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.
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.
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 to 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.
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.
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
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
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.
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
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
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

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

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese</td>
<td>8.5</td>
</tr>
<tr>
<td>Nepalis</td>
<td>14.6</td>
</tr>
<tr>
<td>Pakistani</td>
<td>16.1</td>
</tr>
<tr>
<td>Mixed</td>
<td>17.1</td>
</tr>
<tr>
<td>Filipino</td>
<td>19.4</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese</td>
<td>6.4</td>
</tr>
<tr>
<td>Mixed</td>
<td>9.6</td>
</tr>
<tr>
<td>Pakistani</td>
<td>15.6</td>
</tr>
<tr>
<td>Nepalis</td>
<td>20.6</td>
</tr>
</tbody>
</table>

Source: Hong Kong Institute of Education – quoted by "The Status of Ethnic Minorities in Hong Kong 1997 - 2014"
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