



Plugging the Justice Gap for Minorities under the Law: Applied Intersectionality Research and Substantive Equality

Puja Kapai PARYANI - Associate Professor

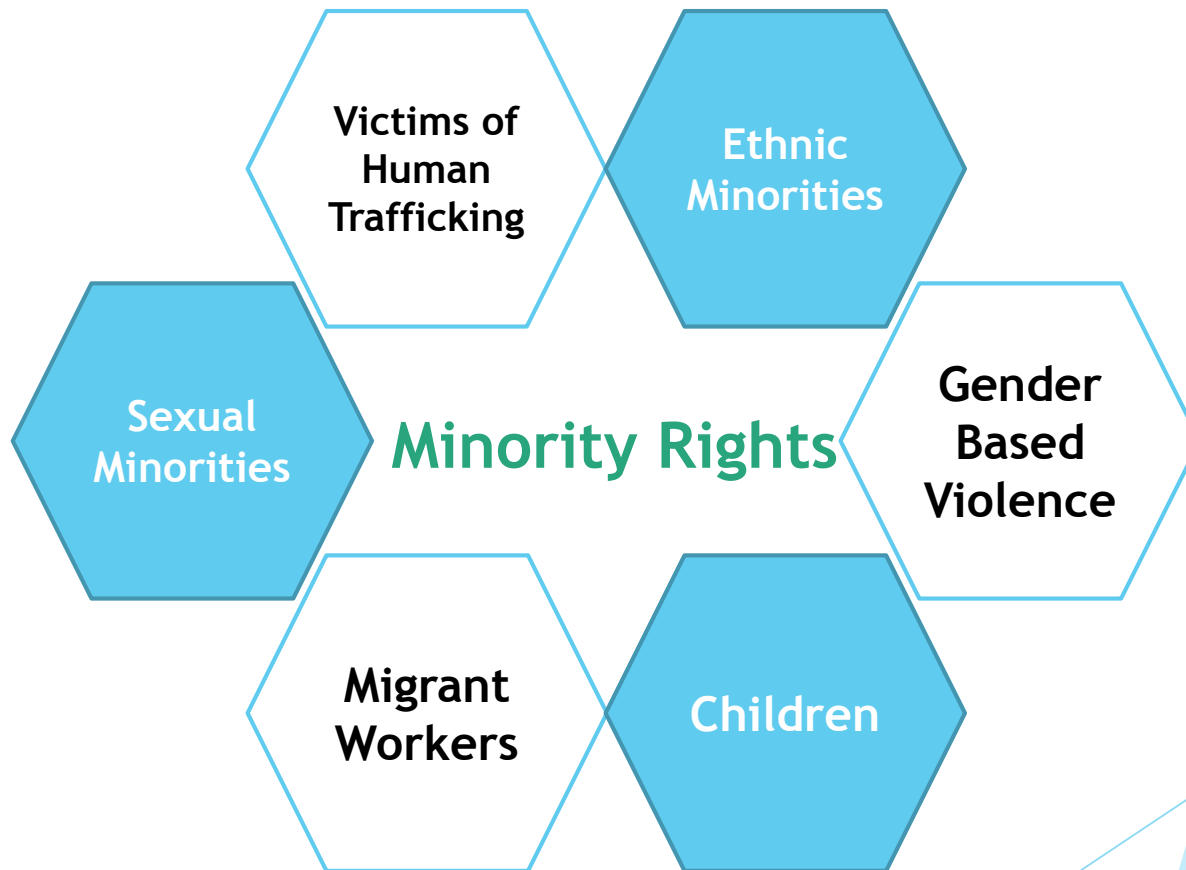
Department of Law, Faculty of Law

18 April 2017

Summary of the Impact

- ▶ Legislative Council (LegCo) referenced Kapai's research findings and called on HKSAR Government to follow up Kapai's recommendations based on her submissions
- ▶ Kapai's applied intersectionality framework has become part of standards of best practice for HKSAR Government and NGOs in handling ethnic minority issues
- ▶ Raising community/public understanding about ethnic minorities (EMs) and issues impacting them and to foster enriched understanding about detrimental impact of inequality for Hong Kong's diversity and future
- ▶ Review and reassessment of existing laws, policies, capacity building and service delivery towards EMs across many areas, including violence against women, education, employment and healthcare
- ▶ Propelled NGOs to conduct research to collect data to work towards evidence-based resource allocation & solutions.

