



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-fifth session
3 – 28 August 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

CHINA

(including Hong Kong and Macau Special Administrative Regions)

1. The Committee considered the tenth to thirteenth periodic reports of China (CERD/C/CHN/13), including Hong Kong Special Administrative Region (CERD/C/HKG/13) and Macau Special Administrative Region (CERD/C/MAC/13), at its 1942nd and 1943rd meetings (CERD/C/SR.1942 and CERD/C/SR.1943), held on 7 and 10 August 2009. At its 1966th meeting (CERD/C/SR.1966), held on 25 August 2009, it adopted the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the tenth to thirteenth periodic reports of China including Hong Kong and Macau Special Administrative Regions and the opportunity thus offered to resume the dialogue with the State party. It also expresses its appreciation for the constructive dialogue held with the large and competent delegation and the comprehensive written and oral responses provided to the list of issues and the questions posed by Committee members.

B. POSITIVE ASPECTS

3. The Committee welcomes the adoption of the National Human Rights Action Plan 2009-2010, which includes a chapter on the protection of the rights of ethnic minorities.

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4. The Committee notes with satisfaction the adoption of a range of laws at the national, provincial and local level to protect the rights of minorities, in particular the revised Regional Ethnic Autonomy Law of the People's Republic of China of 2001 and the Rules of the State Council on the implementation of that law adopted in 2005, as well as the Regulations on Ethnic Work in Cities and the Regulations on Ethnic Administrative Work.

5. The Committee commends the State party for the adoption of a number of programmes and policies aimed at the advancement of minorities, including the 11th Five-Year Programme for the Ethnic Minority Cause, the Programme for Helping the Development of Ethnic Minorities with Relatively Small Populations (2005-2010), the grand strategy for the development of China's west and the 11th Five-Year Programme for Action on Prosperity Promotion in Border Areas.

6. The Committee notes with appreciation the rate of economic development and the adoption of policies and programmes aimed at achieving an equal level of development in all regions, including the autonomous provinces largely inhabited by ethnic minorities.

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7. The Committee welcomes the adoption of the Race Discrimination Ordinance (chapter 602 of the Laws of Hong Kong), which entered into force in 2009.

8. The Committee notes with satisfaction the adoption of Law 6/2008 on the Fight Against Trafficking in Persons, as well as Law 1/2004, establishing the Legal Framework on the Recognition and Loss of Refugee Status, in Macau SAR.

C. CONCERNS AND RECOMMENDATIONS

9. The Committee notes the lack of disaggregated statistical data regarding the socio-economic status of members of ethnic minorities, non-citizens, asylum-seekers and refugees.

In accordance with its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its request (A/56/18, para. 250) that the State party include, in its next periodic report, updated and detailed statistical data on the socio-economic situation of the population, disaggregated by ethnic groups and nationalities. In this regard, it recalls the importance of gathering accurate and up-to-date data on the ethnic composition of the population.

10. While taking note of article 4 of the Constitution of the State party, stipulating that all ethnic groups in the State party are equal, the Committee reiterates its concern (A/56/18, para. 241) that the domestic legislation of the State party does not contain a definition of racial discrimination in full conformity with the definition set out in article 1 of the Convention, as it

does not include a prohibition of discrimination on the grounds of descent and national origin. (art. 1)

The Committee recommends that the State party adopt a comprehensive definition of racial discrimination, fully in accordance with article 1, paragraph 1, of the Convention, prohibiting discrimination on the basis of race, colour, descent, or national or ethnic origin. In this regard, the Committee especially draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens.

11. While noting the information provided by the State party on legislation at the national, provincial and local levels aimed at protecting the rights of minorities, the Committee reiterates its concern (A/56/18, para. 242) that the State party has not adopted a comprehensive anti-discrimination law to protect individuals from racial discrimination. (art. 2)

The Committee recommends that the State party adopt a comprehensive law, at the national level, on the elimination of discrimination on the grounds of race, colour, descent or national or ethnic origin, covering all rights and freedoms protected under the Convention.

