



Hong Kong Unison Limited
香港融樂會有限公司

Hong Kong Unison's Submissions
on the Second Report of Hong Kong SAR
on the International Covenant on Economic, Social and Cultural
Rights (Part Two) for the Pre-sessional Hearing in May 2013

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FOREWORD

Ethnic minorities constitute 6.38% of the Hong Kong population according to the 2011 census. Among them, South East Asians and South Asians constitute about 4.8% of the Hong Kong population. Many of them, especially Indians, Pakistanis and Nepalese, are at least second generation immigrants in Hong Kong with their parents and grandparents having been sent to Hong Kong by the British government during the colonial days. Their history in Hong Kong dates from the 19th century and is at least as long as that of many Chinese families which migrated from mainland China during the two World Wars.

Despite this, the acceptance of the Chinese community towards Asians and South East Asians is weak. According to a study carried out by the Government in 2009, 42% of the Chinese population aged 15 and above do not accept their children studying in a prestigious school with the majority of Indians, Pakistanis, Bangladeshis or Nepalese, while the figure is 10.3% for a prestigious school with the majority of Caucasians.

Hong Kong Unison was established in 2001 and became a charitable organization in 2005. We receive no government funding. We fight for equal opportunities for ethnic minority residents of Hong Kong, particularly South Asians and South East Asians. Our primary concern is education, especially Chinese language education for ethnic minorities. The poor education policy explained in the following section has left many ethnic minority youths unable to fulfil their dreams or actualize their potentials.

1. ARTICLES 13 & 14



1.1 Education for non-Chinese speaking students (Corresponding to paragraphs 13.40-13.57 of the Government’s report)

Current situation-the importance of Chinese in Hong Kong

1.1.1 As pointed out in paragraph 13.13 of the Government’s report, both Chinese and English are persistently essential in Hong Kong. After the handover in 1997, Hong Kong has implemented a “mother-tongue teaching policy” and more than 300 secondary schools switched from using English to Chinese as the medium of instruction¹.

However, the absence of a coherent Chinese Language education policy for ethnic minorities has left many of them unable to write and read Chinese well enough for participating meaningfully in Hong Kong society.

Current policy and problems

1.1.2 There is no policy to structurally cater for the fact that Chinese is not the mother tongue of ethnic minority children in kindergartens. The kindergarten curricula are not subject-based and there is no effective monitoring of the Chinese learning of ethnic minority children. As a result, the Chinese language foundation of ethnic minority children is not well-laid. Ethnic minority parents

¹ See page 143 of the Report on Review of Medium of Instruction for Secondary Schools and Secondary School Places Allocation published by the Education Commission in December 2005, retrieved at http://www.edb.gov.hk/attachment/en/edu-system/primary-secondary/applicable-to-secondary/moi/support-and-resources-for-moi-policy/policy-support-measures/moi&sspa_report_eng.pdf.



do not have the real choice of sending their children to mainstream primary schools, which is explained in the following paragraph.

1.1.3 Ethnic minority students only have two choices, namely mainstream and designated schools². Currently, 30 primary and secondary schools are “designated”. Designated schools teach ethnic minority students Chinese which is of a level too low for them to enjoy equal opportunities in further study and employment; for example they teach secondary six students primary-two level Chinese. On the other hand, mainstream schools assume all students are native Chinese speakers and accordingly put in place a curriculum and assessment unsuitable for ethnic minority students. Both extremes fail to adequately build up the Chinese capacity of ethnic minority students. International schools are way too expensive for ethnic minority students who are often from the working class.

1.1.4 Moreover, ethnic minority students in designated primary schools cannot manage studies at good mainstream secondary schools because the gap in Chinese level is too big. Those in mainstream primary schools cannot get into good mainstream secondary schools either. This is because the secondary school allocation system depends on their grades in schools and their Chinese grades are often very poor.

² Instead of “designated schools”, the Education Bureau now calls these schools “schools provided with recurrent funding by the Bureau to enhance school-based support in servicing the needs of non-Chinese speaking students” in some of its documents, seemingly to avoid criticism and possible lawsuits against the related de facto racial segregation.



