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Bills Committee on Race Discrimination Bill

**Paper prepared by the Legislative Council Secretariat
for the meeting on 28 February 2007**

Issues relating to education for ethnic minorities

Purpose

This paper sets out the issues relating to education for ethnic minorities raised by the Bills Committee on Race Discrimination Bill and summarises relevant issues discussed by the Panel on Education.

Background

2. According to the Education and Manpower Bureau (EMB), all eligible local children, including children of ethnic minorities, are entitled to nine-year free and universal education. As far as EMB is concerned, children of ethnic minorities generally refer to South Asian (mainly Indian/Pakistani/Nepalese) children who are residing in Hong Kong.

3. The right of everyone to education is protected under Article 13 of the International Covenant on Economic, Social and Cultural Rights¹. The right to education and training of everyone, without distinction as to race, colour, or national or ethnic origin, is guaranteed under Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

¹ Under Article 13, the State Parties recognise that (a) primary education shall be compulsory and available free to all; (b) secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; and (e) the development of a system of schools at all levels shall be actively pursued; an adequate fellowship system shall be established; and the material conditions of teaching staff shall be continuously improved.

4. According to the initial report of the Hong Kong Special Administrative Region (HKSAR) submitted to the United Nations under the International Convention on the Elimination of All Forms of Racial Discrimination in late 2000, the HKSAR Government acknowledges without reservation that Article 13 of the International Covenant on Economic, Social and Cultural Rights requires governments to provide free and compulsory primary education to all within their jurisdiction. The HKSAR Government, however, does not consider that free education is required to be provided to the specifications of particular groups.

5. The established Government policy is to facilitate early integration of students of ethnic minorities into the local education system. Parents of children of ethnic minorities can apply to schools direct, or through EMB which has pledged to arrange places for these children within 21 working days. From the 2004 allocation cycle for admission to Primary One and Secondary One onwards, students of ethnic minorities may opt for mainstream schools, or schools that traditionally admit a larger number of students of ethnic minorities. Currently, there are 10 primary schools and five secondary schools that traditionally admit a larger number of non-Chinese speaking (NCS) students. EMB has been putting in place special support measures to cater for the specific needs of NCS students, notably students of ethnic minorities, in schools.

6. According to the Administration, the Race Discrimination Bill does not make it mandatory for affirmative actions to be taken. While special measures that are reasonably intended to address the special needs of ethnic minorities are legitimate under Clause 49 of the Bill, if an act which favours ethnic minorities has the effect of disfavouring those who are equally situated but are not members of the preferred ethnic groups, that act might constitute direct discrimination and would be unlawful under the Bill.

Issues raised by the Bills Committee

7. At its meeting held on 5 February 2007, the Bills Committee discussed the Administration's responses to the following issues raised by members at the first meeting held on 16 January 2007-

- (a) to consider taking affirmative action to ensure that children of ethnic minorities who are disadvantaged by their language proficiency in Chinese would have equal opportunities to receive education (university education in particular) and vocational training; and
- (b) to explain actions taken by the Administration to ensure equal opportunities for ethnic minorities to gain admission to

universities if a legal obligation for affirmative action is not imposed.

8. Arising from the discussion on the Administration's responses, members have raised various issues relating to education for ethnic minorities, a gist of which is summarised in the following paragraphs.

Admission of NCS students to local universities

9. Members have reiterated concern about unfairness suffered by NCS students from families of the lower social class under the existing university admission system. They consider that the application of the Chinese Language requirement for admission of NCS students to the University Grants Committee (UGC)-funded institutions is tantamount to indirect racial discrimination. Members also query whether the existing policy of admission of non-local students, subject to a 10% quota, who are predominantly Mainland students (94% of student intake under this scheme) and the exemption of these students from the Chinese Language requirement for admission to UGC-funded institutions, would be regarded racial discrimination against local NCS students under the Bill.

10. The Administration has made the following responses -

- (a) its initial view, subject to further legal advice, is that the existing policy of admission of non-local students subject to a 10% quota does not constitute racial discrimination under the Bill; and
- (b) the provision of a quota for admission of NCS students to the UGC-funded institutions would not be lawful under the Bill on legal grounds.

11. The Administration has been asked to consider allocating a quota for admitting NCS students to UGC-funded institutions on top of the approved student number of 14 500 for first-year-first-degree programmes.

Legal effect of Clause 49

12. Members have expressed concern that the special measures intended for bestowing benefits on ethnic minorities would be regarded racial discrimination under the Bill, having regard to the argument that the provision of concessionary fares to persons with a disability might constitute a contravention of the Disability Discrimination Ordinance and the High Court's ruling in the case of *Equal Opportunities Commission v Director of Education [2001]*.

13. The Administration has been asked -
- (a) to explain why a defence could be established under Clause 49 for implementing special support measures intending to bestow benefits on ethnic minorities;
 - (b) to give an undertaking as a matter of policy that it would take administrative measures under Clause 49 of the Bill which would have the effect of implementing affirmative action to support NCS students on a long-term basis; and
 - (c) to explain the policy and legal considerations of the Administration for not imposing an obligation for affirmative action under the Bill.

