

Legislative Council Panel on Home Affairs

Outline of the Second Report of the Hong Kong Special Administration under the International Convention on the Elimination of All Forms of Racial Discrimination

Purpose

This paper presents for Members' consideration the Outline of the Second Report of the Hong Kong Special Administrative Region (HKSAR) under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Application of the ICERD

2. The application of the ICERD was first extended to Hong Kong by the United Kingdom Government in 1969. Following Reunification on 1 July 1997, it has continued to apply to the HKSAR since China was also a State Party to the ICERD.

Reporting obligation under ICERD

3. Under Article 9 of ICERD, State Parties have obligation to make periodic reports "on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention". The HKSAR's first report was submitted as part of China's combined Eighth and Ninth Reports to the United Nations (UN) in October 2000. It was heard by the UN Committee on the Elimination of Racial Discrimination (the Committee) on 31 July and 1 August 2001.

4. We have been advised that the Central People's Government (CPG) would submit China's combined Tenth to Thirteenth Report under the ICERD to the UN in 2007. In this connection, we have also been requested to submit to the CPG, by end March 2007, our report on the implementation of the ICERD in HKSAR, for incorporation into the CPG's Report.

Public consultation

5. In line with established practice, we have prepared for public consultation a proposed outline of the topics for inclusion in the report. This covers development in the HKSAR since the Committee last examined the situation in Hong Kong in 2001. The purpose of the consultation is to solicit public views, to encourage community involvement in drafting of the report and to help ensure comprehensive coverage on the part relating to the HKSAR. The process of consultations undertaken by the HKSAR for the preparation of these reports, which included consultations with civil society is often appreciated by the Treaty Monitoring Bodies.

6. The public consultation on the report outline has started on 4 December 2006. We have issued the outline to all Legislative Council Members, relevant non-governmental organizations and other concerned groups to invite their views, particularly on the implementation of the Convention in respect of those topics listed in the outline and to suggest other topics for inclusion. The outline is also being distributed at all District Offices, and in electronic form on the Home Affairs Bureau's website at <http://www.hab.gov.hk>.

7. Public consultation will close on 12 January 2007. We will consider all the comments received in drafting of the report for submission to CPG. For transparency, the original texts of the comments received will be sent to the Secretariat of the Committee so as to ensure that the Committee has full access to the representations. They will also be available to members of the public on request, unless the contributor has specifically asked us to keep their views confidential.

Summary of the outline for the report

8. For ease of reference, a further copy of the Outline which had been sent to Members on 4 December 2006 is attached at Appendix. As required by the UN, the report will be structured in the same order as Part I (ie Articles 1 to 7) of the ICERD and cover the relevant provisions. The key topics to be covered in the report are as follows.

Article 1: Application

9. We shall advise the Committee on the development in areas concerning the Government's policy with regard to racial discrimination, the protection of the rights given under the Convention, the demographic composition of Hong Kong and problems faced by different ethnic groups. We shall also explain the measures taken to publicise the Committee's concluding observations of the HKSAR's initial report under the Convention and to disseminate the present one.

Article 2 - Policy of eliminating racial discrimination

10. We shall advise the Committee on the development of legislating against racial discrimination, and the Administration's measures to promote racial harmony. We shall also inform the Committee on any new developments regarding the various special groups, including foreign domestic helpers, refugees, migrants and illegal immigrants from Vietnam (including ex-China Vietnamese illegal immigrants), new residents of Pakistani origin, and the ethnic minorities in Hong Kong.

Article 3 - No racial segregation or apartheid

11. We shall advise the Committee that the position under this section remains the same as in HKSAR's initial report, i.e. neither apartheid nor any kind of racial segregation is practised in Hong Kong. We shall also update the Committee on any development in the pattern of settlement of different ethnic groups in Hong Kong.

Article 4 - No propaganda or organisations based on racial superiority

12. We shall advise the Committee that the position remains as reported in HKSAR's initial report, i.e. Hong Kong has a protection framework in place to protect the right and freedom of opinion and expression, and to guard against crimes and propaganda based on racial superiority.

