

CHAPTER 8: CRIME AND LAW ENFORCEMENT**OVERVIEW**

In this chapter, we explore issues of crime and criminal justice involving ethnic minorities generally. The failings of the Hong Kong education system, the lack of equal opportunities in employment and the resulting social exclusion play an incontrovertible role in the systemic marginalisation of young ethnic minorities. There is a need to study the impact of these circumstances to explore any causal links to the situation of criminal justice involving ethnic minorities. More generally, however, this chapter also concerns itself with accessibility to legal remedies and justice in cases involving ethnic minorities.

The number of ethnic minorities arrested for criminal offences appears to be on the rise. It is unclear however, what percentage of the arrests lead to convictions and for which crimes. If we pay heed to what the figures reveal, the systemic disadvantage in education and employment are contributing factors to a growing problem of crime, involvement in youth gangs and drugs. The fact that some of these crimes are gang crimes reinforces the view that to some extent, the criminal activities stem from social exclusion. It is a worrying phenomenon because increasing numbers of ethnic minority youth have become recruitment ‘targets’ of Triads, who are taking advantage of the vulnerability of this group of youngsters. Many of them try drugs when offered and become addicted. To feed the addiction, they become drug peddlers dealing small quantities at first, and then begin moving larger amounts.

On the other hand, the criminal justice system, whose very aim is to administer justice equally and fairly, is systemically discriminatory towards ethnic minorities. The many flaws and imperfections in the criminal justice system result in exacerbated unfairness to ethnic minority defendants, who deserve equal protection of their fundamental rights before the law, just as anyone else. Racial profiling, the abuse of ‘stop and search’ powers, erosion of the right to silence and wrongful arrest and detention are frequent complaints levied against police, correctional services, customs and immigration officers. These patterns of discrimination have shattered the trust of ethnic minorities in law enforcement officials. In the courtroom, the language barrier almost automatically strips a convicted ethnic minority of a full range of ‘softer’ sentencing options, such as probation order, rehabilitation, detention or training centre orders, thereby simultaneously undermining their chances to rehabilitate and reintegrate into the society after they have served their sentence.

Crimes involving ethnic minorities and the treatment of ethnic minorities in the criminal justice system in Hong Kong are under-researched. In the absence of coherent and detailed research on the subjects, the current understanding of the situation is based primarily on individual cases reported to front-line workers¹, newspaper reports and certain raw data.

As noted in the Key Demographic Data chapter of this Report, the proportion of ethnic minorities aged below 15 (“Ethnic Minority Youth”) in Hong Kong is significantly higher than that of the whole population of Hong Kong. In particular, almost 40% of the Pakistani population is aged below 15. With such a significant proportion of Ethnic Minority Youth in Hong Kong, which far outnumbers the rest of the population in that age group, they warrant particular attention.

A. CRIME

A.1 Number of Arrests for Crimes, Triads and Ethnic Minorities

During the period 2005 to 2014, the number of arrests for crimes involving ethnic minorities has steadily grown, barring one or two dips in intervening years, as reflected in *Table 8.1* below. During the period 2005 to 2014, the number of arrests involving ethnic minorities disaggregated by types of crime is presented in *Table 8.2* below. *Graph 8.1* shows the number of ethnic minorities arrested between 2005 and 2014 by type of crime.

From 2011 to 2012, Yuen Long and Yau Tsim Mong districts saw an increase in the number of crimes involving ethnic minorities. The type of crimes ranged from theft, shoplifting, common assault to assault occasioning grievous bodily harm.²

Fermi Wong Wai-fun, Founder and the former Executive Director of Hong Kong Unison felt that the increased involvement in criminal activities among ethnic minorities was attributable to the lack of government support and the inadequacy of social policies to cater to the specific needs of ethnic minorities. In particular, the lack of language support (making various services and opportunities inaccessible) and scant employment opportunities, rendered ethnic minorities unable to earn a living through participation in the labour force. As a result some marginalised ethnic minorities turn to illegal gangs to earn 'fast' money.³

James Lung Wai-man, executive officer of Hong Kong Community Development Network highlights that the language barrier discourages Nepalese youth from engaging in activities at community centres. Instead, they tend to gather in parks and other public places, thereby increasing the chances of them being approached by Triad members.⁴

Table 8.4 below shows the number of crimes in Yau Tsim Mong District and Yuen Long District in 2011 and 2012 (January to July) in general and those involving ethnic minorities.⁵

Gang-related violent crime involving ethnic minorities has recently been in the news:

- In July 2012, two Nepalese young men were attacked by 15 Nepalese men at King George V Memorial Park;⁶
- In August 2012, a fight broke out among 60 South Asians in King George V Memorial Park, 9 of whom were arrested for unlawful assembly and 12 were arrested for possession of an offensive weapon;⁷
- In September 2012, a young man and his father were brutally attacked and robbed by 20 South Asian youths in Yuen Long;⁸
- Another fight broke out in September 2012, where a 19-year-old Nepali youth was killed during a Nepali gang fight with 20 to 30 men in Yuen Long.⁹

Table 8.1 Number of Arrests for Crimes Involving Ethnic Minorities, Disaggregated by Age

Age Group	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
10-15	72	100	109	150	188	171	216	169	199	152
16-20	198	188	206	239	238	217	239	295	250	242
21+	2927	3212	3289	3415	3399	3407	3555	3671	3637	3622
Total	3197	3500	3604	3804	3825	3795	4010	4135	4086	4016

