

Race and Equality: A Study of Ethnic Minorities in Hong Kong's Education System

**A research project by
the Centre for Comparative and Public Law and
Unison Hong Kong - for Ethnic Equality**

**Project Report and Analysis by
Kelley Loper**

**Centre for Comparative and Public Law
Faculty of Law
The University of Hong Kong**

Occasional Paper No. 12

February 2004



Centre for Comparative and Public Law
Faculty of Law
The University of Hong Kong

The Centre for Comparative and Public Law was established in 1995 within the Faculty of Law of The University of Hong Kong. The purposes of the Centre are to promote research and other activities in the field of public and comparative law. The Centre has organised many seminars relating to international law and human rights in Hong Kong, and has active research projects covering such topics as the implementation of international human rights standards in Hong Kong law and practice; equality and the law; trafficking of women into Hong Kong; and comparative sexual harassment law.

The Director of the Centre is Associate Professor Carole Petersen; the Deputy Directors are Associate Professor Donald Lewis and Associate Professor Simon Young. The Assistant Research Officer is Lison Harris; and the Executive Secretary is Flora Leung.

This Occasional Paper was written by Ms. Kelley Loper, B.A. (Yale), LL.M. in Human Rights (The University of Hong Kong), recipient of the Anna Wu Prize for Human Rights, and former research officer of the Centre.

Further information about the Centre and other occasional papers published by the Centre are available on the Centre's website: <http://www.hku.hk/ccpl/>.

Published by

Centre for Comparative and Public Law
Faculty of Law
The University of Hong Kong
Pokfulam Road
HONG KONG
Tel: (852) 2859 2941
Fax: (852) 2549 8495
Email: fkleung@hku.hk

©2004 Centre for Comparative and Public Law

The contents of this paper may be freely reproduced, provided that acknowledgement is made of the original source.

**A research project by the Centre for Comparative and Public Law¹
at the University of Hong Kong and
Unison Hong Kong - for Ethnic Equality²**

I. Introduction

Cases of possible unequal treatment of ethnic minority students of south and southeast Asian national origin in the Hong Kong education system have been reported by the press and recounted by non-governmental organizations (NGOs) and social workers in recent years. This issue has become increasingly salient due to changing demographics in Hong Kong and new educational policies that have affected many of these ethnic minority groups disproportionately. Although racial discrimination reportedly exists in many areas of life in Hong Kong, this project focuses on possible discrimination in the education system since equal access to education is fundamental for achieving equal opportunity in many other critical areas including employment. In order to better understand the obstacles some ethnic minority pupils may face when interacting with the Hong Kong education system, a number of interviews were conducted with students and parents from ethnic minority communities in Hong Kong³, teachers, education officials, and social workers.

This report analyzes the key education-related issues raised in these interviews as well as available studies on the needs of ethnic minority communities, press reports, government reports and education policies, in light of Hong Kong's international human rights obligations and developments in local and comparative equal opportunities law. Section II provides a general background of education

¹ The Centre for Comparative and Public Law was established within the Faculty of Law of the University of Hong Kong in mid-1995. Its goals are to promote research in the fields of public and comparative law, and to disseminate the results of that research through publications and making materials available on-line. The Centre houses research projects such as the international law implications of the resumption of Chinese sovereignty in 1997, including the Hong Kong treaty project, immigration law and practice, equality and the law in Hong Kong, the Hong Kong Bill of Rights, human rights protection under the Basic Law and international human rights law.

² Unison Hong Kong was established in March 2001 as a non-government-subsidized, non-profit-making, registered organization. It includes school principals, social workers, artists and others who are concerned with Hong Kong's ethnic-minority residents. Apart from providing relevant social services advocacy work, its aims include enhancing the public's knowledge of Hong Kong's ethnic minorities, spreading the notion of ethnic equality, and promoting cultural understanding, acceptance and appreciation.

policies affecting ethnic minority groups. Section III discusses the project's methodology and summarizes the interviews. Section IV reviews relevant human rights standards applicable to Hong Kong and recent developments involving equal opportunities law in Europe and the UK, arguing that certain education policies discussed in section II could constitute direct or indirect racial discrimination. Section IV concludes by suggesting several points on the content of a future equal opportunities bill prohibiting racial discrimination⁴ as well as the development of equal opportunities law in the SAR generally.

The project clearly points to the need for larger qualitative and quantitative research on the needs of ethnic minority students in Hong Kong in order to better inform policy and law makers going forward. The authors of an article on education policies affecting mainland Chinese immigrants in Hong Kong observe that “[i]f societies want to facilitate the optimal development of young immigrants they must provide educational support services that are based on an analysis of the needs of these children and youth”.⁵ Hopefully this report can contribute to these efforts in Hong Kong and spark further research and greater discussion about the needs of ethnic minority students and the protection of human rights, including the right to non-discrimination.

II. Background

Hong Kong is a predominantly Chinese society, but the population of residents from other cultural and ethnic backgrounds has increased rapidly in recent years. Immigrants from South and Southeast Asia have arrived in significant numbers since the mid-1990s.⁶ According to the 2001, census non-Chinese minorities constitute approximately 5% of the population, although some commentators estimate a higher figure.⁷ Recent studies of the needs of members of these communities suggest that

³ These include Nepalese, Indian, Pakistani and Filipino communities.

⁴ The Hong Kong government has announced its intention to introduce legislation prohibiting racial discrimination by 2006.

⁵ Nirmala Rao and Mantak Yuen, “Accommodations for Assimilation, Supporting Newly Arrived Children from the Chinese Mainland to Hong Kong”, (6 Aug 2002), *Childhood Education* 313, 318.

⁶ “Second Report of the Hong Kong Special Administrative Region of the People’s Republic of China in the Light of the International Covenant on Economic, Social and Cultural Rights” (ICESCR Second Report), June 2003, p. 171, para. 13.22.

⁷ Hong Kong SAR Government, Census and Statistics Department, “Population by Ethnicity 2001”, available at: http://www.info.gov.hk/censtatd/eng/hkstat/fas/01c/cd0052001_index.html. Fermi Wong,

they face various difficulties adjusting to life in Hong Kong due to a number of interrelated factors including insufficient Chinese language skills, lack of knowledge about or access to available services, difficulties finding school places and employment opportunities, and discriminatory treatment.⁸

Before summarizing the points raised in the interviews and in order to better understand the challenges facing ethnic minority communities in the area of education, this section briefly reviews the structure of the Hong Kong education system, policies that have particular impact on ethnic minority communities, and attempts by the government to address some of their needs.

Education is compulsory and provided free of charge in Hong Kong for students aged 6 to 15 at government and government aided primary and secondary schools. Students who wish to continue their studies and qualify after the age of 15 (forms 4-7) may attend government and aided schools for a relatively small fee. When Hong Kong students enter their first years of primary and secondary school, they may apply for school places using two possible methods.⁹ First, students can apply directly to the school of their choice during a “discretionary places admission” phase. This system allows schools to reserve a certain number of places that may be filled at the school’s discretion, usually according to a point system that gives preference to students whose parents or siblings studied at the school. Schools are under no obligation, however, to disclose why a student’s application has been rejected, though secondary schools must keep records of the applications.¹⁰ Students who are not allocated places through this system may then apply through the central allocation system, which assigns school places according to a complicated, mostly

director of Unison, estimates that 8-9% of the population is non-Chinese. [See interview with Fermi Wong, conducted by Wai Har Lam, July 2003 (on file with the author)]. The government’s calculation of census statistics on ethnicity has been criticized by several commentators. For example, see Frank Ching, “Slow to Act”, *South China Morning Post*, 14 Oct 2003, p. 14. Ching remarks that the government “seems to confuse ethnicity and nationality” since the statistical breakdown includes categories such as “British” and “American/Canadian”. Some legislators have also questioned the government’s statistical analysis. See Question 2, Tsang Yok-sing, “Official Record of Proceedings, Hong Kong Legislative Council”, 12 Feb 2003, pp. 3323-3335, available at: <http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm0212ti-translate-e.pdf>.

⁸ See, for example, Yang Memorial Methodist Service, “Educational Needs and Social Adaptation of Ethnic Minority Youth in Hong Kong”, 2000; and Candice Leung and Phyllis Yan, Save the Children Hong Kong, “Adaptation and Subjective Well-being Among South Asian Youth in Hong Kong”, Jan 2003.

⁹ For more complete information on the school places allocation system, see the Hong Kong Education and Manpower Bureau website: <http://www.emb.gov.hk>.

¹⁰ Interview with Philip Li, senior education officer, Education and Manpower Bureau, conducted by Wai Har Lam, July 2003 (on file with the author).

random, process taking a number of criteria into account including the proximity of schools to students' homes. Fermi Wong, director of Unison Hong Kong - for Ethnic Equality, when interviewed for this project, claimed that she is not aware of any ethnic minority students who have been assigned places to local, mainstream Chinese medium schools using the central allocation system.¹¹ According to Wong, primary 1 applicants taking part in the central allocation system are asked to indicate whether or not they speak Chinese on the application form.¹² In her experience, ethnic minority candidates indicating that they do not speak Chinese are assigned places only in the schools traditionally accepting ethnic minority pupils.¹³ In a few cases where ethnic minority students have not indicated whether or not they speak Chinese, these students were allocated places in local Chinese medium schools in their districts.¹⁴

Until 1998 the majority of secondary schools in Hong Kong used English as the medium of instruction. However, in the school year beginning in 1998, the Hong Kong government introduced a major policy shift that has inadvertently impacted ethnic minority students in Hong Kong disproportionately. This policy emphasizes the educational benefits of teaching in the mother-tongue and required 307 government and aided secondary schools in Hong Kong to switch from the English medium of instruction (EMI) to the Chinese medium of instruction (CMI), while a remaining 114 secondary schools were allowed to continue teaching in English after establishing their ability to do so effectively.¹⁵ The Education and Manpower Bureau's "Medium of Instruction – Guidance for Secondary Schools" provides that "all secondary schools should adopt Chinese to teach all academic subjects".¹⁶ Although there are sound educational reasons for adopting a mother-tongue teaching policy for native-level Cantonese speakers, the full implications of the policy for non-Chinese speaking students has not been adequately considered. Indeed, the term "mother-tongue teaching" implies that Hong Kong students all have the same "mother-tongue" (Cantonese), which may not be the case for non-Chinese children.

¹¹ Interview with Fermi Wong (n 8 above).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Christy Ying Lao and Stephen Krashen, "Implementation of Mother-Tongue Teaching in Hong Kong Secondary Schools, Some Recent Reports", *Discover*, Oct 1999, available at: <http://www.ncela.gwu.edu/ncbepubs/discover/05hongkong.htm>.

¹⁶ See "Medium of Instruction, Key Points", available at the Hong Kong Government website: <http://www.info.gov.hk/info/instrumed.htm>.

In fact, according to the government, many ethnic minority students in Hong Kong are unable to function in Chinese, or, if they can speak Cantonese, cannot read or write well enough to attend CMI schools.¹⁷ After the implementation of the mother-tongue teaching policy the numbers of possible secondary schools that these children could realistically attend was drastically reduced. Both trends – increasing immigration and the mother-tongue teaching policy – have led to insufficient school places for ethnic minority children in the public education system.¹⁸

Although 114 schools continued to teach in English after 1998, a list published by the Education and Manpower Bureau, called “Educational Facilities for Non-Chinese Speaking Children”, includes only eight government and aided secondary schools and six government and aided primary schools.¹⁹ These include some highly competitive “band 1” schools considered prestigious in Hong Kong society and which require high academic achievement for admission. In addition, press reports indicate that these “elite” schools impose restrictions on the numbers of non-Chinese speaking students that they will admit.²⁰ The list also includes English Schools Foundation Schools and private international schools, which charge fees that are too high for many ethnic minority families. Evidence suggests, however, that most ethnic minority students are relegated to a handful of “band 3” schools that offer Hindi and Urdu language classes, such as the Sir Ellis Kadoorie Secondary School in West Kowloon (EK). The S.S. Guru Gobind Singh Ji Educational Trust (“Educational Trust”), a group promoting education for Indian children especially from the Punjabi community, claims that 90% of Punjabi children in Hong Kong receive education at such schools.²¹ One school with a majority of ethnic minority students is EK with a student body (in 1999) that consisted of 38% Indian, 41% Pakistani, 11% Filipino, 6% Chinese and 4% “other” students.²²

¹⁷ ICESCR Second Report (n 7 above), para 13.24.

¹⁸ The Yang Memorial Methodist Service found in a 2000 study that nearly 40% of South Asian students had difficulty finding school places and some had waited from 6 months to 3 years. See Sherry Lee, “Learning the Hard Way”, *South China Morning Post*, 10 Oct 2001.

¹⁹ Education and Manpower Bureau, Hong Kong SAR Government, “Education Facilities for Non-Chinese Speaking Children”, 2002, available at: http://www.emb.gov.hk/EDNEWHP/school/education_services/English/download/NCS2002.doc.

²⁰ Polly Hui, “Doors Open for Ethnic Minority Students”, *South China Morning Post*, 6 Sept 2003, Education Post.

²¹ Letter from the S.S. Guru Gobind Singh Ji Educational Trust to the Hong Kong Education Department, 19 Sept 2000 (on file with the author).

²² Sir Ellis Kadoorie School, “School Profile 1999-2000”.

School choices are even more limited after form 5 when the number of available places decreases further. The Hong Kong government has an obligation under various international treaties, the Basic Law, and the Bill of Rights Ordinance to provide equal access to education without discrimination at all levels. However, since there is no domestic racial discrimination legislation and no legal right to education after the age of fifteen (when compulsory education ends), it is difficult for members of racial minorities to enforce this right in practice.

The quality of education provided by schools catering to ethnic minority students varies but some NGOs, including the Educational Trust, have questioned some of the schools' educational standards. Problems cited include poor public examination results; lack of training for educators on teaching in a multicultural classroom; and difficulties in communication between parents and teachers, partly because of language differences.²³ While more concrete comparisons between schools are necessary in order to effectively determine and address this issue, the more limited choice of schools, language barriers, and possible quotas on non-Chinese speaking students attending some of the "prestigious" English medium schools, could certainly lead to unequal access by ethnic minority students to higher quality educational institutions.²⁴

Some have also criticized the education system for not providing sufficient or appropriate Chinese language classes for non-Chinese speaking students.²⁵ As a result, students may lack the necessary Chinese skills for greater access to school places, as discussed above, and for competing in the Hong Kong job market. Indeed, another policy area that deserves greater consideration is whether and to what extent Chinese language skills are necessary to access tertiary education in Hong Kong. The government observed in its first and second reports to the United Nations Committee on Economic, Social and Cultural Rights, that "[m]ost tertiary institutions require Advanced Level (matriculation) passes in Chinese and English. This will be mandatory for most applicants from the 1998-99 academic year".²⁶ The report goes

²³ Letter from Educational Trust, (n 22 above).

