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香港融樂會回應

**SINGH ARJUN (by his next friend Singh Anita Guruprit) v.**  
**THE SECRETARY FOR JUSTICE and Hung Kai Kam 判決**  
**[檔案編號: DCEO9/2011]**

涉及六年前一個十一歲香港土生土長的印度裔永久性居民控告香港警務處違反《種族歧視條例》的民事訴訟，Mr. Arjun SINGH 控告警方種族歧視，未有向他提供平等的警察服務。案件在 2014 年 9 月於區域法院結案，至今 20 個月，法官終於在 2016 年 5 月 30 日宣布判決。法院裁定警方調查及拘捕行動不屬於「服務」，因此被告沒有違反第 602 章《種族歧視條例》第 27 條：在提供貨品、設施或服務方面的歧視。融樂會對此判決表示極度失望。本案突出《種族歧視條例》其中一個嚴重漏洞，無保障本港市民免受政府行使職能及職權時的種族歧視。

社會各界對判決十分期待，因本案是《種族歧視條例》於 2009 生效以來，首宗涉及公共機關種族歧視的案件，而且原告人在事發時為未成年人。事發於六年前，當時 Mr. SINGH 十一歲，他稱在灣仔地鐵站出口被一名華裔成年人大力扯住及扣留，而該華裔成年人則稱 Mr. SINGH 在扶手電梯上撞到她，對她構成攻擊。儘管雙方都有致電「999」求救，警方並沒有拘捕或調查該名華裔人士，Mr. SINGH 則被帶到灣仔警局。雖然他已表示他只能說英語，但警方堅持安排旁遮普語翻譯員，並扣留 Mr. SINGH 五個多小時。

警方對少數族裔不公平對待時有發生，以致少數族裔遇到麻煩時，大多不會向警方求助，會自己處理；當他們遇到警方的惡劣對待及種族歧視，只會忍氣吞聲。Mr. SINGH 選擇循法律途徑伸張正義，但案件從事發至昨天頒布判決所需時間佔了 Mr. SINGH 三分一人生，加上他苦等了廿個月才有判決，他心靈飽受煎熬，而判決結果對他來說是二次創傷。

現行《種族歧視條例》的漏洞，不能保障同樣是香港人的少數族裔，而且成功申訴種族歧視的門檻極高。今次的判決再一次證明修訂《種族歧視條例》的迫切性。融樂會一直以來要求政府修訂《種族歧視條例》，平等機會委員會最近的歧視條例檢討報告亦提出相同建議，訂明政府除了在提供服務之外，在執行職務和行使職權時作出歧視即屬違法，保障不同族裔市民在政府行使其職能及職權時免受種族歧視，與其他三條反歧視條例看齊。

在《種族歧視條例》沒有相關保障之下，法院的獨特角色尤見重要。本案判決原可清楚表明覆蓋少數族裔免受種族歧視的範圍，釐清香港在國際消除種族歧視公約下的法律義務；是次負面判決可能會令少數族裔對種族歧視保障信心大減，即使遇到不公平待遇亦不願向有關部門申訴。融樂會擔心少數族裔即使成為受害者，亦怯於向警方求助，如此對整體社會治安有害無利。

雖然警方在過去幾年開始聘用一小撮少數族裔警員，但要提升當局種族敏感度，警方必須加強警員對人權及種族歧視的認識和訓練，並制訂清晰指引改善種族定性的情況，例如在警察通例及手冊中，列明會制裁種族歧視行為。另政府有必要立法規定各部門消除種族歧視，包括提供服務，行使職能及權力，達至種族平等。



31 May 2016

**A statement from Hong Kong Unison in response to the judgment on**

**SINGH ARJUN (by his next friend Singh Anita Guruprit) v.**

**THE SECRETARY FOR JUSTICE and Hung Kai Kam**

**[Case no.: DCEO9/2011]**

After a long 20-month wait, the District Court has finally issued a judgment yesterday (May 30) on a race discrimination case against the police that took place 6 years ago involving an 11 year old permanent resident of Indian ethnicity. Mr. Arjun SINGH filed a case against the police for discriminating him on the grounds of race by failing to provide adequate police services. The court holds that the acts of the police in investigation and arrest do not amount to ‘services’ for the purpose of section 27 of the Race Discrimination Ordinance, Cap 62 (“RDO”) and policing is not bound by the RDO. Hong Kong Unison expresses our deep disappointment in the judgment. This case highlights a key weakness in the RDO as it is the only Ordinance amongst the four Discrimination Ordinances that does not mention that it is unlawful for the Government to discriminate against persons on the grounds of race in the performance of its functions or the exercise of its powers.

This judgment has been eagerly awaited by all, particularly given the complainant is a minor and this is the first case adjudicated under the RDO involving a public authority since it came into operation in 2009. An 11 year-old at the time of the incident 6 years ago, Mr. SINGH alleged that he was violently grabbed and held by an adult of Chinese ethnicity in Wanchai MTR station, whilst the adult of Chinese ethnicity alleged that Mr. Singh assaulted her by bumping into her as he was walking up the escalator. Although both parties called “999”, the Chinese was not arrested or investigated; Mr. SINGH, on the other hand, was brought to the Wanchai Police station and detained for several hours pending the arrival of a Punjabi-speaking interpreter even though he asserted that he only understood English.

Ethnic minorities are often unfairly treated by the police, so much so that they are reluctant to seek help from the police even when they are in trouble. Mr. Singh chose to brave the system, which took great courage. Yet, Mr. Singh had to spend one-third of his life waiting for justice to arrive since the time of the incident until the delivery of the judgment yesterday. The judgment added disappointment to the traumatic experience for Mr. Singh who had to go through this ordeal before he even turned 18. The judgment shows that it is very difficult to bring a case under the RDO and the scope of the law is vague; it also proves just how essential it is to strengthen the RDO to make it apply to the government in the exercise of its functions and powers and not only binds the government in areas such as “service”. Unison cannot emphasize enough the dire need for the RDO to be amended; the Equal Opportunity Commissions also made such a recommendation in its recent report of the Discrimination Law Review.

In the absence of the relevant provision in the RDO, the court is in a unique position to send a clear message about protecting ethnic minorities against racial discrimination, particularly in the context of law enforcement, in which the tendencies of racial profiling of ethnic minorities have been noted globally as well as the fact that all this occurs against the backdrop of Hong Kong’s obligations under ICERD. This was a missed opportunity at instilling confidence in Hong Kong’s commitment to protection against racial discrimination.

To rectify the current situation, Hong Kong Unison urges the Police Force to step up training and develop clear guidelines to raise awareness of police officers on human rights and racial discrimination. Without prejudging the motive of any party, the police should be aware of possible racial undertone in situations involving ethnic minorities. The Police Force has recruited a handful



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of ethnic minority constables in the last few years, but the task of enhancing racial sensitivity of the Force is far from being done.

It is high time the government considers a racial equality mandate with a statutory duty to eliminate racial discrimination and promote racial equality and harmony within all sectors of the government, including the provision of its service, performance of its functions, and exercise of its powers.