12. The Committee, taking into account that the National Human Rights Action Plan is set to end in 2010, notes the lack of information regarding the extension of the duration of this Plan. (art. 2)

The Committee encourages the State party to extend the Action Plan beyond 2010, to consider including specific provisions on the elimination of racial discrimination and to promote its full implementation.

13. The Committee, acknowledging the information provided by the delegation concerning natural migration within the State party, notes with concern reports according to which the system of incentives granted to work and settle in the autonomous minority regions may result in substantive changes in the demographic composition that impact negatively on local traditions and cultures in these regions. (arts. 2 and 5)

The Committee reiterates its previous recommendation (CERD/C/304/Add.15, para. 26) that any policies or incentives offered that may result in a substantial alteration of the demographic composition of autonomous minority areas be reviewed.

14. While noting the ongoing reforms of the national household registration system (*hukou*), the Committee is concerned at the de facto discrimination against internal migrants in the fields of employment, social security, health services, and education that indirectly result from that system, which also affects members of ethnic minorities, and in particular women. (art. 5 (a) and 2)

The Committee recommends that the State party implement its decision to reform the *hukou* system and to ensure that internal migrants, in particular members of

ethnic minorities, will be able to enjoy the same work, social security, health and education benefits as long-time urban residents.

15. While acknowledging the information provided by the State party on the revision of its legislation regarding administrative detention and “re-education through labour”, the Committee is concerned at reports that in practice effective judicial control of these measures is limited and that the application of these laws may disproportionately affect members of ethnic minorities. (art. 5(a) and (b))

The Committee calls upon the State party to take effective measures with a view to ensuring that the application of administrative detention and “re-education through labor” is used restrictively and subject to full judicial control in line with international human rights standards, and that these practices are not disproportionately applied to members of ethnic minorities. It requests the State party to provide, in its next periodic report, information, including disaggregated statistics by ethnic group, on cases in which these measures were administered, and on appeals lodged, if any. In this regard, the Committee also draws the attention of the State party to the Universal Periodic Review procedure and in particular recommendation 31 of the Working Group, which enjoyed the support of the State party (A/HRC/11/25). In light of the section in the National Human Rights Action Plan regarding the prohibition of illegal detention, it also encourages the State party to consider the complete abolition of such laws, as recommended by the Committee against Torture (CAT/C/CHN/CO/4, para. 13).

16. While noting that the State party is in the process of drafting a refugee law, the Committee reiterates its concern (A/56/18, para. 246) that asylum-seekers from the Democratic People’s Republic of Korea continue to be systematically refused asylum and forcibly returned. (art. 5(b))

The Committee recommends that the State party adopt legislation relating to refugee status as soon as possible. Bearing in mind its general recommendation No. 30, the Committee calls upon the State party to 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.

17. The Committee notes the information provided by the State party regarding the events in Tibet Autonomous Region in March 2008, as well as the events in Urumqi, Xinjiang Uighur Autonomous Region, in July 2009. It regrets the loss of life, including among the armed forces and police of the State party, and the suffering of all victims. While it recognizes the duty of the State party to maintain public order, the Committee is concerned at reports alleging the disproportionate use of force against ethnic Tibetans and Uighurs and the important number of detentions. (art. 5(a) and (b))

The Committee calls upon the State party to ensure that those detained in connection with the above events are guaranteed humane treatment while in custody and fair trial standards according to international law, including access to a

lawyer of their choice, presumption of innocence, and handing down proportionate sentences on those found guilty. The Committee further recommends that the State party carefully consider the root causes of such events, including inter-ethnic violence, and the reasons why the situation escalated.

18. The Committee welcomes the measures taken by the State party to ensure fair and adequate representation of minorities in the administration, the police force, and the military. Notwithstanding the data provided by the State party on the participation of ethnic minorities, including women, in public service and in decision-making positions in political life, the Committee is concerned about the continuing under-representation of minorities, particularly of minority women, in public life. (art. 5(c))

The Committee recommends that the State party intensify its efforts aimed at fair and adequate participation of all minority groups in public service, including the military, and political life. It also recommends that the State party encourage minority women to become more active in public life and draws the attention of the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination. The Committee requests the State party to provide, in its next periodic report, more detailed information on the representation of ethnic minorities in public life, with an indication of the level of representation in higher-level positions.

