

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 75<sup>TH</sup> SESSION CHINA, 10<sup>TH</sup> - 13<sup>TH</sup> REPORT 7 AND 10 AUGUST 2009

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### Key facts<sup>1</sup>

Ratification	Reservations	Other core treaties ratified	Date of previous examination, submission of present report
1981	None	ICCPR, ICESCR, CEDAW, CAT, CPD, CRC + OP SC.	Previously examined July/August 2001. Present report submitted June 2008.

### Opening remarks by the delegation

<sup>1</sup> The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/CNIndex.aspx>.

The delegation of China was led by Mr Duan Jielong, Director General, Department of Treaty and Law, Ministry of Foreign Affairs. He was supported by an extremely large delegation, over 30 in number, including Mr Xu Hong, Ministry of Foreign Affairs, Mr Zhang Ruopu, State Ethnic Affairs Commission, Mr He Kinwah, Constitutional and Mainland Affairs of the Hong Kong Special Administrative Region (HKSAR) Government, Mr Jorge Oliveira, International Law Office of the Macao Special Administrative Region (MSAR) Government, Mr Yao Zhenhuai, Ministry of Justice, Mr Suolangrenzeng, Ethnic and Religious Affairs Commission of Tibet Autonomous Region, Mr Weili Balati, Xinjiang Administration College, Xinjiang Uighur Autonomous Region, Ms Yang Chunyan, Ministry of Public Security, Ms Zhao Wei, Ministry of Education, and Mr Wang Ping, State Ethnic Affairs Commission.<sup>2</sup>

There was representation from the various autonomous and special administrative regions, including Xinjiang, Tibet, Yunnan, Macao and Hong Kong, but somewhat conspicuously, only the latter two spoke during the meeting. The majority of the dialogue was conducted by the head of the delegation, Mr Duan, and Mr Yao of the Ministry of Justice. The majority of the initial presentations were highly nuanced and rhetoric-heavy, reflecting the political positions of the three lead delegates.

In his opening statement, Mr Duan stated that China has made ‘consistent efforts’ to prevent and prohibit all forms of racial discrimination in the country, resulting in ‘equality, solidarity and harmony’ amongst Chinese ethnic groups. Mr Duan did not mention the implementation of previous Committee recommendations, instead choosing to focus on the recent economic development of the State. He claimed that this was helping to eradicate racial discrimination, especially in the Western China regions. The statistics he provided on economic growth, however, were not disaggregated to show the specific benefits of development for minorities – a topic that the Committee would return to later in the dialogue and its concluding observations.<sup>3</sup> This glaring omission, which the Committee had previously offered recommendations on,<sup>4</sup> was further compounded by the provision shortly thereafter of disaggregated data in relation to protection of cultural activities in minority-populated areas, and Committee member Mr Lahiri was quick to point this out later in the dialogue.

Mr Duan finally chose to address the recent disturbances in Lhasa and Tibet, stating that they had been ‘directed and instigated by separatists abroad and organised and carried out by separatists in China’. He claimed that they had attempted to create ‘ethnic splits and hatred, undermining the gratifying situation of harmonious development in ethnic minority areas and undermining national unity’. He also accused the ‘separatists’ of violating the Convention and claimed that the disturbances had been ‘widely condemned’ by ‘Chinese people of all ethnic groups’.

There then followed presentations by representatives from the HKSAR and MSAR, Mr He and Mr Oliveira respectively. In reaction to the list of issues sent in advance of the meeting, Mr He’s presentation clearly focused on legislation developed as a result of previous Committee recommendations,<sup>5</sup> including the recent *Race Discrimination Ordinance* (Chapter 602 of the Laws of Hong Kong), which was enacted by the Legislative Council in July 2008 and has been ‘operational’ since July 2009. His presentation was contrastingly evasive when it came to describing the actual substance of these legislative improvements, however, stating that it is now unlawful to discriminate on the grounds of race ‘in specific areas’. On the subject of education, he also made cursory remarks about grants to schools for bi-lingual teaching pilot schemes, and in the area of employment, he stated that the HKSAR provides acclimatisation programmes for internal migrant workers.

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<sup>2</sup> The full list of members of China’s delegation will soon become available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>3</sup> CERD/C/CHN/CO/10-13, para. 9, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>4</sup> The Committee emphasised the fundamental importance of such data to ensure compliance with a State’s treaty obligations under CERD, echoing a recommendation from the previous examination in 2001. See A/56/18(SUPP), para. 250, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G01/446/43/PDF/G0144643.pdf?OpenElement>.

