

**Joint Submission from Hong Kong Organisations to  
the United Nations Committee on the Elimination of Racial Discrimination  
on the Report by the Government of the Hong Kong Special Administrative Region**

16 July 2009

1. This paper provides a summary of concerns raised by Hong Kong NGOs. For more details on the following issues, please refer to the separate NGO shadow reports submitted to your Committee.
2. **CERD has made a difference for Hong Kong:** The UN treaty mechanisms, including your Committee, have played a pivotal role in successfully persuading the Hong Kong SAR Government (HKSARG) to enact the Race Discrimination Ordinance (RDO) which passed in July 2008 and came fully into force on 10 July 2009. Despite calls from your Committee by way of your follow-up and early warning procedures in August 2007 and March 2008 and efforts by NGOs and law makers, several serious defects remain in the RDO. But now that the legislation is in place, Hong Kong NGOs and law makers are focusing their efforts on legal and administrative reforms to remedy the problems with the law. Continuing assistance from your Committee will make a real difference in these endeavors.
3. With the assistance of the Committee, Hong Kong could become a model for the rest of China by building, through legislative, administrative and other social and cultural measures, a harmonious multi-racial community in which all races are able to retain their cultural and religious identity and way of life while enjoying their civil, political, economic, social and cultural rights equally.
4. **Defects in Race Discrimination Ordinance (RDO):** The most serious flaws in the RDO include:
  - limited application to the Government (unlike Hong Kong's other anti-discrimination laws, it does not cover "the performance of Government's functions" or "the exercise of Government's power");
  - express exclusion of discrimination based on immigration status, right of abode, Hong Kong permanent resident status, length of residence, nationality, etc., from the scope of racial discrimination;
  - overly broad and unjustified exemptions such as the exclusion of all laws concerning nationality, citizenship, resident status or naturalization and, to all non-permanent residents, all immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation;
  - obsolete and ineffective definition of indirect discrimination;
  - exemptions for the language of instruction in education and vocational training establishments; and
  - absence of any statutory equality plan in which the Government and public authorities are required to eliminate racial discrimination and to promote racial equality and harmony.
5. As a result, the police, correctional services, immigration and other law enforcement authorities and their officials are not bound by the RDO in the exercise of their powers. Similarly, the Education Bureau is not bound by the RDO when it implements its primary and secondary school places allocation exercise. Discrimination against migrants from mainland China on the grounds of resident status and length of residence amounting to indirect racial discrimination is exempted under the RDO.
6. We request the Committee to urge the HKSARG to amend the RDO to remove the serious flaws above and ensure it fully complies with the Convention's obligations. The HKSARG should also substantially improve its weak and inadequate Administrative Guidelines to

provide for a Race Equality Plan, in which all governmental and public authorities are required to commit resources according to a statutory mechanism to periodically review, examine, monitor, and improve their policies and practices in collaboration with NGOs and the public to eradicate racial discrimination and to promote racial harmony and equality.

7. **Discrimination against migrants from mainland China:** Many migrants from mainland China have settled in Hong Kong under a One-Way Permit (OWP) system administered by the Central Government. They have experienced discrimination because of their immigrant identity, language, behaviour or appearance. The HKSARG does not provide any legal or administrative means to protect them against discrimination as new migrants.
8. The HKSARG does not provide them with housing and welfare entitlements until they have resided in Hong Kong for seven years, an unduly long period of time. Many families have incurred substantial debts after non-resident mothers give birth to children in Hong Kong hospitals because they are charged a prohibitively expensive price for compulsory prenatal examinations and hospital services. This is true even though the fathers are Hong Kong residents and the children are Hong Kong permanent residents. This differential treatment and the OWP system bring hardship to them and their families.
9. We request the Committee to urge the HKSARG to amend the RDO to ensure it prohibits discrimination against migrants from mainland China and explicitly recognizes new immigrant status as a prohibited ground of discrimination. Moreover, the HKSARG should provide them with effective legal and social protection and immediately set up a unit to handle complaints of discrimination against migrants from mainland China. The HKSAR authorities should also review their policy of charging excessive discriminatory fees for mainland wives of Hong Kong residents giving birth in Hong Kong and other housing and welfare policies which discriminate against migrants from mainland China on the grounds of their origin and gender. In its Concluding Observations on Hong Kong's report in 2005, the Committee on Economic, Social and Cultural Rights expressed concern "that in the proposed racial discrimination law, the protection it affords will not cover migrants from the Mainland despite the widespread de jure and de facto discrimination against them on the basis of their origin".
10. **Right of abode claimants:** Since the reinterpretation of the Basic Law (the mini-constitution of Hong Kong) ten years ago, hundreds of thousands of mainland born children whose right of abode in Hong Kong had been upheld by the Hong Kong Court of Final Appeal have been denied their right to Hong Kong permanent residence. Under the reinterpretation, most of them who are adults now, have not yet been eligible under the OWP system to settle in Hong Kong for family reunion with their parents. Ironically, the quota reserved for minor children has been underutilized in recent years. There are also children born out of wedlock who have been unable to claim their Hong Kong permanent resident status because their Hong Kong parents have died or have been unhelpful in sponsoring their applications. The Central Government should review the OWP system to facilitate family reunion, especially for those who have been denied their constitutional right of abode in Hong Kong due to the reinterpretation or other technical obstacles. Authority to determine eligibility criteria and process applications of mainlanders for resettlement in Hong Kong should be transferred to the HKSARG.
11. **Refugee and torture claimants:** The refugee status determination system administered by the UNHCR Office in Hong Kong and the torture claim procedures run by the HKSARG have lacked procedural fairness. In response to a number of successful judicial challenges, the HKSARG is currently in the process of reforming its torture claims procedure, but continues to refuse to take up its responsibility for screening refugee claims which do not fall within Article 3 of the Convention Against Torture. Furthermore, although the UNHCR process can take several years, asylum seekers and even recognized refugees are given no legal status in Hong Kong, temporary or otherwise. As a result, they are restricted from working, subject to arrest