1.1.5 The outcome is that although many ethnic minority residents are at least second generation immigrants, many of them do not have adequate Chinese writing and reading skills. Also, according to the Report on the Working Group on Education for Ethnic Minorities of the Equal Opportunities Commission in 2011, ethnic minorities account for 0.59% of the student population at the post-secondary level³. This is not commensurate with their proportion in the corresponding age group, namely 2.19% according to the census in 2011. As most jobs for degree holders require Chinese proficiency, the employment opportunities even for those ethnic minority residents managing to graduate from universities are therefore limited. In-work and inter-generational poverty persists. They continue to be socially marginalized from mainstream society.

1.1.6 Permanent Secretary for Constitutional and Mainland Affairs, Ms Chang King-yiu, also admitted that much more needs to be done on the Chinese language education for ethnic minorities during the hearing on Hong Kong SAR in the 107th session of the United Nations Human Rights Committee. We hope the Government will take this promise serious. Our impression is that they have shown little commitment or sincerity throughout the years of our campaign. Most of the measures mentioned in the latest Policy Address are what the Government has been doing and proved to be ineffective.

Our demand

1.1.7 The Equal Opportunities Commission has also urged the government to address this issue, for example by reconsidering the case of an alternative

³ <http://www.eoc.org.hk/eoc/Upload/UserFiles/File/EducationReportE.pdf>.



curriculum for non-Chinese speaking students⁴. **Hong Kong Unison urges the Government to implement a “Chinese as a Second Language” curriculum as soon as possible.** This is also in line with the recommendation by the Concluding Observations of Committee on the elimination of Racial Discrimination on Mongolia for the 69th session in 2009 that Kazakh children should be provided with adequate opportunities to learn Mongolian as a second language.

1.1.8 Hong Kong Unison’s advocacy for a “Chinese as a Second Language” curriculum is *not* based on the view that minority languages in Hong Kong should not be protected. The most pressing challenge ethnic minorities face in Hong Kong is that they do not have sufficient Chinese skills to access information and services as well as to enjoy equal opportunities in a range of public and private spheres.

The Government’s arguments

1.1.9 The Government argues that an alternative curriculum will preset lower standards for ethnic minority students. This shows a sheer lack of understanding on the Government’s part of the objects and ends of a “Chinese as a Second Language” curriculum. As with the “English as a Second Language” curriculum

⁴ In its report in March 2011, the Working Group on Education for Ethnic Minorities of the Equal Opportunities Commission recognizes that it is unfair to impose the same Chinese language proficiency requirement on ethnic minorities without adequate and appropriate support. It therefore recommends a Chinese Proficiency Programme and Testing System with curriculum taught in stages, graded assessment and accreditation. It also recommends the government to carefully review the policy of designated schools. The report can be retrieved at <http://www.eoc.org.hk/eoc/Upload/UserFiles/File/EducationReportE.pdf>.



common in English-speaking countries, a “Chinese as a Second Language”, aims at enabling non-native speakers to learn with native speakers ultimately with suitable curriculum and pedagogy.

1.1.10 The supplementary guide mentioned in paragraphs 13.44 and 13.45 of the Government’s report is in fact a general outline on teaching non-Chinese speaking students. It is not concrete enough for teachers who adapt their curricula for ethnic minority students. Moreover, laying the responsibility on schools is ineffective as schools and teachers may not have the expertise, time and resources to design a new set of materials for ethnic minority students. Furthermore, schools do not have the capacity to develop a recognized assessment mechanism for ethnic minority students.