<sup>5</sup> *Supra*, n. 4, para. 247.

Mr Oliveira made a very short representation to the Committee in which he affirmed that Macao SAR ensures protection from racial discrimination through article 25 of its *Basic Law*, and article 3 ensures that all ‘non-residents’ shall be afforded the same protection. He also attached great importance to the role of the human rights ombudsman and various commissions charged with protecting minority group rights. The presentation was extremely brief but cooperative in tone, and he ended by welcoming any help or advice that the Committee might offer to improve its legal and administrative system.

## Overview of key issues

The following overview addresses 5 of the Committee’s concluding observations following the examination on the basis of those themes that the Committee requested follow-up on implementation within one year, or those which the Committee gave particular focus to during the course of the examination. Each recommendation is assessed according to how it was addressed in the examination, including the initial views of the State, questions and comments by the Committee, and responses provided.

The examination was clearly enhanced by the number and range of State representatives in the delegation, and the Committee thanked the party for its full answers throughout the meetings. Positive aspects of the dialogue included information on the 11<sup>th</sup> Five-Year Program for the Ethnic Minority Cause and the Development Program to Help Ethnic Groups with Relatively Small Populations (2005-2010), with the Committee expressing its hope that similar future plans and policies would help to advance the rights of minorities. The State also confirmed various undertakings which would be performed in line with the Convention, such as modernising the *hukou* family registration system to eliminate discrimination and facilitate increased internal migration, and promising to consider the suggestion of formalising and unifying national laws on discrimination. But very little headway was achieved in relation to some highly significant issues. Intelligent Committee questioning regarding the constitutional status of Tibet and Xinjiang, and whether a solution to the troubles might be to establish SARs similar to those in Hong Kong and Macao, prompted spurious rejections by the delegation and was dismissed out of hand. A further stalemate involved the suggestion that Hong Kong SAR should sign the *1951 Convention relating to the Status of Refugees* and its 1967 Protocol. Mr He stated that Hong Kong could not ratify the Convention as it would leave the region ‘vulnerable to abuses’. Regrettably he failed to put forward any justification for this rejection. This position was thrown into sharp relief when set against that of Macao SAR when, immediately thereafter, Mr Oliveira stated that Macao had indeed signed the Convention and demonstrated a much more cooperative attitude to UNHCR activities in the region. Whilst this disparity was not followed up on again during the examination, it was nevertheless reflected strongly in the concluding observations.<sup>6</sup>

Sadly the Committee’s incisiveness and potency was partially blunted by certain Committee members who failed to conduct any semblance of meaningful examination; some undermined fellow members’ lines of questioning, others failed to pose any questions whatsoever – constructive or otherwise. In this regard mention must be made of Committee members Mr Amir, Mr Ewomsan and Mr Kemal; the latter of whom agreed with the State report’s claim that national legislation is ‘in line with CERD’, thus undermining important questions posed by Mr Sicilianos about the need for legislative improvements. Notwithstanding this unnecessary discrepancy, an appropriate recommendation appears in the concluding observations.<sup>7</sup> Mr Amir embarked on a flattering ten-minute summary on the State’s economic achievements, lauding it ‘one of the wonders of the world’, and failed to ask any questions whatsoever. He was furthermore asked by other

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<sup>6</sup> CERD/C/CHN/CO/10-13, para. 29, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>7</sup> CERD/C/CHN/CO/10-13, para. 10, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>. This issue is considered immediately below.

Committee members to be quiet when they were speaking. All three are coming to the end of their terms of membership on 19 January 2010.

### Legislative and judicial implementation of the Convention

10. 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 State party's attention to its General Recommendation No. 30 (2004) on discrimination against non-citizens.<sup>8</sup>

Despite the head of the delegation stating that 'equality of ethnic groups and prohibition of discrimination are the cornerstones of China's ethnic policy', the country rapporteur Mr Sicilianos<sup>9</sup> pressed further to ascertain whether the national laws reflected this broad policy approach to eliminating discrimination. Mr Duan continued to make general statements about laws which 'prohibit incitement of racial and ethnic hatred, racial discrimination and separation', quoting from the Chinese Constitution and the Law on National Regional Autonomy, but Mr Sicilianos was still clearly disappointed that the State had not managed to integrate the fundamental principles of the Convention into national law. Namely, he stated, China had so far failed to include discrimination on the basis of descent or national origin, something the Committee also recommended remedying after the 2001 examination.<sup>10</sup> Committee member Mr Lindgren Alves backed up the rapporteur's claims by reminding the State party that the Convention isn't intended to protect cultures but individuals, and that, presently, neither the Constitution nor national legislation protects individuals from the types of discrimination set out in article 1 of the Convention. Committee member Mr de Goutte also regarded the legislation as 'incomplete'. In relation to this lack of clarity, concern was also raised by a number of members<sup>11</sup> regarding the lack of a single codified law against discrimination.

