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Panel on Home Affairs

Background brief prepared by Legislative Council Secretariat for the meeting on 12 January 2007

The International Convention on the Elimination of All Forms of Racial Discrimination

Purpose

This paper gives an account of the discussions of the Panel on Home Affairs on the first report of the Hong Kong Special Administrative Region (HKSAR) under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and on the preparation of HKSAR's second report under the Convention.

Background

2. ICERD was extended to Hong Kong in March 1969. Prior to 1 July 1997, the 14th periodic report of the United Kingdom (UK) on Hong Kong was submitted by the UK Government in November 1996 as part of the report of UK. The report was considered by the United Nations (UN) Committee on the Elimination of Racial Discrimination (UNCERD) in March 1997. UNCERD issued its Concluding Observations on 20 March 1997, a copy of which is in **Appendix I**.

3. UNCERD expressed concern, in paragraph 19 of its Concluding Observations, that specific legislation against racial discrimination was not yet available in all the Dependent Territories and Crown Dependencies, and, in paragraph 20, about the absence of a provision in the Hong Kong Bill of Rights Ordinance protecting persons from racial discrimination to which they might be subjected by private persons, groups or organisations.

4. In June 1997, the Permanent Representative of the People's Republic of China (PRC) to UN notified the UN Secretary General that ICERD would continue to apply to the Hong Kong Special Administrative Region (HKSAR) with effect from 1 July 1997, and that the Central People's Government (CPG) of PRC would assume responsibility for the international rights and obligations arising from the application of ICERD to the Region.

5. The first report of HKSAR under ICERD was submitted to UN by the Permanent Representative of the Chinese Mission to UN on 3 October 2000. UNCERD examined the report on 31 July and 1 August 2001 and published its Concluding Observations on 9 August 2001, a copy of which is in **Appendix II**. In paragraph 17 of its Concluding Observations, UNCERD reiterated its concern about the continuous absence in HKSAR of legal provisions protecting persons from racial discrimination to which they might be subjected by private persons, groups or organisations. UNCERD recommended that appropriate legislation be introduced in HKSAR to provide appropriate legal remedies and prohibit discrimination based on race, colour, descent or national or ethnic origin. UNCERD also recommended the State Party to submit its 10th periodic report jointly with its 11th periodic report, which would be due on 28 January 2003, and to address all the points raised in the Concluding Observations in the next report.

6. China will submit its 10th to 13th combined periodic report under ICERD to UN in 2007. The Administration is preparing its second report on the implementation of the Convention in the Region for incorporation into China's report. In this connection, the Administration has published an outline of topics to be included in the report which will cover developments in HKSAR since UNCERD last examined the HKSAR situation in 2001. The Administration is seeking public views on the state of implementation of the Convention in HKSAR. The consultation period will close on 8 January 2007.

Panel discussions on the first report of HKSAR under ICERD

First report submitted in 2000

7. The Panel on Home Affairs discussed the outline of topics to be covered in the first report of HKSAR under ICERD with the Administration and deputations at its meeting on 10 January 2000. The Panel further discussed the first report of HKSAR at its meeting on 10 July 2001 prior to the hearing held by UNCERD on 31 July and 1 August 2001 to examine the eighth and ninth periodic report of China. The major issues discussed at the two meetings are summarised in paragraphs 8 to 14 below.

Failure to introduce legislation against racial discrimination

8. Hon Emily LAU and Hon Cyd HO shared the concern raised by deputations and UNCERD about the absence in Hong Kong of legislation protecting persons from racial discrimination to which they might be subjected by private persons, groups or organisations. Ms LAU expressed dissatisfaction at the slow progress made by the Administration in introducing such legislation, given that some business organisations had already expressed support for legislating against racial discrimination. Ms LAU pointed out that the UN Committee on Economic, Social and Cultural Rights (UNCESCR) also considered that the HKSAR's failure to prohibit racial

discrimination in the private sector had constituted a breach of its obligations under Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). She asked whether it was the Administration's stance that the HKSAR's failure to do so did not constitute a contravention of its obligations under ICESCR or ICERD.