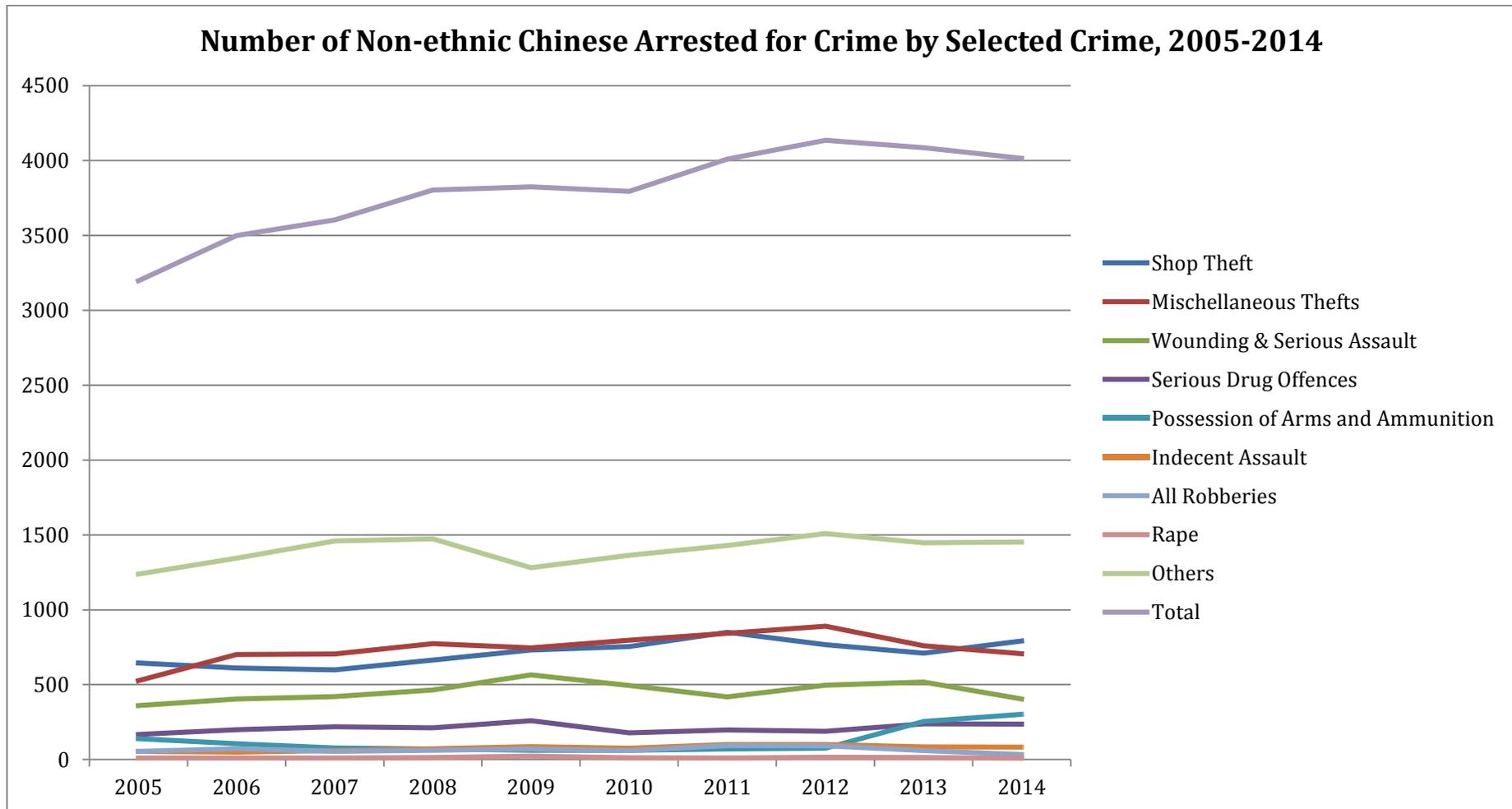
Source: Hong Kong Police Department

Table 8.2 Number of Arrests for Crimes Involving Ethnic Minorities, Disaggregated by Type of Crime

Crime	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<i>Shop Theft</i>	644	612	598	665	731	754	849	767	711	791
<i>Miscellaneous Thefts</i>	526	702	704	773	746	797	842	891	760	706
<i>Wounding & Serious Assault</i>	360	404	421	464	566	494	418	496	518	404
<i>Serious Drug Offences</i>	168	199	219	212	259	178	198	189	239	237
<i>Possession of Arms and Ammunition</i>	140	105	78	70	62	62	71	75	254	302
<i>Indecent Assault</i>	54	50	59	72	87	75	100	100	84	82
<i>All Robberies</i>	55	72	55	62	70	59	93	92	59	33
<i>Rape</i>	11	11	11	13	23	12	10	16	14	8
<i>Others</i>	1239	1345	1459	1473	1281	1364	1429	1509	1447	1453
Total	3197	3500	3604	3804	3825	3795	4010	4135	4086	4016

Source: Hong Kong Police Department

Graph 8.1 Number of Ethnic Minorities Arrested Between 2005 and 2014, by Type of Crime



Source: Police Department of Hong Kong 2015

Table 8.3 Number of Crimes in Yau Tsim Mong District and Yuen Long District in 2011 and 2012 (January to July) in General and those Involving Ethnic

	Yau Tsim Mong District		Yuen Long District	
	2011	2012 (Jan – July)	2011	2012 (Jan – July)
Total no. of crimes	5,800	3,074	6,051	3,395
No. of crimes involving ethnic minorities (%)	105 (1.81%)	83 (2.7%)	251 (4.1%)	183 (5.4%)

Source: Oriental Daily

Although attempts were made to obtain data related to crimes committed as disaggregated by ethnicity, such records have not been maintained. The only available data provided pertains to arrests made as disaggregated by type of crime and ethnicity. This data is not representative of the crime rates but rather the number of arrests made where suspicion arose regarding the commission of crimes. This data may be explained by a number of factors including, an increase in the population of ethnic minorities, additional police resources allocated to tackle specific crimes, or revised protocols in relation to crime detection and arrest. The data is presented here merely to offer an insight into some of the issues arising from racial profiling and numbers of arrests by type of crime and age groups. More specific data sets are essential in order to formulate an accurate picture of rates of crimes involving ethnic minorities.

The police believed that some of those involved in the fight were Triad members. Increasingly more Nepalese have become the target of Triad gangs' recruitment activities, allegedly due to their 'pure' nature and obedience. These Triads attract marginalised youth with drugs and other entertainment benefits, hoping to nurture them as members and ultimately successors in their organisations.¹⁰

Despite this knowledge, the Hong Kong Police Department has not put into place adequate schemes to specifically protect ethnic minority youth from recruitment by Triads although it has instituted general measures, including encouraging students to join the Junior Police Force as a form of extra-curricular activity¹¹ and the appointment of Non-Ethnic Chinese Community Liaison Officers since 2011.¹²

It is noteworthy that the Kwai Tsing police district office launched the "Summit Scheme" in September 2014 with the aim of strengthening ethnic minorities' knowledge of the police force and the integration of ethnic minorities into the general community in the district. In particular, the scheme targets ethnic minority youth and aims to improve their understanding of the police force and strengthen their sense of belonging to the society. Police Training Workshops were tailor-made for ethnic minority youth with the aim of encouraging them to join the police force in the future and to become the bridge of communication between different ethnic minority communities.¹³ It is hoped that similar initiatives will be implemented in other districts, especially those with a large presence of ethnic minorities.