Mr Duan repeated his opening statement, affirming that elimination of all racial discrimination was a 'basic principle' of Chinese legislation, but also seemed to suggest that Chinese law has not used the exact wording of the Convention as it has its own definitions. He furthermore stated that descent-based discrimination was prohibited in separate legislation but was not more forthcoming with information regarding this. This clearly deepened the Committee's concerns about the lack of a comprehensive, codified law against discrimination, and the Committee was quick to point out a useful remedy to the delegation. Mr Sicilianos rounded off the debate on the issue by reemphasising that the State could prevent discrimination more effectively with such a law, and this was echoed strongly in the concluding observations.<sup>12</sup> In response to this, Mr Duan confirmed that they would look at the need for a separate law and would find out if it could improve the situation.

Legislative implementation of the Convention was also questioned in relation to Hong Kong SAR's recently-enacted *Race Discrimination Ordinance* (the 'Ordinance'). The Committee was keen to discover the exact scope of this and other legal provisions which apparently purport to domesticate the Convention's obligations. Mr Diaconu said it appeared as if the Ordinance did not apply to Government officials, and wondered if this was not a potentially huge lacuna in the protection system. Mr Thornberry also expressed deep concern at these exemptions and added that the Ordinance also fails to cover indirect discrimination sufficiently. Mr He responded that indirect discrimination is defined 'in line with the general principles of human rights jurisprudence' and that 'it is important for definitions to follow the precedent established by earlier ordinances'. He also interpreted the Convention as meaning that racial discrimination referred to race, colour,

<sup>8</sup> CERD/C/CHN/CO/10-13, para. 10, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>9</sup> The full list of Committee members can be found at <http://www2.ohchr.org/english/bodies/cerd/members.htm>.

<sup>10</sup> A/56/18(SUPP), para. 241, available

at <http://daccessdds.un.org/doc/UNDOC/GEN/G01/446/43/PDF/G0144643.pdf?OpenElement>

<sup>11</sup> Including Mr Sicilianos, Mr Lindgren Alves, Mr Kemal and Mr de Goutte.

<sup>12</sup> CERD/C/CHN/CO/10-13, para. 11, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

descent and national origin, but that ‘citizenship and permanent resident status’ do not fall within its ambit. The Committee was clearly dissatisfied with this re-interpretation and thus clearly recommends that the Ordinance be improved to include all forms of indirect discrimination, including language, immigration status and nationality.<sup>13</sup> In response to the questions about Government accountability under the new Ordinance, Mr He stated that it is binding upon all Government officials and that ‘any act by a government representative can be subjected to court jurisdiction’. He then fundamentally undermined his answer by insisting that there are nevertheless certain occasions where Government officials must not be held liable for discrimination, but that these exceptions only ‘serve legitimate purposes’ – whatever they might be. The Committee’s recommendation in paragraph 28 of the concluding observations therefore strongly encourages the State party to bring ‘all Government functions and powers...within the scope of the *Race Discrimination Ordinance*’.<sup>14</sup>

Mr Sicilianos raised a pertinent question in relation to State assurances that the lack of racial discrimination is evidenced by the small number of cases that have been tried in courts. Mr Sicilianos pointed out that this does not necessarily indicate perfect compliance with the Convention, and suggested that potential claimants might fear reprisals, lack the funding to bring a case, or lack adequate legal representation. Mr de Gouttes supported the rapporteur, saying that the report lacks sufficient information on the number of complaints and prosecutions that actually arise. The lack of monitoring was a worry, he said, and was ‘to the State’s detriment’. So too were reports of apparent obstacles placed before lawyers attempting to represent their clients who had been victims of discrimination, as pointed out by Mr Diaconu. The delegation’s answers were entirely unsatisfactory on this point, and Mr Duan simply stated that it was ‘difficult’ to provide the Committee with further information on cases of this sort. He promised to collect information ‘in the near future’ but addressed the point summarily. Mr de Gouttes followed up on this commitment by affirming that it is a very important aspect of the national implementation of the Convention. He asked if the minimal number of cases could partly be explained by a general mistrust or fear of the police, or whether it perhaps also indicated a lack of appropriate training for the police force, but no further response was garnered from the delegation. The concluding observation relating to this point is therefore especially important and the Committee requested information on ensuring the freedom of lawyers within one year from the examination.<sup>15</sup> The Committee also recommended that the State ‘examine why there have been only a few judicial cases in this regard’, and encouraged the State to investigate some of the factors put forward by the Committee, as set out above.<sup>16</sup>

