



**Hong Kong Unison's <sup>1</sup> comments on "Consultation Paper on Charities"**

**(August 2011)**

Having reviewed the recommendations thoroughly set out in the Consultation Paper on Charities ("Paper") issued by the Law Reform Commission's Charities Sub-committee ("Sub-committee") in June 2011, we would like to present our comments as follows:

**1. Oppose the proposition of not incorporating "the advancement of human rights" into charitable purposes**

In para. 5.112 on pp.75 the Paper points out that "the Sub-committee has no difficulty with the proposition that the advancement of human rights can well be charitable". However, the last paragraph in the box on pp. 79 states that "in relation to the advancement of human rights, conflict resolution or reconciliation, we welcome the public's views as to whether these purposes should be included in the list of charitable purposes".

We are very puzzled. The Hong Kong Government has acknowledged several conventions in human rights. Chapter III of the "Basic Law", "Hong Kong Bill of Rights" and four legislations on equal opportunities have all prescribed the

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<sup>1</sup> Hong Kong Unison (formerly known as "Unison Hong Kong- for ethnic equality" was established in 2001 as a registered non-governmental organisation. In September 2005 we was registered as a company limited by guarantee and granted charitable qualifications under Section 88 of the Inland Revenue Ordinance (Cap. 112). Without any financial support from the Government, we aim to serve ethnic minority citizens with the mission to promote racial equality, as well as understanding, acceptance and appreciation across multi-national and multi-cultural spectrum. Our work includes social services, policy advocacy, public education and community organizing.



protection of human rights. The advancement of human rights has been widely considered a proper tool to achieve charitable purposes. Now, the Sub-committee has deliberately singled out “the advancement of human rights, conflict resolution or reconciliation” to solicit the public’s views. This not only contradicts to the reality in Hong Kong, but is unsuited to modern conditions and violates the global trend.

In addition, Hong Kong Unison is a non-governmental organisation dedicated to social services and policy advocacy based on the principle of human rights: We promote racial equality, safeguard the rights and equal opportunities for ethnic minorities with regard to education, employment, use of public services, and political participation. We are worried that, with the implementation of the new Charity Law, our qualifications as a charitable organisation and our work style which draws support from the public over the years will be put at risk. Eventually, we will lose our charitable status and cannot carry on our work to promote racial equality. **We urge the Sub-committee to include “the advancement of human rights, conflict resolution or reconciliation” in the list of charitable purposes.**

## **2. Oppose the rule that charitable activities should not involve politics**

The Paper quoted a case of overseas jurisdictions which has been held political (para 5.25): “.....advocating or opposing any change in the law, policy or administrative practice of this country; .....efforts or attempts to sway public



opinion on controversial social issues.”

It means policy advocacy is not defined as charitable purposes. On this basis, excluding “publicity and promotions” and “policy advocacy” from charitable purposes will put a stranglehold on the advocacy of social policies.

Nowadays, in fact, those categories generally regarded as charitable purposes, such as the promotion of racial harmony, human rights, and equal opportunities, the advancement of citizenship, community development, environmental protection, and prevention of poverty, etc., cannot be isolated from government policies and legislations. The policy advocacy work of civil society groups to a great extent facilitates the government in formulating policies for the betterment of society.

Furthermore, to exclude policy advocacy work from charitable purposes violates the core values of social work profession. At present, the charitable responsibilities for many non-governmental organisations are handled by social workers, who are strictly governed by the regulations and code of practice in their profession. The proposed Charity Law, however, will violate the core values of the social work profession as well as the existing “Social Workers Registration Ordinance” and “Code of Practice for Registered Social Workers”, both with statutory status, placing the majority of social workers and charities in a dilemma.

**(a) The International Federation of Social Workers (IFSW)**



IFSW defines the social work profession as “promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work.”

**(b) “Code of Practice for Registered Social Workers” in Hong Kong**

Part 1 – Basic Values and Beliefs

4. Social workers accept responsibility to advance social justice and to safeguard the cause of human rights.

Part 2 – Principles and Practices

49. Social workers recognise the need to bring to the attention of policy makers or the general public any policies, procedures or activities of governments, societies or agencies which create, contribute to, or militate against the relief of hardship and suffering.

50. Social workers recognise the need to advocate changes in the formulation of policies and legislation to improve social conditions, to promote social justice and general welfare of the society. Social workers also recognise the need to contribute to the implementation of policies for human welfare and should not



allow one's knowledge, skills or experience to be used to further unjust policies or inhuman practices.

