

## **LC Paper No. CB(2)308/18-19(06)**

Hong Kong NGO Delegation's responses to the UN CERD 96<sup>th</sup> Session hearing and concluding observations:

- I. Response to the UN CERD 96<sup>th</sup> Session hearing (issued on 13 August 2018)
  - II. Response to the concluding observations (issued on 31 August 2018)
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- I. Response to the UN CERD 96<sup>th</sup> Session hearing (issued on 13 August 2018)
  1. The Hong Kong NGOs delegation attended the hearing of the 96th session of the United Nations Committee on Elimination of Racial Discrimination (the Committee), to examine the reports submitted by China, Hong Kong SAR, and Macau SAR governments in Geneva on Friday (10th August) and today (13th August). We express our gratitude to the Committee for posing numerous questions to the HKSAR government on critical issues fueling the hardships faced by ethnic minorities and vulnerable groups in Hong Kong. Mr. Gun Kut, the Rapporteur on Follow-up of the Committee, criticised the China delegation for coming all the way from China to claim that there is no racial discrimination nor human rights violation in China or that nothing needs to be improved. Mr. Kut and the Chairperson of the Committee emphasised that the hearing is for China to engage its responsibility. Likewise, the HK NGOs delegation regrets the HK government delegation's avoidance of questions and refusal to implement or provide updates on progress with respect to the essential recommendations made by the Committee in 2009.
  2. The Government's response at the hearing today is regrettable. Mr. Andy Chan, Deputy Secretary for Constitutional Mainland Affairs Bureau, was the spokesperson of the government delegation. On the repeated request on reforming the Equal Opportunities Commission (EOC), he insisted that the anti-discrimination mechanism and operation of the Commission is satisfactory, and in compliance with the Paris Principles, and that there is no need to establish a statutory human rights institution. In fact, since the enactment of the Bill of Rights Ordinance, the Government had ignored the advice given by the CERD Committee on numerous occasions to establish a statutory human rights body. His responses were all clichés, revealing the Government's indifference to

academic freedom and freedom of expression, and the need to protect these human rights by a statutory body independent from the Government. Responding to questions about the Race Discrimination Ordinance, Mr. Chan only repeated that they would continue to study how to implement relevant suggestions given by EOC. Mr. Chan omitted to read out the detailed Government's response, due to limited time. However, as there were NGOs sitting-in and live-streaming for the public on the internet, the Government's refusal to verbally respond not only deprived the public's right to monitor but also shows that the Government is reluctant to face international scrutiny. The NGO delegation regrets that compared to the organized and point-to-point response given by the Macau government, the Hong Kong government was far too brief.

3. Ms Kelley Loper, Director of the Centre for Comparative and Public Law of the University of Hong Kong, was disappointed by the Government's responses during the hearing. She notes that the HK Government has failed to implement a number of recommendations made by the Committee nine years ago and has not complied fully with their obligations under the ICERD. She expects the Committee will need to repeat the recommendations it made in 2009.
4. At the hearing on Friday, Committee members were concerned with five areas of racial discrimination in Hong Kong. (1) The slow progress on the reform of the Equal Opportunities Commission (EOC) and the Race Discrimination Ordinance (RDO), given numerous flaws embedded in both; (2) Education policies towards ethnic minorities; (3) Institutional racial discrimination faced by migrant domestic workers on multiple fronts; (4) The inadequacy of measures to combat human trafficking; and (5) The screening mechanism for non-refoulement claimants. The Committee, however, did not mention the Delegation's concerns on the lack of cultural and racial sensitivity among police force, and the plight of split families under the "one-way permit scheme".
5. The Committee expressed dissatisfaction with the anti-discrimination mechanisms in Hong Kong. The Committee raised doubts on the independence

of the Equal Opportunities Commission (EOC), as its Chairperson and members are appointed by the Chief Executive of Hong Kong. The Committee stated that the EOC is non-compliant with international standard (the Paris Principle). The Committee lamented that the HKSARG has not adopted the 2009 CERD recommendations to amend and improve the Race Discrimination Ordinance, reflecting the lack of will of the government to genuinely eliminate racial discrimination in Hong Kong. On Friday, the Country Rapporteur for China, Hong Kong and Macau, Mr Nicolás MARUGÁN, criticized the government for failing to follow up fully on the recommendations made by the EOC Discrimination Law Review. He said “Nine recommendations were originally adopted by the government, but now it’s only eight; six were said to be concerned RDO but none of them give effect to the changes recommended in 2009 Concluding Observations of the Committee.”