Article 5 - Guarantees of rights without distinction as to race, colour, or national or ethnic origin

13. We shall advise the Committee the developments in regard of the various rights given under this Article, including equal treatment before tribunals and organs administering justice, security of person, political rights, civil rights, economic, social and cultural rights, and right of access to services.

Article 6 - Protection and remedies against any acts of racial discrimination

14. We shall advise the Committee that the position under this section remains as explained in the initial report. The proposed legislation against racial discrimination, when enacted, will strengthen existing measures in this area.

Article 7 - Measures to combat prejudice

15. We shall advise the Committee of our ongoing initiatives to promote understanding, tolerance and friendship among Hong Kong's ethnic groups, both in the schools and in the general community.

Presentation

16. Members are invited to comments on the report outline attached. We shall take into careful account their views and suggestions in drafting the report. In due course, the report will also be published for dissemination to the public and copies will be sent to Members when it is submitted to the Committee.

**Home Affairs Bureau
December 2006**

**An outline of the topics to be covered
in the second periodic report on the
Hong Kong Special Administrative Region
under the International Convention on the
Elimination of All Forms of Racial Discrimination**

Introduction: the present report

The Administration is preparing for the submission of the second report of the Hong Kong Special Administrative Region under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It will form part of the People's Republic of China's combined tenth to thirteenth report under the ICERD.

2. In accordance with past practice, we have prepared an outline of the report. It sets out the broad subject headings and individual topics that we envisage covering in the report. We invite all members of the public to submit their views on the implementation of the Convention in respect of those topics and to suggest any additional topics that they consider we ought to include.

3. We will carefully consider all the comments we received. We will also send them to the Secretariat of the Committee on the Elimination of All Forms of Racial Discrimination (the Committee), treaty monitoring body of the ICERD, so as to ensure that the Committee has access to the full, original texts of the comments received. Bearing in mind this consideration, contributors whose submissions are written in Chinese may wish to consider arranging their own English translations as it would not be appropriate for us to arrange such. Submissions will normally be made available to the general public upon request, unless the contributors specifically ask us to keep their views confidential.

4. The text of the Convention is available at the Home Affairs Bureau (HAB) web site:

http://www.hab.gov.hk/file_manager/en/documents/policy_responsibilities/icerd.doc 5.

References to 'the initial report' are to the report on the Hong Kong Special Administrative Region submitted by the Central People's Government in October 2000 and heard by the Committee in July/August 2001. A copy of the initial report is also available on the HAB website :

http://www.hab.gov.hk/en/policy_responsibilities/the_rights_of_the_individuals/report.htm 6.

5. The initial report contained detailed information on the laws, policies, and practices that are in place to ensure Hong Kong's compliance with the Convention. Many of those are long standing and, by nature, tend to remain unchanged – or change very little – over time. In line with the drafting convention adopted in other human rights reports presented to treaty monitoring bodies, we do not propose to repeat descriptions or explanations of such matters in this report; instead, we will simply state that “there have been no significant developments in regard to [the topic in question] and the situation remains essentially as explained in paragraphs [x to y] of the initial report.”

6. The report will chiefly comprise –

- (a) information/explanations about any significant developments since the hearing of the initial report. Our preliminary views as to the areas in which there may have been developments that qualify as ‘significant’ are indicated in the topic headings below. As indicated in paragraph 2 above, respondents are welcome to propose additional topics that they consider so qualify. We ask that, in proposing additional topics, they state why they consider the issue/development to be significant (and relevant to the application of the Convention in Hong Kong), and to set out their views on the Government's performance in handling the issue;
- (b) updates of any developments that were ongoing at the time of the 2001 hearing and in respect of which we undertook to inform the Committee of future progress/outcomes; and
- (c) responses to the concerns and recommendations in the Committee's concluding observations of 9 August 2001 (reproduced at **Annex**).