and detention and are generally excluded from political, economic, social, cultural and many other fields of public life. It has repeated its opposition to the extension of the application of the Refugee Convention and its Protocol to Hong Kong even though these instruments are applicable to the Macau SAR and mainland China.

12. We request the Committee to urge the HKSARG to formulate a coherent and comprehensive asylum policy, and set up a fair screening procedure to assess both refugee and torture claims. It should avoid unfair deterrent measures which have been adopted in some other countries. It should further ensure that adequate housing and food is provided to asylum seekers and refugees. Moreover, the Hong Kong SAR should ensure adequate training of government employees, law enforcement officials, social workers, and any other institution that interacts regularly with refugees and torture claimants. The Government should promote intercultural dialogue and exchange, engage in awareness raising and generally educate the public not to discriminate against refugees and torture claimants.
13. **Education of ethnic minorities:** Learning Chinese is important for ethnic minorities to make a living in Hong Kong. However, the HKSARG has persistently refused to formulate an education policy for learning Chinese as a second language, and failed to look after special needs of Non-Chinese Speaking (NCS) students properly. Adaptation of the Chinese curriculum by individual schools insisted by the Government simply does not work for most NCS students as they cannot adapt to the common required standards in public examination at the end of the day. Given the difficulties these children face learning Chinese, the current assessment and secondary school placement system puts ethnic minority students in a disadvantageous position.
14. We request the Committee to urge the HKSARG to provide a tailor-made full-scale Chinese curriculum for NCS students, coupled with stage-wide learning objectives and proper assessment tools. Schools should be provided with proper teaching materials and other adequate support. The Government should also administer examinations and provide recognized qualifications for a curriculum in Chinese as a Second Language. Before such a new Chinese examination is introduced, students taking the GCSE Chinese Examination should only be required to pay the same fee for the current local Chinese Examination. The difference in fees, which is prohibitive for most NCS students, should be borne by the Government. Other accommodations should be made to ensure that ethnic minority students are able to compete on an equal basis with other students for secondary school places.
15. We request the Committee to urge the HKSARG to impose a requirement that each school (including English-medium and private international schools) allocate a reasonable number of places to NCS children with special educational needs (SEN). Since more than half of the NCS population in Hong Kong speak some English, their special demand for English-medium schools should be adequately catered for and if necessary, more schools established. The Government should implement funding and coordination services to private international schools. The new academic structure should also cater for the special situations of the NCS students especially those with SEN.
16. The Equal Opportunities Commission (EOC) has refused to start working on a Code of Practice on Education under the RDO, and should be urged to do so. Similarly, preparation for a Code of Practice on Goods and Services should begin immediately.
17. **Language requirements for civil service recruitment:** After 1997 the HKSARG imposed Chinese language requirements on recruitment and promotion for all civil service posts, which in effect shut the door for most minority applicants from entering the civil service or promotion to a higher grade. Such policy should be reviewed. Language requirements should only be made on the basis of genuine occupational needs.

