

**立法會**  
**Legislative Council**

LC Paper No. CB(2)437/08-09(09)

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**

**Background brief prepared by Legislative Council Secretariat  
for the meeting on 15 December 2008**

**Second report of the Hong Kong Special Administrative Region under  
the International Convention on the Elimination of  
All Forms of Racial Discrimination**

**Purpose**

This paper gives an account of the previous discussions of the Panel on Home Affairs (the HA Panel) on the reports of the Hong Kong Special Administrative Region (HKSAR) under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

**Background**

2. The application of ICERD was first extended to Hong Kong by the United Kingdom (UK) Government in March 1969.

3. In June 1997, the Permanent Representative of the People's Republic of China (PRC) to the United Nations (UN) notified the UN Secretary General that ICERD would continue to apply to HKSAR with effect from 1 July 1997 as PRC was also a State Party to ICERD, 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.

4. 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. The UN Committee on the Elimination of Racial Discrimination (UNCERD) heard 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 I**. 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 10<sup>th</sup> periodic report jointly with its 11<sup>th</sup> 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.

5. In line with established practices, the Administration published an outline of topics to be included in the second report of HKSAR under ICERD for public consultation on 4 December 2006. The consultation period ended on 12 January 2007. PRC's 10<sup>th</sup> to 13<sup>th</sup> combined report under ICERD, of which the second report on HKSAR formed a part, was submitted to UN on 25 June 2008. The UN hearing is tentatively scheduled for August 2009.

### **Discussions on the first report of HKSAR submitted under ICERD in 2000**

6. The HA Panel 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 HA 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 PRC. The major issues discussed at the two meetings are summarized in paragraphs 7 to 12 below.

#### Failure to introduce legislation against racial discrimination

7. Ms Emily LAU and Ms Cyd HO shared the concern raised by deputations and UNCERD about the absence in HKSAR 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.

8. 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.

#### Education for children of ethnic minorities

9. Ms 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.

10. 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 HKSAR

11. In its Concluding Observations on the 14<sup>th</sup> periodic report of UK in respect of HKSAR 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. Under the "two-week rule", a 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.

12. Some deputations held the view that the "two-week rule" was a 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 unfair dismissal, the worker could apply to the Immigration Department for a 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.

### **Discussions on the second report of HKSAR submitted under ICERD in 2008**

#### Reporting under ICERD

13. At its meeting on 13 December 2002, the HA Panel discussed, among others,

the preparation of HKSAR's second report under ICERD, as some members were concerned that, while PRC's 10<sup>th</sup> and 11<sup>th</sup> periodic reports were due on 28 January 2003, CPG still had not informed HKSAR of the date by which it intended to submit its reports under ICERD and had not called for HKSAR's contribution to the report. These members asked whether HKSAR could submit its own reports to UN, rather than as part of PRC's metropolitan report.

14. The Administration advised that HKSAR would initiate the drafting process of the reports when CPG called for HKSAR's contribution to PRC's metropolitan reports, of which the reports from HKSAR would form a part. HKSAR 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 HKSAR by an extension of PRC's ratifications. HKSAR therefore could not submit reports in its own right.

#### Information to be included in the second report

15. At the meeting of the HA Panel on 12 January 2007, the Panel discussed with the Administration and deputations the outline of topics in preparation for the submission of the second report of HKSAR under ICERD. The major issues of concern raised by members at the meeting are summarised in paragraphs 16 to 20 below.

#### *Race Discrimination Bill and support measures for ethnic minorities*

16. Some members expressed disappointment at the inclusion of a number of exceptions in the Race Discrimination Bill which was introduced into the Legislative Council in December 2006. They considered that these exceptions provided for in the Bill would seriously undermine the effectiveness of protection accorded by legislation. The Administration assured members that it had taken a number of support measures in areas such as education, employment and vocational training, to assist ethnic minorities, and some of these special measures could be taken after enactment of the Bill only if the relevant exception clauses were provided for. The Administration would give a detailed account of such measures in the second report.

17. Mr Albert HO expressed concern that discrimination on the ground of language often gave rise to indirect racial discrimination. He was particularly concerned about whether ethnic minorities were given equal treatment at public hospitals and at immigration control points, and whether the provision of emergency services to them had ever been delayed due to the language barrier. Mr HO requested the Administration to conduct surveys and obtain information from non-governmental organizations on the number of complaints on racial discrimination and present the information to UNCERD.

#### *Education and vocational training*

18. Some members expressed grave concern about the lack of avenues provided to

non-Chinese speaking ethnic minority students to attain qualifications in Chinese for admission to universities. They considered that this had hindered ethnic minority students from gaining admission to universities and amounted to racial discrimination. Some members also expressed concern that the Vocational Training Council (VTC) had failed to offer courses using English as the medium of instruction. As a result, ethnic minorities had little choice in occupation due to the lack of vocational training.

19. The Administration explained that the Hong Kong Institute of Vocational Education of VTC used English as the medium of instruction for some of its training courses. VTC offered additional craft and foundation level courses specifically targeted at ethnic minority students. Mr CHEUNG Man-kwong requested that the Administration should give a detailed account of the concerns expressed on the issue of education and vocational training in the second report.

#### *Discrimination against new arrivals from the Mainland*

20. Noting that new arrivals from the Mainland were not within the scope of the Race Discrimination Bill, some members stressed that discrimination against these new arrivals did exist and it was imperative for the Administration to resolve the problem by effective means. The Administration responded that it was committed to offering equal opportunities for new arrivals from the Mainland in gaining access to public services and would take necessary measures for dealing with their problems. The Administration would explain in the second report why these new arrivals were not included within the coverage of the Bill. Ms CHOY So-yuk requested that the Administration should also provide details on the measures for tackling the problem of discrimination against new arrivals from the Mainland in the second report.

#### Enactment of the Race Discrimination Bill

21. Members may wish to note that the various issues of concern raised by members in paragraphs 16 to 20 above have been discussed during the scrutiny of the Race Discrimination Bill. The Race Discrimination Ordinance was gazetted on 18 July 2008. The original Clause 58 of the Bill which provided for exception for languages has not been incorporated as part of the Ordinance. To address the concern raised by the relevant Bills Committee about the difficulties faced by ethnic minorities in gaining access to university education and various public services, the following measures have been implemented -

- (a) the University Grants Committee-funded institutions would offer further flexibility in the form of accepting alternative qualification(s) in Chinese Language for admission applications;
- (b) regional services centres for ethnic minorities would be established;
- (c) the Hospital Authority would enhance its interpretation support for ethnic minorities; and

- (d) Administrative guidelines on promotion of racial equality would be compiled within the Government for the key Bureaux and Departments to follow in their formulation and implementation of their relevant policies and measures, focusing on the key services including medical, education, vocational training, employment and major community services.

**Relevant motion moved and questions raised at Council meetings**

22. At the Council meeting on 12 March 2003, Ms 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 HKSAR could enjoy equal opportunities in such areas as education, employment and access to social services. The motion was carried.

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

## Appendix I

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 1480<sup>th</sup> and 1481<sup>st</sup> 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.

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

<b>Meeting date</b>	<b>Question</b>
23.2.00	Written question raised by Hon Christine LOH on racial discrimination in HKSAR
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