

Hong Kong Unison Limited
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Submissions to the Legislative Council **Panel on Security** on
**"Hearing of the Hong Kong Special Administrative Region's third report under the
Convention against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment"**

1. Upon the concluding observations of the hearing held by the United Nations Committee against Torture ('the CAT Committee') on the third report of the Hong Kong Special Administrative Region (HKSAR) under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the CAT') and the Government's response, **Hong Kong Unison maintains that the Government should not pull out of the CAT or set up detention camps.** The Government lacks political will and commitment to this human rights cause. We urge the Government to continue to uphold the dignity of human life in Hong Kong and commit to international human rights standards and obligations.
2. Hong Kong Unison strongly echoes the CAT Committee to call on the Government to review the non-refoulement claim screening procedure to ensure persons in need of international protection are fully protected against refoulement.
3. The Government should improve its gatekeeping mechanisms and take necessary legislative amendments to adopt the definition of trafficking provided for in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.
4. The CAT Committee recommends the Government to adopt a more inclusive definition of the term "public official"¹ in order to ensure that all public officials or any other person acting in an official capacity can be prosecuted for acts of torture. The CAT Committee also recommends the Government to ensure the definition comprises all elements contained in article 1, including discrimination of any kind. The Government should take note that the existing Race Discrimination Ordinance ('RDO') allows the Government to discriminate against persons on the grounds of race in the performance of its functions or the exercise of its powers.

The judgment of the first court case [DCEO9/2011] adjudicated under the RDO involving a public authority was finally delivered after a 20-month long wait on 30 May 2016. The court holds that the acts of police including arrest and investigation of the plaintiff (Singh) and treatment of the plaintiff in custody did not amount to 'services' for the purpose of section 27 of RDO and hence dismissed the plaintiff's claim of race discrimination. The

¹ "Public official" is currently defined by the Government as including "any person holding in Hong Kong an office described in the Schedule listing Police, Customs, Correctional Services Department, ICAC and ImmD".



judgment reiterates the dire need to amend the RDO to provide express coverage for Government's functions and powers" as also recommended in the 2009 CERD concluding observations. The RDO is the only ordinance that is inconsistent with such provision amongst the four anti-discrimination ordinances.

5. The CAT Committee is concerned about the importance of educational and training programmes. With reference to the incident in 2009 whereby a Nepalese man (Limbu) was shot dead by a police constable and the occupy movement in 2014, the Government needs to step up "training for all law enforcement officers on the absolute prohibition of torture and on international standards on the use of force, as well as on their liability in the event of excessive use of force".

The Singh case, the Limbu case and ethnic minority domestic violence cases highlight the lack of sensitivity of the Police Force in dealing with ethnic minorities. In the Singh case, the plaintiff was made to wait for a Punjabi interpreter while he spoke English. In the Limbu case, the police constable made his warnings towards Limbu in Cantonese, without considering whether the ethnic minority man understood the warning. Ethnic minority domestic violence victims are often treated unfairly by law enforcement officers. In some cases, victims were arrested for "assaulting" the abusers because the abusers' stories sounded more persuasive in a language understood by the police. One research reported that an "ethnic minority victim approached the police for help in respect of violent attacks by her husband; the police did not attempt to communicate with her to ascertain her side of the story, and merely advised her through her father-in-law in Chinese". "Another two victims reported that they were advised to return to their abusive husbands."² Hong Kong Unison urges the Police Force to strengthen training on cultural sensitivity and develop clear guidelines to raise awareness of police officers on human rights and racial discrimination.

6. Until now, the Government still has not established a fully independent human rights institution in conformity with the Paris Principles and fails to strengthen the mandate and the independence of the Equal Opportunities Commission (EOC), as recommended by the CAT Committee and Human Rights Committee. The board members of the EOC are appointed by the Chief Executive and the Chairman has not been recruited in compliance with the standards set in the Paris Principle. The EOC is limited in power to investigate and eradicate institutionalized racism in government and public bodies. The threshold of establishing a prima facie case is very high, leading to low number of substantiated discrimination cases. We urge the Government to establish a Human Rights Commission with an independent and effective mechanism to receive and investigate complaints against all officials whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, regardless of the victim's race or ethnicity.

² Puja Kapai (2015). "The Status of Ethnic Minorities in Hong Kong 1997-2014". Chapter 6, page 15.