Underpinning Research



- ▶ Examine how legislation and policy frameworks ignore, discriminate against or exclude them from equal protection

Underpinning Research

▶ Challenged:

1. traditional frames of assessment used by frontline responders by unpacking the underlying assumptions informing frameworks offering protection and services to victims of violence
2. the status quo that government and practitioners had been complacent that law and policy in Hong Kong guaranteed equality before the law regardless of race, ethnicity, or other status by providing evidence that a weak nexus between the law, policy and practice had left ethnic minority victims critically unprotected

▶ Applied intersectionality framework

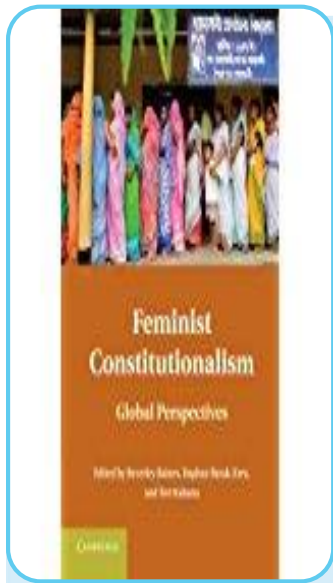
▶ Established the disparate impact of law and policy on minorities, underscoring systemic inequalities and a critical lack of equal access to justice

▶ First in Hong Kong (or Asia?) to use multi-sectoral research in equal rights protection, highlighting that minority victims of domestic violence were persistently failed by the legal framework

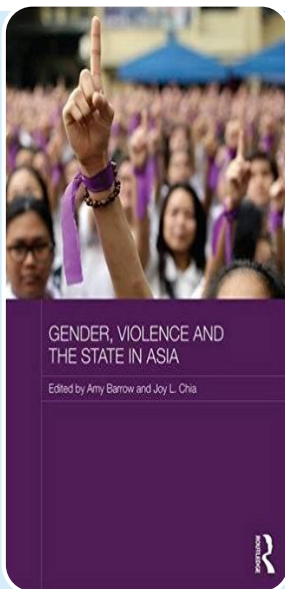
▶ Detailed the difficulties minority victims faced when approaching emergency services, law enforcement, accessing accommodation at shelters, applying for housing, or seeking support from social workers

▶ Found that:

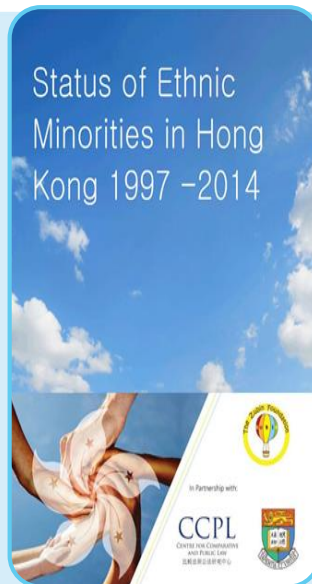
1. victims were unaware of their rights, or unable or unwilling to seek relevant legal protection or services even when aware, forcing them to return to the abuser despite subsisting risks of future violence
2. Key frontline responders lacked cultural competence and knowledge of relevant laws and skills to address minority victims' circumstances, systemically placing ethnic minority victims at a heightened risk of repeat violence.



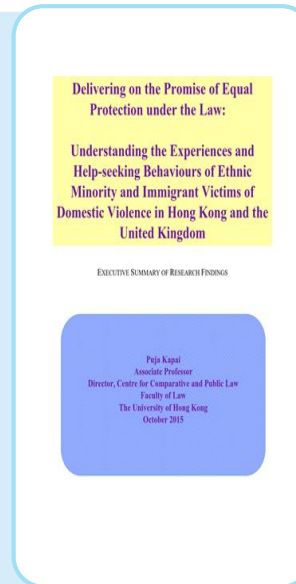
Minority Women:
A
Struggle for Equal Protection Against Domestic Violence
CUP
2012



Bringing Intersectionality Home: Delivering Contextualised Justice in Gender Based Violence
Routledge
2016



The Status of Ethnic Minorities in Hong Kong Report 1997-2014



Help-Seeking Behaviour of Ethnic Minority and Immigrant Victims of Domestic Violence
Faculty of Law 2015



