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7 January 2019

Ms Joanne MAK
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

Dear Ms MAK,

Panel on Constitutional Affairs

At its meeting on 19 November 2018, the Panel on Constitutional Affairs called for the Government to provide supplementary written response under agenda item (III) on “Outcome of the hearing of the Report of the Hong Kong Special Administrative Region by the United Nations Committee on the Elimination of Racial Discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination”. After consulting the relevant responsible bureaux and departments, the Government’s consolidated response on the related issues is at Annex please.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Cathy LI'.

(Miss Cathy LI)

for Secretary for Constitutional and Mainland Affairs

**Legislative Council Panel on Constitutional Affairs
Meeting on 19 November 2018**

III. Outcome of the hearing of the Report of the Hong Kong Special Administrative Region by the United Nations Committee on the Elimination of Racial Discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination

Follow-up

The Administration was requested to provide written response on:

- (a) whether prosecutions had been instituted under sections 45(1) and 46 of the Race Discrimination Ordinance (“RDO”) (Cap. 602) against alleged cases of racial vilification and serious racial vilification; and if so, the relevant figures;
- (b) whether the HKSAR Government would implement the following recommendations made by the UN Committee in its Concluding Observations issued on 30 August 2018:
 - (i) racist hate speech and hate crimes should be publicly condemned;
 - (ii) HKSAR should adopt comprehensive laws on refugee status in conformity with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
 - (iii) the “two-week rule” and the “live-in requirement” applicable to foreign domestic helpers (“FDHs”) should be examined; and measures to protect FDHs, including investigation, prosecutions and sanctions, should be provided in HKSAR’s next periodic report; and
- (c) when the HKSAR Government would follow up on the recommendation made by the Equal Opportunities Commission under the Discrimination Law Review that all Government functions and powers should be brought within the scope of the RDO.

Response

After consulting the relevant responsible bureaux and departments, the Government's consolidated response is as follows:

(a)

There was no reported case, arrest, prosecution or conviction in relation to serious vilification under section 46 of the Race Discrimination Ordinance (Cap. 602) ("RDO") in the past five years (2013-2017).

On the other hand, a person who has been subject to racial vilification under section 45 of the RDO may make a civil claim in the District Court pursuant to section 70 of the RDO. As a victim may make a civil claim in the Court directly against the wrongdoer, the Government does not normally know about the case unless it is reported by the media or the Government is named as the respondent. Hence, the Government does not hold records on the total number of such claims. According to the Equal Opportunities Commission ("EOC"), they are not aware of any cases where a person has made a successful claim for racial vilification. In 2011, the EOC received an application for legal assistance in relation to a complaint of racial vilification, but the application was not accepted due to insufficient evidence.

(b)(i)

The Government does not tolerate and strongly condemns racist views of any person or organisation. While we firmly uphold freedom of expression, the laws of the HKSAR also prohibit racist acts.

Section 45 of the RDO makes it unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of race. A victim may bring a civil claim in respect

of such unlawful conduct (known as vilification) pursuant to section 70.

Section 46 of the RDO makes it a criminal offence for a person, by any activity in public, to intentionally incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of race, and which involves threatening physical harm or inciting others to threaten physical harm towards another person, or the property or premises of that other person. A person convicted of this offence is punishable by a fine of \$100,000 and imprisonment for two years.

Section 17B(2) of the Public Order Ordinance (Cap. 245) makes it an offence for any person who in any public place behaves in a noisy or disorderly manner, or uses, or distributes or displays any writing containing threatening, abusive or insulting words, with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be caused. In some situations, such behaviour may also constitute the common law offence of outraging public decency or the offences of obstruction of public places and public nuisance under sections 4(28) and 4A of the Summary Offences Ordinance (Cap. 228).

The EOC is very concerned about the recent growth in racial vilification and hate speech on the internet, especially those targeting ethnic minorities in Hong Kong, and considers such behaviour not acceptable. Based on the information provided by the EOC, a total of 47 complaints on racial vilification were received in 2017, in which 45 cases were lodged against users of a major social media. The EOC had conducted investigation against these cases, with Notices issued to the social media operator to provide information of the respondents. However, the operator informed that the users' data was kept in its overseas offices instead of in Hong Kong. The EOC is studying the legal position to enforce Hong Kong anti-discrimination laws in relation to such online platforms and considering possible actions to address the issues.

The EOC has also maintained ongoing discussion with the social media operator on its roles and responsibilities to take down racial hate speech posts on its platform, provide users' data for complaint investigation, as well as to conduct public education.

The Government and the EOC will continue to promote the message of non-discrimination on the ground of race to all sectors of the population.