### **Economic, social and cultural marginalisation**

21. 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.<sup>17</sup>

The Committee was evidently interested in the recent disturbances in Tibet and Xinjiang, and this led to a discussion of the ethnic tensions and related relatively slow economic development in those regions. The delegation had repeatedly emphasised China’s overall economic development in its opening statement and report, and had attempted to show the amount of money that was being injected into the local economies of the western territories, but the Committee was concerned that minorities were nevertheless receiving less of the rewards created by this development. Mr Sicilianos commended the State on its various policies and

<sup>13</sup> CERD/C/CHN/CO/10-13, para. 27, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>14</sup> CERD/C/CHN/CO/10-13, para. 28, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>15</sup> CERD/C/CHN/CO/10-13, para. 19, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>16</sup> CERD/C/CHN/CO/10-13, para. 26, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>17</sup> CERD/C/CHN/CO/10-13, para. 21, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

programmes which advance the rights of ethnic minorities but pointed out that there remains a huge gap between the west and east, especially in relation to education,<sup>18</sup> health and social security. There are also limitations placed on those from ethnic minorities who attempt to find work. Furthermore, he expressed his concern about the marginalisation of ethnic groups not just socially and economically, but also politically, citing the recent example of the Mongolian Youth Forum website being shut down, apparently arbitrarily. He highlighted the difficulties created for civil society attempting to operate in the western regions, and said that the lack of political representation for minorities is a fundamental problem.<sup>19</sup>

Mr Lahiri was more outspoken in his criticism, claiming that whilst large investments have been made to the western regions, they have singularly benefitted the large Han population moving into the area. He complained about the lack of disaggregated data provided by China, and quoted UNDP statistics which showed that the situation of Tibetans and Uighurs has in fact deteriorated throughout this period of economic growth. The per capita income in rural Tibet, where most ethnic Tibetans live, is a quarter of that in urban areas of the region, and illiteracy amongst these groups has risen to 55%, whereas illiteracy in the rest of the country stands at a much smaller 9%, he said. Furthermore, he suggested that whilst useful laws may be in place, the reality remains that these laws are ‘widely contravened with regards social benefits’, as well as protection of ethnic languages and religions. Indirect discrimination means that those who do not speak Mandarin are increasingly hindered in the search for gainful employment. Mr Lahiri therefore claimed that action to arrest the influx of Han Chinese is ‘imperative’, and recommended that investment policies should be redesigned to help ethnic minorities more. This suggestion was echoed by a number of Committee members, including Mr de Gouttes, Mr Sicilianos and Mr Peter. Mr Lindgren Alves was particularly worried about this so-called ‘march westwards’ of the majority Han ethnic group, and suggested that these migrants might be lured to western regions under monopolistic incentive schemes which do not directly improve the standard of living or employment rates for ethnic Tibetans.

The subject of religion was also touched upon, with Mr de Gouttes asking what the State was doing to address concerns first raised by the Committee in 2001 regarding freedom of expression and association, particularly in relation to freedom of religion. Paragraph 119 of the State report<sup>20</sup> briefly addresses this topic but Mr de Gouttes was dissatisfied with the level of detail and wanted to know if anyone had been convicted on the basis of their religious beliefs. He also highlighted the particular risk to these freedoms in Tibet, and asked if there were any cases of the police force discriminating against Buddhists in the region. In addition, Mr Sicilianos quoted statements by the Committee against Torture and various NGOs on the subject, and asked what the delegation’s views on the link between ethnicity and religion were.

