", 71% of the 186 non-degree



programmes surveyed is not suitable for students do not have abilities in Chinese and 50% of those programmes is not suitable for students who do not read or write Chinese.

Currently, there are express limitations on the RDO's operation in education and vocational training, which relates to language and the medium of instruction. Sections 26(2) and 20(2) of the RDO states that the "prohibition on racial discrimination in education and vocational training does not require modifying or making different arrangements in the medium of instruction for persons of any racial group". This **violates rights to education and seriously hampers minorities' chance of further education.**

- 16. Ethnic minority students with special education needs face challenges and discriminations in mainstream schools.** The situation of ethnic minority special education needs (SEN) students is critical as there is a "severe shortage of English school places and resources to cater to the special learning needs of ethnic minority SEN students" (Kapai, 15, Chapter 3). A recent study shows that "placing them in a Chinese learning environment can further delay their ability to communicate, compromise their development and result in poor educational outcomes, leaving their equal right to education grossly unmet" (Kapai, 15, Chapter 3). Coupling the problem is the lack of English or mother-tongue SEN assessments for ethnic minority children, which resulted in mis-diagnoses and under-diagnoses.

We urge the government to make **English or mother-tongue SEN assessments more accessible and English school places more available** for ethnic minority SEN students so they do not miss the critical developmental window of opportunity to learn in an appropriate environment.

- 17. Labour Department (LD) is unable to provide suitable service to ethnic minorities.** The Labour Department services are not fully accessible to ethnic minority job seekers. Many LD job postings do not cater to ethnic minorities who are not fluent in Cantonese. According to a recent survey, over 65% of respondents did not find its services useful and 85% did not receive employment via the assistance of LD (DCPW, 2). The Employment Service Ambassadors (ESA) programme, launched by the LD for ethnic minority youths, falls short of its objective of helping ethnic minority job seekers find employment.

Language barrier remain the major difficulty for ethnic minority job seekers. We urge the Government to **provide incentives for employers to hire minority job-seekers.** These strategies can make the most of minority job-seekers' talents while encouraging them to integrate into Hong Kong by learning Cantonese.

- 18. Employment opportunities as civil servants are limited.** Since 1999, most public service vacancies stipulate the requirement to pass the Chinese Common Recruitment Examination (CRE) and some require individual department's internal Chinese language proficiency assessments. This poses hurdles to minorities and amounts to indirect discrimination. Ethnic minority residents have been *de facto* barred from civil service due to language consideration,



preventing them from being adequately represented in the Government and its policy decisions.

We urge the Government to re-assess the requirements on Chinese proficiency for civil service positions in different ranks and departments including but not limited to immigration, police and fire, and correctional and ambulance services, and consider waiving or lowering such requirements for ethnic minority applicants. Employing minorities could be beneficial to the Government – as evident in the case of minority prison officers who, on top of carrying out their daily duties, also serve as a bridge with minority communities.

19. **Ethnic minorities often face direct and indirect discrimination when seeking for accommodations.** The Housing Authority does not and cannot cater ethnic minorities' needs when providing services. Ethnic minority families are generally subjected to indirect discrimination by the public housing scheme because of their larger family size and the resident status of household members. Most flats in the public housing scheme are targeted for smaller families, and public housing is only allocated if at least 50% of household members are permanent residents. Often, ethnic minorities have no choice but to seek private housing. Time and again, landlords and real estate agents blatantly refuse renting to ethnic minorities because of their race and color, thus directly discriminating against them. Many ended up living in poor housing conditions paying exorbitant rent.

20. **Article 5(f): right of access to services**

**Government funded interpretation services vary in quality and are under-utilised.** Language barrier is one of the main obstacles for ethnic minorities to access services and seek help. However, the existing interpreting services funded by the Home Affairs Department are under-promoted to government departments and ethnic minorities. Moreover, the quality and professionalism of interpretation services available vary, which affect ethnic minorities' access to legal protection, medical services, and housing and welfare services. There is currently no comprehensive assessment nor licensing body for interpretation service, and ineffective feedback mechanism in place to inspect the qualifications and conduct of interpreters as well as control the quality of interpretation.

The Government **should ensure relevant bureaux, departments and ethnic minorities know about the interpretation service** and strengthen the monitoring and complaint handling mechanism of the interpretation service and its transparency.

21. **Article 6: Provision of effective protection and remedies against any acts of racial discrimination**

**The Equal Opportunities Commission (EOC) cannot uphold racial justice.** The EOC is not independent from the Government, which does not comply with the standards set in the Paris Principle. Its Chairperson and the board members are appointed by the Chief Executive. The Commission is limited in power in investigating and eradicating institutionalized racism



in government, public or private bodies such as banks, schools, etc. The EOC, which is responsible for monitoring acts of racial discrimination is at the same time bounded by the limited RDO. Racial discrimination complaints to the EOC that Unison have handled are often rejected as unsubstantiated because there is no protection from racial discrimination by perception and the burden of proof on racial discrimination claims is on the complainants which is often difficult to prove because often these are not acts of overt discrimination. Rather than seeking justice against unfair treatment due to race or nationality, EOC resorted to conciliation without determining whether the act is unlawful.

We urge the Government to **establish an authentic Human Rights Commission and seriously review the current flaws with the RDO and the EOC.** While the Government is openly recruiting for the Chairperson of EOC, we urge the Government to abide by the Paris Principle to **instate procedures for electing the next Chairperson** to ensure pluralistic representation of social forces. We urge that the EOC to **review its role and assume a more proactive role in community capacity building**, thus promoting understanding of the Ordinance and awareness of their rights to the general society, especially in ethnic minority communities. We also urge the Commission to **play a more proactive part in policy advocacy and conduct formal investigations into policies that may be violating the Ordinance.**

## 22. Article 7: Measures to combat prejudice

As a result of social marginalization, ethnic minorities, their voices and their needs are largely invisible. The Hong Kong Chinese population's exposure to ethnic minority communities and issues is "fairly limited and is heavily influenced by media, stereotypes and the lack of an active inclusive citizenship policy" (Kapai, 10, Chapter 2). Ethnic minorities' history in HK and their contributions have largely been erased from textbooks and government literature. In 2014, it was widely reported that a primary school level textbook teaches students stereotypes of different races or nationalities in a chapter titled "racial harmony." For example, students are supposed to match "Filipino" with "domestic helper" and "Japanese" with "sushi restaurant" owner, etc.

Their portrayals in the media, particularly the news, are largely negative. Reports on crimes committed by ethnic minorities are sensationalised with the suspects' race highlighted in the headings, which may reinforce public stereotypes and generalisations.

The Broadcasting Ordinance is extremely loose on what kind of content counts as "inciting public hatred" against a certain race, and the ground of a programme being prohibited from broadcasting is that it would "result in a general breakdown in law and order" or "gravely damage public health or morals." Thus, the Ordinance is unable to monitor less severe violations that are also damaging to public perception of ethnic minorities.



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**We urge the EOC and HK government to conduct more public education programme, and issue a detailed guideline to broadcasting licensees.**

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