

**Joint Submissions of NGOs
for the
Committee on the Elimination of Racial Discrimination
(CERD)**

**in relation to the 14th to 17th combined periodic reports of
Hong Kong Special Administrative Region (HKSAR)
CHINA**

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(reformatted by article)**

**This submission is coordinated by
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- 21 Hong Kong Federation of Asian Domestic Workers Unions
- 22 Hong Kong Human Rights Monitor (HKHRM)
- 23 Hong Kong Subdivided Flats Concerning Platform
- 24 Hong Kong Unison
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- 27 Indonesian Migrant Workers Union (IMWU)
- 28 Justice and Peace Commission of the HK Catholic Diocese
- 29 Juvenile Prisoners Human Rights Concern Group
- 30 Labour Party
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- 32 League of Social Democrats
- 33 Les Corner Empowerment Association
- 34 LIKHA Filipino Migrants Cultural Organisation
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- 37 Pangasinan Organisation for Empowerment and Rig (POWER)
- 38 PathFinders Limited
- 39 Pinatud a Saleng ti Umili (PSU)

- 40 Progressive Lawyers Group
- 41 Rainbow Action
- 43 Reclaiming Social Work Movement
- 44 Resolve Foundation
- 45 Scholars' Alliance for Academic Freedom
- 46 Society for Community Organization (SoCO)
- 47 Stop Trafficking of People (STOP.)
- 49 The Hong Kong Coalition for the Rights of Persons with Disabilities
- 51 The Professional Commons
- 52 United Filipinos in Hong Kong (UNIFIL-MIGRANTE-HK)
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- 54 Vancouver Friends of Hong Kong

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BACKGROUND: RAPID DETERIORATION OF THE RULE OF LAW IMPACTING LEGAL AND POLITICAL RIGHTS

Serious deterioration of the rule law, One Country Two Systems and the general political situation in Hong Kong (HK)

1. Since CERD's last review of the China/HKSAR/Macau SAR report in 2009, the political situation in HK has deteriorated, creating an environment in which rights guaranteed under the One-Country-Two-Systems (OCTS) arrangement and HK's international obligations under UN treaties are being persistently undermined, threatening to undermine the effectiveness of the institutions which are central to the eradication of racial discrimination and the protection and promotion of racial equality.

‘ONE COUNTRY, TWO SYSTEMS’

“Complete jurisdiction” asserted by China over HK despite the guarantee of a high degree of autonomy

2. China has been threatening the high degree of autonomy promised to HK under the OCTS framework set out in the Sino-British Joint Declaration (JD) through recent unilateral assertions of “complete jurisdiction over the HK Special Administrative Region (HKSAR)”. China has increasingly intervened in HK affairs in areas reserved for the exclusive purview of HK under the Basic Law (BL) and the JD, including education, academic freedom, and local elections.

Legal and democratic institutions being undermined

3. The Rule of Law is the lynchpin safeguarding the rights and freedoms of HK people. Increasingly, China and the HKSARG are imposing Rule *by Law*, as a means to achieve political and other objectives. The selective use and application of laws, distorted and pre-emptive interpretation of legal provisions and the targeting of political dissidents as a means to suppress opposition forces and human rights defenders, and others who question the authority of those in power is evidence of the deteriorating political environment. These actions threaten judicial independence and undermine the public's confidence in the HKSARG's commitment to safeguarding fundamental rights and freedoms.
4. The joint immigration checkpoint, part of the HK station under construction in Kowloon for the Guangzhou-Shenzhen-HK Express Rail Link, would enable the enforcement of the full array of Mainland laws in designated parts of HK, including the “Mainland Port Area” of the railway network. This contravenes the BL which explicitly requires national laws applicable to HK to be listed in BL Annex III. The result is that HKSAR laws, including those implementing the HKSARG's obligations

under the CERD, ICCPR (incorporated by the Hong Kong Bill of Rights Ordinance and constitutionally entrenched under Article 39, HKBL), CEDAW, CAT, and other relevant human rights treaties, and relevant criminal laws will be excluded from application in this area. Trains will constitute Chinese territory for the purpose of determining the law to be applied.

5. This co-location arrangement violates the stated guarantees in the JD/BL and is inconsistent with HK's international obligations under the ICCPR and CERD, including the obligation of equal treatment of, non-discrimination against and the protection of ethnic, racial and religious minorities, migrant workers, refugees and non-nationals, etc.¹ Given the recent reports of treatment of minorities in China, particularly in the Xinjiang region where reportedly, families of Muslim minorities have been apprehended by the authorities for reeducation, there is grave concern and a sense of threat pertaining to the wellbeing of racial, ethnic and religious minority groups who may be affected under these new arrangements in Hong Kong.
6. The timing of the arrangement added to concerns about the purge of pan-democrat politicians, viewed as "anti-China", from political institutions, using China's power of the final interpretation under BL Article 158(1). This has resulted in the disqualification of elected members of the Legislative Council (LegCo) on grounds of irregular oath-taking and the debarring of persons from standing for elections, including in the most recent round of by-elections. This constitutes an unlawful vetting of electoral candidates in breach of Article 25 of the ICCPR and the BL and disenfranchisement of substantial proportions of the electorate.
7. This political environment undermines prospects for racial and ethnic minorities considering standing for political office and they are likely to be dissuaded from doing so in light of recent events. Ethnic minorities have heretofore been critically underrepresented, if at all, in institutions of government. To date, since 1997, there has never been a non-ethnic Chinese member who is not Caucasian, representative elected to the Hong Kong's Legislative Council, or appointed to the Executive Council. Members of ethnic minority communities are not represented in any positions of seniority in government. They do not head any of the government bureaux or law enforcement or related bodies, for example.
8. A persistent narrative suggesting that judicial review is being "misused" for personal enrichment aims to discredit human rights defenders - including lawyers - who assist in important legal challenges. Calls to raise the threshold for leave to access the courts are not unconnected to the increasingly frequent statements by pro-China elements condemning "foreign" (i.e. non-ethnic Chinese) judges including the judge who convicted the police officers for assaulting a pro-democracy protester Ken Tsang.

¹ Including the non-denunciation clause; doctrine of protection devolves with the territory once protected, will be so protected irrespective the changes in sovereignty; and the CAT

9. While there are a handful of members of the judiciary who are non-ethnic Chinese, non-Chinese judges have recently been the subject of the most vehement attacks, particularly with respect to their judgments meting out punishments to police officers who were found to have abused their powers in handling protesters who participated in the Occupy movement. Accusations that judges of a different ethnic background may not be suited to sit on particular cases as they may have split allegiances to their country of national origin or other such affiliation represent the gravest strike against judicial integrity and the institution's capacity for delivering impartial justice. Such attacks on grounds of a judge's racial or ethnic background is a fundamental attack on the independence of the judiciary and the rule of law. In terms of ethnic and gender diversity on the bench, there is presently only one woman judge who is non-ethnic Chinese (one of the judges who was the subject of the attacks described above). The Legislative Council, has however, approved the appointment of two female non-ethnic Chinese judges to the Court of Final Appeal under the BL's scheme which permits such appointments of foreign judges on the city's highest court.
10. Similarly, the targeted, preemptive interpretations of the BL have tied the HK Judiciary's hands when determining the outcomes of cases with a political element. The selective use of prosecutorial and review of sentencing powers is also troubling. Other concerns include (i) the invocation of archaic, previously unused legal provisions to construct charges against political opposition leaders and activists; (ii) the denial of parliamentary privilege to cover expressions of dissent in LegCo; (iii) the use of fabricated evidence against political protesters; (iv) the pursuit of uncharacteristically heavy sentences against human rights defenders (especially young democracy activists) and (v) the lack of disciplinary action against police officers for misuse of powers in the policing of protesters during the Occupy movement and the general impunity with which triads and thugs acting against Occupy demonstrators were able to operate without being caught or charged. Sixteen youths have been imprisoned for their participation in the Occupy Movement and the protest against the development plan of a rural area (North East New Territories). They are barred from running for electoral office for five years.
11. This narrowing of the political space for the freedom of expression, including lawful dissent, appears to be a deliberate campaign by those in power to curb opposition and undermine any prospects for true, inclusive and representative democratic development. The spectre of implementation of national security legislation (Article 23 of the BL imposes this obligation on Hong Kong) looms large.
12. The Chinese Government has displayed a reckless disregard for its obligations under international law. Its officials have called the JD an 'historical document' which is no longer subject to international oversight or enforcement. In January 2016, the then Chief

Executive CY Leung stated that HK may need to withdraw from the CAT because of the so-called “bogus refugee” problem.²

13. **The Committee is asked to urge both the Chinese and HKSAR Governments to respect the rule of law and their obligations under the JD/BL and specifically for the Chinese Government to (a) exercise restraint in the use of its powers of interpretation of the BL; (b) respect the principle of judicial independence; (c) respect the delineation of responsibilities between the HKSARG and the Chinese Government enshrined under the BL; and (d) respect and implement its international obligations under various international treaties to enable the representation of Hong Kong’s ethnic minorities across institutions of governance so that their voices may be included and issues which impact them can be made more visible.**

Deteriorating cultural context: promoting "patriotism" at the expense of diversity

14. Such undercutting of autonomy promised to HK and the hardline attitude of Mainland Chinese officials and authorities towards HK public opinions and political opposition in Hong Kong, have led to strong distrust and discontent towards China among many HK people especially the youth. There are even some voices calling for HK to become an independent territory.
15. Strenuous efforts have been exerted by Mainland China and the HKSAR Government to promote Patriotism. Such efforts include controversial measures like introducing legislation to outlaw disrespect for the national anthem, putting more emphasis on the teaching of Chinese History in secondary schools by introducing a standalone subject on the same which does not include a separate section on Hong Kong history, stricter scrutiny of new textbooks for political correctness and how historical events are referred to, belittling the local spoken Cantonese language (such as using Mandarin as the medium of teaching Chinese on the pretext of education in mother tongue despite research by educational experts on language learning supporting the use of using Cantonese in schools). Such efforts may not be proper or fair to the majority of the Cantonese-speaking population in the territory who stand at grave risk of having their cultural identity and heritage erased within the space of one generation. Even worse, such measures have largely been implemented on the flawed assumption that HK is a homogeneous Chinese society. These measures have unjustifiably demanded the conformity of non-Chinese ethnic minorities and failed to take adequate and proper consideration of the existence and the rights and interests of non-Chinese ethnic minorities in HK.
16. **The Committee is urged to call on the HKSARG to respect the Cantonese language mother tongue and culture of the majority population in HK and also bear in mind**

² Tony Read, “Hong Kong has no refugee crisis, only a crisis of response” *South China Morning Post*, 31 March 2016. Available at: <http://www.scmp.com/comment/insight-opinion/article/1932216/hong-kong-has-no-refugee-crisis-only-crisis-response>.

the ethnic diversity, identity rights and the interests of ethnic minorities in the HKSAR in formulating legislation and policies that invariably impact them.

ART.1 DEFINITION OF RACIAL DISCRIMINATION

Weakest anti-discrimination ordinance in HK

17. It is not an exaggeration to say that the Hong Kong Race Discrimination Ordinance (RDO), enacted in 2008, is by far the weakest among the four anti-discrimination ordinances in Hong Kong. It does not fully comply with Hong Kong's obligations under the ICERD nor is it in line with those in other international human rights treaties. The Ordinance contains a number of exceptions and gaps which have the effect of allowing discrimination on the ground of race. They include: 1) an overly narrow definition of what amounts to "racial discrimination"; 2) broad exceptions to the meaning of "race" as a prohibited ground of discrimination; and 3) limited scope of application notably excluding some government functions and certain aspects of the education sector. These are expanded upon, below.