Mr Duan’s reaction to this hard line of questioning was to repeat his opening statement, saying that Chinese citizens enjoy equal rights in economic, political, social and cultural fields ‘regardless of their ethnic, racial status or religious belief’. He went on to deny that western areas are struggling economically, but notably failed to name a single region where this was the case. Rather tellingly, however, he later ceded that, ‘generally speaking, the west is lagging behind’, and said that the Government was prioritising investment to the west of the country. Thus he did not address many of the specific questions posed in relation to large investments being directed specifically at Han settlers in an apparent attempt to marginalise ethnic minority groups still further. Mr Yao did address this point, but only to say that highly skilled professionals from outside the region were needed to aid development in the western regions. He called the migration ‘temporary’, and denied that there was a mass-immigration policy. Mr Weili from the Xinjiang Autonomous Region then reaffirmed that there is no ‘organised immigration’ to the Xinjiang region, only that which is

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<sup>18</sup> Which will be dealt with more comprehensively in a subsequent section. See page 8.

<sup>19</sup> See paragraph 18 of the concluding observations, which calls for greater participation by minorities in public life. CERD/C/CHN/CO/10-13, para. 18, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>20</sup> CERD/C/CHN/10-13, para. 119, available at <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CHN.13.pdf>.

‘normal and reasonable’.<sup>21</sup> He went further than Mr Yao in assuring the Committee that it is not the Government’s intention to replace local languages with Mandarin, but did not explain how the various languages were taught and which ones were given priority in schools.<sup>22</sup> This was one of many examples where only partial answers were provided to very clear questions, and was indicative of a general lack of constructive dialogue throughout the examination.

On a more positive note Mr Duan responded cooperatively to the questions about possible discriminatory practices in employment and highlighted the policy of targeted recruitment and quotas for minority groups. He also confirmed that political participation of minorities is important and gave as evidence the growing level of minority representation in decision-making positions. He said the Government would ‘ensure that all people, including women, have the right to run State affairs as well as their own ethnic affairs’. He did not respond favourably to Mr Lahiri’s statement about indirect discrimination existing in the employment market, saying simply that all Chinese citizens must learn to speak Mandarin if they want to find a job. This appears to imply that there is indirect discrimination, although Mr Duan did not go so far as to acknowledge this. The Committee therefore reflected the lack of constructive dialogue on this matter by asking the State party to ‘increase employment opportunities for members of ethnic minorities by focusing on professional training and by providing language training, and to ensure the effective implementation of its legislation in this regard, in particular the *Employment Promotion Law 2007*’.<sup>23</sup>

### Rights of migrant workers and refugees

14. 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.<sup>24</sup>

A useful line of questioning was opened up by Committee member Mr Thornberry regarding internal migration and the associated issues of ensuring adequate protection of economic and social rights to such migrants. He highlighted the archaic *hukou* system of family registration which restricted the free movement of peoples within the country. Demonstrating a level of compliance and cooperation that could not be achieved elsewhere, the delegation was quick to respond that it would look at amending the laws immediately; but what the question also did was to open debate about other rights of internal migrants. Mr Peter noted that coastal areas of the country are more economically advanced and thus attract workers away from rural areas in the west. He asked what was being done to ensure that such workers are well-treated once they reach the economic centres of the east. There followed a brief response from Mr Duan in which he acknowledged the internal migration trend and simply stated that there are ‘regulations on ethnic affairs in cities to ensure customs and religious beliefs are respected’. This was the cue for Committee members to push the questioning further, but sadly none did.

The issue did arise again when the Committee considered Hong Kong’s internal migration policy, however, and this time the members were more pressing with their questions. Several national NGOs had raised the issue of discrimination against migrant workers moving across from ‘mainland’ China, particularly highlighting the problem of institutional discrimination by local government and the police force. Mr de Gouttes asked whether the new *Race Discrimination Ordinance* applied to migrants from the mainland, to which Mr He confirmed that migrants are indeed protected by the Ordinance. He acknowledged certain difficulties in integrating these migrant workers, however, and said that acclimatisation and employment training programmes were being provided. In response to the issue of institutionalised discrimination in the

<sup>21</sup> However, the Committee was not satisfied by the responses provided and nonetheless recommended that ‘any policies or incentives offered that may result in a substantial alteration of the demographic composition of autonomous minority areas be reviewed’. See CERD/C/CHN/CO/10-13, para. 13, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>22</sup> This issue will be addressed more substantially in the section on Education, page 8.