9. The Administration explained that it had great respect for the Concluding Observations issued by the treaty committees and would follow up their recommendations therein accordingly. While the Administration did not agree with the specific observation made by UNCESCR in respect of Article 2 of ICESCR, it acknowledged the need to review the problem of racial discrimination in the light of changing social circumstances. The Administration considered that the problem of racial discrimination in the territory was far less serious than many other advanced countries where legislation against racial discrimination had been introduced. The Administration was of the view that the most effective way of stamping out racial discrimination was by changing people's attitude through public education and publicity rather than by legislation. The Administration, however, would conduct another round of public consultation to examine the need to regulate, by legislation, discriminatory acts on the basis of race in the private sector or between individuals. Based on the results of the survey, the Administration would further review the need to legislate against racial discrimination in early 2002.

10. The Administration stressed that, as racial discrimination was a complex issue, it had to consider the overall interests of the community and the concerns expressed by certain sectors about the possible adverse impact of legislating against racial discrimination. Apart from conducting the opinion survey, the Administration would engage in an active dialogue with organisations which might be affected by the introduction of legislation during the public consultation exercise.

Education for children of ethnic minorities

11. Hon Emily LAU expressed concern about allegations that some children of ethnic minorities had not been able to enrol in schools. She asked whether the Administration had taken measures to eliminate difficulties encountered by these children in their pursuit of school places.

12. The Administration responded that children of ethnic minorities aged between six and 14, like other local children, were required by law to attend school. There were a total of seven schools, including government and aided schools, providing basic education which had admitted a large number of non-Cantonese speaking children of ethnic minorities. Children of ethnic minorities could also apply for enrolment in any other ordinary school. The Administration pointed out that there should not be any child of ethnic minorities who was unable to enrol in school, although there might be isolated cases of non-attendance of school under very exceptional circumstances.

The "two-week rule" applicable to foreign workers in Hong Kong

13. In its Concluding Observations on the 14th periodic report of the UK in respect of Hong Kong under ICERD, UNCERD expressed concern that the "two-week rule" might have discriminatory effects since it applied mostly to domestic workers of Filipino origin and might leave the workers concerned extremely vulnerable and in precarious conditions. Under the "two-week rule", foreign domestic worker or imported worker whose contract is terminated pre-maturely, is permitted to remain in HKSAR for the remainder of the permitted limit of stay, or for two weeks from the date of termination of the contract, whichever is the shorter.

14. Some deputations held the view that the "two-week rule" was a racial discriminatory practice against foreign domestic workers. The Administration, however, was of the view that the "two-week rule" was a measure for effective immigration control. Should there be any special compassionate grounds, or the termination being an unfair dismissal, the worker could apply to the Immigration Department for waiver of that rule. The Administration stressed that the legality of the "two-week rule" had been confirmed by a ruling of the Privy Council prior to 1 July 1997.

Preparation of the second report of HKSAR under ICERD

Reporting under ICERD

15. At its meeting on 13 December 2002, the Panel on Home Affairs discussed, among others, the preparation of HKSAR's second report under ICERD, as some members were concerned that, while China's 10th and 11th periodic report was due on 28 January 2003, CPG still had not informed HKSAR of the date by which it intended to submit its report under ICERD and had not called for Hong Kong's contribution to the report. These members asked whether HKSAR could submit its own reports to UN, rather than as part of China's metropolitan report.

16. The Administration advised that HKSAR would initiate the drafting process of the reports when CPG called for Hong Kong's contribution to China's metropolitan reports, of which the reports from Hong Kong would form a part. Hong Kong was not, and could not be, a State Party to these treaties because it was not a sovereign state and the treaties were applied to Hong Kong by an extension of China's ratifications. HKSAR therefore could not submit reports in its own right.

Relevant motion and questions moved/raised at Council meetings

17. At the Council meeting on 12 March 2003, Hon Audrey EU moved a motion urging the Government to adopt the recommendations of the relevant UN Committees (including UNCERD) and expeditiously legislate against racial discrimination to

ensure that new arrivals from the Mainland and ethnic minorities in Hong Kong could enjoy equal opportunities in such areas as education, employment and access to social services. The motion was carried.