Failure to amend in response to international obligations

18. The Hong Kong Government has ignored repeated calls by international human rights bodies to amend the RDO. In March 2007, more than 11 years ago, your Committee, through its early warning/urgent action mechanism, requested more details concerning the proposed legislation's narrow definition of indirect discrimination and its limited application to actions of the public authorities. It also sought responses on the omissions of provisions relating to discrimination on the basis of nationality or residency status.
19. These concerns followed on from criticisms which had previously been levelled at the proposed legislation. In its 2005 Concluding Comments, the Committee on Economic, Social and Cultural Rights expressed concerns that the proposed race discrimination bill would not "cover migrants from the mainland despite the widespread de jure and de facto discrimination against them on the basis of their origin".
20. In its August 2009 concluding observations, your Committee commented on the RDO's "definition of racial discrimination...which is not completely consistent with article 1 of the Convention as it does not clearly define indirect discrimination with regard to language, and it does not include immigration status and nationality among the prohibited grounds of discrimination". It recommended that "all Government functions and powers be brought within the scope of the Race Discrimination Ordinance".
21. The lack of response to these statements, whether in the form of amending the RDO to bring it in line with international standards, or explanations for not doing so, is stark. The RDO remains in contravention of the Convention.

Narrow definition of direct and indirect discrimination

22. The RDO defines direct racial discrimination as less favourable treatment on the grounds of the race of a person. Although modelled on the 1976 UK Race Relations Act, the

RDO's definition is much more limited than the UK Act's broader reference to less favourable treatment on "racial grounds".

23. The RDO also sets an inappropriately high threshold for establishing indirect discrimination. It defines indirect discrimination as a "requirement or condition" that applies equally to persons of different racial groups but where the proportion of persons in a certain racial group who can comply is "considerably smaller" than those who can comply from another racial group. In contrast, the UK definition, as amended in 2001, is significantly broader: the discriminator must have applied a "provision, criterion or practice" that he/she would apply equally to persons of another racial group but that puts persons of the first racial group at a "particular disadvantage" when compared with persons of the other racial group.

Exceptions to the prohibited grounds of discrimination

24. Although section 8 of the RDO confirms that "race" includes all of the grounds explicitly listed in Article 1 of the ICERD (race, colour, descent, national or ethnic origin), it also carves out numerous, broad exceptions. For example, an act done on the basis of residency or immigration status, nationality or citizenship cannot constitute either direct or indirect discrimination under the RDO.
25. It makes it lawful for a bank to ask ethnic minorities their nationality and then refused services to them or let them wait for a longer time when they come for opening bank accounts.
26. Apparently, it also does not prohibit acts of discrimination against new arrivals from Mainland China.
27. The RDO also incorrectly copies language from your Committee's General Recommendation on the meaning of "descent" in Article 1. While the Committee explains that "discrimination based on 'descent' includes [but is not limited to] discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status...", the RDO explains that "an act constitutes discrimination on the ground of descent only if it constitutes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status..."

ART.2 STATE’S OBLIGATION TO PROHIBIT RACIAL DISCRIMINATION

Limited scope of the Racial Discrimination Ordinance

28. Unlike Hong Kong’s other three anti-discrimination laws, the RDO does not include discriminatory acts of the government in the performance of its functions or the exercise of its powers unless those functions fall within other provisions in the Ordinance. For example, the RDO’s employment provisions should be applicable when the Government acts as an employer with the education provisions prohibiting discrimination in public education. However, the Ordinance would not apply to e.g. the discriminatory exercise of police powers. In *Singh Arjun v. the Secretary for Justice*,³ the only case brought under the RDO to date, the Court confirmed that certain police functions did not constitute a “service” and thus fell outside the scope of the RDO.
29. The RDO’s education provisions also include exceptions for modifications for arrangements of the establishment regarding holidays or medium of instruction; or making different arrangements regarding holidays or medium of instruction for persons of any racial group. These types of broad exceptions may also exclude challenges to unjustifiable indirect racial discrimination in certain circumstances.

Singh Arjun v. the Secretary for Justice

30. The RDO has explicitly excluded from its scope of application to omit actions of the public authorities. Police powers are therefore not bound by section 3 of the RDO nor are they always considered “services” under section 27.
31. The court judgement on *Singh Arjun v. the Secretary for Justice* handed down in 2016 refutes para 2.8 of the HKSAR part of *the Report by China*⁴. Mr. Arjun Singh filed a case against the police for discriminating against him on the grounds of race in failing to provide adequate police services. Arjun is a HK permanent resident of Indian ethnicity and was 11 years-old at the time of the incident in 2010 which formed the substance of the action. He was involved in an altercation with a lady of Chinese ethnicity on the escalator in a train station; they both called the police but Arjun was arrested and detained in the police station for hours while the lady of Chinese ethnicity was allowed by the police to leave. The Court held that the acts of the police in the arrest and investigation did not amount to ‘services’ for the purpose of the RDO and therefore did not fall within the provisions of the RDO. This case is an illustration of the inadequacy of protection afforded by the RDO for ethnic minorities when faced with abuse by the police of its powers. The case has wider implications, too, for the broader use of public powers to discriminate against ethnic minorities in other areas. As a consequence, the

³ *Singh Arjun v Secretary for Justice*, DCEO 9/2011 (30 May 2016)

⁴ It claims, "In particular, section 27 of the RDO renders it unlawful for the HKSAR Government to discriminate against a person in the provision of the services of any department of the HKSAR Government or any undertaking by or of the HKSAR Government." This argument has been rejected by the Court in *Arjun*..

RDO is of limited use, if any, against discrimination on the ground of race in the public sector. Section 3 of the RDO binds the Government for example in respect of employment, but does not bind actions taken by the Government in the exercise of its powers and functions. Similarly, section 27 of the RDO which concerns provision of services cannot now be said to have universal application to all Government acts.

HKBORO and Basic Law as substitutes

32. The Government has cited the existence of the Hong Kong Bill of Rights Ordinance (HKBORO) and Basic Law time and again to justify the fact that the RDO does not need to be amended to explicitly bind the Government in the exercise of its powers and functions, but in fact, neither the HKBORO nor the Basic Law are effective in binding the government to act in a non-discriminatory way. A victim's only recourse is to take the Government to court, which is extremely costly, or depends on the victim finding pro bono representation, making this an ineffective remedy. With virtually no legal and financial repercussions, the government is not effectively regulated by the HKBORO and the Basic Law when it comes to racial discrimination.

Administrative Guidelines on Promotion of Racial Equality

33. The "Administrative Guidelines on Promotion of Racial Equality" is poorly implemented. The Government has issued the Administrative Guidelines aiming to ensure minorities of different races have equal access to public services. 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. Contrary to that stated in para 2.11 and 2.12 of the Report, many bureaux and departments are unaware of the existence of the Administrative Guidelines as has been seen in incidences in which frontline staff at hospitals or birth registrar are entirely ignorant of their obligation to arrange interpretation services for persons seeking assistance. Implementation of the Guidelines is on a voluntary basis and monitoring is weak. The Government should review the implementation of the Administrative Guidelines, and the scope of application of the Guidelines should be extended to all departments and bureaux, be backed by a statutory obligation to comply, and be strictly enforced with an effective monitoring and reporting mechanism.

Race Relations Unit

34. Regarding paras 2.14 and 2.15 of the Report on the work of the Race Relations Unit (RRU), apart from conducting some talks, giving out funding and publicizing existing Home Affairs Department programmes, the RRU is a passive entity that, apparently, has little interest in hearing the voices of the ethnic minority community, at least this seems to be so from its lack of activity. The Ethnic Minority Forum, run by the RRU, is the only channel under the HAD where ethnic minorities and NGOs can voice their concerns directly to Government officials. However, in recent years the Forum has gone from

taking place two to three times a year to meeting once a year and in some years not at all.

Racial equality plan

35. There is no racial equality plan 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 gates for litigation, a worry frequently cited by the Government to deny rendering the RDO 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.

Discrimination Law Review

36. In March 2013, the Equal Opportunities Commission (“EOC”) launched the Discrimination Law Review (“DLR”) to review all four anti-discrimination legislations in HK, including the RDO. As part of the DLR, the EOC conducted a public consultation in 2014, and received over 125,000 written submissions⁵.
37. After considering the public views, the EOC made its submissions to the HKSARG on the DLR in March 2016. The submissions contained 73 recommendations, including 27 on law reforms which were considered by the EOC to be of higher priority because “they raise more serious and urgent concerns”.⁶ Amongst the 27 recommendations, 19⁷ are relevant to racial discrimination and, cover all the changes recommended in the CERD Concluding Observation (CO) concerning the RDO.
38. In March 2017, the Constitutional and Mainland Affairs Bureau (CMAB) responded to the submissions and prioritised nine recommendations, seven of which related to the RDO. Without exception, each of these recommendations were low-priority recommendations concerning only the private sector; none concerned discriminatory acts of the Government in the performance of its functions or in the exercise of its powers. In October 2017, the HKSARG announced that it would propose legislative amendments in the 2017-18 legislative session, for implementing 9 priority recommendations under the DLR⁸. None of these amendments give effect to the changes recommended in the said CO. In a November 2017 Legislative Council meeting

⁵ Discrimination Law Review: Submissions to the Government, Equal Opportunities Commission, March 2016, p.6 (§5). Available at: <http://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf>.

⁶ Footnote 3, p.6 (§3.01).

⁷ Footnote 3, recommendations 6 – 11, 13 – 25.

⁸ Work Progress and Strategic Focuses of the Equal Opportunities Commission, paper for Meeting of the Legislative Council Panel on Constitutional Affairs (14 February 2018), LC Paper No. CB(2)851/17-18(05) §17. Available at: <https://www.legco.gov.hk/yr17-18/english/panels/ca/papers/ca20180214cb2-851-5-e.pdf>.

dedicated to the discussion of amendments to the RDO, the Government refused to provide a timetable on introducing amendments in line with the sixty other DLR recommendations, a dozen of which concern key flaws in the RDO.

39. Pertinent to the recommendation in the CO that the RDO should bind all Government functions and powers⁹, a court decision handed down in May 2016 confirmed that the scope of the RDO is contrary to that recommendation despite the fact that the EOC and the applicant argued otherwise¹⁰.

Recommendations

40. **The Committee should (i) urge the HKSARG to amend the RDO to be fully consistent with its international obligations under the Convention; (ii) should reaffirm its recommendation in its 2009 Concluding Observations (ICERD para 28, 2009)¹¹ for all Government functions and powers to be brought within the scope of the Race Discrimination Ordinance; (iii) should urge the adoption of an equality plan with a view to ensuring the effective implementation of the law; and (iv) that the EOC and the RRU be strengthened.**

⁹ Footnote 2.

¹⁰ *Singh Arjun v Secretary for Justice*, DCEO 9/2011 (30 May 2016) §§286 – 332

¹¹ The Committee recommends that all Government functions and powers be brought within the scope of the Race Discrimination Ordinance. It also recommends the adoption of an equality plan with a view to ensuring the effective implementation of the law and that the Equal Opportunities Commission be strengthened.

ART.3 STATE’S OBLIGATION TO PROHIBIT RACIAL SEGREGATION

De facto segregation in public education

41. Despite the abolition of the designated school system in 2013, de facto racial segregation remains in place. 60% of children from ethnic minority backgrounds are concentrated in a few former designated schools, which are public schools with ethnic minority comprising 80 or 90% of the student body. These schools are neither conducive to students' Chinese language learning nor their social integration. Consequently, ethnic minority students graduating from these schools often have limited Chinese language ability dramatically affecting their social integration and career prospects.
42. The Government should therefore desegregate schools and particularly those with a disproportionate percentage of ethnic minority students. We urge the Government to acknowledge the negative consequences of education in a segregated environment and take immediate and effective steps to eliminate the de facto racial segregation in the public education system. We also urge the Government to offer adequate and professional training for all teachers to raise their cultural sensitivity to better help students integrate.