Part I: General Profile of the Hong Kong Special Administrative Region (HKSAR)

7. The ‘profiles’ follow a standard format, form and content being prescribed in the United Nations Manual on Human Rights Reporting. Part I of the present report will be essentially the same as Part I of our second report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, updated as may be necessary.

Part II: Information in relation to each of the Articles in Part I of the Convention.

Article 1: definition of racial discrimination

8. The commentary on Article 1, in the United Nations Manual on Human Rights Reporting (pages 273 and 274), advises Parties to –

- (a) discuss their policy with regard to racial discrimination and the legal framework of such a policy;
- (b) provide information on how the Convention and the rights put forward in it become part of the domestic legal order; and
- (c) provide general background information on the reporting State, and make special reference to the demographic composition of the population, and to any problems confronting different ethnic groups.

We will advise the Committee of any significant developments in these areas since 30 June 2000 (the ‘cut-off date’ of our initial report) in respect of Article 2 and in the ‘General Framework’ in Part I.

9. We will also explain the measures undertaken to publicise the Committee’s concluding observations on our initial report and to disseminate the present one. In so doing, we will assure the Committee that there has been no departure from the position in paragraphs 9 and 24 of the 2001 concluding observations, where the Committee –

- (a) welcomed “the extensive consultation with civil society in the preparation of, in particular, the part of the State party report pertaining to the Hong Kong Special Administrative Region”; and
- (b) recommended “that the State party’s reports continue to be made readily available to the public from the time they are submitted and that the Committee’s observations on them be similarly publicised.”

Article 2 - Policy of eliminating racial discrimination

Legal framework

10. We will advise the Committee that the legal framework is essentially as described in paragraphs 2 to 5 of the initial report. We will also address

paragraph 19 of the 2001 concluding observations, where the Committee requested –

“...the State party to provide in subsequent reports, inter alia, detailed information on judicial cases relating specifically to violations of the Convention, including in the Hong Kong and Macau Special Administrative Regions, with special reference to the granting by courts of adequate reparation for such violations.”

To date, the Hong Kong courts have not made any judicial decisions on the issue of racial discrimination in relation to the Convention. We will inform the Committee of the position at the time of finalising the report, updating as necessary at the eventual hearing.

Policy

11. We will advise the Committee that the position is broadly as explained in paragraph 11 of the initial report. That is, we are committed to the promotion of equal opportunities for all and firmly believe that all forms of discrimination – including racial discrimination – are wrong. At the same time, we believe that each form of discrimination has its own characteristics, including the particular ways in which they may be manifested in Hong Kong. Therefore, strategies for combating them must be appropriate to the particular form of discrimination that they are intended to address. Thus, in the case of discrimination on the grounds of sex, disability and family status, we have considered the legislative approach to be appropriate. In the case of discrimination on the grounds of race, we formerly considered that a combination of administrative measures and public education offered the best way forward. Such measures remain important and we will discuss some of them in this section of the report (see paragraph 14 below). But changing circumstances, together with research and public consultations undertaken since 2001 have led us to conclude that a change of policy is necessary and we are introducing legislation against racial discrimination. Details are at paragraphs 12 and 13 below.

Legislation: the way forward

12. In paragraph 17 of the 2001 concluding observations, the Committee reiterated –

“...its concern about the continuous absence in the Hong Kong Special Administrative Region of legal provisions protecting persons from racial discrimination to which they may be subjected by private

persons, groups or organizations. The Committee does not accept the argument put forward for not initiating such legislation, i.e. that such legislation would not be supported by the society as a whole. It is recommended to the Government of the State party and to the local authorities of Hong Kong Special Administrative Region that the existing unsatisfactory situation be thoroughly reviewed and that appropriate legislation be adopted to provide appropriate legal remedies and prohibit discrimination based on race, colour, descent or national or ethnic origin similarly to what has been done with regard to discrimination on the grounds of gender and disability.”

