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Hong Kong Unison's Submissions
to the UN Human Rights Committee
on the Third Report of the Hong Kong SAR in light of the ICCPR
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FOREWORD

Ethnic minorities constitute 6.38% of the Hong Kong population according to the 2011 census. Among them, South East Asians and South Asians constitute about 4.8% of the Hong Kong population. Many of them, especially Indians, Pakistanis and Nepalese, are at least second generation immigrants in Hong Kong with their parents and grandparents having been sent to Hong Kong by the British government during the colonial days. Their history in Hong Kong dates from the 19th century and is at least as long as that of many Chinese families which migrated from mainland China during the two World Wars. Despite this, ethnic minorities do not enjoy the ICCPR rights as much as Chinese residents do and are much less visible in the socio-political scene.

1. ARTICLE 2

1.1 Equal Opportunities Commission *(Corresponding to paragraphs 2.5-2.8 of the Government's report)*

1.1.1 The Equal Opportunities Commission (EOC) has adopted a very passive role. Firstly, in handling complaints, it only acts as a postman between the parties to conciliation and turns a blind eye to the imbalance of power between the complainants and the respondents. Secondly, in public education, it only introduces to the public what the law is rather than broader equal opportunities principles, especially in aspects where there is no equal opportunities legislation. Thirdly, it does not exercise its statutory power of advocacy or stand against the government when human rights so require. For example, even though the education for ethnic minorities is clearly discriminatory, it refuses to exercise its power to conduct a formal investigation despite long calls by NGOs. The research it carries out is also very inadequate in addressing the various



discriminatory policies or practices in Hong Kong. Also, it is known to the EOC that ethnic minorities are discriminated against when renting flats, but the EOC only asks ethnic minorities to lodge complaints and never speaks about the issue to the press. Moreover, although the EOC has commissioned an expert to review the current equal opportunities legislation, it never presses the government to take law amendment proposals serious. **Hong Kong Unison urges the Equal Opportunities Commission to take a more proactive role. The EOC should also formulate a concrete action plan on educating ethnic minorities human rights principles and implementation and empowering women and building their capacity.**

1.1.2 The current Chairman of the Commission also serves as the Convenor of the Executive Council, an organ which assists the Chief Executive in policy-making. Such a dual appointment has greatly weakened the independence of the Commission. The current Chairman's term will expire in the end of March. **Hong Kong Unison urges the Government to ensure that new Chairman will, in line with the Paris Principles, be committed to and have experience in promoting equal opportunities. He or she should also be independent from the Government and be able to defend equal opportunities against the Government on both local and international platforms. There should be no revolving door practice.**

1.2 Complaints Against the Police *(Corresponding to paragraphs 2.11-2.14 of the Government's report)*

Lack of an independent complaint mechanism with investigative power



1.2.1 The abuse of police power can ruin the future of young people and ethnic minorities in Hong Kong are particularly susceptible to such an abuse of power. Ethnic minorities are therefore particularly concerned with the lack of an effective mechanism for complaints against the police.

1.2.2 Police officers often discriminate against ethnic minorities. For example, they provoke ethnic minorities by addressing them with racial slurs (e.g. calling members with South-Asia background ‘Ah-Cha’ or ‘Cha-chai’). Also, they often abuse ethnic minorities’ lack of knowledge of their own legal rights. For example, when an ethnic minority person is arrested, the police often do not give him or her the standard required notice which informs him or her of the rights, including the right to remain silent.

1.2.3 Moreover, many police officers do not have equal respect for human rights of all races. One telling example is the police killing of a homeless Nepalese man in 2009. The police constable approached the homeless man upon receiving a nuisance complaint, knowing that the homeless man was probably not of Chinese ethnicity. The police constable obviously understood that many non-Chinese people in Hong Kong do not speak Cantonese and therefore asked for the identity card of the Nepalese man in English. However, before using his baton and gun later, he only warned the Nepalese man in Cantonese. This shows the lack of respect for the life of the Nepalese man by the police constable.

1.2.4 The Complaints Against Police Office (CAPO) mentioned in the Government’s report is in fact a department of the Police. With the lack of independence, police officers in CAPO are unwilling to investigate complaints, especially those against their potential supervisors. They often dissuade ethnic minority complainants, especially those in need of translators.



