

Society for Community Organization

Comments on the government's report under the International Convention on Elimination of All Forms of Racial Discrimination

**Submission to Panel on Constitutional Affairs regarding
the Report of the Hong Kong Special Administrative Region (HKSAR)
under
the International Convention on Elimination of All Forms of Racial
Discrimination**

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1. Introduction

This document represents Society for Community Organization's submission to the Panel on Constitutional Affairs for item V of the meeting on 15 December 2008, regarding the Tenth to Thirteenth Reports of the People's Republic of China under the International Convention on the Elimination of All Forms of Racial Discrimination ('the report') which was issued on 3 October 2008 by the Constitutional and Mainland Affairs Bureau. The hearing of the report will take in Geneva on 3-21 August 2009.

The submission consists of two parts: Part I highlights the general issues of concern related to the different articles and Part II particularly focuses on racial discrimination by law enforcement agencies.

The issues in Part I will be elaborated in a later report.

1.1 Report fails to follow United Nations reporting guidelines

The United Nations (UN) has issued guidelines regarding the form and content of reports to be submitted by States parties ("Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties" (HRI/GEN/2/Rev.5)). According to the UN guidelines such reports should serve to monitor the human rights situation and make a review of the current policies. It should also identify problems in the current approach with a view of developing policies to implement the human rights treaties (Chapter 1, para. 9).

However, a reading of the report shows that it is merely a statement of the current policies rather than an independent review of problems that exist and suggestions of improvement. It blankly denies the reports and experiences of commentators and NGOs. (Our analysis of the report regarding law enforcement and discrimination can serve as an example and additionally highlight issues of our concern.)

1.2 Recommendation

The government should seriously review its current reporting style and ensure that its reports under the human rights instruments follow the United Nations guidelines. The report should provide an independent review of problems under the specific treaties.

2. Part I: General issues

2.1. Issues relating to articles

2.1.1 Article 2: Policy of eliminating racial discrimination

1. The government should provide updated information about the Race Discrimination Ordinance (RDO). It should explain why new immigrants are not included in the RDO and why acts of government, such as the Police, the Immigration Department and the Correctional Service Department, that do not relate to areas such as employment, education or provision of goods and services, have been excluded from the RDO.
2. The report should provide updated information regarding the proposed Code of Practice on Employment under the Race Discrimination Ordinance, and whether there are any plans to provide codes relating to areas such as housing, provision of goods and services and law enforcement.

2.1.2. Special groups

3. The government report does not touch upon the issues of racial discrimination of new immigrants and they are not mentioned either under the section on special groups (para. 75-104). The government should provide additional information on measures to tackle discrimination against new immigrants.
4. The report should provide updated information regarding the recent High Court judgment that the review of torture claims is in violation of Hong Kong's international obligations.
5. The report should explain why asylum seekers and refugees do not have any right to work or right to education, including vocational training.

2.1.3. Article 5(a) Equal treatment before tribunals and organs administering justice

6. The report should explain whether the services of the Legal Aid Department and the Duty Lawyer Service is made accessible to ethnic minorities with interpretation services and translation of application forms.

2.1.4. Article 5(e) Economic, social and cultural rights

7. The government should explain what measures have been taken to ensure that all ethnic minorities have equal access to social services such as those from the Social Welfare Department or the Housing Authority. It should explain whether such departments actively seek to provide interpretation and translation to ethnic minorities.

8. The government should explain why the 7 year residence requirement for applications for CSSA and public housing does not amount to indirect racial discrimination given the fact that this requirement particularly affects new immigrants from Mainland China and ethnic minorities.
9. The government should explain whether it plans to monitor the services of the Labour Department and provide statistics on the number of ethnic minorities that secure jobs through that department.
10. The government should explain whether there are any plans to abolish the two-week rule which applies to foreign domestic helpers, given the fact that the Committee on the Elimination of Racial Discrimination has deemed the rule as discriminatory.

2.1.5. Article 7

The government should provide information on how it evaluates the effectiveness of its public education programmes to combat prejudice.

2.1. 6. Article 14

The government should explain whether there are plans to make a declaration under article 14 which recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive complaints from individuals who are victims of racial discrimination

2.2. Recommendations

1. The government should provide detailed information about the most recent developments about the Race Discrimination Ordinance and the Code of Practice under that ordinance.
2. The government should provide information about the situation of new immigrants from Mainland China.
3. The government should provide further information about vocational training for asylum seeker and refugees and about the right to work.
4. The report should explain whether departments such as the Legal Aid Department, the Duty Lawyer Service, the Social Welfare Department, the Labour Department and the Housing Authority, provides interpretation and translation services for ethnic minorities to ensure equal access to their services.
5. The government should explain whether there are any plans to abolish the 7 year residence requirement for applications for CSSA and public housing.

3. Part II: Government fails to monitor racial discrimination by law enforcement agencies

3.1 Government denies discrimination by law enforcement personnel

In the report the government denies that any kind of racial discrimination takes place by the Immigration Department, the Correctional Services Department and the Police.

The report states that: “[The] staff of the Police and Correctional Service Department act in accordance with the laws of Hong Kong, all binding international conventions and other applicable laws.” (para. 116).

However, this blank denial of the discrimination does not fit the reality or the experiences of ethnic minorities.