ART.4 PROHIBITION OF RACIAL INCITEMENT

Failure to combat racial vilification

43. The Hong Kong SAR Government has not fulfilled its positive obligation to combat hate speech and prejudice that lead to racial discrimination. In recent years, there have been growing concerns about hate speech, xenophobia and racism in society of refugees and migrants, but having knock-on effects by association towards ethnic minorities. This has been particularly in relation to negative traditional and social media portrayals as well stereotypical and inflammatory comments made by prominent politicians in public fora. These trends reached a high point, in particular, around electioneering in the lead-up to the 2016 Legislative Council elections without repercussion.
44. In 2015, politician Regina Ip branded migrant domestic workers as “homewreckers” and being “sexual resources” for Western expatriate men.¹² More recently in 2018, politician Eunice Yung called on the government to provide more places for social gathering of domestic workers, as their convening in the streets, was a “nuisance” and contributed to an “unhygienic environment”.
45. Since Jan 2016, it was reported that there was a surge in crime committed by “South Asians”¹³ despite the absence of official data to substantiate the claim. The Liberal Party had banners that stated “3,800 cases of robbery, theft, rape, etc. committed by non-refoulement claimants”, which were later found to have no evidential basis. Other politicians have linked refugees and migrants to terrorists or being more inherently prone to violence.¹⁴ Politicians have also used terms like “cancer to society”, “toxic tumor” or “ticking time bomb” in the Legislative Council without being reprimanded.¹⁵ Even the former Chief Executive of Hong Kong, CY Leung called for Hong Kong to “quit” the UN Convention against Torture as a solution to handle the refugee “problem”, raising great alarm among human rights defenders.¹⁶
46. In April 2016, in a joint statement entitled “Stop Discrimination: Community Calls for Calm on Refugee Debate”, over 180 organizations and prominent individuals called on the Hong Kong SAR Government to not allow fear-mongering to erode human rights and rule of law in Hong Kong. The same coalition also held several communications

¹²<http://www.scmp.com/news/hong-kong/education-community/article/1776806/domestic-workers-protest-again-over-regina-ips>

¹³ Suspects with dark skin are labelled as “South Asians” even though they are not South Asians. One example of this is that a “South Asian” was wanted for having stabbed a convenience store worker, but the suspect turned out to be a Canadian passport holder of Vietnamese descent.

¹⁴ Wong Kwok-hing, a Hong Kong trade unionist and former member of the Legislative Council expressed if “terrorists use refugee status to take residence in Hong Kong, this would threaten Hong Kong’s security and reputation and consequently world safety as well.” Academic and lecturer Chan Wai Keung has declared if refugees “come from conflict-ridden countries, they will resort to violent measures to solve problems.”

¹⁵ Panel on Security Meetings on 6 and 11 June 2016

¹⁶<http://www.scmp.com/news/hong-kong/politics/article/1901085/hong-kong-could-quit-torture-convention-says-cy>

with the UN CERD Committee and relevant Special Procedures Mandate Holders in 2016.

47. One newspaper in particular is responsible for generating most of the reports on supposed “South Asian crime”; reports on crimes committed by ethnic minorities are sensationalised with the suspects’ race highlighted in the headings, which reinforced public perceptions of ethnic minorities. Yet this news outlet was thanked by name by the then Chief Executive and a few legislators for their extensive work on this issue¹⁷. The organization Justice Centre Hong Kong, after several access to information requests, found that the volume of these articles far exceeded actual crime levels.¹⁸ Around this time, the organization also found that the Immigration Department likewise released more press releases regarding refugees and changed its official terminology in public documents from, “non-refoulement claimants” to “Non-ethnic Chinese Illegal Immigrants” (NECII). Furthermore, a public poll found that only 4.7% of those surveyed held favorable views towards refugees and asylum seekers.
48. Around the same period, the social media platforms of civil societies serving local ethnic minorities including Hong Kong Unison became flooded with xenophobic comments and in some instances, even calls for violence against South Asians. However seeking justice against racial vilification is challenging and time consuming (see paragraphs on the Equal Opportunities Commission).
49. The social media pages of NGOs fighting for the rights of ethnic minorities in Hong Kong have become persistent targets of hate speech and derogatory comments. The derogatory comments contain racism, xenophobia, foul language, harassment, allusion to violence and personal attacks against particular or general racial groups as well as against the organization supporting these populations. South Asians are lumped together as one racial group and called “dogs”, “parasites”, “thieves”, etc. Online Facebook hate groups have also been established to harass individual or group Facebook pages. The openness of such level of racial hatred is unprecedented in Hong Kong. These comments greatly limit the freedom of speech and participation online by ethnic minorities, as they are intimidated by the open hostility and are worried about being ostracised online even if they may only be trying to leave constructive comments. Despite repeated requests to social media platforms like Facebook to take action against racist comments, there has been no positive response. The Equal Opportunities Commission has been slow in taking action against these incidences of hate speech; proactive monitoring of the situation and public education measures has been lacking.
50. The Broadcasting Ordinance is extremely loose on the kind of content which counts as “inciting public hatred” against a certain race, and the ground justifying prohibition of a programme is that it would “result in a general breakdown in law and order” or “gravely

¹⁷ <https://hk.news.appledaily.com/local/daily/article/20160114/19451032>

¹⁸ <https://www.hongkongfp.com/2016/09/03/politicians-who-spuriously-link-refugees-and-crime-harm-us-all/>

damage public health or morals.” Less severe, but nonetheless serious violations which damage public perception of ethnic minorities are simply not covered.

51. **We urge the EOC and HKSARG to investigate and take action against hate speech, particularly the discourse emitted in media and political channels; conduct more public education programmes on the extent and effect of hate speech and racial vilification and develop a detailed guideline to broadcasting licensees in this area.**

ART.5 STATE'S OBLIGATION TO GUARANTEE EQUALITY BEFORE THE LAW IN THE ENJOYMENT OF RIGHTS

RIGHT TO EDUCATION

Chinese language curriculum

52. Despite CERD's concluding observation in 2009 (para 31, 2009), Chinese as a Second Language Curriculum is still absent.¹⁹ The current mainstream Chinese language curriculum assumes all students' mother tongue to be Chinese and the learning of other subjects also depends on a student's Chinese ability. The majority of ethnic minorities do not speak Chinese as a first language, and most ethnic minorities graduate from 12 year of education with Chinese abilities comparable to only mainstream primary two level. As a result, and as noted earlier, they enjoy limited further education and employment opportunities.
53. Although the Government implemented the "Chinese Language Curriculum Second Language Learning Framework" (the Learning Framework) starting from September 2014, the Learning Framework is developed from a Chinese as mother tongue perspective. There are no policy goals or outcome indicators, no detailed implementation plan or timetable, and no monitoring mechanism. Limited guidance has been provided to schools on pedagogic principles and teachers are not required to be trained professionally before teaching Chinese as a Second Language. The Framework also lacks accountability to parents and students.
54. **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.**
55. 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 arrange to study for and take the GCSE (Chinese) examination which is equivalent to local mainstream primary two level. Although students may use their GCSE (Chinese) results in place of the mainstream Hong Kong Diploma of Secondary Education (DSE) Chinese exam results to apply for tertiary programmes, their actual Chinese abilities considerably limit their education and career opportunities. Allowing students to sit for GCSE (and GCE²⁰) Chinese exams and

¹⁹ The Committee recommends that a policy on Chinese teaching for non-Chinese speaking students from immigrant background be developed in consultation with teachers as well as the communities concerned. Efforts to improve the quality of Chinese language education for immigrant children should be intensified.

²⁰ GCE (Chinese) Advanced Subsidiary level is roughly equivalent to mainstream primary six level and GCE (Chinese) Advanced level is equivalent to secondary two level. While these two exams are more advanced than

use the results to apply for universities should be a short-term measure or for new immigrant students only. Eventually, all ethnic minority students should be able to sit for the Diploma for Secondary Education Exam given an effective CSL policy.

56. The quality of the Government's new initiative Applied Learning Chinese (for non-Chinese speaking students) is dubious. 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 DSE (Chinese), this move steers ethnic minority students towards the service industry and does not equip them with inclusive Chinese capability. Frontline Chinese teachers have criticised the quality of the programme and the instructors.
57. **These courses should only be short-term measures; the Government should work towards a long-term strategy on Chinese learning for ethnic minorities.**

Securing school places and promotion of early integration

58. Parents of ethnic minority children are hampered in making informed decisions when choosing a school for their children. Currently, when applying for primary or secondary schools, such parents who wished to locate information about language support provided by different schools must call each school one by one. With this "non-system" in place, the response is unlikely to be welcoming and may well include a suggestion that the parents apply to the former "designated schools".
59. **We urge the Government to require all public schools to include language support and measures available in the School Profiles published by the Education Bureau.**
60. Parents also face discrimination in kindergarten admission procedures. Kindergarten is often the place where ethnic minority children are first exposed to the Chinese language and consequently this basic level has a significant and far-reaching impact on their future Chinese learning. When applying for kindergarten, ethnic minority parents and students are often treated less favorably than their Chinese peers. Kindergartens may be unable/unwilling to provide the application form in English, dissuade ethnic minority applicants from applying, or require ethnic minority children to speak Cantonese, which is almost always not their mother tongue, during admission interviews.
61. Therefore, we call on the government to monitor the fairness of the kindergarten admission process.

the GCSE (Chinese) exam, schools that teach to the test may overlook students' actual abilities and ambition, and only allow them to sit for GCE AS or A level exams.

Vocational training and Chinese language

62. 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. Currently, educational and vocational training bodies do not have to make different arrangements in the medium of instruction for persons of any racial group. Some members of ethnic minorities have been unable to receive vocational training or apply to a range of post-secondary courses because institutions do not offer courses in English. According to research by Hong Kong Unison on post-secondary education programmes in 2015, 71% (132 out of the 186 programmes that provided adequate information) are not suitable for students who do not speak or write Chinese.²¹ This violates rights to education and seriously hampers minorities' chance of further education, as well as limiting their economic opportunity.
63. Although the official languages in HK are Chinese and English, the RDO expressly exempts accommodating the medium of instruction in education and vocational training for persons of any racial groups. This blanket exemption should be removed.

Students with special education needs

64. Ethnic minority students with special education needs face challenges and discrimination in mainstream schools. There is a lack of English or mother-tongue special education needs (SEN) assessments for ethnic minority children, which results in incorrect assessments of the particular need of the child. This “misdiagnosis”, for want of a better word, can have lasting consequences for the appropriate placement of the student, including the inability to access or place the child in a school with proper support and resources. It is accepted that there is a severe shortage of English school places and resources for ethnic minority SEN students. Being placed in a Chinese learning environment can further delay their ability to communicate and compromise their development, resulting in poor educational outcomes.
65. We urge the government to make English or mother-tongue SEN assessments more accessible and to increase the number of English school places for ethnic minority SEN students to ensure they do not miss the critical developmental window of opportunity to learn in an appropriate environment.
66. Moreover, while Cantonese/Chinese is the primary language of instruction in Hong Kong, students who identify as non-Chinese are often required to take Chinese as a Second Language. As a result of a weak Chinese language learning environment, ethnic minority children are unable to keep up with homework as compared to their peers which over time has led to a statistically lower higher education attainment, reduced

²¹ Hong Kong Unison, “Research on Post-Secondary Education Opportunities for local Non-Chinese Speaking students in Hong Kong”.

employment opportunities (e.g. frozen out of civil service, disproportionate take up of low-wage jobs) and limited upward mobility.

67. Government educational policies are thus reducing opportunities for ethnic minority children to integrate into society effectively, instead resulting in a cycle of intergenerational poverty that may perpetuated the social disadvantage of ethnic minorities into the future. The lasting detrimental impact of lack of integration reinforces existing language and cultural barriers, which in turn solidify prejudicial stereotypes towards EMs.

RIGHT TO EMPLOYMENT

Employment Rights

68. Hong Kong's Labour Department (LD) has four key service areas - employment services, labour relations, workplace safety and employee rights and benefits.²² It is quite simply unable to provide suitable services to ethnic minorities.
69. Language barrier remains the major difficulty for ethnic minority job seekers. Many LD job postings are only in Chinese. Surveys have repeatedly revealed the shortcomings in the level of support provided. According to Diocesan Pastoral Centre for Workers' survey in 2015, over 65% of respondents did not find LD's services useful and 85% did not receive employment via the assistance of LD²³. The Employment Service Ambassadors (ESA) programme, launched by the LD for ethnic minority youth, falls short of its objective of helping ethnic minority job seekers find employment.
70. 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.