The Human Rights of Women in the Hong Kong Special Administrative Region
Will. & Mary JGL
2011

Engagement with Government and Statutory Bodies

▶ HKSAR Government

1. Ms. Carrie Lam as Chief Secretary and Chief Executive Election candidate 2017
2. Mr. John Tsang as Chief Executive Election candidate 2017
3. Justice Woo Kwok Hing as Chief Executive Election candidate 2017
4. Integrated Family Service Centres of the Social Welfare Department
5. Commission on Poverty's Special Needs Task Force



▶ Legislative Council

1. Subcommittee on Strategy and Measures Tackle Domestic Violence and Sexual Violence
2. Panel on Constitutional Affairs
3. Panel on Welfare Services
4. Panel on Administration of Justice and Legal Services
5. Individual LegCo members



▶ Equal Opportunities Commission

1. Policy Training and Research Committee
2. Ethnic Minorities Unit



Impact Achieved

- ▶ Subcommittee on Strategy and Measures to Tackle Domestic Violence and Sexual Violence
 - ▶ Referenced Kapai's research findings in relation to domestic violence law and policies; and their impact on ethnic minority and immigrant women
 - ▶ Drew extensively from Kapai's recommendations in the research to direct the future course of government action across various government departments including:
 - ▶ Social Welfare Department
 - ▶ Police Department
 - ▶ Security Bureau
 - ▶ Immigration Department
- ▶ Specifically, they were advised to incorporate best practice recommendations on data collection, maintenance and reporting and attention to exclusion or discrimination on grounds of language, interpretation facilities, race, culture, immigration or housing status, in handling cases involving ethnic minority or immigrant victims of domestic violence.
- ▶ Legislative Councillors Audrey Yu, Tanya Chan, Lee Cheuk Yan, Albert Ho referenced Kapai's research on the systemic discrimination in equal access to education for Hong Kong's ethnic minority children, and called on the Government to fulfil its legal obligations to provide equal access to enable EM students to compete on an equal footing with their local counterparts in higher education and employment

Impact Achieved

LegCo set up a Subcommittee on Rights of Ethnic Minorities

Terms of reference: To study and follow up policies and measures relating to ethnic minority issues in Hong Kong and make timely recommendations.

The Subcommittee will focus its work and make recommendations in the following areas:

- (a) development of a "Chinese language as the second language" curriculum, the examination and assessment systems, as well as the placement of ethnic minority students and support measures to these students and to schools admitting them;
- (b) implementation and review of the Race Discrimination Ordinance;
- (c) difficulties encountered by ethnic minorities in applying for the Hong Kong Special Administrative Region Passport;
- (d) housing problem of ethnic minorities;
- (e) right of fair access to government and public services by ethnic minorities, implementation of the Administrative Guidelines on Promotion of Racial Equality and review of the services provided by the support service centres for ethnic minorities;

Impact Achieved

LegCo set up a Subcommittee on Rights of Ethnic Minorities

(f) poverty situation of ethnic minorities and difficulties encountered by ethnic minorities in applying for the Low-income Working Family Allowance ("LIFA") (e.g., ethnic minorities who were employed as casual workers were unable to provide proofs of employment when applying for LIFA);

(g) employment difficulties encountered by ethnic minorities and enhancing employment support services for ethnic minorities (including establishing an Ethnic Minority Employment Division and employing English-speaking ethnic minority staff to provide support services for non-Chinese speaking job-seekers, and providing other additional employment support measures funded by the Community Care Fund for ethnic minorities);

(h) disparity between the remuneration rates applicable to ethnic minorities and other local people employed by the Government as interpreters;

(i) lack of venues in districts for ethnic minorities to conduct religious and cultural activities;

(j) matters relating to the use of medical and health services by ethnic minorities; and

(k) other subjects pertinent to ethnic minority issues.

Engagement with International Organizations

▶ United Nations Treaty Bodies

- Appeared before Human Rights Committee and Committee on Children's Rights to present deputations concerning minority rights
- Through training workshops and joint writing sessions, Led the preparation and submission of the two largest joint shadow reports to Committee for the Convention for the Elimination of All forms of Discrimination Against Women (CEDAW) and Committee on Economic Social and Cultural Rights (CESCR) in 2014, with 67 NGO signatories to the Reports.
- UN CEDAW and CESCR Committee based their List of Issues for HKSAR Government for the purposes of the hearing in 2014 on these two comprehensive joint shadow Reports.