18. Details of the questions relating to ICERD raised at Council meetings since the first LegCo are in **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
5 January 2007

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

50th session

3 - 21 March 1997

Concluding observations

United Kingdom of Great Britain and Northern Ireland

1. At its 1185th and 1186th meetings, held on 3 and 4 March 1997, the Committee on the Elimination of Racial Discrimination considered the fourteenth periodic report of the United Kingdom of Great Britain and Northern Ireland (CERD/C/299/Add.9), and adopted, at its 1204th and 1209th meeting, held on 14 and 19 March 1997, the following concluding observations:

A. Introduction

2. The Committee welcomes the opportunity to continue its dialogue with the State party. It also welcomes its fourteenth periodic report, and notes with appreciation that information on Crown Dependencies and Dependent Territories is contained therein. The Committee notes with great appreciation that the report provides answers in detail to concerns expressed and recommendations made by the Committee in its concluding observations following the consideration of the thirteenth periodic report of the State party (see documents CERD/C/263/Add.7 and A/51/18, paras. 219-255). The Committee further welcomes the comprehensive answers provided by the delegation in the course of the dialogue.

C. Positive aspects

10. The adoption of the British Nationality (Hong Kong) Bill, which grants the right to members of ethnic minorities in Hong Kong who have no other nationality than their present British nationality to be registered as full British citizens, and thus to enjoy the right of abode in the United Kingdom, is noted with appreciation by the Committee.

11. It is also noted with satisfaction that, after 140 years, equal status has been accorded to Chinese with English in the Hong Kong courts at all levels, and that the Hong Kong Government is undertaking the translation into Chinese of all the laws adopted in Hong Kong before 1989.

12. It is noted with satisfaction that the Hong Kong Government is now providing education up to the secondary level to Vietnamese migrants in Hong Kong, and that education services are provided to all Vietnamese children in the detention centres free of charge. The fact that the syllabus takes into account the future reintegration of these children into the Vietnamese education system on their return to Viet Nam is viewed as a positive measure by the Committee.

D. Principal subjects of concern

19. Concern is also expressed that specific legislation against racial discrimination is not yet available in all the Dependent Territories and Crown Dependencies, and that in some cases such legislation should be deemed unnecessary by the relevant authorities on the ground of the alleged

non-existence of racial discrimination in the territories.

20. The absence of a provision in the Hong Kong Bill of Rights ordinance protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations is a matter of concern for the Committee. In this regard, it is stressed that article 2, paragraph 1(d), of the Convention, makes it an obligation for States parties to prohibit, including by the adoption of legislation, racial discrimination "by any persons, groups or organizations".

21. With respect to the "two-week rule" applying to foreign workers in Hong Kong which prohibits them from seeking employment or remaining in Hong Kong more than two weeks after the expiration of their employment contracts, concern is expressed that such a rule may have discriminatory effects, since it applies mostly to domestic workers of Filipino origin, and that it may leave the workers concerned extremely vulnerable and in precarious conditions.

E. Suggestions and recommendations

29. The Committee also recommends that special attention be given by the Government of Hong Kong to the situation of the foreign workers subject to the "two-week rule" and that all the necessary measures, including the modification or repeal of this specific rule, be undertaken to ensure the protection of all their rights under the Convention.

Appendix II

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

CERD/C/59/Misc.16/Rev.3
9 August 2001
Original: ENGLISH
UNEDITED VERSION

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.

4. 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.

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.

**Relevant questions relating to
the International Convention on the Elimination of
All Forms of Racial Discrimination since the first LegCo**

Meeting date	Question
23.2.00	Written question raised by Hon Christine LOH on <u>racial</u> discrimination in Hong Kong
19.6.02	Oral question raised by Hon Emily LAU on legislation against acts of racial discrimination in the private sector
2.6.04	Oral question raised by Hon Audrey EU on legislative proposals for racial discrimination law

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