



## **Submission to Panel of Constitution Affairs regarding the CERD Committee recommendation**

### Introduction

The Hong Kong government has submitted its report as part of the People's Republic of China's report to the CERD Committee in 2008. The Report was considered by the Committee at its hearing in Geneva on 7 and 10 August 2009. The Concluding Observations of the Committee, which contained the Committee's recommendations concerning the HKSAR, were adopted by the Committee on 25 August 2009. The CERD Committee has recommendation regarding the RDO, torture claimants, foreign domestic workers and non-Chinese speaking children's education.

### Definition of Racial Discrimination in RDO (paragraph 27)

In the CERD Committee Concluding Observation para 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))"

According to article 1 (1) of the ICERD defines the term "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

The definition of race according to Article 1 of the ICERD has been explained clearly by ICERD General Comment No. 8<sup>1</sup>, that "self-identification by individual concerned" should be adopted as the racial identity, if no justification exists to the contrary.

Further, in ICERD General Comment No. 30 on non-citizens, also declares that, "concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality" and ensures that "legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens."

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<sup>1</sup> ICERD General Comment No. 8 at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3ae0a87b5bd69d28c12563ee0049800f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3ae0a87b5bd69d28c12563ee0049800f?Opendocument)



The RDO that follows the previous three anti-discrimination legislations is insufficient does not necessary mean it has fulfilled the requirement of ICERD. The previous three legislations are not about racial discrimination, and the RDO should follow Article 1 of ICERD in defining what racial discrimination is. The government has refused to admit the existing definition of race in RDO has "narrowed" the definition of race when it exclusion acts that discriminate persons based on nationality and immigration status, it is clearly not the case according to ICERD art 1.

We urge the administration to take the CERD Committee Concluding Observation seriously, interpreted Article 1 (1) according to ICERD, and ICERD Comment No. 8 and 30 in amending RDO to prohibited grounds of discrimination based "nationality, length of residence among the prohibition grounds of racial discrimination."

#### On Coverage of Government functions and powers in the RDO (paragraph 28)

The CERD 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)."

According to ICERD Article 2 (1) (c) , "Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists".

The CERD Committee recommends that "all Government functions and powers be brought within the scope of the Race Discrimination Ordinance."

The government is prohibited from practicing racially discriminatory acts in the exercise of its functions under the Basic law and the Hong Kong Bill of Rights Ordinance, but not the RDO. It is exactly what is needed to be done, under the recommendation by the CERD Committee.

Anyone who has been discriminated by the government based on race, one could seek justice via the court, by claiming the rights in the Basic Law and The Hong Kong Bill of Rights. Bringing cases to courts is expensive and making it very limiting in providing protection to the average persons who have been racial discriminated against by the government.

As the government has compared the RDO to the previous three anti-discrimination ordinances, we would like to point out that the three previous anti-discrimination ordinances do cover government's functions.



As it is a recommendation from the CERD committee, and given the three previous anti-discrimination ordinances have covered government functions under the ordinances, we urge the government to amend the RDO to include all government functions under the RDO.

The CERD Committee also recommends "the adoption of equality plan with a view to ensuring the effective implementation of the law and the Equal Opportunities Commission be strengthened."

The government responded that instead of an equality plan, a set of proposed Administrative Guideline on the promotion on racial equality to provide guidance to relevant bureau, departments and public bodies. First, this administrative guideline is not legally binding, and is not clear on the consequence on not following the guideline. It is more or less like a suggestion, and the government shows it is lacking in real commitment to promote racial equality.

We urge the government to follow the three previous anti-discrimination ordinances and amend the RDO to cover government functions as well. In the meantime, we urge the government to spell out the consequence of not following the guideline to ensure it has any affect in reducing racial discrimination in government departments.

#### On Refugees and torture claimants (paragraph 29)

The CERD Committee recommends "the adoption of a law on refugees, with a view to establishing a comprehensive procedure of 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."

Regarding the legal assistance and judicial remedies, relevant discussion on the guideline of the screening process, the training arrangement of duty lawyers, the role of UNHCR in screening CAT claimants and the proposed fee rates for torture claims related work was discussed at the Panel of Security meeting on 29 September by the representatives of the Law Society and the Bar about the proposed arrangements for the legal representation scheme. These concerns have not fully resolved by the Panel of Security meeting on 1 December. The government has announced its pilot scheme this Dec, providing publicly-funded legal assistance to torture claimants and the screening process will resume before the end of the year. The Law Society and the Bar have expressed their concerns and recommendations in the said meeting on 1 December, that the proposed scheme of 28 days is not enough based on their previous experience, and the scheme would not able to provide justice and protection for the most serious of claimants, the Torture Claimants without serious amendments.

We urge the government to seek continue discussion with the two legal professional bodies on various issues of concerns and review the pilot scheme to evaluate its effectiveness and its compliance with the treaties.



#### On Foreign Domestic Migrant Workers (paragraph 30)

The CERD Committee "notes with concern that the "two-weeks rule" continues to be in force, as well as the live-in requirement, and that migrant workers may be subject to longer working hours."

The CERD 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 adopts 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 "two-weeks rule" has put foreign domestic migrant workers in more vulnerable situations, and should be removed to give them a much fairer ground is seeking justice if they were being racial discriminated and/or abuse.

The Hong Kong society has continued to be benefited from the present of foreign domestic workers that allowing our a more productive work forces when children and elderly are being taken care of by these workers while most of the local workers are at work. We should have shown our appreciation for their contributions.

We urge the government to remove the "two-weeks rule" and provide guideline for working hours for live-in domestic workers in the prevention of abuse.

#### Chinese language education for non-Chinese speaking (NCS) students (paragraph 31)

The CERD 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))" regarding the right to education and training.

The CERD 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."

We urge the government to take up the recommendation by the CERD Committee and formulate a Chinese as a second language curriculum with qualified examination so that they would able to, not only learn Chinese as a second language, but opened up opportunities in the work force with Chinese language requirements.



### Conclusion

The recommendations by the CERD Committee would be very helpful to the government and to the Hong Kong society in eliminating all form of racial discrimination in our city. We urge the government to take in the recommendation, and follow through will plans that would make the recommendations become a reality.

Civic Party

11 December 2009