A.2 Drug Abuse and Crime

Drug abuse is a serious problem among ethnic minority youth, who are found to be the most vulnerable to drugs. According to a study conducted by the KELY Support Group and the Polytechnic University's Department of Applied Sciences, 60% of ethnic minority youth respondents stated that they did not know a lot about drugs.¹⁴

Since ethnic minority youth are susceptible to drug abuse, Triads use drugs as a means to control them. They first offer drugs to ethnic minority youth in order to get them addicted. Then, they force ethnic minority youth to participate in crimes in return for an upkeep of their supply of drugs.¹⁵

Ethnic minority youth are especially vulnerable to drug abuse for the following reasons:

- Peer pressure stemming from a strong sense of brotherhood;¹⁶
- Drugs were easily available at Chungking Mansions, a hub for ethnic minorities of various backgrounds in the Yau Tsim Mong district, or simply by telephoning drug dealers;¹⁷
- Desire to escape and seek relief from a society where they feel isolated, lonely and defeated;¹⁸ and
- The small size of ethnic minority communities, which makes it difficult for ethnic minority youth to seek external help¹⁹

An 18-year-old Nepali shared his first-hand experience of how drug dependence 'forced' him to participate in illegal activities.

"I could not find any job after graduating from high school, and so I spent most of my time hanging around with other old friends from school. Initially they bought me meals, showed me around and started giving me drugs. When I became addicted, they asked me to engage in drug-trafficking or I would no longer be supplied with drugs."

The phenomenon of youth gang and Triad participation is not a race-specific issue – marginalised Chinese youth are also attached to gangs and Triads. However, within the solid body of research on youth gangs and their Triadisation in Hong Kong, the specific experience and agency of ethnic minority youth gang members is overshadowed by that of their Chinese counterparts and this needs to be better understood.

B. CRIMINAL JUSTICE

B1. General vulnerability

It is fair to conclude from the reports of frontline workers that ethnic minorities are vulnerable in the current criminal justice regime and their fundamental rights are insufficiently protected. Ethnic minorities experience a sense of powerlessness as an excluded group in Hong Kong society.²⁰ Additionally, owing to language barriers, poor education level as well as unfamiliarity with local legislation, not only are ethnic minorities more prone to transgressing the law inadvertently, they are also vulnerable to wrongful arrest or detention, deprivation of rights and unfair treatment in the criminal justice system.

They have a poor understanding of their legal rights and that such protections are equally accorded to all people, including them.

Ethnic minority victims of crime, for example, were found to display a low level of trust towards police and the judicial system. This may discourage them to seek police assistance for their own protection.²¹

Much is grounded in the discriminatory attitudes that appear to be pervasive among the police force and other law enforcement officers. A study revealed that the attitude of the police towards ethnic minorities is often “rude or discriminatory.”²² This might be attributed to the lack of human rights training for both the junior and senior level police officers. Even though there are departmental instructions and a Training Day package on the Race Discrimination Ordinance (RDO), the Basic Law and other relevant legislations, the materials seem to be limited to “briefing” and “explaining” to the officers the provisions of the legislations and the standard of compliance.²³ In other words, the training does not take a human rights-based approach that would enable the police to appreciate that the limits of their powers stem not from black-letter laws and instructions but the rights of the citizens.

Similarly, although topics on human and civil rights protection, and equal opportunities are available in the Hong Kong Police College’s curricula, whether they are included in the training is subjected to the needs of the programme and the arrangements that can be made to bring relevant experts to speak to the department. This suggests that human rights education is not mandatory.²⁴ The importance of such substantive training being made compulsory for all law enforcement officers is borne out by recent reports and the circumstances underlying on-going litigation involving the Hong Kong Police Force.

B2. ‘Stop and Search’

Ethnic minorities have reported that the police has displayed a brutal attitude and employed abusive language towards them (e.g. by calling them “*sei cha cha*” translating roughly to “freaking Indian boy”). In November 2014, during the Umbrella Movement in Hong Kong, an Indian woman Jessie complained that a male police officer told her to “Go back to India”. Jessie, who was in fact born and raised in Hong Kong, felt offended by the discriminatory words,²⁵ which questioned her belonging to Hong Kong.

Racial profiling is also evident.²⁶ Limbu’s case in 2009 caused public outcry where Limbu, an unarmed Nepalese man, was shot dead by a police constable in Ho Man Tin. Many groups protested against the Coroner’s ruling of the death as a lawful killing. Critics opined that because the policeman only spoke to Limbu in Cantonese and therefore, could not be sure that he understood his warnings, he shot him unlawfully, particularly in light of the fact that the use of force was unnecessary and excessive since Limbu did not pose a threat to public safety at that time and he was not holding any hostages or carrying any lethal weapons.²⁷

Moreover, the stop and search tactics of the Hong Kong Police are questionable. While the frequency of such searches was four times as much as those carried out in New York and London (with more than 1.98 million spot checks last year) by officers there, the searches in Hong Kong are less likely to lead to the detection of a crime. According to Boehler²⁸:

“Only one in 113 searches resulted in the detection of a crime. By contrast, one in nine checks in New York led to the issuance of a summons, while one in 12 checks in London resulted in an arrest in 2011.”

Further, South Asians were much likely to be targeted for searches. Many ethnic minorities complained of frequent identity checks carried out by the police. Kamran Ryed, a 43-year-old Pakistani tailor in Hong Kong reported that he had been stopped 10 times by police patrols in a month, during which they carried out body searches on him in public or asked him to empty his pockets. The frequency of such ‘stop and search’ conduct had started to become a nuisance, said Ryed, who further added that his wife who is Chinese, never gets checked.²⁹

Although there are no independent statistics on whether ethnic minorities are indeed more likely to be stopped and searched by the police, a campaign officer at Hong Kong Unison shared this observation, commenting that, “from my experience, ethnic minority residents tend to face more frequent ID checks.”³⁰

A 31-year-old asylum seeker from the Punjab expressed that he felt insulted in the way the police conducted searches on him. Singh explained that the police checked him almost every day, sometimes more than once. The target of their searches include his bag, his pockets, and on one occasion, his underwear.³¹

“They search me like I’m a drug dealer or an illegal immigrant,” he said.