18. **Interpretation services:** Language barrier is one of the main obstacles for access to public services by ethnic minorities. Though the government has begun to subsidize some interpretation services in recent years, these are only provided on piece-meal basis. There have neither been any objective criteria on when the services will be provided, nor a monitoring mechanism to ensure quality of services. Usually it is the service provider, for instance the hospital management, to decide if an interpreter is needed.
19. We request the Committee to urge the HKSARG to review the situation. An objective criteria should be developed to ensure interpretation services provided based on the needs of service users. In addition, formal training should also be provided, coupled with an official accreditation and monitoring mechanism, so as to ensure accessibility and quality of services.
20. **Racial discrimination by Police:** Ethnic minorities have long been subject to racial harassment and discrimination by police officers. Police officers in general do not take their language difficulties into account. Such police behaviour persists in spite of initiatives by the Police Force in promoting cultural sensitivity and the value of racial equality. There is no independent and fair mechanism to investigate complaints against the police. The Coroners Ordinance requires that the police assist in coroner inquests into the cause of death of people without a clear exception in cases where people were killed by police officers or who have died in police custody.
21. The Police General Orders, Force Procedures Manual and other police orders and guidelines should be revised to ensure that ethnic minorities are treated with due respect by the police and to prohibit all forms of racial, language and religious discrimination. Any breach of these should be made a disciplinary offence for any members of the police force. Measures should also be taken to ensure sufficient racial and cultural sensitivity among police including the adoption of proper attitude and the use of appropriate language when communicating with ethnic minorities. Strict monitoring should be imposed to ensure real behavioral improvements in the force.
22. **Shooting case of a Nepalese man:** In March 2009 a Hong Kong-born Nepalese homeless man Mr. Limbu was shot and killed by a police constable, triggering anger among members of the Nepalese and other South Asian communities. Protests by the Nepalese and other ethnic minorities have been peaceful and restrained but their demand is clear: The HKSARG should set up an independent commission of inquiry to investigate the shooting, and review related police policies and practices as well as the racial, cultural and social roots of this tragedy.
23. A commission of enquiry is much better equipped than a coroner's court in looking at these wider issues, and thus would be in a better position to make broader and detailed recommendations. Unlike a coroner, who is prohibited from assigning fault, a commission of enquiry can be properly empowered to identify those who should be held accountable. We request that your Committee call for the establishment of such a commission of inquiry into Mr. Limbu's death as well as reforms to the coroner's system which require other law enforcement agencies to provide assistance in cases involving deaths in police actions or custody or in which the police have a conflict of interest.
24. **Consultation with civil society:** We regret that the government has failed to sincerely consider the views of civil society. The consultative body on race issues, the Committee on the Promotion of Racial Harmony, has not performed their function. Meetings have been held infrequently; and those government officials who attend are usually of junior rank and are not willing to reflect members' concerns to their superiors. In addition, there are no clear criteria for appointment of members. Most of the members are unaware of difficulties facing ethnic minority communities in Hong Kong and lack relevant expertise.

25. We request the Committee to urge the HKSARG to enhance its accountability to the Committee. They should adopt an open attitude toward members' opinions and objective criteria should also be developed to ensure those appointed represent the interests of ethnic minority communities.
26. **Rights of foreign domestic workers (FDWs):** The HKSARG should protect the rights of foreign domestic workers by repealing the "two-week rule". We also urgently request the Committee to urge the HKSARG to include FDWs in the proposed statutory minimum wage Bill. Furthermore, the Government should permanently abolish the employment retraining levy, remove the live-in requirement for FDWs, and determine acceptable working hours. The HKSARG should provide supporting services to FDWs and educate the public not to discriminate against them. In addition, the Government should lift the ban on Nepalese applying for employment in Hong Kong, including Nepalese foreign domestic workers.<sup>1</sup>
27. **A human rights commission for Hong Kong:** Existing institutions are inadequate to protect human rights including racial equality. We request the Committee to urge the HKSARG to set up a statutory human rights commission in line with the Paris Principles to protect and promote human rights for all, including migrant workers, asylum seekers, ethnic minorities and non-citizens.
28. **Equal Opportunities Commission:** The EOC has been plagued with scandals in recent years. This time another scandal was triggered by a report by the Director of Audit on its spending practices and the poor leadership of its chairman.
29. If the EOC is retained, its structure and practices should be reformed in line with the Paris Principles. To ensure the pluralistic composition of the EOC as well as an independent committed and capable chairperson and commissioners, the Government should establish a panel consisting of users of the EOC's services, NGOs, representatives from underprivileged groups and their service providers and other related professional bodies to formulate the qualifications and requirements for appointing its chair and commissioners. Appropriate candidates for chairs and commissioners should be selected in an open recruitment exercise for the Chief Executive's formal nomination.

#### **Jointly submitted by**

1. **Hong Kong Human Rights Monitor**
2. **Hong Kong Unison**
3. **Society for Cultural Integration**
4. **Hong Kong Against Racial Discrimination**
5. **Hong Kong Refugees Advice Centre**
6. **Society for Community Organization (SoCO)**
7. **Hong Kong Human Rights Commission**
8. **New Immigrants' Mutual Aid Association**
9. **Asylum Seekers' and Refugees' Voice**
10. **Democratic Party of Hong Kong<sup>2</sup>**
11. **Growing Together Limited**
12. **Civic Party<sup>3</sup>**

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<sup>1</sup> The Democratic Party of Hong Kong and the Civic Party have not yet discussed paragraph 26 in detail but will do so later this year.

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<sup>3</sup> The Civic Party has not yet discussed paragraph 26 in detail but will do so later this year.