



香港融樂會
HONG KONG UNISON

**Submission to the United Nations Human Rights Committee
129th Session, 29 June – 24 July 2020**

**for the List of Issues in relation to the consideration of the
4th Report of the Hong Kong Special Administrative Region
under the International Covenant on Civil and Political Rights**

31st May 2020

Hong Kong Unison ('Unison') was established in 2001 and registered as a charitable organisation in 2005. We are a local non-governmental organization that supports ethnic minority residents of Hong Kong. We are committed to safeguarding the rights of ethnic minorities and eliminating racial discrimination in Hong Kong.

Unison is concerned about the human rights violations towards ethnic minorities of Hong Kong. We hereby submit the following concerns for the Human Rights Committee's consideration for inclusion in the List of Issues Prior to Reporting.

Contact Person:

Phyllis Cheung, Executive Director

Hong Kong Unison Limited

Flat 1303, 13/F, 1 Elm Street, Tai Kok Tsui, Kowloon

Tel.: 2789 3246

Email: director@unison.org.hk

Web-site: www.unison.org.hk

Acronyms and abbreviations

Anti-ELAB	Anti-Extradition Law Amendment Bill
CAPO	Complaints against Police Office
CERD	Committee on the Elimination of Racial Discrimination
CMAB	Constitution and Mainland Affairs Bureau
CO	Concluding Observations
EDB	Education Bureau
EM	Ethnic Minority
EOC	Equal Opportunities Commission
GBV	Gender-Based Violence
HK	Hong Kong
HKBORO	Hong Kong Bill of Rights Ordinance
HKPF	Hong Kong Police Force
HKSAR	Hong Kong Special Administrative Region
HKSARG	Hong Kong Special Administrative Region Government
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPCC	Independent Police Complaints Council
JP	Justice of Peace
RDO	Race Discrimination Ordinance
REO	Registration and Electoral Office
SWD	Social Work Department

Introduction

1. According to the latest By-census of Hong Kong in 2016, the ethnic minority (EM) population stood at 583,383 (including migrant domestic workers), accounting for around 8% of the total population in Hong Kong. Among non-migrant domestic workers, over 80,000 were South Asians, including mainly Indians, Nepalese and Pakistanis¹. The Race Discrimination Ordinance, Cap. 602 (RDO), which was enacted in 2008 and came into full operation in July 2009, is the weakest among the four existing discrimination ordinances in Hong Kong. The flaws seriously affect its protection of EM and reflect the Government's lack of commitment to protect this group against racial discrimination and promote racial equality.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

2. In Para 7 of the 2013 Concluding Observations (CO), the Human Rights Committee (HRC) urged Hong Kong “to consider establishing a human rights institution, in accordance with ... the Paris Principles ... with a broad mandate covering all international human rights standards accepted by Hong Kong, China, and with competence to consider and act on individual complaints of human rights violations by public authorities and to enforce the Hong Kong Bill of Rights Ordinance (HKBORO).”

In view of the comments provided by the Hong Kong Special Administrative Region Government (HKSARG) in paras 8 and 9 of its 4th periodic report that the “existing mechanism of protecting human rights has worked well and that there is no need to establish another human rights institution to duplicate the functions of or supersede the existing mechanism”, please list the organizations/commissions (by article) under the existing institutional framework that safeguard the human rights guaranteed by the ICCPR and more specifically, what measures have been taken to ensure equality of protections against racial discrimination and equality in respect of the enjoyment of human rights by ethnic minorities .

3. In 2018, CERD in its CO expressed concerns that the Hong Kong Equal Opportunities Commission (EOC) was assigned a “C” rating by the Global Alliance of National Human Rights Institutions, and that it is not fully independent of the HK government nor accessible to victims of discrimination. Between 2017 and 2019, the EOC appointed a Review Panel to

¹ Source: 2016 Population By-census Thematic Report: Ethnic Minorities. Census and Statistics Department, HKSAR. December 2017. <https://www.statistics.gov.hk/pub/B11201002016XXXXB0100.pdf>

conduct a process review² to examine its governance and management structure and appointed a retired High Court Judge and Professor of Legal Practice at the University of Hong Kong as the consultant to conduct an independent review on the complaints-handling process. His independent report with 25 recommendations were included only as an appendix to the final Process Review Report.