1.1.11 In paragraph 13.46 of the report, it is stated that teachers in primary schools can participate in professional development programmes. However, these programmes are short-term and exclude kindergarten teachers. **We urge the Government to subsidize systematic post-graduate training programmes for teachers in teaching Chinese as a second language.**

1.1.12 In paragraphs 13.50 and 13.51 of the report, the Government mentions that ethnic minority students may take the GCSE (Chinese) Examination of the United Kingdom in Hong Kong and the results may be considered for further studies. However, the GCSE (Chinese) Examination is an examination for students learning Chinese as a foreign language rather than a second language. Also, the content is based on the British context and the level is too low. **A student attaining an A in GCSE (Chinese) who became a delivery assistant was even asked to resign because he could not read the list of goods in**



Chinese. Moreover, the GCSE (Chinese) Examination will be scrapped in 2017. The Government now subsidizes the GCE (Chinese) Examination fees for ethnic minority students. The GCE (Chinese) level is higher than that of the GCSE (Chinese). Still, such a foreign solution does not effectively address local issues. Also, the examination is designed for students learning Chinese as a foreign language rather than an additional language. **Hong Kong should develop its own Chinese language proficiency assessment mechanism for students learning Chinese as a second language and not rely on foreign solutions as these are unhelpful as a marker of competence of Chinese skills required in the local job market.**

1.1.13 The Government mentions several remedial programmes in paragraphs 13.47 to 13.49 of the Government's report, namely the Chinese Language Learning Support Centre, Summer Bridging Programme and after-school tutorial classes. It has been proven that these remedial programmes cannot address structural problems within the education system. Also, the Summer Bridging Programme and after-school tutorial classes only play a remedial role and can only serve a small number of schools and students. The majority of ethnic minority students receive no or very little support from the government. This 'swim or sink' policy has impacted on the motivation and self-esteem of ethnic minority students.

1.1.14 Lastly, measures taken by the Government are piecemeal and cannot solve the problems within the education system in the long run. **We urge the Government to better utilize the resources and implement a "Chinese as a Second Language" policy to address the issue on a fundamental and systematic level.**



1.2 De facto racial segregation across schools

According to Government's data, more than 60% of ethnic minority students study at designated schools in the year 2011-2012. At many of these designated schools, ethnic minority students constitute the majority of the student population. This de facto segregation itself amounts to racial discrimination, potentially violating the RDO, and the absence of a Chinese-speaking environment in these schools hampers the Chinese learning of their students. Moreover, some of these designated schools are of very poor quality in areas like curriculum design. There are suggestions that, without ethnic minority students, their student population may be too small for them to sustain. The Government claims that parents choose to place their children in designated schools. However, in truth, there is no real choice for parents as their children risk failing in Chinese Language and having limited further study opportunities if sent to mainstream schools as explained above. Also, the Government has a duty to interfere as the best interests of the children should be the primary consideration according to treaties such as the Convention on the Rights of the Child. **Hong Kong Unison urges the Committee to show concern over the absence of real school choice for ethnic minority students and the resulting segregation.**

1.3 Ethnic minority students with special educational needs (SEN)

1.3.1 There are complaints that ethnic minority students with different special educational needs are often ignored by schools or different professional sectors.



1.3.2 Firstly, there are complaints that some teachers and school social workers in good faith cannot tell whether the poor performance of these students is attributed to the language barrier or learning disabilities.

1.3.3 Secondly, as observed by Unison, the assessment is conducted in Chinese or English. As far as some ethnic minority parents understand, it is extremely difficult to have translation or interpretation services for the test. Some ethnic minority parents were not given the report on their children's performance either. In some cases, it was only until Hong Kong Unison intervened did the students manage to have the test in minority languages or the reports. Timely identification of special education needs was delayed and Unison cannot get in touch with all parents with such needs. Moreover, there are complaints that the content of the assessment does not cater for the cultural difference of ethnic minority students. As a result, ethnic minority students with special educational needs cannot always be accurately assessed or identified, with timely intervention and support sometimes delayed or totally withheld.

1.3.4 Thirdly, as ethnic minorities are marginalized in society, some parents of ethnic minority students with disabilities do not have access to most information on government policies supporting their children.

