

資料文件

二零零九年十一月十六日

立法會政制事務委員會

就香港特別行政區根據《消除一切形式種族歧視國際公約》 的報告進行的審議會

目的

本文件旨在告知議員關於聯合國消除種族歧視委員會（委員會）就香港特別行政區（香港特區）根據《消除一切形式種族歧視國際公約》（公約）的報告進行的審議會的結果，以及當局就委員會建議的初步意見。

背景

2. 公約在一九六九年起適用於香港。由一九九七年七月一日起，公約繼續適用於香港特區。根據公約，締約國有責任就執行公約的情況，定期向委員會提交報告。香港特區最近的報告，是作為中華人民共和國所提交的報告的一部分，於二零零八年向委員會提交。政制事務委員會曾於二零零八年十二月十五日及二零零九年六月十五日的會議上，就香港特區的報告和有關事宜進行討論。

就香港特區報告進行的審議

3. 該份報告由委員會於二零零九年八月七日及十日在日內瓦召開的審議會審議。由政制及內地事務局、律政司、保安局、教育局和勞工處的人員組成的香港特區代表小組作為中國代表團的一部分出席了審議會。在審議會上，委員會成員就公約適用於香港特區的情況提出了一系列的意見和問題。香港特區的代表就有關事宜作出了回應。報告員在作出結論時，感謝中國代表團（包括香港特區的代表）所作出有建設性的對話及所提供的詳盡回覆。

4. 委員會在二零零九年八月二十五日採納了審議結論，當中包括了委員會對香港特區的建議。審議結論在二零零九年八月二

十八日公布。審議結論的文本載於附件（至今只有英文版）。審議結論的第 7 及 27 至 31 段特別與香港特區相關。

委員會的建議和當局的初步意見

5. 委員會歡迎香港特區制訂《種族歧視條例》，該條例已在二零零九年七月全面實施。另一方面，委員會亦提出了一些關注事項，並在數個範疇提出建議。這些建議和當局的初步意見簡述如下。

(A) 《種族歧視條例》對種族歧視的定義（第 27 段）

6. 委員會表達了就《種族歧視條例》下種族歧視的定義與公約第 1 條不完全一致的關注，原因是該定義並沒有就語言方面的間接歧視作清晰的界定，及沒有把入境身分和國籍納入禁止歧視的範圍內。委員會建議香港特區將相應的事項納入條例中禁止歧視的範圍內。

7. 我們希望指出，《種族歧視條例》下間接歧視的定義與三條關於性別、殘疾及家庭崗位的反歧視條例是一致的，其所包涵的相稱準則，與國際人權法的法理相符。該定義涵蓋不同的要求或條件（其中可包括涉及語言的要求或條件）。因此，我們認為不宜在該定義中突出某一項要求或條件，例如語言。

8. 條例中對「種族」的定義（即某人的種族、膚色、世系、民族或人種），是按照公約的第 1(1)條所列的因素而訂定的。為了令法例清晰及明確，《種族歧視條例》訂明基於國籍或某幾項入境身分（例如在香港的居住年期）而作出的作為，並不構成基於「種族」而作出的作為，這並沒有收窄了條例對「種族」的定義。更重要的是《種族歧視條例》的保障適用於香港的所有人，不論其國籍或入境身分。

9. 因此，我們認為條例中對種族歧視的定義，符合公約的第 1 條。

(B) 《種族歧視條例》對政府職能及權力的適用範圍（第 28 段）

10. 委員會對《種族歧視條例》的適用範圍只涵蓋部分政府行為及所行使的權力，表示關注。委員會建議《種族歧視條例》應涵蓋所有的政府職能及權力。

11. 就此，值得注意的是，香港特區《基本法》和《香港人權法案條例》禁止政府在行使其職能時作出種族歧視的作為。此外，香港設有廣泛架構，包括立法會、平等機會委員會（平機會）及申訴專員公署等，處理對政府部門的投訴。政府的任何種族歧視行為亦會受到法庭的監管。這項事宜在二零零八年審議《種族歧視條例草案》時已作詳細討論，我們並已解釋了我們的意見。我們並不認為把《種族歧視條例》的涵蓋範圍在訂明的範疇外進一步擴大至所有政府職能，是合適的做法。

