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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 November 2009**

**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 discussions held by Legislative Council (LegCo) Members relating to 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), including recent discussions of the Panel on Constitutional Affairs (the CA Panel) as summarized in paragraphs 16 to 21.

Background

2. The application of ICERD was first extended to Hong Kong by the United Kingdom 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. UNCERD 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.
5. The Panel on Home Affairs (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 raised at these two meetings included failure to introduce legislation against racial discrimination, provision of education for children of ethnic minorities and the "two-week rule" applicable to foreign workers in HKSAR.

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

Reporting under ICERD

6. 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 10th and 11th 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.

7. 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.

Outline of topics to be included in the second report

8. 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.

9. 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 summarized in paragraphs 10 to 14 below.

Race Discrimination Bill and support measures for ethnic minorities

10. Some members expressed disappointment at the inclusion of a number of exceptions in the Race Discrimination Bill which was introduced into LegCo 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.

11. 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

12. 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.

13. 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

14. 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.

Second report on HKSAR

15. PRC's 10th to 13th combined report under ICERD, of which the second report

on HKSAR formed a part, was submitted to UN on 25 June 2008. The CA Panel discussed the second report at its meeting on 15 December 2008. Prior to the hearing held by UNCERD on 7 and 10 August 2009, the Panel received views from deputations on and further discussed with the Administration the report at its meeting on 15 June 2009. The issues raised by members of the CA Panel are summarized in paragraphs 16 to 21 below.

Judicial cases on violations of ICERD in HKSAR

16. Mr IP Kwok-him noted from paragraph 19 of the Concluding Observations of UNCERD on the first report of HKSAR under ICERD submitted in 2000 that UNCERD had requested the provision of detailed information on judicial cases relating specifically to violations of ICERD in HKSAR in subsequent reports. Mr IP asked for the reason for such information not to have been included in the second report on HKSAR. The Administration explained that as the relevant judicial cases were still ongoing, detailed information on the cases could only be included after the completion of the legal proceedings concerned. Subject to the progress of the relevant judicial cases, consideration could be given to providing further information to UNCERD on these cases as appropriate when the hearing was held in August 2009.

Problem of racial discrimination and support for ethnic minorities

17. Some members expressed dissatisfaction that the second report on the HKSAR had failed to provide a true picture of the problem of racial discrimination in Hong Kong. They considered that the Administration should have set out in the report the policies and measures to be introduced to eliminate all forms of racial discrimination, as well as the implementation timetable. The Administration explained that the report had given a full account of the situation in Hong Kong, including background information on the legal and constitutional framework, and major developments in relation to the efforts of the Administration on the promotion of racial harmony and racial equality.

18. Some members enquired about the measures taken by Hospital Authority (HA) to enhance its interpretation services for ethnic minorities in gaining access to medical services. The Administration advised that since mid-June 2008, HA had implemented a telephone/booking service to provide telephone and on-site interpretation service for four common ethnic minority languages, *viz.* Urdu, Nepali, Hindi and Punjabi, in all hospitals under HA for accident and emergency services, general and specialist out-patient services, in-patient services as well as individual cases where advanced bookings had been made. The four regional support service centres to be set up would also provide interpretation service to ethnic minorities to facilitate their access to public services and critical non-government services. Such service would be provided for seven common ethnic minority languages primarily through telephone and, subject to pre-booking and availability of resources, might also be provided on site. The Administration had earmarked a total of \$16 million as the operating expenses of these centres in their first year of operation and an additional \$8 million to subsidize their start-up costs. These centres would be run on

a trial basis for two years and would also provide support services to facilitate the integration of ethnic minorities into society.

19. Some members expressed concern that the Administration had not provided sufficient support to ethnic minorities to ensure equal opportunities in terms of education. They considered that support for non-Chinese speaking (NCS) students to learn Chinese in schools was inadequate, and the opportunity for NCS students to gain admission to secondary schools and universities was limited by their lack of proficiency in the Chinese language. The Administration advised that it had stepped up efforts in implementing special measures to provide NCS students with appropriate educational support such as helping schools develop school-based Chinese language curricula and providing special grant to designated schools to enable them to develop supporting teaching materials for NCS students.

20. Mr Albert HO queried the basis for requiring ethnic minorities to meet the Chinese language proficiency requirement in order to secure employment in the civil service. The Administration explained that the appointments to the civil service were based on open and fair competition. The recruitment policy of the Administration was to appoint the most suitable person. As the Government provided various services to the community, the policy objective was to maintain a bilingual civil service. All civil service grades were required to meet Chinese and English language proficiency requirements that were commensurate with the job requirements. Notwithstanding the Administration's explanation, Mr HO requested the Administration to explain why the recruitment policy of the civil service required a person to be proficient in both English and Chinese; and why some post-holders in the civil service were exempted from the Chinese language proficiency requirement. The Administration's response is awaited.

Discrimination against new arrivals from the Mainland

21. Some members expressed concern about the lack of avenue for new arrivals from the Mainland who were discriminated against to seek redress, and criticized the Administration for refusing to legislate to combat discrimination against new arrivals. They asked whether the Administration intended to introduce new legislation to combat against discrimination against these new arrivals. The Administration advised that discrimination against new arrivals from the Mainland was a form of social discrimination which should be tackled by public education, and that it had no intention of introducing legislation to deal with discrimination against new arrivals at this stage. The Administration was requested to provide information on the party responsible and the mechanism for handling complaints about discrimination against new arrivals from the Mainland, and information on the Administration's policy on combating discrimination against new arrivals. The Administration's response is awaited.

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 the **Appendix**.

Latest development

24. After consideration of the second report, UNCERD issued its Concluding Observations on 28 August 2009, a copy of which was issued to LegCo Members vide LC Paper No. CB(2)2438/08-09 on 3 September 2009. The Administration will brief the CA Panel on its initial views on the matters raised in the Concluding Observations at its meeting on 16 November 2009.

Council Business Division 2
Legislative Council Secretariat
10 November 2009

**Relevant questions raised at Council meetings 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 racial discrimination in HKSAR
25.4.01	Oral question raised by Hon Margaret NG on the introduction of anti-racial discrimination legislation
10.4.02	Written question raised by Hon Cyd HO on legislation to prevent racial discrimination in the private sector
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
26.1.05	Written question raised by Hon WONG Kwok-hing on support to and measures to eliminate discrimination against new arrivals from the Mainland
19.10.05	Written question raised by Hon LEUNG Yiu-chung on the employment situation of ethnic minorities
4.3.09	Written question raised by Hon Emily LAU on provision of banking services to ethnic minorities
13.5.09	Written question raised by Hon CHEUNG Kwok-che on social services to ethnic minorities