

**Bills Committee on Race Discrimination Bill
Follow-up Information on Education for the Ethnic Minorities**

Purpose

At the meetings held on 5 February and 28 February 2007, Members asked the Administration to provide information on the following that relate to education for non-Chinese speaking (NCS) students, notably the ethnic minority students –

- (a) whether the admission of non-local students subject to a 10% quota by University Grants Committee (UGC)-funded institutions, who are predominantly Mainland students and do not need to meet the Chinese Language requirement applicable to local students, would be regarded under the Race Discrimination Bill as racial discrimination against local NCS students who are subject to the Chinese Language requirement concerned;
- (b) whether the Administration would consider allocating a quota for admitting NCS students to UGC-funded institutions, e.g. in the form of a quota for NCS students on top of the approved student number of 14 500 for first-year-first degree programmes or a quota within the approved student number for students who participate in the General Certificate of Secondary Education (GCSE) (Chinese) examination in Hong Kong;
- (c) whether the suggestions under (b) could be permitted under Clause 49 of the Bill, and whether they would be challenged as in breach of Article 39 of the Basic Law (BL), Articles 2 and 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), or Article 2 of the International Covenant on Civil and Political Rights (ICCPR);
- (d) if the Administration would not consider allocating a quota, whether it would give an undertaking as a matter of policy that it would make administrative measures under Clause 49 of the Bill to support NCS students on a long-term basis which would have the effect of implementing affirmative action;

- (e) information on the academic attainment of ethnic minority students in public examinations and the number of these students who have been admitted to local universities;
- (f) the number of places available for Chinese Language teachers of the designated schools to participate in the relevant training programmes and the number of these teachers;
- (g) the demand for and the resources allocated to the provision of remedial programmes for NCS students; and
- (h) for those ethnic minorities who have specific needs in language, how their specific needs in receiving vocational training would be met.

This paper addresses the above questions.

Admission of Non-local Students by UGC-funded Institutions

2. Currently, the overall quota for admission of non-local students (including but not limiting to students from the Mainland) to publicly-funded full-time programmes at the sub-degree, undergraduate and taught post-graduate levels is 10% of the respective student number targets. This 10% quota is further split into 4% within approved student number targets¹ (i.e. publicly-funded) and 6% outside approved student number targets (i.e. self-financed). It should however be noted that the quota for non-local students is in fact **a ceiling to protect** the post-secondary educational opportunities of **local students (including local NCS students)** rather than an affirmative quota or privilege for non-local students. Institutions are not obliged to, and indeed they will not, offer places to unqualified non-local students just to fully utilize the 10% quota.

3. Non-local students refer to persons entering Hong Kong for the purpose of education with a student visa/entry permit issued by the Director of Immigration. The distinction is not based on students' race, colour, descent, national or ethnic origin. We therefore are of the view that the current policies would not constitute direct racial discrimination under the Bill. It should also be noted that the quota for admission of non-local

¹ For first-year first-degree programmes, the approved student number target is 14 500.

students does not impose any requirement or condition which has a disproportionate adverse impact on ethnic minority students. On that basis, we consider that such entry policies should not constitute indirect racial discrimination.

The Idea of Setting a Privilege Quota for Admission of NCS Students by UGC-funded Institutions

4. As set out in the paper provided to the Bills Committee on Race Discrimination Bill for discussion on 5 February 2007 [LC Paper No. CB(2)1019/06-07(01)], the objective of the Race Discrimination Bill is to protect **all** individuals, regardless of their race, colour, descent or national or ethnic origin, from being discriminated on the ground of race, whether by private individuals, groups, organisations or public bodies in certain specified fields including education. While special measures that are reasonably intended to address the special needs of ethnic minorities are legitimate under the Bill (Clause 49), 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 might constitute direct discrimination and would be unlawful under the Bill. Setting a privilege quota for ethnic minority students for admission to universities (irrespective of the size of the quota and of whether it is within or above the approved student target) might result in a less well-qualified ethnic minority student being preferred over a better qualified non-ethnic minority student. This might be considered as direct discrimination on the ground of race and would be unlawful under the Bill. Even if the quota is meant for NCS students in general and not specifically for students of certain ethnic origins, it is less likely that an ethnic Chinese student cannot speak Chinese. Therefore, there is likelihood that a *prima facie* case of indirect discrimination under the Bill can be established. More details about the policy and legal considerations of the Administration as a whole for not imposing an obligation for affirmative action under the Bill are provided in LC Paper No. CB(2)1152/06-07(01).