1.2.5 As for the Independent Police Complaints Council (IPCC) mentioned in the Government's report, any advice it gives is non-binding on CAPO. It does not have investigative power either.

1.2.6 Hong Kong Unison urges the Government to make the IPCC the only body with which complaints against the Police are lodged. The IPCC should have the powers of investigation and sanction. It should also strengthen training to enhance the cultural sensitivity of frontline officers and review its internal guidelines to ensure the officers have equal respect for the rights and dignity of all races.

1.3 Human Rights Education *(Corresponding to paragraph 2.15 of the Government's report)*

1.3.1 Ethnic minorities are not conversant with human rights mechanisms and have a weak awareness of their human rights. This is because although both English and Chinese are official languages of Hong Kong, government services and information are often only available in Chinese. Many ethnic minority residents are not proficient in Chinese, the reason of which is explained in section 8.2 below. Also, such human rights education is almost non-existent in pre-tertiary education and very few ethnic minority students manage to get into university due to the poor education policy, which is again explained in section 8.2 below.

1.3.2 Hong Kong Unison urges the Government to strengthen its human rights education for ethnic minorities, especially on their rights as Hong Kong permanent residents. Such human rights education should include



the various human rights mechanisms, such as the EOC, local equal opportunities legislation and international conventions.

2. ARTICLE 3

2.1 Discrimination against ethnic minority women by their own ethnic groups

2.1.1 The situation of gender equality in Hong Kong is not as good as what it appears to be internationally. Women often enjoy unequal pay and promotion opportunities.

2.1.2 Ethnic minority women are particularly marginalized by their patriarchal cultures and tradition. They are often discouraged from pursuing higher education or a rewarding career and have a lower socio-economic status. Furthermore, early arranged or even forced marriages and domestic violence are done in the name of religion while it is in truth a matter of patriarchal tradition. Although such a constraint of the liberty and development of women departs from the values of Hong Kong and inherent dignity and human rights, the Government has turned a blind eye to this issue. Also, social workers in Hong Kong are predominantly Chinese and lack professional training in dealing with arranged marriages and domestic violence, which are linked to a culture foreign to them.

2.1.3 Hong Kong Unison urges the Government and public bodies including the EOC and Women's Commission (WoC) to implement policies on the empowerment and emancipation of South Asian women in Hong Kong. It should also provide training to social workers on dealing with the culture-related suppression of ethnic minority women.



3. ARTICLE 14

3.1 Right of Access to the Legal System *(Corresponding to paragraph 14.9 the Government's report)* *Legal Assistance*

3.1.1 There are three legal assistance schemes—(i) the Free Legal Advice Scheme managed by the Hong Kong Bar Association and the Law Society of Hong Kong held at the Home Affairs Department with the full subvention of the Government, (ii) the Duty Lawyer Scheme managed by the Hong Kong Bar Association and the Law Society of Hong Kong with the full subvention of the Government and (iii) Legal Aid.

3.1.2 For the Free Legal Advice Scheme, there are no interpretation services or leaflets in minority languages. The scheme is unknown among ethnic minority communities and no ethnic minority resident has used the service. **Hong Kong Unison urges the Government to promote the Scheme to ethnic minorities and ensure that participants of the Scheme are provided with interpretation services and there are leaflets in minority languages on the Scheme.**

3.1.3 For the Duty Lawyer Scheme, duty lawyers often seem to have a discriminatory attitude towards ethnic minorities. For example, they tend to persuade ethnic minorities to plead guilty as they are reluctant to defend them because of their race. **Hong Kong Unison urges the Government to enhance the cultural sensitivity of lawyers and promote the principle of non-discrimination among lawyers.**



3.1.4 Also, Hong Kong Unison maintains that the Duty Lawyer Scheme should also be available for persons arrested, interrogated and charged at the police station.

3.1.5 For Legal Aid, although the legal aid services cover interpretation services during litigation, interpretation costs incurred before legal aid is obtained are not covered. **Hong Kong Unison urges the Legal Aid Department to extend legal aid services to such preliminary interpretation costs, so that the legal aid application process does not bar access to the legal system of ethnic minorities.**

Poor Quality of Interpretation Services

3.1.6 There are many complaints by ethnic minority residents who that interpreters in the legal process mis-interpreted their words and even dissuaded them from talking in details.