12. 委員會亦建議香港應採納種族平等計劃，以有效地推行法例；亦應加強平機會。在這方面，我們已訂定擬議的促進種族平等行政指引，為有關的政策局、部門和公共主管當局在促進種族平等和讓少數族裔人士能平等地使用主要的公共服務方面提供指導。我們已分別於二零零九年七月七日及二零零九年十月十九日的政制事務委員會會議上，向議員簡明了制訂有關行政指引、和多個有關的政策局、部門和公共主管當局制訂其有關措施的清單擬稿的最新進度。我們正考慮相關團體的意見，為指引定稿。有關的政策局、部門和公共主管當局亦正制訂餘下的措施清單。

13. 我們已向平機會提供額外資源，以推行《種族歧視條例》，這包括七百萬元的特別撥款，以便進行籌備安排，例如公眾教育、宣傳和推廣工作。在二零零九／一零財政年度，我們額外提供五百萬元給平機會用以聘請額外員工及舉辦社區活動，以推行《種族歧視條例》和推廣種族平等。

(C) 難民和酷刑聲請人士（第 29 段）

14. 委員會得悉香港特區計劃設法定機制處理酷刑聲請，但仍關注香港沒有就難民(包括申請政治庇護的審核程序)訂立法例。委員會建議制訂難民法例，以建立全面的審核程序，處理個別尋求政治庇護的申請。委員會進一步建議，尋求庇護者獲取資訊、傳譯服務、法律援助和司法補救的權力應受到保障。委員會亦希望我們重新考慮把《1951 年難民地位公約》及其《1967 年議定書》的適用範圍延伸至香港。

15. 政府的一貫立場是鑒於香港的地理因素和開放的簽證制度，倘若《1951 年難民地位公約》及《1967 年議定書》延伸至香港，很容易會被濫用。在香港提出的難民身分申請，由聯合國難民事務高級專員署香港辦事處處理。特區政府會因應需要予以協助。

就酷刑聲請的審核程序，政府將推出行政改進措施，並準備在二零零九／一零年立法年度內，就處理聲請的法定機制提出立法框架。

(D) 外籍家庭傭工（第 30 段）

16. 委員會對「兩星期規定」、「留宿」規定以及外籍家庭傭工（外傭）的其他工作條件（工作時間、休息和假期）等表示關注。委員會建議政府應採取有效措施，確保外傭不會被歧視。委員會建議取消「兩星期規定」和「留宿」規定，及「採取較彈性的手法，處理外傭的工作條件及要求，其中包括那些有歧視目的或效果的僱傭規例及做法」。委員會亦提出應留意其發出有關歧視非公民的《第 30 號一般建議（2004）》。

17. 「兩星期規定」對於維持有效的入境管制是必須的。此規定同樣適用於經由「補充勞工計劃」輸入的勞工。規定的目的是要防止提前終止合約的外地勞工（外勞）逾期居留及未經批准在港工作。規定並不阻止外勞回港工作。此外，「兩星期規定」亦提供了合適的彈性安排。

18. 至於「留宿」規定，值得注意的是，輸入外傭是為了應付本港留宿家庭傭工不足的情況。為了應付這個情況，輸入外傭的要求遠較輸入其他低技術勞工的要求為低。至於工作時間方面，《僱傭條例》（香港法例第 57 章）規定了年假及休息日的安排。有關安排適用於本地工人及外勞（包括外傭）。此外，政府亦有宣傳為工人提供休息時段的重要。

19. 就委員會有關歧視非公民的《第 30 號一般建議(2004)》，值得注意的是，聯合國人權機構一般建議或一般意見，並無約束力，但對特區政府制訂和實施政策來說，是十分重要的參考材料。在監察「兩星期規定」和「留宿」規定的實行時，政府會考慮《第 30 號一般建議(2004)》。

20. 至於有關香港應在外傭工作條件及規定上採取較彈性做法的建議，現時外勞與本地工人本港現行的勞工法例(包括《僱傭條例》及《僱員補償條例》(香港法例第 282 章))下享有同樣的權益；若有僱傭糾紛，兩者均可同樣使用勞工處的免費調解服務，及在司法制度下獲一視同仁的對待。此外，政府自一九七零年代初起，便訂立「規定最低工資」，以及指定的「標準僱傭合約」，以給予外傭額外的保障。「標準僱傭合約」強制性規定僱主必須為外傭提供旅