▶ Domestic Worker Roundtable 2015

- Organized a Domestic Worker Roundtable including over 100 representatives from across migrant worker stakeholder groups, NGOs, foreign government consular staff, lawyers, academics across faculties, legislative councillors Emily Lau and Fernando Cheung.



Submissions for CEDAW Committee – Pre-Session Working Group 3-7 March 2014

Submission to CEDAW pre-sessional working group
on the implementation of CEDAW in Hong Kong

January 2014



Centre of Comparative and Public Law of The
University of Hong Kong,
Women's Studies Research Centre of the University
of Hong Kong, and
Hong Kong Women's Coalition on Equal
Opportunities (Coalition)

Comprising of 12 Women's Rights NGOs in Hong Kong SAR, China
Action for REACH OUT,
Association Concerning Sexual Violence Against Women
The Association for the Advancement of Feminism
Association of Women with Disabilities Hong Kong
F-Union
Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)
Hong Kong Federation of Women's Centres
Hong Kong Women Christian Council
Hong Kong Women Workers' Association
III Association
New Arrival Women League
Women's Committee, Hong Kong Confederation of Trade Unions

Impact Achieved

▶ The CEDAW and CESCR incorporated relevant concerns identified by Kapai's deputations and joint-written submissions highlighting the HKSAR government's failure to fulfil its obligations towards minority groups into their Concluding Observations on Hong Kong

▶ In 2013, HKSAR Government abolished the designated schools policy which segregated ethnic minority students from Chinese students in public sector schools

▶ Chief Executive Mr. Leung Chun-ying pledged to introduce Chinese as a Second Language Framework to enhance access to Chinese language education for ethnic minority students in his 2014 Policy Address.

▶ All public sector schools are required to implement Chinese as a Second Language Framework since 2014 and collect data on EM students' progress under the reform.

Committee on the Elimination of Discrimination against Women

Concluding observations on the combined seventh and eighth periodic reports of China^a

1. The Committee considered the combined seventh and eighth periodic reports of China (CEDAW/C/CHN/7-8, CEDAW/C/CHN-HKG/7-8 and CEDAW/C/CHN-MAC/7-8) at its 1251st and 1252nd meetings, on 23 October 2014 (see CEDAW/C/SR.1251 and 1252). The Committee's list of issues and questions is contained in CEDAW/C/CHN/Q/7-8 and the responses of China are contained in CEDAW/C/CHN/Q/7-8/Add.1.

A. Introduction

2. The Committee appreciates that the State party submitted its combined seventh and eighth periodic reports to the Committee during the dialogue.

the State party's written replies to the pre-sessional working group and welcomes the further clarifications provided in the Committee during the dialogue. The delegation, which was headed by the Working Committee on Children and Youth, and included representatives of the Government of Macao, China, and representatives of the Chinese people of Macao, China, and representatives of the Chinese people of Hong Kong, China.

Since the consideration of the fifth and sixth periodic reports, the State party has implemented legislative reforms, in particular the adoption of the Family Insurance Act, in 2010.

Meeting from 20 October to 7 November

Please recycle



Committee on Economic, Social and Cultural Rights

Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China^a

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of China (E.C.12/CHN.2), including the third periodic report of Hong Kong, China (E.C.12/CHN-HKG/3), and the second periodic report of Macao, China (E.C.12/CHN-MAC.2), on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 17th and 18th meetings (see E.C.12/2014/SR.17-18), held on 8 May 2014, and adopted, at its 40th meeting, held on 23 May 2014, the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the second periodic report of the People's Republic of China, including Hong Kong, China, and Macao, China. The Committee also takes note with appreciation of the written replies which it received to its list of issues (E.C.12/CHN/Q/2/Add.1, E.C.12/CHN/Q/2/Add.2 and E.C.12/CHN/Q/2/Add.3) and welcomes the constructive dialogue held with the State party's delegation, composed of experts from many ministries, including representatives of Hong Kong, China, and Macao, China.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the following instruments:
(a) The Convention on the Rights of Persons with Disabilities, in August 2008;
(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in February 2008;
(c) The International Labour Organization (ILO) Convention No. 111 (1958), concerning Discrimination in Respect of Employment and Occupation, in January 2006.