5. Members have enquired whether the setting of a quota for admitting NCS students would be challenged as in breach of BL39, Articles 2 and 13 of ICESCR or Article 2 of ICCPR. In this connection, it should

first be noted that Article 2(1) of the ICCPR² has been incorporated into domestic law by virtue of Article 1(1) of the Hong Kong Bill of Rights (HKBOR). The HKBOR now enjoys an entrenched status under our constitutional document by virtue of BL39³. Article 1(1) of the HKBOR reads as follows:

“The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

6. The right to equality and non-discrimination is also protected under Article 2 of the ICESCR in terms similar to Article 1(1) of the HKBOR. Article 2(2) of the ICESCR provides that:

“The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social, property, birth or other status.”

7. The right to education is a right enunciated in the ICESCR and a State Party is under an obligation to ensure that all individuals subject to its jurisdiction should be able to enjoy the right without distinction of any kind including race and colour. Article 13 of the ICESCR, so far as relevant, reads as follows:

“1. The States Parties to the present Covenant recognize the right of everyone to education. ...

² Article 2(1) of ICCPR provides that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

³ BL39 provides that –

“The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

...

(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.”

8. In construing the protection under Article 13(2) of the ICESCR, the United Nations (U.N.) Committee on ICESCR has identified “accessibility” as an essential feature of the right guaranteed under Article 13(2):

“Accessibility – educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. ...

(i) Non-discrimination – education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds ...;”. (General Comments 13, paragraph 6(b))

9. At paragraph 19 of General Comments 13, the U.N. Committee on ICESCR further indicated that:

“According to article 13(2)(c), higher education is not to be “generally available”, but only available “on the basis of capacity”. The “capacity” of individuals should be assessed by reference to all their relevant expertise and experience.”

10. The suggestion of assigning a quota for NCS students for university admission would likely be challenged on the basis that a quota system which tends to offer more favourable treatment to ethnic minorities at the expense of non-ethnic minority students is in breach of the equality guarantee under Article 1(1) of the HKBOR/Article 2(1) of the ICCPR, Article 22 of the

HKBOR/Article 26 of the ICCPR⁴ read together with BL39. A Chinese speaking student who is likely to be an ethnic Chinese may further allege that the quota system which allocates school places according to the racial background of the students, or the students' mother tongue and hence indirectly favours those students with particular racial background, is inconsistent with Articles 2 and 13 of the ICESCR. The quota system which tends not to look at individual merits of the applicants but assigns school places according to the racial background or the mother tongue of the students would be in breach of Article 13(2)(c) as it fails to make higher education accessible to all on the basis of capacity. It is also unlikely that a mechanical quota system would be allowed under Clause 49 (including Clause 49(c)) of the Bill.

11. As for the suggestion of setting a quota for students participating in GCSE (Chinese) examination or any other alternative Chinese Language qualifications in general, provided that all students, regardless of their racial or ethnic background, would be able to compete with each other for every place under the quota, it is unlikely that the proposal would raise any issue under the equality provisions of the BL or the Bill. However, the Administration considers it inappropriate to do so as such a quota may be used by local Chinese-speaking students who should have the capacity to take the mainstream Chinese Language examination required for entry to universities but have only chosen to take advantage of an alternative Chinese Language examination which is simpler. Separately, if the quota is confined to NCS students participating in the GCSE (Chinese) examination, the same problem as set out under paragraph 10 would arise.

Administrative Measures to Support NCS Students

12. The various special educational support measures provided for NCS students have already been set out in LC Paper No. CB(2)1019/06-07(01). We shall also review the effectiveness of our measures from time to time. It should be noted that these measures seek to

⁴ Article 22 of the HKBOR/Article 26 of the ICCPR provides that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

address the needs of the ethnic minorities in a rational and proportionate manner and should not have the effect of disfavouring those who are equally situated but are not members of the preferred ethnic groups.

Academic Attainment of NCS Students in Public Examinations and Admission to Local Universities

13. Candidates of the Hong Kong Certificate of Education Examination (HKCEE) and Hong Kong Advanced Level Examination (HKALE) are not required to submit information on their racial origin/nationality. That said, beginning from the 2006/07 school year, this Bureau has started to collect information on students' ethnicity and spoken language at home from Primary 1 to Secondary 7 through the annual Student Enrolment Survey. With this information, we should be able to trace the performance of these students in the HKCEE and HKALE from this year onwards. That said, the relevant analyses are not meant to compare NCS students with Chinese-speaking students but to facilitate planning of special support measures for the former. The learning effectiveness of students not only hinges on the learning and teaching in schools, but is also affected by the extent of family support, the learning motivation of individual students, the length of time in which the students have settled in Hong Kong etc. There are so many confounding variables affecting the performance of students in public examinations and their articulation to further studies that it would be over-simplified to correlate the results with just the ethnicity/non-Chinese speaking background of the students. It would also be over-simplified to draw conclusions on the effectiveness of our educational support measures for NCS students from these results alone.