費、免費住宿和膳食（或膳食津貼）、免費醫療等福利。本地工人一般並不享有這些福利。

21. 我們亦希望指出，只要有關的工作條件及規定並不遜於勞工法例及「標準僱傭合約」，外傭（一如本地工人）可與僱主自由就僱傭條款及規定（例如工作時數、超時工作薪酬、假期安排等）達成協議。

(E) 為非華語學生提供的中文教育（第 31 段）

22. 委員會關注到香港沒有為具有移民背景的非華語學生制訂教授中文作為第二語言的教育政策。委員會建議透過諮詢教師及有關團體，制訂相關政策，以努力提升移民學童的中文教育質素。

23. 政府的政策是促進非華語學生盡早融入本地教育體系。因此，所有在公營學校修讀本地課程的中小學生，都必須學習中文和英文，並享有有關學習機會。我們就所有科目（包括中國語文）的課程發展策略，是為學校提供共同而靈活的課程架構，讓學校可以因應學生的能力調適課程策略及教材，以切合他們的需要。換言之，我們不會引進另一套預設內容較淺、水平較低的中國語文課程和資歷評估，以免局限有不同需要的非華語學生的學習機會。另一方面，為加強支援非華語學生，教育局於二零零八年十一月公布《中國語文課程補充指引(非華語學生)》。這份補充指引涵蓋多元化的課程設置模式：「融入中文課堂」、「過渡銜接」、「特定目標學習」和「綜合運用」，調節非華語學生的學習水平，配應多元出路。

24. 為支援學校實施補充指引，教育局同時為非華語學生編製一系列配套課程資料，例如中文學習字詞表，識字寫字自學軟件，傳統美德學習軟件，以及編印成課本的調適學習材料。各類自學及學習軟件以及字詞表已分別於二零零八年十二月及二零零九年五月派發予學校及提供予公眾。二零零九年九月，全套涵蓋中小學課程的學習材料已經派發予學校；另一套學習材料將於二零一零年六月完成。此外，教育局已經開展非華語學生中文水平的研究，作為編製非華語學生評估工具的基礎。評估工具預期於二零一零年底完成。連同其他支援措施，例如增加指定學校的數目以便集中支援，教師專業發展課程，透過與大學夥伴計畫提供到校支援服務，營辦學習中文支援中心提供課後輔導等；我們預計各項支援措施將對非華語學生的學習，進一步發揮持續的效益。

跟進行動

25. 因應審議結論第 40 段的要求，香港特區會就審議結論第 30 段的建議（即有關外籍家庭傭工），在二零一零年八月二十五日前提供跟進工作的資料。我們亦會應審議結論第 41-42 段的要求，在我們將提交的報告中（作為中國於二零一三年一月二十八日前提交的下一份定期報告的一部份），回應審議結論提出的所有有關問題，尤其是就審議結論第 28 段的建議（即有關《種族歧視條例》、種族平等計劃及加強平機會），提供詳細資料。

政制及內地事務局
二零零九年十一月

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**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

**THE PEOPLE'S REPUBLIC OF CHINA
(including Hong Kong and Macau Special Administrative Regions)**

1. The Committee considered the tenth to thirteenth periodic reports of the People's Republic of China (CERD/C/CHN/13), including Hong Kong Special Administrative Region (CERD/C/HKG/13) and Macau Special Administrative Region (CERD/C/MAC/13), submitted in three documents by the respective authority covering the reporting period from the tenth to thirteenth periodic reports, at its 1942nd and 1943rd meetings (CERD/C/SR.1942 and CERD/C/SR.1943), held on 7 and 10 August 2009. At its 1966th meeting (CERD/C/SR.1966), held on 25 August 2009, it adopted the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the tenth to thirteenth periodic reports of the People's Republic of China including Hong Kong and Macau Special Administrative

Regions and the opportunity thus offered to resume the dialogue with the State party. It also expresses its appreciation for the constructive dialogue held with the large and competent delegation and the comprehensive written and oral responses provided to the list of issues and the questions posed by Committee members.

B. POSITIVE ASPECTS

3. The Committee welcomes the adoption of the National Human Rights Action Plan 2009-2010, which includes a chapter on the protection of the rights of ethnic minorities.