6. The Co-Rapporteur, Ms Verene Shepherd, stated that although the government provided a written reply today regarding education policies towards ethnic minorities, she would like to know more about the monitoring and evaluation, reporting, implementation, and effectiveness of the support measures on Chinese learning for the minority students as well as impact of the policies. She asked the government to explain how they would accelerate the progress of Chinese learning of ethnic minority students, so that they could integrate into the society and avoid further socioeconomic marginalization that is currently taking place.
7. Members of the committee paid attention to the situation of human rights violations and forced labor on Migrant Domestic Workers (MDWs) in Hong Kong. In the meeting on Friday, the Committee understands that MDWs face the potential threat of “two-week rule” and “mandatory live-in requirement”. Besides, MDWs are particularly vulnerable due to insufficient monitoring and complaint mechanisms. Therefore, the Committee required the Hong Kong Government to provide a response on how MDWs rights can be protected under the two regulations, as well as the ratification of ILO Convention No. 189 and the implementation of Conventions Nos. 29, 81 and 105. However, the Hong Kong Government has ignored the recommendations of the Committee and

insisted on the position that the "two-week rule" effectively prevents workers from "job hopping" or illegally working in Hong Kong after the termination of the contract. The Hong Kong Government also explained that the Court of First Instance considered that the "mandatory live-in requirement" is not considered to unacceptably or significantly increase the risk of violations of fundamental rights of MDWs. All the responses showed that the government lacked sincerity to improve the problematic conditions faced by migrant domestic workers in Hong Kong.

8. The Committee expressed concern about the fairness of the Unified Screening Mechanism that the HK Government put in place to screen non-refoulement claims based on various obligations of the HKG. They also noted that the HKG continue to refuse to grant asylum or determine refugee status, and that non-refoulement claimants are forced to live in destitution in Hong Kong. The Committee requested the Government to respond.
9. Mr. Law Yuk-kai, Executive Director of the Hong Kong Human Rights Monitor said Committee members thanks the civil society groups for providing information and coming to Geneva in person in several occasions, both in private and in public. In fact, UN treaty bodies' methodology of reviewing state reports puts a great value on input from civil society. Law stresses that Committee members, as experts on human rights, rely on civil society's information to comprehensively review a state's situation. Therefore members look forward to meeting with independent NGOs that work on the frontline in order to verify the actual situation of a state and to determine the priority given to various issues. Law feels disturbed by the absence of NGOs from mainland China in this session. He suspects it is the result of Chinese Government's aggressive suppression on NGOs who tried to "tell the truth" at UN.
10. We also observed that, there was inadequate time for the hearing in actual practice. Marugan commented that the hearing deserves longer time since it has been nine years since the last one. However, there were only 6 hours in total for this hearing. Despite the diligence of the Committee members who prepared

many questions on the state reports, the Chairperson frequently terminated members' speeches on the basis of limited time. Yet, the Chinese government delegation could spend more than half of a three-hour session to elaborate how China has no human rights violations. It did not even intend to offer time for Hong Kong delegation to speak, until an enquiry was raised by the Committee members that delegations from Hong Kong and Macau should have time to give oral answers.

11. There was an episode today (13th August) before the meeting commenced. NGOs are given seats at the hearing by the UN Committee on various treaty bodies as conventional practice. However, China delegation unreasonably requested the NGO delegation gave place to their colleague instead. In addition, it is disappointing that China delegation, unlike the Committee Chairperson and Country Rapporteur, did not express gratitude to civil society' engagement in the review and hearing processes, and therefore disrespected the formal and substantial roles of civil society in the UN monitoring mechanisms. Moreover, it is found that, according to Yuk-kai Law and Emily Lau of Hong Kong Human Rights Monitor, the atmosphere of this hearing is unusually tense, due to the presence of armed security guard in the conference room and the rigour security check of personal belongings.
12. To conclude, we greatly appreciate the Committee as it has a firm grasp and expertise knowledge on the situation in Hong Kong, and understands the inadequacy of institutions and policies that aim at eliminating racial discrimination. We urge the HKSAR government to implement recommendations previously given by the Committee, in particular to reform the defects of the Equal Opportunity Commission, Racial Discrimination Ordinance and other ordinances. It is expected that the Committee will issue its Concluding Observations on 30th August.

## II. Response to the concluding observations (issued on 31 August 2018)

1. The United Nations Committee on 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 Hong Kong NGO delegation welcomed the observations and recommendations; the Committee responded to most of the concerns raised by the delegation at the NGO meeting prior to the hearings.
2. Mr. Law Yuk Kai of Hong Kong Human Rights Monitor said, as the NGO delegation expected, the Concluding Observations were similar to those made at the last hearing in 2009, as there had been negligible advance towards human rights issues. This indeed reflects the failure of the Hong Kong SAR Government to combat racial discrimination in Hong Kong. In its Concluding Observations, the Committee has repeatedly requests the Government to submit disaggregated data and to report precise information on concrete measures taken in areas of concern; experts are concerned about the implementation and effectiveness of policies, which seemed to be an oversight of the Government.
3. Regarding the degree and scope of legal protection under the Race Discrimination Ordinance (RDO), its compliance with ICERD and the independence of Equal Opportunities Commission, 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 criminalised 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. Ms. Puja Kapai of HKU Center for Comparative and Public Law mentioned that 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 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 emphasised that in its next periodic report, the State Party 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.