13. In response, we will advise the Committee of deliberations of the Government on legislation against racial discrimination since the last hearing, culminating in the publication of the Race Discrimination Bill on 1 December 2006 and its introduction into the Legislative Council on 13 December 2006. We will provide a summary of the Bill and the measures taken to publicise the Bill. No doubt we will update progress on the scrutiny of the Bill at the eventual hearing.

Administrative measures to promote racial harmony

14. We will inform the Committee of developments since June 2000. These will include –

- the establishment, in 2002 of the Race Relations Unit;
- the establishment, also in 2002, of the Committee on the Promotion of Racial Harmony: this is a joint committee, comprising representatives of NGOs and the Government. Its purpose is to propose and carry out public education programmes in relation to race. The Race Relations Unit serves as its secretariat;
- the establishment, in February 2002, of the Mobile Information Service at Hong Kong International Airport: this is a joint venture between the International Social Service (Hong Kong Branch) and the Home Affairs Bureau. The Service, which is situated airside within the immigration area of the airport, is staffed by six ‘Information Ambassadors’, who speak the languages most commonly used by migrant workers and new arrivals (its target clientele) from places other than Mainland China. Its purpose is to provide that clientele with the information they need to settle quickly and with the minimum difficulty into the Hong Kong community;

- the publication of a service guidebook that is available in eight languages. The guides provide comprehensive information on Government and non-governmental organisation services and are tailored to the needs of each client community;
- the launch of radio programmes in Urdu and Nepali on a pilot basis since November 2004. We are now launching the fifth series on the Commercial Radio and an Indonesian-Cantonese bilingual radio show on Radio Television Hong Kong;
- sponsoring a Pakistani and a Nepalese organizations – each of which established a Community Support Team to service its respective ethnic community on a pilot basis for two years;
- sponsoring two Community Development Teams for South Asians in Yau Tsim Mong and Yuen Long districts respectively;
- our ‘Multi-lingual Phrasebook for Emergencies’, designed as an aid for front-line emergency service staff and patients who do not speak Cantonese or English;
- the ‘Culture in Motion’ thematic series of Sunday programmes introduced in 2005 as a vehicle for the celebration of multi-cultural diversity; and
- further proposals conceived to support vocational training of ethnic groups.

Special groups

15. We will inform the Committee of any new developments in respect of –

- **foreign domestic helpers:** reduction of the minimum payable wage and new regulations on home leave and the ‘live-in’ requirement. In this context, we will address paragraph 18 of the concluding observations, where the Committee reiterated –

“...its concern regarding the situation of foreign domestic workers in the Hong Kong Special Administrative Region, mainly from the Philippines, Indonesia and Thailand, and the existence of certain rules and practices, such as the so called “two-weeks rule”, which may be discriminatory in effect.”;

- **Refugees, migrants and illegal immigrants from Vietnam (including ex-China Vietnamese illegal immigrants);**
- **New residents of Pakistani origin;**
- **The ethnic minorities: we will inform the Committee of –**
 - (a) the establishment, in 2003, of the Ethnic Minorities Forum to provide a regular and formal channel for members of the minority communities and the NGOs that specialise in serving them to discuss with Government representatives matters of ongoing concern. The membership is self-nominating and – given adequate notice – the agenda is open for the inclusion of topics suggested by Forum members; and
 - (b) the establishment, in 2002, of the Chomolongma Multi-Cultural Community Centre as a meeting point and activity centre for the minority communities and other residents of the Northwest New Territories.

Article 3 - No racial segregation or apartheid

16. We will advise the Committee that the position remains as explained in paragraph 61 of the initial report.

Patterns of settlement

17. In paragraphs 62 to 64 of the initial report, we advised the Committee that some ethnic groups were found to be residing in some localities in greater numbers than in others. But as yet, there were no clear signs of ‘ghettoisation’¹. We will inform the Committee of any changes in this regard. Information from the public will be particularly helpful in this respect.