Adequacy of special support measures for ethnic minorities

14. Members have expressed concern that the Administration has not provided adequate special support measures and allocated sufficient resources to cater for the specific needs of ethnic minorities. They consider that conducting vocational training courses in English could not cater for the needs of those ethnic minorities who know very little English.

15. Members have also expressed dissatisfaction that the Administration does not seem to have sufficient information which is relevant to gauging the demand for special support measures such as the academic attainment of ethnic minority students in public examinations and the number of ethnic minorities in Hong Kong who have specific needs in language.

16. The Administration has made the following responses -
- (a) the existing arrangements for vocational training institutions to cater for the specific needs of NCS participants are made having regard to the requirements of the jobs in question; and
 - (b) it would continue to encourage vocational training institutes to arrange translation into the languages of NCS participants where necessary and practicable.

17. The Administration would provide to the Bills Committee information relevant to the demand and supply of the special support measures for ethnic minorities.

Mother tongue education policy

18. Members have expressed concern that, in the light of the mother tongue education policy of the Administration, ethnic minority students might be considered to have been deprived of their right to mother tongue teaching and therefore subject to racial discrimination under the existing education system.

19. The Administration has made the following responses -

- (a) the use of English and Chinese as medium of instruction would facilitate the learning of the official languages for integration purpose;
- (b) exception provisions (Clauses 20(2) and 26(2)) have been provided for in the Bill to the effect that there is no mandatory requirement for modification of the medium of instruction in education and vocational training; and
- (c) the European Court of Human Rights had ruled in the Belgian Linguistics Case (1968) 1EHRR 252 that failure to arrange a particular medium of instruction in educational establishments was not a violation of human rights.

Relevant issues discussed by the Panel on Education

20. The Panel on Education has discussed the provision of education for ethnic minorities at various meetings. A brief summary of the issues discussed and the Administration's responses is in **the Appendix** for members' reference.

**Issues relating to education for ethnic minorities
raised by the Panel on Education and
the Administration's responses**

Issues	Administration's responses
<p>1. <u>Provision of an alternative Chinese Language curriculum for NCS (non-Chinese speaking) students</u></p> <p>(a) Panel members expressed concern that the current policy and practices of requiring schools with enrolment of NCS students to develop school-based curricula had resulted in inconsistent requirements and standards in the teaching of Chinese to NCS students. They considered it imperative to provide an alternative Chinese Language curriculum for NCS students and formulate effective pedagogies for the teaching of Chinese to these students.</p> <p>(b) Panel members also noted the following views of the Equal Opportunities Commission (EOC)-</p> <p>(i) provision of an alternative curriculum in Chinese Language for NCS students would not constitute discrimination against them; and</p> <p>(ii) an alternative Chinese curriculum with equal accreditation as the Hong Kong Certificate of Education Examination (HKCEE) should be developed, with reference to the General Certificate of Secondary Education (GCSE), for NCS students.</p>	<p>(a) The central curriculum framework for the Chinese Language was divided into key stages and was flexible enough to accommodate different adaptations in catering for a wide range of learner abilities and interests. The school-based curricula could be designed by making adaptations to the central curriculum to suit the Chinese competency levels of different NCS students. Suitable school-based adaptations of the central curriculum, coupled with effective learning and teaching strategies and resources support, should enable NCS students to acquire, upon completion of secondary education, a recognised qualification in the Chinese Language.</p> <p>(b) The Administration would develop, under the umbrella of the central Chinese Language curriculum framework, a supplementary guide on the teaching of Chinese to NCS students (the Guide). The Administration aimed to publish a draft Guide by the end of 2007 for consultation, and to finalise the Guide in 2008.</p>

<p style="text-align: center;">Issues</p>	<p style="text-align: center;">Administration's responses</p>
<p>2. <u>Establishment of another public examination in Chinese</u></p> <p>(a) Panel members were of the view that an alternative examination in Chinese should be made available for NCS students to gain admissions to local universities.</p> <p>(b) Panel members expressed concern that the GCSE(Chinese) examination was designed for English-speaking students living in their native countries, and might not be appropriate for ethnic minority students from South Asian places living in a Cantonese-speaking community.</p>	<p>(a) It is neither appropriate nor necessary to develop a new open examination, specifically an easier Chinese examination similar to the English Language (Syllabus A) in HKCEE, to facilitate the entry of NCS students into local universities and other post-secondary institutions.</p> <p>(b) Standards-referenced reporting would be adopted in Chinese Language and English Language from the 2007 HKCEE onwards. By having standards-referencing, an NCS student taking HKCEE or the future Hong Kong Diploma of Secondary Education (Chinese Language) would be able to demonstrate his/her proficiency in Chinese reading, writing, listening, and speaking for further education and employment purposes. Developing an easier examination would mean taking a retrogressive step in the assessment mechanism.</p> <p>(c) The Administration would make arrangements to administer the UK-based GCSE(Chinese) examination in Hong Kong in 2007 for NCS students in the public school sector. The Administration would first develop the Guide and administer the GCSE (Chinese) examination. The need for developing a brand new examination would be reviewed later.</p>
<p>3. <u>Admission to universities</u></p> <p>(a) Panel members were of the view that under the existing arrangements, it was difficult for NCS students to acquire a recognised qualification in the Chinese Language for admission to the University Grants Committee (UGC)-funded institutions and considered it important to provide NCS students with opportunities for access to university education.</p>	<p>(a) The Administration had made preliminary enquiry about the acceptability of alternative Chinese qualifications including the GCSE(Chinese) qualification as a minimum requirement in Chinese Language for admission to undergraduate programmes offered by the UGC-funded institutions. The initial responses of the UGC-funded institutions were diverse. Some institutions said that they would flexibly consider the Chinese Language requirement for admission of NCS students and had been accepting alternative qualifications; some</p>