^a The present concluding observations comprise three parts: part one (paras. 1-38) relating to China; part two (paras. 39-52) relating to Hong Kong, China; and part three (paras. 53-60) relating to Macao, China.

^b Adopted by the Committee at its fifty-second session (28 April-23 May 2014).

GE.14-04983



Please recycle



The 2014 Policy Address

Support the Needy
Let Youth Flourish
Unleash Hong Kong's Potential

Impacts Achieved

- ▶ Change in government policy in Hong Kong as reflected by abolition of segregated schools, adoption of Chinese as a Second Language Framework, research propelled in ethnic minority studies to examine policy and its impact, new guidelines on the employment of domestic helpers and licensing of employment agencies placing domestic helpers (issued by the Labour Department in 2016)
- ▶ “The Status of Ethnic Minorities in Hong Kong, 1997-2014” report
 - Mrs. Carrie Lam, Chief Executive requested 800+ copies to distribute to government bureaus & departments
 - 400+ people present at launch event

The screenshot shows the Labour Department website for the Government of the Hong Kong Special Administrative Region. The page title is "PRACTICAL GUIDE FOR OPERATING AN EMPLOYMENT AGENCY". The navigation menu on the left includes: Welcome Message, What's New, Press Releases, About Us, Public Services, Labour Legislation, LegCo Business, Publications, TV and Radio Announcements, Public Forms, Links, Access to Information, and Contact Us. The main content area lists several parts of the guide:

- Foreword
- Part I Introduction to Part XII of the Employment Ordinance and the Employment Agency Regulations
- Part II Guidelines on Various Licence Applications and Notifications
 - i. Application for employment agency licence
 - ii. Application for branch licence
 - iii. Renewal of licence
 - iv. Change of name of licensee
 - v. Change of director/partner
 - vi. Change of nominated operator
 - vii. Change of place of business
 - viii. Cessation of business
 - ix. Certified true copy of the licence
- Part III Do's and Don'ts for Operating an Employment Agency
- Part IV Frequently Asked Questions
- Part V Useful Information
- Part VI Flowcharts
 - 1. Application for an employment agency licence
 - 2. Application for renewal of an employment agency licence
- Part VII Appendices
 - 1. Employment Agency - Application for a licence (PDF)
 - 2. Employment Agency - Application for a licence (supplementary sheet) (PDF)

At the bottom of the page, there are several promotional banners for "The 2017-18 Budget", "Current-term Government in its Fourth Year", "Employment Agencies Portal", "Code of Practice for Employment Agencies", "HKE", and "10+ caring organisation".



Engagement with International Expert Teams

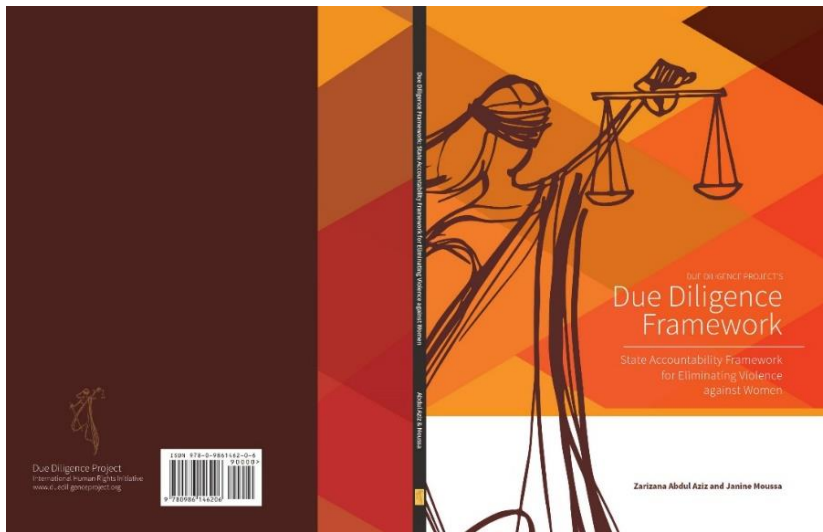
Asia Pacific Regional Expert

- Due Diligence Project on Violence Against Women, submitted to the United Nations Special Rapporteur on Violence Against Women (Rashida Manjoo)

Harvard Kennedy School of Government's Carr Centre for Human Rights' Everywomaneverywhere Project

- Founding member
- Aimed at setting up an International Treaty on Violence Against Women

Everywoman Everywhere
Her right to a life free from violence.