3.1.7 To ensure real access to the legal system on all levels, the Government should develop and subsidize quality professional training for interpreters. Also, the Government should set admission criteria, a grading system, a code of practice and a complaint mechanism to ensure the quality of interpreters and translators.

The Implementation of Sentencing Options

3.1.8 Firstly, women abusers who are bound over are required to watch a video and state that they understand the concept before they are bound over. The video and follow-up services provided by the Social Welfare Department are both in Chinese only. **Hong Kong Unison urges the Social Welfare**



Department to conduct the procedures in English as well as Chinese and provide translation services for ethnic minorities.

3.1.9 Secondly, young persons who have committed minor offences may be put on probation order. There are activities organized by social workers for the rehabilitation of these young offenders, but social workers are reluctant to organize them for ethnic minorities because of the language barrier and the lack of understanding of the unique difficulties faced by ethnic minority offenders. **The Government should provide training to social workers to enhance their cultural sensitivity and ensure they understand they have the same legal duty towards people on probation of all ethnicities.**

4. ARTICLE 22

4.1 Proposed Charity Law

4.1.1 The Law Reform Commission, a body which considers for reform those aspects of the laws of Hong Kong referred to it by the Government, issued a consultation paper on a proposed charity law. The consultation period ended in October 2011. Hong Kong Unison is concerned about the proposed definition of charity. **The Law Reform Commission asked for the public's views on whether the advancement of human rights is charitable, with the definition of "charitable" being "for the public benefit". It also left open the question of whether the political activities done in support of a charitable purpose are legitimate activities for a charity to undertake. Hong Kong Unison stresses the importance for any relevant bill to answer these two questions in the affirmative.** The advancement of human rights is clearly for the public benefit and cannot be achieved without the support of political activities. Moreover, the advancement of human rights and related political activities are inseparable from other objects, such as the relief of poverty, which the



government readily accepts to be charitable. Defining “charitable” in the way proposed in the consultation paper will severely affect the funding and employment of social workers by of charities.

4.1.2 Hong Kong Unison is also concerned about the proposed Charity Commission. The Commissioner and other members are likely to be appointed by the Chief Executive. Although this is an internationally common practice, it is prone to abuse by the Government as there is no real democracy in Hong Kong. Moreover, the consultation paper proposes that the Charity Commission should have the power to refuse registration for organizations which fulfill all the specified criteria even though the Commission will have the power to deregister organizations. The Government may intend to control charities through the Commission, which has the power to Also, current measures monitoring charities are ineffectively implemented and the Government fails to explain why it does not strengthen these measures first before setting up a Charity Commission. For example, after issuing licenses to raise funds in public places, the Food and Environmental Hygiene Department does not monitor whether the licensees indeed raise funds for a charitable purpose. **Hong Kong Unison urges the Committee to show concern over the proposed Charity Commission.**

5. ARTICLE 24

5.1 Poor Services by Social Workers

5.1.1 The Government has adopted an integrated approach for social welfare services for families, children and youths. With this approach, social workers handle problems of all groups in the same way and neglect issues unique to each group. For example, ethnic minority children may face early arranged marriages which are very rare among Chinese children. Social workers in general lack the



cultural sensitivity, basic knowledge and skills necessary for serving ethnic minorities. The resulting incompetence and even phobia in serving ethnic minorities thus hinder social workers from giving immediate attention or assistance to ethnic minorities even in emergencies. **The Government should provide social workers with pre-employment and on-the-job training on serving different racial groups and set up guidelines to ensure all races are served equally.**

5.2 Naturalization

5.2.1 Many ethnic minority residents, including those whose families have settled in Hong Kong for a century, cannot get naturalized as Chinese nationals or get an HKSAR passport due to the apparently discriminatory and arbitrary practice of the Government.

5.2.2 The Government of China has delegated the power of approving naturalisation applications to the Hong Kong Government. The Hong Kong Government has set ten factors to be considered in an application, such as whether the applicant has a reasonable income and whether the applicant has a near relative who is a Chinese national with the right of abode in Hong Kong. Only Chinese nationals are eligible for an HKSAR passport.