²⁴ It would be useful, nevertheless, to establish objective measures to compare the standards of various schools. For example, a comparison – by school and ethnicity - of the results of the Hong Kong Certificate of Education Examinations (HKCEE), which is taken after completing form 5 and is widely referred to by Hong Kong employers and tertiary institutions, could help measure relative educational standards.

²⁵ See Interview with Fermi Wong (n 8 above) and ICESCR Second Report (n 7 above), para 13.31(c).

²⁶ "First Report of the Hong Kong SAR of the PRC in Light of the International Covenant on Economic, Social and Political Rights", para. 533, available at the Home Affairs Bureau website:

on to say, however, that universities have made some accommodation for non-Chinese speakers since “most programmes will accept applicants who offer an alternative second language (such as French)”.²⁷ Despite this claim, a number of the classes and programmes offered at many Hong Kong universities are conducted in Chinese and therefore realistically inaccessible to non-Chinese speaking students. In addition, language requirements for university programmes appear to be common, according to the admission’s requirements posted on university websites. The JUPAS²⁸ website, for example, contains a list of all of these programmes and their requirements, many of which include Chinese.²⁹ There are similar Chinese language proficiency requirements for applicants that fall outside the JUPAS admission system.³⁰

Some Universities apparently have different requirements for foreign and local applicants. General admissions requirements for JUPAS students applying to The Chinese University of Hong Kong (CUHK), for example, include passing the Advanced Supplementary (AS) Chinese Language and Culture examination. Applicants may be exempted from this requirement if they have not taken the test but have received outstanding results in other subjects and the faculty concerned has agreed.³¹ They must also pass a Chinese language test arranged by the university. The university claims it is “keen to continue its efforts in recruiting international students to join its undergraduate programmes” in order to “enrich the cultural diversity on campus”.³² No general language requirements apply to international applicants although some programmes prefer a “working knowledge of Chinese”. There is no mention of special language tests required for international students applying to these programmes. The website does not indicate whether similar more flexible requirements might be used for ethnic minority students in local schools

<http://www.info.gov.hk/hab/new/doc/human2/english/e-pt2-13.doc>, and ICESCR Second Report, *Ibid.*, para 13.37.

²⁷ *Ibid.*

²⁸ Most candidates applying for Hong Kong tertiary programmes at any of eight Hong Kong tertiary institutions must apply through the Joint University Programmes Admissions System (JUPAS).

²⁹ For example, most of the 58 programmes offered at the City University of Hong Kong apparently require AS results in “Use of English” and “Chinese Language and Culture”. See the JUPAS website at: <http://www.jupas.edu.hk/jupas/index.htm>.

³⁰ The Chinese University of Hong Kong requires that applicants “shall have attained an acceptable level of proficiency in both the Chinese and English languages, unless exempted from this language requirement by the Senate”. See the section on full-time undergraduate studies (non-JUPAS) admissions requirements on the Chinese University of Hong Kong (CUHK) website at: http://www.cuhk.edu.hk/adm/application_fe.html.

³¹ See the CUHK website at: http://www.cuhk.edu.hk/adm/application/njrequ_e.html.

applying through the JUPAS system but from the available information it appears they would be treated in the same manner as JUPAS rather than “international” applicants.

Although Chinese language requirements exist for JUPAS students applying to the University of Hong Kong (HKU), there are clearer exemptions. JUPAS candidates must pass AS Chinese Language and Culture but may substitute another AL or AS subject if the candidate has taken another language subject (other than Chinese or English) when sitting for the HKCEE.³³ Requirements for non-JUPAS, international students are based on the country where the applicant has received his/her previous educational qualifications and are diverse. Requirements for applicants coming from some countries, such as Singapore, include passing Chinese language exams while applicants from some other countries, such as the United States, apparently do not require Chinese language ability.³⁴ Language requirements for university admissions and whether ethnic minority students are given adequate opportunities to learn Chinese to the extent that they are able to fulfill university admissions requirements are issues that deserve further study and consideration.

The interviews conducted in the course of this project, which are discussed in more detail in the next section, indicate that some ethnic minority families have difficulty accessing information about the education system or cannot find the information they need in English. Philip Li, a senior education officer with the Education and Manpower Bureau admits that the Bureau takes a more proactive approach toward mainland Chinese immigrants because the government can easily reach these families and provide them with detailed information as they enter Hong Kong through the Lowu checkpoint at the mainland border.³⁵ He claims that ethnic minority families are more difficult to target as they enter Hong Kong on various flights from different places. However, some important information on the Education and Manpower Bureau website is only available in Chinese and therefore less accessible to non-Chinese families who may have little or no Chinese reading comprehension skills. This information includes primary school profiles, a complete list of secondary schools (although the list of schools accepting non-Chinese children

³² See the CUHK website at: <http://www.cuhk.edu.hk/adm/international/isintro.html>.

³³ See the HKU website at: <http://www.hku.hk/ugadm/jupas.htm>.

³⁴ For example, students applying from Singapore must pass a GCE Advanced Level examination in Chinese/mandarin if it is offered. See the HKU website at: <http://www.hku.hk/ugadm/njupas.htm>.

³⁵ Interview with Philip Li, (n 11 above).

is available in English), the page describing the Secondary School Places Allocation System (SSPA) (including frequently asked questions), and a page on student guidance in primary schools, among others.³⁶ There is also a section called “Arrangement for Placement of Newly Arrived Children from the Mainland”³⁷ but contains nothing about placement support services for non-Chinese new arrivals. Incomplete information places non-Chinese speaking minorities at a disadvantage and makes it difficult for them to make well-informed choices.³⁸ It also contributes to feelings of mistrust toward education officials and the education system on the part of some parents.³⁹

The Hong Kong government has attempted to respond to and rectify some of these problems in recent years through policies designed to meet the needs of ethnic minority communities. Fermi Wong acknowledges that education officials are generally more knowledgeable and sympathetic about these issues than they were in the past.⁴⁰ She also observes that the numbers of schools that generally accept ethnic minority students has increased from two primary and two secondary schools in 1998 to nine primary and four secondary schools in 2003.⁴¹

In 2002, the government established a Committee on the Promotion of Racial Harmony, made up of members of NGOs and ethnic minority communities, which is supported by a Race Relations Unit and advises the government on race issues. The government has initiated a 60-hour Induction Programme for newly arrived children to help them adjust to the local social environment and education system and a six-month Initiation Programme intended to foster new arrivals’ English and Chinese skills and facilitate their adaptation to a local classroom context.⁴² These programmes were established in 1995 for mainland Chinese immigrants and were extended to other new arrivals in October 2000. The School-Based Support Scheme provides a block grant to schools for each non-Chinese speaking student in attendance. The school may use the grant to provide extra language classes and other

³⁶ See the Hong Kong Education and Manpower Bureau website at: <http://www.emb.gov.hk>, section on School Places Allocation Systems.

³⁷ See the Education and Manpower Bureau website at: <http://www.emb.gov.hk>, section on Education and Support Services for Newly Arrived Children.

³⁸ Interview with Fermi Wong, (n 8 above).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² See Education and Manpower Bureau website at: <http://www.emb.gov.hk>, section on Education and Support Services for Newly Arrived Children.

adaptation programmes. The government also claims to have extended its outreach efforts to ensure that information reaches ethnic minority families and that children who are not in school find school places.⁴³ Some information is also available at the airport for newly arrived non-Chinese immigrants.⁴⁴ A recently published fourth edition of “Your Guide to Services in Hong Kong”, which was originally intended for migrant workers and is available in a number of languages common to ethnic minority communities in Hong Kong, contains a section on educational services for the first time.⁴⁵

The government has also agreed to strengthen programmes for teaching and learning Chinese and apparently recognizes that lack of Chinese language skills poses one of the greatest obstacles to integration by ethnic minority groups into the community. Hong Kong’s report to the UN Committee on Economic Social and Cultural Rights acknowledges that language is “the core difficulty from which all others flow”.⁴⁶ Recently the government announced that it is considering support for some schools to provide the British Certificate of Education Chinese curriculum for students who may have difficulty with the Chinese component of the HKCEE.⁴⁷ A public examination would encourage schools to allocate resources for adequate language learning.⁴⁸ The government provides support for some NGOs to offer language classes for new arrivals, including adults.⁴⁹

The government also decided to open the Central Allocation System to ethnic minority children which would greatly increase the numbers of schools available to them and place them on more equal footing with local students.⁵⁰ However, the Education and Manpower Bureau has not allocated additional financial resources to fund these projects and existing resources would need to be reallocated if the initiatives proceed.⁵¹

⁴³ ICESCR Second Report, (n 7 above), paras.13.28-13.29

⁴⁴ *Ibid.*, para 2.6.

⁴⁵ Hong Kong SAR Home Affairs Bureau, “Your Guide to Services in Hong Kong”, 4th ed., June 2003, available at: <http://www.info.gov.hk/hab/new/doc/Engversion4thMastercopy.PDF>. The education chapter contains nine pages of information on the education system generally and specific services for non-Chinese students.

⁴⁶ ICESCR Second Report, (n 7 above), para. 13.24.

⁴⁷ *Ibid.*, para 13.31 (c) and Polly Hui, (n 21 above).

⁴⁸ Interview with Fermi Wong, (n 8 above).

⁴⁹ ICESCR Second Report, (n 7 above), para 2.6.

⁵⁰ Polly Hui, (n 21 above).

⁵¹ *Ibid.*

III. The Interviews

A. Methodology

This project included 14 discussions conducted in June and July 2003 with 10 students and 6 parents or relatives of 12 other students all from ethnic minority groups living in Hong Kong, including Nepalese, Indian, Pakistani and Filipino communities. The students range in age from six to twenty-one. All of the students and relatives have had experience with the Hong Kong education system and many had previously indicated to Unison social workers some sort of dissatisfaction with these experiences. Most of the interviewees were referred by Unison social workers while three were found through other NGO and education sector contacts. The purpose of the interviews was to document the issues these particular families faced when attempting to access education in Hong Kong. The students and families were asked a number of questions about their experiences with the education system in Hong Kong and whether they had any difficulties or concerns. Interviews were also conducted with social worker Fermi Wong, director of Unison; Karen Lau Choi Yuk, headmistress of Po Leung Kuk Portuguese Community School which is a provider of the Initiation Programme for newly arrived children; Chan Kui Pui, deputy principal of the Delia Memorial School in Mei Foo, one of the schools traditionally accepting ethnic minority students; Shirley Chan, senior programme officer of the Race Relations Unit within the Hong Kong government's Home Affairs Bureau; and Philip Li, senior education officer with the Hong Kong government's Education and Manpower Bureau.

The interviews conducted in the course of this project are not necessarily representative of the broader ethnic minority community in Hong Kong. Because most of those interviewed had already sought assistance from social workers, the group does not include families who still may not know where to go to receive help or those who feel they may not require assistance. It also does not include less socially disadvantaged ethnic minority families who may be more likely to have access to international and private schools and therefore, perhaps, have more positive educational experiences. However, all of the issues raised in these discussions are consistent with press reports, the results of studies on ethnic minority groups in Hong Kong, NGO and social workers' perceptions, as well as some government statements

on the needs of ethnic minorities generally. The research suggests the need for more extensive studies targeting the specific policies and problems in question and provides the basis for an analysis of the relevance of equal opportunities law to the problems facing these families.

B. Issues

The families interviewed for this project cited a number of problems they have faced when interacting with the Hong Kong education system. The main issues include: (1) limited choice of schools; (2) shortage of opportunities to learn spoken Cantonese and written Chinese to compete effectively in the job market and uncertainty about possible advantages and disadvantages to attending CMI versus EMI schools;⁵² (3) relatively low quality of available educational institutions; (4) difficulty obtaining information about the education system and school placement system; and (5) lack of interaction with Chinese students. Overall, the interviews reveal the absence of a consistent policy and guidance for ethnic minority students. Unlike policy designed to help mainland Chinese students and disabled students adapt and integrate into the education system, the government apparently lacks a conceptual model for educating and integrating minority students. For example, while the EOC issued a Code of Practice in order to “assist educational establishments to develop policies and procedures that prevent and eliminate disability discrimination”,⁵³ no such code exists for race or ethnicity, although ethnic minority students also constitute a group of children with possibly different needs than mainstream students.⁵⁴

The following discussion summarizes the experiences recounted in the interviews before analyzing them from an equal opportunities perspective in section IV. [More detailed descriptions of the students’ and families’ experiences may be found in the appendix to this report.]

School choice and places

⁵² Most students lacked guidance about their concerns over which medium of instruction to choose. Some switched between mediums and schools causing confusion and possibly poorer exam results. See interview with Fermi Wong (n 8 above).

⁵³ See the EOC website at: http://www.eoc.org.hk/TE/edu/cop_edu/index.htm.

Many of those interviewed believe that school choices are extremely limited for ethnic minority students. Some have also recounted difficulties finding school places and some have waited for places for extended periods of time. Lack of options also means that these students are less likely to attend a school within reasonable proximity to their homes.

- Hafiz, who is now 21, initially had difficulty finding a school place, since he did not know where to obtain the information he needed about the education system. As a result, he did not attend school for two years, despite a strong desire to study, and finally attended primary school at the age of 16.⁵⁵
- Faith, now 16, arrived in Hong Kong after completing primary 1 in Beijing. She searched for a primary 2 place but was unable to find anything. She finally accessed a primary 3 spot when she was old enough to attend primary 3 and therefore skipped primary 2 altogether.
- Marjolyn, who is preparing for her HKCEE, is concerned that she will be unable to secure a form 6 place because Sir Ellis Kadoorie School (EK), where she currently studies, does not offer form 6 and 7 classes and she believes that the Delia Memorial School in Kwun Tung has only four available form 6 places. She thinks her Chinese standard is not high enough to attend a CMI school and therefore feels that she has few options.
- Asim has had a number of difficulties finding school places for his children and estimates that his two sons have missed nearly two years of schooling. At the time of the interview, he was still waiting to learn whether his six-year old daughter had been able to secure a school place. Asim claims that some schools told him that applications for school places completed after September would only be processed for the following academic year.