1.3.5 We urge the Government to include how to support ethnic minority students with special educational needs in the professional training for teachers. The learning disabilities test should be available in minority



languages. Moreover, the Government should reach out to ethnic minority parents to identify ethnic minority children with learning disabilities.

1.4 Adult education for ethnic minorities

Adult education for ethnic minorities is inadequate. As mentioned in section 1.1 above, the Chinese language education policy for ethnic minorities is highly problematic. As a result, many ethnic minority adults cannot read Chinese effectively. The Chinese ability of new ethnic minority immigrants who are too old to be eligible for compulsory education is generally very weak as well. However, many adult education programmes, for example some of those run by the Hong Kong College of Technology (HKCT), are available only in Chinese. Even the website of the adult education centre of the HKCT itself is only available in Chinese too. **We urge the Government to implement a systematic language enhancement programme for ethnic minority adults. The Government should also ensure there is a sufficient number of adult education programmes available in English.**

1.5 Civic and human rights education (Corresponding to paragraphs 13.40-13.57 of the Government's report)

1.5.1 Many ethnic minority residents are not conversant with human rights mechanisms and have a weak awareness of their basic human rights and their entitlements as a Hong Kong citizen. As they are marginalized from the mainstream population, they lack access to information about government obligations and services. Also, education on human rights mechanisms and international human rights principles is minimal in pre-tertiary education and



very few ethnic minority students manage to get into university due to the poor education policy, which is again explained in section 1.1 above.

1.5.2 We urge the Government to strengthen its human rights education for ethnic minorities. Such human rights education should include the various human rights mechanisms, such as the EOC, local equal opportunities legislation and international conventions.

2. ARTICLE 2

2.1 Legislation against racial discrimination (Corresponding to paragraphs 2.1-2.10 of the Government's report)

2.1.1 Unlike the other three pieces of equal opportunities legislation, there is no provision in the Race Discrimination Ordinance (RDO) which states that discrimination by the government in its performance of functions and exercise of powers is unlawful. While the Government is prohibited from practicing racially discriminatory acts in the exercise of its functions under the Basic Law and the Bill of Rights Ordinance, the Equal Opportunities Commission has no power to deal with complaints under the Basic Law and the Bill of Rights Ordinance. This means that people racially discriminated against by the Government in its exercise of powers and performance of functions may not be able to seek redress through conciliation or litigation initiated and funded by the Equal Opportunities Commission. The remedies and time bar of judicial review and the RDO are also different.



2.1.2 The RDO excludes and in effect wrongfully legalizes discrimination on the grounds of nationality and language. Banks which have repeatedly refused to open accounts for ethnic minorities can easily argue that they do so on the basis of nationality. Moreover, racially discriminatory provision of goods and services including education may not be caught if the discriminator argues that the discrimination is based on language. It is very difficult for complainants to gather evidence that the discrimination is based on race rather than nationality or language.

2.1.3 Some may argue that defining “race discrimination” to be any discrimination based on race, colour, descent, or national or ethnic origin but not nationality or language is in line with the International Convention on the Elimination of All Forms of Racial Discrimination. However, such an argument is unfounded. According to the General Comments of the Committee on the Elimination of Racial Discrimination in 2004, international treaties should be taken holistically and ICERD should not be interpreted to detract from the protection of rights enshrined in other treaties⁵.

⁵ Paragraphs 1 and 2 of the General Comments No. 30 of CERD in 2004 read “Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2 provides for the possibility of differentiating between citizens and non-citizens. Article 1, paragraph 3 declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality;

Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on



2.1.4 Moreover, for indirect discrimination, the RDO only applies to discriminatory requirements and conditions. This is modeled on the United Kingdom legislation, but the United Kingdom Equality Act 2010 now covers indirectly discriminatory provisions, criteria or practices, which can be both formal and informal.

2.1.5 The government introduced the Administrative Guidelines on Promotion of Racial Equality. However, the set of guidelines is non-statutory and do not apply to all government departments.