5.2.3 The approval process is very opaque and apparently arbitrary. Firstly, the Government has not announced to the public whether any of the factors are given heavier weight and what the factors mean. For example, what amounts to a reasonable income is not known by the public. Secondly, according to the law, the Government does not have to give reasons for rejecting an application. There is also no appeal mechanism. An applicant cannot check whether the processing of the application is rational and in line with natural justice. Also,



there is no way for an applicant to improve his or her situation for the sake of re-applying. Thirdly, frontline officers tend to dissuade ethnic minority applicants from submitting applications before the officers responsible for reviewing applications have a chance to fully review them. There may be wrongful “rejection” in this regard and the data on refused applications do not truly reflect the situation.

5.2.4 The failure for ethnic minority residents to get an HKSAR passport has shattered their sense of identity as they have long seen Hong Kong as their home. They are also denied the facility and protection enjoyed by HKSAR passport holders when they travel abroad and their study and employment opportunities are thus limited. Some banks also refused to open accounts for them without an HKSAR passport.

5.2.5 Hong Kong Unison urges the Government to align the practice and attitude of frontline officers and officers reviewing naturalization applications to ensure the process is rational and non-discriminatory. Also, it should ensure that the public understands the relative importance and true meaning of each factor considered in an application. Furthermore, it should revise the procedure of considering applications so that applicants will know why the Government rejects or is going to reject the applications and have the chance to make representation and appeal the decisions.

6. ARTICLE 25

6.1 Ethnic Minorities being Under-represented in Advisory and Statutory Bodies (ASBs)

6.1.1 Among the 460 ASBs in Hong Kong, only a handful have appointed ethnic minorities to serve on them. Also, many of these few members of ASBs



are pro-establishment and lack of relevant background and understanding on the subject. They are purely decorative and only serve as convenient excuses for the Government to claim that they have appointed ethnic minority members. This affects the need assessment and cultural sensitivity of the policies and initiatives of these ASBs. For instance, although ethnic minority members have been appointed at the EOC and the WoC, their work still reflects a lack of cultural sensitivity. A specific example is that not all the information of the Capacity Building Mileage Programme organized by the Women's Commission is available in English and many ethnic minority women do not read Chinese. **Hong Kong Unison urges the Government to ensure ethnic minorities are adequately represented in public bodies to ensure various policies cater for the need of ethnic minorities.**

6.2 Limited Access to Public Service

6.2.1 Before the handover in 1997, only English but not Chinese proficiency was required of a number of civil service posts and the relevant civil servant could effectively discharge their duties. However, after the handover, proficiency in both Chinese and English is required of all local civil servants, regardless of their specific duties. On the other hand, as explained in section 8.2 below, the Chinese language education for ethnic minorities is very ineffective and many ethnic minority residents cannot read or write Chinese as competently as Chinese residents. As a result, ethnic minorities' access to the public service is seriously limited. Furthermore, the lack of ethnic minority nurses, firemen, immigration officer, postmen etc adds to the invisibility of ethnic minorities in the social arena.

To ensure equal access to the public service, **Hong Kong Unison urges the Government to review the Chinese reading and writing capabilities are**



genuine occupational requirement to each civil service post, especially in light of the poor Chinese language education for ethnic minorities.

7. ARTICLE 26

7.1 Legislation Against Racial Discrimination *(Corresponding to paragraphs 26.1 to 26.9 the Government's report)*

7.1.1 The Race Discrimination Ordinance (RDO) is much weaker than the other three pieces of equal opportunities legislation in Hong Kong in that **there is no provision in the RDO which states that discrimination by the government in its performance of functions and exercise of powers is unlawful**. While, as stated in paragraph 26.8 of the Government's report, the Government is prohibited from practicing racially discriminatory acts in the exercise of its functions under the Basic Law and the Bill of Rights Ordinance, the Equal Opportunities Commission has no power to deal with complaints under the Basic Law and the Bill of Rights Ordinance. This means that people racially discriminated against by the Government in its exercise of powers and performance of functions cannot seek redress through conciliation or litigation initiated and funded by the Equal Opportunities Commission. The remedies and time bar of judicial review and the RDO are also different.

7.1.2 **The RDO excludes and in effect wrongfully legalizes discrimination on the grounds of nationality and language.** Banks which have repeatedly refused to open accounts for ethnic minority women can easily argue that they do so on the basis of nationality. Moreover, discriminatory provision of goods and services including education may not be caught if the discriminator argues that the discrimination is based on language. It is very difficult for complainants to gather evidence that the discrimination is based on race rather than nationality or language.