The Process Review Report recommended that a victim-centric approach be adopted by the EOC. Could the HKSARG explain why some key victim-centric recommendations under the Independent Report were not implemented, and would be considered only if the overall investigation/legal assistance functions of the EOC have not improved? Has the EOC developed any key performance indicators to measure such improvement? How long will the EOC monitor improvement in performance before it decides to adopt the recommendations of the Independent Report?

Non-discrimination and racial equality (arts. 2, 3, 24, 25, 26 and 27)

RDO

4. The RDO, being the only anti-discrimination law in HK which exempts Government powers and functions from its purview on account of a lack of express provision that states such powers are covered (a feature of the other three anti-discrimination laws), is the weakest among the four anti-discrimination ordinances in Hong Kong. Paras 192 and 193 of the Government's 4th periodic report stated that Article 25 of the Basic Law guarantees the right to equality before the law and the HKBORO binds the Government and all public authorities. While this may be true in principle, the heavy legal costs of seeking judicial review of Government's actions using the HKBORO and/or the Basic Law deters individuals from filing a claim. Although legal aid is available for judicial review applications, questions have been raised about the independence of the Director of Legal Aid, who considers all such applications, including claims made in respect of the Government, given that he is a government appointee.

5. The exemptions in the RDO render EMs vulnerable when the exercise of Government powers and functions such as policing and correctional services result in a deprivation of their liberties and human rights. As evidence worldwide and in Hong Kong reflects, EM communities are particularly at risk of racial profiling, the use of force in law enforcement

² Report on Review of the Equal Opportunities Commission – Governance, Management Structure and Complaint Handling Process, December 2019.

https://www.eoc.org.hk/EOC/Upload/UserFiles/File/Process_Review/EOCs_Review_Report_E.pdf

and detention and the deprivation of their human rights during procedures of complaint, arrest, detention and imprisonment.

6. 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 subway station; they both called the police but Arjun was arrested and detained in the police station for hours while the Chinese lady was free to go. The court in 2016 held that the acts of the police in investigation and arrest did not amount to ‘services’ for the purpose of the RDO and policing is not bound by the RDO. Arjun’s case is the only case under the RDO since its implementation in 2009 that was taken to the courts.

7. In October 2016³, four rounds were fired by HKPF after two Nepalese attackers chasing two other Nepalese men with machetes ignored repeated warnings to stop. One of the attackers was in a critical condition after taking three bullets to the waist and hip, while the other was recovering from a gunshot wound on his arm. The HKPF claimed its two officers had followed principles on the use of force having regard to the prevailing circumstances of the time.

8. On 20 May 2020, a man of Indian ethnicity died after HKPF claimed to have used “appropriate force” to subdue him⁴. According to the Fire Services Department, the suspect was not breathing and did not have a pulse when paramedics arrived on the scene, directly contradicting the police’s statement that the suspect expressed that he did not feel well while being detained in the police vehicle, then sent to the hospital by an ambulance and died the following day in hospital.

³ <https://www.scmp.com/news/hong-kong/article/2024385/armed-police-fire-multiple-shots-attempting-break-fight-between-south>

⁴ <https://coconuts.co/hongkong/news/man-dies-24-hours-after-resisting-arrest-police/>

In the previous CO, the HRC recommended that Hong Kong introduce comprehensive anti-discrimination laws to impose obligations on the authorities to promote equality and to eradicate discrimination.

a. With reference to the information provided in paras 188 to 196 of the Government's 4th periodic report, please advise what concrete measures have been taken to ensure that all Government functions and powers are brought within the scope of the RDO as recommended in para 19 of the 2013 CO.

b. In 2018, the CERD in its CO recommended the HKSARG to amend its domestic laws to expressly prohibit both direct and indirect discrimination in all fields of public life, including law enforcement and other government powers. Please explain why the HKSARG has not amended the RDO as in this respect as a matter of immediate priority despite the joint communication sent by the two Special Rapporteurs (Note: Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on minority issues, 11 February 2020.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25045>).

c. Please provide the breakdown by requests for legal aid by EM for judicial review and by EM in general. How many requests were granted?

d. Please state the reasons for not giving statutory force to the "Administrative Guidelines on Promotion of Racial Equality" if the Government is committed to racial equality and considers racial equity in the formulation, implementation and review of all policies and measures?

e. Since it is not unlawful under the RDO for the Government to discriminate against a person on the ground of race in the performance of its functions or the exercise of its powers, what are the measures taken by the Hong Kong Police Force (HKPF) to ensure their practices are non-discriminatory towards EMs?

f. Please provide the number of complaints received by the Complaints against Police Office (CAPO) from the EM population and specifically, the number of complaints alleging racial discrimination. How did the Independent Police Complaints Commission (IPCC) resolve complaints of racism or complaints raised by individuals of EM background?

g. Please provide the number of complaints and requests/enquiries lodged by detained EM persons, received during detention facility visits by Justices of Peace (JPs), disaggregated by category of complaints and requests/enquiries, ethnicity, and gender.