4. The Committee notes with satisfaction the adoption of a range of laws at the national, provincial and local level to protect the rights of minorities, in particular the revised Regional Ethnic Autonomy Law of the People's Republic of China of 2001 and the Rules of the State Council on the Implementation of that law adopted in 2005, as well as the Regulations on Ethnic Work in Cities and the Regulations on the Ethnic Administrative Work.

5. The Committee commends the State party for the adoption of a number of programs and policies aimed at the advancement of minorities, including the 11th Five-Year Program for the Ethnic Minority Cause, the Development Program to Help Ethnic Groups with Relatively Small Populations (2005-2010), the Grand Strategy for the development of China's West and the 11th Five-Year Program for the Action on Prosperity Promotion in Border Areas.

6. The Committee notes with appreciation the rate of economic development and the adoption of policies and programmes aimed at achieving an equal level of development in all regions, including the autonomous provinces largely inhabited by ethnic minorities.

Hong Kong and Macau Special Administrative Regions

7. The Committee welcomes the adoption of the Race Discrimination Ordinance (Chapter 602 of the Laws of Hong Kong), which entered into force in 2009.

8. The Committee notes with satisfaction the adoption of Law 6/2008 on the Fight Against Trafficking in Persons, as well as Law 1/2004, establishing the Legal Framework on the Recognition and Loss of Refugee Status, in Macau SAR.

C. CONCERNS AND RECOMMENDATIONS

9. The Committee notes the lack of disaggregated statistical data regarding the socio-economic status of members of ethnic minorities, non-citizens, asylum-seekers and refugees.

In accordance with its General Recommendation No. 8 (1990) and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its request (A/56/18, para. 250) that the State party include, in its next periodic report, updated and detailed statistical data on the socio-economic situation of the population, disaggregated by ethnic groups and nationalities. In this regard, it recalls the importance of gathering accurate and up-to-date data on the ethnic composition of the population.

10. While taking note of article 4 of the State party's Constitution, stipulating that all ethnic groups in the State party are equal, the Committee reiterates its concern (A/56/18, para. 241) that the domestic legislation of the State party does not contain a definition of racial discrimination in full conformity with the definition set out in article 1 of the Convention, as it does not include a prohibition of discrimination on the grounds of descent and national origin. (art. 1)

The Committee recommends that the State party adopt a comprehensive definition of racial discrimination, fully in accordance with article 1, paragraph 1, of the Convention, prohibiting discrimination on the basis of race, colour, descent, or national or ethnic origin. In this regard, the Committee especially draws the State party's attention to its General Recommendation No. 30 (2004) on discrimination against non-citizens.

11. While noting the State party's information on legislation at the national, provincial and local levels aimed at protecting the rights of minorities, the Committee reiterates its concern (A/56/18, para. 242) that the State party has not adopted a comprehensive anti-discrimination law to protect individuals from racial discrimination. (art. 2)

The Committee recommends that the State party adopt a comprehensive law, at the national level, on the elimination of discrimination on the grounds of race, colour, descent or national or ethnic origin, covering all rights and freedoms protected under the Convention.

12. The Committee, taking into account that the National Human Rights Action Plan is set to end in 2010, notes the lack of information regarding the extension of the duration of this Plan. (art. 2)

The Committee encourages the State party to extend the Action Plan beyond 2010, to consider including specific provisions on the elimination of racial discrimination and to promote its full implementation.

13. The Committee, acknowledging the information provided by the delegation concerning natural migration within the State party, notes with concern reports according to which the system of incentives granted to work and settle in the autonomous minority regions may result in substantive changes in the demographic composition that impact negatively on local traditions and cultures in these regions. (arts. 2 and 5)

The Committee reiterates its previous recommendation (CERD/C/304/Add.15, para. 26) that any policies or incentives offered that may result in a substantial alteration of the demographic composition of autonomous minority areas be reviewed.

14. While noting the ongoing reforms of the national household registration system (*hukou*), the Committee is concerned at the *de facto* discrimination against internal migrants in the fields of employment, social security, health services, and education that indirectly result from that

system, which also affects members of ethnic minorities, and in particular women. (art. 5(a) and 2)

The Committee recommends that the State party implement its decision to reform the *hukou* system and to ensure that internal migrants, in particular members of ethnic minorities, will be able to enjoy the same work, social security, health and education benefits as long-time urban residents.