7.1.3 The government introduced the Administrative Guidelines on Promotion of Racial Equality. However, the set of guidelines is non-statutory and do not apply to all government departments.

7.1.4 Furthermore, the Government is very reluctant to introduce amendments to the equal opportunities legislation. The EOC has submitted its proposed amendments to the Sex Discrimination Ordinance for ten years, but the Government has all along refused to submit a law amendment bill to the Legislative Council. Recently, the EOC has invited an overseas expert to have a complete review of the four pieces of equal opportunities legislation. **We urge the Government to take the review seriously and have an overhaul of the equal opportunities legislation to remedy the existing defects in the law.**

8. ARTICLE 27

8.1 A Comprehensive Racial Policy

8.1.1 Hong Kong is well-developed in the economic and legal sense, but a public outlook on human rights and racial harmony is only starting to grow. In particular, the Government has in the past decades been complacent about leaving ethnic minorities invisible in the political and social scene. Also, there has been almost no discussion on the role of religion in society and politics.

8.1.2 The lack of a comprehensive racial policy and existing discriminatory policies such as that of Chinese education mentioned below make ethnic minorities feel abandoned and excluded by mainstream society. The resentment will easily escalate into social conflicts. Moreover, there is very little guidance for public and private bodies to deal with racial or religious conflicts both in



accordance with the Race Discrimination Ordinance and the broader human rights principle.

8.1.3 Hong Kong Unison urges the Government to devise a comprehensive racial policy on the basis of equal opportunities for all genders and races.

8.2 Chinese Language Education *(Corresponding to paragraphs 27.13-27.16 of the Government's report)*

8.2.1 The Government has no clear policy of Chinese language education for ethnic minorities. Although the Government claims that it promotes the early integration of ethnic minority students, in fact ethnic minority students are in fact concentrated in schools of poor quality and are segregated across schools.

8.2.2 Ethnic minority students only have two choices, namely mainstream and designated schools. Currently, 30 primary and secondary schools are “designated”, ie they admit a significant number of ethnic minority students. Designated schools teach ethnic minority students Chinese which is of a level too low for them to enjoy equal opportunities in further study and employment; for example they teach secondary six students primary-two level Chinese. On the other hand, mainstream schools assume all students are native Chinese speakers and accordingly put in place a curriculum and assessment unsuitable for ethnic minority students. Both extremes fail to adequately build up the Chinese capacity of ethnic minority students. International schools are way too expensive for ethnic minority students who are often from the working class.

8.2.3 Moreover, ethnic minority students in designated primary schools cannot manage studies at good mainstream secondary schools because the gap in Chinese level is too big. Those in mainstream primary schools cannot get into



good mainstream secondary schools either. This is because the secondary school allocation system depends on their grades in schools and their Chinese grades are often very low.

8.2.4 The outcome is that although many ethnic minority residents are at least second generation immigrants, many of them cannot read or write Chinese due to the poor education policy. Despite the fact that both English and Chinese are official languages of Hong Kong, opportunities are extremely limited for residents of the lower and middle classes who do not read or write Chinese. For example, most small enterprises only have Chinese application forms during interviews and company notices are only written in Chinese. Also, every year about 1 % of ethnic minority students are admitted into government-subsidized degree programs while 20% of Chinese students are admitted to such programs.

8.2.5 Therefore, **Hong Kong Unison urges the Government to implement a “Chinese as a Second Language” curriculum as soon as possible.** This is in line with the recommendation by the Concluding Observations of Committee on the elimination of Racial Discrimination on Mongolia for the 69th session in 2009 that Kazakh children should be provided with adequate opportunities to learn Mongolian as a second language.

8.2.6 Hong Kong Unison’s advocacy for a “Chinese as a Second Language” curriculum is *not* based on the view that languages which are minority languages in Hong Kong should not be protected. The most important challenge ethnic minorities face in Hong Kong is different from that common across the world—in Hong Kong they do not have sufficient Chinese skills to access information and services as well as to enjoy equal opportunities.



8.2.7 In paragraph 27.14 of the report, the Government argues that schools are making adaptations to the curriculum for ethnic minority students. However, in truth, teachers do not just adjust the curriculum; they have to design a new set of materials for ethnic minority students. They lack the expertise and time to do so.