⁵⁴ According to Philip Li, the EMB has no plans to develop or introduce such a code pending the introduction of an equal opportunities law covering race. See interview with Philip Li (n 11 above).

⁵⁵ Some students, like Hafiz, attended school at levels that were inappropriate for their ages, which could cause problems with self-esteem and social interaction with other students. An article on support services for newly arrived children from mainland China notes a similar problem for mainland arrivals and argues that “there is a need to expedite school placement for these children and to advocate for age-appropriate placements”. Many of the issues facing mainland immigrants are similar to those facing non-Chinese minorities such as difficulties with the local curriculum and delays in obtaining school places. See Rao and Yuen, (n 6 above), p. 314.

- Mansard arrived in Hong Kong at the age of 17 and could not secure a school place for two years. He was still searching for options at the time of the interview. He claims that after he was rejected by several schools, he approached the Education and Manpower Bureau's Wanchai office but officers were unhelpful and did not provide him with information. He says the officers he spoke with on the telephone asked him if he could speak Cantonese and hung up when he replied that he wanted to speak with someone in English. He claims that one school rejected his application to attend form 5 on the basis of his age. Mansard's case highlights difficulties facing students above the age of fifteen.
- Rehman helped his niece apply to primary schools but was unable to find a place at an EMI school within reasonable proximity to her home. Although he eventually found a place for her at a CMI school, her parents are concerned that she has difficulty understanding her lessons in Chinese.
- Ikra's mother, Rukhsana, considers the school fees charged by many of the schools on the government's list of "Educational Facilities for Non-Chinese Speaking Children" a major barrier to securing a place for Ikra since few government and aided schools accept minority children.
- Simon is helping his niece and nephew secure school places. They speak fluent Cantonese but cannot read or write Chinese. Their family prefers that they attend a CMI school close to their home in Tsuen Wan since they do not want their children to face a lengthy commute to one of the schools traditionally accepting ethnic minority students. Simon has helped his niece and nephew apply to several CMI primary schools. One school administrator asked Simon if the children were Chinese and said that they would not accept ethnic minority children. Another school immediately rejected the applications after learning that the children were not Chinese. The third school said there was no point in the children joining the school since half of the school year had passed. Simon has not contacted the Education and Manpower Bureau and believes they would be unhelpful since he himself had a negative experience with the Education Department when he was attempting to apply for form 6 places. He believes government departments are discriminatory.

- Asim believes that more schools should provide opportunities to learn Cantonese as well as keep children in touch with the languages and cultures of their countries of origin.

Language

Many of the students interviewed expressed frustration that Cantonese and written Chinese language classes are either unavailable at school, or, where available, are insufficient, do not teach relevant vocabulary or teach at the wrong level for their individual skills and needs.

Many students believe that a low level of Chinese limits their choice of primary and secondary schools as well as their options for further education, especially beyond form 5 and at the tertiary level. They also believe that their job prospects and job-related training opportunities may be limited by lack of Chinese language skills.

- Hafiz and Adil both expressed a desire and a need to learn Chinese but have had difficulty finding appropriate courses, especially in the written language. Adil would like to attend a mainstream, CMI school but feels that his Chinese level is too low to cope with learning all subjects in Chinese. Hafiz believes his lack of Chinese skills inhibits his job prospects. When attempting to further his education and skills after leaving form 5, he was unable to enroll in courses at the Open University since most were conducted in Chinese. He also dropped out of a “bilingual” computer course since the class was largely conducted in Cantonese.
- Faith attended basic Cantonese classes between primary 5 and form 3 but feels that the teachers did not take the classes seriously and that they were too basic and ineffective.
- Marjolyn attended a Chinese medium kindergarten and primary school, but felt frustrated when she was advised to take secondary school aptitude tests in English. She struggled with the maths portion of the test, which required her to complete problems in English, although she had previously learned maths in Chinese. She also believes she was rejected from a form 2 place at one of her top choice schools because she was not offered Chinese language classes after primary school and, as a result, her Chinese skills had fallen behind. She also

believes that she may not be able to attend University because of Chinese language admission requirements for certain subjects.

- Anish studied Chinese once a week in primary 5 and 6 and then continued with basic Chinese classes at EK. However, he feels that the language taught is not useful for living in Hong Kong and that the topics are overly simple and outdated. He is worried about his job prospects because of his limited Chinese abilities.
- Nutan would like to study Chinese, but classes are not offered at his school in form 4. He worries about his future job prospects because he cannot speak Chinese and because he believes he has a slim chance of passing the HKCEE.
- Ikra studies French at her EMI primary school, although Cantonese is available. Her mother would prefer that she study Cantonese but she worries that she will not be able to assist Ikra with her homework and she cannot afford a private tutor. Also, Ikra's mother says that many parents believe that French is an easier subject than Chinese. A higher grade in French can positively affect a student's overall average, which ultimately helps determine secondary school placement.
- Although Benny can speak fluent Cantonese, he cannot read or write Chinese and he believes this has limited his employment prospects. He also claims that when he applies for jobs employers are often shocked when they see he is not Chinese and ask whether he can read and write Chinese even if this is not actually a job requirement.
- Adil believes that it is easier for Chinese people to find jobs since Chinese people can more easily communicate with Chinese employers.

Quality

Some commented that they felt unhappy with the quality of education they had received at certain schools. These comments reflect views expressed by NGOs such as the Education Trust, discussed in section II.

- Faith's parents did not want her to return to her previous school, because they believed the quality was poor and that children in the school's primary section were getting in trouble with the police.
- Kirnjit's parents have decided to send her to a private secondary school for form 4 instead of EK because they are concerned that the HKCEE results of ethnic minority students at EK are low. Kirnjit believes that a majority of EK graduates return to their countries of origin or remain in Hong Kong, unemployed or with low-paid jobs.
- When Hafiz was studying in form 4, he claims that some of his ethnically Chinese teachers were discouraging and told him and his fellow students that they were "useless" and would have difficulty passing the HKCEE.

Obtaining Information

Many of those interviewed expressed frustration with difficulties accessing information and the lack of information provided on the education system and schools available for ethnic minority students. Some did not know where to obtain information. Some also claimed that they sometimes received information in Chinese only and were unable to read it.

- Asim says that when he arrived in Hong Kong, no one provided him with information about the education system. He believes there is a general lack of awareness about the education system among ethnic minority communities and that this is exacerbated by the language barrier since many from these communities cannot communicate in Cantonese or English.
- When Anish arrived in Hong Kong from Nepal, he did not know that he was entitled to free schooling and therefore stayed at home for one year. He only realized that he could study when he met other Nepalese students on the streets. He was also unsure which primary schools were available and received most of his information from friends and family.
- Like Anish, Nutan did not realize he was entitled to attend school and stayed home for one year. He applied to a school which he had heard about through friends, but the school never called him after asking him to wait for their call.

They also did not advise him to go to the Education Department or give him information about other possibilities.

- Information sent home from Rehman's niece's CMI school is written entirely in Chinese, although his brother and sister-in-law are unable to read Chinese. The school is apparently unwilling to cater to a small number of non-Chinese speaking families. Therefore the family relies heavily on Rehman's Chinese wife, who translates the documents into English to Rehman and then Rehman translates them into Urdu for his brother.
- Fyzee is frustrated with the lack of information on the education system provided to himself and other ethnic minority parents. He says that most information is provided in Chinese and that he could not locate specific information about secondary schools accepting ethnic minority children.
- Mr. Gurung also expressed frustration with the difficulty of obtaining useful and complete information on available schools, despite searching the government website. He believes the government needs to go beyond simply preparing information and build better bridges with ethnic minority communities to ensure the information reaches its targeted audience.

Interaction with Chinese students

Some students commented that they had few Chinese friends and few opportunities to interact with Chinese classmates.

- Hafiz says that when he studied at secondary school in the English section, he was told by teachers that he was not allowed to go into the Chinese section of the school and believes this created a sense that ethnic minority students were somehow "different" from Chinese students. He believes this inhibited his interaction with Chinese classmates. He suggests that schools organize activities that encourage greater interaction.
- Benyameen also mentions that few opportunities existed for ethnic minority students to interact with Chinese students and believes there is little understanding between students from different ethnic groups. He says that he found it difficult to get along with Chinese classmates.

- Both Benyameen and Hafiz suggest that multicultural sports activities are a good way to overcome prejudice. Hafiz made friends playing basketball with Chinese children and Benyameen found mutual understanding on the football pitch.
- Faith does not have any Chinese friends and believes this is because of her inability to speak Cantonese and her dark skin color.
- Asim says that his children have complained of difficulties communicating with their Chinese classmates.
- Fatimah is eight years old and is attending a CMI primary school. She says that only one Chinese student plays with her at playtime and that the other children can be rude to her.

The policies and practices discussed in section II have contributed to the problems described by these families. For example, the mother-tongue teaching policy has limited the number of schools available for non-Chinese speaking students resulting in relatively fewer options for many ethnic minority children. The lack of information provided in English by some schools and on the Education and Manpower Bureau's website can also affect choice, availability and quality. Possible quotas or limits on the numbers of ethnic minority students accepted at some schools in the discretionary placement system could have similar effects. Lack of a uniform Chinese curriculum enabling students to function in Chinese can limit school and employment options. The small numbers of schools included on the government's list of educational facilities available to non-Chinese speaking children leaves the impression that other schools are unavailable. Overall, the lack of a coherent policy toward ethnic minority students has led to confusion, mistrust and placed students at a disadvantage relative to their Hong Kong Chinese peers. But do these policies and practices amount to discrimination on the basis of race? The next section examines this question with reference to international non-discrimination standards and comparative equality law.

IV. Relevant Law

Despite some positive initiatives taken by the government in recent years, a number of educational policies discussed in the preceding sections appear to negatively and disproportionately affect ethnic minority students and could amount to

direct or indirect racial discrimination. As such, these policies deserve to be reviewed in light of Hong Kong's international human rights obligations as well as developing equal opportunities law in Hong Kong and elsewhere. A comparative analysis also provides a useful starting point for considering the potential content of new equal opportunities legislation prohibiting racial discrimination in Hong Kong.

This section first reviews international human rights standards applicable to Hong Kong in the areas of education, equal opportunity, and non-discrimination in education and considers recent developments in the definition of discrimination – especially the meaning of indirect discrimination - in European and UK law. Finally, it suggests how these standards and developments might inform the drafting of a Hong Kong race law.

The government should be responsive to such trends for several reasons. First, studying improvements to equality provisions in other jurisdictions could lead to useful amendments to Hong Kong's current equality laws, enforcement mechanisms, and policies and will help avoid the necessity of amending future non-discrimination provisions after they are passed into law. In addition, Hong Kong should be especially sensitive to human rights advances in light of recent local and international criticism of the government's attempts to introduce a national security bill that many believe did not conform to modern understandings of human rights.⁵⁶ Consideration of comparative law can demonstrate Hong Kong's continuing openness to the best outside influences and thus its commitment to the one country, two systems framework.

ICCPR and Bill of Rights

Hong Kong has a number of international legal obligations to ensure the right to education, the right to non-discrimination, and the right to non-discrimination in education.

⁵⁶ See, for example, Benny Y.T. Tai, "The Principle of Minimum Legislation for Implementing Article 23 of the Basic Law", (2002) 32 *Hong Kong Law Journal* 579; "Hong Kong Bar Association's Response to the Consultation Document on the Proposals to Implement Article 23 of the Basic Law", 9 December 2002; Fu Hua-ling, Kelley Loper, Carole Petersen, and Simon Young, "Group Submission to the Legislative Council, the Department of Justice, and the Security Bureau of the Hong Kong SAR on the National Security (Legislative Provisions) Bill", Centre for Comparative and Public Law, Occasional Paper No 9/03, May 2003; among others.

The 1966 International Covenant on Civil and Political Rights (ICCPR) has been largely incorporated into Hong Kong Law by virtue of the 1991 Bill of Rights Ordinance (BRO) and Article 39 of the Hong Kong Basic Law.⁵⁷ The ICCPR guarantees a right to non-discrimination in Articles 2 and 26 – which are essentially mirrored in Articles 1 and 22 of the BRO⁵⁸. The BRO provisions bind the Government and public authorities which presumably would include public educational institutions and the Education and Manpower Bureau. Therefore, any discrimination on the basis of race, colour, language, etc. occurring in the public education system is prohibited by the BRO and a victim of such discrimination should have a right to equality enforceable in Hong Kong courts. However, some experts have questioned the effectiveness of the BRO non-discrimination provisions.⁵⁹ Although the BRO came into effect in 1991, the government has generally failed to conduct reviews of its own policies in light of this ordinance or the three equal opportunities ordinances prohibiting sex, disability, and family status discrimination (EO laws) that have been implemented since 1995.⁶⁰ It has also actively resisted attempts by the Hong Kong Equal Opportunities Commission (EOC) to enforce the three ordinances in the public sector.⁶¹ In addition, the EOC cannot assist anyone with a claim of racial discrimination against the government thus making the right to racial equality in the BRO difficult to enforce.

Although the ICCPR does not contain a precise definition of discrimination, the Human Rights Committee, the body which interprets and enforces the ICCPR, understands discrimination as:

⁵⁷ See *HKSAR v. Ng Kung-siu and Another* [1999] 3 HKLRD 907, 920. In this judgment, the court found that “the ICCPR is incorporated into the Basic Law by Article 39”.

⁵⁸ ICCPR article 2.1 provides: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. This provision is essentially copied in article 1.i of the BORO. However, the BORO omits the reference to state obligations to “undertake to respect and ensure” the enumerated rights. The obligations in the BORO provision is less direct and simply provides that “[t]he rights recognized in this Bill of Rights *shall be enjoyed* without distinction of any kind, such as race, colour, [etc.]” [emphasis added]. ICCPR article 26 (BORO article 22) provides: “All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

⁵⁹ See generally, Carole J. Petersen, “The Right to Equality in the Public Sector: An Assessment of Post-Colonial Hong Kong”, (2002), 32 *Hong Kong Law Journal* 103.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

any distinction, exclusion, restriction or preference which is based on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁶²

This definition is broad and includes both direct and indirect discrimination. Indirect discrimination entails seemingly neutral distinctions, that apply equally to all races, but that have discriminatory “effects”, even in the absence of a discriminatory purpose or intent.⁶³ The Committee also points out in its General Comment 18, that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”.⁶⁴

The Hong Kong High Court considered when departures from equal treatment might be possible under the BRO in a 1995 case challenging the government’s localization policies for the civil service which differentiated between local and expatriate civil servants.⁶⁵ In the decision, Justice Keith quotes and accepts Justice Bokhary’s test from an earlier judgment dealing with discriminatory treatment and the rights protected by the BRO:

Clearly, there is no requirement of literal equality in the sense of unrelenting identical treatment always ... But the starting point is identical treatment. And any departure therefrom must be justified. To justify such a departure it must be shown: one, that sensible and fair-minded people would recognize a genuine need for some difference of treatment; two, that the difference embodied in the

⁶² “United Nations Human Rights Committee, General Comment 18, Non-discrimination”, Thirty-seventh Session 1989, UN Doc. HRI\GEN\1\Rev.1 at 26 (1994), para. 7.

