



For information on 4 Jan 2018

**Submission to the Legislative Council's Panel on Constitutional Affairs on
the outline of the topics in the fourth report of the Hong Kong Special Administrative
Region in the light of the International Covenant on Civil and Political Rights**

The Hong Kong SAR Government should take immediate steps to address pressing issues related to the civil and political rights of ethnic minorities.

Article 24: Acquiring nationality

- 1.1 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, making it a frustrating process for them. We urge the Immigration Department to treat applications for naturalisation from long-time and locally born minority residents in Hong Kong with compassion.

Article 25: Equal participation in elections

- 2.1 Hong Kong saw District Councils Election in 2015 and Legislative Council Election in 2016, yet ethnic minorities' participation in these elections were very limited as few candidates were familiar with ethnic minority issues and the great majority of the candidates only provided promotional materials in Chinese. These factors lead to low motivation to vote in the ethnic minority community.

Article 26: Protection against discrimination

Chinese language curriculum

- 3.1 **Chinese as a Second Language Curriculum is still absent**, despite ICCPR's concluding observation in 2013 (para 22, 2013).¹ 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

¹ The Committee is concerned that ethnic minorities are underrepresented in higher education and that no official education policy for teaching Chinese as a second language for non-Chinese speaking students with an immigrant background in Hong Kong has been adopted. The Committee also notes with concern the report of the Equal Opportunities Commission that non-Chinese speaking migrants face discrimination and prejudice in employment due to the requirement of written Chinese language skills, even for manual jobs (art. 26). In light of the recommendation made by the Committee on the Elimination of Racial Discrimination (CERD/C/CHN/CO/10-13, para. 31), Hong Kong, China, should intensify its efforts to improve the quality of Chinese language education for ethnic minorities and non-Chinese speaking students with an immigrant background, in collaboration with the Equal Opportunities Commission and other groups concerned. Hong Kong, China, should further intensify its efforts to encourage the integration of students of ethnic minorities in public school education.



from 12 year of education with Chinese abilities comparable to only mainstream primary two level. As a result, they enjoy limited further education and employment opportunities.

- 3.2 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, outcome indicators, detailed implementation plan and timetable, or 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. 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.

De facto racial segregation

- 3.3 ***De facto* segregation still exists in former ‘designated schools’.** In Hong Kong, there are public schools known as former “designated schools” where over 80 or 90% of the student body is ethnic minority; this constitutes *de facto* segregation. These schools are not conducive to students' Chinese learning or social integration. Ethnic minority students graduating from these schools often have lower level of Chinese abilities; this affects their social integration and career prospects. Therefore, the government should desegregate schools with disproportionate percentage of ethnic minority students. We urge the Government to **acknowledge detriment of 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.

Race Discrimination Ordinance

- 3.4 **The Race Discrimination Ordinance, being the only one that exempts government powers and functions, is the weakest among the four anti-discrimination ordinances in Hong Kong,** despite recommendations made in the 2013 ICCPR Concluding Observations (ICCPR para 19, 2013)². The exemptions in the RDO render

² The Committee notes with concern that, unlike the other Discrimination Ordinances, the Race Discrimination Ordinance (RDO) does not specifically apply to the Government in the exercise of its public functions such as the operations of the Hong Kong Police Forces and Correctional Services Department (art. 26). The Committee recommends that Hong Kong, China, rectify a key gap in the current Race Discrimination Ordinance, in close consultation with the Equal Opportunities Commission, in order to ensure full compliance with article 26 of the Covenant. Hong Kong, China, should also consider introducing comprehensive anti-discrimination laws, in



ethnic minorities vulnerable when facing government powers and functions such as policing. Although the EOC completed the Discrimination Law Review consultation and submitted recommendations to the Government, Government powers and functions was not one of the seven amendment areas being considered by the CMAB, and no timetable has been given on amending this item. This exemption opens the door for violations against the right to liberty and security of person of ethnic minorities under ICCPR Art. 9. **The government should amend the RDO so that it covers government powers and functions.**

3.5 Government powers and functions are not bound by section 3 of the RDO nor are they always considered “services” under section 27. Section 3 of the RDO states that “This Ordinance binds the Government”; this section is also present in the other 3 anti-discrimination ordinances. The court judgement on *Singh Arjun v. the Secretary for Justice* handed down in 2016 shows that this section is not effective in binding government powers and functions. Mr. Arjun Singh filed a case against the police for discriminating him on the grounds of race by 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. He had 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 free to go. The court holds that the acts of the police in investigation and arrest do not amount to ‘services’ for the purpose of the RDO and policing is not bound by the RDO. This shows how vulnerable the current RDO can render ethnic minorities when facing the police and the rest of the Government. Therefore, section 3 of the RDO does not bind Government powers and functions; and section 27 of the RDO concerning provision of services is not always applicable in terms of Government acts.

3.6 The Race Discrimination Ordinance does not cover characteristics such as nationality, citizenship and residency or related status. Ethnic minorities experience proxy discrimination when opening bank accounts where they are asked their nationality and are then refused services or experience longer wait time. Although in 2009, CERD made a specific recommendation to the Government to include in the RDO “immigration status and nationality” as prohibited characteristics of discrimination, no amendment has been made to the RDO as yet (ICERD para 27, 2009)³. The Equal Opportunities Commission (EOC) completed the Discrimination Law Review (DLR) consultation and submitted their recommendations to the Government in 2016. In March 2017, the Constitutional and Mainland Affairs Bureau (CMAB) responded to the submissions and prioritised 9 recommendations, seven of

accordance with the Covenant. Such legislation should impose obligations on the authorities to promote equality and to eradicate discrimination.

³ The Committee recommends that indirect discrimination with regard to language, immigration status and nationality be included among the prohibited grounds of discrimination in the Race Discrimination Ordinance. In this regard it recalls its General Recommendation No. 30.



which concerned the RDO. However all of them were low-priorities recommendations concerning only the private sector. In a Legislative Council dedicated meeting discussing the amendment of the RDO in Nov 2017, the Government refused to provide a timetable on amending the discrimination laws based on the other 60 EOC recommendations, a dozen of which concerning key flaws in the RDO. **The government should amend the RDO to include nationality as a protected characteristic.**

- 3.7 **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.** 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, which is one of the two official languages in Hong Kong that is currently more accessible to ethnic minorities. According to our research 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.⁴ This violates rights to education and seriously hampers minorities' chance of further education, as well as limits their economic opportunity. **This blanket exemption in the RDO should be removed.**

Article 28: Issues of the Equal Opportunities Commission

- 4.1 **The Equal Opportunities Commission (EOC) cannot uphold racial justice**, despite the 2009 CERD concluding observation (ICERD para 28, 2009)⁵. The EOC does not comply with the standards set in the Paris Principle – it is not independent from the Government, and its Chairperson and board members are appointed by the Chief Executive. Its complaint process is long and cumbersome; in the end very few victims are provided legal assistance. Despite having conducted numerous visits and talks, the Commission is ineffective in investigating and eradicating institutionalized racism in government, public or private bodies such as banks, schools, etc. **The Government should establish an authentic Human Rights Commission; the EOC should conduct comprehensive review on all areas of its work.**

⁴ Hong Kong Unison, “Research on Post-Secondary Education Opportunities for local Non-Chinese Speaking students in Hong Kong”, 2015.

⁵ 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.