Education

9. Children have a natural ability to learn and research establishes that children who learn a second language from an early age are capable of achieving native level fluency in both. In fact, the Education Bureau (EDB) encourages EM parents to send “their children to kindergartens with an immersed Chinese language environment as early as possible to facilitate their learning of the Chinese language”. However, both Hong Kong Unison in 2015⁵ and the EOC⁶ in 2018 found discriminatory and unwelcoming attitudes towards EM children during kindergarten application and admission processes – about 25% of mainstream kindergartens do not accept application of EM children and make the Chinese proficiency of the EM preschooler a criterion for their admission. Most kindergartens do not have formal support structures or measures to help EM children with Chinese in school. This seriously impedes the prospects for Chinese language development and progress of EMs in learning Chinese and hinders their participation within the community on an equal footing with other HK residents. The learning gap also bears significant implications for their prospects of entry into higher education institutions in Hong Kong, employment and profession or vocation, income levels and likelihood of leading a life of poverty.

- a. What mechanisms are in place to monitor kindergartens’ compliance with the EDB Admission Arrangement Guidelines and EDB Kindergarten Education Curriculum Guide?
- b. With regards to the information provided in paras 219 and 220 in the Government’s 4th periodic report, what measures are kindergartens taking or required to take to ensure EM children can progress smoothly to mainstream primary education and access quality education that facilitates their Chinese language acquisition to be able to perform to their full potential in a mainstream school?

10. Since 2014/15 school year, the EDB has implemented the “Chinese Language Curriculum Second Language Framework” in primary and secondary schools to help EM students overcome the difficulties in learning Chinese with a goal to bridge them over to mainstream Chinese classes. In 2018, the CERD CO recommended that the HK Government strengthen special measures to ensure equal access to, availability of and quality of primary and secondary education to all ethnic groups as well as ensure children of all ethnicities enjoy their right to inclusive and Chinese-language education (para 24). To date, however, the

⁵ Research on Kindergarten Support and Attitude towards Ethnic Minority Students in Hong Kong. Hong Kong Unison Limited, May 2015.

http://www.unison.org.hk/DocumentDownload/Researches/R201505%20Research%20on%20KG%20support%20and%20attitude_ENG.pdf

⁶ Kindergarten Admission Policies and Attitudes towards non-Chinese Applicants, Equal Opportunities Commission, 14 March 2018. <https://www.eoc.org.hk/eoc/upload/ResearchReport/201843152327916041.pdf>

Chinese proficiency of at least 60% of secondary EM graduates remains at primary two mainstream Chinese level⁷ (because they did not have progressive learning in Chinese), which is far from being adequate for them to participate meaningfully in a society in which more than 90% of the population speak Chinese. The systemic racial discrimination in the education system has led to consistently poor outcomes for EMs. Having lower Chinese language proficiency is one of the factors that has hindered civic and political participation and enjoyment of a range of human rights among EM communities.

- a. With regard to paragraphs 212 to 220 of the Government's 4th periodic report, please clarify what progress has been made to ensure adequate opportunities for racial minority children to learn the Chinese language.
- b. Since the implementation of the "Chinese Language Curriculum Second Language Learning Framework" in primary and secondary schools in 2014/15 school year (para 214), how many non-Chinese speaking students have bridged over to and remained in mainstream Chinese language class?

Xenophobia and online racist hate speech

11. In 2018, the CERD was concerned by reports from Hong Kong of negative portrayals and hostile statements in traditional and social media targeting ethnic minorities, in particular South Asians. Despite inflammatory public statements against them which continued during the anti-Extradition Law Amendment Bill (ELAB) movement in late 2019 and the outbreak of COVID-19 in early 2020, the EOC has not taken any proactive actions other than issuing press statements or op-eds to investigate or address nor bring a legal claim against relevant parties or the social media platforms. In fact, complaints filed by Unison's stakeholders who lodged formal complaints of racial vilification under the RDO, identifying racist hate speech on social media were concluded without any prosecutions or further action because the EOC could not identify the perpetrators and lacked the power to compel social media entities to disclose such data, especially since the headquarters of the social media company is outside of Hong Kong's jurisdiction.