The police insist, however, that on-street checks and searches are not targeted at specific groups of people, either by ethnic origin or social grouping.³²

In Hong Kong, police powers to ‘stop and search’ are broad and governed by s.54 of the Police Force Ordinance (“PFO”). Under s.54 (1) of the PFO, a police officer may stop, detain and search (for anything that may present a danger) any person behaving suspiciously. Whether someone is considered to be behaving suspiciously depends on the police’s subjective judgment, although the police must be able to point to some factual grounds and evidence to support their suspicion.³³ Section 54(2) additionally provides wider search powers which allow police officers to search for anything of value to the investigation of any offence when there is reasonable basis for suspecting that a person has committed, is about to commit or is intending to commit an offence. This subsection is tested against an objective standard and the police officer relying on this subsection must have a particular offence in mind and must not base his decision upon mere suspicion and speculation.³⁴

Misuse of the power of ‘stop and search’ can easily become a tool of oppression against ethnic minorities.³⁵ One only needs to take note of developments in the United States of America or in the United Kingdom since the 9/11 terrorist attacks and the 7/7 bombings in London to see a significant rise in the trend towards racial profiling in the guise of national security. However, in practice, given the wide formulation of the basis of the police’s stop and search powers, it will often be difficult to prove whether the police’s decision was a legitimate one uninfluenced by irrelevant factors, such as a person’s race. This has important negative connotations for ethnic minorities and raises questions about police legitimacy. More crucially, it impacts trust between communities, often resulting in a fear of the police even in times when ethnic minorities need assistance – they worry that they will end up in trouble with the police.³⁶

The RDO purportedly does not generally apply to the police due to the omission of any reference to conduct of government bodies that amounts to the exercise of government functions and powers, as discussed in the The Rights of Ethnic Minorities under the Law in Hong Kong: Equality and Non-Discrimination chapter of this Report.

This is another reason why much hope hangs over the outcome of the case of *Arjun Singh*³⁷ to see how the courts decide on the question of the applicability of the RDO to the conduct complained of and the validity of the argument that the RDO does not cover police conduct in the execution of its powers and functions. Such a position is untenable as being contrary to Hong Kong's international human rights obligations under ICERD.

B3. Wrongful Arrest and Detention

Tahir Khan, a 19-year-old Pakistani complained of his apparently wrongful detention for one year. Khan was charged in 2012 with assault with intent to rob contrary to section 10(2) of the Theft Ordinance. He was denied bail because of the seriousness of the offence. However, after a year, including time for an adjournment sought by the police to collect evidence, the court held that Khan had no case to answer and he was freed from detention. Although the evidence as it stood did not point to a conclusion that the arrest was 'wrongful' *per se*, at the very least the police and prosecution should not have deprived a suspect of his freedom if the evidence against him was not strong enough.³⁸

Hong Kong Unison has reported on various other issues encountered by ethnic minorities in the course of their arrest, for example the failure to administer the caution statement to ethnic minority suspects before arrest, wrongful arrest on account of mistaken identity, wrongful use of handcuffs and the non-use of ski masks to protect their identities, among other infractions of the basic rights of ethnic minority suspects³⁹, all rights which are safeguarded under the Hong Kong Bill of Rights Ordinance and as to which, police guidelines for practice are firmly in place.

B4. Procedural Abuse: Deprivation of Fundamental Rights

Fermi Wong Wai-fun, a registered social worker and a former Executive Director of Hong Kong Unison collated case histories of clients over the years and shared insights into the unpleasant and unfair treatment of ethnic minorities suspected of a crime at the hands of the police and as they undergo the legal process from statement-taking to arraignments to trial. The documented anecdotal evidence is case-based and although not collected systematically with a view to ascertaining a pattern of discrimination, these observations raise fundamental concerns as to whether the basic rights of ethnic minorities are equally protected if differential treatment is extended owing to stereotypes that ethnic minorities are likely to be guilty of an alleged crime or involved in illegal activities being prevalent among the police.

Although the compilation of anecdotal evidence by Hong Kong Unison is the only publicly documented and available information at this time⁴⁰ the serious nature of the patterns of behaviour, attitudes and handling of ethnic minorities on the part of the police towards the case study sample bears significant implications for police education and training to enhance the prospects of equal treatment and to eradicate racial and discriminatory stereotypes that put the fundamental rights and liberties of ethnic minorities at risk.

Right to Silence

The right to silence and the right against self-incrimination are fundamental rights guaranteed to every suspect of a crime.⁴¹ These rights are operative in both, pre-arrest and post-arrest stages, and are protected by mandatory rules which require the police to caution a person *as soon as* the officer has evidence which would give him reasonable grounds for suspecting that he or she has committed an offence. The caution statement must make it

clear to the suspect that he *is not obliged to say anything unless he wishes to*, and that anything said may be put into writing and presented as evidence in a court of law.⁴²

In practice, ethnic minorities are seldom aware of or informed of this fundamental right due to the language barriers or other reasons, most notably, their unfamiliarity with the law and their rights and the discriminatory attitudes of police officers.

Hong Kong Unison has reported on the oppressive conduct of police officers. According to Hong Kong Unison, ethnic minorities are vulnerable to self-incrimination due to the following factors:

- In some cases, even when ethnic minorities are advised of their right to remain silent, they dare not exercise this right for fear of unknown consequences;
- Some ethnic minorities underappreciate the importance of exercising this right as a result of being misled into believing that the offence that they are charged with is not that serious; or
- Some police officers make false promises or threats to induce suspects to make and sign statements, and when these statements are made, the police refuse to give a copy of the statements to the suspects.⁴³

These practices grossly infringe a suspect's right to silence, and are against the rule that statements made by suspects must be voluntary and made or obtained in the absence of inducement or threat. A person who makes a statement should also be entitled to a copy of any such statements made.⁴⁴ These are all serious violations of the Rules and Directions for the Questioning of Suspects and the Taking of Statements 2012.

These deceptive and oppressive tactics deployed by the police suggest that they may be designed to trick the suspect into revealing information they need not reveal, especially in the absence of legal advice. The use of such tactics may belie a disturbing reality: the underlying stereotype that ethnic minorities are criminals appears to inform the approach of the police. If these oppressive practices become routinely deployed towards ethnic minorities without scrutiny, they may risk becoming rampant because the victims may not know any better.

The use of interpreters in relation to the making of statements to the police has also proved to be very problematic.

