



For discussion on 19 November 2018

**Submission on the hearing of the Report of Hong Kong under International Convention
on the Elimination of All Forms of Racial Discrimination (ICERD)**

Overview

1. The United Nations Committee on the Elimination of Racial Discrimination (the Committee) examined the reports submitted by China, Hong Kong SAR, and Macau SAR governments in Geneva on 10th and 13th August, and issued its Concluding Observations on 30th August 2018. The Committee made an unprecedented number of observations and recommendations regarding Hong Kong's progress on eliminating racial inequality.
2. Concluding observations made at the last CERD hearing in 2009 continue to be named as areas of concern in the current concluding observations, reflecting the failure of the Hong Kong SAR Government to effectively combat racial discrimination in Hong Kong.
3. The Committee repeatedly requests the HKSAR Government in its Concluding Observations to submit disaggregated data and to report precise information on concrete measures taken in areas of concern, including (1) administrative and civil complaints on racial discrimination; (2) racist hate speech and hate crimes; (3) development and poverty reduction; and, (4) employment of racial minorities.
4. Experts are concerned about the implementation and effectiveness of policies on issues such as minority education and poverty reduction; the Government is actually well-to-do to improve these policies to ensure racial equality.

Areas of Concerns

5. **Scope of the Race Discrimination Ordinance:** Regarding the degree and scope of legal protection under the Race Discrimination Ordinance (RDO) and its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Committee reiterated its previous recommendations calling on the HKSAR Government to amend the law to ensure that racial discrimination, both direct and indirect, is defined and criminalized in full accordance with Article 1 of ICERD to include nationality, immigration status and language-based discrimination as part of its prohibited grounds and to extend its coverage to all government powers, including law enforcement.
6. **Effectiveness of the Equal Opportunities Commission:** The Committee expressed its concern over the C grade rating (the lowest of 3 on a scale of A to C) of the Hong Kong Equal Opportunities Commission (the EOC) issued by the Global Alliance of National Human Rights Institutions, given its lack of administrative and structural independence, inaccessibility to victims and its general failure to comply with the Paris Principles. It recommended the EOC be rendered compliant with the Paris Principles and in particular, to improve its independence, both financially and in terms of human resources. It



emphasized that in its next periodic report, the HKSAR Government should provide surveys, administrative records and registers of statistics including the origin of complaints, their type, bodies they were submitted to, their handling and outcomes. It also recommended that there be training of all relevant government personnel on the provisions against racial discrimination and related complaints mechanisms to raise awareness of the rights of victims, implying that current training may not be effective.

7. **Education:** On the issue of education for ethnic minorities, the Committee commented that even though the “Chinese Language Curriculum Second Language Learning Framework” (Learning Framework) has been implemented since 2014, there is not adequate Chinese language instruction for non-Chinese speaking students. The Committee is also concerned about the majority of non-Chinese children continuing to attend a few former “designated schools”. United Nations Human Rights Committee (2013), Children’s Rights Committee (2013), and International Covenant on Economic, Social and Cultural Rights (2014) had concerns on minority Chinese language learning and education policies and suggested the Government to promptly ameliorate substantive racial segregation in schools, yet there has not much significant progress. The Committee urges the Government to strengthen measures to ensure equal access to, availability of and quality of education to all ethnic groups, and facilitate the smooth integration of minority students into mainstream education so children of all ethnicities enjoy their right to inclusive and Chinese-language education. In addition, the Committee requests the Government to describe in its next periodic report information contained in school textbooks on the historical presence and contributions of ethnic minorities in the territory.
8. **Racist hate speech and hate crimes:** The Committee expressed concerns about the widespread reports of racist hate speech and negative portrayals of ethnic minorities, particularly South Asians, on both traditional and social media platforms. The lack of statistics on hate speech, complaints made or any commensurate response by the authorities to such hate speech was indicative of the barriers to invoking the rights in the Convention, including a lack of public awareness of the rights protected under the Convention. It also expressed concerns over the lack of information from the Government on the tools to assist victims of hate speech and the sanctions imposed in such cases. It recommended such assistance was vital to facilitating reporting and ensure that appropriate remedies were available. The Committee recommended that law enforcement monitor, investigate, prosecute and sanction hate crimes. The Government was recommended to consider appointing specialized prosecutors on hate crimes to encourage the initiation of ex officio proceedings against hate crimes and speech. The Committee requested the Government to provide statistics of investigations, prosecutions, convictions, sanctions and remedies in respect of hate speech and crimes, disaggregated by ethnicity and national origin, as part of its next periodic report.
9. **Poverty reduction:** With regards to poverty, the Committee notes that the poverty rate of ethnic minorities has increased in recent years. In particular, the poverty rate of South Asian