4. 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 facilitate 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 appointment specialised 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.
5. 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 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. The Commission hence recommends that the Government conduct labour inspections and investigations with a view to detecting discriminatory practices against ethnic minorities in employment.

6. 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". Ms Phyllis Cheung of Hong Kong Unison stated that in fact, United Nations Human Rights Committee (2013), Children's Rights Committee (2013), and International Covenant on Economic, Social and Cultural Rights had concerns on minority Chinese language and education policies and suggested the Government to promptly ameliorate substantive racial segregation in schools, yet the Government disregarded such recommendations. 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.
7. On the protection of migrant workers, the Committee commented that even if migrant domestic workers have some labor protection, the "live-in requirement" and "two-week rule" make migrant domestic workers vulnerable to abuse, and hinder workers' ability to obtain redress for labour violations. The Committee once again reiterates the Government to abolish the "two-week rule" and "live-in requirement", urges the Government to further strengthen monitoring of

the employment and living conditions of migrant domestic workers, and to provide statistics on complaints, self-initiated and other investigations, prosecutions, and remedies to protect domestic migrant workers in its next periodic report.

8. The Committee is aware of undocumented children born to migrant domestic workers and asylum seekers. Kay McArdle of Pathfinders welcomed its recommendation that all children born in Hong Kong should be issued with a birth certificate, irrespective of the legal status of the parents. Provided the Hong Kong Government actions the recommendations, the impact will enable hundreds if not thousands of undocumented babies and children in HK to have an identity.
9. The Committee is concerned that Hong Kong does not have sufficient legislation to combat human trafficking, nor does it submit data on investigations, prosecutions of human trafficking offences, and related penalties. Moreover the number of identified victims and trafficking in persons is extremely low. From the Concluding Observations, one can see that the Committee does not agree that existing legislation in Hong Kong can adequately target trafficking in persons under the Palermo Protocol. Ms. Claudia Yip of the Office of the Hon. Dennis Kwok, mentioned that UN human rights convention committees had repeatedly made recommendations on the lack of measures against human trafficking, including the Human Rights Committee (2013), the Committee against Torture (2009, 2015), Children's Rights Committee, and the Committee on the Elimination of Discrimination against Women (2014). These committees criticized the Government ignoring the fact that Hong Kong has been indulged as a source, a destination and a transit point for human trafficking. The Committee urges the Government improve its practice to identifying victims and recommends that comprehensive anti-human trafficking laws that prohibit all forms of human trafficking be adopted.
10. Regarding non-refoulement claimants, the Committee is concerned that it does not grant asylum to or determine the refugee status of asylum seekers. It

recommends that the Hong Kong Government 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.

11. Many of the recommendations in the 2018 CERD Concluding Observations were mentioned in the 2009 version. Although the government said it would ‘carefully study the Concluding Observations’, the problems persist. It raises questions about the determination of the Hong Kong Government to eliminate racial discrimination in the community once and for all given the lapse of nearly a decade since the implementation of the RDO and its awareness of the failings of its laws and policies back then. 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.
12. Ms. Bonnie Leung, Convener of Human Rights Group of Civil Human Rights, criticized that the initial response issued by the Government is obviously “hiding faults and praising goods”. It quoted the Committee’s appreciation of the government delegation but failed to mention the Committee’s dissatisfactions. “If you only read the government’s press release and not the Concluding Observations, you would think the government did a good job”. Ms. Leung stressed that the Committee is made up of experts who are heavyweights on eliminating racial discrimination and every observation and recommendation counts. The International Convention on the Elimination of All Forms of Racial Discrimination applies to Hong Kong and the government cannot pretend that “problems do not exist” or not deal with them. Even if the government does not fully adopt the Committee’s recommendations, it must address the Committee’s concerns and combat race discrimination via its own means; otherwise it will continue to be non-compliant of the Convention.
13. The Hong Kong NGO delegation once again 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.

Civil society groups represented in the delegation:

Hong Kong Human Rights Monitor, Hong Kong Unison, HKU Faculty of Law's Centre for Comparative and Public Law, Women's Studies Research Centre, Civil Human Rights Front, Mission for Migrant Workers, Justice and Peace Commission of the HK Catholic Diocese, LegCo Office of Dennis Kwok, Society for Cultural Integration, Resolve Foundation Hong Kong, and Pathfinders