- There are insufficient qualified interpreters to act as an effective communicator between the police and ethnic minority suspects;
- Some interpreters display blatantly unprofessional attitudes towards ethnic minorities. They act as if they are part of the police force and even scold ethnic minority suspects;
- Some interpreters engage in selective listening or interpretation of the statements made by suspects, producing misleading and inaccurate statements that may be detrimental to the suspect's case;
- Some interpreters refuse to alter or add information at the suspect's request even after they learn of their errors or mistakes.⁴⁵

Right of Access to Lawyers

The right of access to legal advisors is also a fundamental human right. Under the law, no person shall be denied access to a legal adviser save in extremely exceptional circumstances.⁴⁶

In practice, many ethnic minorities are unable to enjoy this right due to information gaps. While the duty lawyer scheme (“DLS”) is aimed at providing affordable legal services to defendants, many ethnic minorities do not know of the scheme. Very often, therefore, no legal assistance is provided to them. Moreover, since the DLS does not provide representation to suspects in the police station, by the time the cases reach the courts, the ethnic minority suspects might already have made self-incriminating statements. Reportedly, in some instances, the police make adverse remarks questioning whether ethnic minorities can afford a lawyer.⁴⁷

Right to bail

The right to bail is an important right, premised on the presumption of innocence, and specifically, that no person shall undergo imprisonment or punishment until he or she has been adjudged guilty.⁴⁸ Although this is not an absolute right in that it is subject to the court’s discretion, a statutory presumption that every suspect shall be entitled to bail is presently in place.⁴⁹

The experience of ethnic minorities, however, shows that they often have to wait for an unreasonably long period of time for the extension of bail due to the unavailability of interpreters in general. At other times, the renewal of bail is delayed because the police officer in charge is busy or the file has not been prepared in time. These arguably constitute unreasonable infringements of a suspect’s right to bail.⁵⁰ The informational and accessibility gap that result from the lack of effective resources in relation to legal advice and access to an interpreter, hinders timely access to justice for an already vulnerable group in society. Moreover, the prospects of being forced to spend time behind bars for reasons of administrative inefficiency or a lack of adequate resources to enable speedier access to this group raises fundamental issues about fairness and due process.

Rights as a detainee

A detainee is entitled to reasonable provision of food, water and clothing. Ethnic minority detainees have reported, however, that their requests pertaining to these needs, were sometimes ignored or turned down by police officers. The predominantly Chinese environment in imprisonment and detention facilities also means that all the rules, regulations, notices as well as warnings are incomprehensible to ethnic minorities, rendering them vulnerable to unfair treatment and deprivation of their most basic entitlements and liable to routine infractions of prison rules due to their lack of knowledge of them. Some detainees’ family members also expressed frustration due to the police’s unreasonable refusal to answer their enquiries about the detainee.⁵¹

B5. Sentencing Options

Sentencing options are exclusively a matter for the judge. However, in appropriate circumstances, the judge will call for a probation officer’s report to consider whether a non-custodial sentence might be appropriate for a particular defendant. In doing so, a judge is not bound by the report but it is open to him to consider the recommendations of the probation officer.

In the case of ethnic minorities, probation officers have reportedly been biased in their recommendations and often refuse to recommend probation orders as an alternative to custodial sentences on the ground of ‘language barrier’, when an immediate justification is

found to be lacking.⁵² The same appears to be true for other ‘softer’ sentencing options, such as enrolment into a Rehabilitation Centre, Detention Centre or Training Centre.

In *HKSAR v. Chochanga*, the magistrate sentenced a young first-time offender of ethnic minority background to 5 months’ imprisonment for simple possession of dangerous drugs. On appeal, the sentence was overturned because it was manifestly excessive and the appellate judge ordered the defendant to be placed on Probation for a 12-month period instead. The appellate judge nevertheless noted that an offender’s ability to participate *fully* in these programmes would be a vital and deciding factor in determining what sentencing options are appropriate.⁵³ This is likely because while alternative sentences focus on the rehabilitation and reintegration of the offender into society, the fact that the programs are primarily designed with Chinese convicts in mind, means they can potentially fail to have the desired impact in achieving these goals for non-Chinese offenders.

As such, the language barrier faced by ethnic minorities can potentially deprive ethnic minority defendants of a number of alternative sentencing options (to imprisonment) that would have been suitable for and available to them *but for* the language barrier. As a result, ethnic minorities may receive harsher sentences for lack of appropriate alternatives. The disparate treatment and negative experiences in prison can potentially increase their likelihood of reoffending. While language ability no doubt affects the effectiveness of the administration of a certain rehabilitation programme, this does not in itself justify a differential treatment of ethnic minorities in being considered for other forms of sentencing, especially where the only remaining option is imprisonment. This issue warrants serious attention as imprisonment is recognised as a heavy penalty. The ‘clang of the prison gates’ is always to be reserved for more serious crimes since it has a life-altering impact on individuals, especially young offenders from marginalised communities.

Further, it is also hard to justify the differential treatment because there is no attempt to make the alternative sentencing options more suitable for them (e.g. through running equivalent schemes in a language understood by them). This reflects the lack of initiative and commitment to overcome the language barrier even when the stakes are high. Ultimately these systemic failings in the criminal justice system undermine the equal rights of ethnic minorities, thereby endangering their right to defend themselves against criminal charges. This may result in a higher chance of conviction due to an ineffective defence strategy or a lack of recourse to effective and timely legal advice or interpretation to present the defence properly. This, in turn, fuels the stereotype of ethnic minorities as criminals and allows attitudes of exclusion and indifference to fester at all levels of society.

B6. Access to Justice

The challenges described are evident from the barriers to access to justice faced by ethnic minorities on a routine basis. These manifest themselves at various junctures in the justice system, including:-

- Registration of formal complaints against perpetrators of crimes in which they are victims;
- Lack of relevant information and understanding of procedures and formalities required from the moment of reporting to the police or filing a legal action through to the workings of the trial;
- Discriminatory or insensitive or culturally inappropriate treatment;

- Giving a statement in relation to their complaint and having the facts captured inaccurately, signalling reasons underlying the lack of trust towards police;
- Giving evidence in court in a language they are comfortable with only to find the interpreter misinterpreting the evidence being conveyed;
- The use of services for protection, assistance or rehabilitation, for example, in instances of domestic violence or drug abuse; and, most notably,
- When they are remanded in custody or suspected of having committed an offence.

As noted above, the language barrier is the primary culprit, exacerbating the lack of access to information about rights of victims, suspects and convicts. There is however, also concern over the role of discriminatory attitudes harboured by relevant personnel who come into contact with members of the ethnic minority communities in such circumstances. These factors coupled with the general access to justice issues that burden the Hong Kong legal system even for the Chinese population makes it much less likely that ethnic minorities would have confidence to seek justice under Hong Kong law. On the whole, these systemic barriers and attitudes combine to grossly undermine equal treatment and access to justice for ethnic minorities as a group. Where a system is faulty by design and invariably presents challenges for particular users, this is a systemic issue affecting users of particular ethnic backgrounds. This directly violates the Government's obligations under international and domestic law in relation to equality and non-discrimination, among various other guarantees.