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<p>(b) Some Panel members considered that the Administration should take the lead to recognise GCSE(Chinese) for the purpose of enabling NCS students to participate in the Hong Kong Advanced Level Examination and request the UGC-funded institutions to accept GCSE(Chinese) as the minimum Chinese Language qualification for admission of NCS students to individual programmes.</p>	<p>institutions asked for more information about the arrangements for administering alternative Chinese Language examinations in Hong Kong; and some others considered it more appropriate to adopt a consistent Chinese Language requirement for admission of all students including NCS students. The Administration would continue to liaise with the UGC and the UGC-funded institutions to seek a clear indication of their requirements on Chinese Language attainment of students for admission to individual programmes.</p>
<p>4. <u>Secondary School Places Allocation (SSPA) arrangement</u></p> <p>Panel members were concerned that it might be difficult under the current SSPA arrangements (which had been implemented with effect from the 2004 allocation cycle) for children of ethnic minorities to enrol in mainstream schools adopting English as the medium of instruction, even though their parents would prefer them to learn in English rather than Chinese in secondary schools.</p>	<p>(a) During the Central Allocation stage under the current SSPA arrangement, students of ethnic minorities were provided with a choice of 30 schools and allocated places on a school net basis. To cater for the need of primary students of ethnic minorities who had little exposure to the Chinese language, adequate Secondary one places in secondary schools which traditionally admitted a large number of students of ethnic minorities had been provided in all the school nets with these students.</p> <p>(b) Primary six students of ethnic minorities could still apply to any one participating secondary school without the restriction of school net at the Discretionary Places stage. In the 2004-05 school year, 210 of the 451 students of ethnic minorities participated in SSPA had successfully secured a Secondary one place at the Discretionary Places stage. Of the remaining 241 students of ethnic minorities, some 37% had included mainstream secondary schools in their choice of schools, and 18% of these schools adopted Chinese as the medium of instruction.</p>

<p style="text-align: center;">Issues</p>	<p style="text-align: center;">Administration's responses</p>
<p>5. <u>Implementation of integrated education</u></p> <p>(a) While Panel members supported the provision of integrated education for NCS students, they considered it necessary to have more designated schools in each of the five electoral constituencies for enrolment of NCS students.</p> <p>(b) Panel members also noted the EOC's advice that, in the light of the small population of NCS students, their geographical distribution in Hong Kong and the need to centralise resources for the provision of better support to schools, it would be justified to provide integrated education for NCS students in a number of schools on a regional basis.</p>	<p>(a) On top of the schools conventionally admitting a greater number of NCS students, one or two mainstream schools (those with a good foundation in supporting NCS students) in each of the five electoral constituencies would be identified.</p> <p>(b) It would be more cost-effective and beneficial for NCS students to learn in designated schools with a critical mass of NCS students. The objective was to offer better support for NCS students through centralising of expertise and focused use of resources, while preserving the right of NCS students to select these designated schools or other schools under the existing school place allocation system.</p>
<p>6. <u>Provision of vocational training</u></p> <p>Panel members were of the view that it was necessary to provide adequate vocational training for NCS students and called on the Administration to plan the provision under the new academic structure.</p>	<p>(a) Active steps had been taken in making available vocational training opportunities in English for NCS students who were less proficient in Chinese. For future career-oriented studies under the new senior secondary curriculum, prospective course providers had already indicated that a number of programmes might be offered in English subject to demand. To further widen the choices of courses for NCS students who had little problem communicating in Chinese orally but were only relatively weaker in reading/writing the language, relevant institutions had been invited to consider supplementing the courses conducted primarily in Chinese with English reading materials/assessment.</p> <p>(b) The next round of consultation in respect of the new academic structure would focus on the curriculum design of career-oriented studies for students who were less inclined to</p>

Issues	Administration's responses
	academic pursuits. The provision of career-oriented studies would serve as a bridge for NCS students to access vocational training in the long term.

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