14. In fact, in order to help map out systematic support services for NCS students, this Bureau has commissioned a local university to conduct a three-year longitudinal study about the development and adaptation of NCS students allocated to Primary 1 in mainstream schools in the 2004/05 school year until they complete Primary 3 in the 2006/07 school year. To be completed in mid-2008, this Study will evaluate the integration of NCS students in the school community and the findings will shed light on, among other things, the learning attitude, behavior and academic performance of NCS students in mainstream schools.

Training for Chinese Language Teachers of Designated Schools

15. As set out in LC Paper No. CB(2)1019/06-07(01), we have commissioned a tertiary institution to run training programmes for Chinese Language teachers in the designated schools. The programmes are expected to commence around May 2007. We shall be providing a total of 150 training places over two and a half years, which should be sufficient for some 140 Chinese Language teachers in designated primary schools. As for some 50 Chinese Language teachers in designated secondary schools, the Chinese Learning Support Centre to be run by tertiary institution(s) will be able to provide support and training for them, apart from offering remedial programmes for NCS students as described in paragraph 16 below.

Remedial Programmes for NCS Students at School Levels

16. As set out in LC Paper No. CB(2)1019/06-07(01), action is in hand to commission tertiary institution(s) to run a Chinese Learning Support Centre, which will support NCS students who are less proficient in Chinese (in particular the late starters) by offering remedial programmes after school hours or during holidays. Subject to smooth completion of the tendering process, we expect the Centre to start operation in mid-2007. The Centre will target its services at NCS students in our secondary schools who are in need of the intensive support, notably those who may not have received comprehensive education in Chinese Language when they were in primary schools. For planning purpose, the Centre is designed to have the capacity to provide support for the entire population of Secondary 1 to Secondary 5 NCS students. We will have a better idea of the actual demand when the Centre comes into operation.

17. Apart from the remedial programmes to be offered by the Centre, this Bureau has all along been arranging a number of other programmes for NCS students including the 6-month Initiation Programme⁵, 60-hour

⁵ This Programme is designed for newly arrived children (including newly arrived NCS children) to enhance the readiness of these children to receive formal schooling (e.g. to have acquired the basic proficiency in Chinese and English).

Induction Programme⁶ and 4-week Summer Bridging Programme⁷. Besides, publicly-funded schools admitting newly arrived children (including newly arrived NCS children) are provided with the School-based Support Scheme Grant for arranging school-based programmes such as orientation, intensive and/or remedial teaching as well as personal development training. In the 2005/06 school year, some 227, 26 and 367 NCS students attended the 6-month Initiation Programme, 60-hour Induction Programme and 4-week Summer Bridging Programme respectively, and the School-based Support Scheme Grant for 348 NCS students was provided to 85 publicly-funded schools.

Vocational Training

18. In LC Paper No. CB(2)1019/06-07(01), we have set out the efforts put in by vocational training institutions in offering English programmes for the NCS community. For individuals in the NCS community who have difficulties with both Chinese and English, the ultimate objective should be to help them acquire proficiency in at least one of our official languages (i.e. English or Chinese) to facilitate their job seeking and integration into the wider community rather than tailor-make courses to be conducted in their mother tongue. That said, we shall try to address their specific language needs where practicable and where this will not go against the objectives of the training programmes concerned.

19. On the dedicated programmes for NCS youths and adults provided by the Vocational Training Council (VTC), language support measures will be provided as part of the curriculum as far as practicable. The VTC is also exploring the feasibility of providing interpretation services in some ethnic minority languages (for example Urdu and Nepali) in classes where necessary and practicable. Moreover, the VTC will consider the feasibility of providing preparatory courses on English for interested NCS students before they attend vocational training courses to be conducted in English.

⁶ We have invited non-governmental organizations to run this Programme for newly arrived children (including newly arrived NCS children) to help them learn more about the community, acquire basic learning skills and get an early exposure to the Chinese language.

⁷ This Programme focuses on exposure to oral and written Chinese in a classroom setting. It is currently confined to NCS Primary 1 entrants but will be extended to cover also NCS students proceeding to Primary 2, Primary 3 and Primary 4 starting from summer 2007.

Presentation

20. This paper has been prepared in response to Members' request as recorded at paragraphs 2(b), 2(c), 3(b), 3(c) and 3(d) of the minutes of the Bills Committee meeting held on 5 February 2007, and paragraphs 3(a), 3(b), 4(a), 4(b), 4(c) and 4(e) of the minutes of the Bills Committee meeting held on 28 February 2007.

Education and Manpower Bureau
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