B7. Rehabilitation and Reintegration of Ex-offenders

Jon So's study highlights the difficulties encountered by ethnic minority offenders in re-entering the society as law abiding and productive members. It was argued that 'rehabilitation' and 'reintegrated' are misnomers in the case of ethnic minority ex-offenders, as they "were never habilitated or integrated into society in the first place" – or into the prison society for that matter.⁵⁴ So's study reveals that around 8 out of 10 of the ethnic minority inmates had no visitors. In the institutions, there is little communication between them and other Chinese inmates or prison officers due to language barrier, making "disconnection" a common theme of their prison life. The social exclusion within the prison and being cut off from family ties has detrimental effects on the psychological health of ethnic minority offenders and their ability to reform.

Even though there are pre-release preparation and re-entry programmes in place for inmates that are due to be released, ethnic minorities are systemically excluded from these programmes due to language barriers, security reasons and general reluctance on the part of correctional officers to initiate contact with them, and as a result, they are deprived of any information, support and preparation in relation to their lives outside the gated walls of prison. This would have a severe and most detrimental impact on drug addicts, who without the necessary support networks and motivation, are likely to relapse upon release. Once returned to the community, a lack of societal support, shaming from within their own ethnic communities, and difficulties in securing paid employment due to their criminal past, contribute to the further marginalisation of ethnic minority ex-offenders. The result is that ethnic minority offenders continue to be punished for their crimes even after they have served their sentence and are unfairly deprived of the opportunity to reform and rehabilitate.

C. REDRESS FOR RACIAL DISCRIMINATION

C.1 Complaints against Police Office (CAPO)

In light of the racial profiling of Hong Kong police, it is alarming to find that the government either was not aware of it or did not perceive it as an issue. This is evident from the fact that the Government did not make any mention of racially discriminatory police practices in its Second Report under the Convention on the Elimination of All Forms of Racial Discrimination, aside from noting that complaining to the CAPO is possible.⁵⁵ In fact, the effectiveness of CAPO to perform its role of investigating ethnic minorities' complaints against the police is highly questionable if discriminatory attitudes are prevalent against ethnic minorities in the police department itself. The role of CAPO and its oversight body, the Independent Police Complaints Council, have recently been the subject of much public discussion in the wake of the Occupy Central movement, which brought to the fore doubts about the CAPO and IPCC's independence in handling police complaints effectively since the members of the relevant councils are predominantly drawn from the force itself, although there are external members.

C.2 Legal Redress

The case of *Martin Jacques and Another v. Hospital Authority*

Harinder 'Hari' Veriah was a UK qualified solicitor and aged 33 at the time of her untimely death. She moved to Hong Kong in 1998 together with her husband, Martin, and infant son, Ravi, after being seconded to an international law firm in the city. On the first day of the millennium, Hari suffered a seizure and was sent to the Ruttonjee hospital, where, in her words to her husband, she was treated as the "bottom of the pile" because of her Indian descent.⁵⁶ The next morning, Hari had another episode of an epileptic seizure and died shortly after. The coroner's court returned a verdict of natural death due to Sudden Unexplained Death in Epilepsy 11 months later.⁵⁷ Unconvinced with the conclusion reached by the coroner's court, Martin filed a civil lawsuit against the Hospital Authority alleging racial discrimination and medical negligence. Initially dismissing any misconduct and denying responsibility on its part, the Hospital Authority at long last offered a substantial settlement to Martin over a decade later, vindicating the allegation.⁵⁸ The outcry sparked by Hari's case has pushed the Hong Kong government, which had been denying the existence of race discrimination in the city for years, to finally legislate an anti-race discrimination law, the RDO, in 2009.

The case of *Arjun Singh v. Hong Kong Police Force*⁵⁹

Hong Kong recently saw its first racial discrimination litigation under the RDO brought by an ethnic minority teen against the police. Arjun Singh, then an 11-year-old Hong Kong-born Indian boy at that time of the incident, was arrested for allegedly assaulting a woman at Wan Chai MTR station in 2010. Singh explained to the police that he only bumped into the woman in a rush and had already apologised to her. He also complained that the woman in turn refused to let him go and grabbed him by the arm leading to his call to the police because she had assaulted and unlawfully detained him. However, the police neglected Singh's showed no interest in his side of the story, being dismissive of his complaint against the woman, and instead advised his mother that they were going to arrest her then 11-year old son for assault.

CCTV footage in the end showed clearly that it was the woman who assaulted Singh and he was not charged. Singh brought a racial discrimination claim against the police officer involved and the Government.⁶⁰ The court has concluded the hearing and the outcome is eagerly awaited and will be scrutinised closely, being the first case litigating the RDO in Hong Kong. The decision will undoubtedly have significant implications for the future of claims brought under the RDO.

KEY OBSERVATIONS

Overall, these intricate issues and barriers to justice make the legal system an inaccessible vehicle for the peaceful resolution of disputes for ethnic minorities as a community and indeed, gives them cause to fear law enforcement should they wind up being suspected of being involved in a crime. Not only do the attitudes, stereotypes and violations outlined above reinforce inequalities in protecting their rights and interests to life, property and dignity, it undermines confidence in the legal system of Hong Kong among the ethnic minority community. This may result in the communities resorting to other methods for resolving disputes that may arise between them and others in society. This is unhealthy for the rule of law and the legal system as a whole as any system of rough justice in a developed city like Hong Kong would be perceived as a marker of the Government's failure to address injustice under the formal system. Moreover, there are graver consequences for those victimised or marginalised by the system due to their colour, ethnicity or national origin who risk being deprived of their liberty and excluded from society in the future. This will fuel contempt in the minds of those who have suffered injustice at the hands of a system purporting to dispense justice and no doubt, encourage and potentially cause recidivism or resort to a life of crime.

From a law enforcement perspective, these findings of rates of arrest, the about-turn of the police response in the case of *Arjun Singh*, as well as the findings from Kapai's 2015 study on Domestic Violence discussed in Chapter 6 on Family, Marriage and Domestic Violence, reveal the possibility that racially prejudicial attitudes and negative stereotyping may be the driving force behind some of these patterns. More crucially, for women in need of assistance in situations of domestic violence, the fact that they lack confidence in the legal system and law enforcement officers suggests a less than satisfactory public relations situation insofar as ethnic minorities are concerned. This needs considerable work and effort in order to build trust and address stereotypes and root out prejudice. The failure to do so could have life-altering consequences for those caught up in the legal system or process for the wrong reasons.

RECOMMENDATIONS**1. Raising awareness about legal rights among ethnic minorities**

- Public education is crucial to help increase ethnic minorities' awareness of local laws and their rights, especially for youngsters who are easily mobilised by Triad members to commit crimes or may be profiled by the police as suspects for various offences;
- It is also important to educate them about their fundamental rights in the criminal justice system to lower the risk of procedural abuse by the police.