Employment in the civil service

71. In her 2017 Policy Address, the Chief Executive promised that the Civil Service Bureau would coordinate a comprehensive review of the entry requirements relating to Chinese proficiency for all grades of the civil service, with a view to increasing government job opportunities for ethnic minorities.
72. It is difficult to see how steps taken - if any - will be measurable. The Government keeps no data on race or ethnic makeup of civil servants rendering it impossible to evaluate the effectiveness of any review or changes which might follow. Without

²² <http://www.labour.gov.hk/eng/home/index.htm>

²³ Diocesan Pastoral Centre for Workers (Aug, 2015). "Survey on the Government's Support towards Employment of South Asian Ethnic Minorities".

fundamental substantive changes to the education system - as outlined above - a remedial measure of this nature cannot hope to rectify the problem of low Government representation of local ethnic minorities, as language will continue to be a barrier to recruitment/appointment.

RIGHTS TO HOUSING

Inadequate housing in HK

73. The Long Term Housing Strategy states that HK's "housing challenge is characterized by a serious supply-demand imbalance, housing prices and rents at a level beyond the affordability of the general public and out of line with our economic fundamentals, the proliferation of subdivided units, and long queues for public rental housing (PRH)."²⁴ A recent survey by Demographia suggests that the HKSAR remained the least affordable housing market for the eighth straight year, with a Median Multiple of 19.4 in 2017.²⁵ Academic research has suggested housing prices are artificially maintained by restrictive land-use regulation, indicating that it is within the Government's ability, and responsibility to correct the present situation and provide sufficient adequate housing to residents at prices which are affordable. The current housing crisis leaves an overwhelming number of families and individuals unable to access adequate housing.
74. **The Government should provide a broader variety of housing, including transitional housing and social housing with individual rooms as short-term relief measures, and speed up PRH projects for long-term relief.**

Over-representation of ethnic minorities in subdivided units

75. Many households with little means who are not allocated a PRU unit often turn to subdivided units ("SUD") for accommodation. Many among them are ethnic minorities.
76. The Hong Kong Poverty Situation Report on Ethnic Minorities 2014 reports, "77.9% of EM households resided in private housing" but most of such households living in private housing were tenants, not owner-occupiers. The "ratio of tenants to owner-occupiers being around 7:3, in stark contrast to that among all households (3:7)."²⁶
77. According to the 2016 Population By-census, there were 92,700 Subdivided Units (SDUs) in HK,²⁷ accommodating some 91,800 households and 209,700 persons, most

²⁴ Transport and Housing Bureau *Long Term Housing Strategy* 2014: iii.

²⁵ This means people need to live without food or drink for 19.4 years in order to purchase a property in HK. Therefore, without enough adequate housing in the market, residents can only wait for PRHs for more than 4.7 years and rent a house at unaffordable price and indecent living conditions as a last resort.

²⁶ Census and Statistics Department, *The Hong Kong Poverty Situation Report on Ethnic Minorities* 2014: p.72.

²⁷ Subdivided units (SDUs), are formed by splitting a unit of quarters into two or more "internally connected" and "externally accessible" units commonly for rental purposes (Census & Statistics Department, 2018).

comprising low-income families. The median monthly household income was \$13,500 which was almost half of all domestic households (\$25,000).

78. Analyzed by ethnicity, a disproportionate number of ethnic minorities are to be found in this kind of accommodation: 12.9% of non-Chinese living in SDUs which was more than that of the whole population, at 3.8%.
79. In addition, structural safety concerns caused by construction, most if not all of the time being unapproved and not meeting safety standards, poor hygiene due to narrow living space (the median per capita floor area of the accommodation was 5.3m²), tenant evictions due to lack of rent control or protection of tenants' right against unreasonable and unaffordable rents (Hong Kong Subdivided Flats Concerning Platform, 2016) have exacerbated these conditions. Studies also revealed that long term residence in SDUs posed health hazards to residents (World Green Organization and the Baptist University, 2014).
80. **Therefore, we urge the Committee to call on the HKSARG to deal with these problems by incorporating the right to adequate housing (see General Comment 4 of CESCR) into the overall objectives of its housing policy, setting statutory minimal housing standards to preclude these problems from perpetuating, while making strong and timely efforts to increase the supplies of proper public, social and private housing units.**

Discrimination in housing

81. Ethnic minorities often face direct and indirect discrimination when seeking accommodations. Discrimination in housing fosters segregation and hinders cultural diversity and social inclusion. As stated in the Study on Discrimination against Ethnic Minorities in the Provision of Goods, Service and Facilities, and Disposal and Management of Premises (Equal Opportunities, 2016), discrimination encountered in the property and financial sectors was the most critical Ethnic minorities who have been told by estate agents that the landlord has refused to lease the property to them are the victims of negative stereotypes of such tenants never paying rent on time, discarding garbage irresponsibly and blocking corridors with furniture and even the "strong smell of curry".
82. This is obvious racism. The lack of recorded complaints - the EOC says it only received four complaints under the ordinance related to flat renting between 2009 and 2017, points not to the lack of a problem but again to shortcomings in the system. The victim must actually prove that discrimination occurred.
83. **We request the Committee to urge the Government to strengthen the Racial Discrimination Ordinance including shifting the burden of proof so that once a victim has put forth facts from which discrimination could be presumed, the burden of proving otherwise falls on the alleged perpetrator.**

84. Nor is public housing immune from problems associated with discrimination against EMs. In particular, the Housing Authority fails to cater to ethnic minorities' needs when providing services. Most flats in the public housing scheme are targeted to cater for smaller families, and a family is only eligible for public housing if at least 50% of the household are permanent residents of HK. This causes indirect, even unintended discrimination, as ethnic minority families are often larger and they may not meet the 50% threshold requirement. Consequently, they may have no choice but to seek private housing with the problems of discrimination as stated. The result of all of this is that often, ethnic minority families end up living in poor housing conditions and paying exorbitant rent.

POVERTY IN AN AFFLUENT SOCIETY

85. HK has a population of 1,352,500 poor persons and a poverty rate of 19.9%.²⁸ This is despite the SAR having one of the highest rates of GDP per capita in the world (at over USD\$46,000 in 2017).
86. Income and wealth disparity has worsened reaching its peak in the past twenty years. HK's 7.3 million population has the world's third largest concentration of individuals worth more than \$30 million.²⁹ A study from 2016 showed the wealthiest ten percent of households earned 44 times more than the poorest ten percent, the latter with an average of US\$326 (HK\$2,560) per month.³⁰ HK's Gini Coefficient, up from 0.525 in 2001 to 0.539 in 2016, is one of the highest in the world.
87. **The Government should adopt a comprehensive anti-poverty strategy and strengthen mechanisms for wealth redistribution in order to narrow the income disparity between the rich and the poor. Moreover, special policies in relation to specific marginalized groups, such as women, elderly and children, should be introduced.**
88. **The Government should review its comprehensive social security system to ensure the basic standard of living of retired persons, the unemployed, and low-income families.**
89. The *Hong Kong Poverty Situation Report on Ethnic Minorities 2016* revealed that the poverty rate of South Asians was at 25.7% with Pakistanis registering a high poverty rate of 56.5%. It was noted that working poverty and larger households were two aspects

²⁸ HKSAR Government Press Release "Analysis of poverty situation in HK in 2016 announced" 17 November 2017, accessible at <http://www.info.gov.hk/gia/general/201711/17/P2017111700634.htm>.

²⁹ Behind only New York and London, according to a global wealth report by real estate consultancy Knight Frank.

³⁰ "Hong Kong wealth gap at its widest in decades as handover anniversary nears" Reuters 27 June 2017. Available at: <https://www.reuters.com/article/us-hongkong-anniversary-wealth-gap/hong-kong-wealth-gap-at-its-widest-in-decades-as-handover-anniversary-nears-idUSKBN19I1E2>

that differed considerably from the overall poverty situation. Working poverty is attributed to the low employment earnings as a result of having lower Chinese proficiency and the relatively low educational attainment (para. 94 to 111).

90. There are visible signs of intergenerational poverty and entrenchment which are interlinked closely with issues stemming from systemic discrimination or structural problems in the education and employment sectors. These need to be immediately addressed. A **multidisciplinary task force is imminent to conduct impact assessment and evaluation of legal and policy measures in place in relation to the development of ethnic minority children and their life prospects and wellbeing**³¹.

RIGHT TO HEALTH

91. Ethnic minorities do not appear to be exercising sufficient caution in their daily routines to prevent or minimize health risks. Medical experts advise the need for a culturally mindful approach to enhance the reach of programs to address the risk factors in the South Asian population group effectively through tailored advice on dietary and exercise regimens.
92. Despite the fact that South Asian women are prone to a higher incidence of cervical cancer, they appear to be unaware of the Cervical Screening Programme. The rate of regular cervical cancer screenings among them is lower than that of Chinese women, which may owe to the cultural taboos surrounding the discussion of sex and sexual activity and particularly around premarital sex makes. This makes it challenging to reach at-risk sexually active women in the South Asian community.
93. Many ethnic minorities are ignorant about drug abuse and its harmful effects. Moreover, many drug users are in need of specialised treatments that are more accessible.
94. In light of the emerging knowledge about particular health risks that ethnic minorities are prone to, a **proactive action plan to promote and disseminate information about preventive measures** to combat these health problems and in particular, to **raise awareness** about the need for regular testing to facilitate early identification and treatment, is urgently required.
95. The absence of permanent and sustainable government programs for elderly assistance is an issue. The elderly are vulnerable to a potential shortage or gap if or when government funded groups are unable to continue their services. The skewed ratio

³¹ Puja Kapai, “The Status of Ethnic Minorities in Hong Kong 1997-2014 Report”, Chapter 5, Centre for Comparative and Public Law, The University of Hong Kong, 2015, accessible at <http://www.law.hku.hk/ccpl/wp-content/uploads/2018/03/Research/Human%20Rights/StatusofEMComplete.zip>

(particularly of men) in the older age groups within certain ethnic minorities may have important policy and planning implications for the elderly.

96. The Government needs to collect data on the status of Hong Kong's ethnic minority elderlies, their healthcare needs based on the illness and recovery patterns among this group, the numbers in old age homes or in the longer-term care of non-family members and the level and types of support they require. Such data disaggregated by ethnicity, age and gender is indispensable for proper policy development, planning and implementation³².

RIGHT TO POLITICAL PARTICIPATION

Standing for elections

97. Political participation is limited for ethnic minorities. Although ethnic minorities who are permanent residents may 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 are eligible to contest LegCo elections, with the exception of the 12 functional constituencies, which are open to Hong Kong permanent residents who may not be Chinese nationals and who may have right of abode elsewhere. Based on a 2011 Census data which included information on respondents' occupations, it is apparent that ethnic minorities have a very low representation in those 12 functional constituencies. The barriers to naturalisation add to the reasons for such low representation.

Voting in elections

98. Hong Kong saw District Councils Elections in 2015 and Legislative Council Elections in 2016, yet ethnic minorities' participation in these elections was very limited. Few candidates were familiar with ethnic minority issues, and the vast majority of the candidates only provided promotional materials in Chinese. These factors have contributed to a low voter turnout from the ethnic minority community.

Civil Rights

99. Civic participation is hindered by the lack of information in English. Language is a major obstacle to ethnic minorities' 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.