Engagement with Legal Sector

- ▶ Organized a roundtable concerning equal access to justice through protective measures for victims of sexual violence in the courtroom with representatives from the Hong Kong Bar Association, Hong Kong Law Society, Judiciary, Department of Justice and Law Reform Commission

THE RIGHT TO A FAIR TRIAL:
Enhancing Equal Access to Justice through Protective
Measures for Victims of Sexual Violence in the Courtroom

DATE: 7 JUNE 2016 (TUESDAY)
TIME: 1900-2130
VENUE: 11/F CHENG YU TUNG BUILDING, HKU

HONORABLE GUEST SPEAKERS (IN ALPHABETICAL ORDER)

Mr. Andrew BRUCE SC |
Chairman, Criminal Justice Committee, Bar Association

Mr. Eric TM CHEUNG |
Principal Lecturer, Law Department, University of Hong Kong

Mr. Stephen HUNG |
President, the Law Society of Hong Kong

Ms. Linda WONG |
Director, Rainhly

Hon. Mr. Kevin ZERVOS |
Judge of the High Court, The High Court

MODERATOR: Prof. Simon YOUNG |
Professor, Law Department, University of Hong Kong

OPENING AND CLOSING COMMENTS: Pujja KAPAI |
Director, Centre for Comparative and Public Law, University of Hong Kong

*The seminar will be conducted in English with simultaneous interpretation in English and Cantonese.
All non-English speakers are welcome.*

FOR INQUIRIES: joycef@hku.hk

ONLINE REGISTRATION:
<http://bit.ly/1Tdqahc>



ORGANIZERS:

CCPL  ACSVAW  Women's Studies
Centre for Comparative and Public Law 註冊婦女暴力協會 Association Concerning Sexual Violence Against Women Research Centre



Engagement with NGOs



Women's Coalition on Equal Opportunities



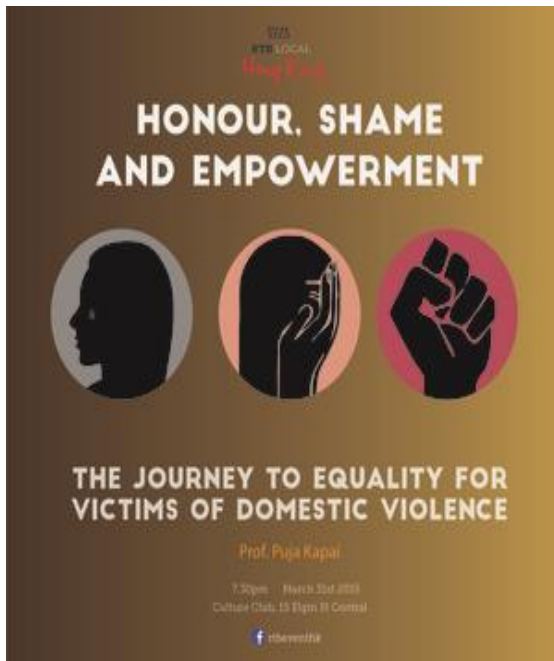
Engagement with NGOs

- ▶ Organized conferences, seminars and workshops for NGOs to share research, best practices and skills
- ▶ Regularly collaborate with / commissioned by NGOs to conduct research, serve as Keynote Speaker locally & internationally and on NGO boards
- ▶ Prepared joint submissions to the UN Treaty Bodies, lobbied for LegCo committees and agenda together



Engagement with the Public & Multisector Civil Society Groups

- ▶ One Billion Rising Movement (engaged 500+ people)



- ▶ “Hong Kong's Hidden Stories”
- ▶ YouTube Channel
- ▶ 23 videos of Lives of HK EMs

DID YOU KNOW EVERY 3 HOURS

A WOMAN IS RAPED OR SEXUALLY ASSAULTED IN HONG KONG

Yet, most are too
ASHAMED to report it.



DETAILS

Onebillionrising HKU Photo Booth Campaign

@ HKU in the Foyer area outside Starbucks, LG Level, University Street, Centennial Campus this

Thursday 7 Feb at 12:00-15:00.