8.2.8 In paragraph 27.15 of the report, the Government argues that an alternative curriculum will preset lower standards for ethnic minority students. This shows a sheer lack of understanding on the Government's part of a "Chinese as a Second Language" curriculum. As with the "English as a Second Language" curriculum common in English-speaking countries, a "Chinese as a Second Language", aims at enabling non-native speakers to learn with native speakers ultimately with suitable curriculum and pedagogy.

8.2.9 In paragraph 27.16 of the report, the Government mentions that ethnic minority students may take the GCSE (Chinese) Examination of the United Kingdom in Hong Kong and the results may be considered for appointment to civil service posts and for further studies. However, departments have the discretion on this matter and ethnic minority applicants often cannot pass individual departments' internal Chinese language tests. The Government also refuses to provide the number of ethnic minority applicants employed with a GCSE (Chinese) result. However, the GCSE (Chinese) Examination is an examination for students learning Chinese as a foreign language rather than a second language. Also, the level is too low and the content is based on the British context. Moreover, the GCSE (Chinese) Examination will be scrapped in 2017. Hong Kong should develop its own assessment for students learning Chinese as a second language and not rely on foreign tentative solutions.

8.3 Racial Segregation in Schools



8.3.1 In at least 9 of the 30 designated schools, ethnic minority students constitute 90% more of the student population. This segregation is in itself racial discrimination, potentially violating the RDO, and the absence of a Chinese-speaking environment in these schools hampers the Chinese learning of their students. The Government claims that parents choose to place their children in designated schools. However, in truth, there is no real choice for parents as their children risk failing in Chinese Language and having limited further study opportunities if sent to mainstream schools as explained above. **Hong Kong Unison urges the Committee to show concern over the absence of real school choice for ethnic minority students and the resulting segregation.**

8.4 Bias in Data Collection

8.4.1 Ethnicity data collected by the Government are biased and inaccurate.

8.4.2 Firstly, for the 2011 census, despite calls by NGOs, the Government refuses to employ interpreters for South Asian or South East Asian languages in the census. As a result, census field officers cannot converse with interviewees well and tend to underestimate the size of the interviewees' families as South Asian and South East Asian families tend to be bigger than Chinese ones. Moreover, the number of South Asian and South East Asian families interviewed is significantly smaller than that of Chinese families. This shows that many census field officers skip ethnic minorities altogether, possibly due to the language barrier. In fact, the census findings are doubted by NGOs and the ethnic minority communities as the numbers are far lower than expected from the everyday contact with ethnic minority people.



8.4.3 Secondly, there has recently been a fabrication scandal of the Statistics Department. Field officers of the department tend to fabricate data that the visited flats are unoccupied so as to maximize their recorded efficiency for the sake of appraisal. This has probably led to an underestimation of the population size of ethnic minorities and the related issues.

8.4.4 Thirdly, different government sources give different numbers of ethnic minority students.

8.4.5 Moreover, the Government is reluctant to collect and release ethnicity data. For instance, there is no data on the education of ethnic minority, including the banding of the schools they are in, the number of ethnic minority students in each school and their drop-out rate. Scholars and NGOs are in the dark whether the Government has collected certain data and can only ask for the data through the Legislative Council. This violates the principle stated in the United Nations Human Rights Council report by Gay McDougall (A/HRC/10/11/Add.1) that accurate qualitative and quantitative data disaggregated by race are necessary for assessing education and anti-discrimination policies. Government policies based on this underestimation of the ethnic minority population size are bound to be ineffective.

8.4.6 The devising of ethnic minority policies is jeopardized by the above-mentioned problems in data collection. Politically, this also serves as an excuse for the Government, which seems to have adopted a “no data, no problem” approach to do less than what has to be done. Moreover, this makes it impossible for the public to monitor whether policies cater for the real needs of society.



8.4.7 Hong Kong Unison urges the Government to employ enough interpreters when collecting data to ensure the accuracy of the data. It should also provide training to both full-time and part-time officers responsible for data collection to enhance their cultural sensitivity and ensure they try their best to interview all ethnic minority families designated. Also, monitoring of frontline officers has to be significantly enhanced.

8.4.8 Furthermore, the Government should set up a database about ethnic minorities. The database should include all data required for the devising of effective policies and be readily available to scholars, NGOs and the general public.