residents is disproportionately high and that language continues to be a barrier in to employment. The Committee recommends that the Government take further steps to eliminate ethnic economic disparities by (a) Enhancing meaningful consultation with ethnic minority groups prior to and during poverty-alleviation projects; (b) Expanding special measures to reduce high levels of poverty and related inequality among affected ethnic minorities; and (c) Further strengthening basic infrastructure and public services in predominantly ethnic areas. The Committee requests that the Government provide in its next periodic report updated poverty rate statistics and other indicators, disaggregated by ethnic and national origin, revealing the enjoyment of economic, social and cultural rights, revealing the effectiveness of measures taken.

10. **Employment:** The Committee is concerned about the discrimination faced by ethnic minorities in job advertisements and recruitment processes as most of the 51 employment-related racial discrimination complaints handled by the Equal Opportunities Commission in the past five years have been discontinued due to lack of substance. Ethnic minorities often face discrimination in job advertisements and recruitment processes. The Committee requests that Hong Kong its next periodic report ethnically-disaggregated statistics on activity rates and employment and unemployment rates and on political and civil service employment, including at managerial levels, and including in the judiciary, police force, and prosecutor's office. It also requests data on labor inspection visits conducted with a view to detecting discriminatory practices against ethnic minorities, as well as statistics on violations detected, sanctions imposed, and compensation provided to victims.
11. **Working with Civil Society:** Although the Government has conducted a public consultation as it was preparing the report for CERD, the report ultimately submitted by the HKSAR Government to the Committee only highlighted policies it has implemented to support the ethnic minority community without detailing the effectiveness of these policies, and completely glossed over areas in which it has not made any improvements. Views submitted by civil society has not been taken into account at all raising the question of whether the Government's public consultation and subsequent public hearing at the Legislative Council are all merely formalities. The Committee recommends that the HKSAR Government increases its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations. We hope that the Government will communicate sincerely with stakeholders when preparing for the next report and include voices from the ethnic minority community and civil society.

Conclusion

12. Many of the recommendations in the 2018 CERD concluding observations were mentioned in 2009. Although the Government had said it would 'carefully study the concluding observations' in 2009, the problems persisted. It raises questions about the determination



of the HKSAR Government to eliminate institutional and systemic racial discrimination given the lapse of nearly a decade since the implementation of the RDO and its awareness of the failings of its laws and policies. To dig its heels in and state that it is reflecting on the recommendations of civil society or the Committee further is to condemn Hong Kong's ethnic minorities to continued racial discrimination indefinitely.

13. Hong Kong Unison urges the Government to show its political goodwill, to communicate with civil societies and adopt effective measures to remedy the flaws in existing laws and mechanisms and bring them into compliance with international human rights standards. In particular, the Government should amend the RDO without delay, to cover its exercise of powers and performance functions.
14. In 2016/17 school year, over one third of non-Chinese speaking (NCS) children were concentrated in 25 kindergartens and more than 45% of 876 total kindergartens do not have NCS students; we call on the Government to monitor the fairness of kindergarten admission process, acknowledge the detriment of a segregated environment and take immediate and effective steps to eliminate the de facto racial segregation in the public education system. We urge the Government to offer adequate and professional training for teachers to teach Chinese to ethnic minority and develop a 'Chinese as a second language curriculum' with stage learning objectives and teaching and learning materials to support ethnic minority students bridge to mainstream Chinese curriculum.
15. Despite requesting the EOC to take action against incidents of racism and hate speech, there have not been much progress. We urge the Government to adopt the Committee's recommendations to consider appointing specialized prosecutors on hate crimes and provide effective remedies in civil and administrative proceedings. The Government should also strengthen the provision of human rights education in schools, including adequate reflection in standard school curricula and training of teachers to prevent and combat racial prejudices and to promote understanding and tolerance in all spheres of life.
16. The Labour Inspection Convention, 1947 (No. 81) applies to Hong Kong. HKSAR Government should conduct labor inspection visits to ensure ethnic minorities are treated equally with respect to access to employment, job classification, promotion and training, pay (fringe benefits, subsidies), working time, etc.