³² Puja Kapai, "The Status of Ethnic Minorities in Hong Kong 1997-2014 Report", Chapter 7, Centre for Comparative and Public Law, The University of Hong Kong, 2015, accessible at <http://www.law.hku.hk/ccpl/wp-content/uploads/2018/03/Research/Human%20Rights/StatusofEMComplete.zip>

100. **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.**

RIGHT OF ACCESS TO SERVICES

101. 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. Other than registered court interpreters, 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.
102. **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.**
103. **There are considerable concerns that** ethnic minorities are treated less favourably when accessing both private and public services. In September 2016, the EOC published a report³³ on this widely recognized phenomenon. The problem is compounded by the reluctance of victims being willing to register a complaint, with the obvious concern that they - and their community - would be labelled as troublemakers. Although the RDO has been in place for eight years, there is a lack of awareness among ethnic minority communities of the law and the protection it affords them, and this is coupled with low confidence in the effectiveness of the law and EOC's complaint mechanism. Though the EOC reported that it has conducted numerous public talks over the years, there is no impact assessment and the training model is grossly outdated. An example of this is given below.
104. Hong Kong Unison has attended talks given by the EOC to estate agents and banks, where the EOC explains the gaps in the RDO in a way that the attendants pick up on how they may legally discriminate against a client. Instead of telling a client that they are not served because of their race, service providers now know that they can refuse a

³³ This project is commissioned by Equal Opportunities Commission to Mercado Solutions Associates Ltd. "Study on Discrimination against Ethnic Minorities in the Provision of Goods, Services and Facilities, and Disposal and Management of Premises." September 2016.

client service on the ground of their nationality, a characteristic not protected by the RDO, and the act will not be unlawful.

ASYLUM SEEKERS AND REFUGEES

Plans to fast-track & provision of legal assistance

105. Since 2017, the HKSARG has set a policy target of determining 5,000 or more non-refoulement claims annually.

106. In the past year, the HKSARG has launched a Pilot Scheme (“PS”) providing publicly-funded legal assistance to non-refoulement claimants under the Unified Screening Mechanism (“USM”) in parallel with the Duty Lawyer Service Scheme (“DLS”). The legal profession has heavily criticized the PS for its lack of independence; it is administered directly by the Security Bureau which gives rise to the perception that it will be used to clear the backlog of claimants without sufficient regard to procedural fairness.³⁴ The PS also potentially compromises the right to legal representation by its payment structure.³⁵ The PS suggests the Government’s policy is not aimed at ensuring that meritorious claims are recognised and at-risk persons protected from refoulement; instead it further supports a “culture of disbelief”, a pernicious feature of refugee screening throughout the world.³⁶

Pre-screening policy and attempts of forced removal/ Torture and CIDTP of non-refoulement claimants in detention

107. The Director of Immigration requires that in order to “make” a non-refoulement claim, a person must first submit a written signification to the Director. Only after the person’s claim is considered to be “made”, will the Director refer him/her to DLS (or PS). This practice puts claimants who are detained and who may be without access to a lawyer at particular risk.

³⁴ Also, the non-involvement of the DLS in an increasing number of claims will remove an effective monitoring element from the USM scheme. The DLS is a service operated under the auspices of the Law Society and the HK Bar Association

³⁵ Assignments under this PS are limited to a flat fee. The fee for representation at the appeal/petition stage (HKD7,500) is troubling and potentially compromises the representation before the Torture Claims Appeal Board (TCAB), in that it disincentivizes work beyond the bare minimum.

³⁶ The Director of Immigration has adopted an excessively high threshold for assessing USM claims leading to an extremely low acceptance rate for asylum seekers, far below the level in other countries. As noted, there is a palpable and endemic “culture of disbelief” running through the decisions reached by both Immigration and on Appeal, by the TCAB. Also see Sedley J in *Sasitharan* [1998] Imm AR 487.

Denial of legal aid to non-refoulement applicants

108. It is becoming increasingly difficult for claimants to obtain legal aid to challenge adverse decisions, which must be launched within 3 months of a rejection.³⁷ The lengthy Legal Aid process renders claimants at risk of being time-barred from challenging what may be a grossly unfair assessment of their claims. The Court of First Instance (CFI) has recently refused leave on the ground of delay alone.
109. In tandem with the decreasing provision of legal aid to non-refoulement claimants, the Government has announced plans to launch a pilot scheme to step up the number of refugee determinations claims to 5,000 or above per year beginning 2017/18. There are legitimate concerns that the Pilot Scheme will not meet the high standards of fairness expected in the USM process, and that the Scheme will become a fast track process to reject USM claims. Lawyers will also be paid a flat fee per assignment instead of a pro rata rate, which will significantly undermine the incentive for lawyers to put their best effort for non-refoulement claimants. In turn, the Scheme is likely to have a chilling effect on the quality of submissions produced to advance an asylum seekers protection claims, thus heightening the risk that the Hong Kong Government will not protect them from refoulement.

Lack of transparency: Appeal Board decisions unpublished

110. Decisions of the Director of Immigration and the Torture Claims Appeal Board (TCAB) are not published (even on a redacted basis). This opaqueness deprives the system of a check on quality and consistency and inserts an imbalance into the appeal process, given the Director is commonly present at appeal hearings and has access to all determinations of the TCAB. The HKSARG noted in its follow-up report (Nov 2016) that it is “assessing” the recommendation for publication of decisions. The Committee is urged to press for implementation as soon as possible.

Torture and ill-treatment of claimants documented

111. Through the work of human rights lawyers representing claimants, they note that there continues to be a substantial number of documented cases where claimants have been subject to torture and serious ill-treatment while being detained at Castle Peak Bay Detention Centre. The incidents of torture and physical and psychological abuse include, but are not limited to:
- Being pulled by the arms with their palms twisted upwards
 - Having water poured through a claimant’s nose to prevent them from breathing

³⁷ The success rate has dropped from 53.06% in 2014 to 6.25% in 2016, see Legal Aid Department “Measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases” July 2017, accessible at <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1386-3-e.pdf>

- Being kicked, kneed and punched in the back, private parts, ribs and nose
- Being repeatedly hit on the arms and back for extensive duration of time
- Being stepped on at the heels under the full weight of an Immigration Officer
- Being deliberately taken to remote off-site locations and/or placed in solitary confinement for the purpose of inflicting psychological pressure on claimants
- Being hit on the head with a helmet
- Having their ears forcefully squeezed by thumbs
- Being beaten and assaulted while being transported between HK International Airport and various Immigration Centres

Denial of status and access to work and in-kind assistance: living below the poverty line

112. Claimants under the USM have no lawful status in the SAR and no ability to apply for one. They are prohibited from working, and receive minimal “in-kind” support. There are palpable and lasting mental effects of living for an indefinite period in such conditions pending determination of their claims. These are particularly acute when families are involved.

Failure to implement CERD’s Concluding Observations: defective USM

113. Finally, the HK Government has failed to follow through with many of the recommendations in CERD’s 3rd Concluding Observations on Hong Kong. To the detriment of non-refoulement claimants, the USM still has not been formally established by statute. Decisions of the Torture Claims Appeal Board remain unpublished and Section 37ZC of Immigration Ordinance continues to deny claimants the opportunity to present their own medical evidence. This prejudices asylum seekers as it prevents them and their lawyers from not only evaluating existing jurisprudence, but also from guiding adjudicators to relevant findings in other prior decisions. In the meantime, the process to access legal work remains highly opaque, thereby leaving a sizeable portion of non-refoulement claimants destitute, with no choice but to live in relatively degrading conditions.

114. The cumulative effects of these policies are that asylum seekers are being made to struggle through a system that continues to lack consistency, transparency and accountability throughout its process. The process expectedly produces an extremely low substantiation rate as compared to many other countries, which gives rise to grave concerns that genuine asylum seekers are being unfairly and unlawfully returned to their home countries.

MIGRANT DOMESTIC WORKERS

Discriminatory immigration policies and defective anti-human trafficking legislation

115. Nearly 380,000 MDWs are working in HK with a “Foreign Domestic Worker Visa” (Visa), taking care of 11% of household families allowing family members to work. However, there is a serious lack of social protection for migrant domestic workers and discrimination is still serious. The conditions of this Visa are highly restrictive and any breach is regarded as constituting a criminal offence. This overhanging threat has led to abuse and maltreatment in many cases.
116. For example, the mandatory requirement that MDW live in the employer’s home forces MDW’s to live in often inadequate accommodation. The employer will sometimes represent to the Director that they will provide suitable space, but then force the helper to use toilets, kitchens, cupboards and even rooftops or other common areas outside the employer’s apartment.³⁸
117. With a status of “Foreign Domestic Worker”, migrant domestic workers are the only group who are restricted with “2-week rules”, “mandatory live-in arrangement” and exclusion “minimum wage” and excluded with the rights of abode. They are the only group of people are not allowed to change their type of jobs freely. Change of employer is not permitted. MDWs must leave HK within 2 weeks of the end, or premature termination, of their contracts.
118. Separating migrants from the locals in classifying domestic workers and in imposing different mandatory requirements in conditions of work, such as mandatory live-in requirement and denial of Mandatory Provident Fund coverage, are first introduced by government policies. Some private housing estate segregate migrant domestic workers from others denying them certain facilities, such as lifts, and prohibit them from accessing certain public spaces in their premises open to others.
119. Employment agencies, especially those in the source countries, frequently charge more than the permitted 10% of the first month salary.³⁹ Migrant domestic workers may be charged various fees equivalent to 7 months’ salaries in HK and often paid by a loan entered into in Hong Kong from a HK registered finance company. Considering their

³⁸ According to Mission For Migrant Workers “PICTURES FROM THE INSIDE: Investigating Living Accommodation of Women Foreign Domestic Workers towards Advocacy and Action” May 2017, accessible at <http://www.migrants.net/press-statement-new-study-shows-mdws-woes-on-unsuitable-accommodation-lack-of-privacy-and-insufficient-amenities/>. A challenge to this policy recently failed in the HK High Court.

³⁹ As documented by numerous treaty bodies, migrant domestic workers (MDWs) working in HK are charged 7 months of their salaries as employment placement and related fees by agencies in HK and their counterparts in countries of origin (home jurisdictions of MDWs). A document of the Indonesia Ministry of Manpower and Transmigration in 2012 states, placement fees by Indonesia agencies for an Indonesian to HK are set to be HK\$13,436, more than three times the statutory minimum wage for MDWs.

unfavorable economic position in an employment contract, all these restrictions are pushing migrant domestic workers to face a huge risk when they complain against exploitative employers and agencies. Complaints are discouraged and they usually suffer in silence.

120. They do not enjoy equal freedom and rights as locals, even other migrant workers not in domestic services, in terms of salary levels and the options to live-out. With straight immigration restrictions and the risk of losing their jobs, many of them tend to stay in exploitative situations, tolerate bad accommodation arrangements such as sleeping in toilets, kitchens, cupboards and even roof tops. Most of them tolerate the situation until the termination of contract to seek help and majority of those who file a case are forced to drop their cases before the ultimate victory.
121. These policies have facilitated the forced labour of MDWs but have never been seriously reviewed, despite clear evidence of exploitation, violence, debt bondage and trafficking. Furthermore, without a comprehensive legislation to stop human trafficking, a strengthened determination to closely monitor and regulate domestic and foreign employment agencies, migrant workers' rights are likely to be violated with little redresses and remedies.
122. There is currently no comprehensive anti-human trafficking law or policy framework in Hong Kong. The only legal provision that deals specifically with human trafficking (section 129 of the Crimes Ordinance, Cap. 200), applies only to trafficking across borders for the purpose of prostitution or commercial sex exploitation. However, the law does not expressly cover the crime of human trafficking for the purpose of forced labour and Article 4 of the Bill of Rights (ICCPR Art.8) had not been implemented into specific legislation. No other forms of trafficking are criminalised. Other trafficking-related legal provisions are dispersed throughout various pieces of legislation. The HKSARG is currently appealing against a recent CFI judgment which was sharply critical of the inadequacy of the law in this area.
123. Perpetrators of human trafficking for forced Labour are often able to operate in Hong Kong with impunity. This is a result of several factors: 1) there remains no laws criminalizing forced labour, human trafficking, involuntary servitude; 2) the government continues to deny the prevalence of human trafficking and forced Labour in Hong Kong; 3) the authorities rarely enforce the existing legislative framework against employers, such as suing them for criminal, Labour or immigration crimes. Victims who make official complaints to the police often get victimized themselves, and are discouraged from seeking redress as follow-up action and/or investigation is rare. In cases where the victim's allegations are investigated, the employers are either not charged or are only prosecuted under minor immigration offenses.
124. The HKSAR Government's adoption of the *Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Workers in Hong Kong 2018* is a welcome initiative, however civil society was not consulted in its development.