2.1.6 Furthermore, the Government is very reluctant to introduce amendments to the equal opportunities legislation. Recently, the EOC has invited an overseas expert to have a complete review of the four pieces of equal opportunities legislation. **We urge the Government to take the review seriously and have an overhaul of the equal opportunities legislation to remedy the existing defects in the law.**

2.2 Equal Opportunities Commission (Corresponding to paragraphs 2.54-2.57 of the Government's report)

2.2.1 The Equal Opportunities Commission (EOC) has adopted a very passive role. Firstly, in handling complaints, it only acts as a messenger between the

Civil and Political Rights.”



parties to conciliation and turns a blind eye to the imbalance of power between the complainants and the respondents. Secondly, in public education, it seldom explains to the public broad equal opportunities principles, especially in aspects where there is no equal opportunities legislation. Thirdly, it seldom exercises its statutory power of advocacy or stand against the government when human rights so require. For example, even though the education policy clearly limits the opportunities of ethnic minorities, it refuses to exercise its power to conduct a formal investigation despite long calls by NGOs. The research it carries out is also very inadequate in addressing the various discriminatory policies or practices in Hong Kong. **Hong Kong Unison urges the Equal Opportunities Commission to take a more proactive role. The EOC should also formulate a concrete action plan on educating ethnic minorities on human rights principles and implementation and empowering women and building their capacity.**

2.2.2 The current Chairman of the Commission, whose term will end on 31 March 2013, also serves as the Convenor of the Executive Council, an organ which assists the Chief Executive in policy-making. Such a dual appointment has greatly weakened the independence of the Commission. A new Chairperson has been appointed and his commitment to human rights principles is yet to be shown. Among the six members of the Selection Board for the Chairperson whose term will start on 1 April 2013, the Chairperson is a former member of the Executive Council, two members are current members of the Executive Council and two members are directors of Government bureau. **Hong Kong**



Unison urges the Government to ensure that the appointment procedures of future Chairpersons of the EOC will be in line with the Paris Principles. For example, the Selection Board should be independent and there should be no revolving door practice.

2.3 A comprehensive race policy

2.3.1 Hong Kong is well-developed in the economic and legal sense, but a public outlook on human rights and racial harmony is only starting to grow. In particular, the Government has in the past decades been complacent about leaving ethnic minorities invisible in the political and social scene.

2.3.2 The lack of a comprehensive racial policy and existing discriminatory policies such as that of Chinese education mentioned above make ethnic minorities feel abandoned and excluded by mainstream society. The resentment will easily escalate into social conflicts. Moreover, there is very little guidance for public and private bodies to deal with racial or religious conflicts both in accordance with the Race Discrimination Ordinance, the Sex Discrimination Ordinance and the broader human rights principle.

2.3.3 Hong Kong Unison urges the Government to devise a comprehensive racial policy on the basis of equal opportunities for all genders and races.

2.4 Ethnicity data

2.4.1 For the 2011 census, despite calls by NGOs, the Government refuses to set a specific target for employing field officers of South Asian or South East Asian ethnicity. As a result, most census field officers could not converse with



interviewees who could only speak minority languages well. The Government has provided training to field officers on handling households of ethnic minorities and field officers have prompt cards in 11 minority languages to remind ethnic minorities to request interpretation services. However, some ethnic minority residents who cannot speak Chinese or English can only speak but not read minority languages. Moreover, some ethnic minority women do not feel comfortable speaking with male field officers. Also, in terms of the outcome, most ethnic minority families in contact with Hong Kong Unison did not receive interview invitations, while most Chinese families seem to have been interviewed. In fact, the census findings are doubted by NGOs and the ethnic minority communities as the numbers are far lower than expected from the everyday contact with ethnic minority people.

2.4.2 Also, there has recently been a fabrication scandal of the Statistics Department regarding its collection of data outside of the census. There were reports that some field officers of the department may have fabricated data that the visited flats are unoccupied so as to maximize their recorded efficiency for the sake of appraisal. This raise doubts on the estimated population size of ethnic minorities and the related data. The department conducted an investigation after the scandal and found that, in respect of one question, about 11% of the answers were inconsistent. The accuracy of the investigation report is also in doubt because the department itself conducted the investigation.