15. While acknowledging the information provided by the State party on the revision of its legislation regarding administrative detention and “re-education through labour”, the Committee is concerned at reports that in practice effective judicial control of these measures is limited and that the application of these laws may disproportionately affect members of ethnic minorities. (art. 5(a) and (b))

The Committee calls upon the State party to take effective measures with a view to ensuring that the application of administrative detention and “re-education through labor” is used restrictively and subject to full judicial control in line with international human rights standards, and that these practices are not disproportionately applied to members of ethnic minorities. It requests the State party to provide, in its next periodic report, information, including disaggregated statistics by ethnic group, on cases in which these measures were administered, and on appeals lodged, if any. In this regard, the Committee also draws the State party’s attention to the Universal Periodic Review procedure and in particular Recommendation 31, which enjoyed the support of the State party (A/HRC/11/25). In light of the section in the National Human Rights Action Plan regarding the prohibition of illegal detention, it also encourages the State party to consider the complete abolition of such laws, as recommended by the Committee against Torture (CAT/C/CHN/CO/4, para. 13).

16. While noting that the State party is in the process of drafting a refugee law, the Committee reiterates its concern (A/56/18, para. 246) that asylum-seekers from the

Democratic People's Republic of Korea continue to be systematically refused asylum and forcibly returned. (art. 5(b))

The Committee recommends that the State party adopt legislation relating to refugee status as soon as possible. Bearing in mind its General Recommendation No. 30 (2004) on discrimination against non-citizens, the Committee calls upon the State party to take all necessary legal and policy measures to ensure that all asylum-seekers have the merits of their individual cases considered by an independent and impartial authority.

17. While noting the information provided by the State party regarding the events in Tibet Autonomous Region in March 2008, as well as the events in Urumqi, Xingjian Uighur Autonomous Region, in July 2009. It regrets the loss of life, including among the State party's armed forces and police, and the suffering of all victims. While it recognizes the State party's duty to maintain public order, the Committee is concerned at reports alleging the disproportionate use of force against ethnic Tibetans and Uighurs respectively and the important number of their detentions. (art. 5(a) and (b))

The Committee calls upon the State party to ensure that those detained in connection with the above events are guaranteed humane treatment while in custody and fair trial standards according to international law, including access to a lawyer of their choice, presumption of innocence, and handing down proportionate sentences on those found guilty. The Committee further recommends that the State party carefully consider the root causes of such events, including inter-ethnic violence, and the reasons why the situation escalated.

18. The Committee welcomes the measures taken by the State party to ensure fair and adequate representation of minorities in the administration, police force, and the military. Notwithstanding the data provided by the State party on the participation of ethnic minorities, including women, in public service and in decision-making positions in political life, the

Committee is concerned about the continuing under-representation of minorities, particularly of minority women, in public life. (art. 5(c))

The Committee recommends that the State party intensify its efforts aimed at fair and adequate participation of all minority groups in public service, including the military, and political life. It also recommends that the State party encourage minority women to become more active in public life and draws the State party's attention to General Recommendation No. 25 (2000) on gender-related dimensions of racial discrimination. The Committee requests the State party to provide, in its next periodic report, more detailed information on the representation of ethnic minorities in public life, with an indication of the representation in higher-level positions.

19. Despite the delegation's assurance that lawyers can exercise their profession freely and in accordance with the Lawyer Law, the Committee notes with concern reports on the harassment of defense lawyers taking up cases of human rights violations, especially those introduced by members of ethnic minorities. In this regard, it also notes that the National Human Rights Action Plan expresses the State party's intention to revise or amend any laws incompatible with the Lawyers Law. (art. 5(d))

The Committee calls upon the State party to take all appropriate measures to ensure that lawyers can exercise their profession freely, in law and in practice, and to promptly and impartially investigate all allegations of harassment, intimidation, or other acts impeding the work of lawyers. In line with the chapter on the right to a fair trial in the National Human Rights Action Plan, it recommends that the State party revise all laws and regulations that are inconsistent with the Lawyers Law and international standards.