19. Despite the delegation's assurance that lawyers can exercise their profession freely and in accordance with the Lawyers' Law, the Committee notes with concern reports on the harassment of defence lawyers taking up cases of human rights violations, especially those introduced by members of ethnic minorities. In this regard, it also notes that the National Human Rights Action Plan expresses the intention of the State party to revise or amend any laws incompatible with the Lawyers Law. (art. 5(d))

The Committee calls upon the State party to take all appropriate measures to ensure that lawyers can exercise their profession freely, in law and in practice, and to promptly and impartially investigate all allegations of harassment, intimidation, or other acts impeding the work of lawyers. In line with the chapter on the right to a fair trial in the National Human Rights Action Plan, it recommends that the State party revise all laws and regulations that are inconsistent with the Lawyers' Law and international standards.

20. Notwithstanding the assurances provided by the State party delegation, the Committee remains concerned about reports that members of some minority groups do not fully enjoy freedom of religion. (art. 5(d))

Taking into account the intersectionality between ethnicity and religion, the Committee recommends that the State party ensure respect for the right of members of all ethnic groups to freely enjoy freedom of religion.

21. While welcoming the measures taken to eliminate economic development disparities between different regions, the Committee notes that the western provinces and regions that are inhabited by the most numerous minorities continue to be economically underdeveloped. However, it also reiterates its previous observation (A/56/18, para. 243) that economic growth in minority regions, ipso facto, is not tantamount to the equal enjoyment of economic, social and cultural rights in accordance with article 5 (e) of the Convention. (art. 5 (e))

The Committee recommends that the State party continue to intensify its efforts aimed at creating conditions for sustainable development in the western areas and to eliminate economic and social disparities between the regions. It also requests that the State party provide further information on the enjoyment of economic, social and cultural rights by all ethnic groups of the State party and the effectiveness of the measures taken to ensure that all minority groups benefit from the economic growth. At the same time, it reiterates its recommendation that the State party take all necessary steps to fully ensure the promotion of and respect for local and regional cultures and traditions.

22. The Committee has taken note of the policy of bilingual education for ethnic minorities of the State party, including the range of bilingual teaching models. It is however concerned at reports that in practice Mandarin is the sole language of instruction in many schools in the autonomous minority provinces, especially at secondary and higher levels of education. While noting with appreciation the increase in school enrolment rates in minority regions and the various measures adopted to enable access to education for members of ethnic minorities, it reiterates its concern (A/56/18, para. 245) about remaining disparities for ethnic minority children in accessing education, which is often linked to the availability of teaching in Mandarin only. (art. 5 (e))

The Committee recommends the State party to intensify its efforts to ensure the implementation of legislation and policies on bilingual education at all levels of education, taking into account the relevant recommendations of the Forum on Minority Issues of 15 and 16 December 2008 (A/HRC/10/11/Add.1). It also recommends that the State party ensure that special measures adopted to promote access to education for children of ethnic minorities, such as scholarships or lower entry qualification, are available in practice. It also requests the State party to provide detailed information, including disaggregated statistics on enrolment in primary, secondary and higher education of members of ethnic minorities, in its next periodic report. In this regard, the Committee also draws the attention of the State party to the Universal Periodic Review procedure and in particular recommendation 16, which enjoyed the support of the State party (A/HRC/11/25).

23. The Committee regrets that the State party did not provide more detailed information on illiteracy among different minority groups and the measures taken by the State party to target those groups that are most affected. It remains concerned at reports of high illiteracy rates among some ethnic minorities. (art. 5 (e))

The Committee calls upon the State party to strengthen its measures in the short and medium terms to implement measures to reduce illiteracy among ethnic minorities, especially in rural areas. The Committee recommends that the State party provide more information on illiteracy rates among the different ethnic groups and between men and women in its next periodic report.