<sup>23</sup> CERD/C/CHN/CO/10-13, para. 25, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>24</sup> CERD/C/CHN/CO/10-13, para. 14, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

police force, he said that police want to develop a ‘constructive relationship’ with migrants (both internal and international), and training programmes on human rights and anti-discrimination principles have been established. There is also increased awareness-raising of language sensitivities, with many official forms being translated into Mandarin and language training being given to officers operating in ethnic minority areas. Committee recommendations relating to internal migrants in Hong Kong therefore focus on ensuring legislative implementation of the Convention so as to ensure that any reported acts of discrimination can be prosecuted.<sup>25</sup>

An area of great concern developed during the dialogue, with Mr Sicilianos inquiring as to whether refugees and overseas migrants were covered by national anti-discrimination laws. He was worried that the lack of information provided by China on this topic indicated that the State did not recognise its obligations to non-citizens. He also pointed out some clear examples of discrimination: Macao SAR appears to exclude migrant workers from receiving social benefits, whilst Hong Kong SAR maintains a discriminatory law which compels all migrant workers to leave the region no more than two weeks after the termination of an employment contract. It furthermore does not apply its minimum wage laws to such migrant workers, and thus migrants such as domestic workers are living and working in abject poverty. Mr Duan responded that the prohibition of discrimination applied to refugees and asylum seekers, in addition to all other non-residents.

On the specific case of Hong Kong however, Mr Sicilianos warned that he had received confirmation from the Hong Kong Bar Association that there was indeed a legislative void with regards to refugees. Mr He assured the Committee that ‘asylum seekers are covered by the Ordinance’. He revealed that the two-week rule for migrants who have lost their jobs does apply, but that, in certain circumstances, the worker ‘may’ obtain a new contract without having to return to their country of origin first. He also provided a highly-nuanced answer to the question of domestic workers, saying that, because of the nature of their employment and accommodation, it is ‘impossible to ascertain exactly how many hours they work’ and that ‘the law cannot therefore be applied effectively’. Rather confusingly, he then contradicted his previous statement by saying that a minimum wage does indeed exist for migrant workers, but that it is lower than that for Chinese workers. This clear case of discrimination is addressed in paragraph 30, which calls upon Hong Kong to repeal the ‘two-week rule’ altogether and adopting employment rules and practices which are not discriminatory.<sup>26</sup>

The responses from Mr Oliveira concerning Macao’s position were more straightforward, recognising the shortcomings in social benefits provision, but admitting that large-scale funding is unavailable for the general population, not just migrant workers. He did however highlight the role of the Ombudsman and various commissions, and stated that by law employers must provide medical insurance for all employees. The Committee nevertheless recommended that ‘relevant legislation be amended with a view to extending social welfare benefits to all workers, including migrant workers’,<sup>27</sup> although it is unclear why they did so.

## Education

22. The Committee recommends the State party to intensify its efforts to ensure the implementation of legislation and policies on bilingual education at all education levels, 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 of 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

<sup>25</sup> *Supra*, n.13 and 14.

<sup>26</sup> CERD/C/CHN/CO/10-13, para. 30, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>27</sup> CERD/C/CHN/CO/10-13, para. 33, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

regard, the Committee also draws the State party's attention to the Universal Periodic Review procedure and in particular Recommendation 16, which enjoyed the support of the State party (A/HRC/11/25).<sup>28</sup>

What is perhaps most interesting about this topic is the distinct lack of dialogue engaged in by the State party following clear and factually supported questions from the Committee. The direct result of this is the almost verbatim translation of Mr Thornberry's questions into a strong recommendation which perhaps asks the State to do more than if it had engaged in a discussion about the exigencies of the national policy on bilingual education.

Of the three lead delegates presenting their reports, only Mr He paid any attention to the issue of education in his opening statement, and he took the opportunity to describe the various programmes designed to integrate non-Mandarin-speaking migrants. However it was not clear whether the implementation of such all-encompassing programmes indicated a form of indirect discrimination. Mr Sicilianos identified and singled out this problem immediately, suggesting that teaching of minority languages is as important as offering education in Mandarin. He called the State's policy on bilingual education 'rather limited' and asked about plans for reform. He also pointed out that Tibet and Xinjiang also suffer from the highest illiteracy rates in the country, and Mr Lahiri supported his statement by providing official UNDP statistics which show illiteracy rates five times as great as those in other parts of China.<sup>29</sup> Mr Diaconu then intervened to reemphasise the 'education gap' between the east and west of the country, and claimed that the State report contains information contradictory to reports from Xinjiang which allege that the so-called 'bilingual education' in reality consists of teaching predominantly of – and in – the Mandarin language. He therefore asked for more information on the languages used and taught in Uighur schools. Mr Avtonomov suggested that perhaps law and practice were not in fact analogous. Mr Peter congratulated the State on its policy of giving certain privileges to ethnic minority students in order to increase attendance rates, but was also interested in the uptake of these offers and the level of publicity given to them, as the number of students benefitting from the incentives was not as high as might be expected.