Furthermore, policy advocacy is the primary function of Hong Kong Unison. Over the years a number of unfair policies for ethnic minorities have been improved only after our long-term lobbying and advocacy with other human rights groups/ NGOs/ advocacy groups. Examples include: advocacy of Race Discrimination Ordinance; campaigning for changes in Primary and Secondary School Places Allocation to allow ethnic minority students to study Chinese language in local mainstream schools for social integration; formulation of Chinese language supplement guidelines; additional funding for designated schools; acceptance of UK-based GCSE results (Chinese) as Chinese language qualifications in the entry requirements of local universities; advocacy of changes in language requirements for ethnic minority residents in the recruitment by the Hong Kong Police Force, etc. We are deeply concerned that should policy advocacy be excluded from charitable purposes, the work of Hong Kong Unison and the welfare of ethnic minorities will be seriously affected. **We strongly demand that policy advocacy work, if not directly involved in an election campaign to promote a political party or candidate, should be acknowledged to be charitable purposes.**

### **3. Oppose the establishment of a “Charity Commission” for Hong Kong**

The Paper proposes to set up a “Charity Commission”, the sole regulatory body



responsible for monitoring charitable organisations in Hong Kong. The Sub-committee has made reference to overseas experience with respect to the need for and the powers of charity regulatory bodies, yet without taking into consideration the legal system, political system, independence status and the balance of powers in these jurisdictions. In the current situation of Hong Kong, there is no real democracy, the Chief Executive and his ruling authorities lack democracy legitimacy, and the appointment of government officials is based on personal preference. It is well known that the appointments of statutory and non-statutory organisations are all pro-government loyalists, which completely excludes opposition camps holding different views from the government. We believe the members of the future charity commission are very likely to be appointed by the Chief Executive or bureau chiefs. We are worried that the charity commission is liable to become a tool for the government to manipulate political intervention in the operation of charities.

We are of the view that the proposed “Charity Commission” has excessive power. For instance, as stated in the Paper, the future charity commission should be vested with the power to protect property of charities in cases of “misconduct” or “mismanagement” in the administration of charities, and that this power should include, but not be limited to, the powers to appoint additional trustees or directors of the charity; suspend or remove trustees, directors or officers of the charity; and vest property of charities in an official custodian. The “Charity Commission” should also be given residual power to refuse to register organisations as charities in certain cases, even where they appear to satisfy the charitable requirements. The



Sub-committee considers that “one of the advantages of such a residual power is that it would allow flexibility in dealing with applications”. We find the definition of “misconduct” and “mismanagement” very confusing. To grant the above power to the “Charity Commission”, which has no basis of public consensus, the balance of powers, and independent statutory status, is very dangerous. It is just like giving a sword to empower the government to suppress non-governmental organisations and intervene in their operation. The Paper also proposes that applicants aggrieved by a decision of the future charity commission may appeal to the Court of First Instance against the decision. But, in reality, the majority of smaller charities cannot afford the court appeal. Under the existing system, the arrangements for such are not to provide flexibility to the public, but to the government for strengthening political intervention and control. We are of great concern as to the composition of the charity commission as well as the powers given to it as proposed by the Paper. **We urge the Sub-committee to withdraw the proposal of establishing a “Charity Commission” for the regulation of charities.**

#### **4. The Paper overlooks the feasibility of employing other regulatory tools**

The Paper has not provided any data about illegal fundraising, such as the ratio of charities guilty of an offence compared to more than 6,000 charities operating in Hong Kong. How serious is the situation? Can we improve the deficiencies in the current regulatory framework through perfecting administrative coordination? Can



we guide the citizens to be smart donors through public education? Is it more cost-effective to monitor charities through the general public and self-discipline of the charitable sector rather than establishing a “Charity Commission”? The Paper has not made any debate to these questions, but introduced the most stringent legislation with an extremely powerful “Charity Commission”, which has no basis of public consensus and the balance of powers. It is our view that the future charity commission is likely to treat normal issues as serious, giving the government an excuse to strengthen intervention and control over charitable business of non-governmental organisations. This clearly reveals its political motive, which is anti-human rights, with an attempt to hinder the advancement of citizenship.

## 5. Conclusion

In summary, we support the initiative for monitoring illegal fundraising and the need for charitable organisations to enhance their transparency, and that they have the obligation to disclose more information in order to increase their accountability to the public. Nevertheless, the recommendations set out in the Paper fail to respond to the existing problems. They cannot meet the high expectations in the society to solve the most pressing problems such as illegal fundraising activities on the street and the supervision of the use of donations, but create barriers to the majority of legal charities, especially small ones. This appears to be contradictory to the Sub-committee’s objective of legislation on charities, that is, “providing a modern and streamlined charity law framework”. **We demand the Sub-committee**





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**to consider other feasibilities instead of legislation: For example, strengthening the monitoring of charities by the public, improving the existing licensing and regulatory mechanisms, promoting self-discipline in the charitable sector, etc.**