Further, apart from Foreign Domestic Helpers, the Action Plan does not refer to any other vulnerable groups.

125. The current piecemeal legislative approach fails to identify and punish perpetrators of trafficking for the crime of human trafficking. Rather, perpetrators may be prosecuted for other offences relating to the component parts of trafficking or else they may slip through the cracks entirely. Victims of trafficking, many of whom are from vulnerable populations such as ethnic minorities, migrant workers, non-citizens, women and children, have little incentive to come forward and seek justice due to the lack of appropriate remedies and victim supports. Access to legal aid, quality interpreters, emergency shelter, medical and psycho-social supports continue to be a struggle for victims and the NGOs assisting them. Further, the risk of victims being charged for breaches of labour contracts, violations of immigration laws and other offences continues to be a problem in the absence of formal legal provisions protecting victims from criminalisation.

Recommendations

126. **The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) should be extended to apply to the HKSAR.**
127. **HKSAR should enact a comprehensive anti-trafficking law that criminalises all forms of trafficking.**
128. **HKSAR should provide and strengthen supports and protections for victims of trafficking including protection from criminalisation and access to emergency accommodation, financial, medical, psychological, social, interpretation, legal and other supports.**
129. **HKSAR should regularly consult and engage in open dialogue with civil society on anti-trafficking related policies.**

Live-in rule and two-week rule

130. Domestic helpers as a group are particularly vulnerable given that the mandatory live-in rule and the two-week rule effectively forces them to remain in conditions where there is a heightened risk of being subjected to abuse, if not forced labour.
131. Repeated calls for reform - including for abolition of the “two-week” and the “mandatory live-in” rules - have largely gone unheeded. Cases such as Erwiana, an Indonesian MDW severely maltreated by her employer, represent extreme but not isolated examples of what can happen as a result of these policies.
132. The lack of a comprehensive and effective anti-human trafficking legal framework addressing multiple forms of exploitation including forced labour and victims of human

trafficking represents a serious and glaring omission and one which requires urgent attention.

133. Furthermore, the HKSARG must establish a comprehensive monitoring and complaints mechanism to ensure MDWs are provided with suitable accommodation and protected from agency abuse. The two-week rule and live in rule should both be abolished. These gaps disproportionately impact women, particularly ethnic minority women.

Children of migrant workers

134. HKSAR's current laws, mandated template employment contracts and policies regarding maternity protections for MDWs fail adequately to provide clear guidance as to what should happen when a MDW is pregnant so as to ensure a happy, healthy and well-managed pregnancy, birth and maternity leave. Over the last nearly 10 years, this omission has left over 5,500 MDWs and their Hong Kong-born babies in the most vulnerable of predicaments.
135. Children born to MDWs are among the most deprived children in HKSAR. Once an unlawfully fired FDW mother has overstayed her visa, her child, when born, assumes the same legal status as his or her mother – they are undocumented.
136. As a result, these typically mixed race, ethnic minority babies do not have access to documentation, healthcare, basic immunisations or welfare support, and are highly vulnerable to malnutrition, disease, abuse, neglect, abandonment, human trafficking, systemic oppression and overt discrimination.
137. **The HKSAR Government should review, create (where currently absent), clarify, clearly communicate and enforce laws, practices and policies to enable lawful, safe and healthy pregnancies free from harmful treatment for FDWs and their unborn babies.**
138. **The HKSAR is urged to ensure equal protection in law, under government policies and extend them to all children born in the HKSAR.**
139. **The HKSAR Government should introduce a concerted education programme about maternity rights, obligations and protections for FDWs to all key stakeholders including FDWs, employers, employment agencies, Labour Department, Immigration Department, Health Authority, Police, Social Welfare Department, Prisons and relevant sending country consulates.**
140. **The HKSAR Government should relax the so-called live-in rule during a MDW's statutory Maternity Leave and specifically explain the expected interplay between and management of ML and that live-in rule.**
141. The Hong Kong government primarily relies on the financial and/or in-kind support services of various non-governmental organizations and/or charitable bodies with

regards to providing shelter and social welfare support to migrant workers and in particular foreign domestic workers.

142. While the Hong Kong government works in collaboration with organizations such as CEASE, persons seeking assistance from these organizations require a Hong Kong Identity Card and/or Hong Kong residency. However, in many cases of foreign domestic helpers who have been subjected to human trafficking and/or forced labour and/or abuse at the hands of their employers such shelters do not provide a viable place of shelter and/or social support. Therefore such victims of abuse are compelled to rely on the services of the already overburdened shelters run by charitable organizations and/or individuals while they await the conclusion of their legal proceedings in Hong Kong.
143. Finally, child poverty within ethnic minority households continues to be on rise, having increased by over 10% in the last 10 years and at a rate double that of the local population. Ethnic minorities are therefore disproportionately represented among those that live below the poverty line. The effects are exacerbated by the fact that government's poverty reduction strategy continues to make no distinction between ethnicities and lumps EMs and Chinese migrants together as "new arrivals". This is in spite of empirical research showing that different ethnic groups face unique poverty challenges. The government's failure to account for regional and ethnic disparities in its poverty reductions strategy thus masks the specific needs of different ethnic minority populations, particularly to the detriment of children.
144. Under Immigration Regulations, persons entering and remaining in Hong Kong for a period exceeding 6 months are issued with a Hong Kong Identity card (HKID). In this regard, foreign domestic helpers (FDH) entering Hong Kong are issued with HKIDs containing the prefix 'W' or 'WX' in their ID number to allow for easy identification. However, the adverse effects of these policies have been noted in numerous incidents where FDHs have faced difficulties in e.g. opening bank accounts due to their legal status in Hong Kong, which is in part supported by government policy on HKIDs. As a result, these policies implicitly endorse and/or perpetuate the systematic discrimination of FDHs when accessing social and other support services.

ETHNIC MINORITY AND MIXED-RACE CHILDREN OF MIGRANTS

Unnecessary delays in placement for adoption

145. Ethnic minority and mixed-race children of migrants born and abandoned by their parents, including migrant domestic workers, in Hong Kong regularly face unnecessary delays in placement for adoption, and protracted stays in institutional care.
146. The causes of such delays are a result of policies and practices that are discriminatory: the practice of treating the children of migrants as non-resident, even when the children

were born in Hong Kong; failure by the responsible officials to apply for residency and/or naturalization of ethnic minority and mixed-race children; a policy and practice of “race-matching” as a prerequisite for adoption; and the refusal and/or failure to register the births of ethnic minority and mixed-race children where their parents have refused/failed to do so.

Immigration bar to rights of EM children to family

147. The government of Hong Kong infringes upon the rights of Hong Kong permanent residents who are the parents, children, or partners of foreign nationals, and this has a disproportionate effect on ethnic minorities. Specifically, the Immigration Department, and the Department of Justice representing them in court, have insisted that the rights to raise a family, and the various rights of the children, especially the rights of children to have their best interests considered (protected in, inter alia, the ICCPR – constitutionally entrenched in Article 39 of the Basic Law – and the CRC) are subordinate to the immigration reservation in Section 11 of the Hong Kong Bill of Rights Ordinance. The relevant section stating in full:

“As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation.”

148. While the Immigration Department has a policy and scheme specifically designed to allow Mainland Chinese to come to Hong Kong to facilitate a family reunion, and a separate admissions scheme for “Second Generation of Chinese Hong Kong Permanent Residents”, the dependant visa scheme for permanent residents to bring their spouses and/or children is applied more restrictive and the Immigration Department has explicitly stated their view is that dependant visas are not be for family reunion, despite the clear requirement that any applicant be a dependant family member. As a consequence, there is no similar family reunion policy for persons not of Chinese nationality.
149. The courts have so far accepted these arguments in effect determined that the inalienable rights of children and families extends only to wholly Chinese or permanent resident families due to the subordination of the de facto constitution to a subordinate ordinance. As a consequence, the refusal to recognize the rights of family and children has a disproportionately harmful effect against the non-ethnic Chinese applicants and their families which includes domestic helpers and their permanent resident children. In maintaining this position, the government of Hong Kong is thus sacrificing ethnic-minority and mixed race families under the guise of immigration control.

MIGRANT SEX WORKERS

150. Sex work in HK is not illegal, but those who are non-residents and who engage in such work face criminal sanction for breach of their conditions of entry. Coupled with the high level of stigma faced by sex workers in general, migrant sex workers are particularly vulnerable to systematic abuse as they are usually ignorant of their legal rights in HK.
151. The prosecution of prostitution is, commonly, based on either the migrant sex worker “establishing a business” without permission from the Immigration Department or “taking up unapproved employment”. In most cases such persons would plead guilty to one or other offence as the standard sentence is almost always less than the time they would spend on remand pending trial if they were to plead not guilty. This “backdoor” method of prosecuting and deterring sex workers has continued for years without any open review and reform.
152. Due to their irregular/illegal migration status, such sex workers are often arbitrarily arrested without having gone through any sort of screening process or interview, specifically as potential victims of human trafficking. Reports have emerged of police and correctional personnel maltreating migrant sex workers, including verbal abuse calculated to demean and oppress.
153. **The Committee is urged to call on the HKSAR to (a) enact comprehensive legislation to criminalise all human-trafficking including specific provisions relating to trafficking of labour and sex workers; (b) devise a system to protect the physical, psychological and mental well-being of human trafficking victims in HK; (c) train all frontline law enforcement officers to identify victims in this regard, develop risk assessments and safe exit plans; (d) abolish the “two-week rule” and the “mandatory live-in policy” which create the vulnerabilities and enabling conditions for such trafficking and ensnarement of unsuspecting victims; and (e) raise public awareness about the conditions and prevalence of human trafficking and implement effective training, screening and prevention measures.**

ETHNIC MINORITY WOMEN VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

154. Some ethnic minority women may find it difficult to utilise public services due to the unavailability of female officers or doctors, which may be a prerequisite in their culture. This becomes a significant barrier in seeking help against violence or medical attention. The lack of support measures to assist these women, who live in a value framework informed by their religious and cultural beliefs and therefore, have different needs and

accessibility issues, has serious ramifications for feminine health and safety among ethnic minority women⁴⁰.

155. EM Victims in Hong Kong are reluctant to seek external help when they face domestic violence. None of the EM Victims participating in the 2015 Study sought medical attention, and only two EM Victims sought police assistance, legal protection, or service providers' assistance. A quarter of the EM Victims said they would share their situation with friends or neighbours whilst half of them said they would share with their families. However, the experiences of sharing with friends or family were sometimes unpleasant because they were often persuaded to stay with their abusive partners. This reflects a lack of confidence in external assistance that may be available in general.
156. Language impacts access to legal and social services for domestic violence victims and potentially limits ethnic minority women's ability to live independently of their partner because they are unable to integrate into the wider social context (employment, education, etc.) without the requisite language skills. Language barriers faced by EM Victims of domestic violence hinder their ability or willingness to seek assistance.
157. One stop information centres providing guidance on how to access different services (including social workers, medical services, shelter services) with information in minority languages should be established in districts with higher concentrations of the ethnic minority population and widely publicised. Training for frontline responders, including the police and service providers in human rights and cultural sensitivity when handling domestic violence amongst ethnic minorities. Government should dedicate resources to empower ethnic minority women in vocational training or continued education so that they can gain independence and open themselves up to more options when they face domestic violence problems

NEW ARRIVALS FROM MAINLAND CHINA AND SPLIT FAMILIES

Legal protection deliberately withheld

158. New immigrants constitute over half of the annual natural growth population of Hong Kong. There are about 40,000 new immigrants from Mainland China who arrive every year for family reunion. Most of them are women and children - approximately 30% of are children, 70% are adult. 85% of adults are mothers. About 32% of them live under poverty line and the monthly median wage is HK\$7,500 (US\$961.5), far below the average of HK\$12,000 (US\$1,538.4). However, the HKSAR Government provides any inadequate assistance to them.

⁴⁰ Puja Kapai, 'Understanding and integrating cultural frames of reference in the development of intervention strategies to address domestic violence among ethnic minority victims and perpetrators of domestic violence' (The University of Hong Kong's Centre for Comparative and Public Law, 2015) accessed 7 August 2015.