2. Mandatory Human Rights training among Law Enforcement officers (including immigration, customs and auxiliary force officers), Lawyers and members of the Judiciary

- Human rights training and education must be provided to police officers at all levels, before whom ethnic minority suspects are most vulnerable.
- There must be guidelines in the criminal justice system to eliminate even the slightest risks of any racially discriminatory practices.
- Awareness of racial prejudice must also be raised among lawyers and judges, who play a vital role in upholding justice and protecting the fundamental rights of suspects and detainees.

3. Interpretation – accredited services required and training on ethics for interpreters

- The existing duty lawyer scheme must be made more readily accessible to ethnic minorities through the provision of information about the scheme and also, quality interpretation services in order to safeguard their right to legal representation.

4. Reform of sentencing options and non-incarceration options for Ethnic minorities

- Rehabilitation programmes that are suitable for ethnic minorities, taking into account their language skills, should be designed and implemented so that they are not systemically and unfairly excluded from non-incarceration sentencing options.

5. Broader systemic issues relating to integration, access to higher and quality education and employment opportunities

- Having lost faith and hope, and faced with prospects of poverty due to challenges faced in employment, some ethnic minority youth resort to drugs for relief or commit themselves to illegal activities to earn a living. What ethnic minority youth need is a fair opportunity to participate meaningfully in the society, without which they will continue to be marginalised.
- This bodes ill for social stability and harmony where a community is continually marginalised until it is pushed to the brink of criminal activity, particularly, its youth. The situation is alarming and calls for policy reform on many levels, from education to social integration, career support, social services and public education on anti-discrimination.

6. Health campaigns to raise awareness about drugs in accessible languages and a widespread media campaign

- Ignorance of the adverse effects of drug abuse renders ethnic minority youth vulnerable to the recruitment strategies of the Triads. Collective efforts from the police, schools, parents and the community are needed to raise awareness of the harmful and long-term effects of drugs among youth.

7. A series of in-depth research studies into ethnic minority youth gangs

- The dearth of research into the specific links between the isolation and exclusion of ethnic minority youth and the potential implications for involvement with crime, drugs and youth gangs calls for designated research studies to look into the complex relationship between ethnic minority youth gangs, criminals and their marginalised position in society and the implications this has for the development and inclusion of ethnic minority youth into broader Hong Kong society and for policy development in relation to youth services and support measures.

- ¹ Fermi Wong, 'Criminal Justice and Ethnic Minority People in Hong Kong – the Untold Frontline Picture' (Human rights Conference, Hong Kong, 31 March 2007) <<https://www.law.hku.hk/ccpl/Docs/FermiWongUnison.pdf>> accessed 13 August 2015.
- ² 鄭宗夏, '探射燈：尼泊爾邊青黑幫生力軍' *Oriental Daily* (Hong Kong, 25 September 2012) <http://orientaldaily.on.cc/cnt/news/20120925/00176_097.html> accessed 13 August 2015.
- ³ Joanna Chiu, Jordan, Home to a Battling Nepali Community, *South China Morning Post* (Hong Kong, 7 December 2012) <<http://www.scmp.com/news/hong-kong/article/1099239/jordan-home-battling-nepali-community>> accessed 20 August 2015.
- ⁴ *ibid.*
- ⁵ When the author approached the police department for updated figures for 2012-2015, the police responded that they do not maintain a record of offenders or the crimes committed by them disaggregated by ethnicity. This appears to be consistent with the reply to a similar request by the Committee on the Promotion of Racial Harmony.
- ⁶ Apple News, '15 尼 漢 伏 擊 同 鄉', (*Apple News*, 4 July 2012) <<http://hk.apple.nextmedia.com/news/art/20120704/16483261>> accessed 6 September 2015.
- ⁷ 鄭 (n 2).
- ⁸ The Sun, '南亞 20 童 黨 圖 生 劊 父 子', *The Sun* (Hong Kong) <http://the-sun.on.cc/cnt/news/20120902/00407_010.html> accessed 6 September 2015.
- ⁹ Apple News, '南亞 裔 古 惑 仔 染 黑 南 邊 圍', (*Apple News*, 15 October 2012) <<http://hk.apple.nextmedia.com/news/art/20121015/18040932>> accessed 6 September 2015.
- ¹⁰ 鄭 (n 2).
- ¹¹ Committee on the Promotion of Racial Harmony, Race Relations Unit, Home Affairs Department (9 October 2012).
- ¹² Simpson Cheung, Police bridge gap with minorities, *South China Morning Post* (Hong Kong, 24 October 2011) <<http://www.scmp.com/article/982747/police-bridge-gap-minorities>> accessed 20 August 2015.
- ¹³ Sing Tao News, '「高峰計畫」助共融 培訓年輕非華裔警' *Sing Tao Daily* (Hong Kong, 2 February 2015) <<https://hk.news.yahoo.com/高峰計畫-助共融-培訓年輕非華裔警-215632675.html>> accessed 6 September 2015; Hong Kong Police, '葵青警區「高峰計劃」推動非華裔社群參與' (*Hong Kong Police*, 27 January 2015) <<http://www.police.gov.hk/offbeat/1031/chi/2310.html>> accessed 6 September 2015.
- ¹⁴ KELY Support Group and Department of Applied Social Sciences of the Hong Kong Polytechnic University, 'More than half of ethnic minority youths in Hong Kong are at risk of drug abuse among other findings in groundbreaking research' (*KELY Support Group*, 27 May 2012) <http://www.kely.org/assets/files/PDF/Press%20Release/Press%20Release_Report%20Launch%20for%20Stand%20Up%20and%20Say%20Something_English_web.pdf> accessed 13 August 2015.
- ¹⁵ 鄭 (n 2).
- ¹⁶ Shirley Zhao, 'Drug use on the fringes' *TimeOut News* (Hong Kong, 2 July 2012) <<http://www.timeout.com.hk/big-smog/features/51903/drug-use-on-the-fringes.html>> accessed 13 August 2015.
- ¹⁷ Candy Chan, 'Minorities missing out in war on drugs' *The Standard* (Hong Kong, 28 May 2012) <http://www.thestandard.com.hk/news_detail.asp?we_cat=4&art_id=122826&con_type=1&d_str=20120528&fc=1> accessed 13 August 2015.
- ¹⁸ Zhao (n 16).
- ¹⁹ Chan (n 17).
- ²⁰ Wong (n 1).
- ²¹ *ibid.*
- ²² Society for Community Organization, *Hong Kong Racial Discrimination Study Series II: Ethnic Minorities* (Society for Community Organization 2001) 4.
- ²³ Hong Kong Legislative Council, 'Police committed to tying in with the Government in promoting equal opportunities' (*Information Services Department*, 28 January 2015) <<http://www.info.gov.hk/gia/general/201501/28/P201501280565.htm>> accessed 13 August 2015.
- ²⁴ *ibid.*
- ²⁵ Amnesty International, 'Racial Profiling by Hong Kong Police' (*Amnesty International*, 2015) <<http://www.amnesty.org.hk/selma/racialprofilingbyhongkongpolice.html>> accessed 6 September 2015.