24. While noting the wide range of measures and policies adopted by the State party to improve access to health care and services, the Committee is concerned that persons belonging to ethnic minorities often face obstacles in accessing health care and services. (art. 5 (e))

The Committee recommends that the State party continue to intensify its efforts to address the persistent health disparities affecting persons belonging to ethnic minorities, in particular by addressing the obstacles that currently prevent or limit their access to affordable and adequate health care, taking into consideration the difficulties posed by their geographical location. In this regard, the Committee also draws the attention of the State party to the Universal Periodic Review procedure and in particular recommendation 20, which enjoyed the support of the State party (A/HRC/11/25).

25. Despite the laws and policy measures adopted by the State party to improve employment rates among ethnic minorities, such as quotas and targeted recruitment, the Committee is concerned about the high rate of unemployment among members of ethnic minorities. (art. 5 (e))

The Committee recommends that the State party strengthen its measures to increase employment opportunities for members of ethnic minorities, in particular by focusing on professional training and providing language training, and to ensure the effective implementation of its legislation in this regard, in particular the Employment Promotion Law of 2007. At the same time, the Committee encourages the State party to intensify its efforts to combat prevailing stereotypes concerning ethnic minorities.

26. The Committee notes the lack of information on complaints of racial discrimination and the absence of court cases regarding racial discrimination (arts. 6 and 4).

The Committee, considering that no country is free from racial discrimination, calls upon the State party to examine why there have been only a few judicial cases in this regard. It recommends that the State party verify if the scarcity of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victims' lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or lack of attention or sensitivity to cases of racial discrimination on the part of the authorities. The Committee also draws the State parties attention to its General Recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

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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))

The Committee recommends that indirect discrimination with regard to language, immigration status and nationality be included among the prohibited grounds of discrimination in the Race Discrimination Ordinance. In this regard it recalls its General Recommendation No. 30.

28. The 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)

The Committee recommends that all Government functions and powers be brought within the scope of the Race Discrimination Ordinance. It also recommends the adoption of an equality plan with a view to ensuring the effective implementation of the law and that the Equal Opportunities Commission be strengthened.

29. While noting the planned legislative framework for torture claimants in Hong Kong SAR, the Committee is concerned that the State party has not adopted a refugee law as such, including a screening procedure for asylum claims. (art. 5 (b))

The Committee recommends the adoption of a law on refugees, with a view to establishing a comprehensive procedure for 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. The Committee also encourages the renewed consideration of the ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

30. Despite the adoption of legislative measures aimed at combating discrimination in Hong Kong SAR, the Committee reiterates its concern (A/56/18, para. 248) at the situation of migrant workers, and in particular domestic migrant workers. It notes with concern that the “two-weeks rule” (whereby domestic migrant workers have to leave Hong Kong within two weeks upon termination of contract) continues to be in force, as well as the live-in requirement, and that migrant workers may be subject to longer working hours, and shorter rest and holiday periods. (art. 5 (e))

The 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

adopt 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 Committee also draws attention to its general recommendation No. 30.

31. Despite the provision of a supplementary guide to the Chinese language curriculum, the 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))

The 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. Efforts to improve the quality of Chinese language education for immigrant children should be intensified.

32. While welcoming the adoption of new legislation on trafficking, the Committee is concerned that trafficking in persons continues to be a serious problem in the Macau SAR, bearing in mind that victims are often women and children belonging to ethnic minorities or non-citizens. (art. 5 (b) and (e)).

The Committee recommends the reinforcement of measures to adequately prevent, combat and punish human trafficking, especially of non-citizens. It expects to receive, in the next periodic report, detailed statistical information in this regard, including on protection and reparation provided to the victims.

33. Notwithstanding the explanation provided by the delegation, the Committee notes with concern that migrant workers are excluded from the social welfare system in the Macau SAR. (art. 5 (e))

The Committee recommends that relevant legislation be amended with a view to extending social welfare benefits to all workers, including migrant workers.

34. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

35. The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

36. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

37. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

38. The Committee recommends that the reports of the State party be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

39. The Committee encourages the State Party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

40. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 15, 19, and 30 above.

41. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 14, 21 and 28 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

42. The Committee recommends that the State party submit its fourteenth, fifteenth and sixteenth periodic reports in a single document, due on 28 January 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.