The State's position on these points can only be presumed, following its inability to answer any of these points after the first round of questions. Mr Thornberry returned to the matter, questioning the effectiveness of fully bilingual education. He quoted research findings from the UN Forum on Minority Issues<sup>30</sup> which indicate that a more useful approach is to develop the mother tongue in the most formative years before then introducing a second language, in this case Mandarin. Regrettably, the State again failed to respond to this and similar suggestions, forcing the Committee to address the issue powerfully in two recommendations.<sup>31</sup>

### Illegal detention

15. 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 State party's attention to the Universal Periodic Review procedure and in particular Recommendation 31, 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).<sup>32</sup>

<sup>28</sup> CERD/C/CHN/CO/10-13, para. 22, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>29</sup> See above, page 6.

<sup>30</sup> For more information see [http://www2.ohchr.org/english/bodies/hrcouncil/minority/inaugural\\_session.htm](http://www2.ohchr.org/english/bodies/hrcouncil/minority/inaugural_session.htm).

<sup>31</sup> *Supra*, n. 28, and CERD/C/CHN/CO/10-13, para. 23, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>32</sup> CERD/C/CHN/CO/10-13, para. 15, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

Another issue raised in relation to unrest in the western provinces was the subject of arbitrary detention and the conditions of detention, including unconfirmed reports of acts of torture. The Committee made excellent use of previous concluding observations made by the Committee against Torture (CAT) as well as NGO reports from Tibet and Xinjiang.

Mr Sicilianos opened the discussion by echoing CAT's recent concern for widespread detention of ethnic Tibetans following demonstrations in the region. He reminded the State that CAT had recommended the initiation of a formal inquiry into torture claims and excessive use of force, and also recommended that China should do more to prevent and prohibit enforced disappearances and deaths in custody. Mr Sicilianos therefore asked for updated information on measures taken to implement these recommendations, which were adopted in November 2008.<sup>33</sup> In this context he raised the most recent incidents in Xinjiang on 5 July 2009. Despite receiving clearly diverging accounts of the events and having to demonstrate a high degree of sensitivity to the issue, Mr Sicilianos acknowledged the need to maintain law and order, but nevertheless emphasised that such detentions should be carried out in line with human rights principles, including the presumption of innocence, the right to a fair trial and prohibition of enforced disappearance. This specific case was also reflected later in the concluding observations when the Committee recognised the State's 'duty to maintain public order' but nevertheless recommended that China should 'ensure that those detained...are guaranteed humane treatment while in custody and fair trials', calling for 'proportionate sentences' for those found guilty in fairly-conducted trials.<sup>34</sup>

A second priority for the Committee was administrative detention and the 're-education through labour' system, which CAT has also recently expressed concerns about.<sup>35</sup> The system attracted the attention of both Committees due to the lack of a judicial hearing before sentencing and the compounding lack of any appeals procedure. Mr Sicilianos noted CAT's recommendation to abolish this form of detention altogether and asked if the National Human Rights Action Plan might be used to initiate measures to prevent such administrative detentions.

Mr Duan directly addressed the recent 5 July demonstrations and subsequent detentions, saying that the total number of detainees was yet to be ascertained. He declared that minor offences were dealt with 'leniently' and that 'some of them have now been released'. He furthermore attempted to justify the actions of the police as necessary in order to maintain 'national security and unity'. Partially answering Mr Sicilianos' question about administrative detention, Mr Duan confirmed that 'all criminal cases will be brought before a court in strict accordance with the law' and that 'prosecutors will bring cases appropriately, and judgments will be handed down in accordance with the law.' Notably, however, he did not address sentencing for non-criminal offences which may also carry with them the disputed 're-education through labour' punishment.