¹ This entry addresses a requirement in the most recent (1997) edition of the UN Manual on Human Rights Reporting. In relation to Article 3 of the ICERD, the Manual records that – at its 1125th meeting (17 August 1995) the CERD adopted General Recommendation XIX(47). Inter alia, this observed that “while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities, residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds”. Accordingly, the Committee invited States Parties “to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports” [UN Manual, pages 278 and 279].

Article 4 - No propaganda or organisations which are based on racial superiority

18. We will advise the Committee that the position remains as reported in paragraphs 65 to 70 of the initial report.

Article 5 - Guarantees of rights of everyone without distinction as to race, colour, or national or ethnic origin

Article 5(a) - equal treatment before tribunals and organs administering justice

19. We will advise the Committee of any developments since the position reported in paragraph 72 of the initial report, in relation to –

- (a) the legal framework;
- (b) legal aid;
- (c) decisions made under the Immigration Ordinance; and
- (d) persons in Police custody.

Article 5(b) - security of person

20. We will advise the Committee that the position remains as reported in paragraph 80 of the initial report.

Article 5(c) - political rights

21. We advised the Committee in the initial report that our electoral laws make no reference to race, colour or national or ethnic origin. We will advise the Committee that the position remains unchanged.

Article 5(d) - Civil rights

22. We will advise the Committee of any development since the position remains as reported in paragraphs 91 to 123 of the initial report in regard to the –

- (i) freedom of movement;
- (ii) freedom to leave the territory;
- (iii) right to residency/right of abode;

- (iv) right to marriage;
- (v) and (vi) right to own property and inherit;
- (vii) freedom of thought, conscience and religion;
- (viii) freedom of expression; and
- (ix) freedom of peaceful assembly and association.

Article 5(e) - Economic, social and cultural rights

23. We will advise the Committee of any developments in relation to the matters discussed in paragraphs 124 to 159 of the initial report in relation to –

- (i) employment rights, including –
 - maternity protections for domestic helpers (decision on the Labour Department's 1999 review); and
 - the minimum allowable wage for foreign domestic helpers;
- (ii) the right to form and join trade unions;
- (iii) the right to housing;
- (iv) the right to receive medical care, social security and social services;
- (v) the right to education and training; and
- (vi) the right to participate in cultural activities.

Article 5(f) - right of access to services

24. We will inform the Committee that the position is essentially as explained in paragraphs 160 and 161 of the initial report, though the proposed legislation against racial discrimination (see paragraph 13 above in relation to Article 2) will strengthen existing measures to protect this right. We will advise the Committee of a range of measures adopted by the Education and Manpower Bureau over the years to support non-Chinese speaking ethnic minority children at schools and in enhancing their learning of the Chinese language.

Article 6 - Provision of effective protection and remedies against any acts of racial discrimination

25. We will advise the Committee that the position remains as explained in paragraphs 163 and 164 of the initial report, though the proposed legislation against racial discrimination (paragraph 13 above in relation to article 2) will strengthen existing measures in this area.

Article 7 - Measures to combat prejudice

26. In this section, we will advise the Committee of our ongoing initiatives to promote understanding, tolerance and friendship among Hong Kong's ethnic groups, both in the schools and in the general community. They include –

- talks to schools, non-governmental organisations and government departments to arouse students' awareness and interest at an early age;
- the after school support programmes provided from 2004 to 2006 to help minority school children adapt to school life in Hong Kong by providing a link between the home and the school and assistance with homework, language learning and so forth;
- the provision of language courses in English and Cantonese through non-governmental organisations;
- the introduction of the Harmony Scholarship in 2004 to recognise schools that have made much effort in diversifying their enrolment;
- an annual funding scheme to encourage community-based initiatives to promote awareness and to encourage contact between the minorities and the majority population; and
- the Community Organiser Training Programme initiated in 2004 to help potential community organisers to address problems experienced by the minority communities and to train them in the promotion of racial harmony.