⁶³ See also Human Rights Committee, Communication No. 208/1986, *Singh Bhinder v Canada*, UN Doc No. CCPR/C/37/01/208/1986.

⁶⁴ UN Human Rights Committee (n 63 above), para 8.

⁶⁵ *R v. Secretary for the Civil Service and the Attorney General, ex p the Association of Expatriate Civil Servants of Hong Kong & Ors*, [1995] 5 HKPLR 490 (Expatriate Civil Servants Case).

particular departure selected to meet that need is itself rational; and, three, that such departure is proportionate to such need.⁶⁶

Keith adds that “the difference in treatment must be as limited as possible; it must not merely be rational, but rationally connected to the need which justifies it; and it must be no more extensive than is necessary to achieve the objective which made some difference in treatment necessary”.⁶⁷

This case, in part, examined policies requiring Chinese language proficiency for expatriate civil servants and therefore may provide some insight into how Hong Kong courts might assess language requirements in the education system. The overseas officers argued that requirements of proficiency in Chinese indirectly discriminated against overseas officers who apply to transfer to local conditions of service because, due to their national or social origins, proportionately fewer of them than local officers could fulfill such a requirement.⁶⁸ Justice Keith rejects this argument stating that the difference in treatment is justifiable and rationally connected to the performance of the job at hand since civil servants must be able to stand in for colleagues at the same rank who may need to speak Chinese in the operation of their duties.⁶⁹ However, language requirements for university entrance in Hong Kong or entrance into CMI schools and the resulting impact on ethnic minority students must be viewed from a different perspective. Ethnic minority students and their families may not have the resources to learn Chinese on their own and a failure to provide opportunities to learn the language adequately in the school system and therefore restricting access to jobs and further education might indeed be considered discriminatory despite the language of this case.

Other International Human Rights Standards Binding Upon Hong Kong

Article 39 of the Basic Law provides that the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) “shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region”. Therefore, as with the ICCPR, Hong Kong has obligations with respect to the ICESCR at both the local and international levels. ICESCR articles 13 and 14, and

⁶⁶ *Ibid.*, p. 21.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, p. 35.

articles 28 and 29 of the Convention on the Rights of the Child (CRC), which also applies to Hong Kong, guarantee a right to education including, at the minimum, free and compulsory primary education for all and secondary education available and accessible to every child and imply a government obligation to ensure that these rights are fulfilled. The terms “all” and “every child” suggest no restrictions on the beneficiaries of such rights.

A key element of fulfilling a right to education is ensuring accessibility to education without discrimination. The Committee on Economic Social and Cultural Rights (CESCR) clarifies that education must be “accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”.⁷⁰ Economic accessibility – meaning affordability – is also described as an aspect of the right to education and is mentioned by some ethnic minorities in Hong Kong as a factor limiting their options, especially at the secondary level. Hong Kong’s language policy, or lack thereof, also affects equal access to educational facilities.

The CESCR also requires that “States parties must closely monitor education – including all relevant policies, institutions, programs, spending patterns and other practices – so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination”. This sort of monitoring and collection of data is apparently absent in Hong Kong, although the government is obligated to determine whether its educational policies result in any discriminatory effects and, if so, how to address such discrimination.

Although the fulfillment of the right to education under the ICESCR may be achieved “progressively”, the concept of progressive realization still obligates a State to take steps “to the maximum of its available resources” (article 2.1). Ensuring that ethnic minority students have equal access to education would probably not put undue strain on Hong Kong’s resources. In any case, while the right to education itself may be achieved “progressively”, the right to non-discrimination as applied to the right to education falls outside the “progressive realization” concept. In other words, States

⁶⁹ *Ibid.*

⁷⁰ “United Nations Committee on Economic Social and Cultural Rights, General Comment 13, Right to Education”, Twenty-first session, 1999, UN Doc. E/C.12/1999/10, para. 6(b).

parties have an immediate obligation to guarantee enjoyment of the right to be free from discrimination in education.⁷¹

The CRC includes a non-discrimination clause (article 2.1) obligating State parties to ensure all of the rights in the Convention without discrimination and article 28.1 states that the right to education must be achieved “on the basis of equal opportunity”. Indeed, non-discrimination is one of four general principles identified by the Committee on the Rights of the Child to be used when interpreting state obligations.

The 1966 International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), which has applied to Hong Kong since 1969, obligates States parties “to undertake to prohibit and to eliminate racial discrimination ... notably in the enjoyment of” political, civil, economic, social and cultural rights including “the right to education and training” (article 5.v.e). Like the definition of discrimination espoused by the Human Rights Committee, the ICERD definition is broad and includes both direct and indirect discrimination.⁷²

One of the first international instruments dealing with the right to education is the 1960 UNESCO Convention against Discrimination in Education. Although both the United Kingdom and China are State Parties to this Convention, it is not included on the list of multilateral treaties applicable to Hong Kong before or after 1 July 1997.⁷³ However, as a standard-setting document that pre-dates the ICESCR and the CRC and clearly articulates the meaning of discrimination in education, it is useful to this discussion of how Hong Kong education policy may discriminate on the basis of race or ethnicity according to international standards. In addition, the CESCR has stated that it “interprets articles 2(2) and 3 [of the ICESCR on non-discrimination] in light of the UNESCO Convention against Discrimination in Education [and other

⁷¹ See “United Nations Committee on Economic, Social and Cultural Rights, General Comment 3, The Nature of States Parties Obligations”, Fifth session 1990, para. 1 and *Ibid.*, para. 31.

⁷² Article 1.1 provides that “the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

⁷³ See “UK Letter of Notification Listing Multilateral Treaties Applicable to Hong Kong prior to 1 July 1997” and “PRC Letter of Notification Listing Multilateral Treaties Applicable to Hong Kong after 1 July 1997”, available at: <http://www.hku.hk/ccpl/hktreaty/database.html>.

instruments]”.⁷⁴ In this sense the UNESCO Convention applies to Hong Kong by virtue of Hong Kong’s obligations under the ICESCR.

The definition of education in the UNESCO Convention includes “access to education, the standard and quality of education, and the conditions under which it is given”.⁷⁵ The definition of discrimination includes deprivation of access to education as well as limiting people to an inferior standard of education and “establishing or maintaining separate educational systems or institutions for persons or groups of persons”.⁷⁶ Educational policies described in preceding sections may effectively limit options for ethnic minority students and possibly relegate them to schools which are either unaffordable or have relatively low educational standards.

At the request of the UN General Assembly in 1992, the UN Secretary-General prepared a “Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation against Racial Discrimination” [Model] based on an analysis of national and international instruments, including provisions against racial discrimination adopted in 42 countries.⁷⁷ The definition of discrimination in the Model is similar, though broader, than the definition included in the ICERD. Although it is not binding on States, the Model is based on developing State practice and international norms and therefore may be considered more current and comprehensive. It includes:

“any distinction, exclusion, restriction, preference or *omission* based on race, colour, descent, nationality or ethnic origin which has the purpose or effect of nullifying or impairing, *directly or indirectly*, the recognition, equal enjoyment or exercise of human rights and fundamental freedoms recognized in international law”⁷⁸

This definition adds the term “omission” to the original list in article 1 of the ICERD, and therefore expands the scope of discriminatory treatment covered by the Model. In

⁷⁴ UN Committee on Economic Social and Cultural Rights, (n 71 above), para. 31.

⁷⁵ UNESCO Convention against Discrimination in Education, 14 December 1960 (UNESCO Convention), article 1.2.

⁷⁶ *Ibid.*, article 1.1.a, b, and c.

⁷⁷ United Nations Secretary-General, “Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation against Racial Discrimination, third decade to combat racism and racial discrimination (1993-2003)” (Model), available at the UNHCHR website: <http://www.unhchr.ch/html/menu6/2/pub962.htm>.

⁷⁸ *Ibid.*, Part I, para 2 [emphasis added].

the Hong Kong context, an example of “omission” might be the lack of adequate Chinese language classes necessary to ensure equal access to educational facilities. The Model definition also explicitly adds the terms “directly or indirectly” – leaving no doubt that it includes indirect discrimination - and clarifies that *all* human rights and freedoms recognized in international law must be enjoyed and exercised without discrimination.

Developments in Europe and the United Kingdom

As international definitions of racial discrimination are evolving to incorporate state practice and developing norms, definitions of racial discrimination in European and UK law have also progressed. While the definitions of both direct and indirect discrimination in Hong Kong’s three EO laws were based directly on UK legislation from the 1970s, the UK laws have since been amended in response to recent European initiatives such as the European Directives on employment discrimination and discrimination on the basis of race and ethnicity (Employment Directive and Race Directive). These two Directives stemmed from Article 13 of the Treaty of Amsterdam, adopted by the EU Council of Ministers in 1997. This treaty established the non-discrimination principle as one of the founding principles of the EU. The United Kingdom has attempted to comply with the two Directives by passing the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 and the Race Relations Act 1976 (Amendment) Regulations 2003 (Race Regulations). However, the corresponding Hong Kong provisions have not yet incorporated the Directives or the subsequent changes to UK law.

An evolving understanding of the meaning of indirect discrimination has particular relevance to this discussion of the Hong Kong education system since many of the policies discussed in the previous sections could amount to indirect, rather than direct, discrimination. For example, admissions policies in Hong Kong based on language requirements may seemingly apply equally to all races and ethnicities. In effect, however, these policies limit access to education for certain ethnic groups who may be less likely to speak or read Chinese.

The concept of indirect discrimination is not widely understood or utilized in Hong Kong and has not been substantially tested in Hong Kong courts.⁷⁹ According to a study by the Centre for Comparative and Public Law of complaints processed by the EOC under the three EO laws, only 7.8% of 451 complaints involved claims of “indirect” discrimination.⁸⁰ A thorough analysis of developments in the meaning of indirect discrimination - in the context of this discussion as well as debate over the content of a new race law - could contribute to raising awareness of this important aspect of equality rights in Hong Kong.

Although not widely understood, indirect discrimination is nevertheless unlawful in Hong Kong under the three EO laws and under the BRO. The High Court found in the case brought by expatriate civil servants against the government, discussed above, that one of the policies under review constituted indirect discrimination and was therefore unlawful under the BRO.⁸¹ The Hong Kong SDO definition of indirect discrimination was modeled on, and is identical to, the original UK definition in the Sex Discrimination Act 1975 (Article 1(1)(b)) and is also similar to the definition in the UK Race Relations Act 1976. The SDO provides that an unlawful act of sex discrimination includes the application of a “requirement or condition” to a woman or a man which is equally applicable to someone of the opposite sex, but

- “(i) which is such that the *proportion* of women who can comply with it is *considerably smaller* than the proportion of men who can comply with it;
- (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
- (iii) which is to her *detriment* because she cannot comply with it”.⁸²

⁷⁹ While awareness of the meaning of discrimination generally may be increasing due to the implementation of equal opportunities legislation and the work of the EOC, one expert suggests that the lack of Hong Kong case law could stem from limited public understanding of the meaning of indirect discrimination and the restrictive definition contained in the Sex Discrimination Ordinance, based on the outdated UK provisions. See Carole Petersen, comments in an e-mail to the author, 11 November 2003 (on file with the author).

⁸⁰ Gabrielle Rush, “Key findings from a study of 451 complaints concluded by the EOC between 1 July 2000 and 31 March 2001”, p. 3, available at the Centre for Comparative and Public Law website: <http://www.hku.hk/ccpl/pub/conferences/documents/14062003a-KeyFindings.pdf>.

⁸¹ Expatriate Civil Servants Case (n 66 above), p. 5.

⁸² Hong Kong Sex Discrimination Ordinance, available at the Hong Kong Equal Opportunities Commission (EOC) website: <http://www.eoc.org.hk> [emphasis added].

The definition of indirect discrimination contained in the two Directives is broader than this definition and can therefore be more effectively applied. According to the Race Directive, indirect discrimination occurs when “an apparently neutral *provision, criterion or practice* ... would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons”.⁸³ It also provides for an “objective justification” test to determine whether such treatment can be considered discriminatory: “[i]ndirect discrimination shall not be taken to occur where the provision, criterion or practice can be *objectively justified* by a legitimate aim and the means of achieving that aim are *appropriate and necessary*”.⁸⁴ This definition of indirect discrimination is more flexible than the original UK provisions or the Hong Kong SDO definition for several reasons. First, “provision, criterion or practice” could catch a larger range of discriminatory treatment, including informal practices, than the narrower terms “condition or requirement”.⁸⁵ In addition, the method of proof is less stringent in the Directive since it does not require proof that a considerably smaller proportion of people from a particular racial group can comply with the provision, criterion or practice in question.

The definition contained in the Race Regulations is similar, but not identical, to the Race Directive definition. The Regulations provide that indirect discrimination occurs when a person applies to another person:

a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but -

- (a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,
- (b) which puts that other at that disadvantage, and

⁸³ See Commission for Racial Equality (CRE) website, section on “Article 13, Proposals from the European Commission for Combating Discrimination” at: http://www.cre.gov.uk/legaladv/art13_key.html.

⁸⁴ The Council of the European Union, “Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin” (Race Directive), (19 July 2000), L180 *Official Journal of the European Communities* 22, 24, article 2(b), [emphasis added].

⁸⁵ See the CRE website, section on “Indirect Discrimination” at: http://www.cre.gov.uk/legaladv/rra_regs_indirect.html.