⁷ Deduced from the number of EM students sitting for DSE Chinese exam and other alternative Chinese qualification exams e.g. GCSE and iGCSE.

In 2018, the CERD at its CO requested that Hong Kong provide in its next periodic report statistics or administrative records, disaggregated by ethnic origin and national origin of the victims, on investigations, prosecutions, convictions, sentences, sanctions and remedies for racist hate crimes. Please provide information on the progress since September 2018 and share the existing, relevant data pertaining to such crimes and action taken in respect thereof with the Committee.

Equal rights of men and women

12. The EOC pointed out in February 2014⁸ that EM women are generally considered as one of the most vulnerable groups in Hong Kong due to cultural and language barriers. One study mentioned EM women are particularly vulnerable to subjugation by their male counterparts in the family and clear inequality between men and women is apparent. Women and girls are almost always valued less than men and boys and this view appears rife even in EM communities where the women are more educated than their male counterparts⁹.

- a. What measures has the Government undertaken and implemented to empower ethnic minority women to participate in public life in HK more widely?
- b. Please advise the services and programs that are designed specifically to promote gender equality among EM communities.

Access to information in public election

13. Although the Registration and Electoral Office (REO) appeals to EM electors to vote and provides key information on voter registration and election-related matters such as voting procedures in key EM languages, a 2017 study¹⁰ found voter registration rates among EMs was far lower than the overall voter registration rate in Hong Kong because they were not familiar with the political and election systems due to their low Chinese proficiency. The study also found that only 50% of election candidates have information in English on their platforms and not all candidates include bilingual introductions on the Government's official election website.

⁸ Submissions from the EOC for the 3rd Report of the HKSAR under ICESCR, 17 February 2014.

<https://www.legco.gov.hk/yr13-14/english/panels/ca/papers/ca0217cb2-850-8-e.pdf>

⁹ Status of Ethnic Minorities in Hong Kong 1997-2014. Pujia Kapai, University of Hong Kong, 2015.

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HKG/INT_CERD_NGO_CHN_31912_E.pdf

¹⁰ A Study on Ethnic Minority's Most Concerned Issues and Voting Behaviour, Hong Kong Council of Social Service, Hong Kong Christian Service, September 2017.

http://101.78.134.197/uploadFileMgmt/0_2017106155129.pdf

What measures have been implemented to ensure ethnic minorities' access to relevant election information including information on candidates' platform or their right to participate in or stand for election to public office?

Access to public sector employment

14. Para 221 of the Government's 4th period report states that "race is not a relevant consideration in the assessment for recruitment or promotion of civil servants". However, in 2018, the CERD in its CO stated that they were concerned that most of the 51 employment-related racial discrimination complaints handled by the EOC were discontinued due to a lack of substance.

In 2018, the CERD CO requested Hong Kong to provide in their next periodic report ethnically-disaggregated statistics on political and civil service employment, including at managerial levels, and including in the judiciary, police force, and prosecutor's office. Please advise the progress of this data gathering exercise since September 2018 and share the data requested with the Committee.

Violence against women (arts. 2, 3, 6, 7, 26 and 27)

15. Various empirical studies have found that women and girls of South Asian ethnic groups in Hong Kong were exposed to a higher risk of gender-based violence (GBV) when compared with Chinese women and girls¹¹ and they often do not receive equal protection because of perceptions of discrimination, lack of culturally appropriate strategies and forms of assistance from frontline responders, ignorance of laws pertaining to equality and non-discrimination¹² and a fundamental lack of access to relevant resources and networks. These are structural issues which impact the prospects for equal protection against GBV among EM women. However, the studies also reveal that there are cultural, religious and other personal factors which exacerbate the vulnerabilities of this group of victims.¹³

¹¹ Understanding Gender-based Violence of Girls of South Asian Ethnic Groups in Hong Kong. Survey Report. January 2018, RainLily Hong Kong.
<https://static1.squarespace.com/static/5c1315a22487fdee2f0aefc2/t/5c5461dd53450ac7f10e1a97/1549033980785/%5BCO%5D+Understanding+GBV+of+Girls+of+South+Asian+Ethnic+Groups+in+HK.pdf>