20. Notwithstanding the assurances provided by the State party's delegation, the Committee remains concerned about reports that members of some minority groups do not fully enjoy the freedom of religion. (art. 5(d))

Taking into account the intersectionality between ethnicity and religion, the Committee recommends that the State party ensure the respect for the right of members of all ethnic groups to freely enjoy the freedom of religion.

21. While welcoming the measures taken to eliminate economic development disparities between different regions, the Committee notes that the Western provinces and regions that are inhabited by the most numerous minorities continue to be economically underdeveloped. However, it also reiterates its previous observation (A/56/18, para. 243) that economic growth in minority regions, *ipso facto*, is not tantamount to the equal enjoyment of economic, social and cultural rights in accordance with article 5(e) of the Convention. (art. 5(e))

The Committee recommends that the State party continue to intensify its efforts aimed at creating conditions for sustainable development in the Western areas and to eliminate economic and social disparities between the regions. It also requests that the State party provide further information on the enjoyment of economic, social and cultural rights by all ethnic groups of the State party and the effectiveness of the measures taken to ensure that all minority groups benefit from the economic growth. At the same time, it reiterates its recommendation that the State party take all necessary steps to fully ensure the promotion of and respect for local and regional cultures and traditions.

22. The Committee has taken note of the State party's policy of bilingual education for ethnic minorities, including the range of bilingual teaching models. It is however concerned at reports that in practice Mandarin is the sole language of instruction in many schools in the autonomous minority provinces, especially in the secondary and higher levels of education. While noting with appreciation the increase in school enrolment rates in minority regions and the various measures adopted to enable access to education for members of ethnic minorities, it reiterates its concern (A/56/18, para. 245) about remaining disparities for ethnic minority children in accessing education, which is often linked to the availability of teaching in Mandarin only. (art. 5(e))

The Committee recommends the State party to intensify its efforts to ensure the implementation of legislation and policies on bilingual education at all education levels, taking into account the relevant recommendations of the Forum on Minority Issues of 15 and 16 December 2008 (A/HRC/10/11/Add.1). It also recommends that the State party ensure that special measures adopted to promote access to education of children of ethnic minorities, such as scholarships or lower entry qualification, are available in practice. It also requests the State party to provide detailed information, including disaggregated statistics on enrollment in primary, secondary and higher education of members of ethnic minorities, in its next periodic report. In this regard, the Committee also draws the State party's attention to the Universal Periodic Review procedure and in particular Recommendation 16, which enjoyed the support of the State party (A/HRC/11/25).

23. The Committee regrets that the State party did not provide more detailed information on illiteracy among different minority groups and the measures taken by the State party to target those groups that are most affected. It remains concerned at reports of high illiteracy rates among some ethnic minorities. (art. 5(e))

The Committee calls upon the State party to strengthen its measures in the short and medium terms to implement measures to reduce illiteracy among ethnic minorities, especially in rural areas. The Committee recommends that the State party provide more information on illiteracy rates among the different ethnic groups and between men and women in its next periodic report.

24. While noting the wide range of measures and policies adopted by the State party to improve access to health-care and services, the Committee is concerned that persons belonging to ethnic minorities often face obstacles in accessing health care and services. (art. 5 (e))

The Committee recommends that the State party continue intensifying its efforts to address the persistent health disparities affecting persons belonging to ethnic minorities, in particular by addressing the obstacles that currently

prevent or limit their access to affordable and adequate health care, taking into consideration the difficulties posed by their geographical location. In this regard, the Committee also draws the State party's attention to the Universal Periodic Review procedure and in particular Recommendation 20, which enjoyed the support of the State party (A/HRC/11/25).

25. Despite the laws and policy measures adopted by the State party to improve employment rates among ethnic minorities, such as quotas and targeted recruitment, the Committee is concerned about the high rate of unemployment among members of ethnic minorities. (art. 5(e))

The Committee recommends that the State party strengthen its measures to increase employment opportunities for members of ethnic minorities, in particular by focusing on professional training and by providing language training, and to ensure the effective implementation of its legislation in this regard, in particular the Employment Promotion Law of 2007. At the same time, the Committee encourages the State party to intensify its efforts to combat prevailing stereotypes concerning ethnic minorities.

26. The Committee notes the lack of information on complaints of racial discrimination and the absence of court cases regarding racial discrimination (arts. 6 and 4).

