

## Panel on Constitutional Affairs

Meeting on 19 November 2018

### Agenda Item III:

#### *Outcome of the Hearing of the Report of the Hong Kong Special Administrative Region by the United Nations Committee on The Elimination of Racial Discrimination Under the International Convention on the Elimination of All Forms of Racial Discrimination*

1. It has been 10 years since the Race Discrimination Ordinance (RDO, Cap 609) was enacted into law in Hong Kong. However, even before the introduction of the Bill in the Legislative Council, the political environment was never receptive to the need for such a law specifically prohibiting racial discrimination in Hong Kong.
2. The arguments for this have been wide-ranging. The three most disturbing and damaging of these arguments for any city which proclaims its status as Asia's World City or the Multicultural Hub of the World are, firstly, the view Hong Kong does not have a race discrimination problem and therefore, there is no need for regulation; second, the view that victims of racial discrimination are themselves to blame because they *invite* such behaviour due to their own actions or inadequacies; and third, we *have* a comprehensive law protecting ethnic minorities against racial discrimination but you can see from the complaints that are so few, there really is no real discrimination but rather, probably cases of misunderstanding at play. In the government's view, the absence of complaints does not seem to call out for an answer but rather, is used to cloak their ignorance or concealment of oppression of institutional and systemic proportions.
3. These have been recurrent themes and were deployed again by the government at the UN CERD Committee hearing in Geneva in August 2018. Government representatives used the occasion of reporting on Hong Kong's performance under their CERD obligations to deny once again the many challenges faced by the city's ethnic minorities due to the critical lack of equal opportunities, rampant racial discrimination, and racial vilification.
4. Instead, the government highlighted how 'well' it is doing in terms of integrating ethnic minorities and gave the impression that to the extent that there remain any gaps, using strategies of victim-blaming that have become commonplace globally, it suggested these are areas where ethnic minorities need to make an effort to benefit from the government's many measures and billions of dollars in resources. Sadly, this entrenches stereotypes about ethnic minorities and fuels further the negative view of many Hong Kongers who remain uninformed and do not believe the lived realities of racism experienced by ethnic minorities every day. Our esteemed politicians and leaders unfortunately remain in denial of Hong Kong's ugly racism and suggest that HK is a free market economy and is only concerned with merit-based competitiveness – in effect perpetuating the stereotype of minorities as **being lazy, unintelligent or undeserving of opportunities**. There is no equality in a system which is stacked against you from the

**very start – where the colour of your skin or your ethnic origin determines whether you can access particular kindergartens for your children or jobs in the market.**

5. This denial flies in the face of figures demonstrating the inequalities between ethnic minorities and the general population across all areas of life, ranging from education to employment to housing and poverty. These figures have been extrapolated from the Census data<sup>1</sup> and analysed thoroughly to determine the root causes of these circumstances of deprivation. They are largely the result of structural and systemic discrimination against individuals on grounds of race, ethnicity and nationality.
6. **When a government, which is tasked with protecting the most vulnerable communities, instead participates in rhetoric which fuels the invisibility of the problem, dehumanizes ethnic minorities, denies them their existence and ability to reach their full potential, and attempts to dupe the UN Committee into believing that all is well and functional with the legal protections, it is incumbent on civil society and members of this council to dig deeper to scrutinize the government's claims and call them to account.**
7. When ethnic minorities seek assistance from the EOC on aspects covering particular actions by government institutions such as law enforcement bodies, they are advised that the RDO does not cover government functions and powers. Yet, officials advised UN CERD Committee that government functions and powers are covered under the law. This created confusion in the Committee. **The very purpose of setting up the EOC was to make the law more accessible without individuals needing to go to court due to challenges of access to justice pertaining to issues around equality. Yet, the law itself treats racial minorities differently in withholding the full realm of protections from them when compared with other anti-discrimination laws for marginalized groups. Thus, even in the law, we are treated unequally.**
8. **The process of reporting to the UN is an opportunity to measure our own progress compared with our last report. If we remain in a state of persistent denial about the progress we have made, we deny the realities of individuals and are in effect refusing to uphold our obligations and subject ourselves to international scrutiny. This is not the mark of a city with an international standing in offering human rights protection. We are increasingly moving away from that epitome to a city that is evasive about acknowledging its problems.**
9. **It is time for the HK Government to submit an honest record, with concrete data to benchmark itself and measure its own progress in the next cycle. Otherwise, there is no point being a part of a process which is not conducive to progressive change.**

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<sup>1</sup> See Puja Kapai, *The Status of Ethnic Minorities of Hong Kong 1997-2014*, Centre for Comparative and Public Law, (2015), available at: [\[link\]](#) and the government's own reports on the *Poverty Situation of South Asians* (2016, 2017), available at: [\[link\]](#)

10. **I'm here to sound a note of caution. We must wake up to events in the United States in terms of ongoing attacks against racial and religious minorities and the systemic genocide being perpetrated against the Rohingya in Myanmar – the triggers for which were states of power imbalance and inequalities, persistent racial vilification and ramped up rhetoric that marginalized minorities by painting them as outsiders, as a threat to our societies and our values. We are not on the brink of such a state in Hong Kong thankfully but we certainly are on the road towards such a climate – ethnic minorities are now openly told to go home or called dogs and other dehumanizing labels. Once we treat a group as non-human, we have the hallmarks of persecution fully in play. It only takes one spark to escalate a crisis. We do not want to be that society.** It is most disheartening that ethnic minorities in Hong Kong, whether homegrown or newly arrived, live in a state of marginality. It is time for the HK government to DO the right thing, to acknowledge the lived realities experienced by many ethnic minorities in Hong Kong, to transparently document these realities and tackle them head on so that we can legitimately claim the title of 'Asia's World City' which we want to hold in the region and globally.

11. **I urge the HK government to acknowledge that every society, including ours is burdened by racial discrimination, which needs to be addressed comprehensively through education, law and policy reform and the reform of our institutions for implementing equality in a meaningful sense. This requires including EM voices, their representation in decision-making in issues impacting them and transparency and evaluation of measures implemented.**

(a) This requires:

- (i) Upscaling the Equal Opportunities Commission into a body that is fully compliant with the Paris Principles in terms of institutional independence and transparency and to resource it well enough to undertake investigations and discharge its mandate effectively;
- (ii) Urgently address the gaps in the Race Discrimination Ordinance, in terms of including nationality and immigration based discrimination and government functions and powers to remove the law's anomalous perpetuation of discrimination against racial and ethnic minorities; and
- (iii) Improving the training of all personnel in all government institutions, and most importantly, the Equal Opportunities Commission, on the substantive protections pertaining to racial minorities under the RDO to address the current access to justice challenges faced by minorities seeking EOC's assistance.

(b) Collect, and make available to the public, civil society and the UN CERD committee race-disaggregated data across key areas of life, in particular

- (i) education, employment, poverty and political representation;
- (ii) the number and type of racial discrimination complaints filed with respect to public and private institutions and their resolution;

(iii) data further disaggregated by gender, disability and other socioeconomic indicators to understand intersectional identity markers to enable the full mapping of the extent of the problem and their root causes;

and to conduct an assessment and evaluation of recent measures to tackle prevailing discrimination against ethnic minorities in education, employment, and poverty bearing drawing on this data as a benchmark.

**Puja Kapai**

Associate Professor of Law  
Convenor, Women's Studies Research Centre  
Centre for Comparative and Public Law  
Faculty of Law  
The University of Hong Kong