(b)(ii)

Hong Kong is a small city with a dense population (population density over 6 700 per sq. km.), a long coastline (over 730 km), a liberal visa regime (nationals or residents of about 170 countries / regions may visit Hong Kong visa-free), a large number of visitors (over 50 million visitors per year), and a well-developed transportation hub in the region (over 100 airlines operate direct flights between Hong Kong and some 190 cities). All these make Hong Kong vulnerable to the ill effect of illegal immigration. Against this background, the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol have never applied to Hong Kong, and illegal immigrants seeking non-refoulement protection in Hong Kong will not be treated as "asylum seekers" or "refugees". The Government maintains a firm policy of not determining or recognising refugee status of anyone.

Notwithstanding the above, since March 2014, the Government has been screening non-refoulement claims under the unified screening mechanism, which observes the high standards of fairness required by our courts to ensure that no claimants will be removed to another country where he/she would face a genuine and substantial risk of being subjected to such harms as torture or cruel, inhuman or degrading treatment or punishment, being arbitrarily deprived of his/her life, persecution, etc. Nevertheless, regardless of the outcome of their non-refoulement claims, Immigration Department ("ImmD") will not permit the claimants to remain in Hong Kong. If their claims are rejected or the risks they face cease, ImmD will remove them to their country of origin. At the same time, we will

also continue with the comprehensive review of the strategy of handling non-refoulement claims, with a view to improving screening procedures through legislative amendments and removing rejected claimants from Hong Kong as soon as possible.

(b)(iii)

The Government is fully committed to protecting the rights and benefits of foreign domestic helpers (“FDHs”) in Hong Kong. We do not tolerate any abuse or exploitation of FDHs and will conduct investigation promptly on any complaints lodged. Prosecution against offenders will be instituted when there is sufficient evidence. To strengthen support for FDHs, the Labour Department (“LD”) has launched a range of publicity activities to educate FDHs on their employment rights and obligations. These activities include staging information kiosks at the popular gathering places of FDHs to screen publicity videos and distribute information packs (available in Tagalog, Bahasa Indonesia, Thai and Khmer); organising briefings for FDHs; placing advertisements on the local Filipino and Indonesian newspapers; and maintaining a dedicated website on employment of FDHs to facilitate FDHs in accessing information on their employment rights. In addition to Chinese and English versions, the website is available in ten mother languages of FDHs. LD has also set up a regular liaison mechanism with the consulates-general of major FDH-sending countries to facilitate information exchange and discussion on FDH-related matters.

We consider the “two-week rule” on FDHs is necessary for maintaining effective immigration control and helps to prevent FDHs from job-hopping frequently and working illegally in Hong Kong after contract termination. Under exceptional circumstances, such as where the employment contract is terminated due to external transfer, emigration, death or financial situation of the employer, or where there is evidence that the FDH had been abused or exploited, ImmD may allow the FDHs concerned to change employer without requiring them to return to their home countries before commencing new contracts in Hong Kong. Moreover, an FDH may, if necessary, apply for extension of stay from the ImmD to facilitate him/her in

pursuing claims in court.

The “live-in requirement” is a cornerstone of the Government’s policy that local workers should be given priority in employment, and importation of foreign workers should only be allowed when there is confirmed shortage in a particular sector that cannot be filled by local workers. Based on this principle, Hong Kong has been importing live-in FDHs in order to meet the shortage of local full-time live-in domestic helpers. Any change to the “live-in requirement” will go against the policy principle of according priority in employment to local workers. To safeguard the rights of FDHs, the Government has required employers to provide their FDHs with free, suitable and furnished accommodation with reasonable privacy. Employers’ applications for employing FDHs may be refused if the requirement cannot be met.

(c)

The RDO binds the Government (section 3 of the Ordinance) and therefore prohibits discriminatory acts of the Government in all the areas specified in the RDO, such as employment, education, the provision of goods, facilities or services, and the disposal or management of premises. In particular, section 27 of the RDO renders it unlawful for the Government to discriminate against a person in the provision of the services of any department of the Government or any undertaking by or of the Government.

Under the HKSAR’s legal framework, public bodies are prohibited from practising racial discrimination. The Hong Kong Bill of Rights Ordinance (Cap. 383) prohibits the Government and public authorities from engaging in discriminatory acts, including those committed on the grounds of race, colour and language. Discriminatory acts of the Government, including racial discrimination, are subject to the Court’s supervisory jurisdiction. Avenues are also available to address complaints against public authorities through the Ombudsman, complaint channels in bureaux/departments, the Legislative Council, etc.

Following a comprehensive review of the four anti-discrimination ordinances (including the RDO) in 2016, the EOC made 73 recommendations for the Government's consideration, of which 27 were considered by the EOC as priority items. The HKSAR Government has consulted the Legislative Council Panel on Constitutional Affairs and has decided to take forward eight recommendations of priority. Among them, six are related to the RDO. The legislative proposals have been introduced into the Legislative Council. The Government will continue to carefully study the EOC's submissions and consider how to follow up on the other recommendations (including the recommendation of bringing all Government functions and powers within the scope of the RDO) at a later stage while maintaining communication with the EOC.

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