#SpeakOutNow

Tell us What YOU think. We'll put it on Facebook
Find Speak for Humanity One Billion Rising @HKU
and tag yourself. Share with your friends, family
and the whole world.

SPREAD THE WORD. STRIKE. RISE. DANCE

FOR MORE, FIND US:
Follow us on facebook:
<https://www.facebook.com/SpeakForHumanity>



Impacts Achieved: Cross Sector Collaboration

- ▶ Raising awareness around the systemic exclusion of minorities from equal protection
- ▶ Cross disciplinary engagement with school of journalism, social work, history and arts to discuss the role of media in fueling public perception and myths about victims of rape and other sexual offences
- ▶ Invited by leading players in the corporate sector for example, Barclays, HSBC, etc. to be a panellist for events held to mark International Women's Day and to share my research on human trafficking, gender bias, violence against women and most recently, unconscious bias in the workplace



Reconstructing Media Discourses on Gender-Based Violence.

The Panel Discussion on 21 February is aimed at engaging the audience in a lively discussion of the biased and inflammatory language used in some of the reporting on recent sexual violence cases including the Delhi and Ohio gang rapes, the Strauss-Kahn affair and the slut walk movement.

Why do accounts of stories such as these continue to perpetuate stereotypes and generalisations? How can we become more sensitised to and willing to speak out against media narratives that compromise fair and equitable coverage and discussion of news?

How does social / new media influence the coverage of stories of sexual violence?

“Date: 21st February
Time: 5:00 – 7:00pm
Venue: 11/F Academic
Conference Room,
Cheng Yu Tung Tower,
HKU”

Panel and audience discussion will engage the gendered dimension of media output from the viewpoint of ethical 'journalism' and documentarianism.

www.facebook.com/SpeakForHumanity
www.speakforhumanity.com

Extensive Media Coverage Print, Radio, TV

- ▶ BBC
- ▶ Singapore Radio International
- ▶ SCMP
- ▶ The Standard
- ▶ Hong Kong Free Press
- ▶ Ming Pao
- ▶ RTHK
- ▶ TVB
- ▶ HKEJ
- ▶ HK01
- ▶ VIRSA The Culture
- ▶ Amnesty International HK

South China Morning Post CHINA HK ASIA WORLD COMMENT BUSINESS TECH LIFE CULTURE SPORT WEEK IN ASIA POST MAG STYLE TV

Hong Kong Union threatens court action on racially segregated schools

Advocates say schools mostly made up of ethnic minorities violate anti-discrimination laws

PUBLISHED: Wednesday, 18 September, 2015, 12:00am
UPDATED: Wednesday, 18 September, 2015, 11:35am



2015年3月27日
張綺霞 居港異鄉人
港大印度法律女教授 為公義據理力爭



Puja Kapai是少數能上大學的本地印裔孩子，在困難環境中，她總不放棄尋找出路。在常規小學發展受限，家境不富裕的她在中學選讀了國際學校，以獎學金支撐完成大學和哈佛碩士課程，如今為港大法律系副教授，以法律上的理據為本地弱勢社群爭取更大權益。父親早年就已經在香港和工作，印度出生的Puja幾個月大...

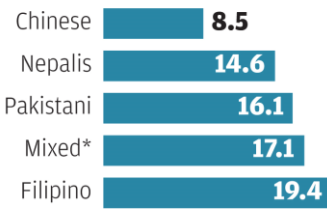
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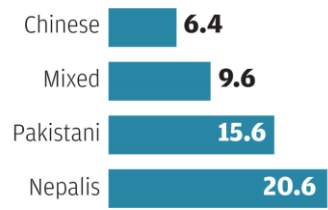
前日以《種族歧視條例》聆聽公共機構的責任，聽後致謝，感謝少數族裔的聯席會，對此感到非常榮幸。(吳秋榮攝)

Left behind

Children aged 3-5 by ethnicity in Hong Kong in 2011 who are not attending school (%)



Pre-Form Five drop out rates among youths aged 13-19 by ethnicity (2011)



Source: Hong Kong Institute of Education - quoted by "The Status of Ethnic Minorities in Hong Kong 1997 - 2014" *Chinese and other Asian SCMP



International Recognition

- ▶ Nominated for the United States Secretary of State's 8th International Women of Courage Award and honoured as a recipient of the 2015 International Women of Courage Award Hong Kong by the US Consulate in Hong Kong