(c) which he cannot show to be a *proportionate* means of achieving a legitimate aim.⁸⁶

The main difference between the definitions in the Race Directive and the Race Regulations is that the Regulations do not entirely incorporate the Race Directive's "objective justification" test.⁸⁷ The UK Commission for Racial Equality (CRE) has criticized this omission, arguing that the "proportionality test" in the Regulations is more limited since a means to achieve a legitimate aim could be proportionate but not necessary. The test in the Race Directive requires that the means are both "appropriate and necessary" encouraging employers, for example, to consider alternatives to discriminatory treatment in order to achieve the legitimate aim even where the means are proportionate. The CRE cites the example of a "no beard" rule in a chocolate factory. This rule may indirectly discriminate against people of a particular ethnicity if men are expected to grow beards for cultural or religious purposes. While the aim may be legitimate for hygienic reasons, the means may not be necessary since another method, such as covering up the beards, could be implemented instead.⁸⁸ In Hong Kong, a more complex example demonstrating this difference might be the mother-tongue teaching policy. It could be argued that this policy indirectly discriminates against members of ethnic groups who may not speak and read Chinese at adequate levels to attend CMI schools, and therefore effectively restricts the number of schools willing to accept them as students. However, the policy could achieve legitimate and proportionate educational aims – for example, the large majority of the Hong Kong population may benefit from learning all subjects in Chinese. At the same time, however, the means by which the policy was carried out may not be necessary. If the Hong Kong government had been required to consider alternative means, it may have taken more creative approaches that would ensure all children, including those from ethnic minority communities, had equal and full access to the Hong Kong public education system. This may have included, for example, providing adequate Chinese as a second language courses within Chinese Medium

⁸⁶ The Race Relations Act 1976 (Amendment) Regulations 2003, 20 June 2003, article 3, available at: <http://www.hmso.gov.uk/si/si2003/20031626.htm>, [emphasis added].

⁸⁷ CRE, "The Race Relations Act 1976 (Amendment) Regulations 2003, Briefing by the Commission for Racial Equality", June 2003, p. 4, available at the CRE website: http://www.cre.gov.uk/downloads/docs/race_regs.doc.

⁸⁸ *Ibid.*

Schools, changing admissions requirements, or providing a standard code of practice for schools on assisting non-Chinese speakers integrate.

The judgment in the expatriate civil servants case discussed earlier recognizes the desirability of finding non-discriminatory solutions to policy problems wherever possible, even where the objectives are legitimate. The test used in the case for determining discriminatory treatment retains the proportionality element - “the difference in treatment should be proportionate to the need which justifies it”.⁸⁹ However, when applying the test to one of the challenged policies in the case, Justice Keith writes that despite the need for the objectives driving the policy, “those objectives could have been achieved without departing from art 21(c) [of the BRO]”.⁹⁰ He therefore finds that the policy was discriminatory and unlawful. This articulation could have implications for any future tests of education policy under the BRO and may encourage Hong Kong courts to consider whether alternatives are available and whether the difference in treatment is really as “limited as possible”.⁹¹ In any case, since this decision occurred before the changes in European and UK laws, any future applications of equality law in Hong Kong should reconsider a reliance on the proportionality principle and the new race discrimination law should take these changes into consideration.

Another criticism of the new UK definition is that it only applies to discrimination on the grounds of race and ethnic origin.⁹² The Race Directive only applies to these grounds and, therefore, the UK definition of discrimination on other grounds, such as colour and nationality which are covered by the 1976 Act, remain unchanged. The CRE rightly observes that this could cause unnecessary confusion since some people may claim discrimination on a number of grounds at the same time.⁹³ A Hong Kong definition should avoid this lack of uniformity.

⁸⁹ Expatriate Civil Servants Case (n 66 above), p. 21

⁹⁰ *Ibid.*, p. 34.

⁹¹ *Ibid.*, p. 21.

⁹² CRE, (n 88 above).

⁹³ *Ibid.*

A Future Equal Opportunities Ordinance (Race)

Following a high-profile campaign by Hong Kong NGOs and ethnic minority groups, the Hong Kong Government agreed, in 2003, to introduce equal opportunities legislation covering racial discrimination by 2006. A draft law has not yet been introduced for public consultation, but the findings of this project suggest a number of factors that should be considered in a draft bill in order to provide adequate protections for ethnic minority students from discrimination in education.

First, any equal opportunities ordinance covering racial discrimination introduced in Hong Kong should apply to the public sector as well as the private sector, and the education sector specifically, similar to the existing Hong Kong EO Ordinances.⁹⁴ Although such discrimination is already prohibited by the BRO, there is no independent institution, such as a human rights commission, tasked with the enforcement of the BRO. In contrast, an equal opportunities law would presumably fall within the remit of the EOC or demand the creation of another similar enforcement body. In addition to a specific race law enforced by the EOC, the EOC, or another similar independent institution such as a human rights commission, should be given jurisdiction to receive complaints of discrimination under the BRO equality provisions.

Second, the bill should take into account recent developments in the definition of racial discrimination – at the national, regional and international levels. For example, rather than conform strictly to the ICERD definition of racial discrimination, as the government has suggested,⁹⁵ it might consider incorporating the UN Model Definition instead, which is more comprehensive than ICERD article 1 and has benefited from an examination of national provisions, many of which were implemented after the ICERD came into force. If part or all of the definition of direct

⁹⁴ For example, the SDO (Cap 480 s 25) provides that “it is unlawful for the responsible body for an educational establishment to discriminate against a woman-

(a) in the terms on which it offers to admit her to the establishment as a student;
(b) by refusing or deliberately omitting to accept an application for her admission to the establishment as a student; or

(c) where she is a student of the establishment-

(i) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them; or

(ii) by excluding her from the establishment or subjecting her to any other detriment.

⁹⁵ Hong Kong SAR Home Affairs Bureau, “Legislative Council Brief, Proposed Legislation against Racial Discrimination”, 19 June 2003, para 23, available at: http://www.info.gov.hk/hab/paper/doc/LegCo_Brief_e.PDF.

or indirect discrimination is based on the three Hong Kong EO laws, the government should incorporate the Race Directive and consider the subsequent changes to UK law, including criticisms of these changes, as discussed in the previous section. The “objective justification” test in the Race Directive as well as the terms “provision, criterion or practice” should be incorporated. Indeed, the three existing EO laws in Hong Kong should also be amended to reflect the requirements of the Employment Directive, which contains the same definition of indirect discrimination as the Race Directive. A strong definition of indirect racial discrimination is especially important for tackling discriminatory treatment in the Hong Kong education system.

A race law in Hong Kong should be designed, at the very least, to tackle prevalent forms of discrimination in the Hong Kong context. Although the definitions of racial discrimination discussed above do not include “language” as a prohibited discriminatory ground, a Hong Kong race law could usefully include a specific reference to language discrimination. While such discrimination could be covered by an indirect discrimination clause, an explicit reference to language discrimination would provide a more direct legal basis for addressing one of the key problems facing ethnic minority families in the education system. It would also serve to strengthen the BRO equality provisions in the BRO which already prohibit language discrimination in the public sector.

V. Conclusions

The interviews conducted in this project indicate continuing difficulties for some members of ethnic minority groups despite Government efforts to implement programmes catering to their educational needs. The project points to the need for a thorough review of educational policies in order to determine if any constitute direct or indirect discrimination against members of ethnic minority groups in Hong Kong. Policies that deserve greater consideration in this respect include the mother-tongue teaching policy; the school placement policy – including the discretionary placement system and the central allocation system; the provision of Chinese language classes for students and whether such classes enable ethnic minority children to adapt to life in Hong Kong, proceed to higher levels of education, and enter the job market on equal footing with Hong Kong Chinese job-seekers; and language policy and what information is provided in English as well as Chinese.

All of these policies should have been – and should be - reviewed in light of the Hong Kong BRO non-discrimination provisions and Hong Kong’s international human rights obligations. However, current discussion about a new EO law prohibiting racial discrimination provides an ideal opportunity to reconsider the effects of educational practices on ethnic minority students. Developments such as the European Race Directive suggest that definitions of direct and indirect discrimination should demand innovative thinking on the part of policy makers in order to come up with alternatives to discriminatory treatment, even where such discrimination may be justified by legitimate educational aims. The Hong Kong education system – and Hong Kong society in general – could only benefit from such creativity and a real commitment to prohibiting discriminatory treatment to the greatest possible degree.

Appendix

Interviews with Ethnic Minority Students and Families

By Wai Har Lam and Kelley Loper

1. Hafiz

Hafiz, 21, is one of seven children and lives in Lai King. He has one older brother, three younger brothers and two younger sisters, all of whom are in Hong Kong.

Hafiz was born in Hong Kong and when he was one year old, he went to Pakistan with his family. He returned to Hong Kong in 1996 when he was 14 years old and his older brother and father remained in Pakistan. He had been attending school in Pakistan until his return to Hong Kong. Upon his return, since his family was unfamiliar with the educational system in Hong Kong, they made enquiries through friends. At that time, he had a friend who was studying at the Delia Memorial School in Mei Foo. He went to this school to ask whether he could attend but was told that there were no vacancies and was not given any further information. As a result, he stayed at home for two years, longing to study but not knowing how to go about finding a school. At the age of sixteen, he found an office job as a messenger through a friend.

Hafiz always wanted to study and his parents made enquiries with friends but to no real avail. Later, while he was working, he broke his arm and had to resign from his job. Around the same time, his father heard about a new school in Yau Ma Tei and Hafiz went to ask for an application form. He was given an application in English which he completed and returned to the school. After two or three months, he was allocated a place. He was told to buy a school uniform and he attended class at Primary 6 level at the age of sixteen. The medium used was English. He attained good results at Primary 6 and tried to apply to the Delia Memorial School in Kwun Tung.⁹⁶ When he applied he did not mention that he was studying at Primary 6 level and was granted an interview. During the interview, he told the headmaster that he had been studying French as his second language and that he had previously studied French during his time away from Hong Kong. He believes it was on this basis that the headmaster allowed him to attend school at form 3 level.

When he went to the Delia School, he did not know anyone and found it difficult to achieve good results. However, he was motivated by the fact that students had to receive good marks to move on to form 4. There were around forty students in his class, mainly of Pakistani, Indian, Nepalese and Philippine origin. He studied intensely and came out at the top of his class. Of the forty students only he and one other student achieved adequate marks to move on to form 4.

At the form 4 level, students were given a choice to either study science or commerce. They were not given any information or guidance about this decision. He decided to

¹ A directly subsidised secondary school that does not charge school fees from Secondary 1 to 3 and charges the same fees for senior secondary school as other government aided schools.

choose commerce as he enjoyed studying economics. During form 4 his results were fair but he admits that he did not concentrate enough on his studies. He found that his teachers, who were of Chinese origin, were discouraging and told him and his fellow students on many occasions that they were useless and that it would be very difficult to pass the Hong Kong Certificate of Education Examination (HKCEE). As a result, he felt disillusioned with the exams and lacked confidence.

At the form 5 level, a new French teacher arrived who provided him and his classmates with greater support and confidence. The teacher expressed the belief that the school system did not provide sufficient support for the students. This teacher's concern was that the school administrators did not speak to the students to explain issues which would later affect them. By the end of form 5, 70-80% of the students passed French when in previous years the pass rate only stood at 20-30%. The teacher made the students feel that nothing was impossible, certainly not the exams, they would be able to pass the HKCEE. With re-newed confidence, Hafiz passed all six of the subjects he took (English, Mathematics, French, Commerce, Accounting and Economics). Initially Hafiz was not confident about passing these exams and feels that had the French teacher started teaching him in form 4 he could have achieved better results.

Although his French teacher was the best teacher he had come across, he felt that learning French was not useful and he wanted to learn Cantonese. However, there were no written Chinese classes offered. He is motivated to learn Cantonese because the vast majority of people in Hong Kong speak Cantonese and he believes that in order to be accepted in Hong Kong it is vital to speak this language. Also the inability to speak Cantonese greatly inhibits his job prospects.

After his exams but before he received his exam results, Hafiz was unclear about his future. At that point he met a social worker, Fermi Wong, and asked for her advice about what to do. She suggested that he continue his studies as he wanted to become a teacher. When he received his results he found that he did not have enough points to move on to form 6. He looked into options to study with the Open University but none of the courses were appropriate as the majority of them were taught in Chinese and not English. He wanted to learn to teach English.

A few months later, Fermi Wong was told of a teacher training course organised by a church and Hafiz signed up for the course which was free of charge. He just wanted to start teaching and after one to two months, a teaching post to teach children from ethnic minority communities at a primary school became available. He went for the interview but later discovered that another teacher already held that particular post and the school later decided not to replace that teacher.

To enhance his skill set, he enrolled in a computer course at Eaton College in Mongkok that was advertised as a bilingual course. However, once the course started, he found that the majority of the class was taught in Cantonese and as he was unable to understand what the teacher was saying, he dropped out.

Following all of these setbacks, he found a job (which is now his current post) at the airport working as a bookkeeper for a British construction company. Although he is happy in his current position, Hafiz ultimately wishes to be a teacher. He is able to

remain optimistic about his future and is studying for three A-levels by himself in order to advance into university. However, he expresses his frustration that, although he has completed his education up to form 5, he was never offered spoken Cantonese or written Chinese classes and it is therefore more difficult to progress further with his studies. He also worries about his younger siblings' future, as they seem to be following the same path. They are all receiving education in English medium schools so without the opportunities to learn Cantonese, they too will struggle to find jobs or progress further with their education beyond form 5.

Hafiz considers himself a Hong Kong citizen but explains that he is only able to communicate with those who speak English. He has met with a range of reactions from local Chinese to himself, from friendly to hostile. His friends often complain of discriminatory treatment but most of his experiences have been less direct. He believes that the reactions he has received have depended greatly upon the circumstances. He explains that in a business setting, people may not necessarily want to talk to him but they must in order to carry out business. On occasion, he feels lost and wonders whether he should return to Pakistan. He also cites examples of friends, who are able to communicate well in Cantonese, applying for advertised positions. Initially the employer is interested until they ask for the applicant's name. When they realize it is not a Chinese name, suddenly the position is no longer available.

Hafiz believes that most of the negative reactions against ethnic minorities are due to a lack of understanding. He suggests that there should be education about people from different ethnic minorities which should start at school. When he was at secondary school, he was in the English section of the school and was told by teachers that he and his classmates were not allowed to go into the Chinese section of the school. If they did, they would be punished. This gave him the feeling that he was different from local Chinese people and suspects that the Chinese students felt the same way about him and other ethnic minority students. He suggests that teachers could organise activities where students would interact regardless of their ethnic origins. He has previously made new friends on basketball courts in his local area and cites this as an example of a way to overcome prejudices. When there is a common goal, people focus on the goal not on skin colour.