SoCO released a research in May 2007 about detention of asylum seekers which surveyed 51 people¹. As all asylum seekers are non-Chinese the research can give a good indicator of the treatment of ethnic minorities by the law enforcement personnel.

The research showed that many detainees felt that the detention staff did not respect them during body search. The respondents were insulted (34%) and joked (36.2%) about their private parts by the officers. Many believe that this is due to widespread racial discrimination in the detention centres. In fact half of the respondents actually felt that they were discriminated because of their race and 44.9% reported to have been insulted by staff.

The report also states that “[the] rights of detained persons are made known to the detainees” and that “[translation] service is also arranged where necessary” (para. 115).

However, our recent interviews with former ethnic minority detainees show that interpretation is only arranged when they have to give statements. When they are given a copy of their rights, it is in English and these are not translated. Secondly, there is no arrangement of interpreter when they want to make complaints to the different departments either.

It thus seems that despite the training provided to the personnel, racial discrimination

¹ ‘Research on the Condition of asylum seekers and refugees in detention centres’, released 6 May 2007, Society for Community Organization.

still takes place.

3.1.1 Recommendation

The government should provide additional information to the report about the following:

- a. Is there any independent monitoring to prevent and detect racial discrimination by the law enforcement personnel?
- b. Do the law enforcement personnel provide interpretation/translation when explaining the rights of detained people to ethnic minorities?
- c. Is the complaint system accessible for ethnic minorities with written information about the complaint mechanism in ethnic minority languages? Are interpreters arranged when ethnic minorities want to make complaints?

3.2 No legal framework to protect against racial discrimination by law enforcement agencies

The report stays silent on the fact that the law enforcement agencies are not fully covered by the Race Discrimination Ordinance as it only covers areas such as employment, education, and provision of goods and services. However, as act done by law enforcement personnel are related to discipline and law enforcement the people who are racially discriminated do not have any legislation to protect them against such discrimination.

As regards complaints of racial discrimination, they can only complain to the complaint units of the respective departments. However, these are not independent and thus the number of substantiated cases is minimal. For instance, the Complaints Investigation Unit of the Correctional Services Department received 172 grievances in 2006. Of the 90 cases that were fully investigated at that time, only **3.3% (3 cases)** had been partly or fully substantiated. The rest were deemed to be false, faultless or unsubstantiated.

3.2.1 Recommendation

The government should provide additional information to the report on whether it envisages providing legislative measures to protect ethnic minorities against racial discrimination when they are deprived of their liberty.

3.3 Government should allow independent monitoring to prevent racial discrimination against people deprived of their liberty

According to the guidelines (Chap 1, para. 24) the majority of reports to the UN should consist of a common core document about the human rights situation and secondly a treaty-specific document about the specific treaty, in this case the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Regarding the core document the government should provide information about international human rights instruments which it has not yet ratified (Chap 1, para. 40(a)). However, it fails completely to make such a list and to explain why different instruments have not been signed.

Such a list should mention that Hong Kong is not a signatory to the **Optional Protocol to the Convention Against Torture (OPCAT)**, concerning regular visits by national and international institutions to places of detention, 2002. Nor does it mention if and when it envisages acceding to this instrument.

By acceding to the OPCAT, there could be an independent review of the problems of racial discrimination in any places where persons are deprived of their liberty, because it would allow an independent United Nations body to visit places of detention.

Currently there is no independent review of the different departments involved in deprivation of people's liberty. With the lack of a national human rights institution in Hong Kong and the fact that all complaint bodies of the police, Immigration Department and the Correctional Services Department are not independent, it is even more important with an international body that can monitor human rights in detention.

3.3.1 Recommendation

The government should follow the new guidelines of the UN and explain why certain instruments have not been acceded to, especially it should explain why it has not yet allowed regular visits by international institutions to places of detention, including police stations, detention centre, prisons, and immigration centres.

4. Summary of recommendations

1. The government should provide detailed information about the most recent developments about the Race Discrimination Ordinance and the Code of Practice under that ordinance.
2. The government should provide information about the situation of new immigrants from Mainland China.
3. The government should provide further information about vocational training for asylum seeker and refugees and about the right to work.
4. The report should explain whether departments such as the Legal Aid Department, the Duty Lawyer Service, the Social Welfare Department, the Labour Department and the Housing Authority, provides interpretation and translation services for ethnic minorities to ensure equal access to their services.
5. The government should explain whether there are any plans to abolish the 7 year residence requirement for applications for CSSA and public housing.
6. The government should provide additional information to the report about the following:
 - a. Is there any independent monitoring to prevent and detect racial discrimination by the law enforcement personnel?
 - b. Do the law enforcement personnel provide interpretation/translation when explaining the rights of detained people to ethnic minorities?
 - c. Is the complaint system accessible for ethnic minorities with written information about the complaint mechanism in ethnic minority languages? Are interpreters arranged when ethnic minorities want to make complaints?
7. The government should provide additional information to the report on whether it envisages providing legislative measures to protect ethnic minorities, who are deprived of their liberty, against racial discrimination.
8. The government should follow the new guidelines of the UN and explain why certain instruments have not been acceded to. Especially it should explain why it has not yet allowed regular visits by international institutions to places of detention, including police stations, detention centre, prisons, and immigration centres.