The Committee, considering that no country is free from racial discrimination, calls upon the State party to examine why there have been only few judicial cases in this regard. It recommends that the State party verify if the scarcity of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victims' lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or lack of attention or sensitivity to cases of racial discrimination on the part of the authorities. The Committee also draws the State parties attention to its General Recommendation No. 31 (2005) on the prevention of

racial discrimination in the administration and functioning of the criminal justice system.

Hong Kong and Macau Special Administrative Regions

27. The Committee expresses its concern about the definition of racial discrimination given in the Hong Kong SAR Race Discrimination Ordinance, which is not completely consistent with article 1 of the Convention as it does not clearly define indirect discrimination with regard to language, and it does not include immigration status and nationality among the prohibited grounds of discrimination. (art. 1(1))

The Committee recommends that indirect discrimination with regard to language, immigration status and nationality be included among the prohibited grounds of discrimination in the Race Discrimination Ordinance. It recalls its General Recommendation No. 30 (2004) on non-citizens.

28. The Committee is concerned that the Hong Kong SAR Race Discrimination Ordinance only covers certain Government activities and exercise of its powers in its scope of application, i.e. employment, education, and the provision of goods and services. (art. 2)

The Committee recommends that all Government functions and powers be brought within the scope of the Race Discrimination Ordinance. It also recommends the adoption of an equality plan with a view to ensuring the effective implementation of the law and that the Equal Opportunities Commission be strengthened.

29. While noting the planned legislative framework for torture claimants in Hong Kong SAR, the Committee is concerned that the State party has not adopted a refugee law as such, including a screening procedure of asylum claims. (art. 5(b))

The Committee recommends the adoption of a law on refugees, with a view to establishing a comprehensive procedure for the screening of individual asylum

claims. It furthermore recommends that the rights of asylum-seekers to information, interpretation, legal assistance and judicial remedies be guaranteed. The Committee also encourages the renewed consideration of the ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

30. Despite the adoption of legislative measures aimed at combating discrimination in Hong Kong SAR, the Committee reiterates its concern (A/56/18, para. 248) at the situation of migrant workers, and in particular domestic migrant workers. It notes with concern that the “two-weeks rule” (whereby domestic migrant workers have to leave Hong Kong within two weeks upon termination of contract) continues to be in force, as well as the live-in requirement, and that migrant workers may be subject to longer working hours, and shorter rest and holiday periods. (art. 5(e))

The Committee recommends that effective measures be taken to ensure that domestic migrant workers are not discriminated against. It calls upon repealing of the “two-weeks rule” as well as the live-in requirement and that the State party adopt a more flexible approach to domestic migrant workers in relation to their working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. The Committee also draws attention to its General Recommendation No. 30 (2004) on discrimination against non-citizens.

31. Despite the provision of a Supplementary Guide to the Chinese language curriculum, the Committee is concerned that no official education policy for teaching Chinese as a second language for non-Chinese speaking students with an immigrant background in Hong Kong has been adopted. (art. 5(e))

The Committee recommends that a policy on Chinese teaching for non-Chinese speaking students from immigrant background be developed in consultation with teachers as well as the communities concerned. Efforts to improve the

quality of Chinese language education for immigrant children should be intensified.

32. While welcoming the adoption of new legislation on trafficking, the Committee is concerned that trafficking in persons continues to be a serious problem in the Macau SAR, bearing in mind that victims are often women and children belonging to ethnic minorities or non-citizens. (art. 5 (b) and (e)).

The Committee recommends the reinforcement of measures to adequately prevent, combat and punish human trafficking, especially of non-citizens. It expects to receive, in the next periodic report, detailed statistical information in this regard, including on protection and reparation provided to the victims.

33. Notwithstanding the explanation provided by the delegation, the Committee notes with concern that migrant workers are excluded from the social welfare system in the Macau SAR. (art. 5(e))

The Committee recommends that relevant legislation be amended with a view to extending social welfare benefits to all workers, including migrant workers.

34. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

35. The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State

party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

36. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

37. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

38. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

39. The Committee encourages the State Party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

40. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 15, 19, and 30 above.

41. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 14, 21 and 28 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

42. The Committee recommends that the State party submit its fourteenth, fifteenth and sixteenth periodic reports in a single document, due on 28 January 2013), taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.