2. Faith

Faith, 16, was born in Hong Kong and has the right of abode. Her father is originally from Uganda and came to Hong Kong in 1984 to work under UN instructions. Her mother came to Hong Kong in 1985 from the Philippines and is a domestic helper. Faith is currently attending form 4 at the Sir Ellis Kadoorie School (EK).

When Faith was one year old, she was sent to live with family friends in Beijing where she remained until she was six years old. She attended a kindergarten where classes were conducted in Putonghua and English. After completing primary 1 in Beijing, she returned to Hong Kong and spent a few months looking for schools and was eventually placed in Li Cheng Uk government primary school. By the time Li Cheng Uk had given her a space, she was old enough to attend primary 3 even though she had not attended primary 2 because of the time she spent out of school waiting for a school place. The school placed her in primary 3 as they said there were no

vacancies in primary 2 and her younger sister was at the same school in primary 2. After studying in primary 3 for one term, her family moved to Macau where she attended a number of schools over a two-year period.

After two years, her family returned to Hong Kong and she began to attend EK at the primary 5 level. Her parents decided not to send her back to Li Cheng Uk primary school as they felt the school was not of a high enough quality. Faith explains that many of the children in primary school were getting into trouble with the police.

When it was time to apply for secondary school, she took the aptitude tests. She applied to several band 1 schools but was allocated to EK which is a band 3 school. She wanted to go to a better school but knew that the chances were very slim and was fairly concerned that she would be attending EK for secondary school studies. She explains that even the top students at EK in primary 6 were all allocated EK for secondary education and not to any band 1 schools. She felt that their applications were pointless since none of them were able to find other schools. She feels that they were just allocated to EK because they were already students of the school.

With regards to her Chinese language ability, she is unable to speak Cantonese. From primary 5 to form 3 she received classes in basic Cantonese but feels that the teachers did not take the classes seriously especially during forms 1 and 2. She felt that the material was too simple and not useful for everyday life. At that time, parents complained to the school and the students filled in a questionnaire regarding attitudes towards Chinese studies. However she says that in form 3, nothing really changed and the Chinese classes were still ineffective and far too basic.

Faith is currently preparing for the HKCEE and wishes to graduate and move on to form 6. She believes that it is possible if she studies hard. However she feels confused and demoralised. She would prefer not to continue her further studies in Hong Kong and although she considers herself a Hong Kong citizen, she also feels that no matter what she does, she will not be able to fit into the Hong Kong community. She says that this is particularly difficult because she cannot communicate in Cantonese. She does not have any Chinese friends and says that she has tried to talk to people but that she has received unfriendly and unwelcoming responses. She believes this is also due to her dark skin. She is also concerned about her sister as they often talk about these issues and they feel they have had similar experiences. Her sister is one year younger studying at EK. Faith believes that both of them face the same difficulties.

3. Marjolyn

Marjolyn, 16, was born in Hong Kong and is of Filipino nationality. She does not hold Hong Kong immigration status as she has taken her mother's nationality due to an absent father. She is dependent on her mother's working visa. She is fluent in English, spoken Cantonese and a Filipino dialect.

She lives in Discovery Bay and started kindergarten at the age of three. As there wasn't anyone to look after her, she went to kindergarten in the morning, which was conducted in Chinese. After that, she would attend another kindergarten in the afternoon conducted in English. She enjoyed the Chinese kindergarten since classes

were small and she did not feel any different from the other children. There were only 30 students and some classes were as small as four per class.

The Chinese kindergarten was part of a primary school which she also attended after kindergarten. She found learning Chinese enjoyable and had a good relationship with her teachers. At primary six, she was required to take the aptitude test to enter into secondary school. At the time, the teachers advised her to sit the exams in Maths and English but not Chinese. She did not ask why and she feels, in hindsight, that she was too young at the time to understand the implications of not doing so. Up until then, she had studied Maths in Chinese but the aptitude test for Maths was in English so she struggled through the test.

While waiting for the results, she filled in her five choices for secondary school. Her first three choices were St Paul's Convent School, St Paul's Secondary and Diocesan Girls' School and her fifth choice was EK. At the relevant time, she was informed that she had been allocated a place at EK. Unhappy with this result, she applied to St. Paul's Convent and St. Paul's Secondary for the second time. She sat the entrance exams for both schools to enter into form 1. She was later informed that she had passed the entrance exam for St. Paul's Secondary but the school was unable to give her a place as they were full. After form 1 she applied again to St. Paul's Convent and again in form 2. Both times she was rejected on the basis that there were no available places for her.

In the same year when she was applying for a form 2 place at St. Paul's Convent, she also applied to St. Clare's which almost accepted her if she was willing to conduct self-study in Chinese to catch up. However, in the end St. Clare's decided that her Chinese standard was not high enough since she was no longer studying in a Chinese medium school. She later discovered that the school worried that if she gained a place and her Chinese standard was too low, it could lead to a floodgate situation of students being accepted with low levels of Chinese. She was extremely frustrated as she believed that she had been rejected on the basis that her Chinese standard had fallen since primary school but she was not given any Chinese lessons to help her maintain her level of Chinese.

Currently she is studying at EK and is happy there. The teachers are friendly and show no signs of favoritism or racism. She explains that they speak "Chinese English". She is preparing for 6 HKCEE subjects and 1 GCSE in French. Her results have been reasonable and she has looked at past papers to see whether she is capable of passing the papers. However she is not optimistic about gaining a place in form 6. EK does not offer form 6 and 7 classes. She believes that there are only four places available at form 6 with the Delia Memorial School in Kwun Tung. She sees Delia as her only option as she is unable to afford International School fees and does not have a sufficient understanding of Chinese to enter into a Chinese medium school offering form 6 classes. She is not confident about passing papers in Maths, French or Chemistry. Her teachers are aware of the difficulties she is facing but not all of them seem to have the time to answer additional questions she may need help with. She predicts that around half of her class is capable of passing all of their papers in the HKCE exams.

She is disappointed that there are no classes in Chinese especially as she enjoyed learning Chinese when she was younger and did well in her classes. She would eventually like to be a doctor but does not think she will be able to attend university because of the Chinese requirement for many subjects. Her lack of Chinese skills makes her feel inadequate since she feels she will be unable to secure a decent job or go on to further education. Also as she is a dependent on her mother's visa, she is not sure how long she will be able to stay in Hong Kong. Her mother plans to retire in a few years time and if so, she will not be able to stay in Hong Kong. Previously she has been to the Philippines and considers the country a nice place to visit but not to live. She has spent her whole life in Hong Kong, it is where her friends are and she is very familiar with the place and the lifestyle.

She is confused about her future. She is a conscientious student and from a young age, has been told by her mother and teachers that she needs to study hard in order to get good grades which will lead to a good job, good prospects and a comfortable lifestyle. However she is encountering many problems due to her lack of knowledge in Chinese and does not know how to address that shortfall.

4. Kirnjit

Kirnjit (Kinny), 16, was born in Hong Kong and has the right of abode. Her father came to Hong Kong from India when he was seventeen to study and work. Her mother came to Hong Kong from India after her parents married in 1980 and now is a Hong Kong permanent resident. Kinny currently attends form 4 at EK.

Kinny's schooling started in Kindergarten in a Chinese medium school in Sham Shui Po. After primary school she moved to the Li Cheng Uk School until primary 3. She then studied primary 4 and 5 in India. Around the age of 10, she returned to Hong Kong and applied to EK, where she secured a primary 6 place. To enter form 1, she took internal examinations for students of EK to move into the secondary section of the school. She had applied to other schools which accept children from ethnic minorities but was rejected by all of them. Before she reached form 4, her parents wanted to move her from EK to the Delia School of Canada (a private school). Her sister is currently studying there in form 5. This was a difficult decision for her but she has decided to change schools for form 5. Although this will mean a change of schools during her preparation for her HKCEE, her parents are very concerned with the HKCEE results attained by ethnic minority students at EK. They do not believe that she will be able to go to university or that she will be in a good position to find a job in Hong Kong if she stays at EK. She is reluctant to leave EK as her friends are there and she is very familiar with the school's set up, but she too agrees with her parents. She explains that the vast majority of students who graduate from EK either go back to their country of ethnic origin or stay in Hong Kong unemployed or have low- paid jobs. Generally speaking, graduates from EK cannot speak Cantonese and Chinese classes are not offered after form 3. She and her parents believe that if she moves to the Delia School of Canada she will be able to progress to forms 6 and 7 which is completed in one year at that school. Only a handful of EK form 5 graduates go on to form 6 and even fewer move on to university. Following in the footsteps of the majority of students from Delia School of Canada, she is most likely to continue her further studies overseas.

Kinny says that she does not want to settle in Hong Kong because she does not believe that she will be able to find many job opportunities because of the education she has received. She does not believe that she has a bright future in Hong Kong and has accepted the idea that she will prosper away from Hong Kong.

Kinny speaks fluent Cantonese and feels like she is a Hong Kong citizen and is happy in Hong Kong. However, she explains that she expects to face racial discrimination everyday and has accepted that as part of her life in Hong Kong. She generally knows how she is going to be treated. She says she finds it easier than some of her friends because there is less of a language barrier but cites many examples of racial discrimination which she was very hurt by. Often when she is shopping with her friends who are also from ethnic minority backgrounds, they have picked up an item to look at and have had it snatched out of their hands by the shopkeeper and been told that they cannot afford things and to get out of the shop.

5. Asim

Asim, 33, lives in Kowloon, works in electronics and holds a Bachelor of Commerce which he gained in Pakistan. He is married with 3 children: a 9-year-old boy, Haiden, an 8-year-old boy, Sheryar, and a 6-year-old girl, Rameen. He is of Pakistani nationality and has the immigration status of unconditional stay in Hong Kong. He has been in Hong Kong for four and a half years, previously residing in Pakistan.

When Asim arrived in Hong Kong he obtained unconditional stay by virtue of his wife's permanent resident status. He decided to come to Hong Kong primarily because other family members were settling in Hong Kong. His children were born in Pakistan. He speaks Urdu, Punjabi, and English and has intermediate abilities in Arabic and speaks a little Cantonese. His children's mother tongue is Urdu. They also speak English and basic Cantonese.

Currently his sons are attending school in Hong Kong. Haiden attends the Yaumatei, Kaifong Association School and Sheryar attends the Delia English Primary School and Kindergarten in Mei Foo. His daughter is on a waiting list to be allocated a school place even though she is 6 and should already have started schooling.

Asim first applied for a school place for his sons to the Educational Department in 1999. He was immediately told that he should file an application and that he would need to wait for one year. After one year Haiden was accepted into Li Cheng Uk. However no allocation was made for Sheryar and so after waiting and staying at home for another 7 months, Asim decided to return to Pakistan. The family stayed in Pakistan for 8 months where the children received schooling locally. After those 8 months, the family returned to Hong Kong and Asim applied for school places for his sons for the second time. Again the children were placed on a waiting list and Asim was told that they had to wait another year. There was no reply within that year and so on 10th October 2002, Asim made his third application to the Li Cheng UK Government School. The family is still waiting for a reply. In fact he believes that the third application has "expired" and that he must apply again.

During his hunt to find a school for his sons, he contacted social workers who suggested he apply to the Delia School since they conducted a special Initiation

Programme for new arrivals to Hong Kong. He was not given this information when he spoke with government officials. After a few months, his sons were accepted into the Initiation Programme and Haiden was later accepted by Yaumatei Kaifong School. When asked why the younger son was not accepted, the school explained that there was only one space available, and this was confirmed by Fermi Wong, a social worker working with the school.

An obvious basic problem is that the sons now attend two separate schools which are geographically far apart. Also the Initiation Programme which Sheryar is attending is almost over. He has yet to find a school that will accept him after this period. Asim has made his first application to the Education Department for his daughter and yet again was told he would have to wait one year before she may be allocated a place, somewhere.

Different Government officers in the Wan Chai Head Office within the school allocation section repeatedly told Asim that it was procedure that he had to wait for one year after he filed an application to the department for a school place. He applied through the Wan Chai office as opposed to his District Office as he was told by friends within his community that the Wan Chai office are the Headquarters and hoped that he would receive a more adequate response. He is aware that education is compulsory and that for P1 students, applications must be made to the Education Department whereas for P2 and above students, parents should apply directly to the schools. His friends who have been applying for school places for their children have all been told that the usual waiting time is one year and that this is in line with procedure.

Much of Asim's knowledge surrounding the Hong Kong educational system came after he set up and registered his own NGO. Through his own experience, Asim believes that the majority of those from ethnic minorities do not know the procedures of the Education Department or the relevant law surrounding education. In his opinion, the policies seem inflexible. For example, he has been told on numerous occasions that applications made after September (the beginning of the academic year) must wait until the following academic year. When he arrived in Hong Kong, there were no officers/ officials to explain any procedures or entitlements and it has been through his own efforts that he obtained some information.

Asim is very troubled by the lack of stability surrounding his children's education. He explains that when his child misses one period of mathematics, for example, the next day he is already behind. Although he knows that his children are doing well under the circumstances, after missing at least 7 months of school he says that he worries about the difficulties the children face in trying to catch up with their peers. Altogether his sons have missed nearly 2 years of schooling.

He explains that his children have said it is difficult to communicate with local Chinese classmates who make up the majority of the class and worries about his daughter who has yet to begin school with no idea how long they have to wait before she finds a school willing and able to accept her. He feels that these problems will have long-term damaging effects on their future if they are not solved promptly.

He believes that the lack of awareness about the education system is exacerbated by the language barrier as many ethnic minorities are unable to communicate in Cantonese and/or English. Previously Asim tried to contact the Pakistani Consulate for help but found that they were only really able to respond to cases concerning immigration and had little interest in the educational needs of those Pakistanis living in Hong Kong.

Asim feels that the Government lacks the knowledge and awareness of the needs of ethnic minorities and recommends that District Offices and LegCo have an appointed ethnic minority representative who is able to act as a bridge between policy makers and those at the grass root level. He also believes that there should be at least one other school for ethnic minorities with facilities to enable the children to learn Cantonese and their mother tongue. He believes that, currently, there are far too few schools offering these options. He is also quick to point out that classes in the children's mother tongue need not be held everyday but that there should be an opportunity for the children to learn about their own culture and language while also learning Cantonese which is crucial to help them integrate into Hong Kong life and strengthen their future job prospects.