159. The government has excluded new immigrants from Mainland China from the Race Discrimination Ordinance. It does not recognize immigration status as a basis of race discrimination nor does it recognize new immigrants as a separate ethnic group.
160. Instead, the government has emphasized that racial discrimination only refers to discrimination on the ground of race, colour, descent, national or ethnic origin, and it has adopted a narrow view of these grounds, especially origin.
161. During discussions of the Race Discrimination Bill, the Hong Kong SAR Government stated clearly that the status of being an immigrant from Mainland China was not considered as a ground of discrimination because the new immigrants were viewed as being of the same ethnic group as local Chinese. The Government explained that the discriminatory treatment experienced by new immigrants is based on *social* rather than racial grounds.
162. In sharp contrast, in its Concluding Observations on HK issued on 13 May 2005, the UN Committee on Economic, Social and Cultural Rights took the views that discrimination against new arrivals from Mainland China is “de jure and de facto discrimination against them on the basis of their origin.”
163. The CESCR recommends in the same document, “The Committee strongly urges HKSAR to extend the protection afforded by the proposed racial discrimination law to internal migrants from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin. The Committee further recommends that the relevant provisions of the existing immigration legislation governing entry into, period of stay, and departure from, HKSAR are amended to ensure full conformity and consistency with the new racial discrimination legislation.”
164. **We urge the CERD to urge the HKSAR to adopt a timetable to implement such recommendations in HK as soon as reasonably practicable.**

Exclusion of split single-parent families from the Family Reunion Policy

165. In Hong Kong, there are still approximately 100,000 split families comprising parents, mostly women, and their children are separated by the border between Mainland China and Hong Kong as a result of problematic and long-standing immigration policy. Their prospect of reunion is purportedly regulated by a queuing system that subject them to bureaucratic manipulation and corruption. In theory, a quota of 150 persons a day are allowed to enter and settle in HK for family reunion.
166. The situation is worst for single-parent families, where commonly it is the mother who has been widowed or abandoned by the Hong Kong father, depriving her from obtaining a One-way Entry Permit to enter and settle in Hong Kong even after her children have been born or have already been allowed to stay in Hong Kong. The children cannot stay with their mothers in mainland China as they do not have household registration and identity there which is necessary to obtain access to support services on the Mainland.

The only hope for family reunion is for the mainland mother to apply to come to Hong Kong to take care of them and for family reunion. However, there is no quota for these single parent mothers in the one-way permit system. The prospects of challenging refusals in the Courts is slim.

167. These mainland mothers can only visit their children in Hong Kong for prolonged years with a visitor's permit issued by the Mainland authority.
168. To avoid being left alone without adults to care for them, some children even need to leave Hong Kong together with their parent when the latter return to mainland China to apply for the visitor's permit in person every three months or even two weeks. Such breaks from school seriously affects the children's education.
169. Without a Hong Kong Identity Card, the mother (or the father) cannot be employed in Hong Kong but must rely on the children's public assistance (CSSA) for a living. Constrained by the very limited public assistance, the children's learning and living conditions is seriously affected, causing problems in the family's physical and mental development and well-being.
170. At least 7,000 Hong Kong children are therefore unable to be reunited with their Mainland mother for years. Although China has introduced a visitor's policy which enables visits to extend for more than one year, the mechanism is inconsistent and hardly represents a lasting solution for these single-parent families.
171. While there is no quota for these single parents to apply to come to Hong Kong or to take care of their children, the 150 daily quotas are not fully utilized (only 125 on average are used). The Mainland authorities have failed to utilize the leftover quota to help such needy single parents.
172. **The Committee should urge the HK and Mainland authorities to come up with a solution, such as using the family reunion quote, to allow such parents to settle in HK to care for their HK children without delay.**

ETHNIC MINORITY YOUNG PRISONERS

Racial discrimination against EM young prisoners

173. Recently, members of the Reclaiming Social Work Movement interviewed 54 young former prisoners to investigate their experiences of being tortured with physical punishment and inhumane treatment by officers in correctional institutions in July and August 2017.
174. Among the 54 cases, young inmates of ethnic minority backgrounds were found to be most vulnerable. Oreo (an alias), entered Pik Uk Correctional Institution in 2013 at the

age of 16. He is from an ethnic minority family. He said that he was beaten up every day, sometimes up to six times a day, for the “offence” of not reciting the prison’s Rules, which are only available in Chinese.

175. This is an extreme, but not isolated example of the kind of treatment of ethnic minorities in detention/prison, who are susceptible to this kind of gross maltreatment and oppression simply because of their ethnicity
176. **The Committee should urge the HKSARG to conduct thorough investigations into the alleged torture/ill-treatment and discrimination and whether EM inmates have been the target of such abuse by officers. Any culpable officers should be brought to justice and permanently removed from the Service Effective measures should be put in place to prevent such violations of rights from happening again.**

Ethnic minority children in prison

177. Beyond the most basic elements of care, there are no mechanisms to cater for children who remain with their parent in prison. In HKSAR, babies are permitted to stay with their mother in prison until the child is 3 years old.
178. Recommendation: that the Prison Rules (Cap 234A, s21) be **urgently reviewed to ensure that the medical, social and educational needs of these children are properly provided for during this critical formative period of their lives.** Given that this involves extremely young children, this needs to be done as a priority.

ART.6 EFFECTIVE PROTECTION AND REMEDIES

Human rights commission and mandate

179. Despite numerous calls by various UN treaty bodies including the CERD, the HRC and the CESCR, the HKSARG has yet to establish a human rights commission with investigative powers and a mandate that covers the full range of human rights protections enshrined in the BL and HK's international human rights obligations under the ICCPR, CEDAW, CERD, CRPD, CRC, CAT and the ICESCR.

Legislation imposing liabilities for human rights violations by non-state actors

180. There is no general legislation prohibiting violations of human rights by non-governmental actors. Increasingly, cases involving migrant domestic workers (MDWs), ethnic minority employees, victims of human trafficking and sex workers, victims of intimate partner violence and sexual abuse, reveal the critical need for such legislation to ensure that both, private and government actors, are held accountable for gross human rights violations. This omission in the legislative framework is a critical gap which leaves many groups, particularly ethnic, racial and religious minorities, vulnerable to exploitation.

Weak Equal Opportunities Commission inconsistent with the Paris Principles

181. The EOC is a statutory body which implements the four equal opportunities or anti-discrimination ordinances on sex, disability, family status, and race. Discrimination on the grounds of sexual orientation, age and political opinions, etc., are not protected by these four equal opportunities legislation. Its mandate is narrow, discrete and limited to the four anti-discrimination laws, leaving a lot of grounds uncovered. The glaring gaps have also been identified by the EOC itself in its Discrimination Law Review.
182. The Chairperson and Board Members of the EOC are appointed by the Chief Executive. The current composition of the EOC lacks diversity in composition and policy inclination. Many of these incumbents are very close to the Government politically speaking, and the system of selection and appointment is designed to minimise the powers of the EOC to criticise and challenge Government policy and practice. Through selective and non-representative appointment of the Chairperson and Members based on their close connection with and policy outlook in line with the Government's viewpoint, it is all too apparent that the EOC is less than pluralist and not truly representative of the divergent views of the Hong Kong community. In short, there is a lack of genuine independence from the Government and from Government influence.
183. Further, the four Ordinances under which the EOC operates impose no positive legal obligations on governmental and public bodies to formulate statutory equality plans periodically for the effective pursuit of anti-discrimination measures and the promotion of and development of equal opportunity wherever it is lacking. Discrimination in HK

is primarily addressed in a passive manner through the making and handling of complaints and, in very rare cases, through litigation. Most concerning of all, the complaints process is long and cumbersome and in the end very few claimants/victims are provided with legal assistance. In consequence, the system is fundamentally passive and complaint-driven, and therefore a weak one. The EOC as an institution does not comply with the standards set out in the Paris Principles. The Commission is ineffective in investigating and eradicating institutionalized racism in the public or private sector in Hong Kong.

Ineffective legal assistance

184. The EOC's track record since its establishment in 1995 highlights its limited ability to investigate and provide remedies for discriminatory conduct. In the more than 2 decades of its existence, the EOC has directly litigated only two cases, one on sex discrimination and the other on disability discrimination.
185. Another clear example of the EOC's lack of teeth is that in the ten years since the enactment of the Race Discrimination Ordinance (RDO) only one case, pursued privately by a minor against the police, has reached the courts, and this was unsuccessful. The plaintiff in that matter failed partly because the RDO exempts government powers and functions from its purview.⁴¹
186. The Legal Service Division of the EOC do not meet with or provide legal advice to victims who have not been granted legal assistance. There are currently 6 lawyers under the Legal Service Division, at a cost of over HK\$8 million per annum. The caseload of this Division is remarkably low: on average, it handled some 30 applications every year, half of which are rejected, leaving barely a dozen cases which receive legal assistance. From these, only a handful are pursued further to the Courts.
187. The Policy, Research and Training Division of the EOC has hitherto devoted its energies to fragmented research projects, and there has been limited follow-up to the findings from these projects. The EOC limits itself to making policy suggestions without actively investigating and monitoring whether government departments and private bodies, especially in areas where discrimination is rampant.
188. The EOC complaint procedure is long and cumbersome. NGOs, such as Hong Kong Unison, have lodged complaints and acted as the representatives for discrimination victims on cases related to employment and access to bank services. The correspondence between the complainant and the respondent to the complaint has lasted anywhere from six months to up to two years. Victims are often fighting against an employer, an institution or a corporate body, most of whom are legally represented. One of the EOC's key roles is to act as a vehicle through which discriminatory conduct can be identified, and corrective measures taken. Against this ideal, it is startling that the EOC has, in

⁴¹ *Singh Arjun v Secretary for Justice* [2016] HKDC 626

these individual matters, acted very much as a “post-box”, assuming the role of messenger. There is little or no assistance to the aggrieved persons. Without a representative, a victim of discrimination is unlikely to be in a position to pursue the matter with the vigor required to lead to a just resolution of the complaint. *One of the roles of the EOC* is to assist in the alternative resolution of the matters, and it is accepted that part of this is to pursue conciliation-based outcomes. However, and remarkably, the complaints procedure resembles a court evidence collection process, placing a substantial burden on the complainant who, most of the time is looking for a practical solution and to right the wrong done to them.

189. **RDO continues to be underused.** Despite the numerous talks EOC conducted with the ethnic minority community, RDO remains grossly underused in the EOC enquiry and complaint procedures. As noted above, there has only been one court case using the RDO.
190. Inevitably, the EOC can hardly assist victims of discrimination and uphold racial justice, despite the call in para 28 of the 2009 CERD concluding observations to strengthen the Commission.⁴²
191. **In the long run, the Government should establish a statutory independent Human Rights Commission with a broad mandate and wide powers in line with the Paris Principles.**
192. **In the short term, the EOC should conduct a comprehensive review of all aspects of its functioning to pursue greater effectiveness in the process and discharge of its statutory obligations. Reforms must be introduced which should include the enactment of relevant equal opportunities legislation to cover areas not yet protected. Fundamentally, such reforms should include the imposition of a statutory positive duty for the governmental and public bodies to eliminate all forms of racial discrimination and the promotion of racial equality. If the Government is truly serious about eliminating racial inequality and discrimination, which is pervasive, it will take the lead and implement these reforms.**

Recommendations

193. In its latest reports to the Committee, the HKSARG deferred following up on the changes recommended in the CO until the EOC finish the DLR⁴³. After the DLR, the HKSARG has not only failed to devise any plan to adopt the changes recommended in the CO, but

⁴² Para 28 states, inter alia, “The Committee recommends that all Government functions and powers be brought within the scope of the Race Discrimination Ordinance. It also recommends the adoption of an equality plan with a view to ensuring the effective implementation of the law and that the Equal Opportunities Commission be strengthened.”