¹² Delivering on the Promise of Equal Protection under the Law: Understanding the Experiences and Help-seeking Behaviours of Ethnic Minority and Immigrant Victims of Domestic Violence in Hong Kong and the United Kingdom. Puja Kapai, University of Hong Kong, October 2015.
http://www.law.hku.hk/ccpl/wp-content/uploads/2018/03/ws_dv20151006cb2-2184-1-e.pdf

¹³ *Ibid.*

16. At the Legislative Council Subcommittee on Strategy and Measures to Tackle Domestic Violence and Sexual Violence on 6th October 2015, (i) Social Work Department (SWD) and HKPF were requested to review their respective procedural guidelines for handling cases of domestic violence involving EMs, particularly the provision of interpretation and translation services to meet their specific needs and circumstances; (ii) SWD, Home Affairs Department, HKPF, and Hospital Authority were requested to maintain statistics on the utilization of translation and interpretation services especially by EM victims of domestic violence and sexual violence; (iii) HKPF requested to provide the statistics relating to training for police officers on handling cases involving EMs, such as the number of training programs, number of participants, course subjects, etc. and (iv) the HKSARG was requested to consider providing dedicated refuge centers for needy EM victims of domestic violence and sexual violence.

The Government is advised to provide detailed updates of the above-mentioned follow-up actions in para (9) since October 2015 and indicate all measures taken to implement the recommendations and provide the data available.

Freedom of religion (art. 18)

17. HKPF deployed the specialised crowd management vehicle (commonly known as “water cannon vehicle”) on 20th October and sprayed blue chemical dye along a major intersection in a district with some of HK’s largest EM community groups, at the junction of which the Kowloon Mosque, HK’s largest mosque sits. The chemical dye was sprayed across the front steps and gates of the Mosque although there were no protesters nor large crowds gathered or any unrest at the time.¹⁴

Please explain why the Kowloon Mosque, a sacred place of worship for the Muslims, was the target of attack of the HKPF on 20th October 2019 despite the visible absence of any rioters or crowds in front of the Mosque. Please advise what measures are being taken to enhance police training to avoid reckless, gratuitous or excessive use of force in the dispensation of its crowd control weaponry and sensitivity to religious sentiment in ensuring that venerable places of workshop are not subjected to direct or collateral attacks or intrusion.

¹⁴ (a) LQC4: Specialised crowd management vehicles, 27th November 2019.

<https://www.info.gov.hk/gia/general/201911/27/P2019112700442.htm>;

(b) Video: Water cannon truck was deployed to protect Kowloon mosque, Hong Kong police claim, Hong Kong Free Press, 21st October 2019.

<https://hongkongfp.com/2019/10/21/video-water-cannon-truck-deployed-protect-kowloon-mosque-hong-kong-police-claim/>

The right to marriage (art. 14 and 23)

18. Under Section 2 of Cap. 179 Matrimonial Causes Ordinance, a monogamous marriage that takes place outside of Hong Kong is interpreted as a marriage which was “celebrated or contracted in accordance with the law in force at the time and in the place where the marriage was performed and recognized by such law as involving the voluntary union for life of one man and one woman to the exclusion of all others”. This means marriage of couples who were married in places where polygamy is allowed would not be interpreted as monogamous marriages under the law as if they were part of a polygamous marriage, although they practice a monogamous marriage in Hong Kong and made an affidavit of their marital status in HK to such an effect. This poses serious issues, particularly for Islamic ethnic minorities of Hong Kong who were married in jurisdictions where polygamy is allowed, such as Pakistan, Malaysia, Indonesia etc. when they apply for divorce or legal aid on divorce proceedings. More specifically, the lack of recognition often exacerbates vulnerabilities of women and children in these arrangements.

- a. Please explain why the interpretation of marriage if celebrated outside of Hong Kong is different in Cap. 182 Married Persons Status Ordinance and Cap. 179 Matrimonial Causes Ordinance. How can the differential treatment of overseas marriages be justified between the two ordinances, particularly where they have a racial and gendered impact on the human rights of ethnic minorities, especially women and children?
- b. Please comment on the support measures for ethnic minority victims of domestic and sexual violence, whose marriages are not considered monogamous under Cap. 179 but urgently needing divorce and support from the Legal Aid?