He explains that there are job opportunities in the construction industry. However, other types of jobs are more difficult to find without strong Chinese reading, writing and speaking skills. These skills, in his opinion, are difficult for ethnic minority students to acquire in the current education system.

When asked whether he considers himself a Hong Kong citizen, he does not hesitate to confirm that Hong Kong is now his home, where he and his family are making plans for the future. He feels that once more is done to fulfill the needs of the ethnic minorities, especially educational needs, it will allow ethnic minorities to truly take up Hong Kong as their home and participate more widely within the Community at large.

6. Anish

Anish is a form 3 student at EK and lives in Yuen Long. He was born in Nepal and came to Hong Kong in 1997. Whilst waiting for his identification card, he stayed at home for one year. When he arrived, he did not know that he was entitled to free schooling in Hong Kong. He later realized that he could study in Hong Kong when he met other Nepalese students while roaming the streets.

His uncle made enquiries and then told him about the Li Cheng Uk school which accepts non-Chinese speaking students. He went to the school and saw Pakistani and Nepalese students going to and from school. He completed an application and was asked to wait for a call from the school to inform him whether he would be accepted or not. He waited for 2 months and did not hear any news from the school. After the 2 months passed, he asked his friends which other schools he could attend and they introduced him to Long Ping Umah International Primary School in Yuen Long. The school is a private Pakistani school. He went to the school to complete an application form with his mother. After 1 month, the school called him and accepted his application. He began Primary 5 in February 1998 and moved into Primary 6 the following September. During his time at the primary school, he had Chinese classes once a week.

When he was nearing the end of Primary 6, the school gave him a form to complete for his move into secondary school. His first choice was EK because it was closer to his home than any other school that had a history of accepting non-Chinese speaking students. His teachers told him about EK and the Delia Memorial School. They also taught him how to complete the form.

At EK, Chinese classes are provided for form 1 to form 3 students. The students learn how to read basic Chinese and English is used to teach Cantonese. Anish says that the language that is taught is not useful for living in Hong Kong. The topics are too simple and outdated.

Anish has real concerns about his future in Hong Kong. He says that he cannot get a good job because knowledge of Chinese is important but there have not been any continuous opportunities for him to learn the language. He cannot read or write Chinese but says that it is still difficult even if he could speak Cantonese. He feels that it is the teachers' responsibility to ensure he and his fellow students learn Chinese and that the government should provide information to them via teachers. He says that the school has not given him any information concerning the implications of the HKCE exams. He says that he will probably go back to Nepal after form 5 as he is unlikely to find a job but he would prefer to stay in Hong Kong to have a better life than going back to Nepal. He says that competition for jobs in Hong Kong is very fierce especially in light of his lack of Cantonese language skills.

7. Nutan

Nutan, 19, is currently a form 4 student at EK. He was born in Nepal and is a dependent on his father's visa. He has a younger brother studying in form 3 at the Delia Memorial School in Kwun Tong. He has 2 older sisters, both of whom are married. His whole family now resides in Hong Kong.

He arrived in Hong Kong with his brother and a sister when he was 14 years old. He did not attend school for one year. He was under the impression that he could not attend school until he had received his Hong Kong identification card. Two to 3 weeks after receiving his identification card, he applied to Li Cheng Uk.

Before receiving his identification card, he initially applied to the Delia Memorial School in Kwun Tong having heard about the school while playing basketball in Jordan. He played basketball when he did not attend school and when he asked some of the other Nepalese teenagers where they went to school, some of them mentioned Delia. He applied to the school and they told him to wait for their phone call to tell him whether he would be accepted or not. The school did not advise him to go to the Education Department and he was not aware of other schools that he could apply to. Since they told him that they would call him he waited for around 2 months but did not receive a call. Then his parents decided to try to apply to other schools. A friend of his father's told the family about Li Cheng Uk. They went to the school and completed an application form. The school asked him to wait. When the school contacted him he was told that he had not been accepted into the school but was not given a reason why when they asked.

After this, he would often socialize in Kowloon Park with friends who also could not find a school which would accept them. It was during this time that he met Fermi Wong. She introduced herself as a social worker and told him and his friends that she would help them if they had any problems. He told her that he was unable to find a school and told her which schools he had already applied to. Ms. Wong informed him and his friends of a private English medium school in Yuen Long. She accompanied him to the school where he completed an application form and took an entrance test. At the same time, his brother also applied. His friends did not go as they were unable to pay the school fees. He started halfway through the school year at Primary 5 level (studying in Primary 5 for 4 months).

By the time he had finished Primary 5, the Yaumatei Kaifong (Kaifong) school opened and Ms. Wong rang his parents to inform them of this. He applied to Kaifong and moved into Primary 6 at the school. He and his parents were pleased Kaifong was a government school so his parents no longer had the burden of his school fees. Also the school was much closer to his home making it more convenient for his parents to take him to and from school. Previously in Nepal he had already completed his Primary 6 studies and more than 2 years later, he was studying Primary 6 again.

After completing Primary 6, he applied to Delia. He did not apply to other schools because all of his Nepalese friends also applied to Delia. He was not given any advice by Kaifong to apply to other schools.

After completing form 1 at Delia, he found that there were too many students in a class and discipline was a real problem. There was a gang problem at school which he says the teachers were aware of. He was often given detention although he did not participate in any gang activities. He says that the teachers took the view that if one person was “bad” then the whole group was “bad”. He was worried that if the police were called he would be labeled as a member of a gang. His parents, concerned for his welfare, sent him back to Nepal to continue his studies.

Whilst in Nepal, he studied in form 2 and 3 following which he returned to Hong Kong to renew his visa. When he returned, he initially began schooling at City College which is a private school. The fees became too expensive for his parents and they moved him to South Band School, a private International school. There, he attended form 4 but after 4 to 5 months felt that the school was too small and there were not enough teachers.

He decided to apply to EK and not Delia because of the negative experience he had had when he was younger. He completed an application form and was told that he should wait for the school to call him. He called Ms. Wong to ask for help and Ms. Wong called the school on several occasions to inquire about the progress of his application. The school said that they required documents including immigration documents. Ms. Wong accompanied him to the school and once the school received the documents, he was told he would have to wait. He waited for 2 to 3 months. He was very frustrated that it seemed so difficult to find a school vacancy. After around 5 months, he was accepted by EK. He wanted to start in form 4 but because it was already half-way through the school year, he was advised by the school to start in form 3 and was allocated a place in form 3.

Currently, he is preparing for his HKCE exams and would like to continue on to form 6. However, he feels that the HKCE exams are very difficult and that he only has a very slim chance of continuing his studies. At form 4 he does not have Chinese classes as they are not offered and would like to be able to continue with Chinese studies. If he is unable to continue studying, he says he will have to find a job, most likely in construction as he is unable to communicate in Chinese. He is unhappy with this prospect as he wants to find a job that will challenge him mentally rather than physically. Eventually he would like to go into business. He says that it is very difficult to find jobs but that he does not want to have the kind of jobs that his parents have. His mother works in a restaurant and his father works part-time as a security guard.

8. Mansar

Mansar came to Hong Kong from Pakistan to apply for right of abode in Hong Kong. His father has been in Hong Kong for 35 years. Currently, Mansar's immigration status is dependent on his father. He was 17 years old when he arrived and had already completed form 6 in Pakistan. He speaks Urdu and English. He does not understand any Chinese dialects.

When he first arrived in Hong Kong, he applied to Maria Evening College, a private institution in Sham Shui Po, introduced to him by a friend who was studying there. He enrolled and paid school fees and went to classes. It was only when he started school that he realized it was a Chinese medium school. As he was unable to understand what the teachers were saying, he decided to apply to EK. He took a test for form 4 but was rejected by the school. He was not given a reason for his rejection. After he received the rejection letter from the school, he wanted to speak to the headteacher. He also emailed the headteacher on 2 occasions. He was told the headteacher was busy and did not receive a reply. On another occasion, he spoke to the headteacher who said that there was a problem with immigration and not the school as there was a spelling mistake on his identification card. He therefore checked with immigration and the department said that it would not be a problem to change the mistake. Mansar believes the headteacher thought he had given him a false identification card. Mansar told the headteacher that he could check with immigration and/or the police. Mansar believes this is why he was rejected from the school as he was not given any other reason.

Around the same time, Mansar applied to the Delia School in Mei Foo and the Delia Memorial School in Kwun Tong. He applied for a place in form 5 and took a test for Delia, Kwun Tong. He was unable to answer some of the questions on the paper but he was rejected on the basis that he was too old. When he applied to Delia, Mei Foo, for form 5, the school arranged an interview for his application and told him he could go ahead and purchase books for his studies. He bought the books but was later rejected by the school.

After receiving a rejection from Delia, Kwun Tong, the school advised him to go to the Education and Manpower Bureau Wan Chai office to be placed in a school. He called the Wan Chai office several times and officers always asked him to call back. Since he had already been rejected from several schools, he wanted a list of schools to see what other options were available to him. The officers that he spoke to did not

provide him with the information. He says that officers would often ask him whether he could speak Cantonese and when he said he could not and would like to be spoken to in English, they hung up the phone.

Currently, Mansar is unclear as to what options are available to him. He is frustrated as he has missed out on over 2 years of school and says that it seems very difficult to study in Hong Kong and that there are no opportunities for him. He says there are far too few schools open to ethnic minorities.

9. Rehman

Rehman, who lives in To Ka Wan, was involved in finding a school place for his niece (his brother's daughter) for the school year beginning in September 2001. His niece was born in Hong Kong and has the right of abode. She speaks Punjabi and Urdu at home. Her English is quite limited. For kindergarten, she attended San Iceland Kindergarten, a private institution teaching in English and Cantonese. After kindergarten, Rehman applied to a school in Cheung Sha Wan for her to attend Primary 1 but the application was rejected on the basis that there were no vacancies available. The family lives in Kwai Chung and after the rejection, he went to the Regional Office Education Department in Tsuen Wan and handed in a form for a school place. The office checked the school in Cheung Sha Wan again but there were still no vacancies. They offered her a school place in Shak Lik Catholic Primary School in Kwai Chung, which is a CMI school. She was also offered a place at the Islamic primary school in Tuen Mun but it is too far from the family home. There were no other offers from EMI schools.

Currently, his brother and sister-in-law are worried about whether their daughter is able to keep up with her Chinese lessons at school and whether she can understand everything in Cantonese. However they are happy as the school is located very close to their home. Since attending the school, all the information, for example, timetables, parents' letters, distributed to the parents have been in Chinese. Rehman asked the school why the information provided to his niece to take home was in Chinese. He was told that there are only a handful of students who come from non-Chinese speaking families and so the school is unable to service them. The teacher's English was poor but she explicitly told Rehman that the school was unable to help. As a consequence, the parents do not know what they are signing and on occasions, a teacher will call the parents to ask them to sign a letter. Rehman is married to a Chinese woman and his brother relies heavily on Rehman's wife to translate information from the school in Chinese into English to Rehman, who then translates the information to his brother into Urdu. His brother has a son who will soon be attending Primary 1 at the same school.

Rehman is concerned for the children because they are shy and he is worried that they will lag behind. According to his wife, the children's Cantonese is weak. He feels that this is not proper education and there are too few options available to them. He also says that the school has not provided his niece with additional services to help her with her studies or otherwise.

10. Rukhsana

Rukhsana and her daughter, Ikra, 7, live in Sam Shui Po. Both are Hong Kong permanent residents and were born in Hong Kong. Ikra began her schooling at the Delia Memorial School's (Delia) private kindergarden. She chose Delia as she had also previously been a student there. She says that most ethnic minority students go to Delia so it seemed natural to send her daughter to that school.

After kindergarden, Ikra moved into Primary 1 at Delia and studied with her cousin. Delia is an English Medium Instruction (EMI) school. Unfortunately, her cousin passed away during Primary 1 and Ikra became reclusive. The teachers told Rukhsana that they had tried various methods to help her get through but none of them seemed to work. During Primary 1, the burden of school fees was too heavy for Rukhsana and so she applied to Yau Ma Tei Kai Fong school (Kai Fong) and Po Leung Kuk during the school year. Kai Fong rejected her application because there were no vacancies, so she pleaded with the headteacher of Po Leung Kuk and Ikra was offered a place at Po Leung Kuk. She was not aware of other schools that would accept ethnic minorities. She found out about schools through friends.

For Primary 2, Ikra started at Po Leung Kuk. When Rukhsana inquired about her daughter's progress, the teacher said that Ikra did not really respond to questions and did not interact well. The teacher also said she was not sure whether Ikra understood English. Rukhsana told the school's social worker and the social worker said she would talk to Ikra but it has been 7 months since her initial enquiry and the social worker has not yet spoken to her or Ikra. She has tried to contact the social worker on several occasions but has failed to find her.

Po Leung Kuk is an EMI school and French is offered as a second language. Students have Putonghua classes and students may choose between Cantonese and French classes. Most students will choose French as it is easier than Cantonese and parents believe that it is more likely that their children can achieve a higher mark in French which will affect their overall grade, ultimately affecting which secondary school they may gain a place at. Ikra finds French difficult as she did not study the language during Primary 1. Rukhsana would prefer Ikra to learn Cantonese but says that she cannot help her daughter as she cannot read Chinese and she cannot afford private tuition for her daughter.

Currently, Rukhsana is applying for a fees remittance which she learned about through a friend whose daughter is studying at Po Leung Kuk. She says that she has had to apply a few times to get a reduction. She does not want her daughter to change schools as she says her daughter is not an open person and worries about whether Ikra will be able to adjust to another school quickly. She would like to send her daughter to Kai Fong but only because she cannot afford the fees at Po Leung Kuk. Other than the schools mentioned and EK, Rukhsana is unaware of other schools accepting ethnic minorities. She has not considered sending Ikra to a mainstream Chinese school as she is sure that Ikra's Cantonese is not strong enough for her to keep up in classes and that she cannot help with Ikra with Chinese studies as she cannot read or write Chinese. Rukhsana feels that the education system in Hong Kong is unfair to ethnic minorities as there are very few schools that will accept ethnic minorities unless school fees are involved.

11. Simsar

Simsar (Simon) has been trying to find school places for his second brother's children (his niece and nephew). Simon lives in Tsuen Wan, is a Hong Kong resident and is fluent in English, Cantonese and Urdu. His niece and nephew are 11 and 10 respectively. The children are fluent in English, Cantonese and Urdu but cannot read or write Chinese. They were born in Hong Kong and have the right of abode.