⁴³ Fourteenth to Seventeenth Reports of the People’s Republic of China under the International Convention on the Elimination of All Forms of Racial Discrimination – Part Two: Hong Kong Special Administrative Region, p.1 (§1.4)

http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Racial_Discrimination/3rdReport/12.Fullreport-e.pdf

has also only accepted the recommendations of the EOC to a minimal degree. This is most disappointing.

194. The HKSARG further suggested in its latest reports that since the performance and exercise of functions and powers of the Government under statutory and administrative measures cannot involve racial discrimination under other statutory and administrative measures, it is unnecessary to expand the scope of the RDO as this would not enhance the protection of the individual and the community at large⁴⁴. We fundamentally disagree with this approach, for a number of reasons, including that:

- (1) All anti-discrimination legislations except the RDO regulate the performance and exercise of functions and powers of the Government⁴⁵. There is no reasonable justification for the RDO to exempt the Government from its operation. As we have said, the Government should be leading by example. There can be no reason for the exemption other than that the Government is concerned that it will not be able to comply without fundamental internal changes to its function, including in the area of recruitment; and
- (2) The existence of other statutory and administrative measures is not a valid reason to debar the people from enjoying the further protection provided by the EOC under the RDO.

195. **Therefore, we urge the Committee to:**

- (1) Require the HKSARG to explain to the Committee specifically why the recommendations made in the CO and by the EOC have not been adopted; and**
- (2) Urge the HKSARG to adopt the recommendations and provide a timeline in which they will be adopted and implemented and the form that implementation will take.**

Establishment of a children's commission/ commissioner

196. Numerous stakeholders in HK, backed by the Committee on the Rights of the Child, have long called for the establishment of a Children's Commission/Commissioner. It is essential that a Children's Commission/Commissioner be independent, established by statute, and in accordance with the Paris Principles. But the HKSARG intends only to establish a non-statutory Children Affairs Commission dominated by the Government with limited mandates.

197. There are several incidents which highlight the need for a Children's Commission/Commissioner. In 2016, 61 children, most of them pre-school age and victims of abuse, were hospitalised not because of any medical needs but because there

⁴⁴ Ibid, p.5 (§§2.7 – 2.8); see also Footnote 2

⁴⁵ See section 21 of the Sexual Discrimination Ordinance (Cap. 480); section 21 of the Disability Discrimination Ordinance (Cap. 487); section 28 of the Family Status Discrimination Ordinance (Cap. 527)

was nowhere else to place them. The average period of such placement in medical wards was 42 days. The potential long-lasting impact is stark. One NGO reported that 6 very young children sent to hospital were tied to their beds and/or placed in restraint vests.

198. Beyond the most basic elements of care, there are no mechanisms to cater for children who remain with a parent in prison. The Prison Rules (Cap 234A, s21) must be urgently reviewed to ensure that the medical, social and educational needs of these children are properly provided for during this critical formative period in their lives.
199. **We urge the Committee to reconstitute the Children Affairs Commission into an independent a Children Commission/Commissioner, established by statute, and in accordance with the Paris Principles.**

Lack of demographic information

200. There is a serious lack of disaggregated statistical data of ethnic minorities, non-citizens, asylum-seekers and refugees.
201. This is particular disappointing when it comes to data for evaluating the effectiveness and side effects of government policies and administrative measures.
202. Another problematic area is information of ethnic minority suffering other disadvantages, such as disabilities.
203. **Special efforts have to made for various governmental and public bodies to identify the necessary statistics and devise a system to collect, store, organise and disseminate such information in an accessible manner for public decision making and policy impact assessment.**

Information accessibility and participation in public life

204. There is no provision for information accessibility to EMs with disabilities and very limited data regarding the demographics of this marginalized group of EMs.
205. Although the HKSAR government launched the Rehabilitation Programme Plan (RPP) with public consultations since the 2nd quarter of 2018, neither was prepared in an accessible way for EMs nor effectively channelled to the community to invite EMs' participation. The RPP serves as a comprehensive review and planning for services for persons with disabilities for the coming decade: it is impossible to plan for EMs with disabilities without sufficient data and participation of EMs in the consultation process. Similar issues regarding information accessibility also happen in other areas of life for EMs in general.⁴⁶

⁴⁶ See generally, [A Study on Ethnic Minorities' Awareness and Satisfaction towards Selected Public Services](#), (Mar 2018), accessed 12 Mar 2018. In the study, it is reported that certain government departments (e.g. Labour Department) provide information to EMs through digital platform without effective promotion and

Language barriers

206. While both English and Chinese are considered to be the Official Languages of Hong Kong, many government state publications are either produced entirely in Chinese and/or translated to English only following a significant delay. This results in persons of non-Chinese ethnicity being unable to access information in a timely manner which negatively impacts upon their ability to participate and/or make their voices and/or their needs heard. This has the effect of dividing the people of Hong Kong into groups, the opposite of what an anti-discrimination regime is designed to achieve.
207. The language barrier or barriers is/are particularly detrimental to the procedural and substantive interests of ethnic minorities or linguistic minorities in the access to justice.

Labour Tribunal

208. The statutory framework governing the jurisdiction of the Labour Tribunal has a detrimental impact on low skilled migrant workers and foreign domestic helpers. While Section 7 and 23 of the Labour Tribunal Ordinance (“LTO”) were enacted to expedite legal proceedings brought before the Labour Tribunal, its effect in practice has had a significantly detrimental impact on those unable to read, write or understand English and/or Chinese. In this regard, low skilled migrant workers and foreign domestic helpers, many of whom are from South Asian countries with little or no formal education and/or training, are often tasked with filing and/or sustaining legal proceedings against employers on their own, as the LTO prohibits formal representation.
209. While it is true that interpretation services are provided during Labour Tribunal hearings, such assistance is not provided when filing the required forms and/or documentation and/or attending initial meetings with the tribunal officers. Therefore, foreign nationals who are unable to communicate suitably in either English and/or Chinese are faced with insurmountable difficulties when accessing legal redress.
210. The procedures of the Labour Tribunal have therefore, over the years, inadvertently put low skilled migrant workers and/or foreign domestic helpers at a substantial disadvantage in presenting their case vis-a-vis their employers. In contravention of the equality of arms principle enshrined in the right to a fair trial, ethnic minority groups are disproportionately impacted by the failure of the LTO to provide adequate facilities for the preparation of their cases.

Legal aid scheme

211. Similar difficulties are faced by Applicants for Legal Aid in respect of their legal proceedings before the Higher Courts of Hong Kong. Vulnerable applicants, who are

considerations of the availability and accessibility of internet access of the majority EMs, leading to lack of information eventually for those who cannot access to online platform. It is necessary for the government to actively engage and consult with EMs to understand their practice of promotion and communication channels, and adopt a more practical measures to support EMs.

unable to communicate suitably in English or Chinese, are left floundering in a system which is unable to assist and/or consider their special circumstances as foreign nationals and/or in particular persons who do not have the existing social and/or community support systems that local English or Chinese applicants may have.

212. A prime example is the lack of facilities for non-refoulement claimants to challenge adverse decisions rejecting their claims for protection. Statistics taken from a LegCo Paper from Panel on Administration of Justice and Legal Services dated June 2017 confirm that it is becoming systematically more difficult for non-refoulement claimants to access legal aid⁴⁷:

No. of legal aid applications involving JRs pertaining to non-refoulement claims	No. of legal aid certificates granted on JRs pertaining to non-refoulement claims	Legal Aid acceptance rate
98	52	53.06%
248	62	25%
144	9	6.25%

213. Alarming, the Immigration Department and Security Bureau continues to issue and enforce removal and deportation orders against asylum seekers and ethnic minorities, even if they have pending Court cases or have made an application for legal aid to judicially review decisions made against them by one or more government departments.
214. Many of the asylum seekers wishing to apply to Legal Aid are in detention, most of them in a dedicated facility called the Castle Peak Bay Immigration Centre (“CIC”). There are no facilities to expedite applications for such persons, and the Director of Legal Aid does not have a system in place to ensure that persons who contact the Legal Aid Department are visited in CIC promptly. The CIC Welfare Officer will sometimes assist in communications, but these are by post, and fail to address the predicament of a failed asylum seeker who is facing arrangements for his or her imminent return.
215. While this is not the place to examine the failings of the screening process under the Unified Screening Mechanism, it will be of interest to the Committee that the success rate is far below that of other comparable jurisdictions, leading inescapably to the conclusion that it is designed to achieve a high rejection rate and a consequential deterrent effect, rather than to identify those genuinely at risk.
216. This dramatically low success rate, and the lack of reasonable facilities to enable a judicial review challenge of an errant decision, suggests that the Government is returning

⁴⁷ <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1386-3-e.pdf>

persons who may well be genuinely at risk of persecution or worse and whose claims for protection have been erroneously denied.

Improving police awareness and procedures for handling persons in need of assistance

217. Over the past decade, NGOs have received many complaints from members of ethnic minorities of various socio-economic backgrounds that they have been racially profiled, discriminated against, harassed or insulted by the Police Force.
218. The HKSARG should keep and provide information to the Committee whether sufficient training and safeguards are in place to avoid racial profiling by the police. For instance, the Hong Kong government should be required to keep and provide statistics on ethnic composition of the population, and statistics of police requests to produce proof of identity and incidents of stop and search segregated by the person's ethnicity.⁴⁸
219. The Hong Kong government should also be required to provide information whether sufficient training and safeguards are in place to ensure that police officers, in encountering ethnic minorities, the latter understand their rights and the nature of the criminal investigation procedures.
220. In 2009, a Hong Kong-born Nepalese man, Limbu Dil Bahadur was shot dead by a police constable who was responding alone to a 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 warning⁴⁹. 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.
221. In the case of Mr. Arjun Singh, Arjun spoke only English but the Police caution was rendered only in Cantonese. Only later was a Punjabi interpreter arranged for statement taking. Even though the caution must have been re-administered, there is no reason why the pre-arrest caution cannot have been given twice, in both English and Cantonese.
222. The Police Force lacks internal guidelines and sanctions against discriminatory practices leaving ethnic minorities vulnerable to police abuse. There are no provisions on non-discrimination or cultural sensitivity in the Police Force's Procedures Manual and Standing Orders.
223. **We 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. The Police Force should be required to collect race or ethnicity data on ID checks,**

⁴⁸ In 2016, 1,274,731 persons were stopped and searched by police, and 326,307 persons were requested to produce proof of identity for inspection. However, the authorities have not provided any statistics segregated by race.

⁴⁹ In addition, despite the fact that Mr. Limbu's family cannot understand Cantonese, the inquest of Mr. Limbu was conducted in Cantonese.

on arrest and on crime rate to assist in identification of and elimination of racial profiling.

224. Very commonly, allegations are raised that arrested persons are threatened by police during interviews in the absence of legal representation. Provision of free legal aid and legal advice should be extended to arrested persons, especially persons in need of assistance, such as EMs and Persons with disabilities. The Bar and the Law Society have both supported the extension of legal aid for such attendances.
225. Following the police's serious mishandling of a man with autistic characteristics and moderate intellectual disability in a manslaughter case in 2015,⁵⁰ the Working Group to Review the Care of Mentally Incapacitated Persons was established to review procedures for handling cases involving people with disabilities in partnership with relevant stakeholders.⁵¹
226. Similar review in favour of EMs in police custody or facing police interrogations should also be conducted.

Naturalisation of non-Chinese ethnic minorities

227. Despite being the second or third generation in Hong Kong, some ethnic minorities face immense difficulties when applying to be naturalised as Chinese nationals. The current system is opaque, requirements seemed to vary from one case to another and applicants are not notified of the reasons for refusal. Challenges to such decisions are virtually impossible.
228. **We invite the Committee to urge the Immigration Department to treat applications for naturalisation from long-time and locally born minority residents in Hong Kong in a fair and consistent system.**

⁵⁰ Amy Nip, "Family blast police over handling of autistic man's arrest, detention" South China Morning Post, 31 March 2016. Available at: <http://www.scmp.com/news/hong-kong/law-crime/article/1791738/family-blast-police-over-handling-autistic-mans-arrest>.

⁵¹ Available at: https://www.police.gov.hk/ppp_en/11_useful_info/mip/about.html