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**Submission to the LegCo Panel on Constitutional Affairs
For its meeting on 11 December 2009 at 3:30 pm**

**On the Hearing of the Report of the Hong Kong Special Administrative Region
under the International Convention on the Elimination of All Forms of Racial
Discrimination**

1. As part of China's report to the United Nations Committee on the Elimination of Racial Discrimination (the Committee), the Hong Kong Special Administrative Region (HKSAR) submitted its report for review and comment. This report was considered by the Committee in August 2009. Supplemental information was provided to the Committee by Growing Together and other Hong Kong NGOs, a number of whom (including Growing Together) traveled to Geneva to observe the Committee proceedings and providing information to Committee members in a number of informal meetings.
2. After the presentations, the Committee issued its concluding observations and recommendations, many of which dealt with concerns raised by the aforementioned NGOs. In its response to the Committee's concluding report, the HKSAR has systematically dismissed most of the listed concerns and recommendations.
3. The HKSAR continues to refuse to broaden the definition of racial discrimination in the Racial Discrimination Ordinance (RDO) to be consistent with Article 1 of the Convention and clearly define indirect discrimination with regard to language and also include nationality and immigration status among the prohibited grounds of discrimination¹. The Committee's clear recommendation was that indirect discrimination with regard to language as well as nationality and immigration status be among the prohibited grounds of discrimination. The Committee recalled General Recommendation No. 30 (2004) as substantiation for this recommendation.
4. The HKSAR flatly refused to consider these recommendations and insists on

¹ Concluding Observations on the Elimination of Racial Discrimination, 28 August 2009.



clinging to an outmoded, narrow and inappropriate definition of Racial Discrimination.

5. The Committee was concerned that the RDO only covered some government activities and exercise of powers in its scope of application. Educational establishments provide an example of this ineffective exercise of powers. The RDO prohibits discrimination from educational establishments but also provides an exemption for educational institutions by failing to require their responsible bodies in any event to modify arrangements in respect of medium of instruction. This leads to de facto discrimination against those students who are not Cantonese speaking. The Committee recommended that all Government powers and functions be brought within the scope of the RDO. The Committee also recommended that the Equal Opportunity Commission (EOC) be strengthened.

6. The HKSAR declined to extend the coverage of the RDO to all Government activities and exercise of powers citing a reliance on the Basic Law and the Hong Kong Bill of Rights Ordinance to prohibit the Government from practicing discriminatory acts and suggested that LegCo, The EOC and the Office of the Ombudsman are existing organizations to deal with complaints of discrimination by Government bodies. The EOC does not have the legal standing to enforce the Basic law or the Bill of Rights Ordinance. Additionally, if the Government admits being prohibited from practicing discriminatory acts in all its activities and exercise of power, it is unclear why it still resists being bound by the RDO.

7. In a letter dated 17 June 2008, The EOC states “ the Commission may and do make general comments as appropriate on issues that are relevant to its jurisdiction, but it does not have the power or jurisdiction to enforce the Bill of Rights Ordinance, the Basic Law or Hong Kong’s international obligations in respect of discrimination...”

8. The Committee was concerned that the HKSAR had no policy relating to teaching Chinese as a second language to non-Chinese speaking (NCS) students with an immigrant background. The Committee indicated that the HKSAR must make

efforts to improve the quality and availability of education programming for NCS children and recommended that a policy on Chinese teaching for NCS students from immigrant background be developed in consultation with teachers as well as the communities concerned.

9. Any efforts in this area must include improved programming for those NCS students who also have special educational needs (SEN) so that the programming is appropriate, sufficiently available, adapted to the needs of this segment of Hong Kong's population and acceptable to NCS children with SEN and their parents. The obvious solution to this problem is to provide appropriate educational programming to NCS children with SEN in English, one of the two official languages of Hong Kong and also a language that 75.6%² of the NCS population speaks as a first or second language.

10. Growing Together encourages the HKSAR to seriously address the recommendations of the Committee and meets its obligations under the International Convention on the Elimination of all forms of Racial Discrimination.

² 2006 Population By-Census Thematic Report: Ethnic Minorities