### **Other issues not addressed in concluding observations**

Throughout the course of the examination, it became clear that a concerted effort was being made by Mr Lahiri to explore the possibility of establishing the troubled Tibet and Xinjiang regions as Special Administrative Regions (SARs) in the same vein as Hong Kong and Macao. The reasoning provided for this line of questioning was ostensibly that it might encourage an atmosphere of greater tolerance and mutual understanding. The delegation initially responded that the two regions in question already enjoy a relative amount of independence, including managing 'local enterprise, education and culture'. Mr Lahiri then pressed for further clarification on his question, and asked why full application of the 'one country two systems' approach would not work in the case of these two regions, as Mr Duan seemed to be suggesting. Mr Duan was thus pressed into giving a more comprehensive answer, but his response was founded in illogical and

<sup>33</sup> CAT/C/CHN/CO/4, para. 18, available at <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.CO.4.pdf>.

<sup>34</sup> CERD/C/CHN/CO/10-13, para. 17, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>35</sup> *Supra*, n.33, para. 13.

somewhat contradictory justifications: he began by addressing the reasons why China applied the system to Hong Kong in the first place, stating that it allowed for the ‘resolution of historical problems by peaceful means’. He then went on to say that any changes to the political make-up of the State would have to be accepted by ‘all 1.3 billion people in the country’. Finally he acknowledged that the ‘one country two systems’ approach had been highly successful, but bizarrely offered little in the way of real explanation as to why it could not therefore be applied to Tibet and Xinjiang provinces. Due to the limited progress made on the matter, but perhaps more importantly due to its inability to rule substantively on such a wide-reaching issue, the Committee decided not to include the issue in its concluding observations.

## Conclusions and next steps

The examination concluded with Mr Duan promising to provide the Committee with written responses to all of the questions posed throughout the two meetings. He also assured the Committee that the Government is ‘not a threat to any ethnic group in China’, whilst also stating that ‘it is important to uphold national unity’. Mr Sicilianos then highlighted several main topics raised in the dialogue where China clearly still has some way to go to achieve compliance with the principles of the Convention, not least full legislative implementation of the Convention in national law, teaching of languages and detention of ethnic minorities following the recent demonstrations.

In terms of **follow-up** to the examination, the Committee highlighted several issues as of special significance in their concluding observations and called for more information to be submitted to them by the State within one year. These topics include: reassessing the application of administrative detention, including providing disaggregated statistics by ethnic group on the number of detentions;<sup>36</sup> ensuring that lawyers can exercise their profession freely and investigating any reports of harassment or interference;<sup>37</sup> updating and extending the National Action Plan;<sup>38</sup> and, in the specific case of Hong Kong, repealing the ‘two-weeks rule’ for migrant workers and improving working conditions for domestic migrant workers in particular.<sup>39</sup>

Of additional interest were certain issues which the Committee requested more information on in the next periodic review. These include ensuring sustainable development in the Western regions and eliminating social and economic disparities,<sup>40</sup> reforming the archaic *hukou* registration system,<sup>41</sup> and ensuring that Hong Kong’s own Government carries equal anti-discrimination obligations under the new *Race Discrimination Ordinance*.<sup>42</sup>

Furthermore, during the course of the examination, Mr Murillo Martinez requested that China should, in its next periodic report, provide information on any progress regarding a declaration under article 14 of the Convention. This is backed up in paragraph 37 of the concluding observations.<sup>43</sup> The document also calls upon China to consider ratifying the remaining major human rights instruments,<sup>44</sup> increasing collaboration with civil society,<sup>45</sup> and providing information in its next periodic report on action plans to implement the Durban Declaration and Programme of Action at the national level.<sup>46</sup>

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<sup>36</sup> CERD/C/CHN/CO/10-13, para. 15, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>37</sup> CERD/C/CHN/CO/10-13, para. 19, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>38</sup> CERD/C/CHN/CO/10-13, para. 12, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>39</sup> CERD/C/CHN/CO/10-13, para. 30, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>40</sup> CERD/C/CHN/CO/10-13, para. 21, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>41</sup> CERD/C/CHN/CO/10-13, para. 14, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>42</sup> CERD/C/CHN/CO/10-13, para. 28, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>43</sup> CERD/C/CHN/CO/10-13, para. 37, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>44</sup> CERD/C/CHN/CO/10-13, para. 34, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>45</sup> CERD/C/CHN/CO/10-13, para. 36, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

<sup>46</sup> CERD/C/CHN/CO/10-13, para. 35, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

The Committee requests that the State submit its 14<sup>th</sup> to 16<sup>th</sup> periodic reports together by 28 January 2013, and asks that the document addresses ‘all points raised in the present concluding observations’.<sup>47</sup>

*Last revised and updated: 21 September 2009.*

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<sup>47</sup> CERD/C/CHN/CO/10-13, para. 42, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>.

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