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香港融樂會有限公司

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**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 bureaus 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.