2.4.3 As such, the accuracy of ethnicity data provided by the Government is doubted.



2.4.4 Moreover, the Government is reluctant to collect and release ethnicity data. For instance, there are no data on the banding of the students, the number of ethnic minority students in each school and their drop-out rate, unemployment rate, etc. Scholars and NGOs are in the dark as to whether the Government has collected certain data and can only ask for the data through the Legislative Council. This violates the principle stated in the United Nations Human Rights Council report by Gay McDougall (A/HRC/10/11/Add.1) that accurate qualitative and quantitative data disaggregated by race are necessary for assessing education and anti-discrimination policies. Government policies based on this underestimation of the ethnic minority population size are very likely to be ineffective.

2.4.5 The devising of ethnic minority policies is probably jeopardized by the above-mentioned problems in data collection. Politically, this may serve as an excuse for the Government, which seems to have adopted a “no data, no problem” approach to do less than what has to be done. Moreover, this makes it impossible for the public to monitor whether policies truly advance the economic and social rights of ethnic minorities.

2.4.6 Hong Kong Unison urges the Government to employ enough interpreters when collecting data to ensure the accuracy of the data. It should also strengthen its training to both full-time and part-time officers responsible for data collection to enhance their cultural sensitivity and ensure they try their best to interview all ethnic minority families designated. Also, monitoring of frontline officers has to be significantly enhanced.



2.4.7 Furthermore, the Government should set up a database about ethnic minorities. The database should include all data required for the devising of effective policies and be readily available to scholars, NGOs and the general public.

3. ARTICLE 10

3.1 Poor services given by some social workers

The Government has adopted an integrated approach for social welfare services for families, children and youths. With this approach, there are complaints that some social workers handle problems of all groups in the same way and that they may neglect issues unique to each group. There are complaints that some social workers lack the cultural sensitivity, basic knowledge and skills necessary for serving ethnic minorities. **The Government should provide social workers with pre-employment and on-the-job training on serving different racial groups and set up guidelines to ensure all races are served equally competently.**

4. ARTICLE 6

4.1 Under-representation of ethnic minorities in advisory and statutory bodies (ASBs)

Among the 460 ASBs in Hong Kong, only a handful have appointed ethnic minorities to serve on them. Also, some of these few members of ASBs appear to lack the relevant background and understanding on the subject. This leads to the concern that they may be purely decorative and only serve as convenient excuses for the Government to claim that they have appointed ethnic minority members. **Hong Kong Unison urges the Government to ensure ethnic**



minorities are adequately represented in public bodies to ensure various policies cater for the need of ethnic minorities.

4.2 Limited access to public service

4.2.1 Before the handover in 1997, only English but not Chinese proficiency was required of a number of civil service posts and the relevant civil servant could effectively discharge their duties. However, after the handover, proficiency in both Chinese and English is required of all local civil servants, regardless of their specific duties. As mentioned in paragraphs 13.50 and 13.51 of the Government's report, the GCSE (Chinese) Examination results may be considered for appointment to civil service posts. However, departments have the discretion on this matter and ethnic minority applicants often cannot pass individual departments' internal Chinese language tests. The public is left in the dark as to whether the departments have carefully reviewed the genuine Chinese levels required of the posts. The Government also refuses to provide the number of ethnic minority applicants employed with a GCSE (Chinese) result. This problem hinges on the failure of the Chinese language education policy to build up the Chinese reading and writing capacity of ethnic minorities. As a result, ethnic minorities' access to the public service is seriously limited. Furthermore, the lack of ethnic minority nurses, firemen, immigration officer, postmen etc adds to the invisibility of ethnic minorities in the social arena.

4.2.2 To ensure equal access to the public service, **Hong Kong Unison urges the Government to review the Chinese reading and writing capabilities are genuine occupational requirement to each civil service post**, especially in light of the poor Chinese language education for ethnic minorities.