We will advise the Committee of the work done at district level by the 18 District Councils with a view to promoting racial harmony. This section will include an explanation of our response to the *Durban Plan of Action* of 2001, which will be attached as an Annex. The Plan forms part of the

Durban Resolution, which can be found on the internet at <http://www.un.org/WCAR/durban.pdf>.

Home Affairs Bureau
December 2006

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-ninth session
30 July – 17 August 2001

CERD/C/59/Misc.16/Rev.3
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Concluding Observations of the Committee on the Elimination of Racial Discrimination

(Note: this document only contains extracts of paragraphs concerning the Hong Kong Special Administrative Region)

China

1. The Committee considered the eighth and ninth periodic report of China (CERD/C/357/Add.4, Parts I, II and III), which were due on 28 January 1997 and 28 January 1999 respectively, at its 1468th and 1469th meetings (CERD/C/SR.1468 and 1469), held on 31 July and 1 August 2001. The eighth and ninth periodic report of China consists of three separate parts. Part I covers the whole of China, with the exception of the Hong Kong and Macau Special Administrative Regions, which are covered by Part II and Part III respectively. At its 1480th and 1481st meetings, held on 8 and 9 August 2001, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the opportunity to continue its dialogue with the State party, including with representatives from the Hong Kong and Macau Special Administrative Regions. The Committee was encouraged by the attendance of a large delegation representing important governmental departments as well as the Hong Kong and Macau Special Administrative Regions.

3. The Committee welcomes the detailed and comprehensive report submitted by the State party, the contents of which correspond with the Committee's guidelines for the preparation of reports. The additional oral information provided by the delegation in response to the wide range of questions asked by Committee members is also appreciated.

5. In view of the dialogue held, the Committee wishes to emphasize that irrespective of the relationship between the central authorities and the special administrative regions, and the principle "One Country; Two Systems", the People's Republic of China has, as the State party to the Convention, the responsibility to ensure its implementation on its entire territory.

B. Positive aspects

8. The Committee notes that as a result of its previously expressed concerns and recommendations, the recently conducted 2001 Population Census in the Hong Kong Special Administrative Region included questions which would help to determinate

the ethnic and racial composition of the region and allow for the identification of minority groups and an analysis of their political, economic and social situation.

9. The Committee welcomes the extensive consultation with civil society in the preparation of, in particular, the part of the State party report pertaining to the Hong Kong Special Administrative Region and the indication by the delegation that projects are already under way in that region to address some of the problems identified by non-governmental organizations during those consultations, such as the provision of language training for immigrants, mainly of Nepalese, Pakistani and Bangladeshi origin.

C. Concerns and recommendations

17. With reference to article 2, paragraph 1(d) of the Convention, the Committee takes note of on-going consultations, but reiterates its concern about the continuous absence in the Hong Kong Special Administrative Region of legal provisions protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations. The Committee does not accept the argument put forward for not initiating such legislation, i.e. that such legislation would not be supported by the society as a whole. It is recommended to the Government of the State party and to the local authorities of Hong Kong Special Administrative Region that the existing unsatisfactory situation be thoroughly reviewed and that appropriate legislation be adopted to provide appropriate legal remedies and prohibit discrimination based on race, colour, descent or national or ethnic origin similarly to what has been done with regard to discrimination on the grounds of gender and disability.

18. The Committee reiterates its concern regarding the situation of foreign domestic workers in the Hong Kong Special Administrative Region, mainly from the Philippines, Indonesia and Thailand, and the existence of certain rules and practices, such as the so called "two-weeks rule", which may be discriminatory in effect.

19. The Committee requests the State party to provide in subsequent reports, inter alia, detailed information on judicial cases relating specifically to violations of the Convention, including in the Hong Kong and Macau Special Administrative regions, with special reference to the granting by courts of adequate reparation for such violations.

24. The Committee recommends that the State party's reports continue to be made readily available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized.

25. The Committee recommends that the State party submits its tenth periodic report jointly with its eleventh periodic report, due on 28 January 2003, and that it addresses all points raised in the present observations.