Two years ago, his brother's family went to the UK to establish a life there but they were unable to adjust and decided to return to Hong Kong. Before the family left for the UK, his niece had been in Primary 2 for half a year and his nephew had just started Primary 4. As soon as the family returned to Hong Kong, Simon went to schools to find places for the children. He went to Li Cheng Uk since the children had been studying at that school before they left for the UK. His niece suffers from dwarfism and underwent corrective surgery. While she stayed in the hospital for 14 months she could not attend school but the Red Cross provided some tuition for her. Once she was released from the hospital, the family requested the Red Cross and/or the Education and Manpower Bureau (EMB) for lessons at home until she returned to school but neither provided lessons for his niece.

The family wish to send the children to a Chinese Medium Instruction (CMI) school since they live in Tsuen Wan and it will be very difficult for them to take the children to and from school if they attend a school which traditionally accepts ethnic minorities. At the first school Simon applied to, Simon was asked whether the children were Chinese and when he replied no, the school said that they did not accept ethnic minorities. At the second school, Simon told the school that the children were not Chinese and they were immediately rejected. Currently, the children have been back in Hong Kong for 6 months and have not found a school. At another school, Simon was told that there was no point in the children joining the school as half of the school year had already passed.

All the schools he applied to for the children have asked him to wait. He is planning to find a CMI school in Tsuen Wan for the children because the family wants the children to study Chinese and be close to home. If there is a parents' meeting and the children are not attending a school in Tsuen Wan, his brother will have to ask for the whole day off to go to the school. It will be a last resort to send the children to Li Cheng Uk or EK. He says it will be difficult for the children whether they attend a CMI or EMI school because their parents are not educated and cannot speak Cantonese or English. The children communicate with their parents in Urdu.

Simon says that he is not aware of the fact that the EMB has a responsibility to find school places for the children. Simon says that he believes the standard of service of the Education Department has worsened since 1997. In 1995, Simon's third brother emigrated to the UK and did not inform the school. The Education Department and schools which his 3rd brother's children were attending, sent officers to his 3rd brother's house to see why the children did not attend school. But when his 2nd brother left for the UK, the school filled the children's school places and did not allow the children back into the school. Also no enquiries were made as to the whereabouts of the children.

Simon has not contacted the EMB because he feels that they will not help him. Many years ago, he had a negative experience when he applied for form 6 through the Education Department. He felt he faced much discrimination and wasted time finding a place for form 6. He feels that most government departments are discriminatory so he feels that it is more effective if he does things by himself.

12. Fyzee

Fyzee is 40 years old and is married with three children. He is self-employed. He was born in India and is of Indian nationality. He has been a Hong Kong resident for many years and recently obtained right of abode status. His wife and children came from India to join him in Hong Kong in August 2002 and have the right to live in Hong Kong as his dependants. Fyzee sees Hong Kong as home and has no definite plans to go back to India and says that should he do so, it would be to retire.

Fyzee has two sons, aged twelve and ten and a daughter aged seven. Until their arrival in Hong Kong, they had been attending school in India. At home they mostly speak English but are also fluent in Tamil. They can converse a little in Cantonese.

Fyzee saw the Yaumatei Kaifong Association School⁹⁷ one or two years before his children arrived. He knew he wanted to send his children to that school so he pleaded with the headmaster to give them places and when the children arrived they were able to start school in September.

Although he considers himself lucky that he was able to find school places for his children, he is concerned about the lack of information provided to himself and other parents about the school placement process. He says that most information is provided to parents in Chinese which he cannot read. During Primary six, parents are given information from the school explaining that their children should move into secondary school and that they can either choose a school on their own or be allocated a school via the government allocation scheme. However he claims that there is no specific information available about any of the secondary schools that will accept ethnic minority children.

He also worries about finding secondary school places for his children since he believes there are few options for children from ethnic minority communities. He cites around ten schools willing to accept children from ethnic minorities but he believes that it is difficult for ethnic minority children to obtain places at these schools. He would like to see the statistics for ethnic minority children entering these schools. Currently he is waiting to see which secondary school his son will be able to attend.

13. Neha and Priyanka

Neha, 10, and Priyanka, 9 are sisters. They arrived in Hong Kong on 21 June 2003 and now reside in Jordan. Their father has been working in Hong Kong and has the

⁹⁷ An aided primary school that is included on a list entitled “Education Facilities for Non-Chinese Speaking Children” published by the Education Department in September 2002.

right of abode. Their mother was born in Hong Kong and also has the right of abode. Both daughters were born in Nepal and have the right of abode in Hong Kong.

Neha was studying in Primary 5 and Priyanka was studying in Primary 4 in Nepal until the end of May 2003.

Their father, Mr. Gurung, has been educated to university level and although he says that he is better able to access information on government websites than less-educated members of his community, he still believes it is difficult to obtain useful and complete information about available schools.

Before his daughters came to Hong Kong, he went through the government information page, initially finding useful but insufficient information. He could only find a list of schools for non-Chinese speaking children which included English Schools Foundation (ESF) schools⁹⁸ as well as private and public sector schools. He sent an e-mail to the ESF asking for information about schools within his residential area. He was referred to the Beacon Hill school which sent him an application form and set an interview.

Last year when he started to make plans for his daughters to join him in Hong Kong, he had many reservations. He did not feel financially secure and he was worried that he would not find a school for the girls. He felt that there were very few options for them as they had already reached an age where it would be too difficult for them to enter a Chinese medium school. If they were younger, he says that they could have gone to kindergarten and started to learn Chinese. But now, he feels that a school using English as a medium of instruction (EMI) would be the only appropriate setting for the girls. He feels that there do not seem to be enough school options especially since he is unable to afford private schooling.

On the EMB website he could only find a list of schools. He found a link for an Induction Programme⁹⁹ but there were no details about where or how to apply. Also there were no details about the course providers. He had to rely on information that he could find by himself, from friends or colleagues. He did not know about the existence of an Initiation Programme¹⁰⁰. He had heard of the Portuguese Community School through family and friends although he was unclear as to what the school provided.

He says that every parent wants to give their children the best education possible. In a large city like Hong Kong, he believes there should be more assistance. The majority of feedback that he has come across within his community has been negative.

⁹⁸ The ESF was established in 1967 by Government Ordinance for children whose first language is English. The ESF charges school fees comparable to many international and private schools in Hong Kong.

⁹⁹ This is a 60-hour programme to help newly arrived children from the mainland and elsewhere adapt to the local social environment and education system. It was established in 1995 for mainland immigrants and extended to include non-Chinese arrivals in October 2000. (See the Education and Manpower Bureau web site: <http://www.emb.gov.hk>, under Education and Support Services for Newly Arrived Children. There is currently a telephone number listed for enquiries).

¹⁰⁰ This programme is also for newly arrived children and lasts six months. Students may choose to attend this programme before entering a mainstream school (See the Education and Manpower Bureau web site: <http://www.emb.gov.hk>).

He says he does not know of any Nepalese students doing well in Hong Kong. In the long-term he believes that his children and other children in the Nepalese community will face real problems if they are not educated well. He believes that the government needs to make more of an effort to provide assistance.

He learned about Ms. Fermi Wong, a social worker, via a Pakistani colleague at work. After hearing about her, he searched on the web and found an article about Ms. Wong fighting for the rights of ethnic minorities in Hong Kong. He therefore called Ms. Wong to ask for assistance to find a school for his daughters.

He says that it is not enough for the government to prepare information. The information does not reach ethnic minorities. The government needs to build better bridges to access communities and co-operate with communities more. He believes that the lack of a Nepalese Club or cultural center is another example of the government's lack of co-operation. This type of club/ centre has been established for the Indian and Pakistani communities in Hong Kong.

Mr. Gurung submitted applications for his daughters to the Delia Memorial School (Delia) having heard of the school through relatives studying at Delia. His friend gave him the school's contact details and when he rang the school, they asked him to visit their website and download an application form. The school further asked him to send his daughters' details and set an interview date. Even though he has scheduled a few interviews, he is concerned that they may be rejected and may not have a school to attend during the coming school year.

Currently he is looking into the Initiation Programme. He is also worried that his daughters have been out of school for a few months and will not have an opportunity to adjust to life in Hong Kong. He says that when the girls arrived at the airport, they were approached by the International Social Service and received an information pack. The details of the pack were very general explaining details about transportation and health in Hong Kong. He says the pack did not contain details regarding education.

14. Benyameen, Abul, and Fatimah

Benyameen, 17, is one of six children living with their mother under one roof in Yuen Long. He has an older brother who is 18, the two siblings mentioned above and another two younger sisters, aged 14 and 9.

Abul (known as Adil) is 12 years old and Fatimah is 8. All of the children were born in Hong Kong and can speak Cantonese fluently. Their parents are originally from Pakistan. Their father came to Hong Kong thirty years ago as a migrant worker and their mother joined him eighteen years ago. They all have permanent resident status. The children usually speak Urdu at home as their mother cannot speak Cantonese. They have intermediate abilities in Arabic and occasionally attend Qu'ran reading classes.

Benny is currently attending Asson College and studying at form 6 level. He attended a mainstream school in Li Cheng Uk government primary school in Cheung Sha Wan

and then went to the Delia Memorial school for secondary education. For the HKCEE he was only able to pass one subject, English. He took French as his second language. During his time at secondary school he had Putonghua classes but he explains that his level of Putonghua is very low as he did not enjoy the classes and there were few opportunities for him to practice. He had not been studying Chinese during secondary school but decided to take Chinese during form 6. He soon dropped this subject since he was unable to understand and it was far too difficult for his level of Cantonese.

In secondary school, he achieved good results in form 1 but in form 2, he says he hung around with “the wrong crowd”. By form 3 most of his friends dropped out due to poor results. In form 4 he had a different group of friends and his results improved during his HKCEE years.

After form 5 Benny tried to find a job but no one replied to his job applications, whether they were full or part time jobs. He believes this is due to two main reasons: First, there are too few jobs because of the economic situation in Hong Kong. Second, employers are shocked when they see that he is not Chinese. He is asked whether he can read and/or write Chinese even when the job does not require knowledge of written Chinese. He currently has a part-time job handing out pamphlets for five hours everyday and is paid \$150 per day.

He feels that he is a Hong Kong citizen although he does not feel like part of the local community. All of his classmates were from ethnic minorities and he found it difficult to get along with the Chinese students in the school. He suggests that schools should organise activities to encourage the students to play with and understand each other. He explains that sports tournaments are arranged in such a way that international school students/ ethnic minorities play against each other and Chinese schools play against each other. He does not understand why teams of mixed ethnic origin do not play against Chinese teams. He believes there is a severe lack of understanding between all the students which is also prevalent in Hong Kong society.

He has received mixed reactions from local Chinese people. He often experiences racial discrimination but cites football as a positive interaction with local Chinese youths. He plays football in Jordan and says that on the football pitch it does not seem to matter what your ethnic origin is. Outside of football, life is difficult and he never feels he knows what people are thinking. However on the football pitch, teams are mixed in ethnic origin, including local Chinese and people are not aggressive. If he falls over, he is often given a helping hand by a local Chinese and receives an apology. Benny shows his identity card and says that no one should tell him that Hong Kong is not his home.

Adil is now twelve years old and is studying at the Delia Memorial School. He chose this school because his older brother, Benny, had studied there. Also he was unable to go to a local mainstream Chinese school as his Chinese level was too low. He went to the same primary school as Benny in Cheung Sha Wan (Li Cheng Uk) and was directly assigned to that school. Adil explains that he actually wanted to go to HKMA, a directly subsidised school, as he believes it is a better school. It is a Band 1 school but the fees are too expensive for him to be able to attend. He enjoys school

life at Delia and has chosen French as his second language. He goes on to explain that he wants to learn Chinese but if he were to choose Chinese, then every subject would be conducted in Chinese. He is unable to cope in that kind of environment. Many of his comments follow the same pattern as Benny's.

Adil believes it is easier for Chinese people to find jobs and that Chinese people can communicate more easily with each other. He says that since he can speak Cantonese, he can communicate with Chinese people but they are not often very friendly. He says that it is not surprising as Chinese people are in a Chinese country and feels that many do not think it is acceptable for Pakistanis to be in Hong Kong, although he disagrees with this perspective.

Fatimah, the youngest of the family, is now attending a Chinese primary school. Her nine year old sister is also attending the same school. She says she enjoys school but finds Chinese very difficult. At play time, she says that none of the other children play with her except one. So she spends her break-times with her sister and one Chinese friend. She says that the other children can be rude to her but she does not understand.

Other Occasional Papers published by the Centre of Comparative and Public Law
(available at <http://www.hku.hk/ccpl/pub/occasionalpapers/index.html>)

No. 1: Andrew Byrnes, “The Convention on the Elimination of All Forms of Discrimination against Women: Implications for Hong Kong”, May 1999.

No. 2: Moana Erickson, “Implementing the CEDAW Convention in Hong Kong: Gender Policy Analysis”, June 1999.

No. 3: Robyn Emerton: “Trafficking of Women into Hong Kong for the Purpose of Prostitution: Preliminary Research Findings”, February 2001.

No. 4: Carole J. Petersen: “Sexual Harassment in the Workplace”, June 2002.

No. 5: Roda Mushkat: “‘Fair Trial’ As A Precondition To Rendition: An International Legal Perspective”, July 2002.

No. 6: Carole Petersen and Kelley Loper: “Submission on The Proposals to Implement Article 23 of the Basic Law”, December 2002.

No. 7: Simon N.M. Young: “Hong Kong’s Anti-Terrorism Measures Under Fire”, January 2003.

No. 8: Robyn Emerton and Carole Petersen: “Migrant Nightclub/Escort Workers in Hong Kong: An Analysis of Possible Human Rights Abuses”, April 2003.

No. 9: Fu Hualing, Kelley Loper, Carole Petersen, and Simon N.M. Young: “Group Submission to the Legislative Council, the Department of Justice, and the Security Bureau of the Hong Kong SAR on the National Security (Legislative Provisions) Bill”, May 2003.

No. 10: Simon N.M. Young, “‘Knock, knock. Who’s there?’ - Warrantless Searches for Article 23 Offences”, June 2003.

No. 11: Johannes Chan, “Unauthorized and Damaging Disclosure of Protected Information: A Comment on the National Security (Legislative Provisions) Bill 2003”, July 2003.