²⁶ Patrick Boehler, 'Hong Kong's ethnic minorities complain of racial profiling by police' *South China Morning Post* (Hong Kong, 24 November 2013) <<http://www.scmp.com/news/hong-kong/article/1364083/ethnic-minorities-complain-racial-profiling-police?page=all>> accessed 13 August 2015; Lo Wei, 'Discrimination case: police had 'no interest' in hearing Indian boy's side' *South China Morning Post* (Hong Kong, 9 April 2014) <<http://www.scmp.com/news/hong-kong/article/1471194/teen-claiming-racial-discrimination-suffered-nightmares-after-assault>> accessed 13 August 2015; Lo Wei, 'Police officer in race discrimination case was 'aggressive and threatening', court told' (Hong Kong, 8 April 2014) <<http://www.scmp.com/news/hong-kong/article/1469100/police-officer-race-discrimination-case-was-aggressive-and>> accessed 13 August 2015.

²⁷ Amnesty International (n 25).

²⁸ Patrick Boehler, 'Hong Kong police stop-and-search tactics questioned after 1.6 million spot checks' *South China Morning Post* (Hong Kong, 24 November 2013) <<http://www.scmp.com/news/hong-kong/article/1364087/police-tactics-queried-after-16m-spot-checks-last-year?page=all>> accessed 6 September 2015.

²⁹ Boehler (n 28).

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

³³ *Attorney General v Kong Chung-Shing* [1980] HKLR 533.

³⁴ *HKSAR v Kwan Kin Sum* [2005] 3 HKLRD 830.

³⁵ This is according to Professor Delores Jones-Brown, director of the Centre on Race, Crime and Justice at the City University of New York. Jones-Brown had written on stop and search practices with a racial dimension in New York: Delores Jones-Brown et al, 'Stop, Question and Frisk Policing Practices in New York City: A Primer (Revised)' (Centre on Race, Crime and Justice at the John Jay College of Criminal Justice, 2013)

<http://www.atlanticphilanthropies.org/sites/default/files/uploads/SQF_Primer_July_2013.pdf>

accessed 13 August 2015. Also see: Boehler (n 25).

³⁶ Anecdotal evidence collected by the author and NGOs working with ethnic minority clients confirms this.

³⁷ The case is discussed in detail below under Section C2.

³⁸ *Kong Chung-Shing* (n 33).

³⁹ Wong (n 1).

⁴⁰ *ibid.*

⁴¹ Bill of Rights Ordinance (Cap 383), art 11(2) (g); International Covenant on Civil and Political Rights, art 14(3) (g).

⁴² The Rules and Directions for Questioning Suspects and Taking Statements 2012, r 2.

⁴³ Wong (n 1).

⁴⁴ Rules and Directions for the Questioning of Suspects and the Taking of Statements 2012, direction 8(a) (v).

⁴⁵ Wong (n 1).

⁴⁶ Basic Law, art 35; Bill of Rights Ordinance (Cap 383), art 11(2)(d); International Covenant on Civil and Political Rights, art 14(3)(d); Rules and Directions for the Questioning of Suspects and the Taking of Statements 2012, principle (c), direction 8(a)(i)(ii). The only circumstances in which the police may refuse access to a legal advisor is if it would result in unreasonable delay or hindrance to the process of the investigation or administration of justice. One example is if there are other people involved in the commission of the offence, and giving the suspect immediate access to legal counsel might interfere with the arrest of others or the discovery of stolen property.

⁴⁷ Wong (n 1).

⁴⁸ Basic Law, art 28; Bill of Rights Ordinance (Cap 383), art 5(3); International Covenant on Civil and Political Rights, art 9(3).

⁴⁹ Criminal Procedure Ordinance, s 9D.

⁵⁰ Wong (n 1).

⁵¹ Anecdotal evidence based on input from ethnic minorities or relatives of ethnic minorities who have spent time in prison.

⁵² Wong (n 1).

⁵³ *HKSAR v Chochanga Vabindra* [2003] 3 HKLRD 224, para 12.

⁵⁴ Jon So, 'Fighting a war alone': reintegration of ex-offenders from ethnic minority groups' [2014] 7(1) *China Journal of Social Work* 64, 65.

⁵⁵ Society for Community Organization (n 22).

⁵⁶ Account of the Martin Jacques, husband of the deceased in. See Martin Jacques, 'It seemed impossible, but at last Martin Jacques got justice for the wife he loved' *The Guardian* (London, 4 April 2010) <<http://www.martinjacques.com/articles/it-seemed-impossible-but-at-last-martin-jacques-got-justice-for-the-wife-he-loved>> accessed 13 August 2015.

⁵⁷ *Martin Jacques and another v Hospital Authority* [2007] HKCFI 718.

⁵⁸ *ibid.*

⁵⁹ *Singh Arjun by his next friend Singh Anita Guruprit v Secretary for Justice for and on behalf of the Commissioner of Police and another* [2014] HKDC 199.

⁶⁰ Lo Wei, 'Discrimination case: police had 'no interest' in hearing Indian boy's side' *South China Morning Post* (Hong Kong, 9 April 2014) <<http://www.scmp.com/news/hong-kong/article/1471194/teen-claiming-racial-discrimination-suffered-nightmares-after-assault>> accessed 13 August 2015; Lo Wei, 'Police officer in race discrimination case was 'aggressive and threatening', court told' (Hong Kong, 8 April 2014) <<http://www.scmp.com/news/hong-kong/article/1469100/police-officer-race-discrimination-case-was-aggressive-and>> accessed 13 August 2015; Lo Wei, both articles are at n 26; also see Lo Wei, 'Teenage prodigy sues Hong Kong policeman and government for "racial discrimination"' *South China Morning Post* (Hong Kong, 7 April 2014) <<http://www.scmp.com/news/hong-kong/article/1467001/prodigys-mother-accuses-police-officer-racial-discrimination>> accessed 13 August 2015.